

# **Balancing Representation: Special Representation Mechanisms Addressing the Imbalance of Marginalized Voices in African Legislatures**

Stephanie Kodish  
Prepared for World Resources Institute  
July 26, 2004

## **ABSTRACT**

This report focuses on four different mechanisms designed to provide marginalized groups in Africa with improved legislative representation at the national level. These special representation mechanisms include: proportional representation, guaranteed minority seating, advisory bodies and affirmative gerrymandering<sup>1</sup>. These tools appear a beneficial means through which nations may eliminate discrimination, better safeguard the interests of marginalized people, boost opportunity for political expression and place each member of society on equal footing.

To situate this discussion in its proper context, the opening section of this paper will explore international law relating to the right of representation and present arguments both for and against the use of special representation mechanisms. This is followed by a brief discussion of the myriad problems that arise in attempting to address or characterize issues relating to marginalized groups in Africa. Turning to an analysis of the four specific mechanisms, this paper will examine numerous cases of African nations that have, in theory or practice, sought to employ proportional representation, guaranteed minority seating or advisory bodies as a means of introducing special representation. In addition, this section will discuss the function of demarcation, its historical roots, and impact on the political climate. Finally, this paper will offer some conclusions about the implications of the research and its findings as well as several policy suggestions. It is my hope that the information in this report will contribute to advancing a more equitable system of representation and its practical implementation in Africa.

I am humbled by the work of those whose insights fill the pages below.

## **Introduction**

---

*“It is an essential part of democracy that minorities should be adequately represented. No real democracy, nothing but a false show of democracy, is possible without it.”<sup>2</sup>*

---

The legislature is considered the most fundamental arm of democratic governance. In its purest form it serves to secure the foundations of democracy by translating the will of people into the law of land. At its core, the legislature is a mirror of society’s soul. The question is how to ensure that the composition of the legislature and the decisions it makes are a true reflection of the will of all people whom this body is designed to represent.

Legislative representation generally provides a means for people to express their will through representatives who bring their constituencies’ “concerns and aspirations” to government decisions and actions.<sup>3</sup> This process pivots on voters electing representatives, who in turn are given authority through the

---

<sup>1</sup> Historically, gerrymandering has been used as a means of manipulating and controlling electoral districts, this paper argues that there is the potential for boundary demarcation to be used as a positive mechanism to increase minority representation.

<sup>2</sup> John Stuart Mill, *Representative Government*, 1861.

<sup>3</sup> Veit et al., “Serving Constituents, Servicing Nature: Legislative Representation and Natural Resource Politics in Africa”, World Resources Institute Publication, 2004. Forthcoming.

electoral process and empowered by the people to make decisions and create laws in their best interests. This form of governance is understood as being the optimal system, since the only form of democracy more pure is the system of direct democracy, where every individual has the opportunity to participate directly in legislative decision making.<sup>4</sup> Although perhaps ideal, direct democracy is generally impractical. Therefore, representative democracy is the next best structure as it ideally provides a form of government whereby people's sovereignty is delegated to a body of elected persons who exercise authority for the benefit of the whole nation.<sup>5</sup> Representative democracy relies on compromise whether to resolve conflict<sup>6</sup> or design policies to address the needs of a nation. Arguably in its purest form, representative democracy can represent marginalized groups and larger populations alike.

Within the context of representational democracy there are a wide range of views concerning how best to represent marginalized groups in the decision making process. At one end of the spectrum, consociationalism, Arjund Lijphart's theory, asserts that peaceful coexistence cannot be ensured unless special constitutional measures recognize the corporate entity of ethnic groups and confer on them the right to separate representation and participation in public bodies.<sup>7</sup> At the opposite end of the pole, integrationists, promulgate the idea that a political system in which all citizens participate can be created through incentives for cooperation and electoral laws that encourage inter-ethnic cooperation.<sup>8</sup>

It should be stated from the outset that the scope of this paper is limited to special mechanisms related to legislative representation, for practical purposes. This limitation is not meant to discount the merit of non-legislative special representation tools—such as special ministries, non-governmental organizations, commissions and workgroups.<sup>9</sup> That said special legislative representation, is unique as it specifically targets the organ whose very *raison d'être* is to represent the entire population, as opposed to creating *ad hoc* or external structures in the manner of its non-legislative counterparts. With this departure point in mind, this report takes the position that legislative special representation may play a critical role in compensating marginalized groups for historical disadvantage and providing them with immediate opportunities to publicly and actively participate in the same institutions that are accessible to the mainstream, thereby correcting societal imbalance. Indeed, the introduction of these tools may serve to effectively incorporate disenfranchised communities in the legislature, thereby potentially strengthening legislative representation as a whole.

There is a tremendous amount of information within the following pages, and this paper includes the diverse perspectives of a number of great scholars as well as the author's own observations. However, this report is not intended to convey the entire spectrum of thought on the subjects raised herein; rather it is intended to stimulate discussion, prompt further work in the area and hopefully inspire creative thinking.

### **Public International Law**

Public international law provides the legal foundation for affirmative rights applicable to all human beings. The roots of human rights, minority rights, the right to be free from discrimination, rights of expression, the right to self-determination, the right to participation and the right to take part in government can be

---

<sup>4</sup> Global Security, "The General Definition of Democracy"  
<[http://globalsecurity.com/democracy/definition\\_democracy.htm](http://globalsecurity.com/democracy/definition_democracy.htm)> (1 June 2004).

<sup>5</sup> *Ibid.*

<sup>6</sup> Veit 2004.

<sup>7</sup> Sisk, T. D., "Power Sharing and International Mediation in Ethnic Conflicts", Washington, DC, US Institute of Peace, 1996, discussing Lijphart's theory of consociationalism. See also Yash Ghai, "Public Participation and Minorities", Minority Rights Group International, 2001 reprinted 1 July 2003  
<<http://www.minorityrights.org/admin/Download/Pdf/PubPartReport.pdf>> (23 July 2004).

<sup>8</sup> Horowitz, D., "Encouraging electoral accommodation in divided societies", in B. Lal and P. Larmour (eds), *Electoral Systems in Divided Societies: The Fiji Constitution Review*, Canberra, Research School of Pacific and Asian Studies, ANU, 1997 cited in Ghai 2001.

<sup>9</sup> Admittedly, some of these mechanisms may be better suited to address certain cleavages than legislative mechanisms. Arguably, none of these mechanism obviate the ability of the other to exist. To the contrary, if successfully implemented in tandem, these tools can offer each other additional support.

identified in international doctrine.<sup>10</sup> The right to equitable representation emerges from these enumerated rights.<sup>11</sup>

The 1945 Charter of the United Nations declared “equal rights and self-determination of peoples”, the purpose of the international body to be thereby establishing the right to self-determination as a pillar of the international system.<sup>12</sup> Elaborating upon the ideology embedded in the UN Charter, Article 15 of the Universal Declaration on Human Rights specifically asserts the right to participate in public affairs and government.<sup>13</sup> In addition, the UDHR expands the right to self-determination to include the pursuit of economic, social and cultural development. The International Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966, expand and make enforceable the rights initially set forth in the UN Charter and the UDHR. The language in Article 25 of the ICCPR declares that every citizen has the right “to take part in the conduct of public affairs, directly or through freely chosen representatives,” and “to vote and to be elected”.<sup>14</sup> Though it does not mention minorities per se, it has been argued to the UN Committee on Human Rights that minorities should be read into the interpretation of this clause as they are understood to be “unrepresented or underrepresented [persons] in national political processes” due to their systematic exclusion or generally small population.<sup>15</sup> This concept was affirmed and is currently encoded in international law. Article 1 of the ICESCR declares “all people have the right of self-determination”.<sup>16</sup>

In 1952, international law explicitly recognized “that everyone has the right to take part in the government of his [or her] country directly or indirectly through freely chosen representatives...in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights.”<sup>17</sup> Inspired by Article 27 of the ICCPR, the UN General Assembly passed the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>18</sup> This document declares that minorities have the right “to participate effectively in cultural, religious, social, economic and public life,”<sup>19</sup> and “to participate effectively in decisions on the national and where appropriate regional level concerning the minority to which they belong or the regions which they live, in a manner not incompatible with national legislation”<sup>20</sup> Other treaties have more specifically addressed categories of minorities such as the Convention on the Rights of the Child,<sup>21</sup> the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries<sup>22</sup> and the Convention on the Political Rights of

---

<sup>10</sup> CHARTER OF THE UNITED NATIONS art. 1.2 [hereinafter UN Charter].

<sup>11</sup> UNIVERSAL DECLARATION ON HUMAN RIGHTS, art. 15 [hereinafter UDHR].

<sup>12</sup> U.N. Charter art 1.2.

<sup>13</sup> UDHR, art. 15.

<sup>14</sup> INTERNATIONAL COVENANT ON CIVIL POLITICAL RIGHTS, art. 25 [hereinafter ICCPR].

<sup>15</sup> This argument was made to the UN Committee on Human Rights by the Mikmaq Tribal Society in support of its claims to be represented at the Canada constitutional conferences (separately from the participation by the Canadian First Nations Council). The Committee concluded that the article did not require that any affected group, however large, be able to send a representative, but did not rule out special representation in suitable cases. See *ibid*; see also Turpel, M.E., “Rights of Political Participation and Self-Determination in Canada” in H. Reynolds and R. Nile (eds), *Indigenous Rights and the Pacific and North America: Race and Nations in the Late Twentieth Century*, London, University of London and Sir Robert Menzies Centre for Australian Studies, 1992; 104-5 cited in Ghai 2001.

<sup>16</sup> THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS [hereinafter ICESCR].

<sup>17</sup> THE CONVENTION ON THE POLITICAL RIGHTS OF WOMEN [hereinafter CPRW].

<sup>18</sup> THE UNITED NATIONS DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES [hereinafter UN Declaration on Minorities].

<sup>19</sup> *Ibid*, art. 2.2.

<sup>20</sup> *Ibid*, art. 2.3.

<sup>21</sup> THE CONVENTION ON THE RIGHTS OF THE CHILD [hereinafter CRC].

<sup>22</sup> THE CONVENTION (No. 169) CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES [hereinafter CITPIC].

Women,<sup>23</sup> for example. In Article 11, the CRC provides that to comply with CITPTC governments shall “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.” Article 6(a) further supports the notion of the right for marginalized groups to be politically represented. The International Convention on the Elimination of All Forms of Racial Discrimination is also fundamental to this discussion insofar as Article 1.4 states:

*Special measures* taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection *as may be necessary* in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.<sup>24</sup>

This provision has most commonly taken the form of affirmative action policies.<sup>25</sup>

Article 2.3 of the Declaration on the Rights of Minorities is of particular interest because of the implicit qualifications it attaches to these positive rights. While the intention of this document is to advance the rights of marginalized groups, it also serves to potentially isolate such groups by only out provisions to involve them in public participation only when issues may directly impact their specified group or regions where they live. The problem here is not the separate recognition of minorities it is but rather that the language is arguably insufficient in acknowledging that marginalized groups remain a part of the majority. To truly ensure marginalized people are protected, free from discrimination and able to meaningfully assert their right to self-determination, their voices also must be deemed relevant to society at large. The language in The Declaration on Minorities fails to open up sufficient space to allow minorities to share their worldviews while remaining a pillar of structuring the larger society. In turn this language creates a qualified right that seems colored more so by exclusion than integration. Nevertheless it must be noted that the CERD, a more significant and binding document, supports the use of special corrective measures.

Regional instruments have added a context rich dimension that view international law through a historic and cultural lens. The African Charter on Human and Peoples Rights<sup>26</sup> exemplifies the effort by African nations to further ingrain international law, specifically the UDHR, into the core of their societies. Though the African Charter makes no mention of minorities, the African Union, formerly the Organization for African Unity, has interpreted Article 19 of its Charter to require that states give information on the “constitutional and statutory framework which seeks to protect the different sections of the national community.”<sup>27</sup> It may be inferred from this directive that protecting disadvantaged groups is an intended objective of the Charter.

Other regional conventions have gone a step beyond articulating goals and ideologies to suggest specific measures that may be used to implement international law and regional aims in a practical manner. Addressing issues of political representation for marginalized groups, the Lund Recommendations on

---

<sup>23</sup> CPRW.

<sup>24</sup> INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION [hereinafter CERD].

<sup>25</sup> Lennox, Corinne, “Discussion Paper on a UNDP Policy Note on Minorities”, Minority Rights Group International, October 2003 <<http://www.minorityrights.org/admin/Download/pdf/UNDP-discussion-paper.pdf>> (19 May 2004).

<sup>26</sup> THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS [hereinafter the African Charter].

<sup>27</sup> Samia Slimane, “Recognizing Minorities in Africa”, Minority Rights Group International Briefing, May 2003, <[www.minorityrights.org/Advocacy/africa2003.htm](http://www.minorityrights.org/Advocacy/africa2003.htm)> (23, July 2004).

Effective Participation of National Minorities in Public Life<sup>28</sup> serve to illustrate a potential device that may assist regional and national efforts to improve the status of potential marginalized populations.

The main objective of the Lund Recommendations is to encourage effective participation of national minorities, which is identified as central to maintaining peaceful and democratic societies. The recommendations strive to facilitate the adoption of state-specific measures aimed at reducing tensions related to minorities and supporting mechanisms for inclusion.<sup>29</sup> This document identifies participation in decision making, and electoral systems specifically, as means for ensuring that minority voices are represented at the national level of government. The Lund Recommendations further state that in order to ensure minority voices are heard, states may make “special arrangements” for special representation. To this end several different mechanisms, including reserving seats in parliament are specifically articulated.<sup>30</sup> With respect to electoral systems, the Lund Recommendations suggest that proportional representation with lower numerical thresholds and geographic boundaries that facilitate equitable representation may be used to enhance inclusion of national minorities in governance. It further “encourages testing new and innovative regimes rather than specifying terms for altering existing arrangements.”<sup>31</sup> The details of this document provide a rich framework for the African Union’s next steps to further encourage representation for marginalized groups in its member nation states. The Gaborone Declaration on Indigenous People and Minorities in Africa provides an example of efforts to increase regional policy in this capacity.<sup>32</sup>

Taken together, the international and regional declarations and treaties discussed above establish the foundation for the right of all persons to self-determination and participation in all dimensions of society affecting their lives and communities. These rights serve as a starting point for an inquiry into how minority rights are in fact manifested. From here one must look past the general principles of international law to the concrete representation mechanisms that have evolved in part from the basic right of representation as it pertains to minority groups. Ultimately to breath meaningful life into the spirit of article 25 of the ICCPR, special processes and structures for political representation must necessarily exist.<sup>33</sup>

While the relationship between self-determination and legislative representation may be set out in international law, the tools of implementation are outside of the scope and powers of the UN. States are the subjects of international law and are accordingly charged with the responsibility of complying with that through the actions of national and local governments. Under international law the duty of the state to take remedial action in relation to minority groups can be understood as an affirmative duty to ensure that all its citizens have the ability to inform the decisions which may affect their present or future situations. Consequently, the aforementioned international principles serve as a pillar for the arguments asserted below, but are not to be understood as the sole impetus for the creation of mechanisms for special representation.

### **The Case for Special Representation**

The defining question at this point is whether it is better to encourage political integration of minorities or introduce special provisions to enhance minority participation.<sup>34</sup> Although, history challenges whether integration alone provides sufficient representation for minority groups, this paper makes no argument against the validity of using political integration as a means of ensuring representation of marginalized groups. In fact, if well constructed, mechanisms for special representation will possess qualities of integration and may ultimately be harnessed towards this end. That said, it is the intent of this inquiry to limit the scope to an examination of the mechanisms used to provide special representation and their impact on minority representation.

---

<sup>28</sup> The Organization for the Security and Cooperation in Europe, “The Lund Recommendations on Effective Participation of National Minorities in Public Life” [hereinafter the Lund Recommendations], September 1999, <<http://www.osce.org/hcnm/documents/recommendations/lund/index.php3>> (22 July 2004).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid*, Part II (A)(6).

<sup>31</sup> *See Ibid.*

<sup>32</sup> Gaborone Declaration on Indigenous Peoples and Minorities in Africa, February 2002.

<sup>33</sup> *Ibid.*

<sup>34</sup> Ghai 2001; 25.

Shortcomings in representational democracy bring into question whether certain characteristics need to be altered to better reflect and meet the needs of society, and especially its associated cleavages. The classic tyranny of the majority argument posits that traditional representation bodies fail to effectively represent and protect the needs of minority groups. Because minority interests generally differ from those of the majority, the majority typically marginalizes groups that do not mirror the mainstream. For example, politicians “personal ‘ideology’ is a key determinant of observed policy outcomes”,<sup>35</sup> if each politician hails from the same class or religion. Based on this theory, little may distinguish one politician’s views from another. Similarly, significant differences observed between the policies favored by male and female legislative representatives also contributes to the value of diversity in the legislature.<sup>36</sup> Simply stated, if a lack of diversity exists on the legislative level, the opportunity for various marginalized groups to shape governmental structure and policies becomes insufficient at best.

No universally prescribed democratic mechanism, or precise formula exists to ensure that all voices, regardless of where they are echoing from are heard. As various international principals demonstrate, minority protection and the right to self-determination are fundamental concepts upon which inclusive societies ought to be built. Though notions of representation may be inferred from international instruments, they are not enough. Even if a strict and well-defined democratic ideal for ensuring the protection of minorities existed, without culturally sensitive sub-iterations, it would in all likelihood prove insufficient in any number of local scenarios.

Special procedures are necessary to ensure disenfranchised persons are able to exert their right to self-determination through the legislature. Ghai notes that by allowing minorities a voice of their own establishes the basis of deliberative democracy and also provides an avenue through which these groups may seek redress.<sup>37</sup> Special representation is not intended to place minorities upon a pedestal, but rather, to place them on equal footing with individuals belonging to the majority. Indeed, these special mechanisms are premised on their own phase out: once minority representation is successfully attained, the need for special mechanisms is rendered redundant. The primary goal of special representation is to help marginalized groups achieve recognizably fair political standing, like that of the majority. It follows that providing specialized mechanisms to contour the representational equation to the actual mold of society supports the underlying objectives of representational democracy.

---

*“I cannot see why the feeling and interests which arrange mankind according to localities, should be the only ones thought worthy of being represented.”<sup>38</sup>*

---

Marginalized groups and society at large are being harmed due to lack of representation. A society’s “internal strife is connected to the quality of democracy— specifically the failure of integrating minorities.”<sup>39</sup> Conflict in many African nations has evolved for want of conflict prevention strategies which in turn give rise to social tension and violence. In fact, an estimated five million people have died in civil wars in Nigeria, Rwanda and Uganda over the past decade due to the exclusion of marginalized groups.<sup>40</sup> There is a widely recognized link between conflicts and violation of minority rights. The African Union has observed that “peace, justice, stability and democracy call for the protection of the ethnic, cultural, linguistic and religious identity of all our people including the national minorities and the creation of

---

<sup>35</sup> Pande, Rohini, “Can Mandated Political Representation Increase Policy Influence for Disadvantaged Minorities? Theory and Evidence from India” based on Chapter 2 of PhD, May 2001, thesis citing Joseph Kalt and Mark Zupan(1985) and Steven Levitt (1996) study, <http://www.econ.yale.edu/~rp269/website/aerfin.pdf> (23 July 2004).

<sup>36</sup> Ghai 2001; 5.

<sup>37</sup> Ghai 2001.

<sup>38</sup> Mill 1861.

<sup>39</sup> United Nations Development Programme, “Inclusive democracy secures rights”, Chapter 3 in *The Human Development Report 2000*, < <http://www.undp.org/hdr2000/english/HDR2000.html> > (22 July 2004).

<sup>40</sup> *Ibid.*

conditions conducive to the promotion of this identity.”<sup>41</sup> A recent UN report on peace operations asserts that in many cases of internal conflict, poverty is coupled with ethnic and religious cleavages leaving minority rights insufficiently respected and the institutions of government insufficiently inclusive. The report concludes that “every group needs to become convinced that the State belongs to all people”.<sup>42</sup>

Still many groups are left unconvinced. For example in Kenya alone, Muslim communities complain of being concentrated in the slums of urban centers, segregated and subject to discrimination.<sup>43</sup> Two Ogeik politicians were killed and 200 belonging to the Ogeik, a hunter gatherer community in western Kenya, were set ablaze.<sup>44</sup> Northern Kenyans have claimed to be marginalized, with MPs having no accountability to their constituency.<sup>45</sup> There are countless examples of similar problems across all of Africa. These cases bring attention to the urgent need for and implementation of mechanisms for enhancing representation as a means of promoting conflict prevention and peacekeeping.

Generally, majority leaders who seek to represent the interests of disenfranchised groups promote prejudice and stereotyping.<sup>46</sup> Minority groups see no role for themselves in the centralized government and consequently a vicious downward spiral of disengagement ensues.<sup>47</sup> Under such a system, minorities lack confidence in existing institutions, doubt their effectiveness and question whether they might lead to further exclusion. This trend of harm will likely continue unless corrective and preventive measures are implemented. It is vital to change values and norms of society by widening participation of those groups who face discrimination.<sup>48</sup> By welcoming minority participation, states are typically more stable and prosperous.<sup>49</sup> Conversely, denying minorities rights (presumably that of meaningful representation) breeds intolerance and authoritarianism.<sup>50</sup> Establishing special legislative representation may be viewed as one means of including historically disadvantaged groups in the public discourse. It also promises an integral role for disenfranchised groups in the legislature and thereby a potential means of renegotiating relationships with other groups while moving closer toward the goals of stability and prosperity.

The UNDP has stated that its support of minority participation is not intended as a bias. Rather, it views its mission as promoting the rights that are owed to marginalized groups that have suffered as a consequence of discrimination.<sup>51</sup> It has been asserted, that democracy is flawed without special protection of minorities, and that the key component for guaranteeing this protection is ensuring participation in governance.<sup>52</sup> Special representation ensures a stake in the country’s political system and helps society focus on the needs

---

<sup>41</sup> Declaration on a Code of Conduct for Inter-African Relations, Assembly of Heads of State and Government, 30<sup>th</sup> Ordinary Session, Tunis, Tunisia 13-15 June 1994.

<sup>42</sup> The Brahimi Report was a study on UN Peace and Peacekeeping Operations prepared by a panel of ten respected experts appointed by the UN Secretary-General completed 2000 for further information see <[http://www.un.org/peace/reports/peace\\_operations/report.htm](http://www.un.org/peace/reports/peace_operations/report.htm)> (23 July 2004).

<sup>43</sup> According to Asiya Mahmood Mwanzi, representing the League of Muslim Women of Kenya in “Rights, representation and constitutional reform demanded by Kenya’s Muslims”, Minority Rights Group International, 15 March 2004 < [http://www.minorityrights.org/news\\_detail.asp?ID=218](http://www.minorityrights.org/news_detail.asp?ID=218) > (23 July 2004).

<sup>44</sup> Minority Rights Group International, “Ogeik killing highlight precarious position of Kenyan hunter-gatherer community,” e-bulletin March 2004, < <http://lists.delfi.lv/pipermail/minelres/2004-March/003260.html>> (12 May 04).

<sup>45</sup> Constitution of Kenya Review Commission (CKRC) National Constitutional Conference, Verbatim Report of Plenary Proceedings- Presentation of Draft Bill, Chapter 7- Legislature, Held at the Bomas of Kenya on 13-15 May 2003 p.94. < <http://www.kenyaconstitution.org/verbatim%20reports/CKRC%20-%20NCC%20-%20Chapter%207%20-%20The%20Legislature,%2013,%2014%20&%2015.05.03.doc>> (23 July 2004).

<sup>46</sup> Ghai 2001.

<sup>47</sup> Ghai 2001; 6.

<sup>48</sup> See *supra* note 39.

<sup>49</sup> Ghai 2001; 6.

<sup>50</sup> *Ibid.*

<sup>51</sup> Lennox 2003; 9.

<sup>52</sup> *Ibid.*, p.11

of historically powerful and disadvantaged groups.<sup>53</sup> In addition, the very process of electing representatives mobilizes minorities and reinforces their corporate character.<sup>54</sup> Qualities of protection, inclusion and progress are inherent to well constructed special representation mechanisms and their value cannot be understated.

Tools of special representation provide a practical solution where traditional methods for selecting legislative representational fail to represent the will of all groups equally in a given society. If well designed and executed, special representation mechanisms are supported by a strong foundation of international law principals and can be fashioned to suit a nation's individual history and present needs. Such mechanisms could provide a venue for marginalized groups to express themselves, be involved in the decision making process, broaden and contribute to more well rounded discussions and policy creation, help correct power imbalances, avert violent conflict and societal tensions, eliminate discrimination, enhance the intellectual makeup of a nation and ultimately create a more democratic and just society. In a ideal world mechanisms for special representation would be unnecessary. The very notion of marginalization would be moot and conflict not an issue. But the practical world dictates that special mechanisms are necessary to ensure stability and equity.

**BOX 1: The All Pervasive Impact of Inadequate Representation: A Story of the Ogoni People**

For over 500 years the Ogoni have lived in the Niger Delta of Nigeria as a fishing and agricultural people. In various forms, the Ogoni have fallen pray to social, environmental and economic oppression. The most explicit form of marginalization may be traced back to 1958 when Shell Petroleum Development Company discovered oil in the Niger Delta. A government decree ordered the Ogoni to give their lands over to oil development and in 1978 the Land Use Decree vested all land rights in the government. At no point in these developments were Ogoni voices included. Since the discovery of oil in the region, the Ogoni's environment has suffered and violence has ensued. Gas flares have caused air pollution and oil spills have been the source of land and water contamination to name but few of the damaging results linked to oil exploration, development and mismanagement. To be certain, the subsistence lifestyle of the Ogoni was also impacted as the crops and fish became spoiled. The Ogoni began to complain to the government in 1970 and in 1990 they established the Movement for the Survival of the Ogoni People (MOSOP), an NGO tasked with advocating environmental, social and economic justice for their people. In 1994, four of MOSOPs leaders were tried and sentenced to death and in the 1996 elections MOSOP leaders were prevented from running for elections. The Obasanjo government is credited as working towards greater democracy and good governance and in recent years has sponsored development projects in Ogoniland with the participation of MOSOP.

Despite "civil" rule in Nigeria, protective laws and regulations, public protests, lawsuits, international support and the highly organized MOSOP, little has improved for the Ogoni people. Since these forms of public participation have failed, the pivotal question becomes whether the Ogoni and their environment would benefit from special representation. A missing component, as found in 2001 by the African Commission on Human and People's Rights, was the genuine integration of Ogoni representation—the actual inclusion and involvement—into the decisions that impact the wellbeing of this minority group. Special representation seems a common sense approach that offers to fill

<sup>53</sup> US Agency for International Development, Center for Democracy and Governance, "Understanding Representation: Implications for Legislative Strengthening", November 2000 <<http://www.cid.suny.edu/Publications/pnach303.pdf> > (23 July 2004).

<sup>54</sup> Ghai 2001;12.

this void and provide an avenue for the Ogoni to determine the fate of the environment in which they live.<sup>55</sup>

### **The Cons of Special Representation**

Notwithstanding the potential for special representation to achieve an equilibrium in societies lacking effective minority representation, many obstacles may impede its design. Indeed, even if implementing such mechanisms overcome barriers of creation and find their way into existence, success remains questionable. Therefore, it is important to raise the persistent critiques to special representation here and illuminate their implications for the actualizing of such mechanisms.

---

*“Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the whole.”*<sup>56</sup>

---

To be certain, special representation is understood by many as being undemocratic. Traditional (or perhaps more correctly) ideal systems of democracy treat all individuals the same. Void of special privileges, traditional democracy places all members of society on equal footing. Either through direct representation, whereby parliament mirrors the nation as a whole<sup>57</sup> or representational democracy in which representatives are selected to represent the voices of society, special representation stands to be in stark contrast with the principles of democracy. Mechanisms of special representation may adversely affect the quality of legislative candidates as seats reserved for “special” legislators would be viewed as less competitive and therefore producing inferior candidates. Similarly, the ability of voters to punish candidates who engage in wasteful redistribution or corrupt political practices may be reduced. Marginalized groups may advocate policies more likely to reflect the preferences of minority groups instead of benefiting the whole of society. Representatives may be more willing to curry favor along group identity lines. Special representation may also lead to individuals belonging to non-minority groups to disengage from the political process or incite conspiracy and possibly rebel.<sup>58</sup>

The concept of special representation is unmistakably linked to minority rights and minority specific issues. This notion of minorities not only lacks the support of most African nations but is actively shunned. Cultural diversity in Africa is viewed as a disruptive and potentially volatile force. One central aspect of many African states’ efforts in nation-building has been to unabashedly renounce ethnicity and promote national unity. In fact, national unity has been postulated so as to create “a mythical nation-state amidst multi-ethnic states.”<sup>59</sup> During South Africa’s constitutional drafting, Nelson Mandela, spoke out against cultural, group and minority rights being a central component in the new constitution; asserting that, “any form of racism was a formula for disaster.”<sup>60</sup> The African Union was founded upon the vision that unity of African nations would “transcend ethnic and national differences.”<sup>61</sup> In a similar vein, many African constitutions seek to promote national unity by requiring political parties to advance national objectives and

---

<sup>55</sup> Unrepresented Nations and Peoples Organization, “Homepage; Ogoni” <<http://www.unpo.org/member.php?arg=43>> (23 July, 2004); see also “The Ogoni of Nigeria: Oil and Exploitation”, Minority Rights Group International <[http://www.minorityrights.org/Dev/mrg\\_dev\\_title6\\_nigeria/mrg\\_dev\\_title6\\_nigeria\\_pf.htm](http://www.minorityrights.org/Dev/mrg_dev_title6_nigeria/mrg_dev_title6_nigeria_pf.htm)> (21 July 2004)

<sup>56</sup> Edmund Burke, “Speech to the Electors of Bristol” in ch. 13 of *The Founders’ Constitution*, 1774 <<http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>> (23 July 2004).

<sup>57</sup> Hanna Pitkin, “The Concept of Representation” New York: Atherton Press, 1969; 10.

<sup>58</sup> Pande 2001; 24.

<sup>59</sup> Slimane 2003.

<sup>60</sup> Herman Giliomee, “The Majority, Minorities and Ex-Nationalities in South Africa and the Proposed Cultural Commission”, 1998 <<http://www.kas.org.za/Publications/SeminarReports/Multiculturalism/GILIOMEED.pdf>> citing Judge Albie Sachs (23 July 2004).

<sup>61</sup> The African Charter.

not be associated with tribes, ethnic groups or religion.<sup>62</sup> Arguably, special representation may threaten cooperation between different groups in Africa's pluralistic societies. It may also be understood as undermining the goal of unity and the effort to advance national, rather than group specific, interests by drawing upon these classifications.

Another potential pitfall of special representation stems from the risk that separate representation and institutions may lead to ethnic manipulation or extremism.<sup>63</sup> Given the history of violent conflict that has been politically or ethnically inspired in Africa, awarding particular groups special representation may lead to additional tension and conflict. As Decalo has observed, "Politicized ethnic sentiment remains the most meaningful force in Africa's syncretic, marginal, non-nation states, implying that politics in the new democracies will constantly reflect this tug-of-war with all its deleterious and divisive negative effects."<sup>64</sup> If this statement is accurate, then another negative attribute of special representation may be that it is ideologically incompatible with the national identity states are striving to establish. Thus at least in Africa, special representation could arguably serve to perpetuate cultural, religious, ethnic and other divisions which most African nations are striving to eradicate. As Stanley de Smith has noted, communal seats tend "to magnify existing communal differences in as much as communities are stirred to fuller self-consciousness and electoral campaigns are dominated by appeals to communal prejudices and new communities discover themselves as further claims to separate representation are lodged."<sup>65</sup>

So ingrained is the history of oppression and marginalization in Africa that the claims of historical disadvantage may indeed be endless. Political elites have historically exploited ethnic and religious differences for political ends, for example in Nigeria, where historically dominant minorities such as the Efik or the Ijaw are now marginalized politically.<sup>66</sup> Indeed, one might argue that the entire Nigerian population may be deemed marginalized? Or perhaps geography might be the guiding criteria in determining what group constitutes a genuine minority. Arguing in favor of district-level as opposed to provincial-level divisions during the Kenyan constitutional debates, Delegate Ole Osoi declared, "we have an animal called a province, which is only a more marginalizing factor of the more marginalized. People like the Ogiek will never go to the province, they will just get finished at the district, just like other small communities."<sup>67</sup> Delegate Sasura Abdi Tari pointed out that it is:

Proven historically that women at the district level have been marginalized by the women at the provincial levels and in the city. You will find that in Coast Province those who are in Mombasa benefit more, in Nairobi Province those who are in the city benefit more, in Eastern Province those who are in Embu benefit more, the rural women are always forgotten. So [thirty seats reserved for women on the basis of provinces in section 106] should go to the district and not to the province.<sup>68</sup>

Other characteristics may operate to define marginalization as well. Large groups, clearly not of minority status, have been marginalized through exclusion from power like the Hutu in Rwanda and the Oromo in Ethiopia.<sup>69</sup> Citizenship requirements have also served to isolate populations. For example, individuals were denied of citizenship in the Democratic Republic of Congo, Kenya, Zambia and Cote d'Ivoire. In these

---

<sup>62</sup> Burch et al., "Legislative Representation and the Environment in African Constitutions", *Pace Law Review*, 2003; 535 [NEED PERMISSION TO CITE].

<sup>63</sup> Ghai p. 25

<sup>64</sup> Samuel Decalo, "The Process, Prospects and Constraints of Democratization Africa", *African Affairs*, 91, 1992 cited in Timothy Murithi, "Electoral Systems and the Management of Ethnic Conflict in Africa" 1998, <[www.psa.ac.uk/cps/1998%5Cmurithi.pdf](http://www.psa.ac.uk/cps/1998%5Cmurithi.pdf)> (23 July 2004).

<sup>65</sup> Ghai 2001;18.

<sup>66</sup> Slimane 2003.

<sup>67</sup> See *supra* note 45.

<sup>68</sup> *Ibid*, p. 175.

<sup>69</sup> Slimane 2003.

states, citizenship has been a prerequisite of public participation thereby excluding people from participating in public life or gain access to land.<sup>70</sup> The following section will elaborate on this conundrum.

Where can the line rightly be drawn to fairly distinguish those deserving of special representation? How can the determining factors be designed to appease even a fraction of society? The potential floodgate argument poses a particular problem to instituting special representation mechanisms. In addition, pleas for special attention to group specific issues may be insatiable. For example, in South Africa alone, the Griqua community sought official recognition of their traditional leaders and protection of their culture; Muslims wanted recognition of Muslim polygamous marriages and hereditary rights; Khoisan were desirous of help in developing San languages and teaching them in schools; Khoikhoi sought restitution of their land; the December One Movement argued for revival of the memories of suffering under slavery; and Indian communities sought fuller recognition of Hindi and Gujarati languages.<sup>71</sup> As may be inferred from these examples, special representation provisions may likely be accompanied by overwhelmingly numerous and complex issues that demand fairness in drawing distinctions and establishing remotely effective rules. How could a systematic approach be effectively designed and executed given the uniqueness of each circumstance?

---

*“The right to participate is meaningless unless a group has the ability and the resources to exercise it.”<sup>72</sup>*

---

Poverty, lack of education and inadequate sanitation are amongst the plethora of issues so many African nations confront, and each is seemingly more urgent than special representation. As stated in the Copenhagen Declaration on Social Development, “the right to participate is meaningless unless a group has the ability and the resources to exercise it.”<sup>73</sup> It is increasingly recognized that minimum levels of education and other social and economic facilities are necessary prerequisite to effectively exercise the right to participate.<sup>74</sup> The question therefore becomes, given the lack of time and resources, is it prudent to focus a nation’s efforts on issues of minority legislative representation when other needs, perhaps affecting a more substantial aggregate of the population, appear to be higher priorities. A slightly different position, though made along similar lines, is advanced by Professor Cheru. Cheru asserts that a nation must at the very least address social and economic issues simultaneously with civil and political concerns for solutions to stick.<sup>75</sup> Direct correlations have been documented in this regard. In Wilma Rule’s 1970 and 1972 studies, 70% of the variance in the number of women in legislatures was explained by the number of female college graduates the number of women in the workforce, the length of women’s suffrage and the level of unemployment.<sup>76</sup> This evidences the importance and influence of other societal factors that may contribute to the failure or success of special representation. Moreover, these points challenge the potential effectiveness that a form of special representation may provide.

It could also be argued that special representation is not the best way to ensure or secure the rights of marginalized people. For instance, mechanisms may be grounded in the executive or judiciary for addressing problems of the disenfranchised. Given the role of these institutions it may be argued that they would be more appropriate and powerful avenues through which to launch special representation mechanisms and achieve more effective results. Furthermore, the particular composition of a given minority group may raise additional issues, each presenting its own unique obstacles that challenge society’s level of acceptance and society would have its unique and timely responses to each individual

---

<sup>70</sup> *Ibid.*

<sup>71</sup> Giliomee 1998.

<sup>72</sup> The Copenhagen Declaration on Social Development, 1995.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> Professor Fantu Cheru, American University, Washington D.C., telephone interview 29 April 2004.

<sup>76</sup> Andrew Reynolds, “Women in the Legislature and Executives of the World: Knocking at the Highest Glass Ceiling”, *World Politics* 51.4 (1999) citing Wilma Rule, “Parliaments of, by, and for the People: Except for Women?” in Rule and Zimmerman, eds., *Electoral Systems in Comparative Perspective: Their Impact on Women and Minorities* (Westport, Conn.: Greenwood Press, 1994), 20.

group gaining or seeking special representation. To illustrate this complication, if the minority group of choice is women, in addition to the aforementioned problems, issues of conservative interpretations of religious texts,<sup>77</sup> narrow gender rules, unequal laws, male-biased party leadership, discriminatory socioeconomic conditions and “women-unfriendly” elections systems would raise additional factors of potential disenfranchisement that would require further attention beyond a simple special representation mechanism.<sup>78</sup>

**TABLE 1: ARGUMENTS FOR AND AGAINST SPECIAL REPRESENTATION**

Pros	Cons
<ul style="list-style-type: none"> <li>• Enhances representational democracy by contributing to a representational system that more accurately mirrors society</li> <li>• Majority interests do not typically represent the interests of minority groups</li> <li>• Boosts diversity in the legislature</li> <li>• Designed to cater to the needs of different societies</li> <li>• Validates minority concerns and provides their representatives with mode of expression</li> <li>• Incorporates marginalized groups and places them on equal footing with the rest of society, giving minorities a stake in their nation</li> <li>• Means of conflict prevention through open dialogue and negotiating relationships</li> <li>• Builds confidence and a formal means for engaging the disenfranchised</li> <li>• States that encourage minority participation are more stable and prosperous</li> <li>• Provides redress for historical disadvantage</li> <li>• Removes obstacles of discrimination, allowing minorities to become involved ins society</li> <li>• Mobilizes minority group and reinforces corporate character</li> </ul>	<ul style="list-style-type: none"> <li>• Special representation is undemocratic, not treating all people equally</li> <li>• Undermines democratic elections</li> <li>• Perpetuates stereotypes and cultural, ethnic, religious and other group distinctions</li> <li>• Adversely affect the quality of candidates</li> <li>• Reduces ability of voters to punish candidates</li> <li>• Produces policies that are more reflective of groups with special interests than the good of the whole</li> <li>• Representatives may be more willing to curry favors along group identity lines</li> <li>• Non-minority groups may become disengaged and create underground movements in rebellion</li> <li>• Runs counter to African nationalism</li> <li>• Promotes a form of privilege which may lead to further tension and conflict between groups</li> <li>• Leads to ethnic manipulation or extremism</li> <li>• Claims for special representation may be endless</li> <li>• Requires resources to implement which may be better allocated elsewhere</li> <li>• Not the most effective means to secure the rights of marginalized groups</li> </ul>

**Who Are the Politically Marginalized: The Semantic Dilemma**

As mentioned above, one of the more complex issues of establishing and executing mechanisms for special legislative representation involves the difficulty in defining what groups are to be given marginalized status and subsequently special representation. Particularly in light of Africa’s history of ethnically based conflict, the concept of giving a group any form of privilege over another is indeed problematic. Most groups are not consciously self aware, and ethnicity has only been an issue where situations of political polarization exist.<sup>79</sup> While marginalization may be seen as a reactionary, dialectical process,<sup>80</sup> international law does not help in clarifying matters. There is no universally accepted definition for minority/marginalized group/disenfranchised person. That said, the UN Human Rights Committee has

<sup>77</sup> International Institute for Democracy and Electoral Assistance (IDEA), “From the Field: Women in Parliament in Francophone West Africa”, International Idea News Autumn 2000, < [http://www.idea.int/newsletters/2000\\_11/from\\_the\\_field\\_2.htm](http://www.idea.int/newsletters/2000_11/from_the_field_2.htm)> (23 July 2004).

<sup>78</sup> Reynolds 1999.

<sup>79</sup> Dr. James Wunsch, Creighton University, Nebraska, telephone interview 28 April 2004.

<sup>80</sup> Cheru 2004.

stated that determining who is a minority or an indigenous person is a “factual question” to be left to states. However, the Committee has also claimed that such a determination should be based on an objective test.<sup>81</sup>

While no clear definition exists, a number of criteria have been attributed to minority/marginalized groups and/or their members. The quality of having a “collective” right that may only be asserted with other members of the community is an example.<sup>82</sup> Victimization is another character associated with marginalization.<sup>83</sup> Historical disadvantage has also been a defining variable. Perhaps most prominently, Gurr’s indicators have been used for identifying minority groups. His indicators are high birth rates, high mortality rates, poor health facilities, low literacy and skill levels, lack of resources in comparison to other groups and marginalization in land ownership.<sup>84</sup> It has also been asserted that any disempowered group regardless of its size may be considered marginalized.<sup>85</sup>

**BOX 2: “Minority”<sup>86</sup> in Africa?**

There is no common legal or practical international standard that is used to distinguish marginalized groups from the rest of the population. Despite its repeated use across a range of national and international instruments, no consensus has been reached establishing a universally acceptable notion of minority. Minority Rights Group International asserts that regardless of its demographic makeup, a group that is disempowered may be classified as a minority. To further illustrate complexity in attempting to clarify marginalization on the African continent, several country facts are presented here. In Africa’s most populous country, Nigeria, over 250 different ethnic groups have been identified. The following are the most populous and politically influential: Hausa -Fulani 29%, Yoruba 21%, Igbo (Ibo) 18%, Ijaw 10%, Kanuri 4%, Ibibio 3.5%, Tiv 2.5%.<sup>87</sup> There are over 24 major African language groups in Cameroon.<sup>88</sup> In Chad, 200 distinct groups exist that are fragmented into territories. In the north and center of the country: Arabs, Gorane (Toubou, Daza, Kreda), Zaghawa, Kanembou, Ouaddai, Baguirmi, Hadjerai, Fulbe, Kotoko, Hausa, Boulala, and Maba, most of whom are Muslim; in the south: Sara (Ngambaye, Mbaye, Goulaye), Moundang, Moussei, Massa, most of whom are Christian or animist; about 1,000 French citizens also live in Chad.<sup>89</sup> In 2003 it was estimated that fighting between the Congolese Government and Uganda- and Rwanda-backed Congolese rebels which spawned a regional war in the Democratic Republic of the Congo in August 1998, left 1.8 million Congolese internally displaced and caused 300,000 Congolese refugees to

<sup>81</sup> UN Human Rights Committee, “International Human Rights Report 2002” 2002 < [http://www.ihf-hr.org/viewbinary/viewdocument.php?doc\\_id=2684](http://www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=2684) > (23 July 2004).

<sup>82</sup> Gilooeme 1998 citing Phillip Gleason, “Speaking of Diversity: Language and Ethnicity in the Twentieth Century America” Baltimore: John Hopkins University Press, 1992.

<sup>83</sup> *Ibid.*

<sup>84</sup> Dr. Wairama G. Baker, “Uganda: The marginalization of Minorities”, Minority Rights Group International, December 2001 [www.minorityrights.org/admin/Download/pdf/UgandaReport.pdf](http://www.minorityrights.org/admin/Download/pdf/UgandaReport.pdf) (23 July 2004) citing T.R. Gurr, “Minorities at Risk: A Global View of Ethnopolitical Conflicts US Institute of Peace Press”, Washington, D.C, 1993.

<sup>85</sup> Baker 2001.

<sup>86</sup> The terms minority, marginalized and disenfranchised are used interchangeably throughout this paper. This paper similarly does not seek to challenge any claim to such status that may be advanced by a given group.

<sup>87</sup> Central Intelligence Agency, The World Factbook 2004: Nigeria, < <http://www.cia.gov/cia/publications/factbook/geos/ni.html> > (11 May 2004).

<sup>88</sup> Central Intelligence Agency, The World Factbook 2004: Cameroon, <<http://www.cia.gov/cia/publications/factbook/geos/cm.html>> (11 May 2004).

<sup>89</sup> Central Intelligence Agency, The World Factbook 2004: Chad, <http://www.cia.gov/cia/publications/factbook/geos/cd.html> (11 May 2004).

flee to surrounding countries.<sup>90</sup> Ethnicity, culture, language, migration, displacement and geographic demography—these examples illustrate the myriad ways in which a country's cleavage populations may be divided and subdivided.

There is no shortage of groups that have entitlement to marginalized status. Economically impoverished blacks in rural parts of South Africa are neglected by the ANC, the ruling party.<sup>91</sup> Violent conflicts in Angola in 1993 resurfaced due to controversial majoritarian election results that called for a run off between two ethnically based political parties, Jose Eduardo dos Santos' MPLA and Jonas Savimbi's UNITA. Savimbi declined run-off elections and appealed to his group's fear of being dominated by the opposing ethnic group,<sup>92</sup> creating tensions between the two ethnicities. Political parties in Sudan are dividing along religious lines—Sudan's north is Muslim whereas the south is non-Muslim. This divide led to a collapse of dialogue between north and south and to a renewal of conflict in 1995.<sup>93</sup> Once powerful-Colonial and minority white-ruled states like Angola, Mozambique, Namibia, Zimbabwe and South Africa lend negative connotation to the word "minority",<sup>94</sup> though may now lay claim to marginalization.

Marginalized<sup>95</sup> groups may be characterized in terms of gender, ethnicity, culture, or religion. Similar, populations may be isolated according to nomads, indigenous, tribal, non-citizen, immigrant, migrant worker and displaced person groupings, each of which can be declared worthy of special representation. Those who are economically impoverished or even in the upper financial echelon of society may also be disenfranchised. Groups that once ruled and fell from power, homosexuals, youth, the elderly, educationally underprivileged, physically challenged or the disabled, the list of potential minority groups in arguably inexhaustible. However, the challenges of identification can be met with unbiased, equitable and standardized rules and objective and historically sensitive judgment.

Different countries have opted to deal with defining marginalization based on their respective populations. Reclassifying groups so that their minority description is neutral in character is a method, perhaps unknowingly, used in Botswana. The Botswanan government considers all residents indigenous and therefore does not accept a "First People" definition. To avoid problems of ethnic identification, the government has used the term "Remote Area Dwellers" (RAD) since 1978 to denote people living in rural areas outside of villages. The government has also created a program called the Remote Area Development Program to target group based RADs, which are people characterized by: special location (remote areas outside villages), sociopolitical status (marginalized), and socioeconomic status (impoverished and subject to discrimination). These RADs are estimated to have a population of 60,000-100,000, of which some 50,000 are San.<sup>96</sup>

While the Botswana classification system was not established in the legislative context, it provides a meaningful example of a neutral language that may be used in the legal context. In Uganda, the constitution enumerates women, disabled, youth and the army as groups having marginalized status.<sup>97</sup> Namibia's approach identifies marginalized groups as those which are "socially, economically or educationally

---

<sup>90</sup> Central Intelligence Agency, *The World Factbook 2004: Democratic Republic of the Congo*, <http://www.cia.gov/cia/publications/factbook/geos/cg.html> (11 May 2004).

<sup>91</sup> Giliomee 1998.

<sup>92</sup> Murithi 1998 citing A. Pereira, "The Neglected Tragedy: The Return to War in Angola", 10(1992-3); *Journal of Modern African Studies*, 1994; 32.

<sup>93</sup> Murithi, citing Marina Ottaway, "Democratization in Collapsed States", in I. W. Zartmen (ed), *Collapsed States: Disintegration and Restoration of Legitimate Authority*, Lynne Rienner, 1995.

<sup>94</sup> Slimane 2003.

<sup>95</sup> See *supra* note 86.

<sup>96</sup> Constituencies are not specially designed with the purpose of representing the interests of the San See Robert K. Hitchcock and Megan Biesele, "San, Bushmen, Basarwa, Khwe: Terminology, Identity and Empowerment in South Africa" 2004 [need permission to cite] see also John Moreti, Counsellor & Head of Chancery, Embassy of Botswana, Washington D.C., Interview, 7 May 2004.

<sup>97</sup> The Constitution of Uganda.

disadvantaged by past discriminatory laws and practices.”<sup>98</sup> Despite the efforts to create neutral language, another complication which arises is that defining one group may lead to the marginalization of another. For example classifying women as a marginalized group and striving for their equality has been observed to marginalize peasants.<sup>99</sup> The lesson here provides us with concrete models used to frame a group’s marginalized character in a fashion that mitigates the historical problems of ethnicity and culture while simultaneously addressing the representational disadvantage.

John Stuart Mill argued for the inclusion of both majority and minority voices in participatory government.<sup>100</sup> He observed that it would be a great loss to society to not include its diverse talents and views in decision making. For example, a parliament with inadequate female representation might fail to understand issues significant to women.<sup>101</sup> Indeed, a parliament with a higher percentage of women has been proven to pass more laws advancing “women-friendly policies,” like legislation that benefits children and families.<sup>102</sup> Reynolds states that “the degree to which a system successfully includes women can indicate a propensity for the system to include other disenfranchised minorities.”<sup>103</sup> When applied more broadly, this pattern may be made applicable to other marginalized groups. To quote Reynolds, “Absence is not merely a sign of disadvantage and disenfranchisement, but the exclusion of [marginalized groups] from positions of power also compounds stereotypes and retards the pace of equalization.”<sup>104</sup> The unique experiences and worldviews of minorities promise to enrich the decision making process and provide incentive for ensuring their inclusion in the legislature.

## MECHANISMS FOR SPECIAL REPRESENTATION IN THE LEGISLATURE

### Proportional Representation

---

*“Electoral systems are not mere details but key causal factors in determining outcomes...[they do] so directly in that who is elected under one system may not be elected under another system.”<sup>105</sup>*

---

### Two Common Electoral Systems

The two most common electoral systems used in democratic elections are the first past the post (FPTP) and the proportional representation (PR) systems. The bulk of case studies and opinions reviewed herein point to the proportional representation system as the better option for providing a greater opportunity for marginalized group representation. Electoral systems may be established in a number of ways. Generally, the electoral system will be constitutionally mandated or established via legislative act. In Africa, there are also electoral systems informally grounded in tradition. Two preconditions for the proper functioning of a nation’s legislature include ensuring the right to elect representatives and having an independent electoral commission or international elections monitors oversee the process and promote trust where autonomous institutions are lacking.<sup>106</sup>

---

<sup>98</sup> Dr.J.W.F. van Rooyen, “Implementing Affirmative Action in Namibia”, Namibia Institute for Democracy, April 2000, < [http://www.nid.org.na/pdf/aff\\_action.pdf](http://www.nid.org.na/pdf/aff_action.pdf)> (23 July 2004).

<sup>99</sup> Byanyima, Winnie, “Perils and Promises; Living Feminist Politics in Uganda”, African Gender Institute Panel Discussion, March 2004. <<http://web.uct.ac.za/org/agi/events/perils%20&20%promises%20speech%20&20march.htm>> (10 May 2004).

<sup>100</sup> Reynolds 1999, paraphrasing Mill.

<sup>101</sup> *Ibid* citing Rule.

<sup>102</sup> *Ibid* citing Lijphart, Thomas, Saint-Germain and Saltzstein.

<sup>103</sup> Reynolds 1999.

<sup>104</sup> *Ibid*, specifically referring to women, though here this statement broadened to include marginalized groups in general.

<sup>105</sup> Murithi 1998 citing A. Reeves & A. Ware, *Electoral Systems: A Comparative and Theoretical Introduction*, Routledge, 1992.

<sup>106</sup> *See supra* note 39; 65.

States with constitutional FPTP systems include: Gambia, Ghana, Lesotho, Swaziland and Uganda. States with PR systems set out in their respective constitutions include: Angola, Cape Verde Equatorial Guinea, Namibia and Zimbabwe. Cameroon, Guinea and Seychelles employ a combination of the FPTP and PR systems.<sup>107</sup> Other states have a different combination system in place or different system altogether. Botswana, Burundi, Democratic Republic of the Congo (transitional constitution), Ethiopia, Lesotho, Liberia, Madagascar, Morocco, South Africa, and Tanzania each employ unique constitutional structures. Still other African constitutions remain silent with respect to the electoral system. In total, 26 countries have constitutions that fail to address the electoral system. In these cases, the nature of the electoral systems is left to legislative and regulatory acts.<sup>108</sup>

---

*“There is a history of distrusting the electoral process. ‘Rather than provide the electorate with the opportunity and freedom to choose a government of their choice the government imposes itself...’<sup>109</sup> The electoral system was used to prevent structural and institutional attempts to challenge the primacy of the ruling party government – a factor which undermined the democratic condition.”<sup>110</sup>*

---

### **The First Past the Post System**

---

*The surest way to kill the idea of democracy in a plural [multi-ethnic] society is to adopt the Anglo-American electoral system of first-past-the-post.... Where cleavage is a problem, one needs a system which will give minorities adequate representation, discourage parochialism, and force moderation on the political parties.”<sup>111</sup>*

---

The case for and against FPTP set out below is based principally on arguments advanced by Reynolds. The FPTP system is considered an advantageous electoral structure as it provides a straightforward choice for voters. Casting a vote merely requires placing a mark next to a given candidate’s name or reference symbol. A candidate is not required to affiliate with a political party, and as such, this system encourages—or at least provides space for—independent candidates. By voting for a specific person, a voter is able to identify with a human being and not a party. Reynolds identifies the most prized quality of the FPTP system to be that the elected candidate is in a position to serve and represent constituents from a specific geographical area and not be restricted by a party’s platform. It therefore also follows that in voting for a person, a voter may hold the winning candidate accountable for his or her political behavior and decisions. This outcome stands in sharp distinction to the PR system, where voters cast ballots for a political party. Another advantage of the FPTP is the ease with which it may be administered. Managing the voting process and tallying results does not present the same potentially daunting administrative burdens that are part and parcel of other electoral systems. Furthermore, the outcome of FPTP elections typically produces a single party government that is not compelled to haggle with minority coalition partners. Along these lines, FPTP usually excludes extremist parties from holding seats but engenders more realistic opposition parties. This system generally produces candidates that strive to appeal to various factions of society and are therefore supported and must answer to a broader spectrum of the electorate while in office. As may be gleaned from the above, the FPTP system is prized in large part because of its support for people as candidates, not only political parties.<sup>112</sup>

---

<sup>107</sup> Bruch, et al., 2004 [NEED PERMISSION TO CITE]

<sup>108</sup> *Ibid.*

<sup>109</sup> Murithi 1998, quoting P. Wanyande, “Democracy and the One-Party State: The African Experience.,” in W. Oyugi et al (eds), *Democratic Theory & Practice in Africa*, James Currey, 1988.

<sup>110</sup> Murithi 1998.

<sup>111</sup> Murithi, 1998 citing Arthur Lewis, “Politics in Africa”, Allen & Unwin, 1965.

<sup>112</sup> Andrew Reynolds, “First Past the Post-Advantages”, Administration and Cost of Elections (ACE) Project, 10 August 1997, [www.aceproject.org/main/english/es/esd01a.htm](http://www.aceproject.org/main/english/es/esd01a.htm)> (21 September 1998)

Despite its enumerated advantages, FPTP is not without its shortcomings. The most problematic aspects of the FPTP are linked to the marginalized group representation and therefore are of utmost concern here. Inherent to the FPTP is a built-in disincentive for minorities to participate since it is practically a statistical impossibility for such a candidate to be elected. The FPTP system excludes marginalized groups from fair representation since the population's votes are not mirrored by the seats won in the legislature. For example, in the 1989 election in Botswana, the Botswana National Front won 27% of the overall votes, but only 9% of the seats. Furthermore, parties endorse candidates that will appeal to the largest percentage of the electorate, thereby often excluding the participation of potential candidates from marginalized groups. Reynolds refers to this as the "most broadly acceptable candidate syndrome."<sup>113</sup> This phenomenon factors into explaining the outcome of a 1995 Inter-Parliamentary Union study which found women were half as represented in FPTP systems as opposed to PR systems.

First past the post systems have also been found to encourage ethnic parties or parties to run by appealing solely to a specific ethnicity. The 1994 elections in Malawi evidenced the regional and cultural divide bred by colonial powers. When the South voted for the United Democratic Front, the Central region voted for the Malawi Congress Party, and the North for the Alliance for Democracy. Each party secured the votes of their respective region and culture. However, in Nigeria, the 1982 constitution introduced incentives into the FPTP system. These incentives were designed to integrate different communities by moderating the political parties and securing minority support through broader appeal.<sup>114</sup>

Despite potential incentives, by establishing geographic boundaries as the baseline for determining voter choice, FPTP defines politics by geography instead of ideology. In effect this buries or wastes the ballots cast by marginalized voters, thereby excluding the opportunity for their voice to be translated into any meaningful representation. Wasted votes are understood as contributing to "anti-system" extremist movements. Coupled with the stagnant nature of the FPTP system and the lack of responsiveness to public opinion, wasted votes give rise to a lack of faith in the system among marginalized voters. Psychologically, members of these minority groups may fall prey to the frustration of being disenfranchised and turn towards more drastic measures to achieve a political voice. Lastly the act of "gerrymandering", or malapportionment of district boundaries, may also be noted as a disadvantage of the FPTP system.<sup>115</sup>

The UN's 2000 Human Development report points out several additional ways a majoritarian democracy, such as one fostered by an FPTP electoral system, impacts and excludes marginalized groups from the political representation. For example, governments lacking minority representatives and a system of checks and balances may more easily bypass the rule of law and manipulate or violate the rights of those not vested. Left unchecked, majoritarian democracies have a history of oppression which has taken the form of imposing religious practices on marginalized groups or banning languages and other cultural identities. Additionally, the economic interests of the majority in power have come at the expense of disenfranchised groups. Forced relocations from fertile soil or plentiful natural resources have forced some marginalized peoples into impoverishment.<sup>116</sup>

### **The Proportional Representation System**

---

*"Fairness and equity in electoral competition does not evolve naturally... fairness and 'equality has to be designed introduced and regulated'. An electoral system based on PR is the objective of one such democratic design."<sup>117</sup>*

---

---

<sup>113</sup> *Ibid.*

<sup>114</sup> What the constitutions did not seek to do was specifically ensure direct minority representation. See Ghai 2001.

<sup>115</sup> Reynolds 1997.

<sup>116</sup> See *supra* note 39; 59.

<sup>117</sup> Murithi, 1998 citing Leslie Lipson, "The Philosophy of Democracy- Can its Contradictions be Reconciled?", *Journal of International Affairs*, 38/2 1997.

Of the world's 36 major democracies, 33 use a form of PR.<sup>118</sup> In Africa, 13 nations employ a PR system and an additional number of states combine PR with other systems.<sup>119</sup> There are three main forms of PR. The List PR system is the most common among them. Here, each political party presents voters with a list of its candidates. The voter selects their party of choice and based on the percentage of votes the party secures, a proportional number of seats to the legislature is allocated.<sup>120</sup> This system may have the entire state as a single constituency, as with Namibia, or multiple constituencies based on geographical markers.<sup>121</sup> Large constituencies are best for minorities.<sup>122</sup> Party slates can be closed, which means that a party determines which candidates will be allocated a seat after the election. Alternatively, a party under the open list system allows voters to simultaneously chose a party and indicate their preference for individual candidates.<sup>123</sup> The second form of PR is the mixed member system. It is a PR hybrid that elects half the legislature from single seat, "winner take all" districts and the other half through the list system. This system is noted for combining geographic and ideological components with PR.<sup>124</sup> This form may also accomplish the element of proportionality prized in the List PR if the mixed member system compensates for any "disproportionality" stemming from "majoritarian district results."<sup>125</sup> The final PR system addressed here is the Single Transferable Vote or Preference Voting system. Here a voter may rank candidates in order of preference. If a voter's choice is not elected, then his or her otherwise wasted or "excess" vote (which is what such a ballot would be in other electoral forms) will be transferred to subsequent preferences until all seats are filled.<sup>126</sup>

**TABLE 2: ARGUMENTS FOR AND AGAINST PROPORATIONAL REPRESENTATION**

<b>Pro</b>	<b>Con</b>
<ul style="list-style-type: none"> <li>• Power sharing/conflict management mechanism used to overcome ethnic conflict</li> <li>• party wins parliamentary seats in proportion to their share of votes</li> <li>• Better at promoting minority group mobilization and ensuring representation</li> <li>• Minimizes risks of violent conflict</li> <li>• Produces governments that more closely resemble society</li> <li>• Notably higher voter turnout- due to voter incentive of selecting a winning candidate</li> <li>• Encourages opposition voices and fosters better debate</li> <li>• Diversifies candidate and legislators representatives</li> <li>• Makes geographical gerrymandering more difficult</li> </ul>	<ul style="list-style-type: none"> <li>• Often results in unstable government coalitions or political gridlock</li> <li>• Lack of accountability as no person is directly accountable to constituency</li> <li>• Perpetuates social and political cleavages</li> <li>• Inclusion of marginalized representatives on party list is merely symbolic and averts meaningful discussion of minority issues</li> <li>• Party loyalty usually trumps ability of representative to represent constituency</li> <li>• May encourage population growth through incentive for minority groups to outgrow marginalization</li> <li>• Requires additional support mechanisms to be successful</li> </ul>

<sup>118</sup> Representative Cynthia McKinney, "Keep it Simple" *Boston Review a Political and Literary Forum*, February/March 1998 <[www.bostonreview.net/BR23.1/mckinney.html](http://www.bostonreview.net/BR23.1/mckinney.html)> (20 April 2004).

<sup>119</sup> Algeria, Angola, Benin, Burkina Faso, Cape Verde, Equatorial Guinea, Eritrea, Buinea-Bissau, Libya, Mozambique, Namibia, Sao Tome & Principe and Zimbabwe; see Bruch et al., [NEED PERMISSION TO CITE]

<sup>120</sup> Center for Voting and Democracy, "What is Proportional Representation?", <<http://www.worldpolicy.org/globalrights/democracy/abcs.html>> (21 April 2004).

<sup>121</sup> Andrew Reynolds, "PR Systems", Administration and Cost of Elections (ACE) Project, 28 October 1997 <<http://www.aceproject.org/main/english/es/esf.htm>> (7 November 2001).

<sup>122</sup> See Ghai 2001.

<sup>123</sup> See *supra* note 120.

<sup>124</sup> *Ibid.*

<sup>125</sup> Reynolds 2001.

<sup>126</sup> See *supra* note 120.

Proportional representation emerged as a conflict management and power sharing tool to promote political stability in disestablished countries. The PR system was designed to “overcome politically important cleavages in divided societies... it was based on the assumption that political parties are formed along the lines of these major cleavages.”<sup>127</sup> This assumption is well founded when applied to African history as many nations that have chosen to employ some form of PR have done so to overcome ethnically inspired conflict. In fact, the PR system has been regarded as an important tool for stabilizing several African nations. Post-apartheid South Africa used PR in its first all-race election in 1994 and the two leading parties – the African National Congress and the National Party ran multiracial lists that communicated inclusion to voters.<sup>128</sup> In Liberia, PR was used for one election term as a post conflict tool to redistribute power, after which the country would revert to an FPTP system. “The rationale underpinning all proportional representation (PR) systems is to consciously reduce the disparity between a party’s share of the national vote and its share of the parliamentary seats.”<sup>129</sup>

---

*“Majoritarian attempts to cross-cut political ethnic cleavages into irrelevance only suppress them and preserves them as latent sources of tension. Proportional mechanisms prevent such suppression of ethnic cleavages by proliferating, dispersing and expanding the opportunities of their ventilation.”*<sup>130</sup>

---

Proportional representation is based on the principle that any group of like-minded voters should win legislative seats in proportion to its share of the popular vote.<sup>131</sup> In a PR electoral system the percentage of votes a party receives is translated into an identical percentage of legislative seats,<sup>132</sup> provided the percentage of votes meet the predetermined threshold. In other words, if a party wins 20% of the vote, it will likewise occupy 20% of the seats in the legislature. The threshold is the minimum amount of votes a party is *de-facto* or legally required to obtain in order for the votes to convert into seats.<sup>133</sup> For example, there is a 10% threshold in the Seychelles for 23 available PR seats. In South Africa in 1994, no legal threshold was in place and the African Christian Democratic Party won two seats out of 400, winning only 0.45% of the national vote. If no threshold exists or it is very low, smaller parties – representing marginalized group interests, have a greater chance at securing their own seats.<sup>134</sup>

There is strong evidence that electoral systems based on PR are better at ensuring minority representation.<sup>135</sup> It is further argued that PR also minimizes risks of violent conflict.<sup>136</sup> PR systems tend

---

<sup>127</sup> Christiaan Keulder, “Women and Proportional Representation: Assessing the Arguments”, Institute for Public Policy Research, Opinion No. 3, October 2001, <http://www.ippr.org.na/Opinion%20Pieces/Opinion3.pdf>> (23 July 2004).

<sup>128</sup> Robert Richie and Steven Hill, “The Case for Proportional Representation”, *Boston Review A Political and Literary Forum*, February/March 1998, <<http://www.bostonreview.net/BR23.1/richie.html>> (30 April 2004).

<sup>129</sup> See *supra* note 121.

<sup>130</sup> Murithi 1998, citing Frank Cohen, “Proportional Versus Majoritarian Ethnic Conflict Management in Democracies”, *Comparative Political Studies*, 30/5 1997.

<sup>131</sup> Smaller amount of votes are wasted on losing candidates, see *supra* note 124; 6.

<sup>132</sup> Dr. Fernand de Varennes, “Towards Effective Political Participation and Representation of Minorities”, Commission on Human Rights, Sub-commission on the Prevention of Discrimination and Protection of Minorities, 25-28 May 1998 <<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/9bc6715374fa0079c125696d00445b1e?Opendocument>> (23 July 2004).

<sup>133</sup> See *supra* note 121.

<sup>134</sup> *Ibid.*

<sup>135</sup> Ayers et al., “Democracy and Identity Based Conflicts: Problems or Solution?”, in *Democratic Institutions and Politics in the Contexts of Inequality, Poverty and Conflict: A Conceptual Framework*, DRAFT Working Paper, November 1, 1999, <http://www.ids.ac.uk/ids/govern/pdfs/demcon.pdf>> (4 May 2004).

<sup>136</sup> *Ibid.*

to produce governments that represent the median.<sup>137</sup> The PR system is credited with increasing voter turnout from between 10 to 12% twelve percent when comparing nations using PR to similar nations using winner take all or FPTP systems.<sup>138</sup> Voter turnout is understood to be higher because the likelihood of a voter selecting a winning candidate is increased, therefore providing incentive for voters.<sup>139</sup> Ideas are more likely to be debated and opposition voices heard, as there is increased opportunity for legislatures to entertain more varied perspective with diversified representatives. Marginalized groups have more occasions to negotiate for influence because smaller parties could “swing” between various parties political factions.<sup>140</sup> The PR system encourages minorities to mobilize themselves to win access to power.<sup>141</sup> It is interesting to note that majority rule and PR are not mutually exclusive. Richie has explained majority rule itself is improved by full minority representation: “by maximizing the number of voters who elect candidates, PR increases the chances that a legislative majority has support from a majority of its voters.” This translates into the ability to foster a more deliberative legislative process. Additionally, PR makes geographical gerrymandering more difficult and there is a smaller amount of votes wasted on losing candidates.<sup>142</sup>

The proportional representation system is not void of shortcomings. Political stability may be threatened by failing coalitions or gridlock of parties. Religious or extremist parties may hold a stable government coalition hostage. Lack of accountability is frequently highlighted as problematic to PR since ideological parties rather than district representatives are representing the electorate.<sup>143</sup> Proportional representation falls short of incentives for “racial moderation” and bridging the gap between different groups. Instead it “freezes in and perpetuates the socio-political cleavages”<sup>144</sup> by providing the incentive of securing representation if a group bands together based on their marginalized character. Multi-ethnic candidate lists are arguably nothing more than eye-candy for marginalized or other ethnic groups, giving the “illusion of representivity” and “obfuscating a discussion of cultural issues.”<sup>145</sup> Gilomee believes the “ideology of inclusiveness is usually not much more than vaguely reassuring.”<sup>146</sup> Closed party lists also pose a problem as they generally lack measures to ensure that representatives are accountable to their constituencies.<sup>147</sup> Party loyalty hinders the ability of a representative to genuinely represent their constituency. Rosa Namisia , an MP from Namibia, stated that “party loyalties keep women from uniting around the issues of concern to women of Namibia who are after all the majority of our population.”<sup>148</sup> During discussions amongst delegates at the Constitution of Kenya Review Commission one delegate stated another, perhaps more curious, argument against PR, that “if going to go by population alone, I think we are endangering the principle and the policies of family planning. Because we might as well encourage those who are lagging behind... to multiply faster and catch up and avoid being marginalized.”<sup>149</sup> It has been asserted that the pure PR system alone is only part of the representational puzzle. To be truly effective, PR must be combined with a quota system for party lists<sup>150</sup> or another mechanism designed to secure effective minority representation.

---

<sup>137</sup> Study of 12 democracies in Europe by John Huber and G. Bingham Powell, “Congruence Between Citizens and Policymakers in Two Visions of Liberal Democracy,” *World Politics*, April 1994: 291-326 summarized by Ritchie and Hill see *supra* note 124.

<sup>138</sup> Arend Lijphart, “Unequal Participation: Democracy’s Unresolved Delimma”, *American Political Science Review*, March 1997.

<sup>139</sup> See *supra* note 128.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> Keulder 2001.

<sup>145</sup> Giliomee 1998.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> Keulder 2001.

<sup>149</sup> See *supra* note 45.

<sup>150</sup> *Ibid.*, 181.

Many additional factors contribute to determining the allocation of seats in a PR system. Several examples are helpful to highlight the range of variables that may contribute to different constructs of the PR system. Factors that differentiate PR systems include: the method used to calculate and convert votes into seats, the number of members chosen to represent a district (district magnitudes and the demarcation of boundaries) and the complexity of the voting process. To better understand the influence and intricacy of these factors, district magnitudes serves as an illuminating example. Large districts achieve the greatest degree of proportionality and ensure that small parties are represented in the legislature. However, as districts grow larger the connection between an elected member and their constituency becomes attenuated as there are simply more constituents for each member to represent. In societies where local issues are important to the party's politics, which is typically the case with marginalized groups, this may have negative consequences.<sup>151</sup>

### **Examples of Proportional Representation in Africa**

Proportional representation systems make up a third of all electoral systems in Africa. As addressed above, a number of states use a pure PR system as mandated by their respective constitutions or legislative framework, while others combine PR and FPTP systems. Still other states credit their electoral structure to tradition, or other "informal" origins. Experimentation with PR is not uncommon. Some countries have opted to implement the PR system for a term to establish a power-sharing framework and then shift to another electoral system. Many African states have chosen to use the PR system for the aforementioned reasons and it is widely believed to be a superior system for ensuring legislative representation of disenfranchised groups. This section spotlights several cases of African electoral systems.

#### **Sudan**

In Sudan, PR was chosen in part for its appeal as a transitional mechanism to ease into a power sharing arrangement and offer a more inclusive system for marginalized groups. Article 67 of the Sudanese Constitution establishes that 75% of the National Assembly shall be directly elected from geographical constituencies that reflect the proportional representation of the country's population. The remaining 25% of members are elected through special elections or indirect elections from "women, and the scientific and professional communities, in either states or nationally, as determined by law." In the event that national security impedes the process of special elections, the constitution provides that the President of the Republic may appoint such persons as would normally hold the seats of the constituency until elections may be held.<sup>152</sup> Of Sudan's 360 members in its National Assembly, 35 or 9.7% are filled by women.<sup>153</sup>

#### **BOX 3: Why the Increase of Women Represented in Parliament?**

Reynolds' 1999 study of women in legislatures found that the position of women in society and history of participation will impact women's representation in the legislature. Reynolds found that the number of parliamentary parties and the existence of a quota for women will increase the number of women represented in the legislature. Accordingly, legislatures with few strong parties were found to have more women elected to the legislature while legislatures with many parties had a lesser amount of elected women, but a higher amount of nominated women.<sup>154</sup> List PR with high district magnitudes and low thresholds are understood as being most advantageous to women. The ANC party in South Africa and the Frelimo party in Mozambique operating in a closed list system placed an admirable percentage of women candidates in top slots so as to secure a fair number of female legislators. A Mozambican attributed the higher than average number of female representatives in parliament to women's involvement in the national revolution. In a similar manner, women played an important role in overseeing military activities in Uganda, and this fact is often

<sup>151</sup> Reynolds 2001.

<sup>152</sup> The Constitution of Sudan, Art 67.

<sup>153</sup> International Parliamentary Union, "Women in National Parliaments", June 2004, <<http://www.ipu.org/wmn-e/classif.htm>> ( 23 July 2004).

<sup>154</sup> Reynolds 1999.

cited as a reason underlying their heightened parliamentary representation in that country.<sup>155</sup>

### South Africa

The proportional representation system is said to have been introduced in South Africa to allow for smaller political party representation in parliament. Its nascent Constitution boasts some of the most progressive provisions in the world, it enumerates no less than 21 categories in its non-discrimination clause.<sup>156</sup> Currently, South Africa uses the proportional representation model for electing MPs to its National Assembly and its upper house, the National Council of Provinces. The country's PR system maintains a very low threshold, thereby permitting smaller parties to secure representation.<sup>157</sup> Two factors are attributed to determining voter choices in South Africa: First, ethnic group, as is the case for the predominately Zulu Inkatha Freedom Party (IFP). The second, the fierce loyalty that many South Africans still hold towards the ANC. This loyalty is based on the party's leadership role during the struggle to remove the apartheid regime from power. In support of the democratic foundation on which PR itself is based, South Africa also has created a host of institutions and participatory bodies in an effort to ensure that every possible faction of society is heard by government. A noteworthy policy at the municipal level is that mechanisms facilitating community participation cater to the special needs of illiterate, disabled, women and other disadvantaged groups. However, legislators often lack adequate training to effectively relate and explain government processes to their constituents. As one local has noted, "legislatures are truly just there for form, and not substance."<sup>158</sup>

---

*"Favorable societal conditions will not substitute for unfavorable electoral systems for women to reach their optimal representation in parliament and local legislatures. But unfavorable contextual conditions—including cultural biases and discriminatory practices can be overcome to a great extent by a[n] alternate electoral system."<sup>159</sup>*

---

Despite the noble concept behind the proportional representation system, genuine representation in a PR system—that would ideally provide for the articulation of dynamic perspectives, vivacious debates and momentum on issues germane to marginalized peoples—is constrained by issues such as ethnicity, gender, economic status and demographic identity.<sup>160</sup> As Suzanne Vos, an IFP MP has stated, women MPs are "hostage to hierarchical and male-dominated parties where the gender ticket is not the route to party power."<sup>161</sup> In a similar manner, a female ANC MP has observed that women "are there to represent women but at the same time one has to be careful because at the next election you could be pushed off the list. You have to take account of party loyalties."<sup>162</sup>

Patterns have also been associated with rural voters whereby this electorate votes according to the party endorsed by their traditional leader.<sup>163</sup> Indeed, traditional leaders possess much power, particularly in the most impoverished and rural areas. In Eastern Cape, Kwazulu-Natal, Limpop and Mpumalanga provinces, traditional leaders essentially dictate politics. The IFP is associated with traditional leadership and tribalism. Its constituents tend to be ethnically based. Historically, rural chiefs from Kwazulu-Natal served as the principal impetus for establishing the IFP. Mangosuthu Buthelezi, leader of the IFP, is considered

---

<sup>155</sup> See *supra* note 53.

<sup>156</sup> The Constitution of South Africa.

<sup>157</sup> Urguhart, Penny, "Background Report: Legislative Representation and the Environment in South Africa", World Resources Institute, January 2004.

<sup>158</sup> *Ibid.*

<sup>159</sup> Reynolds 1999, citing, Wilma Rule, "Electoral Systems, Contextual Factors and Women's Opportunity for Election to Parliament in Twenty-three Democracies", *Wester Political Quarterly* 40 (September 1987).

<sup>160</sup> Urguhart 2004.

<sup>161</sup> Shireen Hassim, "Representation, Participation and democratic effectiveness: Feminist challenges to representative democracy in South Africa", in *No Shortcuts to Power: African Women in Polticia* 2003, <<http://wiserweb.wits.ac.za/PDF%20Files/state%20-%20hassim.PDFlast>> (2 June 2004). Forthcoming.

<sup>162</sup> *Ibid.*

<sup>163</sup> Urguhart 2004.

among the most forceful politicians advocating traditional leadership.<sup>164</sup> It may be gleaned from these cases that while the PR system offers many ideological benefits, in practice there is room for improving its operation.

### **Liberia**

The Republic of Liberia, founded by freed slaves from the United States in 1820, declared its independence in 1847. It was a peaceful nation until 1980 when the leader of the indigenous Krahn ethnic group, Master Sergeant Samuel K. Doe, seized power by killing President William R. Tolbert and other members of his government. Shortly thereafter, Doe and his supporters brought ethnicity to the forefront. Those of Krahn ethnicity took control of the military and government and in 1984 banned political parties. The year 1989 marked the beginning of a seven-year civil war which took the lives of 200,000 and displaced approximately one million others.<sup>165</sup> International institutions attempted to broker over a dozen peace agreements and nearly 20 cease fire arrangements yet the conflict persisted. The repeated demise of the peace process and the desperate economic and political situation further intensified internal divisions between ethnic groups.<sup>166</sup> Only the elections of 1997 signaled an end to the civil war.

The proportional representation system was introduced in Liberia to arrange for power sharing between the competing factions, thereby doing away with the former electoral system.<sup>167</sup> Political analysts asserted that proportional representation could reach constituencies that were made inaccessible during the civil war.<sup>168</sup> Charles Taylor's political party, the National Patriotic Front of Liberia (NPFL) won the 1997 elections by a 75% majority. The NPFL won 70 of the 90 legislative seats.<sup>169</sup> Despite the victory many claimed that the NPFL only won because Liberians feared the outbreak of another war should Taylor have lost.<sup>170</sup> While the Constitution provided for the right to free and fair elections, and a considerable peacekeeping force was in place during the electoral process, voters remained intimidated by the military forces.<sup>171</sup>

Still the benefits of PR and its function as a structure supporting political transition are not to be understated. Granted that the impact of a PR system in a post conflict society is often tempered by corruption, intolerance and domineering leaders, it is nonetheless a practical solution for renegotiating power distribution. In this capacity, PR is an important tool for marginalized groups as through it they may capitalize on representation opportunities. To be sure, meaningful representation, inclusion and dialogue appear to be a promising formula for conflict prevention. In this way PR offers to aid marginalized groups and society as a whole by creating institutions in which each citizen has a stake.

### **Demarcation**

A 2003 study analyzed the relationship between ethnic characteristics (specifically race and language) and a group's identification with a political party. It concluded that in eight of the 12 countries surveyed, ethnicity played a "significant" role in determining political party support. In the most ethnically fractionalized societies, including Nigeria and South Africa the correlation between ethnicity and party

---

<sup>164</sup> *Ibid.*

<sup>165</sup> US Department of State, "Background Note: Liberia" June 2004, <<http://www.state.gov/r/pa/ei/bgn/6618.htm>> (22 July 2004).

<sup>166</sup> Human Rights Watch, "Liberia: Emerging from the Destruction, Human Rights Challenges Facing the New Liberian" November 1997, [http://www.hrw.org/reports/1997/liberia/Liberia.htm#P54\\_1371](http://www.hrw.org/reports/1997/liberia/Liberia.htm#P54_1371) 22 July 2004.

<sup>167</sup> *See supra* note 165.

<sup>168</sup> Peter Kahler, "Rights Group Demands Taylor's Resignation", Panafrikan News Agency, 10 February 2001, <<http://www.globalpolicy.org/security/issues/liberia/2001/0210lwhr.htm>> (23 July 2004).

<sup>169</sup> *See supra* note 166.

<sup>170</sup> *See supra* note 165.

<sup>171</sup> U. S. Department of State Released by the Bureau of Democracy, Human Rights, and Labor, "Liberia Country Report on Human Rights Practices for 1998", February 26, 1999 at <<http://www.republicofliberia.com/usreport.htm>> (23 July 2004).

support was found to be the strongest.<sup>172</sup> This finding supports Horowitz's theory that ethnicity has a direct impact on electoral behavior in ethnically diverse societies. Horowitz identifies the psychological connection of citizens to parties as stemming from feelings of loyalty to a particular party and the symbolic value of a vote selection being equated to group identity.<sup>173</sup> Current geographic boundaries in Africa are intimately linked to the issue of ethnicity and the resulting patterns of ethnically divided constituencies are not an accidental wonder. Rather this phenomenon is in part a result of careful and intentional planning by the British, who sought to harness ethnic tensions as a means of maintaining control over their colonies. It is therefore not surprising that ethno-political affiliations did not rapidly deteriorate.

Constituencies in Africa remain ethnically demarcated. Although the colonial period formally drew boundaries according to political convention ethnic lines, most of these boundaries remain in effect in the current post-independence era. The persistence of ethnic boundaries may in part be attributed to the strong reliance of political parties on ethnically based constituencies. Accordingly, established political parties typically oppose efforts to reorganize electoral districts for fear of compromising their political support. Ethnic constituencies represent the mainstay of a reliable voter base that may be encouraged by tribal leadership and manipulated by political promises of resource allocation and political favor.<sup>174</sup> This section explores the patterns in several states to better understand how electoral districts came to be demarcated. It also pulls upon the example of the San people to understand the effects of delimitation upon a marginalized group and the different ways of addressing geographic marginalization across borders. It should be noted that while the history of colonization has left a common mark on many African nations concerning the issue of boundary demarcation, little reliable information is currently accessible on the current demographic composition of electoral districts.<sup>175</sup>

### **Nigeria**

In the 1940s, colonial powers divided Nigeria into three regions, based on the three predominant ethnic groups in the north, southeast and southwest.<sup>176</sup> These boundaries became official in 1954 and remained until independence in 1960.<sup>177</sup> With the establishment of these regions, the interests of minority ethnic groups became marginalized. Dominant ethnic groups became "regionalist" and minority groups sought protection from neighboring regions under the wings of the hegemonic groups. The basis for the current violence in Nigeria is intimately connected to the division of these three groups: the Calabar-Ogoja-Rivers State Movement, the Midwest State Movement and the Niger Delta Congress. In 1963, a fourth region was created for ethnic minorities in the western part of the country. Five years later, an attempt to secede by the eastern region inspired the military government to divide Nigeria into 12 states.<sup>178</sup> Continuing demands for greater autonomy increased over time and were met with additional boundary demarcations. Nigeria jumped from 19 states in 1976 to 36 states in 1996. To be certain, this pattern of redistricting facilitated the increased concentration of power in the federal military government and the mounting tensions between ethnic groups. As the northern states maintained larger populations, and representation was linked to

---

<sup>172</sup> Pippa Norris and Robert Mattes, "Does ethnicity determine support for the governing party: The structural and attitudinal basis of partisan identification in 12 African Nations", Harvard University and the University of Cape Town, 10 February 2003  
<<http://ksghome.harvard.edu/~pnorris.shorenstein.ksq/Acrobat/Ethnic%20cleavages%20and%20party%20support%20in%20Africa.pdf>> (23 July 2004).

<sup>173</sup> *Ibid*, citing Donald Horowitz 1985, 1991, 1993.

<sup>174</sup> Alex Weinreb "A State-Centered, Political Capital Approach to the Explanation of Demographic Differences: With Special Reference to Regional/Ethnic Inequality in Sub-Saharan Africa", Population Research Center, 2001 < [www.spc.uchicago.edu/prc/pdf/weinre01.pdf](http://www.spc.uchicago.edu/prc/pdf/weinre01.pdf) > (23 July 2004).

<sup>175</sup> This issue merits field research and exploration.

<sup>176</sup> Sklar, Richard, "Unity or Regionalism: The Nationalities Question", to be published in *Crafting the New Nigeria: Confronting the Challenges*, 2004 at  
<<http://www.bol.ucla.edu/~rsklar/recentessays/regionalismMay04.pdf> > (23 July 2004); see also Victor Ojatorotu, "Oil Minorities and Politics of Exclusion in the Niger Delta of Nigeria", 2000, <http://www.sidos.ch/method/RC28/abstracts/Victor%20Ojatorotu.pdf>. (23 July 2004).

<sup>177</sup> Sklar 2004.

<sup>178</sup> Ojatorotu 2000.

population size, the opportunities for minorities to elect their choice representatives to regional assemblies became nonexistent.<sup>179</sup>

In 1993, democrats resurrected a “six-zonal blueprint” designed by the British during their colonial rule.<sup>180</sup> Though unofficial, these zones have become increasingly realized and acknowledged as distinct political entities.<sup>181</sup> The southeast, southwest and northwest are home to culturally, linguistically and politically similar groups while the other three zones are ethnically diverse. The Igbo are the dominant ethnic group in the southeast while the Yoruba dominate the southwest; both groups have separatist aspirations. In the northwest, the Hausa-speaking emirates<sup>182</sup> are the majority population with a leadership interested in “transregional aims” grounded in “pre-colonial history and religious culture.”<sup>183</sup> The populations in the northeast and north-central zones share a common history with the Hausa people of the northwest and also similar goals of living in accordance with *Sharia*, or Islamic law. These demands have further polarized ethnic constituencies, particularly between the northern and southern states. The northeast is comprised of myriad ethnicities, many of which trace their lineage to the emirates or identify with either the traditional leadership of Sokoto Caliphate or the Muslim-like Kanuri kingdom. The majority of the region is Muslim, however there is a small non-Muslim population in the southernmost part of the zone that aspires to autonomy. The north-central zone is the most culturally diverse, boasting the largest number of ethnicities of all the zones. Though there is no overarching political identity in this area, it is united by the will to separate from the Muslim emirates. Both it and the southerly zone are “defensive rather than autonomist”. Like the north-central zone, the southern zone also has various ethnic groups and includes the Niger Delta, from where 90% of the country’s exports are derived.<sup>184</sup>

The dynamic of Nigeria’s constituencies and their historical components are too complex to summarize in this brief space. It has been noted that the problems within Nigeria may not be simply reduced to Muslim-Christian tensions, but are much more multifaceted. Though perhaps the inability of repeated successions of government to adequately tackle minority issues has led to violence, human rights abuses and environmental degradation, the lack of institutional structure and support for marginalized groups has further entrenched the colonial legacy of exclusion. Encouragingly, positive steps have recently been observed. The 2003 election resulted in over 30 political parties fielding candidates, whereas only two were permitted in 1999. Though more than 100 people were killed in conflicts related to the election, it produced the first power transfer from one civilian administration to another without military intervention since independence.<sup>185</sup>

## Kenya

Kenya’s electoral districts or constituencies vary in number of voters from 4,000 to over 300,000. Kenyan districts are divided into ecological zones. As a result, residents in sparsely populated, arid areas are over represented while densely populated urban areas are underrepresented.<sup>186</sup> This representation system has existed since the early 1960s and has not been met with the introduction of more equitable electoral boundary demarcation. Section 42(3) of the Kenyan Constitution leaves the delimitation of electoral districts largely to the discretion of the Electoral Commission. While this section establishes the standard that constituencies be equal in number of inhabitants, it gives the Electoral Commission broad authority to abandon this standard and devise a scheme which it determines suitable in light of articulated criteria in this section.<sup>187</sup> One notable result has been the continuation of a single ethnic group dominating a district.<sup>188</sup>

---

<sup>179</sup> *Ibid.*

<sup>180</sup> Sklar 2004.

<sup>181</sup> *Ibid.*

<sup>182</sup> The emirate system was created by Hausa-speaking Fulani warriors and their allies at the beginning of the nineteenth century, *see* Sklar 2004.

<sup>183</sup> Sklar 2004.

<sup>184</sup> *Ibid.*

<sup>185</sup> International Parliamentary Union, “Nigeria, Last Elections” 2003, <[www.ipu.org/english/parline/reports/2363\\_e.htm](http://www.ipu.org/english/parline/reports/2363_e.htm)> (23 July 2004).

<sup>186</sup> Joel D. Barkan, Paul Densham and Gerard Rushton, “Designing Better Electoral Systems for Emerging Democracies”, 2001 <<http://www.uiowa.edu/~electdis/kenyaright.htm>,> (23 July 2004).

<sup>187</sup> Barkan 2001.

This system was not the subject of much scrutiny until 1992, when Kenya transitioned to a multiparty political system and political opposition leaders grew wary of the demarcation of existing constituencies.<sup>189</sup> Because political parties in Kenya are generally associated with a particular ethnic group or tribe which has in turn been enveloped into its own constituency, Barkan reasons that the current system better represents regions that support the ruling party and inadequately represents regions that support opposition parties.<sup>190</sup> Barkan suggests that a more equitable design of constituencies would emphasize equal populations per district and minimize differences in compactness. Given the current electoral districts, the outcome of parliamentary elections are attributed to “realignment and shifting alliances” between parties rather than to fair representation.<sup>191</sup>

### **Tanzania**

During the colonial era, the British ruled Tanzania and imposed a system of local government based on chiefdoms drawn strictly in relation to ethnic lines. After gaining its independence in 1961, Tanzania quickly abolished the chiefdom system. From this point the government determined that boundaries would be demarcated according to population. Despite the shift in approach to delimiting districts, ethnic divisions did not disappear. As populations in a district would increase, formerly ethnic based constituencies would be divided into two or more new constituencies, thereby creating additional constituencies though still largely retaining the same ethnicity. Currently, districts are randomly redrawn. The most recent demarcation took place in 1995, and these districts remain subdivisions of old constituencies – divided now by population, but having the same ethnic make up as previous chiefdoms.<sup>192</sup>

The only Tanzanian districts exhibiting a moderately diverse ethnic makeup exists in the major urban areas. Approximately 15% of the country’s overall population lives in urban environments, while the other 85% live in agricultural communities almost entirely characterized by a particular ethnic group.<sup>193</sup> At present, Tanzania is divided into 21 regions and 111 districts.<sup>194</sup> A Tanzanian Embassy official in Washington, D.C. stated that many of the pastoralist tribes have their own representatives who air concerns on behalf of their constituency.<sup>195</sup> The current prime minister and a cabinet minister are from the Barabigs pastoralist group, an extremely marginalized group, having no representation in parliament. The Maasai are another marginalized group, and though they have significant representation in parliament it is not considered particularly meaningful.<sup>196</sup> The crux of the representational issues in Tanzania is that the parliament has never been a locus of power and rests on the margins of the national power structure. Lissu, a Tanzanian attorney, stated that, “no one takes the parliament seriously.”<sup>197</sup> The parliament has no administrative support, and no representative has assistance in information gathering. As a result, legislators attend debates unprepared. In the anticipated 2005, election the country will shift to a proportional representation system, which is hoped to encourage dialogue with opposition voices and offer more credibility to the parliamentary structure.<sup>198</sup> Currently only five of the sixteen political parties are hold seats.<sup>199</sup>

### **Niger**

In 1991, Niger transitioned to a multi-party system. Legislation provided that the multi-party system was to be “non-regionalist” in character, though it allowed political parties to carry out “regional or sub-regional

---

<sup>188</sup> Weinreb 2001;15.

<sup>189</sup> *Ibid.*

<sup>190</sup> This observation is arguably confirmed by the results of the 1997 elections. Barkan 2001.

<sup>191</sup> *Ibid.*

<sup>192</sup> Tundu Lissu, Lawyers' Environmental Action Team, telephone interview 29 June 2004.

<sup>193</sup> *Ibid.*

<sup>194</sup> Joseph Sokoini, Tanzanian Embassy, Washington D.C., Interview 17 May 2004.

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> Lissu 2004

<sup>198</sup> Sokoini 2004.

<sup>199</sup> *Ibid.*

integration projects that would not undermine national interests.”<sup>200</sup> The following year, the government allocated eight of the 83 National Assembly seats to special electoral constituencies. These special constituencies were designed to compensate historically disadvantaged minority groups marginalized by the “colonial recognition of traditional authorities.”<sup>201</sup> This law further provided that the eight seats would go to the smallest minorities, principally the Arab, Toubou and Gourmantche communities, who currently comprise 1.2% of Niger’s population.<sup>202</sup> In essence, ethnic communities not labeled as “traditional” or included in the traditional authority scheme for representation were identified by their ethnicity and given a special seat in parliament.<sup>203</sup>

In 1993, in an effort to move away from colonial era ethnic districting, Niger embarked on an ambitious attempt to reform electoral boundaries. Several additional factors influenced the State’s effort at geographic redistricting. First, public demand for “democratization and liberalization” of political life. Second, international financial institutions required decentralization. And finally, the 1995 peace accords with the Tuareg rebels both required the Nigerien government to create “regional territorial collectives” and the overall disengagement and “systematic mobilization of local stakeholders”. Between 1994 and 1995 Niger drew new boundaries dividing the country into communes, arrondissements (similar to the municipal subdivision used in France), departments and regions. Though this redivision established approximately 1,000 entities over four levels, it never made it past the idea stage. Instead, in 1998 boundary reform aimed to shape Niger into a system resembling decentralization.

The current electoral demarcation in Niger is highly complex. Haphazard divisions are modeled on pre-colonial historical provinces and have resulted in the creation of regional seats assigned to all provincial centers and official sultanates. Historical entities such as the Maouri lands and Gobir and Katsina regained autonomy. The reemergence of these historical districts confused the status of modern towns such as Dakoro, Filingué and Dosso and reduced their jurisdiction. Consequently, these towns sought to secure better existing constituencies. As it stands, different regions maintain various levels of political autonomy and tensions remain linked to ethnic division.

### **Mauritius**

The Dutch settled Mauritius in 1598, and after it passed through the hands of the French, the British captured the island in 1810.<sup>204</sup> Colonization created ethnically based constituencies, though in contrast to other nations, additional components factored into the “spatial distribution” of groups, thus making ethnicity but one component in a more complex political identity. Spatial distribution in Mauritius has been attributed to a myriad of interests including culture, language, religion, labor and occupational structure. The resulting “ethnopolitical demography”, brought out both inter and intra-group cleavages. The rise of ethnicity as a main source of marginalization may be traced to the importation of slaves from East African and indentured labor from India to work on sugar plantations. While the Legislative Council created a form of limited political representation in 1886 that eventually expanded beyond the Franco-Mauritian elite communities to include Creoles, Hindis and Muslims, leadership positions remained restricted. Mozaffar points out that political mobilization was not only grounded in ethnicity but also

---

<sup>200</sup> Benoît Antheaume and Frédéric Giraut, “Margins at the Heart of Territorial Innovation? A Comparative Look at Administrative Borerlands (South Africa, France, Morocco, Niger and Togo)”, translated by Lynnaia Main, 2002, <<http://iga.ujf-grenoble.fr/teo/Innovation/PDF/43%20Margins.tradfinale.pdf>> (21 July 2004).

<sup>201</sup> Antheaume 2002.

<sup>202</sup> UN Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network for West Africa, “Draft constitution worries members of minority groups”, IRN-WA Weekly Round-up 21 covering the period 22-28 May 1999, <<http://www.reliefweb.int/w/rwb.nsf/0/a8c407f65838890ec1256782002dd48a?OpenDocument>> (22 July 2004).

<sup>203</sup> Antheaume 2002.

<sup>204</sup> Government of Mauritius, “Our Constitution”, <http://ncb.intnet.mu/govt/constitu.htm> (23 July 2004).

prompted by trade unions and class-based party politics. Mozaffar adds that the “cultural and demographic differences corresponded with differences in the distribution of economic and political resources.”<sup>205</sup>

The 1947 Constitution created a 34-member Legislative Council, 19 members were elected, 12 nominated and three appointed official members. This composition sought to satisfy the Indo-Mauritian demand for majority rule and the Franco-Mauritian demand for minority protection. In the 1948 elections, Indo-Mauritians won all the seats in the three-member rural constituencies and all but one of the representatives came from the professional middle class. The Creole and Muslims groups received many votes in the urban constituencies, though due to their geographic dispersion no Muslim was elected. Eventually, most political parties organized along ethnic lines and by the 1959 elections, parties began forming coalitions in preparation for the shift in system from five to forty single member constituencies. Notably, communal interests took priority over class interests for value of strategic coordination. By 1967, political parties became multiethnic and began appealing to diverse constituencies on the basis of common interest. For example, the Muslim constituency was too small and spread out so the Comité d’ Action Muselman (CAM) aligned with the Indo-Mauritian Mauritius Labor Party (MLP) while other groups became allies in anti-Hindu campaigns.

Mauritius achieved independence in 1968.<sup>206</sup> Its Mauritian territory is comprised of the island of Mauritius and the island of Rodrigues. Today, Mauritius is divided into 20 constituencies, each with three seats; Rodrigues serves as the 21<sup>st</sup> constituency and has two seats. The National Assembly has 70 members, with 62 elected seats and the remaining eight allocated to the “best losers”.<sup>207</sup> The Electoral Supervisory Commission nominates the eight representatives—or best losers—from among the defeated candidates that received the most votes in an effort to establish inter-ethnic and inter-party balance in parliament.<sup>208</sup> Mauritius is the only African country aside from Botswana that has maintained an uninterrupted democracy since independence.<sup>209</sup>

### **The San People**

The San have a population of about 90,000 and live primarily in or near the Kalahari Desert in Namibia and Botswana. San are also found in Angola, Zambia, Zimbabwe<sup>210</sup> and South Africa<sup>211</sup> and their archeological history traces back some 20-30,000 years.<sup>212</sup> The San make up 3% of the total populations in both Namibia and Botswana.<sup>213</sup> San people are often characterized as sharing a hunter-gatherer ancestry, and speaking Khoisan languages, and living in small 25-30 person kinship groups.<sup>214</sup> Currently, they are subject to discrimination and regarded as second class citizens in their home countries.<sup>215</sup> According to Suzman, San have been targeted by special statutes and in every country they have lived in they are treated as

---

<sup>205</sup> Mozaffar, Shaheen, “Negotiating Independence in Mauritius”, for publication in *The Impact of Colonial Bargaining on Inter-Group Relations in Africa*, 2004. Forthcoming.

<sup>206</sup> *Ibid.*

<sup>207</sup> See *supra* note 192.

<sup>208</sup> Mozaffar 2004.

<sup>209</sup> *Ibid.*

<sup>210</sup> Hitchcock, Robert K., Megan Biesele and Richard B. Lee, “The San of Southern Africa: A Status Report”, 2003.

<sup>211</sup> Victoria Geingos, “San, Land Rights and Development: Can San Survive without Land”, Working Group of Indigenous Minorities in Southern Africa (WIMSA) Namibia, October 2002 <[www.cpsu.org.uk/downloads/Victoria%20geingos.pdf](http://www.cpsu.org.uk/downloads/Victoria%20geingos.pdf)> (22 July 2004).

<sup>212</sup> Indigenous Peoples of African Coordinating Committee, “Regional Summary: Southern Africa”, <<http://www.ipacc.org.za/default.asp?sPage=/regional/sa.asp>> (23 July 2004).

<sup>213</sup> Minorities at Risk Project, “Assessment for San Bushmen in Namibia” 2000, <<http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=56502>> (23 July 2004), see also Minorities at Risk Project, “Assessment for San Bushmen in Botswana”, 2000, <<http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=57101>> (23 July 004).

<sup>214</sup> Hitchcock 2003.

<sup>215</sup> Lee, Richard B., Robert Hitchcock, Megan Biesele, “Foragers to First Peoples: The Kalahari San Today”, *Cultural Survival Issue* 26.1, 31 March 2002 <[http://www.culturalsurvival.org/publications/csq/csq\\_article.cfm?id=FD8F5DC-F322-41](http://www.culturalsurvival.org/publications/csq/csq_article.cfm?id=FD8F5DC-F322-41)> (23 July 2004).

vagrants.<sup>216</sup> Hitchcock observes that the development of Community Based Natural Resource Management (CBNRM) is a promising development for the San as it allows them to exert control over their lands and resources.<sup>217</sup> Since 1997, 28 CBNRM schemes have been created in Botswana and 14 in Namibia. In addition, many San are working in the Workgroup for Indigenous Minorities in Southern Africa,<sup>218</sup> an organization created by San people to represent them at all levels of society.<sup>219</sup>

### **The San in Botswana**

Currently, there are three San representatives in the district council of Ghanzi, Botswana, where 42% of the population are San. There is one female representative in the House of Chiefs from the Chobe district, though she is not believed to be voting on behalf of San interests.<sup>220</sup> Hitchcock argues that the San of Botswana are involved in a great struggle. As marginalized groups the San are “co-opted and become little republics,” though they are actively trying to become more engaged in the political process, particularly in Botswana, where efforts are made to secure a special representative in parliament.<sup>221</sup> This undertaking is hampered by the fact that the government of Botswana does not recognize the San as a distinct people. Representation of the San is partly accomplished through the dominant Tswana tribal system. As mentioned above, Botswana identifies all residents as indigenous people. Instead of identifying ethnic groups for special assistance, the government created the Remote Areas Development Program to provide aid to a less controversial “designed” group. This necessarily impedes the creation of special representation and consequently, any chance for the promulgation of San rights and views in parliament. Unfortunately, San representatives who have become district counselors typically fail to advance the interests of their constituency or effectively represent San people, as they have been noted to merely represent their own self interests.<sup>222</sup>

### **The San in Angola and South Africa**

Discussing constituencies as they relate to the San is challenging, insofar as they live in small scattered groups and have historically been dominated by other ethnicities. In Angola for example, San communities live on communal lands managed the Bantu *sobas*<sup>223</sup> and local government. In these areas, San have no jurisdiction over their lands nor any control over their resources. San leaders are precluded from representing themselves at local *soba* council meetings. In 2003, Senhor Piriquito Kambili of Hombo, Kipungu Municipio, Huila Province and Senhor Arundingo of Cafima, Kwanyama Municipio, Cunene Province, two San leaders were recognized as leaders by the local government and *soba* councils and currently act as representatives, or perhaps more correctly liaisons, between government agencies and the San people.<sup>224</sup> In northwest and northwest South Africa, land bases have been allocated to the ++Khomani, !Xun and Khwe, three small San communities, for further development. It is unclear how these constituencies are represented.<sup>225</sup>

### **The San of Namibia**

Namibian constituencies were created on the principle of separate development.<sup>226</sup> The South West African Administration (SWAA) allocated prime farming land in central Namibia to white farmers and marginal areas or “native reserves” to the Herero and Nama peoples. The San people were not even considered for these plots, as they were deemed an insufficiently developed group. This process was implemented by the

---

<sup>216</sup> *Ibid*, quoting James Suzman, “Regional Assessment of the Status of the San in Southern Africa” 2001.

<sup>217</sup> Lee 2002.

<sup>218</sup> *Ibid*.

<sup>219</sup> Geingos 2002.

<sup>220</sup> Professor Robert Hitchcock, University of Nebraska, telephone interview 28 April 2004.

<sup>221</sup> *Ibid*.

<sup>222</sup> *Ibid*.

<sup>223</sup> Geingos 2002.

<sup>224</sup> Benedito Quessongo, Daniel Gaspar, Americo Kwononoka and Richard Pakleppa, “Where the First are the Last: San Communities fighting for Survival in Southern Angola”, Working Group of Indigenous Minorities in Southern Africa, 2003, < <http://www.wimsareg.org/angolframeset.htm> > 22 July 2004).

<sup>225</sup> Geingos 2002.

<sup>226</sup> Suzman, James, “Minorities in Independent Namibia”, Minority Rights Group International Publication, 2002; 8.

Native Reserves Commission of 1921 who carried out the SWAPO development scheme, allocating separate reserves for various ethnicities and controlled their movement within the colony. The Odendall Plan formally enshrined this practice during the 1960s and 70s.<sup>227</sup> Until today, Namibian townships remain divided into separate “homelands” based on ethnic groups such as the Herero, Damara, Owambo and others.<sup>228</sup>

The dominant party is the South West African People’s Organization (SWAPO), traditionally supported by the largest ethnic group in the country, the Owambo, who comprise approximately 50% of society.<sup>229</sup> The rest of Namibia consists of more than seven minority groups none of which make up more than 10% of the general population.<sup>230</sup> SWAPO has been known to address minority concerns, and as a result has harnessed the support of many members of minority constituencies.<sup>231</sup> SWAPO’s policies culminated in the Proclamation AG8 of 1980, which empowered seven major ethnic groups—the Basters, Damara>Nama, Herero, Himba, Kavango and Owambo—to elect government representatives from their respective ethnic constituencies.<sup>232</sup> This policy effectively excluded other more marginalized groups.

Several political decisions made with respect to the San people in Namibia underscore the need for San interests to be made an equal and integrated part of the decision making process. The 2001 Traditional Authorities Act (TAA) establishes a role for traditional leaders within the overall state governance scheme. The traditional communities enumerated in the TAA are afforded recognition and a voice although parliamentary influence remains unequal.<sup>233</sup> To be considered a “traditional community” the TAA requires that an ethnic group must “inhabit a common communal area.” Because Namibia never granted the San land rights in the native reserves, according to the TAA they are deemed a landless people and therefore denied the opportunity to secure representation by their traditional leaders.<sup>234</sup> In 2002, none of the traditional authorities from the traditional San communities were listed as such. However, more recently example, three of the six San groups in Namibia were recognized by the Namibian government as traditional communities. The !Kung of the Tsumkwe District West, the Jul’hoan of the Tsumkwe District East (Nyae Nyae) and the Naro of the Ghanzi District are the recognized communities though representation in the parliament still does not exist. In 2001, the Namibian government denied the Khwe of West Caprivi and the !Xõó of Omaheke South and the Jul’hoan of Omaheke North official recognition.<sup>235</sup> Needless to say, without the requisite recognition and inclusion in existing mechanisms of governance, the San remain inadequately represented in Namibia. While one member of the National Assembly is San, no regional or local council seat is occupied by a San person.<sup>236</sup> Subsequently, the San do not benefit from laws like the Communal Lands Bill which grants community leaders the right to allocate land and “reaffirms land as a constituent of their heritage and identity.”<sup>237</sup> In light of these realities, on the ground it would appear that article 102 of the Constitution of the Republic of Namibia, that declares “delineation of the boundaries of the regions and Local Authorities... shall be geographical only...”<sup>238</sup> is arguable.

### **Guaranteed Minority Seats: Quotas and Reserved Seats**

---

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> Suzman 2002; 4.

<sup>230</sup> Central Intelligence Agency, World Factbook 2004: Namibia, <<http://www.cia.gov/cia/publications/factbook/geos/wa.html>> (23 July 2004).

<sup>231</sup> Suzman 2002; 6.

<sup>232</sup> Suzman 2002; 9.

<sup>233</sup> Suzman 2002; 12.

<sup>234</sup> Suzman 2002; 12.

<sup>235</sup> Geingos 2002.

<sup>236</sup> Suzman 2002; 23

<sup>237</sup> Suzman 2002; 13

<sup>238</sup> The Constitution of the Republic of Namibia.

---

*“The argument that special representation is reserved for groups (of a special kind) carries with it the proverbial Pandora’s box.”<sup>239</sup>*

---

Another method for securing special representation for marginalized groups in parliament is to guarantee them a minimal number of seats in the legislature. Essentially, this practice equates to affirmative action or positive discrimination. Parliamentary seats may be set aside for enumerated groups using several different mechanisms. Two of the more common mechanisms are reserved seating and quotas. At least 17 countries in Africa use a form of the quota system<sup>240</sup> and a minimum of five countries reserve seats.<sup>241</sup>

Geographical quotas are common to nearly all political systems in Africa.<sup>242</sup> They are employed to ensure that densely populated areas will have a predetermined minimum number of representatives, though no uniform international application exists, when used in the parliamentary context, a quota is understood as a mechanism specifying a certain number or percentage of members of a body, either in a candidate list or a parliamentary assembly. Essentially, a quota functions as “a qualitative jump into a policy of exact goals and means.”<sup>243</sup> The quota system shifts the burden from individuals belonging to marginalized group to those who control the legal instrument, government, or committee charged with developing or preserving the electoral process. The core idea behind this system is to recruit marginalized peoples into political positions and to ensure that they are not isolated in political life.<sup>244</sup> Quota systems aim to create a “critical minority” and strive to establish form of a balance at the national level of government. Quotas may be applied to a pool of potential candidates, nominated candidates or elected candidates.<sup>245</sup> Ideally, the use of a quota serves as a stopgap measure to be removed once the obstacles impeding fair representation is remedied. It should be noted that the use of quotas are gaining international support.<sup>246</sup>

---

*“The use of quotas is increasingly influenced by international recommendations and from cross-country inspiration. However there is no international concept of quotas as they are met with very different contexts in individual countries.”<sup>247</sup>*

---

The effectiveness of a quota system is contingent on many variables including the country context, method by which the quota is established and terms of implementation. There are three principal types of quota systems: Constitutional Quotas, Election Law Quotas or Regulation for National Parliament and Political Party Quotas for Electoral Candidates. Constitutional Quotas essentially enshrine the quota provisions within framework of the constitution. This practice is currently used in Burkina Faso and Uganda. Electoral Law Quotas or Regulation for National Parliament encode the quota provision either in national legislation or a regulatory framework, as is the case in Sudan.<sup>248</sup> Finally, the National Parliament and Political Party Quotas represents an internal structure which takes one of two forms. The given political party may be mandated to nominate a prescribed number of candidates<sup>249</sup> from a given denomination, or the party may establish a fixed percentage of candidates from certain denominations<sup>250</sup> by its own will and design. The

---

<sup>239</sup> Keulder 2001.

<sup>240</sup> International IDEA and Stockholm University, “Global Database of Quotas for Women”, 2003 <[www.quotaproject.org/country.cfm](http://www.quotaproject.org/country.cfm)> (3 June 2004).

<sup>241</sup> *Ibid.*

<sup>242</sup> This project asserts that quotas are a means by which to increase women’s representation. I have broadened this argument to encompass marginalized peoples more generally *see Ibid.*.

<sup>243</sup> *See supra* note 240.

<sup>244</sup> *Ibid.*

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> Yash Ghai, “Chapter 8, The Electoral System”, The Constitution of Kenya Review Commission, A Guide to the Constitution, 1 January 2002, <[www.kenyaconstitution.org/docs/03ad009.htm](http://www.kenyaconstitution.org/docs/03ad009.htm)> (23 July 2004).

<sup>250</sup> *See supra* note 224.

African National Congress in South Africa and the Front for the Liberation of Mozambique in Mozambique use the Political Party Quota.<sup>251</sup>

The 1980s and 1990s saw the women's movement galvanize itself around securing positions of political influence in decision making. In 1995, The Fourth World Conference on Women in Beijing called for a 30% floor of women representatives in national governments. Of the elections held in 23 sub-Saharan Africa countries from 2000-2002, 14 of them recognized an increase in women parliamentarians.<sup>252</sup> Notably, Rwanda, South Africa, Mozambique, Namibia, Seychelles, Tanzania and Uganda have made major political strides in this regard.<sup>253</sup> That said, during the same election cycle four African countries, including Zimbabwe, witnessed a decline in the proportion of female representatives. Thirty countries worldwide implement a form of gender quota. Beatrice Kiraso, a female Ugandan MP, has stated that quotas "kick start the process" of increasing women's participation in national politics.<sup>254</sup> However, as Mata Sy Diallo, a former female vice-president of the Senegalese National Assembly, has observed, "it is not a cure for the makings of a true democracy."<sup>255</sup> Many have pointed out that a transitory quality should be included in the fashioning of a quota system.

The use of reserved seats first emerged in the 1930s and 1940s in Britain. The British used this system to allocate seats in its governing councils to Hindus and Muslims, and eventually to European planters and expatriots.<sup>256</sup> Previous notions of having reserved seats for one or few women, representing the vague and all-embracing category of "women", are no longer considered sufficient.<sup>257</sup> Moreover, the distinction between the quota system and reserved seating arrangements is increasingly blurred. One definition provides that reserved seats set aside a certain percentage of seats for individuals representing a defined group rather than setting aside candidate positions.<sup>258</sup> In any case it appears that albeit two, artificial distinctions may be discerned. Reserved seats are seen as less progressive, typically allocating a less significant, though perhaps no less meaningful, number of seats to a designated group.<sup>259</sup> The second distinction is that reservations generally are associated with ethnic or cultural cleavages, while quotas are associated with women.<sup>260</sup> This distinction does not hold true across the board. For example, Uganda reserves one seat from each of its 39 districts for women, Tanzania reserves 63 out of 295, and Eritrea reserves 33 of 150 seats.<sup>261</sup> Burkina Faso<sup>262</sup> and Rwanda apply similar provisions.<sup>263</sup> Uganda also reserves seats in parliament for youth, the disabled, salaried workers and the army.<sup>264</sup> Ethiopia, Mauritius and Niger each reserve seats for national ethnic minorities.<sup>265</sup> Given this negotiable distinction in terminology, these two mechanisms will be treated

---

<sup>251</sup> *Ibid.*

<sup>252</sup> Gumisai Mutume, "Quota systems allow more women to gain elected offices", *Africa Recovery*, Vol.18 #1, April 2004, <[www.un.org/ecosocdev/geninfo/afrec/vol18no1/181women.htm](http://www.un.org/ecosocdev/geninfo/afrec/vol18no1/181women.htm)> (23 July 2004).

<sup>253</sup> Winne Byanyima, "Perils and Promises; Living Feminist Politics in Uganda", African Gender Institute Panel Discussion, March 2004, <<http://web.uct.ac.za/org/agi/events/perils%20&%20promises%20speech%208march.htm>> (10 May 2004).

<sup>254</sup> Mutume 2004.

<sup>255</sup> Mutume, 2004.

<sup>256</sup> Shaheen Mozaffar, telephone interview 2 June 2004.

<sup>257</sup> See *supra* note 224.

<sup>258</sup> Lisa Baldez, "Elected Bodies: The Gender Quota Law for Legislative Candidates in Mexico", Paper presented at the 2003 Meeting of the American Political Science Association, Philadelphia, 28-31 August 2003, <[http://www.quotaproject.org/Conference\\_papers/apsa\\_2001.pdf](http://www.quotaproject.org/Conference_papers/apsa_2001.pdf)> (15 May 2004).

<sup>259</sup> See *supra* note 224.

<sup>260</sup> Mala Htun, "Why Identity Groups Get Represented in Politics", August 2003 Draft, <[www.newschool.edu/gf/polsci/sseminar/Htun9-25-03pdf](http://www.newschool.edu/gf/polsci/sseminar/Htun9-25-03pdf)> (23 July 2004).

<sup>261</sup> See *supra* note 148.

<sup>262</sup> Bill Carmen, "Gender Equality and Women's Empowerment", International Development Research Center, 2003 <[http://web.idrc.ca/en/ev-42968-201-1-DO\\_TOPIC.html](http://web.idrc.ca/en/ev-42968-201-1-DO_TOPIC.html)> (23 July 2004).

<sup>263</sup> Mutume 2004.

<sup>264</sup> The Constitution of Uganda, see also *supra* note 51.

<sup>265</sup> Election World, "Elections in Nigeria", <<http://www.electionworld.org/niger.htm#2>> (23 July 2004); Election World, "Elections in Ethiopia", <<http://www.electionworld.org/ethiopia.htm#2>> (23 July 2004);

the same for purposes of this analysis. This mechanism will be broadly characterized here as a *de facto* or legal or mechanism guaranteeing a minimum number of parliamentary seats to a marginalized group.

**TABLE 3: ARGUMENTS FOR AND AGAINST GUARANTEED PARLIAMENTARY SEATS**

Pro	Con
<ul style="list-style-type: none"> <li>• Compensates for barriers that prevent equitable representation</li> <li>• No discrimination</li> <li>• More than one delegate for a given marginalized group removes pressure from a single token representative</li> <li>• Need for diverse perspectives</li> <li>• Elections are more about representation and not educational qualification</li> <li>• Qualifications attributable to unique experiences of disenfranchised groups are viewed as less significant in majoritarian system</li> <li>• Political parties mainly control nominations, not voters</li> <li>• Conflicts surrounding quota system subside over time</li> <li>• Quotas are temporary and removed after historical disadvantages are remedied</li> </ul>	<ul style="list-style-type: none"> <li>• Lends preference to one group over another, violating the principle of equality</li> <li>• undemocratic, as voter is unable to decide who will be elected</li> <li>• Exclude qualified candidates because they do not fit the appropriate gender role</li> <li>• People do not want to be elected because of their affiliation with a specific group</li> <li>• Create internal party tensions and ill feelings toward those who are included based on quota<sup>266</sup></li> <li>• “Would you then say that 10 percent of the cricket team should be white and the rest black because that is the make up of the nation? You would not, because everyone wants to play cricket.” Chief Whip Douglas Gibson of the Democratic Alliance in South Africa.<sup>267</sup></li> <li>• Gender quotas may be mistaken for a “glass ceiling”<sup>268</sup> or unacknowledged discriminatory barrier that prevents women and minorities from rising to positions of power or responsibility<sup>269</sup></li> </ul>

### Guaranteed Parliamentary Seats: Country Examples

#### South Africa

At the end of apartheid in South Africa, the African National Congress, the nation’s largest and most influential political party, adopted a quota for women to increase their representation within the party.<sup>270</sup> Section 60 of South Africa’s Constitution requires that each province’s delegation to Parliament include three special delegates whose selection is defined by national legislation, and “must ensure the participation of minority parties in both permanent and special delegates.”<sup>271</sup> While the constitution specifies that national legislation must be established to address the issue of minority quotas, tailored national legislation does not appear to yet have been created. A more formalized quota system is also applied in South Africa’s municipal elections.

#### Malawi

The Constitution of Malawi, Chapter 6, section 62 (1) states that the National Assembly will represent every constituency in Malawi and that the Electoral Commission shall determine the formula for calculating the number of seats for each constituency. The Constitution provides for greater specificity

---

and Central Intelligence Agency, World Factbook 2004: Mauritius, <<http://www.cia.gov/cia/publications/factbook/geos/mp.html>> (23 July 2004).

<sup>266</sup> Ghai 2002.

<sup>267</sup> Mutume 2004.

<sup>268</sup> *Ibid*, see also Reynolds 1999.

<sup>269</sup> Online Dictionary, “glass ceiling”, <<http://dictionary.reference.com/search?q=glass%20ceiling>> (23 July 2004).

<sup>270</sup> Baldez 2003.

<sup>271</sup> The Constitution of South Africa, section 60.

regarding the composition of the Senate. The Senate is to consist of 80 members, one elected Senator and Chief from every District and 32 additional senators determined by the Senate who will elect and nominate the remaining 32 senators from each group enumerated in section 68 (1)(c). Specifically, interest groups, societal groups and religious groups are identified as being worthy of representation in the Senate. More specifically, they are to hail from groups including women's organizations, the disabled, farming and business sectors, trade unions, persons recognized as being "outstanding" contributors to society in the area of social, cultural or technological development of the nation, and every major religious faith in the country. The procedure for filling these seats is as follows: A Nominations Committee, is established within 45 days of each local government election. This Committee consists of the Speaker of the National Assembly, the Ombudsman and seven elected Senators appointed to the Nominations Committee on a motion by the Speaker of the National Assembly. The Nominations Committee is charged with ensuring, whilst it considers nominations for the aforementioned 32 Senate seats, that the Senate proportionally represent the different factions of the Malawian society, including an equitable gender balance.<sup>272</sup>

### **Kenya**

Kenya is currently undergoing an expansive constitutional review process. The issue of how to best represent marginalized peoples is a topic of much debate, yet no clear consensus has emerged on this issue to date. As it stood in 2002, The Kenyan Constitution designated 12 reserved seats in the National Assembly to be filled by representatives of 'special interests', such as minorities or professions. These representatives were to be appointed by the elected members of the National Assembly.<sup>273</sup> A 1997 constitutional amendment provided that nominations would be weighed proportionally to each party's elected seats in the National Assembly.<sup>274</sup> In making their nominations, parties had to observe the principle of gender equality.

The nomination process was often justified based on ensuring minority representation or securing the participation of individuals with special skills or experiences who were otherwise unwilling to compete in elections. However, Ghai has concluded that little evidence points to the mechanism being used to this end. Candidates defeated in elections or otherwise active in politics have been appointed to the National Assembly through the nomination procedure.<sup>275</sup> Over time, use of the nomination mechanism as a backdoor for failed candidates caused the system to become delegitimate.

Though this mechanism lost credit with the Kenyan population, during discussions for the creation of the new Kenyan Constitution delegates advanced arguments in support of special representation as a means of ensuring representation for marginalized groups. Hon. Delegate Charles Lwanga, advocating on behalf of affirmative action, spoke about the Ogiek people who have a population of 5000-10,000 people, and lack effective representation. He stated that if a party list were drawn, the Ogiek would be left without representation. In Lwanga's eyes, this was reason enough to ensure that a number of seats should be set aside for minorities.<sup>276</sup> Hon. Delegate David M Gitari supported the portion of the draft constitution involving the representation of women and a more broadly construed concept of marginalized people. He argues that a third of the parliamentary seats should be allocated to women.<sup>277</sup> The previous Kenyan parliament had six or seven women and currently there are 17 female representatives.<sup>278</sup> "If we leave them to compete with men, I think history has shown that they will still be marginalized in one way or another. Marginalization is not merely for pastoralists, slums in the city of Nairobi hold marginalized people without clean water or decent sanitation."<sup>279</sup>

---

<sup>272</sup> The Constitution of Malawi, art. 68.2-4.

<sup>273</sup> Between 1968 and 1997 the system empowered the President to make these 12 appointments. *See Ghai 2002.*

<sup>274</sup> The 1992 Constitution of Kenya, art. 33.

<sup>275</sup> Ghai 2002.

<sup>276</sup> *See supra* note 45; 19.

<sup>277</sup> *Ibid.*, 114-115.

<sup>278</sup> *Ibid.*, 19, *see also supra* note 148 stating the current number of women in parliament totals 16.

<sup>279</sup> *See supra* note 45; 114-115.

Moving beyond consideration of these protective mechanisms, some delegates articulated practical measures designed to ensure more equitable representation. Hon. Delegate Luseno Liyai suggested that in the interest of affirmative action, 5% of the seats in the National Assembly, Devolved Governments<sup>280</sup> and 8.5% in the Senate, should be reserved for special interest groups, including persons with disabilities, the youth, labor organizations and other minorities and at least one third of the seats should be held by the marginalized gender.<sup>281</sup> Liyau also spoke of extending the principle of maintaining at least one third affirmative action seats for the marginalized gender to the Senate and the Devolved Governments and ensuring that at no time would one gender be permitted to have more than a two thirds of majority.<sup>282</sup> The concept of two thirds representation as a ceiling did not fair well and was subject to much criticism. The Review Committee concluded that reservation of seats for women and special interest groups was a superior system and that the previously discussed mixed member proportional representation system would be dropped.<sup>283</sup>

New language was recently introduced to amend the 2004 draft constitution. The proposed amendment to article 83 (1)(b) states that “not less than two and not more than ten other members, at least one-third of whom shall be from the marginalized gender and one tenth from persons with disabilities.”<sup>284</sup> The outcome of these deliberations remains uncertain and a final new constitution for Kenya has not yet been accomplished. Given the limited nature of this assignment, arguments against having a form of special representation being integrated into the Kenyan constitution are not been discussed here. Suffice it to say that most participants favored the idea of guaranteeing seats for specified marginalized groups and that the focus rested on the best way to achieve this goal rather than debating the merits of its inclusion.

**BOX 4: Inadequate Representation of Women in Kenya: Problems & Solutions**

From independence until 2001, 10 women in Kenya were elected to the National Assembly and only eight served as nominated members.<sup>285</sup> Currently 16 women hold seats in the National Assembly.<sup>286</sup> Several problems were identified by Ghai as giving rise to the difficulty in increasing representation of women in the Kenyan Parliament. The first obstacle is traditional prejudice against women. Ghai argues that by enabling participation of women through constitutional provisions, the constitution itself can reduce prejudice. The second barrier is that political parties are reluctant to nominate female candidates. Mandating parties to nominate a prescribed number or proportion of female candidates or adopting an electoral system where parties have incentive to adopt this practice can help to overcome this obstacle. The last representational hurdle is that voters are reluctant to elect women. To this, Ghai responds by embracing the PR electoral system. Proportional representation systems are believed to be more effective than majoritarian systems for electing female candidates – and the larger the constituency the better. It has also been observed that urban constituencies return more female representatives than rural ones.<sup>287</sup>

**Ethiopia**

<sup>280</sup> The Draft Constitution of Kenya 2004: Chapter 14 for the structure and principles of Devolved Governments.

<sup>281</sup> Constitution of Kenya Review Commission (CKRC) National Constitutional Conference, Verbatim Report of Discussion on the Zero Draft Technical Working Committee C (TWC “C”), Chapter 6 “Representation of the People”, Kenya, 24 February 2004 <<http://www.kenyaconstitution.org/downloads/CKRC%20-%20NCC%20-%20TWC%20C%20-%20Chapter%206%20-%20Representation%20-%20BOK%20-%2027.02.04.doc>> (23 July 2004), p.47, regarding Sub Article 4 of the draft constitution.

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*, 32.

<sup>284</sup> *Ibid.*, 11.

<sup>285</sup> Ghai 2002.

<sup>286</sup> See Appendix C.

<sup>287</sup> Ghai 2002.

Article 54(2) of the Constitution of the Federal Democratic Republic of Ethiopia states that “Provisions shall be made by law for special representation of minority Nationalities and Peoples.” Section 3 further provides that there shall be no more than 550 Members of the House and that such members shall be based on population size and special representation of minorities. The constitution creates seats for a minimum of 20 people representing minority “Nationalities and Peoples”, however the details of this system have yet to be clarified or entrenched in law. Part II Article 61(2) of the Constitution, referring to the makeup of the members of the House of the Federation, states “Each National, Nationality, and People shall be represented in the House of the Federation by at least one member. Each Nation or Nationality shall be represented by one additional representative for each one million of its population.”<sup>288</sup>

Ethiopia’s lower house, the Yefedereshn Mekir Bet or Council of the Federation, currently has 117 members, one delegate from 22 minority nationalities and one from each professional sector of the remaining nationalities designated by regional councils which may elect them directly or provide their direct elections.<sup>289</sup>

### **Burkina Faso**

Burkina Faso, like most African nations is wrought with a history of patriarchy and socio-cultural traditions condemning women to subservient and submissive roles. Evading such stereotypes has placed an undue, though inescapable, burden on female representation in Burkina Faso, as the stereotypes themselves effectively obstruct the emerging female political voice. Burkina Faso became independent in 1960. The following two decades saw four different constitutions and rule by military juntas. Although the principle of gender equality was present in the country’s framework, it only achieved constitutional status under Article 12 of the 1991 Constitution. Female representation has steadily risen in Burkina Faso. The first woman was elected to the legislature in 1977 and in 2002 eleven women accounted for nearly 10% of the legislative seats.<sup>290</sup> This increase is in part attributed to the revolution of 1983 which expanded the reach of democracy in the country, and aspired to integrate women into all levels of the decision making process. In 1992, the national legislature designated that the Assembly’s deputy-speaker or vice-president should be held by a woman (1999-2000 proved an exception).<sup>291</sup> Currently a national legislative quota exists to reserve seats for female representatives.<sup>292</sup> In 2002, the Parliament was modified from a bicameral to unicameral system with the National Assembly being designated the single legislative body.

Several challenges further impede the ability for women to succeed in political life of Burkina Faso. The country employs a proportional representation list electoral system. However, women are placed at the bottom of the list, giving them little opportunity for being elected. Moreover, these slots are open only after a woman overcomes the barrier of actually being placed on a party list. As Tiendrebeogo-Kaboret notes, because it is tradition for a woman, upon marriage, to move to the husband’s village, women effectively become outsiders, robbed of their connections to a home village that may have increased the likelihood of being nominated as a candidate on a party list. Education and economic disadvantages also contribute to the political hurdles women face. The literacy rate is approximately 15% and a mere 34% of girls have access to schooling. Moreover, literacy and personal autonomy are unwritten qualifications for holding public office, and are used to exclude women from parliament.<sup>293</sup>

### **Rwanda**

---

<sup>288</sup> The Constitution of the Federal Democratic Republic of Ethiopia.

<sup>289</sup> Election World, Elections in Ethiopia, < <http://www.electionworld.org/ethiopia.htm#2>> (8 June 2004).

<sup>290</sup> Another disappointing bit of information is the comparison of the existing statistics to the promise of the majority party in 2002 to have a quota of 25% women on their list. See Tiendrebeogo-Kaboret 2002.

<sup>291</sup> Alice Tiendrebeogo-Kaboret, “Burkina Faso: Obstacles to Women’s Participation in the Legislature”, International IDEA, 2002, <[http://www.idea.int/gender/wip/PDF/French/English\\_translations/CS-Burkina-Kaboret.pdf](http://www.idea.int/gender/wip/PDF/French/English_translations/CS-Burkina-Kaboret.pdf)> (23 July 2004).

<sup>292</sup> Krook, Mona Lena, “Not All Quotas Are Created Equal: Trajectories of Reform to Increase Women’s Political Representation,” Department of Political Science, Columbia University, 2003, [http://www.quotaproject.org/Conference\\_papers/Krook\\_2003.pdf](http://www.quotaproject.org/Conference_papers/Krook_2003.pdf)> (23 July 2004).

<sup>293</sup> Tiendrebeogo-Kaboret 2002.

Rwanda's lower house boasts 49% female representatives, the highest percentage of any country in the world. The Constitution designates 24 of 80 seats as reserved for women. After the 2003 election (the first after the genocide), 39 of the 80 seats were held by women. Rwandan women lobbied, assisted in drafting the constitution and developed voting guidelines to ensure seats for women.<sup>294</sup> These factors aided Rwandan women in securing parliamentary seats through the country's seat reservation system. While women in Rwanda have improved their political position, pleas for special representation echoed by other marginalized groups such as the Batwa, a hunter-gatherer group making up the smallest ethnic population (approximately 20,000) in Rwanda, have been less successful.<sup>295</sup> There is a void of available information on Batwa status. Though there appears to be no public policy response to the Batwa request for better representation, it should be noted that the Rwandan constitution forbids "any word or act deemed to promote ethnicity."<sup>296</sup>

**BOX 5: Outside of Africa: India's Mechanisms for Castes and Tribes**

Increased political representation for disadvantaged minorities in India has been shown to allow them greater influence on policy-making. In India, before every state election, specified jurisdictions are declared reserved for disadvantaged castes and tribes. Not less than 25% of all legislators in India at both state and national level come from reserved jurisdictions. Only members of a group designated to benefit from the reservation system can stand for election and the entire electorate votes over the same set of candidates. The effect of this system is altering legislator identity and increasing political representation afforded to minority groups in the legislature without diminishing voter identity. Article 332 of 1950 Indian Constitution requires that state-level political reservation reflect the scheduled castes (16% population) and scheduled tribes (8% population) population in every state. These numbers can only be revised after new census estimates is provided. Two independent national-level commissions are responsible for implementing this mandate (Election Commission and the Delimitation Commission). However, while scheduled castes have emerged as an important political block in post-independence India, scheduled tribes remain politically marginalized.<sup>297</sup> Pande's main finding is that resources have been redistributed in favor of groups which benefit from political reservation, evidence that reservations can enhance group's policy influence particularly on targeted redistribution.<sup>298</sup>

**Mauritius**

Mauritius is one of the two oldest and most successful democracies in Africa. In Mauritius, four of the 66 seats in the National Assembly are reserved for the losing political parties to represent various constitutionally recognized ethnic minorities. These seats are appointed by the election commission. These minorities are Hindus, 52% of the overall population; Muslims, 16.6%; Chinese, less than 3%, and Franco-Mauritian/Creole Christians some 2.9%.<sup>299</sup> (See also discussion on constituencies in Mauritius).

**Niger**

The National Assembly in Niger has 83 members, eight of whom are members elected in single-seat national minority constituencies.<sup>300</sup> Prior to multiparty elections in the 1990s, the National Movement for a

<sup>294</sup> Mutume 2004.

<sup>295</sup> Integrated Regional Information Networks, "Rwanda: Batwa appeal to government for affirmative action", Relief Web, 27 March 2003 <<http://www.reliefweb.int/w/rwb.nsf/0/07d5fe6e3003a07e49256cf7001a13de?OpenDocument>> (23 July 2004).

<sup>296</sup> Rodrique Ngowi, "Rwanda: 10 years after genocide" 5 April 2004 <<http://cnews.canoe.ca/CNEWS/World/2004/04/05/408850-ap.html>> (23 July 2004).

<sup>297</sup> Pande 2001 citing Abhijit Banerjee and Rohini Somanathan 2001.

<sup>298</sup> Pande 2001.

<sup>299</sup> See *supra* note 265, Mauritius.

<sup>300</sup> *Ibid*, Nigeria.

Society in Development party set aside five seats for women through the quota system adopted by the party.<sup>301</sup> (see also discussion on constituencies in Niger)

### **Tanzania**

The Tanzanian Constitution provides for special representation of women in Article 66(1)(b), of guaranteeing five seats in the House of Zanzibar 66(1)(c) and also 10 representatives to be appointed by the President to the National Assembly 66(1)(d). Article 78 (1) states that political parties are required to submit names of women to the Electoral Commission on the basis of proportional representation among the parties that secured seats in the National Assembly. With respect to women MPs, part 66(1)(b) provides that the percentage of women in parliament shall have a quota of at least 20% and increase “progressively” thereafter.<sup>302</sup> There are multiple issues for which the electorate has expressed including the proposal to increase the number of presidential appointments. Female MPs are widely regarded as “token” members who take positions on issues based on what will secure their place on the party list. Complaints have also been lodged regarding the passive role female MPs.<sup>303</sup>

### **In Depth Look at Uganda**

Britain colonized Uganda in 1894 and ruled until the country’s independence in 1962. After a number of coups, Idi Amin asserted control of the country. Amin’s rule spawned a violent wave of ethnic intolerance, including the banishment of 60,000 Asians. In 1980, this streak of abusiveness, continued under Obote’s rule, this time targeting Rwandan refugees. Ethnic tensions intensified and another coup ended Obote’s second regime in 1985. The National Resistance Movement (NRM) ruled Uganda through its platform of popular participation grounded in a “no party system of governance” that sought to eliminate pluralism. Although the NRM supported marginalized group rights, this concept was restricted to Asians and women. The NRM’s rule is not immune to opposition or violence. The Lord’s Resistance Army (LRA) is one principal opponent, and its roots may be traced to Christianity and traditional religions and the Allied Democratic Front (ADF), which is comprised of Salaf Muslims and former Ugandan soldiers. Though it is understood that each government has accepted ethnic diversity, it is also clear that each ruling party has sought to promote its own ethnic group by oppressing other ethnic groups.<sup>304</sup>

“Individual merit” has been considered the prerequisite for individuals to participate in Ugandan party politics. This dogma was in part aimed at drowning out ethnicity, religion and party politics as relevant issues that the NRM deemed as harms that create social divisions. Consequently the NRM banned independent political activities, thereby placing a stranglehold on rights of free speech, assembly and expression guaranteed by Uganda’s constitution. One Muslim Ugandan observed that when a member of a minority group tries to politically organize, they are deemed as opposition and therefore a “potential enemy” to the NRM.<sup>305</sup> A major problem noted by Baker is that NRM policy recognizes two narrowly defined minorities. The first group is those individuals central to the NRM struggle and the second consists of “historical minorities” including “women and the disabled.” This definition significantly restricts the scope of Article 32 of the Ugandan Constitution (discussed below). These two groups have been given special legislative representation and subsequently they have gained greater economic and social power as compared to other marginalized peoples. Generally, minority groups are assumed to be represented by their county MP, however, this assumption is incorrect. For example, Asians and the Muslim Tabligh sect in Uganda have taken initiative to alter their historically disadvantaged standing, yet due to the restrictions placed on political power, these efforts have been of limited consequence.<sup>306</sup>

Article 78 (1) of the Ugandan Constitution provides that in addition to parliamentary members being directly elected by constituencies, the Parliament shall also consist of one woman for every district and

---

<sup>301</sup> International Ideal and Stockholm University, “Global Database of Quotas for Women; Niger”, 13 February 2003, <<http://www.quotaproject.org/displayCountry.cfm?CountryCode=NE>>(23 July 2004).

<sup>302</sup> The Constitution of the United Republic of Tanzania, ch. 3.

<sup>303</sup> Rugemeleza Nshala, Washington, DC, Interview 4 June 2004.

<sup>304</sup> Baker 2001; 10.

<sup>305</sup> *Ibid*, fn 61.

<sup>306</sup> Baker 2001; 10

include representatives of the army, youth workers and persons with disabilities. Parliament has the option to add additional groups to this list, however this option has yet to be exercised. Article 73(2) goes on to establish a review clause for the special representation provision and the option to continue, increase or eliminate such representation for these groups. Initial review of the special representative provisions are to be accomplished in the tenth year after the establishment of the Constitution and every five years thereafter.<sup>307</sup> The Constitution further provides for facilitating registration and voting for persons with disabilities.<sup>308</sup> People with disabilities have representatives in Parliament from each of the four regions of Uganda. Women and youth also have special representation in Parliament. These representatives are elected through legally constituted Electoral Colleges.<sup>309</sup> In addition to gender, youth and disability, the Constitution under Article 32 provides that the government may also adopt affirmative action policies to compensate historical wrongs or imbalances impeding any marginalized group. This article also establishes the Equal Opportunities Commission to carry out the mandate of Article 32.<sup>310</sup>

Representation of marginalized groups in Uganda is not reflective of group needs or claims, nor does it effectively include members of marginalized groups in the legislative system.<sup>311</sup> For example, the Batwa Pigmies, a landless group of about 3,000, are represented by individuals outside their group. In 2001, there were several Batwa representatives at the local level, though those individuals were among the more assimilated and not known to be advancing Batwa interests. Most Ugandans are unfamiliar with Batwa issues and stereotype them as being violent and secretive. Although the Tabligh Muslims in comparison to the Batwa they are an organized group with a louder more articulate voice, they consider themselves to be poorly represented and discriminated against.<sup>312</sup> Baker observes that Uganda's current system does not permit marginalized groups to express themselves through organized political parties since minorities cannot organize political parties. Uganda has some 56 ethnic groups classified by linguistic similarities scattered throughout the country. More than three quarters of Uganda's population live in rural areas. While Article 36 of the 1995 Constitution guarantees minorities the right to participate in decision making and to have their views taken into account in the making of national plans and programs, this provision is continually disregarded.<sup>313</sup>

The arguments promulgated both in favor of and against special representation during the Uganda Constitutional Commission of May of 1993 illuminates some of the challenges in opting for special representation. Two central arguments opposing special representation reasoned that special interest groups would "debase" the core principle of democratic representation and that individuals belonging to special interest groups would be granted disproportionate representation as compared to the average person. Additionally, and perhaps articulating the most complex aspect of special representation, critics questioned where the line would be drawn?<sup>314</sup> This issue raises itself repeatedly throughout the course of any special representation discussion, as the groups seeking such representation may indeed be endless and the objections to including a particular group may create additional political and social tensions.

The military is one group advanced as a special interest group which continues to attract a great deal of controversy. Some Ugandans argued that for the 1995 Constitution to be effective, it was vital that the army be vested and committed to its success. These individuals understood the army to be a key force in securing the stability of the country in 1993, when constitutional Commission discussions transpired. They argued that for the Army to work as a partner with civilian authorities, rather than threaten stability it needed to be part of the decision-making process.<sup>315</sup> In light of its role in Uganda's turbulent history, granting special

---

<sup>307</sup> The Constitution of Uganda.

<sup>308</sup> *Ibid.*

<sup>309</sup> The Administration and Cost of Elections Project, "Voting for Democracy (The Ugandan Experience)" <[http://www.aceproject.org/main/samples/vr/vrx\\_w014.pdf](http://www.aceproject.org/main/samples/vr/vrx_w014.pdf)> (10 May 2004).

<sup>310</sup> The Constitution of Uganda art. 32.

<sup>311</sup> Baker 2001.

<sup>312</sup> *Ibid.*

<sup>313</sup> The Constitution of Uganda; see also Baker 2001; 10.

<sup>314</sup> Uganda Constitutional Commission, "The Report of the Uganda Constitutional Commission: Analysis and Recommendations", 1993; 296.

<sup>315</sup> *Ibid.*, 298.

representation to the army was understandably accompanied by much opposition. During the Commission's discussions, opponents questioned the army's supposed neutral and apolitical position, and also expressed fear over any involvement in the legislative decision making body.

The Uganda Constitutional Commission raised two points in favor of special representation. The first claimed that the establishment of special representation would guarantee different factions of society would support the new Constitution. Second, special representation could be used to correct the history of marginalization and exclusion of women, youth and workers from political and social life.<sup>316</sup> In 1993, over 50% of Uganda's population were women and over 60% were youth. The "talent and wisdom" of these members of society was clearly lacking on the parliamentary level. The idea of using a special mechanism to represent these groups in the parliament was identified as but one means of addressing the problem of marginalization. However, it was also noted that such representation was not intended to be a permanent fixture of the legislative system. Rather, once the "fruits of special representation" broke down obstacles impeding disenfranchised groups,<sup>317</sup> such mechanisms would become unnecessary.

Positive results have been associated with the NRM's efforts to advance the role of women in parliament. The NRM is credited with leading efforts to place women in parliament. During debates over the 1995 constitution, the NRM accepted a one-third reservation of seats for women on all local government councils in exchange for the political support of the Constituent Assembly Women's Caucus on other issues.<sup>318</sup> Currently, women hold 25% of the seats in the national parliament. As noted above, Uganda's Constitution establishes quotas and reserved seats as a means of affirmative action and for redressing the historical disadvantages faced by women and the disabled.

Byanyima, a female Ugandan MP, has commented that the NRM exhibited an early openness to discussing gender issues, despite the absence of "enlightened" gender perspectives at that time.<sup>319</sup> However progressive Ugandan leadership has become, the rural and patriarchal parts of society remain opposed to progressive changes. Therefore, though women retain physical seats in parliament, they typically receive little support from their "progressive" male colleagues.<sup>320</sup> Further, because women are elected by special districts, not interest groups as is the case for youth, workers and people with disabilities, women do not represent a specific female constituency. Some argue that this is problematic, insofar as the purpose of affirmative action is to "increase women's voice in parliament" not to create special representation for them. Along these lines, female MPs do not consider themselves to be representing women's issues nor are they held accountable to women. In 2006, Uganda is expected to transition to a multiparty system.<sup>321</sup>

Guaranteed electoral seating inspires much debate and an equal amount of praise. While many agree that it is a quick and dirty way to infuse state parliaments with greater representativeness, the value of those representatives elected under this system remains questionable. As demonstrated from the cocktail of overviews, the structure of guaranteed electoral seats can be multifaceted. Adaptability to country specific issues appears to be the pearl inherent in this arguably favored mechanism.

### **ADVISORY BODIES**

Advisory bodies constitute another form of special representation. When discussed in terms of their relationship or role in a legislative capacity, they are generically defined as an independent body charged with consulting the legislature.<sup>322</sup> However, these bodies usually have significantly less power than the lower house of a bicameral legislature. Though advisory bodies are presumably intended to be an integral part of the decision making process, in the African context, this does not appear to be the case. In Africa the role of an advisory body such as a house of traditional leaders or second chamber is typically restricted to

---

<sup>316</sup> *Ibid*, 296.

<sup>317</sup> *Ibid*, 297.

<sup>318</sup> Byanyima 2004.

<sup>319</sup> *Ibid*, 3.

<sup>320</sup> *Ibid*.

<sup>321</sup> See The Uganda Constitution; *see also supra* note 53.

<sup>322</sup> de Varennes 1998.

advising. The issues an advisory body consults the parliament on are unique to their individual mandate, though typically their focus is narrow in scope. The legislature may be obliged to consult the advisory body only on matters affecting the interests of groups represented by that advisory body.<sup>323</sup> Alternatively, an advisory body may be required to initiate an investigation or present a report to the parliament. In the case of many African nations, the advisory body represents marginalized groups from various segments of society such as indigenous people or tribes.<sup>324</sup> Creating advisory bodies comprised of traditional leaders has been a transitional tool used to aid the democratic process while striving not to abruptly abandon and forsake traditional ways.<sup>325</sup> Essentially, these institutions emerged as a form of integrating the old with the new. Second chambers are another form of advisory body. They are seen as a tool to provide the legislature with perspectives from a more representative cross-section of society. This type of body promises to improve integration and more accurately reflect the diverse views and needs of heterogeneous societies in the decision making process. Occasionally, as is the case in Botswana, the house of traditional leaders may also serve as the second chamber.

The particular structure, representative capacity and authority assigned to an advisory body may vary widely across institutions. Members may be appointed or composed of elective representatives of various groups, as is the case with traditional leaders.<sup>326</sup> Advisory bodies may originate from organic grassroots organizations or be created by constitutional mandate or legislative initiative. Societies employing these mechanisms may also opt to use any number of additional tools to enhance representational capacity.<sup>327</sup> The examples below are used to illustrate methods establishing advisory bodies and elaborate upon their purpose, shortcomings and realm of influence.

**TABLE 4: ARGUMENTS FOR AND AGAINST ADVISORY BODY**

<b>Pro</b>	<b>Con</b>
<ul style="list-style-type: none"> <li>• Independent consultative body</li> <li>• Legislature or executive consult or may be obligated to consult on specific matters</li> <li>• Means for representing particular interests/issues, often those of marginalized communities</li> <li>• Transitional tool used to facilitate moving to democratic process</li> <li>• Improves integration of diverse views and needs in the decision making process</li> <li>• Fosters dialogue between different cultural/ethnic groups</li> <li>• Increases value of decisions taken in parliament</li> </ul>	<ul style="list-style-type: none"> <li>• Limited authority, usually narrow in scope</li> <li>• Perpetuates and institutionalizes archaic or “backwards” lifestyles</li> <li>• Members often are appointed, thereby compromising democratic function of system</li> <li>• Legitimizes oppressive behavior and customs (ie. sexism, patrimonial/hereditary leadership)</li> <li>• Representatives often fail to advocate on behalf of their constituency</li> <li>• Considered discriminatory since privilege is awarded arbitrarily</li> <li>• Ill defined duties of representatives</li> <li>• Pervasive corruption</li> </ul>

### **Traditional Houses**

The idea underpinning a house of chiefs is that all democracies have at least one house in their legislature representing all citizens on questions of national relevance. Some countries have a second house addressing more local interests. The house of chiefs (or house of traditional leaders) is intended to reflect local interests in the legislature.<sup>328</sup> Indigenous and tribal groups are typically marginalized populations in large part due to a lack of infrastructure, resources and representation. Traditional houses are similar to second

<sup>323</sup> *Ibid.*

<sup>324</sup> *Ibid.*

<sup>325</sup> Moreti 2004.

<sup>326</sup> de Varennes 1998.

<sup>327</sup> *Ibid.*

<sup>328</sup> Don Ray, “Africa’s House of Chiefs: A Model for Aboriginal Governance in Canada”, The International Development Research Centre, April 2001, <[http://web.idrc.ca/en/ev-5440-201-1-DO\\_TOPIC.html](http://web.idrc.ca/en/ev-5440-201-1-DO_TOPIC.html)> (25 July 2004).

houses and are ideally designed to respond to the needs of indigenous communities' and advocate on their behalf. Traditional houses institutionalize forms of traditional governance and, under optimal conditions one of their functions is to foster dialogue between different ethnic groups.<sup>329</sup> In this way, traditional houses may be a critical and effective tool in conflict resolution.<sup>330</sup> Houses of Chiefs in Botswana, Ghana and South Africa are authorized to advise their respective governments on issues concerning customary rights and laws. Another way these representatives interact with government is through debate with state officials, civil servants and judges.<sup>331</sup>

Despite the optimistic potential of this mechanism, houses of traditional leaders and houses of chiefs are flawed in multiple ways. For example, because the title and power of chieftaincy is both hereditary and patriarchical, it is seen as sexist. It is also thought to go against the democratic grain. In fact, the constitutional provisions, legislation and mere existence of these institutions are considered discriminatory since they function to afford certain articulated groups privileges on what is understood by some to be an arbitrary basis. The responsibilities and duties of traditional leaders is in most cases ill-defined. In short, these systems are seen by progressives as "backwards"<sup>332</sup> and reinforcing outdated lifestyles. Some factions of society simply wish the "old" ways would surrender to contemporary culture and view this institution as an enabling mechanism that perpetuates outmoded values. Leaders represented in these bodies are notoriously ineffective or unmotivated advocates for their constituencies. In fact, there are numerous instances of corrupt and self-indulgent behavior and an overall lack of effort to use this system to benefit tribal constituents.

### **South Africa**

Section 184 of the 1993 South African interim Constitution provided a much greater role for traditional leaders than the final 1996 Constitution. The 1993 Constitution established a Council of Traditional Leadership and created a framework under which it was to be shaped. This Council consisted of a chairperson and 19 representatives, who were to be elected by traditional authorities. In addition, the interim Constitution required that bills relating to traditional customs and laws be reviewed by the Council, which was armed with a delaying power that could temporarily suspend such bills from being established as law.<sup>333</sup>

The Constitution of the Republic of South Africa recognizes the role of traditional leaders<sup>334</sup> and provides that legislation may create institutions at the local, provincial and national levels. Through these institutions, traditional ways of life may be represented and potentially integrated into decisions relating to matters of customary rights and laws.<sup>335</sup> Specifically, section 211 (1) of the permanent Constitution recognizes the "institution, status and role" of traditional leaders, though it compromises the 1993 provisions by subjecting the powers to the constitution<sup>336</sup> and to subsequent legislation.<sup>337</sup> Acknowledging the function of traditional leaders and including them in decisions affecting their respective communities may be understood as an effort by the drafters of the constitution to more gently transition from traditional power to modern democratic reform.<sup>338</sup> However, the limiting clause has the effect of narrowing the capacity of traditional authority. While the extent of the "role and status" has yet to be defined with any meaningful precision, this situation has given rise to tension between traditional leaders and elected

---

<sup>329</sup> *Ibid.*

<sup>330</sup> Don Ray, "Enhancing the Role of Traditional Leaders in African Governance", The International Development Research Centre, March 2001, <<http://www.ucalgary.ca/UofC/faculties/SS/POLI/RUPP?taarn/idrcreport.html>> (25 July 2004).

<sup>331</sup> Ray April 2001.

<sup>332</sup> Moreti 2004.

<sup>333</sup> Gansi Mabutla, Grank, "The Fate of Traditional Leaders in Post-Apartheid South Africa", Southeastern Regional Seminar in African Studies, 2001.

<sup>334</sup> The Constitution of the Republic of South Africa, ch. 12.

<sup>335</sup> *Ibid*

<sup>336</sup> *Ibid*, art. 211.1.

<sup>337</sup> *Ibid* art. 211.2

<sup>338</sup> Deputy Chief Minister Thandabantu Nhlapo, Interview, The Embassy of South Africa, Washington, D.C., 13 May 2004.

officials.<sup>339</sup> The most significant reduction in traditional authority (as compared to the 1993 Constitution) has occurred at the national level, section 212(2)(a) of the final Constitution states the creation of a council of traditional leaders is optional and that national legislation “may”—but not must—provide for such a body.<sup>340</sup> It is worthy to note that local tribal councils are established under schedule 6 section 25(1)(b) of the final Constitution. Another important clause to integrate into this analysis is the requirement that the courts apply traditional and customary laws when relevant.

The Council of Traditional Leaders Act 1997 establishes the Council of Traditional Leaders in section 2(1) to sec 7(1) which declares that the role of the Council is to “promote the role of traditional leadership within a democratic constitutional dispensation and enhance unity and co-operation between the council and various houses and address areas of common interest.”<sup>341</sup> Section 7 (2)(a) provides that the Council may advise the national government and make recommendations relating to matters of traditional leadership and customary law. It may also conduct its own investigations and advise the President on request.<sup>342</sup> The Council of Traditional Leaders Amendment Act 1998 changed the Council’s name to the National House of Traditional Leaders.<sup>343</sup>

Interestingly, the 1996 Constitution fails to delineate the scope of traditional authority or ensure its integration into the decision making process. From one angle, these legal mechanisms and the institution it creates provide the building blocks for a venue within which traditional communities may exert greater influence over their destiny. (Despite this fact that there is no clearly articulated process carved out for their inclusion.) However, another perspective argues that the nature of the National House of Traditional Leaders appears to further marginalize the leaders and communities. In other words, the National House of Traditional Leaders is essentially prevented from influencing society at large. The body also remains patriarchal, and unwilling to alter this trait. For example, the House of Traditional Leaders rejected instituting a gender quota. However, it should be noted that two women from Kwazulu-Natal were recently appointed to be traditional leaders.

Currently, traditional leadership is institutionalized at the local, provincial and national levels. The National House of Traditional Leaders consists of chiefs sent up from the provincial council. Six provinces (Eastern Cape, Free State, KwaZulu-Natal, Limpopo Province, Mpumalanga and North West) have Houses of Traditional Leaders, which elect three members to be representatives in the National House.<sup>344</sup> While National House is said to be loosing power, recent legislation appears to be increasing its embrace of customary norms.<sup>345</sup> Mabutla has commented that “tribalistic ideology” remains the biggest threat to South African politics.

## **Uganda**

Uganda has not created an advisory body of traditional leaders and in fact the constitution specifically limits any future political influence of these leaders. Chapter 16 of Uganda’s Constitution recognizes traditional or cultural leaders. However, section 246(3)(e) provides that no traditional or cultural leader may take part in partisan politics. Section 246(3)(f) further narrows the authority of traditional or cultural leaders stating that such leaders may not exercise any legislative or other governmental powers.<sup>346</sup> Much of the focus in this Chapter is placed on ensuring that the role of traditional or cultural leaders will be constitutionally constrained and that any power will not interfere with other rights accorded to citizens under the constitution.

---

<sup>339</sup> Mabutla 2001.

<sup>340</sup> See The Constitution of the Republic of Ghana ch. 22.

<sup>341</sup> The Council of Traditional Leaders Act No. 10, South Africa, 1997.

<sup>342</sup> The official South African Government Website, “Traditional Leaders”, <[http://www.safica.info/ess\\_info/sa\\_glance/government/govtrad.htm](http://www.safica.info/ess_info/sa_glance/government/govtrad.htm)> (17 May 2004).

<sup>343</sup> The Council of Traditional Leaders Amendment Act, No. 85, South Africa, 1998.

<sup>344</sup> See *supra* note 342.

<sup>345</sup> [Recognition of Customary Marriages Act, No. 120](#), South African, 1998.

<sup>346</sup> The Constitution of the Republic of Uganda.

## Ghana

Chapter 22 of the Constitution of the Republic of Ghana guarantees the institution of “chieftaincy” and traditional councils.<sup>347</sup> Negative rights are assigned to parliament, effectively limiting the legislature’s ability to revoke any constitutionally derived right of traditional leaders and further ensuring that no law “in any way detracts or derogates from the honor and dignity of the institution of chieftaincy.”<sup>348</sup> This powerful constitutional language entrenches the function of traditional leaders. The National House of Chiefs does not have legislative power, though advises on all matters affecting the country’s chieftaincy and customary law.<sup>349</sup> From a comparative constitutional law perspective, the following excerpt illustrates the important role ascribed to Ghana’s traditional leaders:

### Article 272

The National House of Chiefs shall-

- (a) advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy;
- (b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin;
- (c) undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful;
- (d) perform such other functions, not being inconsistent with any functions assigned to the House of Chiefs of a region, as Parliament may refer to it.

More so than other African constitutions, the Constitution of Ghana envisions a path for traditional leaders that both integrates the role of chieftaincies and traditional councils into society at large while preserving their unique traditional nature. The intricate structure of the House of Chiefs and the support the House receives from other wings of government firmly root this advisory body into Ghana’s governing system. Article 271 specifies that members of the National House of Chiefs shall be elected by the House of Chiefs of each region.<sup>350</sup> The process is quite elaborate since there are hundreds of traditional councils which elect representatives to one of 10 Regional Houses of Chiefs. Of the members in the 10 Regional Houses, five from each are chosen to be representatives in the National Houses. The Ghanaian government also provides an administrative staff for the National House of Chiefs and has a Chieftaincy Division in the President’s Office.<sup>351</sup>

As mentioned above, one argument against traditional institutions is their inherently patriarchal and undemocratic nature. Women in particular have taken issue with the lack of gender equality in these bodies. These inequalities form a common basis for uniting in support of the women’s movement in Africa and for increasing equitable representation. In southern Ghana, however, women are better represented than in like systems across the continent. “Queen mothers”, while not exactly representatives, are women who advise the Chiefs and are considered moral leaders of the community. While this role exists at the grassroots level, it has yet to penetrate into the upper echelons of the House of Chiefs’ hierarchy.<sup>352</sup>

Ghana’s National House of Chiefs has assumed an independent lobbying role in promoting long-term national interests, rather than the special interests advocated by upper houses in other African countries. It is also said to have played a critical role in helping to transition the country to democracy.<sup>353</sup> Prompted by private investors wishing to purchase land in Ghana, the government undertook an analysis of property rights. In so doing, it requested the advice of the House of Chiefs, who in turn influenced the outcome of

---

<sup>347</sup> The Constitution of the Republic of Ghana.

<sup>348</sup> *Ibid*, art. 270 (2)(b).

<sup>349</sup> U.S. Department of Army, “The Forth Republic: The 1992 Constitution”, <http://countrystudies.us/ghana/100.htm> (25 July 2004).

<sup>350</sup> The Constitution of the Republic of Ghana

<sup>351</sup> Ray March 2001.

<sup>352</sup> Ray April 2001.

<sup>353</sup> U.S. Department of Army, “Country Studies: Interest Groups and National Politics” <<http://www.country-studies.com/ghana/interest-groups-and-national-politics.html>> (25 July 2004).

the government's decision to maintain the country's system of property rights. The House of Chiefs reasoned that private land ownership would potentially create a landless class and ultimately prove "socially disruptive".<sup>354</sup>

### **Botswana**

Botswana is the oldest and most successful democracy in Africa. The nation has been independent and democratic since 1966.<sup>355</sup> Like traditional leaders elsewhere in Africa, their leadership role is hereditary. Botswana's House of Chiefs was established in the 1960s. It was created to marry the new with the old and gradually introduce ideas of western democracy.<sup>356</sup> The institution is enshrined in Part III of the Constitution and the appointment of the chiefs is spelled out in the Chieftainship Act.<sup>357</sup> The House of Chiefs deal with all customary matters like property, land change and other customary laws and rights. While the National Assembly is not required to consult the House of Chiefs on general matters, they are obliged to consult them on matters affecting customary laws and rights. However, the National Assembly may pass laws without their approval.<sup>358</sup> In addition to their advisory role, members of the House of Chiefs also participate in the judicial system.<sup>359</sup> The House of Chiefs in Botswana has the ability to increase government accountability through its power to compel a cabinet minister to answer questions about his or her government portfolio.<sup>360</sup> Like Ghana, Botswana also has administrative offices designated to support the House of Chiefs.

Article 85 of the Constitution of Botswana details the tasks assigned to the House of Chiefs, with provisions similar to those contained in Ghana's constitution. The House of Chiefs functions include the ability to address any matter within the country's legislative or executive authority that it deems important to "take cognizance in the interests of the tribes and tribal organizations it represents and to make representation" to the President or National Assembly.<sup>361</sup> Also included in this section is the foundation for the reciprocal nature of the relationship between the House of Chiefs and both the legislative and executive branches. The language here establishes the building blocks for a culture of inclusion and flexible.

While the House of Chiefs institution appears well structured in Botswana, communities have expressed dissatisfaction with their representation. For example, one San female representative from the Chobe district is believed not to be voting on behalf of her San constituency.<sup>362</sup> The House of Chiefs initially represented the eight principle tribes in Botswana. However, during the 1997 review process, communities expressed the need to increase the number of representatives in the House of Chiefs. Accordingly, in 2001, a constitutional amendment increased the number of representatives to 15.<sup>363</sup> This number is still considered insufficient by some, specifically those excluded and those seeking an end to "racism".<sup>364</sup> The Basarwa, a San people, are a marginalized and scattered population of hunter-gatherers that complain of their lack of representation in the House of Chiefs and the fact that they are not acknowledged as a tribe.<sup>365</sup> In 2000, President Mogae appointed a task force to review the House of Chiefs and its constitutional basis.

---

<sup>354</sup> Ray April 2001.

<sup>355</sup> Jeremias Blaser, "Report on the 'Southern Sudanese Study Tour' to Botswana", November 2003, [http://www.gurtong.com/downloads/Sudanese\\_Visit\\_to\\_Botswana.html](http://www.gurtong.com/downloads/Sudanese_Visit_to_Botswana.html) (25 July 2004).

<sup>356</sup> Moreti 2004.

<sup>357</sup> *Afrol News*, "Botswana President comes clean on tribalism allegations", Based on article by Letshwiti Tutwane, Mmegi, April 2002 [http://www.afrol.com/News2002/bot004\\_mogae\\_tribalism.htm](http://www.afrol.com/News2002/bot004_mogae_tribalism.htm) (25 July 2004).

<sup>358</sup> Moreti 2004.

<sup>359</sup> Ray March 2001.

<sup>360</sup> *Ibid.*

<sup>361</sup> The Constitution of Botswana art. 85.3.

<sup>362</sup> Hitchcock on 2004.

<sup>363</sup> Moreti 2004.

<sup>364</sup> *The Daily News*, "BPP rejects revised draft White Paper", 17 July 2002, <<http://www.gov.bw/cgi-bin/news.cgi?d=20020717>> (25 July 2004).

<sup>365</sup> *Survival International*, "Botswana: Tensions Heightened over fate of Basarwa", October 2003, [http://www.irinnews.org/report.asp?ReportID=37586&SelectRegion=Southern\\_Africa](http://www.irinnews.org/report.asp?ReportID=37586&SelectRegion=Southern_Africa) (25 July 2004).

The ensuing White Paper on the Balopi Commission proposed to change several constitutional sections to make them “tribal neutral” however its recommendations failed to be implemented.<sup>366</sup>

### **The Second Chamber**

The history of second chambers is intimately linked to conflict resolution. These chambers were construed as a way to balance cultural, ethnic and social instability.<sup>367</sup> During a Seminar for Parliamentarians of West and Central Africa, participants addressed the question of the representative nature of parliaments. This proceeding stressed the importance for all sectors of society, particularly women and ethnic groups, to be involved in the decision-making process. Second chambers are established to help satisfy the need for better integrating different factions of society and making the shift towards modern democracy more gradual, as witnessed in Burkina Faso.<sup>368</sup> Second chambers have also been identified as a type of think-tank that can function to increase the reliability of decisions taken by parliament.<sup>369</sup> African second chambers are unique in that they are designed to account for “diverse social geography and the need to re-introduce equality via specific measures and adapted practices, in countries prey to social, racial and cultural imbalances.”<sup>370</sup> For example, importance is given to representation of socio-professional categories in the Egyptian consultative assembly and the second chambers of Burkina Faso and Morocco.<sup>371</sup> However, unlike second chambers elsewhere in the world, most of these bodies in Africa lack voting powers. The magnitude of power bestowed upon Ethiopia’s second chamber is extremely rare. African nations that boast bicameral systems include: Algeria, Botswana, Burkina Faso, Ethiopia, Egypt, Gabon, Lesotho, Liberia, Namibia, Morocco, Nigeria, South Africa and Swaziland.

### **Ethiopia**

As stated previously, Ethiopia’s legislature is bicameral. The House of the Federation (Yefedereshn Mekir Bet), Ethiopia’s second chamber, has 112 members (71 of which are appointed by states and 41 are allocated according to population). Every “nation or nationality” has one seat per one million of its population.<sup>372</sup> Composition of the House of the Federation is not rigid, election of its members may be direct or indirect and this decision lies with state councils. While this practice allows local nomination practices and elections of ethnic representatives to be tolerated it also leaves room for abuse. State councils are free to choose whether elections will be held or whether they will appoint House members. Juxtaposed with the trends of power dispossession linked to other second chambers in Africa, the House of the Federation remains relatively powerful and its duties are central to the function of the state. This institution is facilitating Ethiopia’s move towards democracy, though it remains necessary to have some measure of checks and balances installed to prevent abuse of power. Though the second chamber was created in 1994, it was not until 2001 that it gained resources and increased responsibility through a special government proclamation. This proclamation grew out of a power struggle in the ruling party and resulted in a scale back of power in the Prime Minister’s Office.<sup>373</sup>

Arguably, the House of the Federation has too many duties within its purview. It is responsible for interpreting the constitution, determining issues regarding the “rights of nations, nationalities and peoples to self-determination”, and is also charged with promoting unity through mutual consent. The House must also resolve disputes between states, divide federal and state tax revenues and set federal subsidies allocated to states. In addition, it is authorized to order federal intervention if any state violates the

---

<sup>366</sup> See *supra* note 364.

<sup>367</sup> “Bicameralism in African and the Arab world”, Sénat, February 2001, <[www.senat.fr/senatsdumonde/bicamerafrica2001english.html](http://www.senat.fr/senatsdumonde/bicamerafrica2001english.html)> (25 July 2004).

<sup>368</sup> *Ibid.*

<sup>369</sup> The Inter-Parliamentary Union, “Final Report of the Seminar for Parliamentarians of West and Central Africa” Ouagadougou (Burkina Faso), 12-15 March 1996 <<http://www.ipu.org/splz-e/b-faso.htm>> (25 July 2004).

<sup>370</sup> See *supra* note 367.

<sup>371</sup> *Ibid.*

<sup>372</sup> Tom Pätz, “Ethiopia’s return to federalism, A renewed House of the Federation could bolster minority rights and languages” 1 March 2004 [www.forumfed.org/publications/pdf/v4n1.pdf](http://www.forumfed.org/publications/pdf/v4n1.pdf) (25 July 2004).

<sup>373</sup> *Ibid.*

constitution or endangers the constitutional order.<sup>374</sup> Many societal and political changes have been attributed to the success of the House of Federation. For example, there has been an increase in debates and resolutions of intergovernmental conflicts and discussions on regional development policies and ethnic differences. In addition, the House of the Federation has created various groups to help manage “unity in diversity.” Moreover, the developments within the second chamber appear to be supported by the government at large.<sup>375</sup>

### **Burkina Faso**

In December 1995, the constitutionally mandated second chamber of Parliament was installed, completing the government structure envisioned by the 1991 Constitution.<sup>376</sup> The Chamber of Representatives is the upper house in parliament though its powers do not extend beyond an advisory role. It is comprised of representatives from all sectors of civil society, including traditional chiefs, NGOs and religious groups. For example, approximately 30 of the 150 seats in the upper house are allocated to civil society organizations representing from various special interest groups.<sup>377</sup>

### **Swaziland**

British conquest of Swaziland in 1903 reduced the King’s role to that of a paramount chief. In 1968, the new Constitution declared the nation a “constitutional monarch”, and the King regained some of the original authority bestowed upon him. According to the 1968 Constitution, parliament was independent. However, in 1973 the King dismantled the parliament, abolished most of the constitution and banned all political parties.<sup>378</sup> In 1978 the King appointed a “Tinkhundla” (constituencies)<sup>379</sup> parliament, however, its role was merely advisory. The Tinkhundla was organized by Regional Councils according to the four regions of the country; Hhohho, Manzini, Shishelweni and Lebombo. However, these Regional Councils were ineffective.<sup>380</sup> One of the main problems with the Tinkhundla was attributable to the power imbalance between the Tinkhundla and the chiefs in Libandla.<sup>381</sup> These chiefs were given the power of development as granted through the Swazi Administration Act 79/1950, direct access to the King and the duty of land allocation while members of the parliament appeared to be nothing more than talking heads.<sup>382</sup>

The 1968 Constitution and its 1978 and 1992 amendments provide for a bicameral Parliament with “equal powers to enact laws”. The House of Assembly consists of 65 members, comprised of 55 members elected from the 50 constituencies and 10 members appointed by the Head of State. The Senate is composed of 30 members, 10 of whom are elected by the House of Assembly and 20 appointed by the King. The 1992 Establishment of Parliament Order No.1 provides that those appointed by the Head of State in either Chamber include *inter alia* Chiefs and Members of the Royal Family<sup>383</sup> both on a rotational basis, as well

---

<sup>374</sup> *Ibid.*

<sup>375</sup> *Ibid.*

<sup>376</sup> U.S. Department of State, “Burkina Faso Country Report on Human Rights Practices for 1997”, Bureau of Democracy, Human Rights, and Labor, 30 January 1998, <<http://stockholm.usembassy.gov/human/human97/burkinaf.html>> (14 May 2004).

<sup>377</sup> “Who owns civil society?”, SPORE no 79 February 1999 <[http://spore.cta.int/spore79/SP1\\_79A.html#anchor831889](http://spore.cta.int/spore79/SP1_79A.html#anchor831889)> (14 May 2004); *see also* “Burkina Faso – Government”, Embassy of Burkina Faso <<http://expedition.bensenville.lib.il.us/Africa/BurkinaFaso/government.htm>> (25 July 2004)

<sup>378</sup> Mbabane McDermott, M.D., “Common Country Assessment—Swaziland 1997: Government and Participation”, 1997, <[http://www.ecs.co.sz/cca/cca\\_11.htm](http://www.ecs.co.sz/cca/cca_11.htm)> (25 July 2004).

<sup>379</sup> Tinkundla are the administrative divisions by which Swaziland is separated. *See* “The Summary of the Draft Constitution of the Kingdom of Swaziland”, Chapter VIII, Swaziland Government Homepage, <<http://www.gov.sz/home.asp?pid=2999>> (25 July 2004).

<sup>380</sup> McDermott 1997.

<sup>381</sup> *Ibid.*

<sup>382</sup> *Ibid.*

<sup>383</sup> Neither Chiefs nor Members of the Royal Family are permitted to run for elections due to their social status in Swazi Society. *See* “About Parliament”, Swaziland Government Homepage, <[www.gov.sz/home.asp?pid=398](http://www.gov.sz/home.asp?pid=398)> (25 July 2004).

as other special interests such as women, youth and members of religious groups based on their representation in either Chamber.<sup>384</sup> In 1993 parliamentarians were directly elected by secret ballot, though experts ascribed little credibility to these elections. Further undermining this potential system of representation is the fact that people did not have the right to express complaints to their supposed representatives.<sup>385</sup>

Currently, Swaziland is undergoing a constitutional review process. However, critics of the draft constitution find its provisions will do little to improve on previous parliamentary has been in the performance. The design of the parliament is of particular concern as approximately one third of the body is appointed by the King. According to the proposed constitution, the parliament would consist of up to 31 Senators, 20 of whom would be appointed, and no more than 76 members in House of Assembly or second chamber, 10 of whom would be appointed by the King.<sup>386</sup> These figures reflect a slight increase in the members of both houses. Candidates in the House of Assembly are to be elected at the regional level by traditional local councils.<sup>387</sup> An Electors and Boundaries Commission is established under Chapter VIII of the Draft Constitution with a mandate for reviewing the boundaries of tinkhundla areas. This same section further states that special representation will be provided for marginalized groups, with particular emphasis on representation for women. No particulars are detailed in this regard.<sup>388</sup> Swaziland continues to be a no-party state that outlaws political parties.<sup>389</sup> This reality leads one to reasonably conclude that the process of representation is hampered and the ability of disenfranchised groups to express themselves through political activity is wholly inadequate. Referring to the Libandla as a legislative body appears to be a misnomer, as its law making function is artificial and it does not possess any independent power. In a 2003 survey, Swazi voters expressed the desire for “drastic” political change and a hunger for an accountable government.<sup>390</sup>

### **Malawi**

Section 68-72 of the Constitution of the Republic of Malawi called for the creation of a second chamber of parliament, or “Senate”.<sup>391</sup> The Senate was intended to have 80 members comprised of one from each District, a Chief from each District, and 32 additional Senators that would be nominated from various societal groups. These 32 senators would represent women’s organizations, the disabled, individuals from the health, education, farming and business sectors and from trade unions, as well as individuals based on outstanding service to the public and religious affiliation.<sup>392</sup> The Senate was designed to be part of a system of checks and balances, to scrutinize the National Assembly. However, the Senate was never established. In 2001, the relevant constitutional sections were repealed, thereby effectively abolishing the idea of an upper house.<sup>393</sup> Although society at large was opposed to this move the government repeatedly diverted funds that had been allocated for the purpose of setting up the senate.<sup>394</sup>

### **Summary of Advisory Bodies**

---

<sup>384</sup> *Ibid.*

<sup>385</sup> McDermott 1997.

<sup>386</sup> “The Summary of the Draft Constitution of the Kingdom of Swaziland”, Chapter VIII, Swaziland Government Homepage, <<http://www.gov.sz/home.asp?pid=2999>> (25 July 2004).

<sup>387</sup> “Swaziland Government”, Tiscali Reference, 2004,

<<http://www.tiscali.co.uk/reference/encyclopaedia/hutchinson/m0019864.html>. > (25 July 2004).

<sup>388</sup> *See supra* note 386.

<sup>389</sup> McDermott 1997.

<sup>390</sup> “Swaziland: Polls show rising desire for less royal rule” *UN Office for the Coordination of Humanitarian Affairs*, September 23, 2003

<[www.irinnews.org/report.asp?ReportID=36771&SelectRegion=Southern Africa&Sel...](http://www.irinnews.org/report.asp?ReportID=36771&SelectRegion=Southern Africa&Sel...) > (25 July 2004).

<sup>391</sup> The Constitution of the Republic of Malawi, sec. 68-72.

<sup>392</sup> *Ibid.*

<sup>393</sup> Dr. Heiko Meinhardt and Dr. Nandini Patel, “Democratic Transition and consolidation in Africa, Malawi’s process of democratic transition: An analysis of political developments between 1990 and 2003”, November 2003, <[http://www.kas.de/db\\_files/dokumente/7\\_dokument\\_dok\\_pdf\\_4009\\_2.pdf](http://www.kas.de/db_files/dokumente/7_dokument_dok_pdf_4009_2.pdf). > (25 July 2004).

<sup>394</sup> *Ibid.*

Although little information on the effectiveness of advisory bodies exists, to date, these bodies do not appear to be the most useful or effective representation mechanism. Whether it is their historical grounding in executive manipulation, ill design or the lack of concrete power, of the three mechanisms discussed herein, appear advisory bodies to have the least amount of political influence and the least effective means to represent marginalized populations. That said, if constructed and empowered properly, advisory bodies may still serve a positive function. With greater authority and tools for advocacy, representatives may better carry out the will of otherwise unrepresented populations. Furthermore, it cannot go unnoticed that advisory bodies in Africa still reflect a sincere attempt to appeal to mentalities, lifestyles and organization of traditional communities. Indeed, both second chambers appear an authentic attempt to include local perspectives in decision making. However, when the very origin of advisory bodies and the constitutional provisions and legislation through which they were created ascribes narrow and irrelevant duties that may be overlooked, undermined or simply erased, then true purpose of their existence is brought into question. The trend in most African nations appears to increasingly diminish the importance of these bodies and to continue reducing their already minimal relevancy. Though promising in theory, advisory bodies seem to further incubate and foster mistrust in the legislature and offer little to their constituencies. Ideally these institutions should add an additional layer of integrity to the law making process and not serve to quiet disgruntled citizens left outside of the mainstream political process.

### **Important Components for Structuring Special Representation**

The three mechanisms discussed above are by no means exhaustive. Other mechanisms such as minority veto, special constituencies, national commissions, and ombudspersons<sup>395</sup> are other tools that have been used to create and support special representation. Though historically, many of these mechanisms served to marginalize groups in the colonial era, they may now be employed to reverse the wrongs of the past and establish representational balance.

While no cookie cutter blueprint for constructing mechanisms of special representation exists, several basic principals may be derived from international law, African history and the common objectives of the various representational mechanisms. First and foremost, there must be recognition that people in a society are marginalized. It must be acknowledged that minority populations have been willfully or incidentally excluded from society and face discrimination at the hands of mainstream populations. It is necessary to recognize that minority views and needs are neither presented nor integrated in public discourse and lack meaningful avenues of expression. Recognition is the precursor to representing marginalized people. It is also necessary that there be an unambiguous definition of what groups are being referred to as marginalized.<sup>396</sup> The ICCPR states that the existence of a minority classification is a matter of fact rather than law and should be based on objective criteria.<sup>397</sup> Once a minority group has been identified, it is critical that earnest political will acknowledge and prioritize the need to take measures towards improving that group's marginalized status. Given the history of corruption and skepticism of legislators among many Africans, the integrity of political will is a critical issue. Accordingly, at this stage a government may chose to pursue formalized mechanisms for special representation as a remedy for marginalization.

There are several ways political will can be manifested. The most well-regarded measures include enshrining provisions in the constitution or enacting legislation. Ideally, a provision will be constitutionally entrenched and its particularities spelled out in legislation. The significance of constitutional provisions should not be understated. One delegate to the Constitutional Review in Kenya noted that "whether you are a majority or minority, the Constitution becomes a protecting tool for everybody so that we are all equal."<sup>398</sup> Another equally astute remark by Commissioner Mutakha Kangu resolved that:

"Constitutionalism is more important than democracy, democracy should be looked at as just one aspect of Constitutionalism and if there are any circumstances under which

---

<sup>395</sup> See *supra* note 28.

<sup>396</sup> Slimane 2003.

<sup>397</sup> Lennox 2003; see also Office of the Higher Commissioner for Human Rights, "General Comment No. 23: The rights of minorities (Art. 27)" 4 August 1994, <<http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111?Opendocument>> (25 July 2004).

<sup>398</sup> See *supra* note 45; 177, quote stated by Hon. Delegate Rotini Philip Ruto

majorities can run away with power and minorities are left with nothing constitutionalism will step in and say no we must allow majorities their chance but we must also protect minorities.”<sup>399</sup>

Additional factors may influence the success of special representation mechanisms. Constitutional and legislative safeguards create basic rights and a foundation of trust in a society. They also serve to establish principles and processes to ensure the integrity of representation and confidence in the legislative system. Securing fundamental rights within the constitution promises the support and protection of efforts aimed at equitable representation. A freedom of speech clause is a vital component. At least 39 African constitutions have established a freedom of speech clause within their constitution but 14 remain silent on the issue.<sup>400</sup> Equality and non-discrimination clauses are likewise critical constitutional components. Both are illustrated in the South African Constitution’s Bill of Rights which provides:

9 (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

9 (3) “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

9 (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

States may also ensure optimal conditions for voting through acts of legislation or within constitutional provisions. For example, they may establish political rights by making voting universal and secret,<sup>401</sup> as well as establishing an electoral system and process to be implemented. They may similarly entrench minority rights and delineate mechanisms for minority representation. Stipulations may also assure physical and emotional security, economic resources, minimum levels of education and health as well as tolerance of opposing views.<sup>402</sup> Accountability of representatives may be enforced through articulated rules and sanctions. Independent institutions and/or commissions may be set up to support or enforce these laws. To effectively implement special representation, minority rights must be secured. Promoting the richness of ethnic group values, combating political, economic and social exclusion and respecting the rights of ethnic groups in all matters in line with the fundamental rights articulated in international law is a necessary and minimum step.<sup>403</sup> Ultimately, constitutional, legislative or institutional mandates must be insulated by well structured rules and regulations that are sufficiently tailored to cater to the particular needs of a given society.

Ideally, special representation is a stop-gap measure. Many assert that measures must be temporary and mechanisms abandoned once the marginalized group achieves effective representation. As Kymlicka states:

“In so far as these rights are seen as a response to oppression or systematic disadvantage,

---

<sup>399</sup> Mozaffar, forthcoming.

<sup>400</sup> Thirty-nine African constitutions protect legislative representative’s speech and fourteen are silent on the issue *see* Bruch et al., 2004; 524 [check for permission to cite].

<sup>401</sup> Burch et al., 2004; 516 [check for permission to cite].

<sup>402</sup> Akpan, Joseph, Ignatius Mberengwa and Robert K Hitchcock, “Indigenous People, Human Rights, and Participation in Southern Africa” [check for permission to cite].

<sup>403</sup> Slimane 2003.

they are most plausibly seen as a temporary measure on the way to a society where the need for special representation no longer exists... society should seek to remove the oppression and disadvantage, thereby eliminating the need for these rights”.<sup>404</sup>

The ultimate yardstick for success of whichever mechanism is instituted is that the marginalized group and society at large will no longer have a need for it to exist. In other words, when marginalized interests are represented and integrated into mainstream decisions and national policymaking processes,<sup>405</sup> there will be no need for special representation mechanisms—at that time everyone will be seen as an equal.

### **Overcoming the Problems Associated with Special Representation**

Numerous problems identified in this report underscore the shortcomings of existing special representation mechanisms to effectively improve the situation of marginalized peoples. The following thoughts are meant to provoke discussion and raise questions as to whether these obstacles are insurmountable and how mechanisms might be reconceptualized and improved upon.

Special representation has been attacked for being undemocratic. When the essence of a representational democracy is explored, one uncovers a system whereby representatives are elected by the people to make decisions on their behalf. Therefore, special representation may be understood as furthering democratic goals and principals by ensuring that all people are represented, particularly those who have traditionally been excluded from representation. An issue that must be dealt with simultaneously is how to ensure that non-minority groups remain engaged in the political process and do not become disenchanting by special representation. The challenge is how to construct and define these mechanisms so they are understood as contributing value to the *whole of society*. To this end, relevant regulations and constitutional provisions should include specific language to this effect. Public education can also be used to reinforce this policy purpose.

Decline in legislator quality, bias of legislators, preference in favoring special interest groups over the good of the whole and the willingness of legislators to bargain along identity lines are only a few of the potential issues that arise when representatives are elected through special mechanisms. Dealing with the earnestness of legislators is an understandable concern and the issue must be confronted in the design of the specific mechanism. There is endless space for innovation in creating the rules that would govern the electoral system and the mandate of elected representatives. In addition, independent bodies could support the integrity of the system. For example public interest groups, national commissions and media may be used to keep representatives in line. Additionally, sanctions against representatives who fail to fulfill their mandate should be established as a matter of law and enforced by a nonpartisan judiciary.

Perhaps the greatest challenge facing Africa is the entrenched skepticism towards awarding a special privilege to any group over another. Particularly with the regional goal of a unified African identity, one might question how special representation may be accomplished. Meaningful efforts to achieve unification must first listen to and address the problems linked to societal cleavages, thus making representational issues part of the wider African goal of unity. Marginalized people must first be accepted and included in the societies in which they live before they may see themselves as part of a unified nation. This report has not found any evidence indicating that special representation mechanisms lead to a rise in tensions between groups. More accurately, they lead to additional groups pleading to be included within the special representation framework. To avert a floodgate scenario, existing and new mechanisms may create an objective and evenhanded, yet still flexible, list of criteria with which to evaluate group claims. Creating group qualifications with the use of neutrally acceptable terms, like Botswana’s rural area dwellers classification, may also help to sidestep issues of ethnic conflict. Additionally, a rotational quality may compliment the instrument by providing future marginalized communities with an entrenched mechanism guaranteeing a just opportunity.<sup>406</sup> This mechanism it could be structured in such a way whereby when one

---

<sup>404</sup> Zidas Daskalovski, “Liberalism and Nation-building”, PhD Dissertation, Central European University, September 2003, see discussion regarding Kymlicka (1995) < <http://www.ceu.hu/polsci/dissertations/daskalovski.doc> > (25 July 2004).

<sup>405</sup> See *supra* note 55.

<sup>406</sup> Peter Veit, Personal communication, 14 May 2004.

marginalized group cycles out of the system, if need be, another group may fill its place. This may be used as a way to ensure priority to the most marginalized populations while preserving representational opportunities for other groups in the future.

Africa is faced with immense challenges across a number of issue areas. Indeed, for special representation to foster meaningful change, it must be accompanied by systems of social and economic reform. It seems shortsighted to suspend political issues until problems of poverty, education and sanitation are eradicated. A more prudent and realistic strategy is to embrace the interconnectedness of these matters and realize the potential for creative, interconnected solutions. To be certain, legislative mechanisms are but one, albeit a profoundly significant, angle from which to approach better representing interests of disenfranchised people. In fact, such mechanisms are not mutually exclusive and can exist in tandem with executive, judicial and other tactics.

### **Policy Recommendations**

This report has surveyed a number of African states to gain a better understanding of the four most frequently used legislative special representation mechanisms. The following suggestions reflect broad ideas that offer to contribute to the advancement of special representation systems. These suggestions encompass areas for future projects that may contribute to enhancing opportunities for expression and participation among marginalized groups in African societies and thereby help move nations towards becoming more equitable and just societies.

- **Conduct more comprehensive field based study on special representation.** Focusing on the impact of existing mechanisms and examine relevant judicial rulings, legislative acts as well as notable improvements where mechanisms exist, the impact on society at large and any related negative repercussions.
- **Work with African and international partners to create a knowledge bank of mechanisms for special representation.**
- **Design and compile an online warehouse** of country specific regulatory and constitutional language, supporting institutions, tactics and successful strategies used to advance special mechanisms (including their implementation and enforcement), statistical and other accomplishments, references to supporting organizations, and related data.
- **Build coalition to draft and publish an advisory booklet on special representation mechanisms for African governments** including:
  - Recognizing marginalized groups (specifying neutral and objective criteria that may be used for determining minority status) and rethinking the way these groups are perceived;
  - Sample legislation and other legal means for enhancing systems of special representation;
  - Encourage NEW and innovative ideas to fit the needs of each society (as recommended in the Lund Recommendations<sup>407</sup>);
  - Training guides for legislator; and
  - Examples of sanctions that may be adopted and enforced if and when legislators violate code of conduct (ineffective representation, corruption, bribery, etc.)
- **Encourage inter-African governmental dialogue on issues of special representation**
- **Lobby for educational directive** to include teaching tolerance, cultural awareness, knowledge of a country's system of governance, and ways individuals can become politically engaged.
- **Foster institutional support outside the legislature**, including roundtables for drafting legislation on how to carry out constitutional mandates

### **Concluding thoughts**

Positive things are happening. Benin, Ghana, Kenya, Madagascar, Senegal and Zambia each held multi-party elections where an incumbent regime was defeated and peacefully handed over the reigns of power.<sup>408</sup>

---

<sup>407</sup> See *supra* note 28.

<sup>408</sup> United Nations Economic Commission for Africa, "PanAfrica; Governance and Development in Africa: the Critical Nexus", 19 February 2004  
[www.nexix.com/research/search/documentDisplay?\\_docnum=1&\\_ansset=B-WA-A...](http://www.nexix.com/research/search/documentDisplay?_docnum=1&_ansset=B-WA-A...) (25 July 2004).

The National Constitutional Review Process occurring in Kenya has made efforts to involve most “minority groups” and is striving to offer opportunities to redress previous imbalances through affirmative action, gender equality, free and compulsory primary education, and devolution of power to lead regions on human rights issues, the environment, land rights and cultural reforms.<sup>409</sup> Women in Mozambique, Namibia, South African and Uganda fill over 25% of the seats in their respective national parliaments.

That many countries in Africa and around the world employ special mechanisms to give voice to marginalized peoples evidences a need that has given way to a rising and hopeful trend. The African experience underscores the fact that no absolute formula for special representation exists. Rather mechanisms must be built to fit the unique historical and present context of each country. That said, each of these mechanisms also must satisfy the standard of being well-articulated and malleable. Similarly, the temporary nature of such mechanisms must be ensured to preemptively address the concern of creating disproportionate representation, new tiers of privilege and future conflict. To be meaningfully successful, these tools must also be part of a broader holistic approach to securing better representation for the disenfranchised. In this respect, willful leadership, supporting institutions, constitutional and legislative measures and enforcement each have a role to play. This paper offered a peripheral overview of constitutions and other data, yet did so from a distance. A closer, on the ground examination of special representation is necessary to more accurately evaluate the status of existing mechanisms and determine where room for improvement exists.

Several assumptions or observations may be associated with each mechanism and the opportunities under which they may prove most popular. Proportional representation is most often associated with better representation of political parties enabling groups outside the status quo to find a means for expression in parliament. The true nature of a population is more often reflected in a PR system and though this system is not restricted to any particular classification, groups are often organized around a shared ideology or ethnicity. Conversely, quotas and reserved seats are respectively linked to more equitable representation of gender and ethnicity. These methods for manipulating the electoral system represent common tools for rapidly encouraging diversity in the legislature. In a similar manner, advisory bodies are often used to ensure that traditional and local ways of life are preserved in modern systems of governance. Though not exclusively, many advisory bodies echo customary norms and lend a historical and organic balance to—often externally introduced—institutional change. If infused with integrity and given genuine representational authority, these bodies also reflect geographically diverse interests and may feed local sentiments into the national agenda. Finally constituencies are principally connected to ethnicity and socioeconomic status. While many boundary demarcations have remained essentially static since colonial times, they still serve as a useful form through which a political party may target their campaign, align their political priorities and harness support for elections. The increasingly efforts to redraw district lines offers hope of greater balance either with an eye towards more equitable population distribution or as a means for temporarily boosting representation for those groups living on the margins of society.

On the whole, proportional representation and guaranteed electoral seats are more common and effective means by which nations have opted to redress marginalized peoples. In contrast, advisory bodies appear to have far less credibility and are much more easily manipulated by executive powers. The redrawing of electoral districts must be further explored in order to provide a meaningful assessment.

Each special representation mechanism offers valuable insights into the questions of minority rights yet additional study is required for determining their value with regard to long term democratic development in Africa. Guaranteeing parliamentary seats, for example is a concept familiar to the women’s movement. The literature on mechanisms used to push women’s representation is much more impressive than that of other disenfranchised groups. The voices and abilities of other marginalized groups may be enhanced by learning from the lessons, techniques and accomplishments of the international and Pan-African women’s fight for increased representation. In a similar manner, the emergence of the advisory body model be used as a paradigm for merging traditional forms of governance with modern innovation. By further dissecting a

---

<sup>409</sup> Minority Rights Group International, “Rights, representation and constitutional reform demanded by Kenya’s Muslims”, 15 March 2004, < [http://www.minorityrights.org/news\\_detail.asp?ID=218](http://www.minorityrights.org/news_detail.asp?ID=218) > (25 July 2004).

country's electoral system and its affects we may better understand how to create a structure that will be ever more inclusive and promising to future generations. Finally, collecting and analyzing census data may inform effort to draw district lines that support the notion of equitable representation.

To be certain, many of the endemic inequalities found within the African context existed before the introduction of any special representation mechanisms. Special representation played no role in ostracizing groups with like ancestry, physical features or spiritual beliefs. However, special representation mechanisms may play a critical role in redistributing opportunities of expression and including marginalized communities in society. In an ideal world these tools would be superfluous. But in our world the scales of democracy need tipping towards equality.

**Appendix A: Electoral Systems and Advisory Bodies of the Africa**

<b>Country</b>	<b>Electoral system of unicameral legislature or lower house of bicameral legislature</b>	<b>Advisory Bodies: Second Chamber (upper house)/House of traditional leaders</b>	<b># reps</b>
Algeria	List PR	Second chamber	430
Angola	List PR		220
Benin	List PR		83
Botswana	First-past-the-post	House of Chiefs (also the Second chamber)	47
Burkina Faso	List PR	Second chamber	111
Burundi	List PR		81
Cameroon	First-past-the-post		180
Cape Verde Islands	List PR		79
Central African Republic	First-past-the-post/ two-round system		85
Chad	First-past-the-post/ two-round system		125
Congo (Brazzaville)	First-past-the-post/ two-round system		125
Congo (Democratic Republic)	First-past-the-post/ combination system		210
Djibouti	First-past-the-post/ party block		65
Egypt	First-past-the-post/ two-round system	Second chamber	444
Eritrea	List PR		130
Ethiopia	First-past-the-post	Second chamber	547
French Guiana	First-past-the-post/ two-round system		19
Gabon	First-past-the-post/ two-round system		120

Gambia	First-past-the-post		36
Ghana	First-past-the-post	National House of Chiefs	200
Guinea	First-past-the-post/ combination system		114
Guinea-Bissau	Lists PR		100
Ivory Coast	First-past-the-post/ party block		175
Kenya	First-past-the-post/ combination system		188
Lesotho	First-past-the-post	Second chamber	65
Liberia	List PR	Second chamber	64
Libya	PR		--
Madagascar	List PR/combo system		138
Malawi	First-past-the-post		177
Mali	First-past-the-post/ two-round system		147
Mauritania	First-past-the-post/ two-round system	Second chamber	79
Mauritius	First-past-the-post/ party block		70
Morocco	First-past-the-post/ combination system		222
Mozambique	List PR		250
Namibia	List PR	Second chamber	72
Niger	First-past-the-post		83
Nigeria	First-past-the-post	Second chamber	593
Papua New Guinea	First-past-the-post		109
Réunion (France)	First-past-the-post/ two-round system		44
Rwanda	First-past-the-post		70
Sao Tomé and	List PR		55

Principe			
Senegal	First-past-the-post/ party block		120
Seychelles	First-past-the-post/ combination system		33
Sierra Leone	First-past-the-post		68
Somalia	First-past-the-post		123
South Africa	First-past-the-post/ combination system	National House of Traditional Leaders	400
Sudan	First-past-the-post		275
Swaziland	First-past-the-post	Second chamber	55
Tanzania	First-past-the-post/ combination system		232
Togo	First-past-the-post/ two-round system		81
Tunisia	First-past-the-post/ party block		163
Uganda	First-past-the-post		214
Zambia	First-past-the-post	House of Chiefs	150
Zimbabwe	List PR		120

\* List of advisory bodies is not intended to be all inclusive.

Sources: World Policy Institute, "Electoral Systems of the World"

<<http://www.worldpolicy.org/globalrights/democracy/table-pr.html>> (14 May 2004);

Bruch et al., tables 1& 2, forthcoming [check for permission to site]; Jose de Araújo, "Legislative Branch", <http://www.chame.com.br/world/legislative.html>> (25 July 2004).

**Appendix B: Ethnic Reservations**

Country	Reservation System in 2003
Burundi	* 60% of National Assembly Tutsi and 40% Hutu and 50% of Senate each Hutu and Tutsi
Ethiopia	22 of 117 seats in upper house reserved for representatives of minority nationalities
Mauritius	8 of 70 seats reserved for “best losers” representing four constitutionally-recognized ethnic communities
Niger	8 of 83 seats reserved for representatives of national minorities
Zimbabwe	* 10 seats unofficially reserved for whites and 10 seats occupied by traditional chiefs of the 150 seats in parliament

Sources: CIA Factbook; Howard Wolpe. Telephone interview, 7 April 2004.

### Appendix C: Quota systems and Statistic of Female Parliamentarians

Country	Quota for Women	Seats in lower house of Parliament as of April 2004	Seats filled by women	% of Women in Parliament	Rank by IPU (compared to global statistics)
Rwanda	Constitutional Quota, Election Law Quota	80	39	48.8	1
South Africa	Political Party Quota	400	131	32.8	12
Mozambique	Political Party Quota	250	75	30.0	15
Seychelles	* National Legislative Quota	34	10	29.4	16
Namibia		72	19	26.4	20
Uganda	Constitutional Quota, Election Law Quota	304	75	24.7	26
Eritrea	Constitutional Quota	150	33	22.0	30
United Republic of Tanzania	Constitutional Quota, Election Law Quota	295	63	21.4	32
Guinea	Political Party Quota	114	22	19.3	41
Senegal	Political Party Quota	120	23	19.2	42
Burundi		179	33	18.4	46
Botswana	Political Party Quota	47	8	17.0	52
Angola	* Political Party Quota	220	34	15.5	55
Sierra Leone		124	18	14.5	57
Gambia		53	7	13.2	61
Democratic Republic of the Congo		500	60	12.0	68
Zambia	* National Legislative Quota	158	19	12.0	“
Burkina Faso	* National Legislative Quota, Political Party Quota	111	13	11.7	69
Lesotho		120	14	11.7	“
Tunisia	Political Party Quota	182	21	11.5	70
Djibouti	Election Law	65	7	10.8	72

	Quota				
Morocco	Election Law Quota, Political Party Quota	325	35	10.8	“
Swaziland		65	7	10.8	“
Mali	Political Party Quota	147	15	10.2	78
Zimbabwe		150	15	10.0	79
Sudan	Election Law Quota Regulation	360	35	9.7	82
Ghana		200	19	9.5	83
Malawi		193	19	9.3	85
Gabon	*National Legislative Quota	119	11	9.2	86
Sao Tome and Principe		55	4	9.1	87
Cameroon	* Political Party Quota	180	16	8.9	88
Congo		129	11	8.5	90
Cote d'Ivoire	* Political Party Quota	223	19	8.5	“
Ethiopia		547	42	7.7	93
Togo		81	6	7.4	94
Benin		83	6	7.2	95
Kenya	Constitutional Quota, Political Party Quota	224	16	7.1	96
Algeria		389	24	6.2	97
Nigeria		359	24	6.1	98
Chad		155	9	5.8	101
Mauritius		70	4	5.7	102
Liberia		76	4	5.3	104
Madagascar		160	6	3.8	109
Mauritania		81	3	3.7	110
Niger	Political Party Quota	83	1	1.2	118
Papua New Guinea		109	1	.9	119

\*indicates cell contains 2003 information

**Sources:** International Parliamentary Union, Women in National Parliament 30 June 2004, <<http://www.ipu.org/wmn-e/classif.htm>> (25 July 2004); International IDEA and Stockholm University, “Global Database of Quotas for Women”, 2003 <<http://www.quotaproject.org/system.cfm>> (25 July 2004); Mona Lena Krook, “Not All Quotas Are Created Equal: Trajectories of Reform to Increase Women’s Political Representation”, March 2003, [http://www.quotaproject.org/Conference\\_papers/Krook\\_2003.pdf](http://www.quotaproject.org/Conference_papers/Krook_2003.pdf)> (25 July 2004);