


RESEARCH ARTICLE

Legal Barriers to Women’s Access to Elected Parliamentary Seats in Light of 30 Years of Multiparty Democracy in Tanzania

Victoria Melkisedeck Lihiru* 

Faculty of Law, Open University of Tanzania, Kinondoni, Dar es Salaam, Tanzania
Email: victoria.lihiru@out.ac.tz

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Abstract

The year 2022 marked 30 years since Tanzania re-adopted multiparty democracy in 1992. The number of women parliamentarians has increased from 16 per cent after the multiparty elections in 1995 to 37.4 per cent after the 2020 elections. However, a significant share of women parliamentarians emanates from the special seats system, while only a small share of women hold directly elected seats. For example, in 2023, while women account for 37.4 per cent of the Parliament, only 9.8 per cent were elected from constituencies. This article studies the legal challenges facing women’s access to directly elected parliamentary seats in light of 30 years of multiparty democracy in Tanzania. It finds that the legal gaps related to candidacy age, political affiliation, the applicable electoral system, governance of political parties, violence against women in political and public life, campaign financing and challenges related to the implementation of the special seats system hinder women’s access to elected parliamentary seats.

Keywords: Women’s political participation; women’s electoral rights; parliament; Tanzania; democratization; quota system; electoral systems

Introduction

Before and after the reintroduction of multiparty democracy in 1992, Tanzania ratified various international and regional conventions which required state parties to ensure equal representation of men and women in all positions of power. At the international level, these conventions include the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration and Platform for Action of 1995.¹ At the regional level, Tanzania has committed to the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol), the 2008 Southern African Development Community (SADC) Protocol on Gender and Development and the 1999 Treaty for the Establishment of the East African Community.² The CEDAW, which Tanzania ratified in 1986,

* PhD (Cape Town), LL.M (Dar es Salaam), Postgraduate Diploma in Legal Practice (Law School of Tanzania), LL.B (Mzumbe). Postdoctoral Fellow under NRF SARChI support, Department of Public Law, Faculty of Law, University of Pretoria.

1 Convention on the Elimination of All Forms of Discrimination against Women (1979), United Nations Treaty Series vol 1249, available at: <<https://www.refworld.org/docid/3ae6b3970.html>> (last accessed 5 March 2023); Beijing Declaration and Platform for Action, Fourth World Conference on Women (1995) A/CONF.177/20 (1995) and A/CONF.177/20/Add.1.

2 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003), available at: <<https://www.refworld.org/docid/3f4b139d4.html>> (last accessed 5 March 2023). SADC heads of state and government

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requires state parties to make deliberate efforts to ensure women have the right to vote, to be elected to public office, and to fully participate in the public functions and service of their countries on equal terms with men.³ Likewise, article 9 of the Maputo Protocol, which Tanzania signed in 2007, requires state parties to ensure through national legislation that women participate without discrimination in all elections and that they are represented equally at all decision-making levels. In addition, the SADC Protocol on Gender and Development calls for 50:50 male and female representation in decision-making and electoral processes, while the Treaty for the Establishment of the East African Community calls for member states to eliminate prejudices against women and promote the equality of women and men in every respect.⁴ In 2018, the East African Community adopted a gender policy which among other things calls upon members to advance women's participation in political and decision-making processes at all levels on equal terms with men.⁵ Overall, the international and regional conventions seek to hold states to a standard that ensures both men and women have the right to exercise their political rights in an equal manner and without any discrimination. They require member states to take deliberate actions to reform policies, laws and practices to embrace the principles of gender equality and non-discrimination in exercising civic and political rights. Having ratified these conventions, Tanzania is obligated to respect and enact laws that align with them; this obligation was emphasized by the African Court on Human and Peoples' Rights in *Mtikila v Tanzania*.⁶ Although Tanzania has taken steps to ratify the international and regional conventions on civil and political rights, the full domestication and implementation of the conventions in the country is wanting.

The 1977 Constitution of the United Republic of Tanzania describes the country as a democratic, secular and socialist state which adheres to multiparty democracy.⁷ Article 21 guarantees every citizen the right to participate in public affairs and matters pertaining to the country's governance, directly or through representatives. In line with Tanzania's international and regional commitments, articles 9(h) and 12 of the 1977 Constitution outline non-discrimination principles and guarantee equality to all citizens. This notwithstanding, women have been underrepresented in positions of power compared to their male counterparts. At the parliamentary level, for example, while the overall number of women stood at 37.4 per cent after the 2020 general elections, only 9.8 per cent were directly elected from constituencies; others emanated from the special seats system and presidential appointments.⁸ Likewise, whereas women comprise 29.24 per cent of councillors, only 6.5 per cent are directly elected. At the grassroots level, the situation is alarming: women make up 2.1 per cent, 6.7 per cent and 12.6 per cent of elected village, hamlet and street chairpersons, respectively.⁹ The challenge of the low representation of women in positions of power exists in a context where women make up a slight majority of the population, at 51 per cent, and are the majority of registered voters.¹⁰

adopted the SADC Protocol on Gender and Development in August 2008, and it came into force in 2013; lately, the 2008 Protocol has been replaced by the 2016 Consolidated Text of the Protocol on Gender and Development, which consolidated the 2008 Protocol and the Agreement Amending the SADC Protocol on Gender and Development 2016. The East African Community Treaty was signed in Arusha, Tanzania, on 30 November 1999 and went into effect on 7 July 2000.

3 CEDAW, art 7.

4 SADC Protocol on Gender and Development 2008, art 12; EAC Treaty 2000, art 121.

5 EAC Gender Policy 2018, objective 4(5)(c).

6 *Tanganyika Law Society, Legal and Human Rights and Rev Christopher Mtikila v Tanzania*, AfCHPR 009/0211 & 011/2011.

7 Constitution of the United Republic of Tanzania of 1977 (cap 2, RE 2002), art 3(1).

8 IPU "Monthly ranking of women in national parliaments" (2023), available at: <https://data.ipu.org/node/184/data-on-women?chamber_id=13508> (last accessed 6 November 2023).

9 Data obtained from President's Office Public Service Management and Good Governance in May 2023.

10 According to the August 2022 population and housing census, there are about 61 million Tanzanians. The country has more women than men: 51% of the population is women (31,687,990 people) and 49% is men (30,053,130 people); National Bureau of Statistics "2022 population and housing census: Preliminary report" (2023) at 3. In the 2020 general

It is noteworthy that the state authority in Tanzania is exercised and controlled by the executive, vested with executive powers; the judiciary is vested with judicial powers; and the legislature is vested with legislative and supervisory powers over the conduct of public affairs.¹¹ The 1977 Constitution stipulates ways citizens can become part of the executive, judiciary and legislature through election, appointment and nomination.¹² Regarding the legislature, the 1977 Constitution, article 66(a–f), establishes five ways citizens can access parliamentary seats. It 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: –
- (a) members elected to represent constituencies;
 - (b) women members being not less than thirty per centum of all the members mentioned in paragraphs (a), (c), (d), (e) and (f) with qualifications mentioned in Article 67 elected by the political parties in accordance with Article 78, on the basis of proportion of votes;
 - (c) five members elected by the House of Representatives from among its members;
 - (d) the Attorney General;
 - (e) not more than ten members appointed by the President from amongst persons with qualifications specified under paragraphs (a) and (c) of sub-article (1) of Article 67 and, at least five members amongst them shall be women; and
 - (f) the Speaker, if he is not elected from amongst the members.”

Overall, the 1977 Constitution, article 66(a–f), allows citizens, including women, to become members of Parliament through vying directly for constituency seats, through the special seats system, by presidential appointment, through representation of the Zanzibar House of Representatives to the National Assembly or by being the president, Attorney General or Speaker of the Parliament. The first three are the most common means women access the Parliament in Tanzania, with the majority accessing the Parliament through the special seats system (outlined in article 66(b)), followed by constituency seats and presidential appointment.

Like everyone else, women can compete in a single-member constituency through the first-past-the-post electoral system as long as they are 21 and belong to a political party.¹³ Women can also be appointed to the Parliament by the president; the 1977 Constitution allows the president to appoint ten members of Parliament, five men and five women.¹⁴ The majority of women access the Parliament through the special seats system. The special seats system is established under the 1977 Constitution, articles 66(b), 67, 78 and 81, which requires at least 30 per cent of all categories of members of Parliament to be women.¹⁵ Political parties that get 5 per cent of the total valid parliamentary votes qualify for an allocation of special seats in proportion to the votes they have obtained. The special seats system came with the reintroduction of multiparty democracy in 1992, to curb the problem of the smaller number of women contesting and winning elections that had existed since Tanzania Mainland (then Tanganyika) got its independence in

election, women comprised 50.3% of voters in Tanzania’s mainland; Tanzania National Election Commission, Dodoma “Report on the 2020 presidential, parliamentary and councilors’ elections” (2021) at 21.

11 1977 Constitution, art 4. According to the Preamble of the Constitution, the executive is accountable to a legislature composed of elected members and representatives of the people, and a judiciary which dispenses justice without fear or favour.

12 *Id.*, caps 2 and 4.

13 *Id.*, art 67(1)(a).

14 *Id.*, art 66 (1)(e).

15 This was later increased to 40% in 2015 following a government directive to the National Election Commission. Tanzania NEC “Report”, above at note 10 at 70.

1961.¹⁶ In the three decades that Tanzania operated under a one-party system (1961–1992), no woman won a constituency between 1965 and 1980, while only one woman won a constituency in 1985 and two in 1990.¹⁷

Since the 1995 elections (the first election after the reintroduction of multiparty democracy in 1992), each of the constitutionally established modalities for accessing Parliament, namely, standing for constituency seats, the special seats system and presidential appointment, have recorded both progress and shortcomings in facilitating women's access. While the three pathways brought about 16 per cent of women in Parliament after the 1995 elections, the number increased to 37.4 per cent after the 2020 general elections.¹⁸ However, the significant share of women parliamentarians emanates from the special seats system, rather than from the directly elected parliamentary seats. Although there is a steady increase of directly elected women parliamentarians, with the number increasing from 8 in 1995 to 26 in 2020, the number has consistently remained smaller compared to women entering Parliament through special seats. For example, while women made up 16 per cent of the Parliament after the 1995 elections, only eight women were directly elected in constituencies (3.4 per cent); others came from special seats. Also, while women comprised 21.5 per cent of the Parliament after the 2000 elections, only 12 (5.3 per cent) were elected from constituencies, and the rest emanated from special seats. After the 2005 elections, although women made up 30.03 per cent of the Parliament, only 17 (7.3 per cent) were directly elected from constituencies; the others came through the special seats system. A similar trend was also seen in the 2010 and 2015 general elections: while women made up 35.85 per cent of the Parliament after the 2010 elections, 21 (8.7 per cent) were elected from constituencies, with the rest arriving through the special seats system. After the 2015 general elections, women comprised 37.1 per cent of the Parliament, but only 25 (9.4 per cent) were elected from constituencies. In 2020, almost three decades after the reintroduction of multiparty democracy in the country, women still constitute less than 10 per cent of the directly elected parliamentarians. The 2020 general election resulted in 37.4 per cent of women in Parliament; however, only 26 (9.8 per cent) of them were directly elected from constituencies.¹⁹

Despite the apparently slow progression of the number of women parliamentarians directly elected from constituencies, literature has focused on studying the challenges related to women's access to Parliament through the special seats system, with less focus on the directly elected seats.²⁰ Notably, in discussing the factors behind the small representation of women in elected seats, most authors have addressed the topic from a political science perspective, with a light touch of legal dynamics. For example, analysis of the legal challenges facing women's political participation is limited to the ways the 1977 Constitution uses gender-neutral language and how it reinforces the negative framing that politics is a male domain.²¹ When authors make an account of the ways in which the electoral regime, unfriendly political-party structures, a prohibitive legal

16 B Killian "A policy of parliamentary special seats for women in Tanzania: Its effectiveness" (1996) 24/2–3 *Ufahamu: A Journal of African Studies* 21 at 24.

17 Id at 21.

18 IPU "Monthly ranking" (2023), above at note 8.

19 Data obtained from National Electoral Commission election reports of the 1995, 2000, 2005, 2010, 2015 and 2020 general elections.

20 See M Yoon "Beyond quota seats for women in the Tanzanian legislature" (2016) 50/2 *Canadian Journal of African Studies* 191; M Yoon "Special seats for women in parliament and democratisation: The case of Tanzania" (2013) 41 *Women's Studies International Forum* 143; M Yoon "More women in the Tanzanian legislature: Do numbers matter?" (2011) 29/1 *Journal of Contemporary African Studies* 83; A Makulilo "Where there is power, women are not: Rethinking women and politics in Tanzania" (2019) 46/2 *The African Review: A Journal of African Politics, Development and International Affairs* 349; E Bjarnegård and P Zetterberg "Gender equality reforms on an uneven playing field: Candidate selection and quota implementation in electoral authoritarian Tanzania" 2016 51/3 *Government and Opposition* 464.

21 Makulilo "Where there is power", id at 355.

framework, negative social norms, domestic responsibilities, lower financial capabilities and lower education block women's access to directly elected seats in Tanzania, their analysis is short of the legal dynamics.²² While I argue elsewhere that the 1992 Political Parties Act and its 2019 amendment vitiate women's access to political leadership, the analysis is based on how a lack of legal guidance regarding the conduct of political parties affects women's access to parties' leadership positions and their nominations as candidates. The analysis leaves behind other equally important election-related legislation that hinders women's access to directly elected parliamentary seats.

From this premise, this article adds a comprehensive legal perspective to the debate regarding factors hindering women's access to directly elected parliamentary seats in Tanzania. It appreciates that the exclusion of women in politics is historical and complex and needs to be tackled from different angles. Thus a reflection on the legal challenges facing Tanzanian women's access to elected parliamentary seats is critical. This is because in 2022, Tanzania marked 30 years since the reintroduction of multiparty democracy, albeit with an alarmingly small number of elected women parliamentarians, at only 9.8 per cent. Through doctrinal legal research methodology, I analyse Tanzania's electoral laws and how they hinder women from vying for and winning constituencies three decades after the reintroduction of multiparty democracy. This is complemented with a comparative legal method where Tanzanian electoral laws are compared with the standards for safeguarding and practising inclusive democracy established under international and regional conventions that Tanzania has committed to. I further study the trend of women's access to Parliament in all six elections Tanzania has conducted since the reintroduction of multiparty democracy in 1992.²³ The article starts with providing the context for women's political participation globally, continentally and at the national level. In the main, I analyse laws governing access to Parliament in Tanzania and the legal challenges women encounter when accessing the Parliament, before ending with recommendations.

The context for women's political participation globally, in Africa and in Tanzania

Women's participation in political life is critical for the country's democratization process and sustainability.²⁴ It is an effective indicator for assessing the quality of democracy and determining the legitimacy, responsibility and accountability of a democratic regime.²⁵ In any democratic space, critical decisions, laws and regulations are made in the representative bodies. In order to obtain inclusive and gender-responsive laws, policies, budgets and programmes, the demographic representation of diverse citizen groups, including women, in decision-making bodies is critical. Despite this realization, the underrepresentation of women is a common characteristic in governance structures of both established and new democracies. Currently, the global proportion of women parliamentarians stands at 26.1 per cent.²⁶ Only five countries – namely Rwanda, Cuba, Nicaragua, Mexico and the United Arab Emirates – have attained equal representation of men and women in parliaments.²⁷ In sub-Saharan Africa, the representation of women in parliaments is low, with 29.2 per cent of elected or nominated parliamentarians being women.²⁸ In the East African region, women occupy 32 per cent of parliamentary seats. In Tanzania, while women account for 37.4 per cent of the Parliament, only 9.8 per cent are directly elected from constituencies; others access parliamentary seats through the special seats system or presidential appointment.²⁹

22 Ibid.

23 The six general elections were in 1995, 2000, 2005, 2010, 2015 and 2020.

24 J Moisés and B Sanchez "Women's political representation in Brazil" in M Vianello and M Hawkesworth (eds) *Gender and Power* (2016, Palgrave Macmillan) 7.

25 A Lijphart *Patterns of Democracy* (2012, Yale University Press) at 206.

26 IPU "Monthly ranking of women in national parliaments" (2022), available at: <<https://data.ipu.org/women-ranking?month=3&year=2022>> (last accessed 6 January 2023).

27 Ibid.

28 Ibid.

29 IPU "Monthly ranking" (2023), above at note 8.

Historically, laws have been used to reinforce negative societal perceptions of women in public life and consequently sideline them from political life. The “theory of gendered organizations” calls attention to the politics of exclusion, pointing to ways gender privilege and disadvantage are created and maintained through law and institutional and political practices which distribute political opportunities based on race and gender.³⁰ According to the theory, male lawmakers, being the dominant sex in many countries’ representative bodies, have created laws that reinforce male societal privilege and inhibit women from political life. The legal exclusion of women from political life can be traced to the first Athenian democracy, which legally banned women, enslaved people and foreigners from politics.³¹ In the fifth century, the Salic law implemented in the Roman Empire prevented women from inheriting land and owning property, the prerequisites for political power.³² In the African context, gendered institutions, including laws, social structures and patriarchal norms and practices, promote and maintain gender inequalities, often to the advantage of men, who form the majority of traditional leadership structures. The status quo makes it challenging for women to participate in public life, have a voice and access political power.³³

In Tanzania, the legal framework has also been one of the main hindrances to women’s access to positions of power, including in elected parliamentary positions. For example, the 1961 Constitution and the immediate subsequent amendments contained no deliberate efforts to facilitate women’s access to positions of power.³⁴ This is despite the fact that women played a critical role during the struggle for Tanganyika’s independence. For example, in collaboration with fellow women, Bibi Titi, through the Umoja wa Wanawake wa Tanzania (UWT, Union of Tanzanian Women), mobilized men and women to support the independence movement.³⁵ Nevertheless, Mwalimu Julius Kambarage Nyerere, the first prime minister of independent Tanganyika, appointed an all-men cabinet a few months after the country gained its independence from the British in 1961. Nyerere argued that women lacked the political experience to serve in the government.³⁶

While Tanganyika obtained independence in 1961 as a multiparty state, it became a de facto one-party state at independence and de jure in 1965. The negative perception of women’s ability and experience to engage in political life persisted and meant that the political arena during the single-party system was a male domain. It took two decades after the transition to the single-party system for the first woman to win a constituency, in 1985.³⁷ Later, in 1985, Chama cha Mapinduzi (CCM), the only party, reserved 15 parliamentary seats for women due to pressure from the international and regional community to include women in positions of power. The seats benefited CCM women through the UWT (the CCM’s women’s wing).³⁸ However, no measures were taken to ensure electoral laws, namely the 1977 Constitution and the National Elections Act, contained mechanisms to promote women to stand for and win directly elected seats.³⁹ Consequently, only two women won directly elected parliamentary seats in the 30 years that the single-party system existed in Tanzania.⁴⁰

30 M Hawkesworth “Gender and democratic governance: Reprising the politics of exclusion” in Vianello and Hawkesworth (eds) *Gender and Power*, above at note 24 at 217.

31 Ibid.

32 Ibid.

33 D Madsen (ed) *Gendered Institutions and Women’s Political Representation in Africa* (2021, Africa Now) at 2.

34 The Independence Constitution (1961–62), the Republican Constitution (1962–64) and the Interim Constitution of the United Republic of Tanganyika and Zanzibar (1964–67).

35 S Geiger *TANU Women: Gender and Culture in the Making of Tanganyikan Nationalism, 1955–65* (1997, Heinemann) at 47.

36 A Kairuki “The role of women in politics in Tanzania” (2018) at 47, available at: <https://www.hss.de/download/publications/AMZ_90_Frauen_05.pdf> (last accessed 10 March 2023).

37 Killian “A policy”, above at note 16 at 24.

38 Ibid.

39 National Elections Act, cap 258 RE 2015.

40 Killian “A policy”, above at note 16 at 24.

Table 1. Trend of the number of women in Parliament 1995–2021

Year	Women who won in constituencies	Women special seats	Total number of parliamentarians	Total percentage of women in Parliament
1995	8	37	269	16.73
2000	12	48	279	21.51
2005	17	75	307	30.03
2010	26	102	357	35.85
2015	25	113	393	37.2
2020	26	113	393	37.4

Source: National Electoral Commission elections reports of the 1995, 2000, 2005, 2010, 2015 and 2020 general elections

The 1990s witnessed significant democratization efforts in the African continent.⁴¹ Consequently, both internal and external factors led to the re-adoption of multiparty democracy in Tanzania in 1992, with the first multiparty election being undertaken in 1995.⁴² Patchy amendments were made to the 1977 Constitution and the National Elections Act to allow the country to transition to multiparty democracy.⁴³ The 1992 Political Parties Act was enacted to guide the formation and management of political parties.⁴⁴ This Act contained no directives to ensure political parties nominate women candidates.⁴⁵ The reintroduction of multiparty democracy also established, in the 1977 Constitution, 15 per cent of reserved parliamentary seats for women through the special seats system.⁴⁶

Three decades of operating under multiparty democracy has seen changes made in the legal framework governing political participation and elections. The Political Parties Act has been amended, and new laws, such as the 2010 Election Expenses Act, which seeks to regulate the sourcing and utilization of finances during elections, have been enacted and further amended.⁴⁷ Notably, none of the amendments to the Constitution, the National Elections Act, the Political Parties Act or the Election Expenses Act have significantly transformed how women take part in and win competitive parliamentary seats. To respond to the slow progress of women's access to elected parliamentary seats, the government kept on increasing the number of special seats for women, from 15 per cent to 20, 30 and 40 per cent in 2000, 2005 and 2015, respectively.⁴⁸ Accordingly, since 1992, most women have accessed the Parliament through the special seats system; fewer women parliamentarians have vied for and won constituencies directly, as depicted in Table 1.

Legal challenges facing women's access to directly elected parliamentary positions

Tanzania celebrates 30 years of multiparty democracy with some great achievements in women's political participation. Since 2022, two arms of the state are headed by women;⁴⁹ the women's special seats system, which was first introduced and set at 15 per cent in 1985, has increased to 40 per

41 R Shayo "Women's participation in party politics during the multiparty era in Africa: The case of Tanzania" (2005) at 11, available at: <<https://media.africaportal.org/documents/OP34.pdf>> (last accessed 17 January 2023).

42 P Msekwa "Reflection on the first decade of multi-party politics in Tanzania" at 13, available at: <<https://searchworks.stanford.edu/view/6842664>> (last accessed 10 March 2023).

43 See the Eighth Constitutional Amendment of 1992.

44 Act No 5 of 1992.

45 Shayo "Women's participation", above at note 41 at 3.

46 V Lihiru "The 2020 CHADEMA special seats dispute in Tanzania: Does the National Electoral Commission comply with the law?" (2021) 20/2 *Journal of African Elections* 103.

47 Political Parties Amendment Act No 1 of 2019; 2010 Election Expenses Act, cap 278 RE 2015.

48 Tanzania NEC "Report" above at note 10 at 70.

49 President Samia Suluhu Hassan is the head of the executive arm of the state, and Dr Tulia Ackson is the second female speaker of the national Parliament.

cent; the number of women in Parliament has increased by 20 per cent, from 16 per cent in 1995 to 37.4 per cent after the 2020 general elections; and the number of women directly elected from constituencies has also increased, from 8 women in 1995 to 26 women in 2020. That notwithstanding, 30 years of multiparty democracy has seen fewer women vie for and win parliamentary elections directly. The 1977 Constitution, article 66(a–f), with its five ways through which citizens, including women, can access parliamentary seats, has shortcomings that hinder women’s access to elected parliamentary positions.

The cross-cutting challenge is the requirement of age and political affiliation. In Tanzania, while a person of 18 years of age can vote in an election, a candidate for a parliamentary seat needs to be 21.⁵⁰ Similarly, candidates need to be members of a political party and receive the party’s sponsorship to stand for an elected position.⁵¹ The age and party sponsorship criteria limit how citizens, women included, can contest elected parliamentary seats. Article 25 of the 1966 International Covenant on Civil and Political Rights (ICCPR), which Tanzania ratified in 1976, requires every citizen to have the right and opportunity, without any distinctions and without unreasonable restrictions, to take part in the conduct of public affairs, to vote and to be elected at genuine periodic elections. The UN Committee on Human Rights has also clarified that “anyone otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements, including because of political affiliation”.⁵² Unlike many other countries, including some of its neighbours such as Uganda, Kenya and Rwanda, Tanzania does not allow for independent candidates.⁵³ This is despite the fact that a 2013 ruling by the African Court on Human and Peoples’ Rights required Tanzania to allow independent candidates.⁵⁴ Prohibiting independent candidates bears the potential of restricting alternative entry points to the political space and different voices that may resonate with the specific needs of marginalized groups, including women, that do not fall within the remit and political ideologies of mainstream political parties.⁵⁵

Similarly, the ICCPR, article 25, stipulates that any person of age should be able to vie for an elected position. The UN Committee on Human Rights recognized that there may be reasons to require a higher age for election or appointment to particular offices, but such limitations must be justifiable on objective and reasonable criteria.⁵⁶ With no reasonable justification provided, the three-year gap in Tanzania between being legally allowed to vote and being able to vie for a parliamentary position is an obstacle for young people, including young women, to exercise their political rights. It hinders diversity and inclusion in elections and, consequently, in the representation of youth perspectives and experiences in the decision-making process.⁵⁷

Further, Tanzania’s dominant electoral system vitiates the ability of women to stand in constituencies. The first-past-the-post (FPTP) electoral system has existed since Tanzania gained independence.⁵⁸ Under this system, the country is divided into geographical electoral constituencies, and political parties are expected to place candidates in constituencies.⁵⁹ Voters then vote for their

50 1977 Constitution, arts 5(1) and 67(1)(a).

51 *Id.*, arts 39, 47 and 67.

52 UN Committee on Human Rights General Comment No 25: The right to participate in public affairs, voting rights and the right to equal access to public service (12 July 1996), 1510th meeting (57th session), available at: <<https://www.refworld.org/legal/general/hrc/1996/en/28176>> (last accessed 20 March 2024).

53 For example, the 2003 Constitution of Rwanda (as amended in 2015), art 75(1), allows independent candidates.

54 *Tanganyika Law Society*, above at note 6.

55 *Ibid.*

56 UN General Comment No 25, above at note 52.

57 Not Too Young to Run “Facts and figures: What do the numbers tell us?”, available at: <<http://www.nottooyoungtorun.org/facts/>> (last accessed 10 October 2023).

58 Established under secs 35(f)(8) and 80(1) of the National Elections Act, cap 343, RE 2002. The Act is currently under review, hence the arrangement of sections may change.

59 ØS Skorge “Mobilising the underrepresented: Electoral systems and gender inequality in political participation” (2021) 3 *American Journal of Political Science* 538, available at <<https://doi.org/10.1111/ajps.12654>>.

Table 2. Percentage of women and men in nominations for parliamentary elections since 1995

Year	Percentage of women in nominations for parliamentary elections	Percentage of men in nominations for parliamentary elections
1995	4.4	95.6
2000	8.12	91.88
2005	12.7	87.3
2010	18.4	81.4
2015	19.2	80.8
2020	23.3	76.7

Source: National Electoral Commission elections reports of the 1995, 2000, 2005, 2010, 2015 and 2020 general elections

preferred candidate in the constituency and are allowed to vote for only one candidate; the candidate with the most votes in the constituency is deemed the winner. The FPTP system does not favour female candidates due to social and cultural norms, which position women as belonging in the private and domestic sphere and men in the public sphere and as natural leaders.⁶⁰ These norms, in turn, influence political parties, which lean towards nominating male candidates, and voters' preference for male candidates.⁶¹ Women are viewed as incapable or incompetent leaders and are considered risky candidates by political parties. As depicted in Table 1, since 1992, most women have accessed the Parliament through the special seats system; fewer women parliamentarians have vied for and won constituencies directly.⁶² Table 2 shows that the number of women nominated for parliamentary seats has increased incrementally since the first multiparty election, from a low of 4.4 per cent in 1995 to 23.3 per cent in 2020. This notwithstanding, the FPTP electoral system affects the placement of female candidates in constituencies, with political parties placing women in hard-to-win constituencies. It also affects voter preferences and how voters select women candidates.⁶³ Consequently, after three decades of a multiparty democracy, Tanzanian women still make up less than 10 per cent of elected parliamentarians. The status quo has contributed to the low numbers of women nominated for and elected to constituency parliamentary seats since the 1995 elections, as shown in Tables 2 and 3.

Another significant obstacle for women entering Parliament is gender-based violence during elections. The National Elections Act, the Code of Ethics and the Electoral Code of Conduct (for the 2020 election) recognize the importance of minimizing violence during elections. The Electoral Code of Conduct for the 2020 general election, for example, prohibited the use of abusive language, harassment, threats or inciting violence or discrimination based on gender, disability, colour or body structure in the election campaigns. Nonetheless, the measures taken against those committing violence during elections are minimal and implemented haphazardly, and therefore provide little deterrence to perpetrators. For example, a 2015 study on gender-based violence during elections recorded 69 per cent of women electoral candidates self-reporting as having experienced abusive language, 17 per cent experiencing physical attacks and 13 per cent receiving demands for sexual favours.⁶⁴ There were reports during the 2020 general election of instances of violent and belittling rhetoric against female candidates: in Mara Region, a campaign manager labelled a female

60 Makulilo "Where there is power", above at note 20 at 356.

61 Skorge "Mobilising the underrepresented", above at note 59 at 539.

62 V Lihiru "Exploring suitable electoral systems for promotion of women's representation in Tanzania and Rwanda" (2022) 21/3 *African Studies Quarterly* 65.

63 Ibid.

64 Tanzania Women Cross-Party Platform "Violence against women in elections: Evidence from 2015 Tanzania general elections" (2015) at 16, available at: <https://mlkrook.org/pdf/TWCP_VAWE.pdf> (last accessed 20 March 2024).

Table 3. Elected female parliamentarians in the National Assembly 1995–2020

Years	Number of women who won elections in constituencies	Total percentage of women in Parliament
1995	8	3.4
2000	12	5.3
2005	17	7.3
2010	21	8.3
2015	25	9.4
2020	26	9.8

Source: National Electoral Commission elections reports of the 1995, 2000, 2005, 2010, 2015 and 2020 general elections

candidate a “prostitute” while appealing for people to vote for a male candidate; in Rukwa Region, a parliamentary candidate reportedly urged people during a political rally not to vote for a female candidate because “she would not be able to represent them while on her menstrual period”.⁶⁵ The fact that gender-based violence during elections in Tanzania is largely met with a porous legal framework and with impunity continues to perpetuate its occurrence and consequently scares women away from public life, including contesting parliamentary seats.

A further challenge for women’s access to Parliament is difficulties in accessing campaign funding. The 2010 Elections Expenses Act controls election financing by political parties but does not contain any specific measures for addressing women’s unique financial challenges during elections. The Political Parties Amendment Act (PPAA), section 3(c) and (d), contains guidelines on political parties’ income, expenditure and accountability. It does not, however, guide the ways that political parties’ subventions can be used to advance the participation of women. In Kenya, for example in the Political Parties Act 2011, section 23, political parties are legally required to utilize the funds from the Political Parties Fund to advance the participation of vulnerable groups in the political processes, among other things. In addition, the Kenyan Independent Electoral and Boundaries Commission allows women and other vulnerable groups to pay half of the standard nomination fee.⁶⁶ Unlike in Kenya, political parties in Tanzania do not have a legal obligation to use their subsidies to promote the participation of women in political processes; how they are utilized is at the sole discretion of the parties. Usually, parties that receive subsidies from the government allocate a small amount to their women’s wings, but this is usually not enough to finance capacity-strengthening programmes to promote women’s effective participation in political processes, including in elections.⁶⁷

Further, the special seats system also hinders women’s access to directly elected parliamentary seats.⁶⁸ As a form of temporary special measure, the special seats system has contributed significantly to increasing the overall number of women in Parliament. For example, after the 2020 elections, women accounted for 37.4 per cent of total parliamentary seats. However, only 9.8 per cent of women are directly elected from constituencies, and the rest come from the special seats system.

65 V Lihiru “Chronicles of women’s participation in the 2020 general elections in Tanzania” (2020), available at: <<http://www.udadisi.org/2020/12/chronicles-of-women-participation-in.html?m=1>> (last accessed 2 December 2022).

66 S Teyie and P Etyang, “IEBC to slash nomination fees for women, special groups by half” (23 March 2022) *The Star*, available at: <<https://www.the-star.co.ke/news/2022-03-23-iebc-to-slash-nomination-fees-for-women-special-groups-by-half/>> (last accessed 6 March 2023).

67 V Lihiru “Political parties as a stumbling block for women’s political leadership in Tanzania” (2023) *The African Review* 1 at 18.

68 1977 Constitution, arts 66 1(b) and 78(1).

In all the six elections Tanzania has held since 1995, most women parliamentarians have emerged from the special seats system.

The special seats system has done more than just bring more women into Parliament. It has contributed to a significant transformation in the perception of women in leadership and has provided an entry point for women into politics. Several women have moved from being special seats MPs to standing for and winning constituency seats, including in highly patriarchal societies like the Mara Region.⁶⁹ Women who started their political careers as special seats parliamentarians have become speakers of the National Assembly, ministers and deputy ministers. The first female president of Tanzania, President Samia Suluhu Hassan, also started her political career as a special seat parliamentarian.⁷⁰ Women in special seats have also played a significant role in legislating for gender-sensitive laws, including laws related to land ownership, employment, education and sexual offences.⁷¹ That notwithstanding, implementing the special seats system in Tanzania has had a perverse effect on how women transition to elected constituency seats. Anecdotal evidence points to political parties encouraging women not to vie for constituencies, promising to offer them special seats in return. Voters are also fed with negative perceptions of women who choose to stand for constituency seats, with such women branded as “greedy” because they choose to stand for a competitive seat while they have their special seats. The weaknesses in the legal framework have also contributed to the poor transition of women from special to competitive seats. Although the 1977 Constitution, article 81, requires the National Election Commission (NEC) to create procedures for the nomination of special seats for parliamentarians by political parties, no such procedures have been developed to date. How and which women are selected for special seats remains at the sole discretion of the political party and is not a legal requirement. This lack of guidance from the NEC has contributed to different systems across political parties in their selection of special seats members, thus often exacerbating systems of patronage and corruption.⁷² Consequently, special seats parliamentarians are not elected by voters, do not substantively represent any geographical area, serve at the party’s discretion and are not eligible to be nominated for the position of prime minister.⁷³ As a form of temporary special measure, the women’s special seats system is meant to be a time-limited intervention to provide women with a stepping stone, to gain political experience and financial muscle to transition to competitive seats. However, there are no term limits for special seats for Tanzanian parliamentarians, which has contributed to women serving for decades under special seats without transitioning to constituency seats, thus limiting the opportunity for other women to access the Parliament and gain political experience. These challenges demonstrate that the practice of the special seats system in Tanzania is contrary to the instructions of the CEDAW, article 4, which requires temporary special measures to not maintain unequal or separate

69 In 2015, Ester Bulaya of the Chama cha Demokrasia na Maendeleo (CHADEMA) party won Bunda Urban constituency against a well-established Chama Cha Mapinduzi candidate, Stephen Wasira. Bulaya started as a special seat MP in 2010–15. Similarly, in 2015, Ester Matiko won the Tarime Urban constituency, defeating Chama Cha Mapinduzi candidate Michael Kembaki. As in Bulaya’s case, Matiko moved from special seats, where she served from 2010–15.

70 Suluhu was elected as a member of the Zanzibar House of Representatives for a special seat in 2000 and was appointed as a minister. In 2005, she was re-elected and appointed minister for another portfolio. In 2010, she became competent for a parliamentary seat and won in the Makunduchi constituency; she became the Minister of State for Union Matters. In 2014, Suluhu was elected the vice-chairperson of the Constitutional Assembly, tasked with drafting the country’s new constitution. In July 2015, she was nominated as the presidential running mate of the late Dr John Magufuli, who was the presidential candidate of the fifth-phase government administration. She became the first female vice-president in 2015 and the first president of the United Republic of Tanzania in March 2021, in line with the 1977 Constitution, article 35(7), following Magufuli’s untimely demise.

71 Lihiru “The 2020 CHADEMA special seats dispute”, above at note 46 at 104.

72 Id at 109.

73 The 1977 Constitution, art 51(2), requires the president to appoint a member of Parliament elected from a constituency of a political party that has a majority of members in the National Assembly or, if no political party has a majority, who appears to have the support of the majority of the members of Parliament, to be prime minister of the United Republic.

standards and to be temporary. Overall, these challenges lead to disputes in political parties,⁷⁴ affect the quality and competence of women special seats parliamentarians and impact on how special seats parliamentarians transition to elected parliamentary seats.⁷⁵

The existence of a special seats system also makes political parties reluctant to adopt voluntary gender quotas to promote the inclusion of women within the parties and beyond. The PPAA, section 6(a)(5), requires political parties “to promote, among other things, principles of gender, youth and social inclusion in the (a) formulation and implementation of its policies; (b) nomination of candidates for elections; and (c) election of its leaders”. However, four years after the advent of the PPAA, political parties have not adopted voluntary gender quotas for the nomination or election of party leaders or in the nomination of candidates for local and general elections. The political parties’ initiatives to include women are limited to establishing women’s wings and the nomination and election of a token number of women to be represented in decision-making organs. Gaps in the PPAA also enable political parties’ non-compliance; although it requires parties to adhere to principles of gender and social inclusion, it does not establish compliance thresholds, nor does it provide incentives for compliance or penalties for non-compliance.⁷⁶

Another way that women can become members of Parliament is by being president, Attorney General or Speaker. Since independence, all the ten appointed Attorney Generals have been men,⁷⁷ while the country has had two female speakers out of eight in total.⁷⁸ The country has had one female president (Suluhu) among the six presidents since independence.⁷⁹ Thus, more men have been accessing the Parliament through these modalities than women. A final way through which women can access the Parliament is through presidential appointment. The Constitution gives power to the president to select ten additional members of Parliament at his / her discretion, five of whom must be women.⁸⁰ Although women are guaranteed to access the Parliament through this modality, there are no legal requirements to consider other excluded groups based on age or disability, including women, while making these appointments.

Conclusion and recommendations

Tanzania celebrates 30 years of multiparty democracy with notable achievements in women’s political participation. Nevertheless, few women vie for and win parliamentary elections directly; most women access parliamentary seats through the special seats system. In July 2022, in her letter to Tanzanians on 30 years of multiparty democracy, Tanzania’s first female president, President Suluhu, introduced her “4Rs” agenda (Resilience, Reconciliation, Reforms and Rebuilding).⁸¹ She promised to initiate reforms, including in the political arena and electoral laws. In October 2022, the task force President Suluhu had formed in 2021 to look into ways to improve multiparty democracy in the country submitted its report and recommendations.⁸² The task force recommended,

74 Such as *Halima James Mdee and 18 Others v The Board of Trustees, Chama cha Demokrasia na Maendeleo (CHADEMA) and 2 Others* High Court of Tanzania at Dar es Salaam, misc civil application no 16 of 2022 (pending).

75 Lihiru “The 2020 CHADEMA special seats dispute”, above at note 46 at 112.

76 Lihiru “Political parties”, above at note 67 at 21.

77 Roland Brown, Mark Bomani, Joseph Warioba, Damian Lubuva, Andrew Chenge, Johnson Mwanyika, Frederick Werema, George Masaju, Adelardus Kilangi and Eliezer Feleshi.

78 Anne Makinda and Tulia Ackson were the female speakers, along with Adam Sapi Mkwawa, Erasto Andrew Mbwana Mang’anya, Adam Sapi Mkwawa, Pius Msekwa, Samuel Sitta and Job Ndugai.

79 The men were Julius Nyerere, Ali Hassan Mwinyi, Benjamin Mkapa, Jakaya Kikwete and John Magufuli.

80 1977 Constitution, art 66.

81 S Suluhu Hassan “President Samia’s letter to Tanzanians on 30 years of multi-party democracy” (1 July 2022) *The Citizen*, available at: <<https://www.thecitizen.co.tz/tanzania/oped/president-samia-s-letter-to-tanzanians-on-30-years-of-multi-party-democracy-3866168>> (last accessed 7 March 2023).

82 The task force was formed as a result of the resolution made at the Stakeholders Meeting on Multiparty Democracy of 15–17 December 2021. The task force report covers nine areas, inter alia political rallies, election conduct, participation of women and vulnerable groups in multiparty democracy and political-party subsidies.

inter alia, reforms in the Political Parties Amendment Act and the National Elections Act and provided pathways for reviving the stalled 2011–2014 constitutional review process. Further, the task force recommended measures to curb violence against women in political and public life and for each political party to have a gender policy. On 10 November 2023, three bills related to the conduct of elections and political parties were tabled in the Parliament.⁸³ On the inclusion of women in the electoral process, the bills have eliminated unopposed candidates, a system which contributed to electoral malpractice in previous elections.⁸⁴ The bills also require political parties to maintain a gender and social inclusion policy at all times, which must stipulate their commitment to advance the participation of women, young people and persons with disabilities in politics and in leadership positions, as well as to put in place a gender and social inclusion desk to deal with gender issues.⁸⁵

Despite these gender-related provisions, the new bills have not addressed critical challenges that face women's access to directly elected seats. The legal gaps and restrictions on candidacy age and political affiliation, the FPTP electoral system, the governance of political parties, violence against women in political and public life, campaign financing and challenges related to the implementation of special seats remain. The status quo exists because the government has been reluctant to undertake reforms to the 1977 Constitution;⁸⁶ most of the challenges that hinder women's access to elected seats emanated there. Without reviewing the Constitution, no changes in other legislation will cure the problem. To allow women equal access to directly elected seats, including parliamentary seats, the 1977 Constitution must be reviewed and must address the challenges related to candidacy age, must allow independent candidates, must address violence against women in political and public life, and must alter the FPTP electoral system and the special seats system. As I argue elsewhere, the reforms of electoral and political parties' laws must include clear gender representation thresholds to guide the recruitment of party members, the election of party leaders, the nomination of candidates and the utilization of financial resources and capacity-building opportunities.⁸⁷

Competing interests. None

83 The bills were the Electoral Commission Bill 2023, the Political Parties Affairs Bill (which amends two laws, the Political Parties Amendment Act and the Elections Expenses Act) and the Presidential, Parliamentary and Councilors Bill, which harmonizes the 1985 National Elections Act and the Local Government Elections Act of 1979; J Mosenda "Public opinion split over proposed elections bill" (11 November 2023) *The Citizen*, available at: <<https://www.thecitizen.co.tz/tanzania/news/national/public-opinion-split-over-proposed-elections-bill-4429994>> (last accessed 15 November 2023).

84 Regarding unopposed candidates, according to section 44 of the National Elections Act, the NEC does not hold an election in a particular ward or constituency if only one candidate stands for its seat. Such candidates are deemed to have run and won unopposed. I argue elsewhere that "[t]he possibility of winning the election before actual campaign and voting periods increases candidate and party temptation to eliminate competition. This happens through corruption, manipulation, or leveraging legal and procedural technicalities. During the 2020 general election in Tanzania, parliamentary elections did not occur in 28 out of 264 constituencies as 28 candidates from the ruling party had passed without objection." Lihiru "Exploring", above at note 62 at 65.

85 There are also changes in the handling of disputes within the parties, with members who sit in the first level of the dispute resolution organ not allowed to sit in the appeal organ. This was one of the contentious issues in the handling of the case pertaining to the 19 special seats parliamentarians of CHADEMA; see *Halima James Mdee*, above at note 74.

86 The government communicated its intention to undertake three years of public education on the 1977 Constitution before the constitution reform process began, a move that civil society organizations termed a delaying tactic.

87 Lihiru "Political parties", above at note 67 at 21.

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