

view was enforced by the fact that Articles 97 and 98 of the constitution set the maximum number of seats in the National Assembly and the Senate.

The court contrasted this situation with that of the county assemblies, where no maximum number of members is set in the constitution and Article 177 calls for topping up the number of members in order to meet the gender rule. Therefore, the court found that the gender rule was immediately enforceable to the county assemblies through Article 177.

The court then reasoned, under the Fifth Schedule of the constitution, that since Parliament had been given five years to implement legislation promoting the representation of marginalized groups under Article 100, the same should apply to the gender rule. As such, the implementation deadline was set at Aug. 27, 2015. The court subsequently stated that the failure of Parliament to

to a violation of the rights of women to equality and freedom from discrimination and a violation of the constitution.

(c) An order of Mandamus be and is hereby issued directing Parliament and the Honorable Attorney General to take steps to ensure that the required legislation is enacted within a period of sixty (60) days from the date of this order and to report the progress to the Chief Justice.

(d) That it is further ordered that if Parliament fails to enact the said legislation within the said period of SIXTY (60) DAYS from the date of this order, the Petitioners or any other person shall be at liberty to petition the Honorable Chief Justice to advise the President to dissolve Parliament.

Parliament once again failed to act before the deadline set by the court and recessed on May 28, 2017, until after the scheduled Aug. 8, 2017, general election. At that point the petitioners made a strategic decision not to return to court until after the results of the general election were known, in the hope that the case would be moot if the newly elected Parliament met the gender rule.

Unfortunately, the 2017 general election did not result in the election of sufficient women to satisfy the gender rule. In the National Assembly, a mere 23 women were elected in the first-past-the post contests. Together with 47 women's county representatives and six nominated women, the number of female parliamentarians totaled 76, creating a shortfall of 41 women to satisfy the gender rule.⁵ In the Senate, three women were elected, 16 were nominated by the political parties, one was

However, Parliament failed to pass either proposal. The petitioning parties again agreed to an extension until Sept. 30, 2018. As this deadline was not met, the petitioners can return to court and seek an order from the High Court that would eventually result in the dissolution of Parliament and subsequent elections. However, under Article 261(8) of the constitution, any Parliament elected after dissolution under Article 261(7) has another five years to address the gender rule as the deadline in the Fifth Schedule starts anew.

Despite much public and legislative debate on the gender quota in fall 2018, a vote on implementing legislation was deferred to 2019 after the National Assembly was unable to achieve quorum to hold a vote on the legislation. The bill was reintroduced in February 2019, but the assembly again failed to meet quorum. The legislation's future remains uncertain.

Conclusion

It is clear from the recent rulings of the High Court that there is a real possibility that Parliament could be dissolved if it fails to pass implementing legislation to uphold the two-thirds gender quota. Even if Parliament passes pending legislation and constitutional amendments are enacted, the earliest the gender rule can be enforced is the next general election, scheduled for 2022. As noted above, if Parliament is dissolved for failure to act, the new Parliament would be allowed another five years to implement the gender rule.

Most countries that have successfully implemented gender quotas have a proportional electoral system, in which the number and position of women on party lists can be legislated, resulting in a higher number of women getting elected. It is difficult to implement a gender quota in a first-past-the-post-system except through the topping-up method. Women's rights advocates, however, caution that efforts to amend the constitution risk weakening the current provisions to protect and strengthen women's political participation, as a constitutional referendum could result in the reversal of the gains made to date and removal of the two-thirds gender quota.

In any likely scenario – a continuation of the status quo or the Parliament is dissolved and a new election is held with an additional five-year cycle to achieve the gender