

***Securing Women's Right to Political Participation
Through the Adoption of Quota System in Somalia***

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EXECUTIVE SUMMARY

The participation and representation of women in political and decision-making structures is not only a justice issue but also a human rights issue. The clan based political representation of Somalia combined with others factors such as socio-economic, cultural beliefs, stereotypes, unconducive political environment and fragile security prove to be a barrier to the realization of gender equality in politics.

As Somalia is undergoing a historic and critical moment politically, moving towards a democratic and inclusive political system, the approach and position to women's representation in political structures is being defined. The proposed approach to increasing the women's political representation in Somalia is a combined approach one rather a sequencing one through the adoption of a gender quota and through applying gender mainstreaming -combination of both the fast track and incremental track to equal political representation. The combination of both tracks will bring in both a top down and bottom up approach to increasing women's political representation.

However, the mere adoption of a gender quota is not sufficient means to achieve equal representation. This paper seeks to offer practical recommendations on pre-conditions necessary to make a gender quota work more effectively in view of the on-going constitutional and political processes and consideration of all these issues into the process. This includes the removal of not only the formal barriers but also the direct and hidden discrimination as well as the institutional and cultural mechanisms of exclusion. Creating strong institutions both political and judicial, a free, safe and enabling environment, which are also prerequisite for a gender quota system to be effectual. Independent judicial institutions such as courts do not only have an important role in ensuring the upholding of the constitution but also that the political leaders of the country are delivering to achieve and meet their international commitment of which gender equality is one of them. In addition, this paper looks at the theoretical arguments on women's political representation, the legal and institutional frameworks on women's political participation, the barriers to Somali women's representation in politics and finally drawing lessons learned from the driving factors behind the notable increase in political engagement of women in Africa from mid-1990 is which Somalia can apply. It also highlights the limitations and implications of gender quota system in Somalia

INTRODUCTION

Evidence shows that women's participation in politics and in leadership positions are restricted both at local and global levels.¹ Historically, women have been excluded from the public and political life. Women are not only marginalized in positions of political power but also other positions of power at the local level such as "religious and traditional leaders, local politicians, and village and community elders".²

The under-representation of women in political and decision-making structures is attributed to a number of factors such as institutional, economic and societal constraints that have locked out women from public and political life as the 2011 UN General Assembly resolution on women's political participation indicates that

*Women in every part of the world continue to be largely marginalized from the political sphere, often as a result of discriminatory laws, practices, attitudes and gender stereotypes, low levels of education, lack of access to health care and the disproportionate effect of poverty on women.*³

Societal constraints include the social and cultural "norms that make it more challenging for women to leave their traditionally domestic roles for more public roles outside of the home"⁴. The institutional constraints encompass "barriers such as political systems that operate through rigid schedules that do not take into consideration women's domestic responsibilities, and the type of

¹ UN WOMEN: <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation>

² Governance. Social Development. Humanitarian. Conflict 'Gender and Governance'
<http://www.gsdrc.org/go/topic-guides/gender/gender-and-governance#part>

³ UN General Assembly resolution(A/RES/66/130): Women's Political Participation (2011)

⁴ Governance. Social Development. Humanitarian. Conflict 'Gender and Governance'
<http://www.gsdrc.org/go/topic-guides/gender/gender-and-governance#part>

electoral quotas used (if any)”.⁵ Economic constraints among others include women’s lack of access to economic resources, which is an important tool for women’s empowerment in politics.

Despite the existence of a number of international and regional conventions and efforts to redress the gap of gender inequalities in politics, including the Beijing Platform which calls “for governments to end discrimination against women and close the gender gap in 12 critical areas including political participation and human rights”⁶, women still are largely underrepresented in the political domain. According to the Head of UN Women “[t]wenty years after 189 countries adopted a blueprint to achieve equality for women, not a single country has reached gender parity and equality.”⁷

Likewise, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) reiterates the importance of women’s representation in the political life of their countries and calls on States to put in place specific measures to promote women’s political participation, yet progress made by States is still far below the desired outcome.⁸

⁵ibid.

⁶United Nations ‘Beijing Declaration and Platform for Action’(1995)

⁷ UN WOMEN <http://america.aljazeera.com/articles/2015/3/6/head-of-un-women-no-country-has-achieved-gender-equality.html>

⁸Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): The Committee on the Elimination of Discrimination against Women in its General Recommendation No.5 (1988) recommends that States Parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment. Article 7 and 8 of CEDAW unequivocally cover the right of women to non-discrimination in a country’s public and political spheres, as well as their right to equality with men as follows:

Article 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country

Article 8: States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Gender inequality remains a major problem in many parts of the world and women's empowerment is critical to achieving gender equality. One aspect that this inequality is manifested is in the political scene. Though gender equality is one of the key principles that many constitutions around the world are founded on, nevertheless the lack of strong commitment and political will at the national level undermines the promotion of women's rights and achieving gender equality.

In Somalia, United Nations Development Programme (UNDP)'s Human Development Report (2012) states that "Gender inequality is alarmingly high at 0.776 out of a value of 1 (complete inequality), with Somalia at the fourth lowest position globally on the Gender Inequality Index (GII)."⁹

Every woman and girl should have the opportunity and be able to make decisions regarding their life and as well as be able to partake in a meaningful way in the public life. However, when it comes to decision-making and power, Somali women have been marginalized, excluded and denied access to power, decision making and political processes.

In spite of the pressures from the international community such as the UN and Donors influencing women's political representation in Somalia and politicians' promising to adopt a quota for women, this pledge still remains unfulfilled to date. Quotas for women through constitutions and laws have been argued to be primary and strong mechanisms, which offer protection of women's right to political participation and representation. Nevertheless, in the case of Somalia, I will argue that the mere adoption of quotas for women will not be of sufficient guarantee and efficient mechanism to tackle Somalia's clan-based form of political representation in which the clan elders

⁹ United Nations Development Programme (UNDP), *Somalia Human Development Report* (2012) p. xviii

hold unlimited power. Therefore, making it impossible to achieve equal representation (both descriptive and substantive representation) of women in politics in Somalia.

I will argue that in the absence of certain conditions such as commitment and political will, leadership and effective implementation and enforcement mechanisms through collective efforts and actions of different institutions, which are key to addressing the gender inequalities in the political domain, the quota system in Somalia, will remain ineffectual. These conditions for efficient and successful quota system will not only yield in recruiting more women into politics but gradually moving the country's political system from the clan- based political representation to a more democratic and inclusive political system as the country works towards building more democratic institutions and system.

In addition to the above problems noted in the UN General Assembly resolution, Somali women are particularly challenged by the traditional clan system of power sharing known as “the 4.5 formal” that does not recognize women should have a role or say in the political affairs and dictates that women cannot and should not represent their clans.

Supported by the international community and led by the United Nations (UN) especially the United Nations Development Programme (UNDP) and the United Nations Political Office for Somalia (UNPOS), Somalia adopted a Provisional Constitution in 2012, which does not include the 4.5 formula systems. This move is an indication of living up to the agreement by the different clans reached at the Constitutional Conference earlier the same year which denounced the use 4.5 formula for power sharing in Somalia's political transition in order to achieve democracy and agreed that the 4.5 system would not be included in the new Constitution.

While this can be said to be a major milestone for opening up space for women to be involved in politics, however there has been a failure in recognizing and legalizing a quota for women in political representation in the draft constitution that was adopted. Somalia's National Consultative Constitutional Conference known as Garowe II held in early 2012 agreed to a minimum of 30 percent quota representation of women in all political structures.¹⁰ Nonetheless, the draft Constitution adopted later in the same year did not include these specific provisions on quota for women initially negotiated and agreed upon during the consultative meetings. The only provision which talks about gender equality is vaguely formulated into a sub article in the provisional constitutional i.e. Article 3(5). This is a reflection of the lack of commitment by clan elders and lack of political will of politicians to allow women in the political sphere.

However, this setback did not make the Somali women give up hope as they continued with their cause and struggle for their representation in Somalia's political and decision-making structures. With the assistance of the international community such the UN agencies, women continued to advocate for 30% quota and called upon the clan elders who were in charge of nominating candidates from their clans for parliamentary seats to honor their promise agreed at the national conference. With all these efforts and pressure from international community, women managed to secure almost 14% of the parliamentary seats, i.e. 38 out 275 members in the new Federal Government of Somalia in August 2012.

Research Question

The requirement of a gender quota to promote women's political participation has been argued to be critical in achieving inclusion of women in the political and decision-making process. This

¹⁰Second Somali National Consultative Constitutional Conference, *Garowe II Principles*, , (February 2012)

thesis will mainly address the question on whether the mere adoption of a quota system for women, in light of the constitution making process in Somalia, is a sufficient guarantee. Also whether the a gender quota is able tackle the barriers such as the traditional clan based political representation and power sharing system which locks out Somali women from politics and create a more inclusive political system for Somalia. The paper will further focus on the following three main issues:

- i. The theoretical discussions on gender quota system and women's political representation
- ii. The issues and barriers effecting women's political representation in Somalia
- iii. The necessary pre-conditions such as the legal and institutional frameworks for increasing descriptive and substantive representation of women in politics in Somalia

This thesis will also be embedded in a brief comparative view of some of the relevant country cases, which are the currently leading democracies in Africa on women's political participation such as Rwanda, Seychelles, Senegal and South Africa. The objective is to draw potential lessons learnt from the experiences and factors behind the increased engagement of women in politics in Africa since mid-1990 as well as how Somalia can apply when adopting and implementing the gender quota.

It will then look at the recent experience of 2013 Kenya election. Kenya succeeded in adopting specific provisions on affirmative action in light of the 2010 constitution reform process, which Somalia may learn a few lessons from; both from the constitutional process (success story) and the last elections, which failed to deliver the constitutional promise of the two--thirds gender principle rule. Kenya ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984 and the Protocol to the African Charter on Human and Peoples'

Rights on the Rights of Women in Africa, (Maputo Protocol) in 2010 while Somalia did not ratify any of these.

Women's representation "in decision-making and politics is a human rights issue enshrined in the Constitution [of Kenya], which has tried to address many issues that have been at the heart of the clamor for gender mainstreaming in Kenya from the 1980s."¹¹ Despite its extensive commitment to international and regional treaties as well as the country's constitutional promise of the two-third gender principle, Kenya still lags behind in translating these commitments into action. Following the last elections in 2013, women are still underrepresented in positions of leadership across the country.¹²

Despite this setback, the ratification of international and regional conventions gives the women the legal claim for their equal representation in the political scene and decision-making structures. However, due to Somalia's non-ratification of these international and regional instruments makes it difficult for Somali women to claim representation in politics. These instruments provide formal protection of their rights and solid foundation to undisputedly claim their equal participation and representation in positions of political power and decision-making.

Methodology

To address the research question, a desk review will be conducted through analysis of

- ✓ Primary sources and data (current and on-going constitutional debates, draft constitutions, expert opinions, international and regional conventions on women's right, case laws,

¹¹ Douglas Lucas Kivoi, 'Factors Impeding Political Participation and Representation of Women in Kenya' (2014) p.174.

¹² *ibid.* p.178-181.

advisory opinion of the Kenyan Supreme Court on gender representations in the National Assembly and the Senate)

- ✓ Secondary sources (books, articles and journals) written on the history of women's political participation, the quota system in constitution building processes in Africa and the experience from these processes, etc. which will give some insight to the main question of this thesis.
- ✓ Additionally, statistics will be used to illustrate the picture of women's political representation in selected jurisdictions.

Significance

This paper is expected to contribute and offer practical ways and recommendations to the ongoing Somalia's political processes to inform designing an effective strategy and approach for substantive representation of women in the political sphere. It will make recommendations to the necessary pre-conditions that are conducive to achieving descriptive and substantive representation of women in politics. This paper will draw on some lessons learned from experiences of other countries in Africa such as Kenya. In order help the advocates of women's political representation in Somalia in their cause for achieving equal participation and representation in the decision-making processes and tackle the impediment of the clan system, which is hostile to achieving a democratic and inclusive political system in Somalia.

Contents of the Paper

This paper is structured into four chapters.

Chapter I will provide the theoretical arguments on women's political participation, discuss why women should be considered as a counterpart of men and should have equal terms in the decision-

making and the three kinds of representation namely formal, descriptive and substantive. The types and debates of the gender quota system and affirmative action will also be discussed as well as the importance of gender integration during political transition environments.

Chapter II will look at the existing legal and institutional frameworks effecting women's right to political participation, the institutionalization of gender equality through the constitution-building process as well as the current legal and institutional framework in Somalia on women's political participation.

Chapter III will discuss the state of affairs in Somalia on women's participation in politics and public life, the specific barriers Somali women have been facing in accessing forums of power and decision-making structures including the Somalia's clan-based political representation and the influence of international community in Somalia.

The final chapter will give a brief comparative of the factors behind the increased engagement of women in politics in Africa, selecting the lessons learnt from the leading democracies in Africa. It also discusses the case of 2013 Kenya elections which is a good example in terms of demonstrating that having a gender quota and laws on paper is not sufficient without other conditions to make effective implementation. From these lessons learnt, the necessary pre-conditions for successful implementation of quota system in the context of Somalia will be discussed as well as the limitations and implications of gender quota in Somalia amidst the deeply rooted clan based political representation.

CHAPTER I

1. Women and Politics: The Theoretical Arguments

1.1 Arguments for Women's Representation in Politics

*'No democracy without women!' Democracy needs women in order to be truly democratic, and women need democracy if they are to change the systems and laws that preclude them, and preclude societies as a whole, from attaining equality.*¹³

There are both theoretical and practical reasons why women should be included in politics or why we should all care about the lack of or their underrepresentation in politics. In principle, some could argue that it does not matter whether or not women are absent from the decision-making and political processes or that all political decision-makers are men as “most laws are gender natural, and elected representatives pay attention to all of their constituents equally.”¹⁴

However, in practice it matters a lot “because women bring to politics a different set of values, experiences and expertise.”¹⁵ There is a clear difference of when women are not seen and represented in politics and when they are right there at the forefront in the political scene contributing to the development of a nation, taking part in making important decisions.

*Feminist political theorists have argued the appearance of neutrality toward gender or equality between men and women in government actually hides the substantial gender inequality.*¹⁶

¹³ United Nations: See <http://www.un.org/en/globalissues/democracy/women.shtml>

¹⁴ Paxton Pamela and Melanie M Hughes, *Women, Politics and Power: A Global Perspective* (Thousand Oaks, CA: Sage Publications 2007). p.6

¹⁵ Anne Phillips, *Engendering Democracy* (Penn State Press 1991) p.6.

¹⁶ *ibid.* p.4

Also feminist social scientists such as Phillips, Eschle and Moghadam “argue that a polity is not fully democratic when there is no adequate representation of women.”¹⁷ Women are invisible, marginalized and are not on equal terms with their male counterparts in politics despite the claims of gender neutrality laws.

There are several arguments for women’s representation in politics. Paxton and Hughes provide two main arguments for women’s representation in politics; the justice arguments and utility arguments.¹⁸ From the point of justice argument, women represent half of world’s population, if not more, therefore, men and women should be equally represented in politics. Women’s capability to take part effectively in the decision-making process is crucial. Because ultimately when decisions are made without representing women’s interests, needs and positions, it means half of a country’s population are missing in the developmental processes and yet women are always expected to live by the outcome of these decisions that impacts their personal lives in many negative ways.

But this leads us to an important question which is what equal representation means for women. I will discuss this later in this chapter, the three different types of representation known as formal, descriptive and substantive.

On the other hand, the utility argument focuses on the usefulness of having increased representation of women in politics which firstly, increases the quality of political decision-making as different views, ideas, opinions, values, priorities and diversity will be represented. The second is that women who are visible in politics serve as an inspiration and role model to younger

¹⁷ Valentine M Moghadam, ‘Democracy and Women’s Rights: Reflections on the Middle East and North Africa’ (2008). p.1

¹⁸ *ibid.* p.9-17

girls and women who might aspire to become politicians themselves. Lastly, it can be safely said that a country is maximizing the use of its human resource (talent and ability) when women are included among potential politicians.¹⁹

Other arguments have been brought forward in addition to the justice and utility arguments such as the interest argument and the experience argument. The two arguments claim that women and men have different experience and conflicting interests and therefore, men cannot represent women. They argue that women “should enter into positions of power because they will engage in politics differently, thereby improving the nature of the public sphere”.²⁰

While women have made some remarkable progress in gaining grounds in both higher education and occupations that were traditionally reserved for and dominated by men, in the political sphere they are still far underrepresented. Statistics indicate that of more than 190 countries in the world, there are only 13 female head of states and 9 heads of government.²¹ This representation of 13.8% is an indication of the struggle that empowerment of women in political participation and representation is a challenge that demands the world’s attention and calls for a transformative agenda from world leaders.

In many countries around the world, the struggle for equal representation of women in politics is taking a slow pace, and tangible results have not been achieved. Because “some of populations, religions and government still remain openly hostile to the notion of women in politics”²² and often pose the question ‘can a woman make difference or what change can a woman bring.’

¹⁹ ibid 16–17.

²⁰ D Drude Dahlerup and Lenita Freidenvall, ‘Quotas as a “fast Track” to Equal Representation for Women’ (2005) p.23.

²¹ As of March 2015

²² Paxton Pamela and Melanie M Hughes, *Women, Politics and Power: A Global Perspective* (Thousand Oaks, CA: Sage Publications 2007) p. 2

In countries such as Somalia, society defines a woman's role as limited to the home, with no position in public affairs and that politics is only for men.

Women, just like their men counterparts, have the same and equal rights to enter into politics because politics is an important platform for decision-making. It is not a matter of privilege but a fundamental right. Politics is a platform where important decisions regarding policies, resources, laws etc. affecting the lives of individuals and their choices are made. Politicians make decisions for others so if women are absent from the arena of decision-making, who can better represent their voices, interests and needs. When women are not present at the decision-making forums, their interests may not be served when decisions are made. This is why women should be there at the roundtable of political negotiations and decision-making to speak for themselves and express their views and interests in matters that affect their lives directly.

The perspectives and views of men and women differ because of their different interests and needs. Men cannot and will not speak for women on issues that are affecting women's lives and limiting their enjoyment of their fundamental human rights. It is rare for a man to speak up at the decision-making forum, for instance, against issues of rape, domestic violence, girl child education or child marriage. Simply because men are not women, they have different life experiences and are not on the receiving end of such inhumane and violent acts committed against women. Men are not able to express, even if they are willing to put themselves into the shoes of women, the experiences women go through on regular basis, what their needs and interests are.

"Political power is a valuable good."²³ Meaningful participation of women in politics brings societal transformation, economic growth, and shapes the power relations of men and women,

²³ *ibid.* p.3-4

which eventually contributes to the development of a society. Because political decision-makers hold power and authority over the social institutions and resource redistribution as well as pass and enforce laws and policies. However, gender-blind laws and policies that do not take into consideration the different needs and interests of both men and women, girls and boys are manifestations of inequality and injustice as the voices of more than half of the population are missing in the making of important decisions.

Women to have an equal status and voice in politics and decision-making is a prerequisite for democracy and development. No nation can claim to be democratic while half of the voices and views of its population are unheard and unexpressed. Because in democracies, everyone especially women need to be heard and the “points of view of all groups need to be taken into account.”²⁴ This has been emphasized in the 2011 General Assembly resolution on Women’s Political Participation which reiterates “that the active participation of women, on equal terms with men, at all levels of decision-making is essential to the achievement of equality, sustainable development, peace and democracy.”²⁵ Moreover, the Beijing Platform for Action states that “[n]o government can claim to be democratic until women are guaranteed the right to equal representation.”²⁶

In conclusion, inclusive political processes and genuine participation of women in decision-making is a key milestone and enabler of human development which without it, democratic governance cannot be achieved. UNDP Administrator Helen Clark stresses this point as follows:

[I]t is self-evident that democratic governance cannot be fully achieved without the full participation and inclusion of women. Those without voice are so easily ignored by those who have it. Without the full participation of women in decision-making processes and

²⁴ ibid. p.5

²⁵UN General Assembly resolution(A/RES/66/130): Women’s Political Participation (2011)

²⁶United Nations ‘Beijing Declaration and Platform for Action’ (1995)

*debates about policy priorities and options, issues of great importance to women will either be neglected, or the way in which they are addressed will be sub-optimal and uninformed by women's perspectives.*²⁷

1.2 Formal, Descriptive and Substantive Representation

*A leading in feminist political theory Anne Phillips advocates gender quotas in a system that combines a politics of ideas with a politics of presence. Even if she sees the many arguments against quotas, Anne Phillip asks why everybody agrees on the demand for the **equal participation** of women, but not for **equal representation** {emphasis added}. The fact that women all over the world have been excluded from representation must be taken as the starting point, not the abstract principles of representation.*²⁸

Representation of women in political institutions and decision-making processes is a principal concern in contemporary debates about the level of democratic governance. This is evidenced in the progressive implementation of quota systems in many countries to level up the number of women represented in politics and decision-making as a remedy to the underrepresentation of women in politics.²⁹ A simple definition of what political representation means according to Pitkin is the “activity of making citizens' voices, opinions, and perspectives “present” in the public policy making processes.”³⁰ However, the concept of women's political representation has different

²⁷ International Institute for Democracy and Electoral Assistance ‘Democracy and Gender Equality: The Role of the UN’ (2013)

²⁸ Drude Dahlerup, ‘Global Database of Quotas for Women: Quotas - A Key to Equality’ <http://www.quotaproject.org/about_research.cfm>. last accessed 17 March 2015

²⁹ Drude Dahlerup, *Women, Quotas and Politics* (Routledge 2013) p.3-4.

³⁰ Dovi, Suzanne, ‘Political Representation’ in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Spring 2014).

conceptions and dimensions (who, what, how and where of representation³¹) but they are integrated and linked to one another.

Arguments for women's equal representation in politics are categorized into three types of representation, namely formal, descriptive and substantive representation.³² The most basic form is **formal representation** which means "that women have the same legal right to participate in politics on an equal basis with men."³³ The formal representation demands that any roadblocks to women's political participation should be removed. In other words, women "have the right to 'vote' and the right to 'stand for office'³⁴". This type of representation seeks that any discrimination against women in the field of politics should be eliminated, that men and women are equal before the law and women should be guaranteed equal and same opportunity as men to partake in politics because women's political rights are human rights. The purpose of formal representation is to achieve the elimination of direct and obvious discrimination against women in politics.³⁵

The second type of representation is called **descriptive representation**. The descriptive representation states that the equal representation "requires that there should be descriptive similarity between representatives and constituents"³⁶ meaning that "[i]f women make up 50% of population, they should also make up roughly 50% of legislative and executive bodies."³⁷ This type of representation acknowledges that while laws can guarantee equal opportunity for women and safeguard their right to vote and pursue political careers. In practice, equal opportunity does not necessarily mean that women start at the racing line with same resources and skills as men thus

³¹ Drude Dahlerup, 'Representing Women: Defining Substantive Representation of Women '(2014) p.59

³² Paxton Pamela and Melanie M Hughes, *Women, Politics and Power: A Global Perspective* (Thousand Oaks, CA: Sage Publications 2007) p. 9-16.

³³ *ibid.* p.9

³⁴ *Ibid.*

³⁵ *ibid.*

³⁶ *Ibid.*

³⁷ *ibid.* p.11

differences can result in the outcomes due to the historical exclusion and continued marginalization of women in politics. Equal opportunity does not always translate to equal outcomes therefore something more has to be done and further action must be taken as Phillips (1991) argues

*Those who have been traditionally subordinated, marginalized or silenced need the security of a guaranteed voice and ...democracies must act to redress the imbalance that centuries of oppression have wrought.*³⁸

As a result, this type of representation suggests that men cannot represent women but women are best placed to represent the interests and needs of their own. The Beijing Platform for Action states that “[w]omen’s equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women’s interests to be taken into account.”³⁹

The third type of political representation is **substantive representation**, which moves beyond the numerical representation of women to “women’s interests must be advocated in the political arena”⁴⁰. Substantive representation requires that “politicians speak for and act to support women’s issues.”⁴¹ The substantive representation argument argues that the obtaining of higher number of women in politics is not a satisfactory condition for women’s interests to be served. Advocates of substantive representation such as Piktin argue that “*standing for* is not the same as *acting for*.”⁴²

It is orders instead of “women’s interests to be represented in politics” that “female politicians have to be willing to and able to represent those interests.”⁴³ Dahlerup in stretching Phillip’s argument adds that

³⁸ Anne Phillips, *Engendering Democracy* (Penn State Press 1991) p.7

³⁹United Nations, *Beijing Declaration and Platform for Action* (1995) para 181

⁴⁰ Paxton Pamela and Melanie M Hughes, *Women, Politics and Power: A Global Perspective* (Thousand Oaks, CA: Sage Publications 2007) p.13.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

While descriptive representation functions somewhat by default (because there are women in parliament, women are therefore said to be represented), substantive representation requires consciousness and deliberate actions: a women MP must speak and act in favor of the expectation, needs and interests of women.⁴⁴

In other words, the substantive representation of women focuses on acts and interests, “acting in the interest of the represented, in a manner responsive to them”⁴⁵, acting for women. This includes passing laws that deal with issues that directly relate to women such reproduction health issues, harmful traditional practices, equal wages, labour laws, domestic violence and sexual assault, issues that are personally affecting the lives of women. Women in politics should be willing and able to put on the political agenda the interests of women and the decisions and outcomes should reflect those interests in a responsive and concrete manner. As Dahlerup puts it, substantive representation of women mean “being a representative of women, around “issue of women’s interests or behalf of women””.⁴⁶

In order to have a broadened and engendered political agenda, putting the interests and needs of women at the core and center of discussions, decisions and outcomes is critical. In addition, for that to happen, securing equal representation of women in politics in the form of the three types of representation discussed above is required. A mere representation of women numerically in the legislative and executives bodies just to show that women are represented is not enough. Women need to be represented in almost equal numbers as men in political institutions and their voices and views are not only heard but also taken into account and reflected in the decisions made.

⁴⁴ Drude Dahlerup, ‘Representing Women: Defining Substantive Representation of Women’ (2014) p.60.

⁴⁵ Karen Celis, ‘Substantive Representation of Women (and Improving It): What It Is and Should Be About’(2009) p.3

⁴⁶ Drude Dahlerup, ‘Representing Women: Defining Substantive Representation of Women’ (2014) p.62.

1.3 Gender Quotas for Women in Politics: Debates and Types of Gender Quota

From a global perspective to national levels, quotas have been central to the debate and efforts to increasing and securing equal representation of women in politics. This is evident in the progressive adoption and implementation of quotas for women through constitutions or laws. While the experiences of each individual country differ, quotas have significant symbolic effects, which should not be undervalued. This is particularly true in contexts where there are enormous prejudices against women's presence in the public sphere as political actors⁴⁷.

Tripp and Kang argue that “[t]he adoption of quotas reflects a growing consensus that women should have greater representation or equal representation with men.”⁴⁸ The reason behind this growing consensus encompasses a wide range of arguments. The most interesting argument is that political leaders accept quotas as they want to seem “modern and in tandem with changing international norms” and for their own political interests.⁴⁹ Other important reasons behind this growing consensus given by researchers such Paxton and Hughes include women's activism- the extensive lobbying of women's rights advocates and movements and the international influences on women in politics.⁵⁰

Also changes in regimes can “positively affect women's political representation”⁵¹ if new leaders are receptive to the adoption of gender quotas and consider “them as compensation for structural

⁴⁷ Amanda Gouws and Shireen Hassim, ‘The Power to Change: Women's Participation and Representation in Africa’ (2014) p10.

⁴⁸ Aili Mari Tripp and Alice Kang, ‘The Global Impact of Quotas: On the Fast Track to Increased Female Legislative Representation’ (2008) p.340-341

⁴⁹ *ibid.*

⁵⁰ Paxton Pamela and Melanie M Hughes, *Women, Politics and Power: A Global Perspective* (Thousand Oaks, CA: Sage Publications 2007) p.163-164

⁵¹ Jennifer Rosen ‘The Effects of Political Institutions on Women's Political Representation: A Comparative Analysis of 168 Countries from 1992 to 2010’ (2012) p.308

barriers that prevent fair competition”⁵² or negatively if they framed and critiqued gender quotas as being anti-democratic⁵³, “a form of discrimination and violating the principles of fairness, competence and individualism.”⁵⁴ Whichever reason is accredited to this growing consensus, as political scientist such Dahlerup argues that “quotas are changing the history of women” across the globe.⁵⁵ Quotas are shaping the traditionally male dominance politics and opening up new opportunity for women in the political life.

The debates on quotas have progressed in two distinctive stages. Shireem Hassaim explains these two phases as follows.⁵⁶

First Phase: *Feminists were concerned with justifying the idea that special mechanisms were needed to redress the democratic deficit in representation.*

Second Phase: *Researchers focused on analyzing the kinds of mechanisms that could be employed to ensure that women gained fair access to the processes and institutions of representation, the "fast-track" representation.*

The growing demand for equal representation of women in the political decision-making has shifted the focus “from women’s lack of resources or lack of will to participate in politics to the institutional and cultural mechanisms of exclusion which prevent women from gaining an equal share of position of power in most political institutions in the world”.⁵⁷ This shift from individual to institutional has led to the immense adoption of quotas across regions. This wave is evidence

⁵² Drude Dahlerup, ‘Quotas Are Changing the History of Women’ (2003) p.17

⁵³ Mona Lena Krook, ‘Reforming Representation: The Diffusion of Candidate Gender Quotas Worldwide’ (2006) p.313.

⁵⁴ Dahlerup, ‘Quotas Are Changing the History of Women’ (n 48) p.17.

⁵⁵ *ibid* p.16-20

⁵⁶ Shireen Hassim, ‘Perverse Consequences? The Impact of Quotas for Women on Democratisation in Africa’ (2010) p. 211-212.

⁵⁷ Drude Dahlerup, *Women, Quotas and Politics* (Routledge 2013) p.5

for the rejection of the traditional justification for underrepresentation of women in politics that women are not willing to participate in politics or simply there are no ‘enough qualified and competent’ women and demands that institutions to take more proactive measures and actions to remedy the reasons for women’s underrepresentation.

Dahlerup distinguishes between two tracks to equal representation of women in political institutions; the ‘*fast track*’ and ‘*slow track*’⁵⁸. The slow track is marked by the ‘incremental’ changes corresponding to the greater participation in the labour force and educational opportunities. This has been the case in the Nordic countries i.e. “where it has taken Sweden 80 years to achieve 45 % representation of women”⁵⁹. Dahlerup argues “that this is no longer the model for other parts of the world.”⁶⁰

Therefore, the fast track model, on the other hand, demands special measures to be taken to reduce the gender gap in politics. The fast track approach is characterized by the implementation of quotas for women as a result of international discourse on gender balance in politics. As Dahlerup notes that introducing quota provisions politics has been viewed as “a legitimate equal opportunity measure in many countries around the world.”⁶¹ The underlying discussions and debate, while both aim to achieve the same goal which is equal political participation of women, have different discourses. The two concepts is summarized in the below table.

⁵⁸ Drude Dahlerup, ‘Quotas Are Changing the History of Women’ (2003) p.16-20

⁵⁹ Ibid.

⁶⁰ Ibid. p.14

⁶¹ Ibid. p.16

Table 1: Two tracks to equal political representation⁶²

<i>Discourse</i>	<i>The Incremental Track</i>	<i>The Fast Track</i>
General perception	<ul style="list-style-type: none"> ○ Equal representation may take many decades, but will be achieved in due course. 	<ul style="list-style-type: none"> ○ Women's representation does not increase by some historical necessity. Backlash may even be possible. ○ Historical leaps in women's representation are necessary and possible.
Problem identification	<p>Why so few women?</p> <ul style="list-style-type: none"> ○ Women lack resources and public commitment ○ Attitudes and ingrained prejudices limit women 	<p>Why so few women?</p> <ul style="list-style-type: none"> ○ Informal and formal discrimination against women (and other groups) is widespread in politics. ○ Processes of exclusion and glass ceilings.
Strategy	<ul style="list-style-type: none"> ○ Increase women's commitment and resources in civil society through education, labour force participation, social welfare provisions such as daycare-centers. ○ Political parties should work more actively to recruit women. Capacity building for women in political parties education, mentor programmes and provisions to help women combine family, work and politics, such as babysitting facilities at political meetings, family activities at conferences, compensation for salary reduction, change of meeting hours ○ Strong resistance to quotas, which considered discriminatory(against men) 	<ul style="list-style-type: none"> ○ Active measures, such as targets or quota provisions, which will force political parties to work more actively to recruit women. ○ Quotas are seen as compensation for structural barriers, and not as discrimination.

Source: International Feminist Journal of Politics (2005)

1.4 Integration of Gender in Political Transitions

Women's participation in politics and decision-making during political transitions is of crucial importance and cannot be stressed enough. According to a report by United Nations Working Group on discrimination against women in law and in practice, "political transitions do not always lead to inclusive democracy and long-lasting peace, and may erode key gains in the quest for gender equality."⁶³ Women should be represented not only in the most visible but also in the powerful political and policy decision-making bodies and processes i.e. at the peace negotiations, constitution-making and building processes etc. Political transitions "can offer exceptional opportunities to address violations of women's rights and promote the transformation of traditional

⁶² Drude Dahlerup and Lenita Freidenvall, 'Quotas as a "fast Track" to Equal Representation for Women' (2005) p.29.

⁶³ Ibid.

and societal norms that promote a subordinate position of women.”⁶⁴ When women are involved in the political transition and reforms, women’s rights stand a chance to become part of the foundations of a new beginning. Effective and meaningful participation of women needs to be ensured in all aspects and stages of political transitions. Because there is a huge tendency that women will be kept at the back and not the frontline of where political negotiations are taking place. As can be noted from the experience of South Africa, involving women in political transitions in a meaningful way and ensuring that their voices are heard lays the basis for instilling the “Constitution with human rights, gender equality and integrity”.⁶⁵

1.5 Equality of Result vs. Equality of Opportunity: Affirmative Action and Gender Quotas

Since women have been historically marginalized and excluded from the political and decision-making structures, in recent years quotas has been used to remedy this past discrimination in the form of special measures and affirmative action. Dahlerup defines “[q]uotas in politics as an affirmative action measure that establishes a percentage or number for the representation of a specific group, in this case women, most often in the form of a minimum requirement, for instance 20, 30, 40 or 50 per cent.”⁶⁶

Gender quotas “represent a form of affirmative action, a policy designed to remedy the effects of past discrimination on women”⁶⁷ and therefore are “a type of special measure designed to increase

⁶⁴ United Nations: Working Group on discrimination against women in law and in practice (2013) <http://www.ohchr.org/EN/NewsEvents/Pages/WomenRightsInPoliticalTransitions.aspx#sthash.23LZkK0u.TMbzRWze.dpuf> accessed 20 March 2015

⁶⁵ Pregalxmi Govender, Deputy Chairperson of the South African Human Rights Commission, <http://www.ohchr.org/EN/NewsEvents/Pages/WomenRightsInPoliticalTransitions.aspx#sthash.23LZkK0u.dpuf> accessed 20 March 2015

⁶⁶ Drude Dahlerup, ‘Electoral Gender Quotas: Between Equality of Opportunity and Equality of Result’ (2007) p.78.

⁶⁷ Joy McCann, ‘Electoral Quotas for Women: An International Overview’ [2013] Australian Parliamentary Library Research Paper, p.12

women's political representation"⁶⁸. The ultimate goal of these special measures is to achieve gender balance in the political institutions and decision-making structures. Dahlerup provides that "[q]uota advocates maintain that historically as well as in contemporary society the chances are never really equal for women as long as male standards are the norms for most competitions. Consequently, affirmative action is seen as necessary."⁶⁹

The form of special measures are introduced as temporary measures to provide opportunities to women by removing the barriers that block women in participating in politics. Gender quotas and affirmative action do not, in principle, violate the principle of fairness but rather create a fairer competition when men are competition with women for political positions instead of men competing with men. Hence, gender quotas and affirmation action are just "a step towards providing real equality of opportunity rather than equality of result and [c]onsequently, gender quotas offer a real opportunity for both sexes to compete for political positions and the possibility for the voters – perhaps for the first time – to be able to choose between male and female candidates."⁷⁰

⁶⁸ Ibid.p.14

⁶⁹ Drude Dahlerup, 'Electoral Gender Quotas: Between Equality of Opportunity and Equality of Result' (2007) p.75.

⁷⁰Ibid., 88

CHAPTER II

2. Legal and Institutional Frameworks on Women's Right to Political Participation

2.1 Significance of International and Regional Frameworks

A series of international and regional human rights instruments have been established over the years since the adoption of Universal Declaration of Human Rights (UDHR) to advance gender equality and eradicate discrimination in all spheres of life. Legal instruments both international and regional conventions provide for a solid foundation for the protection, promotion and empowerment of women's human rights. They are key enablers of realizing women's human rights, creating an enabling environment and framework on which women's rights can be promoted and realized.

Gender balance in positions of political power, leadership and decision-making structures is at the heart of an ideal functioning democracy. Political empowerment is defined as “people's capacity to influence policy, make demands, and call to account the state institutions that impact upon their lives. This includes political representation and collective action”.⁷¹ As the Beijing Platform of Action reiterated “women's persistent exclusion from formal politics, in particular, raises a number of specific questions regarding the achievement of effective democratic transformations, in practice”.⁷² It has also defined two important strategic objectives and actions to be taken by States, in its critical area of concern, on women in power and decision-making as follows:⁷³

⁷¹ Rosalind Eyben, ‘Supporting Inclusive and Democratic Ownership. A’How to Note’for Donors’ (2010) p.12.

⁷² United Nations Expert Group, ‘Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership’ (2005) p.5

⁷³ United Nations, ‘Beijing Declaration and Platform for Action’ (1995) p.81-84

- *To ensure women's equal access to and full participation in power structures and decision-making*
- *To Increase women's capacity to participate in decision-making and leadership*

In this regards, several resolutions have been adopted for implementation of 'special measures' to address the low proportion of women, as a result of gender inequality, in public and political life. These instruments urge and call upon States to reflect and implement the international mechanisms in their domestic laws and policies as well as to put in place specific measures "as part of the necessary strategies directed towards the acceleration of the attainment of substantive equality between women and men in the public and political spheres".⁷⁴

On this basis, there has been growing consensus at the international and national level on the obligations and accountability of States in advancing women's participation and representation in the political domain and address the barricades to their active participation in this domain. These instruments recognize that "equality for women in public and political life is an obligation for all regimes as well as being a prior condition for the legitimacy of democratic regimes, as well as their responsibility and obligation."⁷⁵

Of importance is also the General Recommendations of the CEDAW Committee, which clarifies and identifies a set of obligations, which States have "in order to fully guarantee women's rights to political participation, including the adoption of general positive measures and temporary special measures to ensure that women have the right to participate fully in politics."⁷⁶

⁷⁴ Hanna Beate Schöpp-Schilling, 'The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and Its Monitoring Procedures for Achieving Gender Equality in Political Representation' (2004) p.4

⁷⁵ Megan Alexandra Dersnah, 'Global Report for the UN Working Group on the Issue of Discrimination Against Women in Law and in Practice' (2014) p.8-9

⁷⁶Ibid. p.10

2.2 The Institutionalization of Gender Equality through Constitution-Building Process

National constitutions are instrumental to achieving gender equality by instituting legal basis on which women's political participation can be promoted. Therefore, constitution-building processes offers a unique political opportunity and platform for engaging women and promoting gender equality. By drawing inspirations from international and regional human rights instruments, constitutions can be “transformative tool for change, advancing women's equality and agency in the political, economic and social spheres.”⁷⁷ On-going debates show that

*[I]n spite of the gaps between constitutional positions on women's access to rights and the day-to-day experiences of women in contexts of poverty and patriarchal norms, there is broad consensus that constitution-building offers an invaluable opportunity to translate ideals of gender equity and equality into law.*⁷⁸

On the contrary, “constitutions can also entrench the status quo and become impediments to the realization of substantive equality.”⁷⁹ Therefore, a lot depends on ensuring the active and full participation of women in the whole process of constitution building. Because “[a] country's constitution provides the framework for its legal system, which shapes not only the political status of women, but their economic and social status as well.”⁸⁰ Economic and social conditions are key factors that can enable or hinder women's participation in politics. Therefore, “the drafting of new constitutions and legal frameworks, as well as the re-establishment of legislature can provide

⁷⁷ Sumit Birsarya (ed), *Constitution Building: A Global Review* (Institute for Democratic and Electoral Assistance 2013) p.16

⁷⁸ Grace Maingi, ‘The Kenyan Constitutional Reform Process: A Case Study on the Work of FIDA Kenya in Securing Women's Rights’ (2011) p.63.

⁷⁹ Sumit Birsarya (ed), *Constitution Building: A Global Review* (Institute for Democratic and Electoral Assistance 2013) p.16.

⁸⁰ International Knowledge Network Women in Politics ‘Women's Participation in the Constitution Building Process’ (18 February 2014)

women with an important political opportunity to push their demands for greater inclusion in national governance structures.”⁸¹

It is imperative to involve women in the enter process in substantial terms because experience shows that significant advances and active participation of women in constitution-building processes have progressively contributed to gender sensitive constitutions ⁸² and thus are able to defend their visions for the future.⁸³ Experts stress on the importance of empowering women “to fully participate at every stage and at every level of the constitution-making process- from building coalitions, engaging in civic education efforts to debating, adopting, drafting and implementing the constitution.”⁸⁴

Since national constitutions can provide the legal framework that profiles the political status of women and offers guidance on how to enforce women’s right to political participation. The process itself of constitution building offers avenues to explicitly include quotas for women or affirmative action provisions as can be seen in many post-conflict countries in Africa which hold the highest representation of women in parliament today.⁸⁵

However, research has also indicated that some governments assume that by simply mentioning in the “constitution’s preamble that women and men are equal”⁸⁶ as well as the inclusion of equality and non-discrimination provisions will serve the purpose of achieving gender equality but

⁸¹ Julie Ballington, ‘Conclusion: Women’s Political Participation and Quotas in Africa’ [2004] IDEA (Hg.), *The Implementation of Quotas: African Experiences*, Stockholm p.127

⁸²Ibid.

⁸³ Sumit Birsarya (ed), *Constitution Building: A Global Review* (Institute for Democratic and Electoral Assistance 2013) p 24.

⁸⁴Interpeace ‘Supporting Women’s Equal Participation in Constitution-Making’ (06 March 2015)

⁸⁵ Megan Alexandra Dersnah, ‘Global Report for the UN Working Group on the Issue of Discrimination Against Women in Law and in Practice’ (2014) p.64-65.

⁸⁶ International Knowledge Network Women in Politics ‘Women’s Participation in the Constitution Building Process’ (18 February 2014)

this is not enough “to guarantee the equal treatment of women”.⁸⁷ That is why women’s activists play an important role by bringing forward comprehensive proposals, which will secure women’s rights as well as accountability mechanisms into the process of constitution building.

2.3 Institutions Affecting Women’s Political Participation

Several key institutions affect women’s political participation and can collectively contribute to eradicating the barriers that lock women from participating in politics. The individual and collective action/s of these institutions are key determinant in empowering women as well as changing the social perception. Some of the key institutions and how their role can shape the status of women’s political participation are discussed below.

2.3.1 Political Parties

One of the most important institutional frameworks affecting women’s political participation are the political parties. The political parties are the gatekeepers of elections and thus play a fundamental role in the political empowerment of women, which is a key factor in advancing their participation at the national level. Given their vital role, political parties can support women in a number of strategies. For example, through provision of capacity and skill building in the form of “training and support, allocation of campaign funds equally, the adoption of party quotas, providing women a forum for discussion and the exchange of ideas which may be critical in putting women’s issues on political agendas.”⁸⁸

Political parties have a degree of power in the nomination process of candidates and therefore are “so influential in shaping women’s political prospects. Governments and international

⁸⁷ *ibid*

⁸⁸ International Knowledge Network Women in Politics ‘Consolidated Responses: Best Practices Used by Political Parties to Promote Women in Politics’ (2014) p.3-9

organizations seeking to advance the participation of women in elections justifiably tend to focus on the role of political parties”⁸⁹. In order to make progress on gender equality in the political scene, it is crucial to engage political parties. Political parties can be “key enablers for women’s political participation”⁹⁰ and representation because they not only provide structures for political participation but also “formulate policies and set governance priorities and are therefore strategically placed to address the concerns of women”⁹¹ but often have key ‘bottlenecks’.

2.3.2 National Gender Machinery

National gender machines play vital role towards promoting gender equality and empowerment of women. Having a ‘fully-fledged’ ministry mandated for the overall coordination and overseeing of gender equality and women’s empowerment policies and programmes is fundamental in advancing women’s rights. Their role includes influencing government policies, developing gender equality policies that promote gender mainstreaming in all government programmes, national action plans that provide the operational framework for promoting women’s rights and status and ensuring the government’s programmes are implemented in a gender-sensitive and gender-responsive way.

National gender ministries are key in ensuring that gender is mainstreamed in all initiatives and sectors undertaken by the different ministries and agencies both at national and local levels, provide technical assistance, monitoring and evaluation, and devise strategies to improve where gaps are detected. Also national gender ministries facilitate the appointment and empowering of

⁸⁹ United Nations, *Women & Elections: Guide to Promoting the Participation of Women in Elections* (2005) p.33.

⁹⁰ International Institute for Democracy and Electoral Assistance ‘Democracy and Gender Equality: The Role of the UN’ (2013) p.45

⁹¹ International Knowledge Network Women in Politics, ‘Consolidated Responses: Best Practices Used by Political Parties to Promote Women in Politics’ (2014) p.3.

gender focal points in other ministries on issues of gender equality and women's rights to help ensure that projects and resources allocation take into considerations women's needs and interests. However, as experience shows that the national gender ministers are often faced with the challenge of funding received from the government to executive their duties.⁹² Therefore, maybe not have the necessary resources to recruit qualified personnel and execute their mandate effectively.

2.3.3 Women's Movement and Civil Society Organizations

The emergence of strong and autonomous women's movements and civil society organizations have positively contributed to the increased representation of women in politics in Africa after the 1990s. These organizations have been instrumental in influencing the peace talks, the constitution-making and legislative reforms ensuring constantly that women's participation in political and leadership positions remains active on the agenda.

They have employed different strategies to gain grounds and influences platforms of politics and decision-making, lobbying for women's participation. For example, in Muslim counties, women have challenged the conventional understandings of the impact of religion on women and pressured the religious groups and as a result many Muslim countries were motivated to adopt quotas for women.⁹³ When women's movement are more mobilized and organized, they are able to effectively push for women's representation in both public and political life, despite their exclusion and marginalization, and negotiate their share.

Civil society organizations play an important role in shaping the public's perception and creating social acceptance through awareness raising and civic education programmes on women's political

⁹² Grace Bantebya-Kyomuhendo, 'The Role of National Mechanisms in Promoting Gender Equality and the Empowerment of Women: Uganda Experience' (2005) p.6.

⁹³ Aili Mari Tripp, 'Women and Politics in Africa Today' <<http://democracyinafrica.org/women-politics-africa-today/>> accessed 22 March 2015.

participation. Therefore, women's movements and civil society organizations are major drives that can enhance women's political participation by playing "a vital role in furthering women's participation in politics and elections. This involves advocating for policies that will increase space for women's involvement, encouraging women to vote and serve as monitors in elections; supporting them to stand as candidates and run a campaign."⁹⁴ These groups act as wings of support to women who are aspiring to enter politics or are already involved.

2.3.4 Media -emerging trends

Media is another important institution whose role and significance in politics cannot be underestimated especially in today's world because

*"[M]edia coverage is the very lifeblood of politics because it shapes the perceptions that form the reality on which political action is based. Media plays a great role in shaping the political environment of any country."*⁹⁵

The media coverage of women in politics includes "[t]he way the media portray women and how they deal with issues of special concern to women"⁹⁶ which is of great importance and can influence the general perception of the public. Therefore, while it is imperative for media to allocate sufficient coverage to women in politics, it is also more important the quality of the coverage.

For instance, media can portray a positive picture of women as political leaders and report in a positive manner, women's role in transforming the society, giving women space to express their views and share their experiences and visions. Political advertising is significant tool in

⁹⁴ Sibonokuhle Ndlovu and Sani Boniface Mutale, 'Emerging Trends in Women's Participation in Politics in Africa' (2013) p.77-78.

⁹⁵ *ibid.*

⁹⁶ United Nations (n 83) p.41.

contemporary elections and “influences voters in support of one candidate or another.”⁹⁷ Therefore, efforts need to be given to ensure equal coverage of men and women.

2.4 The Legal and Institutional Framework in Somalia on Women’s Political Representation

At the international and regional level, Somalia is missing from the platform on women’s rights, as it has not ratified the two most important instruments women and gender quality. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the leading instrument addressing women’s human rights and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo) Protocol, which guarantees comprehensive rights to women including the right to take part in the political and decision-making process.

At the national level, the constitution adopted in 2012 does not include gender quota for women or any kind affirmative measures. While the National Consultative Constitutional Conference known as Garowe II agreed to a minimum of 30 percent quota, this had not been put into the constitution. Moreover, the only provision which talks about gender equality is vaguely formulated into a sub article in the provisional constitutional i.e. Article 3(5). Somalia is yet to adopt a multi-party system and in essence, the traditional clan elders undertake that function. However other institutions such the national gender machinery (Ministry of Women and Human Rights Development) and the Parliamentary Committee on Human Rights, Women and Humanitarian Affairs are advocates for women’s rights.

⁹⁷ Sibonokuhle Ndlovu and Sani Boniface Mutale, ‘Emerging Trends in Women’s Participation in Politics in Africa’ (2013) p.78.

CHAPTER III

3. The State of Affairs in Somalia on Women's Representation in Politics

3.1 Somali Women in Politics: The Era Before and After Civil War

From the independence time in 1960 to the collapse of the central government in 1991 to date, Somali women's role in politics has gone through different changes. In 1959, women's activists formed the first women's organization called Somali Women's Association (SWA), which focused, mainly in the area of social welfare. As part of their continued political struggle, the Somali Women's Movement came into live. The movement was led by "educated middle class women and wives of political parties' leaders and one of its major goals was to fight for the social, political, cultural and economic rights of Somali women, taking a holistic approach to women's empowerment and gender equality"⁹⁸. However "[t]he fruits and ideology of this organization was short-lived as the Siad Barre regime came into power in 1969."⁹⁹ During the period of this regime, all political parties and organizations were abolished as a result of socialist principles.

Instead, a governmental organization named Somali Women's Democratic Organization (SWDO) was founded. Taking "advantage of the opportunity of being a government's machinery, it has become a vehicle in women's rights and equal justice engaging in mobilizing Somali women and raising their political awareness, training and expanding leadership, training and expanding their leadership in women's groups and the community as well as creating priorities in the establishment of change."¹⁰⁰

⁹⁸ Yasmeen Maxamuud, 'Somali Women: Agents of Change. The Untapped Pedigree of Somali Women's Political Participation' (2011).

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

During this period up to before the collapse of the central government, the Somali women have had gained strong autonomy and equality.

The “promulgation of the family law” enacted in 1975 gave men and women equal rights in matters of marriage, divorce and inheritance. This law also promoted the equality of women in the workplace and in 1978 gave Somali women equal opportunities to participate in government and to reach positions of leadership.¹⁰¹

Many women also excelled in the field of business and trade at all levels where they have “gained a strong autonomy in business and demonstrated management capacities equivalent to that of men. Consequently, Somali women seem to have gained a new status.”¹⁰² However, following the breakout of the civil war and the collapse of the central government, the situation of women were reversed. While the war has changed both the lives of men and women, women were more affected. Somali women for over the past two decades have been left to carry the extreme burden of holding families and the society together amidst the extended violent conflict and bear the unequal burden of sufferings. Women have been marginalized and entirely excluded from the political and decision-making processes when the clan-based political representation system took over.

The collapse of the central government led to the emerge and extended use of customary and sharia law. How this was applied by men clan elders were not favorable to women where their role has been defined to be limiting within the walls of their home and do not have any rights or voice to part take in public and political life.

In a report by United Nation Development Programme (UNDP)’s Human Development Report on Somalia (2012) states that “Gender inequality is alarmingly high at 0.776 out of a value of 1

¹⁰¹ *ibid.*

¹⁰² *ibid.*

(complete inequality), with Somalia at the fourth lowest position globally on the Gender Inequality Index (GII).”¹⁰³

Many attempts were made to restore order and stability in the war torn country but unfortunately, these attempts were unsuccessful. Following the failed UN peacekeeping missions, other several efforts on national reconciliation were initiated which all were externally sponsored aimed on state building. As almost all these conferences took place outside Somalia, the number and selection of delegates participating in these conferences were limited and mainly focused on warlords, politicians and traditional and religious elders.

While women were playing an active and important in the peace building and reconciliation processes at the local level, their efforts were never acknowledged at the national level. Moreover, in all these reconciliation conferences, women were almost left out and even where women were present, they were voiceless. That is why so many peace negotiations and agreements made without the inclusion of women have failed in Somalia because men undermined the role of Somali women play in peace building initiatives and their contribution in rebuilding the country.

The National Peace Conference in 2000 known as the ‘Arta Conference’ has formed a Transitional National Government (TNG) by adopting the so-called ‘4.5 power sharing formula’ for proportional representation of Somali clans in government.”¹⁰⁴ This 4.5 system was first adopted in 1996 and has been applied in discussions of representation in all peace talks since then.¹⁰⁵ During the Arta talks, women resorted to break out of their clan-based allegiance. Instead they mobilized themselves into a sixth clan “to vote as a single bloc”¹⁰⁶ to increase their voices in the

¹⁰³ United Nations Development Programme (UNDP), *Somalia Human Development Report* (2012) p. xviii.

¹⁰⁴ *ibid.* p.18

¹⁰⁵ *ibid.* p.21

¹⁰⁶ *ibid.* p.24

decision- making. It was due to these efforts that at the end of the talks, it was agreed “to secure 25 assembly seats for women or 10 percent of total, with each of the five main clans allotted five 5 seats.”¹⁰⁷

However, the TNG failed to bring unity and stability to the country and “in 2002, the Intergovernmental Authority on Development (IGAD) revived the peace initiatives, which led to the formation of the Transitional Federal Government (TFG) in late 2004. It was slated to lay the foundation of a national government over a five-year period.”¹⁰⁸

The Principles that were to guide the Transitional Federal Government Charter which was approved in 2004 at the Somali National Reconciliation Conference in Nairobi -Kenya included a gender balance provision in Articles 29 and 26 respectively of the Charter. These provisions read that “at least 12 percent of all members of the Transitional Federal Parliament should be women and that the Government promises to promote participation of women in all aspects of society.”¹⁰⁹

In the period of 2011-2012, Somalia embarked on a UN backed process of drafting a new constitution as part of the roadmap to end the Transitional Federal Government (2004-2012), however the level of participation of women in the constitution-making process was very low and was not well represented, leading up to the ratification stage. There was no public referendum held for the approval of the constitution due to the absence of security conditions and other technical issues.

Instead, a National Constituent Assembly (NCA) was established composing of 825 members to adopt the draft constitution. The members of the NCA were drawn from all the different clans and the Garowe II Principles Agreement reached at the Somali National Consultative Constitutional

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.* p.20

Conference required a minimum 30% of women. However only 24% of the members were women i.e. 198 out of 825 members.

It is important to note that the nomination of the NCA delegates were done by the respective traditional clan elders and as the norm, elders nominated men over women to represent their clans. The Provisional Constitution was adopted without the inclusion of a quota for women or specific/explicit gender equality provisions. According to the United Nations Guide on Women and Elections, “[a] country’s constitution should explicitly guarantee equal human rights for women, including civil, political and electoral rights.”¹¹⁰ If it is not included in specific language, the equal human rights for women and their representation (i.e. through a quota system) in this window of opportunity “may ultimately prove to be a serious impediment to women’s participation.”¹¹¹

This is the case with regards to Somalia’s constitution which lacks clear and specific language on equality and inclusivity which is constructed in a general and unclear terms: “[w]omen must be included in all national institutions, in an effective way, in particular all elected and appointed positions across the three branches of government and in national independent commissions.”¹¹² This ambiguity has left lot of space for speculation and at the same empowering the clan elders to interpret however they see fit as they are no specific quotas and special measures in place mandated for women’s representation in the political and decision structures.

¹¹⁰ United Nations, *Women & Elections: Guide to Promoting the Participation of Women in Elections* (2005) p.22.

¹¹¹ *ibid.*

¹¹² Somali Provisional Constitution (2012), Article 3(5)

3.2 Barriers to Women's Representation in Politics in Somalia

A number of factors has caused the marginalization and exclusion of Somali women from the public and political life. Achieving gender equality in the political life requires understanding of the barriers that are preventing and limiting women to enter in politics and their exclusion from political decision-making in order to come up with effective strategies to deal with these roadblocks. These barriers include institutional, economic and societal as well as security factors.

3.2.1 The Clan-Based Political Representation of Somalia

It is crucial to understand the dynamics of the country's clan system which is contrary to the principles of democracy and to Somalia achieving political inclusivity and equal representation. The clan system "plays a significant role in the lives of Somali people and is an important feature of social, political, and economic life and key to understanding many aspects of contemporary Somali society."¹¹³ The Somali society is organized into clans and clan affiliation and allegiance is the lifeline of Somali people. The barriers that are locking women out of Somalia's public and political life primarily evolve around the clan system. The clan identity itself is not the problem per say but the way it is being used, "shaped and manipulated according to changing situations."¹¹⁴

The clan-based political representation is viewed as the major institutional barrier and political constraint to women's political representation in Somalia. Since the fall of Somalia's central government in 1991, the Xeer system, which is the traditional legal system that is believed to have existed before Islam in which the men elders serve as mediators, has been the 'governing law of the country' reinforced by the customary law and extended use of the Sharia law.

¹¹³ United Nations Development Programme (UNDP), *Somalia Human Development Report* (2012) p.22.

¹¹⁴ *ibid.*

The Xeer has reemerged after the collapse of the central government where men elders are the administrators of this system. This Xeer system “recognizes and promotes the rights of men but limits the rights of women, meaning their lives are of unequal value to those of men.”¹¹⁵ In addition, the sharia law has been misapplied to undermine the status of women in Somali community. The Xeer promotes the clan based political representation, which blocks Somali women from the political and judicial structures of the country.¹¹⁶

Somalia’s clan based political representation employs a system known as the ‘4.5 formula’. The 4.5 system is a formula Somalis have been using for power sharing in political representation that only counts men to represent their clans in the following form, as Dini explains it

[T]he 4.5 clan formula has been used as a tool for power-sharing. The (4.5) clan formula divides all Somali clans into four major factions that are equal in terms of size while several other clans are categorised as minority groups into a half (0.5).¹¹⁷

Somali women are not counted part of the 4.5 formula system nor does their family or husband’s clan recognize them when she is married. The traditional clan elders have, over the last two decades, been the biggest obstacle to women’s political participation and representation in Somalia.

To state the obvious, this clan system is a powerful tool in Somalia’s politics and is the basis for power sharing. It does not only promotes the interests of men and ignores women as counterparts and allies of men, but also treats women as ‘second-class’ citizens within their own clans.

¹¹⁵ *ibid.* p.23

¹¹⁶ *Ibid.*

¹¹⁷ Shukria Dini, ‘Clan Leaders: Major Obstacle to Somali Women’s Political Participation’ (2012) <<http://operation1325.se/en/blogg/clan-leaders-major-obstacle-to-somali-women-s-political-participation>> accessed 2 August 2015.

*Women are marginalised in the clan system in every way. For instance, unlike men, they do not have certain entitlements such as the right to become leaders representing their own clans and access to formal decision-making processes.*¹¹⁸

The men and clan elders in Somalia are reluctant to the idea of women participating in decision-making and block their access to the platforms of decision-making and political processes. Perceptions of women taking part in public life has been changing slowly in recent years, yet many still relate to the notion of women taking roles in the public sphere and women sitting at the decision-making table with men as an imported foreign concept ‘western idea’ and has no root in Somali culture. However, it is viewed as common and acceptable that women should implement the decisions made on their behalf on the ground.

In Article 3 of the Somali provisional constitution, a generally and vaguely formulated provision specifies the importance of women's political participation, which notes that “[w]omen must be included in all national institutions, in an effective way, in particular all elected and appointed positions across the three branches of government and in national independent commissions.”¹¹⁹

But it is difficult to understand what actually ‘in an effective way’ means for Somali women struggling to secure their rights and entering into the face of Somali politics, when there are no specific quotas for women, laws and gender policies in place and when men politicians and clan elders shut down every attempt to remedy this inequality.

To date, the system of 4.5 is the basis for political representation in Somalia and has been used by the leaders in the last roadmap “to end the protracted political transitioning and promote a

¹¹⁸ *ibid.*

¹¹⁹ Somali Provisional Constitution (2012), Article 3(5)

permanent political system in Somalia.”¹²⁰ For example, in Somalia’s Parliament, women not only make up only 13.8% (38 out of 275 members ranking 93rd globally out of 137 countries according to data by Inter-Parliamentary Union) but also are nominated by the clan elders and therefore represent their clans. Within this form of political representation, it is hard to say women will represent women’s interests but their clan’s interests and thus women in Somalia’s politics are facing this dual challenge. They cannot advocate for women’s issues and interests, and when it comes down to voting for a specific law, due to their small numerical figure, they are at disadvantage and handicapped.

The life experiences of women do influence and impacts on decisions differently than those of men. No matter how hard women try to fight for their human rights, if they are not present at the decision-making arena on equal terms and numbers with men and do not have the political power, there is little they can do to make change and advance human rights for women. For instance, in Somalia 2011, in a national women’s conference, Somali women activists from all corners of the country in a united voice denounced and demanded the outlaw of all forms of the practice of female genital mutilation known as FGM that is widely practiced in the country (according to UNICEF 2014, the prevalence rate in Somalia is at 98%¹²¹). The Ministry for Women Development and Family Affairs of the semi-autonomous region of Puntland then presented for approval to the Parliament in that region a draft Bill outlawing and criminalizing the practice of all forms of FGM. But Parliament shut down the proposed Anti-FGM Bill and condemned the Bill for being anti-Islam. It was no surprise that the MPs took that course of action instead of supporting the Bill

¹²⁰ Shukria Dini, ‘Clan Leaders: Major Obstacle to Somali Women’s Political Participation’(2012) <<http://operation1325.se/en/blogg/clan-leaders-major-obstacle-to-somali-women-s-political-participation>> accessed 2 August 2015.

¹²¹United Nations Children's Fund (UNICEF), 2014 <http://data.unicef.org/child-protection/fgmc>

because the 66 members of the Parliament were all men, except for one female. Therefore, they had no idea of the terrible ordeal that young girls and women have to endure for a lifetime in the name of tradition. More importantly, it was also no surprise that the religious leaders maintained their silence on the issue that the proposed Anti-FGM Bill was anti-Islam because the religious leaders in Somalia are all men.

In a functioning democracy where elections takes place, the gatekeepers of the political scene would be political parties who control the nomination process. But in Somalia, the clan elders (who are all men) are the gatekeepers, they make the ultimate decisions of who is best fit to represent them in the political arena and according to them, women are not ‘fit’ to represent their clans. They control the nomination process therefore, for a women to be nominated in such a process is very difficult. The 4.5 formula has received critiques from some groups in Somalia.

The 4.5 formula has been seen by some as being unfair, undemocratic and ineffective by both the intellectual and religious Somali communities. Defenders argue that 4.5 is a stop-gap measure designed only for the transitional phase, but this does not explain why a system that produces often poor quality leaders should be considered even a temporary remedy. Clan representation is a legitimate and emotional issue, and debate over a fair system is necessary. But in general, moving towards a policy-based politics, in which leaders are freely chosen on merit rather than clan affiliation, could accelerate progress on all fronts.¹²²

¹²² United Nations Development Programme (UNDP), *Somalia Human Development Report* (2012) p.21

3.2.2 *The Social and Cultural Factors*

Social and cultural factors are another bloc of barriers that hinder equal representation in Somalia. The make-up of the country's social and cultural aspects affects "the demand for women political leaders and the supply of willing female candidates hence affecting the level of women political participation."¹²³ The social and cultural attitudes towards women can influence them either positively or negatively.

Somalia being a patriarchal society, cultural attitudes towards women's role have imposed barrier to women going out to run for offices and to take part in decision-making forums. Women's roles have been largely limited to household chores and thus "are expected to be submissive before men, any desire to get more powerful than men is unwelcome."¹²⁴ Since the collapse of the central government in 1991, most women have taken up the breadwinning role within the family while the men are either unemployed, killed in the war or recruited by the militia but this did not raise their status within the community.

The cultural attitudes that belittle women and place no confidence on them is widespread in Somalia. Women's decisions are limited to the household affairs and rarely their views on important matters are sought or accepted while men are "to act as the public economic and political face of the household, serving as breadwinner and representative to clan decision-making structures."¹²⁵ Moreover, there are a number of traditional sayings (i.e. "*talo naaged reer kuma tanaado*" which means "no family will prosper if it relies on women's decisions"¹²⁶) which are often used to reinforce and recreate the negative stereotypes on and their role in Somali society

¹²³ Ali Yassin Sheikh Ali and Fatima Mohamed Mohamud, 'Constraints Hindering Somali Women's Advancement to Higher Political and Leadership Positions' (2015), p.126

¹²⁴ *ibid.*

¹²⁵ *ibid.* p.132

¹²⁶ *ibid.*

and to undermine their contribution and worthiness. With all the household responsibility and chores left entirely to the women, they can find little or no time for activities. Due to these negative opinions, it is not only men but even women themselves do not their fellow women who are competing for political offices. Today, many Somalis consider that women getting involved in public and political life and activities as a ‘taboo’ since this is labeled as men’s job. Because of the gender hierarchy and roles placing women lower than men have led widespread discrimination against women.

3.2.3 *The Economic Factors*

Economic resources play an important role in today’s politics such running a political campaign, political advertising etc. During and after the civil war, Somali “men and women had different access to resources, power and decision-making.”¹²⁷ Women in Somalia are mainly involved in small-scale businesses, which the returns go into the family needs and men mainly dominate the big businesses. Women in Somalia are economically disadvantaged because they “lack access to and ownership of productive resource that can enable them to survive in a political arena.”¹²⁸

Since Somali society is organized into clans, the political candidate from each clan nominated by men clan elders are given the necessary including financial support and backed by their own clans to run for offices.

However, Somali women have no such support from their clan and basically are on their own. Women have neither self-sufficient resources nor their own clan’s support when intending to run for political office. Because their economic status directly influences their ability make campaigns,

¹²⁷ United Nations Development Programme (UNDP), *Somalia Human Development Report* (2012) p.23

¹²⁸ Ali Yassin Sheikh Ali and Fatima Mohamed Mohamud ‘Constraints Hindering Somali Women’s Advancement to Higher Political and Leadership Positions’ (2015) p.127

thus many women who are aspiring to get into public and political life gave up even before they begin.

3.2.4 Islam and Women: The Misinterpretation of Religion

When it comes to applying religious laws to limit women's rights and oppress them, Somalia is not an exception. As a patriarchal society, men are the custodian of the religion and culture. The misinterpretation of Islam to deny women their rights has been a common phenomenon in Somalia since the collapse of the central government in 1991. Religion has an influence in shaping the lives of societies and cultures as well as the roles of men and women in communities. In Somalia, religious leaders have applied restrictive interpretation and extreme reading of Islam, which limits women's rights in general including participation in public life.

Somalia has adopted the Sharia law in 2009. The Sharia law "is the Islamic legal framework within which the public and private aspects of life are regulated including politics, economics, business etc."¹²⁹ In the current 2012 Provisional Constitution in its Article 2(3), it states that "No law can be enacted that is not compliant with the general principles and objectives of Shari'ah."¹³⁰ In addition, Somalia's the traditional justice system known as the Xeer is influenced by the Sharia. In comparison with the Xeer, "Sharia law offers women greater justice than the Xeer, but can only be administered by men; in practice it is often misapplied in the interests of the latter."¹³¹

In 2012, the politicians, with the influence of the international community, agreed on a minimum 30 percent quota for women in parliamentary seats. However the traditional elders who were in

¹²⁹ 'Sharia Law, *Simple English Wikipedia, the free encyclopedia* (2015) <https://simple.wikipedia.org/w/index.php?title=Sharia_law&oldid=5220525> accessed 25 September 2015.

¹³⁰ 'Provisional Constitution of the Federal Republic of Somalia, 2012'.

¹³¹ United Nations Development Programme (UNDP), *Somalia Human Development Report* (2012) p.23.

charge of nomination process of the parliamentary candidates did not take this quite well, expressing their strong rejection of equality based political representation basing their opposition of the 30 percent on religion. They argued that according to Islam, women couldn't hold public office and leadership positions. According to the words of one traditional elder in an interview with VOA noted "that the elders are particularly concerned about a draft constitution, written in consultation with the United Nations and that that elders take issue with sections granting women the right to run for high office."¹³²

The religion has been long used a scapegoat to limit and deny women's rights while in fact this is contradictory to the principles and teachings of Islam. The use of religion to limit women's right is a role of patriarchal laws and not a reflection of Islamic values. The distinguished Islamic scholars have noted that in the early Islamic history, there were no restrictions on women's rights where women have had full enjoyment of their human rights as men. For example, women had, in those times, full participation in politics including the right to be elected for political office.¹³³

In Somalia, even among the religious leaders, there is no harmonized position of what they think women's status in society is and this is open for contradicting views.

The restrictive use of religion for the purpose of excluding women from the political sphere represent a unfavorable and disadvantaged position for women in view of the absence of strong institutions in Somalia to manage the upcoming 2016 elections. It seems that the clan based political representation will continue to regulate the election process. The clan and traditional elders will have the role to decide who will represent their clan and the goal to achieve equality based political representation will be far from realization.

¹³² 'Somali Constituent Assembly Delayed Due to Constitution Quarrel, 2012'
<<http://www.voanews.com/content/somali-parliament-decisions-delayed/1403714.html>> accessed 25 September 2015.

¹³³ KM Baharul Islam, *Issues in Women's Rights: A Practitioner's Resource Book* (Allied Publishers 2014) p.47.

3.3 The Influence of International Community in Somalia on Women's Political Representation

The influence of international community has greatly shaped the discussion on women's rights in general and specifically on women's political representation. The international community have taken the role to continuously pressure and remind the political leaders of their international commitments in advancing women's status and rights as well as offering assistance as required. The international community has also supported and empowered civil society organizations to hold accountable their governments in delivering their promises.

In Somalia, the international community has played a key role in advancing gender equality and empowerment of women. Their influence have been instrumental in building capacities of both governments and strong civil societies, raising awareness on women's rights and especially realization of women's right to participate in political and decision-making structures. The international partners working with Somali authorities have advocated for and supported programmes and policies to include women's needs, voices. Reinforcing that the "representation of women in the political arena is a human rights issue, a justice issue, and their participation is critical in rebuilding transformative and inclusive political institutions"¹³⁴ in the country.

In addition, they are supporting the national gender machineries providing both technical and financial assistance in developing gender policies, laws and strategies to advance women's status. As the leading governmental body on gender equality and empowerment of women, the international community are building the capacities of the gender machineries to effectively

¹³⁴ Shukria Dini, 'Women in the government of Somalia' (2012) < <http://afrikansarvi.fi/62-artikkeli/180-women-in-the-new-federal-republic-government-of-somalia> > accessed 24 August 2015

mainstream gender in the other governmental bodies, coordinate and oversee the different efforts by both NGOs and CSOs on advancing women's rights.

Their support on women's political participation is one of the crucial areas where they have greatly influenced and always persistently pressured the government for the representation of women in political forums. During the 2012 constitutional process, they had played a key role in advocating for and supporting the adoption of the 30 percent quota during constitutional consultative conferences as well as screening the candidates' list submitted by the clan leaders to ensure the quota has been observed.

CHAPTER IV

4. The Conditions for the Implementation of Quotas for Women in Somalia

4.1 Driving Factors behind Increased Women's Political Engagement in Africa

In Africa, since mid- 1990s, there has been notable increase in political engagement of women. Women are becoming more politically engaged and seeking representation at all levels, from local government to legislatures and even executive office.¹³⁵ Data shows that the continent has some of the world's highest female political representation the legislative bodies i.e. Rwanda holds the highest in the world, 64% of the parliamentary seats, Seychelles (44%), Senegal (43%), South Africa (41.5%) followed by Mozambique(40%), Angola (37), Tanzania (36%) and Uganda (35%).¹³⁶ According to a report by Inter-Parliamentary Union “four of the best performing countries in the world [top 10 countries in terms of women's share of single or lower houses of parliament], are in Sub-Saharan Africa”¹³⁷ as illustrated in the below table.

Table 2: Top-ranking countries for single and lower houses of parliament, 1995 vs. 2015

1 January 1995			1 January 2015		
Country	Region	% Women	Country	Region	% Women
1. Sweden	Nordic/Europe	40.4	1. Rwanda	Africa	63.8
2. Norway	Nordic/Europe	39.4	2. Bolivia	Americas	53.1
3. Denmark	Nordic/Europe	33.5	3. Andorra	Europe	50.0
4. Finland	Nordic/Europe	33.5	4. Cuba	Americas	48.9
5. Netherlands	Europe	32.7	5. Seychelles	Africa	43.8
6. Seychelles	Africa	27.3	6. Sweden	Nordic/Europe	43.6
7. Austria	Europe	26.8	7. Senegal	Africa	42.7
8. Germany	Europe	26.3	8. Finland	Nordic/Europe	42.5
9. Iceland	Nordic/Europe	25.4	9. Ecuador	Americas	41.6
10. Argentina	Americas	25.3	10. South Africa	Africa	41.5

Source: IPU (2015) *Women in Parliament: 20 years in Review*

¹³⁵ Aili Mari Tripp, 'Women's Political Participation in Sub-Saharan Africa' (2014) p.1

¹³⁶ Inter-Parliamentary Union: 'Women in National Parliaments' (as of January 2015) <http://www.ipu.org/wmn-e/classif.htm#1> accessed 20 March 2015

¹³⁷ Inter-Parliamentary Union, 'Women in Parliament: 20 Years in Review' (2015).

So what have been the main driving factors that facilitated and contributed to women's engagement in the African politics? According to political scientist Aili Mari Tripp the following four main factors are attributed to the increasingly women's political empowerment in Africa¹³⁸. The first important factor is the institutional factor- the introduction of the gender quotas of what the Danish political scientist Drude Dahlerup has called the 'fast track' model to achieving equal representation of women in politics.¹³⁹ As Dahlerup argues

*Electoral quotas are a symbol of the impatience of modern women. The fast track is a symbol of the impatience of women around the world that they will not wait for women's representation to come on its own, but are demanding special measures to make this a reality.*¹⁴⁰

The implementation of quotas for women is the key explanatory factor that has resulted in dramatic increase in number of women's representation in legislative bodies in Africa. Introducing quotas in Africa has also overridden the religious and cultural that traditionally constrained women from entering in politics. Thus quotas system have proven to be an effective institutional measure to tackle the barriers that restraint women from participating in political life, given under what conditions they are being implemented and enforced.

The second equally important factor has been "the emergence of autonomous women's movements"¹⁴¹. The role of women's movement has been key especially in taking advantage of democratic openings to push for quotas and shaping the status of women's political representation

¹³⁸ Aili Mari Tripp, 'Women's Political Participation in Sub-Saharan Africa' (2014) p. 6-18

¹³⁹ Drude Dahlerup and Lenita Freidenvall, 'Quotas as a "fast Track" to Equal Representation for Women' (2005).

¹⁴⁰ Drude Dahlerup, 'Quota Systems: An Overview of Global Trends and Continental Analysis' (2004) p.14, 16-18.

¹⁴¹ Aili Mari Tripp, 'Women's Political Participation in Sub-Saharan Africa' (2014) p. 6-18

in Africa in terms of their campaign and advocacy work in keeping the momentum. As Bauer points out that

“[T]he strength and cohesion of national women’s movements, pressure exerted by international women’s movements and organizations, and the strategic use of windows of political opportunity as the factors giving rise to women’s increased political representation in Africa in the 1990s and 2000s.”¹⁴²

However, there have been setbacks in pushing increased women’s political representation in countries where the women’s movement are not vibrant such as experience shows in Botswana, a long standing democracy, where women only hold 9.5% of parliamentary seats compared to Senegal at 43% where women’s movement are more organized. Therefore creating the enabling environment for sustained women’s movement is of high importance in keep the momentum for increased women’s representation in politics.

The third factor has to with the pressures of international community which they influenced women’s political representation. The international community such the impact of the UN world conferences towards gender equality is the proof of the international mobilizations and women’s movements have used these international institutions in advancing their advocacy and agenda at the local level.

The fourth factor has been the impacts of the post-conflicts that has opened up new political opportunity structures for women such peacekeeping negotiations, constitutions and elections) through which women were able to proclaim their rights. Women activists have taken more active role in the transition moments in demanding greater political representation.

¹⁴² Muna Ndulo and Margaret Grieco, *Power, Gender and Social Change in Africa* (Cambridge Scholars Publishing 2009) p.9

Therefore, the rapid growth and the positive trends of female political representation in Africa is not accredited to a single factor but a combination of a number of factors that made this a reality. This increase has also led to positive developments at the national level such as gender sensitive policies, laws against violence against women and anti-discrimination, equitable resource distribution, promotion of women's interests, "enhancing the quality and legitimacy of democracy, inspiring and recruiting ordinary women to become more politically engaged." ¹⁴³

4.2 The Kenya Experience: The Two-Thirds Gender Principle in the 2013 General Elections

Under 2010 Kenya Constitutional Reform process, a fundamental gain for women's political representation secured the opportunity and pledge of effective representation of women via the ***two-thirds principle of gender representation.***¹⁴⁴ The two-thirds principle in Article 27(8) of the Kenya Constitution "imposes upon the State the obligation to redress gender disadvantage"¹⁴⁵ and requires that "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."¹⁴⁶ Additionally, in Article 27(6) dictates that "the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination."¹⁴⁷

¹⁴³ Mona Lena Krook, 'Gender Quotas and Democracy: Insights from Africa and beyond', *Women's Studies International Forum* (2013) p.160-163.

¹⁴⁴ Federation of Women Lawyers (FIDA) Kenya, 'Key Gains and Challenges: A Gender Audit of Kenya's 2013 Election Process' (2013) p.4

¹⁴⁵ Supreme Court of Kenya, *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate* Advisory, Advisory Opinion No. 2 (2012), para 2

¹⁴⁶ Constitution of Kenya, Article 27(8)

¹⁴⁷ Constitution of Kenya, Article 27(6)

This principle has been enshrined in two important sections of the Constitution—the Bill of Rights and the general principles of the electoral system. These two parts can be found in the following articles.

*Article 27(8) states: “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.”¹⁴⁸*

Article 81(b) states: “The electoral system shall comply with the following principles — that not more than two-thirds of the members of elective public bodies shall be of the same gender.”¹⁴⁹

In spite of the constitution categorically protecting the women’s participation in politics, there has not been a strong mechanism provided for the implementation of this rule in the Senate and National Assembly. Hence this proved to be a major challenge to the realization of the two-thirds principle. In order to redress this legal gap, an amendment to the constitution was proposed in 2011 but “never progressed further due to a critical lack of political will.”¹⁵⁰

The Two-Thirds Gender Principle: Supreme Court of Kenya Advisory Opinion, 2012¹⁵¹

In view of the upcoming 2013 general elections in Kenya, the Attorney General submitted a request for an Advisory Opinion to the Supreme Court of Kenya in October 2012. On behalf of the Government, the Attorney General request was seeking a determination as to

¹⁴⁸ Constitution of Kenya , Article 27(8)

¹⁴⁹ Constitution of Kenya, Article 81(b)

¹⁵⁰ Federation of Women Lawyers (FIDA) Kenya, ‘Key Gains and Challenges: A Gender Audit of Kenya’s 2013 Election Process’ (2013) p.37

¹⁵¹ Supreme Court of Kenya, *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate* Advisory, Advisory Opinion No. 2 (2012)

whether the two-thirds rule was to be implemented with immediate effect i.e. during the 2013 elections or progressively. The question put forward was whether the two-thirds requirement, read with the non-discrimination provision in Article 27 and provisions relating to the composition of the National Assembly and Senate, required “immediate” or “progressive” realization and, specifically, whether it was applicable to the March 4, 2013 elections. The Attorney General’s request was in principle asking the Supreme Court to confirm that the two-thirds principle was progressive in nature.

Federation of Women Lawyers (FIDA) Kenya, other civil society groups, and national commissions, such as the Commission on the Implementation of the Constitution and the National Gender and Equality Commission, joined the case as amicus curiae (friends of the court) and interested parties. FIDA Kenya made submissions to the court arguing for immediate implementation of the two-thirds principle.

*On December 2012, a majority of the Supreme Court held that on the basis of Article 81(b) formulation the electoral system **shall**{emphasis added} comply with the following principles.....that not more than two-thirds of the members of elective public bodies shall be of the same gender and that the two-thirds principle is subject to progressive implementation.*

The Court interpreted that the wording the electoral **shall** [emphasis added].....means it is to be realized **progressively and not immediately**{emphasis added}. The Court also noted that the principle “had not been transformed into a full right ... capable of direct enforcement.”¹⁵² The Court stated that

¹⁵²Supreme Court of Kenya, *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate Advisory*, Advisory Opinion No. 2 (2012), para 71

[F]or Article 81(b) to be transformed from a principle into a right, either the provisions relating to the National Assembly and Senate would have to be amended or other legislative measures would have to be implemented as envisioned by Article 27(8). As such, the Court pronounced that progressive implementation was the right course.

In the “same ruling, the Court did prescribe a timeline for implementation, calling on Parliament to take the necessary legislative measures by August 27, 2015.”¹⁵³ However the Court did not attach any sanctions to the holding in the event that the Parliament fails to make the necessary legislative measures to enforce the two-thirds principle.

*In its opinion, the Supreme Court effectively defeated the realization of the two-thirds principle at the National Assembly and Senate for purposes of the 2013 elections. In fact, the opinion may be cited as the most momentous setback recorded in the implementation of the Constitution and the efforts to increase women’s representation.*¹⁵⁴

However, the dissenting opinion of Chief Justice Dr. Willy Mutunga held a different view from the majority ruling that the two-thirds rule would apply in the 2013 elections. The Chief Justice disagreed with the majority on the interpretation of the rule to imply that it is to be implemented in a progressive manner. In his opinion, he believes the approach, which the Majority took

*“to interpret Article 81(B) was narrow and rather the Court should have taken a broad approach to interpret the provisions of the constitution in this case and therefore it makes it abundantly clear that it is unwise to tie in the interpretation of this Article to a single word (shall).”*¹⁵⁵

¹⁵³ *ibid.*, para 79

¹⁵⁴ Federation of Women Lawyers (FIDA) Kenya, ‘Key Gains and Challenges: A Gender Audit of Kenya’s 2013 Election Process’ (2013) p.39.

¹⁵⁵ Supreme Court of Kenya, *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate* Advisory, Advisory Opinion No. 2 (2012), Dissenting Opinion para 9.1

This Advisory Opinion of Supreme Court of Kenya has its significance on the debate of whether the gender quota system is to be realized immediately or progressively which portrays the challenges beyond the political will, economic and cultural factors that arise in enforcing women's right to political participation within legal framework that is supposed to secure and enforce this right. This Advisory Opinion speaks of the understanding of the judiciary branch that women's right to political participation is not a 'right' of equal importance and hence not entitled for enforcement and this significantly undermines the gender equality goal in the politics sphere. This is also serves and supports the arguments of women's movements and activists that,

*“Kenya has a solid international foundation for the protection and enhancement of women's rights as women pursue representation and leadership. However, even where instruments have been signed and ratified, the Government of Kenya is yet to fully meet its obligation as duty bearer by putting in place policies or laws that give impetus to women's participation in political life and firmly address discrimination”.*¹⁵⁶

Of course, constitutions and laws are primary and strong mechanisms that offer protection of women's right in participating politics and public life however they are not of sufficient means to guarantee effective representation of women in the public life as collective efforts is required to materialize and enforce such a right. While the women's right to political participation can be guaranteed through the constitution and special measures such quota system and affirmative action. It however requires a collective effort including the judicial branch to give legal empowerment to this right if it is to be achieved.

¹⁵⁶ Federation of Women Lawyers (FIDA) Kenya, 'Key Gains and Challenges: A Gender Audit of Kenya's 2013 Election Process' (2013) p.12.

At the same time, if adequate measures are not implemented to enforce the gender quota system, it would not make difference in enhancing women's political representation. Despite struggles of women's movement to advance women representation in politics, the need for different institutions to work together is required. Institutions such the judicial branch to keenly support the enforcement of laws by adopting the interpretation of the Constitution and laws that most favours the immediate realization of such a right is required for the realization of gender equality in the political domain. What can be drawn from the Kenya experience is that the mere adoption of gender quota without the necessary conditions including its enforceability that would give effect to bring about desired change and achieve the intended goal is not sufficient and effective. While a country may have signed and ratified the international instruments on women's rights including their right to participate in decision- making and political structures, it does not necessarily translate to action without proper implementation mechanism designed and implemented.

4.3 The Pre-Necessary Conditions for Effective Implementation of Quota System in Somalia

A comprehensive and integrated approach is required for Somalia to achieve equal representation in politics of which the adoption of a gender quota system is only one part of this approach. The political theorists have argued that fast track to equal representation could be more efficient where direct and indirect discrimination against women is still widespread as discussed in chapter one of this paper. However, the Somalia case presents a more complicated situation where the fast track policies such as the quota and temporary measures alone may not bring the transformations towards genuine gender equality due to the structural problem of massive clan- based political structures. The Somalia cases shows that various forms of direct discrimination hinders the application of affirmative action. Therefore, the solution to this problem is to have a combined

approach that brings political, legal and institutional transformations. This combined approach rather a sequencing one would involve creating pre-necessary conditions such as the legal, political and institutional frameworks parallel to the adoption of an affirmative for effective implementation of quota system. The effective implementation of quota system in the case of Somalia depends on additional measures in order to address the clan issue such gender mainstreaming which requires overcoming gender specific power relations. Despite the failed efforts in the past to adopt formally quota system, it is not too late to address the clan issue in the current on-going constitutional and political processes. The current political and post-conflict transition presents windows of opportunities for creating the pre-necessary conditions in addition to the adoption of quota for an inclusive political frameworks, in view of the on-going constitutional review in Somalia and the elections scheduled to take place next year both parliamentary (2016) and municipal (2016-2017). In addition, this agenda is massively being advocate by the international community supporting the women's movement advocacy.

While Somalia did not adopt a quota system formally either through the constitution or through a law, however, affirmative measures were introduced in a number of peace agreements, the last one, during 2011 peace and reconciliation processes. The 2011 agreement known as Garowe II Principles mandated for 30% quota for women in all political and decision-making structures, which was agreed and signed by all the different clan functions/ political leaders, which was in a way binding. This agreement was actually enforced during the 2012 parliamentary elections and substitute measure for political will i.e. a Technical Selection Committee was composed to screen the candidate lists submitted by clans to ensure women were included. The co-chairperson was a female and that is how women managed to secure a 14% of the parliamentary seats in 2012, and the first female deputy prime minister/minister of foreign affairs was appointed. However, there

has been and still is strong resistance to implement the quota system as evidenced in statements of traditional/clan and religious elders. From this analytical perspective, Somalia has a unique implementation puzzle in the sense none of the previous affirmative measures introduced were respected/implemented due a number a number of factors but mainly relating to the lack of functioning institutions and the clan system problem. For instance, the vacuum created by lack of political parties allowed the clan structures to play this role and consequently even when they do not respect and fulfill the quota requirements, they were no sanctions. The issue is that while the current constitutional review process might be successful in introducing an anti-discrimination/quota system as a result of international impact but that will just remain on paper as experience shows, as there are no mechanisms in place for effective implementation. Thus, the clan based political structures will remain to be the biggest hinder to effective implementation of affirmative measures and women's movements will later on face challenges to pursue its enforcement.

The adoption of an affirmative action is the first important step in removing the formal barriers to women's political participation and representation, which establishes the legal framework. This step includes the formalization and institutionalization of gender equality in political representation. This will not only give the women and advocates of women's political representation a legal basis for their claim but will also prevent the manipulation and autonomy of religious and clan elders to exclude and marginalize women.

However, this sequencing is not the beneficial for Somalia The removal of formal barriers by adopting a gender quota system does not necessarily translate or offer 'real equal opportunity'. There is more to do if equality based political representation is to be achieved. As political scientist,

Dahlerup noted, "Direct discrimination and a complex pattern of hidden barriers prevent women from being selected as candidates and getting their share of political influence."¹⁵⁷

As they are lessons learnt from the Somalia 2012 political processes and from the Kenya case discussed earlier, there are opportunities in the current political processes to consider these lessons to design a more efficient strategy to create a conducive environment for substantive representation of women. In parallel to the adoption of the quota system, plans and efforts should be made to create strong and functioning political and judicial institutions to replace the current "clan institution" for a gender quota system to work effectively. The absence of these institutions such political parties and an independent electoral commission have enabled the traditional elders to take total control of nomination and selection process of any political processes including nominating men to political offices. When institutions such as the political parties and independent electoral commission are functioning, the non-fulfilment of quota required can be sanctioned.

On the other hand, as the Kenyan example strongly shows, independent judicial institutions such courts have an important role in ensuring the laws are applied and enforced, upholding the constitution and imposing sanctions for the non-compliance. In the Kenya case, the 2013 elections due to the lack of the Supreme Court's willingness to enforce the gender principle, which is enshrined in the constitution, women have lost ground for holding accountable their leaders. Therefore, an independent judicial body is important component towards effective implementation of gender quota system.

Another important condition is the creation of a free, secure and conducive environment for equal representation. This includes reducing the capacity gaps in education, resources and opening new opportunities for women to engage in politics as well as tackling socio-economic factors that

¹⁵⁷ Drude Dahlerup, 'Quota Project' <<http://www.quotaproject.org/aboutQuotas.cfm>> accessed 28 September 2015.

impose “double burden” for women. Empowerment through educational and economic opportunities, capacity building and mentor programmes, which will enable them to combine domestic duties, work and politics. Designing an advocacy strategies targeting at changing the outdated and patriarchal stereotypes, which are reinforced in political life. Working with the media is important to shape the perceptions and stereotypes. Creating such environment is a long-term goal as this involves changing the social structures, culture and norms.

Security is another major concern for women in all aspects of public life. Current very few women’s politicians are under constant threat by the extremist groups and therefore creating safe and secure for women to operate is something that requires of special attention, for not only female politicians or candidates but also female voters as the country plans for public elections next year. Finally yet importantly, the strong and autonomous women’s movement are instrumental in putting pressure for the successful implementation of gender quota. Women’s organization take the lead in advancing the advocacy and campaign which creates an internal owned debate on equal representation, monitoring the non-compliance of quota laws and shaping the status of women in political sphere and gender interactions.

In a long-term perspective, inclusive political systems and successful implementation of quota system depend on additional measures such as the principle of gender mainstreaming into the political and governance processes to create conducive and enabling environment for women’s leadership and political, legal and economic empowerment of women. In new democracies, such Somalia where fast track policies alone will not guarantee substantive representation of women, specific gender mainstreaming approach is required to reconcile the constitutional and implementation agendas.

The constitutional moment is a crucial moment when forward looking implementation issues could and should be considered which provides a platform and opportunity for transformational change. In Somalia, it would be benefit from a ‘twin-track approach’ on gender mainstreaming combining the fast track to equal representation with gender mainstreaming which includes building the basic institutions to support effective implementation of quota. The aim of gender mainstreaming is, in this context, facilitate justice based and genuine gender equality in Somalia. Through gender mainstreaming, efforts needs to be made to institute gender policies with corresponding action plan translating the constitutional provisions into reality. Gender mainstreaming in such context raises general awareness and its implications for development and social recovery in a post-conflict society like Somalia.

Gender mainstreaming facilitates to re-awaken the socio-political consciousness to address the need and increase the capacity of different political actors. Another importance of gender mainstreaming approach is that it allows to work with human rights and gender equality treaties that the country has not yet ratified which could draw public attention on discrimination and gender inequalities, which eventually would prepare and lead to ratification of the treaties. Gender mainstreaming makes it possible for human rights and women activists to begin to engage with international human rights and gender equality instruments and integrate them in their work and cases, particularly lawyers and activists.

Nevertheless, a critical question remains on accountability, which also has been raised in the discussions of post-2015 agenda, “what’s transformative if the powerful [the clan and religious leaders] remain mainly accountable to themselves — or not to all?”¹⁵⁸ How to deliver a more transformative approach to build inclusive political frameworks and how do we get the gender

¹⁵⁸ Karen McMinn, *Candid Voices from the Field: Obstacles to a Transformative Women Peace and Security Agenda and to Women’s Meaningful Participation in Building Peace and Security* (2015) p. 22-23

equality policies that truly prohibits discrimination. These are all critical questions, which should be considered in the current constitutional and political processes. Furthermore,

“[T]he political commitment to transformative changeneeds to be rooted in genuine fairness and cooperation because transformation, in a real sense, will require people to work together, to move beyond just their own interests, and to share limited resources in a far more equitable manner”¹⁵⁹

4.4 The Limitations and Implications of Gender Quota System in Somalia

There are certain limitations or implications of use of political gender quotas. There have been debates around gender quotas, which have been labeled them as “preferential treatment or positive discrimination”¹⁶⁰ as researchers such as Dahlerup and Freidenvall among others have pointed out. These debates argue that these measures i.e. gender quotas and affirmative actions are discriminatory.

While “the implication of gender quotas relies on its effectiveness to be used within the political system by countries to legitimize equal representation”¹⁶¹, however that legitimacy has been questioned. These debates have severe consequences on the effectiveness of gender quotas as these debates “for and against quotas highlight key political concepts, such as ‘equality’, ‘representation’ and ‘justice’, and the debate can also have serious implications for women in politics.”¹⁶²

¹⁵⁹ *ibid.*

¹⁶⁰ Drude Dahlerup and Lenita Freidenvall, ‘Electoral Gender Quota Systems and Their Implementation in Europe’(2013) p.20

¹⁶¹ WIKI GENDER, ‘Debates on Gender Quotas’

<http://www.wikigender.org/index.php/Debate_on_Gender_Quotas> accessed 4 August 2015.

¹⁶² Drude Dahlerup and Lenita Freidenvall, ‘Quotas as a “fast Track” to Equal Representation for Women’(2005). p.20

In Somalia, there could be three main implications that will hamper on the effectiveness of gender-specific quotas. Firstly, the adoption of gender quotas are currently advocated for and pushed by international community such as the UN and Donors. The efforts of to adopt formally gender quotas in the current on-going political processes are rather a symbolic top-down approach where they are being imposed through the UN rather than coming from an autonomous and inside debate. If the quotas have been adopted after an internal debate, they may be considered more legitimate thus to have more effect on the ground than if they are "imposed" from outside which is the case in Somalia which questions the attainment of genuine gender equality policies that have impact. Such symbolic top-down approach requires that women's movements actually back them up and put them on the political agenda as well. However, the strong clan based political representation overwhelms the efforts of women's movements.

This point leads to the second limitation, which is the lack of strong legal and institutional mechanism in place, which supports the claim, and efforts of women's movements to push the quotas. Hence, this leaves more room for traditional clan elders managing the candidate nomination process to continue nominating men over women

Lastly, the other implication is that once the quotas have been adopted, women will still be at a disadvantaged position due to the lack of resources as well as the institutional and cultural mechanisms of exclusion. Adoption of quotas without the necessary institutions in place to challenge the cultural barriers, its effectiveness will be severed by the clan-based political representation.

CONCLUSION

It is no doubt that the cost of low participation of women in political and decision-making structures have serious consequences on the progress of the nation as a result of inefficiency of the legal and political institutions and structures locking out women. Years of experience have shown that “[e]xcluding women from positions of power and from elected bodies impoverishes the development of democratic principles in public life and inhibits the economic development of a society”¹⁶³.

As a response to the institutional, economic and societal challenges that lock women out of these institutions, gender quotas have been increasingly adopted, over the last decade, as a positive measure to remove those barriers and the double burden for women and redress the gap of gender inequalities in the political sphere. Fast tracking women’s political representation through quotas and temporary measures have led to the achievement of high rates of women in political and decision-making structures in Africa. Besides quotas, other factors were also identified and recognized to have contributed to the increased political engagement of women in Africa. Such factors include political will and support at the highest level, vibrant women’s movements and civil society, the pressures from international community and the impacts of post-conflicts which have opened new political structures.

In Somalia, the road ahead to gender equality is a long one and gender inequality is not only manifested in the political sphere but in every aspect of life i.e. in economic, in education, in health, in employment opportunities, etc. Women have systematically been excluded, marginalized and denied access to political and decision-making structures.

¹⁶³ Julie Ballington and Azza Karam (ed), *Women in Parliament: Beyond Numbers. A Revised Edition*. (2005) p.49.

In the case of Somalia, if we are to design and implement effective strategies for successful gender quotas, it is crucial to synchronously understand the political and legal environment, the social structures and cultural traditions within which women can operate to gain political power. Thus, the mere adoption of gender quota alone would not be sufficient guarantee and mechanism to tackle the clan-based political representation and to achieve equality and equal representation in the political sphere. This paper has sought to give insights to the problems to women's political participation in Somalia and gave recommendations of the pre-necessary and practical conditions for effective implementation of gender quota system.

The paper has also suggested going beyond the current approach of adopting a symbolic top down move that lacks serious commitment and political will. The consequence of this will be that while gender quota looks good on paper and the traditional clan based political representation will continue to be dominant behind the curtains. Women who will be elected will have their allegiance to their clan elders who put them in those positions and not to the constituencies they represent neither, in the least, represent women's needs and interests.

Thus, in the case of Somalia, this paper has offered a solution to the problem and recommends taking a combined approach to the problem that involves parallel processes i.e. a combination of both the fast track policies and gender mainstreaming principle to increasing women's political participation and representation. Gender mainstreaming as a tool for reducing gender inequalities will complement the fast track policies and enables to create the environment in which the quota can function. Applying gender mainstreaming into the political processes will allow incorporating gender equality into the post-conflict and political transitions, strengthening not only women's participation in peace and political processes but also women's engagement "in the broader

economic and political relations that impact the capacity of women to exercise their rights for political and economic empowerment in post conflict settings.”¹⁶⁴

This will stimulate and foster an enabling environment for women who already are interested and willing to pursue career in the political and public life can have the required resources and skills as well as the social facilities that will ease their double burdens. With such environment, women will be able to combine both family, work and politics.

While adopting quotas through the constitution and laws is a strong mechanism that offers protection to women’s right to political participation, however without functioning legal and institutional frameworks both political and judicial in place, achieving substantive women’s political representation will remain a hard goal to achieve. Institutions such as independent electoral commission, political parties, strong gender national machineries with the necessary resources both technical and finances, vibrant women’s movements and civil society organizations and gender responsive media are all crucial for collective efforts and actions towards effective implementation of gender quota. Moreover, safe, secure and enabling environment is equally important, given the current context of the country, to foster equal representation.

A mechanism for monitoring the implementation of gender quota and sanctions for the non-compliance with the quota requirements needs to be established. Not only the political will and support of political leaders are necessary but also strong commitment and support to implementation of quotas is required from the judicial branch. Independent judicial institutions to uphold the constitutional right of women’s political participation and impose sanctions where non-compliance has been identified is crucial. As seen from the Kenya experience, regardless of

¹⁶⁴ Karen McMinn, *Candid Voices from the Field: Obstacles to a Transformative Women Peace and Security Agenda and to Women’s Meaningful Participation in Building Peace and Security* (2015) p.24.

extensive commitments to international human rights by the country, if there is no enforcement mechanism in place, then there is no way to translate those commitments into action.

Achieving substantive representation of women in the political spheres requires more than adoption of affirmative measures. This paper has tried to illustrate that in the case of Somalia by just adopting a quota in itself is not sufficient guarantee to achieve substantive representation of women. Thus in Somalia, the proposed solution is to adopt a combined approach of fast track policies, application of gender mainstreaming principle and implementation of the recommended pre-necessary conditions for effective implementation of the quota system i.e. the institutional frameworks. Applying gender mainstreaming will help address institutional constraints on affirmative measures and give political empowerment of women. This combined approach may help in melting down some of the impediments such clan-based structures. To support this argument, this paper has also analyzed experience of other African countries namely the Kenya case that substantively supports this argument that the availability of gender equality provisions in the local constitutions and law does not translate to actions.

Ultimately, effective implementation of gender quota is reliant on effective enforcement and accountability mechanisms through collective efforts and actions of different institutions and actors. Without these practical conditions in place, the gender quota will remain ineffectual and equal representation will be hard to achieve. When these legal and institutional frameworks as well as mechanisms of enforcement are in place, it will not only be a critical factor for pressing forward women's political representation in the country but also gradually reshaping the political dynamics moving away from the traditional clan-based system to a more inclusive political system.

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