

WOMEN'S REPRESENTATION IN LESOTHO'S LEGISLATIVE BODIES

A Politico-Legal Analysis of the Effectiveness of Electoral Gender Quotas

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ABSTRACT

Women are under-represented in legislative bodies in the majority of countries, and Lesotho is no exception to this worldwide trend. In an attempt to address this problem, the country has adopted, through electoral laws, electoral gender quota systems for both local and national legislative structures. The country has introduced a 30% gender quota requirement for election to the local councils at the local level. At the national level, it introduced a 'zebra list' – the condition that when political parties submit lists for the purposes of 40 proportional representation (PR) seats in the National Assembly, the names must alternate between those of men and women. The idea was to attain 50% representation of women in the National Assembly, at least for the 40 PR seats. The effectiveness of these two quota systems in enhancing women's representation has been the subject of intense disagreement. The animating question is whether, since the adoption of gender quotas, the representation of women in legislative bodies has improved. The article investigates this question using the qualitative content analysis method. The central hypothesis is that electoral gender quotas in Lesotho, particularly at the national level, have not significantly improved the representation of women. The paper critiques the models used and makes some recommendations for reform.

Keywords: electoral gender quotas, Lesotho, National Assembly Electoral Act, Local Government Elections Act, National Assembly, local councils, electoral system

INTRODUCTION

The under-representation of women in public decision-making structures is a global phenomenon. Women constitute less than half of the representatives in legislative bodies at all levels (UNWomen 2021). The problem does not appear to be abating: the most recent data suggests that the global representation of women in legislative structures is at 25.5% (IPU 2021). Disaggregated by regions, women representatives constituted 32.4% in the Americas, 30.4% in Europe, 20.4% in Asia and 24.9% in sub-Saharan Africa (IPU 2021). The Nordic countries – Denmark, Finland, Iceland, Norway and Sweden – constitute the only sub-region that is close to achieving gender parity in legislative bodies, with women comprising about 43% of the members of parliament. In Africa, Rwanda has been the most successful in achieving gender parity, with 56% women's representation in parliament.

Studies demonstrate a slight improvement in women's representation in legislative bodies globally, compared to a decade ago (Atske, Geiger & Scheller 2019). A decade ago, the rate hovered at around 18%. This modest improvement notwithstanding, the problem of under-representation persists.

Lesotho is no exception to this phenomenon as women are under-represented at both the national and local levels. As of 1 January 2021, the National Assembly comprised 23% women, while the percentage of women in the Senate stood at 21% (IPU 2021). The percentage of women local councillors was 40% after the 2017 local government elections (Gender Links 2017). The statistics for the national and local levels indicate that women are profoundly under-represented in legislative bodies in Lesotho, despite the fact that the country has electoral gender quotas at both the national and local levels.

The country introduced the 'zebra-list' model for the 40 proportional representation (PR) seats in the National Assembly (National Assembly Electoral Act 2011). The law prescribes that when a political party submits its list of PR candidates, the candidates must not only appear in order of preference, but women must alternate with men on the list. This electoral gender quota is limited to 40 out of 120 seats in the National Assembly.

The country has a 30% quota system at the local level to ensure women's representation in the local councils (Local Government Elections Act 1998). In the first democratic local government elections in 2005, the quota proved to be effective as the rate of women's representation in local councils was 58%. However, the rate could not be sustained in the next elections, raising questions about whether the high rate observed in the first elections was attributable to the electoral gender quota. The rate gradually declined to 49% and 40% after the 2011 and 2017 elections, respectively (Gender Links 2017). A similar downwards trend is observable at the national level. In the National Assembly, the rate had been steadily dropping

from an impressive 27% in 2012, to 25% in 2015. After the 2017 national elections, the presence of women plummeted to 23% (Gender Links 2017).

This picture raises the issue of whether electoral gender quotas effectively enhance female representation in Lesotho's legislative bodies. An ancillary question is whether the type of electoral gender quotas that the country has chosen is problematic or whether electoral gender quotas should be jettisoned altogether, with other models being devised to enhance women's representation in legislative bodies. These questions form the central enquiry in this study. The study proceeds from the primary hypothesis that electoral gender quotas in Lesotho, particularly at national level, have not been effective in enhancing sustainable gender parity in legislative bodies in the country.

The paper is structured as follows: the first section focuses on the methodology and delimitation of the study. The second section provides the conceptual and theoretical framework for this study. The third section presents the legal framework for gender quotas in Lesotho. The fourth section assesses the performance of quota systems at both the national and local levels. The final section concludes the paper and makes recommendations for reform.

METHODOLOGY AND DELIMITATION OF THE STUDY

Since the phenomenon that this study deals with requires impressionistic, intuitive, interpretive or strictly textual analysis, the most appropriate method is qualitative content analysis (Rosengren 1981). As a research methodology, particularly in social sciences, content analysis has only recently started to gain traction. It becomes the most suitable method where the content of messages in any instrument becomes the basis for inferring or drawing conclusions about particular content (Nachmias & Nachmias 1996). In this study, the critical data are statistics already collated from other sources – legal instruments and patterns in literature. The study thus draws inferences from the interpretation of available data.

Another justification for the choice of content analysis is that it straddles the two main disciplines – political studies and legal studies – that directly impact the study. It therefore permits the interdisciplinarity that is necessary to undertake a study of this nature. Youngblood's approach is premised on the conviction that '[n]o discipline is an island entirely in itself. That is to say, disciplines are by no means discrete entities – they necessarily overlap, borrow, and infringe upon one another' (Youngblood 2007, p. 1). Conceptually, multidisciplinary (or interdisciplinarity) is a research approach in which 'members of two or more disciplines cooperate, using the tools and knowledge of their disciplines in new ways to consider multifaceted problems that have at least one tentacle in another

area of study' (Youngblood 2007, p. 2). It draws from the strengths of two or more disciplines in analysing a single phenomenon or multiple phenomena with interconnectedness.

The study is very limited in scope; it deals solely with electoral gender quotas and how they have performed in Lesotho. It does not deal with the broad issues of women's representation or gender parity generally in Lesotho. Nor is the study so much about the substantive empowerment of women legislators or female representatives who have attained public office. Other studies have focused on the broader issues of gender disparity and the empowerment of women in public institutions in Lesotho (Kali 2018; Clayton & Zetterberg 2018; Ramakhula 2019). These studies are almost unanimous in finding that there is a palpable disparity in Lesotho, both formally and substantively. The gap which this study seeks to fill is determining whether electoral gender quotas, as a remedial measure for the under-representation of women in politics, are effective. The representation of women in parliament has implications for women in the executive branch of government, but the study touches only tangentially on the executive branch of government; the executive is not the main focus of the study.

CONCEPTUAL AND THEORETICAL FRAMEWORK

Problematizing Electoral Gender Quotas

A balanced political representation of various groups in a political system is considered an indicator of democracy around the world (Kalaramadam 2018, p. 2). Political representation is essential in two strands of democracy – representative democracy and participatory democracy. Representative democracy focuses on the quantitative (descriptive) representation of all groups in public decision-making bodies while participatory democracy is concerned with the qualitative (substantive) aspect regarding the incorporation of the experiences and the interests of the represented (IDEA 2021, p. 17).

Descriptive representatives mirror some of the more frequent experiences of the group(s) they represent (Mansbridge 1999, p. 629) and consequently influence legislative decision-making that is inclusive of the broader set of political voices and legitimises policy-making in democracies (Arnesen & Peters 2018, p. 869). Additionally, descriptive representation of women in legislative bodies is a matter of justice and equity (Carroll, Dodson & Mandel 2001, p. 2).

Despite the importance of descriptive representation, some scholars point out that the mere presence of the representatives of marginalised groups in legislative bodies may not be sufficient in influencing policy outcome in favour of the represented (Phillips 1995; Weldon 2002). Substantive representation depends on several factors such as the acts of the 'critical actors' and the institutional

framework (Chaney 2012, p.442), and the fact that women are not a homogenous group (Dovi 2007, p. 311).

Notwithstanding the criticism against descriptive representation, countries worldwide have been under pressure to increase the participation of women in political processes. A variety of measures have been employed to increase women's representation. One such method, which is presently at the height of the political discourse, is electoral gender quotas. Electoral gender quotas reserve certain seats or positions in legislative bodies for female representatives (McCann 2013, p. 4; Kurebwa & Ndlovu 2017, p. 50). These legislative strategies are meant to boost the representation of female political decision-makers (Fernández & Valiente 2021, p. 352). They have emerged as arguably the most prevalent mechanism for fast-tracking gender equality, representative government and women empowerment as a developmental goal (El-Helou 2009, p. 2).

One of the most persuasive theories undergirding electoral gender quotas is the critical mass theory (Broome, Conley & Krawiec 2011, p. 1053). The theory posits that a group begins to be transformative only when a critical mass is reached (Yang, Yang & Gao 2019, p. 3453), because the nature of group interactions depends upon the size of each group. The qualitative change in groups occurs once the group attains a certain proportion, as the minority can assert itself and transform the institutional culture (Norris & Lovenduski 2001, p. 2). Hence, the presence of a substantial proportion of women in public decision-making structures is expected to transform the political discourse, policy agenda and institutional culture (ibid.). The required proportion for a minority group to make a difference is 30% (Dahlerup 1988, p. 275). As Childs and Krook (2008, p. 725) contend, women can have a significant impact on legislative outcomes only if their numbers increase from being a few token appointments into a substantial minority, as that will enable them to work together to promote pro-women policy outcomes.

Quotas take several forms, namely voluntary political parties and constitutional or legislated quotas (McCann 2013, pp. 7-8; Kalaramadam 2018, p. 2). Constitutional or legislated candidate quotas are entrenched in constitutions or electoral laws. Such quotas dictate that political parties must fulfil a particular gender quota in their electoral lists. Voluntary party quotas are adopted at the level of candidate selection and nomination by parties, by requiring that a certain minimum percentage of the candidates for election are reserved for women (Kethusegile-Juru 2004, pp. 22-23). The requirements are usually stipulated in the constitutive rules of each political party (ibid.).

Although electoral gender quotas have been lauded as an effective policy for bolstering the presence of women in politics, they are also highly controversial. They have been criticised for rendering the beneficiaries of the quota system inferior to non-quota representatives (Solyom 2020, p. 4). The beneficiaries of the quota policy are said to occupy the places of more qualified men (ibid.). Gender

quotas are also regarded as undemocratic and contravening the equality principle, as women are elected on the basis of their gender and not their credentials (Goulding 2009, p. 73). Liberalists also reject quotas, stating that they undermine the principle of equal opportunity for all as they favour women and deny men an equal chance to establish a political career (Dahlerup & Freidenvall 2005, p. 30). Quotas are also derided for restricting voters' choices (Guadagnini 2005, in Kalaramadam 2018, p. 3).

These criticisms notwithstanding, proponents argue that quotas have had a desirable effect on the presence of women in politics. For instance, Clayton (2021, p. 236) asserts that many quota-adopting countries have made remarkable progress in very short periods of time, doubling or even tripling women's legislative representation in the first post-quota election. For instance, as of 1 January 2021 seven of the top ten countries for the representation of women in single or lower houses have put a quota system in place, while the bottom five have no quota system at all (see Table 1 below).

Table 1: Ten highest-ranked and five lowest-ranked countries for women's parliamentary representation in the single or lower house in 2021

RANK	COUNTRY	% OF WOMEN	QUOTA
Highest ranked countries			
1	Rwanda	61.3	Yes
2	Cuba	53.4	No
3	United Arab Emirates	50.0	Yes
4	Nicaragua	48.4	Yes
5	New Zealand	48.3	Yes
6	Mexico	48.2	Yes
7	Sweden	47.0	Yes
8	Grenada	46.7	No
9	Andorra	46.4	No
10	Bolivia	46.2	Yes
Lowest ranked countries			
184	Nigeria	3.6	No
185	Oman	2.3	No
186	Kuwait	1.5	No
187	Yemen	0.3	No
188	Micronesia (Federated States of)	0.0	No

Source: Data from IPU Parline (available at <https://data.ipu.org/content/parline-global-data-national-parliaments>)

Furthermore, advocates contend that quotas do not necessarily discriminate but compensate women for the barriers that prevent them from participating in politics (Kurebwa & Ndlovu 2017, p. 53). El-Helou (2009, p. 2) argues that a gender quota is instrumental as a temporary measure to break down the social, cultural and political barriers to gender equality. Quota policies diversify parliaments and influence the prioritisation of policy areas in favour of the historically marginalised groups (Clayton & Zetterberg 2018). Additionally, the problems associated with the under-representation of women outweigh the shortcomings resulting from the adoption of gender quotas, because equal representation is necessary to improve democracy and enhance the substantive representation of women (Solyom 2020, p. 2).

In an attempt to increase the number of women in decision-making bodies and reap the benefits thereof, countries have individually and collectively established legal and institutional frameworks for gender equality. Electoral quotas have been very popular as the single most important avenue for the increased participation of women in political structures in general, and in legislative bodies in particular.

Factors that Influence the Effectiveness of the Gender Quota System

Several factors influence the effectiveness of quotas in the political system. They interact positively and negatively with numerous features of the broader political context and consequently do not simply lead to gains proportionate to the quota policy (Krook 2009, p. 11). For instance, the size of the quota, the electoral system, party rules and magnitude have a bearing on their propensity to enhance women's descriptive representation in legislative bodies.

Quota size is the most important characteristic of gender quotas that increase women's representation on their own (Schwindt-Bayer 2009, p. 17). Quotas are more effective when they are set at a high threshold, usually requiring that party lists comprise an equal proportion of men and women (parity quotas). The level of the goal set by a quota is directly related to the level of representation achieved, that is, countries that have set higher quota targets have achieved higher representation of women (Sojo, Wood, Wood & Wheeler 2016, p. 533).

The effectiveness of the quota policy is determined by the electoral system in use within a political system (Larsrud & Taphorn 2007, p. 10). In Latin America, the success of electoral gender quotas has been influenced by institutional factors which are at times unrelated to the quota laws, such as the electoral system (Sacchet 2018, p. 33). On the whole, the efficacy of the quotas has been evident in countries using the PR electoral system (Kethusegile-Juru 2004, p. 15). Despite its limitations, such as resulting in unstable coalition governments and weakening

the link between the representatives and the constituencies (ACE, 2021), globally about twice as many women access national parliaments under the PR system (19.6%) than under majoritarian electoral systems (10.5%), while 'mixed' electoral systems fall between these two at 13.6%. Clearly, therefore, women are almost twice as likely to be elected to the legislature under the PR system as under majoritarian electoral systems (Norris 2006, p. 41). Combining a PR system with a legislated quota is the most powerful strategy for achieving gender parity in politics (Kethusegile-Juru 2004, p. 24; Tamale 2004, p. 42). Therefore, legislative bodies with the highest representation of women (for example, South Africa and Norway) often have parity quotas in a PR system (Clayton 2021, p. 238).

One factor that determines the success of the PR system in enhancing the representation of women in the legislature is the size of the political parties (Larsrud & Taphorn 2007, p. 10). Political parties tend to fill the first slots on the candidate lists with male candidates (usually party leaders). The larger the party, the better the chances for women to get into parliament, as parties will then fill their second and subsequent seats with candidates other than their absolute top candidates. The party will be larger if the districts are large and if the number of parties that are allocated legislative seats is relatively low. If a party is small, this will negatively affect the representation of female politicians in the legislature, unless women are placed at the top of the party list (*ibid.*).

Another vital requirement for quotas to be effective is the willingness of political parties to implement a quota policy in the first place (Bjarnegård & Zetterberg 2016, p. 395). The achievement of the objectives of the quotas also depends on good faith conformity by political parties (Htun & Jones 2002, pp. 36-43, in Schmidt & Saunders 2004, p. 706). Parties can contribute to the effectiveness of the quota policy by establishing formal rules that reserve a certain proportion for women among the party's candidates. This could take the form of either a quota (mandated percentages of women) or a target (recommended percentages of women) (Caul 1999, p. 83). While quotas are indeed useful, political parties could reinforce their effectiveness by ensuring that their structures and culture allow and encourage women to stand for office (Kethusegile-Juru 2004, p. 24). Otherwise, political entities, especially the male members usually disadvantaged by quotas, frequently act strategically to sidestep the intended impact of quotas on leadership outcomes (Pande & Ford 2011, p. 3). Such an act not only reflects the acknowledgement that the under-representation of women in politics is a problem, but it also indicates a willingness to address the problem (*ibid.*).

Furthermore, quotas at times result in unintended outcomes as they somehow relieve the political parties of their responsibility to remove obstacles to the entry of women to the legislative bodies (Meena 2004, pp. 84-85). This is

because of a misconception that since women have access to parliament through the quota system, they should not stand for the open seats (Kabuni & Agon 2021, p. 4). The quota seats erode the competitive 'power' of women to enter the representative organs of the state in the 'normal' way (Tamale 2004, p. 42).

In addition, the way the quota law is worded also affects the effectiveness of the quota policy (ibid.). For instance, when the quota law says 'at least one of the offices ... shall be held by a female', in practice, this is usually interpreted to mean 'the maximum number'. This unintentionally creates a glass ceiling, preventing women's representation from exceeding the stated quota.

The following section presents the legal framework for electoral gender quotas in Lesotho.

ANALYSIS OF THE LEGAL FRAMEWORK FOR ELECTORAL GENDER QUOTAS IN LESOTHO

Electoral Gender Quota Law at National Level

Lesotho has joined the global wave to introduce electoral gender quotas. It is important to note that the Constitution of Lesotho, 1993 does not have an express electoral gender quota in its original text, for either parliamentary or local government elections. However, it may be argued that its text has always indirectly envisaged that measures might be taken to affirm groups in society that have been previously disadvantaged. Section 18(4)(e) of the Constitution therefore contemplates that laws or measures may be taken to promote 'a society based on equality and justice for all the citizens of Lesotho, thereby removing any discriminatory law'. And such measures will not be regarded as violating the freedom from discrimination provided for under the section. In other words, the Constitution permits positive discrimination in the form of affirmative action measures (Viljoen & Nsibirwa 2006). This view was confirmed by both the High Court and the Court of Appeal in the celebrated decision of *Molefi Ts'epe v The Independent Electoral Commission and Others* (2005). In this case, the introduction of electoral gender quotas for local government in 2005 was challenged as being unconstitutional, in that it violated both freedom from discrimination and the right to equality as provided for in sections 18 and 19 of the Constitution, respectively. The Court of Appeal disagreed and held that the measure – the reservation of 30% of the seats in local authorities for women – is based on section 18(4)(e) of the Constitution and is therefore permissible.

The original texts of the 1993 Constitution and the 1997 Local Government Act were based on the constituency-based electoral system – an electoral model renowned for being unfriendly towards the representation of marginalised groups

in general and women in particular (Matlosa 2008). The original section 57(1) of the 1993 Constitution provided that Lesotho shall 'be divided into constituencies and each constituency shall elect one member to the National Assembly'. As demonstrated later in this research, female representation was very low under the constituency-based system.

In 2001 the country introduced the Fourth Amendment to the Constitution to usher in a new electoral system that replaced the majoritarian model with the mixed member proportional (MMP) electoral system (Nyane 2017). Even then, there was still no express provision for electoral gender quotas. The Fourth Amendment retained the 80 constituencies whose representatives are elected through the majoritarian system, but expanded the erstwhile 80-member National Assembly to 120 members. The additional 40 members are elected in accordance with the principle of proportionality applied to the National Assembly as a whole.

The cardinal principle of the MMP model is contained in section 57 of the Fourth Amendment, which states that 'forty members [are] to be elected to party seats in accordance with the principle of proportional representation applied in respect of the National Assembly as a whole'. The amendment never included a requirement for electoral gender quotas. However, it introduced proportionality to the electoral system in Lesotho. As Elklit observes, 'the MMP system is however a genuine PR system as all seats are included in the conscious attempt to reach a proportional result through the use of [a] strong compensatory mechanism' (Elklit 2008, p. 13). In general, proportionality-based electoral systems are reputed to be friendlier to women's representation than the constituency-based electoral systems (Matlosa 2008). However, the proportionality-based electoral systems are often criticised for being weaker on the accountability of elected representatives in comparison to constituency-based electoral systems. In South Africa for instance, despite an impressive gender representation (Goetz & Hassim 2003), there is a strong call to move away from a pure proportional representation model (Nijzink & Piombo 2005).

The newly adopted constitutional principle of proportionality was operationalised through the National Assembly Election (Amendment) Act of 2001. Section 49B of this Act provided that a political party intending to contest elections may 'nominate candidates for election by proportional representation'. The first election to be held under this model in Lesotho was in 2002. As will be demonstrated later, the representation of women started increasing with this election, although there were no electoral gender quotas.

In the run-up to the 2007 parliamentary elections, the country took a bold decision and introduced an electoral gender quota through the electoral law. For the first time, the law made it a condition that when political parties submit lists for

elections to the 40 PR seats in the National Assembly, the lists must alternate the names of males and females – if the list starts with a man, the following candidate must be a female. These lists came to be known colloquially as ‘zebra lists’.

It is important to note that the law introducing electoral gender quotas at the national level has three fundamental deficiencies which will make it difficult, if not impossible, to attain even a mere 30% representation of women in parliament. Firstly, the law is limited to only 40 PR seats in a 120-member chamber. Even before they are shared between men and women, the seats in themselves only constitute about 33% of the entire National Assembly. Indeed, the 80 constituency seats are open to both genders, and some women do occupy them. But still, the constituency-based leg of the electoral system has proven not to be favourable for women.

Another deficiency with the law is that it does not make it a requirement that the first person on the list should be a female. Consequently, a political party’s first candidate on the list is the party leader, who invariably is a male. Therefore, when a party sends only one candidate to parliament, which is often the case with smaller parties, it is a male. Or, where the party sends an odd number of candidates to parliament, males will invariably be in the majority.

The third problem with the law is that it does not say anything about the Senate, the upper chamber of Parliament. This chamber has 33 members, 22 of whom are principal chiefs, and the king appoints 11 other members on the advice of the Council of State. With the principal chiefs being hereditary, and given the primogeniture rule as a guideline to succession to the chieftainship in Lesotho, it is to be expected that the majority will be males. Hence, the female representation in this chamber has been deplorably low, hovering at around only 5%.

Electoral Gender Quota Law at Local Level

When the country passed the Local Government Act and the Local Government Elections Act in 1997 and 1998, respectively, electoral gender quotas were not envisaged. The legal framework was based on the majoritarian electoral system in line with the system used for national elections at the time. When the local government elections that were scheduled for 2005 were approaching, the idea of a quota was adopted, and the legal framework for the elections had to be amended. The law was amended to provide for the 30% quota for women in all councils. Attaining this created much controversy. The law provided that one-third of the seats in each council had to be reserved for women (Local Government Elections (Amendment) Act 2005: section 26(1)A (a) and (b)). This meant that in some electoral divisions – those reserved for women – men would be completely debarred from standing for election. This method of implementing the 30% quota

generated considerable controversy. The main argument was against the method of implementing it, and not necessarily against the quota itself. It was argued that the quota could be implemented and still achieve the same outcomes without preventing men from standing (Shale 2012).

The main argument against the reservation of the election division model of attaining the 30% representation of women is that it violates the right of men to stand for elections. It was argued that, to the extent that implementing the quota is not the least intrusive measure into the rights of men, it is unconstitutional (Shale 2012). This controversy reached its height in *Molefi Ts'ephe v The Independent Electoral Commission and Others* (2005). Both the High Court and the Court of Appeal rejected the argument that implementing the quota was unconstitutional, but both courts missed the point in this case. They misconstrued it as a case against the 30% quota for women. In fact, the case was not opposed to the quota itself, but against the method of implementing it.

Indeed, the 2005 local government elections were held under the same law that reserved one-third of electoral divisions in the councils. The outcome of the elections with regard to women's representation was astounding. Women's representation surpassed the anticipated 30% by far and reached a staggering 58%.

The proponents of an alternative method were later vindicated in the next election when the country decided to change the model from the reservation of seats to introducing special seats in the councils. The change of model was influenced by the same argument that initially failed in both the High Court and the Court of Appeal – that the 30% quota could be implemented through a model that intrudes less into the right of men to stand for elections (Shale 2012). In the run-up to the 2011 local government elections, the law was changed again to abolish the idea of reserved seats and introduced special seats (Local Government Elections (Amendment) Act 2011). The special seats are proportionally allocated to political parties that contested elections in the councils.

It is important to note that although the system changed from reserved seats to special seats, the electoral divisions were still open – based on the first-past-the-post system – to both genders. As demonstrated earlier, the majoritarian model does not lend itself to enhanced female representation.

This section has laid the legal framework for electoral agenda quotas at local and national levels and exposed some underlying systemic challenges; the following section analyses how the quota systems have performed in practice, at both levels.

AN ASSESSMENT OF THE PERFORMANCE OF THE GENDER QUOTA SYSTEM

How the Quota System is Performing at National Level

Lesotho has used the majoritarian electoral system since independence. As a result, the representation of women has been very low. For instance, after the 1965 election, which was held about a year before independence, there were no women in the National Assembly. The situation did not improve in the next election of 1970. Although the 1970 election was aborted (Macartney 1973), and no parliament came into being, research shows that there was still no women's representation. From 1970 to 1993, no legitimate elections were held in Lesotho. When the country returned to electoral politics in 1993, the elections were still held under the majoritarian electoral system. The representation of women improved slightly, standing at around 5%. The next election was held in 1998, still under the majoritarian electoral system. The rate of women's representation in the National Assembly dropped slightly to 3.8%.

After the 1998 elections, major electoral systems were instituted, which resulted in the country changing the electoral system from the full majoritarian system to a mixed system – the MMP model. The first election to be held under the MMP system was in 2002. In terms of the newly adopted system, the seats in the National Assembly were increased from 80 to 120. The 80 constituencies were retained, and an additional 40 seats were allocated through the PR system. The PR seats compensate parties for the shortfall between the proportion of votes obtained and the percentage of the constituency seats won. Due to the proportionality leg of the electoral system, which is reputed to be more conducive to female representation, the rate of female representation in the National Assembly received a significant boost after the 2002 elections, increasing from 3.8% in 1998 to 12.5%. Although the rate improved significantly, it was still woefully low.

After the 2002 elections, and mindful of the minimal impact brought about by the introduction of proportionality to the electoral system, the country introduced further changes to the electoral system with a view to improving the rate of female representation in the National Assembly. For the first time, the country introduced the electoral quota system. As earlier demonstrated, the system was not necessarily intended for equalising representation in the National Assembly. Instead, it was hoped that the system would reach not less than 50-50 representation, at least on the 40 PR seats. The first election held under the electoral gender quota was in 2007. As was expected, the rate of female representation improved significantly to about 25%, but was still short of the minimum 30% threshold.

A factor that negatively affects the representation of women in the National Assembly is that the electoral gender quota law is limited to only 40 PR seats.

Unlike in the local councils, the 40 seats are shared between men and women. Even before they are shared between men and women, the seats in themselves constitute only about 33% of the entire National Assembly and women are guaranteed at most half of the seats, which is 16.5% of the total number. Indeed, we know that the 80 constituency seats are open to both genders, and sometimes women do occupy them. Still, the constituency-based leg of the electoral system is proven not to 'be favourable' for women.

The PR seats serve to compensate parties for the shortfall between the proportion of votes obtained and the percentage of the constituency seats won. Since these are compensatory seats, the more constituency seats a party wins in proportion to the total votes garnered, the fewer the compensatory seats. This usually happens in the large parties. For instance, in the 2012 national elections, out of 48 seats for the Democratic Congress (DC), only 7 (14.5%) were allocated through the PR system. Similarly, out of the 30 seats for the All Basotho Convention (ABC), only 4 (13%) were allocated through the PR system (IPU 2013). The same trend took place in the 2015 elections: 21% and 13% of seats were allocated to the DC and the ABC in that order (IPU 2016). This has led to a situation where men dominate both the constituency and PR seats, leaving women's representation at less than SADC's 30% target.

Though it can be argued that the Lesotho national case is that of a 'rank order rule without a quota outcome' (since the size of the quota or the quota outcome has not been announced), it can be discerned from the arrangement that the proportion of seats reserved for women is very low; the 'zebra list' has therefore failed to enhance gender parity in the legislature. As Schwindt-Bayer (2009, p. 17) and Sojo et al. (2016) pointedly contend, the size of the quota matters because of its ability to boost the presence of women in legislative bodies.

Since the law does not require the first person on the list to be a female, political party's first candidate on the list is the party leader, who invariably is a male. Hence, for smaller parties that send one candidate to parliament, such single candidate is often a male. For instance, in Lesotho's 2015 national elections, four parties, namely the Basutoland Congress Party (BCP), the Lesotho People's Congress (LPC), the Marematlou Freedom Party (MFP) and the National Independence Party (NIP) secured one parliamentary seat and, as has been the practice, they were occupied by the male leaders. This has happened in almost all the election cycles since 2012. This confirms the assertion by Larsrud and Taphorn (2007, p. 10) that the size of the parties affects the proportion of women in the legislature as the male leaders of small parties take up the top slots in the party lists, thereby disadvantaging their female counterparts.

Additionally, the political parties in Lesotho have not adopted quotas for the nomination of candidates to the National Assembly. The few parties that have an

affirmative action provision in their constitutions, namely the DC, the Lesotho Congress for Democracy (LCD) and the Alliance of Democrats (AD), focus on the internal party structures and political posts in government. They are silent on the National Assembly candidacy. The political parties in the country have thus not made any efforts to reinforce the electoral quota system in their constitutions, hence the low representation of women in the legislature. This affirms IDEA's view (2021, p. 71) that a direct relationship exists between countries with high levels of representation of women and the adoption of voluntary quotas by the ruling parties. For instance, South Africa, Namibia, Mozambique, Ethiopia and Cameroon are ranked amongst the top ten African countries with the highest levels of women's representation in parliament, and the ruling parties have adopted voluntary quotas (ibid.).

How the Quota System is Performing at Local Level

The local governance system in Lesotho is in its infancy. The country introduced the system of a fully democratic and elective electoral system only in 2005. Thus far, the country has held only three local government elections – in 2005, 2011 and 2017. All the elections were held under a gender quota system of one form or another. During the inaugural 2005 elections, the system worked in such a way that 30% of the electoral divisions were reserved for women. The outcome of the election surpassed the 30% threshold by far, putting the rate of female representation countrywide at 58%. It is important to note that the system was still 100% majoritarian. The rate of female representation has been boosted by the reservation of 30% of the electoral divisions (constituencies) for exclusive female contestation.

In the run-up to the second election in 2011, the system was changed to make it less intrusive into men's rights, although it was still intended to attain the minimum of 30% representation of women. This time around, the idea of reserving electoral divisions for women was rescinded in favour of a new innovation, which was styled 'special seats for women'. The special seats constitute 30% of the total number of seats in a local council. They are then allocated to political parties proportionally. The change meant that the system at the local level was becoming mixed, combining plurality with proportionality. The voter is now given two ballots – one for the plurality leg of the system and another for the special seats (proportionality). The essence of the system is that special seats are intended to attain the 30% threshold without preventing men from contesting seats. Following the 2011 local government election, the rate dropped from 58% in 2005 to 49%. However, the rate was almost 50% – far above the threshold. The next local government election was held in September 2017. After this election, the rate of female representation continued to plummet, to 40%.

Table 2: Rate of female representation at the local level since 2005 elections

Local Government Election Year	Rate of female representation (%)
2005	58
2011	49
2017	40

Source: Gender Links 2017

Although the rate of female representation at local level is still above the threshold, unlike the rate at the national level, the steady decline is a worrying factor. Table 2 above indicates that there has been a decline since 2005. This downward spiral continues despite the quotas. Nevertheless, the comforting factor with the local governance system, compared to the one at the national level, is that the rate may not drop below the threshold because of how the system is designed. The local level's quota system is designed to ensure that the rate will not fall below the 30% threshold.

CONCLUSION AND RECOMMENDATIONS

This article has demonstrated that although the system of electoral gender quotas may have its challenges in the broader quest for women's empowerment, it remains the most viable mechanism for accelerating the rate of representation of women in legislative bodies. Lesotho has different systems for electoral gender quotas for national and local levels. The system at the national level is based on the 'zebra lists', and the one at the local level has changed from the reservation of seats to 'special seats for women'. However, Tables 1 and 2 demonstrate that the quota system at the local level is more effective than the one at the national level.

The local government system has been designed so that it has a threshold of 30%, while the one at the national level does not. By creating zebra lists at the national level, it was hoped that at least for the 40 PR seats – which already constitute a mere 33% of the National Assembly seats – there would be 50-50 representation for both genders. But even 50-50 representation on the PR seats is barely attainable because there is no requirement that the first person on the list is a female. Consequently, political parties always put the leader of the party first on the list, and the leaders are invariably men. Indeed, in larger parties, the leader will win a constituency seat and the next person on the list – who is a female – is then first on the list. But the situation where leaders win constituency seats is rare; this happens for only a few political parties. For instance, during the 2017 election, only five leaders won the constituency seats, thereby creating space for

females to appear first on the lists. The situation is rendered even more dire by smaller political parties that often win only single seats. For such parties, those single seats are always for the leaders, who are usually males.

We have three main recommendations for the improvement of the effectiveness of the electoral gender quotas in Lesotho. Having noted the recommendation by the National Reforms Authority (NRA) for a constitutional amendment to increase the PR seats from 40 to 60 in the National Assembly (Kabi 2021), we welcome the move. However, this will only secure 25% of the seats for women as they are still going to share the 60 seats with their male counterparts. Subsequently, the first recommendation is that the system needs to be reviewed to ensure that it has a threshold of at least 30%, with the progressive aim of realising parity.

The second recommendation is that legislation must impose quota systems at the political party level, where the decisions about representation in Parliament or any legislative body are made. This will ensure that the idea of gender parity is inculcated as part of the political culture from that level.

The third recommendation relates to representation in the Senate. This chamber is often overlooked, yet when Parliament is assessed as a whole, it undermines even the small gains that have been made in the lower chamber, the National Assembly. Since the majority of the senators are hereditary chiefs, it is to be expected that males will always constitute the members of the Senate because of the primogeniture rule of succession in Lesotho (*Senate Gabasheane Masupha v Senior Resident Magistrate of the Subordinate Court of Berea*, 2013). Even for the 11 senators appointed by the king, who constitute only about 33% of the Senate, gender considerations during the appointment are not required. It is recommended that the gender quotas be extended to the Senate.

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