



**ASSESSING THE EFFECTIVENESS OF GENDER QUOTAS IN ENHANCING  
WOMEN'S POLITICAL LEADERSHIP - A CASE STUDY OF ZIMBABWE, KENYA  
AND SOUTH AFRICA**

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE  
MASTER'S DEGREE HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA

BY

**MOSUPATSILO MOTHABONOE NARE**  
STUDENT NUMBER: U15286577

PREPARED UNDER THE SUPERVISION OF

**DR AMA HAMMOND**

FACULTY OF LAW, UNIVERSITY OF GHANA

&

**DR ASHWANEE BUDOO-SCHOLTZ**

FACULTY OF LAW, UNIVERSITY OF PRETORIA

25 OCTOBER 2022

## PLAGIARISM DECLARATION

I, Student No 15286577, declare as follows:

1. I understand what plagiarism entails, and I am aware of the University's policy in this regard.
2. This assignment is my own original work. Where someone else's work has been used (whether from a printed source, the internet or any other source), due acknowledgement has been given and reference made according to the requirements of the Faculty of Law.
3. I did not make use of another student's work and submit as my own.
4. I did not allow anyone to copy my work with the aim of presenting it as his or her own work.

Signature: MMN

Date: 25 October 2022

## DEDICATION

Dedicated to all women who are breaking glass ceilings in all spheres; the future is indeed female!

## ACKNOWLEDGMENTS

I am forever grateful to God for His grace that has taken me this far.

I wish to extend my deepest gratitude to my supervisors Dr Ama Hammond and Dr Ashwanee Budoo-Scholtz. Thank you for your sober guidance and unwavering support; I am eternally grateful.

I extend my sincere gratitude to the Centre for Human Rights, University of Pretoria, for granting me this life-changing opportunity. I do not take it lightly.

A special appreciation to the team at Women's Institute for Leadership Development (Bulawayo) under the leadership of Samu Khumalo for nurturing my interest in women's rights. I am indebted.

I am grateful to my family and friends for their unwavering support throughout this program.  
*Umntu ngumuntu ngabantu!*

To the HRDA class of 2022, thank you for being my family away from home. I wish you all the best in your future endeavours.

To my special HRDA friend Sinésio Sambo, thank you for having my back always and constantly reminding me that I can do this.

## ABBREVIATIONS

ACCORD	African Centre for the Constructive Resolution of Disputes
ACDEG	African Charter on Democracy, Elections and Governance
African Charter	African Charter on Human and Peoples' Rights
ANC	African National Congress
AU	African Union
BPfA	Beijing Declaration and Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission for Gender Equality
CREAW	Centre for Rights Education & Awareness
CSOs	Civil Society Organisations
GDP	Gender and Development Policy
ICCPR	International Convention on Civil and Political Rights
International IDEA	International Institute for Democracy and Electoral Assistance
KNCHR	Kenya National Commission on Human Rights
MDC-Alliance	Movement for Democratic Change Alliance
MPs	Members of Parliament
NHRI	National Human Rights Institution
NGEC	National Gender and Equality Commission
NGP	National Gender Policy
OAU	Organisation of African Unity
PR	Proportional Representation
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SDGs	Sustainable Development Goals
SRHR	Sexual Reproductive Health Rights
TSM	Temporary Special Measures
UN	United Nations
Universal Declaration	Universal Declaration of Human Rights

UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WALPE	Women's Academy for Leadership and Political Excellence
ZANU-PF	Zimbabwe African National Union – Patriotic Front
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission

## TABLE OF CONTENTS

<b>PLAGIARISM DECLARATION</b> .....	<b>i</b>
<b>DEDICATION</b> .....	<b>ii</b>
<b>ACKNOWLEDGMENTS</b> .....	<b>iii</b>
<b>ABBREVIATIONS</b> .....	<b>iv</b>
<b>CHAPTER ONE: INTRODUCTION</b> .....	<b>1</b>
1.1 Background.....	1
1.2 Problem statement.....	3
1.3 Research questions.....	5
1.4 Methodology.....	5
1.5 Theoretical framework.....	6
1.6 Scope and limitations of study.....	7
1.7 Literature review.....	8
1.8 Structure.....	10
<b>CHAPTER TWO: THE ROLE OF GENDER QUOTAS IN ENHANCING WOMEN’S PARTICIPATION IN POLITICAL LEADERSHIP</b> .....	<b>11</b>
2.1 Introduction.....	11
2.2 Electoral gender quotas - an overview.....	11
2.3 Types of electoral gender quotas.....	14
2.4 Legal framework on women’s political participation - a synopsis.....	15
2.5 Global legal framework.....	16
2.6 Regional legal framework.....	19
2.7 Conclusion.....	21
<b>CHAPTER 3: PROMOTING WOMEN’S POLITICAL LEADERSHIP: LEGAL OBLIGATIONS</b> .....	<b>23</b>
3.1 Introduction.....	23
3.2 Women’s political leadership and the law.....	23
3.3 Zimbabwe.....	25
3.3.1 Legal framework underpinning women’s political leadership in Zimbabwe.....	25
3.3.2 Institutional framework underpinning women’s political leadership.....	27
3.4 Kenya.....	28
3.4.1 Legal framework underpinning women’s political leadership in Kenya.....	28
3.4.2 Institutional framework underpinning women’s political leadership.....	30
3.5 South Africa.....	31
3.5.1 Legal framework underpinning women’s political leadership in South Africa.....	31

3.5.2 Institutional framework underpinning women’s political leadership .....	33
3.6 The adequacy of the three countries’ constitutions in promoting women’s political leadership .....	35
3.7 Conclusion .....	36
<b>CHAPTER 4: THE EFFECTIVENESS OF ELECTORAL GENDER QUOTAS IN PRACTICE: A CASE OF ZIMBABWE, KENYA AND SOUTH AFRICA .....</b>	<b>38</b>
4.1 Introduction .....	38
4.2 Zimbabwe.....	38
4.2.1 Gender quotas in Zimbabwe: a case study .....	38
4.2.2 Electoral gender quotas: affirmative action or tokenism? .....	40
4.3 Kenya .....	43
4.3.1 Gender quotas in Kenya: a case study .....	43
4.3.2 Legal challenges in implementing the gender quota in Kenya .....	45
4.3.3 Electoral gender quotas: affirmative action or tokenism? .....	46
4.4 South Africa .....	49
4.4.1 Gender quotas in South Africa: A case study .....	49
4.4.2 Electoral gender quotas: affirmative action or tokenism? .....	50
4.5 Conclusion .....	53
<b>CHAPTER 5: CONCLUSION AND RECOMMENDATIONS.....</b>	<b>55</b>
5.1 Summary of key findings and conclusion .....	55
5.2 Recommendations.....	56
5.2.1 Recommendations to the three countries .....	56
5.2.2 Recommendations to political parties.....	57
5.2.3 Recommendations to Electoral Commissions.....	58
5.2.4 Recommendations to Gender Equality and Human Rights Institutions .....	59
5.2.5 Recommendations to Civil Society Organisations .....	59
5.2.6 Recommendations to the media.....	60
<b>BIBLIOGRAPHY.....</b>	<b>61</b>



## Chapter one: Introduction

*“Women belong in all places where decisions are being made”. – Ruth Bader Ginsburg<sup>1</sup>*

### 1.1 Background

Statistics show that more than two-thirds of African countries have adopted electoral gender quotas as affirmative action in enhancing women’s political leadership.<sup>2</sup> While the adoption of gender quotas is celebrated, the literature reveals that implementing quotas remains a challenge in practice.<sup>3</sup> On this premise, the research investigates the effectiveness of electoral gender quotas as affirmative action and subsequently recommends other avenues to be explored in promoting women’s political leadership.

Women’s participation in political processes as both voters and candidates is a vital component in the attainment of democratic rule and good governance.<sup>4</sup> While women’s participation as the electorate is equally important, this research focuses on women’s political leadership as a key factor in achieving gender equality and women’s inclusion.<sup>5</sup> Women’s political leadership is essential for democracy and promoting good governance by ensuring that women, a group of approximately half the world population, are not left behind in decision-making processes.<sup>6</sup> However, women’s participation in political leadership is undermined by cultural, social, economic and political factors that have perpetuated men’s dominance while relegating women to the periphery.<sup>7</sup>

Patriarchy, a system defining women’s role in society as subordinate while men occupy leadership positions, has posed barriers to women’s political participation.<sup>8</sup> Patriarchal norms that undermine women’s leadership are sustained by key institutions such

---

<sup>1</sup> ‘Ruth Bader Ginsburg’s Experience Shows the Supreme Court Needs More Women’ *U.S News Weekly* 20 May 2009 <https://www.usnews.com/opinion/blogs/mary-kate-cary/2009/05/20/ruth-bader-ginsburgs-experience-shows-the-supreme-court-needs-more-women> (accessed 08 September 2022).

<sup>2</sup> International Institute for Democracy and Electoral Assistance (IDEA) *Women’s Political Participation: Africa Barometer 2021* (2021) 40.

<sup>3</sup> S Myeni ‘Representation without Participation: Dilemmas of Quotas for Women in Post-apartheid South Africa’ (2014) 3 *African Journal of Governance and Development* 76.

<sup>4</sup> Women Deliver ‘Strengthen Women’s Political Participation and Decision-Making Power’ <https://womendeliver.org/investment/strengthen-womens-political-participation-decision-making-power/> (accessed 13 September 2022).

<sup>5</sup> Westminster Foundation for Democracy ‘Women’s Political Leadership’ <https://www.wfd.org/womens-political-leadership> (accessed 13 September 2022).

<sup>6</sup> As above.

<sup>7</sup> International IDEA (n 2 above) 19 -20.

<sup>8</sup> Myeni (n 3 above) 72.

as tradition, religion and family.<sup>9</sup> Patriarchy has also fuelled gender stereotypes, further allocating subordinate predetermined social roles to women.<sup>10</sup> The major gender stereotypes highlight women's primary role as caregivers, whilst public leadership is reserved for men.<sup>11</sup>

Another barrier to women's political leadership is election-related violence against women. The United Nations Entity for Gender Equality and the Empowerment of Women, also known as UN Women, reports that while in many African countries both genders are victims of election-related violence, women suffer more election-related violence as they are deemed to be 'softer targets'.<sup>12</sup> Physical, verbal and psychological abuse are amongst the prominent types of abuse suffered by women during elections, discouraging them from actively participating.<sup>13</sup> Amid the COVID-19-induced lockdowns when the world was battling the pandemic, online platforms served as public engagement platforms.<sup>14</sup> While creating opportunities for virtual campaign drives, online platforms also fomented cyberbullying, with women being the main targets.<sup>15</sup>

Financial and resource constraints also pose limitations and negatively impact women's political participation.<sup>16</sup> Women's economic activities are mostly limited to the informal and sustenance sector, resulting in them earning low wages and, in some instances, none.<sup>17</sup> By running businesses in the informal sector, women's income remains paltry and inadequate to run successful political campaigns. High illiteracy levels among women in Africa also continue to be a hurdle to their effective political leadership.<sup>18</sup> The burden of household chores has been a prominent driver in women's limited access to higher education, resulting in their inability to participate in public leadership.<sup>19</sup> Due to these challenges, women shy away from political leadership resulting in a skewed leadership representation structure.<sup>20</sup>

---

<sup>9</sup> As above.

<sup>10</sup> E Asiedu *et al* 'The Effect of Women's Representation in Parliament and the Passing of Gender Sensitive Policies' (2018) 5.

<sup>11</sup> As above.

<sup>12</sup> UN Women 'Preventing Violence Against Women in Elections: A Programme Guide' (2017) 8.

<sup>13</sup> UN Women 'Violence Against Women in Politics: Expert Group Meeting Report & Recommendations' (2018) 5.

<sup>14</sup> International IDEA 'Elections and COVID-19: How election campaigns took place in 2020' (2021) <https://www.idea.int/news-media/news/elections-and-covid-19-how-election-campaigns-took-place-2020> (accessed 11 August 2022).

<sup>15</sup> International IDEA (n 2 above) 25.

<sup>16</sup> Asiedu *et al* (n 10 above) 5.

<sup>17</sup> Myeni (n 3 above) 73.

<sup>18</sup> As above.

<sup>19</sup> As above.

<sup>20</sup> Women's Academy for Leadership and Political Excellence (WALPE) 'A research on the efficacy of the Parliamentary Women's Proportional Representation Quota System' (2019) 11.

Over the years, feminist ideologies such as the feminist democratic theory have been formulated, calling for women's equal representation in political leadership.<sup>21</sup> To date, several global, regional and sub-regional instruments obligate governments to undertake affirmative action in promoting women's inclusion in political leadership.<sup>22</sup> On this premise, African governments have progressively taken steps towards women's inclusion in political leadership through ratifying the gender equality legal frameworks and adopting affirmative action such as gender quotas.<sup>23</sup>

Several African countries have adopted a 30% gender quota in establishing a critical mass of women in political leadership.<sup>24</sup> When successfully implemented, quotas promote the active recruitment of women into political leadership. These are women who can influence political norms and decision-making processes rather than a token few.<sup>25</sup> However, despite adopting gender quotas, the literature reveals that women still hold fewer leadership positions than men.<sup>26</sup> This is contrary to the 50% women's representation in parliaments and local governments recommended by the African Union (AU) and Southern African Development Community (SADC).<sup>27</sup>

Further, what has been noted is that the adoption of quotas has created new challenges for women in political leadership. In Zimbabwe, there has been an outcry that gender quotas do not ensure equal representation as required by the Constitution, rather, they are tokenistic.<sup>28</sup> What has emerged from Kenya is that quotas have fomented patriarchal backlash against women due to refusal of compliance to the Constitution by political leaders and other organs.<sup>29</sup> In South Africa, it has been noted that quotas have acted to legitimise and perpetuate women's actual lack of power since the beneficiaries lack elected legitimacy.<sup>30</sup>

## 1.2 Problem statement

---

<sup>21</sup> H Asenbaum 'Making a Difference: Toward a Feminist Democratic Theory in the Digital Age' (2020) 16 *Politics & Gender* 230.

<sup>22</sup> International IDEA (n 2 above) 32.

<sup>23</sup> As above, 40.

<sup>24</sup> International Knowledge Network of Women in Politics 'Gender Quotas in African Countries' (2009) 7.

<sup>25</sup> L Vincent 'Quotas: 'Changing the way things look without changing the way things are' (2004) 10 *The Journal of Legislative Studies* 92.

<sup>26</sup> Myeni (n 3 above) 76.

<sup>27</sup> As above.

<sup>28</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 22.

<sup>29</sup> M Berry et al 'Implementing Inclusion: Gender Quotas, Inequality, and Backlash in Kenya' (2020) 17 *Politics and Gender* 15.

<sup>30</sup> Vincent (n 25 above) 71.

While statistics show that women comprise about 50 percent of the world's population, their participation in political leadership remains low due to gender inequality.<sup>31</sup> Women's participation in political leadership is hindered by factors such as structural deficiencies, patriarchy, resource constraints and violence.<sup>32</sup> Notwithstanding the looming deadline for the 2030 Sustainable Development Goals, women remain largely underrepresented and on the side-lines in political leadership.<sup>33</sup> Calls have been on the increase for the adoption of affirmative action, including electoral gender quotas, by ensuring that political leadership platforms consist of 30 to 40 percent of women towards the attainment of the 'critical minority'.<sup>34</sup>

However, the effectiveness of gender quotas as a strategy for ensuring women's political participation remains debatable. Political parties relegate women to the quota seats while they field male candidates for the competitive seats.<sup>35</sup> This has seen women being marginalised from effectively participating in political leadership since the seats allocated through gender quotas are inadequate. The exclusion of women is also perpetuated by negative perceptions, with gender quotas being seen as institutionalised favours to get women into office.<sup>36</sup> The quota system has also been heavily criticised for placing women under the control of the political party hierarchy.<sup>37</sup> This has perpetuated a system whereby women entering office through gender quotas have to be subservient to the political party elites for survival, diminishing their effective participation.<sup>38</sup>

About 16 legal frameworks commit African countries to achieve gender equality, however, UN Women confirms that women's inclusion in political leadership remains low in Africa.<sup>39</sup> This supports the view that if ineffectively implemented, laws and policies are inadequate in ensuring women's inclusion in political leadership.<sup>40</sup> Therefore, this calls for a

---

<sup>31</sup> G Turan 'Why quotas work for gender equality' (2015) <https://www.oecd.org/social/quotas-gender-equality.htm> (accessed 11 May 2022).

<sup>32</sup> Myeni (n 3 above) 70.

<sup>33</sup> International IDEA (n 2 above) 7.

<sup>34</sup> International IDEA 'Gender Quotas Database' <https://www.idea.int/data-tools/data/gender-quotas/country-view/310/35> (accessed 12 May 2022).

<sup>35</sup> Myeni (n 3 above) 74.

<sup>36</sup> As above.

<sup>37</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 22.

<sup>38</sup> ML Krook 'Why Are Fewer Women than Men Elected? Gender and the Dynamics of Candidate Selection' (2010) 8 *Political Studies Review* 160.

<sup>39</sup> International IDEA (n 2 above) 7.

<sup>40</sup> As above.

critical assessment to establish the effectiveness of the frameworks in achieving their objectives.

With countries increasingly adopting legislative gender quotas, what remains to be seen is the extent of their effectiveness in ensuring women's inclusion in political leadership.<sup>41</sup> Against this backdrop, this research establishes whether quota systems work in practice and highlights other avenues that the three countries under study can explore in enhancing women's participation in political leadership.

### 1.3 Research questions

The research aims to assess the effectiveness of quota systems in enhancing women's political leadership. The primary research question is:

To what extent have gender quotas enhanced women's political leadership in Zimbabwe, Kenya, and South Africa?

The study will also answer the following sub-questions linked to the primary research question:

- a) How do gender quotas enhance women's participation in political leadership?
- b) What are the obligations of the three countries in ensuring women's participation in political leadership?
- c) To what extent have gender quotas led to women's inclusion in political leadership?
- d) How can the three countries enhance women's participation in political leadership?

### 1.4 Methodology

The dissertation relied on desktop research consisting of a literature review from different sources. The study focused on global and regional legal frameworks on the rights of women. These include the Convention on the Elimination of Discrimination Against Women, African Charter on Human and Peoples' Rights and the Protocol to the African Charter on the Rights of Women. The research paid attention to domestic legal frameworks such as national constitutions and Acts of Parliament on equal representation. These were crucial to the study as they highlight the countries' legal obligations regarding women's political leadership. The

---

<sup>41</sup> Berry *et al* (n 29 above) 1 - 2.

research included a review of academic books, journal articles, newspaper articles, case law, databases, and other related internet sources. These provide information on the practices and experiences in implementing women's quotas in the three studied countries. Since the study was based on desktop research, the literature was sifted by consulting the most recent sources on the subject. The material was also sifted for appropriateness based on their relevance to the research.

## 1.5 Theoretical framework

This study is anchored on the feminist democratic theory as espoused by scholars like Iris Marion Young: a feminist democratic thinker, and Carol Pateman: a representative of participatory democracy.<sup>42</sup> The theory was chosen for this research as it is anchored on the ideals of women's inclusion in political leadership, which underpins the study.<sup>43</sup> First and foremost, feminism is the belief in the equality of sexes.<sup>44</sup> The basis of feminism is that since women consist around 50% of the world's population, real change can only be attained through their inclusion, including in political leadership.<sup>45</sup> While men ran governments for centuries, women's experiences had minimal impact on democratic practices, however, recently, feminist ideas have been pivotal in the debate on democratic politics.<sup>46</sup>

The research accessed the efficacy of the use of the quota system from the perspective of the feminist democratic theory in its advancement of the democratic ideals of inclusion in societies characterised by gendered power inequalities.<sup>47</sup> The feminist democratic theory interrogates the modern-day democratic theory which is founded on the social contract theory.<sup>48</sup> Through the social contract, political and civil society is constructed to confine women to the private, domestic space while men lead in public politics.<sup>49</sup> The feminist democratic theory critiques the way political philosophy is construed by failing to pay attention to feminist concerns.<sup>50</sup>

---

<sup>42</sup> Y Ryusaku 'What is "the Democratic" in Feminist Political Theory?' [https://researchmap.jp/dragon-yamada21/presentations/16152142/attachment\\_file.pdf](https://researchmap.jp/dragon-yamada21/presentations/16152142/attachment_file.pdf) (accessed 13 July 2022).

<sup>43</sup> Asenbaum (n 21 above) 230.

<sup>44</sup> Britannica 'The suffrage movement' <https://www.britannica.com/topic/feminism/The-suffrage-movement> (accessed 13 July 2022).

<sup>45</sup> JJ Lewis 'The Core Ideas and Beliefs of Feminism' (2021) <https://www.thoughtco.com/what-is-feminism-3528958> (accessed 13 July 2022).

<sup>46</sup> J Mansbridge 'Feminism and Democracy' <https://prospect.org/civil-rights/feminism-democracy/> (accessed 14 July 2022).

<sup>47</sup> Asenbaum (n 21 above).

<sup>48</sup> Ryusaku (n 42 above).

<sup>49</sup> As above.

<sup>50</sup> KB Howard & N McAfee 'Feminist Political Philosophy' (2018) <https://plato.stanford.edu/entries/feminism-political/> (accessed 14 July 2022).

The theory interrogates systems whereby authoritative positions in political, judicial and economic spheres were dominated by men and calls for women's inclusion.<sup>51</sup> By revisiting the debates of 'difference democracy,' which advanced the inclusion of marginalised groups in the political sphere in the 1990s, the theory provides a basis for the adoption of gender quotas.<sup>52</sup>

A crucial aspect in political philosophy, the theory provides the ideals for the reconstruction of political systems towards women's inclusion.<sup>53</sup> The values of the theory are entrenched in instruments such as the Convention on the Elimination of Discrimination Against Women and the Beijing Declaration and Platform for Action, whose common thread is equal representation of women and men in political leadership.<sup>54</sup> The theory is vital for this research as, together with legal instruments, it serves as a yardstick in measuring the progress made by the three studied countries in women's inclusion in political leadership.

## 1.6 Scope and limitations of study

Whereas the research may have drawn from practices and norms from Africa in general regarding the use of electoral gender quotas, the countries serving as case studies are Zimbabwe, Kenya and South Africa. To be sure, there are commonalities regarding the disproportionate effects of women's marginalisation from political leadership in Africa as a whole, with countries increasingly adopting gender quotas.<sup>55</sup> However, with about forty African countries currently using electoral gender quotas<sup>56</sup>, it is impossible to investigate all the states due to time constraints. The research focuses on the three mentioned countries as they possess characteristics which enabled the writer to answer the research questions. The selection of the three states is based on a purposive approach and the writer's interest in them.

The research examines the quota systems in use in the three countries and the successes and challenges in the implementation thereof. Further, the research assesses whether gender quotas offer sufficient affirmative action or promote tokenism without facilitating real change of the underlying factors limiting women's political leadership. The

---

<sup>51</sup> Ryusaku (n 42 above).

<sup>52</sup> Asenbaum (n 21 above).

<sup>53</sup> Howard & McAfee (n 50 above).

<sup>54</sup> International IDEA (n 2 above) 17.

<sup>55</sup> As above, 40.

<sup>56</sup> As above, 39.



research subsequently makes recommendations for enhancing women's political leadership in the three studied countries.

With the study relying on desktop research, there were constraints on acquiring real-time data on the topic under study. However, the use of gender quota databases by institutions such as the International Institute for Democracy and Electoral Assistance and the Inter-Parliamentary Union, which are updated regularly, circumvented the challenge. The research only focused on three African countries, while over forty African countries are currently using electoral gender quotas. This may have resulted in the research not capturing comprehensive information in reaching the conclusions herein. However, while focusing on the three countries, the research also drew from practices and experiences from Africa in general.

## 1.7 Literature review

Women's Academy for Leadership and Political Excellence (WALPE) in 'A research on the efficacy of the Parliamentary Women's Proportional Representation Quota System' submit that while the numbers of women in political leadership have increased through the quota system, the same has perpetuated tokenism as women remain excluded from meaningfully participating in decision-making processes in parliament.<sup>57</sup> This view is supported by Berry and others in 'Implementing Inclusion: Gender Quotas, Inequality, and Backlash in Kenya', who submit that while quotas are seen as having made a difference by securing women's descriptive representation in political leadership, quotas have in practice reinforced patronage politics and political elites.<sup>58</sup> The study, therefore, interrogates the extent to which the increase in numbers has promoted women's substantive inclusion in political leadership.

In further assessing the effectiveness of quotas, WALPE has submitted the view that the quota system has failed to address the underlying norms and practices that undermine women's political leadership.<sup>59</sup> They submit that it should be discarded and equitable means towards gender equality adopted.<sup>60</sup> Further, reflecting on the efficacy of gender quotas in promoting women's inclusion in political leadership, Berry and others hold the view that

---

<sup>57</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 11.

<sup>58</sup> Berry *et al* (n 29 above) 5 – 6.

<sup>59</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 8.

<sup>60</sup> As above.



women holding reserved seats are accorded less respect as they are considered to lack elected legitimacy since they are not voted for by the electorate.<sup>61</sup> The study, therefore, assesses the adequacy of gender quotas as a form of affirmative action in promoting women's political leadership.

In 'Representation without Participation: Dilemmas of Quotas for Women in Post-apartheid South Africa', Myeni is of the view that the most important question to be asked regarding gender quotas is whether they have improved women's participation in decision-making or they have merely ensured women's attendance in leadership positions.<sup>62</sup> This view is supported by Vincent in 'Quotas: Changing the way things look without changing the way things are', who holds that as much as they are celebrated, quotas are a 'blunt instrument' as their focus is on numbers rather than promoting substantive change.<sup>63</sup> This view has also been advanced by International IDEA in *Women's Political Participation: Africa Barometer 2021* as they submit that while the implementation of quotas has increased women's political participation, what is yet to be seen is how the numbers translate into women's active participation.<sup>64</sup> Hence this study makes an assessment of the qualitative form of gender quotas in establishing the extent to which they enhance women's substantive participation after their entry into office.

Berry and others in 'Implementing Inclusion: Gender Quotas, Inequality, and Backlash in Kenya' submit that implementing affirmative action, such as quotas, does not automatically result in women's empowerment, hence the need for affirmative action to tackle the structural barriers<sup>65</sup> Extending the debate on the effectiveness of gender quotas, Myeni in 'Representation without Participation: Dilemmas of Quotas for Women in Post-apartheid South Africa' holds the view that, for quota systems to be effective, society must overcome the rigid social, political and cultural barriers that women still face.<sup>66</sup> This is supported by Berry and others, who submit that unless the law is effectively implemented, gender quotas are not likely to yield positive results hence the need for addressing the current defiance regarding their implementation.<sup>67</sup> International IDEA, in their 'Gender Quotas Database,' submit that the effect of quotas should be studied in their qualitative form, looking at both the intended and unintended consequences.<sup>68</sup>

---

<sup>61</sup> n 58 above.

<sup>62</sup> Myeni (n 3 above) 73.

<sup>63</sup> Vincent (n 25 above) 81.

<sup>64</sup> International IDEA (n 2 above) 162.

<sup>65</sup> Berry *et al* (n 29 above) 3.

<sup>66</sup> Myeni (n 3 above) 74.

<sup>67</sup> Berry *et al* (n 29 above) 21.

<sup>68</sup> International IDEA (n 34 above).

While contributing to the existing literature on the effectiveness of electoral gender quotas, the research goes a step further by highlighting other measures which can be undertaken in enhancing women's participation in political leadership. Further, while discussing the traditional factors that limit the efficacy of gender quotas, the research also assesses the adequacy of legal frameworks in achieving the set objectives. Therefore, the research is intended to be used in lobbying for legislative reform towards promoting the effectiveness of electoral gender quotas.

## **1.8 Structure**

The research consists of five chapters. The first chapter introduces the topic, the research problem and methodology and the general layout of the study. The second chapter of the study outlines how electoral gender quotas enhance women's political leadership in an African context. It also unpacks the global and regional legal frameworks providing for the adoption of quotas towards women's inclusion. The third chapter outlines the obligations of the three countries under study in enhancing women's participation in political leadership. This was achieved through an analysis of the domestic legal instruments and institutional mechanisms underpinning women's political leadership in the three countries. Chapter four of the study assesses and evaluates the effectiveness of women's quotas in enhancing women's substantive participation in political leadership in the three studied countries. The chapter also highlights the challenges encountered in the implementation of gender quotas. The fifth and final chapter of the dissertation highlights recommendations and other avenues the three countries can explore in enhancing women's participation in political leadership. The chapter concludes the dissertation.

## Chapter two: The role of gender quotas in enhancing women's participation in political leadership

*"For me, a better democracy is a democracy where women do not only have the right to vote and to elect but to be elected". - Michele Bachelet<sup>69</sup>*

### 2.1 Introduction

As highlighted in the preceding chapter, women's political participation is essential for democracy as it guarantees their involvement in the governance of their countries.<sup>70</sup> However, while women's political leadership is key for democracy, women continue to be under-represented due to social, cultural, economic and political hurdles.<sup>71</sup> In alleviating these challenges, electoral gender quotas have proven to be a common strategy for redressing the imbalances resulting from age-old discriminatory practices.<sup>72</sup> Electoral gender quotas are a form of affirmative action which reserves a prescribed number of seats for women in public leadership platforms such as the National Assembly and local governments.<sup>73</sup>

In setting the background for the assessment of the efficacy of gender quotas, this chapter delves into the rationale for their adoption while highlighting how they enhance women's political leadership. The chapter also unpacks the global and regional legal instruments which underpin the adoption of gender quotas in promoting women's political leadership. This creates a background for assessing the countries' legal obligations in promoting women's inclusion in political leadership.

### 2.2 Electoral gender quotas - an overview

While emphasis is placed on the importance of women's inclusion in political leadership, in Africa, factors including culture, financial constraints, and gendered election violence continue to relegate them to the side-lines.<sup>74</sup> This has resulted in low numbers of women in political leadership positions below the 30% critical mass requirement, as shown in the table below. The table shows the number of women holding public office, such as parliament, local government and cabinet, in all 54 African countries in 2021. Given these limited numbers of

---

<sup>69</sup> 'Evaluating Challenges Women Face' *New York Times* 06 March 2012 <https://www.nytimes.com/2012/03/07/us/07iht-letter07.html> (accessed 12 September 2022).

<sup>70</sup> Asiedu *et al* (n 10 above) 2.

<sup>71</sup> Westminster Foundation for Democracy (n 5 above).

<sup>72</sup> Vincent (n 25 above) 71.

<sup>73</sup> International IDEA (n 34 above).

<sup>74</sup> DH Madsen *Gendered Institutions and Women's Political Representation in Africa* (2021) 5.

women in political leadership, it has become imperative for countries to effectively implement affirmative action for women's inclusion.

Percentage of women in leadership	North Africa	East Africa	Southern Africa	West Africa	Central Africa	Horn of Africa	Africa Total Average
Lower houses of parliament	24%	33%	28%	16%	19%	33%	25%
Upper houses of parliament	11%	29%	29%	12%	20%	30%	21%
Parliament overall	21%	32%	28%	16%	19%	33%	24%
Local government	3%	35%	20%	2%	27%	N/A	17%
Political party leadership	0%	15%	14%	11%	7%	17%	10%
Speakers of parliament	0%	33%	35%	16%	18%	0%	17%
Cabinet	13%	32%	26%	19%	20%	23%	22%

Source: *Women's Political Participation - Africa Barometer 2021*.<sup>75</sup>

Figure 1: Table showing the percentage of women's political participation across Africa in 2021.

A form of affirmative action, electoral gender quotas are special temporary measures that are meant to remove barriers in attaining equal representation in political leadership.<sup>76</sup> Through the use of quotas, a prescribed number or percentage of seats are reserved for women in candidate lists, local authorities, parliament, government or committees.<sup>77</sup> Premised on the feminist democratic theory, which postulates the importance of women's political participation, quotas are being implemented by at least half of the countries globally in 'fast-tracking' women's political leadership.<sup>78</sup> Scholarship shows that implementing gender quotas by African states has increased women's inclusion in political leadership.<sup>79</sup>

While serving to accelerate women's political leadership, electoral gender quotas are at the centre of a debate stemming from diverging views on their effectiveness. Tokenism and merit are the main contentions on gender quotas, with objections to their use based on views

<sup>75</sup> <https://www.idea.int/publications/catalogue/womens-political-participation-africa-barometer-2021> (accessed 10 September 2022).

<sup>76</sup> International IDEA (n 34 above).

<sup>77</sup> As above.

<sup>78</sup> J McCann 'Electoral quotas for women: an international overview' (2013) 1.

<sup>79</sup> International Knowledge Network of Women in Politics (n 24 above) 3.

of their tokenistic nature while propagating political party patronage.<sup>80</sup> Some arguments against quotas are based on submissions that they are discriminatory to men while undermining the selection of candidates based on merit.<sup>81</sup> Opponents of quotas also argue that the use of quotas has promoted ‘unqualified’ women to positions of power, diminishing their legitimacy.<sup>82</sup> Critics also argue that by prescribing numbers, quotas place a ceiling on women’s political participation.<sup>83</sup>

As a point of departure, the gendered impediments to women’s inclusion in political leadership are still prominent hence the interventions through gender quotas being paramount. To be noted is that the existing barriers serve to exclude even the most qualified women from political leadership, whereas the gender quotas create opportunities for advancing women into positions of political leadership.<sup>84</sup> Gender quotas are a necessary tool in dismantling discriminatory norms and practices that perpetuate the exclusion of women from political leadership.

On this premise, the following table summarises the arguments submitted in the debate on the relevance of adopting electoral gender quotas. As highlighted in the following table, while negative views have been submitted on the relevance of gender quotas, what cannot be denied is their importance in ‘fast-tracking’ women’s inclusion in political leadership.

---

<sup>80</sup> Asiedu *et al* (n 10 above) 10.

<sup>81</sup> McCann (n 78 above) 1.

<sup>82</sup> As above.

<sup>83</sup> As above, 5.

<sup>84</sup> International Knowledge Network of Women in Politics (n 24 above) 3.

Arguments for quotas	Arguments against quotas
Electoral gender quotas are one of the key drivers towards increasing numbers of women in political leadership.	Quota systems deprive the electorate of their right to vote for leaders of their choice.
Quotas are key in enhancing equal representation.	Quotas can limit women's opportunities to contest for competitive seats, placing a ceiling on their participation.
Quotas are not discriminatory rather they seek to eliminate discriminatory practices that hinder women's effective participation.	By giving preference to women over men, quotas go against the merit principle.
As citizens, women have the right to equal participation and representation.	Through quotas, politicians are elected based on gender rather than expertise and competence.
Male domination in the political sphere and other harmful practices deprive women from contesting on an equal footing with their male counterparts.	Being elected through quotas has fomented stigmatisation as in some instances they are referred to as 'quota women'.
The increase in numbers of women in parliament facilitates inclusion which is key for democratic rule.	Quotas may promote pliant and incompetent women into the legislature.

Source: International Institute for Democracy and Electoral Assistance 'Gender Quotas Database'.<sup>85</sup>

Figure 2: Table summarising the arguments for and against quotas.

## 2.3 Types of electoral gender quotas

Scholarship shows that the most used quotas are reserved seats, legal candidate quotas and voluntary political party quotas.<sup>86</sup>

### *Reserved seats (constitutional and/or legislative)*

Typically entrenched in national constitutions and legislation, reserved seats quotas prescribe a certain number or percentage of seats that can only be contested by the intended beneficiaries.<sup>87</sup> This type is mostly based on the critical mass theory by Kanter and Dahlerup, which posits that by constituting at least 30% of a governing body, women are likely to influence the adoption of pro-women policies.<sup>88</sup>

### *Legal candidate quotas (constitutional and/or legislative)*

Through this type of quota, political parties are compelled to field a certain proportion of women to compete for parliamentary seats.<sup>89</sup> The legal candidate quotas place an obligation

<sup>85</sup> <https://www.idea.int/data-tools/data/gender-quotas/quotas> (accessed 08 September 2022).

<sup>86</sup> International IDEA (n 34 above).

<sup>87</sup> McCann (n 78 above) 7.

<sup>88</sup> Asiedu *et al* (n 10 above) 7.

<sup>89</sup> International IDEA (n 34 above).

on political parties to field women candidates, and in some instances, incentives and legal sanctions for non-compliance apply.

*Political party quotas (voluntary)*

This is a type of non-legislated quota adopted voluntarily by political parties requiring the fielding of a certain proportion of women candidates to represent the party during an election.<sup>90</sup> In some instances, the voluntary party quotas are recommendations, also known as ‘soft’ quotas, while mandatory regulations such as the ‘zebra’ system, which require an alternation of male and female names on the party list, are also used.<sup>91</sup>

The following table summarises the electoral systems and types of gender quotas adopted by countries in Africa in their respective parliaments. The table shows that electoral gender quotas have been used with different electoral systems, however, the average of women holding public office across Africa remains low.

Electoral system	Proportional Representation	Mixed	First Past the Post	Total Average for Africa
No of countries	18	10	23	54
Voluntary party	40%	N/A	28%	34%
Constitutional/ legislated	26%	25%	25%	25%
None	17%	23%	16%	18%

Source: *Women’s Political Participation - Africa Barometer 2021*.<sup>92</sup>

Figure 3: Table showing types of electoral systems and quotas used by Parliaments in Africa in 2021.

Albeit being commended for guaranteeing an increase in women’s political leadership, gender quotas require the removal of social, political and other prejudices so that they are effective in practice. While quotas serve as temporary special measures in promoting women’s inclusion in political leadership, there is a consensus that long-term strategies are required to address the barriers that limit the election of women to positions of power.<sup>93</sup>

## 2.4 Legal framework on women’s political participation - a synopsis

As highlighted in the above sections, several challenges have served to relegate women to the periphery of political leadership while leadership positions are dominated by their male

<sup>90</sup> McCann (n 78 above) 7.

<sup>91</sup> International IDEA (n 34 above).

<sup>92</sup> <https://www.idea.int/publications/catalogue/womens-political-participation-africa-barometer-2021> (accessed 11 September 2022).

<sup>93</sup> McCann (n 78 above) 11.

counterparts. Due to the discriminatory norms against women, human rights institutions have adopted legal frameworks addressing discriminatory norms impacting women's effective political leadership through the years.<sup>94</sup> By ratifying the legal frameworks, States assume obligations to ensure that barriers against women's political leadership are removed.

UN Women reports that at least 16 legal instruments obligate African states to facilitate equal representation of women and men in political leadership.<sup>95</sup> While most African countries have ratified these instruments and domesticated their provisions, national instruments have generally avoided 50% as a set target for gender quotas required by some legal instruments.<sup>96</sup> The write-up below expounds on the global and regional legal instruments providing for the adoption of gender quotas.

## **2.5 Global legal framework**

### **2.5.1 Universal Declaration of Human Rights**

The adoption of the Universal Declaration of Human Rights (Universal Declaration) in 1948 set a foundation for the attainment of gender equality in all spheres. The Declaration sets out that a person's status, such as their sex, race, colour or other status, shall not be used to discriminate them from exercising the rights and freedoms set out in the Declaration.<sup>97</sup> The Declaration further provides that all persons have a right to take part in their national governments as directly chosen candidates without discrimination.<sup>98</sup> The Declaration, therefore, prohibits discrimination of women from being elected into positions of political leadership.

### **2.5.2 Convention on the Elimination of All Forms of Discrimination against Women**

Adopted in 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is dubbed the "international bill of rights for women", as well as the "treaty for the rights of women" as it explicitly provides for the realisation of gender equality in all spheres including political leadership.<sup>99</sup> The Convention calls for member states to eliminate discrimination against women while taking action to boost their eligibility for election to public office.<sup>100</sup> The Convention further calls on state parties to eliminate all norms, practices

---

<sup>94</sup> As above, 5.

<sup>95</sup> International IDEA (n 2 above) 32.

<sup>96</sup> As above.

<sup>97</sup> Universal Declaration, art 2.

<sup>98</sup> Universal Declaration, art 21.

<sup>99</sup> International IDEA (n 2 above) 26 -27.

<sup>100</sup> CEDAW, art 7.



and prejudices that serve to discriminate women from political leadership based on gender stereotypes.<sup>101</sup> The CEDAW serves as a global blueprint for promoting women's political leadership and obligates countries to take appropriate measures to ensure gender equality in political leadership.

### 2.5.3 International Convention on Civil and Political Rights

The International Convention on Civil and Political Rights (ICCPR) of 1966 is part of the international Bill of Rights and a key human rights treaty for the protection of civil and political rights of all persons.<sup>102</sup> The Convention obligates state parties to promote equal access of citizens to all civil and political rights without any distinction based on gender and sex.<sup>103</sup> It further provides that every citizen, without any form of discrimination or unreasonable restriction, shall have the right and be eligible to be elected to public office.<sup>104</sup> On this premise, it is clear that the Convention prohibits discrimination of women from fully participating in political leadership on an equal basis with men.

### 2.5.4 Beijing Declaration and Platform for Action

Adopted by the United Nations (UN) in 1995, the Beijing Declaration and Platform for Action (BPfA) requires states to take action to ensure that the goal of gender balance and increasing the number of women in political leadership is achieved.<sup>105</sup> The Declaration makes provision for women's effective participation in leadership and decision-making processes as key factors in promoting women's empowerment.<sup>106</sup> The Declaration calls upon governments of the world to commit themselves to the attainment of gender balance in public leadership positions by adopting necessary positive action and implementing measures to increase women's political leadership.<sup>107</sup> By providing for 'positive action', this can be read to include quotas as affirmative action in advancing women's political leadership.

### 2.5.5 Economic and Social Council Resolution – Resolution 1990/15 (24 May 1990)

Recommendation VI of the resolution obligated stakeholders, including governments and political parties, to increase the participation of women in leadership in all spheres to at least 30% by 1995.<sup>108</sup> This was meant to promote an increase in the number of women holding

---

<sup>101</sup> CEDAW, art 5.

<sup>102</sup> United Nations Human Rights office of the High Commissioner 'International Bill of Human Rights' <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> (accessed 16 August 2022).

<sup>103</sup> ICCPR, art 3.

<sup>104</sup> As above, art 25(b).

<sup>105</sup> Asiedu *et al* (n 10 above) 2.

<sup>106</sup> Beijing Declaration and Platform for Action, para 13.

<sup>107</sup> As above, para 190(a).

<sup>108</sup> United Nations 'Targets for Proportion of Women in Leadership and Decision-Making Positions' (2003) [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi\\_1piS38v5AhUh](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi_1piS38v5AhUh)

public office towards the attainment of equal representation by 2000.<sup>109</sup> The resolution was the first instrument to prescribe a women's quota in positions of power, including political leadership.

### **2.5.6 Resolution on women's political participation- Resolution 58/142 (22 December 2003)**

This resolution calls upon states to implement measures to promote gender equality in political leadership.<sup>110</sup> It obligates states to eliminate laws, regulations and practices that perpetuate discrimination and restrict women's effective participation in public leadership.<sup>111</sup> The resolution also calls upon states to review and reform electoral systems that have a differential impact on the participation of men and women in electoral processes.<sup>112</sup> The resolution provides for gender equality in political leadership and calls upon states to implement affirmative action towards achieving this goal.

### **2.5.7 Resolution on women's political participation - Resolution 66/130 (19 December 2011)**

This resolution urges states to adopt measures towards the elimination of prejudices that pose barriers to women's effective political participation, including gender stereotypes which have been prominent in subjugating women to male domination in political leadership.<sup>113</sup> The resolution also obligates political parties within member states to adopt and implement policies that promote the full participation of women in public leadership.<sup>114</sup> One of the key provisions of the resolution is the obligation on state parties to take proactive measures in addressing factors limiting women's political participation, including violence, poverty, lack of access to quality education and gender stereotypes.<sup>115</sup> The resolution also calls upon states to accelerate the implementation of strategies in fast-tracking women's inclusion in political decision-making processes.<sup>116</sup> Such strategies could include quotas as affirmative action towards women's inclusion in political leadership.

### **2.5.8 2030 Sustainable Development Goals**

---

[MuuKHc\\_qCzIQFnoECCYQAO&url=https%3A%2F%2Fwww.legco.gov.hk%2Fyr02-03%2Fenglish%2Fpanels%2Fha%2Fpapers%2Fha0314cb2-1636-1c.pdf&usg=AOvVaw3RiSBVcpXxT3zEYhEqfftz](https://www.legco.gov.hk/fyr02-03/english/panels/fa/papers/fa0314cb2-1636-1c.pdf&usg=AOvVaw3RiSBVcpXxT3zEYhEqfftz) (accessed 18 August 2022).

<sup>109</sup> As above.

<sup>110</sup> Resolution 58/142, clause 1(b).

<sup>111</sup> As above.

<sup>112</sup> As above, clause 1(f).

<sup>113</sup> Resolution 66/130, clause 6(b).

<sup>114</sup> As above, clause 6(c).

<sup>115</sup> As above, clause 6(n).

<sup>116</sup> As above, clause 6(g).

By providing for the achievement of gender equality and women's empowerment, Sustainable Development Goal (SDG) 5 is key to ensuring gender parity in political leadership.<sup>117</sup> It provides for women's full and effective participation at all levels of decision-making and identifies the main indicator for this goal as an increase in the number of women in leadership positions.<sup>118</sup> SDG 5 seeks to ensure that states adopt legal frameworks that promote, enforce and monitor equality while seeking to eliminate gendered discriminatory practices and norms.<sup>119</sup> The SDG calls for the adoption and implementation of affirmative action in promoting equal participation of both sexes in political leadership.<sup>120</sup> This can be read to include the implementation of gender quotas as affirmative action by member states.

## 2.6 Regional legal framework

In Africa, several legal instruments promoting women's political participation have been adopted, with some states incorporating their provisions into their national legal frameworks. The African Charter on Human and Peoples' Rights (African Charter) is a key human rights instrument for Africa and provides a basis for non-discrimination and equality.<sup>121</sup> Premised on Article 66 of the African Charter, which provides for the adoption of special protocols, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) has been dubbed "Africa's most progressive legal instrument" for the promotion of the rights of African women.<sup>122</sup> Providing for the rights of women to political leadership, these instruments are supported by frameworks such as the African Charter on Democracy, Elections and Governance (ACDEG) and Agenda 2063. The relevant provisions of these instruments to women's political leadership are discussed below.

### 2.6.1 African Charter on Human and Peoples' Rights - 1981/ 1986

A key human rights instrument of the African Union (AU), the African Charter on Human and Peoples' Rights (African Charter) provides for the human rights of all people on the basis of equality and non-discrimination.<sup>123</sup> It provides that all persons shall be entitled to human rights set out in the Charter without discrimination on the grounds of sex or other status.<sup>124</sup> The African Charter recognises the right of all citizens to be elected into government bodies

---

<sup>117</sup> United Nations 'SDG Indicators: Metadata repository' <https://unstats.un.org/sdgs/metadata/?Text=&Goal=5> (accessed 16 August 2022).

<sup>118</sup> SDG 5.

<sup>119</sup> SDG 5, target 5.1

<sup>120</sup> n 113 above.

<sup>121</sup> C Heyns & M Killander *Compendium of Key Human Rights Documents of the African Union* (2016) 29.

<sup>122</sup> International IDEA (n 2 above) 27.

<sup>123</sup> As above.

<sup>124</sup> African Charter, art 2.

of their countries without any distinction, hence recognising women's eligibility in contesting for elected office.<sup>125</sup> The Charter further calls upon state parties to eliminate discriminatory norms against women hence guaranteeing the removal of barriers to their political participation.<sup>126</sup> The African Charter, therefore, created a basis for the realisation of women's political participation as a key human right in Africa.

### **2.6.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa - 2003/ 2005**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) seeks to eliminate every discrimination against women including in political leadership.<sup>127</sup> The Protocol obligates state parties to eliminate all forms of gendered discrimination through undertaking appropriate legislative, institutional and other measures.<sup>128</sup> The Protocol calls upon state parties to eliminate harmful practices which perpetuate gender stereotypes resulting in women being side-lined from political leadership.<sup>129</sup> The Protocol obligates member states to formulate affirmative action and other measures in promoting women's political leadership, which can be read to include gender quotas.<sup>130</sup>

It should be noted that the Protocol calls upon state parties to ensure the increased and effective participation of women at all levels of decision-making.<sup>131</sup> This can be construed as an indication that the Protocol envisages the elimination of factors that impede women's effective substantive participation in decision-making processes. The Maputo Protocol is commended for its emphasis on women's inclusion in political leadership as well as highlighting the need for states to adopt affirmative action to promote women's effective participation.<sup>132</sup>

### **2.6.3 African Charter on Democracy, Elections and Governance - 2007/ 2012**

Amongst other objectives, the African Charter on Democracy, Elections and Governance (ACDEG) seeks to promote gender balance and equality in governance processes.<sup>133</sup> The Charter recognises women's political participation as crucial in strengthening democracy,

---

<sup>125</sup> As above, art 13.

<sup>126</sup> As above, art 18(3).

<sup>127</sup> Heyns & Killander (n 121 above) 65 – 66.

<sup>128</sup> Maputo Protocol, art 2(1).

<sup>129</sup> As above, art 2(2).

<sup>130</sup> As above, art 9(1).

<sup>131</sup> As above, art 9(2).

<sup>132</sup> n 123 above.

<sup>133</sup> Heyns & Killander (n 121 above) 125 – 126; ACDEG, art 2(12).

hence calling upon member states to promote conducive conditions for women's active political leadership.<sup>134</sup> The creation of 'necessary conditions' can be read to include affirmative action, such as the adoption of gender quotas. The Charter provides for member states to take possible measures towards the attainment of gender parity in all levels of representation hence calling for affirmative action towards equality participation.<sup>135</sup>

#### **2.6.4 Agenda 2063 – 2015**

Agenda 2063 is Africa's development blueprint, and amongst other initiatives, it seeks to ensure the removal of all forms of gender discrimination in all spheres. Article 47 provides for the active involvement of all citizens in decision making where no one should be left behind based on gender or other factors. The framework further provides that Africa seeks to empower women and ensure full gender equality in all spheres of life.<sup>136</sup> It further provides that by 2063, 50% of elected offices will be occupied by women, shattering the political glass ceiling currently restricting women's progress.<sup>137</sup> The framework recognises women's equal and effective participation in the political landscape as necessary for development and provides for the adoption of affirmative action in the attainment of the same.<sup>138</sup>

#### **2.7 Conclusion**

As highlighted in the preceding discussion, gender quotas are a form of affirmative action in addressing the practices and norms that have excluded women from political leadership. Taking cognisance of the feminist democratic theory, what has emerged is that the attainment of democracy requires equal representation of all sexes in decision-making processes in the public sphere. Notwithstanding the formulation and adoption of legal frameworks providing for women's inclusion in political leadership, women remain underrepresented in positions of leadership in Africa. A common thread that flows through the legal instruments is equality and non-discrimination of women in all spheres. However, cultural practices, patriarchy, religion, resource constraints, violence and illiteracy have been the key drivers of women's exclusion from political leadership. An analysis of the legal framework shows that states are obligated to eliminate harmful practices in enhancing women's effective participation in political leadership.

---

<sup>134</sup> African Charter on Democracy, Elections and Governance, arts 29(1) & (2).

<sup>135</sup> As above, art 29(3).

<sup>136</sup> Agenda 2063, art 49.

<sup>137</sup> As above, art 52.

<sup>138</sup> As above.

To be noted is that legal instruments adopted in earlier years simply mentioned affirmative action without prescribing the critical numbers needed for women to create change. However, today, gender equality is the norm, with some instruments prescribing the adoption of gender quotas which has been a common practice in the majority of countries of the world. However, what remains to be seen is the extent to which women who enter positions of leadership through quotas can significantly contribute to change without being silenced. The literature reveals that the politics of patronage plays a major role in subjugating women and silencing them. Gender quotas are viewed by some as tokenistic as they create an illusion of inclusion of women in political leadership, whereas, in practice, women under the quota are being silenced as they are said to lack elected legitimacy.

While gender quotas are a starting point for women's inclusion in political leadership, as shown in this chapter, there is still more to be done in translating laws and policies to practice. With comprehensive global and regional legal instruments providing for the adoption of gender quotas in place, the following chapter discusses the three countries' legal obligations in promoting women's inclusion in political leadership as set out in these instruments as well as the domestic frameworks.

## Chapter 3: Promoting women’s political leadership: legal obligations

*“Women must enjoy the rights to participate fully in the political lives of their countries, if we want freedom and democracy to thrive and endure”. - Hillary Rodham Clinton.<sup>139</sup>*

### 3.1 Introduction

Women’s inclusion in political leadership has been a key topic in the human rights discourse, with several global and regional human rights instruments entrenching the same as fundamental for democracy and good governance.<sup>140</sup> As a result, most countries globally have taken strides in promoting women’s political leadership through the reform of laws and institutional frameworks.<sup>141</sup> The three countries under study, that is, Zimbabwe, Kenya and South Africa, are not an exception as they have ratified the instruments on women’s rights and taken steps in domesticating the same.

The discussion in this chapter, therefore, assesses the three countries’ legal obligations in advancing women’s political leadership, drawing from their domestic legal frameworks. The chapter outlines the laws, policies, and the adequacy thereof for gender mainstreaming in political leadership. The chapter also highlights the affirmative action entrenched in the laws and policies to ensure women’s inclusion in decision-making processes. A discussion of the legal obligations is a key component of this research because the laws underpin the obligations and provide critical checks and balances on government decisions regarding women’s inclusion.<sup>142</sup> This will subsequently serve as a yardstick in assessing how the countries have translated these laws into practice in enhancing women’s political leadership.

### 3.2 Women’s political leadership and the law

The three countries under study have ratified global and regional instruments on women’s rights, as shown in the table below. By ratifying these instruments, these states have assumed obligations and duties to respect, protect and fulfil women’s rights in their respective countries.<sup>143</sup> The common provision within these instruments is obligating member states to adopt measures, including legislative reforms, in a bid to end gendered discrimination in

---

<sup>139</sup> HR Clinton ‘Address to the United Nations 4th World Congress on Women’ (1995) 5.

<sup>140</sup> UN Women ‘Facts and figures: Women’s leadership and political participation’ (2021) <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> (accessed 06 September 2022).

<sup>141</sup> UN Women & Inter-Parliamentary Union *Gender-responsive law-making* (2021) 13.

<sup>142</sup> As above, 12.

<sup>143</sup> United Nations Human Rights Office of the High Commissioner ‘International Human Rights Law’ <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed 09 September 2022).



political processes. The instruments provide for the adoption of affirmative action, such as gender quotas, in promoting an increase in the number of women holding office.<sup>144</sup> The following table highlights the three countries' statuses on the adoption of the global and regional instruments on women's political leadership and the targets set by the respective instruments.

Instrument	Status			Target
	Zimbabwe	Kenya	South Africa	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Ratified in 1991	Ratified in 1984	Ratified in 1995	Equal participation
International Convention on Civil and Political Rights (ICCPR)	Ratified in 1991	Ratified in 1972	Ratified in 1998	None
Beijing Declaration and Platform for Action (BPfA)	Adopted	Adopted	Adopted	Equal participation
2030 Sustainable Development Goals (SDGs)	Adopted	Adopted	Adopted	Equal participation
African Charter on Human and Peoples Rights (African Charter)	Ratified in 1986	Ratified in 1992	Ratified in 1996	Equal participation
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	Ratified in 2008	Ratified in 2010	Ratified in 2004	Equal participation
African Charter on Democracy, Elections and Governance (ACDEG)	Ratified in 2021	Ratified in 2021	Ratified in 2010	Equal participation
Agenda 2063	Adopted	Adopted	Adopted	50%

Sources: United Nations Treaty Collection & OAU/AU Treaties, Conventions, Protocols & Charters.<sup>145</sup>

Figure 4: Table showing the three countries' status on the adoption of global and regional instruments on women's political leadership.

The three countries have subsequently taken steps in domesticating these instruments while setting up institutions with a watchdog role in monitoring their implementation. The following discussion expounds on the domestic laws and policies adopted by the three countries, obligating them to promote women's political leadership.

<sup>144</sup> International IDEA (n 2 above) 19 -20.

<sup>145</sup> <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en>; <https://au.int/en/treaties> (accessed 09 September 2022).



### 3.3 Zimbabwe

The sixth periodic report submitted by Zimbabwe to the committee on CEDAW highlights the country's commitment to addressing matters of women's inclusion in conformity with international and regional instruments.<sup>146</sup> The government of Zimbabwe has enacted several laws and policies entrenching the provisions of the women's rights instruments that the country has ratified. The Constitution of Zimbabwe is the principal Act providing for women's participation in political leadership, while laws such as the Electoral Act recognise the need for gender mainstreaming in electoral processes. The discussion below unpacks the provisions of the key legal instruments obligating the country to undertake measures towards advancing women's political leadership.

#### 3.3.1 Legal framework underpinning women's political leadership in Zimbabwe

##### *Constitution of Zimbabwe (2013)*

Zimbabwe's constitutional reform saw the adoption of a new constitution in 2013, which established a strong foundation for gender mainstreaming in political processes. Sections 17, 56 and 80 of the Constitution of Zimbabwe provide for gender equality and non-discrimination, while section 124 provides for a gender quota for Parliament. Section 17 obligates the State to prioritise women's participation in all spheres and the attainment of gender equality through the adoption of measures that will ensure equal representation of both genders in all government institutions.<sup>147</sup>

Section 56 provides for equality between women and men, including equal opportunities in the political sphere, while prohibiting unfair discrimination on any grounds, including sex and gender.<sup>148</sup> Section 56 further mandates the State to adopt measures to advance previously marginalised groups due to unfair discrimination.<sup>149</sup> Section 80(3) highlights that every law, custom or practice infringing women's rights is void in its entirety. Section 124(1)(b) provides for a women's quota by reserving sixty seats for women in parliament. Being the supreme law of the country, the 2013 Constitution embodies fundamental provisions on gender equality and women's participation in political leadership. It is a key domestic instrument mandating the government and all institutions to adopt

---

<sup>146</sup> Government of Zimbabwe 'Sixth periodic report submitted by Zimbabwe under article 18 of the Convention on the Elimination of Discrimination Against Women' (2018) 4.

<sup>147</sup> Constitution of Zimbabwe, secs 17(1)(a) & (b).

<sup>148</sup> As above, secs 56(2) & (3).

<sup>149</sup> As above, sec 56(3).

affirmative action, including quotas, to ensure women participate equally in political processes.

*Constitution of Zimbabwe Amendment (No. 2) Act (2021)*

Whereas the 2013 Constitution made provisions for the women's quota for the life of the first two parliaments, section 11(a) of the Constitution Amendment Act provides for the extension of the quota system to four parliaments. Therefore, while the women's quota for parliament ended with the 2018 election, it has been extended until the 2028 elections. This is a commendable provision which facilitates an improvement in the number of women in the National Assembly.

*Electoral Act (2004)*

The Electoral Act is a crucial law in the country's elections management and provides for women's inclusion in electoral processes. Section 45C provides for the allocation of women's reserved seats in the National Assembly in line with section 124(1)(b) of the 2013 Constitution. Section 5(d) of the Electoral Act provides for the Electoral Commission to promote gender mainstreaming in electoral processes. This is a vital provision mandating the elections management body to promote women's inclusion in electoral processes.

*Zimbabwe Gender Commission Act (2016)*

The Zimbabwe Gender Commission Act provides for the establishment of the Zimbabwe Gender Commission (ZGC), an independent institution responsible for the advancement of women's rights.<sup>150</sup> The Act provides that the ZGC is mandated to monitor the implementation of gender equality provisions and provide recourse in cases of violation of the same.<sup>151</sup> This is an important instrument equipping the ZGC, a key institution on women's rights, with powers to enforce compliance with gender equality standards in all spheres, including political leadership.

*National Gender Policy (2013-2017)*

The National Gender Policy (NGP) is a vital blueprint providing a roadmap for the implementation of women's rights laws. The policy highlights the attainment of a 50/50 representation of men and women in politics as its main objective.<sup>152</sup> The policy advances

---

<sup>150</sup> Zimbabwe Gender Commission Act, Preamble.

<sup>151</sup> As above.

<sup>152</sup> Government of Zimbabwe 'National Gender Policy' (2013) 15.

affirmative action measures in areas where prominent gender disparities exist.<sup>153</sup> However, as robust as it is in setting out strategies and action plans towards the attainment of women's equal representation in political leadership, the policy is outdated, and the government has not taken any measures to formulate an updated gender policy.

### 3.3.2 Institutional framework underpinning women's political leadership

#### *Ministry of Women's Affairs, Gender, and Community Development*

This is the primary government Ministry responsible for spearheading women's empowerment and gender equality in Zimbabwe.<sup>154</sup> The Ministry is responsible for establishing relevant structures for the implementation of the laws and policies on women's inclusion.<sup>155</sup> It is also responsible for state party reporting on regional and international conventions and protocols on the rights of women.<sup>156</sup>

#### *Zimbabwe Gender Commission*

Established by the Zimbabwe Constitution and the Zimbabwe Gender Commission Act, the Zimbabwe Gender Commission (ZGC) is responsible for ensuring compliance with the principles of gender equality and non-discrimination.<sup>157</sup> The ZGC is responsible for monitoring compliance with gender equality and investigating possible violations of rights relating to gender.<sup>158</sup> The ZGC is a key institution mandated with recommending affirmative action towards achieving women's participation, including in political leadership.<sup>159</sup>

#### *Zimbabwe Human Rights Commission*

The Zimbabwe Human Rights Commission (ZHRC) is one of the 'Chapter Twelve' independent commissions supporting democracy and a key institution in the promotion of gender equality.<sup>160</sup> The ZHRC is responsible for promoting the protection and attainment of human rights as set out in the Declaration of Rights.<sup>161</sup> With women's rights entrenched in the

---

<sup>153</sup> As above.

<sup>154</sup> Socialprotection.org 'Zimbabwe - Ministry of Women Affairs, Gender and Community Development' <https://socialprotection.org/connect/stakeholders/zimbabwe-ministry-women-affairs-gender-and-community-development> (accessed 30 August 2022).

<sup>155</sup> Government of Zimbabwe (n 152 above) 21.

<sup>156</sup> As above.

<sup>157</sup> Zimbabwe Gender Commission Act, Preamble.

<sup>158</sup> Constitution of Zimbabwe, secs 246(a) & (b).

<sup>159</sup> As above.

<sup>160</sup> Constitution of Zimbabwe, chapter 12.

<sup>161</sup> As above, secs 243(1)(b) & (c).

Declaration of Rights of the Constitution of Zimbabwe, it follows that the promotion of women's equal participation in political leadership falls within the work of the ZHRC.

As highlighted above, Zimbabwe has made strides in formulating a comprehensive legal framework for the realisation of women's political leadership on an equal basis with men. The framework places obligations on the state to ensure gender equality by calling for affirmative action towards advancing women's participation. Of note is that the 2013 Constitution calls for a 50/50 representation in all decision-making processes. However, of concern is that the quota system provided for is way below the 50/50 representation threshold. This implies that for equal representation to be attained in parliament, women must contest in the competitive seats. This is problematic as it is unclear whether the laws have yielded any positive results in eliminating the practices and norms that have discouraged women from successfully contesting for the competitive seats. While a comprehensive legal and institutional framework is in place for advancing women's political leadership in Zimbabwe, of importance is translating these laws into practice towards the attainment of the desired outcomes.

### **3.4 Kenya**

Kenya's legal reforms have established a legal system founded on commitments to the protection of human rights in all spheres.<sup>162</sup> The Constitution of Kenya (2010) is a progressive instrument that entrenches fundamental human rights for all its citizens. Having adopted the democratic Constitution in 2010, the Republic of Kenya has taken further strides in enacting legislation expounding on the rights set out in the Bill of Rights, including women's rights. However, the issue of contention is the adequacy of these laws in providing for women's political leadership, which is highlighted in the ensuing discussion.

#### **3.4.1 Legal framework underpinning women's political leadership in Kenya**

*Constitution of Kenya (2010)*

The supreme law of the Republic of Kenya, the 2010 Constitution of Kenya, is a fundamental instrument obligating the State to promote women's political leadership by eliminating discriminatory practices. Article 27(3) outlaws gendered discrimination and provides that women and men should have the same opportunities and access to political leadership.

---

<sup>162</sup> M Akech *Institutional Reform in the New Constitution of Kenya* (2010) 3.

Article 27 further provides for the prohibition of discrimination on grounds such as sex, ethnic or social origin and religion, which have perpetuated the exclusion of women from political leadership.<sup>163</sup> Article 27 further highlights that the state is obligated to ensure that not more than two-thirds of members of an elective body are of the same gender.<sup>164</sup> This is a key provision towards the adoption of electoral gender quotas.

Article 56(a) provides for the adoption of affirmative action for marginalised groups to ensure their participation in governance and other spheres of life. Despite not explicitly mentioning the marginalised groups, this provision can be read to include women, given their history as a marginalised group in public leadership platforms. Article 81(b) reiterates the provisions of Article 27 on the two-thirds principle, which is a key provision for women's inclusion. Article 91 mandates political parties to ensure the inclusion of marginalised groups in political processes in line with the principles of gender equality.<sup>165</sup> The Constitution further highlights that the National Assembly also consists of 47 women representing each county in addition to the elected members.<sup>166</sup> The 2010 Constitution obligates the state to adopt measures to eliminate barriers to gender equality; this is crucial for the promotion of women's inclusion in political leadership.

#### *National Gender and Equality Commission Act (2011)*

A key Act in advancing women's rights, the National Gender and Equality Commission Act establishes the National Gender and Equality Commission (NGEC) pursuant to article 59(4) of the Kenyan Constitution. The Act provides for the guiding principles of the NGEC in fulfilling its mandate, which includes protecting marginalised groups and advancing gender equality.<sup>167</sup> The Act also highlights that the NGEC shall facilitate the implementation of treaties and conventions on women's rights ratified by the country.<sup>168</sup>

#### *Elections Act (2011)*

Kenya's Elections Act expounds on the nomination process of party-list members. Section 36(2) provides that party lists submitted for the allocation of special seats for different interest groups should contain alternates between male and female candidates. This is a commendable

---

<sup>163</sup> Constitution of Kenya, art 27(4).

<sup>164</sup> As above, art 27(8).

<sup>165</sup> As above, arts 91(1)(e) & (f).

<sup>166</sup> As above, arts 97(1)(a) & (b).

<sup>167</sup> National Gender and Equality Commission Act, secs 7(a) & (b).

<sup>168</sup> As above, secs 7(d).

provision as it seeks to ensure that women occupy the National Assembly seats to achieve the goals of women's inclusion as envisaged by the 2010 Constitution.

#### *National Policy on Gender and Development (2019)*

A crucial tool for translating laws into practice, Kenya's Gender and Development Policy (GDP) sets out strategies towards attaining gender equality as obligated by the laws the country has enacted. Policy goal 3 provides for establishing and strengthening affirmative action efforts to reduce gender inequalities and disparities in leadership.<sup>169</sup> Goal 4.11 of the policy provides for action in the enactment of legislation towards ensuring that not more than two-thirds of members of elected bodies are of the same gender.<sup>170</sup> It further provides for political party regulations in promoting women's inclusion.<sup>171</sup> The goal also highlights actions towards ensuring women's meaningful participation in decision-making processes.<sup>172</sup>

### **3.4.2 Institutional framework underpinning women's political leadership**

#### *Ministry of Public Service and Gender - State Department for Gender Affairs*

This is a key state department in the coordination of gender mainstreaming in all spheres towards national development.<sup>173</sup> The department is responsible for developing standards and guidelines on women's inclusion in complying with the principles of equality and non-discrimination.<sup>174</sup> The department is crucial in ensuring that the Republic of Kenya upholds its obligations in promoting women's political leadership.

#### *National Gender and Equality Commission*

Established in article 59 of the Constitution of Kenya, the National Gender and Equality Commission (NGEC) is a key institution playing a watchdog role in promoting gender equality.<sup>175</sup> A core function of NGEC is gender mainstreaming by ensuring that women's concerns are integral to the laws, policies, and practices for inclusion in the political sphere.<sup>176</sup> As an independent institution, the NGEC plays a critical role in holding institutions and organs to account regarding women's inclusion in political leadership.

---

<sup>169</sup> Government of Kenya 'National Policy on Gender and Development' (2019) 28.

<sup>170</sup> As above, 35.

<sup>171</sup> As above.

<sup>172</sup> As above.

<sup>173</sup> State Department for Gender <https://gender.go.ke/background/> (accessed 28 August 2022).

<sup>174</sup> Government of Kenya (n 169 above) 40.

<sup>175</sup> Constitution of Kenya, sec 59(2)(b).

<sup>176</sup> National Gender and Equality Commission <https://www.ngeckenya.org/SpecialInterestGroups/GenderandWomen> (accessed 28 August 2022).

### *Kenya National Commission of Human Rights*

The Kenya National Commission on Human Rights (KNCHR) is an independent institution and the state's lead agency in promoting and protecting human rights.<sup>177</sup> The main goal of KNCHR is monitoring compliance with human rights norms and standards.<sup>178</sup> By setting up a National Human Rights Institution (NHRI), the Republic of Kenya has provided a critical mechanism for protecting women's human rights, including their participation in decision-making processes.

An assessment of Kenya's legal framework reveals the country's commitment to gender equality in all sectors, thereby obligating the state to promote women's inclusion in political leadership. The Constitution highlights the importance of adopting affirmative action towards eliminating hurdles that have historically side-lined women from leadership positions. A commendable provision of the Constitution of Kenya is the political party obligation to ensure that marginalised groups, including women, fully participate in political processes. This is a crucial provision as, in most instances, political parties serve as gatekeepers who perpetuate political patronage resulting in the exclusion of women from political office. The legal framework is progressive as it sets the foundation for the establishment of key institutions playing a watchdog role regarding the realisation of the rights of women.

### **3.5 South Africa**

A democratic state, the Republic of South Africa has taken commendable strides in promoting the human rights of all its citizens and providing for affirmative action in advancing the rights of marginalised groups.<sup>179</sup> The country has enacted several laws which obligate the state to promote gender equality and women's inclusion. A common thread within the enacted laws is the provision for the adoption of affirmative action in promoting women's inclusion in decision-making processes. Taking cognisance of the steps that the country has taken in adopting laws that advance the rights of women, what remains key is an assessment of the same in addressing the practices that have created barriers on women's political leadership.

#### **3.5.1 Legal framework underpinning women's political leadership in South Africa**

---

<sup>177</sup> Kenya National Commission on Human Rights <https://www.knchr.org/> (accessed 28 August 2022).

<sup>178</sup> Constitution of Kenya, sec 59(2)(d).

<sup>179</sup> U Archibong & O Adejumo 'Affirmative Action in South Africa: Are We Creating New Casualties?' (2013) 3 *Journal of Psychological Issues in Organisational Culture* 15.



### *Constitution of the Republic of South Africa (1996)*

A key instrument which serves as the foundation for democracy in South Africa, the Constitution of the Republic of South Africa of 1996 is anchored on the principles of equality and non-discrimination.<sup>180</sup> Section 9 provides for equality, non-discrimination on any grounds and the equal enjoyment of rights and freedoms for all citizens.<sup>181</sup> The section goes further to provide that the state should take legislative and other measures to protect and advance the rights of groups disadvantaged by unfair discrimination.<sup>182</sup> Section 19(3)(b) provides for the right of all citizens to stand for and hold public office, which can be read to encompass women's participation.

Section 46(1) highlights that the National Assembly consists of around 400 women and men. This is a crucial provision as it highlights that women should not be excluded from the National Assembly. While the 1996 Constitution is commendable for providing for equality and non-discrimination, which is key for women's inclusion, an area of concern is that it does not make explicit provisions for the rights of women. This is problematic as women's rights, including the right to political participation, will have to be read into the equality clause. This can however result in a situation whereby rights such as women's political leadership may fall through the cracks on interpretation and implementation.

### *Commission for Gender Equality Act (1996)*

Providing for the establishment of the Commission for Gender Equality (CGE), the Act is crucial in the promotion of women's rights in South Africa. The CGE is a key institution in monitoring compliance with international conventions and protocols on the rights of women.<sup>183</sup> This is an important law as it provides for the powers and operations of the principal institution in the advancement of the rights of women, including the right to political leadership.

### *Promotion of Equality and Prevention of Unfair Discrimination Act (2000)*

Expounding on the equality clause as set out in the 1996 Constitution, the Act prohibits discrimination of any person and outlaws any practice undermining equality between women and men.<sup>184</sup> Section 28 mandates the state and relevant institutions to enact laws and policies

---

<sup>180</sup> Constitution Hill 'The Constitution of South Africa' (2022) <https://www.constitutionhill.org.za/pages/the-constitution-of-south-africa> (accessed 01 September 2022).

<sup>181</sup> Constitution of South Africa, secs 9(1) & (3).

<sup>182</sup> As above, sec 9(2).

<sup>183</sup> Commission on Gender Equality Act, sec 11(1)(h).

<sup>184</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, sec 8(i).



towards the elimination of discrimination on the basis of gender while promoting equality between women and men.<sup>185</sup> This is a key Act obligating the state to ensure that women participate in public leadership by removing discriminatory laws and practices.

#### *Women Empowerment and Gender Equality Bill (2014)*

Adopted in a bid to ensure the promotion of gender equality in all spheres, the Women Empowerment and Gender Equality Bill is also a key law in expounding on the equality clause set out in the 1996 Constitution.<sup>186</sup> The Act provides for the adoption of measures towards a 50 percent participation of women in decision-making structures.<sup>187</sup> Section 8 provides that institutions must adopt remedial measures to alleviate the gender disparities in decision-making structures.<sup>188</sup>

#### *African National Congress Constitution (2017)*

The Constitution of the African National Congress (ANC) political party provides for an electoral gender quota to promote women's full representation.<sup>189</sup> Rule 6 of the Constitution provides that the quota amounts to not less than 50% of reserved seats for women in all elected structures. The adoption of the voluntary gender quota has been a key contributor to the high numbers of women in South Africa's National Assembly.<sup>190</sup>

#### *National Gender Policy Framework (2002)*

The National Gender Policy Framework (NGP) outlines South Africa's vision for the attainment of gender equality in line with the 1996 Constitution. The policy objective is to create an enabling policy environment for the establishment of mechanisms for women's empowerment at all levels of government and the integration of gender considerations in all aspects of governance.<sup>191</sup> The policy prescribes a 30% quota for women in the public sector decision-making structures.<sup>192</sup> It is, however, to be noted that this quota has not been implemented in the country's National Assembly.

### **3.5.2 Institutional framework underpinning women's political leadership**

---

<sup>185</sup> As above, secs 28(3)(b)(ii) & (iv).

<sup>186</sup> Women Empowerment and Gender Equality Bill, sec 3(a)(i) & (ii).

<sup>187</sup> As above, secs 3(e) & 9(1).

<sup>188</sup> As above, secs 8(2)(c)(i) & (ii).

<sup>189</sup> Constitution of the ANC, rule 6.

<sup>190</sup> Myeni (n 3 above) 60.

<sup>191</sup> Government of South Africa 'National Gender Policy Framework' (2002) 5.

<sup>192</sup> As above, 22.

### *Department of Women, Youths and Persons with Disabilities*

The Department is the primary state institution responsible for facilitating the implementation of initiatives towards the attainment of women's inclusion in development initiatives. Through its 'Governance Transformation, Justice and Security' programme, the department implements interventions on gender mainstreaming in decision-making processes.<sup>193</sup>

### *Commission for Gender Equality*

The Commission for Gender Equality (CGE) is an independent institution established in Chapter 9 of the 1996 Constitution.<sup>194</sup> The CGE is responsible for monitoring compliance with gender equality requirements by state institutions and other organisations.<sup>195</sup> Section 11 of the CGE Act provides that the Commission is responsible for making recommendations to parliament on the reform of laws and practices affecting the status of women in decision-making processes.<sup>196</sup>

### *South Africa Human Rights Commission*

The South African Human Rights Commission (SAHRC) is the national institution established to support constitutional democracy and to promote respect for and protection of human rights for everyone<sup>197</sup> Section 184(2)(b) of the Constitution of South Africa empowers the Commission to take correctional measures in cases of human rights violations. With equality as one of its areas of focus, the SAHRC works to eradicate unfair discrimination on grounds such as sex and gender, hence being a key institution for advancing women's political leadership.<sup>198</sup>

Drafted soon after the country attained its independence, the Constitution of South Africa is considered one of the first progressive and democratic constitutions in Africa.<sup>199</sup> However, as already highlighted in the above discussion, the 1996 Constitution, while being the supreme law of the Republic of South Africa, does not make specific provisions on the rights of women nor does it make any reference to gender equality. Further, the 1996 Constitution does not

---

<sup>193</sup> Department of Women, Youths and Persons with Disabilities <https://www.dwypd.gov.za/index.php/about-us/overview> (accessed 28 August 2022).

<sup>194</sup> National Government of South Africa <https://nationalgovernment.co.za/units/view/52/commission-for-gender-equality-cge> (accessed 28 August 2022).

<sup>195</sup> As above.

<sup>196</sup> Commission on Gender Equality Act, secs 11(1)(c)(i)-(iv).

<sup>197</sup> South African Human Rights Commission <https://www.sahrc.org.za/index.php/focus-areas/immigration-equality/equality> (accessed 28 August 2022).

<sup>198</sup> As above.

<sup>199</sup> Constitution Hill (n 180 above).

mandate the state and its organs to promote women's equal participation in political leadership. These gaps leave women without a clear constitutional recourse in the protection of their political rights. However, notwithstanding the foregoing, the country has since taken strides in enacting legislation expounding on the equality clause. This has seen the adoption of laws that provide for women's political leadership as well as the establishment of institutions responsible for the promotion and protection of the rights of women.

### **3.6 The adequacy of the three countries' constitutions in promoting women's political leadership**

As highlighted in the discussion above, the three countries under study have enacted constitutions which obligate them to promote women's inclusion in all spheres. This section, therefore, assesses the adequacy of the constitutions as the supreme laws of the respective countries in enhancing women's political leadership.

The three countries' constitutions provide for the equality of all persons and non-discrimination on any grounds, including gender and sex. Section 17 of the Constitution of Zimbabwe provides for full gender balance and equal representation in governance. Section 27 of the Constitution of Kenya provides that women and men have the right to equal opportunities in political leadership. The Constitution of South Africa, in section 9, provides for the equality of all persons. However, it does not provide for gender equality expressly or the rights of women to occupy leadership positions based on equality with men. The equality clause is key as it creates a basis for gender equality in political leadership while prohibiting gendered discrimination. However, while providing for equality in governance, the constitutions of the three countries do not provide sanctions for non-compliance, creating gaps for enforcement.

The constitutions of the three countries provide for the adoption of affirmative action, which creates a basis for adopting gender quotas in promoting women's political leadership. Section 17 of the Constitution of Zimbabwe calls upon the state to undertake affirmative action in rectifying gendered discrimination. Section 56 of Kenya's Constitution provides for affirmative action towards the inclusion of marginalised groups in governance, women included. Section 9 of South Africa's Constitution obligates the State to adopt measures to advance classes of persons disadvantaged by discrimination. The South African Constitution, however, does not expressly mention women as a class of persons affected by discrimination.

Section 124 of the Constitution of Zimbabwe provides for a women's quota in parliament. Section 97 of the Constitution of Kenya also provides for reserved seats for women in the National Assembly. South Africa's Constitution does not make any provision for gender quotas which is a missed opportunity in legislating quotas towards gender equality in political leadership. However, the ANC Constitution has bridged this gap by providing for a 50% voluntary quota for women in the National Assembly. While Zimbabwe and Kenya have legislated reserved seats for women in parliament, the two countries' quotas are a far cry from the 50% threshold envisaged in instruments such as Agenda 2063. Zimbabwe's gender quota amounts to 31%, while Kenya's gender quota amounts to 33.3%.<sup>200</sup>

However, as a point of departure, while some gaps have been noted in the three countries' constitutions, they are celebrated for providing fundamental principles such as equality and non-discrimination, which are key in advancing women's political leadership. Further, all three countries have enacted legislation expounding on the rights of women to participate fully in political leadership. The three countries have also established gender commissions and national human rights institutions, which are paramount in ensuring the translation of laws and policies into practice. The institutions' watchdog role enables them to ensure that women are not left behind and fully participate in decision-making processes without any restrictions.

### **3.7 Conclusion**

Women's inclusion in decision-making processes has been prominent in human rights instruments such as CEDAW, ICCPR, the African Charter and the Maputo Protocol. In complying with obligations under these instruments, state parties, including the three countries under study, have subsequently taken steps to domesticate the same within their national laws. As shown in this chapter, the three countries have comprehensive laws and policies on the inclusion of women in political leadership. An assessment of the legal framework shows the countries' commitments to advancing women's political leadership, notwithstanding the identified gaps.

In addition to enacting constitutions to advance gender equality, the countries have enacted Acts of parliament whose provisions have endeavoured to address the gaps identified within the constitutions. The domestic legal framework obligates the three countries to promote women's political leadership on the basis of equality with men. The legal framework

---

<sup>200</sup> International IDEA (n 34 above).

provides for the adoption of affirmative action, including gender quotas in the case of Zimbabwe and Kenya for women's inclusion in political leadership. However, to be established is the success of these laws in enhancing women's political leadership. The next chapter, therefore, delves into how the laws have been translated into practice through an assessment of the implementation of gender quotas in practice.

## Chapter 4: The effectiveness of electoral gender quotas in practice: A case of Zimbabwe, Kenya and South Africa

*“There needs to be a fundamental shift in the way societies view women in government, one that does not see them as mere seat-fillers or stats on a chart, they must be viewed as a vital contributing factor to the betterment of the world.” Aysha Taryam<sup>201</sup>*

### 4.1 Introduction

As highlighted in the previous chapter, the three countries under study make use of electoral gender quotas towards promoting women’s political leadership while establishing independent institutions for monitoring the implementation of gender equality provisions. This approach has created obligations and opportunities for Zimbabwe, Kenya and South Africa to advance women’s participation in political leadership.<sup>202</sup> Whereas the gender quotas apply at the national and local levels for all three countries, the scope of this chapter is limited to the application of quotas in the various National Assemblies.

While the three countries can be commended for adopting a comprehensive normative framework on women’s political leadership, interrogating how these laws have been translated into practice is essential. Against this backdrop, this chapter assesses the extent to which the laws and the adopted gender quotas have enhanced women’s political leadership in the three countries. While highlighting how the gender quotas have improved the numbers of women in the National Assemblies, the chapter also delves into an assessment of their effectiveness in advancing women’s substantive participation beyond the numbers. The chapter discusses the successes and challenges in implementing gender quotas and makes recommendations for improvement where gaps are identified. An assessment of the effectiveness of gender quotas is paramount in the discourse of women’s political leadership as a means of guarding against the adoption of tokenistic measures which create illusions of inclusion without facilitating real change.

### 4.2 Zimbabwe

#### 4.2.1 Gender quotas in Zimbabwe: a case study

---

<sup>201</sup> ‘Women in politics: How does it work?’ *Gulf Today* 08 February 2020  
<https://www.gulftoday.ae/opinion/2020/02/08/women-in-politics-how-does-it-work> (accessed 29 September 2022).

<sup>202</sup> International IDEA (n 2 above) 39.

As shown in the previous chapter, the 2013 Constitution of Zimbabwe provided for 60 reserved seats for women in the National Assembly for the first two parliaments after the adoption of the Constitution.<sup>203</sup> While the quota was scheduled to expire after the 2018 general elections, it was subsequently extended for a further ten years due to the incessant low numbers of women in parliament.<sup>204</sup> On its adoption in 2013, the women's quota was celebrated as a progressive development towards women's inclusion in political leadership.<sup>205</sup> In the same vein, it has been submitted that the adoption of the electoral gender quota averted a potential political crisis regarding women's inclusion in national politics.<sup>206</sup>

Currently, in Zimbabwe, women hold 81 (30%) seats out of 270 seats in the National Assembly, whereas only 25 seats were won by women out of the 210 competitive seats.<sup>207</sup> The table below shows the number of women before and after the adoption of the quota system. As shown in the table, the gender quota has increased the number of women in parliament since its adoption in 2013. However, these numbers are a far cry from the 50/50 representation envisaged by the 2013 Constitution.<sup>208</sup>

Year	Percentage of seats held by women in the National Assembly
2005	16%
2009	14%
2013	31%
2018	33%
2021	30%

Source: Inter-Parliamentary Union Global Data on National Parliaments.<sup>209</sup>

*Figure 5: Table showing the progression in the number of women in Zimbabwe's parliament pre- and post-adoption of the gender quota.*

The literature reveals two dominant perceptions regarding the effectiveness of gender quotas in Zimbabwe.<sup>210</sup> One perception supports the use of the quota as a measure that has facilitated an increase in the number of women in the National Assembly, which is a starting

<sup>203</sup> International IDEA (n 34 above).

<sup>204</sup> Kubatana 'Women's Quota System in Parliament, Mere Tokenism' (2022) <https://kubatana.net/2022/05/11/womens-quota-system-in-parliament-mere-tokenism/> (accessed 19 September 2022).

<sup>205</sup> ACCORD 'Offering insights into Zimbabwe's political processes, with particular attention to processes involved in the quota system' (2018) <https://www.accord.org.za/conflict-trends/looking-beyond-2023/> (accessed 13 September 2022).

<sup>206</sup> As above.

<sup>207</sup> International IDEA (n 34 above).

<sup>208</sup> Constitution of Zimbabwe, sec 17.

<sup>209</sup> [https://data.ipu.org/content/zimbabwe?chamber\\_id=13560](https://data.ipu.org/content/zimbabwe?chamber_id=13560) (accessed 28 September 2022).

<sup>210</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 8.

point towards attaining gender equality.<sup>211</sup> The other perception asserts that the quota has failed to address the discriminatory norms and practices that have subjugated women and demands that the quota system be discarded in favour of more equitable interventions.<sup>212</sup> The prominent view regarding the effectiveness of gender quotas in Zimbabwe is that the system has guaranteed the attainment of the 30% critical minority for women in parliament.<sup>213</sup> However, practice shows that the major shortcoming of Zimbabwe's quota system is its failure to ensure women's substantive participation after their entry into parliament.<sup>214</sup>

Notwithstanding, the quota system has created opportunities for debut parliamentarians to advance to leadership at a high level.<sup>215</sup> After entry into office through the quota in 2013, some women consolidated their standing, and in 2018 they were elected to office through the competitive seats.<sup>216</sup> Some women under the quota have also participated in the legislative reform agenda by moving motions on issues such as child marriages, access to affordable health care and Sexual Reproductive Health Rights (SRHR).<sup>217</sup> Practice shows that when women are excluded from decision-making processes, these rights are generally treated as secondary.<sup>218</sup> As a point of departure, the literature shows that these achievements are minimal. The input from women under the quota is mostly disregarded as they are perceived to lack the elected legitimacy to participate in the legislative processes.<sup>219</sup> This has, in turn, diminished the effectiveness of the gender quotas in ensuring women's active participation in decision-making processes after their entry into parliament, as discussed below.

#### **4.2.2 Electoral gender quotas: affirmative action or tokenism?**

While the above discussion highlights that the quota system has increased the number of women in political leadership, my central argument is that Zimbabwe's gender quota has not effectively promoted women's substantive participation in parliament. In supporting my central argument, it should be noted that while the quota system has facilitated the entry of women into office, the literature reveals that the backlash that has ensued has limited

---

<sup>211</sup> As above.

<sup>212</sup> As above.

<sup>213</sup> International IDEA (n 2 above) 65.

<sup>214</sup> ACCORD (n 205 above).

<sup>215</sup> As above.

<sup>216</sup> As above.

<sup>217</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 9.

<sup>218</sup> UN Women 'The gender agenda: role of parliamentarians in the establishment of gender-sensitive health policies' <https://www.un.org/womenwatch/daw/csw/rance.htm> (accessed 27 September 2022).

<sup>219</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 10.



women's active participation in parliament business.<sup>220</sup> Women who enter office through the quota system are denigrated and treated as illegitimate members compared to the elected Members of Parliament (MPs).<sup>221</sup>

Further, the belittling of parliamentarians under the quota system has seen them being referred to as '*bacossi*', a term used to refer to cheap products in Zimbabwe.<sup>222</sup> These negative perceptions regarding women MPs under the quota have seen most of them shying away from participating in parliamentary debates and tabling motions.<sup>223</sup> In light of the above, it is my contention that while implementing the quota, the relevant stakeholders have failed to effectively address the ensuing backlash which has in turn diminished the quota's effectiveness in enhancing women's substantive participation in parliament.

Also to be noted is that the selection criteria of women for the gender quota have affected its effectiveness due to the lack of legal benchmarks guiding the process.<sup>224</sup> Currently, the selection process is a mandate of political party bosses, and reports show that power dynamics, loyalty and other subjective elements inform the process, compromising the quality of the selected women.<sup>225</sup> The subordinate women who are selected are more concerned with toeing the party line and are subsequently used as proxies for male politicians in perpetuating male dominance.<sup>226</sup> The politics of patronage has seen women who 'contradict' the political bosses left in the political wilderness despite their good track records.<sup>227</sup>

This practice sustains Mansbridge's view that while increasing the number of women in political leadership, quotas may not be the panacea in addressing the entrenched harmful practices which have served to curtail women's effective political leadership.<sup>228</sup> The foregoing therefore supports my central argument that the Zimbabwe quota system has perpetuated women's subordination, countering its aspirations for promoting women's empowerment.

---

<sup>220</sup> International IDEA (n 2 above) 136.

<sup>221</sup> Bhatasara & Chiweshe (n 221 above).

<sup>222</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 11.

<sup>223</sup> Africa Portal 'Rethinking women's political participation in Zimbabwe's elections' (2018) <https://www.africaportal.org/features/rethinking-womens-political-participation-zimbabwes-elections/> (accessed 22 September 2022).

<sup>224</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 11.

<sup>225</sup> ACCORD (n 205 above).

<sup>226</sup> Africa Portal (n 223 above).

<sup>227</sup> ACCORD (n 205 above).

<sup>228</sup> J Mansbridge 'Quota Problems: Combating the Dangers of Essentialism' (2005) 1 *Politics & Gender* 623.

Another shortcoming regarding Zimbabwe's quota system is that since its adoption, there has been a decline in the number of women directly elected to the National Assembly.<sup>229</sup> Statistics show that in 2008, 43 women were directly elected, which dropped to 26 and 25 in the 2013 and 2018 elections, respectively.<sup>230</sup> Reports indicate that in the 2013 and 2018 elections, the top political parties in Zimbabwe, ZANU-PF and MDC-Alliance, fielded a limited number of female candidates for the competitive seats highlighting that women had their reserved quota seats.<sup>231</sup> To be noted is that the Zimbabwe Electoral Act does not compel political parties to observe the 50/50 threshold when fielding candidates as required by the Constitution.<sup>232</sup>

This approach has diminished the purpose of the quota system as it is meant to complement and not substitute the competitive seats. The political parties' non-compliance with the provisions of the Constitution on gender balance has countered the objectives of the quota system on the attainment of gender equality in political leadership. Further, since the introduction of the quota, women have considerably shied away from the competitive seats due to fear of election-related violence as they prefer the quota seats, which are seen as 'safe'.<sup>233</sup> In view of the aforesaid, I argue that Zimbabwe's gender quota has failed to contribute to the gender equality aspirations entrenched in the 2013 Constitution. As highlighted above, it has served as a retrogressive tool, as seen by the decrease in the number of elected women since its adoption.

The Zimbabwe experience reveals that the gender quota has failed to effectively promote women's substantive participation in leadership.<sup>234</sup> Bhatasara and Chiweshe argue that while guaranteeing women's entry into office, the gender quota has failed to eliminate inequality, resulting in the country applauding tokenism, which is being used to mask the reality of women's exclusion in decision-making once in office.<sup>235</sup> The Zimbabwean experience shows that quotas alone are insufficient in transforming societal attitudes regarding women's political leadership, as seen by the backlash they receive from their male counterparts in parliament.<sup>236</sup> What has also emerged is that while the increase in numbers is crucial in keeping with the ideals of the feminist democratic theory on women's inclusion, the

---

<sup>229</sup> ACCORD (n 205 above).

<sup>230</sup> As above.

<sup>231</sup> As above.

<sup>232</sup> S Bhatasara & M K Chiweshe 'Women in Zimbabwean Politics Post-November 2017' (2021) 6 *Journal of Asian and African Studies* 226.

<sup>233</sup> Women's Academy for Leadership and Political Excellence (n 20 above) 12.

<sup>234</sup> As above, 20.

<sup>235</sup> Bhatasara & Chiweshe (n 232 above).

<sup>236</sup> ACCORD (n 205 above).

ability of women parliamentarians to contribute to substantive issues is paramount.<sup>237</sup> The above discussion also reveals that an increase in numbers through the quota without addressing discriminatory practices and gender stereotypes could prove untenable in the long run, as argued by Kittilson.<sup>238</sup> This is so because the backlash associated with the implementation of the gender quota may further contribute to women shying away from political leadership. Hence my contention is that in Zimbabwe, the implementation of the gender quota has proved inadequate in enhancing women's substantive political leadership.

Whereas the overview of Zimbabwe's quota system is generally negative as it is considered tokenistic, what cannot be ignored is that it has brought women's inclusion to the discourse of the political landscape. As a way forward, various actors and stakeholders should adopt an implementation methodology that will ensure women's substantive participation in decision-making processes. As it stands, the conclusion that can be drawn from the Zimbabwean experience is that the gender quota has guaranteed women's entry into the National Assembly in line with the feminist democratic theory. However, due to structural barriers, the quota falls short of enhancing women's substantive leadership. On this premise, I maintain my central argument that the system has resulted in women entering parliament while lacking real power to effect substantive change due to tokenistic implementation.

### 4.3 Kenya

#### 4.3.1 Gender quotas in Kenya: a case study

As shown in the previous chapter, Kenya adopted a constitutional quota system for the National Assembly when the 2010 Constitution was enacted.<sup>239</sup> The 2010 Constitution entrenches the gender principle, which prohibits any sex from holding more than two-thirds in any organisation, including parliament.<sup>240</sup> The gender principle provides for women to occupy at least one-third of seats in parliament, which amounts to 33.3%.<sup>241</sup> This principle on women's inclusion is crucial and advances the ideals of the feminist democratic theory in ensuring that women are not excluded from governance and decision-making processes.<sup>242</sup> Following the promulgation of the 2010 Constitution, the highest numbers of women in the

---

<sup>237</sup> As above.

<sup>238</sup> M C Kittilson 'In Support of Gender Quotas: Setting New Standards, Bringing Visible Gains' (2005) 1 *Politics & Gender* 639.

<sup>239</sup> International IDEA (n 34 above).

<sup>240</sup> Berry *et al* (n 29 above) 641.

<sup>241</sup> Women Deliver 'Political Participation for Kenya's women still a far cry from its Constitutional Provision' (2018) <https://womendeliver.org/political-participation-kenyas-women-still-far-cry-constitutional-provision/> (accessed 22 September 2022).

<sup>242</sup> Asenbaum (n 21 above).

National Assembly were recorded in the country's history.<sup>243</sup> The literature reveals a general consensus that Kenya's gender quota has increased the number of women in parliament, as shown in the table below.<sup>244</sup> However, these statistics reveal that the country falls significantly short of the 33.3% provided by the 2010 Constitution.<sup>245</sup>

Year	Percentage of seats held by women in the National Assembly
2003	7%
2007	9%
2013	19%
2017	21%
2022	23%

Source: Inter-Parliamentary Union Global Data on National Parliaments.<sup>246</sup>

Figure 6: Table showing the progression of the number of women in parliament in Kenya before and after the adoption of the gender quota.

While the country has recorded history-making numbers of women in the National Assembly, the political context characterised by patriarchy has limited women's effective participation in decision-making, as discussed in the subsequent sections.<sup>247</sup> Nonetheless, despite the challenges faced by women under the quota, their entry into the National Assembly has increased their visibility in the political arena.<sup>248</sup>

Reports show that female MPs under the quota have made some contributions during parliamentary debates and lobbied for legislative reforms.<sup>249</sup> However, practice shows that in most cases, contributions from female MPs under the quota system are disregarded due to their status as non-constituency members.<sup>250</sup> Most motions tabled by the female MPs have been on 'softer' issues mostly affecting women, such as maternal health care, SRHR and domestic violence.<sup>251</sup> However, while setting the tone for the adoption of gender-sensitive legislation is crucial, there are concerns that by focusing solely on these issues, women miss

<sup>243</sup> Berry *et al* (n 29 above) 640.

<sup>244</sup> As above, 641.

<sup>245</sup> Open Democracy 'Kenya's election is being lauded as 'historic' for women – that's not true' (2022) <https://www.opendemocracy.net/en/5050/kenya-election-women-history-representation/> (accessed 26 September 2022).

<sup>246</sup> [https://data.ipu.org/content/kenya?chamber\\_id=13438](https://data.ipu.org/content/kenya?chamber_id=13438) (accessed 29 September 2022).

<sup>247</sup> Berry *et al* (n 29 above) 642.

<sup>248</sup> Y Bouka *et al* 'Strengthening the leadership and influence of women in politics in Kenya' (2017) 47.

<sup>249</sup> Australian Institute of International Affairs 'A Gender Agenda: the effectiveness of quota systems in increasing women's meaningful participation in politics' (2014) <https://www.internationalaffairs.org.au/news-item/a-gender-agenda-the-effectiveness-of-quota-systems-in-increasing-womens-meaningful-participation-in-politics/> (accessed 27 September 2022).

<sup>250</sup> As above.

<sup>251</sup> UN Women (n 218 above).

opportunities to influence change on equally important reforms.<sup>252</sup> The basis of this argument stemmed from the failure of women parliamentarians to assert their influence in pushing for the adoption of the Constitutional Amendment Bill of 2015, which was a crucial mechanism for implementing the women's quota.<sup>253</sup> The non-adoption of this legislation has adversely affected the attainment of the 33.3% representation of women in parliament, as discussed in the section below.

#### 4.3.2 Legal challenges in implementing the gender quota in Kenya

Whereas the Constitution of Kenya provides for women to occupy at least 33.3% of the National Assembly seats, practice shows that the country has failed to implement the said quota.<sup>254</sup> As shown in figure 6 above, women have held an average of 21% of seats in parliament since 2013, which falls significantly short of the 33.3% minimum requirement.<sup>255</sup> The failure to implement the gender quota has been attributed to the inadequacy in the wording of articles 97 and 98 of the 2010 Constitution.<sup>256</sup> While explicitly providing for the 33.3% quota for women, the Constitution fails to prescribe the means of implementation should elections result in the dominance of one gender.<sup>257</sup> To date, over six court petitions have been instituted, with petitioners seeking orders for the enactment of enabling legislation for the implementation of the two-thirds gender rule.<sup>258</sup>

In 2012, the Attorney General sought an advisory opinion from the Supreme Court in *the Matter of the Principle of Gender Representation in the National Assembly and the Senate* concerning the failure of parliament to enact legislation on the two-thirds gender rule.<sup>259</sup> The Supreme Court directed parliament to enact the requisite legislation by August 2015.<sup>260</sup> However, by the said date, parliament had still not enacted the legislation resulting in a petition - *Centre for Rights Education & Awareness (CREAW) v Attorney General & another* being launched to enact the enabling legislation.<sup>261</sup>

---

<sup>252</sup> n 249 above.

<sup>253</sup> Y Bouka *et al* (n 248 above) 47.

<sup>254</sup> Women Deliver (n 241 above).

<sup>255</sup> Open Democracy (n 245 above).

<sup>256</sup> Y Bouka *et al* (n 248 above) 28.

<sup>257</sup> Berry *et al* (n 29 above) 648.

<sup>258</sup> International IDEA (n 2 above) 49.

<sup>259</sup> *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate* [2012] eKLR.

<sup>260</sup> As above.

<sup>261</sup> *Centre for Rights Education & Awareness (CREAW) v Attorney General & Another* [2015] eKLR, Petition No. 182 of 2015.

Further, in 2017 another petition - *Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 others* was launched seeking the same order.<sup>262</sup> In its ruling on both petitions, the High Court issued an order directing the Attorney General and parliament to draft, table and enact the relevant legislation within the stipulated timeframes.<sup>263</sup> However, parliament did not enact the said legislation within the stipulated timeframes, which saw six petitions brought before the Chief Justice between 2019 and 2020.<sup>264</sup>

These petitions were consolidated into one petition as they all sought an order for the dissolution of parliament for failing to enact enabling legislation for the implementation of the two-thirds rule despite several court orders.<sup>265</sup> In the said consolidated petition of *Margaret Toili & 5 others v Speaker of the National Assembly & 2 others*<sup>266</sup>, the Chief Justice made an order advising the then President Uhuru Kenyatta to dissolve parliament.<sup>267</sup> The Chief Justice held that parliament had failed in its constitutional duty to enact the enabling legislation for the enactment of the two-thirds gender rule despite several court orders.<sup>268</sup> However, the court order for the dissolution of parliament was later set aside, and to date, parliament has defied all court orders to enact the relevant legislation.<sup>269</sup>

Failure to enact the enabling legislation has resulted in the current situation whereby women only hold 22% of seats in the National Assembly instead of the stipulated 33.3%. The Constitution has however provided a starting point for women's inclusion, as seen by the nomination of an average of 21% of women since its adoption. However, while women have entered the National Assembly through the gender quota, reports show that they have faced challenges affecting their substantive participation in the National Assembly, as discussed below.

### 4.3.3 Electoral gender quotas: affirmative action or tokenism?

In addition to the challenges in the implementation of the gender principle as discussed above, the literature reveals that women who have entered into parliament under the quota system

---

<sup>262</sup> *Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 Others* [2017] eKLR, Petition No. 371 of 2016.

<sup>263</sup> National Gender and Equality Commission 'Journey to Gender Parity in Political Representation' (2018) 38 – 40.

<sup>264</sup> Kenya Law 'Chief Justice's advice to the President on dissolution of parliament for failure to enact the gender rule' (2020) <http://kenyalaw.org/kenyalawblog/chief-justices-advice-to-the-president-on-dissolution-of-parliament/> (accessed 22 September 2022).

<sup>265</sup> As above.

<sup>266</sup> *Margaret Toili & 5 others v Speaker of the National Assembly & 2 Others* [2020] eKLR, Petition Nos 1-5 of 2019 & 1 of 2020.

<sup>267</sup> As above.

<sup>268</sup> As above, para 24.

<sup>269</sup> International IDEA (n 2 above) 49.

face structural challenges limiting their active participation.<sup>270</sup> On this premise, it is my central argument that while being commended for being an effective intervention in ensuring women's inclusion in public leadership, the tokenistic nature of the Kenyan quota has failed to promote women's substantive participation in office, as shown below.

My central argument that the Kenyan gender quota has proved inadequate in facilitating women's substantive leadership in parliament is supported by the fact that nominated women in Kenya are not allocated clear geographic constituencies.<sup>271</sup> Due to the lack of geographic constituencies, many nominated women are not clear about their mandates.<sup>272</sup> The status of non-constituency female parliamentarians has also perpetuated public perceptions that these women are only accountable to the elites who appointed them, hence no effective checks and balances on their performance.<sup>273</sup> Further, due to a lack of geographic constituencies, the nominated women are seen as less powerful compared to the elected MPs, affecting their confidence to participate in parliament business.<sup>274</sup> In light of the above, I submit that the failure to allocate constituencies for women under the quota attests to its tokenistic nature, as nominated women seem to be in office solely for compliance with the gender principle rather than to contribute to the country's governance.

Further, in supporting my argument on the ineffectiveness of the gender quota in promoting women's substantive participation, it should be noted that, unlike elected MPs, nominated women MPs are not awarded budgets for development initiatives.<sup>275</sup> As a result, nominated women MPs face financial and resource constraints for effectively carrying out their work and effecting their visibility.<sup>276</sup> The resource constraints negatively impact the effectiveness of the nominated women MPs as they lack the capacity to undertake development projects which are seen as crucial in garnering support from the electorate.<sup>277</sup>

Nominated women MPs are also not allocated office spaces which further affects their productivity while fuelling the perception that they are unprofessional.<sup>278</sup> The lack of political largesse for nominated women MPs has fomented backlash from the electorate, with women considered ineffective leaders.<sup>279</sup> However, unbeknown to the electorate in most instances is

---

<sup>270</sup> Berry *et al* (n 29 above) 644.

<sup>271</sup> As above, 650.

<sup>272</sup> Y Bouka *et al* (n 248 above) 45.

<sup>273</sup> Berry *et al* (n 29 above) 650.

<sup>274</sup> Y Bouka *et al* (n 248 above) 46.

<sup>275</sup> Berry *et al* (n 29 above) 652.

<sup>276</sup> As above.

<sup>277</sup> As above.

<sup>278</sup> International IDEA 'Factsheet: Women's access to political finance in Kenya' (2016) 1.

<sup>279</sup> As above.



that the nominated women are not allocated development funds.<sup>280</sup> On this premise, I contend that the Kenya gender quota is a tokenistic system that has failed to promote women's substantive participation due to the differential treatment of nominated women compared to the elected MPs.

Further, what should be noted is that Kenya's quota system has not adequately ensured women's participation in office, as reports show that the nominated women are exposed to violence and abuse in office.<sup>281</sup> The pervasiveness of abuse against women in Kenya's parliament has taken a sexual form, as seen in some instances where male counterparts demand sexual favours in exchange for support for tabled projects and motions.<sup>282</sup> Male parliamentarians exhibit aggression towards nominated women MPs whom they consider less important and influential than elected women MPs.<sup>283</sup>

Further, the quota seats in parliament are referred to as 'sexually transmitted', with nominated women MPs referred to as 'flower girls' or '*bonga*', a Kenyan term referring to extra points for loyalty.<sup>284</sup> These expressions are based on the perception that nominated women MPs get into office because of their loyalty to the political party bosses rather than on merit.<sup>285</sup> The rampant violence and intimidation experienced by nominated women who are seen as 'softer targets' have diminished their interest in initiating motions and taking part in parliamentary debates.<sup>286</sup> These practices show that the gender quota in Kenya is a tokenistic system which has only guaranteed women's entry into office, albeit without real power, as contended by Asiedu and others.<sup>287</sup> In light of the aforesaid, I contend that by failing to address harmful practices affecting women's participation, Kenya's quota system has proved inadequate in enhancing women's political leadership.

While it can be argued that Kenya's quota system has created a foundation for women's inclusion in decision-making processes in line with the feminist democratic theory; gender stereotypes, power games, and other discriminatory practices have been major obstacles affecting its effectiveness.<sup>288</sup> Implementing the gender quota in Kenya is beset with challenges deeply rooted in age-old social and cultural systems, rendering it ineffective in

---

<sup>280</sup> Y Bouka *et al* (n 248 above) 48.

<sup>281</sup> All Africa 'Violence Against Female MPs Still Rampant in Africa, APU Report Reveals' (2021) <https://allafrica.com/stories/202112030035.html> (accessed 21 September 2022).

<sup>282</sup> As above.

<sup>283</sup> Berry *et al* (n 29 above) 653.

<sup>284</sup> As above.

<sup>285</sup> n 283 above.

<sup>286</sup> Y Bouka *et al* (n 248 above) 44.

<sup>287</sup> Asiedu *et al* (n 10 above) 30.

<sup>288</sup> National Gender and Equality Commission (n 265 above) 54.



promoting women's substantive participation.<sup>289</sup> Whereas the intent behind adopting the gender quota was noble, practice shows that it may have unintentionally intensified backlash against women in the political arena.<sup>290</sup> This view supports my central argument that Kenya's quota has failed to enhance women's substantive leadership in parliament.

The Kenyan experience brings to the fore the argument by Berry and others that without a strong commitment to the rule of law, gender quotas are ineffective in enhancing women's political leadership.<sup>291</sup> Political goodwill and buy-in from stakeholders is key for ensuring that the gender principle serves its intended purpose. Untangling women's subordination in political leadership requires efforts that will uproot patriarchy from all systems that have served to marginalise women from leadership. While the adoption of the gender quota has seen the country record the highest number of women in the National Assembly, this should not distract from the country's failure to implement the 33.3% quota and the ensuing backlash. In view of the foregoing, I maintain that Kenya's gender quota is a tokenistic measure which has proved inadequate in promoting the active participation of nominated women MPs in decision-making processes.

## **4.4 South Africa**

### **4.4.1 Gender quotas in South Africa: A case study**

Albeit not adopting a legislated gender quota, South Africa has recorded high numbers of women in parliament for nearly two decades, mainly through the use of the ANC voluntary quota.<sup>292</sup> In the advent of the 1994 democratic elections, the ANC political party adopted a policy stipulating that in ensuring gender equality, the party was to include women in the party list submitted for parliament.<sup>293</sup> In 1994 the stipulated gender quota was 30% for the National Assembly, which increased to 50% in 2006 and is still being implemented.<sup>294</sup>

Currently in South Africa, 46% of the National Assembly seats are held by women, which has seen the country ranking second in Africa and 12th globally in terms of the number of women in parliament.<sup>295</sup> As shown in the table below, over the years, South Africa has strived to maintain the critical minority of between 30 – 40% of women in the National Assembly, with the current numbers having advanced close to equal representation.

---

<sup>289</sup> As above.

<sup>290</sup> International IDEA (n 2 above) 83.

<sup>291</sup> Berry *et al* (n 29 above) 643.

<sup>292</sup> International IDEA (n 34 above).

<sup>293</sup> Vincent (n 25 above) 72.

<sup>294</sup> International IDEA (n 2 above) 80.

<sup>295</sup> As above, 60.

Year	Percentage of seats held by women in the National Assembly
2004	29%
2009	43%
2014	44%
2018	42%
2022	46%

Source: Inter-Parliamentary Union Global Data on National Parliaments.<sup>296</sup>

Figure 7: Table showing the number of women in parliament in South Africa before and after the adoption of the 50% gender quota.

The use of the ANC voluntary quota has brought about notable achievements regarding women's inclusion which has enhanced the country's democratic image in the continent and globally.<sup>297</sup> The success of the voluntary quota has been attributed to the country's electoral system, the Proportional Representation (PR), which means that seats in parliament are awarded to political parties based on the votes garnered in an election.<sup>298</sup> As it stands, the ruling ANC party has been garnering the highest number of seats in parliament, with 50% of these seats reserved for women.<sup>299</sup>

However, while South Africa boasts of high numbers of women in the National Assembly, the question that remains is the effectiveness of the gender quota in contributing to substantive equality.<sup>300</sup> In light of the foregoing, the following discussion interrogates the extent to which women under the gender quota have contributed to legislative reforms and influenced decisions in parliament. The assessment also focuses on the extent to which the implementation of the gender quota has interrogated the practices and norms that have traditionally disenfranchised women from effective participation in political leadership.

#### 4.4.2 Electoral gender quotas: affirmative action or tokenism?

While South Africa's quota system is celebrated for guaranteeing women's entry into parliament, my central argument is that, as is the case with Zimbabwe and Kenya, the ANC

<sup>296</sup> [https://data.ipu.org/content/south-africa?chamber\\_id=13311](https://data.ipu.org/content/south-africa?chamber_id=13311) (accessed 29 September 2022).

<sup>297</sup> Myeni (n 3 above) 60.

<sup>298</sup> International IDEA (n 2 above) 80.

<sup>299</sup> As above, 81.

<sup>300</sup> A Gouws 'Women's representation in Government: quotas, substantive equality and self-interested politicians' (2011) 77 *Transformation: Critical Perspectives on Southern Africa* 83.

voluntary gender quota has failed to adequately ensure women's substantive participation in office, as discussed below.

In supporting my central argument that South Africa's quota has not promoted women's substantive participation, attention should be drawn to the gender quota's nomination process.<sup>301</sup> Practice shows that the political party leaders, who are mostly male, are responsible for nominating women for the reserved seats, which has exacerbated party paternalism rather than agency to the electorate.<sup>302</sup> Women under the gender quota are not linked to any specific constituencies, depriving them of a support base independent of the political party bosses who nominate them.<sup>303</sup> As a result, women parliamentarians under the quota seem to owe their allegiance to the political party rather than the electorate. Reports show that the nominated women are required to seek approval to table and vote on motions from the political party bosses hence diminishing their effective participation in decision-making processes.<sup>304</sup>

Further, the nomination process has promoted tokenism, with reports showing that women shy away from raising motions on what is considered 'women's issues', for fear of irritating the party bosses who nominated them.<sup>305</sup> Ironically, this results in a situation whereby the power and influence of women MPs is monitored to guard against use in an adversarial manner, undermining women's substantive participation.<sup>306</sup> Hence women MPs under the quota have avoided situations where they are seen to be overtly advocating for women's rights due to the fear of exclusion from mainstream politics where perceived real power is located.<sup>307</sup> In view of the aforesaid, it is my argument that the nomination process has reinforced the subordination of women instead of enhancing their substantive participation in decision-making processes.

I further submit that patriarchy has also rendered the gender quota inadequate in enhancing women's substantive leadership in South Africa.<sup>308</sup> Male MPs continually undermine women MPs since the widespread belief rooted in patriarchy is that women should not be involved in public leadership as their place is in the domestic sphere.<sup>309</sup> Women

---

<sup>301</sup> Vincent (n 25 above) 80.

<sup>302</sup> Gouws (n 300 above) 85.

<sup>303</sup> Vincent (n 25 above) 78.

<sup>304</sup> n 302 above.

<sup>305</sup> Vincent (n 25 above) 85.

<sup>306</sup> Myeni (n 3 above) 74.

<sup>307</sup> n 305 above.

<sup>308</sup> n 306 above.

<sup>309</sup> As above.

MPs have also reported sexual harassment in parliament, with male colleagues passing them notes during sittings commenting on their appearance.<sup>310</sup> In light of the above, I submit that while guaranteeing women's entry into office, the implementation of the gender quota has not adequately addressed the negative attitudes and practices which has resulted in women refraining from actively participating in parliament.

Challenges concerning the effectiveness of the gender quota in South Africa also stem from the fact that they are not entrenched in the Constitution and other national legislation, posing regulation challenges at the national level.<sup>311</sup> While the advantage of the ANC voluntary gender quota is that it was adopted and driven by the party with the potential of non-compliance being minimal, the drawback is that if the party loses its support base, women's numbers also drop.<sup>312</sup> This has driven calls for legislating the gender quota through the amendment of the Electoral Act, as its current success depends on the ANC's positive performance.<sup>313</sup>

Further, in the wake of a 2020 Constitutional Court ruling in the case of *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* requiring that the electoral system be reviewed, there are concerns that this development could have adverse effects on women's inclusion if the current quota system is discarded.<sup>314</sup> The amendment of the Electoral Act is expected to change the current electoral system, which has been a key factor in maintaining the high numbers of women in the National Assembly since 1994.<sup>315</sup>

However, the amendment could be an opportunity for the country to entrench the gender quota in national legislation, increasing chances for compliance. As it stands, there are implementation challenges which have been attributed to the lack of legal sanctions for non-compliance due to the quota's voluntary nature.<sup>316</sup> Therefore, the proposed amendment of the Electoral Act in South Africa presents an opportunity for legislating and regulating the quota. The amendment could entrench checks and balances on the nomination process, considering that in its current state, it has been marred by irregularities due to politics of patronage. This practice has been counterproductive, with women under the quota serving the interests of those who nominated them, contrary to its intended purpose.

---

<sup>310</sup> Vincent (n 25 above) 78.

<sup>311</sup> International IDEA (n 2 above) 60.

<sup>312</sup> As above.

<sup>313</sup> As above.

<sup>314</sup> *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* (CCT110/19) [2020].

<sup>315</sup> International IDEA (n 2 above) 62.

<sup>316</sup> International IDEA (n 34 above).

As is the case of Zimbabwe and Kenya, the South African experience has shown quotas to be tokenistic measures rather than effective affirmative action, notwithstanding the high number of women in parliament. The quota system nomination process has perpetuated the subordination of women, reinforcing Myeni's view that while the quota has increased the number of women in parliament, it has not facilitated their empowerment and active participation.<sup>317</sup> The adoption of the gender quota in South Africa introduced the initial step in women's inclusion in political leadership. However, as shown above, it has not automatically enhanced their access to power in decision-making, undermining the principles of women's inclusion as expounded by the feminist democratic theory and the women's rights legal instruments.

The preceding discussion reinforces my central argument that the quota system has proved to be a tokenistic measure, undermining its primary objective of promoting women's substantive participation in decision-making processes. Taking cognisance of the above, I submit that for the gender quota to be an effective affirmative action in South Africa, the relevant stakeholders should adopt measures to eliminate harmful practices that affect women's effective political leadership and ensure tighter controls in the implementation of the gender quota.

#### **4.5 Conclusion**

What has emerged from the research on the effectiveness of gender quotas in the three countries is that quotas have proved to be a double-edged system. Whereas the three countries have taken crucial steps in promoting women's inclusion in political leadership, their active participation in decision-making processes is limited. While guaranteeing women's entry into office, the quota has failed to address the factors that affect women's substantive participation, as discussed in the above sections. The research found that most factors that affect women's access to political positions also have a bearing on their capacity to exert influence once in office.

The research reveals that patriarchy is rife in all the three countries' parliaments, with male MPs continually undermining women MPs due to gender stereotypes. Nominated women in all three countries are not allocated geographic constituencies, and, in some instances, they are not allocated budgets for development projects. This has seen the

---

<sup>317</sup> Myeni (n 3 above) 73.

nominated women failing to undertake development projects within communities, negatively affecting their political capital.

The challenges in the effectiveness of the gender quota in all three countries seem to stem from the nomination process whereby women seem to be nominated based on loyalty to the party bosses rather than on merit. This has resulted in pliant women occupying the nominated seats, further perpetuating women's subordination and diminishing their substantive participation. In all three countries, the focus seems to have been on the quantitative rather than qualitative participation of women, which has undermined the key objectives of the electoral gender quotas.

While the research shows vast similarities in the implementation of the quota system in Zimbabwe, Kenya and South Africa, some differences have also been noted. Unlike Zimbabwe and Kenya, South Africa's Constitution does not make provision for the gender quota. However, notwithstanding, South Africa has made notable progress regarding the number of women in parliament compared to Zimbabwe and Kenya. This shows that while legislating gender quotas has proved to be the best practice, the lack of political will to implement the same is counterproductive.

To be further noted is that while Zimbabwe and Kenya have not adopted enabling legislation specifically for the implementation of the quota, Zimbabwe has consistently ensured that women occupy the reserved seats as prescribed by the Constitution. On the contrary, research shows that Kenya has failed to enforce the two-thirds gender principle, which further attests to the country's lack of political will to implement the quota system.

The identified gaps require action from all relevant stakeholders, including governments, women's rights institutions, and political parties, in spearheading reforms to counter the current practice whereby quotas have seen women holding positions in political leadership while they lack substantive power to contribute to decision-making processes. On this premise, the next chapter highlights recommendations for promoting the effectiveness of gender quotas and other avenues that can be explored in enhancing women's political leadership.

## Chapter 5: Conclusion and recommendations

*“We do need women in civic life. We do need women to run for office, to be in political office...”*

*Dolores Huerta.*<sup>318</sup>

### 5.1 Summary of key findings and conclusion

The research assessed the effectiveness of gender quotas in enhancing women’s political leadership using Zimbabwe, Kenya, and South Africa as case studies. The research shows that women’s inclusion in political leadership, as espoused by the feminist democratic theory, has been central in the political discourse of the three countries.<sup>319</sup> Whereas feminism advances women’s inclusion in all spheres, the feminist democratic theory proved relevant to this study as it reinforces the fundamental ideals of women’s inclusion in political leadership towards the promotion of democracy and good governance.<sup>320</sup>

This research makes an important contribution to the scholarship on women’s inclusion in political leadership. Most importantly, while other scholarship focuses on the quantitative inclusion of women, this research further assessed women’s qualitative and substantive participation in political leadership. This approach interrogated whether the quota system is an effective affirmative action or a tokenistic measure that only celebrates numbers without real change regarding women’s leadership. However, while exploring women’s qualitative inclusion was key, there were challenges in determining what amounts to substantive inclusion, as some scholarship supports the quantitative factors as sufficient for women’s inclusion.

The study shows that the three studied countries have adopted electoral gender quotas, ensuring women’s entry into positions of political leadership. However, what has been established is that while gender quotas have played a key role in increasing the number of women in parliament, structural barriers remain a major challenge to their effective participation.<sup>321</sup> Age-old impediments to women’s entry into political leadership, such as patriarchy and gender stereotypes that perpetuate women’s subordination, pose challenges to their substantive participation in office.<sup>322</sup> Women under the quota system are denigrated,

---

<sup>318</sup> ‘Dolores Huerta to Speak at Virtual HU Commencement May 15’ *New Mexico Highlands University* 27 April 2021 <https://www.nmhu.edu/dolores-huerta-to-speak-at-virtual-hu-commencement-may-15/>. (accessed 07 October 2022).

<sup>319</sup> Ryusaku (n 41 above).

<sup>320</sup> Asenbaum (n 21 above).

<sup>321</sup> Inter-Parliamentary Union ‘Women in Parliament’ 2022 <https://www.ipu.org/our-impact/gender-equality/women-in-parliament> (accessed 04 October 2022).

<sup>322</sup> As above.



and their input in the legislative processes is mostly disregarded.<sup>323</sup> This supports my central argument that gender quotas have not adequately addressed structural challenges to women's effective political leadership.

Further, unlike South Africa, the case of Zimbabwe and Kenya shows that while the numbers of female parliamentarians have increased, the two countries still fall short of equal representation in political leadership, notwithstanding the adoption of the quotas. The two countries, therefore, need to consider other interventions in augmenting the numbers of women in the National Assembly in line with their constitutional provisions on gender equality. On this premise, future studies on women's inclusion could interrogate the progress made by countries towards attaining gender equality in political leadership as envisaged by global, regional, and domestic legal instruments.

The study concludes that while gender quotas can be commended for increasing the number of women parliamentarians, there is a need to enhance women's substantive participation upon their entry into office. The three countries should adopt strategies to ensure that quotas are an effective affirmative action and are not merely tokenistic measures creating an impression of women's inclusion while, in reality, women's participation remains limited. Against this backdrop, the research recommends the following interventions in enhancing the effectiveness of gender quotas while highlighting other avenues for promoting women's political leadership.

## **5.2 Recommendations**

### **5.2.1 Recommendations to the three countries**

- i. In line with their constitutional gender equality provisions, Zimbabwe, Kenya, and South Africa should adopt a closed-list electoral system, also known as the 'zebra system'. When fielding candidates through this system, there is an alternation of names of female and male candidates resulting in 50/50 representation.
- ii. In case the closed list system is not adopted, Zimbabwe, Kenya and South Africa should adopt mixed electoral systems providing for legislated proportional representation seats and mandatory political party quotas to attain equal representation.

---

<sup>323</sup> International IDEA (n 34 above).



- iii. Drawing from the South African experience, Zimbabwe and Kenya should enact gender equality legislation for the implementation of the constitutional provisions on gender equality in political leadership and amend the electoral legislation to reflect the same. While South Africa has enacted a gender equality law, the legislation does not provide for compliance mechanisms. Therefore, the gender equality laws of the three countries should provide sanctions in curbing non-compliance.
- iv. The governments of the three countries should work with the election management bodies, gender equality and human rights institutions and other relevant stakeholders in monitoring compliance with the gender equality instruments and legislation.
- v. Zimbabwe should review its election-related laws to make provision for political party compliance with the constitutional provisions on gender equality.
- vi. Kenya should take action in complying with the court orders on the implementation of the two-thirds gender rule.
- vii. South Africa should adopt legislated gender quotas to create legal obligations in implementing the same.
- viii. Zimbabwe, Kenya, and South Africa should adopt strategies towards fostering political party buy-in to promote the effectiveness of quotas beyond the numbers.
- ix. The three countries should adopt a parliamentary code of conduct to regulate political debate and emphasise non-confrontational interaction whilst addressing intimidation and violence against female legislators.
- x. The three countries should initiate appropriate policies and programs to address gender stereotypes and harmful practices that have marginalised women from political leadership.
- xi. The three countries should continually raise awareness on the gender equality provisions in relation to women's political leadership in promoting a culture of acceptance of women's inclusion in decision-making processes.

### **5.2.2 Recommendations to political parties**

- i. Political party constitutions should incorporate the gender equality provisions as set out in national constitutions and electoral laws. In the absence of constitutional or legislated quotas or where legislated quotas fall short of the 50/50 representation, political parties can enhance gender equality in political leadership by adopting voluntary gender quotas.

- ii. In regulating candidate nomination processes, political parties should develop and strengthen internal nomination guidelines and incorporate rules guaranteeing women's inclusion. The nomination guidelines should guard against the nomination of candidates according to undefined criteria resulting in politics of patronage.
- iii. Political parties should field more women candidates for the competitive seats towards making women's inclusion in political leadership an acceptable norm. This is crucial in combating gender stereotypes in women's political leadership.
- iv. Political parties should ensure an equitable distribution of funds so that more women can access finances and other resources for electoral campaigns.
- v. Political parties should ensure that nomination fees are lowered or waived so that more women can compete for the elected seats.
- vi. The political parties should also promote equal access to media airtime for female candidates to increase their visibility.
- vii. Political parties should initiate mentorship and capacity-building programs for female members so as to enhance the leadership capacities of female candidates.
- viii. Political parties should adopt codes of conduct for addressing all types of violence against women in politics while creating an environment of zero tolerance for violence against women.

### **5.2.3 Recommendations to Electoral Commissions**

- i. As key institutions in ensuring democratic elections, electoral commissions must ensure that electoral laws embody the provisions of global and regional instruments on women's inclusion and that gender equality commitments are enforced.
- ii. Electoral commissions should review election-related domestic laws to ensure that gender-sensitive provisions, implementation mechanisms, and sanctions for non-compliance are in place.
- iii. Electoral commissions should develop frameworks and guidelines for monitoring women's inclusion in electoral processes and ensure that the eligibility criteria for political office are not exclusionary to female candidates.
- iv. Electoral commissions should adopt budget caps and spending limits on election campaigns to promote balanced and fair competition for female candidates with limited finances and other resources.
- v. The commissions should also ensure that funding for political parties is subject to the adoption of gender equality provisions to promote women's inclusion.

- vi. The commissions should also adopt deterrent measures to curb violence against women in politics to ensure their effective participation.

#### **5.2.4 Recommendations to Gender Equality and Human Rights Institutions**

- i. These watchdog institutions should actively enforce compliance of all stakeholders with the global, regional, and domestic laws on women's participation in political leadership.
- ii. These institutions should develop indicators to determine women's "effective participation", including the extent to which women raise motions in parliament, the issues they raise and the legislative reforms resulting from their contributions.
- iii. These institutions should undertake research on women's experiences in political processes and craft recommendations for improvement where gaps are noted.
- iv. In collaboration with civil society organisations, these institutions should scale up capacity building for women in politics, boost their confidence and change the narrative about women's leadership.
- v. The institutions should also adopt strategies for addressing practices and norms perpetuating women's exclusion from political leadership.
- vi. These institutions should also explore and unpack mechanisms for translating the laws to practice in promoting equal representation in political leadership.

#### **5.2.5 Recommendations to Civil Society Organisations**

- i. In promoting equal representation in political leadership, Civil Society Organisations (CSOs) should undertake 50/50 advocacy initiatives, drawing from countries that have adopted electoral reforms and successfully implemented gender quotas.
- ii. CSOs should be actively involved in election monitoring, undertake election gender audits, and produce shadow reports to identify and recommend areas for improvement regarding women's political leadership.
- iii. CSOs should engage with men's organisations as key partners and allies in debunking and challenging harmful practices that have perpetuated women's marginalisation from political leadership.
- iv. CSOs should rally and coordinate women across political parties to hold their leaders accountable for implementing the gender equality provisions within the national and political party constitutions and manifestos.

- v. CSOs should undertake initiatives to address structural impediments to women's effective political leadership and offer support to women candidates throughout the electoral cycle and when in office.

### **5.2.6 Recommendations to the media**

- i. The media should promote gender-sensitive reporting regarding elections to demystify gender stereotypes regarding women's political leadership.
- ii. The media should undertake deliberate efforts to ensure objective, fair and accurate reporting on women in politics.
- iii. A media code of conduct and penalties for biased reporting should be adopted as a deterrent against the abuse of women in politics through the media.
- iv. The media commissions and councils in the three countries should monitor and address media bullying, unequal and biased reporting against women candidates. The commissions should also implement checks and balances in guarding against cyberbullying.

**Word Count: 19931**

## Bibliography

### Books

Akech, M *Institutional Reform in the New Constitution of Kenya* (International Center for Transitional Justice: 2010)

Heyns, C & Killander, M *Compendium of Key Human Rights Documents of the African Union* (Pretoria University Law Press: 2016)

International Institute for Democracy and Electoral Assistance *Women's Political Participation: Africa Barometer 2021* (International IDEA publications: 2021)

Inter-Parliamentary Union & UN Women *Gender-responsive law-making* (UN Women and the Inter-Parliamentary Union: 2021)

Krook, ML *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (Oxford University Press: 2009)

DH Madsen, DH *Gendered Institutions and Women's Political Representation in Africa* (Bloomsbury Publishing: 2021)

### Journal articles

Archibong, U & O Adejumo, O 'Affirmative Action in South Africa: Are We Creating New Casualties?' (2013) 3 *Journal of Psychological Issues in Organisational Culture* 14.

Asenbaum, H 'Making a Difference: Toward a Feminist Democratic Theory in the Digital Age' (2020) 16 *Politics & Gender* 230.

Berry, M; Bouka, Y & Kamuru MM 'Implementing Inclusion: Gender Quotas, Inequality, and Backlash in Kenya' (2020) 17 *Politics and Gender* 640.

Bhatasara, S & Chiweshe, MK 'Women in Zimbabwean Politics Post-November 2017' (2021) 6 *Journal of Asian and African Studies* 218.

Gouws, A 'Women's representation in Government: quotas, substantive equality and self-interested politicians' (2011) 77 *Transformation: Critical Perspectives on Southern Africa* 70.

Kittilson, MC 'In Support of Gender Quotas: Setting New Standards, Bringing Visible Gains' (2005) 1 *Politics & Gender* 638.

Krook, ML 'Why Are Fewer Women than Men Elected? Gender and the Dynamics of Candidate Selection' (2010) 8 *Political Studies Review* 155.

Mansbridge, J 'Quota Problems: Combating the Dangers of Essentialism' (2005) 1 *Politics & Gender* 622.

Myeni, S 'Representation without Participation: Dilemmas of Quotas for Women in Post-apartheid South Africa' (2014) 3 *African Journal of Governance and Development* 56.

Vincent, L 'Quotas: 'Changing the way things look without changing the way things are' (2004) 10 *The Journal of Legislative Studies* 71.

### Newspaper articles

'Women in politics: How does it work?' *Gulf Today* 08 February 2020  
<https://www.gulftoday.ae/opinion/2020/02/08/women-in-politics-how-does-it-work> (accessed 29 September 2022).

'Dolores Huerta to Speak at Virtual HU Commencement May 15' *New Mexico Highlands University* 27 April 2021 <https://www.nmhu.edu/dolores-huerta-to-speak-at-virtual-hu-commencement-may-15/> (accessed 07 October 2022).

'Evaluating Challenges Women Face' *New York Times* 06 March 2012  
<https://www.nytimes.com/2012/03/07/us/07iht-letter07.html> (accessed 12 September 2022).

'Ruth Bader Ginsburg's Experience Shows the Supreme Court Needs More Women' *U.S News Weekly* 20 May 2009 <https://www.usnews.com/opinion/blogs/mary-kate-cary/2009/05/20/ruth-bader-ginsburgs-experience-shows-the-supreme-court-needs-more-women> (accessed 08 September 2022).

## Reports and papers

All Africa 'Violence Against Female MPs Still Rampant in Africa, APU Report Reveals' (2021).

Asiedu, E; Branstette, C; Gaekwad-Babulal, N & Malokele, N 'The Effect of Women's Representation in Parliament and the Passing of Gender Sensitive Policies' (2018).

Bouka, Y; Kamuru, MM & Berry, M and Natalie Moss 'Strengthening the leadership and influence of women in politics in Kenya' (2017).

Clinton, HR 'Address to the United Nations 4th World Congress on Women' (1995).

Government of Zimbabwe 'Sixth periodic report submitted by Zimbabwe under article 18 of the Convention on the Elimination of Discrimination Against Women' (2018).

International Knowledge Network of Women in Politics 'Gender Quotas in African Countries' (2009).

International Institute for Democracy and Electoral Assistance 'Elections and COVID-19: How election campaigns took place in 2020' (2021).

International Institute for Democracy and Electoral Assistance 'Factsheet: Women's access to political finance in Kenya' (2016).

McCann, J 'Electoral quotas for women: an international overview' (2013).

National Gender and Equality Commission 'Journey to Gender Parity in Political Representation' (2018).

UN Women 'Preventing Violence Against Women in Elections: A Programme Guide' (2017).

UN Women 'Violence Against Women in Politics: Expert Group Meeting Report & Recommendations' (2018).

Women's Academy for Leadership and Political Excellence 'A research on the efficacy of the Parliamentary Women's Proportional Representation Quota System' (2019).

### **Global and regional instruments**

2030 Sustainable Development Goals.

Agenda 2063.

African Charter on Democracy, Elections and Governance.

African Charter on Human and Peoples' Rights.

Beijing Declaration and Platform for Action.

Convention on the Elimination of All Forms of Discrimination Against Women.

Economic and Social Council Resolution – Resolution 1990/15.

International Convention on Civil and Political Rights.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Resolution on women's political participation- Resolution 58/142.

Resolution on women's political participation – Resolution 66/130.

Universal Declaration of Human Rights.

### **Legislation**

#### **Zimbabwe**

Constitution of Zimbabwe Amendment Act 2 of 2021.

Constitution of Zimbabwe Act 20 of 2013.

Electoral Act 25 of 2004.

National Gender Policy of 2013.

Zimbabwe Gender Commission Act 7 of 2016.

#### **Kenya**

Constitution of Kenya 2010.

Elections Act 24 of 2011.

National Gender and Equality Commission Act 15 of 2011.

National Policy on Gender and Development of 2019.

#### **South Africa**

African National Congress Constitution of 2017.

Commission for Gender Equality Act 39 of 1996.



Constitution of the Republic of South Africa 108 of 1996.

National Gender Policy Framework of 2002.

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

Women Empowerment and Gender Equality Bill of 2014.

## Case law

### Kenyan case law

*Centre for Rights Education & Awareness (CREAW) v Attorney General & Another* [2015] eKLR.

*Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 Others* [2017] eKLR.

*In the Matter of the Principle of Gender Representation in the National Assembly and the Senate* [2012] eKLR.

*Margaret Toili & 5 others v Speaker of the National Assembly & 2 Others* [2020] eKLR.

### South African case law

*New Nation Movement NPC and Others v President of the Republic of South Africa and Others* 2020 (6) SA 257 (CC).

## Websites and online sources

ACCORD 'Offering insights into Zimbabwe's political processes, with particular attention to processes involved in the quota system' (2018) <https://www.accord.org.za/conflict-trends/looking-beyond-2023/> (accessed 13 September 2022).

Australian Institute of International Affairs 'A Gender Agenda: the effectiveness of quota systems in increasing women's meaningful participation in politics' (2014) <https://www.internationalaffairs.org.au/news-item/a-gender-agenda-the-effectiveness-of-quota-systems-in-increasing-womens-meaningful-participation-in-politics/> (accessed 27 September 2022).

Africa Portal 'Rethinking women's political participation in Zimbabwe's elections' (2018) <https://www.africaportal.org/features/rethinking-womens-political-participation-zimbabwes-elections/> (accessed 22 September 2022).

African Union 'OAU/AU Treaties, Conventions, Protocols & Charters' <https://au.int/en/treaties> (accessed 09 September 2022).

Britannica 'The suffrage movement' <https://www.britannica.com/topic/feminism/The-suffrage-movement> (accessed 13 July 2022).

Constitution Hill 'The Constitution of South Africa' <https://www.constitutionhill.org.za/pages/the-constitution-of-south-africa> (accessed 01 September 2022).



Department of Women, Youths and Persons with Disabilities  
<https://www.dwydpd.gov.za/index.php/about-us/overview> (accessed 28 August 2022).

Howard, KB & McAfee, N 'Feminist Political Philosophy' (2018)  
<https://plato.stanford.edu/entries/feminism-political/> (accessed 14 July 2022).

Kenya Law 'Chief Justice's advice to the President on dissolution of parliament for failure to enact the gender rule' (2020) <http://kenyalaw.org/kenyalawblog/chief-justices-advice-to-the-president-on-dissolution-of-parliament/> (accessed 22 September 2022).

Kenya National Commission on Human Rights <https://www.knchr.org/> (accessed 28 August 2022).

Kubatana 'Women's Quota System in Parliament, Mere Tokenism' (2022)  
<https://kubatana.net/2022/05/11/womens-quota-system-in-parliament-mere-tokenism/> (accessed 19 September 2022).

Lewis, JJ 'The Core Ideas and Beliefs of Feminism' (2021)  
<https://www.thoughtco.com/what-is-feminism-3528958> (accessed 13 July 2022).

International IDEA 'Gender Quotas Database' <https://www.idea.int/data-tools/data/gender-quotas/country-view/310/35> (accessed 12 May 2022).

Inter-Parliamentary Union Global Data on National Parliaments  
[https://data.ipu.org/content/kenya?chamber\\_id=13438](https://data.ipu.org/content/kenya?chamber_id=13438) (accessed 29 September 2022).

Inter-Parliamentary Union Global Data on National Parliaments  
[https://data.ipu.org/content/south-africa?chamber\\_id=13311](https://data.ipu.org/content/south-africa?chamber_id=13311) (accessed 29 September 2022).

Inter-Parliamentary Union Global Data on National Parliaments  
[https://data.ipu.org/content/zimbabwe?chamber\\_id=13560](https://data.ipu.org/content/zimbabwe?chamber_id=13560) (accessed 28 September 2022).

Inter-Parliamentary Union 'Women in Parliament' (2022) <https://www.ipu.org/our-impact/gender-equality/women-in-parliament> (accessed 04 October 2022).

National Gender and Equality Commission  
<https://www.ngeckkenya.org/SpecialInterestGroups/GenderandWomen> (accessed 28 August 2022).

National Government of South Africa  
<https://nationalgovernment.co.za/units/view/52/commission-for-gender-equality-cge> (accessed 28 August 2022).

Open Democracy 'Kenya's election is being lauded as 'historic' for women – that's not true' (2022) <https://www.opendemocracy.net/en/5050/kenya-election-women-history-representation/> (accessed 26 September 2022).

- Ryusaku, Y 'What is "the Democratic" in Feminist Political Theory?'  
[https://researchmap.jp/dragon-yamada21/presentations/16152142/attachment\\_file.pdf](https://researchmap.jp/dragon-yamada21/presentations/16152142/attachment_file.pdf) (accessed 13 July 2022).
- Socialprotection.org 'Zimbabwe - Ministry of Women Affairs, Gender and Community Development'  
<https://socialprotection.org/connect/stakeholders/zimbabwe-ministry-women-affairs-gender-and-community-development> (accessed 30 August 2022).
- South African Human Rights Commission  
<https://www.sahrc.org.za/index.php/focus-areas/immigration-equality/equality> (accessed 28 August 2022).
- State Department for Gender <https://gender.go.ke/background/> (accessed 28 August 2022).
- Turan, G 'Why quotas work for gender equality' (2015)  
<https://www.oecd.org/social/quotas-gender-equality.htm> (accessed 11 May 2022).
- United Nations Human Rights office of the High Commissioner 'International Bill of Human Rights' <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> (accessed 16 August 2022).
- United Nations Human Rights Office of the High Commissioner 'International Human Rights Law' <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed 09 September 2022).
- United Nations 'SDG Indicators: Metadata repository'  
<https://unstats.un.org/sdgs/metadata/?Text=&Goal=5> (accessed 16 August 2022).
- United Nations 'Targets for Proportion of Women in Leadership and Decision-Making Positions' (2003)  
[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi\\_1piS38v5AhUhMuwKHc\\_qCzIQFnoECCYQAQ&url=https%3A%2F%2Fwww.legco.gov.hk%2Fyr02-03%2Fenglish%2Fpanels%2Fha%2Fpapers%2Fha0314cb2-1636-1e.pdf&usq=AOvVaw3RiSBVcpXxT3zEYhEqfftz](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi_1piS38v5AhUhMuwKHc_qCzIQFnoECCYQAQ&url=https%3A%2F%2Fwww.legco.gov.hk%2Fyr02-03%2Fenglish%2Fpanels%2Fha%2Fpapers%2Fha0314cb2-1636-1e.pdf&usq=AOvVaw3RiSBVcpXxT3zEYhEqfftz) (accessed 18 August 2022).
- United Nations 'Treaty Collection'  
[https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=\\_en](https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en) (accessed 09 September 2022).
- UN Women 'Facts and figures: Women's leadership and political participation' (2021) <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> (accessed 06 September 2022).
- UN Women 'The gender agenda: role of parliamentarians in the establishment of gender-sensitive health policies'  
<https://www.un.org/womenwatch/daw/csw/rance.htm> (accessed 27 September 2022).

Westminster Foundation for Democracy 'Women's Political Leadership'  
<https://www.wfd.org/womens-political-leadership> (accessed 13 September 2022).

Women Deliver 'Political Participation for Kenya's women still a far cry from its Constitutional Provision' (2018) <https://womendeliver.org/political-participation-kenyas-women-still-far-cry-constitutional-provision/> (accessed 22 September 2022).

Women Deliver 'Strengthen Women's Political Participation and Decision-Making Power' <https://womendeliver.org/investment/strengthen-womens-political-participation-decision-making-power/> (accessed 13 September 2022).