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WOMEN'S POLITICAL PARTICIPATION IN THE GAMBIA – ONE STEP FORWARD OR TWO BACK?

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1 Introduction

One of the significant changes that African countries experienced during the beginning of the 1990's was the so-called 'third wave of democratization'.¹ The majority of Africa's political leaders are men and, in the majority of countries including The Gambia, the political arena remains primarily dominated by men.

From a human rights perspective, the equal participation of women in politics is intrinsically linked to participative and inclusive democracy. Participative democratic theory finds its origin in the thought that full inclusion in the polity is a positive attribute of democratic governance. Good governance requires 'changes that will strengthen the accountability of political leaders to the people, ensure respect for human rights, and strengthen the rule of law'.² It provides for extensive participation in politics. According to Tocqueville, citizen participation in governing is the political essence of citizenship.³ In excluding women from making decisions that affect their lives, there is a failure in ensuring participative democracy. The need to overhaul the governance framework to place women at the centre of the management of the affairs, particularly in matters of local development, thus becomes a major objective of the struggle for constitutional reforms in Africa.

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1 SP Huntington *The third wave: Democratization in the late twentieth century* (1992) 15.

2 BC Smith *Good Governance and Development* (2007) 6.

3 A Tocqueville *Democracy in America* trans J Epstein (2000).

During the past few decades, a rights-based approach has evolved. The fundamental principles of this approach to women's political participation highlight the rights and how these rights should be implemented and safeguarded. The rights-based approach is rooted in the Universal Declaration of Human Rights (UDHR)⁴ – based on the idea that everyone is born with, and possesses the same rights, regardless of gender, age, orientation, race, or ethnic background. It ensures and upholds non-discrimination.

The International Bill of Rights serves as the basis for international human rights law for protecting the right to participation in public and political life. The UDHR enshrines the entitlement of all persons to non-discrimination, including based on sex. Both the International Covenant on Civil and Political Rights, 1966 (ICCPR)⁵ under article 25; and the International Covenant on Economic Social and Cultural Rights, 1966 (ICESCR)⁶ under article 3 provide more specific agreements on the right to equality between men and women in public and political life. In addition to the setting up of the Commission on the Status of Women (CSW) by the UN, mobilisation of women's rights in the political sphere culminated in the declaration of the UN Decade of Women from 1976 to 1986 through UN General Assembly Resolution 31/136.⁷ This was shortly followed by the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁸ in 1979. CEDAW mandates the use of temporary special measures, including quotas, to increase the voice of women in decision-making at all levels. Beyond CEDAW, the Beijing Platform for Action called for gender balance in governmental bodies, and this finds support with the Sustainable Development Goals (SDGs).⁹ Goal 5 focuses on achieving gender equality and empowering all women and girls, specifically 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.

4 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

5 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol 999, p 171.

6 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol 993, p 3.

7 UN General Assembly, Resolution 31/136: United Nations Decade for Women, 16 December 1976, UN Doc A/RES/31/136 (1976).

8 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol 1249, p 13.

9 See General Assembly Resolution 'Transforming our world: the 2030 Agenda for Sustainable Development' A/RES/70/1 (25 September 2015).

At the African regional level, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)¹⁰ recognises women's political participation as a right. The Protocol endorses affirmative action to promote the equal participation of women, including equal representation of women in elected office. The AU Solemn Declaration on Gender Equality in Africa (SDGEA), adopted by the AU Assembly of Heads of State and Government in Addis Ababa, Ethiopia in July 2004, also contributes to such a call to action. The African Union Women's Decade, 2010-2020, offers a means of holding national mechanisms accountable.

In addition, at the beginning of 2015, the African Union Summit adopted its vision for the next 50 years: Agenda 2063: 'The Africa We Want'. Agenda 2063 calls for action to all segments of African society to work together to build a prosperous and united Africa based on shared values and a common destiny. It also prioritises democracy, human rights, gender equality, the empowerment of women and young people, management of diversity as critical to good governance, eradicating poverty, ending gender-based violence, and building tolerant, stable, inclusive, and peaceful societies. Aspiration 6 of Agenda 2063 calls for an Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children.¹¹

Increasingly motivated by the intention and commitments well expressed in these documents, women are gradually taking the helm of leadership. In particular, Rwanda is the leading country in the region and the world in terms of gender parity, 61.3 per cent women at the Lower House of Parliament, and 38.5 per cent at the Senate.¹² This incredible progress was spurred by special measures, starting with the 2003 Constitution that set a 30 per cent quota for women in elected positions. The political parties adopted their own voluntary quotas for women candidates on party lists. Similarly, Senegal's legislated candidate quota system has significantly increased the numbers for women, resulting in 41.8 per cent of women in the parliament as of the 2017 elections.¹³

10 African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003.

11 AU 'Agenda 2063: The Africa we want' <https://au.int/en/documents/20141012/key-documents-agenda2063> (accessed 20 July 2020).

12 Inter-Parliamentary Union (IPU) 'Women in Parliament: World classification database' <http://archive.ipu.org/wmn-e/classif.htm> (accessed 10 March 2020).

13 As above.

However, despite the numerous international commitments to bridge the gender gap in the formal political arena, the figures remain gloomy in The Gambia. While women constitute more than half of the Gambian population and over half of the voting population,¹⁴ low representation in positions of power and authority is evident. The Gambia is yet to attain the requisite 30 per cent representation at all levels as agreed upon at the UN World Women Conference in Beijing in 1995.¹⁵ The Cabinet currently has four women out of 23 Ministers.¹⁶ There are currently six women out of 58 National Assembly Members (NAMs) at the National Assembly, of which three are elected and three nominated by the President. There has been significant progress in the judiciary. As of September 2020, there are 14 High Court judges of which six are women, five Court of Appeal judges of which three are women, and two women out of the nine Supreme Court judges.¹⁷ There are also 22 women out of 42 Magistrates in the subordinate courts.¹⁸ The increased number of women in the judiciary is indicative of what is happening around the world in which the numbers of women represented in the judiciary are increasing.¹⁹ The challenge of inequality in politics is also evident at the local leadership level, where women constitute only eight out of the 120 councillors in the country. Thus, according to the Human Development Report of 2019, The Gambia ranked 150 on the gender equality index, despite enacting laws and policies on promoting and protecting the rights of women and girls.²⁰

This chapter examines women's political participation in The Gambia and challenges and prospects for women's political participation in The Gambia. In this chapter, political participation refers 'to the exercise of political power, in particular the exercise of legislative, judicial, executive

14 Gambia Bureau of Statistics (GBOS) '2013 Demographic and Health Survey: Gender Report' (2014) 15-16.

15 United Nations, Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), chap I, resolution 1, annex II. See, African Union (AU) 'Solemn Declaration on Gender Equality in Africa' (6-8 July 2004).

16 These portfolios are the Office of the Vice President, Ministry of Basic and Secondary Education, Ministry of Agriculture and the newly established Ministry of Women, Children and Social Welfare.

17 Data collected from the judiciary, September 2020.

18 Human Rights Council 'List of issues in the absence of the second periodic report of the Gambia: Replies of the Gambia to the list of issues' CCPR/C/GMB/Q/2/Add.1 (12 June 2018) para 61.

19 See generally UN Women 'Progress of the World's Women: In pursuit of justice' (2012).

20 UNDP 'Human development report' (2019) <http://hdr.undp.org/en/content/table-5-gender-inequality-index-gii> (accessed 15 June 2020).

and administrative powers'.²¹ The next section briefly reviews the applicable legal frameworks at the international, regional, and national levels. This is followed by a discussion on the nature and current state of women's participation in governance processes. The chapter then examines the challenges and opportunities for women within the political landscape. It then ends with a conclusion.

2 The Gambia's legal framework on women's political participation

2.1 Constitutional and legislative protection

Since the attainment of independence in 1965, numerous laws and policies, deriving a substantive basis from laws and policies, have, to date, been passed to advance the cause of women in The Gambia.

The legal system of The Gambia is plural in nature, with the 1997 Constitution serving as the main legal source for guarantees of human rights, including the protection of women from all forms of discrimination. The promulgation of the 1997 Constitution of the Republic of The Gambia was deemed to have heralded a new dispensation for the recognition and upholding of the dignity of the individual. The Preamble recognises that

the fundamental rights and freedoms enshrined in this Constitution, will ensure for all time respect for and observance of human rights and fundamental freedoms for all, without distinction as to ethnic considerations, gender, language and religion.

The Constitution of The Gambia contains a comprehensive catalogue of rights and freedoms under Chapter IV. These include the right to life (section 18); the right to personal liberty (section 19); protection from slavery and forced labour (section 20); protection from inhuman treatment (section 21); the right to privacy (section 23); freedom of speech, conscience, assembly, association, and movement (section 25); political rights (section 26); the right to marry (section 27); rights of women (section 28); rights of children (section 29); rights of the disabled (section 31); culture (section 32); and protection from discrimination (section 33).

On the right to participate in the political and decision-making process, section 26 provides that a Gambian citizen of full age and capacity has the right to take part in the conduct of public affairs, to vote and be voted

21 CEDAW Committee, General Recommendation 23: Political and Public Life, 31 January 1997, UN Doc A/52/38 (1997) para 5.

for in public office and to have equal access to public service without unreasonable restrictions. This is a good basis for women's participation in the country's political affairs. The shortcoming of this section is its failure to define 'reasonable restrictions'. However, it will be understood that such a restriction should not in any way be construed to discourage or prevent women from equally taking part in the political process of the country. Chapter V further focuses on the representation of the people. Section 39 provides for the right to vote and to be registered. Every citizen of The Gambia, being 18 years or older and of sound mind shall have the right to vote for elections of a President, members of the National Assembly local government authorities and referendum through secret ballot.

Section 28 of the Constitution states that 'women shall have the right to equal treatment with men including equal opportunities in political, economic and social activities'. This provision recognises the equality of men and women and the right to equal opportunities in all spheres. However, section 28 falls short of fulfilling the international commitments enshrined in the CEDAW and the Maputo Protocol related to women's right to political and decision-making processes. The Gambia has signed and ratified many international and regional legal instruments.²² At the regional level, The Gambia is a party to the African Charter on Human and Peoples' Rights (African Charter),²³ the African Charter on the Rights and Welfare of the Child (African Children's Charter),²⁴ and the Maputo Protocol. In order to ensure that women's *de jure* rights translate into *de facto* equality, the principle of substantive equality is aptly provided in the Protocol. State parties are thus required to enact laws and ensure that they translate into real and tangible benefits for women. Article 9 provides the

22 The International Covenant on Economic, Social and Cultural Rights, ratified on 29 December 1978; the International Covenant on Civil and Political Rights, ratified on 22 March 1979; the Convention on the Elimination of All Forms of Discrimination against Women, signed on 29 July 1980 and ratified on 16 April 1993; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime, signed on 14 December 2000 and ratified on 5 May 2003; the Convention on the Rights of the Child, ratified on 9 August 1990; the Minimum Age Convention, ratified on 4 September 2000; the African Charter On Human And Peoples' Rights, ratified on 8 June 1983; the African Charter on the Rights and Welfare of the Child, ratified on 14 December 2000; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified on 25 May 2005; and the African Youth Charter, signed 24 December 2003 and ratified 30 April 2009.

23 OAU, African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982).

24 OAU, African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990).

right to participate in political and decision-making processes. It obliges state parties to take specific positive actions to promote participative governance and equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures.

The affirmative action provision is section 214(4), which provides that 'in the composition of Government, women shall be fairly represented'. This section is related to state policy's directive principles, which only serve as policy guidelines and are not enforceable.²⁵ In essence, the 1997 Constitution does not provide for binding temporary special measures. In General Recommendation 23, the CEDAW Committee identified the adoption of general positive measures and temporary special measures as part of states' obligations to fully guarantee women's rights to political participation.²⁶ The Committee in its General Recommendation 25 further stated that 'the term 'special measures' in its corrective, compensatory, and promotional sense is often equated with the terms 'affirmative action', 'positive action', 'positive measures', 'reverse discrimination' and 'positive discrimination'.²⁷ The Committee explained that the term 'measures' encompasses:

[A] wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems.

CEDAW clarifies that these temporary special measures do not discriminate against men and are not a form of discrimination if they are being implemented to speed up the achievement of gender equality. Temporary special measures can include a wide range of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources, preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with timeframes; and quota systems. The term 'quota' most often refers to a provision in

25 F Viljoen 'The justiciability of socio-economic and cultural rights: Experiences and problems' (2005) (Unpublished) 3.

26 See, generally, CEDAW, General Recommendation 23 (n 21) at 260.

27 CEDAW, General Recommendation 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures (2004) para 17 <http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf> (accessed 7 July 2022).

the electoral system that guarantees a minimum number of seats in the legislature for women. Quotas are a form of temporary special measures. There are mainly three types: parliamentary seats reserved by law for women; legal quotas requiring a percentage of political party nominees to be women; and voluntary quotas adopted by political parties themselves. These quotas can effectively increase gender balance where there is little willingness to address existing inequalities. Quotas can apply at the local, regional, or national levels.

In terms of national legislative and policy protection, The Gambia has made significant strides in promoting and protecting women's rights. The Gambia is one of few countries in Africa that have enacted specific legislation to fulfil its obligation of domesticating the provisions of both the CEDAW and the Maputo Protocol. These two instruments were given force of law nationally when in April 2010, the Women's Act 12 of 2010 was passed.²⁸

Generally, the Act is a very innovative piece of legislation that contains similar provisions as in the Constitution and creates new provisions aimed at promoting and protecting the rights of women in The Gambia. Section 15 on Temporary Special measures provides:

- 1) Every organ, body, public institution, authority or private enterprise shall adopt temporary special measures as set out in this Act aimed at accelerating de facto equality between men and women.
- 2) The special measures to be adopted under subsection (1) shall
 - a) not to be considered discrimination as defined in this Act or in any other law in force, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards; and
 - b) be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- 3) Without prejudice to the provisions of subsections (1) and (2), every organ, body, public institution, authority or private enterprise shall take appropriate measures to protect the maternity status and reproductive health of women, including allocation of special facilities, time and

28 The Long Title of the Act provides that, it is:

'An Act to implement the legal provisions of the National Policy for the Advancement of Gambian Women and Girls, and to incorporate and enforce the United Nations Convention on the Elimination of all forms of Discrimination Against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.'

resources, aimed at protecting maternity, and such special measures shall not be discriminating.

Measures are to be adopted by every organ, body, public institution, authority, or private enterprise to accelerate *de facto* equality between men and women. However, this section of the Women's Act failed to introduce quotas in meeting the 30 per cent target for women's political participation and representation in the National Assembly and public positions. A close reading of section 15 of the Act shows that it distinguishes between *de facto* and *de jure* discrimination.

The National Gender and Empowerment Policy 2010-2020 also serves as a comprehensive guide to attaining gender equity and equality through its Implementation Plan. It sets indicators to assist in gender mainstreaming from a human rights-based approach in planning, programming, and implementation processes by sectoral departments, partners, and other stakeholders. Its goal is to mainstream gender in all national and sectoral policies, programmes, plans, and budgets to achieve gender equity, equality, and empowerment in the development process. The National Gender and Empowerment Policy generally addresses human rights, governance, and women's empowerment. In part, the policy uses the appropriate human rights language, and reference was made to the CEDAW and the Maputo Protocol.

Women's political rights as guaranteed in the Constitution and the Women's Act are fundamental. However, it represents only a starting point, a bare minimum for realising such a right.

2.2 Gender machinery

Both the National Women's Council and Women's Bureau were established by the National Women's Council Act 1980. The Council is composed of 65 members with eight nominated Councillors representing the interests of women countrywide.²⁹ The Council is mandated with advising 'government on all matters affecting the development and welfare of women and any other matters referred to it by the minister'.³⁰ The Women's Bureau serves as the secretariat of the Council responsible for its day-to-day administration, coordination, and implementation of its policy decisions.

29 Gambia Government 'Combined report on the African Charter on Human and Peoples' Rights & Initial report on the Protocol to the African Charter on the Rights of Women in Africa' (2018) 121.

30 Section 5 of the National Women Council Act.

In January 2019, a new Ministry of Women, Children and Social Welfare was established.³¹ The Ministry is responsible for policy formulation, coordination, resource mobilisation, monitoring, and evaluation at the highest level, particularly for women and gender in general. The Gender Policy Implementation and Monitoring Committee also meets periodically to review sector level of implementation and report on progress, gaps and recommendations. There is a need to strengthen the national women's machinery to ensure the effective implementation, monitoring and mainstreaming of national, regional and international commitments to gender equality.

3 Trends and status of women in political and decision-making processes in The Gambia

To understand the position of Gambian women in the modern political dispensation, it is necessary to make clear the structures they operated in before the colonial period and during the colonial era.³² According to Oral Historians, The Gambia had women rulers before the advent of Islam notable of whom were: the first ruler of Niumi who was a woman; and Wulending Jassey, the ruler of Kombo Sanyang who was married to the Jattas of Busumbala, then a ruling family. During the reign of Musu Molo, his cousin sister Fanta Sarjo ruled the province of Fulladu. In Kaabu, the power of women brought about 'nyanchoyaa'. In Sine Saloum, the 'Gelewars' are proud of their maternal inheritance which forms an institution called '*linguere*' overseen by women. Therefore, during the pre-independence era, women participated in decision-making and held influential positions. Even though Gambian women had certain powers in the pre-colonial times, traditional Gambian culture was predominantly patrilineal and patriarchal.³³ As noted by Cymone Fourshey, most of these prestigious statuses that women occupied 'greatly diminished from the 19th century onward due to processes of the slave trade, Islamization, and European colonialization'.³⁴

31 The Ministry of Women's Affairs under the Office of the Vice President was created in 1996.

32 On previous studies on Gambia women's participation in politics and society, see H Ceessay *Gambian women: Profiles and historical notes* (2011); H Ceessay *Gambian women: An introductory history* (2007).

33 See J Kingsland 'A Gambian chieftaincy election' (1977) 15 *Journal of Modern African Studies* 651.

34 C Fourshey 'Women in The Gambia' (2019) *Oxford Research Encyclopedia of African History* 2; on colonial-era Gambian women see 10-13.

Despite the constraints faced during the colonial era,³⁵ Gambian women occupied leadership prominence in pre- and post-independence.³⁶ In the 1950s, before independence, the Late Lucretia St Claire Joof was the first nominated member of Parliament. The first Gambian Parliament, the single-chamber House of Representatives, was established in 1960. In 1962, the first female to contest for a Parliamentary seat was the Late Lady Hannah Augusta Darling Jawara, candidate for Soldier Town Ward in Banjul for the Peoples' Protectorate Party (PPP), which was formed in 1959 and headed by Sir Dawda Kairaba Jawara. She was the first politician to start the house-to-house campaign. Lady Jawara was the first President of the Republic's wife, and a veterinary doctor turned politician. Although she did not win, she did open the gates for women to enter the political field.

The modern-day nation of The Gambia achieved independence in 1965. The first woman cabinet minister was Louise Njie, who was appointed as a parliamentary secretary in 1977, rising to become Minister of Health with a more extensive portfolio overseeing Social Welfare, Labour and the Environment (1979-1985). Fatou Sonko also contested as an independent candidate in 1972 and 1987 as a candidate of the Gambia People's Party (GPP) founded in March 1986 by three dissident ex-PPP ministers and led by a former president Vice-President, the later Assan Musa Camara. She did not also succeed. The first woman to be elected to the House of Representatives was Nyimasata Sanneh-Bojang in 1982 in the First Republic. She was the first woman to contest and win the parliamentary elections in the Kombo North Constituency for PPP. She was again elected in the 1987 election. On the third occasion, her party, the PPP did not endorse her nomination. Nyimasata made history as the first elected woman to the Parliament, mainly seen as a hitherto all-male domain. 1992 also saw the entering into Parliament of three more nominated members namely Elizabeth Renner (who won the Miss Gambia contest at Independence) and together with the Late Kunda Camara and Agnes Jawo.

Under the Second Republic, Cecilia Cole was nominated and served as first Deputy Speaker from 1997-2001. In 2006, the first woman, the late Belinda Bidwell presided over Parliament. This was followed by

35 See RM Baum 'West African Women of God: A response' (2018) 1 *Journal of African Religions* 149.

36 See A Hughes & D Perfect *Historical dictionary of The Gambia*, 4th ed (2008) 244-245. See also M Khan 'African women's leadership: A case study on The Gambia' in G Mkodzongi & M Khan *Africa history and culture* (2020); see H Ceasay 'Women's associations and social development in Bathurst 1925-1965' in G Mkodzongi & M Khan *Africa history and culture* (2020).

two other Speakers namely Fatoumata Jahumpa-Ceesay (2007-2009) and Elizabeth Renner in 2009. Other elected female members in the National Assembly have included Bintanding Jarju for Foni Berefet, Ndey Njie for Lower Saloum and Duta Kamaso for Wuli East who all won in 2002 and became members of Parliament. In 2007, Bintanding and Haddy Nyang-Jagne for Jeshwang Constituency stood for elections. Other women Parliamentarians include Ramzi Diab and Tina Faal. From 2013 to 2016, there were three elected female representatives and the Deputy Speaker who was a nominated member. In 2016, Dr Isatou Touray, an anti-Female Genital Mutilation (FGM) campaigner, ran for president. Though she did not win, her campaign exemplified grassroots organising and campaigning. She is the current Vice-President of the country.

Women constitute over half of the voting population yet make up only 20 per cent of the ministerial cabinet. As for the legislative body from 2017 to date, there are only six women out of 58 National Assembly Members (NAMs), of which three are elected and three nominated by the President. While the speaker is a woman, the number of women parliamentarians is less than 10 per cent. Out of the eight local government administrations (Area Councils and Municipalities), all are headed by men with only the Banjul City Council headed by a female Mayor. All 40 District Chiefs are male. According to The Gambia's Initial Report on the Maputo Protocol, elected female councillors numbered 14 in 2008, ten in 2013 and eight (6.67 per cent) in 2018 out of 120 councillors.³⁷ The sharp decline of female councillors is mainly due to the general barriers to women's equal participation, including structural, socio-cultural, and institutional, and increasing high costs involved with politics even at the local leadership level, which is driven by patronage networks.

While progress was made in 2018, with the first female mayor's election in the country's capital, the gender gap in the legislative and other decision-making bodies is evident. Despite the numerical strength, it illustrates that women's rights and gender equality issues continue to be systematically marginalised even after the ratification and adoption of international and regional human rights instruments and documents and their subsequent domestication.

Despite the considerable progress made, The Gambia is yet to attain the requisite 30 per cent representation, which is considered the 'minimum' or 'critical mass' level for women to participate effectively.³⁸

37 Gambia Government (n 29) 131.

38 M Allen 'A practitioner's account: The Constitution Assessment for Women's Equality' in H Irving (ed) *Constitutions and gender* (2019) 195.

Due to the patriarchal nature of society, women are not treated equally with men in all areas of their lives, and these are based on practices that are deeply rooted in customs and traditions. This is more prominent in the political sphere. Given that informal rules governing power relations in The Gambia remain patriarchal, the constraints that limit female involvement include intimidation, violence and subtle manipulation of voters' expectations of female politicians.³⁹

Women in The Gambia have been the greatest supporters of male candidates within the parties they belong to. They serve as mobilisers, rally organisers and event planners and organisers. For example, '*Yai Kompins*' are women leaders who are very influential in party politics, and they play a significant role in advancing the political ambitions of candidates, mostly men. The majority of male political aspirants depend heavily on the support of women to win elections, and many politicians have acknowledged this. In a relevant nationwide study on women's political participation, a male councilor of the Kerewan Area Council attested to this, stating that 'it is women that get candidates to win elections, including myself'.⁴⁰

4 Challenges to the realisation of women's rights to political participation

Current scholarship often groups these barriers into structural, institutional, and cultural categories. Structural barriers include women's general positions within different social systems as they pertain to women's levels of educational achievement, rates of participation in the workforce, the percentage of women in poverty, and the division of childcare and household responsibilities. These factors affect the number of women who have the 'human and financial capital necessary to run for office'.

Cultural barriers include gendered political beliefs, which create significant obstacles for women seeking office. Gender stereotyping affects women's decision to enter politics, run for office, chances of becoming

39 Allen (n 38) 33-44.

40 S Nabaneh 'Women's political participation and representation in The Gambia: One step forward or two back?' (2013) commissioned by TANGO 32.

party candidates, and their ability to win. Gambian societies view politics as a man's world.

4.1 Legal barriers

The non-discrimination section in the Constitution of The Gambia prohibits discrimination but at the same time has far-reaching *provisos* that put the so-called personal laws beyond the reach of such articles. Section 7 provides that both customary law and the Sharia law as it relates to marriage, divorce and inheritance are sources of Gambian laws.⁴¹ While the Constitution prohibits discrimination, in the same token, condones it when perpetrated under customary and personal laws. This exclusion renders women's right to representation meaningless because discrimination against them remains constitutionally sanctioned.

Although there are constitutional and national legal and policy frameworks, as noted above, which can serve as a springboard for the implementation of women's political participation rights, the inadequacy in laws and policies, coupled with poor implementation strategies, lead to their ineffectiveness. In addition, the legal frameworks do not adhere to international and regional human rights standards on women's representation.

4.2 Limited capacity and inefficiency of state institutions in mainstreaming gender and service delivery targeting women

Administrative incapacity at the local government levels greatly hinders women's political participation. Ensuring women's political participation and representation is made additionally difficult when they do not have the adequate administrative capacity to mainstream gender and service delivery targeting women. Local participation has also been hampered by the attitudes of local government personnel who have not been supportive of more direct forms of participation. Moreover, elected representatives do not always see it as important to make themselves accessible to their constituents. Shortages of financial and human resources further incapacitate local governments. Local government staff and councilors' professional and institutional values and practices should be reoriented

41 See section 7(d) and (e).

towards women's empowerment. Local officials need to recognise and understand power disparities and other inequalities.

4.3 Limited capacity and inefficiency of CSOs in women's rights advocacy and service delivery

Civil Society Organisations (CSOs) engaged in women's rights advocacy are notable in their efforts to increase women's political participation and representation in The Gambia. These organisations are consulted in the planning and implementing laws and policies targeting women. CSOs can influence the political process because they collaborate with people at the grassroots level. CSOs have tried to work closely with women in politics through trainings and forums, however, the limited capacity and inefficiency in having a significant impact on women's rights advocacy and service delivery remain a problem.

The lack of coordination between CSOs involved in women's rights advocacy serves as a problem. Interventions would be more effective if CSOs formed alliances to mobilize, train and campaign for an increased number of women at all levels of decision-making rather than at organisational level. There is a need for close collaboration between CSOs in articulating, highlighting, and lobbying for women's needs and rights, especially in the political sphere.

4.4 Economic challenges to women's political participation

Women face financial barriers to engage in politics and run as candidates. The 'law of the pockets' generally affects women's effective participation and representation in politics. Poverty and political power or to achieve power are directly related to each affecting the other, hence creating a vicious cycle. For instance, men and women do not have the equal financial means to stand for elections considering the cost involved. It is simply too expensive. According to the 2011 study, a former female councillor of the Janjabureh Area Council who stood for parliamentary elections in 2006 and lost highlighted the economic challenges faced. She stated that 'the expenses involved are too much. You have to buy kolanuts, sweets, fuel- which you need money to do so'.⁴² Women often lack access to adequate

42 Nabaneh (n 40) 40.

funds limiting their ability to run for political office. They often lack the business networks that male politicians have to raise money.

4.5 Social challenges to women's political participation

Alongside institutional barriers, Gambian women also face cultural and structural obstacles. Family demands are a major factor why politics is not chosen by women who are mothers and their families do not welcome the demand on their time or travel. Women are often sidelined in key decision-making processes, such as when informal gatherings occur outside regular working hours. The time that meetings are held can conflict with women's other responsibilities towards their families.

Socio-cultural beliefs and practices, like patriarchy, continue to hinder the full acceptance of women and their participation in leadership positions. Stereotypes and the socialisation process have led to a perception of men as leaders and women as supporters. Women are expected to behave in a certain way, including leadership behaviour or lack thereof based on their gender.⁴³ These perceptions put women in the private sphere as wives, mothers and daughters and men in the public domain of decision-making as well as the economic and political arenas. As noted by Nabaneh in the study on women's political participation, 'the continued visualisation of women as "followers" and rather than as "leaders" based on cultural and traditional beliefs, continue to hamper women's political participation'.⁴⁴ Thus, the masculine model of politics is evident in The Gambia. Patriarchal politics entails the belief that the man is the 'natural' head of household, and that this decision-making role naturally extends to the public domain of national politics. It is a manifestation and institutionalisation of male dominance over women and children in the family and the extension of male dominance over women in society, in general. In The Gambia, men overwhelmingly dominate the political landscape. They define and formulate the political games. They head all major political parties in The Gambia, so they get to decide who should make it to parliament or local government council. Men's politics are characterised by 'winners and losers, competition and confrontation, which are alien to women, who prefer mutual respect, collaboration and consensus building'.⁴⁵ Politics is often seen as an old-boys' club in which there is no place for women. Politics remains a masculine realm, and there are few women role models

43 MA Ceika & AH Eagly 'Gender-stereotypic images of occupations correspond to the sex segregation of employment' (1999) 25 *Personality and Social Psychology Bulletin* 413.

44 Nabaneh (n 40) 40.

45 N Shvedova 'Obstacles to women's participation in parliaments' in J Ballington et al (eds) *Women in parliament: Beyond numbers* (2005) 35-36.

for young women to look to as mentors. While women are increasingly challenging these gender norms, the legacies of men's domination of these spheres continue to disadvantage women.

In addition, younger women who are unmarried also face many restrictions. Evidence shows instances in which a man was convinced to stand as an independent candidate because the female was single.⁴⁶ As the female youth representative for the Kanifing Municipal Council puts it, 'If you are not married, you are usually advised to get married. This is premised on the belief that unmarried women do not bring a lot of people or supporters'.⁴⁷ Questions such as 'is she married?'; 'How many children does she have?'; 'Does she have any children out of wedlock?' are the few questions they will first ask when a female candidate expresses her interest in standing for elections.

Other issues also include the difficulties faced by independent candidates who face challenges such as security, negative effects on their families, and also expelled from their own political parties,

4.6 Violence against women in politics

Violence or threat of violence serves as an impediment to women's political participation. Violence especially occurring at the local level remains underreported and undocumented. Physical or psychological violence can undermine women's ability to enter, or stay in, politics. Such violence takes a variety of forms, including character assassination and defamation, harassment, insults and slander, sexual violence, assault, and the targeting of relatives and supporters. The root causes of violence against women in politics are as a result of persisting cultural stereotypes, abuse of religious and traditional beliefs and practices, the patriarchal nature of society, and the role women historically played as followers of male leaders.

4.7 Lack of women's advancement in political parties

Political parties serve as important structures that can facilitate or impede women's access to political power by determining what kinds of experience and personal qualities matter. It is one of the key institutions through which gender equality can be promoted and realised. Parties with clear rules in determining candidate selection and proper selection procedures tend to provide an advantage for women.

46 Nabaneh (n 40) 40.

47 As above.

All political parties have a women's section or wing. They serve as an essential tool in exerting influence over party platforms and policies. Women in political parties face several challenges, one key mechanism being the selection process for the nomination of candidates.

However, in The Gambia, some political parties promote gender equality in practice, and very few hold decision-making positions with the party structure. Political parties do not often promote women to leadership positions. In many cases, parties recruit women engaged in election campaigns and mobilisation of voters. Women are often portrayed as having little political knowledge, experience and skills, which creates an unfavourable environment for women's political participation. As a result, there are many women party members, but few are able to move into positions of power.

5 Opportunities and recommendations

As noted above, there is currently no constitutional provision that allows for special measures to accelerate the substantive equality between women and men. The constitutionalisation of temporary special measures becomes more relevant in the political arena and decision-making at all levels, where women are not legally barred from participating effectively on an equal footing with men but may not be able to do so due to cultural bias in favour of men, and stereotypical perception of the role of women. An inclusion of a special measures provision that makes a definitive prescription, for example to provide quotas in areas where women are underrepresented is necessary. This is also in line with the National Development Plan (NDP), which has a goal of increasing the proportion of seats held by women in the National Assembly from 10 per cent to at least 30 per cent and the proportion of women holding ministerial positions.⁴⁸

The 2014 nationwide study on women's political participation and representation shows that 89 per cent of all respondents supported introducing the quota system.⁴⁹ Fast forward four years later, findings from the Afrobarometer Round 7 survey in The Gambia found that 85 per cent of all respondents support the inclusion of a quota system for women's representation in the National Assembly.⁵⁰ Temporary special measures such as quotas can rectify imbalances in political representation

48 Gambia Government 'National Development Plan 2018-2021' (2018) 38.

49 Nabaneh (n 40) 45.

50 Centre for Policy, Research and Strategic Studies (CEPRASS) 'Summary of Results: Afrobarometer Round 7 Survey in the Gambia, 2018' (2018).

by guaranteeing a number of seats for women in both the National Assembly and Local Government Council.

Given the above outlined challenges, there is room for improvement and opportunities. The 2020 Draft Constitution makes several provisions on accelerating substantive equality between men and women. It sought to remedy the gaps in the 1997 Constitution, relating to the adoption of a mechanism to ensure women's effective participation in the political process in The Gambia. This is in line with the country's international obligations in CEDAW, Maputo Protocol, and best practices in other comparative African jurisdictions like Rwanda, South Africa, and Kenya.

Section 53 of the Draft Constitution, 2020 guarantees the political rights of all persons in The Gambia. Section 74 on general principles for the electoral system provides:

The electoral system shall comply with the following principles –

- (a) freedom of citizens to exercise their political rights under section 53;
- (b) fair representation of all gender in the elective public bodies;
- (c) fair representation of the youth and persons with disabilities;

The section's reference to fair representation of all gender is vague. The question that needs to be asked is, how is fair representation to be determined particularly without a positive obligation to achieve a specific percentage or quota?

Political parties are also obligated to respect the rights of all persons to participate in the political processes, including women, youth and persons with disabilities under section 84. The section did not specify a specific percentage or quota allotted to women to aid their representation.

Section 83 further provides for the establishment of a number of constituencies for the purposes of the election of the members of the National Assembly specified in Schedule 3. Schedule 3 states:

For purposes of election to the National Assembly, the members shall be elected from the following constituencies –

- (a) 53 persons elected from single member constituencies as demarcated by the Independent Boundaries and Electoral Commission;
- (b) 14 women, 2 elected from each administrative area; and

- (c) 2 persons, elected by persons with disabilities from amongst the members of the federation representing such persons.

Consequently, the composition of the National Assembly would include a number of women and persons with disabilities, in addition to those who may be elected from single-member constituencies. Thus, parliamentary seats will be reserved for women.

While the provision of a legislated quota system, which entails 'reserved seats', wherein a specific number of seats are set aside for women, is commendable, it still falls below the 30 per cent requirement. It is also not clear what the modalities will be in how to go about with the election of 14 women from the administrative areas. What is also not clear is whether the women representatives would be subject to the same criteria as stipulated for in clause (a), including educational requirements? Considering that many rural women are often not educated beyond the primary level, some elitism could be encouraged. How to ensure that it does not become class-centric?

It would be helpful to draw from other countries that have the legislated quota system, Uganda is a good case study. The revised 1995 Constitution institutionalised the quota system by providing for a number of reserved seats in the national parliament equal to the number of districts in the country.⁵¹ Each district elects a female parliamentary representative. In the case of Uganda, they organise the reserved seats as single-member 'women's districts' constituency.⁵² This single-member constituency similar to what is provided in subsection (a) to be decided by the Independent Boundaries and Electoral Commission, means first-past –the-post electoral system in essence. In essence, for the Ugandan model, one-woman representative is elected by universal suffrage in each district – which may consist of multiple counties (constituencies) – in directly contested 'female candidate only' elections.

Thus, an all-female electorate is proposed to elect the 14 women from that administrative area based on universal adult suffrage and by secret ballot. Similar to what happens in Uganda, women who want to become reserved-seat parliamentarians, can take the following steps, which primarily follows the election procedure. First, women interested in the reserved seats should decide to run. Second, they can then obtain a party

51 See art 78(1) of the Constitution of Uganda, 1995.

52 On the recruitment process, see, V Wang & MY Yoon 'Recruitment mechanisms for reserved seats for women in parliament and switches to non-quota seats: A comparative study of Tanzania and Uganda' (2018) 56 *The Journal of Modern African Studies* 299.

nomination or be exempted from this if they are independent candidates. Third, win the election. This process ensures a transparent voting process and enhances the legitimacy of these female parliamentarians.

Though the constitution-making process has been stalled due to the rejection of the Constitution Promulgation Bill, 2020 by the National Assembly, this can still serve as an entry point to strengthen constitutional and legislative measures on this issue including a proposal for a private member bill to increase women's representation in the National Assembly.⁵³ A private member's bill can be tabled before the National Assembly by a Parliamentarian who is not a Cabinet member and is not acting on behalf of the Executive branch as provided in section 101(1) of the 1997 Constitution. Furthermore, the Standing Order 62 of the Standing Orders of the National Assembly (Revised edition 2019) also gives full effect to this provision. Such a bill will make provision for reservation of specific seats for women to ensure that women enjoy genuine *de facto* equality on an equal basis with men.

In addition, the proposal in the Draft Constitution that imposes an obligation on political parties to promote gender equity in selecting candidates for election, including the selection of women to contest for election, can be implemented without the need for an amendment of the 1997 Constitution. Section 60 of the 1997 Constitution, which deals with political parties, has an empowering provision in subsection (3) which provides that: 'An Act of the National Assembly shall make provisions for the better implementation of this section'. Therefore, this can be implemented through an ordinary Bill, without the need to amend the Constitution. Reforming political parties to support women's political empowerment within the party as leaders as well as their nomination as candidates to contest elections, is critical.

6 Conclusion

Increasing women's representation and participation in governance can play a central role in building momentum for progressive policy and legal reforms, changing adverse social norms, and promoting accountability. Strengthening women's rights and addressing barriers to political participation are critical to achieving gender equality and female empowerment. It is clear from the above analysis that The Gambia has

53 S Nabaneh 'Women's political participation in The Gambia: Gender quotas as fast track to equality' *IACL-AIDC Blog* 25 January 2022 <https://blog-iacl-aidc.org/new-blog-3/2022/1/25/womens-political-participation-in-the-gambia-gender-quotas-as-fast-track-to-equality-b5a94> (accessed 10 February 2022).

an international obligation to adopt and implement, through legislation, special measures, and affirmative action, to guarantee genuine de facto equality and participation of women in the political arena. This includes representation in the National Assembly and selection to contest for election.

In order to overcome gender stereotypes, laws and their implementation require greater support. Women's political participation and representation must be founded on strong laws and institutions. Therefore, it is recommended that the innovative provision in the 2020 Draft Constitution be incorporated into the existing legal framework. After 22 years of authoritarian rule, due consideration should be given to the adoption of specific measures and affirmative action through legislation to accelerate the attainment of equal representation at all levels of decision-making, including representation at the level of the National Assembly. Given The Gambia's political transition, this serves as an opportune time for positive gender equality and ending discrimination against women.

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