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# LEGAL PROVISIONS FOR GENDER-BASED SPECIAL MEASURES IN AFRICA

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### LEGAL PROVISIONS FOR GENDER-BASED SPECIAL MEASURES IN AFRICA



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### **INTRODUCTION**

Gender equality is a fundamental human right, and a necessary requirement for the development of any society. Women and girls constitute half of the world's population; however, the issue of gender inequality continues to persist everywhere in the world.<sup>1</sup> Despite several efforts to promote the rights of the female gender, women and girls around the world do not yet fully enjoy equal rights as their male counterparts.

In public life, women have become increasingly engaged in voting, joining political parties, and contesting primary and main elections. However, women rarely win elections, which has resulted in only a small number of women holding elective positions around the world. This is as a result of persisting structural constraints and barriers that reinforce discriminatory norms, practices and policies.<sup>2</sup> According to a report by UN Women, globally, women constitute only 24.3% of all national parliamentarians, which is a slow increase from 11.3% in 1995 with only four countries having 50 per cent or more women in parliament.<sup>3</sup>

The low representation of women in the political sphere led to the adoption of **gender special measures (GSMs)** also known as quota systems to increase women representation in politics. Studies show that gender equality in politics increases women's engagement and participation and leads to a gender balance at all levels of government.<sup>4</sup> In the bid to increase women representation therefore, several countries have adopted gender special

<sup>&</sup>lt;sup>1</sup>"Gender Equality: Why It Matters," available at <u>https://www.un.org/sustainabledevelopment/wp-content/uploads/2018/09/Goal-5.pdf</u>

<sup>&</sup>lt;sup>2</sup> "Women's full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls," Report of the Secretary-General, Commission on the Status of Women Sixty-fifth session 15–26 March 2021. Available at <u>https://undocs.org/E/CN.6/2021/3</u>

<sup>&</sup>lt;sup>3</sup> "Facts and figures: Women's leadership and political participation," available at <u>https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures</u>

<sup>&</sup>lt;sup>4</sup> Eszter Solyom, "Gender Quotas: Towards an Improved Democracy," available at <u>https://www.e-ir.info/2020/07/01/gender-quotas-towards-an-improved-democracy/</u>

measures, quota systems and also enacted legislative frameworks to ensure the enforcement of gender quotas. Undoubtedly, the adoption of quota systems has led to a significant increase in women participation especially in Africa.

Against this backdrop, we have highlighted select African countries that have adopted gender special measures and quotas, including legislated quota systems and voluntary political party quota systems at both national and sub-national levels. It is hoped that the information provided in this paper will contribute to further research, as well as inform policy making on the use of gender special measures and quotas to promote women representation in the legislature.

#### **LEGAL PROVISIONS OF GSMs ACROSS AFRICA**

PARLIAMENT	LEGAL FRAMEWORK	PROVISIONS <sup>5</sup>	
TANZANIA <sup>6</sup>			
Total number of seats - 384 Total number of women - 141 Percentage of women - 36.90%	The Constitution of The United Republic of Tanzania (Cap. 2), 1977 (as amended).	<ul> <li>Gender quota was first introduced in Tanzania in 1992 under the 1992 constitutional amendments prior to the 1995 elections. Before the constitutional amendments in 2005, the reserved seats were pegged at 15 percent. After the constitutional amendments in 2005, the gender quota was increased to 30 percent.<sup>7</sup></li> <li>Article 66(1)(b) of the Constitution provides that: (1) Subject to the other provisions of this Article, there shall be the following categories of Members of Parliament, that is to say: - (b) "women members being not less than thirty per centum of all the members mentioned in paragraphs (a), (c), (d), (e) and (f)</li> </ul>	

<sup>&</sup>lt;sup>5</sup> The details contain verbatim the provisions of the various legislative frameworks of the countries highlighted that have adopted gender-based quota systems. Also, only political parties that won elections and have voluntary political party quota systems have been highlighted.

<sup>&</sup>lt;sup>6</sup> Tanzania has a unicameral parliament with the use of voluntary party quotas and legislated quotas for the single/lower house and at the subnational level. 141 of 384 (37%) seats in the Bunge / National Assembly are held by women.

<sup>&</sup>lt;sup>7</sup> "Gender Quotas Database," available at <u>https://www.idea.int/data-tools/data/gender-quotas/country-view/291/35</u>; Alice Kang and Aili Mari Tripp, "Coalitions Matter: Citizenship, Women, and Quota Adoption in Africa," available at <u>https://core.ac.uk/download/pdf/189479573.pdf</u>

	<ul> <li>with qualifications mentioned in Article 67 elected by the political parties in accordance with Article 78, on the basis of proportion of votes".</li> <li>- Article 78(1) provides that "For the purposes of the election of women Members of Parliament mentioned in Article 66(1) (b), political parties which took part in the general election in accordance with the procedure laid down and obtained at least five percentum of the total valid voters for Parliamentary election, shall propose to the Electoral Commission the names of women on the basis of the proportion of votes obtained by each party in the Parliamentary election."</li> </ul>
The National Elections Act (Cap 343) 2010	<ul> <li>Articles 86 A (1) -(3) provide that:-</li> <li>(1) There shall be women special seats in the National Assembly as provided for in Article 66 of the Constitution.</li> <li>(2) A political party which contests for Parliamentary election held after the dissolution of the National Assembly may propose to the Commission* names of eligible women for candidates for nomination to women special seats.</li> <li>(3) The Commission shall specify a number of women candidates to be nominated by each political party.</li> <li>* The Commission means the Electoral Commission of the United Republic</li> <li>At the sub-national level women must hold not less than one-third of the seats and these seats are allocated among political parties based on the seats that they have gained.</li> </ul>

	Voluntary Political Party Quotas	<ul> <li>Note that Tanzania has 35% women Councilors at the local level.</li> <li>Some parties in Tanzania also use gender quotas on their own initiative. An example in the <u>Chama cha Mapinduzi</u> (<u>Revolutionary Party</u>) manifesto: Section 204 of the 2010 CCM Manifesto set out to attain 50-percent women representation in all elective bodies.</li> </ul>
	RWANDA <sup>8</sup>	
Lower House (Chamber of Deputies) Total number of seats - 80 Total number of women - 49 Percentage of women - 61%	The Constitution of The Republic of Rwanda (O.G n° Special of June 04, 2003)	<ul> <li>Gender quota was first introduced in 2003 under the new Rwandan Constitution which was adopted in 2003.<sup>9</sup></li> <li>Article 9(4) of the Constitution provides that the government is committed to building a state governed by the rule of law, a pluralistic democratic government, equality for Rwandans and between men and women reflected by ensuring that women are granted at least thirty percent of posts in decision-making organs.</li> </ul>
<u>Upper House (Senate)</u> Total number of seats - 26 Total number of women - 10 Percentage of women - 38%		- Article 76 of the Constitution further stipulates that the 80 members of the Chamber of Deputies are elected as follows: 53 members elected by direct universal suffrage through a secret ballot using closed list proportional representation, of which at least 30% must be seats reserved for women; 24 women (2 elected from each province and from the city of Kigali by an electoral college with a women-only ballot); 2 members elected

<sup>&</sup>lt;sup>8</sup> Rwanda has a bicameral parliament with legislated quotas for the single/lower house and upper house and at the sub-national level. <sup>9</sup> "Rwanda (Republic of Rwanda)," available at <u>https://www.idea.int/data-tools/data/gender-quotas/country-view/255/35</u>; Ibid.

	<ul> <li>by the National Youth Council; and 1 member elected by the Federation of the Associations of the Disabled.</li> <li>Article 82 provides for the composition of the Senate and stipulates that The Senate shall be composed of twenty-six (26) members serving for a term of eight (8) years and at least thirty per cent (30 %) of whom are women.</li> </ul>
The Electoral law: Organic Law N° 03/2010/OL OF 18/06/2010 Organic Law no. 19/2007 of 04/05/2007	<ul> <li>Article 109 of the Electoral Law provides for the election of women Deputies and stipulates that: twenty-four (24) female Deputies shall be elected by specific organs in accordance with national administrative entities. A Presidential Order shall determine a national administrative entity and the number of women Deputies to be elected at each entity.</li> <li>Article 155 provides for the election of a member of a Sector Council. It stipulates that at every Sector, one female member and one male member of Council shall be elected through direct and secret ballot.</li> <li>Furthermore, Article 156 provides for the election of female members of Council constituting at least thirty per cent (30%) of all District Council members shall be elected through indirect and secret ballot as well as by the members of the Council Bureau of Sectors constituting the district, members of the Executive Committee of the National Council of Women at the District and Sector levels and Coordinators of the National Council of Women at Cell level.</li> </ul>

	UGANDA <sup>10</sup>	
<u>Single House (Parliament of Uganda)</u> Total number of seats - 529 Total number of women - 174 Percentage of women - 33%	Constitution of The Republic of Uganda, 1995	<ul> <li>Since 1989, Uganda has had reserved seats for female legislators. The revised 1995 Constitution institutionalized the quota system by providing for a number of reserved seats in the national parliament equal to the number of districts in the country ahead of the 1996 general elections.<sup>11</sup></li> <li>Article 78 provides for the composition of the parliament while (1)(b) stipulates that Parliament shall consist of one woman representative for every district;</li> </ul>
		- Article 180 provides for elections of local government council and (2)(b) stipulates that one-third of the membership of each local government council shall be reserved for women.
	Local Government Act 1997	-Article 108(3) provides that the population quota for demarcation of electoral areas for women representatives shall be determined by the requirement of women constituting one-third of any local council being considered.
	The Parliamentary Elections Act 2005	-Article 8(1)-(2) provides for District or city women representatives and special interest groups

<sup>&</sup>lt;sup>10</sup> Uganda has a unicameral parliament with legislated quotas for the single/lower house and at the sub-national level

<sup>&</sup>lt;sup>11</sup> Despite the reserved seat for women, women are also allowed to compete against men for unreserved seats therefore creating for quota-elected women and non-quota-elected women; Amanda Clayton et al, "Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates," available at <u>https://www.cmi.no/publications/file/6076-quotas-and-womens-substantive-representation.pdf;</u> "The Implementation of Quotas: African Experiences Quota Report Series," edited by Julie Ballington, available at <u>https://www.idea.int/sites/default/files/publications/implementation-of-quotas-african-experiences.pdf</u>

(1) As required by article $78(1)(b)$ of the Constitution, there
shall be one woman representative in Parliament for every
district or city.
(2) There shall be the following representatives of special
interest groups in Parliament for the purposes of article 78(1)(c)
of the Constitution -
a. for the Uganda Peoples Defence Forces there shall be ten
representatives at least two of whom shall be women;
b. for workers there shall be five representatives at least one
of whom shall be a woman:
c. for the youth there shall be five representatives at least
one of whom shall be a woman; and
d. for persons with disabilities, there shall be five
representatives, at least one of whom shall be a woman.

### KENYA<sup>12</sup>

Lower House (National Assembly)	The Constitution of Kenya, 2010	- Gender quota was adopted in 1997 under the 1997 constitutional amendments which allowed the President to
Total number of seats - 347		appoint 12 nominated seats in parliament. Six of these seats
Total number of women - 75		were reserved for women.
Percentage of women - 22%		
		- Following the enactment of a new Constitution in 2010 which
<u>Upper House (Senate)</u>		established a bicameral legislature, reserved seats for women
		were provided in both houses of Parliament. The adoption of the
Total number of seats - 66		new Constitution introduced the elected-quota system for
		women.

<sup>&</sup>lt;sup>12</sup> Kenya has a bicameral parliament with the use of voluntary party quotas and legislated quotas for the single/lower house and upper house and at the subnational level

Total number of women - 21 Percentage of women - 32%

- The new constitutional provisions for gender equality in the electoral system were first implemented in the March 2013 general elections.<sup>13</sup>

- Article 27 of the Kenya Constitution provides for freedom from discrimination. Clause (3) states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Clause (8) further provides that 'In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.'

- Also, Article 81 stipulates general principles for the electoral system and clause (b) states that not more than two-thirds of the members of elective public bodies shall be of the same gender.

- Article 97 (1)(a) & (b) stipulates that the National Assembly consists of— (a) two hundred and ninety members, each elected by the registered voters of single member constituencies; and (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency.

- Article 98 (1) (a)-(d) provides that: The Senate consists of— (a) forty-seven members each elected by the registered voters of Constitution of Kenya, the counties, each county constituting a

<sup>&</sup>lt;sup>13</sup> "Kenya (Republic of Kenya)," available at <u>https://www.idea.int/data-tools/data/gender-quotas/country-view/156/35</u>

single member constituency; (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected in accordance with Article 90; (c) two members, being one man and one woman, representing the youth; (d) two members, being one man and one woman, representing persons with disabilities

- Article 90(2)(b) which provides for allocation of seats stipulates that:

The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—

(b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed.

- Article 175(c) stipulates that no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

- Article 177(1)(b) provides that: A county assembly consists of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.

- Article 197 provides for County Assembly gender balance and diversity and (1) states that not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender.

	The Elections Act of 2011	Article 36(2) provides that a party list submitted under subsection (1) (a), (c), (d), (e) and (f) shall contain alternates between male and female candidates in the priority in which they are listed.
	Political Parties Act, 2011	Article 25 provides for the distribution of funds to political parties; however, Article 25(2)(b) stipulates that: Notwithstanding subsection (1), a political party shall not be entitled to receive funding from the Fund if more than two-thirds of its registered office bearers are of the same gender.
	Voluntary Political Party Quotas	
		- <u>National Rainbow Coalition (NARC)</u> – the Party Constitution provides for the gender policy and states that 1/3 of all nominated persons should at a minimum come from each gender.
	SOUTH AFR	ICA <sup>14</sup>
Lower House (National Assembly) Total number of seats - 400		- Schedule 1 of the Act provides for the elections for metro and local council elections. Section 11(3) of the Schedule stipulates that every party must seek to ensure that fifty per cent of the

<sup>&</sup>lt;sup>14</sup> South Africa has a bicameral parliament with the use of voluntary party quotas and legislated quotas at the sub-national level. There is no constitutional provision for gender quota at both national and sub-national levels.

Total number of women - 185 Percentage of women - 46%		candidates on the party list are women and that women and men candidates are evenly distributed through the list.
<u>Upper House (Senate)</u> Total number of seats - 53 Total number of women - 22 Percentage of women - 42%		- Schedule 2 of the Act applies to district councils' elections. Section 5(3) states that every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.
		- Also, Section 17(5) stipulates that every party or councilor must seek to ensure that fifty per cent of the candidates on the candidates list are women and that women and men candidates are evenly distributed through the list.
	Voluntary Political Party Quotas	- <u>African National Congress (ANC)</u> : Rule 6(1) of the party Constitution states that in the endeavour to reach the objective of full representation of women in all decision-making structures, the ANC shall implement a programme of affirmative action, including the provision of a quota of not less than 50% (fifty per cent) of women in all elected structures of the ANC to enable such effective participation. <sup>15</sup>

<sup>&</sup>lt;sup>15</sup> In 2006 ANC adopted a 50% gender quota in local elections. The quota was extended to national elections as well in 2009.

SENEGAL <sup>16</sup>			
<u>Single House (Assemblée</u> <u>Nationale / National Assembly)</u>	The Electoral Code, 1992 (Law n ° 2012-01 of January 3, 2012) <sup>17</sup>	- Gender quota was adopted in 2010 following the amendments to the Electoral Code of 1992. The gender quota was first implemented in the 2012 legislative elections. <sup>18</sup>	
Total number of seats - 165 Total number of women - 71 Percentage of women - 43%		- Article L.145 provides for list of candidates for elections into the National Assembly. The Article states that in any case, gender parity applies to all lists. The lists of candidates, incumbents as well as substitutes, must be made up alternately of people of both sexes. When the number of members is odd, parity applies to the next lower even number.	
		- In the event that only one deputy is to be elected in this department, the incumbent and the substitute must be of different sexes. <sup>19</sup>	
		- With regards to the elections of Regional Councilors, L.229 (2) stipulates that gender parity applies to all lists. The lists of candidates, incumbents and substitutes, must be made up	

<sup>&</sup>lt;sup>16</sup> Senegal has a unicameral parliament with legislated quotas for the single/lower house and at the sub-national level as provided for under the Electoral Law. Note that there are no provisions for gender quota under the Constitution. Also, there are no voluntary political party quotas.

<sup>&</sup>lt;sup>17</sup> The Electoral Code of 1992, as amended by law 2012-01 of 2012. The adopted amendments to the election law introduced the requirement for gender parity in candidate lists for proportional and majority contests in legislative, regional, municipal and rural elections.

<sup>&</sup>lt;sup>18</sup> Amanda Clayton et al, "Quotas and Women's Substantive Representation: Evidence from a Content Analysis of Ugandan Plenary Debates," available at <u>https://www.cmi.no/publications/file/6076-quotas-and-womens-substantive-representation.pdf</u>; "Senegal (Republic of Senegal)," available at <u>https://www.idea.int/data-tools/data/gender-quotas/country-view/269/35</u>

<sup>&</sup>lt;sup>19</sup> Candidate lists which do not comply with the provisions of Article L.145 (parity and gender alternation) will not be admitted.

alternately of people of both sexes. When the number of members is odd, parity applies to the next lower even number.

- Also, L.263(2) relating to the elections of Municipal Councilors stipulates that all the lists presented must respect parity between men and women. The lists of candidates, incumbents as well as substitutes, must be made up alternately of people of both sexes. When the number of members is odd, parity applies to the next lower even number.

- For the elections of Rural Councilors, L.294(2) states that all the lists presented must respect parity between men and women. The lists of candidates, incumbents as well as substitutes, must be made up alternately of people of both sexes. When the number of members is odd, parity applies to the next lower even number.

- Notably, Articles L.245(2), L.279 (5) and L.308(2) stipulate sanctions for non-compliance with the gender quotas.<sup>20</sup>

<sup>&</sup>lt;sup>20</sup> Failure to submit candidate lists that do not comply with gender parity would result in refusal to admit the list by the appropriate authority depending on the type of election i.e., either regional, municipal or rural.

NAMIBIA <sup>21</sup>		
Lower House (National Assembly)		- Gender quota was first established under the Local Authorities Act of 1992. The affirmative action was implemented in the 1992 and 1998 Regional and Local Council elections. <sup>23</sup>
Total number of seats - 104 Total number of women - 46 Percentage of Women - 44%		- Article 6 of the Act provides for elections of the Local Authority Governing Bodies, while Article 6(4) states that for the purposes of any election contemplated in subsection (2),
<b>Upper House (Senate)</b> Total number of seats - 42 Total number of women - 6 Percentage of women - 14%		each party list shall contain as candidates for such election - (a) in the case of a municipal council or town council consisting of 10 or fewer members or a village council, the names of at least three female persons; (b) in the case of a municipal council or town council consisting of 11 or more members, the names of at least five female persons.
	Voluntary Political Party Quotas <sup>24</sup>	South West Africa People's Organisation (SWAPO): SWAPO has a 50 percent quota with a zebra-system (alternation between men and women) for women on electoral lists for local elections.

<sup>&</sup>lt;sup>21</sup> Namibia has a bicameral parliament with the use of voluntary party quotas and legislated quotas which are only applicable to elections at the subnational level. There no constitutional provision for gender quota at both the national and sub-national levels; "Namibia: Women's representation quotas," available at <u>https://www.eisa.org/wep/namquotas.htm</u>

 $<sup>^{22}</sup>$  The first women's quota was established in the Local Authorities Act of 1992, which provided for at least two women on the party list. In 1997 the number was increased to three and then in 2002 the number was increased to five women.

<sup>&</sup>lt;sup>23</sup> William A. Lindeke and Winnie Wanzala, "Regional Elections in Namibia: Deepening Democracy and Gender Inclusion," available at <u>https://www.jstor.org/stable/4186999?seq=1</u>; "Affirmative Action for Women in Local Government in Namibia: The 1998 Local Government Elections (1998)," available at <u>https://www.lac.org.na/projects/grap/Pdf/affirmactionsum.pdf</u>

<sup>&</sup>lt;sup>24</sup> In August 2013, the South West African People's Organisation (SWAPO), which is the ruling party in the National Assembly, adopted a 50 per cent gender quota which shall apply to all the national and regional structures of the party.

NIGER <sup>25</sup>		
SingleHouse(AssembléeNationale / National Assembly)	Quota Law, n ° 2000-008 of June 7, 2000.	- Gender quota was first adopted in 2000 under Section 2 of quota law, n $^\circ$ 2000-008 of June 7, 2000.
Total number of seats - 166 Total number of women - 43 Percentage of women - 26%		- Article 3 of Law 2000/08 establishes a quota system for elected offices in government and in the administration of the State. The law stipulates that stipulates that when the final results are announced, the proportion of elected candidates of one or the other sex must not be less than 10%.
		- Article 4 of the law on the quota, states that during the appointment of members of the government and the promotion to higher posts of the State, the proposal of the persons of both sex should not be less than 25%. <sup>27</sup>
		- Article 6 of the implementing decree of the law on the quota provides that any appointment made in violation of the threshold of 25% of representation of one or the other sex when appointing members of the Government and to higher posts of the State may be challenged before the Administrative Chamber of the Supreme Court.

<sup>&</sup>lt;sup>25</sup> Niger has a Unicameral parliament with the use of voluntary party quotas and legislated quotas for the single/lower house and at the sub-national level. However, Niger has no Constitutional provision for gender quota at both national and sub-national level.
<sup>26</sup> Ibid.

<sup>&</sup>lt;sup>27</sup> Hassane Hamadou Namary, "The effectiveness of women's political rights under the Fifth Republic in Niger," available at <u>https://www.memoireonline.com/07/09/2237/m\_Leffectivite-des-droits-politiques-de-la-femme-sous-la-Ve-Republique-au-Niger5.html</u>

Voluntary Political Party Quotas	<ul> <li>Decree 2001-056/PRN/MDSP/PF/PE of 28 February 2001 states that in the case of independent candidates, any political party or group of independent candidates that obtains at least 3 seats in a constituency must ensure the implementation of the 10% quota requirement.</li> <li>In 2019, the gender quota was increased from 10 per cent for elected positions and 15 per cent for nominated offices, to 25 and 30 per cent, respectively. This was implemented in the 2020 elections held in Niger leading to a significant increase in the percentage of women representatives from 14.6 per cent in the previous election to 25.9 per cent during the 2020 elections.<sup>28</sup></li> <li>Mouvement National pour la Société de Développement (National Movement for a Society in Development): Prior to multiparty elections in the 1990s, the MNSD set aside 5 seats for women through the quota system adopted by the party. In 1999 the party adopted a 10 percent quota for women on electoral lists.</li> </ul>

<sup>28</sup> "Niger National Assembly," available at <u>https://data.ipu.org/node/124/basic-information?chamber\_id=13476</u>; "Niger (Republic of Niger)," available at <u>https://www.idea.int/data-tools/data/gender-quotas/country-view/225/35</u>

### **CONCLUSION**

From our case studies of African countries such as Tanzania, Rwanda, Uganda, Kenya, South Africa, Senegal, Namibia, and Niger, it is clear that the use of gender special measures is a proven way to increase women's representation in the legislature. These measures may be compulsory as provided for in the relevant laws of the country, voluntary on the initiative of the political parties in that country, or a combination of both. They may also be imposed at the national level, sub-national level, or both levels.

Whatever the case, it is evident that the use of gender special measures contributes to increasing women's political representation. We therefore call on researchers and policy makers to use the information provided in this paper for further research and informed policy making on increasing women's representation through special measures.

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