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LL.M. HUMAN RIGHTS LAW



**THE IMPACT OF ELECTORAL GENDER QUOTAS ON
WOMEN'S REPRESENTATION IN LEGISLATIVE
DECISION-MAKING BODIES**

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Research dissertation presented for approval of Senate in fulfilment of part of the requirements for the LL.M. in Human Rights Law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses. I hereby declare that I have read and understood the regulations governing the submission of LL.M. dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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DEDICATION

Carrissime memoriae Himmet Şahin.

ABSTRACT

To overcome gender bias and long-standing inequalities, more than 110 countries worldwide are reported to practice gender quotas in some form. Nonetheless, electoral quotas are not uncontroversial, despite their political appeal and common adoption. Critics note that such measures run a danger of bringing to office individuals who lack the necessary qualifications and who may then be easily manipulated. Supporters in comparison argue that empowering members of groups who have historically been disadvantaged can result in more inclusive processes of policy-making – drawing in those previously excluded and enhancing the universality of legislative perspectives. This can change the outcomes from political decision-making to the extent that it improves access to public goods by those who had earlier been excluded or marginalised. The majority of comparative literature on women’s representation has argued that more inclusive and diverse legislatures are fundamental for the democratic legitimacy of elected bodies, primarily because they provide a voice for historically underrepresented groups. Studies also suggest that female participation in legislative processes helped to overcome gender bias in access to specific services and that female legislators tended to allocate more funds to causes important to women. In light of these arguments, the question remains one to discuss and opine on: are specific gender *quotas* the adequate instrument to give women access to power in order to achieve the ultimate goal of gender equal participation in decision-making processes? Furthermore, this dissertation aims to answer the question whether electoral gender quotas have an impact on policy outcomes enhancing women’s life and on women’s representation in a broader sense.

ACRONYMS

AU	African Union
CSW	Commission on the Status of Women
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
DEDAW	Declaration on the Elimination of Discrimination against Women
ECHR	European Convention on Human Rights
EU	European Union
FWP	Forum for Women Parliamentarian
GNU	Government of National Unity (Rwanda)
GR	General Recommendation
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDEA	Institute for Democracy Electoral Assistance
IPU	Inter-Parliamentary Union
MDGs	Millennium Development Goals
MP	Member of Parliament

NRM	National Resistance Movement (Uganda)
SDGs	Sustainable Development
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSMs	Temporary Special Measures
UDHR	Universal Declaration of Human Rights
UN	United Nations
UWOPA	Uganda Women Parliament Association

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1.1 INTRODUCTION

In 2015, 193 Member States of the United Nations unanimously adopted a new global agenda to end poverty by 2030 and to pursue a sustainable future for all. The 2030 Agenda for Sustainable Development¹ (SDGs) includes a specific goal to achieve gender equality, aiming to end discrimination and violence against women and girls, and to ensure equal participation and opportunities in all spheres of life. One of the targets for Goal 5 is to ‘ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life’ (SDG Target 5.5).

However, the implementation reality looks dire. According to the data included in the ‘Women in Politics 2017 Map’², launched by the Inter-Parliamentary Union (IPU) and UN Women, SDG Target 5.5 still remains largely utopian, as the number of women in the executive of governments and in parliaments worldwide has mostly stagnated with only marginal improvements. Furthermore, only two out of the 193 reviewed states have reached the promulgated 50 per cent threshold for women in their national parliament.³ The barriers that women face when trying to participate in decision-making bodies occur on four different levels: individual, institutional, structural, and socio-cultural.⁴

To overcome gender bias and persistent inequalities, more than 110 countries worldwide are reported to apply gender quotas in some form. According to the Atlas of Electoral Gender Quotas, ‘gender quotas are numerical targets that stipulate the percentage of women that must be included in a candidate list or the number of

¹ United Nations General Assembly Resolution 70/1 ‘Transforming our world: the 2030 Agenda for Sustainable Development’, U.N. Doc. A/RES/70/1, adopted on 25 September 2015 [SDGs].

² The Inter-Parliamentary Union (IPU) ‘Women in Politics 2017 map’ (2017) United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), available: <http://www.unwomen.org/en/digital-library/publications/2017/4/women-in-politics-2017-map>, accessed 14 August 2018.

³ Ibid..

⁴ J Ballington, A Karam ‘Women in Parliament – Beyond Numbers’ (2005) International Institute for Democracy and Electoral Assistance, available at: <https://www.idea.int/sites/default/files/publications/women-in-parliament-beyond-numbers-a-revised-edition.pdf>, accessed 14 August 2018, 31 [Women in Parliament – Beyond Numbers].

seats to allocate to women in a legislative body.’⁵ Their overall aim is ‘to reverse discrimination in law and in practice and to level the playing field for women and men in politics.’⁶ This thesis focuses on electoral gender quotas in legislatures only.

Despite their political appeal and common adoption, electoral quotas are not uncontroversial. Critics note that such measures run a danger of bringing to office individuals who lack the necessary qualifications and who may then be easily manipulated.⁷ Supporters, in comparison, argue that empowering members of groups who have historically been disadvantaged can result in more inclusive processes of policy-making – drawing in those previously excluded and enhancing the universality of legislative perspectives.⁸ This can change the outcomes of political decision-making to the extent that it improves access to public goods by those who had earlier been excluded or marginalized.⁹

Furthermore, the majority of comparative literature on women’s representation has argued that more inclusive and diverse legislatures are fundamental for the democratic legitimacy of elected bodies, primarily because they provide a voice for historically underrepresented groups.¹⁰ Studies also suggest that female participation in legislative processes have helped to overcome gender bias in access to specific services and that female legislators tended to allocate more funds to causes that are important to women.¹¹ In light of these arguments, the question remains one to discuss

⁵ D Dahlerup, Hilal, Kalandadze, Kandawasvika-Nhundu *Atlas of Electoral Gender Quotas* (2013) International Institute for Democracy and Electoral Assistance (IDEA), available at: <https://www.idea.int/publications/catalogue/atlas-electoral-gender-quotas?lang=en>, accessed 9 July 2018, p. 16.

⁶ *Ibid.*

⁷ ML Krook ‘Gender Quotas and Women’s Political Empowerment’ (2010), *E-International Relation*, available at: <https://www.e-ir.info/2010/06/18/gender-quotas-and-women%E2%80%99s-political-empowerment/>, accessed 15 August 2018; Franceschet, Piscopo ‘Gender Quotas and Women’s Substantive Representation: Lessons from Argentina’ (2008), *Politics and Gender*, pp. 393-xx, 394, available at: http://web.pdx.edu/~mev/pdf/PS%20471%20Winter15%20Readings/Franceschet_Piscopo.pdf, accessed 15 August 2018.

⁸ L Baldez ‘Elected Bodies: The Gender Quota Law for Legislative Candidates in Mexico (2004), *LSQ*, pp. 231-xx, 238.

⁹ Miranda ‘Impact of women’s participation and leadership on outcomes’ (2005), available at: http://www.un.org/womenwatch/daw/egm/eql-men/docs/EP.7_rev.pdf, accessed 15 August 2018, p. 6.

¹⁰ J Lovenduski ‘Feminizing Politics’ (2005) Polity Press, Cambridge; Mansbridge, 1999; Phillips, 1995.

¹¹ P Paxton, M Hughes ‘Women, Politics and Power’ (2007); B Reingold, J Harrell ‘The Impact of Descriptive Representation on Women’s Political Engagement: Does Party Matter?’ (1992), *PRQ*, p 286.

and opine on: are specific gender quotas an adequate instrument to give women access to power and to ensure gender equal participation in decision-making processes?

Examining the existing national gender quota laws and policies therefore becomes relevant, as it may advance the discussion about the presumed necessity of affirmative action regarding the adoption of gender parity policies in decision-making bodies. It is in cross-national patterns that one can identify the efficiency and impact of specific legal designs or institutions of gender quotas.

It can be argued that most men enjoy a democratic head start in terms of political participation since women's right to vote in many countries is merely 100 years old.¹² This thesis' socio-political relevance lies in a catalogue of answers to the question whether the male democratic head start can only effectively be outbalanced by gender quotas and/or other similar legal affirmative actions.

1.2 THEORETICAL BACKGROUND

In this thesis, '(electoral) gender quota' or 'quota' refers to legislated gender quotas for legislative decision-making bodies, i.e. national parliaments.

In accordance with CEDAW General Recommendation No. 28, the term gender refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for biological differences. This results in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.¹³

Currently, electoral gender quotas are said to be the most effective tool for a rapid increase of women's representation in elected government offices. However, quotas are not designed and equipped to remove *all* structural, institutional, societal, and social barriers for women in politics and should therefore be complemented by other measures designed to level the political and societal playing field for women.¹⁴

¹² Germany and Poland in 1918, Austria and Netherlands in 1919, and the United States in 1920.

¹³ CEDAW General Recommendation 28, para. 5.

¹⁴ Supra note 5.

1.2.1 QUOTA TYPES, AIMS AND OBJECTIVES

There are three main types of gender quotas in politics, although one can find different variations and implementations of each. These three main types include legislated candidate quotas (1), legislated ‘reserved seats’ (2), and party quotas (also known as voluntary quotas) (3).¹⁵ They are either mandated through national constitutions and or by municipal electoral laws.

Legislated candidate quotas regulate the gender balance of the candidate lists and are binding by law for all political parties participating in elections. Countries with legislated candidate quotas in which a strict alternation between female and male candidates at national and/or sub-national level is required include Bolivia, Costa Rica, Ecuador, and France.¹⁶

Legislated ‘reserved seats’ regulate, the gender balance of elected bodies by reserving a definite number of seats or percentage of seats for women Members of Parliament. Countries that operate under the ‘reserved-seats’ system include Rwanda and Uganda.

The party quotas, which are also known as voluntary party quotas, are adopted by individual political parties for their own list of candidates. They are usually stipulated in party statutes and rules. An example for party candidate quota is Sweden. Sweden has no legal requirement for quotas, but the Green Party, the Left Socialist Party, and the Social Democratic Party apply the so-called ‘zipper system’. According to this system, the parties nominate 50 per cent men and 50 per cent women on their lists for election, alternating between both sexes throughout the list.¹⁷

Countries and territories with reserved seats in the lower or upper house of parliament or at sub-national levels include, among others, India, Pakistan, Kenya, Lesotho, Libya, Kosovo, Rwanda, and Uganda.¹⁸ Based on the Atlas of Electoral Quotas, 60 countries use legislated candidate quotas, 36 countries use the ‘reserved

¹⁵ Ibid, at 23.

¹⁶ Ibid.

¹⁷ D Dahlerup, ‘Has Democracy Failed Women?’ (2018), Polity Press, Cambridge, p. 63.

¹⁸ Supra note 15.

seats' system and in 37 countries at least one political party represented in parliament uses a voluntary party quota.¹⁹

The rapid rise of both voluntary and involuntary gender quotas, as a policy tool to achieve more representation of women in the public sphere, is underpinned by the conviction that true gender parity in representation, without any special or affirmative measures, would take several decades.

Gender quotas are further considered to be 'necessary affirmative action measures to realise de facto substantive equality for women.'²⁰ They seek to 'place the burden of recruitment not on the individual woman but on those who control the recruitment process.'²¹ Their aim is to reform the inherent institutional masculinity which characterises most legislatures.

1.2.2 OBSTACLES TO WOMEN'S PARTICIPATION IN DECISION-MAKING BODIES

Radical feminism suggests and theorises about the subordination of women through the lens of sex, gender, and sexuality. However, radical feminisms' goal is not to merely effect changes to the law, but to achieve a complete change of the patriarchal systems that structure women's lives.²²

Women who want to enter the world of politics find that the public, cultural, and social environment is often unfriendly or even hostile to them in their efforts to reach positions in legislative decision-making bodies. The obstacles that women face can be classified as political, socio-economic, ideological and psychological (or socio-cultural).²³

¹⁹ Ibid at 17.

²⁰ See Article 4 (1) Convention on the Elimination of All forms of Discrimination against Women (CEDAW), available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4>, accessed 21 January 2019.

²¹ D Dahlerup 'Women, Quotas and Politics' (2006).

²² Bonthuys, Albertyn 'Gender, Law and Justice' (2007), Juta, pp. 34-35.

²³ N Shvedova, 'Obstacles to Women's Participation in Parliament' in Ballington, Karam (eds.) Women in Parliament – Beyond Numbers (2005) International Institute for Democracy and Electoral Assistance, available at: <https://www.idea.int/sites/default/files/publications/women-in-parliament-beyond-numbers-a-revised-edition.pdf>, accessed 14 August 2018, pp. 33-50, 34.

Among the political obstacles that women face is the dominance of the ‘masculine model’ of political life and of elected offices, the lack of sustained contact and cooperation with public organisations, such as trade and labour unions which are mainly male-dominated, the lack of political network opportunities, and the limited financial support for women candidates²⁴. The political obstacles above reflect the patriarchal structure of today’s governments and the public law-making sphere, where male dominance is the norm.²⁵

Socio-economic realities play a significant role in the recruitment of women for political roles.²⁶ The social and economic status of women in society has a direct influence on their participation in policy-orientated institutions and decision-making elected offices. The most severe obstacles to women’s participation can be classified into two categories. The first is the limited access to education and choice of professions and the second is the dual burden of ‘domestic duties’ and professional obligations.²⁷

Socio-cultural barriers that women face when attempting to stand for office include cultural patterns and predetermined social roles assigned to women and men, which is exacerbated by the way women are portrayed in mass media, including those who already hold political office.²⁸

1.2.3 EQUALITY

Since electoral gender quotas provide an instrument to achieve gender equality within decision-making legislative bodies it is important to differentiate and explain the term *equality*, moreover, formal (*de jure*) and substantive (*de facto*) equality.

²⁴ J Ballington, ‘Gender Equality in Political Party Funding’ (2003), International Institute for Democracy and Electoral Assistance, available at: <https://www.idea.int/sites/default/files/speeches/Gender-Equality-in-Political-Party-Funding.pdf>, accessed 14 August 2018.

²⁵ See supra note 2.

²⁶ N Shvedova, ‘Obstacles to Women’s Participation in Parliament’ in Ballington, Karam (eds.) *Women in Parliament – Beyond Numbers* (2005) International Institute for Democracy and Electoral Assistance, available at: <https://www.idea.int/sites/default/files/publications/women-in-parliament-beyond-numbers-a-revised-edition.pdf>, accessed 14 August 2018, pp. 33-50, 42.

²⁷ *Ibid*, at 38 f.

²⁸ *Ibid*, at 41.

Equality encompasses that persons, regardless of their gender, race, ethnicity, and religion, should in principle be treated equally, if they can be considered to be in an equal situation. This can be referred to as formal equality, which implies having equal rights and being treated equally. In comparison to formal equality, substantive equality deals with the result of the treatment, which should be equal. Hence, the distinction between the two forms of equality is that formal equality concerns the nature of the treatment, while substantive equality deals with the result of a certain treatment.²⁹

An example of formal equality is the right to vote which was granted to women in most countries during the 20th century and was a right formerly only available to men. Oostland states that formal equality puts a strong emphasis on the primacy of the individual and does not take the social and economic background of particular groups in society into account.³⁰ He illustrates this by the following example: officially granting girls access to education might still not lead to similar enrolment rates for girls as for boys, when parents cannot afford to send all their children to school.³¹ Eriksson therefore criticises formal equality for assuming an ideal world, in which all human beings are on an equal terms.³² Or as Gallagher states, ‘formal equality fails to recognise the fact that equal treatment of persons in unequal situations will invariably operate to perpetuate, rather than to eradicate injustices.’³³ In comparison to formal equality, the principle of substantive equality requires that ‘unequal factual patterns have to be treated unequally in order to attain an equal result.’³⁴

In the context of this dissertation its focus will be on gender equality in the public sphere, specifically national legislative decision-making bodies. Women’s formal right to equality in the public sphere is recognised almost universally, although some States reserve certain areas of public service for men, like military posts, succession

²⁹ EW Vierdag, ‘The Concept of Non-Discrimination in International Law’, Martinus Nijhoff, The Hague (1973), p. 14.

³⁰ R Oostland, ‘The Principle of Equality’(2012), in Westendorp (ed.), *The Women’s Convention Turned 30*, pp. 67-xx, 69.

³¹ See e.g. UNESCO, ‘Education for All Global Monitoring Report 2007’, *Strong Foundations: Early Childhood Care and Education*, UNESCO, Paris (2007), Table 2.9, pp. 29-xx, 33.

³² M Kirilova, Eriksson, ‘Reproductive Freedom: In the Context of International Human Rights and Humanitarian Law’, Martinus Nijhoff, The Hague (2000), p. 30.

³³ A Gallagher, ‘Ending the Marginalization: Strategy for Incorporating Women into the United Nations System’ (1997), *Human Rights Quarterly*, Vol. 19, p. 290.

³⁴ R Alexy, ‘Theorie der Grundrechte’ (1985), Nomos Verlagsgesellschaft, p. 379; EW Vierdag, ‘The Concept of Non-Discrimination in International Law’ (1973), Martinus Nijhoff, The Hague, p. 13.

to the thrones, titles of nobility, and religious positions. Therefore, formal equality continues to be an important step, but is still not sufficient.

As underlined before, representation and participation of women in political and public life in practice remain far from equal. *De facto* equality is reached when women have substantive equality of opportunity – i.e. where men and women benefit from substantially the same starting positions to participate in public and political in the way the deem fit.³⁵

Transformative equality in the public and political fields implies a real transformation of all public and political institutions as well as society at large, so that gender relations in public and political life are no longer set in historically persistent male paradigms of power.³⁶

1.2.4 REPRESENTATION

It is relevant who we are represented by, with an emphasis on the representative's social background, Philipps argues. She calls this 'the politics of presence'.³⁷ This is where, according to Schwartz, gender quotas for legislative decision-making bodies 'touch upon a recognition of the importance of the representation of women in institutional decision-making bodies'.³⁸ Schwartz and Dahlerup argue that scholars have distinguished at least four arguments for quotas and women's equal representation in parliaments. First, the justice argument which points to the fact that women represent half of the population and hence should have the right to half of the seats. Second, it is highlighted that women's different experience, whether biologically or socially constructed, would improve the nature of the public sphere. The third argument indicates that men cannot represent women as effectively, since they have partly conflicting interests. Finally, it is important for women to seek political roles thus representing important role models and encouraging other women to follow their steps.³⁹

³⁵ Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, p. 199.

³⁶ *Ibid*, at 211.

³⁷ Phillips, 'Politics of Presence' (1995), p. 25

³⁸ H Schwartz, 'Women's Representation in the Rwandan Parliament' (2004), p. 16.

³⁹ H Schwartz, p. 16; D Dahlerup, 'Has Democracy Failed Women?' (2018).

The representation of women can be divided into three categories which mutually reinforce each other, being symbolic, descriptive, and substantive representation.

Symbolic representation considers how women's presence affects their constituents, their perception, and opinions. Analysing gender quota's symbolic representation is crucial to understand their broader impact on public attitudes and women's political empowerment. The introduction of quotas may signal inclusion by legitimising women's presence, thereby challenging traditional stereotypes regarding women's role and the private-public-dichotomy, which has been impeding women's participation in legislative decision-making bodies.⁴⁰

Descriptive representation refers to the proportions of women and other minorities present in elected political bodies, sometimes being characterised as 'mirror'⁴¹ representation. In debates surrounding the descriptive representation of women in legislative decision-making bodies, assumptions are made about the consequences of making parliaments more descriptively representative. One assumption is the association of the selection of less capable candidates with the aim to achieve descriptive representation.⁴²

According to Franceschet, descriptive representation of women has received the most attention in comparative academic work. Reason for this, she argues, are the 'relatively straightforward to compare percentages of women in legislatures across countries.'⁴³ Those studies have mainly focused on the 'how' of women's election into decision-making bodies.

According to Franceschet and Piscopo, 'gender quotas are explicit measures that target gender bias in the candidate selection process, with the goal of increasing women's descriptive representation.'⁴⁴ Defenders of gender quotas therefore assume a link between descriptive and substantive representation.⁴⁵ It is on the basis of this

⁴⁰ S Franceschet, ML Krook, M Piscopo, 'The Impact of Gender Quotas' (2012), Oxford University Press, pp. 9-12.

⁴¹ Ibid, at p. 27.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ S Franceschet, JM Piscopo, 'Gender Quotas and Women's Substantive Representation – Lessons from Argentina' (2008), *Politics and Gender* (4), pp. 393-425, 394.

⁴⁵ Ibid, at 395.

controversy that one has to explore if and how gender quotas mediate the relationship among women's presence in political institutions where gender quotas have been incorporated, their likelihood to act for women, and their success. This chapter will discuss the possible link between descriptive and substantive representation and analyse if one can assume that more women (descriptive representation) results in a more substantive representation of women.

According to Franceschet, women's substantive representation occurs when women legislators undertake activity on behalf of some or many women. Those actions range from the introduction and the support and draft of bills and laws addressing women's issues, to the establishment of connections between female constituents and civil society and to putting women's issues or interests on the agenda within committees, parliamentary hearings, etc.⁴⁶

The research on women's substantive representation asks whether women seek and are able to promote women's issues once they are elected to political office. Here, a key concern is to determine whether more women 'make a difference'. As Thomas argues, female legislators often do have distinct policy priorities than their male colleagues but at the same time those differences do not always translate into policy gains for women as a group.⁴⁷ Those who are supportive of quotas for legislative decision-making bodies assume that 'as the number of women approximates a critical mass, attention to women's policy concern will grow'.⁴⁸

In order to analyse whether gender quotas have an impact on women's representation one has to agree on how to measure any potential impact. Representative democracy states that representation entails acting in the interest of the represented in a manner positive to them. Inevitably this brings up the frequently debated issue of women's interests.⁴⁹ A question that arises is whether it is possible to

⁴⁶ Ibid, at 397.

⁴⁷ S Thomas, 'The Impact of Women on State Legislative Policies' (1991), *Journal of Politics* 53 (3), pp. 958-976.

⁴⁸ S Franceschet, ML Krook, JM Piscopo, 'Conceptualising the Impact of Gender Quotas' in S Franceschet, ML Krook, JM Piscopo (eds.) *The Impact of Gender Quotas*, New York: Oxford University Press, pp. 3-27, 8 referring to S Thomas, 'How Women Legislate' (1994), New York: Oxford University Press; S Childs, ML Krook, 'Analysing Women's Substantive Representation: From Critical Mass to Critical Actors' (2009), *Government and Opposition* 44 (2), pp. 125-145.

⁴⁹ H Schwartz

analyse women's interest as if there was a universal meaning of the notion which addresses all women.

As most scholars have done previously, this dissertation takes Pitkin's classic work on representation as a starting point. According to Pitkin and her seminal work, *The Concept of Representation*, descriptive representation refers to the basic attribution of the elected legislators and how well they mirror the social group to which they are related through their gender, race, ethnicity or class. On the other hand, substantive representation occurs when legislators seek and are able to promote the interests and priorities of their constituents, according to Pitkin.⁵⁰ Nonetheless, it is essential to point out the flaws of the Pitkin's work which distinguishes between legislators who are descriptively similar and hence 'stand for' their constituents, and those who substantively 'act for' constituents by promoting issues of concern to that group.⁵¹ As pointed out by Franceschet and Piscopo, the problem with 'linking descriptive and substantive representative' is flawed as is the assumption that descriptive similarity, that is, sharing ascriptive features, 'leads automatically to substantive similarity, which is, sharing perspectives, interests, and issues.'⁵² They correctly observe that the assumption that female politicians are needed to represent women's interests and issues presumes a 'homogeneity among women that reinforces essentialist notions of an exogenously given, universally shared, fixed female identity', which does not take women's intersectionality into account.⁵³

In this dissertation the view regarding women as a group is that of women's identities being multiple, constituted not only by gender but also by ethnicity, race, class, and sexual orientation, amongst others. Furthermore, as Young argues, women are able to share a female perspective irrespective of any essential female identity.⁵⁴ According to Schwartz, although not undisputed, most feminist scholars agree that it is possible to establish a set of interests that is shared by all women, and to maintain a common minimal definition of women's interests.⁵⁵

⁵⁰ H Pitkin, 'The Concept of Representation' (1967).

⁵¹ S Franceschet, JM Piscopo, 'Gender Quotas and Women's Substantive Representation – Lessons from Argentina' (2008), *Politics and Gender* (4), pp. 393-425, 396.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ IM Young, 'Democracy and Inclusion' (2000), Oxford University Press.

⁵⁵ H Schwartz, p. 18.

This dissertation will utilise Wängnerud's definition of women's interests/issues, which has three components. Firstly, the recognition of women as a social category, second, the recognition of a power imbalance between men and women, and lastly, the commitment to implement a policy that increases the autonomy of female citizens.⁵⁶

The link between representation and substantive gender equality is easy to draw. Substantive gender equality requires that equality is interpreted according to the broad context of realities of women's disadvantages and the impact of these circumstances in order to eliminate disadvantage in outcome or result. The concept of substantive equality has special relevance in addressing disadvantage based on sex and gender. De facto gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognising the diversity of different groups of women and men. Therefore, policies and laws which aim to promote women's right and eradicate any violations against them are one of many steps towards substantive gender equality. The advocacy of such rights in legislative decision-making bodies can be an indicator for a country's shift towards the achievement of substantive gender equality.

1.3 RESEARCH QUESTIONS AND OBJECTIVES

This dissertation's focus will be on women's representation in decision-making bodies under national quota laws and the influence of international human rights law on women's representation in the political sphere. Within this focus, the research question is as follows: are gender quotas an adequate instrument to give women access to power in order to achieve the goal of substantive representation of women in decision-making bodies, resulting in substantive gender equality?

The thesis' second and third chapter highlight existing national and international standards and analyse whether they ensure gender-equitable access to elective offices and mandates. This analysis includes information on international legal instruments and policies, including the Sustainable Development Goals (SDGs)⁵⁷, the Millennium

⁵⁶ K Celis, S Childs, J Kantola, ML Krook, 'Constituting Women's Interests through Representative Claims' (2009), Paper presented at the Annual Meeting of the American Political Science Association, Toronto, Canada, available at: http://mlkrook.org/pdf/Celis_et_al_APSA_2009.pdf, accessed 25 November 2018.

⁵⁷ SDGs.

Development Goals (MDGs)⁵⁸, the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW)⁵⁹ and Beijing Declaration and Platform for Action⁶⁰, as well as regional and national legislative approaches and measures. Furthermore, they outline the different approaches taken by national legislatures in introducing quota laws, such as hard and soft law gender quotas, reservations, and political party gender quotas, amongst others.

Chapter three provides a critical analysis of national legal initiatives using a feminist point of view. This includes an analysis of existing national laws, their objectives, and their impact on female representation in national decision-making bodies. Countries under review include Rwanda, Uganda, and France, three countries that have incorporated electoral gender quotas into their municipal law. The selection of these countries is based on available data, which will assist in analysing the impact of the various laws and policies.

1.4 CHAPTER OUTLINE

The thesis comprises four chapters.

Chapter One provides an introduction to the study, its background and the research questions.

Chapter Two identifies and analyses the international and regional legal human rights framework in the context of women's representation in decision-making bodies and its potential influence on national laws.

Chapter Three describes and examines national laws that encompass electoral gender quotas. The focus is on three countries, France, Uganda, and Rwanda. Furthermore, this chapter will critically evaluate the impact of national gender quota

⁵⁸ United Nations General Assembly Resolution 55/2 'United Nations Millennium Declaration', U.N. Doc. A/RES/55/2, adopted on 18 September 2000 [MDGs].

⁵⁹ United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 available at: <http://www.un.org/womenwatch/daw/cedaw/>, accessed 14 August 2018 [CEDAW].

⁶⁰ United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, available at: <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>, accessed 14 August 2018 [Beijing Declaration].

laws on female representation and on policy outcomes. The analysis is based on the three aforementioned country case studies, taking into account their national laws.

Lastly, Chapter Four aims to answer the research question and provide recommendations on how to achieve substantive gender equality and substantive representation of women through the use of electoral gender quotas.

1.5 METHODOLOGY

This dissertation analyses literature from secondary resources, including journals, reviews, books, and media articles. International and national human rights frameworks, as well as data on women in national and local decision-making bodies used as benchmarks to interpret and evaluate existing systems. Additionally, other relevant databases and online sources are utilised.

1.6 CONCLUSION

Despite the removal of legal barriers to women's political participation in many countries, governments remain largely male-dominated.⁶¹ Shvedova assumes that, 'excluding women from positions of power and from elected bodies impoverishes the development of democratic principles in public life and inhibits the economic development of a society.'⁶² Men, who dominate the majority of governing institutions nationally and internationally, do not necessarily support women's political participation. The perennial question is whether quotas are an adequate instrument to increase women's political participation on a large scale, and whether they yield a long-term outcome in influencing policy outcomes that are in the interest of women, representing women in a substantive manner.

⁶¹ See supra note 2.

⁶² N Shvedova, 'Obstacles to Women's Participation in Parliament' in Ballington, Karam (eds.) *Women in Parliament – Beyond Numbers* (2005) International Institute for Democracy and Electoral Assistance, available at: <https://www.idea.int/sites/default/files/publications/women-in-parliament-beyond-numbers-a-revised-edition.pdf>, accessed 14 August 2018, pp. 33-50, 34.

CHAPTER TWO INTERNATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORK

2.1 INTRODUCTION

According to the Atlas of Electoral Gender Quotas, ‘the framework for the use of quotas can be based on a wide range of international and national commitments and principles pertaining to the equality of rights and opportunities for women and men to participate in and be elected to legislative decision-making structures.’⁶³ These include internationally binding conventions such as the 1966 International Covenant on Civil and Political Rights and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, regionally adopted human rights treaties like the American Convention of Human Rights (1969), the African Charter on Human and Peoples’ Rights (1981) and its Protocol on Women (2003), the African Charter on Democracy, Elections and Governance (2007), the European Convention on Human Rights (1950), as well as various policy documents adopted at the international, regional, and sub-regional level. These include, amongst others, the Beijing Declaration and Platform for Action, adopted at the United Nations Fourth World Conference on Women in Beijing in 1995, which served to galvanize international and national actions in this regard, calling on governments to implement special measures (including the use of affirmative action) for the equal participation of women and men in decision-making ‘in order to strengthen democracy and promote its proper functioning’ and the Millennium Development and Sustainable Development Goals.⁶⁴

This chapter will outline the existing international and regional legal frameworks regarding the equality of men and women in the public and political field – from which one can draw preliminary conclusions to the legitimacy and the necessity of electoral gender quotas. The focus will be on the Convention on the Elimination of All Forms of Discrimination (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Beijing Declaration and Platform for Action and the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs). Each of these

⁶³ IDEA ‘Atlas of Electoral Gender Quotas’, p. 17, available at: <https://www.idea.int/sites/default/files/publications/atlas-of-electoral-gender-quotas.pdf>, accessed 8 August 2018.

⁶⁴ Ibid.

legal international frameworks, in one way or another, contributes to the debate of electoral gender quotas. Under international law, adoption by the General Assembly of a Declaration, such as the Beijing Declaration and Platform for Action or the Development Goals, have different consequences from treaties, such as the ICCPR and CEDAW, that came into force through a required number of ratifications. A declaration's subject matter may be of great significance when approved or adopted, but it is hortatory and aspirational, i.e. recommendatory rather than, in a formal sense, binding. Therefore, this chapter's focus will be on two binding treaties, the ICCPR and CEDAW, where the basic principle of international law, *pacta sunt servanda*, comes into effect. Within this focus, the emphasis will be on CEDAW and its Committee's interpretations, as it is the most detailed, recent and ground-breaking international framework regarding women's rights and providing the framework for realising equality between women and men.

2.2 INTERNATIONAL LEGAL FRAMEWORK

2.2.1 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The participation of women in political decision-making positions was officially recognised as a political right with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. UDHR Articles 2 and 21 stipulate equal enjoyment of political rights without discrimination on the basis of one's sex or any other ground. The International Covenant on Civil and Political Rights reaffirmed the UDHR principle of the right to participate in public and political life without any discrimination in 1966.⁶⁵

The ICCPR contains classical human rights of the so-called 'first generation', which made their way into the domestic constitutional law of most State parties.⁶⁶

2.2.1.1 HISTORY, STRUCTURE, MECHANISMS

In transforming the UDHR's provisions into legally binding obligations, the United Nations adopted two separate International Covenants, which, taken together, constitute the bedrock of the international normative regime for human rights. The two separate

⁶⁵ Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), pp. 198-219, 216.

⁶⁶ Nowak 'UN Covenant on Civil and Political Rights CCPR Commentary' (2005), Introduction, para 3.

treaties, which were adopted in 1966 after approximately 20 years of negotiation, are the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶⁷ The ICESCR, the Universal Declaration of Human Rights, and the ICCPR with its two Optional Protocols, are collectively known as the International Bill of Rights.⁶⁸

Although the official position, dating back to the Universal Declaration, is that the two covenants and sets of rights are ‘universal, indivisible and interdependent and interrelated’, there has been a deep and enduring disagreement over the proper status of civil and political rights on the one side and economic and social rights on the other side. One side argues that economic and social rights should be superior to civil and political rights, asking ‘of what use the right to free speech is to those who are starving and illiterate.’⁶⁹ At the other extreme there is the view that economic and social rights do not constitute rights at all.⁷⁰ This discrepancy was manifested in the drafting and ratification of two separate treaties, the ICCPR and the ICESCR. Despite the political and ideological pressure for separating human rights into two categories through regulating them with two different instruments, the preamble of the ICCPR and the ICESCR highlight the natural interdependence that exists between all human rights.⁷¹ As Alston states correctly, ‘the interdependence principle, apart from its use as a political compromise between advocates of one or two covenants, reflects the fact that the two sets of rights can neither logically nor practically be separated in watertight compartments’⁷². Recently though, various scholars and practitioners have called for a united Covenant again, addressing the two covenants as a false dichotomy and calling the division artificial.⁷³ Although believing in the interdependence and the indivisibility of the sets of rights, this

⁶⁷ World Health Organization (Regional Office for the Eastern Mediterranean), ‘Health and Human Rights – International Covenant on Civil and Political Rights’ (2015), available at: http://www.who.int/hhr/Civil_political_rights.pdf, accessed: 1 September 2018.

⁶⁸ Office of the United Nations High Commissioner for Human Rights, ‘Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights’ (1996), available at: <https://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>, accessed: 1 September 2018.

⁶⁹ HJ Steiner, P Alston, R Goodman, ‘International Human Rights in Context’ (2007), Oxford University Press, p. 263.

⁷⁰ Ibid.

⁷¹ F Gómez Isa, K de Feyter, ‘International Protection of Human Rights: Achievements and Challenges’, p. 158.

⁷² HJ Steiner, P Alston, R Goodman ‘Human Rights in Context’, Clarendon Press, Oxford, p. 247.

⁷³ See Hasan Shire, executive director of East and Horn Africa Network of Human Rights Defenders and Catarina de Albuquerque, former Special Rapporteur on Water and Sanitation at a panel discussion on the 50th Anniversary of the Human Rights Covenants, 2016; available at: <https://www.ohchr.org/EN/NewsEvents/Pages/TwoCovenantsShouldBeOne.aspx>, accessed: 3 October 2018.

dissertation's focus will be on provisions regarding civil and political rights, therefore provisions of the ICCPR. Historically, civil and political rights have been seen as superior. From the lack of justiciability of social and economic rights, one can assume that this view is still dominant.

The ICCPR was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. As of August 2018, the ICCPR has 74 signatories and 172 State parties.⁷⁴

The values and principles of the ICCPR are found in Article 2 and 3, and are based on the notion of non-discrimination. Article 2 ensures that rights recognised in the ICCPR will be respected and available to everyone within the territory of State parties. Article 3 confirms the equal right of both men and women to the enjoyment of all civil and political rights set out in the ICCPR.

Apart from the provisions in the ICCPR itself, there are two Optional Protocols to the Covenant which give additional protection. The First Optional Protocol allows victims of human rights violations to be heard. The Human Rights Committee (HRC) has the jurisdiction to receive, consider and hear communications from victims. The Second Optional Protocol to the ICCPR was adopted in 1989⁷⁵ and has one signatory and 86 State parties to it. It demands, amongst other things, the abolishment of the death penalty.

Regarding the ICCPR's enforcement mechanisms, Article 2 (2) provides that State Parties are to take the 'necessary steps ... to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.' State parties to the ICCPR must therefore take steps in their municipal jurisdiction to recognise the acceptance of the Covenant's provisions. In addition to State parties' formal legal adoption of the ICCPR into their municipal law, Article 28 provides for the Human Rights Committee (HRC) to be established for monitoring the implementation of the Covenant.

⁷⁴ United Nations Treaty Collection, Status as at: 31.08.2018, 07:32:44 EDT, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en, accessed: 1 September 2018.

⁷⁵ See UN General Assembly Resolution A/RES/44/128 adopted by the General Assembly on 15 December 1989.

The HRC examines State parties' reports, submitted under Article 40, on the measures they have adopted to give effect to the rights recognised in the Covenant and on the progress made in the enjoyment of those rights. Having examined a State party's report, the HRC issues what are known as Concluding Observations specifying positive and negative aspects of the State party's implementation of the ICCPR and any remedial action the Committee recommends. The HRC further issues General Comments where a specific article or general issue in the ICCPR is analysed in an extensive manner. The aim of such general comment is to clarify the scope and meaning of the provisions of the Covenant.

2.2.1.2 ARTICLE 25 ICCPR AND GENERAL COMMENT NO. 25

Article 25 of the ICCPR states that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through chosen representatives (a), to vote and to be elected at genuine periodic elections (b), and to have access, on general terms of equality, to public service in his or her country (c).

The Human Rights Committee has interpreted 'the conduct of public affairs' in Article 25 (a) as a 'broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers.'⁷⁶ According to Manfred Nowak, the right and opportunity of citizens to take part in the conduct of public affairs formulates a duty for State parties to guarantee, with positive measures, that all formally eligible persons have the actual opportunity to exercise their political rights.⁷⁷ However, he connects this positive duty to ensure the right to vote, and not the right to be elected.

According to the HRC, affirmative actions in order to achieve *de facto* equality more promptly for traditionally disadvantaged groups of the population, such as women or members of ethnic minorities, or for long suppressed political parties, does not qualify as discrimination within the meaning of Article 2, so long as measures are reasonable and temporary. For this reason, Australia withdrew reservation to Article 25 in 1984 and in the *Stalla Costa* case the Committee determined that Uruguay had not violated Article 25

⁷⁶ Human Rights Committee, General Comment No. 25, paras. 12, 26 and 27.

⁷⁷ M Nowak, 'U.N. Convention on Civil and Political Rights: CCPR Commentary' (N.P. Engel, Kehl, 2005), Art. 25, para. 9.

(c). In Concluding Comments on India, the HRC also expressly approved of a constitutional amendment prescribing that women receive at least one third of positions on elected local bodies, as well as the reservation of elected positions ‘for members of scheduled casts and tribes.’⁷⁸ These quotas are measures of positive discrimination designed to ensure political representation for disadvantaged groups. Reasonable measures of positive discrimination are therefore compatible with Article 24 in the context of the right to stand for election and are furthermore harmonious with the specific non-discrimination provisions of the Covenant.⁷⁹

General Comment No. 25 related to the right to participate in public affairs, voting rights and the right of equal access to public service enshrined in Article 25 of the ICCPR. It was adopted by the Committee in its fifty-seventh session in July 1996. In paragraph 24 of the General Comment it is states that State reports should describe the conditions to access to public service positions, any restrictions which apply and the processes for appointment. Reports should further indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.⁸⁰ Notably, the Comment does not refer to affirmative actions or other measures to enhance women’s participation.

2.2.2 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women marked a milestone as the first legally binding international instrument for the protection of women’s rights.⁸¹ As of August 2018, 185 states have ratified the Convention. Not only has CEDAW increased attention to gender issues within the UN human rights framework, it has sparked transnational activism that uses the Convention to impact national policy

⁷⁸ UN doc. CCPR/C/79/Add. 81 (1998), para. 11.

⁷⁹ Joseph, Schultz, Castan, ‘The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (2000), Oxford University Press, 509.

⁸⁰ See General Recommendation No. 25, para. 24, available at: <http://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>, accessed 3 October 2018.

⁸¹ Between 1949 and 1959, the Commission also elaborated the Convention on the Political Rights of Women, adopted by the General Assembly on 20 December 1952, the Convention on the Nationality of Married Women, adopted by the Assembly on 29 January 1957, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 7 November 1962, and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 1 November 1965.

developments.⁸² In 1999 the General Assembly adopted a 21-article Optional Protocol to CEDAW. By ratifying the Optional Protocol, the State party recognises the competence of the Committee on the Elimination of Discrimination against women – CEDAW’s monitoring body – to receive and consider complaints from individuals or groups within its jurisdiction.⁸³ It entered into force in December 2000 and has, as of August 2018, 80 signatories and 109 State parties.⁸⁴

Before outlining the relevant provisions of CEDAW, i.e. Articles 2, 4, and 7, and the treaty body’s interpretations, for the purposes of this dissertation’s research focus, the paragraph below provides a brief overview and background to the Convention’s history, structure and its mechanisms.

2.2.2.1 HISTORY, STRUCTURE AND MECHANISMS

As the Preamble of the Charter of the United Nations reaffirms ‘the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women’, equality of rights for women is one of the basic principles of the United Nations.⁸⁵ The Charter was the first international instrument to refer specifically to human rights and to the equal rights of women and men. The International Bill of Human Rights extended and strengthened the emphasis on women’s rights.

In order to guarantee women the set of rights laid down in the International Bill of Human Rights and other related human rights treaties, the Commission on the Status of Women (CSW) was founded in 1946. The CSW has sought to define and elaborate the general guarantees of non-discrimination in the various human rights instruments from a gender perspective.⁸⁶ Between 1949 and 1959, the Commission produced the Convention

⁸² S Zwingel, ‘From intergovernmental negotiations to (sub)national change’ (2006), *International Feminist Politics* Vol. 7 Issue 3, 400-424.

⁸³ UN Women, ‘Optional Protocol on the Convention on the Elimination of All Forms of Discrimination against Women’, available at: <http://www.un.org/womenwatch/daw/cedaw/protocol/>, accessed 8 August 2018.

⁸⁴ United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en, accessed: 3 October 2018.

⁸⁵ United Nations Charter, Preamble.

⁸⁶ United Nations Entity for Gender Equality and the Empowerment of Women (Un Women), ‘Short History of CEDAW Convention’ (2009), available at: <http://www.un.org/womenwatch/daw/cedaw/history.htm>, accessed 1 September 2018.

on the Political Rights of Women⁸⁷ as well as the Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages⁸⁸. After the adoption of the Declaration on the Elimination of Discrimination against Women (DEDAW) in 1967, which amounted only to a statement of moral and political intent, the CSW decided in 1974 to prepare a single, comprehensive and internationally binding instrument to eliminate discrimination against women.⁸⁹

The text of the Convention on the Elimination of All Forms of Discrimination against Women was prepared by working groups within the Commission during 1976. The Convention was adopted by the General Assembly in 1979 and entered into force in September 1981, after the twentieth member State had ratified it.

It consists of a Preamble and 30 articles that define what constitutes discrimination against women and is often described as an international bill of rights for women. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.⁹⁰

The Committee that, according to Article 17 of CEDAW, oversees the Convention is the Committee on the Elimination of Discrimination Against Women. It is a (U.N.) treaty body which, throughout its years of operation, has held multiple sessions to ensure the rights and rules outlined in CEDAW are being respected, implemented and not violated by the state parties.

The Committee on the Elimination of Discrimination against Women is the body of independent experts that monitors the implementation of the Convention. It consists of 23 experts on women's rights from all around the world. Countries that have become party to the treaties are obliged to submit regular reports to the Committee to track the

⁸⁷ UN General Assembly Resolution A/RES/7/640, adopted by the General Assembly on 20 December 1952.

⁸⁸ UN General Assembly Resolution 1763 A (XVII), adopted by the General Assembly on 7 November 1962.

⁸⁹ UN General Assembly Resolution A/RES/22/2263, adopted by the General Assembly on 7 November 1967.

⁹⁰ United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), 'Overview of the Convention' (2009), available at: <http://www.un.org/womenwatch/daw/cedaw/>, accessed: 1 September 2018.

implementation status of the Convention. During its sessions the Committee considers each State party report and addresses its concerns and recommendations to the State party in the form of concluding observations.⁹¹

In terms of the Optional Protocol to the Convention, the Committee is mandated to: (1) receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and (2) initiate inquiries into situations of grave or systematic violations of women's rights. These procedures are solely applicable where the State concerned has ratified the Optional Protocol. The Committee further drafts general recommendations and suggestions, as Article 21 CEDAW invites it to do, based on the examination of State reports and information that has been received from the State parties. Between 1986 and 2018, the Committee has adopted 37 General Recommendations.⁹²

For the purpose of this dissertation's research focus, General Recommendations No. 23, 25, and 28 and the corresponding CEDAW Articles' provisions will be outlined.

2.2.2.2 ARTICLE 2 AND GENERAL RECOMMENDATION NO. 28

Article 2 of CEDAW focuses on what State parties have to do to in order to eliminate discrimination against women. It is both a general and a concrete provision.⁹³ Article 2 has been further described by the Committee as 'the very essence of the Convention' and as 'crucial to its full implementation'.⁹⁴ Together with Articles 1, 3, 4, 5 (a), and 24, Article 2 sets out the general obligations assumed by State parties. The provision focuses on law and the role of legislation and legal institutions in ensuring that women are not subject to discrimination, whether in law or in practice.⁹⁵ Article 2 provides ways for State parties to implement the provisions of the Convention into their municipal law.⁹⁶ It is further set out that State parties 'agree to pursue by all appropriate means and without

⁹¹ United Nations Entity for Gender Equality and the Empowerment of Women (Un Women), 'Short History of CEDAW Convention' (2009), available at: <http://www.un.org/womenwatch/daw/cedaw/history.htm>, accessed 1 September 2018.

⁹² All Recommendations may be found at:

<https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>, accessed: 28 August 2018.

⁹³ R Oostland, 'Chapter 4: The Principle of Equality' in Westendorp (ed.), *The Women's Convention Turned 30* (2012), pp. 67-95, 67.

⁹⁴ CEDAW General Recommendation 28, paras. 41 and 6.

⁹⁵ A Byrnes 'Article 2 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 2, 72.

⁹⁶ CEDAW General Recommendation 28, para. 1.

delay policy of eliminating discrimination against women'. This general obligation contains important elements that the Committee explicated in its General Recommendation No. 28. According to this, a State party must:

*'immediately assess the de jure and de facto situation of women and take concrete steps to formulate and implement a policy that is targeted as clearly as possible towards the goal of fully eliminating all forms of discrimination against women and achieving women's substantive equality with men. The emphasis is on forward movement, from the evaluation of the situation to the formulation and initial adoption of a comprehensive range of measures to building on those measures continuously, in the light of their effectiveness ad new or emerging issues, towards the Convention's goals.'*⁹⁷

According to the Committee and its General Recommendation, 'Article 2 is crucial to the full implementation of the Convention, since it identifies the nature of the general legal obligation of State parties.'⁹⁸

2.2.2.3 ARTICLE 4 AND GENERAL RECOMMENDATION NO. 25

Article 4, in both its paragraphs, introduces the concept of special measures. In the first paragraph, it refers to temporary special measures (TSMs) to accelerate *de facto* equality for women. The second paragraph makes clear that special measures contained in the Convention, specifically those that aim to protect maternity, 'shall not be considered discriminatory.'⁹⁹ This section will mainly focus on the first paragraph, the temporary special measures to accelerate *de facto* equality for women.

Not all measures directed to improving the situation of women are TSMs. The Committee has drawn attention to this distinction:

'State Parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women

⁹⁷ CEDAW General Recommendation 28, para. 24.

⁹⁸ Ibid, at para. 6.

⁹⁹ Schöpp-Schilling, 'Reflections on a General Recommendation on Article 4 (1) of the Convention on the Elimination of All Form of Discrimination Against Women' in Boereijn, Coomans, Goldschmidt, Holtmaat and Wolleswinkel (eds.), *Temporary Special Measures: Accelerating de facto Equality of Women under Article 4 (1) UN Convention on the Elimination of All Form of Discrimination against Women* (2003), p. 18.

of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary measures.’¹⁰⁰

Raday interprets Article 4 (1) as a closing-gap-tool.¹⁰¹ The gap being the one between the right to equality and its translation into living law and social practice. She further states that Article 4 (1) provides for TSMs as promotional measures to ensure women equal opportunities in all fields of life. It is said to add an additional conceptual tool to the definition and the guarantees of *de facto* equality (that are already provided in Articles 1, 2, 3, and 5 of the Convention). By doing so, Raday states, ‘the Convention recognises the intransigence and persistence of cultural and institutional barriers to women’s equality and the urgency of eliminating them.’¹⁰²

General Recommendation 25, which was adopted in 2004, provides an insight into CEDAW’s understanding of the concept of discrimination against women in Article 4 (1) of the Convention. The Committee explains that the concept of discrimination used in the Convention goes beyond the prohibition of discrimination based on sex and is further concerned with the discrimination of women because they are women. According to the Committee this entails, inter alia, that State parties should focus on the elimination of both direct and indirect discrimination, both in law and practice.¹⁰³

According to the General Recommendation and the Committee’s expressed view that systematic discrimination requires a systematic solution, it further states:

‘A purely formal legal or programmatic approach is not sufficient to achieve women’s de facto equality with men, which the Committee interprets as substantive equality. In

¹⁰⁰ CEDAW General Recommendation 25, para. 9.

¹⁰¹ F Raday ‘Article 4 in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 4.

¹⁰² F Raday ‘Article 4 in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 4, pp. 124-137, 124.

¹⁰³ Westendorp, Waltermann, ‘Chapter 3: The Essence of Discrimination Against Women: An Interpretation by CEDAW and the European Union’ in Westendorp (ed.), *The Women’s Convention Turned 30* (2012), pp. 33-66, 46.

addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results.’¹⁰⁴

The term ‘special measures’ may be functionally analogous to measures taken by States parties which have been variously described as affirmative action, positive action, positive measures, or preferential treatment. However, special measures under Article 4 (1) should be regarded as having an autonomous meaning i.e. that the provision affects the Convention in its entirety and not only special provisions, such as the one in Article 7. It was developed in accordance with the context and principles of the Convention. As a matter of fact, the Committee explicitly avoids the use of terms other than TSMs.

2.2.2.4 ARTICLE 7 AND GENERAL RECOMMENDATION NO. 23

Article 7 addresses State parties’ obligations in realising women’s political rights. These include the right to participate directly in the formulation of public policy as elected representatives (Article 7 (a)) or as appointed public officials (Article 7 (b)), as well as indirectly through voting (Article 7 (a)). Taking these provisions into account, State parties must aim to realise formal, substantive, and transformative equality which encompasses the adoption of temporary special measures under Article 4 (1) to accelerate its realisation. The Committee has elaborated upon the meaning and scope of Article 7 in its official analysis issued in 1994¹⁰⁵ and through adopting General Recommendation No. 23 in 1997.¹⁰⁶

The most detailed explanation of the scope of women’s political and public participation rights is provided in General Comment No. 23 of the Committee on the Elimination of All Forms of Discrimination Against Women, which interprets Article 7 of the Convention.

¹⁰⁴ CEDAW General Recommendation 25, para. 8.

¹⁰⁵ CEDAW Committee ‘Implementation of Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women. Analysis of Article 7 and 8 of the Convention. Report by the Secretariat (30 November 1993)’ UN Doc CEDAW/C/1994/4.

¹⁰⁶ CEDAW General Recommendation 23; Wittkopp ‘Article 7 CEDAW’ in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), pp. 198-219, 198.

Article 7 of the Convention states that women's rights to equal participation in political and public life encompasses the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; to participate in the formulation and implementation of government policy; to hold public office and to perform public functions at all levels of government.

In its General Comment, the Committee notes the slow progress in achieving gender equality and identifies a number of barriers to the equal political participation of women stating that societies in which women are excluded from public life and decision-making cannot be described as democratic.¹⁰⁷

In comparison to other human rights conventions¹⁰⁸, the wording of CEDAW makes it clear that equality before the law is not sufficient. Women's rights, including women's political rights, have to be *ensured*, meaning that women are able to enjoy these rights in practice and not only on paper. Some authors have argued that the wording 'on equal terms with men' confirms that Article 7 is asking for formal/*de jure*, not *de facto* (substantive), equality.¹⁰⁹ In contrast to this, it can be argued that almost all Articles of the Convention contain phrases 'on equal terms with men' and that both the preamble and Articles 2 and 3 make it clear that the Convention is not only concerned with *de jure*, but also *de facto*, substantive equality.¹¹⁰ This understanding of Article 7 has been enhanced through several General and Concluding Observations by the CEDAW Committee. The Committee in its General Recommendation No. 23 explicitly argues that the removal of *de jure* barriers is necessary but not sufficient to achieve full and equal participation of women.¹¹¹

De facto equality is reached when women have substantive equality of opportunity – i.e. where men and women benefit from substantially the same starting positions to participate in public and political life in the way they deem fit.¹¹² Under Article 7, the

¹⁰⁷ CEDAW General Recommendation 23, para. 14.

¹⁰⁸ eg the European Convention on Human Rights.

¹⁰⁹ See Goldschmidt, Verhage, 'Participation in binnen – en buitenlands beleid' in Heringa, Hes and Lijnzaad (eds.) *Het Vrouwenverdrag: een beeld van een verrag* (1994), p. 76.

¹¹⁰ See de Boer 'The Added Value of the Women's Convention and the Dutch Case of the Christian Party' in Westendorp (ed.) *The Women's Convention Turned 30* (2012), pp. 163-185, 169.

¹¹¹ Cedaw General Recommendation 23, para. 15.

¹¹² Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, p. 199.

Committee even employs the concept of equality of results when it asks State parties to adopt quotas.¹¹³ This would not only require the *de jure* ability to vote and stand for election, but the establishment of opportunities where men and women have substantially the same democratic chances in winning a seat in a publicly elected body. This might necessitate unequal treatment of men and women in order to counter historically determined under-representation.¹¹⁴

Transformative equality in the public and political fields implies a real transformation of all public and political institutions as well as society at large, so that gender relations in public and political life are no longer grounded in historically determined male paradigms of power.¹¹⁵ Two spheres of human life and legal systems, the private and the public, have long been viewed as distinct, with men invariably dominant in the public sphere associated with politics, government, economics, and the workplace.¹¹⁶ Although the Committee has challenged this private-public-dichotomy¹¹⁷, the stereotypical view that women belong to the private sphere remains prevalent in many societies.¹¹⁸ Article 7 and 5 of the Convention compel State parties to eliminate stereotypical perceptions of male and female behaviour and roles in the political and public field. The Committee has often highlighted the relationship between stereotypes about women and their under-representation and therefore recommended State parties to undertake measures to change these perceptions of women's role in public life.¹¹⁹

A number of State parties have entered reservations that materially affect the implementation of Article 7. Most concern the obligations under Article 7 (b).¹²⁰ The

¹¹³ See CO Burkina Faso CEDAW/C/GTM/CO/8-9 and CO Guatemala CEDAW/C/BFA/CO/7 (2017).

¹¹⁴ S Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, p. 210.

¹¹⁵ *Ibid.*, at 211.

¹¹⁶ Charlesworth 'Human Rights as Men's Rights' in J.S. Peters and A. Wolper (eds.), *Women's Rights, Human Rights. International Feminist Perspectives* (1995), pp. 103-13, 106.

¹¹⁷ CO Cape Verde CEDAW/C/CPV/CO/6 (2006) para 24 (asking the State to encourage men to undertake their fair share of domestic responsibilities so that women can devote times to public and political life).

¹¹⁸ eg Slovakia explained the low representation of women as due to insufficient social demand for such participation; CO Slovakia CEDAW/C/SVK/CO/4 (2008) para 38.

¹¹⁹ eg CO Uruguay A/57/38, 26th Session (2002), para 27; CO Kazakhstan A/56/38, 24th Session (2001) para 89,90; CO Cuba A/55/38, 23rd Session (2000) para 262.

¹²⁰ Australia on 30 August 2000 concerning combat duties, United Nations, Treaty Series, Vol. 1325, 378; United Kingdom of Great Britain and Northern Ireland, concerning any act done for the purpose of ensuring the combat effectiveness of the Armed Forces of the Crown, United Nations, Treaty Series, Vol. 1423, 412, art A c) as modified on 6 June 2005; Monaco concerning police enforcement duties; New Zealand and the Cook Islands, as to police duties involving serving in situations of violence or threat of violence. The Cook Islands withdrew its reservations on 30 July 2007, CEDAW, CO Cook Islands

CEDAW Committee has urged the respective governments to withdraw them on numerous times.¹²¹ A number of reservations to Article 7 on service in the military have been withdrawn as a result of CEDAW's interventions.¹²²

Article 7 requires State parties to take 'all appropriate measures' to ensure certain political rights to women. In order to ensure these rights, it is argued that State parties must adopt, inter alia, the measures set out in the general Article 2, 4 and 5.¹²³ The measures to be taken range from legislative to administrative and other policy measures including TSMs.

The Committee has consistently recommended State parties to adopt temporary measures as set out in Article 4 in relation to Article 7 of the Convention.¹²⁴ The Committee further recommends that State parties employ a variety of TSMs, ranging from less to more interventionist measures. General Recommendation 23, paragraph 15 and also concluding observations mention recruiting, financially assisting, and training women candidates on leadership and negotiation skills, amending electoral procedures, developing campaigns directed at equal participation, establish benchmarks, setting numerical goals and timetables, and establishing quotas targeting women for election and appointment to public positions like the judiciary or other professional group that plan an essential part in the everyday life of all societies. The Committee not only recommends State parties to employ quota systems, but also criticises the absence or unwillingness to do so.¹²⁵

Under Article 7, the Committee even employs the concept of equality of results when it asks State parties to adopt quotas.¹²⁶ This would not only require the *de jure* ability to vote and stand for election, but the creation of a circumstance where men and women

CEDAW/C/COK/CO/1 (2007) para 5; Israel, concerning the appointment of women to serve as judge in religious courts where it is prohibited by the laws of any of the religious communities.

¹²¹ CEDAW CO Maldives A/56/38 (2001) 24th Session para 131; CO Malaysia CEDAW/C/MYS/CO/2 (2006) para 10; CO Israel CEDAW/C/ISR/CO/3 (2005) para 26.

¹²² New Zealand on 5 July 2007; the Cook Islands on 30 July 2007; Austria on 11 September 2000; Belgium on 8 July 2002; Germany on 10 December 2001; Switzerland on 29 April 2004; Thailand on 1 August 1996.

¹²³ S Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, 214.

¹²⁴ The Committee has in its Cos to the reports of States from the 39th Session, '23 June-10 July 2007' to the 48th Session (17 January-14 February 2011) commended all States to adopt or strengthen TSMs in political and public life.

¹²⁵ CEDAW General Recommendation 23 para. 29; eg CO Belize CEDAW/C/BLZ/CO/3 (2007) para 17.

¹²⁶ See CO Burkina Faso CEDAW/C/GTM/CO/8-9 and CO Guatemala CEDAW/C/BFA/CO/7 (2017).

have substantially the same democratic chances in winning a seat in a publicly elected body. This might necessitate unequal treatment of men and women in order to counter historically determined under-representation.¹²⁷

Wittkopp states in the CEDAW Commentary that it is not clear whether quotas constitute TSMs in accordance with Article 4 (1) of the Convention. At times, quotas are mentioned in the enumeration of TSMs that should be adopted; on other occasions, they are mentioned as separate, presumably because they are assumed permanent.¹²⁸ The Committee states that quotas should not be applied as a ceiling, but as a minimum requirement.¹²⁹ State parties have an obligation to respect, protect and fulfil the rights enshrined in Article 7. The obligation to respect refers to States' own conduct. *De jure* realisation is brought about by enacting pertinent constitutional or legislative provisions. The *de facto* realisation of these rights, however, requires additional legislative measures to abolish indirect discrimination in the public and political field.¹³⁰ State parties have the additional obligation to protect by taking preventive, remedial, punitive, or compensatory measures against interference by third parties, specifically political parties, trade unions, corporations, and the media. They have the obligation to adopt procedures in order to prevent interference with women's rights to participate in public life.

According to the Committee, additional measures are needed besides the *de jure* realisation to secure the effective enjoyment of entitlements under Article 7 – such as the establishment of numerical goals, benchmarks, timetables, and quotas for nomination, selection, and promotion.¹³¹ To enable the Committee to assess State parties' implementation of Article 7 rights effectively, they must include sufficient information and sex-disaggregated data in their reports on women's participation and representation in the various sectors and levels of political and public life.¹³² Further, the CEDAW Committee views numerical goals connected with timeframes and quota systems as a 'measure' in the sense of Article 4 of the Convention.

¹²⁷ S Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, 210.

¹²⁸ *Ibid*, at 215.

¹²⁹ eg CO Burundi CEDAW/C/BDI/CO/\$ (2008) paras. 19, 20.

¹³⁰ S Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, 216.

¹³¹ Sweden Combined sixth and seventh report CEDAW/C/SWE/7 (2008) para 198.

¹³² S Wittkopp 'Article 7 CEDAW' in Freeman, Chinkin and Rudolf (eds.), *The UN Convention on the Elimination of All Form of Discrimination Against Women – A Commentary* (2012), Article 7, p. 217.

2.2.3 BEIJING DECLARATION AND PLATFORM FOR ACTION¹³³

The Beijing Declaration and Platform for Action was adopted during the Fourth World Conference on Women in September 1995. The Platform for Action focuses on 12 areas concerning the implementation of women's human rights and sets out an agenda for women's empowerment. The Declaration and Platform build on the results of the previous three world conferences on women (Mexico City, Copenhagen and Nairobi¹³⁴) but in comparison to the other outcome documents, the conferences and their outcome documents are considered to be significant achievements in explicitly articulating women's rights as human rights.

The Platform for Action includes a series of strategic objectives to eliminate discrimination against women and achieve equality between women and men. It involves political and legal strategies on a global scale based on a human rights framework.

The Declaration and Platform for Action recognise women's unequal share of power and decision-making as one of the 12 critical areas of concern. The Platform for Action outlines concrete actions to ensure women's equal access to, and full participation in, power structures (Strategic Objective G.1), and to increase women's capacity to participate in decision-making and leadership (Strategic Objective G.2).¹³⁵ The Platform further recommends 'positive measures' to combat the low proportion of women among decision makers, including setting 'specific targets' to substantially increase the number of women 'in all governmental and public administration positions.'¹³⁶

One of the arguments used globally in claims for equal participation of women and men and gender quotas is the aforementioned democracy argument. This argument was

¹³³ Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), chap. I, resolution 1, annex I.

¹³⁴ UN General Assembly Resolution A/RES/30/3520, 'World Conference of the International Women's Year', adopted by the General Assembly 15 December 1975; UN General Assembly Resolution A/RES/40/108, 'Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women', adopted by the General Assembly 13 December 1985;

¹³⁵ United Nations Division for the Advancement of Women, Department for Economic and Social Affairs, 'Equal Participation of women and men in decision-making processes, with particular emphasis on political participation and leadership' Expert group meeting, October 2005, Addis Ababa, Ethiopia, available at: <http://www.un.org/womenwatch/daw/egm/eql-men/>, accessed: 1 September 2018.

¹³⁶ The United Nations Fourth World Conference on Women, Beijing, China, September 1995, Platform for Action, Chapter G, 'Women in Power and Decision-Making', paras. 186 and 190.

furthermore included in the Beijing Platform for Action.¹³⁷ According to Dahlerup, the democracy argument implies that ‘only the full inclusion of women will make democracy real, and that gender parity signifies that a country is modern and democratic.’¹³⁸ Article 181 of the Platform for Action states: ‘Achieving the goal of equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning.’¹³⁹

Subsequent reviews of the implementation of the Beijing Declaration and Platform for Action have revealed that although significant progress has been made in some areas of women’s human rights, ‘discriminatory legislation as well as harmful traditional and customary practices and negative stereotyping of women and men still persist’.¹⁴⁰ Particularly, this is can be observed in family, civil, penal, labour, and commercial laws or codes, or administrative rules and regulations.¹⁴¹ The 2005 and 2010 reviews of the Platform further concluded that *de jure* and *de facto* equality had not been achieved in any country in the world.¹⁴² The 2010 review noted that even where legal reforms had taken place, they were often ineffectively enforced.¹⁴³ In the last review from 2015, the 20-year-review, it is claimed that despite a steady increase in women’s political representation and participation in parliaments, women remain significantly under-represented at the highest levels of political participation as well as across the public and private sector.¹⁴⁴ The summary report further emphasises the persistence of discrimination, gender bias, threat of violence, harassment and intimidation in political institutions as a contributing factor to the low levels of women’s political participation.¹⁴⁵

2.2.4 THE DEVELOPMENT GOALS

Development today, as Jahan argues, has brought outstanding benefits to people all around the world who have gained in terms of education, health and income. Nevertheless, it is imperative for gender equality discussions to focus on the gendered

¹³⁷ D Dahlerup, ‘Has Democracy Failed Women?’ (2018), Polity Press, Cambridge, p. 17.

¹³⁸ Ibid.

¹³⁹ Beijing Platform for Action, 1995.

¹⁴⁰ UN General Assembly Resolution S-23/3, annex. Para. 27.

¹⁴¹ OHCHR, ‘Women’s Rights are Human Rights’ (2014), available at:

<https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>, accessed 3 October 2018.

¹⁴² E/2010/4-E/CN.6/2010/02, paras. 307-210.

¹⁴³ Ibid.

¹⁴⁴ UN Women, ‘The Beijing Declaration and Platform for Action Turns 30 – Summary Report’ (2015).

¹⁴⁵ Ibid.

nature of development and challenge the capitalist paradigm of international development that creates and recreates gender disparities.¹⁴⁶

The UN General Assembly adopted two resolutions in the past 20 years with specific goals, which, amongst other things, promote the achievement of gender equality and women's empowerment. The first resolution consists of the Millennium Development Goals (MDGs)¹⁴⁷, the subsequent resolution of the Sustainable Development Goals (SDGs)¹⁴⁸.

2.2.4.1 MILLENNIUM DEVELOPMENT GOALS

The Millennium Development Goals were adopted by the United Nations General Assembly in September 2000. The MDGs are part of a resolution and therefore constitute non-binding policy.

Gender equality and women's empowerment is the third of eight MDGs. Its last sub-indicator for monitoring progress on gender equality and women's empowerment relates to the number of seats held by women in national parliaments. It moves the focus of empowerment into the arena of politics, and the struggle for participation and representation in decision-making bodies and structures.¹⁴⁹

2.2.4.2 SUSTAINABLE DEVELOPMENT GOALS

The Sustainable Development Goals (SDGs) were adopted by the United Nations General Assembly in September 2015, 15 years after the adoption of the MDGs.

The SDGs are 17 goals with 169 targets that all 191 UN Member States have committed to try to achieve by the year 2030.¹⁵⁰ The new agenda, which builds on the

¹⁴⁶ Jahan, 'Institutional Mechanisms for the Advancement of Women' United Nations Division for the Advancement of Women, Paper Presentation (March 1999), New York, USA.

¹⁴⁷ United Nations General Assembly Resolution 55/2 'United Nations Millennium Declaration', U.N. Doc. A/RES/55/2, adopted on 18 September 2000.

¹⁴⁸ United Nations General Assembly Resolution 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development', U.N. Doc. A/RES/70/1, adopted on 25 September 2015.

¹⁴⁹ Kabeer, 'Gender equality and women's empowerment: A critical analysis of the third millennium development goal 1' (2010), *Gender & Development*, 13:1, pp. 13-24, 21.

¹⁵⁰ See United Nations General Assembly Resolution 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development', U.N. Doc. A/RES/70/1, adopted on 25 September 2015.

MDGs, aims to be relevant to all countries and focuses on structural solutions to meet the needs of women, children and the poorest, most disadvantaged people.

Goal 5 sets out the achievement of gender equality and empowerment of all women and girls. Target 5.5 further states that States must ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life. According to 5.5.1 and 5.5.2, leading indicators could be the proportion of seats held by women in national parliaments and local governments as well as the proportion of women in managerial positions.

2.3 REGIONAL LEGAL FRAMEWORK

As this dissertation will analyse the impact of electoral gender quotas on the basis of three case studies, Rwanda, Uganda, and France, it is crucial to outline the corresponding regional legal frameworks, in the African and European systems. The outline will be brief and focuses on relevant provisions only.

2.3.1 AFRICA

The African human rights and more specifically women's rights system consists of three main legal frameworks, the African Charter on Human and Peoples' Rights (Banjul Charter), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the African Charter on Democracy, Elections and Governance, and the Charter of the African Union (AU Charter).

The African Charter on Democracy, Elections and Governance was adopted in 2007 and entered into force in 2012. As of September 2018, it has 46 signatory State parties. Both, Rwanda and Uganda have signed the treaty. In contrast to Uganda, which has not ratified the Charter, Rwanda ratified it in 2010.¹⁵¹ Provisions relevant to this dissertation include Articles 3, 8, and 29. Article 3 sets out the principle of the Charter. Amongst other these include:

'3. Promotion of a system of government that is representative;

¹⁵¹ African Union, List of countries which have signed, ratified/acceded the African Charter on Democracy, Elections and Governance, 21/09/2018, available at: https://au.int/sites/default/files/treaties/7790-sl-african_charter_on_democracy_elections_and_governance.pdf, accessed 26/12/2018.

6. Promotion of gender equality in public and private institutions

11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given status under national law.'

Article 8 sets out that State parties 'shall eliminate all forms of discrimination, especially those based on political opinion, gender ...'. Further, it also calls State parties to adopt legislative and administrative measures to guarantee the rights of women. Regarding the role of women in a democracy, Article 29 explicitly mandates State parties to create conditions for 'full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.' Additionally, according to Article 29 (3), State parties are to take 'all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all level, including legislatures.' Although the Charter on Democracy, Elections and Governance does not explicitly name affirmative measures such as quotas, these can be read into Article 29, in accordance with Articles 3 and 8.

The Banjul Charter was adopted in 1981, entered into force in 1986 and has been ratified by 54 States as of July 2017.¹⁵² Provisions that are relevant to this dissertation include Articles 18, 19, and 47. According to Article 18 (3), 'the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of woman and the child as stipulated in international declarations and conventions.' Article 19 states that all peoples shall be equal. The Banjul Charter was criticised for the omission of women's rights, despite the fact that women brought issues on gender inequalities to the African agenda through their participation in liberation struggles, and also for the emphasis given to cultural values, which appeared to contradict norms regarding women's rights.¹⁵³ The adoption of the Maputo protocol sought to address these omissions.¹⁵⁴

¹⁵² African Union, List of countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights, 15/06/2018, available at: https://au.int/sites/default/files/treaties/7770-sl-african_charter_on_human_and_peoples_rights_2.pdf, accessed 26/12/2018.

¹⁵³ O Martin, 'The African Union's Mechanisms to Foster Gender Mainstreaming and Ensure Women's Political Participation and Representation' (2013), International IDEA, 12.

¹⁵⁴ Ibid.

The Maputo Protocol was adopted in July 2003 and came into effect in 2005. As of October 2018, the Protocol has been ratified by 40 States of the 53 AU Nations.¹⁵⁵ Both Rwanda and Uganda became State parties to the Protocol in 2004 and 2010 respectively.¹⁵⁶ According to Article 2 of the Maputo Protocol, ‘State parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.’ Therefore Article 2 suggests that State parties shall enact and implement appropriate legislative and/or regulatory measures (b)), integrate a gender perspective in their policy decisions, legislation, and development plans (c)), and take corrective and positive actions in areas, where discrimination against women *de jure* and *de facto* continues to exist (d)).

2.3.2 EUROPE

The most relevant European frameworks with regards to this dissertation’s focus are the European Convention on Human Rights (ECHR), Article 2 and 3 of the Treaty on European Union (TEU), and the Treaty on the Functioning of the European Union (TFEU). The two latter treaties are mostly referred to as ‘*the Treaties*’ but for the sake of clarity this term will not be used.

The European Convention on Human Rights sets forth a number of fundamental rights and freedoms, such as the right to life, prohibition of torture, and the right to a fair trial, amongst others. More rights are granted by the additional protocols to the Convention. As of December 2018, 47 States including France ratified the Convention.¹⁵⁷ The most relevant provision is the one prohibiting discrimination in Article 14. According to this provision, the rights and freedoms ensured by the Convention ‘shall be secured without discrimination on any ground such as sex, race, colour, language, religion’, amongst other grounds.

The TEU has significant provisions in Articles 2 and 3. According to Article 2 the Union is founded on the values of respect for human dignity. These values are further

¹⁵⁵ African Union, List of countries which have signed, ratified/acceded to the Protocol of the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 20/10/2018, available at: https://au.int/sites/default/files/treaties/7783-sl-protocol_to_the_african_charter_on_human_and_peoples_rights_on_the_rights_of_women_in_africa_7.pdf, accessed: 26/12/2018.

¹⁵⁶ Ibid.

¹⁵⁷ Council of Europe, Treaty Office, Chart of signatures and ratification of Treaty 005 – Convention for the Protection of Human Rights and Fundamental Freedoms, 27/12/2018.

common to Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail. Furthermore, the Union shall combat social exclusion and discrimination, and promote equality between women and men (Article 3 (3)).

According to the TFEU, the Union shall aim to eliminate inequalities, and to promote equality between men and women (Article 8). Further, it expects State parties to ensure full equality in practice between men and women in working life. The principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocation or to prevent or compensate for disadvantages in professional careers (Article 157 (4)).

In comparison to the African framework, the European Conventions do not explicitly promote gender quotas for decision-making bodies in legislative offices. One reason for this might be that the European treaties and conventions are older and do not take gender into account, when naming grounds for discrimination. In contrast to the European system, the African human rights system is contemporary and informed by conflicts such as the Rwandan genocide. Nonetheless, the lack of explicit encouragement or legal basis for such affirmative actions in the European system, does not preclude reading into the named provisions.

2.4 CONCLUSION

The Human Rights Commission (HRC) refers to affirmative actions in order to achieve gender equality in political decision-making bodies and refers to CEDAW provisions and the CEDAW Committee's General Recommendations in its General Comments.¹⁵⁸ Positive State obligations are largely not included, although the commentary of the ICCPR and General Comments address systematic discrimination within the public and political sphere (particularly for elected offices) and indicate tools for its eradication, such as affirmative legal measures. In contrast to CEDAW, no positive obligations can be read out of Article 25 regarding a State parties' duties. The HRC has

¹⁵⁸ M Nowak, 'U.N. Convention on Civil and Political Rights: CCPR Commentary' (N.P. Engel, Kehl, 2005), Art. 25, para. 22.

not yet changed this traditional interpretation of Article 25 of the ICCPR, although one might read its references to CEDAW and the General Recommendations as an indication for future modifications.

In contrast to the ICCPR and the work of the ICCPR's treaty body, CEDAW moved the right of political participation another step towards *de facto* equality by affirming the obligation of State parties to take affirmative action to accelerate the participation of women in politics and their representation in other public decision-making bodies. Through Article 7 and the Committee's interpretations via General Recommendation No. 23 and its Concluding Observations to State parties, it is clear that CEDAW promotes the use of electoral gender quotas to gain *de facto* / substantive equality for women in public offices or more generic, in the public field. Under Article 7, State parties to CEDAW have the obligation to ensure the establishment of substantive equality within the political life, and therefore within legislative decision-making bodies and women's access to them through elections. Nevertheless, CEDAW recommends quotas as a temporary special measure, rather than a permanent policy or national law.

Two spheres of human life and legal systems, the private and the public, have long been viewed as distinct, with men invariably dominant in the public sphere associated with politics, government, economics, and the workplace.¹⁵⁹ Although the CEDAW Committee has challenged this private-public-dichotomy¹⁶⁰, the stereotypical view that women belong to the private sphere remains prevalent in many societies.¹⁶¹ Article 7 and 5 of the Convention compel State parties to eliminate stereotypical perceptions of male and female behaviour and roles in the political and public field. The Committee has often highlighted the relationship between stereotypes about women and their under-representation and therefore recommended State parties to undertake measures to change these perceptions of women's role in public life.¹⁶²

¹⁵⁹ Charlesworth 'Human Rights as Men's Rights' in J.S. Peters and A. Wolper (eds.), *Women's Rights, Human Rights. International Feminist Perspectives* (1995) 103-13, 106.

¹⁶⁰ CO Cape Verde CEDAW/C/CPV/CO/6 (2006) para 24 (asking the State to encourage men to undertake their fair share of domestic responsibilities so that women can devote times to public and political life).

¹⁶¹ eg Slovakia explained the low representation of women as due to insufficient social demand for such participation; CO Slovakia CEDAW/C/SVK/CO/4 (2008) para 38.

¹⁶² eg CO Uruguay A/57/38, 26th Session (2002), para 27; CO Kazakhstan A/56/38, 24th Session (2001) para 89,90; CO Cuba A/55/38, 23rd Session (2000) para 262.

CEDAW's provisions and its interpretations through General Recommendations and Concluding Observations by the Committee are further strengthened by non-binding General Assembly Resolutions such as the United Nations Millennium Declaration, the United Nations Agenda for Sustainable Development and the Beijing Declaration and Platform for Action.

Apart from international provisions, treaties and conventions, the case study countries have to take into account the relevant regional legal frameworks. These frameworks, especially in Africa, promote the empowerment of women in decision-making bodies and ask State parties to ensure the equality of men and women in every aspect of the State.

3.1 INTRODUCTION

This chapter will provide background information on the three countries serving as case studies – Rwanda, Uganda, and France. Furthermore, each country's specific quota regulation, the status quo of women's participation, and an introduction to the quotas' potential impact on women's lives and women's substantive representation will be discussed. Moreover, the chapter's purpose and aim lie in the portrayal of the existing legislation in the aforementioned three countries.

This chapter will analyse the connection between women's interests, their representation, and substantive gender equality, linking them to electoral gender quotas for legislative decision-making bodies. In order to measure the impact of each country's quota regulation on the representation of women, I will reference latest country reports to the CEDAW Committee and the Committee's Concluding Observations. Conclusions can also be drawn from the content of national plenary debates.¹⁶³

Quotas for women entail that women must constitute a certain number or percentage of the members of a body, whether it is a candidate list of a political party, a parliamentary assembly, a committee, or the executive, as stated by Dahlerup.¹⁶⁴ Quotas aim to increase women's representation in publicly elected or appointed institutions such as governments, parliaments and local councils. Dahlerup argues that 'they draw legitimacy from the discourse of exclusion, according to which the main reasons for women's under-representation are the exclusionary practices of the political parties and the political institutions at large.' Ideally, quotas force those who nominate and select, to start recruiting and giving women a chance to equally participate in the political landscape.¹⁶⁵

¹⁶³ See for Uganda: A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304

¹⁶⁴ D Dahlerup, 'Increasing Women's Political Representation: New Trends in Gender Quotas' in *Women in Parliament: Beyond Numbers*, International Institute for Democracy and Electoral Assistance (2005), pp. 141-174, 144.

¹⁶⁵ *Ibid.*

The concept of ‘substantive representation’, as noted by Drude Dahlerup, ‘addresses the relationship between the represented and their representatives’.¹⁶⁶ Regarding the analysis of substantive representation, this dissertation will make use of the perspective used by Franceschet. Her framework consists of process-oriented and outcome-oriented representation. According to Franceschet, process-oriented presentation occurs when a woman legislator performs activities on behalf of women. Outcome-oriented representation refers to the kind of representation which effectively results in specific outcomes, like policies enhancing women’s rights and lives.¹⁶⁷ When analysing each country-case study, this dissertation will focus on both, the process-oriented and the outcome-oriented representation as an indicator for substantive representation of women and the potential impact of gender quotas.

The following sections will outline the quota system for legislative decision-making bodies in Rwanda, Uganda, and France, and also preclude some information on each country’s political-historical background.

3.2 RWANDA

This section will give an overview of the current and past situation in Rwanda regarding women’s participation in the highest legislative decision-making bodies. It will analyse the impact of Rwandan gender-quotas on the representation of women in the country.

The Rwandan government has pursued three kinds of quotas for women: reserved seats (1), party quotas (2), and legislative quotas (3). Party quotas have been pursued by all political parties since 1999, whereas reserved seats and legislative quotas were instituted by the 2003 Rwandan constitution. The Rwandan case is relevant for this study and the debate about gender quotas, as the country is ‘frequently cited as a success story in terms of the impact of quotas.’¹⁶⁸ In 2008, Rwanda became the first and only country in the world with a majority-female, national legislative body. In September 2018,

¹⁶⁶ D Dahlerup, ‘Has Democracy Failed Women?’ (2018), Cambridge: Polity Press, p. 95.

¹⁶⁷ S Franceschet, JM Piscopo, ‘Gender Quotas and Women’s Substantive Representation – Lessons from Argentina’ (2008), *Politics and Gender* (4), pp. 393-425, 396.

¹⁶⁸ E Burnet, ‘Women’s Empowerment and Cultural Change in Rwanda’ in Franceschet, ML Krook, JM Piscopos (eds.), *The Impact of Gender Quotas*, S (2012), pp. 190-207, 190 f.

women won 61.3 per cent of seats in Rwanda's lower house of Parliament.¹⁶⁹ Rwanda ranks first among all countries, in terms of the number of women elected to parliament.

3.2.1 THE POLITICAL-HISTORICAL BACKGROUND

First and foremost, a portrayal of the Rwandan background is indispensable to understand why Rwanda is where it is today when it comes to women's participation in legislative bodies. This includes the 1994 genocide, which 'more than any other event in recent Rwandan history' shaped the country's current political landscape, as Schwartz notes.¹⁷⁰

In the Rwandan genocide almost one million Rwandans, primarily Tutsi and politically-moderate Hutu, lost their lives in massacres. The genocide took place between April and July 1994 and occurred in the middle of the civil war which began in 1990 when the Rwandan Patriotic Front (RPF) – a then rebel movement based in Uganda, invaded Rwanda.¹⁷¹

Longman argues that in comparison to the violence against the Tutsi in the early 1960s and in 1973, the 1994 genocide targeted specifically women.¹⁷² The violence perpetrated in 1994 was much more widespread than anything known in Rwanda before, partly because of the strong ideology which was used to encourage this violence and the elimination of limits that had previously protected women.¹⁷³ Taylor claims that this widespread violence represented a backlash against the social and political advances that women had made in the previous decade, concluding that the genocide has a clearly gendered aspect.¹⁷⁴ It is within this context than one has to analyse the impact of electoral gender quotas on the Rwandan society and more specifically on Rwandan women.

¹⁶⁹ Inter-Parliamentary Union (IPU), 'Women in national parliaments' World Classification (2018), available at: <http://archive.ipu.org/wmn-e/classif.htm>, accessed 12 September 2018.

¹⁷⁰ H Schwartz, 'Women's Representation in the Rwandan Parliament' (2004), Department of Political Science, Gothenburg University, Sweden, 8.

¹⁷¹ Devlin, Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008), *Parliamentary Affairs* Vol. 61, No. 2, pp. 237-254, 241.

¹⁷² T Longman, 'Rwanda: Achieving Equality or Serving an Authoritarian State?', in *Women in African Parliaments*, G Bauer, HE Britton (eds.), 2006, pp. 133-151, 136.

¹⁷³ *Ibid*, at 137.

¹⁷⁴ Taylor, 'Sacrifice as Terror: The Rwandan Genocide' (1999), Oxford.

The genocide ended in July 1994, when the RPF seized the capital Kigali. Shortly after this, the RPF named a transitional government, the ‘Government of National Unity’ (GNU).¹⁷⁵ The GNU continued until 1998, when the government launched a transition called ‘democratisation.’ In 2003, the new constitution was approved through a national referendum followed by presidential and parliamentary elections in August and September of the same year. As a result of these elections, Rwanda displaced Sweden as the country with the world’s highest percentage of women in its lower or single house of parliament.¹⁷⁶ The elections were criticised by international observers as falling short of normal standards of ‘free and fair’.¹⁷⁷ Freedom House¹⁷⁸ even classified Rwanda as ‘Not Free’ and branding it as a non-electoral democracy in accordance with their criteria.¹⁷⁹

The Rwandan political system is nominally multi-party, but in practice one can observe a single-party system with the RPF functioning as a state party. Schwartz notes that ‘while the Parliament is majority female, most of the women are card-carrying members of the RPF or its coalition partners.’¹⁸⁰ She further states: ‘Women elected to seats reserved for women were nominated, or at least vetted, by the RPF via the Forum of Political Parties, an umbrella organization that all political parties must join.’¹⁸¹ Schwartz and other authors conclude that many of these women owe allegiance to the RPF.¹⁸² This might indicate that the Rwandan experiences may not be comparable as a case study within this research. However, Devlin and Elgie suggest that Rwanda is a useful case study to examine by which conclusions can still be reliably drawn. They argue that ‘even though Rwanda may be an authoritarian society, it is one in which women

¹⁷⁵ E Burnet, ‘Women Have Found Respect: Gender Quotas, Symbolic Representation and Female Empowerment in Rwanda’ (2011), Georgia State University, p. 7 f.

¹⁷⁶ T Longman, ‘Rwanda: Achieving Equality or Serving an Authoritarian State?’, in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 133-151, 133.

¹⁷⁷ EU Election Observation Mission (EOM) to Rwanda-2003, available at: http://ec.europa.eu/comm/external_relations/human_rights/eu_election_ass_observ/rwanda/prelim.htm#, accessed: 9 November 2018.

¹⁷⁸ Freedom House is a NGO that conducts research and advocacy on democracy, political freedom, and human rights. The organisation releases an annual ‘Freedom in the World report’, which assesses each country’s degree of political freedoms and civil liberties.

¹⁷⁹ Freedom House rated Rwanda as ‘Not Free’ in its 2010 annual report, *Freedom in the World*.

¹⁸⁰ H Schwartz, ‘Women’s Representation in the Rwandan Parliament’ (2004), Department of Political Science, Gothenburg University, Sweden, 8.

¹⁸¹ *Ibid.*

¹⁸² H Schwartz, ‘Women’s Representation in the Rwandan Parliament’ (2004), Department of Political Science, Gothenburg University, Sweden, 8; T Longman, ‘Rwanda: Achieving Equality or Serving an Authoritarian State?’, in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 133-151.

have a considerable and active presence'¹⁸³, and, women's representation in Rwandan parliament has increased as rapidly as never seen before. I agree with Devlin and Elgie that Rwanda does provide a reliable case for analysing the effect of women's representation in legislative decision-making bodies on policy outcomes and women's substantive representation.¹⁸⁴

While the 1994 genocide and the civil war devastated women's groups, with many of its leaders and members dead or in exile, Longman states that the 'intense problems facing women in the post-conflict period inspired women's organisations to assume an important social role.'¹⁸⁵ Various women's groups have enjoyed the growing public influence which translated itself into public political power. Working closely with the Forum for Women Parliamentarian (FWP), women's civil society organisations pushed successfully for the adoption of laws banning discrimination against women as well as for an important reform of inheritance laws which grant women the right to inherit their husbands' property. Longman argues that the involvement of women in Rwandan civil society has been a major reason for the expansion of women's representation in Rwanda for two reasons: first, activism in civil society is an important basis for entering politics, and second, women's groups have actively promoted the legitimacy and importance of women holding office.¹⁸⁶

3.2.2 STATUS QUO: QUOTA LAWS AND WOMEN'S PARTICIPATION

Post genocide, the RPF came into power with a strong commitment to women's rights and to women's representation in general. During the GNU (1993-2003) the number of women in parliament grew steadily. Prior to the 2003 election, women made up 25.7 per cent of the Rwandan parliament.¹⁸⁷

In 2003, Rwanda adopted a new constitution. The preamble of the constitution cites human rights instruments and conventions to which Rwanda is a signatory, including

¹⁸³ C Devlin, R Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008), *Parliamentary Affairs* Vol. 61, No. 2, pp. 237-254, 24.

¹⁸⁴ *Ibid*, at 24 f.

¹⁸⁵ T Longman, 'Rwanda: Achieving Equality or Serving an Authoritarian State?', in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 133-151, 137-139.

¹⁸⁶ *Ibid*.

¹⁸⁷ *Ibid*, at 144.

CEDAW.¹⁸⁸ Within the constitution there is a mandatory minimum 30 per cent gender quota in all decision-making bodies (Article 9). The constitution explicitly recognises the responsibility of political organisations to ‘participate in the education of citizens on politics based on democracy and election and operate in such a manner as to ensure that women and men have equal access to elective offices’.¹⁸⁹ Article 76 stipulates that 24 of the 80 members of the Chamber of Deputies shall be female.¹⁹⁰ Article 82 sets forth the quota of 30 per cent women in the Senate and states that ‘the organs responsible in the nomination of Senators shall take into account national unity and equal representation of both sexes.’¹⁹¹

The Senate is an appointed body, with members selected by provincial councils, the political parties, the universities, and the president ‘to ensure the representation of historically marginalised communities.’ In comparison, the 24 seats in the lower house (Chamber of Deputies) reserved for women are contested in ‘women-only election’, meaning only women can stand for election and further only women can vote. In addition to the quota-secured 24 seats, 14 additional women were elected in openly-competed seats during 2003. In 2008, women made up 56 per cent of the Chamber of Deputies, whereas in 2013, 64 per cent of the Chamber of deputies were women. After the recent 2018 election, the parliament now consists of 61 per cent women.¹⁹² In comparison, the global average of women representatives in the single or lower house of parliament is 24 per cent.¹⁹³

Kanakuze, who was part of the 12-member constitutional commission where she represented civil society, called Rwanda’s new constitution a ‘major watershed’ for women.¹⁹⁴ Nonetheless, ‘it is important to note, that although the constitution is very progressive, in terms of equal rights, gender equality, and women’s representation, it is

¹⁸⁸ E Powley, ‘The Legislative Priorities of Rwandan Women Parliamentarians’ (2008), The Initiative for Inclusive Security, Hunt Alternatives Fund, 8.

¹⁸⁹ Article 52 of the Rwandan Constitution, Amendment 2 of 8 December 2005.

¹⁹⁰ H Ballington, ‘The Implementation of Quotas: African Experience’ (2004), for IDEA, p. 73.

¹⁹¹ Ibid.

¹⁹² UN Women, ‘Revisiting Rwanda five years after record-breaking parliamentary elections’, available at: <http://www.unwomen.org/en/news/stories/2018/8/feature-rwanda-women-in-parliament>, accessed 12 November 2018.

¹⁹³ IPU, Women in National Parliaments, available at: <http://archive.ipu.org/wmn-e/world.htm>, accessed 12 November 2018.

¹⁹⁴ J Kanakuze, ‘Quotas in Practice: The Challenge of Implementation and Enforcement in Rwanda’ (2003), IDEA.

limited in other important ways', as Powley emphasises. Concerns that have been raised include those about restrictions on freedom of speech, around ethnicity/ethnic diversity, as well as the seven-year presidential term.¹⁹⁵

Despite the authoritarian functioning of the RPF, it has mainstreamed women from the beginning in many of its policies.¹⁹⁶ This includes the creation of the Ministry of Gender and Women Promotion in 1999. According to the Rwandan government 'it was set up to focus on gender equality and women's empowerment with a special focus on mainstreaming gender in different institutions, particularly Government ministries.' In 2005 the Ministry was renamed the 'Ministry of Gender and Family Promotion' with the mission on gender equality, family promotion, and child protection. Although the ministry's name changed throughout the years, its goal to promote gender equality and its special focus on mainstreaming gender in different Government institutions, remained the same, as claimed by the Rwandan Government.¹⁹⁷ Nonetheless, the change of name could have had negative implications for women as it dilutes the focus of the Ministry from women only issues/interests to those of family, emphasising the existence of the private-public dichotomy.

3.2.3 POLICIES AND LAWS POST-CONFLICT

Rwanda is frequently cited as a success story when it comes to the effect and impact of gender quotas on women's life. In contrast, Devlin and Elgie argue that, although women's issues in Rwanda are now more easily raised than before, the increased representation of women has had only 'little effect on policy outputs.'¹⁹⁸ I argue that this view is not applicable any longer and that the increase of women in the Rwandan political landscape has led to change that ultimately has the goal of substantive gender equality and the promotion and protection of women's rights. This will be demonstrated by

¹⁹⁵ E Powley, 'The Legislative Priorities of Rwandan Women Parliamentarians' (2008), The Initiative for Inclusive Security, Hunt Alternatives Fund, 9. See also: Longman, 'Rwanda: Achieving Equality or Serving an Authoritarian State?', in *Women in African Parliaments*, Bauer, Britton (eds.), 2006; C H Hogg, 'Women's Political Representation in Post-Conflict Rwanda: A Politics of Inclusion or Exclusion?' (2009), *Journal of International Women's Studies* Vol. 11, p. 34.

¹⁹⁶ E Burnet, 'Women Have Found Respect: Gender Quotas, Symbolic Representation and Female Empowerment in Rwanda' (2011), Georgia State University, 9.

¹⁹⁷ Ministry of Gender and Family Promotion, 'Historical Background of The Ministry of Gender and Family Promotion', January 2018, available at: <http://www.migeprof.gov.rw/about-us/history/>, accessed 14 November 2018.

¹⁹⁸ C Devlin, R Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008), *Parliamentary Affairs* Vol. 61, No. 2, pp. 237-254, 237.

making reference to laws and policies, adopted by the Rwandan government in the past two decades and by referencing recent Country Reports to the CEDAW Committee and the Committee's corresponding Concluding Observations.

Various pieces of legislation have extended and broadened the rights of women since the 1994 genocide. These include the achievement of Category One status for rape or sexual torture victims in the post-genocide prosecution guidelines (1996)¹⁹⁹, a law extending the rights of pregnant and breast-feeding mothers in the workplace (1997), a law on the protection of children from violence (2001)²⁰⁰, the Inheritance Act (2003), and the gender-sensitive Rwandan constitution itself (2003)^{201.202}. Although these laws were passed when the number of women in Rwandan parliament was smaller than today and pre-quota, they are still noticeable legal achievements in post-conflict Rwanda.

The 'Law on the Prevention, Protection and Punishment of Any Gender-Based Violence'²⁰³ is the first law post-quota which promotes women's rights. Among other things, it prohibits polygamy and provides a legal definition of rape of an adult woman, although marital rape is not on the same level as rape outside of marriage. Further, the land policy adopted in 2004 was complemented in 2013 by the new law governing land in Rwanda. Article 4 prohibits all forms of discrimination based on sex in relation to access to land and the enjoyment of real rights. Another law was passed in 2009 regulating labour in Rwanda and prohibiting discrimination on the grounds of gender, marital status or family responsibilities. Discriminatory provisions towards women in the family law, in the commercial code of 1988, and in the Penal Code were revoked.

Furthermore, the Rwandan government introduced national machineries for the advancement of women such as the Ministry of Gender and Family Promotion, the

¹⁹⁹ Rwanda: Organic Law No. 08/1996 of 1996 on the Organization of Prosecutions for Offenses constituting the Crime of Genocide or Crimes Against Humanity committed since 1 October 1990.

²⁰⁰ Rwanda: Law No. 27/2001 of 2001 Relating to Rights and Protection of the Child Against Violence, 28 April 2001.

²⁰¹ The Constitution stipulates in the preamble its commitment to 'ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development'. Republic of Rwanda Constitution 2003, Official gazette special number 04/06/2003.

²⁰² C Devlin, R Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008), *Parliamentary Affairs* Vol. 61, No. 2, pp. 237-254, 249.

²⁰³ Rwanda: Law No. 59/2008 of 2008 on Prevention and Punishment of Gender-Based Violence, 10 September 2008.

Gender Monitoring office, the National Women Council, and the National Commission for Children. The National Gender Policy was approved by the Government in 2010. Its Strategic Plan institutionalised the National Gender Cluster as a coordination mechanism that aims at supporting the Rwandan Government in promoting gender equality, as noted in the Government's 7th-9th Periodic Report to the CEDAW Committee. The first Gender Cluster Strategic Plan 2010-2012 contained provisions of CEDAW and the Beijing Platform for Action. Further, the Girls Education Policy, the Agriculture Sector Gender Mainstreaming Strategy, the Media Gender Mainstreaming Strategy, and the Rwanda National Police Gender Mainstreaming policy were introduced. In 2012, Rwanda also developed a five year (2012-2017) National Implementation Plan of the Beijing Declaration and Platform for Action. A report on the implementation of the Declaration and the Platform for Action was submitted to the United Nations General Assembly in 2014.²⁰⁴

Leaders of Pro-Femmes, one of the most influential women's groups and representation of women's rights in Rwandan civil society, identified the presence of women in parliament and the FWP as an important factor in getting relevant legislation passed. The FWP helped as a networking space which strengthened the power of women parliamentarians, as they were able to act as a bloc.²⁰⁵

3.2.4 SUBSTANTIVE GENDER EQUALITY THROUGH REPRESENTATION? A RWANDAN CASE-STUDY

Devlin and Elgie argue that the literature on the impact of women's greater representation in the Rwandan parliament provides a contrasting picture of the impact of increased women's representation.²⁰⁶ Powley explicitly draws attention to the early legislative achievements of women representatives, including the revoking of laws that prohibited women from inheriting land.²⁰⁷ Powley, together with Pearson, also demonstrates the impact of women representatives on the drafting of the 2006 bill which

²⁰⁴ Report, 7-8

²⁰⁵ T Longman, 'Rwanda: Achieving Equality or Serving an Authoritarian State?', in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 133-151, 145.

²⁰⁶ C Devlin, R Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008), *Parliamentary Affairs* Vol. 61, No. 2, pp. 237-254, 241.

²⁰⁷ E Powley, 'Rwanda: Women Hold Up Half the Parliament' in A. Karam and J. Ballington (eds.), *Women in Parliament: Beyond Numbers*, IDEA, revised ed., p. 160.

addresses gender-based violence.²⁰⁸ In contrast to Powley, Longman questions whether women have really achieved much in the authoritarian political environment of Rwanda. Nonetheless, he also acknowledges that women representatives have been influential in passing reforms in favour of women's interests, such as laws relating to inheritance, discrimination, and rape.²⁰⁹ Burnet finds that gender quotas in Rwanda have 'generated impacts far beyond the political sphere', leading to significant changes in attitudes towards women and the perception of their competence.²¹⁰

In 'face-to-face' interviews of women who were in parliament both prior to the 2003 elections and who were elected to parliament after 2003, Devlin and Elgie tried to assess the effects that women had on the Rwandan parliament.²¹¹ They examined the positive impact on the general culture of the parliament, stating that with the greater number of women, several interviewed representatives felt more comfortable, more confident, and more 'at home'.²¹² According to the study, one theme that emerged as important in all the interviews was the issue of female solidarity. Several female representatives openly declared that they put the promotion of women ahead of party politics.²¹³ Furthermore, Devlin and Elgie indicate that women are indeed highly aware of their numerical strength.²¹⁴ Nonetheless, they argue, that the interviews failed to reflect changes in some other aspects of parliament's political culture such as 'the hours worked, the calendar, the way meeting were arranged and conducted and formal decision-making processes.'²¹⁵

Elgie and Devlin, and Schwartz also conducted interviews with Rwandan women parliamentarians in order to assess their impact on women's lives and whether they act in the interest of women. Similarly to this dissertation, Schwartz used Wängnerud's definition of the concept of women's issues, within which she based her work on the first

²⁰⁸ E Powley, E. Pearson, "'Gender is Society": Inclusive Lawmaking in Rwanda's Parliament' (2007), *Critical Half* 5(1), pp. 17-21.

²⁰⁹ T Longman, 'Achieving Gender Equality or Serving an Authoritarian State? Rwanda's Female Parliamentarians' (2006), in G Bauer and HE Briton (eds.), *Women in African Parliaments*, Lynne Rienner, pp. 130-150.

²¹⁰ J Burnet, 'Women's Empowerment and Cultural Change in Rwanda' (2012), in S Franceschet, ML Krook, M Psicopo (eds.), *The Impact of Gender Quotas*, Oxford: Oxford University Press, p. 206.

²¹¹ C Devlin, R Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008), *Parliamentary Affairs* Vol. 61, No. 2, pp. 237-254, 243.

²¹² *Ibid.*, at 244.

²¹³ *Ibid.*

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

two concerns, namely the recognition of women as a social category and the acknowledgement of the unequal power balance between the sexes.²¹⁶ Her findings primarily confirm results from previous research which states that female parliamentarians represent women's interests and issues 'to a greater extent than male parliamentarians in the Rwandan parliament.'²¹⁷ Furthermore, Schwartz indicates that the use of gender quotas for legislative decision-making bodies resulted in a number of female parliamentarians who experience a special and strong commitment to women and their representation.²¹⁸

The introduction of gender quotas has had an impact on the descriptive and symbolic representation of women in the Rwanda. However, the question remains as to whether the increase in descriptive and symbolic representation has led to progress in women's substantive representation. These policies and laws can be seen as an outcome of strong lobbyism of civil society organisations and their strong ties to women parliamentarians (who mainly emerged out of civil society) and vice versa. As leaders of Pro-Femmes, the very influential Rwandan women's rights organisation identified, the presence of women in parliament was and still is an important factor in getting pro-women legislation passed. In conclusion, quotas in Rwanda have had an impact on the process-oriented, as well as outcome-oriented substantive representation of women.

3.3 UGANDA

Uganda was one of the first countries in the world to introduce reserved parliamentary seats for women in 1989, which enables me to assess the quota's more long-term effect on the representation of women and the equality of gender within decision-making bodies. Uganda is a State party to CEDAW as well as the ICCPR. Furthermore, it has signed and ratified the Banjul Charter, but not the Maputo Protocol.

Past studies and analysis of gender quotas' influence on women's representation in Uganda have 'painted a mixed picture', as Clayton et al. state.²¹⁹

²¹⁶ H Schwartz, p. 28.

²¹⁷ H Schwartz, p. 61.

²¹⁸ H Schwartz, p. 62.

²¹⁹ A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 284.

3.3.1 THE POLITICAL-HISTORICAL BACKGROUND

The Ugandan quota system was introduced during what is known as the Movement years (1986-2006). Typical for these Movement years was a no-party state where the still ruling National Resistance Movement (NRM) was in power. As a justification for the introduction of a no-party system, the NRM argued that multiple political parties would create ethnic conflict and that an inclusive and consultative no-party democracy would bring stability to Uganda.²²⁰

In 1989 the NRM regime adopted a system of reserved seats for the disabled, the youth, the workers, and women. In the following parliamentary elections, the number of reserved seats for women has been expanded through a constant formation of new districts. Nonetheless, the Ugandan quota system has been heavily criticised for ‘creating a group of legislators more beholden to the NRM in their loyalties than to the cause of women’s emancipation.’²²¹ As observed by Tripp, in the 2001 parliamentary elections, only two of the women elected to Parliament were not part of the Movement. Tamale has noted in interviews she conducted in 1996 that half of the women who won a parliamentary seat had served on Museveni’s campaign in their districts. Both Tamale and Tripp argue that the ‘NRM patronage politics’ played a role in several victories of female NRM loyalists.

Another reason commonly identified for the system’s shortcomings is that until 2006, women were elected by the ‘Electoral College’.²²² The Electoral College consisted of NRM leaders (mostly men) from all five levels of the local government system. At first, all legislators were elected via the Electoral College. In the subsequent elections however, the county representatives were elected by universal suffrage and the interest groups representatives were elected through their own organisations. The only interest group not included in these changes were the representatives of women who were still being elected by mostly male NRM leaders.²²³ The Electoral College has been further

²²⁰ C Josefsson, ‘Who benefits from gender quotas? Assessing the impact of election procedure reform on Members of Parliament’s attributes in Uganda’ (2014), *International Political Science Review* Vol. 35, No. 1, pp. 93-105, 96.

²²¹ Tamale 1999; Tripp, ‘Uganda: Agents of Change for Women’s Advancement?’, in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 111-132, 119.

²²² Tripp, ‘Uganda: Agents of Change for Women’s Advancement?’, in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 111-132, 120.

²²³ *Ibid.*

accused of promoting elite women who have neither had the power nor the will to further women's rights.²²⁴ Additionally, the other problem observers have noted is that the Electoral College was made up of a relatively small number of people who could have easily be bribed or influenced.²²⁵

The discussion on how to replace the Electoral College system for the election of women's representatives shifted between universal suffrage on one side and the election through women's organisations on the other side. The majority²²⁶ argued for direct universal suffrage as it would be more democratic, claiming that women would gain greater legitimacy and would be accountable directly to the people whom they are supposed to represent.²²⁷

In 2006, the NRM reformed the system of the reserved seats election. Since then, the district female representatives have been elected by the people in their district, reflecting direct universal suffrage. This electoral reform coincided with the country's return to a multiparty system as Ugandans voted for a return to multiparty election in a referendum in 2005.²²⁸

3.3.2 STATUS QUO: QUOTA LAWS AND WOMEN'S PARTICIPATION

Article 78 (1) of the Constitution of Uganda states that the parliament shall consist of one women representative for every district. The reserved seats for women are single-member constituencies. Since the quota policy was adopted in 1989, the number of reserved seats for women, and thus the number of districts, has almost tripled, reaching 112 seats in the recent 2011 elections.²²⁹ The parliament is further formed in the following way: there are 238 constituency representatives, 112 district women representatives directly elected by all voters on a special ballot in each district (for women candidates only); ten representatives of the Uganda People's Defence Forces, of

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Tamale, Tripp

²²⁷ Tamale 2004

²²⁸ C Josefsson, 'Who benefits from gender quotas? Assessing the impact of election procedure reform on Members of Parliament's attributes in Uganda' (2014), *International Political Science Review* Vol. 35, No. 1, pp. 93-105, 97.

²²⁹ A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 284.

whom two must be women; five youth representatives of whom one must be a woman; five representatives of persons with disabilities, of whom one must be a woman; and five representatives of workers, of whom one must be a woman.²³⁰

Currently, 154 of 449 (33,5 per cent) seats in the Ugandan Parliament are held by women. The number of women entering parliament through direct competition with men is still relatively small. In the current parliament, women only hold 19 of the 290 open seats.

3.3.3 NATIONAL LEGISLATION AND POLICIES POST-QUOTA

With regards to the impact of reserved seats on pro-women legislation and the substantive representation of women, Tripp states that on the whole only few legislative gains were made in the period between 1989 and 2006.²³¹ Similarly to Rwanda, the access and rights to land, as well as women's marriage rights have been driving forces behind the Ugandan women's movement.²³²

According to the CEDAW Committee's Concluding Observations, Uganda has adopted a wide range of legislative measures since the consideration of the State party's third periodic report in 2002 (CEDAW/C/UGA/3). These legislative measures include the following:

- (a) The Land Act Amendment (2004)²³³;
- (b) The Employment Act (2006)²³⁴;

²³⁰ See Article 8 of the Parliamentary Elections Act, 2005; IDEA Gender Quotas Database for Uganda, available at: <https://www.idea.int/data-tools/data/gender-quotas/country-view/293/35>, accessed 18 November 2018.

²³¹ Tripp, 'Uganda: Agents of Change for Women's Advancement?', in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 111-132, 128.

²³² RL Muriaas, V Wang, 'Executive Dominance and the Politics of Quota Representation in Uganda' (2012), *Journal of Modern African Studies* 50, 2, pp. 309-338, 331.

²³³ Uganda: The Law (Amendment) Act, 2004, 18 March 2004.

²³⁴ Uganda: Employment Act, 2006, 24 May 2006, available at: <https://ulii.org/system/files/legislation/act/2006/2006/employment%20Act%202006.pdf>, accessed 22/01/2019.

- (c) The Equal Opportunities Commission Act (2007), which provides a legal basis to challenge laws, policies, customs and traditions that discriminate against women, as well as the National Equal Opportunities Policy²³⁵;
- (d) The amendments to the Penal Code prohibiting defilement of girls and boys (2007)²³⁶;
- (e) The Domestic Violence Act (2010), criminalising violence in a domestic setting²³⁷;
- (f) The Prohibition of Female Genital Mutilation Act (2010)²³⁸;
- (g) The Prevention of Trafficking in Persons Act (2010)²³⁹; and
- (h) The International Criminal Court Act (2010), criminalising sexual exploitation of women during conflict situations²⁴⁰.

The Committee further notes that Uganda has adopted a number of policies, programmes, and plans of action to promote gender equality and eliminate discrimination against women, as proscribed by the CEDAW Committee. Here, it makes specific reference to the National Action Plan on Gender for monitoring the implementation of the Convention for the period 2007-2010 as well as the National Gender Policy from 2007.²⁴¹

Similar to the Committee's Concluding Observations, Muriaas and Wang note that the number of laws relevant to women enacted in the period after the introduction of the multi-party-system and the reform of the Electoral College system is surprising, 'given the relatively unimpressive legislative record of women so far but must be understood against the background of the 2011 elections.' They argue that Musuveni and the NRM

²³⁵ Uganda: Equal Opportunities Commission Act, 2007, 18 May 2007, available at: <https://ulii.org/ug/legislation/act/2015/2-1>, accessed 22 January 2019.

²³⁶ Uganda: The Penal Code (Amendment) Act, 2007, Act 8 of 2007, 17 August 2007.

²³⁷ Uganda: Domestic Violence Act, 2010, 17 March 2010, available at: <https://ulii.org/ug/legislation/act/2015/3-9>, accessed 22 January 2019.

²³⁸ Uganda: Prohibition of Female Genital Mutilation Act, 2010, Act 5 of 2010, 9 April 2010, available at: <https://ulii.org/system/files/legislation/act/2010/5/Prohibition%20of%20female%20Genital%20Mutilation%20Act.pdf>, accessed 22/01/2019.

²³⁹ Uganda: Prevention of Trafficking in Persons Act, 2009, 1 October 2009, available at: <https://ulii.org/node/24737>, accessed 22 January 2019

²⁴⁰ Uganda: International Criminal Court Act, 2010, 25 May 2010, available at: <https://ulii.org/ug/legislation/act/2015/11-4>, accessed 22 January 2019.

²⁴¹ Committee on the Elimination of Discrimination against Women, Concluding Observations considering the combined fourth and seventh report of Uganda (CEDAW/C/UGA/4-7) at its 954th and 955th meetings, 13 October 2010, CEDAW/C/UGA/CO/7.

needed to position themselves prior to the elections by giving women some victories to ‘keep them in line’.²⁴² Still, those legislative achievements should not be underestimated, as the hard work of different actors, including civil society - especially the Uganda Women Parliament Association (UWOPA) - account for the outcome. In the interviews conducted by Muriaas and Wang, nearly all legislators expressed UWOPA as a force to be reckoned with in parliament.²⁴³ Tamale has analysed the role of women in formal politics in Uganda. In her analysis she found that female MPs tend to ‘make a case for women’, no matter how they were elected, through quotas or the open election.²⁴⁴

Nonetheless, in its Concluding Observations, the Committee urges the Ugandan government to enact the Marriage and Divorce Bill, the Sexual Offences Bill and the HIV/AIDS Prevention and Control Bill.²⁴⁵ As cited by Muriaas and Wang, the opposition member Alaso explained why the Marriage and Divorce Bill is still pending: ‘There are issues ... that are deeply entrenched in culture. For instance, polygamy, matters of marital rape, matters of co-ownership and many other such related matters. Those ones you just have to approach bit by bit. If you don’t do, you are in trouble because you will lose the whole thing.’²⁴⁶ Muriaas and Wang argue that the reason this bill is still pending is that it challenges ‘established power structures, in the sense that it concerns the issue of property and seeks to alter basic gender and power relations in society.’ It therefore directly affects the majority of power holders who are still men.²⁴⁷

3.3.4 SUBSTANTIVE GENDER EQUALITY THROUGH REPRESENTATION? A UGANDAN CASE-STUDY

Regarding the impact of gender quotas in Uganda, Clayton et al. investigate the representation of women through the analysis of legislative speeches in the Ugandan parliament. In doing so, they have expanded the scholarship on women’s substantive representation beyond an analysis of pro-women policy outcomes, taking a more process,

²⁴² RL Muriaas, V Wang, ‘Executive Dominance and the Politics of Quota Representation in Uganda’ (2012), *Journal of Modern African Studies* 50, 2, pp. 309-338, 331 f.

²⁴³ *Ibid.*, at 333.

²⁴⁴ Tamale 1999, 195

²⁴⁵ Committee on the Elimination of Discrimination against Women, Concluding Observations considering the combined fourth and seventh report of Uganda (CEDAW/C/UGA/4-7) at its 954th and 955th meetings, 13 October 2010, CEDAW/C/UGA/CO/7, para.12 a).

²⁴⁶ Muriaas, Wang, ‘Executive Dominance and the Politics of Quota Representation in Uganda’ (2012), *Journal of Modern African Studies* 50, 2, pp. 309-338, 332, Interview with Alaso in 2010.

²⁴⁷ *Ibid.*

rather than outcome-oriented approach.²⁴⁸ They chose to use the contents of Members of Parliament (MP) speeches during plenary debates as an indicator of women's substantive representation. Within their research they created three categories, quota-elected women, non-quota-elected women, and men. The dataset they used consists of 14 years of speech transcripts from 500 MPs and more than 40.000 pages of Hansard text. It consists of a near complete record of all plenary speeches in the Ugandan Parliament from 1998 to 2011.²⁴⁹ Notably though, the research Clayton et al. conducted falls short of capturing differences between MPs policy preferences and political ideologies such as feminist versus conservative.

Through the analysis of the aforementioned dataset, Clayton et al. are trying to prove or disprove five hypotheses regarding women's participation and representation in the Ugandan parliament. The first hypothesis claims that women speak more about women's interests than men and that there are no differences in speech patterns between women in reserved and unreserved seats.²⁵⁰ Hypothesis two notes that men speak as much or more about women's interests than women. The third hypothesis claims that women in reserved seats speak less about women's interests than women in open seats. Hypothesis four in comparison to three, claims that women in reserved seats speak more about women's interests than women in open seats. Finally, the fifth hypothesis states that women in reserved seats that are associated with the ruling party speak less on women's interests than women in reserved seats in opposition parties.²⁵¹

The study suggests that 'female parliamentarians as a group, regardless of how they achieve office, share similar biological experiences, face the same socially constructed expectation about appropriate gender roles, and continue to experience many forms of active discrimination. The results of the empirical analysis show that gender, but not specifically gender quotas, affect the extent to which legislators raise issues that disproportionately affect women in plenary debates. In summary, Clayton et al.'s findings demonstrate that female parliamentarians devote more legislative speech to women's

²⁴⁸ A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 299.

²⁴⁹ A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 277.

²⁵⁰ *Ibid*, at 281.

²⁵¹ *Ibid*, at 282 f.

issues than their fellow male colleagues, regardless of how they achieved office. The findings strongly support hypothesis one, which links descriptive effects of quotas to an increased level of advocacy around women's issues. Consequently, hypothesis two, stating that men would speak as much or even more than women about women's issues was rejected through their findings. Regarding hypotheses three and four, Clayton et al. have found that there is no significant difference in gendered speech patterns between women elected in reserved and open seats. When speaking about hypothesis five, which related to the potential negative effect of ruling party membership on gender-related speech, they only found limited support for it. Ultimately, Clayton et al. argue that their findings suggest that the Ugandan quota policy may actually strengthen women's substantive representation, even in a semi-authoritarian political setting.²⁵²

As noted previously, female parliamentarians, in collaboration with women's rights organisations, succeeded in the adoption of laws and policies that aim to promote women's rights and eradicate any violations of the latter. The content of parliamentary debates and policies can serve as an indicator for the impact of such quotas. Although Clayton et al. argue that women's substantive representation is moreover an effect of gender, rather than quota, it is inevitable to draw a line between more women in parliament, quota regulations and women's increased representation.

3.4 FRANCE

After analysing two African countries which have implemented quota laws into their municipal law, the inclusion of France, being a European country might seem arbitrary. To begin with, France is the first country in the world to have introduced a compulsory 50 per cent gender parity provision for decision-making bodies on both, the local and the national level. Included in the journey to electoral gender quotas was a change of a constitutional provision, allowing for such a *parité* law to be passed.²⁵³ These parity provisions are framed within the concept of '*parité*'/parity.

²⁵² Ibid, at 299.

²⁵³ R Murray, 'Parity and Legislative Competence in France' (2012), in Franceschet, Krook, Psicopo (eds.) *The Impact of Gender Quotas*, pp. 27-43, 28.

Vogel-Polsky argues that ‘parity does not mean 50-50’ and that it is moreover ‘demanded in the name of equal status, and not in the name of representing a minority.’²⁵⁴ According to her, parity is not the equivalent to quotas, stating that the philosophy underlying parity is different from the one underlying quotas. Parity is often described as ‘perfect parity’, whereas quotas constitute a threshold, and are as such considered to be discriminatory.²⁵⁵ In comparison, Murray argues, that the notion of parity as a gender quota remains in principle and effectively the same.²⁵⁶

3.4.1 THE POLITICAL-HISTORICAL BACKGROUND

In the beginning of the 1990s, women held only 6 per cent of the seats in the French National Assembly. Notably, this number is very low and negatively astonishing considering that France is one of the world’s oldest democracies. The word ‘parité’ was adopted during the 1990s by intellectuals, party activists, women’s associations and feminists in France.²⁵⁷ Dahlerup and Freidenvall correctly state that the demand for parité is ‘based on the realisation of the shortcomings of French Republicanism, which has long excluded women from politics.’²⁵⁸ In France, political rights to women were only granted in 1944 almost one century after the granting of ‘universal’ male suffrage in 1848. Dahlerup and Freidenvall argue that the under-representation of women in French politics is not only rooted in history, but in general politics.²⁵⁹

In the late 1950s, the French government re-introduced the Two-Round single-member district system for the election of the National Assembly. This system is quite unusual in Europe and has qualified as a reason that impedes women’s entry to the National Assembly. As Mariette Sineau points out: ‘This system indirectly discriminates against women since, by ‘personalising’ the election, it gives the political premium the ‘notable’ (usually a man): in selecting their candidates, the parties tend to choose the

²⁵⁴ E Vogel-Polsky, ‘Les impasses de l’égalité ou pourquoi les outils juridiques visant à l’égalité de femmes et de hommes doivent être repensés en terme de partié (The impasse of equality, or why judicial measures for the equality of women and men have to be rethought in terms of party)’ (1994), *Parité-Infos*, special issue No. 1, 9.

²⁵⁵ M Sineau, ‘The French Experience: Institutionalizing Parity’ (2006), in Ballington, Karam (eds.) *Women in Parliament: Beyond Numbers*, pp. 122-131, 124.

²⁵⁶ R Murray, ‘Parity and Legislative Competence in France’ (2012), in Franceschet, Krook, Psicopo (eds.) *The Impact of Gender Quotas*, pp. 27-43, 27.

²⁵⁷ D Dahlerup L Freidenvall, ‘Electoral Gender Quota Systems and Their Implementation in Europe’ (2008), for the Directorate General Internal Policies of the Union, European Parliament, 51.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

most well-known personality, that is someone who already holds local mandate in the district.’²⁶⁰ Nevertheless, through the introduction of the parity law, France stands as an exception, compared to its neighbouring countries, such as Germany, by resorting to legislative directives instead of relying on the ‘wisdom’ of the political parties and their voluntary party quotas.²⁶¹

3.4.2 STATUS QUO: QUOTA LAWS AND WOMEN’S PARTICIPATION

France has legislated gender quotas for the single/lower house, the upper house and for the sub-national level.²⁶² Currently, 228 (40 per cent) of the 577 National Assembly seats (the lower house) are held by women.

According to Sineau, the French constitution states that ‘the law shall promote equal access of women and men to electoral mandates and elected offices, as well as professional and social responsibilities.’²⁶³ Further, the French Constitution recognises the responsibility of political parties in upholding and promoting this principle.²⁶⁴ The French electoral law further provides that the members of the National Assembly are elected in 577 single-member constituencies, according to a two-round majoritarian system. The difference between the number of candidates of each sex that a party or group of parties present for single-member constituency elections cannot be greater than 2 per cent.²⁶⁵

In case of non-compliance with the 50 per cent parity rule, a legal sanction is imposed in the form of a financial penalty calculated in the following way: the public funding provided to parties based on the number of votes they receive in the first round of elections will be decreased ‘by percentage equivalent to three quarters of the difference between the total number of candidates of each sex, out of the total number of

²⁶⁰ M Sineau, ‘The French Experience: Institutionalizing Parity’ in IDEA, *Women in Parliament – Beyond Numbers*, pp. 122-131, 123.

²⁶¹ *Ibid.*, at 124.

²⁶² See: IDEA, *Gender Quotas Database on France*, available at: <https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35>, accessed 18 November 2018.

²⁶³ M Sineau, ‘The French Experience: Institutionalizing Parity’ in IDEA, *Women in Parliament – Beyond Numbers*, pp. 122-131, 124; See Article 1 (2) of the French Constitution.

²⁶⁴ See Articles 3 and 4 of the French Constitution.

²⁶⁵ IDEA, *Gender Quotas Database on France*, available at: <https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35>, accessed 18 November 2018; Article 9 (1) Law No. 88-227.

candidates.’²⁶⁶ For instance, if (only) 40 per cent women candidates are presented, the difference between the number of female and male candidates presented is 20 point. According to this, the financial fine will amount to a 15 per cent cut of the public party funding.²⁶⁷

3.4.3 SUBSTANTIVE GENDER EQUALITY THROUGH REPRESENTATION? A FRENCH CASE-STUDY

To measure or to analyse indicators for or against quotas as a tool to increase women’s (substantive) representation is more challenging in the French context. This is in partly because of the French quota regulation’s design which is different to those in Uganda and Rwanda. The French *Parité*-Law is not as effective as those in other countries with a reserved seat system. French parties are given a way to buy themselves out of the quota, by paying a fine which most of the big influential parties are able to afford. As argued by Sineau, the law ‘brought a quick feminisation of the candidacies for the National Assembly, but a slower feminisation of the members elected.’²⁶⁸

One of the arguments against the use and implementation of quota regulations for decision-making bodies is that quotas may produce or ‘seen be seen to produce second class politicians.’²⁶⁹ This argument is fed by the assumption that if women can’t make it on their own merit without affirmative actions, they shouldn’t be in politics at all. In contrast to this it is argued that women’s exclusion from politics is not an indication for their lack of ability but moreover the result of longstanding institutional, structural, and psychological barriers. Murray argues that as a result, the question of competence is essential to debates of quotas.

Regarding the above, Murray conducted an empirical analysis regarding French male and female parliamentarians before and after the 2007 election and compared them to see, firstly, whether they have different backgrounds, and secondly, whether there is any difference in their parliamentary activity. Her findings suggest that newly elected

²⁶⁶ Article 9 (1) Law No. 88-227.

²⁶⁷ IDEA, Gender Quotas Database on France, available at: <https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35>, accessed 18 November 2018

²⁶⁸ M Sineau, ‘France: ‘parité’ under the law’ (2008), in D Dahlerup L Freidenvall (eds.), *Electoral Gender Quota Systems and Their Implementation in Europe*, IDEA, p. 58.

²⁶⁹ R Murray, ‘Parity and Legislative Competence in France’ (2012), in S Franceschet, ML Krook, M Psicopo (eds.), *The Impact of Gender Quotas*, Oxford: Oxford University Press, pp. 27-41, 29.

women do have slightly different backgrounds from those of newly elected men. Two conclusions can be drawn from Murray's study. First, an increase in the number of women led to the French parliament becoming more descriptively representative, both in terms of sex and in terms of age and profession, though leaving out any tendencies regarding their race and or ethnicity. Second, the study found no evidence of 'quota women' being less effective in their role as parliamentarians than those elected without a quota. The latter is based on the participation in parliamentary life and does not support the widely held view that descriptive representation occurs at the expense of competence and meritocracy.²⁷⁰

3.5 CONCLUSION

Studies examining the origins and impacts of gender quotas now constitute one of the fastest-growing subfields within gender and politics research. Where a first wave of quota research examined the spread and reasons for the adoption of quotas as well as the numerical impacts of these on women's descriptive representation²⁷¹, an emerging scholarship now additionally investigates the effect of quotas on the advocacy of women's interests in politics and policy making.²⁷²

According to Pitkin's seminal work, *The Concept of Representation*, descriptive representation refers to the basic attribution of the elected legislators and how well they mirror the social group from which they are drawn. Substantive representation, on the other hand, occurs when legislators seek and are able to promote the interests and priorities of their constituents.²⁷³ Even though, in most cases, quotas increase the numbers of women in office, the available evidence suggests that their impact on women's substantive representation has been mixed. Countries across sub-Saharan Africa, such as Rwanda and Uganda, have been particularly successful in increasing

²⁷⁰ Ibid, at 40.

²⁷¹ See: S Bush, 'International Politics and the Spread of Quotas for Women in Legislatures' (2011), *International Organization* 65 (1), pp. 103-137; D Dahlerup, 'Women, Quotas and Politics' (2006), Routledge; ML Krook, 'Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide' (2009), Oxford University Press.

²⁷² A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 277; See: S Childs ML Krook, 'Analyzing Women's Substantive Representation: From Critical Mass to Critical Actors' (2009), *Government and Opposition* 44 (2), pp. 125-145; C Devlin, R Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008); Franceschet, ML Krook, JM Piscopos (eds.), *The Impact of Gender Quotas*

²⁷³ H Pitkin, 'The Concept of Representation' (1967).

women's descriptive representation through the use of quotas. Yet, the reforms' impact on women's substantive representation is more varied.²⁷⁴

In order to assess the impact of gender quotas in Rwanda, the representation of women in Rwanda's Parliament has to be seen in the larger context of two trends: the use of quotas in Africa and the post-conflict and genocide situation. The post-genocide period has brought enormous change for Rwanda and especially Rwandan women. Despite the challenges women are still facing with regards to education, legal rights, health, and access to resources, Rwandan women did start achieving impressive developments. These include the new gender-sensitive Rwandan Constitution of 2003 and parliamentary elections that led to a Parliament where 64 per cent of the seats were earned by women. Nevertheless, it is important to emphasise that the majoritarian women parliament has been achieved in a country which was labelled as undemocratic, where a single political party dominates the political landscape.²⁷⁵

Uganda has adopted gender quotas for their highest legislative decision-making bodies during times of a no-party system where the political landscape was shaped by the NRM, the Movement's no-party. 'Previous studies examining quotas and women's substantive representation in Uganda paint a mixed picture'²⁷⁶, as Clayton et al. argue. An early lack of success in securing women's rights legislation after the 1995 Constitution, despite the relatively high number of female MPs, has been explained by an excessively strong executive and patronage-based politics as well as the quota system's disposition to create a group of women more beholden to the NRM regime than to the interests of Ugandan women.²⁷⁷

²⁷⁴ C Josefsson, 'Who benefits from gender quotas? Assessing the impact of election procedure reform on Members of Parliament's attributes in Uganda' (2014), *International Political Science Review* Vol. 35, No. 1, pp. 93-105, 94.

²⁷⁵ Powley, 'Rwanda: Women Hold Up Half the Parliament' in *Women in Parliament – Beyond Numbers*, IDEA, p. 162.

²⁷⁶ A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 284.

²⁷⁷ A Clayton, C Josefsson, V Wang, 'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates' (2017), *Politics & Gender* 13, pp. 276-304, 284; Tripp, 'Uganda: Agents of Change for Women's Advancement?', in *Women in African Parliaments*, Bauer, Britton (eds.), 2006, pp. 111-132.

In comparison to Uganda and Rwanda, the French *parité* law's impacts on women's representation and presence in national legislative decision-making bodies is more difficult to assess. The French system has been criticised for being ineffective and was declared a political scam, which only superficially complies with the demands of women's rights activists and feminists to increase women's political participation.

The case-studies reflect the impact of electoral gender quotas on the abovementioned kinds of presentation. The Rwandan and Ugandan case studies show an impact on the descriptive, representative, and symbolic representation of women. The laws and policies that were adopted in Uganda and Rwanda after the introduction of reserved seats can be said to be in the interest of women since they recognise women as a social category and further recognise the ongoing power imbalance between men and women.

Because of the questionable efficiency of the French *parité* regulation it remains difficult to assess whether these regulations have a substantive impact on women's representation and women's lives. However, as assessed by Murray, due to the French *parité* regulation, one can assume that an increase in women's descriptive representation does not result in a politician of 'second grade'.

Gender quotas for legislative decision-making bodies have been adopted into national law in more than 110 countries as an instrument to increase women's political participation and representation. Through the introduction of such affirmative actions, the debate around their effect and their potential impact on women's life has emerged. This dissertation's aim has been to analyse the impact of gender quotas in relation to women's representation and substantive gender equality.

The ultimate goal of gender quotas is the achievement of substantive gender equality through representation of women by women in decision-making bodies. Quotas aim to achieve this is through reforming the inherent institutional masculinity which characterises most legislatures and through overcoming the obstacles to women's participation. These obstacles range from political, socio-economic, ideological, to socio-cultural ones. In order to accomplish this, gender quotas increase the descriptive representation of women.

One of the aims of this dissertation was to highlight the connection between an increase in descriptive representation and women's substantive representation. I argue that the very presence of a woman in a legislature is important for changing its culture, priorities, and the range of concerns.²⁷⁸ In order to measure any advancements in women's substantive representation in the three case-studies, I first had to identify women's interest. The identification of women's interest is highly controversial, as it has a long history of debate in the feminist scholarship and advocacy.²⁷⁹ Furthermore, I distinguished between outcome-orientated and process-orientates substantive representation, not giving one or the other more weight in terms of benefit for women.

The evidence from the case studies suggests that gender quotas itself will not immediately and directly transform into a meaningful change for women, with 'change' referring to actual outcomes in terms of policies and laws.²⁸⁰ However, it can be argued that gender quotas help to induce institutional changes in the long-term, since change in

²⁷⁸ J Lovenduski, 'Feminizing Politics', Polity Press, Cambridge, p. 18.

²⁷⁹ *Ibid*, at 19.

²⁸⁰ KJ Hopp, 'How Effective are Gender Quotas in Achieving Meaningful Change for Women? A Case Study of Argentina' (2015), *Interstate - Journal of International Affairs*, Vol 1, p. 4.

societal attitudes and systems are achieved in a long-term process. Consequently, it is important to acknowledge the limited potential of gender quotas while taking into account the possibility of the positive change they induce, as seen in the case-studies of Rwanda and Uganda.²⁸¹ One must take into account the political situation in Rwanda and Uganda. According to Chen, countries belonging to the fast track of gender equality in politics mostly came out of civil war or wars of liberation during the 1980s and early 1990s, which, as she suggests, ‘might have resulted in enhanced eagerness for achieving political rights and guaranteeing constitutional civil rights.’²⁸² Regarding the impact of gender quotas on women-friendly policies and politics, Chen also suggests in her studies that countries which introduce gender quotas, ‘tend to spend 3.38 percentage points more on social welfare than those countries without gender quotas.’²⁸³ She also argues that gender quotas are only relevant to social service and welfare among policy outcomes.²⁸⁴

One can further assume that quota regulations have increased the symbolic representation of women and thus the discourse regarding women in decision-making bodies and the societal potential that this bears. The increase of women’s symbolic representation can be seen as an aim in itself. Hopp argues, that one must not underestimate the significance of symbolic representation. Fulfilling symbolic representation also means fulfilling women’s right to be represented by female bodies in parliament as they relate much better to cases such as maternity leave and exposure to sexual harassment by men.²⁸⁵ Symbolic representation of female bodies is essential because it leads to a process of questioning as to why a specific type of body, the male, is highly dominant in a political institution. This then allows for the de-normalisation (not de-valuing), of male bodies and therefore starts a process of normalisation of female bodies in parliament.²⁸⁶ Miguel persuasively argues that ‘numbers do make a difference’.²⁸⁷ The increase in the number of women make it more difficult to isolate

²⁸¹ Ibid.

²⁸² LJ Chen, ‘Do Gender Quotas Influence Women’s Representation and Policies?’, *The European Journal of Comparative Economics*, Vol. 7 n.1, pp. 13-60, 21.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ KJ Hopp, ‘How Effective are Gender Quotas in Achieving Meaningful Change for Women? A Case Study of Argentina’ (2015), *Interstate - Journal of International Affairs*, Vol 1, 2.

²⁸⁶ Ibid.

²⁸⁷ LF Miguel, ‘Policy Priorities and Women’s Double Blind in Brazil’ (2012), in S Franceschet, ML Krook, M Psicopo (eds.), *The Impact of Gender Quotas*, Oxford: Oxford University Press, p. 104.

them in specific thematic niches or to place them in a bloc separate from major positions in the field.²⁸⁸

Notwithstanding the importance of symbolic representation, the lack of emphasis of distinct female experiences and interests when advocating for gender quotas occupies a danger of essentialism, as critically examined by Hopp.²⁸⁹ Essentialism takes effect when gender quotas generate an over-emphasis on sex, on ‘femaleness’, thereby decreasing the significance of other aspects which influence a person’s identity such as race, class, and sexuality.²⁹⁰ This is the notion of intersectionality – ‘the complex, cumulative way in which the effects of multiple forms of discrimination, such as racism, sexism, and classism, combine, overlap, or intersect especially in the experiences of marginalised individuals or groups.’²⁹¹ Specifically the notion that ‘any woman can represent all women’ displays essentialism.²⁹² It is therefore important to take women’s intersectionality into account when analysing their representation. ‘Although it is evidently necessary to take into account essentialism as a possible drawback of the implementation of quotas, it is [still] equally important to recognise the shared female identity of all women’, as stated by Hopp.²⁹³

Despite studies stating the positive impact of gender quotas for decision-making bodies, they are widely criticised and still remain highly controversial. The criticism not only derives from conservatives or traditionalists, disagreements regarding the use and impact of gender quotas can also be found among feminists. One reason for this is the fear that women elected because of gender quotas could be stigmatised as ‘quota or token women’. In response to this, Bacchi argues that affirmative action, such as gender quotas, can be seen as ‘an attempt to redress entrenched privilege’.²⁹⁴ I share this perspective

²⁸⁸ Ibid, at p. 117.

²⁸⁹ KJ Hopp, ‘How Effective are Gender Quotas in Achieving Meaningful Change for Women? A Case Study of Argentina’ (2015), *Interstate - Journal of International Affairs*, Vol 1, p. 2.

²⁹⁰ J Mansbridge, ‘Quota Problems: Combatting the Dangers of Essentialism’ (2005), *Politics & Gender*, 1, p. 623.

²⁹¹ Merriam-Webster Dictionary, Definition of intersectionality, available at: <https://www.merriam-webster.com/dictionary/intersectionality>, accessed: 26/12/2018.

²⁹² J Mansbridge, ‘Quota Problems: Combatting the Dangers of Essentialism’ (2005), *Politics & Gender*, 1, p. 623.

²⁹³ KJ Hopp, ‘How Effective are Gender Quotas in Achieving Meaningful Change for Women? A Case Study of Argentina’ (2015), *Interstate - Journal of International Affairs*, Vol 1, p. 2.

²⁹⁴ C Bacchi, ‘Arguing for and against quotas’ (2006), in Dahlerup (ed.), *Women Quotas and Politics*, pp. 32-51.

because it represents a shift away from a discourse about women themselves, which bears the danger of essentialism, to a debate about exclusions, inequalities, and deeply rooted patriarchal structures in political institutions.

As outlined in chapter two, international organisations, such as the UN, the AU and the EU, increasingly support affirmative-action policies, despite the term ‘quota’ regularly being envisioned. CEDAW, being the first international Convention to state that equality before law is not enough, strongly encourages so-called ‘Temporary Affirmative Actions’ in order to achieve *de facto* equality of women. The 1995 Beijing Platform for Action, though not mentioning the word ‘quotas’ speaks of ‘discriminatory attitudes and practices’ and ‘unequal power relations’ and the need for redress.²⁹⁵

Ultimately, one has to ask, why do we seek specific outcomes when it comes to women in decision-making bodies? Are considerations of justice not enough to support the increased representation of women in legislative decision-making bodies? Ultimately, women do not have to make a difference to merit inclusion. It can be argued that both the arguments, to increase women’s representation and the contexts in which they are made, seem to promise not only change, but also transformation. Although substantive and descriptive representation are analytically distinct, there is a tendency to expect substantive representation to follow from descriptive representation.²⁹⁶

Even though gender quotas might increase women’s representation they are not a cure for all barriers that women face in politics, such as the lack of campaign financing, harassment, and the difficulties of combining political life, work and family obligations, among others.²⁹⁷ Quotas are still a start, especially in post-conflict countries and a promising instrument to increase women’s representation, having the potential impact on women’s life when looked at from a long-term perspective. Future research should focus on this through examining plenary debates, societal perspectives, and other indicators for change in women’s substantive representation which will eventually transform into a more substantive gender equal society.

²⁹⁵ D Dahlerup, ‘Has Democracy Failed Women?’ (2018), Polity Press, Cambridge, p. 70.

²⁹⁶ J Lovenduski, ‘Feminizing Politics’ (2005), Polity Press, Cambridge, p. 76.

²⁹⁷ Ibid, at 88.

In conclusion, more women in parliament, and therefore a larger critical mass, might constitute a necessary but not sufficient condition to qualify gender quotas as an instrument for substantive representation of women.

BIBLIOGRAPHY

PRIMARY SOURCES

Cases

R. D. Stalla Costa v Uruguay, 1987 Human Rights Committee, No. 198/1985.

International and Regional Legal Instruments

African Union (AU), *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entry into force 21 October 1986), available:

http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

AU, *African Charter on Democracy, Elections and Governance* (adopted 25 October 2011, entry into force 15 February 2012), available:

http://www.achpr.org/files/instruments/charter-democracy/aumincom_instr_charter_democracy_2007_eng.pdf

AU, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (adopted 7 November 2003, entry into force 25 November 2005, available:

<http://www.achpr.org/instruments/women-protocol/>.

European Union (EU), *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (OJ C 364/01).

EU, *Treaty on European Union* (Consolidated Version), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C325/4. 24 December 2002.

EU, *Treaty on the Functioning of the European Union* (Consolidated Version), 13 December 2007, 2008/C 115/01.

United Nations General Assembly (UN GA), *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979) U.N.T.S Vol. 1249, available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4>.

UN GA, *International Covenant on Civil and Political Rights*, (1966) U.N.T.S vol. 999, p. 171.

UN GA, *International Covenant on Economic, Social and Cultural Rights*, (1966), U.N.T.S vol. 993.

UN GA, *Universal Declaration of Human Rights* (1948) 217 A (III).

UN GA, '*United Nations Millennium Declaration*', U.N. Doc. A/RES/55/2.

UN GA, '*Transforming our world: the 2030 Agenda for Sustainable Development*', U.N. Doc. A/RES/70/1.

UN GA, Resolution A/RES/44/128 adopted by the General Assembly on 15 December 1989.

UN GA, *Beijing Declaration and Platform of Action*, adopted at the Fourth World Conference on Women, 27 October 1995, available: <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

UN GA, *Convention on the Political Rights of Women*, Resolution A/RES/7/640, adopted by the General Assembly on 20 December 1952

UN GA, *Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages*, Resolution 1763 A (XVII), adopted by the General Assembly on 7 November 1962.

UN GA, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, A/RES/54/5, adopted by the General Assembly on 15 October 1999.

National Legislation and Legal Instruments

Rwanda

Constitution of the Republic of Rwanda (2003)

Organic Law no. 03/2010/OL of 18/06/2010 repealing Organic Law no. 17/2003 of 07/7/2003 governing presidential and legislative elections as amended and complemented to date, Official Gazette, special issue (2010)

Organic Law no. 19/2007 of 04/05/2007 modifying and complementing Organic Law no. 16/2003 of 27/06/2003 governing political organizations and politicians (2007)

Organic Law No. 08/1996 of 1996 on the Organization of Prosecutions for Offenses constituting the Crime of Genocide or Crimes Against Humanity committed since 1 October 1990 (1996)

Law No. 27/2001 Relating to Rights and Protection of the Child Against Violence (2001)

Inheritance Act (2003)

Law on the Prevention, Protection and Punishment of Any Gender-Based Violence (2008)

Uganda

Constitution of the Republic of Uganda, as amended to 2006 (1995)

Parliamentary Elections Act (2005)

Local Government Act (1997)

The Land Act Amendment (2004).

The Employment Act (2006).

The Equal Opportunities Commission Act (2007), which provides a legal basis to challenge laws, policies, customs and traditions that discriminate against women, as well as the National Equal Opportunities Policy.

The amendments to the Penal Code prohibiting defilement of girls and boys (2007).

The Domestic Violence Act (2010), criminalising violence in a domestic setting.

The Prohibition of Female Genital Mutilation Act (2010).

The Prevention of Trafficking in Persons Act (2010).

The International Criminal Court Act (2010), criminalising sexual exploitation of women during conflict situations.

France

Constitution of France (1958)

Code électoral, Partie Législative (Electoral Code, Section on Legislative Elections, 2013)

Loi no 2000-493 du 6 juin 2000 tendant à favoriser l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives (Law No. 2000-493 of 6 June 2000 for the promotion of equal access of women and men to elected mandates and elected functions)

SECONDARY SOURCES

General Comments and Recommendations

Human Rights Committee, General Comment No. 25

Committee on the Elimination of Discrimination against Women, General Recommendation No. 23

Committee on the Elimination of Discrimination against Women, General Recommendation No. 25

Committee on the Elimination of Discrimination against Women, General Recommendation No. 28

Books and Chapters in Books

Bacchi '*Arguing for and against quotas*', in Dahlerup (ed.), *Women Quotas and Politics*, Taylor & Francis, 2006.

Ballington and Karam '*Women in Parliament: Beyond Numbers, A Revised Version*', IDEA, 2005.

Bauer and Britton '*Women in African Parliaments*', Lynne Rienner Publishers, 2006.

Bonthuys and Albertyn '*Gender, Law and Justice*', Juta & Co Ltd, 2007.

Dahlerup '*Has Democracy Failed Women?*', Polity Press, 2018.

Dahlerup '*Women, Quotas and Politics*', Taylor & Francis, 2006.

Franceschet, Krook and Piscopo '*The Impact of Gender Quotas*', Oxford University Press, 2012.

Freeman, Chinkin, Rudolf '*CEDAW – A Commentary*', Oxford University Press, 2012.

Gomez and de Feyter '*International Protection of Human Rights: Achievements and Challenges*', Univeridad de Deusto, 2006.

Joseph, Schultz and Castan '*The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*' Oxford University Press, 2000.

Longman '*Rwanda: Achieving Equality or Serving an Authoritarian State?*' in Bauer and Britton (eds.) *Women in African Parliaments*, Lynne Rienner Publishers, 2006.

Lovenduski '*Feminizing Politics*', Polity Press, 2005.

Miguel '*Policy Priorities and Women's Double Bind in Brazil*', in Franceschet, Krook, Psicopo (eds.), *The Impact of Gender Quotas*, Oxford University Press, 2012.

Nowak '*U.N. Covenant on Civil and Political Rights – CCPR Commentary*', N.P. Engel, 2005.

Oostland '*The Principle of Equality*' in Westendorp (ed.) *The Women's Convention Turned 30*, Intersentia Ltd, 2012.

Paxton and Hughes '*Women, Politics and Power*', Pine Forge Press, 2007.

Pitkin '*The Concept of Representation*', University of California Press, 1967.

Shedova '*Obstacles to Women's Participation*' in Ballington and Karam (eds.) *Women in Parliament: Beyond Numbers, A Revised Version*, IDEA, 2005.

Steiner, Alston and Goodman '*International Human Rights in Context; Law, Politics, Morals*' (3ed), Oxford University Press, 2008.

Sineau '*The French Experience: Institutionalizing Parity*' in IDEA, *Women in Parliament – Beyond Numbers*, 2005.

Taylor '*Sacrifice as Terror: The Rwandan Genocide*', Oxford University Press, 1999.

Tripp '*Uganda: Agents of Change for Women's Advancement?*', in Bauer and Britton (eds.), *Women in African Parliaments*, Lynne Rienner Publishers, 2006.

Westendorp '*The Women's Convention Turned 30*', Intersentia Ltd, 2012.

Young *'Democracy and Inclusion'*, Oxford University Press, 2000.

Journal Articles

Baldez *'Elected Bodies: The Gender Quota Law for Legislative Candidates in Mexico'* in *Legislative Studies Quarterly*, Volume 29, Issue 2, 2004.

Burnet *'Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda'* in *African Affairs*, 107/428, 2008.

Celis, Child, Kantola and Krook *'Rethinking Women's Substantive Representation'* in *Journal of Representative Democracy*, Vol. 44, Issue 2, 2008.

Chen *'Do Gender Quotas Influence Women's Representation and Policies?'*, *The European Journal of Comparative Economics*, Vol. 7.

Clayton *'Women's Political Engagement Under Quota-Mandated Female Representation: Evidence from a randomized Policy Experiment'* in *Comparative Political Studies*, Vol. 48, 2015.

Clayton, Josefsson and Wang *'Present without presence? Gender, quotas and debate recognition in the Ugandan parliament'*, *Representation*, 2014.

Clayton, Josefsson and Wang *'Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Uganda Parliamentary Debates'* in *Politics and Gender*, Vol 13, Issue 2, 2016.

Dahlerup *'Gender Quotas – Controversial but Trendy'*, *International Feminist Journal of Politics*, Vol. 10, Issue 3, 2008.

Dahlerup and Freidenvall *'Judging gender quotas: predictions and results'*, Polity Press, 2010.

Devlin and Elgie *'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda'* in *Parliamentary Affairs*, Vol. 61, No. 2, 2008.

Franceschet and Piscopo '*Gender Quotas and Women's Substantive Representation: Lessons from Argentina*' in *Politics & Gender*, Vol. 4, 2008.

Hopp '*How Effective are Gender Quotas in Achieving Meaningful Change for Women? A Case Study of Argentina*' *Interstate - Journal of International Affairs*, Vol. 1, 2015.

Josefsson '*Who benefits from gender quotas? Assessing the impact of election procedure reform on Members of Parliament's attributes to Uganda*' in *International Political Science Review*, Vol. 35, 2014.

Mansbridge '*Quota Problems: Combatting the Dangers of Essentialism*', in *Politics & Gender*, Vol. 1, 2005.

Muriaas and Wang '*Executive dominance and the politics of quota representation in Uganda*' in *Journal of Modern African Studies*, 2012.

Reingold and Harrell '*The Impact of Descriptive Representation on Women's Political Engagement: Does Party Matter?*' in *Political Research Quarterly*, Vol. 63, No. 2, 2010.

Thomas '*The Impact of Women on State Legislative Policies*' in *Journal of Politics*, Vol. 53 (3), 1999.

Wängnerud '*Women in Parliament: Descriptive and Substantive Representation*' in *Annual Review of Political Science*, 2009.

Zwingel '*From Intergovernmental Negotiations to (Sub)national Change*' in *International Feminist Journal of Politics*, Vol. 7, Issue 3, 2007.

Internet Sources

Ballington '*Gender Equality in Political Funding*', IDEA, 2003, available at: <https://www.idea.int/sites/default/files/speeches/Gender-Equality-in-Political-Party-Funding.pdf>, accessed 31 January 2019.

Burnet '*Women Have Found Respect: Gender Quotas, Symbolic Representation and Female Empowerment in Rwanda*', Georgia State University, 2011, available at: https://scholarworks.gsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1003&context=anthro_facpub, accessed 31 January 2019.

Dahlerup, Hilal, Kalandadze and Kandawasvika-Nhundu '*Atlas of Electoral Gender Quotas*', IDEA, 2014, available at: <https://www.idea.int/publications/catalogue/atlas-electoral-gender-quotas?lang=en>, accessed 31 January 2019.

International IDEA, *Gender Quota Database*, available at: <https://www.idea.int/data-tools/data/gender-quotas>, accessed 31 January 2019.

Inter-Parliamentary Union (IPU), '*Women in Politics 2017 map*', 2017, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), available: <http://www.unwomen.org/en/digital-library/publications/2017/4/women-in-politics-2017-map#view>, accessed 31 January 2019.

Krook '*Gender Quotas and Women's Political Empowerment*', E-International Relations, 2010, available at: <https://www.e-ir.info/2010/06/18/gender-quotas-and-women%E2%80%99s-political-empowerment/>, accessed 31 January 2019.

Miranda '*Impact of women's participation and leadership on outcomes*', 2005, available at: http://www.un.org/womenwatch/daw/egm/eql-men/docs/EP.7_rev.pdf, accessed 31 January 2019.

United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) '*Short history of CEDAW Convention*', available at: <http://www.un.org/womenwatch/daw/cedaw/history.htm>, accessed 31 January 2019.

Theses

Schwartz '*Women's Representation in the Rwandan Parliament*', Master Thesis in Political Science, Department of Political Science, Gothenburg University, Sweden, 2004.