

THE IMPLEMENTATION OF GENDER QUOTAS IN KENYA: LESSONS FROM SENEGAL

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE MPhil
HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA

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23 October 2023

Abstract

In 2010, Senegal adopted the 50/50 gender quota in their gender parity law. In a similar way, Kenya adopted the 2010 constitution that provided that not more than two thirds of any appointive or elective positions shall be of the same gender. A close look at the two states shows that Senegal has successfully implemented the gender law leading to a 47% of women in parliament becoming the second highest representation of women in Africa after Rwanda. Kenya has struggled with the implementation of the gender rule recording a 23.5% representation in the just concluded 2022 general elections. This discrepancy has led to the research concept where this study seeks to borrow lessons from Senegal that Kenya can use to improve its women representation efforts. Before getting to the lessons, we must first understand the existing gender laws on quotas and parities.

This research shows Kenya should draw from Senegal are based on the actors that have made the implementation of gender quotas possible. These include NGOs, the Presidency, the International Community, the judiciary, and religious leaders. Moreover, this study recognizes that lessons can be learned through both success and failure and examines the challenges Senegal has faced in the journey. This helps Kenya to not fall into the same trap. Finally, Senegal has still not achieved a 50/50 representation of both men and women. Therefore, the study looks at gaps that have been left in the fight and the opportunities that Kenya can tap into and achieve better women in parliament representation. This thesis presents the timely recount of the status of gender quotas in two states that implemented gender quotas in the same year and have just concluded elections in 2022 recording different statistics of women in politics.

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Declaration

I, **Ilse Syonthi Kithembe**, Student number **u23982391** declare as follows:

1. I understand what plagiarism entails and I am aware of the University's policy in this regard.
2. This dissertation is my own original work and where someone else's work has been used, due acknowledgement has been given and reference made according to the requirements of the Faculty of Law.

Signature.....

Date: 22 October 2023.

Dedication

“To all the women whose blood swims in me; I won’t let you drown.” Farida D. Athur

Acknowledgement

I express profound gratitude to the Centre for Human Rights at the University of Pretoria for their invaluable support and guidance throughout my master's journey.

I extend my heartfelt appreciation to my esteemed supervisors, Professor Papa Samba Ndiaye (Department of Political Science, Universite of Gaston Berger and Mr. Jared Gekombe (Faculty of Law, University of Pretoria) whose insightful guidance and expertise have been instrumental in making this work possible.

To my beloved family, you have been my unwavering foundation, providing the strength and support I needed every step of the way. To my cherished nieces, Shanice Khanguha and Graca Kukia, your love and presence have been a constant source of joy and motivation in my life.

To my best friend Susan Gathoni Ng'ang'a, thank you for being my safe space. To my dear friends—Faith Chelangat, Stacie Ayumah, Marion C. Jepchumba, and Robert Arogo—I am deeply grateful for the solidarity and comfort you have generously offered during the most challenging moments of my journey.

To everyone else I have met throughout this journey who has contributed to my positive experience through simple acts of kindness, thank you.

Thank you all for being an essential part of my academic and personal growth.

List of abbreviations and acronyms

ACDEG - African Charter on Democracy, Elections, and Governance

ACHPR - African Charter on Human and Peoples' Rights

AU - African Union

CEDAW - Convention on the Elimination of all Forms of Discrimination against Women

CENI - Commission Electoral National Independante

CNRA - National Broadcasting Regulatory Council

COMESA - Common Market for Eastern and Southern Africa

COSEF - Conseil Sénégalais des Femmes

CSOs - Civil society organisations

DEVAW - UN Declaration on the Elimination of Violence against Women

EAC - East African Community

EALS - East African Law Society

EASSI - Eastern African Sub-Regional Support Initiative for the Advancement of Women

ECOFEPA - Association of ECOWAS Female Parliamentarians

ECOSOC - United Nations Economic and Social Council

ECOWAS - Economic Community of West African States

EGDC - ECOWAS Gender Development Centre

FBOs - Faith-based organisations

FIDA - Federation of Women Lawyers

GED - Gender Equality and Development

GEWE - Gender Equality and Women's Empowerment

GMT - Gender Management Team

ICCPR - International Covenant on Political and Civil Rights

IEBC - Independent Boundaries and Electoral Commission

IGAD - Intergovernmental Authority on Development

IPPG- Inter-Parliamentary Group

MAWS - 50 million African Women Speak

NGOs - Non-governmental organisations

NOPSWECO - Network on Peace and Security for Women in the ECOWAS Region

PTA - Preferential Trade Area

ROAJELF - West African Network of Young Women Leaders' Network/ Réseau Ouest des Jeunes Femmes Leaders

SDGs - Sustainable Development Goals

SMP - Single-member Plurality

UDHR - Universal Declaration of Human Rights

UNSCR - United Nations Security Council Resolution

Chapter 1

Stagnation in motion: The puzzle of gender quota implementation in Kenya

1.1 Introduction

After the introduction of gender quotas in South Africa, it took only two elections to move the percentage of women representation from 3% to 30%, while the absence of gender quotas has seen Sweden take 80 years to reach a 45% representation of women in parliament.¹ This illustrates the necessity of gender quotas in swiftly improving the representation and participation of women in parliament. In 2010, after adopting the new constitution, Kenya introduced the two thirds gender rule and the reserved seats for women both in its upper house and lower house of parliament. 12 years after the adoption, and three elections later, Kenya has only managed to register a 23% representation of women in parliament; a result attributed to among other factors, the electoral system.

For effective implementation, gender quotas must be accompanied by the proper electoral systems.² The top 13 countries of the world with the highest percentage of women in parliament either use proportional representation or a mixed voting system.³ In Africa, the top five states with higher representation of women in parliament (Rwanda 61.3%, Senegal 46.1%, South Africa 45.6%, Namibia 44.2%, and Mozambique 43.2%) have adopted gender quota laws and exclusive or mixed forms of the proportional representation form of the electoral system.⁴ Three of the five states belong to the Southern African Development Community (SADC) region that adopted the Declaration on Gender and Development, signed by SADC heads of state and government in 1997, committing member states to use ‘whatever methods available’ to increase the participation of women at all levels of decision making to 30% by 2005.⁵ Two years later, SADC convened a conference where they identified voluntary party-based quotas and mandatory quotas through constitutional or legislation and combined with either proportional representation or constituency-based electoral systems applied at national and subnational levels as a means of increasing women representation in political processes.⁶ In cases where voluntary

¹ J Ballington ‘The implementation of quotas: African experiences’ International Institute for Democracy and Electoral Assistance November 2004 <<https://www.idea.int/sites/default/files/publications/implementation-of-quotas-african-experiences.pdf>> (accessed on 15 July 2023).

² As above.

³ The top 13 countries with the highest women representation in parliament are Rwanda, Sweden, Denmark, Finland, Norway, Costa Rica, Iceland, Netherlands, Germany, Argentina, Mozambique, South Africa, Seychelles.

⁴ International IDEA ‘Monthly rankings of women in parliament’ 1 July 2023 <<https://data.ipu.org/women-ranking?month=7&year=2023>> (accessed 23 July 2023).

⁵ SADC Declaration on Gender & Development 1997.

⁶ As above.

quotas have not been effective, appropriate legislation has compelled parties involved to be gender inclusive.

International intergovernmental bodies, acting as norm setters in international law, have developed several legal frameworks to increase women representation in legislative bodies. The groundbreaking Beijing Declaration and Platform for Action identified 12 critical areas where states should take keen interest to ensure they advance women's rights including the representation of women in power and decision-making processes where states committed to taking steps towards the same.⁷ The Constitutive Act of the African Union calls for equality in all of its structures⁸, as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) calls for the increment of women in political decision making processes⁹. The East African Community Treaty (EAC treaty) which Kenya is party to recognises that women play a key role in the economic, social and political development of the region.¹⁰ Moreover, EAC's Gender and Community Development Strategic Plan and the 4th EAC Development Strategy provide guidelines for mainstreaming gender in EAC policies and programmes.¹¹ The Economic Organisation of West African States (ECOWAS), which Senegal is party to, calls for its members to take all necessary measures to ensure equal rights for men and women to vote and to be voted for in elections as well as advance women's rights to hold public office.¹²

Kenya and Senegal, have both developed national legal and institutional frameworks to domesticate international agreements that call for gender equality and affirmative action. The Kenyan constitution provides for 47 reserved seats for women in the national assembly including two separate seats for a female youth and a female person with disability.¹³ In the Senate, the constitution provides for 16 seats for female representatives as direct nominees of political parties.¹⁴ To increase women representation in decision making bodies, the constitution stipulates that in any elective public body, none shall have more than two-third of the same gender.¹⁵ In Senegal, the constitution calls for equal access for women and men in its provisions.¹⁶ This is affirmed through the 2006 National strategy for Gender Equity and Equality, and the 2010 gender parity decree that calls for a 50% share of positions of both genders; failure to which political party list will be dismissed.¹⁷

⁷ The Beijing Declaration and Platform for Action.

⁸ AU Charter, art 3(1).

⁹ Ballington n 1 above.

¹⁰ EAC art 121-122.

¹¹ EAC's Gender and Community Development Strategic Plan & 4th EAC Development Strategy provide guidelines for mainstreaming gender in EAC policies and programmes.

¹² The 2001 ECOWAS Supplementary Protocol on Democracy and Good Governance, art 2(3).

¹³ The 2010 constitution of Kenya, 97(b) & 97(c).

¹⁴ The 2010 constitution of Kenya 97 (b), 98(c), & 98(d).

¹⁵ The 2010 constitution of Kenya, art 81(b).

¹⁶ The 2001 constitution of Senegal art 7.

¹⁷ Loi sur la parité 2010.

In the just concluded 2022 parliamentary elections in Senegal, and 2022 general elections in Kenya, the two states registered a 44% and 23% representation of women in parliament respectively.¹⁸ Senegal has historically registered higher representation of women in political positions and performed better in the implementation of its gender quota provisions.¹⁹ Ahead of the 2022 general elections, Kenya witnessed the application of ramifications of the failure to meet gender quotas. First, the chairperson of the electoral commission returned party lists for failure to meet the gender threshold²⁰, and then, the Chief Justice called on the president to dissolve parliament for failure to fulfill the constitutional provision.²¹ Both Kenya and Senegal adopted gender quotas in 2010 but Senegal has registered more positive progress than Kenya. With the aforementioned information in mind, this study aims to achieve two things; to ascertain whether the success of Senegal is pegged to its electoral regime, and to explore themes, strategies, and lessons from Senegal that Kenya can apply to better implement gender quotas.

1.2 Problem statement

Despite having a population of more than 50% of women, Kenya is one of the lowest performing countries in East Africa in terms of women representation in parliament.²² In Eastern Africa, the ranks from the highest to the lowest percentages are: Rwanda (61.3), Ethiopia (41.3), Tanzania (37.4), Uganda (33.8), South Sudan (32.4), Djibouti (26.2), Kenya (23.3), Somalia (17.7) and Congo (14.6).²³ During the drafting of the 2010 Kenyan constitution, the constitution of Kenya review commission (CKRC) stated that affirmative action was the ideal direct response to historical marginalisation of disadvantaged and vulnerable groups such as women.²⁴ This intention led to the introduction of the two thirds gender rule that states that in any given public body, there shall not be more than two thirds of the same gender.²⁵ Additionally, reserved seats for women were introduced both in the lower house (national assembly) and upper house (senate) of the Kenyan parliament. 12 years after the introduction of gender quotas and affirmative action, and three elections later, Kenya still has a very low representation of

¹⁸ International IDEA ‘Gender Quotas database’ <<https://www.idea.int/data-tools/data/gender-quotas/country-view>> (accessed 23 July 2023).

¹⁹ Senegal has had two female prime ministers, Mame Madior Boye in 2001 and Aminata Toure in 2013. Kenya has had three female presidential candidates. Although there were three female presidential running mates in the 2022 general elections, none of the mentioned female leaders have ever attained the top seat: as president, prime minister, or deputy president.

²⁰ Independent Electoral and Boundaries Commission ‘Political parties must adhere to two-thirds gender rule, commission warns’ 10 May 2022 <https://www.iebc.or.ke/news/?Political_Parties_Must_Adhere_to_Two-Thirds_Gender_Rule,_Commission_Warns> (accessed 23 July 2023).

²¹ M Kiruga ‘Kenya: Constitutional crisis after calls to dissolve parliament’ 22 September 2020 <<https://www.theafricareport.com/42693/kenya-constitutional-crisis-after-calls-to-dissolve-parliament/>>(accessed on 29 May 2023).

²² Statista ‘Kenya: Total population from 2011 to 2021, by gender’ <<https://www.statista.com/statistics/967855/total-population-of-kenya-by-gender/>> (accessed 2 October 2023).

²³ IPU praline ‘Monthly ranking of women in national parliaments’ January 2023 <<https://data.ipu.org/women-ranking?month=1&year=2023>> (accessed 2 October 2023).

²⁴ Constitution of Kenya Review Commission ‘The final report of constitution of Kenya Review Commission’ approved for issue at the 59th plenary meeting held on 10 February 2005.

²⁵ The constitution of Kenya, art 27(8).

women leading to the conversation of dissolving the government, numerous court cases challenging the failure of parliament to meet gender quota provisions, and the recent conversation by the national dialogue committee to change the electoral system to a parliamentary system, and increase the number of allocated seats for women in parliament. This obvious failure to implement gender quotas has inspired this study. This research aims to identify ways to address this problem by studying Senegal, an African country that has not been widely studied but has the second-highest representation of women in Africa, surpassing South Africa.

Existing research on gender quotas and electoral regimes in Africa has predominantly focused on the Southern African region, with particular emphasis on countries such as South Africa, Mozambique, and Namibia, which have achieved significant representation of women in parliament. Rwanda, a global trendsetter has also been featured in most research on women representation in government. However, there is a noticeable research gap when it comes to comparative studies involving Senegal, the only successful implementer of gender quotas in West Africa. Kenya can borrow valuable lessons from Senegal given the fact that both countries adopted gender quotas in 2010, and both states conducted parliamentary elections in 2022. Kenya is struggling to implement their gender quotas, while Senegal has registered positive results.

The decision to study Senegal as a unique implementer of gender quotas from whom Kenya can draw valuable lessons from is based on three discoveries. First, Senegal is the only nation state in West Africa to register a high percentage of women in parliament and as of July 2023 took the second spot after Rwanda as the top state with a high percentage of women in parliament. Secondly, until recently when the United Arab Emirates joined the scene, Senegal was the only Muslim majority country to have a high number of women in parliament. Lastly, while most African States have adopted gender quotas in the aftermath of conflicts; an approach seen as a way of women fighting for their space in post-conflict situations, Senegal is one of the most stable West African states and has not experienced any major conflicts. The introduction of gender quotas and their implementation in Senegal has taken a unique approach compared to other African states, and the position Senegal holds in the women representation is timely.

By examining Senegal's experience and approach to implementing gender quotas, this research seeks to contribute to the existing literature by incorporating a West African case study on comparative perspectives on gender quotas implementation, analysing Senegal's approach driven by the civil society, identifying the factors that have led to Senegal's success in implementing gender quotas, and lessons that can be drawn from it, and highlighting potential solutions to Kenya facing challenges with gender quota implementation. By drawing lessons from Senegal, this study hopes to provide insights to policy makers, researchers, and gender equality advocates on ways to enhance women political representation. By broadening the focus to a West African state, this research hopes to contribute to a

more comprehensive understanding of the implementation of gender quotas in different African contexts.

1.3 Research questions

The main research question is:

How do the different electoral regimes in Kenya and Senegal influence the outcome of gender quotas implementation, and the consequential representation of women in decision-making bodies?

The questions guiding this research are:

1. What are the legal structures and regulations that govern the administration of gender quotas in Kenya and Senegal?
2. What are the systemic gaps that have accounted for the low representation of women in parliament under Kenya's electoral system?
3. What strategies have been used to improve women representation in parliament in Senegal, and what lessons Kenya can borrow from?

1.4 Literature review

The persistence of marginalisation of women in politics has attracted a wealth of research presented in books, publications, journals, reports, and students' dissertations and theses. All the infinite voices seem to discuss similar themes.

Men and women view politics differently; thus, the inclusion of women is seen as a way of accommodating different perspectives in policies and running of government. Squires²⁶ argues that there is a 'women's perspective' and a distinct way that women engage in politics that is repressed and can be solved through the political presence of women with quotas as the ideal approach. Diaw argues that women's pursuit of power is not a matter of representation only; it is a chance to reform the political realm as it has been argued that women conceptualise power differently and possess a different perception of morality.²⁷ Women inclusion is also an attempt to restore order given that women make up almost half of the global population. Phillips²⁸ argues for the development of mechanisms that acknowledge gender differences and inequality and strive to bring proportionality in spheres where political decisions are made. Moreover, she argues that there needs to be a reordering of the relationship

²⁶ J Squires *Gender in Political theory* (1999) 195.

²⁷ A Diaw 'Femmes, éthique et politique' <<http://library.fes.de/fulltext/bueros/senegal/00263001.htm>> (accessed on 29 May 2023).

²⁸ A Phillips *Engendering politics* (1991) 7.

between gender and public and private spheres. Research shows that women are often isolated from private lives at home, and public spaces such as governments are seen as male spaces.

Pitkin²⁹ describes four components of representation; Formal representation where selection happens through rules and procedures, descriptive representation where the representatives mirror the represented (a female representative represents women, Symbolic representation where the representative makes the represented feel seen, and substantive representation where legislators represent those that elected them. Mansbridge³⁰ contends that quotas guarantee women's descriptive representation as their presence in parliament means that women will be able to address issues that affect them and eventually lead to better living conditions for women. It gives women a chance to have a seat at the decision table.

Bauer³¹ argues that without gender quotas it would have taken Sub-Saharan Africa decades to attain women representation and that the quotas have led to an increase in women's engagement at mass-level voting as well as the change in cultural attitudes, and social-economic development. Thabane³² In analysing gender demographics against representation in Africa cites patriarchy, negative cultures, religion, education, and globalisation as some of the barriers that hinder women's representation. Nanjala³³ argues that it is an unspoken principle of Kenya's ethno-nationalist politics that women should be sidelined. She argues that women are only accepted in spaces where they do not threaten the position of men in the given spaces.

The first-past-the-post electoral system has been faulted for causing women underrepresentation since it enhances factors such as heavy financial burden on women, and violent political process such as the party primaries in Kenya. Paxton and Kunovich³⁴ argue that proportional representation systems with party lists are ideal for implementing gender quotas as they feel the need to balance the party lists, they present before electoral bodies. Further, they argue that theoretically, the proportional system by itself is not responsible for better representation; factors such as whether the party is left-oriented or not have been shown to determine women representation in parliament.

In Kenya, extensive literature studies about the current status of women in Kenyan parliament has not been examined given the 2022 elections have just been concluded. One of the most elaborate books that brought together ten of Kenyan women scholars exploring the position of women in politics

²⁹ H Pitkin *The concept of representation* (1967).

³⁰ ZM Olaitan 'Gender quotas and substantive Representation of Women in African Politics: Case studies of Botswana and South Africa' Unpublished PHD thesis, University of Pretoria, 2023.

³¹ G Bauer 'Fifty/fifty by 2020: Electoral gender quotas for parliament in East and Southern Africa' 10(3) *International Feminist Journal of Politics* 348-368.

³² T Thabane 'Bridging the gap between de jure and de facto parliamentary representation of women in Africa: Lessons from Rwanda and South Africa' unpublished PHD Thesis, University of Pretoria, 2006 64.

³³ N Nyabola & ME Pommerolle 'Women and elections in Kenya' in *Where women are: Gender & the 2017 elections* (2018)12.

³⁴ P Paxton & S Kunovich 'Women's political representation: The importance of ideology' September 2003 *Oxford Journals* 82(1) 87-113.

covers themes up to the 2017 general elections.³⁵ However, some recent developments are documented in case laws, online articles, and news articles. In Senegal, Toraasen³⁶ investigates the strategic mobilization of the women movement and how the presence of a willing head of state and enabling international environment led to the development of the parity law in Senegal. She concludes that the symbolic representation of women in the Senegalese parliament has contributed to societal positive attitude towards women in politics. However, this study realises the need for in-depth studies of current developments in Kenya and Senegal using quantitative research methods and hopes that this study commences a debate that can serve as an opening for further up-to-date studies in the subject of women representation in Kenyan, Senegalese, and African parliaments.

1.5 Methodology

This study research employs the qualitative approach to analysing data.

First, the study uses primary sources of data such as international, regional, and sub-regional legal instruments, domestic legislation of the two states, national constitutions of the two states, and jurisprudence emerging from courts. This study is an analysis of the challenges and steps made into the implementation of the legal frameworks aimed at increasing women representation in legislative bodies.

Second, this study utilises secondary sources of data such as books, articles, journals, and internet sources. These sources help to understand previous research and gaps in the study. This will be conducted through desktop review aimed at identifying key themes and extracting relevant information.

The study also employs a comparative research design by critically examining the electoral regimes in Kenya and Senegal, and how they have accounted for the success or failure of effective gender quota implementation.

1.6 Theoretical framework

To better understand the debate around gender quotas, this study will explore two theories: the theory of the politics of presence and the relational feminist theory. These two theories try to explain the necessity of women involvement in politics and the essence of women representation respectively. The theory of presence presents a way to view the significance of women representing women in a

³⁵ N Nyabola & ME Pomerrole *where women are Gender & the 2017 Kenyan elections* (2018).

³⁶ M Toraason 'Gender parity and the symbolic representation of women in Senegal' published master's dissertation, University of Bergen, 2016.

democracy while relational feminism argues that only women are better suited to represent women issues.³⁷

The theory of politics of presence was developed to counter the politics of ideas that underplayed the presence of different groups in political representation through assuming that a democracy can function well in the absence of marginalised groups.³⁸ Therefore, this theory argues that the involvement of women in politics gives legitimacy to a democracy by allowing for the representation of different groups in a society.³⁹ Further, the theory presents that female politicians are better endowed with the ability to champion for women issues thereby linking descriptive and substantive representation.⁴⁰ However, critics argue that the focus on group identities undermines general interests and disrupts social cohesion.⁴¹

Relational feminist theory argues that women as a faction in government impact policies that touch on women issues by giving importance to issues such as social welfare, and health as women are seen to experience life differently from men.⁴² However, this grouping of women as a collective sect often ignores the intersecting identities of women caused by class, race, and sexuality. For example, a transgender woman and a black woman with disability might have different needs that inform their interest separate from the larger women group. On the other hand, the theory does not only focus on men and women as separate entities but argues for the incorporation of all gender based on the unique contribution they offer in each society.⁴³ This notion affirms gender quotas in parliament as a way of bringing in new and unique perspectives to policy making.

These two theories tend to support the need for inclusive politics and implicitly affirm the need for gender quotas to achieve inclusivity.

1.6 Limitations to the study

There are generally two limitations to this study; the language barrier given the study analyses both a Francophone and Anglophone Country, and the restraint of time and resources allows for a qualitative research approach to this study. Senegal is a French-speaking country with some key literature relevant to the study available in French. Although the researcher can harness digital tools to translate the literature into English, there is always the challenge of the translation relaying the information in a distorted version.

³⁷ n 30 above.

³⁸ S Erzeel 'Intersectionality, citizenship and multiculturalism' panel discussion on diversity, intersectionality, and the politics of presence. available at < <https://ecpr.eu/Events/Event/PanelDetails/3814> > (accessed 14 November 2023).

³⁹ As n 1 above.

⁴⁰ L Wangnerud 'women in parliaments: descriptive and substantive representation' 12(1) *annual review of political science* 52

⁴¹ A Phillips 'From a politics of ideas to a politics of presence' in A Phillips *The politics of presence* (1998) 1

⁴² S Child & ML Krook 'Labels and mandates in the United Kingdom' in S Franceschet et al (eds) *The impact of gender quotas* (2002) 89-102

⁴³ K Offen 'Defining feminism: A comparative historical approach' *The University of Chicago press journals* 14(1) 119-157.

Conducting research in Senegal during the tumultuous campaign period for the 2024 presidential election poses challenges such as constant internet shutdowns that hinder information access, especially on government websites and political parties' data. This challenge is exacerbated by the study's use of the desktop research method.

1.7 Structure

This research is divided into 5 chapters. The current chapter introduces the subject of the study, the research problem, literature review, and the methodology used. It explains the justification for the study and gives a background and contextual introduction to gender quotas implementation in Kenya and Senegal.

Chapter 2 explores the legal provisions for gender quotas in the international sphere, in the African Union space, the regional bodies of ECOWAS, SADC, IGAD and EAC which the two countries are members of, and the domestic legal provisions of the same. This chapter looks at how supranational bodies create the space for gender equality by making legal provisions and standards. When states, in this case Kenya and Senegal, commit to these legal provisions, they domesticate it to consolidate them with their national laws.

Chapter 3 examines the electoral systems in Kenya. It seeks to find the gaps in the system that have historically accounted for the poor representation of women in Kenya's parliament. This chapter explores the entirety of electoral regimes with a focus on key players such as political parties, electoral management bodies, the media, and civil society.

Chapter 4 interrogates the electoral regime in Senegal and how it has accounted for the impressive increment of women in parliament. It examines the notable actors namely the civil society and the former President Abdulaye Wade as notable stakeholders in ensuring the implementation of laws on gender equality in decision-making. The goal of this chapter is to illuminate the factors that led to Senegal's progress to draw lessons that Kenya can apply to improve its current situation.

Finally, chapter 5 makes the conclusion by summarising the findings of the paper and making recommendations based on the findings of the study.

Chapter 2:

Legal framework on gender quotas in Kenya and Senegal

2.1 Introduction

Legal framework refer to a wide system of rules that dictate and determine decision making agreements, and laws.⁴⁴ International legal frameworks and standards are set by supranational bodies as part of their mandate in the protection and promotion of human rights. National states must then domesticate these laws to fit into national contexts, and to provide for the justiciability of the rights. International and regional bodies are norm entrepreneurs; a term describing the standards of common expected behaviour of actors which determines what they do, and what they do not do. A norm entrepreneur is an individual, political actor or international organisation that initiates new standard of behaviour among a group of players, mobilises and convinces members about its appositeness for the purpose of modifying a particular prevailing behaviour.⁴⁵ The United Nations is a perfect example of a normal entrepreneur. The UN holds a significant degree of influence on how states behave in the international system and holds the proper institutions to advocate for given norms such as advancement of women rights. For the norm entrepreneur to influence the behaviour of other actors, factors such as the strong need for the norm entrepreneur to influence change, the use of the proper instruments of persuasion, and the degree of influence on its community members.⁴⁶ However, the international organisations have no ability to force states to follow the standard, but nation states follow them out of the desire to be a role model and due to the fear of being the odd one out.⁴⁷

2.2 International legal frameworks

Kenya and Senegal as part of member states at the international bodies are bound by the laws and principles that dictate the inclusion of women in decision making bodies as provided by various international agreements. While some of these legal provisions do not explicitly give guidance on women representation in parliaments, they advance the principles under which gender quotas are created, the principle of equality and non-discrimination based on sex. Globally, the new global development agenda alias Sustainable Development Goals (SDGs) places an emphasis on achieving gender equality and empowerment of all women and girls in its fifth goal.⁴⁸ With regards to discrimination, in target 5.1, the SDG calls for elimination of discrimination against women and girls everywhere and specifically calls for effective and equal participation of women at all levels of decision

⁴⁴ Legal framework definition < <https://dictionary.translegal.com/en/legal-framework/noun>> (accessed 24 July 2023).

⁴⁵ C Sunstein 'Social norms and social roles' 96 (1996) *Columbia law review* 903.

⁴⁶ As above.

⁴⁷ BF Obamamoye 'ECOWAS and women representation in West Africa' (2016) *Africa* (2016) 3 *Journal of Political Sciences & Public Affairs* 4(3).

⁴⁸ 'Goal 5: Achieve gender equality and empower all women and girls' Sustainable Development Goals available at <<https://www.un.org/sustainabledevelopment/gender-equality/>> (accessed 18 July 2023).

making in the public sphere as target 5.5.⁴⁹ This influences the development of gender quotas as a response to systemic and historical discrimination against women.

The Universal Declaration of Human Rights (UDHR) calls for the participation of every individual in the government of their state. The International Covenant on Political and Civil Rights (ICCPR) calls on state parties to undertake to ensure that both men and women enjoy the civil and political rights provided in the covenant on an equal basis,⁵⁰ and calls for non-discrimination based on sex⁵¹. Further, the ICCPR provides for the right of every individual to directly participate in public affairs, to be elected in national elections, and to hold public office.⁵² In 1990, the United Nations Economic and Social Council (ECOSOC) made a resolution recommending that by 1995 the proportion of women in leadership should be 30% and increase to 50% by 2000.⁵³

The United Nation Charter, and relevant UN legal instruments provide for the inclusion of women in decision making and other public office spaces. Kenya and Senegal have been members of the United Nations since 16 December 1962 and 28 September 1960 respectively.⁵⁴ One of the purposes of the UN is to promote and encourage the respect of human rights and fundamental freedoms for all irrespective of their race, sex, language, or religion.⁵⁵ Both states have ratified the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which binds them to the treaties' provisions.⁵⁶ CEDAW calls on its state parties to develop legislation in political, social, economic, and cultural spheres that ensure that women equally enjoy their human rights like men.⁵⁷ Particularly, the CEDAW convention calls on state parties to take necessary steps to eliminate discrimination of women by ensuring the right to be eligible for election in public bodies, and to hold public office including the participation in decision and policy making bodies.⁵⁸ The UN Declaration on the Elimination of Violence against Women (DEVAW) recognises the right to equality for women in the economic, political, cultural and civic platforms.⁵⁹ These UN agreements are accompanied by treaty monitoring bodies that ensure the implementation of the agreements through committees that call for regular state reports. Commenting on Kenya's eighth periodic report, the CEDAW committee after noting Kenya's strained development in gender inclusion advised the state to develop short-time

⁴⁹ Target 5.1 & Target 5.5 Sustainable Development Goals available at <<https://www.un.org/sustainabledevelopment/gender-equality/>> (accessed 18 July 2023).

⁵⁰ ICCPR, art 3.

⁵¹ ICCPR, art 26.

⁵² ICCPR, art 25 (a), 25(B) & 25(c).

⁵³ 'Information paper: United Nations targets for proportion of women in leadership and decision-making positions' available at <<https://www.legco.gov.hk/yr02-03/english/panels/ha/papers/ha0314cb2-1636-1e.pdf>> (accessed 18 July 2023).

⁵⁴ UN member states <<https://www.un.org/en/about-us/member-states>> (accessed 18 July 2023).

⁵⁵ UN Charter, art 1(3).

⁵⁶ UN treaties database <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> (accessed 15 October 2015) Kenya ratified CEDAW on 9 March 1984 while Senegal ratified the treaty on 5 February 1985.

⁵⁷ CEDAW, art 3.

⁵⁸ CEDAW, art 7(a) & art 7(b).

⁵⁹ DEVAW, art 3(b).

solutions accompanied by consequences for failure to improve the equality of women and men in accessing public office.⁶⁰

The Beijing Declaration in part G tackles the issue of women and power and provides an elaborate legal framework for the advancement of women participation in public decision-making bodies⁶¹ After establishing varied reasons that hinder women from accessing decision making platforms, the Beijing Declaration provides strategic objectives G.1 and G.2 that are particularly useful in this study. In objective G.1, whose goal is to encourage stakeholders to take measures that ensure women's equal access and participation in power structures and decision making, the declaration calls on national governments to set specific targets, take needed positive actions, and implement measures that increase the representation of women in public office.⁶² Additionally, it calls on governments to review the differential impact of electoral regimes on the representation of women, and where necessary take steps in utilising electoral regimes that favour women election or alternatively set up proportions for non-elective public positions.⁶³ Apart from the government, the Beijing Declaration calls on political parties to aim at attaining gender balance in their party lists, and consider examining party structures to eliminate all direct and indirect barriers that prevent women from running for office.⁶⁴ Recognising the role supranational bodies play in not only promoting women representation in decision making but also the symbolic representation of women in senior level spaces, the declaration calls upon the United Nations to ensure gender balance in the appointment of its senior officials, and in the appointment of individuals in UN agencies, missions, and committees.⁶⁵ The Beijing Declaration is instrumental when studying gender quotas as it created a global shift into women inclusion in politics. Before the Beijing Declaration, only four countries had adopted gender quotas. After the declaration, between the years 1995 and 2005, 55 countries adopted gender quotas as a way of boosting women numbers in legislative bodies. A UN women analysis of the Declaration 25 years later notes that all countries have adopted legislation to ensure women political participation although gaps such as underrepresentation in lower houses of parliament, and lack of political good will still exist.⁶⁶

2.3 Regional frameworks

The African Union in full realisation of different regional contexts has come up with legal provisions that target African member states. Senegal and Kenya have both been members of the African Union since 25 May 1963.⁶⁷ The Charter on the Organisation of African Unity (AU Charter) cites the UN

⁶⁰ CEDAW 'Concluding observations on the eighth periodic report of Kenya' 22 November 2017.

⁶¹ n 7 above, part G.

⁶² n 55 above, para 190 a, 194 a, 194b & 194c.

⁶³ n 56 above, para 190b & 190d.

⁶⁴ Beijing Declaration, para 191a, 191b & 191c.

⁶⁵ n 58 above, par 190j, 192I & 197.

⁶⁶ UN women East and Southern Africa Office 'Synthesis report on the implementation of the Beijing Declaration and Platform for action' October 2020.

⁶⁷ AU member states <https://au.int/en/member_states/countryprofiles2> (accessed 18 July 2023).

Charter and the UDHR as part of its purposes.⁶⁸ Further, the Constitutive Act of the African Union cites the promotion of gender equality as one of the principles of the African Union.⁶⁹ The African Charter on Human and Peoples' Rights (ACHPR) provides for the principle of non-discrimination by stating that every individual shall enjoy the rights provided in the charter regardless of their sex,⁷⁰ and that all individuals are equal and shall thus enjoy equal respect and have the same rights.⁷¹ The ACHPR recognizes the right of each citizen to vie for elective positions as well as the right to access public service.⁷²

The AU developed the 2003 African Charter on the Rights of Women (Maputo Protocol) aiming at creating an agreement that caters to the cultural context of African states that was not considered by CEDAW. Kenya and Senegal both ratified the Maputo Protocol on 10 October 2010 and 27 December 2004 respectively.⁷³ The Maputo Protocol instructs member states to eliminate all forms of discrimination against women through suitable legislative, institutional, and other measures by including them in their national institutions, and other legislative instruments, and ensuring the principle of equality of men and women is properly applied.⁷⁴ Further, the African Women's Protocol calls on party states to take positive action in ensuring the right of women to participate in the political and decision making through affirmative action, legislation, measures that ensure non-discrimination of women in political participation, equality of men and women in the electoral process, women's participation in the development of state policies and programs, and increased and effective representation and participation of women in all decision making levels of government.⁷⁵ The provisions for these agreements are key in advocating for women rights at both the domestic and international court level. For example, in *Center for Rights Education and Awareness and 2 others v Speaker the National Assembly & 6 others*, the high court of Kenya acknowledged the argument made by the Kenya National Commission on Human Rights that the failure by both houses of parliament to meet the gender threshold was a violation of article 9(1) (a) of the Maputo Protocol.

Kenya ratified the African Youth Charter on 23 January 2014 as Senegal did the same on 17 September 2009.⁷⁶ The African Youth Charter uses the same language of non-discrimination on the basis of, among other factors, sex in its provisions.⁷⁷ The African Charter further calls on state parties to eliminate discrimination of girls and women as stipulated in various international, regional and national human rights instruments by introducing legislative measures, ensuring the equal participation

⁶⁸ AU Charter, art 2(e).

⁶⁹ Constitutive Act, art 4(1).

⁷⁰ ACHPR, art 2.

⁷¹ n 63 above, art 19.

⁷² n 63 above, art 13(1) & 13(2).

⁷³ Maputo protocol countries table <<https://www.maputoprotocol.up.ac.za/countries/countries-table>> (accessed 18 July 2023).

⁷⁴ Maputo Protocol, art 2(a) & 2(b).

⁷⁵ n 67 above, art 1 & 2.

⁷⁶ African Youth Charter Status list <<https://au.int/en/treaties/african-youth-charter>> (accessed 18 July 2023).

⁷⁷ African Youth Charter, art 2.

of both binary sexes in economic, political, cultural and civic spaces including creating programmes that point girls and young women in the direction of such opportunities.⁷⁸

Kenya ratified the ACDEG on 7 January 2012 but Senegal has not yet ratified although it signed the charter on 15 December 2023.⁷⁹ African Charter on Democracy, Elections, and Governance (ACDEG) calls on state parties to promote government systems that are representative, promote gender equality in public and private spheres, and the participation of any and every citizen governance as well as the public affairs of a country.⁸⁰ Article 8 calls on state parties to eliminate discrimination based on gender among other bases, and to take legislative and administrative approaches to guarantee the rights of women among other marginalised groups.⁸¹ Further, the ACDEG recognizes the important role that women play in advancing democracy and development, and calls for states to create optimum conditions for full participation of women in decision-making-processes, electoral process, and representation at all levels including the legislature.⁸²

On top of committing to ensure that member states ratify the Maputo Protocol, the AU head of states and governments during the adoption of Solemn Declaration on Gender and Equality in Africa agreed to ensure that the principle of gender parity enshrined in its provisions is upheld by all AU organs, Regional Economic Communities, and in national and local levels.⁸³ The AU Declaration on Gender Equality also commits to timely reporting on the status of progress in attaining gender parity provisions.⁸⁴ The African Union strategy on Gender Equality and Women's Empowerment (GEWE) 2018-2028 developed as a product of the lessons learned from the 2009 AU gender policy aims to mitigate the hindrances to attaining gender equality and women's empowerment to allow women and girls to fully engage in the economic, social and political affairs of Africa.⁸⁵ GEWE's fourth pillar proposes the integration of women in African narratives by equally representing them in decision making spaces as a major tool for enhancing leadership, voice, and visibility.⁸⁶ The AU Agenda 2063 aspires for an Africa whose development utilises the potential of African people especially women and girls by setting the goal of totality in the application of gender equality with key priority areas being women and girls empowerment, and elimination of discrimination against women and girls.⁸⁷ The AU uses the special rapporteur on the rights of women to, among other mandates, investigate the progress

⁷⁸ n 70 above, art 23 (1a, 1b, & 1c).

⁷⁹ ACDEG status list <<https://au.int/en/treaties/african-charter-democracy-elections-and-governance>> (accessed 18 July 2023).

⁸⁰ ACDEG, art 3(3),3(6), & 3(7),

⁸¹ n 73 above, art 8(1) & art 8(2).

⁸² n 73 above, art 29(1), 29(2) & 29(3).

⁸³ AU Declaration on Gender Equality, para 9 and para 5.

⁸⁴ n 76 above, para 12.

⁸⁵ 'AU strategy for Gender Equality and Women's empowerment' <<https://au.int/en/articles/au-strategy-gender-equality-and-womens-empowerment>> (accessed 18 July 2023).

⁸⁶ As above.

⁸⁷ AU agenda 2063 "A shared strategic framework for inclusive growth and sustainable development & a global strategy to optimise the use of Africa's resources for the benefit of all Africans" September 2015 <https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf> (accessed 18 July 2023).

of women rights in Africa, and collaborate with national governments to ensure the implementation of the ACHPR, and the Maputo Protocol.⁸⁸ These commitments form part of the effort by the AU to promote women rights, and fill in the gaps that might be left in implementing different regional agreements.

Although the African Union has formulated all these laws regarding women inclusion, it lacks the ability to guarantee women rights in case of violations. The jurisdiction of the court allows it to decide on any human rights matter if it has been ratified by an African state.⁸⁹ This is inclusive of provisions that guarantee women's right to hold public office such as Maputo Protocol and CEDAW. However, the accessibility to the court for individuals and NGOs requires the country to have ratified the protocol and made a declaration under article (34)6 accepting the court's jurisdiction to hear complaints by individuals and NGOs.⁹⁰ To hear a case filed by an NGO or individual, the African Court has seven requirements; whether the applicants want to be anonymous, compatibility with the AU charter, written in non-abusive language against the state, not based on rumours as in media, exhaustion of local remedies, submission within a reasonable time, and the case should not be one that has been decided on before.⁹¹ These requirements automatically make it hard for individuals or NGOs to seek justice through the court as the requirement to exhaust local remedies is rigid to the fact that in most cases it is the local system that has failed to guarantee these rights.⁹² The court also requires a state to have deposited the declaration under article 34(6) which only six African states have. This means that under the court's barriers, individuals and states cannot litigate the non-justiciable women rights issues at the domestic level.

2.4 Sub-regional frameworks

This section looks at the sub-regional bodies that Kenya and Senegal are members of and the legal and institutional frameworks that advance women's political participation in the sub-regions.

2.4.1 Economic Community of West African States (ECOWAS)

Senegal is one of the founding members of ECOWAS following the signing of the treaty of Lagos in 1975. As such it is bound by all the legal provisions of the ECOWAS treaty and emanating from the organisation. Since its inception, ECOWAS has made notable strides in creation of legal norms and provisions for advancement of women rights in the West African region. It is important to note that ECOWAS has developed institutional frameworks whose key mandates are the advancement of human

⁸⁸ African Commission on Human and Peoples' Rights 'Special Rapporteur on Rights of Women; mandates and biographical notes' available at <<https://achpr.au.int/en/mechanisms/special-rapporteur-rights-women>> (accessed 18 July 2023).

⁸⁹ Art 3(1) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

⁹⁰ Art 34(6) as 79 above.

⁹¹ Art 56 AU Charter.

⁹² P Masore & N Kabira 'Monitoring compliance of African Women's human rights commitments by the African Court on human and peoples' rights' *De jure law journal* <<http://dx.doi.org/10.17159/2225-7160/2021/v54a27>> 453-475.

rights of women namely the commission on development and social affairs with an aspect on gender in the ECOWAS Commission⁹³, the ECOWAS Secretariat Gender Management Team (GMT), and the ECOWAS Gender Development Centre (EGDC)⁹⁴. Apart from its internal structures, ECOWAS promotes human rights of women through regional advocacy networks such as The Network on Peace and Security for Women in the ECOWAS Region (NOPSWECO), The West African Network of Young Women Leaders' Network/ Réseau Ouest des Jeunes Femmes Leaders (ROAJELF), and the Association of ECOWAS Female Parliamentarians (ECOFEPA).

The Revised Treaty of the Economic Community of West African States (ECOWAS) in its principles provision commits to the recognition, promotion, and protection of human rights as provided by the ACHPR⁹⁵ Article 63 of the ECOWAS revised treaty titled 'women and development' calls for three things from member states. First, it calls on members to create and synchronise needed measures and mechanisms that push forth the economic, social, and cultural state of women.⁹⁶ Second, it calls on member states to investigate the factors that have kept women in marginalised forms and provide frameworks on how this will be addressed.⁹⁷ Lastly, it calls on its member states to discuss within their internal structures the manner of programs and projects that will engage women in development, establish bilateral and multilateral coordination mechanisms on the same, and encourage strategy exchanges among member states.⁹⁸

The ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (ECOWAS Supplementary Protocol on Democracy and Good Governance) calls on member states to eliminate all forms of discrimination against women, and that member states shall adopt all necessary practices to ensure equal rights between men and women to vote and be voted for.⁹⁹ Moreover, it calls on member states to formulate policies that encourage the right of women to hold public office and engage in governance at all public service levels.¹⁰⁰ It also touches on other aspects of women's participation in electoral processes such as the inclusion of women in ECOWAS election observer missions¹⁰¹, and the call to invest in women education which is a factor that prevents women from holding public office.¹⁰²

⁹³ ECOWAS human development social affairs <<https://ecowas.int/departments/human-development-social-affairs/>> (accessed 18 July 2023).

⁹⁴ ECOWAS gender development Centre <https://ecowas.int/special_agency/ecowas-gender-development-centre-egdc/> (accessed 18 July 2023).

⁹⁵ ECOWAS revised treaty art 4(g).

⁹⁶ n 85 above, art 63(1).

⁹⁷ n 85 above, art 63(2a) & 63(2b).

⁹⁸ n 85 above, art 63(3a), 63(3b) & 63(3c).

⁹⁹ ECOWAS Supplementary Protocol on Democracy and Good Governance, art 2(3).

¹⁰⁰ n 89 above, art 2(3).

¹⁰¹ n 89 above, art 14(2). The inclusion of women in observer missions is key in addressing the issues that women face during the electoral process and contributes to an informed and gender lens on the factors hindering women from holding public office.

¹⁰² n 89 above, art 30(4).

The gender strategy of the ECOWAS parliament 2010-2019 in its fifth strategy aims to advocate for the strengthening of the political participation of women in ECOWAS structures and replicate the same on national levels through championing for equality and quotas.¹⁰³ The strategy calls on ECOWAS to have a gender balance in its parliament and other key institutions. The mandate to mainstream gender within ECOWAS internal structures and member states is placed upon the ECOWAS Gender Development Centre (EGDC) and the gender unit within the ECOWAS commission.¹⁰⁴ The EGDC formerly known as the West African Women Association was established to aim for women development in the sub-region with governance as one of the key priority areas. Its approach is through the initiation, development, facilitation, and coordination of strategies that ensure gender mainstreaming in community programs. In 2004, the EGDC developed a gender policy aimed at promoting the gender parity principle, augmenting the institutional frameworks for women and girls' rights and promote legislations that support the human rights of women and girls. The EGDC also developed the 2005-2007 EGDC Plan for Action and the 2009-2013 EGDC Strategic Plan whose core purposes included the advancement of women in governance, representation and decision making.

After lengthy consultations between member states, civil society organisations and relevant stakeholders, in 2015, the ECOWAS head of states adopted the legally binding Supplementary Act on Equality of Rights between Women and Men for Sustainable Development in the ECOWAS region. Its objectives include the development of a legal document that harmonises the national legislations with international commitments to advance human rights of women and girls, and to increase women involvement in all levels of decision making among other objectives.¹⁰⁵ The supplementary Act calls on member states to adopt affirmative action that will ensure gender balance in both private and public decision making platforms as well as institute needed measures to ensure gender balance in representation, good governance, and sustainable development.¹⁰⁶ Further, it calls on states to take legislative measures that ensure participation of women and men in electoral processes, build capacity for women to run for public office, and ensure women have equal chances in being political representatives as well as in participating in key decision making platforms.¹⁰⁷

In 2007, the ECOWAS commission adopted the Roadmap for the Implementation of the Supplementary Act whose main purpose is to promote gender equality in the implementation of key programs in ECOWAS member states with governance and women participation named among its five priority areas. The road map recognizes efforts by nation states such as Senegal in pushing for gender parity laws and quotas that have allowed women to gain representation, nationality, and participate in

¹⁰³ 'Gender Strategy ECOWAS parliament 2010-2020' available <https://www.agora-parl.org/sites/default/files/agora-documents/gender_strategy_ecowas_parl_en.pdf.pdf> (accessed 19 June 2023).

¹⁰⁴ As n 93 above.

¹⁰⁵ 'ECOWAS Member States' Priorities in the Implementation of the Supplementary WME Act for Sustainable Development in the ECOWAS Region in Relation to the SDGs and the African Union's Agenda 2063. Road map to supplementary Act<<https://ccdg.ecowas.int/wp-content/uploads/Supplementary-Act-on-Gender-Equality.pdf>> (accessed 20 July 2023).

¹⁰⁶ Supplementary Act on Equality of Rights between Women and Men for Sustainable Development in the ECOWAS region, art 11(a) & art 11(b).

¹⁰⁷ n 96 above, art 12(1) & art 12(2).

politics.¹⁰⁸ However, it notes that West Africa has overwhelmingly low numbers of representation of women in ministerial, parliamentary, and mayoral positions.¹⁰⁹ In 2010 during the Dakar Declaration on the implementation of United Nations Security Council Resolution (UNSCR) 1325 and related regional action plan, ECOWAS cited the participation of women in elections and decision making as one of the calls to member states.¹¹⁰

2.4.2 East African Community (EAC)

The East African Community is a regional body formed in 1967 and later re-established after the signing of The Treaty for the Establishment of The East African Community (EAC Treaty).¹¹¹ Its main mandate is the economic and social integration among Kenya, Burundi, Rwanda, Congo, South Sudan, Tanzania, and Uganda.¹¹² The East African treaty includes the adherence to principles of democracy, and gender equality as a prime principle as well as adherence to the ACHPR.¹¹³ Member states are required to practise universally accepted standards of human rights.¹¹⁴ The EAC treaty calls on member states to ensure gender mainstreaming in its endeavours and be cognisant of the role of women and girls in decision-making.¹¹⁵

The EAC Gender Equality and Development Bill 2016, which is legally binding once adopted, is aligned with the Maputo Protocol, and proposes harmonisation of gender policies within the East African region, and prohibits discrimination by calling for legislative, programmatic, and other necessary measures to attain gender equality.¹¹⁶ It also includes the promotion of women and girls in power and decision-making platforms.¹¹⁷

The EAC secretariat has a gender department that oversees the inclusion of children, youth, and persons with disabilities in community development matters.¹¹⁸ As part of its regional advocacy networks, the EAC has The Eastern African Sub-regional Support Initiative for the Advancement of Women (EASSI) which promotes girls and women issues across member states and has developed the EAC Gender Equality and Development (GED) Barometer to monitor gender equality related legislations in the region.¹¹⁹ The GED Barometer undertakes documentation in three aspects: statistics

¹⁰⁸ Roadmap of supplementary Act, Para 55.

¹⁰⁹ n 98 above, Para 56. It calls on states to adopt gender quotas and parity laws as a way of increasing women representation in policy formulation, and decision making in the ECOWAS region.

¹¹⁰ Women Count for Peace in West Africa ‘The Dakar Declaration & ECOWAS plan for action for the implementation of the United Nations Security Council Resolutions 1325 and 1820 in West Africa, <<https://www.peacewomen.org/node/90013>> (accessed 20 July 2023).

¹¹¹ East African Community <<https://www.eac.int/>> (accessed 20 July 2023).

¹¹² As above.

¹¹³ EAC Treaty, art 7(2).

¹¹⁴ n 103 above, art 6(d).

¹¹⁵ EAC Treaty, art 121. It also calls upon member states to create programs that change the negative community attitudes towards women, eliminate prejudice and discrimination against women, and abolish discriminatory legislations.

¹¹⁶ The EAC Gender Equality and Development Bill 2016, art 4(2a).

¹¹⁷ n 106 above, art 4(2d).

¹¹⁸ The fact that the department deals with so many marginalised groups has hindered them from focusing on promoting women issues.

¹¹⁹ The Eastern Sub-Regional Support Initiative for the Advancement of Women (EASSI) <<https://eassi.org/>> (accessed 20 July 2023).

on several result areas, scorecards based on information collected from EAC members, and case studies for purposes of learning and improvement.¹²⁰ Other advocacy networks on the EAC include the East African Law Society (EALS) which focuses on public interest litigation of human rights issues.¹²¹

In the strategy on gender, community development and civil society mobilisation, the EAC development strategy (2016/17-2020/21) cites mainstreaming gender into EAC policies, programmes, and projects, and the promotion of women rights as part of its interventions.¹²² Upon assessing the performance of all its member states in the implementation of gender equality frameworks, the EAC Strategic Plan for Gender, Youth, Children, Persons with Disability, Social Protection and Community Development highlights that gender equality is still a challenge among the East African countries and thus the strategy is justified in having a gender focus.¹²³

2.5 Domestic legal frameworks

This section looks at the domestic legal frameworks that Kenya and Senegal have developed to promote gender balance in the public service.

2.5.1 Kenya's domestic legal framework

Kenya, through the 2010 constitution, adopted reserved seats for women as its preferred type of gender quota.¹²⁴ The most referred to gender rule is the two-thirds gender rule in Kenya repeated extensively in different parts of the Kenyan Constitution. The Kenyan constitution stipulates the government should adopt legislative measures to ensure that no more than two thirds of the members of an elective or appointive body shall be of the same gender.¹²⁵ The Political Parties Act provides legal sanctions for non-compliance with the provision by stating that no political party shall receive funding if two thirds of its officials represent the same gender.¹²⁶ Article 81(b) reflects the same by stressing that in electoral laws of Kenya, more than two thirds of the members of an elective body shall not be of the same gender. In the County government positions, the constitution states that the county assembly shall be composed of special seats that will ensure two thirds of the members are not of the same gender.¹²⁷ When selecting county assembly members and members of the county executive committees, the constitution recalling the same provisions states that the two thirds gender rule must be adhered to.¹²⁸

Apart from the two thirds gender rule, the constitution provides for reserved seats for women in both the National Assembly, and Senate which collectively form the Kenyan parliament. In the

¹²⁰ East African Civil Society Organisation Forum <<http://eacsof.net/EACSOF/wp-content/uploads/2017/05/EAC-Pilot-Gender-Barometer.pdf>> (accessed 20 July 2023).

¹²¹ East African Law Society <<https://ealawsociety.org/>> (accessed 20 July 2023).

¹²² EAC development strategy (2016/17-2020/21), section 8.3.5 (iii) & (vii).

¹²³ EAC Strategic Plan for Gender, Youth, Children, Persons with Disability, Social Protection and Community Development

¹²⁴ International IDEA <<https://www.idea.int/data-tools/data/gender-quotas/country-view/156/35>> (accessed 21 July 2023).

¹²⁵ The 2010 Kenyan Constitution, art 27(8)

¹²⁶ The Political Parties Act NO. 11 OF 2011, art 25(2a).

¹²⁷ n 123 above, art 177(b).

¹²⁸ n 123 above, art 197(1). This is equally reflected in article 175(c) which states that no more than 2/3 of the county government representatives shall be of the same gender.

National Assembly, the constitution states that voters from the forty seven counties in Kenya shall elect forty seven women each representing a county for the position of county woman representative.¹²⁹ Further, the constitution dictates that each political party shall provide a list of twelve nominated members to represent special interest groups, and the list must alternate between a man and a woman in the priority in which they are listed.¹³⁰ In the Senate, sixteen seats are reserved for women through nomination by political parties.¹³¹ Further, there are reserved seats for youth members, and Persons with Disabilities with a requirement that the nomination list alternate between a man and a woman.¹³² The consequences of failing to implement these provisions as provided by the constitution is the dissolution of the parliament by the president following the advice of the chief justice.¹³³

2.5.2 Senegal's domestic legal framework

The Constitution of the Republic of Senegal in its preamble commits to uphold the UDHR, ACHPR, CEDAW, and international treaties adopted by the UN and AU.¹³⁴ Further, it proclaims the indiscriminate right of all citizens to access power at all levels and rejects all forms of discrimination and inequality.¹³⁵ The Senegalese provision of gender quotas has taken a unique approach in that it has been introduced through various legal provisions in an incremental approach from one legal provision to the other since 1991. At the frontlines of the gender parity laws in Senegal is the Conseil Senegalais des Femmes (COSEF), an collaborative effort by women's associations, political parties, and Non-Governmental Organisations (NGOs) committed to increasing women's participation in politics.¹³⁶ In 1995, the organisation attempted to push for a voluntary political party quota of 30% but changed their approach to advocate for legal provisions after an insignificant number of women were elected in the 1998 election period.¹³⁷

With the support of president Wade who also proposed for a 50% gender parity law at the AU, COSEF through the *Avec la parité, consolidons la démocratie* (with parity, we consolidate democracy) campaign, a committee was put up by the government which developed the first draft of gender quotas that were rejected by the opposition.¹³⁸ The 2010 parity law states that each party's list of candidates should be of alternating genders.¹³⁹ The 2012 electoral code dictated that when presenting candidates

¹²⁹ n 123 above, art 97(b).

¹³⁰ n 127 above, art 97(c) & art 90(b).

¹³¹ n 127 above, art 98(b).

¹³² n 123 above, art 98(c) & 98(d).

¹³³ n 123 above, art 261(7). After dissolution, the next parliament should enact the legislation within the timeframe provided by article 261(8) of the constitution; fifth schedule beginning with the first day of parliament business.

¹³⁴ It should be noted that Senegal has ratified the UN and AU legal provisions on gender equality except for the ACDEG.

¹³⁵ The Constitution of the Republic of Senegal, art 1.

¹³⁶ COSEF <<https://cosefsenegal.org/>> (accessed 21 July 2023).

¹³⁷ C Durantaye-Guillard 'The political empowerment of Senegalese women: Understanding Gender Quotas from women's accounts' published master's thesis, McGill University, 2019 31.

¹³⁸ n 133 above.

¹³⁹ LOI n 2010-11 du 28 Mai 2020, art 2.

lists to the electoral commission, the candidates must be 50% women and 50% men.¹⁴⁰ Lists that do not comply with the rule are dismissible per the law.¹⁴¹

2.6 Conclusion

From the legal provisions analysis, it is apparent that the international, regional, and sub-regional society have provided extensive legislation on inclusion of women in politics. Domestically, both states have made legislations to ensure the inclusion of women in politics and the access to the right to hold public office for women in both Kenya and Senegal. This indicates that the problem might lie in the implementation of the legal instruments and the gaps left during the formulation of the said provisions.

¹⁴⁰ Senegal Code electoral 2021, Art L.149. The provision states that the list of names should be of alternating genders.

¹⁴¹ n 133 above, art L.178.

Chapter 3:

Kenya's electoral regime as a hindrance to gender equality in parliament

3.1 Introduction

An electoral regime is defined by the set of rules within a given political system. In the context of a dictatorship, these rules often constrain and suppress pluralism, subsequently shaping the electoral system. Consequently, it becomes challenging for a proportional representation electoral regime to exist under such circumstances, as the existence of multi-party systems is virtually non-existent. To gain a deeper understanding of how the marginalisation of women is connected to the general suppression of divergent voices under dictatorial regimes, it is crucial to examine the historical developments in Kenya. Such an analysis can shed light on how electoral laws, constitutional mandates, and various electoral actors have contributed to these issues.

This part looks at the historical background of how political and electoral regimes in Kenya have interacted with women inclusion in government. Kenya uses the Single-member Plurality (SMP) electoral system. The Single-member Plurality (SMP) often referred to as relative majority, simple majority, single-member simple plurality, or first past the post, refers to an electoral system where to be declared the winner, the candidate must attain the highest number of the vote compared to their opponents even if it is by a difference of one vote.¹⁴² In this type of system, the voters cast a vote by simply placing an x on the ballot against their preferred candidate and the one who gets the most votes is declared the winner.¹⁴³ Generally, Kenya has used the majoritarian electoral regimes commonly referred to as first-past-the-post form of electoral system.

3.2 Historical background

The history of electoral regimes in Kenya and how they have impacted women representation in parliament has been different throughout the pre-2010 constitution regimes under presidents Jomo Kenyatta and Daniel Moi, and Mwai Kibaki versus post-2010 constitution regimes under presidents Uhuru Kenyatta and William Ruto. It is in the post-2010 era that gender quotas were introduced through the current constitution. While the presidency contributed to setting norms of women representation, especially during the Moi and Kenyatta era where the executive held more constitutional power, the democracy maturity level in Kenya in relation to global trends of women's political participation were different across all presidencies.

Although women were active participants of the independence struggle, their access to parliament was reliant on colonial or male permission. The exclusion of women in politics has been viewed as a colonial legacy of neo-patrimonialism where women were viewed as private and domestic

¹⁴² DM Farrell *Electoral systems: A comparative introduction* (2011) 3.

¹⁴³ As above.

beings who should not feature in the very public political space.¹⁴⁴ The indirect form of rule used by British colonial masters transferred authority to local male elites shaping the domestic political realm that placed men at the powerful position of dictating what women roles are.¹⁴⁵ Women's attempt at penetrating parliament was first reported during the 1963 independence preparations where they requested to form 10% of the planning committee for the independence celebration only for their pleas to fall on deaf ears.¹⁴⁶ Under Asiyo and Abwao, women representing each of the eight provinces in Kenya visited the first president Kenyatta while in detention to negotiate women's inclusion in the first parliament and movement.¹⁴⁷ Despite all these efforts, women were excluded from Kenya's first election through an exclusion from vying for any seat, from being party or election officials.¹⁴⁸

In 1952, the Maendeleo ya Wanawake Organisation (MYWO) became the first women empowerment organisation founded by white settlers' wives. The organisation focused on women economic empowerment until 1961 when Phoebe Asiyo, a female politician from Nyanza Kenya, became the chair.¹⁴⁹ As women continued to fight for their place in politics through the organisation, in 1961, Priscilla Abwao, and Jemima Gecaga became the first woman to ever be nominated in the Kenya Legislative Council (LEGCO). Out of the two, Priscilla was appointed in the LEGCO to become the first woman Parliamentarian in Kenya.¹⁵⁰

Post-independence, the government was predominantly dominated by the elite male class that did not believe in equality with women.¹⁵¹ The earliest political party in Kenya, Kenya African National Union, recognised the mobilising ability MYWO had, and used it to garner female votes for their candidates. Although the political parties realised the need for the female voters, they bashed female political candidates. The first ever woman to vie for an elective seat, Ruth Habwe, was banned from her political party for contesting without the mandate of the party and asked to return to the kitchen and cook for her family instead.¹⁵² Kenya's first parliament was made up of only men. Eventually, in the second parliament in 1969, Grace Onyango became the first ever elected female member of parliament in Kenya and served as the speaker of the national assembly.

¹⁴⁴ F Bates 'British Rule in Kenya' 31 November 2016 <<https://history105.libraries.wsu.edu/spring2015/2015/01/19/british-rule-in-kenya/>> (accessed 13 October 2023).

¹⁴⁵ As above.

¹⁴⁶ R Maxon & T Ofcansky *Historical dictionary of Kenya* (Rowman & Littlefield Publishers:2014)

¹⁴⁷ M Ndeda 'Luo Women Voters/Aspirants and the New Constitutional Dispensation in the March 2013 Kenya Elections: The case of Siaya and Kisumu Counties' in MA Fouere and S Mwangi (eds) *Kenya's Past as Prologue: Voters, Violence, and the 2013 General Election* (2015) 211 - 231.

¹⁴⁸ J Cotrell & Y Ghai 'Constitution making and democratisation in Kenya (2000- 2005)' (2007) *ResearchGate* 1-25.

¹⁴⁹ L Aubrey *The Politics of Development and Cooperation: NGOs, Gender and Partnership in Kenya* (Routledge:2004).

¹⁵⁰ WN Kamau-Rutenberg 'Feuding in the family: Ethnic politics and the struggle for women's rights legislation' Unpublished PHD thesis, University of Minnesota, 2008.

¹⁵¹ GO Okoth *Women and political party participation in Kenya: An analysis of gender mainstreaming efforts within party processes in Nyanza region* (Twaweza communications:2018).

¹⁵² L Maloiy *Tracing Kenyan women's involvement in elections and political leadership from 1963-2002* (HBS and IFRA:2018)

In the 1992 elections, 50 women were able to register and vie for political party seats nominations where 19 succeeded and six were elected to parliament.¹⁵³ In the 1997 elections, the opposition parties and the civil society threatened to snub the elections demanding changes to accommodate inclusivity in the constitution.¹⁵⁴ This led to the creation of the Inter-Parliamentary Group (IPPG) to negotiate the reform where women demanded that six out of the 12 nominated seats be reserved for women.¹⁵⁵ This would also be the year where the first ever woman, Charity Ngilu, vied for presidency in Kenya. That year, only four women were elected to parliament and Charity Ngilu got 9% of the total vote despite women being over 55% of the registered voters.¹⁵⁶ In 2002, nine women were elected to parliament but there was a significant rise in women seeking positions in the legislature with 107 women seeking party tickets but only 49 got the nominations.¹⁵⁷

Before the 2013 general elections, Kenya lacked the necessary domestic legislation to promote women inclusion although Kenya has been a signatory of International human rights instruments supporting women rights. Additionally, the first and second governments of Kenya were run under a very undemocratic political environment including the one-party dictatorship regime of President Moi. These factors combined with issues such as the existing socio-cultural gender stereotypes, economic discrimination, and education gap between men and women ensured the continued strangulation of the political aspiration of many women leaders. However, the 2010 constitution presented an opportunity for women to seek political inclusion and for the Kenyan voters to show their progress towards supporting women aspirants. One of the key observations noted by the committee reviewing the 1963 Kenyan constitution is the need for a mixed member proportional representation (MMPR) method of electing members into the legislature. The committee also submitted that a mix of both first past the post (FPTP) and MMPR systems are suggested to ensure the reduced marginalisation of women, persons with disabilities and youths.¹⁵⁸ It is on this basis that the new constitution incorporated an element of MMPR although it did not change the system entirely.

Perhaps owing to the reforms in the 2010 constitution, there was a significant difference in women participation in the 2013 general elections. 930 women contested for various electoral seats.

¹⁵³ n 148 above.

¹⁵⁴ K Kanyiga 'A review by AfriMAP, open society initiative for Eastern Africa and the institute for development studies (IDS), University of Nairobi' March 2014 <http://erepository.uonbi.ac.ke/bitstream/handle/11295/80392/Kanyinga_Kenya%20%20Democracy%20and%20Political%20Participation.pdf?sequence=2> (accessed 10 October 2023).

¹⁵⁵ As above.

¹⁵⁶ International Institute for Democracy and Electoral Assistance (IDEA) 'Political Parties in Africa through a Gender Lens' <<https://www.idea.int/sites/default/files/publications/political-parties-in-africa-through-a-gender-lens.pdf>> (accessed 10 October 2023).

¹⁵⁷ J Ghai & Y Ghai 'Constitution making and democratisation in Kenya (2000- 2005)' (2007) *Taylor & Francis Online* 1-25 <<https://www.tandfonline.com/doi/citedby/10.1080/13510340601024272?scroll=top&needAccess=true>> (accessed 10 October 2023).

¹⁵⁸ Committee of experts on constitutional review 'The report of the committee of experts on constitutional review issued on the submission of the reviewed harmonised draft constitution to the parliament select committee on constitutional review, 8 January 2010' <https://constitutionnet.org/sites/default/files/Final_Report_on_the_Reviewd_Draft.pdf> (accessed 9 October 2023).

However, the election results reflected the rigidity of the Kenyan society to accept women leadership. Outside the 47 women who were elected through the exclusive reserved women seats, only 16 out of 290 seats in parliament were won by women, and only 88 out of 1450 seats in the county governments were occupied by women.¹⁵⁹ Of the 47 governorship seats, none was occupied by women.¹⁶⁰ In the second election under the new constitution, the number of women aspirants was above double the number in the previous election registering a total of 2,077 aspirants.¹⁶¹ This was an indication that despite the reforms in the constitution, Kenya needed to tackle the underlying issues that hinder women from accessing public office. The 2013 and 2017 election results led to emerging gaps and calls for relevant stakeholders to take the 2/3 gender rule seriously.

Calls for further legislation to ensure the 2/3 gender rule was adhered to include the Two-Third Gender Rule Laws (Amendment) Bill of 2015 that called for the deregistration of any political party that fails to provide a gender-balanced candidate nomination list.¹⁶² The Constitution of Kenya amendment bill of 2015 was also presented before parliament which called for the amendment of article 91 of the constitution to require political parties to fully adhere to the 2/3 gender rule.¹⁶³ Both bills were tossed after the first reading. The then leader of majority in parliament, Adan Duale presented yet another bill that aimed to among other things provide for reserved seats for women in parliament for a period of 20 years anticipating that by this time all the underlying issues causing exclusion would have been dealt with and women and men would be competing on a levelled ground.¹⁶⁴ On four occasions, on the required day of voting for the amendment proposing the women inclusion suggestion, 233 out of 349 parliamentarians failed to show up in parliament leading to the failure of the bill on its second reading.¹⁶⁵

The obvious unwillingness of parliament to ensure the effective implementation of the 2/3 gender rule led to its proponent's decision to seek the help of the judiciary. This led to six petitions being filed to dissolve parliament between April of 2019 and July of 2020.¹⁶⁶ The constitution of Kenya gives the high court of Kenya the jurisdiction to accept any petition made in a bid to make a declaratory order that directs parliament and the attorney general to take measures that ensure the enactment of a legislation within the given period and make a report to the chief justice.¹⁶⁷ Further, the constitution

¹⁵⁹ D L Kivoi 'Factors Impeding Political Participation and Representation of Women in Kenya' (2014) 2(6) *Humanities and Social Sciences*. 173-181.

¹⁶⁰ National Democratic Institute (NDI) 'A Gender Analysis of the 2017 Kenya General Elections. Nairobi, USAID' 28 February 2018, <<https://www.ndi.org/publications/gender-analysis-2017-kenya-general-elections>> (accessed 10 October 2023).

¹⁶¹ As above.

¹⁶² The Two-Third Gender Rule Laws (Amendment) Bill, 2015.

¹⁶³ The Constitution of Kenya (Amendment) Bill, 2020.

¹⁶⁴ The Constitution of Kenya (Amendment) (No. 4) Bill, 2015.

¹⁶⁵ M Obiria 'The long walk to the two-thirds gender rule' 28 August 2020 <<https://nation.africa/kenya/news/gender/the-long-walk-to-the-two-thirds-gender-rule-1927310>> (accessed 10 October 2023).

¹⁶⁶ Office of the chief justice/president, supreme court of Kenya 'Chief Justice's advice to the president pursuant to article 261(1) of the constitution' <<http://kenyalaw.org/kenyalawblog/chief-justices-advice-to-the-president-on-dissolution-of-parliament/>> (accessed 9 October 2023).

¹⁶⁷ Art 261(5), constitution of Kenya.

provides that if parliament fails to implement the legislation, the president shall dissolve parliament after the advice of the chief justice.¹⁶⁸ Therefore, based on Kenyan law, on 21 September 2020, the then Chief Justice David Maraga through official communication advised the then Head of State, Uhuru Kenyatta to dissolve parliament.¹⁶⁹ Although parliament was not dissolved, the 2022 elections seemed to anticipate the repetition of a similar occurrence prompting the chair of the elections management body to return party nomination lists for failure to adhere to the gender equality provision. Still, the 13th parliament of Kenya is illegally in operation with the 2/3 gender rule still not implemented.

Apart from the lack of political will to ensure inclusion of all genders in parliament, the study of the historical background presents the role of three key stakeholders in any electoral regime: political parties, electoral management bodies, media, and the civil society. Therefore, the next part of this chapter shall look at these players in the Kenyan electoral system and their involvement in ensuring inclusion or exclusion in public office. The major difference between all electoral regimes is determined by how political parties get their candidates into office.

3.3 The key actors in Kenya's Electoral system

There are a wide range of actors that influence the implementation of gender quotas in Kenya. This part of the study examines political parties, the electoral management body, the media, the judiciary, and the civil society.

3.3.1 Political parties

For women to be elected in power, they must be selected as candidates by political parties, and they must be elected by voters.¹⁷⁰ The gatekeepers of the electoral process are thus political parties, and the nomination process of political parties removes 99.96% of eligible contestants leaving the voters to decide from the 0.04% left.¹⁷¹ Although national constitutions and related laws contain provisions that encourage gender equality and women empowerment, political parties are the tool through which the formal rights are translated into practical action. 27% of political parties in Africa contain provisions on gender equality in their party constitutions, while 58% had gender equality commitments in their manifesto.¹⁷² However, it should be noted that the presence of gender equality in the two documents present very distinct issues. Party constitutions contain the foundational values of the party, while party manifestos are often created to fit the political rhetoric at a given campaign period. Although, a political party might have gender equality provisions in their manifesto, it could be viewed to get votes. Political parties might have gender equality clauses in their constitution without a detailed analysis on how they

¹⁶⁸ Art 261 (6) (b), constitution of Kenya.

¹⁶⁹ n 166 above.

¹⁷⁰ P Paxton & MM Hughes *Women, politics, and power: A global perspective* (2007) 133.

¹⁷¹ As above.

¹⁷² R Kandawasvika-Nhundu 'Political parties in Africa through a gender lens' *International IDEA* <https://www.idea.int/sites/default/files/publications/political-parties-in-africa-through-a-gender-lens.pdf> (accessed 16 August 2023).

hope to achieve it or translate it into practice. However, there are parties that provide a detailed procedure into how they intend to achieve gender equality. For example, the Safina Party has a party strategy that contains their intention to attain gender equality. In the strategy, the party provides for reserved seats for women in the party structure, and a gender program for creating awareness and sharing knowledge to ensure all genders understand gender mainstreaming across its party structure.

As of 2023, the Office of Registrar of Political Parties (ORPP) in Kenya has a list of 69 registered political parties.¹⁷³ It is a common practice in Kenyan politics for political parties to merge and form coalitions which then adopt joint manifestos. The mergers are regulated by the ORPP under the guide to mergers and coalition in Kenya.¹⁷⁴ The parties still maintain their individuality and only form coalitions and mergers under the need for shared ideology, or a tool to gain a presidential win. It is also a common trend in Kenya for political parties to be formed right after each general election with the same members and similar tenets.¹⁷⁵ For the said reason, this research shall examine the United Democratic Alliance (UDA) which has the majority number in parliament, the Orange Democratic Movement (ODM) that is the official opposition party, and the manifesto of the two opposing coalitions in the 2022 general elections in Kenya; Azimio la Umoja, and Kenya Kwanza.

In its constitution, ODM has an objective to promote the complete involvement of women in public affairs management, and national development through affirmative action, and gender mainstreaming of party activities at all levels.¹⁷⁶ It hopes to achieve this through access to education, shifting oppressive laws, and advocating against discrimination of girls and women that will ensure a 30% women representation in parliament, foreign service, and decision-making bodies. In the Azimio la Umoja coalition manifesto whose presidential candidate was from ODM, the commitment to increasing women participation in decision making is vaguely mentioned in a statement that claims that financing women will unlock their potential.¹⁷⁷ A look at the 2022 general election party list submitted by ODM shows the party's commitment to gender equity through provision of alternating male-to-female candidates throughout its party nomination list.¹⁷⁸

¹⁷³ ORPP <<https://orpp.or.ke/images/LISTOFFULLYREGISTEREDPOLITICALPARTIESUpdated2020.pdf>> (accessed 16 August 2023).

¹⁷⁴ Guide to mergers and coalitions' <<https://orpp.or.ke/images/RESOURCECENTER/political%20parties%20manual/Guide%20to%20Mergers.pdf>> (accessed 16 August 2023).

¹⁷⁵ For example, the current president William Ruto was in KANU, formed ODM, Jubilee, URP, and now UDA. The party members of these parties are still the same politicians with different allies and competitors.

¹⁷⁶ Art 4.15 and 4.16 of the ODM constitution.

¹⁷⁷ G Maringa 'Raila Odinga's 10-point agenda as he unveils manifesto' Standard Media <<https://www.standardmedia.co.ke/national/article/2001447340/raila-odingas-10-point-agenda-as-he-unveils-manifesto>> (accessed 16 August 2023). "Azimio la Kina Mama – The programme will unlock access to financing for women-led businesses and provide support for women on other enabling factors such as access to assets for production, land tenure and proportional representation at all levels of government."

¹⁷⁸ IEBC <https://www.iebc.or.ke/resources/?Party_list> (accessed 16 August 2023).

The UDA party constitution states that the party is founded on the principle of good governance and equity.¹⁷⁹ The preamble also claims that the party is committed to creating a better Kenya where there is equity,¹⁸⁰ and holds among other values the value of democratic and participatory governance, equality and equity and gender parity, and non-discrimination.¹⁸¹ The objectives of the party include to provide constitutional, good governance, and provide for the political and civil rights of every Kenyan, and ensure the full participation of women and girls in governance. It also commits to uphold the two thirds gender principle within all its structures, and organs of the party, and to ensure the full participation of women in the programs, activities, and governance of the party.

One of the organs of the party include the women congress¹⁸² and the secretary for women affairs¹⁸³ The National Women Congress mandate includes articulating the incorporation of women needs into the party policy and educating and sensitising women on the need for participation in party and national issues. However, in its party structure there is only one woman serving as the party chairperson.¹⁸⁴ In one of the most elaborate manifestos, the ruling party UDA makes several commitments including party provisions for women in the party administration.¹⁸⁵ In UDA's women agenda provision, it acknowledges that women are excluded from decision-making bodies. Further, Kenya Kwanza commits to implementing the two thirds gender rule in both elective and appointive positions in the public sector within 12 months after being elected to power and appointing women to 50% of the cabinet ministry positions. After being elected to power, contrary to the manifesto, UDA has appointed only 7 out of twenty-two cabinet ministers and has done little to implement the 2/3 gender rule.¹⁸⁶

In Kenya, the political parties are required to present lists with a gender balance and ensure that no more than 2/3 of the candidates are of the same gender. Additionally, they are required to present a list of nominees to fill up reserved seats to cater for underrepresented groups such as women, persons with disabilities, and youth.¹⁸⁷ In the last three elections since the 2010 constitution that introduced gender quotas, there has not been any adherence to the gender balance rule. This is a devastating picture since political parties are the only pathway women can get into parliament. The provision for independent candidates can curb this problem but the issue of financing, political backing, and the political environment makes it very difficult for women to utilise the option.

¹⁷⁹ UDA constitution, art 1(ii).

¹⁸⁰ UDA constitution, art 2(ii).

¹⁸¹ UDA constitution Values and principles iii, v, vii.

¹⁸² UDA constitution, art 5(ix).

¹⁸³ UDA constitution, art 6.1(21).

¹⁸⁴ UDA <<https://uda.ke/about-uda/team/>> (accessed 16 August 2023).

¹⁸⁵ 'The Kenya Kwanza Plan; the bottom-up economic transformation agenda 2022-2027' <<https://uda.ke/downloads-uda/>> (accessed 16 August 2023).

¹⁸⁶ S Addamah 'Kenyan president William Ruto appoints 22 ministers including seven women' 8 September 2022 available <https://medafricatimes.com/28322-kenyan-president-william-ruto-appoints-22-ministers-including-seven-women.html> (accessed 18 August 2023).

¹⁸⁷ Political parties act on 11 of 2011 in Kenya.

3.3.2 Electoral management bodies

In Kenya, the Independent Boundaries and Electoral Commission (IEBC) is the institution tasked with running general elections. The IEBC has among other mandates the responsibility to register candidates for elections, conduct voter education, regulate the financial spending during elections, and monitor the compliance of relevant stakeholders to Kenyan laws and legislation.¹⁸⁸ In relation to these mandates the commission is responsible for ensuring the lists submitted to the commission for candidature are balanced in terms of gender, the voter education involves creating awareness about the political participation of women, and ensuring stakeholders are compliant of the gender parity laws. In the 2022 general elections, the IEBC rejected all the lists provided by 79 political parties for nomination of candidates to the Senate, National and County assemblies for failure to comply with the constitutional requirement of gender, youth, and persons with disability inclusion.¹⁸⁹ IEBC is restricted in terms of enforcing compliance since the body is on a deadline to conduct elections, in a domestic environment that is always heated and suspicious of the body.

3.3.3 Media

In national electoral processes, media is used as a government watchdog, a space to conduct public and candidates' debate, and as a source of public electoral education. Media, plural for medium, are the online and offline communication passages through which music, movies, news, education, and marketing messages are spread.¹⁹⁰ Examples of media include newspapers, magazines, television, radio, billboards, telephones, the internet, fax and billboards.¹⁹¹ The media analyses the performance of government and candidates highlighting their successes and failures which create public awareness. It also educates voters on their democratic rights, reports on the progress of the electoral process, enables the candidates to present their manifestos before the public, allows for debates among candidates, and provides information aimed at avoiding electoral violence.¹⁹² For example, manifestos often seem to hop on the current wave of public opinion and global trends. Media in its analyses of government performance should be able to present to voters whether the gender inclusion in manifestos is a matter of the political party jumping on a current wave or the party has proven through previous performance to uphold women rights. The media is a key tool in documenting human rights development including women rights and the debate on gender quotas. However, deeply entrenched patriarchal norms have led to the media being an impediment to women's political empowerment.

¹⁸⁸ IEBC mandate <<https://www.iebc.or.ke/iebc/?mandate>> (accessed 17 October 2023).

¹⁸⁹ J Muia 'IEBC rejects 79 political parties' nomination lists for failing to meet requirements' Citizen digital news 15 July 2022 <<https://citizen.digital/news/iebc-rejects-79-political-parties-list-over-implementation-of-gender-rule-gives-7-days-to-comply-n302210>> (accessed 19 July 2023).

¹⁹⁰ Market Business News 'What is media? Definition and meaning' <<https://marketbusinessnews.com/financial-glossary/media-definition-meaning/>> (accessed 18 August 2023).

¹⁹¹ As above.

¹⁹² 'Media and elections' The electoral knowledge network <<https://aceproject.org/ace-en/topics/me/introduction/me10/me10e>> (accessed 18 August 2023).

At both the national and international stage, the media presents men and women differently. Men are more visibly dominant in media spaces which negatively impacts women's political success.¹⁹³ The Global Media Monitoring project shows that men make up 79% of the news subjects which feeds into the notion that men outnumber women in professions.¹⁹⁴ The report also shows that women reporters are 6% more likely to have women as news subjects.¹⁹⁵ Stressing on the importance of media in shaping public opinions, the Inter-parliamentary union argues that media can create an opinion that women's political participation is an important part of democracy and can shift the narrative about the capacity of women to participate in politics among other developmental issues.¹⁹⁶ This overrepresentation of one group and consequential underrepresentation of another leads to two types of political polarisation; ideological polarisation given the political adversity, and affective polarisation where salient groups play a role in identity politics.¹⁹⁷ It pushes the notion that women are not key players in politics and overall stresses on women's supposed position in public life. Overall, the underrepresentation of women in the media in terms of having fewer female journalists and fewer stories of women has led to the lack of public knowledge of female candidates and their political agendas placing them at a disadvantageous position compared to their male opponents. It has also contributed to the wider public stereotype that politics is a man's sport.

In Kenya, the conduct of media is regulated by the media council of Kenya. The media council of Kenya is an independent institution established under the provisions of the constitution and the media council of Kenya Act with the mandate to promote and uphold the freedom and independence of the media among other mandates.¹⁹⁸ The media report on the 2022 elections produced by the media council of Kenya lacks a gender lens. It observes certain generalisations such as the coverage bias given to certain candidates yet fails to address how female candidates were covered by media *vis-a-vis* the male candidates.¹⁹⁹ On social media female candidates faced a lot of threats. Most of the female candidates had to deactivate their social media handles due to hate speech which impacted on their ability to use social media to engage prospective voters.²⁰⁰ Women journalists who would perhaps have a gender bias in presenting female politicians raised concerns on attacks both online and offline. The media focused

¹⁹³ 'Gender, media, and elections' <<https://aceproject.org/ace-en/topics/me/introduction/me10/me10e>> (accessed 18 August 2023).

¹⁹⁴ 'Global Media Monitoring Project 'Who makes the news (report highlights) 2010' <http://www.medinstgenderstudies.org/wp-content/uploads/highlights_en.pdf> (accessed August 23, 2012).

¹⁹⁵ As above.

¹⁹⁶ "Plan Of Action to Correct Present Imbalances in the Participation of Men and Women in Political Life", *Inter-Parliamentary Union*, March 16, 1994, < <http://Www.Ipu.Org/Wmn-E/Planactn.htm> > (accessed 27 August 2023).

¹⁹⁷ E Kubin & C Sikorski 'The role of (social) media in political polarisation: a systematic review' (2021) 45 *annals of the international communication association* 183-206.

¹⁹⁸ Media Council Act 20 of 2013, art 34(5) constitution of Kenya 2010.

¹⁹⁹ 'Media Council of Kenya 'Hits and Misses. Media performance and press freedom violations pre, during & post the August 9 General election in Kenya.' <<https://mediacouncil.or.ke/sites/default/files/downloads/REPORT%20ON%20MEDIA%20PERFORMANCE%20DURING%20THE%202022%20GENERAL%20ELECTION.pdf>> (accessed 27 August 2023).

²⁰⁰ KICTANet 'Trends of Online Violence against Women in Politics during the COVID19 Pandemic in Kenya' June 2020 <<https://www.ifree.co.ke/wp-content/uploads/2020/07/Trends-of-Online-Violence-against-Women-in-Politics-During-the-COVID19-pandemic-in-Kenya.pdf> > (accessed 19 August 2023).

on male candidates more than the female candidates and the cost of media on-air airtime was so high forcing women groups to develop Women's Economic Recovery Manifesto for Women in Kenya.²⁰¹ The media underrepresentation of women both during and after the elections has contributed to the negative stereotypes that hold women from holding power and passed the message to lawmakers that if the general public does not care about women rights, then, it is okay for them to dismiss it as unimportant.

3.3.4 The civil society

The civil society space is a key and important player in the electoral process of any country. The civil society is key in implementing gender quotas as their work surrounds the underlying issues that prevent women from being elected in power such as creating public awareness on the negative socio-cultural perspectives against women. The World Bank defines civil society as including community-based organisations, non-governmental organisations, labour unions, indigenous groups, charitable organisations, professional organisations, and foundations.²⁰² The civil society plays different but key roles in the electoral process as they are arguably independent from government influence and work directly with the communities. Some of the functions they perform include election observation with a gender focus, conducting electoral education, financing women candidates, and empowering female candidates to run for political seats. For example, in Kenya, the Federation of Women Lawyers (FIDA) carried out a policy gap report on the political participation of women and followed up with a leadership academy for aspiring female candidates. They also carried out the *Vote a dada* initiative to lobby for voters to elect female leaders.

3.3.5 The Judiciary

The Judiciary of Kenya is a key player in Kenya's electoral system since it is the first option for redress of any violation of the law. With the failure of parliament to implement the gender rule, Kenyans have filed multiple cases to the courts of Kenya. The courts have also been used to seek interpretations of the law regarding gender equality. For example, the court ruled that the 2/3 gender rule was to be progressively realised and that parliament should formulate further legislations to ensure conducive ground for implementation of gender quotas.²⁰³ However, the high court acknowledged that it was not simple to decide. In the ruling it says:²⁰⁴

“This leads us to the inference that whether a right is to be realised “progressively” or “immediately” is not a self-evident question: it depends on factors such as the language used in the normative safeguard, or in the expression of principle; it depends on the mechanisms provided for attainment of gender-equity; it depends on

²⁰¹ Report of the commonwealth observer group. Kenya general elections' 9 August 2022 <[https://production-new-commonwealthfiles.s3.eu-west-2.amazonaws.com/s3fspublic/202308/Kenya%20COG%20Report%20Final%20\(2\).pdf?VersionId=vj2INsOTT0LrdfixdctCsAgJw4yt3cpg](https://production-new-commonwealthfiles.s3.eu-west-2.amazonaws.com/s3fspublic/202308/Kenya%20COG%20Report%20Final%20(2).pdf?VersionId=vj2INsOTT0LrdfixdctCsAgJw4yt3cpg)>(accessed 19 August 2023).

²⁰² World Economic Forum 'Who and what is 'civil society'?' 23 April 2018 <<https://www.weforum.org/agenda/2018/04/what-is-civil-society/>> (accessed 20 August 2023).

²⁰³ The Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR., Para 74.

²⁰⁴ As n 203 above, Para 59.

the nature of the right in question; it depends on the mode of constitution of the public body in question (e.g. appointive or elective; if elective, the mode and control process for the election); it depends on the identity and character of the players who introduce the candidates for appointment or election; it depends on the manner of presenting candidature for election or nomination”

However, this decision was not implemented. At the time the chief justice advised the president to dissolve parliament, there were six petitions and four court orders to parliament to enforce the gender law that had not been implemented. Parliament had appealed the last decision of the high court of Kenya instructing it to formulate the right legislation in 60 days.²⁰⁵ In recent developments, the 2023 national dialogue committee published a newspaper advertisement calling for among other things, public participation regarding the 2/3 gender rule. In a petition that has been served to the court, the petitioners argue that the committee and its operations are unlawful.²⁰⁶ This shows that the Kenyan judiciary is at the centre of the fight for gender equality, and that with failure from other branches of government to promote gender rule, the last resort is always the judiciary.

3.4 Challenges posed by the electoral system in Kenya.

The nature of the first past the post electoral system presents different challenges to Kenya. These challenges are covered in the next phase of this chapter.

3.4.1 Financing for women in politics

The financial burden of running for a political seat is a huge setback to women’s political ambitions in Kenya. Countries with proportional representation electoral systems register higher numbers of women in parliament as campaign funding is taken off the hands of individual candidates and transferred to the political party.²⁰⁷ By requiring political parties to produce equal male and female candidates’ names, it places the financial burden of campaign on the parties. A 2013 Kenyan economic forum report shows that the female-to-male income ratio in Kenya is 0.65:1 making it number 47 in the world with the smallest gender gap.²⁰⁸ In Kenya, political candidates use money to get party nomination tickets, and finance their own campaigns.²⁰⁹ With such a gap, female politicians are severely disadvantaged in the political race.

Financial regulation laws are important in ensuring the fairness of competition among candidates running for political seats. In Kenya, finances are crucial in being elected to political office

²⁰⁵ Constitutional Petition No. 371 of 2016, Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 others [2017] eKLR

²⁰⁶ Legality and constitutionality of the national dialogue committee & 3 others v Ichungwa & 13 others.

²⁰⁷ M Ohman & C Lintari ‘political party financing and equal participation of women in Kenyan electoral politics: A situation overview’ Netherlands institute for multiparty democracy <<https://nimd.org/wp-content/uploads/2015/06/2015-05-Kenya-Gender-and-Political-Finance-Report.pdf>> (accessed 4 September 2023).

²⁰⁸ World Economic Forum ‘The Global Gender Gap Report 2013’ <https://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf> (accessed 19 August 2013).

²⁰⁹ n 207 above.

starting from the nomination stage to election campaigning. Political party selection is key for women to be nominated to governance and candidates must pay to be considered in the candidate nomination process. This is due to the lack of political party funding through the political parties' funds.²¹⁰ Not all men can afford it also, but women are majorly affected due to the economic gap that exists between men and women. Currently, presidential candidates can spend up to KES 5.2 billion (\$44.3m), while governors, senators and female representatives are limited to up to KES 433 million (\$3.69m) in a country where the minimum wage bill is KES 15,201 (\$131).²¹¹ The Kenyan parliament declined the proposed election financing bill that would have regulated the expenditure and levelled the ground for candidates. The lack of financial resources and failure of the government to regulate election spending has led to most women lacking the ability to compete fairly with their male counterparts.

3.4.2 Lack of political will

In Kenya, the lack of political will is the biggest obstacle to women representation in parliament.²¹² This lack of political will is backed by the underlying social-cultural factors that view women as less leaders than men. Since politicians are often bent to the will of the citizens as voters and determinants of their place in power, the negative societal stereotypes reinforce the politician's decisions to be adamant in ensuring the implementation of the gender rule. Even in the context of quotas, it is somewhat accepted for women to pursue the reserved seats, but scorned upon if they pursue seats that are male dominated. This is not unique to the Kenyan experience as women all over the world are oppressed by religious and cultural beliefs. However, based on Kenya being among the worst performing countries in East Africa in terms of gender equality, it is evident that the socio-cultural factors run deep.

3.5 Conclusion

Historically, Kenyan women have always been marginalised under different regimes despite their active role in politics since the fight for independence and against colonial rule. Biases in media representation and the education curriculum have contributed to the little knowledge and appreciation of female politicians' role in the political development of the country. Male politicians have acted as gatekeepers in parliaments who prevent women from accessing power. Political parties, media, and voters have all contributed to the suffocation of women's political rights. However, the new constitution and related court cases offer a breath of fresh air in the matter by reaffirming women's critical role in the democratic developments of the country. Despite the failed attempts by the judiciary to reinforce the law, civil society and women in Kenya continue to relentlessly fight for their rightful position in the political space

²¹⁰ As above.

²¹¹ G Ndirangu 'No limits: Campaign spending spikes ahead of Kenyan elections' Aljazeera 22 June 2022 <<https://www.aljazeera.com/features/2022/6/22/no-limits-campaign-spending-spikes-ahead-of-kenyan-elections>>(accessed 23 August 2023).

²¹² n 159 above.

Chapter 4:

The Senegalese Electoral System as a catalyst for gender equality in parliament

4.1 Introduction

This chapter examines the electoral regime in Senegal and its contribution to the successful implementation of gender parity. It examines the factors that have worked to ensure women access public office in Senegal, while drawing key lessons that Kenya can borrow and apply in its own system. This chapter does not hope to provide a pre-supposed answer, but rather hopes to create a situation where Kenya questions whether to change its electoral system altogether or to provide some adjustments to the current system to ensure women are included in the legislature. It examines the historical progress, the challenges, the gaps, and the future of the Senegalese gender quota and parity implementation process.

4.2 Historical development

The journey of women representation in Senegal just like most countries has never been easy. During the precolonial times, Senegalese women were not completely excluded from political life, but they could not hold positions of power.²¹³ For example, during the election of the King in the Wolof tribe by the all-male council of *grand electeurs*, women were used as the chief campaigners. The position of power held by women was dependent on the titles of their spouses.²¹⁴ The patronage practice held by Senegalese tribes during the pre-colonial times manifests itself all the way to the present political life.²¹⁵

Between 1848-1945, under the French colonial rule, it was only men residing in the French communes of Saint-Louis, Goree, Dakar and Rufisque that were granted legal status. In 1994, when French women were granted legal status and the right to vote, Senegalese male representatives demanded a similar right for the Senegalese women.²¹⁶ Because the advocacy efforts were geared more towards racial equality than gender equality, it resulted in the continued marginalisation of Senegalese women.²¹⁷ Even after the women gained the right to vote, they were used by their political parties to campaign for male candidates through dance and praise songs.²¹⁸

In 1960, Senegal gained independence, and the presidency fell to Leopold Sedar Senghor who changed the system into a de facto one-party state. In a system where political pluralism was not

²¹³ L Beck 'Democratisation and the hidden public: The implementation of patronage networks on Senegalese women' (2003) 35 *comparative politics* 147-169.

²¹⁴ A Diop 'La société wolof: tradition et changement. Les systèmes d'inégalité et de domination' (1984) 18(2) *Canadian Journal of African Studies* 475-477.

²¹⁵ n 213 above.

²¹⁶ Letter from the Governor General of French West Africa to the Minister of the Colonies quoted in Jean- Bernard Lacroix and Saliou Mbaye, "Le vote des femmes au Sénégal," *Ethiopiennes* 6 January 1976.

²¹⁷ n 213 above.

²¹⁸ G Geisler 'Sisters under the Skin' *Journal of Modern African Studies* (1987) 25, 43-45.

allowed, women were hardly represented in government except a few educated women who played a symbolic representative role. Despite the tokenistic approach, the women persuaded the government to develop the *code de la famille* that provided political rights for women.²¹⁹ The first feminist association *Yewwu Yewwi* hoping to garner international support and inversely pressure male politicians to create change as opposed to the Senegalese masses conducted strategic seminars with elites.²²⁰ This was a very calculated approach as changing the mass thinking could take decades given its dependency on improvements in education and economic levels of a country's citizens.

In 1975, President Senghor allowed for two opposition political parties in government. This led to a four-fold increase in the number of women in parliament by 1988. This was because female aspirants were placed high in the nomination lists of the ruling party. Further changes were recorded after the introduction of multi-partyism by President Abdou Diouf, and the introduction of 25 reserved seats for women in parliament. Additionally, the two opposition parties (the young socialist and PS union) were given a 10% quota and a 10%, later extended to 15% quota allocation respectively.²²¹ Although the move was seen as a fight between the political parties of who obtains power, the consequence was that women were finally acknowledged as key players in the political scene.²²² President Diouf's regime also saw a shift of power from elite educated Senegalese women to register the first 'illiterate' woman in parliament; Arame Diene.

In early 1980's the electoral system in Senegal was changed from a purely PR system to a mixed system. Until the electoral code changed in 2001, the number of women continued to rise in parliament due to their nomination on national party lists.²²³ The presence of the proportional system of government is credited for the rise of women from 8% in 1988 to over 33% in 2001.²²⁴ Because most Senegalese parties were dominated by men, they controlled the electoral lists determining the election prospects.²²⁵ However, the nomination of female and male candidates by political parties in Senegal was based on their appeal to the electorate which superseded all the underlying gender frictions caused by male-dominated systems.²²⁶ Women in political parties complained that men controlled most of the party resources such as cars and gasoline, and electoral campaign t-shirts although the women controlled a limited part of the resources mostly the sewing machines and the money for female dancers at the campaigns.²²⁷

²¹⁹ n 213 above.

²²⁰ Personal communication, July 1999.

²²¹ n 213 above.

²²² As above.

²²³ In 1998, the ruling party won only 50% of the vote, but retained 66% of the seats in the assembly. In 2001, the new ruling party won 74% of the seats with less than 50% of the vote. This is because the electoral system favours district seats, which are easier to win for large parties.

²²⁴ n 213 above.

²²⁵ The only new party to run in the 2001 election was the Parti pour la Renaissance Africaine, led by a woman. Over 60% of its candidates were women, but none were elected.

²²⁶ n 213 above.

²²⁷ As above.

In 1994, the Conseil Sénégalais des Femmes (COSEF) was created; an organisation of various women's associations, trade unions, and NGOs whose main agenda was to advocate for increment in women's political participation.²²⁸ A year after its formation, COSEF pressured political parties to adopt a 30% voluntary gender quota that failed and manifested in the 1998 election a small number of women were elected in parliament.²²⁹ COSEF took a calculated approach by pushing for legal provisions that would compel political parties to include women in their party list and shifted the campaign from quotas to parity laws due to the negative reaction that gender quotas had received.²³⁰ Since the inception of the gender parity law, the number of women in Senegal's parliament has risen to the second highest after Rwanda in Africa.

4.3 Key players in Senegal's gender parity implementation success

In the proportional representation system, particularly when parity laws and mandatory gender quotas are in place, the willingness of political parties becomes irrelevant. When these laws are effectively enforced, along with the consequences for non-compliance, political parties have no choice but to adhere. This study, therefore, examines the distinct roles played by actors unique to the Senegalese experience, such as civil society and presidential influence. This approach aims to reduce redundancy and overlap in the information examined.

4.3.1 The civil society

As discussed in the historical development part, the formulation and implementation of gender quotas in Senegal has been majorly through the efforts of the civil society. Apart from pushing for legislation, COSEF has undertaken various projects to push for gender inclusion in politics. During the 2001 elections, COSEF ran a campaign to encourage women to be elected in positions of power by improving the capacities of women that were running for power.²³¹ This campaign registered a high number of women in parliament leading to the continued efforts by COSEF to conduct capacity building for women for political seats.²³² COSEF realised an often forgotten gap that the society holds certain stereotypes about women that need to be shifted if they are to elect female leaders. Additionally, capacity building of female leaders is useful in ensuring women are prepared to navigate the circumstances that women undergo in the political environment.

Since 1997 COSEF has brought together all the relevant stakeholders in a targeted effort to advance women representation in parliament. These have included grassroots programs for raising awareness, discussions with political parties, campaigns on media platforms, press conferences,

²²⁸ COSEF < <https://cosefsenegal.org/index.php/a-propos-du-cosef/> > (accessed 30 August 2023).

²²⁹ n 35 above 56.

²³⁰ As above.

²³¹ M Toraasen 'Gender parity in Senegal- a continuing struggle' (2017) *CMI insight*.

²³² From 2009 to the present day, 1,383 beneficiaries, including 789 women and young women, have been strengthened on various themes across the 14 regions of Senegal. 15 citizen consultation frameworks have been set up in the various municipalities of intervention to initiate the practice of gender-sensitive participatory budgeting.

spreading cassettes, and posters for promoting women.²³³ Before the adoption of the gender parity declaration, COSEF organised a peaceful walk to the president's office where women came out in all white and submitted the proposed legislation to former president Wade.²³⁴

However, the promise of the president is not always enough. For example, In Kenya's 2022 election, President William Ruto promised to implement the gender rule within the first year of his election and appoint 50% of women in cabinet secretaries' positions.²³⁵ Although the government has failed to implement this so far, the civil society and other interested parties should use the promise as a window of opportunity to push for the implementation of gender quotas. As proven by COSEF, the efforts might fail in the initial campaigns but with consistent and resilient efforts, eventually change happens.

4.3.2 President Abdoulaye Wade

There is no dispute that the support of president Abdoulaye Wade was a big elevation to the push and implementation of gender quotas in Senegal. A recipient of the African Gender Award, President Wade was the first president to suggest the 50% gender parity law in the AU, and placed gender equality on his agenda during his 2000 presidential bid.²³⁶ After being elected as president, he created the committee to draft the gender parity laws, and coordinate the efforts by COSEF, himself and other NGOs.²³⁷ The desire to push for women inclusion in politics gave the civil society an opportunity to target President Wade as a key partner in the women's political inclusion campaign. With the support of the president himself, it was easier to push for gender parity.

The decision by president Wade might have been influenced by various reasons. COSEF started its campaign for women representation in the wake of the 1995 Beijing Conference that had led to increased focus on promoting the international norm on women representation. President Wade, just like most political leaders, hop onto these international waves to present their countries as modern and attract international financial support.²³⁸ Domestically, winning votes from women who are estimated to make up 51% of Senegalese population might have led to president Wade's support of gender parity given his competition from president Macky Sall during his eight years in power.²³⁹ Despite the reasons behind it, President Wade's support helped elevate the campaign and shows the importance of key

²³³ AF Kasse 'women in politics in Senegal: The implementation of Quotas: African experiences quota report series' *International IDEA* 66.

²³⁴ n 229 above, 4.

²³⁵ S Addamah 'Kenyan president William Ruto appoints 22 ministers including seven women' 8 September 2022 available <<https://medafricatimes.com/28322-kenyan-president-william-ruto-appoints-22-ministers-including-seven-women.html>> (accessed 18 August 2023).

²³⁶ n 231 above.

²³⁷ n 231 above.

²³⁸ n 229 above.

²³⁹ As above.

political leaders, especially one with significant influence and power in determining the effective implementation of gender quotas.

4.4 Hitches and hurdles faced by gender parity quotas in the electoral system.

The challenges Senegal has faced in their efforts towards increasing the political participation of women present a chance for other states to tend to challenges that have served as the underlying impediments to women pursuit of political power.

4.4.1 Hostile political environment

In the initial stages of fighting for women inclusion in governance, COSEF received promises from political parties who never affected the gender quotas when elections were conducted. However, COSEF was able to take a more effective approach and opted for the mandatory inclusion of women through the gender parity law.²⁴⁰ After COSEF successfully formulated the first gender parity law, parliamentarians declared it unlawful and discarded it.²⁴¹ The decision to shift the campaign from quotas to gender parity was based on the negative response the quotas had received over the years.²⁴² Due to COSEF's efforts, public opinion about women in power changed among the Senegalese people. Gender quotas have led to an increase in women's engagement at mass-level voting as well as the change in cultural attitudes, and social-economic development.²⁴³ A study conducted by the Afro barometer shows 78% of Senegalese believe that women and men have an equal chance of being elected; a response that is the 71% average among 34 countries surveyed.²⁴⁴

4.4.2 Unfavourable religious environment

In Senegal the role of religion has served as the major social challenge leading to the failure of political parties to nominate women for political seats. Despite the progress made in Senegal representation of women in parliament, there have been constituencies that have a zero representation of women in parliament. The Sufi Muslim leaders commonly known as the *Marabouts* argued for the unequal status of men and women, and the parliamentarians from the religious group opposed the parity law in the national assembly.²⁴⁵ In 2014, the second largest city in Senegal produced a list of 100 male candidates to the electoral management body with no female candidates yet didn't face any of the stipulated consequences prescribed by the Senegalese electoral laws.²⁴⁶ Although the setback and declaration that women will not lead in the district is a challenge to the progress, the success in a 94% Muslim majority country cannot be downplayed.

²⁴⁰ n 137 above.

²⁴¹ As above.

²⁴² As above.

²⁴³ G Bauer 'Fifty/fifty by 2020: Electoral gender quotas for parliament in east and southern Africa' 10(3) *International Feminist Journal of Politics* 348-368.

²⁴⁴ T Isbell et al 'For Senegalese women, advancement is real but uneven' Afro Barometer 305, 28 June 2019.

²⁴⁵ n 229 above.

²⁴⁶ CMI CHR Michaelson Institute 'Reality defeats good intentions: The power of religious leaders in Touba' 27 November 2015 <https://www.cmi.no/news/1625-reality-defeats-good-intentions> (accessed 5 September 2023).

4.4.3 Violence towards women in parliament

Senegal just like most African countries has failed to contain the violence faced by women in parliament. In the latest report on African parliaments, 80% of women parliamentarians have suffered from psychological violence over their tenure.²⁴⁷ Additionally, 67% of women have received sexist comments, 46% have been sexually attacked online, 42% have been threatened by death or rape, 39% have been intimidated, 39% have been sexually abused, while 23% have been physically abused.²⁴⁸ Male parliamentarians are the primary perpetrators of all forms of violence against women with 78% responsible for sexist behaviours, 49% of the same political parties and 41% of opposite parties.²⁴⁹ In Senegal, a female parliamentarian was slapped by a male colleague in an incident that shows the unsafe parliamentary environment for women in politics. These statistics show that beyond fighting for women representation and participation in parliament, Senegal must fight to make parliaments safe for women for this will encourage more women to aspire for public service.

4.5 Conclusion

Senegal's journey towards gender parity in politics is a complex and challenging one, yet the country has made significant progress in recent years. Key milestones include the introduction of gender parity laws and mandatory quotas, which have played a pivotal role in boosting the representation of women in parliament. This success can be attributed to the concerted efforts of various key players, particularly the civil society and influential political figures like President Abdoulaye Wade.

Despite the progress made, challenges persist, including a hostile political environment, religious resistance, and the prevalence of violence against women in politics. These challenges serve as a reminder that achieving gender parity is an ongoing struggle that demands both legislative reforms and a change in societal attitudes. Senegal's experience offers valuable lessons for other countries striving to advance women's participation in politics, emphasising the need for multifaceted strategies that engage civil society, gain political leadership support, and address deeply rooted societal issues.

²⁴⁷ Inter-Parliamentary Union 'sexism, harassment and violence against women in parliaments in Africa' November 2021 <<https://www.ipu.org/resources/publications/issue-briefs/2021-11/sexism-harassment-and-violence-against-women-in-parliaments-in-africa>> (accessed 4 September 2023).

²⁴⁸ As above.

²⁴⁹ As above.

Chapter 5

Lessons, conclusions, and recommendations

5.1 Lessons

The analysis of the study holds political parties as the core tool in enabling women to access parliament. If political parties are the means through which women get into parliament, then, the most effort should be placed on ensuring that political parties are women inclusive. Political parties can influence women representation by rethinking party structures, and elaborating party representation rules. A centralised party structure means that the party leaders have the ability to include women in party lists and can be held responsible for low numbers of female representation.²⁵⁰ In decentralised systems regional and local party systems should be encouraged to be more women-inclusive.²⁵¹ However, women should be included in the party structures and decision-making bodies which will influence their ability to influence party lists and call for inclusive lists. Weakly structured parties lead to biases when presenting nomination lists. Vague party provisions on women representation provide a ground where women are excluded and no repercussions for it. With institutionalisation, party leaders have less chance to manipulate the rules in favour of certain candidates.²⁵² It is not enough to have clauses that state that political parties acknowledge gender inclusion. For example, France was the first country to initiate the 50/50 parity law. Because the parity law was not compulsory, political parties put women names at the bottom of the list leading to underrepresentation of women.²⁵³ This experience shaped Senegal's push for a compulsory alternating list between men and women. In Senegal, the parity law explicitly states that the party lists must alternate between female and male candidates.²⁵⁴ By clearly stating how political parties hope to achieve this inclusion, they give way to be held accountable to their words, and responsible for failure to do so.

The responsibility of gender quota implementation falls on other stakeholders at both the domestic and international actors. International non-governmental organisations have been instrumental in conducting research and sharing information about the status of women political representation in Africa. For example, the Inter-parliamentary Union provides monthly ranking of women representation in parliament, yearly reports analysing women representation in parliament, and landmark reports on sexism and gender-based violence in parliament.²⁵⁵ International IDEA also provides a huge wealth of research reports on gender equality and inclusion in democracy, and national parliaments.²⁵⁶ In separate

²⁵⁰ KM Caul 'Women's representation in parliament: the role of political parties' 15 August 1997 <<https://escholarship.org/uc/item/60q2s39p>> (accessed 30 August 2023).

²⁵¹ As above.

²⁵² As above.

²⁵³ n 137 above.

²⁵⁴ Gender parity law, art 2.

²⁵⁵ Inter-parliamentary Union <<https://www.ipu.org/impact/gender-equality>> (accessed 4 September 2023).

²⁵⁶ International IDEA <<https://www.idea.int/our-work/what-we-do/gender-democracy>> (accessed 4 September 2023).

capacities, NGOs partner with local NGOs to support women movements. For example, Oxfam International in Senegal lists supporting good governance as one of its pillars, and in particular the inclusion of women and youth.²⁵⁷ This provides an opportunity for NGOs working in the women's political participation space to get support from the organisation that will facilitate their work. Academic institutions have also extensively researched or facilitated students in researching issues of women political participation and representation. This research has identified the progress, gaps, and opportunities for nation states to improve on their status on women representation and participation in parliaments.

5.2 Conclusion

The effective implementation of gender laws, whether parity laws or quotas has been a headache for most countries in the world. In Kenya, the debate on how to implement the two-thirds gender rule has attracted several court cases, parliamentary and public debates. On the other hand, Senegal has managed to fight for the inclusion of women in parliament registering the second highest representation in Africa. This has informed this study since Senegal has not been widely studied as an example to borrow lessons for. This study views Senegal as an important case study as it is a Muslim majority state, the only west African country to implement gender quotas, and the only state in Africa to do so in a unique context as it went against the norm where states usually adopt gender quotas in a post-conflict situation.

Globally, the Beijing declaration set the tone for women inclusion in politics. Since then, supranational bodies such as the UN and AU have adopted binding agreements to ensure women run for public office. Kenya and Senegal are signatories to CEDAW and Maputo protocol that support women inclusion. Sub-regionally, Senegal has adopted legislations adopted by ECOWAS to support women inclusion. Kenya, as a member of EAC, IGAD, and COMESA has also signed legal instruments meant to increase women representation and participation. This commitment has trickled down to the domestic level where both Kenya and Senegal have adopted the two-thirds gender rule and the 50-50 gender parity law respectively that aims to improve women's' inclusion in politics.

The success or failure of women representation in parliament is often attributed to the electoral systems of a given nation state. The proportional representation system has registered more women representation of women in government versus the first past the post system. Kenya uses the first past while Senegal uses the proportional system. This can majorly be attributed to the cleavage in implementation of gender quotas in the two states. However, the role of various actors cannot be downplayed in the study of political regimes. The electoral management bodies, political parties, civil society, and the media are among the key actors that shape the electoral process of both countries. These

²⁵⁷ Oxfam <<https://www.oxfam.org/en/what-we-do/countries/senegal>> (accessed 1 September 2023).

actors also inform the electoral laws of a given state as the laws are aimed to regulate the behaviour of these actors.

There are some underlying factors that lead to the outcome of implementation of gender quotas. Such factors include the socio-cultural norms, the political atmosphere, and religious aspects; all of which determine how women are viewed and treated in given societies. By studying Kenya and Senegal it is apparent that these two share similar struggles. However, Senegal struggles with religious dominance while Kenya battles tribal/cultural issues.

Kenya can draw key lessons from the Senegalese experience by studying its success, failure, and opportunities. In Senegal, the role the civil society played is a key lesson that Kenya can borrow from given the resistance gender quotas have received from parliamentarians. Senegal also used the president as their key target influencer which shows the impact of a high political ally in this fight. Additionally, Senegal switched from using voluntary quotas and opted for parity, becoming the first country to ever do so, due to the negative associations and feedback quotas had gotten from the international community. These are the key lessons Kenya should borrow from.

Based on the Senegalese experience, there are still gaps in political independence of key institutions, and the media is still behind when it comes to gender representation. These gaps are learning points for Kenya too. Kenya could shift the quotas into parity as it allows for more women representation and amend its electoral regime to that of proportional representation as it will afford women the chance to occupy seats in parliament.

5.3 Recommendations

After analysis of the data collected through research, this study makes recommendations to the relevant actors in the electoral process of Kenya.

5.3.1 To the political parties

The study recommends that political parties:

- a. Adopt party legislations that clearly dictate how they intend to increase women participation at the party level.
- b. Implement gender equality by including women in their party position and decision-making bodies.
- c. Adopt affirmative actions that will ensure women the capacity building of women in political affairs.

5.3.2 To the civil society

This study recommends that the civil society in Kenya should:

- a. Push through the resistance and stay vigilant in their quest for increased women participation.

- b. To continuously involve the relevant stakeholders in the debate on women participation including male allies.
- c. To take advantage of political promises made by key figures such as the president and to pressure them to act on their promises to ensure gender equality.

5.3.3 To the registrar of political parties

This study recommends that the registrar of political parties should:

- a. Formulate and design policies that will ensure gender inclusion guidelines for political parties.
- b. Deregister political parties that fail to comply with gender equality rules.
- c. To create laws that clearly guide the political parties on how to make and submit gender-balanced nomination lists, and the repercussions of not adhering to them.

5.3.4 To the IEBC

This study recommends that the IEBC:

- a. Rejects any lists that fail to meet the gender equality threshold.
- b. Call out tricks used by political parties to include women only in areas with more competitors from opposing parties. This meets the gender requirement but blocks women from accessing power.
- c. To make recommendations on financial financing to parliament despite the pushback.
- d. Approve more female election observers, media personnel, and incorporate more female commissioners in the institution.

5.3.5 To the media

This study recommends to the media to:

- a. Include female journalists in political related reporting and discussions.
- b. Include female experts in political talk shows, and political debates.
- c. Employ more female reporters in telling political stories and covering the electoral process.

5.3.6 To regional and international bodies

This study recommends that:

- a. They should lead by example by showing representation and participation of women in all levels of governance.

Word count: 19,666

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