



Gender Quotas in Four African Countries

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Contents

Introduction.....	2
Gender Quotas in Rwanda	3
<i>Background</i>	3
<i>The Constitutional Gender Quota</i>	3
<i>Gender Quota Legislation</i>	4
Gender Quotas in Uganda.....	4
<i>Background</i>	4
<i>The Constitutional Gender Quota</i>	5
<i>Gender Quota Legislation</i>	5
Gender Quotas in South Africa.....	6
<i>Background</i>	6
<i>The Women’s Charter and Constitutional Equality Clause</i>	6
<i>Gender Quota Legislation</i>	7
Gender Quotas in Kenya.....	8
<i>Background</i>	8
<i>The Constitutional Gender Quota</i>	9
Conclusion	10

Introduction

This research report addresses the legislative history of gender quotas for political participation in Rwanda, Uganda, South Africa and Kenya. The purpose of this report is to provide relevant information on how these nations developed their quota systems in order to inform advocacy efforts on equal representation in Zimbabwe as Section 124 of the Constitution, which established quota falls away in 2023. The research presented here was pulled from available newspaper articles, law review articles, and other reports available on the internet. This research provides information based on the legislative history of gender quotas in these countries.

This research finds, notably, that in the four nations, Rwanda, Uganda, South Africa and Kenya, three advocacy strategies contributed to the success of the campaigns for gender quotas: (1) the pre-engagement of women politicians and other political stakeholders throughout the advocacy process; (2) the formation of non-partisan coalitions to amplify women’s voices; and (3) consultations with women around the country to ensure participatory and popular support for gender provisions.

Gender Quotas in Rwanda

Background

Provisions establishing gender quotas in Rwanda appear both in the nation's 2003 Constitution and in later legislation, passed in 2006. The Constitution itself provides that in the bicameral parliament, thirty percent of Deputy Seats and thirty percent of Senatorial seats must be reserved for women.¹ An additional provision establishes that women must make up at least thirty percent of all "posts in decision making organs."² When it was found that the quotas were not being met at a local governance level, additional legislation was passed in 2006,³ establishing that women must be "[a]t least thirty percent . . . of the members of the District Council."⁴ These gender quotas are largely credited with pushing Rwanda to its first place world ranking for its relatively high percentage of women represented in politics.⁵

The Constitutional Gender Quota

The inclusion of a gender quota in the Constitution is seen as a direct result of the post-genocide reconstruction process that took place in the 1990's and early 2000's, a process in which women and women's organizations were very active.⁶

Following the Rwandan genocide, seventy percent of the remaining population was female, and women were seen as critical to helping the country through its post-conflict reconstruction.⁷ In the first nine years post-conflict, women's representation in parliament reached almost twenty eight percent; a Ministry for Gender was established; and three women were appointed to the twelve-member Constitution drafting committee.⁸ In the Constitutional drafting process, the Ministry of Gender and all women parliamentarians, regardless of party, worked closely with a coalition of NGOs, the Collectifs Pro Femmes/Twese Hamwe, to disseminate information about the draft Constitution to women around Rwanda and to hold consultations and meetings on the proposed provisions.⁹ One notable effort was a three-day seminar organized by the National Assembly and the Forum of Rwandan Women MPs, during which participants developed a consolidated document on gender equality and "affirmative action" in the context of the new Constitution.¹⁰ This document was submitted to the Constitutional Commission.¹¹

Furthermore, the drafting of the Constitution was a participatory process in which women were consulted and in which women's voices were heard.¹² Information-gathering for the new

¹ Kathleen A. King, *Representation of Women: Constitutional Legislative Quotas in Rwanda and Uganda*, 1 CHARLESTON L. REV. 217, 220–21 (2007).

² *Id.* at 222.

³ WOMEN'S POLITICAL PARTICIPATION AND ECONOMIC EMPOWERMENT IN POST-CONFLICT COUNTRIES: LESSONS FROM THE GREAT LAKES REGION IN AFRICA, INTERNATIONAL ALERT 27–28 (July 2012).

⁴ Law N° 08/2006 of 24/02/2006 Determining the Organisation and Functioning of the District (Rwanda), available at www.southernprovince.gov.rw/fileadmin/templates/documents/District.pdf.

⁵ *Women in National Parliaments*, INTER-PARLIAMENTARY UNION (July 1, 2017), www.ipu.org/wmn-e/classif.htm.

⁶ Priscilla Yachat Ankut, *The Role of Constitution-Building Processes in Democratization: Case Study – Rwanda*, INTERNATIONAL INSTITUTION FOR DEMOCRACY AND ELECTORAL ASSISTANCE 23–25 (2005).

⁷ King, *supra* note 1, at 219–20.

⁸ Ankut, *supra* note 6, at 23–25.

⁹ *Id.* at 23.

¹⁰ *Id.* at 23–24.

¹¹ *Id.* at 24.

¹² *Id.* at 17.

Constitution took place over a six-month period, during which experts, interest groups (including women's groups), citizens, and coalitions were consulted.¹³ After this period, the Constitution was drafted and re-opened for comment from the populace and the international community, before being debated in the parliament.¹⁴ In this drafting period, the participatory process was critical to the ultimate inclusion of a gender quota, as it provided a forum for women to present their unified ideas on key provisions.

Finally, international organizations empowered women in Rwanda in their lobbying efforts. Among others, the Inter-Parliamentary Union, the United Nations Development Programme, the United Nations Development Fund for Women, and the Economic Commission for Africa are all credited with providing the funding necessary for women's groups and organizations to pursue "consultative meetings and awareness-raising among Rwanda women."¹⁵ These consultative meetings and awareness-raising efforts were directly related to the ultimate adoption of gender-sensitive provisions, including the quota, in the final Constitution.

Gender Quota Legislation

The history of the law implementing the Constitutional gender quota is sparsely documented. From what is available online, it is possible to note that legislation on local gender quotas was passed largely because the Constitutional quotas were not being enforced at the local level. The law, however, contained no further obligations than what was already guaranteed in the Constitution.¹⁶ The law was supported by the Rwanda National Commission for Human Rights,¹⁷ women's rights organizations, and the Forum of Rwandan Women MPs, which were also active in the Constitutional drafting process.¹⁸ These organizations may be able to provide further insight on their lobbying strategy to other organizations, upon request, although this strategy is not immediately available online.

Gender Quotas in Uganda

Background

Provisions establishing gender quotas in Uganda appear both in the nation's 1995 Constitution and in the later Local Governments Act of 1997.¹⁹ The Constitution itself provides that fifty-six seats in the Parliament and one-third of all local council seats are reserved for women.²⁰ The Constitution also states that women have a positive right to "affirmative action" and that gender quotas exist for the express purpose "of redressing the imbalances created by history, tradition or

¹³ *Id.* 17–18.

¹⁴ *Id.*

¹⁵ *Id.* at 15.

¹⁶ *Id.* See also Law N° 08/2006 of 24/02/2006 Determining the Organisation and Functioning of the District (Rwanda), available at www.southernprovince.gov.rw/fileadmin/templates/documents/District.pdf.

¹⁷ Nirere Madeleine, *Gender Equality and the Role of a National Human Rights Institution: The Rwandan Experience*, Global Alliance of National Human Rights Institutions (Nov. 2012), <http://nhri.ohchr.org/EN/ICC/InternationalConference/11IC/Session%202%20How%20are%20NHRI%20addressing%20forms%20of%20VAW%20an/The%20Rwandan%20Experience.doc>.

¹⁸ WOMEN'S POLITICAL PARTICIPATION AND ECONOMIC EMPOWERMENT IN POST-CONFLICT COUNTRIES: LESSONS FROM THE GREAT LAKES REGION IN AFRICA, INTERNATIONAL ALERT 27 (July 2012).

¹⁹ GENDER EQUALITY AND WOMEN'S EMPOWERMENT IN PUBLIC ADMINISTRATION: UGANDA CASE STUDY, UNITED NATIONS DEVELOPMENT PROGRAMME (2012).

²⁰ King, *supra* note 1, at 229.

custom.”²¹ The Local Governments Act of 1997 implements the Constitutional mandate that one-third of local council seats are to be filled by women.²²

The Constitutional Gender Quota

Similar to Rwanda’s Constitution, Uganda’s Constitution was drafted in a period of political transition, during which women’s groups were particularly active.²³

The women’s association, Action for Development (“ACFODE”) began lobbying in the mid-1980s for increased representation of women in a new government established under President Museveni.²⁴ The group lobbied for, among other demands, the creation of a women’s ministry and women’s representation in government at all levels.²⁵ As a result, President Museveni created seats for women in all councils, added one seat for one woman per district in the national assembly, appointed women to positions in his government, created the Ministry of Women, and selected two women to serve on the Constitutional Commission.²⁶

Thus, going into the Constitutional drafting period between 1989 and 1995, women and women’s organizations were well placed “to insert [their] concerns into the institutions and politics of the country.”²⁷ The newly created Ministry of Women organized consultations on women’s interests around the country, and the women appointed to the Constitutional Commission introduced gender-relevant provisions in the drafting process.²⁸ Women also constituted eighteen percent of delegates to the constitutional debates and amplified their voice by forming a non-partisan Women’s Caucus.²⁹ The Women’s Caucus lobbied for the inclusion of gender equity clauses in the Constitution and was “instrumental” in ensuring that a number of these provisions made it into the Constitution.³⁰ Although the gender quota was the most controversial provision, the Women’s Caucus won its inclusion with the argument that women must be given “a special advantage in compensation for a history of disadvantage.”³¹ This principle of nondiscrimination, the concept that all individuals should have an equal and fair prospect to access opportunities available in society, won the inclusion of a gender quota in the Constitution.

Gender Quota Legislation

Like in Rwanda, the legislative history of the law implementing the Constitutional gender quota in Uganda is sparsely documented. The Local Governments Act of 1997, containing a gender

²¹ CONSTITUTION OF THE REPUBLIC OF UGANDA, Oct. 8, 1995, art. 33, *available at* www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf.

²² *See* Local Governments Act (Mar. 24, 1997), *available at* www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94558&p_country=UGA&p_count=130&p_classification=01.01&p_classcount=9 (current as of July 27, 2017).

²³ WOMEN’S POLITICAL PARTICIPATION AND ECONOMIC EMPOWERMENT IN POST-CONFLICT COUNTRIES: LESSONS FROM THE GREAT LAKES REGION IN AFRICA, INTERNATIONAL ALERT 12 (July 2012).

²⁴ Anne Marie Goetz, *No Shortcuts to Power: Constraints on Women’s Political Effectiveness in Uganda*, 40 J. MOD. AFR. STUD. 549, 555 (2002).

²⁵ *Id.*

²⁶ *Id.* at 555–56.

²⁷ *Id.* at 556.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 557.

quota, was passed to ensure the implementation of the Constitutional gender quota at a local level and was supported by various women's lobbying groups, including the Uganda Women's Parliamentary Association³² and the Uganda Women's Network.³³ These organizations may be able to provide further insight on their lobbying strategy to other organizations, upon request, although this strategy is not immediately available online.

Gender Quotas in South Africa

Background

Provisions establishing gender equality in South Africa appear in the Women's Charter for Effective Equality that was adopted in August 1994,³⁴ the nation's democratic Constitution (both interim and final)³⁵ and the Local Government: Municipal Structures Act.³⁶ Unlike Rwanda and Uganda, the Constitution does not explicitly provide for gender quotas and there are no legal quotas enacted with regard to national or provincial elections.³⁷ Rather, the Local Government: Municipal Structures Act requires that with respect to proportional elections and proportional representation elections, "every party much seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list."³⁸ Furthermore, women must be "equitably represented in a ward committee".³⁹ Despite the lack of national quotas, South Africa is tenth in world ranking for its percentage of women represented in politics.⁴⁰

The Women's Charter and Constitutional Equality Clause

The independent Women's National Coalition ("WNC"), formed in 1991, was the "broadest coalition ever formed in South Africa" bringing together more than three million diverse women from 81 organizations and 13 regional alliances⁴¹ with the primary goal of achieving gender equality in the new democratic Constitution.⁴² The WNC lobbied extensively to pass the Women's Charter, which addresses topics such as gender equality, women's rights, economic issues, health, politics and violence against women.⁴³ The Women's Charter was drafted and

³² *Uganda Women's Parliamentary Association (UWOPA)*, PARLIAMENT OF THE REPUBLIC OF UGANDA (2015), www.parliament.go.ug/index.php/members-of-parliament/parliamentary-fora/uganda-womens-parliamentary-association-uwopa.

³³ *Women's Leadership and Democratic Governance*, UGANDA WOMEN'S NETWORK (2017), www.uwonet.or.ug/womens-leadership-and-democratic-governance.

³⁴ THE WOMEN'S CHARTER FOR EFFECTIVE EQUALITY, available at <http://www.anc.org.za/content/womens-charter-effective-equality>.

³⁵ CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, available at <http://www.gov.za/documents/constitution-republic-south-africa-1996>.

³⁶ LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT. 1998, available at http://www.gov.za/sites/www.gov.za/files/a117-98_0.pdf.

³⁷ See CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996, available at <http://www.gov.za/documents/constitution-republic-south-africa-1996>.

³⁸ See LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT. 1998, available at http://www.gov.za/sites/www.gov.za/files/a117-98_0.pdf.

³⁹ See *Id.*

⁴⁰ *Women in National Parliaments*, supra note 5.

⁴¹ Aili Mari Tripp, *New Political Activism in Africa*, *Journal of Democracy*, 12 J. DEMOCRACY, 141, 149 (2001).

⁴² Catherine Albertyn, *Women and the transition to democracy in South Africa*, ACTA JURIDICA 39, 52 (1994).

⁴³ *Id.*

endorsed by the national parliament in 1994 after the drafting of the interim constitution was complete; however, women delegates to the constitutional negotiations still sought to influence the interim constitutional drafting by working with the WNC's Negotiations Monitoring Team, which facilitated discussion, disseminated information and lobbied between its member organizations.⁴⁴

While few women delegates participated in the preliminary constitutional negotiations in 1992, the Gender Advisory Committee was established in response to opposition and protest, both publicly and within parties, regarding the lack of women representation.⁴⁵ During the next round of negotiations, it was decided that each delegation to the Negotiation Council would have one woman delegate and each technical committee would have one woman member.⁴⁶

The Constitution itself illustrates the success of the WNC's lobbying efforts and the importance of a unified consensus among women, as it "protects many critical rights for women, including the right to equality; the right to freedom and security of person (including the right to freedom from violence); the right to make decisions concerning reproduction; and the right to security and control over one's own body."⁴⁷ Additionally, governmental organizations and departments have been established in South Africa to enforce the implementation of such policies, including the Office on the Status of Women and the National Commission on Gender Equality.⁴⁸

Gender Quota Legislation

The Local Government: Municipal Structures Act of 1998, the only legislative quota for women representation in South Africa, provides that with respect to proportional representation from party lists, "every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list"; however, this provision is more of an aspiration than a meaningful mandate as there is no penalty for non-compliance.⁴⁹

Despite the lack of legislative quotas, women held 42% of seats in the national parliament in 2016⁵⁰ and 41% of cabinet positions as of 2015.⁵¹ Women's representation is largely attributable to the voluntary quota enacted by the African National Congress (the "ANC"), the current ruling party, which was initially 30% in 2002 and later increased to 50% in 2009.⁵²

The ANC, led by Nelson Mandela, headed negotiations with the South African government regarding its transition to democracy, universal suffrage and drafting of the interim and final

⁴⁴ *Id.* at 53.

⁴⁵ *Id.* at 54.

⁴⁶ *Id.*

⁴⁷ Priya Pitamber, South Africa's women in politics, Brand South Africa (August 25, 2016), available at <https://www.brandsouthafrica.com/governance/developmentnews/south-africa-s-women-in-politics>.

⁴⁸ *Id.*

⁴⁹ *South Africa: Women's representation quota*, African Democracy Encyclopedia Project (April 2009), available at <https://www.eisa.org.za/wep/souquotas.htm>.

⁵⁰ http://data.worldbank.org/indicator/SG.GEN.PARL.ZS?name_desc=true.

⁵¹ Pitamber *supra* note 47.

⁵² *South Africa Misses the Mark on Women in Politics*, May 28, 2014, available at http://data.worldbank.org/indicator/SG.GEN.PARL.ZS?name_desc=true.

constitutions.⁵³ Mandela was elected president during the country's first democratic election in 1994, an election that also resulted in the ANC receiving more than 60% of the vote for seats in the National Assembly, and the ANC has dominated the nation's political system since.⁵⁴ During his presidency, Mandela laid a strong foundation for the success of the ANC, ensuring that the Constitution provided for "a strong central government based on majority rule and guaranteeing both the right of minorities and the freedom of expression," and focusing on important post-apartheid socio-economic issues, including economic prosperity, job growth, housing, health care and poverty.⁵⁵ Mandela was explicit in his dedication to gender equality and female liberation, which resulted in an almost immediate rise in women's parliamentary representation in 1994, and, during his presidency, he continued to affirm the role of women in the anti-apartheid movement and the importance of gender equality and eliminating sexual violence, even declaring Women's Day a national holiday.⁵⁶ Mandela's presidency is also characterized by his commitment to peace, unity and nation-building, illustrated by his ability to successfully work with the unity Government cabinet, which included members from rival political parties, including the National Party, Inkatha Freedom Party and the Communist Party.⁵⁷

Other contributing factors to the relatively high participation of women in politics include women's participation in elections, as more women than men vote in South Africa⁵⁸, and increased educational opportunities, which have given rise to a larger pool of women situated for political power.⁵⁹

Gender Quotas in Kenya

Background

Provisions establishing gender quotas in Kenya appear in the nation's 2010 Constitution⁶⁰ and were recently reinforced by the nation's Supreme Court on March 29, 2017.⁶¹ The Constitution itself provides that "the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender."⁶² The Constitution also states that "the State shall put in place affirmative action

⁵³ African National Congress (ANC), Encyclopedia Britannica, *available at* <https://www.britannica.com/topic/African-National-Congress>.

⁵⁴ *Id.*

⁵⁵ The Nelson Mandela Presidency – 1994 to 1999, <http://www.sahistory.org.za/article/nelson-mandela-presidency-1994-1999>.

⁵⁶ Tara Kelly, The ultimate male feminist? 5 things Nelson Mandela did for women, CNN (December 8, 2016), *available at* <http://www.cnn.com/2013/12/08/world/africa/the-ultimate-male-feminist-mandela/index.html>.

⁵⁷ Bill Keller, Mandela Completes His Cabinet, Giving Buthelezi a Post, New York Times (May 12, 1994), *available at* <http://www.nytimes.com/1994/05/12/world/mandela-completes-his-cabinet-giving-buthelezi-a-post.html>.

⁵⁸ Aili Mari Tripp, Women and Politics in Africa Today, *available at* <http://democracyinfrica.org/women-politics-africa-today/>.

⁵⁹ Tripp *supra* note 41.

⁶⁰ Constitution of Kenya, 2010, *available at* <http://democracyinfrica.org/women-politics-africa-today>.

⁶¹ *Kenya court orders parliament to pass gender quota*, The Independent, March 30, 2017, *available at* <http://democracyinfrica.org/women-politics-africa-today/>.

⁶² Constitution of Kenya, *supra* note 55.

programmes designed to ensure that minorities and marginalized groups (a) participate and are represented in governance and other spheres of life.”⁶³

The Constitutional Gender Quota

Similar to South Africa’s Constitution, Kenya’s Constitution was drafted during a period of democratization, during which women’s groups were particularly active in Africa.⁶⁴

The Women’s National Convention in 2004 was a turning point for the women’s movement in Kenya, as the event brought together over 2,000 women, and created a “new cycle of activism.”⁶⁵ Initially, women sought to gain affirmative action through legislative lobbying, which was largely met with failure; however, women saw the constitutional review process as another opportunity to seek affirmative action through constitutional reform.⁶⁶ Another notable feature of the women’s movement in Kenya was its strategic use of lawyers and judicial review to challenge discrimination against women and girls.⁶⁷ During the constitutional drafting, women lobbied powerful male members of parliament and utilized the media to advocate to the general public.⁶⁸ Thus, through women’s social mobilization, networking, advocacy and use of law, women were in a powerful position to participate in the constitutional reform.⁶⁹

The 2010 Constitution gave parliament until 2015 to enact the required legislation, which was extended to 2016.⁷⁰ While the 2013 general election resulted in a record-setting number of women in politics,⁷¹ which was in part due to another constitutional provision requiring that 48 women representatives be elected, the male-dominated parliament has not passed the constitutionally mandated legislation requiring that at least one-third of lawmakers be women.⁷² In response, Kenya’s Supreme Court announced on March 29, 2017, that parliament had 60 days to do so or “the petitioners or any other person shall be at liberty to petition the Honourable Chief Justice to advise the president to dissolve parliament.”⁷³

General elections in Kenya were held on August 8, 2017, which resulted in at least 23 women elected to the National Assembly (not including the 47 women-only seats and 6 political party nominees), three women governors and three women senators.⁷⁴ While these results reflect steady improvement over the results of the 2013 election, parliament is still short of meeting its constitutionally mandated quota and thus, remains subject to dissolution.⁷⁵ While it is unclear

⁶³ *Id.*

⁶⁴ Pilar Domingo et al, *Women and Power – Shaping the development of Kenya’s 2010 Constitution*, at 23 (March 2016), available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10292.pdf>.

⁶⁵ *Id.*

⁶⁶ *Id.* at 24.

⁶⁷ *Id.* at 25.

⁶⁸ *Id.* at 27.

⁶⁹ *Id.* at 27.

⁷⁰ *Kenya court orders parliament to pass gender quota*, *supra* note 56.

⁷¹ Marie Berry et al, *Kenyan Women Just Fought One of the Most Violent Campaigns in History*, Foreign Policy (August 7, 2017), available at <http://foreignpolicy.com/2017/08/07/kenyas-female-politicians-just-fought-the-one-of-the-most-violent-campaign-in-history-election/>.

⁷² *Kenya court orders parliament to pass gender quota*, *supra* note 56.

⁷³ *Id.*

⁷⁴ Fred Oluoch, *More women elected in Kenya, but the numbers still fall short*, *The East African* (August 12, 2017), available at <http://www.theeastafrican.co.ke/news/Women-elected-in-Kenya-/2558-4054988-d8a9guz/index.html>.

⁷⁵ *Id.*

how willing the Supreme Court would be to dissolve the current parliament for falling below the quota, it has taken an increasingly independent and active role in ensuring appropriate democratic processes, most notably having nullified the recent presidential election for unconstitutional election procedures.⁷⁶

Conclusion

The histories of gender quotas in Rwanda, Uganda, South Africa and Kenya reveal that women and women's organizations engaged in effective advocacy to ensure the inclusion of gender quotas in their nations' Constitutions and legislation. Three strategies employed in those nations are particularly noteworthy: (1) the engagement of women politicians and other political stakeholders throughout the advocacy process; (2) the formation of non-partisan coalitions to amplify women's voices; and (3) consultations with women around the country to ensure participatory and popular support for gender provisions. These strategies, among others, may help inform the advocacy efforts of organizations in Zimbabwe, as they seek to renew gender quotas in their own country's legislation.

⁷⁶ Robyn Dixon and Reuben Kyama, Kenya's Supreme Court nullifies presidential election result, a ruling hailed as a triumph for African democracy, *The Los Angeles Times* (September 1, 2017), *available at* <http://www.latimes.com/world/africa/la-fg-kenya-election-annulled-20170901-story.html>.