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# POLITICAL REPRESENTATION OF ETHNIC GROUPS IN THE GAMBIA – LESSONS FROM THE ELECTORAL SYSTEM OF MAURITIUS

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## 1 Introduction

Mauritius[1] and The Gambia[2] are often known as two 'small' countries on the African continent due to their relatively small surface area. However, both come from different historical backgrounds and trajectories. Mauritius, having been built on an empty island discovered by explorers or colonisers, such as the Dutch, the British and the French, populated by slaves brought from the mainland African continent and the arrival of indentured labourers mainly from India after the abolition of slavery.[3] The Gambia was colonised by the British and was a major port in the history of colonisation and the transatlantic slave trade.[4] Their political trajectories have also been largely different even though there is a diversity of ethnic groups in both countries. While it can be observed that Mauritius has consistently strived to be a democracy throughout its ten elections held since the advent of its independence in 1968,[5] it is commendable that the Gambia is rebuilding itself after having witnessed and undergone a dictatorship lasting almost 22 years and reliving its path to a multi-party democracy.[6]

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1    Mauritius has a surface area of 2 040 km2.

2    The Gambia has a surface area of 11 295 km2.

3    Government of the Republic of Mauritius 'History of Mauritius' http://www.govmu.org/English/ExploreMauritius/Pages/History.aspx (accessed 18 June 2019).

4    The Commonwealth 'History of The Gambia' http://thecommonwealth.org/our-member-countries/gambia/history (accessed 18 June 2019).

5    The Worldbank 'Political context of Mauritius' https://www.worldbank.org/en/country/mauritius/overview (accessed 18 June 2019).

6    The Commonwealth 'Political trajectory of the Gambia' http://thecommonwealth.org/our-member-countries/gambia/constitution-politics (accessed 18 June 2019).

With the number of ethnic groups and religions of different sizes in a small country of 4 361 square miles, communalism cannot be treated lightly. One way through which communalism or social cohesion can be achieved is meaningful political representation. The concept of political representation is founded on making citizens' voices, opinions, and perspectives present in public decision-making processes. It is also considered as 'acting in the interest of the represented in a manner responsive to them'.[7] Political representation is materialised when all adults are given the opportunity of influencing a political process without discrimination.[8] Political representation of minorities, therefore, means an opportunity afforded to minorities to effectively influence the outcome of an electoral process.

The Gambia is one of the smallest West African countries, practically surrounded by the Republic of Senegal. It is a developing country with a population of 1.8 million people.[9] The country is heterogeneous in nature, consisting of a mixture of different people from different ethnic and religious backgrounds. Interestingly, in terms of political system, from independence to date, the only electoral system being used in The Gambia is the first-past-the-post system. This system does not guarantee or ensure minority representation to a large extent. An unprecedented constitutional development is underway in the country. Perhaps now is the time to rethink the country's electoral system to ensure fair political representation of the minority for further social co-operation among the different ethnic and religious groups.

From a comparative perspective, the Mauritian Electoral system, as alluded to, was established to ensure fair representation – participation of minorities in the Mauritian's political processes. In terms of its usefulness, one could argue that the system has given an opportunity to the minorities to mutually participate in different political processes. Given the demographics of Mauritius, one can safely conclude that it shares a lot in common with the Gambia in terms of ethnic and religious diversity. What is worthy of noting is that the different ethnic and religious groups in Mauritius are geographically organised. In other words, each ethnic or religious group lives and settles in different regions, which is more reason why the Mauritius electoral system was put in place to ensure that these groups effectively participate in every electoral process and in particular, represent in Parliament. Unlike The Gambia, the different

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7    HF Pitkin *The concept of representation* (1967).

8    Pitkin (n 7). See also section 33 of the 1997 Constitution.

9    Open Date for Africa 'Gambia data portal' http://gambia.opendataforafrica.org/nujcwtc/population(accessed 10 June 2019).

ethnic and religious groups live together everywhere across the country. Despite the difference identified above, it is undeniable that the Mauritius system has been a success and one way through which it can be helpful to the Gambia is to have the ethnic and religious minorities well represented in parliament. However, what must not be overlooked is the fact that this system is not all perfect; there are hitches that come with it and one of them is social division. However, whether or not such division will arise when this system is customised in The Gambia can only be presumed, and if this presumption should stop the Mauritius system from being customised, then the quest to realise minorities' representation will remain a moving target.

With the mind to contribute to the development of The Gambia's Constitution, the chapter states, firstly, the historical setting of The Gambia and Mauritius. Secondly, it covers the historical background of The Gambia's and Mauritius's Political system. Thirdly, it discusses how minorities in The Gambia are politically represented, particularly in parliament, and finally, it ventures into analysing Gambia's legal framework and its reforms and determine whether it ensures adequate representation of minorities in parliament while comparing how the electoral system in Mauritius may provide important lessons in minority representation in the political arena.

## 2    Historical context

### 2.1    The Gambia

The Gambia gained independence on 18 February 1965. During this period, The Gambia a new independent state, got registered with the Commonwealth. But before the country became a Republic, its multiparty system was headed by a prime minister and the constitutional monarchy was headed by Queen Elizabeth II.[10] Since its independence to date, The Gambia has had three Constitutions: the 1964, 1970 and the 1997 Constitution.[11] The Gambia became a republic following a referendum in 1970, which referendum changed the constitutional monarchy to a presidential system.[12] From this moment, the Queen of England ceased to be the head of state. The first republic started in 1970 and lasted until 1994 when the former president, Sir Dawda Jawara, was toppled in a military coup lead by Yahya Jammeh on 22 July 1994.[13] The second republic came

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10    D Perfect *Historical dictionary of The Gambia* (2016) 98-100.

11    Perfect (n 10) 538-539.

12    A Hughes & D Perfect *A political history of The Gambia,* 1816-1994 (2006) 175, 346.

13    Perfect (n 10) 99-100.

in with a new Constitution on 16 January 1997. This Constitution further strengthened the presidential system, but the system of checks and balance was comparatively weak.[14] However, shortly after he was voted out in 2016 by a coalition government, whose flag bearer was Adama Barrow.

In essence, the three presidents of the Gambia, their parties and tenue are as follows:

(i)   Dawda Jawara: 1970-1994. Party: People's Progressive Party (PPP);
(ii)  Yahya Jammeh:1996-2017.Party: Alliance for Patriotic Reorientation and Construction (APRC); and
(iii) Adama Barrow: since 2017. Party: United Democratic Party (UDP).

It is worthy to note that before the advent of colonial rule, The Gambia was part of what was then called the Ghana Empire, the Mali Empire, and the Kingdom of Songhai. In the 13th century, these empires and the kingdom were predominantly ruled by a few ethnic groups such as the Serahule, Mandinka, Susu, and Fula. As The Gambia began to gain more recognition, other ethnic groups were identified. The Europeans started to arrive in The Gambia from about the 15th, and more aggressively in the 17th and 18th centuries. The first Europeans to explore and settle on the coast were the Portuguese followed by the Dutch, the French and the British. The French and British struggled to colonise the country and in around the 17th century, the Colony of The Gambia slowly developed as a British possession.[15]

The above-mentioned ethnic groups were predominantly Muslim and animist. It was around 1807 when slavery was abolished that other ethnic groups such as Aku, who were mostly Christians, started to settle in The Gambia. It is noteworthy that every tribe shares a high sense of belonging to the country and there has been no conspicuous record of any tribal clash at any given point. The pre-colonial, colonial, and post-colonial period in The Gambia has witnessed a great transformation. Administratively, the protectorates were segmented into different provincial administrate areas such as North Bank, McCarthy Island, South Bank, Upper River, and Kombo/Foni. However, these areas were later renamed and called divisions and now regions. Aside from these regions, eight local government areas were also created between 1960 and 1995.[16]

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14   OAS Jammeh *The Constitutional law of The Gambia* 1965-2010 (2011) 4-6.

15   JM Gray & HR Palmer *The book of the quarter: A history of The Gambia* (1940) 39 *African Affairs* 272.

16   Hughes & Perfect (n 12) 7-8.

On the demographic distribution of The Gambia's population by ethnicity, the 2013 census shows that Mandinka constituted the largest ethnic group with 34.4 per cent. However, there are indications that the population share of the Mandinkas is steadily declining, because the size of other ethnic groups, such as Fula and Wollof, is considerably on the increase. The second-largest ethnic group was Fula/Tukulor with 24.1 per cent. This is followed by Wollof with 14.8 per cent, Jola with 10.5 per cent, Sarehule with 8.2 per cent and Sereres constitute 3.1 per cent. The remaining 0.5 per cent is shared among the rest of the minorities such as the Manjagoes, the Creole/Aku, among others.[17] All these ethnic groups live together everywhere across the country.

## 2.2    Mauritius

In 2018, Mauritius celebrated 50 years of independence.[18] Mauritius is known to be a multicultural and multi-ethnic welfare state blessed with years of relatively good standard of living and political stability.[19] However, the picture is not necessarily as rosy as it may seem. Going through Mauritian history, it can safely be said that Mauritius had no indigenous population per se. Every citizen was brought from parts of the world, namely Southeast Asia, Africa, and Europe. Therefore, every generation sticks to the roots, values, and cultures that they came with, sometimes resulting in irreconcilable differences. There is a sense of belongingness still tied to the roots of the countries of origin of the descendants. There are differences among the various ethnic groups which is, fortunately, not voiced out through violence but solved rather calmly in most cases. It may be observed that the State of Mauritius has tried to adopt the principle of diversity management to quell tensions as a pre-emptive measure or as a solution whenever tensions have arisen or could have degenerated because of the differences among the ethnic groups.

The demographics demonstrate that Mauritian society is composed of Indo-Mauritian (descendants of Indian Indentured Labourers comprising of Hindus and Muslims) 68 per cent, Creole (descendants of former slaves) 27 per cent, Sino-Mauritian (descendants of Chinese Indentured

17    Gambia Bureau of Statistics https://www.gbos.gov.gm/2013.php (accessed 7 May 2019).

18    BBC Travel 'Mauritius at 50' http://www.bbc.com/storyworks/travel/specials/mauritius-at-50/ (accessed 7 May 2019).

19    H Heerah 'The elimination of ethnic problems through the implementation of policies by the Government in Mauritius' https://www.academia.edu/23707044/The_elimination_of_ethnic_problems_through_the_implementation_of_policies_by_the_Government_in_Mauritius (accessed 7 May 2019).

labourers) 3 per cent, and Franco-Mauritian (descendants of former colonisers) 2 per cent.[20] In terms of wealth distribution, the Franco-Mauritian group comprises the largest group of people of European origin on the island and is the wealthiest ethnic group in Mauritius followed by the Sino-Mauritians.[21]

Mauritian society is religious and practices Hinduism, Christianity, Islam and Buddhism.[22] The religions present in the Republic are Hindu making up 48.5 per cent, Roman Catholic 26.3 per cent, Muslim 17.3 per cent, other Christian 6.4 per cent, other 0.6 per cent, none 0.7 per cent, unspecified 0.1 per cent.[23] With a population coming from different regions of the world, Mauritius is a multi-lingual country. The languages spoken range from Creole (86.5 per cent) as the common language of communication followed by the Bhojpuri (5.3 per cent), French (4.1 per cent), two languages (1.4 per cent), other (2.6 per cent) including English as the official language, spoken by less than 1 per cent of the population.[24] The country is often called a melting pot. Through 'the meeting of a mosaic of people from India, China, Africa and Europe began a process of hybridisation and intercultural frictions and dialogues, which poet Khal Torabully has termed "coolitude"'.[25]

In terms of belongingness to a new place, Krish Seetah argues that

Identity negotiation is a process in which a person negotiates with society at large regarding the meaning of his/her identity. These processes were being performed among all newcomers to Mauritius - having no indigenous population, all the peoples of Mauritius are colonisers - all immigrants had to alter, transform their identities to survive in their new home.[26]

It can safely be said that the identity negotiation still plays a big role in shaping Mauritian political scenario today, in terms of defining the reins of power and who gets to occupy which post of power.

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20    Mauritius demographic profile 2014.

21    'Household Budget survey in Mauritius' http://statsmauritius.govmu.org/English/ Publications/Pages/HBSYr17.aspx (accessed 7 May 2019).

22    Religion in Mauritius.

23    Mauritius statistics Office.

24    Languages spoken in Mauritius.

25    K Torabully 'The father of coolitude (Mauritius)' http://afrotourism.com/ travelogue/khal-torabully-the-father-of-coolitude-mauritius/              (accessed 18 June 2019).

26    K Seetah 'Identity negotiations in colonial Mauritius' https://www.researchgate.net/ publication/308348337_Identity_negotiations_in_colonial_Mauritius (accessed 18 June 2019).

## 3      Political context

### 3.1     The Gambia's political landscape

The political history of The Gambia dates back to 1816, when the British took over Bathurst, formerly called St Mary's Island and now called Banjul, the present capital city of The Gambia.[27] The British first occupied Banjul before they extended their political tentacles to the rest of the protectorates.[28] The British introduced basic forms of electoral practice in the Gambia but at the start, elections were centralised.[29] In other words, not every Gambian was allowed to vote. Only most of those in the Capital were allowed to vote. The franchise could be considered a right that only the rich and the urban settlers were entitled to. Though this trajectory was changed as time went by, it did not have an inclusive impact as Gambians in the protectorate were still not allowed to vote.[30] The year 1950 marks the birth of the 'contemporary democratization process' in the country,[31] where every citizen was granted liberty to vote.

The electoral system being practiced in The Gambia is the common first-past-the-post system, which reflects the British influence. There has been no other system in place apart from this. Under this system, a candidate with more votes is elected to man a political position from single member constituencies. This system cuts across all forms of elections in The Gambia. Although this system of election seems archaic, it is still used by many states and the principle applies in both presidential and parliamentary elections.[32] In the presidential elections, section 48(3) of the Constitution categorically provides that a candidate is only declared a president if he or she won the highest number of votes validly cast at that election.[33] This constitutional requirement is quite straight forward. When it comes to the National Assembly election, the constituencies are clearly demarcated. There used to be 48 constituencies as per section 88 of the Constitution, but the Independent Electoral Commission (IEC), has created five more constituencies in late 2015 which now makes it 53

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27    Hughes & Perfect (n 16).

28    As above.

29    Hughes & Perfect (n 16) 3.

30    Hughes & Perfect (n 16) 495.

31    P Nugent 'A source book for Gambian elections' (2007) 48 *The Journal of African History* 494-495.

32    Section 48 of the 1997 Constitution.

33    Section 48(4) of the 1997 Constitution.

constituencies.[34] As practiced in other jurisdictions, each constituency returns a single member to assume a seat in parliament. There are other five members in addition to the 53 elected members who are nominated by the president, among whom are the Speaker and the Deputy Speaker. The remaining three of the five nominated members could be from any party or civil society organisation as the case is in the present parliament. According to the Constitution, every citizen of full age has the political right to make political choices, guaranteeing free, fair, and regular elections, and allowing qualified citizens to vote and be voted for.[35]

The Gambia is undoubtedly one of the long-standing multiparty democracies in Sub-Saharan Africa.[36] Since the inception of modern politics in The Gambia, a good number of political parties have emerged and contested in several democratisation processes. From the outset, the first three parties that were formed to take over from the British Colony were the Unity Party (UP), The Gambia Democratic Party (GDP), and The Gambia Muslim Congress (GMC).[37] The list of parties continues to expand as time goes by. Among other parties formed shortly before The Gambia gained its independence from the British rule in 1965, includes the fourth and most celebrated party, the Peoples Progressive Party, formerly called Protectorate Peoples Party (PPP). The four parties contested in the 1960-1962 general elections and PPP emerged victoriously and eventually took over from the British. Other parties formed in addition to the four parties mentioned earlier, include the National Convention Party (NCP) in 1975, the Gambia People's Party (GPP) in 1980, National Reconciliation Party (NRP), the United Democratic Party (UDP) and Alliance for Patriotic Reorientation Construction (APRC), in 1996.[38]

The post-independence era in The Gambia witnessed a steady political atmosphere. The electoral system was tested in a couple of elections before 1994 when the military government was ushered into power. Interestingly, one party that always lead in both general and parliamentary elections since 1965 was PPP. Sir Dawda continued to emerge victorious for three decades. The 30 years of uninterrupted victories of the party led to accusations of the party leader, Sir Dawda Jawara of intending to turn

34    Independent Electoral Commission: The Gambia 'Registration statistics' http://iec. gm/registration/registration-statistics/ (accessed 7 June 2019).

35    Sections 26 and 36 of the 1997 Constitution.

36    CJ Edie 'Democracy in The Gambia: Past, present, and prospect for the future' (2000) 25 *Africa Development/Afrique Et Développemen*t 161.

37    Hughes & Perfect (n 16)101.

38    As above.

the country into a dictatorship or one-party state.[39] The PPP enjoyed one-party dominance for three decades, giving the party leader considerable power in determining government policies. Many concluded that PPP's longevity in power was because Sir Dawda hailed from the Mandinka tribe which constitutes the majority. This informs the issue of tribal differences in the country. Consequently, in 1981, an attempt was made to forcefully dislodge Sir Dawda from power, but it failed. A second attempt was made in 1994 when the military junta took over through a bloodless coup d'état and formed the APRC party. Notwithstanding, from 1970, when The Gambia became a Republic and the first Republican Constitution was passed, to 1997 when the new regime was ushered into the office and the second Constitution was passed, constitutionalism and democracy became relatively robust and invigorated.

## 3.2    Mauritius' political landscape

Having enumerated the demographics of Mauritius in terms of ethnicity and explaining the source of conflict in terms of identity negotiation, it is arguable that carefully devising the political landscape of Mauritius was key in maintaining peace in the country considering that acceding to independence was not an idea which was favourable to many.[40] The idea of independence was divided between losing the British passport and gaining independence. The political landscape of Mauritius is defined as being a parliamentary constitutional democracy abiding by values of multipartyism, the rule of law, promotion, and protection of human rights. Being a multiparty democracy, Mauritius has over 20 political parties registered with the National Electoral Commission and these parties often form coalitions or alliances, as the chances of winning as a single party in elections are often slim. The elections in Mauritius have witnessed a wave of democratic alternance, however, they continue to be dominated by the two majoritarian parties, the Labour Party, and the Movement Socialiste Militant (MSM). These two parties are also reminiscent of dynasty politics, where family members often occupy high positions, which has been continuing since independence and therefore proving to be a source of unease among the populist.

It is noteworthy that the political system of the state of Mauritius does not only comprise the electoral system and mechanism, which albeit remains a backbone of the democratic fabric but also comprise of state democratic institutions such as the Mauritius Police Force,

39    Hughes & Perfect (n 16) 22.

40    EISA Publication 'Political parties in Mauritius' https://www.eisa.org.za/wep/mauparties.htm (accessed 18 June 2019).

Mauritius Revenue Authority, different Ministries such as Ministries of Social Security, National Solidarity and Environment and Sustainable Development and Ministry of Education, Ministry of Justice to ensure that citizens of every community is represented. It is common practice in Mauritius that it is not only being part of the legislative that matters but also at the helm of organisations and institutions that make and implement decisions. The historical path of Mauritius has played a heavy influence in shaping the political system of Mauritius in the sense that every government has tried to ensure that no community is left behind in matters of representation. Even though from a political perspective, all citizens cannot have a seat at the national assembly, efforts have been made to keep the economic disadvantage to a bare minimum by providing opportunities to all citizens and by developing additional affirmative actions or measures to curb systemic discrimination.

The issue of the malaise creole has often come to the forefront when it comes to the diversity management of the population in terms of political representation.[41] From a historical lens, it could be observed that Afro-Mauritians or descendants of slaves have been discriminated against, which resulted in a vicious cycle of poverty and lack of representation on several aspects, political included. Therefore, as a remedial measure and oversight mechanism, an 'Equal Opportunities Commission that can protect victims of ethnic, religious, class prejudices from individuals and institutions that believe they are the repositories of power and authority'[42] was put in place to stop the systemic discrimination and promote access to opportunities to marginalised communities. Furthermore, the National Human Rights Commission (NHRC) also has protective mechanisms as it may be seized 'by any person who feels being discriminated against on the basis of colour, creed, race, religion, language or place of origin' to inquire into the matter.[43]

## 4    The influence of majority ethnic groups in The Gambia's political process

Like many other countries, The Gambia is a multi-ethnic and multi-religious country. Some ethnic groups are bigger than others, but the Constitution affords all citizens the right to vote and be voted for.[44]

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41    W Miles 'The Malaise creole in Mauritius' https://www.jstor.org/stable/pdf/723627. pdf?ab_segments=0%2Fdefault-2%2Fcontrol&refreqid=search%3Acb86f47cc8179e3 b66395028d7b9000d (accessed 18 June 2019).

42    Heerah (n 19).

43    1997 Constitution

44    Section 26 of the 1997 Constitution.

The Constitution takes a liberal approach of neutrality to the issue of ethnicity. In terms of political representation in parliament, there has not been any special electoral system in place to ensure fair representation of minorities. The population is comprised of different ethnic groups such as the Mandinka, the Wolofs, the Akus, the Jola, the Fulanis, the Serahule, the Manjago, the Serer and the Tukulor, among others.[45] But the country's Mandinka population has long constituted the majority.[46] On the religious strand, there are two major religions in The Gambia: Christianity and Islam. However, Islam has been the dominant religion constituting 94 per cent of the country's population.[47] Logically, in terms of political representation, both in the general and parliamentary elections, it is clear that any party alluring to the Mandinka or Islam being the majority would have automatic control over the Gambia political process.

To expand on the aspect of religion, Islam has always been the dominant religion as far back as the 19th century, especially in the protectorate. Bathurst, now called Banjul, was predominantly occupied by Christians. The Christians and the animist were the minority around the 14th century. However, in the early 19th century, most animists were baptised into Islam, hence the increase in the Muslim population. The Muslims outnumbered the Christians in Bathurst between the 19th and 20th centuries. Before this time, it is largely argued that some political parties, such as the Gambia Muslim Congress (GMC), were formed under such a name, primarily to appeal to the Muslim population to consider voting the party to power. However, there is no record of how that impacted the outcome of elections at any given point in time. In other words, GMC never won any elections. This might be because the Muslim population was just on the rise and the number was not enough to influence the outcome of an election at the time. Nevertheless, as mentioned earlier, from 1965 to 1994, PPP, a party led by Sir Dawda Jawara never lost an election.[48] As a matter of fact, this dominance extended to parliamentary elections where the party constantly secured the majority of seats.

In what follows, the demographics indicate that, even before independence, the Mandinka ethnic group continues to dominate the other ethnic groups.[49] This greatly impacted the outcome of virtually

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45    Hughes & Perfect (n 16) 13-23.

46    Hughes & Perfect (n 16) 13.

47    Hughes & Perfect (n 16) 24.

48    The Commonwealth 'Gambia: The History' http://thecommonwealth.org/our-member-countries/gambia/history (accessed 15 June 2019).

49    A Saine *The paradox of third-wave democratization in Africa The Gambia under AFPRC-APRC Rule, 1994-2008* (2009) 49.

every political decision. For example, during the parliamentary election held a few years before independence, a good number of the Mandinkas, who were predominantly residing in the protectorate, were known to have supported the PPP party.[50] Consequently, the PPP party won a good number of seats from the protectorate in the 1960 parliamentary election. Ninety-five per cent of the MPs directly elected were all Mandinka.[51] The remaining few MPs were more ethnically diverse but the ethnic parity between the Mandinka and the rest of the tribes was considerably high. What is clear is that any political party that is supported by the dominant tribe, stands a great chance of being voted to power. For example, when Yahya Jammeh, the former president of The Gambia's Second Republic came into power, he led the country for 22 years, and he emerged victorious in every election. Interestingly, he is from a Jola minority tribe constituting only 10 per cent of the population.[52] This suggests that he must have to gain more popularity among Mandinka,[53] being the major ethnic group. At the parliamentary level, the APRC party equally won most seats in parliament.

Ethnic politics tend to phase out in post-independence.[54] However, in recent times, ethnic bigotry is becoming a big issue in The Gambia. For some, everyone in The Gambia is now tribalist,[55] but some believed otherwise.[56] From what is unfolding in the Gambia's political discourse, it is argued that most political parties today are built on ethnic/tribal alignment. This sort of practice is undoubtedly becoming a life vein that seems impossible to expel out of the political sphere. Given the demographics of The Gambia, it will be right to say the risk of ethnic and religious resistance is highly likely and therefore, the need for fair political representation cannot be taken for granted. More importantly, there is a wide view that tribal politics is inimical to fair political representation. This goes to say that, where communalism is undermined by ethnic bigotry, minorities' interest is at risk of being rendered futile and their meaningful representation in parliament is one of those interests.

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50   Hughes & Perfect (n 16) 154.

51   Hughes & Perfect (n 16) 24.

52   World Population Review http://worldpopulationreview.com/countries/gambia-population/ (accessed16 June 2019).

53   Saine (n 49) 1.

54   Hughes & Perfect (n 16) 3.

55   M Jobarteh 'The stupidity of Gambians' The Fatou Network 21 March 2017 http://fatunetwork.net/the-stupidity-of-gambians/( accessed 15 June 2019).

56   L Gano 'Is Gambian politics based on tribalism?' *The Fatou Network* 23 May 2016 https://www.fatunetwork.net/is-gambian-politics-based-on-tribalism/ (accessed 15 June 2019).

Another aspect that is worth pointing out, though debatable, is the imbalance in party representation in parliament. The current parliament constitutes 58 members. Out of the nine major political parties, the United Democratic Party (UDP) won 31 seats and the remaining 27 were shared among the other parties and one independent candidate. What is interesting to note is that out of the nominated members, three members are from the UDP. Though this practice seems to be the case in many countries, one could argue that it does not reflect fair representation, especially in a multi-ethnic society like The Gambia. In a parliamentary democracy, the majority carries the vote. Technically, if this is anything to go by, no decision against the UDP as a party can be passed. The party member in parliament forming the majority will most definitely block it. This has been the case in the two regimes that preceded the current one. Borrowing the argument of Ben Saunders,[57] majority rule is not a democracy because the voices of minorities do not influence the outcome of any given process. He interestingly noted that Lottery Voting[58] should be considered as opposed to the option with most votes winning.

Given the foregoing, it is important to note that one of the numerous criteria for a democratic parliament is that it should reflect the social diversity of the population in terms of gender, language, religion, and ethnicity. A more inclusive parliament gives birth to policies that curtails conflicts and increase development potential. In the case of ethnic minorities, it gives a potential possibility to advance the interest of the people they represent and influence the decision-making processes. Given the political history of The Gambia and what obtains therein in terms of the nomination of members into the National Assembly, which the president solely does, one could argue that the quest to realise fair representation of ethnic minorities is still a moving target.

## 5     The Gambian electoral law

The electoral rules map out how representation works and determine how effective a government performs.[59] The regulations guiding the National Assembly Election in the Gambia can be traced in a plethora of laws. These include the Constitution, the Election (Amended) Act and a series of other delegated legislation presented in the form of notices and orders.

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57    B Saunders 'Democracy, political equality, and majority rule' (2010) 121 *Ethics* 148.

58    In this system, each person casts their votes for their preferred option and a single vote is randomly selected and that determines the outcome. This sounds far-fetched, but in reality, it makes sense.

59    D Giannetti & B Grofman (eds) *A natural experiment on electoral law reform: Evaluating the long run consequences of 1990s electoral reform in Italy and Japan* (2011).

Political rights, including the right to vote and to stand for election to the National Assembly, are well protected in the domestic legal framework. Section 26 of the 1997 Constitution provides that every citizen of full age shall have the right to partake in any public affair and vote and be voted for in a genuine periodic election. Aside from the Constitution, The Gambia has acceded to regional and international human rights instruments such as the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR).[60] Both instruments guarantee fair political representation.

From 1963 to 2017, The Gambia underwent a number of changes or amendments to its electoral Laws, including drawing of new constituencies, changes in the party registration requirement, filing of election petitions, an increase in the required deposit for presidential and national assembly candidates, as well as campaign election ethics. Well before the Gambia gained independence in 1965, the Election Act 1963 was subsisting.[61] The same act was amended in 1969. What triggered the amendment was to consolidate the laws relating to elections to the House of Representatives, at the same time provide for elections to local government bodies. This shift was meant to expand rights to vote for local government. This was meant as a preliminary step for inclusiveness. The Election Act 1969 as amended, subsisted during the First Republic until the second Republic headed by the former president, Yaya AJJ Jammeh was ushered in in 1994. The Election Act (as amended) 1969 was set aside by the Elections Decree (Decree 78 of 1996) which came into force on the 2 January 1996. The scope of the Decree applies to the election of candidates for the office of President, member of the National Assembly, District Chiefs, Mayors or Chairman of Municipal Council Councilors village heads, etc.

In general, it contains provisions that reflect the 1963 Election Act in respect of areas highlighted as being the scope of the Decree. The said Election Decree was later incorporated into the Election Act,1996 which came into force on the 2 January 1996. This Act was complemented by the Code on Election Campaign Ethics Order, 1996 and Election Petition Rules, 2009. Both the order and election rules are subsidiary legislation to the 1996 Election Act alluded above.[62] Shortly before the 2016 election, by

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60 OAU, African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982); UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol 999, p 171.

61 Election Passport 'The Election Act 1963' http://www.electionpassport.com/files/GM/GM1963ElectionAct.pdf (accessed 12 July 2022).

62 Law Hub Gambia 'Electoral laws' https://www.lawhubgambia.com/electoral-laws (accessed 20 March 2019).

which election the Second Republic was voted out, the 1996 Election Act was amended. The amendment took effect on the 20 July 2015.[63]

As The Gambia was moving toward a new democracy, the current President, Adama Barrow, passed the Election (Amendment) Act to 'encourage the widespread participation of all citizens in the new democratic dispensation'.[64] Though the amendment was not overly significant, it has undone the restrictive measures in the former Act, thereby allowing inclusive participation.

Furthermore, section 50 of the Constitution requires the Independent Electoral Commission (IEC) to demarcate new constituencies. As part of the legal amendment exercise, the new additional constituencies have been demarcated and have increased the number of elected members to the National Assembly from 48 to 53. Aside from these amendments, the Constitution is silent on the electoral system which should be used to conduct the National Assembly elections. Consequently, the current National Assembly election was conducted in 53 single-member constituencies and the electoral system employed to determine who is to represent in Parliament, was the first-past-the-post system. It is undeniable that the past-the-post system has been the only electoral system being practiced from the time democratisation was introduced in The Gambia. This system guarantees representation as everyone is afforded an equal right to vote candidates of their choice without any restrictions. However, it did not provide any other electoral system that guarantees fair representation of minorities, such as in Mauritius.

A crucial question one could ask is whether these numerous amendments have adequately addressed and ensured equitable representation of ethnic minorities. While useful, the amendments do not clearly ensure fair representation of the minorities, particularly in the aspect of ethnicity and religion. Nothing in the 1997 Constitution explicitly provides an equitable representation of ethnic minorities in the country; no model is in place giving the minorities due consideration. The president exclusively nominates the nominated members of the National Assembly, and while doing so, the ethnic minorities are not considered. In other words, the president can nominate anyone, which inevitably gives way to the president to nominate members of his former party. An

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63   Amending sections 12, 17, 18, 19, 34, 35, 36, 37, 43, 51, 61, 65, 75, 80 and 105 of the principal Act. See Independent Electoral Commission 'Election Act amendments 2015' https://iec.gm/download/election-act-amendments-2015/ (accessed 12 July 2022).

64   Law Hub Gambia (n 62).

inclusive parliament where ethnic minorities will be considered can only be realised when the law restricts or prohibits the president from nominating members of a party that constitutes the majority in parliament. In other words, nominated members should be from the minority groups – a minority religion and a minority ethnic group and the president should do the nomination in consultation with a set committee and not unilaterally.

Alternatively, the president can be completely excluded, and a set committee can be seized of the power to do the same unilaterally so as to avoid politicising the selection process. In the year 2020, the current government of The Gambia took yet another landmark step, which step was meant to have a crucial amendment of the 1997 Constitution. It is in that regard that the Constitutional Amendment (Repeal) Bill of 2020 was placed before the Parliament. However, notwithstanding the number of resources spent and the long wait it took to come up with a fit-for-purpose document, the said Bill has not passed due lack of support of the parliamentarians. Arguably, it is with no *iota* of doubt that the Bill has captured salient provisions that are all-inclusive. In other words, fundamental provisions on gender quota were provided to ensure fair representation. The rejection of the Bill on its merits only indicates that Gambians will not see a new phase of constitutional governance. This setback has indeed rendered the need for constitutional amendments farfetched. As a matter of fact, the Election Act, Decree 78 of 1996 coupled with the relevant election provisions of the 1997 Constitution, remains the principal act that guides elections in The Gambia. As alluded to, since the new regime was ushered into power, the latest amendment to the Electoral Act was done in 2017.

Although having all factors constant, the country went to the polls on 4 December 2021 and aside from the latest amendment mentioned, there has been no law or amendment passed or done in 2021 relating to electoral laws in The Gambia. However, the Constitution (Amendment) Bill, 2021, was to be tabled before the National Assembly. The amendment seeks to amend section 88 of the 1997 Constitution. This amendment is intended to cater for gender quotas, as a unique opportunity to advance women's representation through a number of reserved seats in parliament. It also seeks to reserve a few seats for persons with disabilities.

## 6    Mauritius political and electoral system

With regard to Mauritius, coming to the core of the political system, which is the electoral system, Professor Pipa Norris from Harvard University argues that

'Electoral systems are rarely designed, they are born kicking and screaming into the world out of a messy, incremental compromise between contending factions battling for survival, determined by power politics.[65]

This can be seen in how the current electoral system in Mauritius has undergone changes to ensure that there is adequate representation of minorities in the legislature. Diversity management in a country such as Mauritius, which still grapples with identity negotiation, needs to be treaded on carefully for any lack of space or opportunity to a certain segment of the population may spark communal riots and racial fights. Prior to independence, Mauritius faced instances of communal riots and has witnessed few incidences of the same since then.

The electoral system of Mauritius is unique in its way,[66] inspired to a large extent by the British Westminster model. As stipulated in the First Schedule to the Constitution, the Mauritian electoral system has some distinct characteristics. Currently, the country is divided into 20 constituencies (with Rodrigues Island being the 21st constituency and the Chagos Islands being proposed as the 22nd constituency). Firstly, and glaringly, there is the three-first-past-the-post system (TFPTP), where each voter votes for three candidates who get elected based on the highest number of votes. There is normally a tendency for block voting (voting for all three candidates of a party).[67] Mahadew argues that:

[T]he TFPTP system produces relatively stable government since voters have the opportunity to hold accountable each elected member from a specific constituency based on the way he or she has implemented a manifesto.[68]

It, therefore, keeps a connection between the people and parliament through the elected member, as the latter represents a particular geographical area. However, the drawbacks are significant. The possibility exists that representatives can be elected with only tiny amounts of public support, seeing as the number of votes obtained does not matter – what does is getting more votes than other candidates. In addition, the votes cast for

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65 'Renewing democracy electoral reform: Modernising the electoral system' Consultation Paper March 2014, Republic of Mauritius (on file with the author).

66 R Mahadew 'The Best Loser System in Mauritius: An essential electoral tool for representing political minorities' in J de Visser et al (eds) *Constitution building in Africa* (2015) 135.

67 The National Assembly consists of 70 members, 62 of whom are voted in directly through the TFPTP (20 constituencies each return three members, with the remaining two being elected from Rodrigues Island) and eight through the Best Loser System.

68 Mahadew (n 66).

losing candidates count for nothing even if there is a narrow difference between the losing and winning candidate.[69]

## 6.1 The best-loser system

In this two-tiered system which marks the Mauritian electoral system, there is the best-loser system (BLS) which is a system designed to protect minority representation in Parliament. The BLS is unique to Mauritius in the sense that candidates do not necessarily need to get the highest number of votes to get a seat in the national assembly. Based on one's community[70] with which the candidate has registered with the Electoral Commission and based on the number of votes and elected candidates from that specific community, eight seats are reserved and calculated. Naseerah Oderuth argues that

> The BLS system has worked well in terms of its own stability and the stability of the elected governments by providing conditions for the practice of consociationalism. This provided an often fragile but sustainable democracy in an ethnically plural society.[71]

As the test of time has proven, the BLS has gone beyond the wishes of the electorate by ensuring that there was adequate representation of minorities in the legislative assembly, even if they were not elected. Even if it was done on a purely community association and counting basis, there was the representation of these minorities who without the application of the BLS would have been unable to get a seat since they did not win the minimum number of votes required to get past the post. Elections in Mauritius have not been marred by violence or post electoral conflict since the BLS represented a justice mechanism instead of the force of block voting, which limits a candidate's potential.

However, in as much as it is recourse to minority representation in the legislative assembly, this system has been criticised by many as being 'unfair, undemocratic, anarchic, archaic, arbitrary, erratic, unreliable,

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69   N 20 above

70   The Constitution recognises only four communities – Hindu, Muslim, General Population and Sino-Mauritian. Christians often fall in the category of General Population. However due to the ambiguity of General population and the narrowness of the recognised communities, judicial interpretation is being sought to prevent miscarriages of justice and ensure adequate and proportional representation of all communities.

71   N Oderuth 'Best loser system and electoral system in Mauritius' https://www.academia.edu/12383265/Best_Loser_system_and_Electoral_System_in_Mauritius (accessed 27 March 2020).

unpredictable'. The seemingly complex calculation of who gets through the BLS has left many baffled. The BLS was initially put in place by the Branwell Commission on the electoral system in 1966 and was supposed to a temporary measure for two elections till a more permanent mechanism is devised. However, it has continued for over two decades. It is arguable that the BLS institutionalises communalism and weakens the spirit of nationalism. The question here, on the issue of minority representation and considering that minorities are directly linked to the ethnicity, is communalism legitimate? Furthermore, the data on which the Electoral Commission relies to calculate and evaluate to whom the seat should be allocated comes from an old census that does not necessarily reflect the current demographics or political reality.

Another contentious issue related to the BLS is the fact that there have been at least four commissions that have debated the issue of electoral reform but because it is a highly sensitive subject matter, many of the recommendations or proposals have never seen the light of the day. The gap between the policy makers and the voters is also widening as the decisions especially regarding the application of the BLS is done in a way to suit those holding the reins of power and authority and not necessarily to ensure adequate representation in its best possible way. The decision makers act to serve their interests instead of taking decisions in the nation's welfare. In a pluralistic society, where each one is still connected to one roots, customs, traditions, and beliefs, brushing differences under the carpet do not resolve the issues. In essence, adopting an ostrich response to issues, which are quiet but very visible, does not solve the issue but instead gives way to amplifying in the longer run.

## 6.2    Mauritius's adherence to regional conventions, treaties and protocols

Within the international law framework, regional organisations through the development of protocols, treaties, and policies, raise the mark for the member states to follow. Mauritius is a state party to the Maputo Protocol on the Rights of Women,[72] the Southern Africa Development Community Gender and Development Protocol, 2008. Mauritius is also a Member of COMESA and therefore has tried to a large extent to implement the COMESA Gender Policy.

However, despite the good will demonstrated by the State of Mauritius in ratifying these instruments, the domestication takes place at a slow pace. Furthermore, the TFPTP system rarely allows women to make the cut with the required number of votes. In her paper, Ramtohul argues that

> despite its outstanding achievements, the Mauritian democracy is fundamentally flawed, as it has failed to effectively represent women who comprise 52 percent of the population. She further adds that the rigidity of the political system and patriarchal culture, combined with the high salience of the ethnic dimension in Mauritian politics, have caused the country to fail to uphold international commitments made.[73]

It can be observed that so far, the representation of women in the political arena has been merely tokenism. Therefore, it is ironic that a country with women as the majority has limited women active in political life. It also exemplifies that the electoral system operates in a patriarchal environment where the voices of 'minorities' are not brought to the limelight even if on the face of it, legal steps have been taken.

## 6.3    Constitutionalism, casteism and communalism

Constitutionalism ensures that the values enshrined in the constitution are adhered to. Article 11(1) of the Constitution of the Republic of Mauritius states that:

> Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion

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

73   R Ramtohul 'Political power and decision-making in the aftermath of Nairobi: The case of Mauritius' (2006) 20 *Agenda* 14.

or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.[74]

Religion binds communities and brings about shared values and beliefs. However, religion may also bring about the spirit of communalism and can be a dividing factor in a country which is trying to build itself as a nation. In Mauritius, religion and ethnicities have often been used as divisive weapons during the electoral campaign. Not only it is related to inter-religious divides, but it is also divided intra-religiously such as when it comes to issues of castes within the communities. Therefore, the question that remains to be asked is whether allowing communalism and casteism during electoral campaign is overpowering the spirit of nationalism and continuously dividing the country or is it that there is a sense of patriotism and citizens are holding to their communities as their safe havens?

## 6.4 Mauritian jurisprudence on political representation and recent developments

The issue raised in the case brought to the Supreme Court of Mauritius by Rezistans ek Alternativ, a political party with regard to the constitutionality of the clause of declaring one's ethnic belonging before standing as a candidate pertains to the minority representation in the elections and in the parliament. The fact that a majority of voters vote for the representatives of their same ethnic community renders those from the minority difficult to elected and therefore have a voice in the legislature.[75]

The same issue was also raised in the case of *Narrain v Electoral Supervisory Commissioner*[76] as was heard in front of the United Nations Human Rights Council as a human rights issue and in the case of *Joomun v The Government of Mauritius*[77] where the court left the issue of electoral reform to the legislature.

The explanatory memorandum accompanying the proposed constitutional Amendment Bill (2018) state the following:

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74   Article 11(1) of the Constitution of the Republic of Mauritius 1968.

75   Resistanz ek Alternativ 'Notre démocratie est en danger' https://www.lexpress.mu/article/353106/rezistans-ek-alternativ-notre-democratie-est-en-danger (accessed 18 June 2019).

76   *Narrain v Electoral Supervisory Commissioner* (2005 SCJ 159).

77   *Joomun v The Government of Mauritius* (2000 SCJ 234).

The main object of this Bill is to reform certain aspects of the electoral system of Mauritius. 2. The Bill, accordingly, amends the Constitution – (a) to provide, with a view to ensuring wider representation of parties in the National Assembly – (i) for 63 seats in the Assembly for members representing constituencies, in lieu of 62; and (ii) in addition to the 63 constituency seats, 12 proportional representation seats (PR seats) and a maximum of 10 additional seats; (b) to do away with the requirement for the mandatory declaration as to the community to which a constituency candidate belongs to; (c) to seek better gender representation in the National Assembly by providing that – (i) every party or party alliance shall present not more than two thirds of constituency candidates of the same sex; and (ii) every proportional representation list (PR list) submitted by a party or party alliance shall comprise not more than two thirds of persons of the same sex; and (d) to provide for anti-defection measures to enhance stability[78]

Therefore, having taken cognisance of the fact that loopholes in the electoral system and unclear principles such as the BLS have led to the weakening of the democratic fabric of the State of Mauritius, these proposed reforms, if implemented will ensure the representation of women and their mandatory participation and nomination by each party and also remove the clause of ethnic declaration of a candidate. These measures will also put in place firmer decisions as compared to temporary measures such as the BLS and ensure that there is accountability by those who are elected towards their electorate.

In Mauritius, different Electoral systems apart from the first-past-the-post were created to ensure fair minority representation in parliament. Mauritius has what it calls first-three-past-the-post system as well as best-loser system. The first-three-past-the-post System requires each constituency to return three elected members. This is unlike the Gambia where only one elected member is elected and returned. The best-losers are candidates from recognised parties who stood for election in their constituencies and received the highest percentage of votes cast without winning.[79] The best losers are eight. The first four best-losers' seats were to be allocated to parties belonging to underrepresented communities notwithstanding their party affiliation. To determine which community is underrepresented, the total of each population is divided by one plus the

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78   'Explanatory Memorandum, Constitution (Amendment) Bill No XXII of 2018' http://mauritiusassembly.govmu.org/English/bills/Documents/intro/2018/bill2218.pdf (accessed18 June 2019).

79   R Mathur 'Parliamentary representation of minority communities: The Mauritian experience' (1997) 44 *Africa Today* 61 at 64.

number of representatives from that population.[80] The second four best-losers were allocated on party and community basis. This form of system is largely meant to create a balance in the representation of the various communities. This constitutional structure is highly laudable.[81] Looking at Mauritius geopolitical context, one would be right to say the model perfectly suits the country.

## 7    How BLS can be customised in The Gambia

The 1997 Constitution of The Gambia guarantees the right to participate in electoral processes and it was amended on numerous occasions. However, neither the Constitution nor its amendments clearly provide for fair representation of ethnic minorities, more particularly in the parliament. Unlike The Gambia, Mauritius has initiated and implemented the BLS and after a careful study of the system, it clearly shows that BLS was meant to create fair representation of the different communities in the country's electoral processes. Given the ethnographic nature of the country, this was crucial. In a bid to customise BLS in The Gambia, one may be tempted to ask why The Gambia should do so. Indeed, The Gambia does not have divided communities like Mauritius, however, the country is segmented into different ethnic groups, of which some are bigger than the others. So given the ethnic differences, it is important to ensure that the ethnic minorities are well represented in parliament. This is more reason why it is important to customise the Mauritius BLS and use it as a constitutional guarantee. Few ways through which this can be done are as follows: First, additional seats should be created in parliament by law. Second, a nominated member of the parliament should be selected from the ethnic minorities to ensure equitable, fair, and proportionate representation.

Expanding on the first limb, and as alluded, the Gambia population is divided into eight main ethnic groups. To ensure equitable or fair representation of these ethnic minorities, the law should create additional seats in parliament aside from the current number. That way, a member of a given ethnic minority group who is also a member of a political party that emerged as a best loser in a given election is selected. The selection of an individual should be made by an apolitical committee constituting persons of impeccable character and of well standing in society. The committee shall have the ultimate powers to set out modalities on how selection should be done and, at the same time determine who is fit to be selected.

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80    As above.
81    H Srebnik 'Can an ethnically-based civil society succeed? The case of Mauritius' (2000) 18 *Journal of Contemporary African Studies* 7 at 11.

This may be realised by borrowing D'Hondt's model,[82] if applicable at all. Alternatively, Mauritius proposed the Constitutional Amendment Bill, 2018, which is pretty much driven towards attaining an equitable representation, including women, can be used as a model. Although to Oderuth, there is a danger of having unwanted representatives when BLS is used,[83] it makes sense to have a delicate society such as The Gambia organised in that manner. That will definitely serve as a proactive step to averting the likely tribal, religious and gender conflict.

On the second limb, nominated members of parliament should be selected from the minority groups of which ethnic minorities are a part of. Unlike what is currently provided for in the 1997 Constitution, and as mentioned earlier the nomination of members should not be left entirely with the president. Decentralising the powers to do so will largely prevent the president from selecting individuals with the purpose to achieve or realise his political will as opposed to achieving a common good. The two suggested points are practically the same and moving in the same direction to achieve the same purpose. To this end, the proposal to customise BLS cannot be dismissed, in that it will contribute so much towards the management of ethnic diversity in the country and at the same time, underpin the move toward a more united Gambia.

## 7.1    Alternative methods going forward

The foregoing underscores the fact that the crux of discussion in this chapter is highly premised on effective representation of the minorities in political space (the National Assemble). And as alluded, the present Gambian Constitution did not specifically provide for minority participation. This is not meant to say the 1997 Constitution is not rich. However, the establishment of the Constitutional Review Commission of the Gambia in 2017[84] by the Barrow lead government was no doubt a move in the right direction. The objective was to establish a comprehensive constitutional reform process that can deliver a progressive constitution which shall carry in it all principles of good governance, respect for human rights and democracy. The constitutional review process allowed effective consultation, which consultation gave every citizen and every stakeholder the opportunity to sound their opinion on what should and should not be part of the proposed constitution bill. Although rejected by the National Assembly, the Draft Bill provides for inclusive participation.

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82    Britannica 'D'Hondt formula definition' https://www.britannica.com/topic/dHondt-formula (accessed 27 March 2020).

83    Oderuth (n 71).

84    Constitutional Review Commission Act, 2017.

It also strengthens the Bill of Rights and provides measures to amplify the participation of women in particular.

Even if the opinion to amend the 1997 Constitution is later considered compelling and necessary, however, one cannot pretend to be oblivious to the fact that the new Constitution Bill, like the 1997 Constitution of The Gambia, did not clearly or specifically provide for ethnic minority but participatory representation. As noted earlier, ethnic issues are becoming worrisome. It is consequential of these underlying effects that the Mauritius electoral method was invoked for the purpose of transforming the electoral system to ensure effective participation of ethnic minorities. At this juncture, having studied the Mauritius model, it is opined that the said model, though not ruled out completely cannot be effective in The Gambia due to the differences in the ethnographic setting of the two concern states.

In view of the foregoing, it is essential to accentuate the need to consider alternative measures going forward in ensuring effective representation of ethnic minorities. Electoral system design is one method by which any society can harness to manage and control issues of fairness, especially in societies with ethnic diversity. Different ways by which minority representation can be ensured includes the following: boundary delimitation, proportionality, and reserved seats. The Mauritius model is more theboundary delimitation method, which would be an ideal solution for a system where there is obvious concentration to relevant population in each region. This is not an issue in The Gambia.

The reserved seat method is perhaps the best alternative approach (though not absolutely different from the Mauritius model) that can be harnessed in The Gambia. Reserving seats is undoubtedly, a more direct approach that allows seats to be reserve in the legislature for a particular minority purposely to ensure representation notwithstanding the vote share. This approach is adopted in many countries across the globe. For example, in India, seats are reserved for tribes, in Jordan, Palestine and Iraq, seats are reserved for Christians and, in Columbia, seats are reserved for the black community.[85] These and many more countries that adopt this approach do so to prevent mostly ethnic and religious conflicts and to ensure national unity and more importantly to hold government accountable.[86] It is known fact that in an ethnically divided society,

85    A Reynolds, B Reilly & A Ellis (eds) *Electoral system design: The new International IDEA handbook* (2005).

86    M Bratton, R Bhavnani & TH Chen 'Voting intentions in Africa: Ethnic, economic or partisan?' (2012) 50 *Commonwealth & Comparative Politics* 27.

majority rule is definitely not the solution – in fact it is a problem in that it allows continuous domination.

Most scholars support the idea of inclusive representation of minorities.[87] The reason behind this support is premised on the inherent justice of including every group in decision making. The true value of minority representation lies in the substantive representation of minority interests. Minorities are in a better position to advocate for their interest than leaving the majority to do same. The cause of most wars especially in Africa are highly based on the exclusion of minorities. [88] Countries such as Togo, Congo Republic and Sri Lanka are good examples of the kind of descent into ethnic conflict.[89]

Also, it is a known fact that in every country, women are not conceptualised as minority, but as marginalised majority. Patriarchal structure is prevalent in the Gambia, because of which women mostly experience varying levels of discrimination. The alternative method to the Mauritius model is the proportionality system. It provides a more straightforward guaranteed of minority representation. This, in mind, is one fundamental way or rather a building block in bridging ethnic differences. South Africa adopted this system in post-Apartheid, consequently of which even highly marginalised groups could gain reserve seats in parliament. This system is similar to the Mauritius communal representation.

Women endure double discrimination – discrimination as a result of patriarchal dominance in societies and discrimination by virtue of being part of a minority. There remain significant challenges regarding Gambian women's ascendancy into public political leadership positions. In the National Assembly, only five out of the 53 members are women. At the Local level, there are only 18 women councillors out of 137 councillors and only ten elected from a total of 109 councillors around the country.[90] To ensure that the obvious gap between women and their male counterparts in terms of electoral participation, it is important to consider adopting

87    S Dovi *The good representative* (2012).

88    LF Miguel 'Political representation and dender in Brazil' (2008) 27 *Bulletin of Latin American esearch* 197.

89    DL Horowitz 'Democracy in divided societies' (1993) 4 *Journal of Democracy* 18; DL Horowitz *Ethnic groups in conflict* (1985).

90    UN OHCHR West Africa Regional Office 'Promoting women's political participation in The Gambia' (8 February 2018) g https://www.westafrica.ohchr.org/Promoting-women-s-political-participation-in-The-Gambia-a-national-dialogue.html    (accessed 12 July 2022).

gender quotas. Ann Philip in the book *The politics of presence,* argues that gender quotas increase the number of women in formal politics and in recent decades, a significant number of political parties have taken steps to increase the representation of women in national assemblies, often by introducing gender quotas.[91] Gender quotas can be implemented in different ways: constitutional amendment or electoral law. In case of the Gambia, the Constitution can be amended with the sole aim to reserve seats in national assembly. Electoral laws can also be amended to ensure that the nomination of women representatives is conditional.[92] Inclusion of quotas will undoubtedly increase the representation of women and ethnic minorities.[93]

## 7.2    Best practices and lessons to be drawn

It is arguable that the relative political stability and instability of Mauritius and The Gambia may be attributed to the parliamentary and presidential systems of governance. The aim of this chapter is not to delve into details regarding the pros and cons of the presidential and parliamentary systems of governance. However, these two distinct systems do influence to a large extent, the political stability of a country especially pertaining to the separation of powers and checks and balances.

One important distinction to be drawn is that The Gambia has a military while Mauritius does not. This distinction may be an important link in explaining that Mauritius has had a relatively stable political trajectory with democratic alternance and regular elections while the Gambia's longest history of multiparty democracy was overturned by a coup. The fact that the Gambia was ruled by Yaya Jammeh, who comes from one of the minority ethnic groups in the country, is reminiscent of the fact that ethnic representation and political participation is not a subject that may be brushed under the carpet while developing a new constitution considering the past historical context.

In this regard, a few lessons that The Gambia may draw from Mauritius are as follows: Regarding political representation in the legislature, the best-loser system, despite its lacuna has demonstrated the ability to give ethnic minorities a seat and a voice and thus avoiding a feeling of

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91    A Phillips *The politics of presence* (1998)https://oxford.universitypressscholarship.com/view/10.1093/0198294158.001.0001/acprof-9780198294153 (accessed 21 March 2021).

92    N Kudva & K Misra 'Gender quotas, the politics of presence, and the feminist project: What does the Indian experience tell us? (2008) 34 *Signs* 49.

93    ML Krook & DZ O'Brien 'The politics of group representation: Quotas for women and minorities Worldwide' (2010) 42 *Comparative Politics* 253.

dissatisfaction in terms of ethnic minorities. It has also shown that even though it will be the representative from the majority of the government who will be at the head of the government, other ethnic minorities will not merely be at the periphery but also take part in the law and policy making process. In addition, to ensure that women, in particular, do not continue to be marginalised and discriminated against in their capacity as women gender quotas should be introduced to guarantee their full and effective participation in the national legislative organ. This will give them the opportunity to debate over issues and contribute to making decisions that directly affect them, hence discountenancing the trajectory of having others, mostly men, who barely know and or understand how they feel and how those decisions being made affect them. It is important to note that electoral quotas, which is more general, can be considered to ensure that the ethnic minority representation gap is filled.

Mauritius has consistently tried to adopt the principle that securing a seat at the national assembly is not the end of all. Political participation does not limit itself to being represented in the parliament. For a country to function smoothly as a democracy, it is crucial that democratic institutions or institutions of the state function effectively. Therefore, the chairmanships of these institutions are also done taking into consideration the ethnic minorities and ensure that no community is left behind. Mauritius has made considerable efforts in aligning its legal frameworks and policies with those of the regional institutions. Similarly, ECOWAS also has a strong normative framework which provides a good yardstick for political participation. The fact that the Parliament is accountable to the people, both for the majority and the ethnic minorities, underscores the democratic fabric of the Mauritian society. The Gambia is faced with the golden opportunity of writing their constitution, of making it a Gambian people's document and, therefore, may seize the opportunity of increasing the powers of the parliament instead of concentrating it all in a single Presidential figure. However, now that the 2018 Connotation Bill is rejected, one way through which some of the provisions in the alluded Bill that ensure participatory representation can be harnessed is by amending the present Constitution to realise the same desired purposed.

As mentioned in this chapter, the Gazette (Constitutional Amendment) Bill, 2021, is predicated on the quest to introduce gender quotas. It is opined that ethnic quotas should equally be introduced to ensure proportional representation. Proportional representation, in the words of David, promotes power-sharing and constitutional democracy at the same time provide a greater voice for the ethnic minority.[94] Drawing

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94    DT Canon 'Electoral systems and the representation of minority interests in

on David  Canon's focus on the possible alternatives that can be harnessed to solve the issue on divergent racial and ethnic group interest, we can  ask 'how should representation be provided to minorities within a majority rule system?'[95] Although his analysis is applicable within the context of American politics, it is convincingly a catalyst that can promote political accommodation and or participation and stability in an ethnically divided society like the Gambia. David suggests having what he calls, cumulative voting and racial redistricting wherein

> members of the legislature would be elected from multimember districts in which votes would have one vote per legislative seat … voters could allocate their votes between the candidates in any proportion…so that the minorities who forms 1/nth (where 'n' is the number of legislative seats) of a district could be able to elect at least one of their preferred candidates.

Cumulative voting using racial redistricting as explained can be best assimilated to the Mauritius electoral system. However, what can be done going forward, is to customise same by narrowing David's method to what can be refer to as 'ethnic inclusion' in The Gambia. That way, minorities are afforded some veto powers, exercise of which will protect them at the same time provide them the opportunity to have their voices given credence. This will no doubt inform some form of procedural changes in the legislative process, however, what is important to note is that under this proposed system, minority candidates can win when majority votes have no preference between the majority candidates.[96]

## 8     Conclusion

This chapter has briefly highlighted the political history of Mauritius and The Gambia since their respective independence. Even though there are significant differences in the economic, political, and social systems of both countries, no doubt both have similar aspirations of ensuring the political representation of minorities. This common aim can be served by contextually transporting the essential components of the BLSof Mauritius in The Gambian political framework. It may be concluded that even though Mauritius and The Gambia are distinct in their anthropological, historical, and political trajectory, the fact that The Gambia is presented with an opportunity of rewriting or rebuilding their Constitution is also an opportunity to learn from other countries

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legislatures' (1999) 24 Legislative *Studies Quarterly* 331 at 368.

95     Canon (n 94) 332.

96     B Monroe 'Fully proportional representation' (1995) 88 *American Political Science Review* 925.

whose democracies have stood the test of time. There is no doubt that each country has its realities and specificities. It is, therefore, not a question of mirroring the electoral system of Mauritius to The Gambian system. However, there are features of the BLS that can be adopted to the Gambian electoral system. Accordingly, this chapter has discussed the advantages and drawbacks of the BLS. Since independence, it has been at the core of maintaining peace and harmony among the various religious factions of the Mauritian society. This system has allowed all religious communities to be represented in National Assembly by ensuring that at least one or more candidates belonging to each religious minority group is allocated a seat in the National Assembly. This guarantees an adequate and meaningfully representation of minorities. As discussed in a previous section, The Gambia also has the crucial need to ensure that all its ethnic minorities are meaningfully represented in the legislative organ of the country. The functioning and proven BLS can thus be of immense guidance and inspiration. Alternatively, quotas can be introduced to ensure that women, especially those who found themselves between the devil and the deep blue sea (marginalised and part of an ethnic minority), can be afforded the opportunity to take an active role in formal politics.

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