



# WHY GENDER QUOTAS DON'T WORK IN SOMALIA? THE INFLUENCE OF THE ELECTORAL SYSTEM AND CLAN POLITICS

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## EXECUTIVE SUMMARY

This brief explores why, despite having a gender quota provision, Somalia has failed to reach the target number of women in the national Parliament for nearly three consecutive electoral cycles. It compares key institutional variables thought to be central to explaining the success or failure of quotas over the three last cycles. In Somalia, key factors explaining the low proportion of women elected include the design of the electoral system which is exclusionary in nature, and the weight of clan-based politics. In a voting system infused with clan dynamics and where voting based on clan interests is encouraged, women are often disregarded.

For readers familiar with the role that quotas have played in increasing the presence of women in decision-making positions in different countries, but unaware of the peculiarities of Somalia's political culture and political system, it may seem confusing that Somalia has not achieved the minimum representation of 30% women in its national legislation. This brief seeks to explain this paradox in two ways: first, by discussing the implementation of the gender quota provision and aspects which reduce its effectiveness. Second, this brief also explains how the Somalia hybrid electoral system works, emphasising the patriarchal nature of its clan-based political system and culture.

The poor representation of Somali women in the Somali Parliament during the last three electoral cycles has proved how the lack of a legal foundation can render a gender quota policy weak and therefore not enforceable in the face of non-compliance and the lack of political will. Somalia implements the quota for its federal and state elections based on a provision not backed by law. This suggests that other factors are more important in determining the number of women elected to Somalia's legislature than the 30 per cent women's quota. This reinforces the fact that having a special measure such as a quota is not sufficient to increase women's representation, but that the quality and workings of the institution in play are equally important.

## INTRODUCTION

The significant increase in the number of women elected across some African countries over the last 20 years is

the result of a steady, though uneven introduction of gender quotas. Rwanda, South Africa, Mozambique, and Angola have become the most prominent examples of the success of gender quotas. The sharp drop in the percentage of women elected in Somalia between 2016 and 2022 indicates that women's political representation in Somalia is regressing. Thus, contrary to popular belief and international and regional trends, as quotas are implemented, the chances of women being elected in Somalia are decreasing rather than increasing. The gender quota in Somalia, while important for other reasons, has not increased women's participation in Parliament, implying that the real factor for women's political representation could lie elsewhere and not in the presence or absence of the quota provision. According to research on the subject, the institutional framework in which quotas are implemented should be considered when determining their efficacy.

This policy brief argues that the political engineering of Somalia, in particular its electoral system and the design of the gender quota, is key to explaining why the presence of women in political decision-making positions is declining. The 4.5 electoral system<sup>1</sup>, together with the strong male patronage networks anchored in the clan system, shape political life and remain a significant obstacle to the representation of women and to political diversity. Together these factors negatively affect the electoral performance of women in the country. This brief offers possible recommendations on how to support women's participation in political and electoral processes in Somalia.

## ELECTORAL SYSTEMS AND GENDER QUOTAS

An important factor to consider while examining the electoral process is the electoral system and its influence on the gender quota (Ballington, 2004). Electoral systems have a significant impact on party systems, the make-up of legislatures, and the longevity of democratic institutions (Norris, 2004), and as such are effective instruments for institutional engineering. The choice of an electoral system has a direct effect on the electoral results and has serious political consequences for representation and political stability (Kadima, 2003). An electoral system, among other factors, determines how votes gained by political parties, coalitions, and

<sup>1</sup> The 4.5 formula refers to the Somali political system centered on clan-based power-sharing among four major clans and an ensemble (0.5) of those considered as smaller (minor) clans.

candidates are translated into seats, and establishes the procedures by which elections are conducted. As a result, it has a major impact on how political parties behave and the outcomes of elections.

Gender quotas are a type of affirmative action designed to help women overcome the barriers that prevent them from running for political office in the same way that men do. Gender quotas can be categorised based on their guiding principles or methods of implementation (Dahlerup, 2006). There are various types of quotas, with the main distinction being between voluntary party quotas and constitutional and legislative quotas (Reynolds et.al, 2005). Voluntary quotas are usually adopted by political parties, whilst constitutional quotas are written into the country's constitution, and legislative quotas are written into the country's election law, political party law, or other comparable law. Both constitutional and legislative quotas are, by definition, based on legal provisions, which require all political entities participating in elections to apply them equally. Non-compliance with either form may result in penalties for the political entities responsible. Sanctions imposed by a country's legal authorities can range from disqualifying candidates to imposing fines and even disqualifying the entire party from contesting an election.

Other quotas mandate that women have a specific number of seats in the legislature (or a set proportion of seats). These reserved-seat quotas have an impact on how posts are chosen, resulting in special seats for women that are assigned either through direct elections or indirect selection processes. While reserved seats are more prevalent in Africa, candidate quotas are the most widespread sort of legislative gender quota worldwide. There are mechanisms in place at the regional level that support increased female political participation; for example, the African Union (AU) has taken numerous steps to promote good governance and democratic consolidation across the continent. The principle of gender equality is enshrined in the AU Constitutive Act, which, along with other AU declarations, resolutions, and decisions, calls for women's full participation as equal partners in political processes. For example, the AU adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2003. This has been signed and ratified by at least 36 of 54 African countries and provides that states shall take specific positive action

to promote participative governance and the equal participation of women in the political life, and ensure that women participate without any discrimination in all elections. The AU's African Charter on Democracy, Elections, and Governance, adopted in 2007, includes among its goals the promotion of 'gender balance and equality in governance and development processes' (Abdumelik &Belay, 2019). This brief concentrates on how well quotas could work in an indirect electoral system such as the clan-based system used in Somalia.

## THE ACHILLES HEEL OF SOMALIA'S GENDER QUOTA

Since the founding of the Republic of Somalia in 1960, Somali women have been largely under-represented at all levels of government administration. When Somalia's transition period ended in 2012, women were guaranteed 30% representation in all government sectors, following pressure from advocacy groups and the international community lobbying at the Somali National Consultative Constitutional Conference in February 2012 (Osman, 2012; Osman, 2015: Heritage Institute, 2022). However, the first indirect election in 2012 saw clan elders selecting legislative members from their respective clans who were not in favour of women's leadership. The foundational weakness of the 30% gender quota provision, since its pronouncement in 2012, was that it has not been institutionalised in the national constitution which is still incomplete and is still provisional. Failing to institutionalise the constitution has left the implementation of meeting the quota requirements to the goodwill of the political actors, with no mechanisms in place to guarantee enforcement (Badibanga, 2022).

Somalia's legal documents relating to the conduct of elections, namely the 2012 Provisional Federal Constitution, the Electoral Law which was passed in 2018 but never implemented, and the Political Party Law which is yet to be passed, make no mention of the gender quota. The 30% gender quota provision therefore remains an unofficial practice that is unenforceable. The unequal representation of women in Parliament during the last three indirect elections (2012, 2016, and 2022) illustrates the impact of the absence of gender quota institutionalisation. Currently, the implementation of the gender quota is, in most cases, negotiated with

male political figures and clan elders to ensure that the 30% quota is applied. Women acquired 14% of the seats in 2012. This increased to 24% in 2016, before a sharp decline to 20% in 2021-2022 in the House of the People (Lower House). The presence of women in the Senate (Upper House) in 2021-2022 increased by 2% to 26% (Heritage Institute, 2022).

Another impediment to the Somalia gender quota provision is that despite the principle of gender equality being a universally acknowledged value and a basic human right, Somalia as of August 2022 (UN Treaty Body Database), has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This failure by the government of Somalia to ratify the international normative framework for gender equality weakens the legitimacy of the claim for equal representation and participation by all human beings, including women. With the lack of a legally prescribed implementation of the women's quota, what has emerged in Somalia is the notion of 'a willing buyer-willing seller' model based on the preference of the clan leaders and influential politicians, leaving gender equality advocates having to rely on political promises made by political figures to support women candidates. A willing and functioning party system to promote and support women is necessary to implement women's quotas based on the gender quota categories mentioned in the background section. Gender quotas guide the actions of political parties in promoting women and emphasise the perception that political parties are seen as the 'gatekeepers' through which citizens seek opportunities for political leadership. In the case of Somalia, the electoral system is based on the 4.5 clan system which is used in the seat allocation in the houses of Parliament with the distribution between the four major clans of Darood, Digil-Mirifle, Dir, and Hawiye, and a 0.5 share allocated to minority clans. Clans in Somalia are culturally consensual identities inherited from the ancestral patriarchal system, with power divided along gender and age lines in which women are subjugated to men (Torunn, 2015). Clan politics is one of the most important systemic barriers to women's political progress, as clans underpin distributive politics and remain the primary means by which women in Somalia gain political power (Tripp, 2016). Women's participation in formal clan discussions and decision-making structures is proscribed. Women are disadvantaged in political systems because the exclusion they face in clan structures is directly reflected in formal politics. As a result, in the case of Somalia clan

leaders, not political parties, play an important role in ensuring that women are elected to public office. The use of an indirect electoral system in Somalia makes it challenging to apply women's quotas.

As previously stated, quotas are considered to be an effective tool when they become binding and are implemented by competing political entities and complemented by other tools to strengthen effective gender representation. However, opposing views have expressed concerns that quotas are not an effective way of ensuring representation as they may facilitate access for unqualified women, and put women in office who have little interest in advancing women's causes (Krook, 2009). Different views on the use of gender quotas suggest that they may have a variety of positive and negative consequences beyond the number of women elected. Despite their prevalence in quota debates, the empirical validity of these claims has yet to be thoroughly investigated, although a growing number of scholars have indicated the need to go from quantitative to qualitative representation (Franceschet, 2012). To ensure that quotas are applied and followed, they must be legally binding (legislative or constitutional quotas), and must be overseen by an independent electoral management body or its equivalent. Enforcement mechanisms make it easier for electoral authorities to punish parties that overlook or choose not to employ the quota, and consequently these should serve as deterrents to quota evasion. Because more parties will comply with the quota, including enforcement mechanisms in the quota law should result in more women being elected to office. The Transitional Federal Government of Somalia delegated the selection and appointment of members to the federal Parliament to 135 clan elders for the 2012 indirect elections. The elders were told to make sure that women were represented in Parliament, but no guidelines were given. In the absence of any enforcement mechanism, many of the elders refused to appoint women.

Enacting a quota system to ensure that women receive 30% of parliamentary seats is insufficient (Dahlerup, 2005). Other considerations should be included. For instance, the more ambiguous the regulations, the more likely it is that the quotas will not be properly implemented. Quotas for candidates do not guarantee the election of more women. In the 2016 indirect elections, the National Leaders Forum reaffirmed a minimum of 30% representation for women at all levels of government and developed a new electoral college

model to address the flaws of the 2012 system. Despite this, clan leaders' authority was reinforced rather than challenged, as members of the electoral colleges were all appointed by clan leaders. Clan leaders allowed their preferred candidate, usually male, to choose the delegates, increasing their electoral success.

Given that Somalia's political life is shaped by strong male patronage networks anchored in the clan system, women's representation may not improve until clan leaders are forced to put women in positions where they can be elected and fill the legal quota. In other words, if the quota size is set at 30% but enforcement methods are not included, fewer legislative seats will be won by women. Penalties for noncompliance should support the implementation of the quota (McCann, 2013).

## RECOMMENDATIONS

- Institutionalise the gender quota. The quota must be included in the Constitution, the Political Party Law, and the Electoral Law. This is particularly important as Somalia moves towards one person, one vote.
- Gender quotas should be crafted to consider additional aspects of the electoral context that influence women's engagement outside the mandate of the quota in order to produce long-term representational effects, for example strengthening the engagement between clan elders and political actors.
- While quotas are a temporary special measure to 'fast-track' women into Parliament, long-term strategies to address cultural, social, and economic barriers to women standing for or being elected to Parliament should be supported.
- To ensure that quotas are properly implemented, specific monitoring bodies with enforcement powers and procedures (such as electoral committees and courts) should be established. Administrative bodies and clan elders who fail to meet minimum quotas should face penalties.
- The Parliament of Somalia should reconsider the discourse over the country's electoral system. A closed-list proportional representation system will ensure that women and other marginalised groups are politically represented, as opposed to the 4.5 clan-sharing agreement based on clan interests.
- Quota modalities and electoral systems matter. Therefore, the rules of the game must be fair and then reformed to allow for women's sustainable political mainstreaming.

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# About EISA

Since its inception in July 1996 EISA has established itself as a leading institution and influential player dealing with elections and democracy related issues in the African continent. EISA has had and has current field offices in 20 African countries. The organisation's Strategic Goals are:

- Electoral processes are inclusive, transparent, peaceful and well-managed;
- Citizens participate effectively in the democratic process;
- Political institutions and processes are democratic and function effectively; and
- EISA is a stronger and more influential organisation

The vision of EISA is "an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment". This vision is executed through the organisational mission of "striving for excellence in the promotion of credible elections, participatory democracy, a human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa".

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