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Legislative review for gender parity in politics and leadership through realization of women quota system in Somaliland

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Report
Hargeisa
December 2019

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Executive summary

There is a wave of national and international activism focused on gender quotas as part of the broader movement towards realising more political representation of women. The level of political representation of women in different countries around the world and Africa, in particular, varies. In Somaliland, there is only one female member of the Parliament (164 members of the bicameral parliament). The same low representation is evident in all branches of the state. Efforts directed to mandate quota in legislation is hindered by rejections from the Parliament. This review analyses the legal framework of gender equality and specifically focuses on the possibility of legislating quota. The review attempts to answer the constitutionality of quota by analysing the Constitution of Somaliland in line with the international human rights conventions and instruments accepted and recognized by the Constitution.

The review also studies legislations pertinent to gender equality to pinpoint challenges and opportunities. To understand the wider context of the region, ten African constitutions have been reviewed. The objective of the review is to compare other constitutions with that of Somaliland to better understand the constitutionality of quota and the different modalities adopted by the countries of the continent.

Although the Constitution of the Republic of Somaliland does not specifically mention quota, it encourages legislation of laws and adoption of policies and measures intended to accelerate de facto equality between men and women. Furthermore, all articles related “to fundamental rights and freedoms shall be interpreted in a manner consistent with the international conventions on human rights and also with the international laws referred to in this Constitution.”¹ The Constitution obliges the government of Somaliland “to recognise and shall act in conformity with the United Nations Charter and with international law, and shall respect the Universal Declaration of Human Rights.” It also observes all treaties and agreements entered into by the former state of Somalia.² The International Covenant on Civil and Political Rights is among human rights treaties entered into by the former state of Somalia.³

The proposed 22% quota containing the consolidated Election Bill is a step taken forward. However, the inclusion of quota in the Bill lacks clarity and details. The Bill neither specifies the quota system and type that should be adopted nor how the seats will be allocated in party lines and electoral regions. The inclusion of quota, however, opens an opportunity to revisit the quota system in the Bill and include in more detailed, practically possible and enforceable quota system.

The review studies laws that have discriminatory provisions. These laws include the Citizenship Act and the Voter Registration Act. As a result of the nature of these laws which have a direct bearing on the political rights of women, right to nationality and right to participation, the report makes recommendations to amend all discriminatory laws.

¹ Article 21 of the Somaliland Constitution

² Article 10 of the Somaliland Constitution

³ Somalia ratified the International Covenant on Civil and Political Rights, 1990

1. Introduction

Somaliland endorsed the Sustainable Development Goals (SDGs) and aligned with its National Development Plan (NDP II). Goal 5.5 of the SDGs targets to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.” One of the indicators in realising the target is “proportion of seats held by women in national parliaments and local governments.” According to the UN:

"Women continue to be underrepresented at all levels of political leadership. As of 1 January 2019, women's representation in national Parliaments ranged from 0 to 61.3 per cent, with the average standing at 24.2 per cent, an increase from 19 per cent in 2010. At the local level, data from 99 countries and areas show that women's representation in elected deliberative bodies varies from less than 1 per cent to 48 per cent, with the median of the distribution at 26 per cent. When legislated gender quotas are adopted, significantly higher proportions of women are elected at both national and local levels."⁴

Additionally, “in 2018 from 53 countries, almost a third have legal gaps in the area of overarching legal frameworks and public life (e.g., constitutions, anti-discrimination laws, quotas, legal aid).” To overcome these challenges and increase women’s participation and involvement, “it has been argued that a gender-blind politics cannot be said to be democratic neither can it be credible because equality is an essential part of a democratic government.”⁵ In cognizant of such reality and necessity to take an action aimed to eradication of inequality and to improve drastically women’s participation in politics and decision making, the government of Somaliland sanctioned an independent legal review to analyse the Constitution, laws and policies to analyse the legality of quota, but also to understand the position of gender equality in the law.

Xaqdoon Law Firm has taken legal review to analyse the constitution and the laws of the country to better understand the legal framework influencing gender parity in politics and decision-making process. The review analysis for gender parity in politics and decision-making process has been conducted for contributing to the realization of women quota in politics and leadership for equitable and fair legislation for all.

⁴ <https://sustainabledevelopment.un.org/sdg5>, last retrieved 28th December 2019

⁵ Adefemi, Adedayo and Agunbiade, Ayodejim, Women’s political participation and representation in the state of legislature, Southwest, Nigeria, Open Access Journal Volume 7 Issue 1

2. Methodology

A desk-study was made to research constitutional provision, national laws, policies and international human rights instruments related to gender parity. Particular emphasis was made on the constitutional provisions and election related laws. Ten African constitutions were assessed to compare the constitution of Somaliland. The countries were selected based on their geographical location, proximity and religion. The laws investigated during the research include:

- Presidential and Local Councils Elections Act, Law No. 20/2001
- House of Representatives Election Act 2005.
- The Political Associations and Parties Act, Law No. 14/2001
- Voter Registration Act.
- Citizenship Act
- Consolidated Electoral Bill;

The review conducted a systematic review and gap analysis of legislations and legal frameworks relevant to women's political representation through women quota as a legal mechanism. Data on gender quota in Africa and many other parts of the world, particularly in Latin America and Europe were reviewed to compare Somaliland with the rest of the world. The comparative research was carried out compare Somaliland legal system with those of other African countries. The focus was on gender equality and quotas. Therefore, the comparative analysis was not made to the development, history and principles of constitutions and legal systems. The constitutional articles related to gender, non-discrimination and equality were targeted.

Somaliland is not internationally recognised as an independent state. Nevertheless, that does stop the country to engage with the international arena and accept international law. The international human rights treaties and declarations accepted and endorsed by the Constitution of Somaliland have been reviewed to understand the interpretation of the Bill of Rights in the Constitution. The jurisprudence of international human rights laws has been developing over the years. Therefore, it is imperative to cite whenever human rights laws are on the subject of study.

3. Context

Since the declaration of the restoration of independence in 1991, Somaliland has been undergoing a democratisation process. The approval of the constitution in a referendum on 2001 led to embarking a journey towards democracy. The first election was held in 2002 for local councils. The presidential election followed in 2003 and the election of the House of Representatives was conducted in 2005. Smooth transfer of power through democratic means occurred in Somaliland in 2010 and 2017. In 2010 the then incumbent president was unseated by an opposition contender, a rare occurrence in Africa.

In contrast to such obvious success, women are underrepresented in leadership positions in the three branches of the state. The judiciary is the least represented organ where women have never been appointed as a judge. But there is an increasing number of female deputy attorney generals and court clerks. The appointment of women in the Office of the Attorney General as deputies (prosecutors in a criminal case) started in 2011. Also, female lawyers are working as independent private practitioners or working for government offices such as the Office of the Solicitor General.

There are three women in the cabinet. According to Somaliland SDG16+ Progress Report (2019), in Somaliland, there is:

- 1 female member of the House of Representatives (out of 82 members).
- 0 female members of the *Guurti*, House of Elders (out of 82 members).
- 0 female mayors in the 23 districts of the country.
- Just 9 female district councillors out of 305 seats, which equates to just 3% women in the councils.⁶
- 0 female governors or deputy governors out of 13 governors and 13 deputies.
- 1 director general (the equivalent of permanent secretary) in Somaliland's ministerial departments out of 25 positions.
- 1 female who is head of a government commission, agency or authority out of 21; and
- Women constitute 25% of civil servants.⁷ With evidence suggesting that the majority of them work in lower ranking officers.⁸
- The total of current cabinet members is 32. Women have two full ministers and a deputy minister (9% out of total seats). The previous government which handed over power in December 2017 had 2 women cabinet members.

The report also outlines a gap in the three political parties where all the senior leaderships are held by men. As found out by the Somaliland SDG16+ Progress Report "in 2012 local government councillors' election, 2088 candidates competed for 305 seats. There were 135 female candidates, which constitutes 6.4 % of the total candidates.⁹ Only 9 were elected,

⁶ Somaliland: A Male Democracy, Centre for Policy Analysis, November 2018

⁷ Somaliland Civil Services Commission, 2018 report as cited by the Somaliland SDG16+ Progress Report by Somaliland SDG16+ Civil Society Coalition

⁸ Somaliland: A Male Democracy, Centre for Policy Analysis, November 2018 as cited by the Somaliland SDG16+ Progress Report by Somaliland SDG16+ Civil Society Coalition

⁹ National Electoral Commission data as cited by the Somaliland SDG16+ Progress Report by Somaliland SDG16+ Civil Society Coalition

which constitutes just 2.9% of the total seats.¹⁰ In the 2005 House of Representatives election, 7 women ran for office¹¹ and only two were elected (2% of total seats).¹²

Somaliland has a gender policy. The objective of the National Gender Policy “is to facilitate the mainstreaming of the needs and concerns of women and men, girls and boys in all areas for sustainable and equitable development and poverty eradication.”¹³ The Policy aims to provide “equal access to participation and decision making of women in the social, political and economic life of the nation.” Action plan for implementation of the Policy is in place.¹⁴ Political participation and decision making, as well as democratic governance and human rights, are among the thematic areas of the policy. The existence of the policy and its action plan indicate the government's clear position towards gender equality and its commitment.

¹⁰ Somaliland SDG16+ Progress Report by the Somaliland SDG16+ Civil Society Coalition

¹¹ Source: Nagaad Women Organizations Umbrella as cited by the Somaliland SDG16+ Progress Report by Somaliland SDG16+ Civil Society Coalition

¹² Somaliland SDG16+ Progress Report by Somaliland SDG16+ Civil Society Coalition

¹³ National Gender Policy, Somaliland, 2009

¹⁴ Review Report Implementation of Somaliland National Gender Action Plan

4. Legal Framework

4.1.1 Somaliland Constitution

The Republic of Somaliland was a British Protectorate before it gained independence on 26th June 1960. The independence lasted only five days and Somaliland joined a union with the Italian colony of Somalia which got its independence on 1st July 1960.¹⁵ In 1991 after a long struggle for freedom, the people of Somaliland finally declared the restoration of independence. In a series of peacebuilding and state-building conferences held in Somaliland between 1991 and 1997, Somaliland re-established a functioning and stable country. In 1993 Borama Conference the National Charter was passed by the delegates of the conference representing from all regions of the country. The Charter was the starting point and foundations for the constitutional making of Somaliland. The next conference was convened in Hargeisa in 1996/1997. At the conference, a provisional Constitution was approved to replace the National Charter.

The Conference obliged the government to prepare and finalize a constitution and to hold a referendum for its approval. In 2001, the people of Somaliland approved the Constitution in a nationwide referendum. The 2001 Constitution paved the way for multiparty democracy and the formation of a government elected by the people through elections. The constitution created an executive branch headed by a popularly elected president, bicameral legislature and judiciary branch.

The constitution has a Bill of Rights. In part three of chapter one of the Constitution, there are sixteen articles on the fundamental freedoms and human rights. Starting from article 21 to article 36, the Constitution covers basic human rights. According to the Constitution ", the articles which relate to fundamental rights and freedoms shall be interpreted in a manner consistent with the international conventions on human rights and also with the international laws referred to in this Constitution."

The treaties and human rights declarations recognized by the Constitution include the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. In article 10 (1) the Constitution says "the Republic of Somaliland shall observe all treaties and agreements entered into by the former state of Somalia with foreign countries or corporations provided that these do not conflict with the interests and concerns of the Republic of Somaliland." The International Covenant on Civil and Political Rights is among human rights treaties entered into by the former state of Somalia.¹⁶ In paragraph 2 of article 10, the Constitution further states that "the Republic of Somaliland recognises and shall act in conformity with the United Nations Charter and with international law, and shall respect the Universal Declaration of Human Rights."

Therefore, the interpretation and understanding of the provisions of the constitution should be read in line with international human rights law. Standards and principles enshrined in the

¹⁵ Jhazbhay, Iqbal. *Somaliland an African Struggle for Nationhood and International Recognition*. 1st ed. Midran South Africa: Institute for Global Dialogue and the South African Institute of International Affairs, 2009.

¹⁶ Somalia ratified the ICCPR in 1990

ICCPR and its jurisprudence, as well as the provisions of the Universal Declaration of Human Rights, apply to Somaliland. In legislating a new law about women political participation, the Bill of Rights is binding on the Parliament¹⁷. Any legislation furthering the protection granted by the constitution is consistent with the Constitution. The same applies to the other two branches of the state; the executive and the judiciary.

In a separate article, the Constitution stipulates equality and non-discrimination. The explicit prohibition of non-discrimination is coupled with equality. Attainment of equality requires both taking positive actions and negating actions detrimental to ascertaining equality. This is truer when inequality is engrained in long held social practices and cultural beliefs. Article 8(1) of the constitution states that “all citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion etc.” The article expressly mentions gender by stating that giving precedence to one gender over others is impermissible. In paragraph 2 the article further emphasises eradication of “long-lasting bad practises.” Such long lasting bad practices related to discrimination means to discrimination of women and girls, taking into account the meaning given in article 36 of the Constitution.

Paragraph 2 of article 36 states “the Government shall encourage, and shall legislate for the right of women to be free of **practices** which are contrary to Sharia and which are injurious to their person and dignity.” These practices are not only, as some people narrowly construe, gender and sexual based violence. But they also include practices preventing women in participating in the decision making. As explained in section 3, women are underrepresented in decision making because of patriarchal practices viewing leadership roles as special for men. Elimination of such gender allocation requires legislative interventions among other policies and actions. Laws facilitating women to take part in politics and decision making are necessary for the elimination of gender inequality.

4.1.2 Equality and non-discrimination under international law

The international human rights instruments endorsed by the Constitution guarantee the right to equality before the law and the right to non-discrimination. The International Covenant on Civil and Political Rights in article 3 emphasises gender equality, according to which States parties “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”.¹⁸ Under Article 18(3) of the African Charter on Human and Peoples' Rights, States parties further undertake to ensure “the elimination of every discrimination against women.”

Article 1 of the Universal Declaration proclaims that “All human beings are born free and equal in dignity and rights”, while, according to article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 7 of the Universal Declaration stipulates that “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal

¹⁷ Article 21(1) of the constitution.

¹⁸ 8Ibid., General Comment No. 28 (Equality of rights between men and women), pp. 168-174.

protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

4.1.3 Political rights

Political and electoral rights are protected by the Constitution in article 22(1), which provides that “every citizen shall have the right to participate in the political, economic, social and cultural affairs in accordance with the laws and the Constitution.” The Constitution uses ‘citizen’ in talking about political rights. In paragraph 2, the article says “every citizen who fulfils the requirements of the law shall have the right to be elected (*to a public office*) and to vote.” Women and men who fulfil the legal requirements are eligible to run for office. Barriers hindering women to exercise their political rights need to be removed through legislative means. The Parliament of Somaliland which consists of 164 members has only one woman. This is a clear manifestation of gender inequality entrenched in the system. Without interventions to introduce affirmative actions, a realisation of gender equality is not on the horizon. This is not only in Somaliland, but globally gender inequality in leadership is high. Quota bridges the gap and facilitates more women to reach a leadership position.

4.2 Somaliland Citizenship Law

Right to nationality is guaranteed by the international human rights law. Article 4 of the Somaliland Constitution reads as follows: "1. Any person who is a partial of Somaliland being a descendant of a person residing in Somaliland on 26th June 1960 or earlier shall be recognised as a citizen of Somaliland. 2. The law shall determine the acquisition or loss of the citizenship of Somaliland." The Constitution uses "person." In contrary to this constitutional provision, the Somaliland Citizenship Law discriminates women.

The Citizenship Law (LAW No: 22/2002) was enacted in 2002. In article 2(1), the Law says “a Somaliland citizen by birth is anyone whose father is descendent of persons who resided in the territory of Somaliland on 26 June 1960 and before." The article comes up with blatant gender discrimination in violation of the 2001 Constitution.

The Law also further discriminates women and girls. Article 2(3) of the Law says:

Unless he has not voluntarily renounced the right to Somaliland citizenship, any adult progeny of a male Somaliland citizen, who resides in a foreign country or is a citizen of another country or is a refugee in another country may acquire Somaliland citizenship on his first return to the territory of Somaliland.

The Citizenship Law permits Somaliland citizens to have dual citizenship. For men, such dual citizenship is unlimited and without constraints, but for women and girls, the risk of losing Somaliland citizenship exists. Article 9(2) of the Law says "any female [Somaliland] citizen who marries a male alien shall lose her [Somaliland] citizenship if she accepts her husband's citizenship." This article violates the constitution and discriminates women. They lose their citizenship for a circumstance their male counterparts do not. In contrast, men are allowed to marry foreign women and retain their Somaliland citizenship.

the Law links women's citizenship right to men. In article 9(3) the Law states "a female citizen, who is married to a husband who has renounced his Somaliland citizenship and acquired another citizenship, shall lose her [Somaliland] citizenship unless the husband was a refugee."

4.3.1 Somaliland electoral laws

The key election related laws are:

1. Presidential and Local Councils Elections Act, Law No. 20/2001
2. House of Representatives Election Act 2005.
3. The Political Associations and Parties Act, Law No. 14/2001
4. Voter Registration Act.
5. Consolidated Election Bill (draft, 2018).

In 2018, the Cabinet passed a consolidated electoral law encompassing procedural and substantive provisions governing all elections. The comprehensive electoral Bill is before the House of Representatives, which is yet to debate. The proposed law, if approved, will repeal the Presidential and Local Councils Elections Act, Voter Registration Act and the House of Representatives Election Act 2005. In our review, we will analyse separately the abovementioned laws, and the new proposed comprehensive law.

4.3.2 Presidential and Local Councils Elections Act

The Presidential and Local Councils Elections Act, Law No. 20/2001, was first passed in 2001 but has undergone many changes and amendments. It consists of substantive and procedural articles. The latter were the main causes of the changes made to the law. The Law applies to both the presidential elections and those of the Local Councils.

The Law allows both men and women to run for the office of the president and the vice-president and local councils. No distinction is made based on sex in setting conditions for running office or voting. However, the law lacks any type of quota. Hence few female candidates were able to compete in the two local councils ever held in Somaliland (2002 and 2012). The absence of any type of quota is a challenge hindering woman to join in the ranks of the leadership at local and national levels.

In 2018, the National Electoral Commission proposed a compiled electoral law that will repeal the Presidential and Local Councils Elections Act, Law No. 20/2001, if approved by the Parliament. The proposed law includes provisions of entailing quota. This is explained in section 7 of this review.

4.3.3 House of Representatives Election Act 2005

House of Representatives Election Act used only once in 2005 sets out a proportional representation system. Every citizen who fulfils requirements in the Constitution is eligible to run for the membership of the House of Representatives. Nevertheless, a candidate should be in a party list. Although independent candidacy is not prohibited by law, it did not happen so far, and the absence of voting districts makes difficult for an independent candidate to run

for office. The Act does not stipulate quota allocation for women. Only two women won seats in 2005 election. T

4.4.4 Voter Registration Act

The voter registration Act is a law directly related to the registration of voters. Three voter registration exercise was conducted in Somaliland. The first registration made in 2003 was manual. It was aborted after it became evident that the process was marred by multiple registrations of voters and it was not possible the manual system to prevent. The second voter registration in 2008 used computer system. However, it became controversial and was widely believed to lack detection mechanism to avoid multiple registrations of a single voter. The widely praised voter registration in 2016/2017 employed sophisticated biometric system.

In all voter registration results, the National Electoral Commission has not publicized the sex of the voters. Therefore, the number of women registered as voters is unknown. The same applies the actual voters who turned out the voting day. Publishing this data will help improve the understanding of who are the voters and the political significance of women voters.

Women face challenges in registering to vote. A person to register for voting, it is required that person to prove citizenship. Citizenship is provable in two ways. First by showing up national identity card (ID Card). Second, if a person does not have an ID Card, a traditional leader (*Caaqil*) present at the voting station has to certify the nationality of the person.

Both systems disfranchise women. Getting the ID Card requires proving citizenship through the discriminatory Citizenship Act (see section 4.2). In the law, women are discriminated and many women are deprived of their right to a nationality. The traditional leader present at the polling station basis his decision on clan lineage and the Citizenship Act. The clan system again marginalizes women and girls. The voter registration system is therefore discriminatory and negatively impacts women to register.

5. Comparative Analysis: Constitutions of Regional Countries

Quota in Africa is diverse with success and failures. Some countries have a quota in the constitutions, and others in law. In this section, ten African constitutions are reviewed in relation to gender equality and specifically the quota system. The objective is to show that quota can be in a constitution or a separate law or an electoral law. The system of quota is different from one country to another. However, the commonality is that even countries in which their constitutions do not provide quota can have a law to legislate quota. The countries in this section have common context with Somaliland either in terms of religion, proximity or geographical location. The constitutions of the following countries were reviewed:

	Countries	Details
1	Nigeria	The most populous country in Africa with a big Muslim population.
2	Morocco	A Muslim country.
3	South Africa	A leading African democracy, since the end of the apartheid regime.
4	Kenya	East African Country. with considerable Somali and Muslim population.
5	Ethiopia	A neighbour at the East African region
6	Ghana	A leading African democracy.
7	Tanzania	East African Country.
8	Rwanda	The country with the highest number of women in parliament.
9	Eretria	East African Country.
10	Uganda	East African Country.

1. Nigeria

The constitution of the Federal Republic of Nigeria, which was amended in May 1999, gives men and women equal rights and opportunities in terms of participation in politics. Chapter two upholds the fundamental objectives and directive principles of state policy. Section 14 states that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice, as well the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution." Additionally, section 17(1)(2), endorse state's social order is founded on the ideals of freedom, equality and justice,

and for the furtherance of the social order “every citizen shall have equality of rights, obligations and opportunities before the law.”

Likewise, chapter 5 of the constitution upholds fundamental rights. In section 40 it states that "every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest. In addition to section 42, it states that "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected to any form of discrimination. However, the constitution has no specific provisions on the protection of women's rights. Nevertheless, Nigeria has reserved seats for women and it is legislated by law.

2. South Africa

In South Africa, women maintain a full range of protection and secured rights in the constitution that has been amended on 11 October 1996.¹⁹ The Chapter two of the constitution upholds the bill of rights; in section 9 it emphasis on “Equality” and states that “equality includes the full and equal enjoyment of all rights and freedoms, to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken, as well it states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." Those prohibitions of discrimination on the grounds of gender, sex, pregnancy and marital status are intended to protect women.

South Africa has voluntary party quotas, but it does not have quota introduced by a constitution or by law.

3. Ghana

The Constitution of Ghana was adopted by referendum in April 1992 and came into force on the 28 of April 1992²⁰. It ensures equality, unity and stability for the nation. Chapter 5 of the constitution upholds the fundamental human rights and freedom which in section 17 endorses the equality and freedom of discrimination. It states that “A person shall not be discriminated against on grounds of gender, race, color, ethnic origin, religion, creed or social or economic status. It furthermore obligates the government to enact laws for the implementation of policies and programmes aimed at redressing the social, economic or educational imbalance in the Ghanaian society.

Moreover, section 21 highlights the general fundamental freedoms. It states that “All citizens shall have the right and freedom to form or join political parties and to participate in political

¹⁹ The Constitution OF THE REPUBLIC OF SOUTH AFRICA, 1996
<https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

²⁰ UNHCR 2012, Library of Congress 1994.

activities subject to such qualifications and laws as are necessary for a free and democratic society and are consistent with this Constitution."²¹ However, On May 2015 Ghana established national gender policy that further enhances women's rights and continues to provide a clear framework for addressing inequalities, it mainstreams gender equality and women's empowerment.²² Therefore it doesn't provide a specific percentage for women in political participation and as a result, the Affirmative Action Bill that proposes 40% quota is under process.

4. Morocco

The Kingdom of Morocco had a new constitution that's been amended in July 2011, which indorsed a range of articles that enhance women's participation in social life and gender equity. Title 2 of the constitution emphasis the fundamental freedoms and rights. In article 19, it states that the man and the woman enjoy, inequality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants [constantes] of the Kingdom and its laws."

Furthermore, in Article 30 it states that "All the citizens [feminine] and the citizens [masculine] of majority, enjoying their civil and political rights [,] are electors and eligible. The law provides [prevoit] the provisions of [a] nature encouraging the equal access of women and men to the elective functions" Yet, Morocco introduced Law n° 59-161 in 2011, which created a quota system that allocated one-third of the seats in the Lower House of Parliament to women.

5. Kenya

The republic of Kenya had a new constitution which was amended in 2010. It provides full range protection and promotion of women rights and equality principles. Chapter four of the constitution affirms the bill of rights. Article 27 underlines the equality and freedom from discriminations. It states that "equality includes the full and equal enjoyment of all rights and fundamental freedoms." Also, "women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres."

Article 38 of political rights also states that "Every adult citizen has the right, without unreasonable restriction; (a) to be registered as a voter; (b) to vote by secret ballot in any election or referendum; and (c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office. Furthermore, Part one of chapter seven in the constitution focuses on the electoral system and process. Article 81 states that "not more than two-thirds of the members of elective public bodies shall be of the same gender."²³

²¹ THE CONSTITUTION OF THE REPUBLIC OF GHANA (AMENDMENT) ACT, 1996
<https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh014en.pdf>

²² <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103987/126660/F-515436150/GHA103987.pdf>

²³ THE CONSTITUTION OF KENYA, 2010 <http://extwprlegs1.fao.org/docs/pdf/ken127322.pdf>

6. Rwanda

The Constitution of Rwanda was adopted by referendum on May 26, 2003. It has been amended on 2 December 2003 and on 8 December 2005. Chapter one of title two of the constitution upholds human rights and freedom. Article 11 protects from discrimination and states that “All Rwandans are born and remain free and equal in rights and duties. Discrimination of any kind or its propaganda based on, inter alia, ethnic origin, family or ancestry, clan, skin color or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other form of discrimination are prohibited and punishable by law.” In addition to Title 3 of the constitution which highlights the political organization. Article 54 states that the "Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination", it also states that "Political organizations must constantly reflect the unity of the people of Rwanda and gender equality and complementarity, whether in the recruitment of members, putting in place organs of leadership and their operations and activities."²⁴

Moreover, chapter two of title four concerning the legislature, emphasizes on the senate. Article 82 states the Senate shall be composed of twenty-six (26) members serving for a term of eight (8) years and at least thirty per cent (30 %) of whom are women. In 2007, the Law on Political Organizations and Politicians was amended, establishing that party lists for all elective offices must contain at least 30 per cent women candidates. However, the law does not contain any provisions regarding the rank order of women candidates. Following this amendment and in combination with the 24 reserved seats for women, the Rwandan Chamber of Deputies reached a worldwide record in the 2008 legislative elections, as 56.25 per cent of the elected deputies were women. This positive record was repeated in the 2013 legislative elections when women constituted 63.75 per cent of the total number of elected deputies. Rwanda's remarkable progress in increasing women's political participation and representation in the post-genocide period is largely credited to the introduction of these electoral special measures, as well as other legal acts such as the law for the prohibition of all forms of discrimination and sectarianism, and the Code of Conduct of Political Organizations and Their Members (adopted by the National Consultative Forum of Political Organizations in Rwanda in 2005). The code promotes rules and regulations, discipline and integrity, and governs all political activities in Rwanda.²⁵

7. Tanzania

The Constitution of the United Republic of Tanzania 1977, which was amended in 2005, ensures that all human rights are preserved and protected along with the duties of every person are faithfully discharged. Part three of the constitution urges the protection of basic rights and duties. Article 13 (1)(2) states that “All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law” “For the purposes of this Article the expression “discriminate” means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, color, religion, sex or station in life such that certain categories of people are

²⁴ THE CONSTITUTION OF RWANDA <https://www.refworld.org/docid/46c5b1f52.html>

²⁵ Atlas of Electoral Gender Quotas <https://www.idea.int/sites/default/files/publications/atlas-of-electoral-gender-quotas.pdf>

regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications except that the word "discrimination" shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society."

Moreover, in chapter three of the constitution affirms the Legislature of the united republic, Article 66 states that "women members must not make up less than 30% in the National Assembly. Also, Article 78 provides special seats for women that are distributed among the political parties in proportion to the number of seats awarded to them in parliament. ²⁶

The quota type of Tanzania is reserved seats which are based on both the constitution and the electoral law. It also has voluntary political party quota.

8. Uganda

The Constitution of the Republic of Uganda 1995, as amended to 2005, is committed to building a better future by establishing a socioeconomic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.²⁷ The constitution has 29 national objectives and directive principles of state policy which gender equality is one of them; it states that "The State shall ensure gender balance and fair representation of marginalized groups on all constitutional and other bodies." Chapter four stressed on protection and promotion of fundamental and other human rights and freedoms. Article 21 states that "All persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other respect and shall enjoy equal protection of the law." Article 72 states that "Any person is free to stand for an election as a candidate, independent of a political organization or political party."

Furthermore, on chapter six of the constitution, it affirms the Legislature; Article 78 states that the "composition of Parliament will consist of (a) members directly elected to represent constituencies; (b) one woman representative for every district; (c) such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine; and (d) the Vice President and Ministers, who, if not already elected members of Parliament, shall be ex officio members of Parliament without the right to vote on any issue requiring a vote in Parliament. The Uganda parliament is composed of 238 constituency representatives; 134 district women representatives directly elected by all voters on a special seat in each district. In addition to chapter eleven of local government; Article 180 states that one-third of the membership of each local government council shall be reserved for women.²⁸ Uganda's gender quota system is based on 30% quota for national and local elections enshrined in the 1995 constitution. ²⁹

²⁶The Constitution of the United Republic of Tanzania: <https://rsf.org/sites/default/files/constitution.pdf>

²⁷ <https://www.wipo.int/edocs/lexdocs/laws/en/ug/ug002en.pdf>

²⁸ <https://www.wipo.int/edocs/lexdocs/laws/en/ug/ug002en.pdf>

²⁹ <https://www.trocaire.org/sites/default/files/resources/policy/2006-real-illusionary-progress.pdf>

9. Eritrea^{*30}

The constitution of Eritrea ratified on May 23, 1997, guarantees the recognition and protection of the rights of citizens, human dignity, equality. Chapter 3 upholds the fundamental rights, freedom and duties. Article 14 of equality under the law states that "No person may be discriminated against on account of race, ethnic origin, language, color, gender, religion, disability, age, political view, or social or economic status or any other improper factors." Furthermore, Article 20 of Right to Vote and to be a Candidate to an Elective Office states that "Every citizen who fulfils the requirements of the electoral law shall have the right to vote and to seek elective office." However, Affirmative action applies in principles, in Eritrea's electoral system through a 30% quota for women in national, regional and local elected offices³¹

10. Ethiopia

Article 35 of the constitution of Ethiopia states that "women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men." The article further adds that "The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions." Ethiopia has recognized various International Conventions based on the Declaration of Human Rights. These Declarations include the Convention on the Rights of the Child (CRC), Convention on Elimination of All Forms of Discrimination Against Women (CEDW) and various Labour Conventions.

Ethiopia has a voluntary political party quota, but it does have a quota mandated by the constitution or by law.

³⁰ *Eritrea is under a dictatorship rule which does not honour the constitution.

³¹ <https://www.idea.int/data-tools/data/gender-quotas/database>, last retrieved 28th December 2019

6. Quota in Africa

The following is the data of quota in the African countries:³²

Country	Parliament type	Voluntary political party quotas	Quota type	Constitutional quota details	Electoral law quota details
			Single/Lower House	Single/Lower House	Single/Lower House
Algeria	Bicameral	No	Legislated Candidate Quotas	No	Yes
Angola	Unicameral	No	Legislated Candidate Quotas ^a	No	Yes
Benin	Unicameral				
Botswana	Unicameral	Yes	No legislated	No	No
Burkina Faso	Bicameral	No	Legislated Candidate Quotas ^a	No	Yes
Burundi	Bicameral	No	Reserved seats	Yes	Yes
Cameroon	Unicameral	Yes	No legislated	No	Yes
Cape Verde	Unicameral	No	Legislated Candidate Quotas		Yes
Central African Republic	Unicameral				
Chad	Unicameral				
Comoros	Unicameral				
Congo, Democratic Republic of	Bicameral	No	No legislated	Yes	Yes
Cote d'Ivoire	Unicameral	Yes	No legislated	No	No
Djibouti	Unicameral	No	Reserved seats	No	Yes
Egypt	Unicameral	No	No legislated	No	No

³² <https://www.idea.int/data-tools/data/gender-quotas/database>, last retrieved 28th December 2019

Country	Parliament type	Voluntary political party quotas	Quota type	Constitutional quota details	Electoral law quota details
			Single/Lower House	Single/Lower House	Single/Lower House
Equatorial Guinea	Bicameral	Yes	No legislated	No	No
Eritrea	Unicameral	No	Reserved seats	No	Yes
Ethiopia	Bicameral	Yes	No legislated	No	No
Gabon					
Gambia	Unicameral				
Ghana				No	No
Guinea	Unicameral	No	Legislated Candidate Quotas		Yes
Guinea-Bissau	Unicameral				
Kenya	Bicameral	Yes	Reserved seats	Yes	No
Lesotho	Bicameral	No	Legislated Candidate Quotas	No	Yes
Liberia	Bicameral	No	Legislated Candidate Quotas	No	No
Libya	Unicameral	No	Legislated Candidate Quotas		Yes
Madagascar	Unicameral				
Malawi	Unicameral	Yes	No legislated	No	No
Mali	Unicameral	Yes	Legislated Candidate Quotas	No	Yes
Mauritania	Unicameral	No	Legislated Candidate Quotas	No	Yes
Mauritius	Unicameral	No	No legislated		
Morocco	Bicameral	No	Reserved seats	No	Yes

Country	Parliament type	Voluntary political party quotas	Quota type	Constitutional quota details	Electoral law quota details
			Single/Lower House	Single/Lower House	Single/Lower House
Mozambique	Unicameral	Yes	No legislated	No	No
Namibia	Bicameral	Yes	No legislated	No	No
Niger	Unicameral	Yes	Reserved seats	No	Yes
Nigeria	Bicameral				
Republic of The Congo (Brazzaville)	Bicameral	No	Legislated Candidate Quotas	Yes	Yes
Rwanda	Bicameral	No	Reserved seats	Yes	Yes
Sao Tome and Principe	Unicameral				
Senegal	Unicameral	No	Legislated Candidate Quotas	No	Yes
Seychelles	Unicameral				
Sierra Leone	Unicameral	No	No legislated	No	No
Somalia	Bicameral	No	Reserved seats	Yes	No
South Africa	Bicameral	Yes	No legislated	No	No
South Sudan	Bicameral	No	Reserved seats	Yes	Yes
Sudan	Bicameral	No	Reserved seats	No	Yes
Swaziland	Bicameral	No	Reserved seats	Yes	
Tanzania, United Republic of	Unicameral	Yes	Reserved seats	Yes	Yes
Togo	Unicameral	No	Legislated Candidate Quotas		Yes

Country	Parliament type	Voluntary political party quotas	Quota type	Constitutional quota details	Electoral law quota details
			Single/Lower House	Single/Lower House	Single/Lower House
Tunisia	Unicameral	No	Legislated Candidate Quotas	Yes	Yes
Uganda	Unicameral	No	Reserved seats	Yes	Yes
Zambia	Unicameral				
Zimbabwe	Bicameral	Yes	Reserved seats	Yes	No

7. Quota in Somaliland context

7.1 Existing proposals

Unlike some countries in the continent, a quota is not in the constitution of Somaliland. The constitution requires gender equality, prohibits discrimination and obliges the state to take legal and policy actions towards the realisation of gender equality. In 2012, the then president of Somaliland H.E Ahmed Mohamed Mohamoud proposed a quota for women. The president proposed 10% quota in the two houses of the Parliament and the local councils.³³ To legalize the intention of introducing a quota, the Cabinet approved and submitted an amendment of the Election Law to the House of Representatives. In September 2012, the House rejected the proposal, arguing that it is not mandated by the Constitution. In 2018, the Cabinet passed a consolidated electoral law encompassing procedural and substantive provisions governing all elections. In the Bill, the cabinet proposed a quota of 22% in the local councils and the Parliament.

Article 78 of the proposed consolidated Election Bill states that 22% of the members of House of Representatives shall be women. The article adds, "the National Electoral Commission shall issue a regulation detailing the system of quota and election." Three members out of the 82 members of the House will be from minority clans (Gabooye), according to the article. The Bill does not detail the manner of allocation. The generic provision is not helpful to determine quota. It lacks clarity and details. It does not specify the type of quota system applicable and how it will be allocated in party lines and as well as regional wise.

The inclusion of quota in the Election Bill is a commendable action taken to legislate quota in a law. Nevertheless, it also important to note that quota was not in the original draft of the Bill as submitted by the National Electoral Commission. That may explain the reason quota provisions in the Bill are not detailed and are vague. The Bill is not yet debated by the House. Hence there is an opportunity to reframe and include clearer articles unambiguously constituting enforceable quota system. One of the loopholes in the new Bill is that it delegates the National Electoral Commission to determine allocations of quota among regions as well as the model and quota electoral system. This is shorter than the complete enactment of quota. As an administrative agency, the National Electoral Commission will face difficulties in introducing a quota system, if that is not in the legislation.

As suggested in the recommendation section of this report, the best practice is legislating quota in a law. This means for instance; the Bill does not provide how the 22% will be allocated among the six electoral regions. The members of the House of Representative are 82 in which each region has different representations. Therefore, it is important to desegregate the reserved seats in regional wise to make clear how many seats are reserved for women in every region.

³³ Advocacy Strategy, Nagaad, Revised, March 2017

7.2 Types of quota

There are many quota types employed in different parts of the world to “establish a fixed percentage or number for the nomination or representation of a specific group – in this case, women – most often in the form of a minimum percentage, which may be 20, 30 or 40.”³⁴ The aim is to increase the “participation of underrepresented groups in decision-making positions”³⁵ The type of quota used depends on the political system of the country in question and its policy preference.

Generally, a quota is divided into party quota (voluntary) and quota by law. Quota by law is enacted by either Act of Parliament or by the Constitution. The voluntary party quota is used by political parties and is voluntarily internalized by parties. It is not legally binding in contrast to quota by law which is legally binding to all parties, and any party that does not apply is subject to punishment. The enforcement is also the responsibility of electoral bodies.

The type of quota also depends on the objective underlining adoption of quota. In terms of the aim, quota either changes the gender composition of the pool of aspirants (potential candidates), candidates or those elected. The first type (potential candidates) is used by countries with a single winner electoral system. The second type used by countries with proportional electoral systems. The third one is seats reserved for one gender. Reserved seats are allocated for women. The countries that use this type of quota include Rwanda and Uganda.

Reserved seats regulate and determine the actual number of women elected. But other forms of quota, for instance, the legal candidate quota and political party quotas do not determine actual seats but rather increase the number of women in the candidate list. The women in the candidate list may be elected or not elected.

Quotas are intended to increase the participation of women. Hence it is not sufficient to remove all barriers, but it sets out an increase by allowing more women to be recruited in politics. Majority of quota system provides women with a percentage. For example, 30, 40%. This is a minimum requirement. However, there is a gender neutral quota which states, for example, that neither gender should have more than 60% or less than 40% of the seats. Kenya is an example of this form of quota.

In the three common systems: (a) the pool of potential candidates; (b) the actual nominees; and (c) the elected, the main difference is the one that allows women to be elected in office. For instance, many countries preferred (b) the actual nominees. But this does not guarantee women to be elected to office. Having a party’s list 40% women does not mean this number of women will be elected into office. Reserved seats for women are more successful in ensuring women are elected into office. Examples of countries that use reserved seats include Uganda, Nepal, the Philippines, many parts of Latin America and, for example, in Belgium, Bosnia–Herzegovina, Serbia and Sudan.

³⁴ Dahlerup 2006: 19

³⁵ Ibid

8. Conclusion

There are politicians and some lawyers who argue quota is contrary to the Constitution. This contention is not grounded on any principle in the Constitution. The quota does not give women new rights or precedence, but it helps women exercise their rights. The quota is aimed to eradicate inequality and discrimination perpetuated by patriarchally political, economic and cultural systems.

Discrimination is unfair treatment. The quota does not discriminate any group because it does not unjustly or unfairly treat a group. Removal of barriers prolonging discrimination to allow women to exercise their rights is a move towards ending discrimination, not introducing one. Article 4(1) of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) "adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention."

In article 1, the Convention on the Elimination of All Forms of Discrimination Against Women defines the term "discrimination against women" to "mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Absence of women in decision making tables impairs their exercise of political rights as well as economic, social, cultural, civil rights. Actions taken toward gender parity removes such discrimination and empowers women. Therefore, it is vital to enact legislation providing a quota. The different types of quota presented in this review gives Somaliland an opportunity. The fact many African countries adopt quota means the case for quota is stronger, and Somaliland should not be left behind in this regard.

The quota design is dependent on the electoral system. The proportional representation electoral systems of Somaliland where candidates are in party list require quota to be integrated into the party list on the form of reserved seats. The proportional representation electoral systems are much easier than plurality/majority and mixed electoral systems in terms of applying quota. At times of constitutional reforms, there is an opportunity to campaign for the inclusion of gender quotas. If a country' constitution does not mandate quota, the option is to legislate quota in a law. It is vital gender quotas are applied in both the national level for the two houses of the Parliament and in local elections.

In summary, the constitution of Somaliland does not refute the introduction of any type of quota. But the literal meaning of the provisions of the Constitution and its spirit ordain enactment of legislations and adoption of policies increasing women's political participation in leadership and decision making. Furthermore, the international treaties and declarations endorsed and recognized by the Constitution further strengthen the constitutionality of quota in Somaliland. The international human rights law support quota and an increasing number of African countries are successfully implementing quota.

9. Recommendations

The review makes the following recommendations:

❖ **Affirmative actions**

To address gender inequality in all levels, it is recommended to enact legislation (Affirmative Action Law) related to the gender composition of commissions, agencies and other public institutions. The legislation should set the minimum of women in these public institutions. Gender parity requires more than a quota in the Parliament. A comprehensive strategy to increase women's participation in all leadership positions of the three branches of the state is needed. To address the wide range of gender inequality and discrimination in Somaliland, affirmative actions are recommended to create equal opportunities in politics, employment, education, and business. Looking equality issues comprehensive and in a holistic approach is preferable.

❖ **Gender Quota**

The most appropriate quota system for Somaliland is adopting reserved seats for women. This quota system should be included in the Election Bill. But the proposed reserved seats should be based and distributed along with the six electoral regions as mandatory percentage reserved for women candidates. In the three common systems: (a) the pool of potential candidates; (b) the actual nominees; and (c) the elected, the review recommends the quota system to adopt (c) the elected by legislating a mandatory reserved seat for women. Somaliland should be in the lead in the movement to adopt electoral gender quotas to change women's under-representation. Legislated gender quotas are better structured in establishing a mandatory and enforceable quota.

The Election Bill shall detail the system of quota and all relevant practical aspects of enforcement of quota. This should include the percentage of women seats allocated per region. The clarity of reserved seats per region allows the National Electoral Commission to monitor and enforce the legislated quota. It will also fill any loopholes that may be used to avoid complying mandated quota. Therefore, it is important to desegregate the reserved seats in regional wise to make clear how many seats are reserved for women in every region.

The National Electoral Commission should duly and fully implement legislated quotas and should reject submitted lists of candidates for non-compliance. The Election Bill should include articles mandating the National Electoral Commission to administer, supervise and control the implementation of the gender quota.

❖ **Voluntary party quota**

Voluntary party quota is recommended for political parties to achieve more gender balances within party political assemblies, central committees, executive committees and senior leadership positions. The political parties to implement the voluntary quotas in their internal leadership positions should adopt an action plan. The Political Association and Political Parties Certification Commission should monitor and enforce voluntary quotas when/if political parties adopt. The voluntary quota recommended in this section is intended to address the underrepresentation of women in parties' leadership positions.

The relevant government authorities should formulate tools to monitor the implementation of voluntary quotas.

❖ **Amendment of laws and legal drafting**

Discriminatory laws such as the Citizenship Act should be reviewed and amended immediately. The Citizenship Act is discriminatory and violates the constitution and international human rights law.

Gender mainstreaming in legal drafting is recommended. Legal drafters need to be trained in gender issues to be mindful of gender in writing laws to avoid drafting laws in a language that discriminates women.

❖ **Capacity building**

Capacity building programs should be adopted to help women in politics and leadership positions and those vying for political offices. The capacity building and support mechanism should also support women in the civil society, young activists and should include mentorship for students.

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