



Women's Rights in the New Somalia: Best Practice Guidelines for MPs and CSOs

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Glossary

ANCLW	The African National Congress's Women's League
CEDAW	Convention for the Elimination of Discrimination Against Women
COGWO	Coalition of Grassroots Women Organisations
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
FEPMA	Female Paramedical Association
FFRP	The Forum of Women Parliamentarians
FGM	Female Genital Mutilation
FIDA	The Federation for Women's Lawyers
HIV	Human Immunodeficiency Virus
HRVC	Human Rights Violation Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICU	Islamic Courts Union
IDLO	International Development Law Organisation
IDP	Internally Displaced People
MPF	Ministry for the Advancement of Women, Family Welfare and Social Affairs
MPWS	Selangor Women's Permuafakatan Council
MWFC	Ministry of Women, Family and Community Development
NAP	National Action Plan
NGO	Non-Governmental Organisations
PHRN	Peace and Human Rights Network
RWP	Rwandan Patriotic Front
SFCC	Somali Family and Child Care Organization
SGBV	Sexual and Gender-Based Violence
SSWC	Save Somali Women and Children
STD/I	Sexually Transmitted Disease/ Infection
SWA	Somali Women's Agenda
SWDC	Somali Women Development Centre
TFG	Transitional Federal Government
UNFD	National Union of Djiboutian Women
UDHR	Universal Declaration of Human Rights
UNSOM	United Nations Operation in Somalia
WAWA	We Are Women Activists
WNC	The Women's National Council

1. EXECUTIVE SUMMARY

The progress of creating a Somali state has been long and particularly difficult for women. On 20 August 2012 the Somali parliament held its inaugural session as the first internationally recognised central government in Somalia in 21 years, after eight years of transitional government. In the same month, 275 MPs were elected by elders to the parliament, including 38 women. The new constitutional system provides a rare opportunity to change the country's direction in the field of women's rights.

'A New Deal for Somalia' conference, co-chaired by the Somali Federal Government and the European Union (EU), was held in Brussels on 16 September 2013. At the conference, government and civil society representatives from all regions of Somalia adopted a 'New Deal Compact', which establishes a framework for the country's reconstruction and reconciliation. The Compact highlights the important role of Somali women in the peace and state building process, and contains numerous commitments to protecting women's rights. This Guide aims to assist the Somali Parliament in realising the aspirations in the New Deal Compact. It provides recommendations which will enable MPs to begin the process of developing legal, governmental and social institutions to embrace principles of gender equality and commit to the practical realisation of all rights for all Somali citizens.

Somali women face many of the same challenges as women have in other conflict and post-conflict societies. This Guide looks at the experiences of five other African and Muslim countries: Djibouti, Kenya, Rwanda, South Africa and Malaysia.¹ The experiences of these countries provide insight into how African and Muslim-majority countries have approached issues of customary law, Sharia law and women's rights in the context of post-conflict situations, political transitions and/or international and domestic pressure for change. Each of these states have made positive developments in the realm of women's rights, though all continue to experience setbacks and challenges. We outline the primary obstacles to progress still experienced by these countries and discuss where and how these challenges have been handled effectively.

Key Strategies Learned From Other Contexts

Some countries have responded to the challenge of protecting and promoting women's more effectively than others. In the context of African and Islamic societies, four key strategies have emerged as providing the most effective support to protecting the rights of women:

1. **Women's groups across all sectors:** Advances in all of the countries examined are in a large part attributable to be the strength and persuasive power of their women's organisations. They are most effective when there is cooperation between women within CSOs (civil society organisations) and the government.

¹ It is recognised that several prominent Muslim countries were not included in this guide. A full list of reasons for the exclusion of these countries and a discussion of relevant issues from the Afghan and Egyptian contexts is included in Annex VII. In brief: Afghanistan has not been effective in enforcing women's rights and various Bills limiting the rights of women have been allowed to pass into law; Egypt's constitution is still in its draft stages and currently contains no provisions safeguarding women's equality; and Tunisia's constitution is also in draft form and debates about whether it will be secular or religiously based are ongoing

2. **Quota systems:** It is generally agreed that for women's voices to be both heard and listened to in male dominated institutions, they require a "critical mass" of about 30%.² Quotas establish a culture of women in leadership more quickly and effectively than waiting for one to develop naturally from a strongly patriarchal society.
3. **Gender responsive budgeting:** Programmes need to be properly resourced rather than simply statements of policy or a passage of law without further action.³ Countries that effectively assess the budgets of all departments for their responsiveness to gender issues, such as Rwanda, are progressing faster than countries that do not do this in practice, such as South Africa.⁴
4. **Implementation of gender equality in Sharia law:** Women benefit from the appointment of females as judges in Islamic courts and from attempts to streamline an interpretation of Sharia rules with principles of gender equality.

Recommendations for Somalia

This Guide highlights **four** areas for Somali MPs to focus their attention on for the realisation of women's rights:

1. Constitution Amendments: The Guide makes **seven** recommendations for amendments to be made to the constitution. They are: gender quotas, the insertion of rights that address specific gender issues, provisions on the interpretation of rights, onus placed on the State to provide certain rights, provisions on the relationship of the constitution with customary law, provisions on the relationship of the constitution with Sharia law, provisions on the relationship of the constitution with international law, the establishment of a Gender Commission and the implementation of gender equality within the truth and reconciliation process. The Guide provides a simple and clear explanation of how to pass constitutional amendments.

2. International instruments to ratify: The Somali executive should ratify the Convention on the Rights of the Child, and accede to the UN Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) and the Rome Statute of the International Criminal Court. It should also implement a National Action Plan (NAP) on Resolution 1325, relating to the role of women in conflict management, conflict resolution, and sustainable peace.

3. Legislation and policies should be developed for the protection and empowerment of women.

² This number was the UN Economic and Social Council international target for 2005 and was endorsed in the United Nations Beijing Declaration and Platform for Action.

³ Including reduction in female poverty rates in Rwanda and increased access to education in Kenya.

⁴ African Development Bank, 'South Africa: the National Gender Machinery, Gender Mainstreaming and the Fight against Gender Based Violence, Human Development Department, 2009, <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/South%20Africa%20-%20The%20National%20Gender%20Machinery%20Gender%20Mainstreaming.pdf>, (accessed 6 October 2013), p 14.

- Laws to develop, in order of feasibility are: Sexual Offences Act, Workplace Equality Act, Land Inheritance Act, Protection against Domestic Violence Act.
- The Somali National Gender Policy currently being developed should include: a National Action Plan for the implementation of Resolution 1325, a Gender-Based Violence policy, a Gender Mainstreaming and Institutional Capacity Development Program, and an Economic Empowerment Policy, which includes a focus on empowering the most vulnerable, including women.

4. Developing the capacity of women's organisations in conjunction with CSOs and international development partners is very important.

Somali MPs can learn from the experiences of these nations in pushing for reform. None of the examined societies changed instantaneously and all continue to face obstacles in the progression towards true gender equality. However, all have begun the gradual progression towards lasting change. It is a critical time for Somalia, and the right time to push for legislative, constitutional and policy change that will allow all rights of all Somali women to be realised.

Antonia Mulvey

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Note: At the time this report was written, the line Ministry was the Ministry of Development and Social Affairs. A new Ministry of Women and Human Rights Development was established in early 2014 and is now responsible for issues relating to the protection and empowerment of women. This Ministry has made significant progress in developing laws and policies for the advancement of women which are not included in this report. Further, it is now suggested that legislation and amendments are introduced to Parliament by the Minister of Women and Human Rights Development, rather than the deputy Minister of Justice as suggested in this report.

PART I: Gender and the Somali Legal Framework

2. THE SOMALI CONTEXT



2.1 Commitment to Gender Equality

The new Somali Federal Government has repeatedly committed itself to the attainment of gender equality and the empowerment of women.⁵ In September 2013, a ‘New Deal Compact’ was designed through a consultative process with Somali MPs, regional administrations, civil society, women’s groups and international development partners. The compact incorporates prior commitments and policies of the Somali government, and was described by President Hassan Sheikh Mohamud as ‘Somali led and Somali owned.’⁶ This compact includes numerous commitments to the recognition, protection and promotion of women’s rights, as well as the important place of women in political and social life. It seeks to address the contributing factors to gender inequality through strategic priorities, including emphasis on improved political

participation, access to justice and protection from sexual and gender based violence (SGBV), economic empowerment, and access to basic services such as health and education.⁷ The compact also recognises that respect for women’s rights is critical to national healing and rebuilding, and that women, as 52% of the Somali population, play an essential role in the reconciliation and peace-building process. The protection and promotion of women is therefore not a peripheral issue, but an essential prerequisite to the reconstruction of the Somali state.



Children playing at Merka beach

2.2 Somali Legal Framework

Somalia has a limited number of protections for women under its domestic law and is a signatory to a handful of international conventions which guarantee certain rights for women. In practice, however, these protections and freedoms are generally not enforced.

2.2.1 Domestic Law

Somalia’s legal system is a combination of civil law, customary law (Xeer) and Sharia law. The codified law is an amalgamation of British common law and Italian civil law. Currently, it does not provide a

⁵ The Federal Republic of Somalia, ‘The Somali Compact’, adopted at the A New Deal for Somalia conference, Brussels, 16 September 2013; Federal Government of Somali Republic, ‘Vision 2016: Principles and Recommendations’ Mogadishu, Somalia, September 2- 6 2013.

⁶ H. Mohamud, speech made at the New Deal for Somalia Conference, 16 September 2013.

⁷ The Federal Republic of Somalia, ‘The Somali Compact’, adopted at the A New Deal for Somalia conference, Brussels, 16 September 2013, p 11.

comprehensive legal framework and has historically been inadequately enforced. The limited legislative protections for women that do exist are mainly contained in the following legislation:

- **The Family Code 1975**

The Family Code provides some protections for women, including providing equal inheritance rights, setting the marriageable age at 18 (though women can marry at 16 with parental consent), and requiring court authorisation for men to take more than one wife. However, it also stipulates that men head the family and the wife is obliged to follow her husband.⁸ Further, the provisions on equal inheritance rights were seen many actors as contradicting Sharia law and as such the legislation has been rarely used.

- **Penal Code 1963**

Rape is included as an ‘unnatural offence’ under a section on ‘Crimes against Morals and Decency’ in the Penal Code. The majority of other sexual offences, including sexual assault, sexual offences relating to children and gang rape are not dealt with under the Penal Code. There is no guidance in the legislation on burden of proof, admissibility and evaluation of evidence or what may be considered aggravating factors. Laws against “hurt” in the Penal Code, which could theoretically apply to female genital mutilation (FGM), are not applied in this way in practice.⁹

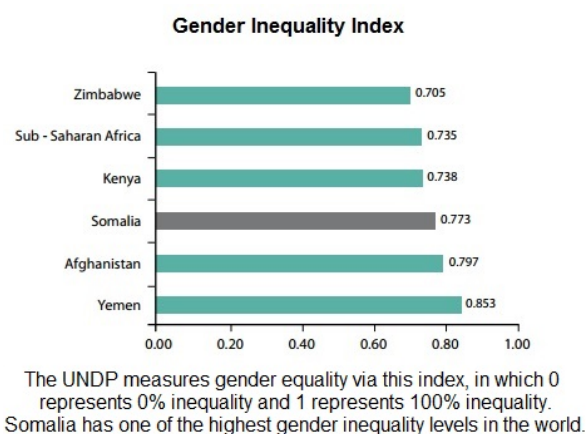
⁸ Social Institutions and Gender Index, ‘Somalia’, <http://genderindex.org/country/somalia>, (accessed 16 August 2013).

⁹ US Department of State, ‘Somalia’, Country Reports on Human Rights Practices for 2006, 2007.

- **The Civil Code 1973**

The Civil Code gives women the right to independently own and control their own property.

In August 2012, the new Somali government initiated a judicial reform process to pave the way for the re-establishment of independent courts.¹⁰ The government is also mandated to pass new legislation in order to develop a comprehensive formal legal code. Unfortunately, from 2012 until the time this report was written, no new legislation had been passed. This is predominantly due to a lack of legislative drafting capacity within the government, as well as uncertainty relating to which governmental body has responsibility for drafting the laws. The low technical quality of the laws that have been put before Parliament has forced the passing of numerous Bills to be postponed.¹¹



One of the Bills currently being developed is aimed at protecting women’s rights in areas

¹⁰ A. Khalif, ‘Somalia takes first step towards judicial reforms’, *Africa Review*, 6 April 2013, <http://www.africareview.com/News/Somali-takes-first-step-of-the-journey-to-judicial-reforms/-/979180/1741060/-/nwc8b0z/-/index.html> (accessed 9 August 2013).

¹¹ Peter Cross, Law Enforcement Project Manager, UNDP Somalia, GBV working group meeting, 12 August 2013.

of education, access to health services and participation in government.¹² The director-general of the women's department in the Ministry of Development and Social Affairs has stated that the Bill is due to be passed in September 2013.¹³ No Bill which extensively criminalises sexual offences has been drafted. In one of the first court cases prosecuted by the new Attorney General's office, a woman who alleged she had been raped by men in police uniform and a journalist who interviewed her were sentenced to a year in prison for insulting the state.¹⁴ Both convictions were overturned upon appeal.

It is unclear on the information available whether there have been any successful prosecutions for rape in civil courts since the appointment of the new government.¹⁵ There have been five prosecutions for rape by military tribunals in the same timeframe; four in November, which resulted in five year jail sentences,¹⁶ and one in January, which resulted in the execution of the perpetrator.¹⁷ The January execution follows a statement made by President Hassan Sheikh in December acknowledging the rise

in reported rapes and announcing that security personnel involved in the commission of such crimes would receive the death penalty.¹⁸

Women currently hold 38 of the 275 seats in Parliament, which is just under half the 30% quota specified in the Garowe II Principles.¹⁹ There are currently no female judges in Somalia,²⁰ and studies indicate that many women view the formal legal system as male-dominated and untrustworthy.²¹ However, there are six legal aid providers in South Central Somalia which assist with the provision of legal aid for women wishing to bring a case to the formal courts: Association of Somali Women Lawyers, Coalition of Grassroots Women Organisations, Save Somali Women and Children, the Somali Womens Development Centre, the Elman Centre and the Somali Bar Association. There are also other groups which focus on providing women with information, advice and protection in the areas of SGBV and reproductive health, including IIDA, We Are Women Activists (WAWA), Ilsan Women Coalition, Women Lawyers, Somali Family and Child Care Organization (SFCC), Peace and Human Rights Network (PHRN), Djiro, the Female Paramedical Association (FEPMA) and

¹² D. Jibril, 'Somali government drafts bill to protect women's rights', Sabahi Online, 22 July 2013, http://sabahionline.com/en_GB/articles/hoa/articles/features/2013/07/22/feature-02 (accessed 2 September 2013).

¹³ Ibid.

¹⁴ D. Smith, 'My Rapists were Rewarded, says Somali woman cleared of making false claims', The Guardian, 7 March 2013, <http://www.theguardian.com/world/2013/mar/07/rapists-rewarded-somali-woman-cleared> (accessed 24 August 2013)

¹⁵ Peter Cross, Civilian Police Project Manager, UNDP Somalia stated on 12 August at a GBV working group meeting that there has not. However, according to other sources there may have been a handful successful prosecutions in recent years.

¹⁶ US Department of State, Somalia Human Rights Report 2012, p 37.

¹⁷ Tahlil Ahmed, Judiciary Advisor, UNDP Somalia

¹⁸ Above n 16, p 37

¹⁹ Second Somali National Consultative Constitutional Conference, 'Garowe II Principles', 2012, <http://puntlandi.com/wp-content/uploads/2012/02/Garowe-II-Principles.pdf>, (accessed 22 October 2013).

²⁰ There was previously at least one female judge in South-Central Somalia, but she is now a lawyer. There is also a female deputy Prosecutor in Somaliland: Interview with Simone Boneschi, Area Project Manager, Access to Justice, Governance & Rule of Law Programme, UNDP, 28 October 2013.

²¹ UN Somalia, 'Violence in the Lives of Women and Girls (draft copy)', UNDP, UNPOS and UN Women, 2012, pp 58- 59.

many other organisations scattered across the regions.

2.2.2 Sharia Law

Compatibility with the principles of Islamic legal jurisprudence is essential for all laws in Somalia. The Somali constitution adopted in 1960 and the current provisional constitution both specify that Islamic doctrines shall be the main source of the state's legislation. Sharia therefore influences all systems of law, although there are few instances of Sharia law being directly administered by Islamic courts.

The Quran and Sunnah, the primary sources of Sharia law, contain numerous pronouncements of women's rights and freedoms. At the time of the birth of the Prophet Mohammad (PBUH) in 7th century Arabia, women had limited recognised rights. For example, women were regarded as property of their husbands, could not inherit land, and unwanted baby girls were sometimes buried alive. The Quran condemns female infanticide²² and explicitly protects women's inheritance rights.²³ Numerous verses of the Quran affirm that all people are equal,²⁴ and the expressions 'believing men and women' and 'Muslim men and women' are used frequently

throughout the scripture to emphasise the equality of the sexes.²⁵ Part of the legacy of the Prophet Mohammad and the advent of Islam was the introduction of explicit rights and protections for women.²⁶

Some laws and practices currently observed in Somalia are incompatible with Sharia principles regarding respect for women. This includes customs that have been erroneously justified on a religious basis, such as female circumcision and other serious curtailments of women's rights and freedoms.

2.2.3 International Law

Somalia has ratified a handful of international instruments, including the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, the International Covenant of Economic Social and Cultural Rights (ICESCR) and the Convention Against Torture (CAT). Each of these instruments was signed by the Barre government in 1990 although they have not been incorporated into domestic law.

The ICCPR and the ICESCR contain a comprehensive list of civil, political, economic and social rights and include protections for the rights of women. The ratification of these treaties by Somalia

²² Quran 81:8-9

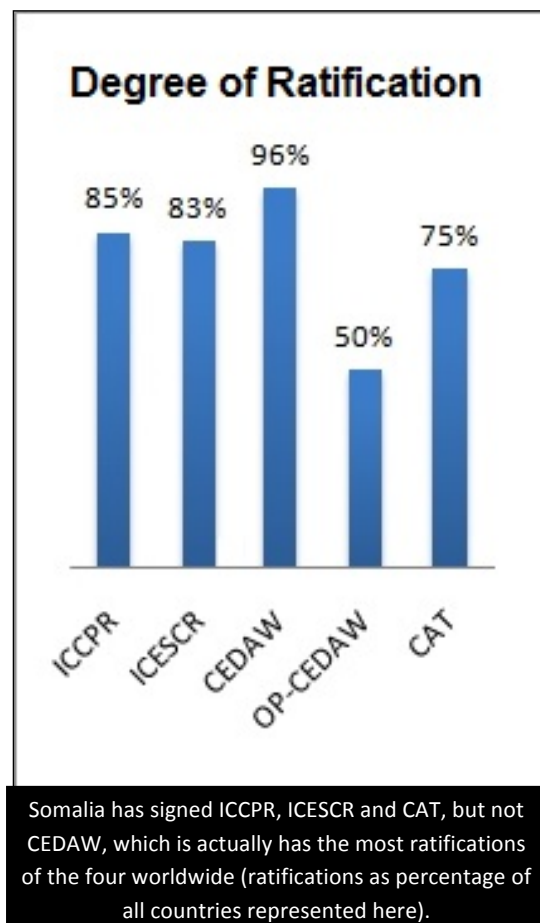
²³ Quran 4:7: Unto men (of the family) belongs a share of that which Parents and near kindred leave, and unto women a share of that which parents and near kindred leave, whether it be a little or much - a determinate share

²⁴ Eg Quran 3:195: Their Lord responded to them: "I never fail to reward any worker among you for any work you do, be you male or female - you are equal to one another."; 4:124: As for those who lead a righteous life, male or female, while believing, they enter Paradise; without the slightest injustice; 49:13: Oh mankind, we created you from a single (pair) of a male and a female and made you into nationalities and tribes, that you may know each other'.

²⁵ Eg Qur'an 33:35: For Muslim men and women and for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise, for them has Allah prepared forgiveness and great reward.

²⁶ J Badawi, 'The Status of Women in Islam', *Al-Ittihad Journal of Islamic Studies*, vol. 8, no. 2, 1971, p 2.

means they are legally bound by them. The ratification of the ICCPR First Optional Protocol gives Somalis the right to make individual complaints to the UN Human Rights Committee if they feel their rights under the Convention have been violated by the Somali government. Somalia is also bound by the Convention Against Torture (CAT). The Committee on the CAT considers violence against women, including rape, sexual abuse, forced marriage and FGM to be within its remit. Somalia has not, however, signed the Optional Protocol to CAT, which establishes an international inspection regime.



The Transitional Federal Government signed the Convention on the Rights of the Child (CRC) in 2002, and in 2011 reported that it was considering ratifying both the CRC and

the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW). Signing the CRC means that Somalia is not legally bound by the Convention but it does have an obligation to desist from any acts which would defeat its objective and purpose. The CRC provides for rights of children against violence and maltreatment and to healthcare and education. It also stipulates that both parents have equal responsibility for their children. CEDAW, which Somalia has not signed, contains comprehensive rights and freedoms for women in political, economic, social and cultural fields.

Somalia also has not signed the Rome Statute, which would subject it to the jurisdiction of the International Criminal Court. The Rome Statute contains significant provisions regarding the perpetration of gender crimes. Articles 7 and 8, defining war crimes and crimes against humanity, contain a subparagraph listing a broad spectrum of gender-specific crimes including rape and any other form of sexual violence.²⁷ The Statute also criminalises persecution against group on grounds including gender, and defines 'enslavement' as the exercise of any power attaching to the right of ownership over a person, and in particular women and children.²⁸

²⁷ B. Bedont and K. Hall Martinez, 'Ending Impunity for Gender Crimes under the International Criminal Court', *Brown Journal of World Affairs*, vol. 6, issue 1, 1999, p 66: Art. 8(2)(b)(xxii) for international armed conflict and Art. 8(2)(d)(vi) for non-international armed conflict. The enumerated crimes are: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence also constituting a grave breach/serious violation of the Geneva Conventions (regarding war crimes) or other forms of sexual violence of comparable gravity (regarding crimes against humanity).

²⁸ Arts 7(1)(g).and 7(1)(h).

Somalia has ratified the African Charter on Human and Peoples' Rights, and has signed but not ratified the Maputo Protocol on the Rights of Women in Africa, which guarantees protections including the rights to political representation, social equality, and reproductive health, and which commits to the abolition of FGM.

On 31 October 2000, the Security Council unanimously passed Resolution 1325, which addresses both the inordinate impact of war on women and the pivotal role women should and do play in conflict resolution and peace building. Resolution 1325 has four pillars: the participation of women in leadership and conflict resolution; the protection of women and girls from SGBV; the prevention of violence against women; and relief and recovery measures that respond to conflict situations through a gendered lens.²⁹

The Security Council has called on all governments to formally support the Resolution and to enact a NAP that supports its vision. As well as taking these actions, the Somali government may also support and enact policies that implement Resolutions 1820, 1888, 1889 and 1960, which identify concrete areas and additional obligations for the implementation of Resolution 1325.³⁰



Resolution 1325 was adopted over 10 years ago. The UN Security Council continues to encourage UN Member States to implement its mandate.

2.3 Provisional Constitution

On 20 August 2012 a new internationally backed government was sworn in at Mogadishu airport, adopting the country's first provisional constitution in more than half a century. The next section will provide an outline to the articles referencing women's rights and a legal analysis of the constitution.

The table below highlights the main provisions within Somalia's provisional constitution which will affect the rights of women. For a list of these provisions in full, see Annex I.

²⁹ USIP, 'What is UN Security Council Resolution 1325 and Why is it So Critical Today?', http://www.usip.org/gender_peacebuilding/about_UNSCR_1325#Why_is_participation_important_to_Resolution_1325, (accessed 8 October 2013).

³⁰ Ibid.

Specific References to Women/Gender Rights

Art 5- Founding Principles	(5) Women must be included in all national institutions, commissions and elected and appointed positions across the three branches of government
Article 10- Dignity	(2) Human dignity is inviolable and must be protected by all. (3) State power must not be exercised in a manner that violates human dignity.
Art 11- Equality	(1) Equality before the law, regardless of (inter alia) gender; (2) discrimination may be intentional or unintentional; (3) The State must not discriminate against any person on the basis of, inter alia, gender.
Art 15- Liberty and Security	(2) Right to personal security, which includes the prohibition of all forms of violence, including any form of violence against women, torture, or inhumane treatment. (4) Prohibition of FGM. (5) Abortion is prohibited except in cases of necessity, especially to save the life of the mother.
Art 24- Labour Relations	(5) All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the work place.
Art 27- Economic and Social Rights	(5) Minorities who have suffered discrimination, including women, must get the necessary support to realize their socio-economic rights.
Art 28- Family Care	(2) Mother and child care is a legal duty of the State; (3) Every child has the right to care from their parents; (5) Marriage must be between consenting adults.

Role of Islam

Art 2- State and Religion	(1) Islam is the religion of the State; (2) No other religion can be propagated (though it can be practiced in private as per Art 17); (3) No law can be enacted that is not compliant with the general principles and objectives of Shari'ah
Art 4	(1) Shariah has precedence over the constitution as the supreme law of the country
Art 40	(2) When interpreting the rights in the Constitution, the court may consider Shariah, international law and decisions of courts in other countries

General Rights

Art 13- Life	Right to life
Art 14- Freedom	A person may not be subjected to slavery, servitude, trafficking or forced labour for any purposes.
Art 16- Association	Right to associate with other individuals and groups.
Art 17- Religion	Every person is free to practice his/her religion.
Art 18- Expression	Right to have and express opinions.
Art 20- Political expression	Right to participate in meetings, demonstrations and peaceful protests without requiring authorisation.
Art 21- Movement	(1) Right to freedom of movement; (2) Right to citizenship/ a passport.
Art 22- Political participation	(1) Right to take part in public affairs.
Art 23- Work	Every citizen has the right to choose their trade, occupation or profession.
Art 25- Environment	(1) Right to a non-harmful environment; (2) Right to share of natural resources and protection from exploitation of resources.

Art 26- Property	(1) Right to own and transfer property; (2) No acquisition of property without fair compensation.
Art 27- Socio-Economic rights	(1) Right to clean water; (2) Right to healthcare, including emergency healthcare even where there is lack of economic capability; (3) Right to social security; (5) Women must get necessary support to realise rights
Art 30- Education	(2) Right to free primary education.
Art 32- Access to Information	(1) Right of access to information held by the state, or (2) another person which is required for the exercise or protection of any other just right.
Art 33- Admin Decisions	Right to administrative decisions that are lawful, reasonable and procedurally fair.
Art 34- Legal Decisions	(1) Right to file a legal case; (2) Right to a fair trial; (4) State to provide free legal defence where necessary; (5) including for public interest cases
Art 39- Human Rights Violations	(1) The law shall provide for adequate procedures for redress of human rights violations; (2) Redress must be available in courts and readily accessible; (3) Third party may protect rights of another in court.
Independent Commissions	
Art 11B- Human Rights Commission	Human Rights Commission, tasked with: (a) Promoting respect for human rights, (b) promoting the development and attainment of rights; and (c) monitoring and assessing the conduct of human rights
Art 11D- Parliamentary Service Commission	(1) Parliament shall establish a Parliamentary Service Commission; (2) consisting of: (a) The Speaker of the House; (b) The Speaker of the Upper House; 4 other others from the House (at least 2 women), and 2 from the supper house (and least 2 women).
Art 111J- Ombudsman	The Ombudsman shall: (a) Investigate complaints of rights violations, abuse of power, unfair behaviour, etc by representatives of government.

2.3.1 Implications of the Constitution for Women's Rights

The new constitution contemplates progressive protections of women's rights in both social and political spheres, though there is little guidance as to how to ensure their enforcement. The constitution:

- Bans the practice of FGM;³¹
- Allows for abortion in the case of necessity;³²
- Recognises equal rights in the workplace;³³
- Prohibits violence against women prohibited;³⁴

³¹ The Federal Republic of Somalia, *Provisional Constitution August 2012*, Article 15 (4).

³² Ibid, Article 15 (5).

³³ Ibid, Article 24 (5).

³⁴ Ibid, Article 15 (2).

- Specifies that marriages must be consented to by both males and females³⁵
- Prohibits child marriage.³⁶

The constitution also states in Article 2 that all legislation must be 'compliant with the general principles and objectives of Sharia law.' This does not suggest that legislation must implement all of the legal rules found in the Quran and other Islamic jurisprudence, but that it must be generally aligned with its principles and aims. The implementation of Sharia law in Kenya, Malaysia and Djibouti is discussed further below, along with recommendations on the most effective strategies from these nations for promoting women's rights and

³⁵ Ibid, Article 28 (5).

³⁶ Ibid, Article 28 (5).

empowerment within a Sharia law framework.

2.3.2 Implementation to Date

The provisional constitution is currently in force as the provisional constitution of Somalia. In May 2013 the government set up a Draft Constitution Technical Review Committee. The committee includes only two lawyers, one of whom is a woman. Its other members do not have legal training. At the Vision 2016 conference, convened by President Hassan Sheikh Mohamud and held from 2-6 September 2013, the delegates acknowledged that the government was behind on milestones related to the review and implementation of the constitution. The Conference recommended the establishment of the constitutionally mandated Constitution Review and Implementation Commission within 60 days, and the establishment of the constitutionally mandated Constitutional Court and ‘all other institutions necessary to review and implement the Constitution’ within 90 days.³⁷ By October 2013, however, no bodies had been established to review the Constitution or assess its implementation.

³⁷ Vision 2016 Conference, ‘Vision 2016: Principles and Recommendations’ Mogadishu, Somalia, September 2- 6 2013.

PART II: Comparable Jurisdictions

3. BEST PRACTICES AND LESSONS LEARNT FROM POST CONFLICT AND COMPARABLE SOCIETIES

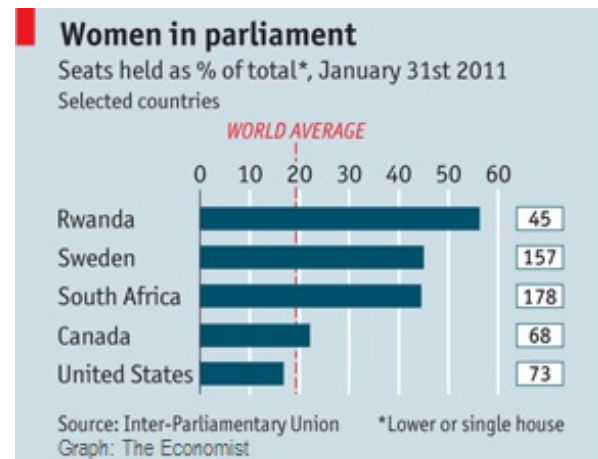
The section below examines five Muslim and/ or African countries for the purposes of comparison with Somalia: Djibouti, Kenya, Rwanda, South Africa and Malaysia.

Rwanda and South Africa have constitutions borne out of the resolution of conflict and the transition to a new era of government. The protections in place for women's rights within each constitution were vociferously fought for by well-organised and passionate women's groups in both countries. These countries now have constitutions with some of the strongest protections for women in the world, and boast above average representation of women in Parliament. The relationship of each system with customary law and the reconciliation mechanisms put in place to address the legacies of genocide and apartheid are also addressed.

Kenya's constitution was the result of thirteen years of drafting. Its Bill of Rights and enshrined protections for women are some of the strongest in the world. Again, such protections were fiercely fought for by women's organisations and female politicians within the country. Kenya's Khadi courts also provide some guidance on how to marry the principles of Sharia with the rights of women, although this example is limited to personal status and family law in the Kenyan context.

Djibouti is geographically, culturally and religiously comparable to Somalia. Though its constitution is not the result of a long struggle or the end of a war, the country provides significant protections for women that overcome entrenched cultural and

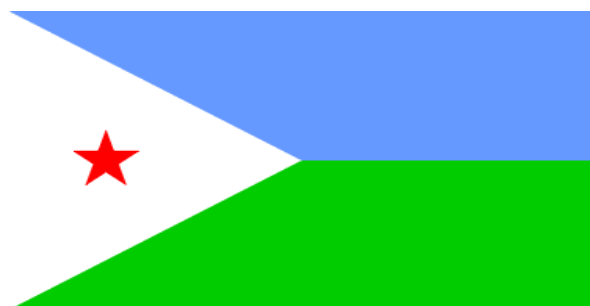
religious attitudes similar to those experienced in Somalia. It also provides some guidance in terms of how to best incorporate customary and Islamic practices into a system that provides adequate protections for women.



Malaysia, like Somalia, is a Muslim majority country in which Sharia law is widely practiced. While several positive developments have been made in Malaysia, it is also notable for failures in regards to the protection of women, that Somalia should be careful to avoid.

Annex VII provides a list of Muslim-majority countries that were considered but were ultimately considered unsuitable for this guide.

3.1 Djibouti



- Non-discrimination as a core constitutional provision
- Legislative quota system to ensure female representation in government bodies
- Numerous policies for the promotion

and protection of women

- Effective cooperation between civil society and the government
- Interpretation of Sharia law that limits discrimination against women
- Outlaws FGM

Women have historically been marginalised in Djibouti. However, many international observers and NGOs have in recent years reacted positively to the progress the country has made.³⁸

Constitutional protections of women's rights

Despite experiencing a civil war from 1991 to 2000, Djibouti currently functions under substantially the same Constitution that was adopted by popular referendum in 1992.³⁹ The constitution is not comprehensive in its protection of human rights, but does specify that all people are equal and incorporates ratified international treaties into domestic law. However, most of Djibouti's achievements in the area of gender equality have occurred within a political rather than constitutional framework.

Activism of women's groups

There is a close connection between government and CSOs in Djibouti. Given the country's small political and NGO community, there is often significant overlap between female leaders in civil society and female politicians. Djibouti's First Lady, for example, is also very active as the President of the National Union of Djiboutian Women (UNFD), the country's pre-eminent

women's organisation.⁴⁰ While this prevents CSOs from acting as an independent check on the government, it also means that NGOs wield significant leverage over those in power which, to date, has resulted in advances for the rights of women.⁴¹ The UNFD has benefited from working closely with the Ministry for the Advancement of Women, Family Welfare and Social Affairs (MPF) on issues such as domestic violence and female genital mutilation (FGM). In 2007, for example, the MPF provided the UNFD with funding to set up a counselling service for victims of SGBV.

Domestic laws and policies for the protection and empowerment of women

In 2002, a law was passed establishing a minimum 10% quota for women in elected legislative and executive positions.⁴² At that point, there were no female parliamentarians. In 2008, the President signed a decree further requiring women to hold at least 20% of all high-level public services positions.⁴³ Currently, women hold 14% of seats in Parliament, two positions in the 21 member cabinet, and 29 appointments as judges.⁴⁴ The increased representation of women in government led to the establishment of the MPF as a fully-fledged ministry in 2008. The MPF is currently developing a National Gender Policy and assisting in the implementation of the National Strategy for the Integration of Women in Development.

³⁸ Eg UNICEF 2011; US Department of State 2010; UN Women 2004; African Commission on Human and Peoples' Rights 2002.

³⁹ A. Abdallah, 'State Building, Independence and Post-Conflict Reconstruction in Djibouti' in Johansson Dahre, U (ed.) *A Report of the 6th Annual Conference on the Horn of Africa, Lund, August 24-26, 2007*, pp 275- 277

⁴⁰ UN Women, 'National Ten-Year Evaluation Report on Implementation of the Beijing Platform for Action: Djibouti', <http://www.un.org/womenwatch/daw/Review/responses/DJIBOUTI-English.pdf>, 2004 (Accessed 4 August 2013), p 6

⁴¹ US Department of State, 'Djibouti Profile', <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154343.htm>, 2010 (accessed 4 August 2013), p 12

⁴² UNICEF, Djibouti: Gender Equality Profile', <http://www.unicef.org/gender/files/Djibouti-Gender-Eqaulity-Profile-2011.pdf>, 2011 (accessed 4 August 2013); above n 99, p 6.

⁴³ Above n 42, p 15

⁴⁴ Above n 43, p 3; The President of the Supreme Court is also a woman: Above n 42, p 11.

In recent years, the Djiboutian Parliament has passed laws which:

- Provide for equal nationality rights between the genders.
- Impose large sentences for rape (although spousal rape is not criminalised).
- Provide access to healthcare, including reproductive healthcare.
- Provide for punishments of five years in prison and fines over \$5500 for conducting FGM; provide for imprisonment of one year and fines over \$500 for failing to report completed or planned FGM to the authorities; and allow NGOs to file charges on behalf of victims.⁴⁵
- Codifies a version of Sharia law that limits discrimination against women, for example, by prohibiting the practice of repudiation (whereby the man may divorce his wife without the involvement of a court), setting the marriageable age for both genders at 18 (unless parental consent is given), and imposing robust conditions on men wishing to take a second wife.

However, the Family Code retains some discriminatory practices. It states that a wife must provide evidence to initiate a divorce, allows for the continuation of discriminatory practices in regards to inheritance and allows polygamy in certain circumstances.

Influence of customary and Islamic law

The Djiboutian Constitution names Islam as the 'sole state religion' in Article 1. It does not specifically mention customary or Sharia law. In practice, however, the Djiboutian legal system is a combination of French civil law and customary practices based on Sharia law. Prior to 2002, Djibouti had separate

Special Courts which applied Sharia law in personal and family matters for Muslims.⁴⁶ In 2002, personal status tribunals were established, presided over by judges with special expertise in both civil and Islamic personal status law.

There has also been some attempts to codify personal and family laws, for example in the Family Code (2002), which attempts to marry principles of civil and Islamic law in matters of marriage, divorce and inheritance. Laws on these issues and other personal status matters have been progressively altered in recent years to provide for an expansion of women's rights.

Djibouti allows for and in practice has several female judges, who interpret both civil and Islamic laws, giving women enhanced influence within the Sharia legal system.⁴⁷

According to the Djibouti 2009 CEDAW report, in that year there were 29 female judges, including both sharia and civil judges, in Djibouti's justice system.⁴⁸

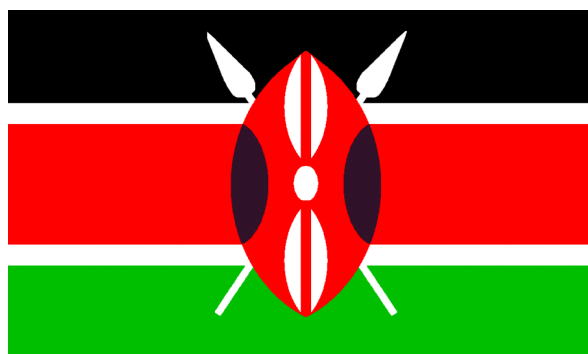
⁴⁵ Above n 42, p 15

⁴⁶ International Monetary Fund, 'Djibouti: Poverty Reduction Strategy Paper, Report 9/203, 2009, section 1.4.3.

⁴⁷ CEDAW, 'Malaysia', <http://cedaw-seasia.org/malaysia.html>, (accessed 25 July 2013).

⁴⁸ UNICEF, Djibouti: Gender Equality Profile', <http://www.unicef.org/gender/files/Djibouti-Gender-Eqaulity-Profile-2011.pdf>, 2011 (accessed 4 August 2013).

3.2 Kenya



- Strong constitutional guarantees of women's rights
- Quota system to ensure female representation included in the Constitution
- Effective cooperation between civil society and the government
- Constitutionally recognised system of Sharia law that provides some protections for women, including through allowing the appointment of female Sharia judges
- Focus on gender and abuses against women in the reconciliation process

Kenyan women have historically been poorer, less educated, less represented in positions of power and generally less respected than their male counterparts. According to the Hon. Njoki Ndungu, a judge on the Supreme Court of Kenya and a former MP, Kenya has 'one of the most paternalistic parliaments in the African region', creating a political environment 'not conducive to any advocacy or lobbying on issues of women's emancipation.'⁴⁹

New Constitution and protection of women's rights

The Kenyan constitution is extremely comprehensive in terms of the protections it

⁴⁹ N. Ndungu, 'The Kenyan Experience'. Speech at Regional Seminar for Asian Parliaments: Preventing and responding to violence against women and girls: From legislation to effective law enforcement, 2011.

affords women. It establishes a 30% quota system and requires the Parliament to pass laws for the protection of women. The Bill of Rights in Chapter Four contains three generations of rights- civil and political; economic, social and cultural; and environmental.⁵⁰ The constitution contains clauses that specifically respond to a large range of women's issues. For example:

- **Article 29** provides the basis for a prohibition of GBV, Article 40 prevents discriminatory land ownership practices;
- **Article 44** safeguards against the customary practice in which men may inherit the wives of deceased relatives;
- **Article 53** addresses with the historical situation in which the mother bears responsibility for a child born out of wedlock;
- **Article 68** protects widow's property rights;
- **Article 73** addresses discrimination and sexual harassment. Finally, the constitution provides for a specific organ to deal with gender issues, as well as more generalised human rights bodies.⁵¹

A full list of constitutional provisions relevant to women is included in Annex II.

Women's activism in Constitutional drafting process

After thirteen years of attempts to create a new constitution, one failed referendum and the 2007 election violence, the Parliament passed a new legal framework for achieving a new constitution in 2008.⁵² In the face of significant opposition, women's groups

⁵⁰ Centre for Multiparty Democracy Kenya, 'From Paper to Reality: A tool kit for empowering Kenyan women to actualize gains in the new Constitution of Kenya', 2010, p 5.

⁵¹ Ibid, pp 6- 25.

⁵² G. Maingi, 'The Kenyan Constitutional Reform Process: A Case Study on the work of FIDA Kenya in Securing Women's Rights', *Feminist Africa*, vol. 15, 2011, p 68.

campaigned vociferously for inclusion of their rights in the final document. In doing so, three tactics were particularly successful:

1. Forming alliances with influential interest groups in other sectors;⁵³
2. Lobbying female MPs directly;
3. Using every possible communication method to educate and mobilise the public.⁵⁴

The final constitution contained most of the protections fought for by women, although some feminist groups objected to its prohibition of abortion and qualification of the equality clause for Muslims submitting to Sharia law.

Domestic laws and policies for the protection and empowerment of women

The Kenyan Parliament has passed legislation which:

- Comprehensively criminalises sexual offences;⁵⁵
- Prohibits discrimination on the basis that someone has HIV;⁵⁶
- Prohibits FGM.⁵⁷

⁵³ Eg, The Federation of Women's Lawyers (FIDA)-the leading women's rights organisation in Kenya-formed strong alliances with other groups affected by the omissions, including the Reproductive Health Rights Alliance, the Kenyan Section of the International Commission of Jurists, and the Katiba Sasa! (Constitution Now!) campaign.

⁵⁴ The young women's advocacy group *Waremboni Yes*, for example, used both new technologies like text messaging and social media as well as traditional methods like community forums to reach their younger constituency: above n 53, p 76.

⁵⁵ Sexual Offences Bill: W. Oyango-Ouma et al, *The making of the Kenya sexual offenses act, 2006: Behind the scenes*, Nairobi, Kwani Trust, 2009.

⁵⁶ Prevention and Control of HIV/AIDs Act: UNFPA, Report Card: HIV Prevention for Girls and Young Women: Kenya, 2008, p 2.

⁵⁷ Prohibition of Female Genital Mutilation Act 2011: N. Shaban, 'Permanent Mission of the Republic of Kenya to the United Nations', *Kenya Delegation to*

Numerous policies are also currently in place to achieve gender equality.⁵⁸ Since the passing of the new constitution, these policies have been accompanied by significant increases of funding in areas in which women are particularly vulnerable, such as education and agricultural employment.⁵⁹

Women activists have expressed anger, however, at the number of Bills containing gender equality measures that have been tabled in Parliament for years without being enacted. These include the Constitution of Kenya (Amendment) Bill 2011, which aims to provide a workable mechanism for the quota system⁶⁰ and the Protection Against Domestic Violence Bill 2012. The Domestic Violence Bill has been in front of the Parliament in some form for six years but has not been seen as a priority.⁶¹ At the 2013 elections, women won 87 of the 416 seats, or about one fifth; far short of that envisioned by the constitution.

the 56th Session of the Commission on the Status of Women (CSW), 2012, p 1.

⁵⁸ Eg, Vision 2030 (Kenya's major development blueprint), the National Land Policy 2009, the National Reproductive Health Policy 2007 and the Maternal and New Born Health Roadmap 2010: Republic of Kenya, *Final Report on the Implementation of Beijing Platform for Action*, 2004, p 2

⁵⁹ Ibid, p 3; W. Mwangi, 'The Correlates of HIV/AIDS Vulnerability: A Multilevel Study of the Impact of Agricultural-consumption Regimes on Women's Vulnerability in Kenya.' *Ohio State University*, 2008.

⁶⁰ Federation of Women Lawyers, 'Joint Submission of Shadow Report to the Human Rights Committee on International Covenant on Civil and Political Rights', *Global Initiative for Economic, Social and Cultural Rights*, 2012, p 20; Okoth, P., interviewed by International Crisis Group, 2012, Institute for Education in Democracy (IED), Nairobi.

⁶¹ Above n 53, p 1; Federation of Women Lawyers, 'Joint Submission of Shadow Report to the Human Rights Committee on International Covenant on Civil and Political Rights', *Global Initiative for Economic, Social and Cultural Rights*, 2012, p 19.

Influence of customary and Islamic laws

The constitution implicitly protects customary law. However, Article 2(4) provides that any customary law that is inconsistent with the constitution shall be considered void, and Article 60(1)(f) specifies that land in Kenya is to be managed in a way that eliminates gender discrimination in customs and practices relating to property.

While Article 24(4) places limitations on the equality clause to facilitate the application of Sharia law, it makes no reference to customary law.

Section 170 of the constitution protects the jurisdiction of Kenya's Islamic Khadi courts in the areas of personal status, marriage, divorce and inheritance. Subsection 5 specifies that for a matter to be heard in these courts, both parties must be Muslim, and both must accept the court's jurisdiction to hear their claim. The constitution upholds the supremacy of the country's secular courts over the Khadi system.⁶² In 2011, the Chief Justice announced his decision to allow women to be magistrates in Khadi courts.⁶³

A 2012 decision of the Kenyan Supreme Court provides an example of the manner in which the country's judiciary is attempting to streamline Sharia law with Kenya's strong constitutional guarantees of equality in the areas of land rights and inheritance. The Court upheld the right of a childless Muslim widow to inherit her late husband's land, despite a provision of Sharia law stating her share of the land should be limited to one quarter. While the constitution qualifies the equality provision with regards to the application of Sharia law, its section on land, which is external to the Bill of Rights, is clear that discriminatory customs

related to land must be abolished. The court also held that the Quran had an inbuilt sense of justice.⁶⁴

Truth and Reconciliation

The Truth, Justice and Reconciliation Commission (TJRC) of Kenya was established in response to the post-election violence of 2007 and 2008, and was mandated to respond to all human rights abuses from Kenya's independence on 12 December 1963 until the time of the Commission's creation in February 2008. The TJRC held a special hearing on women's issues, which allowed survivors of abuse to come together with government representatives, CSOs, medical professionals, law enforcement personnel and other stakeholders to share knowledge and best practices on human rights abuses against women. This recognition that women have historically suffered different types of human rights violations, including SGBV, was important both to the reconciliation process and to discussions about prevention of further abuses. The TJRC's final report dedicated a separate volume to 'the stories and narratives of groups of people that are provided special protection under domestic and international law because of a history of discrimination and oppression', including women.⁶⁵ The report makes numerous recommendations to the government regarding women's rights, SGBV and children's rights.⁶⁶ The High Court is currently considering whether the

⁶² Kenyan Constitution, Art 169

⁶³ T. Lansner, 'Countries at the Crossroads 2012: Kenya', *Freedom House*, 2012, p 15

⁶⁴ The Star, 'Women Wins Suit to Inherit Property', Dec 2012.

⁶⁵ Truth Justice and Reconciliation Commission of Kenya, 'Final Report: Volume IIC', 2013.

⁶⁶ Truth Justice and Reconciliation Commission of Kenya, 'Final Report: Volume IV', 2013, pp 32- 45.

government has a legal obligation to implement the report's recommendations.⁶⁷

3.3 Rwanda



- Currently has the largest number of women Parliamentarians in the world
- Strong constitutional guarantees of women's rights
- Numerous laws and policies for the protection and promotion of women
- Has effective cooperation between civil society and the government across the different bodies of government
- Implements gender sensitive budgeting
- Visible role of women in involved in reconciliation process

The 1994 Rwandan genocide is notable for the extent to which the perpetrators used rape, sexual torture and sexual mutilation against their victims, which included Tutsi and moderate Hutu women and successful female leaders.⁶⁸ After the genocide, the

⁶⁷ International Centre for Transitional Justice, 'ICTJ to Kenya's High Court: Uphold Victim's Rights to Truth, Justice', 3 October 2013, <https://ictj.org/news/ictj-kenya-high-court-uphold-victims-rights-truth-justice>, (accessed 8 October 2013).

⁶⁸ The country's first female Prime Minister, a moderate Hutu, was one of the first to be killed: Human Rights Watch, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath*, New York, Human Rights Watch, 1996; T. Longman, 'Rwanda's Paradox: Gender Equality or Emerging Authoritarianism?' in Bauer, G. and

majority of the surviving population were women, and female civil society played an enormous role in rebuilding the nation.⁶⁹ The victorious Rwandan Patriotic Front (RPF), still the dominant party in Rwanda, regularly and publicly states its commitment to women in leadership.⁷⁰

New Constitution and protection of women's rights

The Rwandan constitution evinces a strong commitment to women's rights through its Preamble and Fundamental Principles. The substantive section of the constitution guarantees women 'at least' 30 percent of posts 'in all decision-making organs', and describes how to practically implement the quota. It guarantees extensive civil and political rights, and establishes bodies with specific mandates to focus on women, as well as a more generalised Human Rights Commission. A full list of constitutional provisions relevant to women is included in Annex IV.

Activism of women's groups in the constitutional drafting process

There were three important groups involved in pushing for the inclusion of women's rights in the 2003 Constitution:⁷¹

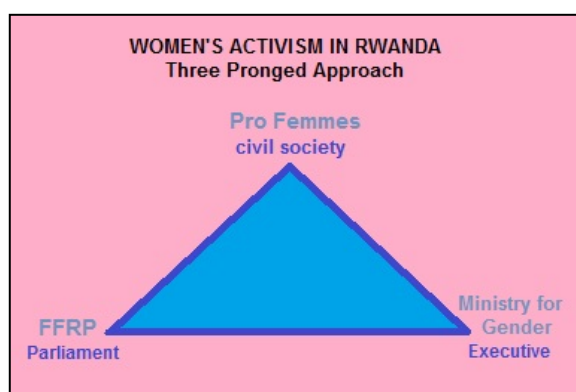
Britton, H. (eds.) *Women in African Parliaments*, Boulder, Lynne Rienner, 2005, p 215.

⁶⁹ E. Powley, 'Rwanda: Women Hold up Half the Parliament', in *Women in Parliament: Beyond Numbers*, 2004, p 157

⁷⁰ P. Bangi, 'RWANDA: 13 Years After the Genocide, Gender-Based Violence Continues Behind Closed Doors', Make Every Woman Count, 2012, http://www.makeeverywomancount.org/index.php?option=com_content&view=article&id=4614:rwanda-13-years-after-the-genocide-gender-based-violence-continues-behind-closed-doors&catid=70:16daysactivism&Itemid=187, (accessed 15 July 2013).

⁷¹ E. Powley, 'Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families', *UNICEF Division of Policy and Planning, Background Paper*, 2006, p 4.

- The Ministry of Gender and Family Promotion
- The Forum of Women Parliamentarians (FFRP)
 - Established in 1996 as a cross-party caucus designed to work together on issues of common importance to women.
- Pro Femmes
 - Established in 1992, at which point it was the umbrella organisation for 13 women's NGOs.



In the lead up to adopting the new Constitution, Pro-Femmes held consultations with NGOs and women at a grassroots level, and then brought those concerns to representatives from the FFRP and the then Ministry of Gender and Women in Development.⁷² This brought the civil sector, which had direct knowledge of the issues on the ground, together with representatives of both the legislative and executive arms of government.

The three groups jointly submitted a policy paper to the Constitutional Commission. Once the provisional constitution adequately reflected the policy paper, Pro Femmes campaigned for women to vote for the document in the referendum.⁷³

Domestic laws and policies for the protection and empowerment of women

The coordinating institution for women's affairs is the Ministry of Gender and Family Promotion, under which several bodies operate, including:

- The Gender Monitoring Office is a constitutional body responsible for monitoring the implementation of gender equality strategies.⁷⁴
- The National Women's Council is a constitutional body which coordinates the local women's councils established throughout Rwanda after the genocide.⁷⁵
 - These women's councils are elected at the most local level by the women in that community, and then from that pool were indirectly elected to the higher administrative levels, operating parallel to the local council and representing women's concerns.⁷⁶
- The National Gender Cluster works on a macro level to allow the government, development partners, the private sector and civil society to meet and discuss the coordination of gender equality strategies.
- Gender Focal Points work at a micro level to streamline gender concerns within all government departments.⁷⁷

The overarching objectives guiding these bodies are contained in the government's

⁷⁴ Republic of Rwanda, 'National Gender Policy', 2010, http://www.gmo.gov.rw/uploads/media/NGP-FINAL_VERSION_02_JULY_2010.pdf, (accessed 23 July 2013).

⁷⁵ P. Abbott and M. Rucogoza, 'Legal and Policy Framework for Gender Equality and the Empowerment of Women in Rwanda', *Institute of Policy Analysis and Research*, 2011, p 8.

⁷⁶ Ibid, p 156- 157; Republic of Rwanda, Single Report on the Implementation of the Convention on the Elimination of all forms of Discrimination Against Women, 2006, p 3

⁷⁷ Above n 75.

⁷² Ibid, p 5.

⁷³ Ibid, p 158

National Gender Policy.⁷⁸ Within the last decade, Rwanda has passed laws that:

- Guarantee women the same rights of succession as men.⁷⁹
- Ensure equal land access between the genders.⁸⁰
- Give women equal citizenship rights.⁸¹
- Prohibit workplace discrimination.⁸²

The passage of many of these laws has only been assured after significant pressure from the FFRP.⁸³

Influence of customary law

The constitution places an obligation on the State to protect Rwanda's customary legal systems.⁸⁴ It also makes customary laws void to the extent that they contradict human rights. Nevertheless, it is common that the predominantly male community decision-makers are unaware of and unwilling to enforce constitutional and legislative protections for women.⁸⁵ However, research has indicated that although it is unlikely that traditional structures will enforce the detail of legal provisions contained in statute law, they are likely to settle on a more gender-inclusive approach where decisions are made with input from the community women's councils.⁸⁶ A 2011 study by the International Development Law

Organisation (IDLO)⁸⁷ describes numerous examples of involvement by women's council representatives in traditional dispute resolution procedures. These representatives actively took part in the efforts undertaken by the elders to resolve disputes and frequently took the lead in demanding attention for the interests of the women involved. The study found that the involvement of the women 'enhance[d] the capacities of these institutions (and, thus, their communities) to bring more disputes to an... outcome accepted by both parties'.⁸⁸

Truth and Reconciliation

Rwanda has both justice and reconciliation processes in place to address the legacy of its genocide.

Justice process

Community *gacaca* trials of those suspected of genocide involvement tried over two million cases from 2005 to 2012.⁸⁹

Women represented 29% of *gacaca* judges. This is an important development, given that these posts were traditionally reserved for men.⁹⁰

Reconciliation process

The formal reconciliation process continues to be conducted by the National Unity and Reconciliation Commission. The major programs run by this body are *Ingando*, a

⁷⁸ This policy targets poverty reduction, access to education, access to health, violence against women, economic empowerment and women in decision making as its major themes: Ibid

⁷⁹ Law on Matrimonial Regimes, Liberalities, and Successions

⁸⁰ Land Organic Law N°08/2005

⁸¹ Organic Land Law N° 27/2001 and N° 30/2008

⁸² Law No 27/2010

⁸³ R. Arnold, *Gender-Based Violence: An Advocacy Guide for Grassroots Activists in Rwanda*, Kigali, CARE Rwanda, 2011, p 1

⁸⁴ Rwandan Constitution Art 145

⁸⁵ M. Veldman and M. Lankhorst, 'Enhancing Legal Empowerment and Customary Law in Rwanda'. *International Development Law Organisation*, 2011, p1.

⁸⁶ Ibid, p 3

⁸⁷ Written for the purpose of assessing their capacity building and empowerment program for traditional and women leaders: Ibid.

⁸⁸ Ibid, p 70.

⁸⁹ UN Department of Public Information, 'Outreach Programme on the Rwanda Genocide at the United Nations', <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>, 2013, (accessed 1 August 2013), p 2

⁹⁰ Izabilizia, J., 'The Role of Women in Reconstruction: Experience of Rwanda', UNESCO, <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Role-Women-Rwanda.pdf>, 2003, (accessed 22 July 2013), p 5.

peace education program established in 1999, and *Itorero*, a leadership academy established in 2007. These programs include a focus on the gendered nature of the genocide. However, the reconciliation process has generally been far less visible than justice process, and involved far fewer people.⁹¹ Activists suggest that gender and peace education should be integrated into the school system in order to reach larger numbers of young Rwandans.⁹²

3.4 South Africa



- Strong constitutional guarantees of women's rights
- Comparatively high number of women in Parliament (38%)
- Numerous laws and policies for the protection and promotion of women
- Progressive judicial interpretation of women's rights

South African women have been socially subordinate to men under both customary and colonial systems of the pre-independence era.⁹³ In the struggle against

apartheid, women's groups and particularly the African National Congress's Women's League (ANCWL) emerged as a passionate and important force for change.⁹⁴ During the dismantling of apartheid, women's groups mobilised to ensure the protection of their rights under the new system.

New Constitution and protection of women's rights

Non-sexism is included in South Africa's Constitution as a 'Fundamental Principle'.⁹⁵ Its Bill of Rights contains a comprehensive list of civil and political rights, a strong and substantive right to equality, and explicit protections for reproductive rights and bodily integrity. It also contains guarantees to economic, social and cultural rights, including land, health, food, water and welfare.

Unusually, it states that when courts are interpreting domestic legislation they must consider certain principles (including equality) and international law, and may consider foreign law.

A full list of constitutional provisions relevant to women is included in Annex V.

Women's activism in the Constitutional drafting process

In 1992, the Women's National Council (WNC) was established as an umbrella organisation, representing women's groups across the racial divide, to coordinate the push to include women's rights in the new

⁹¹ By the end of 2009, these programs had reached just over 200 000 people; around 2% of Rwanda's population: UN Department of Public Information, 'Outreach Programme on the Rwanda Genocide at the United Nations', <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>, 2013, (accessed 1 August 2013).

⁹² Balikungeri, M. and Ingabire, I., 'In Country Monitoring Review 2012', *Rwanda Women's Network*, 2012, p 16.

⁹³ African National Congress, Press Statements: Malibongwe Conference: Programme of Action, 1990, <http://www.anc.org.za/show.php?id=7132>, (accessed 27 July 2013).

⁹⁴ S. Bazilli, and M. McPhedran, 'Women's Constitutional Activism in Canada and South Africa', *International Review of Constitutionalism*, vol. 9, no. 2, 2009, p, 393.

⁹⁵ This is a testament to the negotiating skills of the women involved in the drafting process: S. Hassim, *Women's Organizations and Democracy in South Africa: Contesting Authority*, London, University of Wisconsin Press, 2006, p 155

constitution.⁹⁶ The WNC organised educational and consultative programs with women across the country, and lobbied for numerous protections for women based on the concerns raised at these events.⁹⁷ Many of the women involved in the WNC were also part of the ANC, which, by this time, was preparing itself to become the country's government.⁹⁸ The experience of the ANC with strong female leadership and the relentless campaigning of the women activists lead to the fulfilment of most of their demands.⁹⁹

Domestic laws and policies for the protection and empowerment of women

South Africa does not enforce a gender quota in its parliament or national executive. The dominant ANC party, however, voluntarily adopts a 50% quota for its candidate lists. Female representation in the South African government is currently 38%.¹⁰⁰ Since independence, the South African parliament has attempted to establish national machinery that effectively implements gender equality policies on the ground. The main institutions in this machinery are:

- The Department of Women, Children, Youth and People with Disabilities
- The Commission for Gender Equality
- Gender Focal Units
- A Parliamentary Women's Caucus
- A Gender Working Group for local governments.

Unfortunately, however, both the institutions and the policies they support lack funding. Despite the number of women in Parliament, there is a lack of political will to implement gender sensitive budgeting processes and to ensure the machinery functions effectively.¹⁰¹

The South African Parliament has passed legislation that:

- Prohibits discrimination and establishes special "equality Courts";¹⁰²
- Comprehensively criminalises sexual offences and establishes health and counselling services for victims.¹⁰³
- Broadens the definition of domestic violence and provides for the issuance of protection orders;¹⁰⁴
- Prohibits sexual harassment in the workplace;¹⁰⁵
- Establishes a grant-making system aimed at facilitating economic equality.¹⁰⁶

The South African Constitutional Court and Supreme Court of Appeal have also tended

⁹⁶ G. Houston et al, 'Interest Group Participation in the National Economic Development and Labour Council', in G. Houston, (ed.), *Public Participation in Democratic Governance in South Africa*, Pretoria, Human Sciences Research Council, 2001, p 51.

⁹⁷ S. Bazilli and M. McPhedran, 'Women's Constitutional Activism in Canada and South Africa', *International Review of Constitutionalism*, vol. 9, no. 2, 2009, pp 414- 415

⁹⁸ Hassim, S, *Women's Organizations and Democracy in South Africa: Contesting Authority*, London, University of Wisconsin Press, 2006, p 131.

⁹⁹ Above n 98, p 415.

¹⁰⁰ Gender Links for Equality and Justice, 'South Africa and Namibia debate legislated quotas and draft 50/50 layperson bills', 2012, <http://www.genderlinks.org.za/article/south-africa-and-namibia-debate-legislated-quotas-and-draft-5050-layperson-bills-2012-10-14>, (accessed 7 August 2013); EISA, 'South Africa: Election Archive', 2009, <http://www.eisa.org.za/WEP/souelectarchive.htm>, (accessed 28 July 2013).

¹⁰¹ Moothoo-Padayachie, N., 'Gender Mainstreaming in the South African Public Service', *Alternatives International Journal*, 2011.

¹⁰² The Equality and Prevention of Unfair Discrimination Act 2000

¹⁰³ Sexual Offences Act 2007

¹⁰⁴ Domestic Violence Act 1998

¹⁰⁵ Employment Equity Act 1999

¹⁰⁶ National Empowerment Fund Act 1998: Women's Legal Centre, *Submissions on South Africa to the Commission on Status of Women*, 2010, p 13.

to make progressive decisions in the areas of women's rights.¹⁰⁷

In practice, however, women's ability to access the rights guaranteed to them by progressive legislation is divided along socio-economic lines.¹⁰⁸ Further, widespread sexual violence and SGBV remain enormous problems for South African women,¹⁰⁹ with many activist groups arguing that the government is not invested in addressing these issues.¹¹⁰



Protestors gather outside the South African Parliament to protest the high incidence of rape in the country.

Influence of customary and Islamic Law

The South African constitution specifies that courts must consider customary law where it applies. It also states that the application of customary law is subject to both the constitution and to domestic legislation. Section 8(1) unequivocally states that the constitutional Bill of Rights "applies to all laws". The Constitutional Court has in recent years considered itself competent to

develop the customary law in order for it to exist alongside rights to gender equality.¹¹¹

Section 15 of the constitution allows for Sharia law in 'personal and family law'. Again, section 8(1) subjects any such laws to the Bill of Rights. To date, there has not been a formalisation of Sharia laws within South Africa, though the courts have recognised it on an ad hoc basis in regards to certain personal matters.¹¹²

Truth and Reconciliation

South Africa's Truth and Reconciliation Commission (TRC) was set up in 1995, and comprised of a Human Rights Violations Committee and an Amnesty Committee. Research indicates that there was significant value to giving the victims the opportunity to recount their experiences. The offering of amnesty in exchange for confessions, however, was less successful. Very few people who committed crimes in the name of apartheid came forward and of those who did, many did not apologise.¹¹³

Feminist observers claim that the TRC did not go far enough in addressing the gendered nature of apartheid, whereby women were subjected to different kinds of human rights violations to men. The vast majority of the statements received by the Human Rights Violations Committee concerned abuses committed against males. Gender activists succeeded in setting up ad hoc 'Special Hearings on Women', but not in establishing

¹⁰⁷ M. Maluleke and T. Madonsela, 'Gender Equality Jurisprudence in Landmark Court Decisions', *Department of Justice and Constitutional Development*, 2005, pp 5- 57.

¹⁰⁸ Ozoemena 2010.

¹⁰⁹ A national survey of 1000 women in 2002 found that two thirds of the participants had experienced abuse: Amnesty International, 2007, p 17.

¹¹⁰ Pillay, V., 'Rape in South Africa: Desperately Seeking a Political Champion', *Mail and Guardian*, 2013.

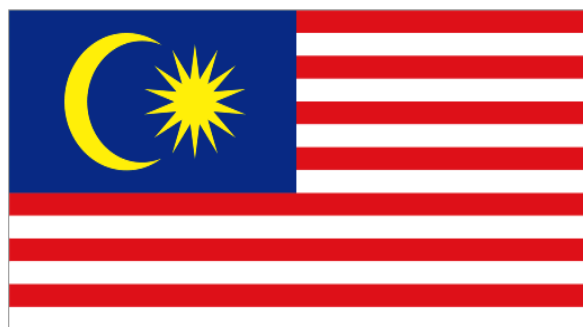
¹¹¹ J. Miles, 'Customary and Islamic Law and its Development in Africa', *Law for Development Review*, 2004, pp 134- 135

¹¹² H. Abrahams-Fayker, 'South African Engagement with Muslim Personal Law: The Women's Legal Centre, Cape Town and Women in Muslim Marriages', *Feminist Africa* vol. 15, 2007, pp 49- 57

¹¹³ Graybill, L., and Lanegran, K., 'Truth, Justice and Reconciliation in Africa: Issues and Cases'. *African Studies Quarterly*, vol. 8, no. 1, 2004, pp 6- 7

a permanent gender strategy for the Commission.¹¹⁴

3.5 Malaysia



- Constitution prohibits discrimination on the grounds of gender
- Constitutionally mandated framework of Sharia law that provides some protections for women, including through allowing the appointment of female Sharia judges
- Highly organised women's groups
- Several laws and policies for the protection and promotion of women

Malaysia has undergone a period of rapid economic development in the last forty years, leading to dramatic increases in education rates amongst women and fast improvements in maternal and reproductive health.¹¹⁵ The improvements have not been matched by comparable increases in employment opportunities for women or female political representation, however, due to deeply entrenched cultural perceptions of the role of women and their unsuitability for formal employment or community leadership.

¹¹⁴ A. Kusafuka, 'Truth Commissions and gender: A South African case study', *African Journal of Conflict Resolution*, vol. 9, no. 2, 2009, pp 45- 47.

¹¹⁵ In 1970, over 50% of Malaysians were estimated to live below the poverty line; today, that number is less than 5%.

Enshrined rights in Constitution directly effecting women

Malaysia's constitution explicitly protects against discrimination based on gender. However, the absence of detailed, comprehensive gender rights has been disadvantageous to Malaysia's women.

Activism of Women's Groups

Women's groups form one of the most developed civil society networks in Malaysia.¹¹⁶ It is primarily a result of the activism of these groups that 'gender' was added as a category to the anti-discrimination clause in the constitution in 2001.¹¹⁷ These groups continue to push for gender equality across many fields in Malaysia, and have been successful in bringing about some of the policy and legislative changes described below. Unfortunately, patriarchal attitudes and entrenched gender stereotypes have made progress piecemeal and slow.

Domestic laws and policies for the protection and empowerment of women

The Ministry of Women, Family and Community Development (MWFCDD) is the governmental institution tasked with the protection and empowerment of women. A Cabinet committee on gender equality was established in 2004 to provide policy direction and monitor the implementation of strategies for women's development.¹¹⁸ Gender focal points have also been placed in various ministries in an attempt to include gender issues in policies across all sectors.¹¹⁹ Female representation in positions of power

¹¹⁶ Yeoh, T., 'Public Affairs in the State of Selangor', *Public Policy in Malaysia*, 2012.

¹¹⁷ Ahmad, S., 'Gender Equality under Article 8: Human Rights, Islam and "Feminism"', *The Malaysian Bar*, 2005, p 2.

¹¹⁸ UNDP, 'Malaysia: Measuring and Monitoring Poverty and Inequality', *United Nations Country team, Malaysia*, 2007, p ii.

¹¹⁹ CEDAW, Country Report: Malaysia, 2006, p 2.

has been slowly increasing, with women now comprising 10.4% of the House of Representatives and 25.7% of the Senate.¹²⁰

In terms of legislation, Malaysia has passed laws which:

- Vest both parties to a marriage with equal land rights;
- Broaden the definition of domestic violence;
- Increase penalties for rape;
- Prohibit sexual harassment in the workplace.¹²¹

However, issues with these laws still remain. There is no domestic law comprehensively prohibiting discrimination based on gender,¹²² marital rape is still legal,¹²³ and the Domestic Violence Act is rarely enforced.

Influence of Sharia law

The Malaysian constitution names Islam as the 'religion of the Federation.' It provides for the establishment of Sharia courts, which apply to all Muslims, and have exclusive jurisdiction over marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law and succession.¹²⁴ The constitution also gives Sharia courts jurisdiction over the 'punishment of offences by persons professing the religion of Islam against the precepts of that religion' in state matters, and limited jurisdiction over criminal law in federal matters.¹²⁵ Some states enforce punishments of whipping for offences such as drinking alcohol, close

proximity of men and women and non-attendance of Friday prayers.¹²⁶ In practice, more women than men are whipped and sentenced under Sharia law, including victims of rape.¹²⁷ While women's groups in Malaysia have repeatedly attempted to bring cases challenging the manner in which Sharia personal and criminal laws discriminate against Muslim women, the Malaysian courts have to date been unwilling to adjudicate on such issues.¹²⁸



Sharia court judges Suraya Ramli and Rafidah Abdul Razak. Photo: Lai Seng Sin/ AP.

In 2010, after years of female activists complaining of bias against women by Sharia courts, Malaysia began appointing female Sharia judges. The move was applauded by women's groups. However, Sharia courts are still dominated men and it is yet to be seen whether the limited presence of women has had a positive effect for female complainants on a whole.¹²⁹

¹²⁰ Women's Aid Organisation, 'Malaysian NGOs Alternative Reporting- assessing the Government's progress in implementing the UN CEDAW', 2012, p 19.

¹²¹ Land Act; Domestic Violence Act; amendments to the Penal Code; CEDAW.

¹²² Above n 121, p 15.

¹²³ Ibid, p 16.

¹²⁴ Above n 118.

¹²⁵ Malaysian Constitution, State List; F. Shuaib, 'The Islamic Legal System in Malaysia', *Pacific Rim Law and Policy Journal* vol. 21, no. 1, 2012, p 97.

¹²⁶ F. Shuaib, 'The Islamic Legal System in Malaysia', *Pacific Rim Law and Policy Journal* vol. 21, no. 1, 2012, p 104.

¹²⁷ Joint Action Group for Gender Equality, Press Release, 14 June 2013, <http://www.freemalaysiatoday.com/category/opinion/2013/06/14/repeal-syariah-criminal-offences-laws/>, (accessed 6 October 2013).

¹²⁸ Human Rights Law Centre, 'Malaysia High Court denies request to declare Sharia law prohibiting cross-dressing unconstitutional', 2012, <http://www.hrlc.org.au/malaysia-high-court-denies-request-to-declare-Sharia-law-prohibiting-cross-dressing-unconstitutional>, (accessed 12 August 2013).

¹²⁹ Above n 121, p 57.

4. STRATEGIES USED TO OVERCOME CHALLENGES TO GENDER EQUALITY

The experiences of Rwanda, Kenya, South Africa, Djibouti and Malaysia provide insight into how African and Muslim-majority countries have approached issues of customary law, Sharia law and women's rights in the context of post-conflict situations, political transitions or international and domestic pressure for change. Each of these countries has made positive developments in the realm of women's rights, though all continue to experience setbacks and challenges. The following section outlines the primary obstacles to progress still experienced by the examined countries, and discusses where and how these challenges have been addressed effectively. It concludes with recommendations for how Somalia's new constitution and legislative and policy framework may best facilitate real change for the country's women, with a focus on ensuring the protections contained in theory may be enforced in practice.

4.1 Common Challenges

The biggest obstacles for the realisation of women's rights in each of the countries analysed within this report significantly resemble those currently faced in Somalia and include: ongoing and extreme poverty, lack of education, sexual and gender based violence and entrenched patriarchal attitudes. The majority of women in each of the African countries discussed live in rural areas, where poverty levels are higher, education levels are lower, and communities have little regard for government policy changes. Further, the culture of impunity

surrounding SGBV and sexual crimes indicates a fundamental disrespect for women that exists in all five countries. Finally, the prioritisation of Sharia law over the constitutional equality clause in the Kenyan and Malaysian constitutions and ongoing discriminatory practices justified on the basis of religion in Djibouti have the potential to render Muslim women in these countries vulnerable to abuse. It is therefore important that Somalia's Sharia legal framework is used to protect women, rather than being used to their disadvantage.

4.2 Strategies Used to Promote Change

Some countries have responded to these challenges more effectively than others. In the context of African and Islamic societies, four key strategies have emerged as providing the most effective support to protecting the rights of women:

1. Women's groups across all sectors;
2. Quota systems;
3. Gender responsive budgeting;
4. Implementation of gender equality in Sharia law.

4.2.1 Women's groups across all sectors

Advances in all of these countries are in a large part attributable to be the strength and persuasive power of their women's organisations. These organisations work most effectively when mechanisms are established for cooperation between women within civil society and the government. Gender based mechanisms that build on customary laws and practices, such as the Women's Council in Rwanda, are also vitally important.

4.2.2 Quota systems

Experts generally agree that for women's voices to be both heard and listened to in

male dominated institutions, they require a “critical mass”, generally judged to be about 30%.¹³⁰ Quotas establish a culture of women in leadership more quickly and effectively than waiting for one to develop naturally from a strongly patriarchal society. It is obvious in each of the examined countries that very few advances for women were made until females were represented in government in significant numbers. An increase in female politicians also generally corresponds with a genuine political commitment within the government to advance the rights of women. In Rwanda, for example, women have benefited from a clear and oft-stated commitment to the cause of female empowerment by the ruling RPF party.¹³¹

4.2.3 Gender responsive budgeting

The incremental successes of certain policies in each of these countries have occurred because they are properly resourced programs, rather than simply statements of policy or a passage of law without further action.¹³² Countries that effectively assess the budgets of all departments for their responsiveness to gender issues, such as Rwanda, are also progressing faster than countries that do not do this in practice, such as South Africa.¹³³



4.2.4 Implementation of gender equality in Sharia law

In countries where Sharia law is practiced, women benefit from the appointment of females as judges in Islamic courts, and from attempts to streamline an interpretation of Sharia rules with principles of gender equality. This may be achieved by codifying a gender-sensitive interpretation of Sharia law, sensitising qadis on provisions of internationally recognised women’s rights, subjecting the appointment of female qadis and judges to the 30% quota rule, and making official declarations regarding the compatibility of Sharia with respect for women.

Women are vastly disadvantaged in countries, like Malaysia, that do not take seriously constitutional guarantees of equality, or where the court system is reluctant to adjudicate on matters where constitutional rights clash with culturally prevalent principles of Islam.

¹³⁰ M. Nzomo, ‘The Impact of Quotas in Kenya’, *Centre for Multiparty Democracy*, 2011, <http://www.cmd-kenya.org/files/Impact-of-Quotas-by-Prof-Maria-Nzomo.pdf>, (accessed 24 July 2013)

This number was the UN Economic and Social Council international target for 2005 and was endorsed in the United Nations Beijing Declaration and Platform for Action.

¹³¹ Above n 71, p 158.

¹³² Including reduction in female poverty rates in Rwanda and increased access to education in Kenya.

¹³³ Above n 102, p 14.

Part III: Recommendations

5. RECOMMENDATIONS FOR SOMALIA

The following section is divided into four parts:

1. **Seven recommendations for amendments to be made to the current constitution.**
 - An explanation of how to pass constitutional amendments is also included in the beginning of this section.
2. **Recommendations regarding which international instruments to sign or ratify.**
3. **Suggestions as to legislation and policies that should be developed for the protection and empowerment of women, including:**
 - Suggestions on how to increase the capacity of the Somali Parliament to draft legislation;
 - A list of laws to develop, in order of feasibility; and
 - A list of policies to develop, in order of feasibility.
4. **Suggestions on how to develop the capacity of women's organisations in conjunction with other CSOs and the UN.**

5.1 Recommendations for Constitutional Provisions

The following section recommends amendments to be made to the constitution relating to the following seven issues:

1. Gender quotas;
2. Rights that address specific gender issues;

3. The interpretation of rights, including provisions on how to apply customary and Sharia law;
4. Onus on the State to provide certain rights;
5. Relationship of the constitution with international law;
6. The establishment of a Gender Commission; and
7. The implementation of gender equality within the truth and reconciliation process.



A moment from IIDA's 2010 National Conference of Women's Human Rights, which involved many female MPs. Collaboration between civil society and MPs supportive of women's rights is vital to the implementation of these recommendations.

Before addressing each of these issues, it is necessary to review how a constitutional amendment can be made.

How can you amend the constitution?

1. Draft the constitutional provisions aimed at protecting women suggested below.
2. Insert these provisions into the full draft of the constitution, so that the entire document is together. Ensure that there is both an English and a Somali version of the document, and that these versions are identical.
3. Circulate the draft amongst women groups, CSOs and all MPs. Encourage them to formally support it.

- However, when the appropriate person is proposing amendments to Parliament, they should be proposed separately, to avoid the entire document being rejected.
4. Attach a report to each amendment justifying its inclusion in the constitution and identifying the individuals and groups who support it.
 5. The way to recommend these amendments to Parliament depends on which stage of the Constitutional drafting process the government is at.
 - a. If you are in the Public Consultation phase, you may present the amendments during the consultation.
 - b. If it is after the public consultation phase but before the adoption of the Constitution, you may send the recommendation to the Constitutional Committee Secretariat as a public submission.
 - c. If the Constitution has already been passed, you will need to lobby for:
 - at least ten MPs of a Federal Member State; or
 - a Minister
 to introduce the amendment in Parliament. To begin this process, who should present the report and the amendment to any MPs or a Minister who you think will be sympathetic to the objective of the amendment.
 6. Mobilise women, human rights activists, CSOs and other sympathetic members of the population to lobby for the acceptance of the amendments by Parliament, and to vote for them in a referendum if they are so accepted.

In advocating for these amendments to be made, the following dates are relevant:¹³⁴

¹³⁴ Each of these dates are taken from the 'Roadmap for Somalia Constitutional Implementation & Review Process'.

- **August - December 2013:** Review Commission is to hold Public Consultations with relevant stakeholders, including women's groups. CSOs should participate in these consultations and use them to promote the recommended amendments. Ensure that women's groups have a prominent place in these consultations to guarantee their continued representation in the next stages of the negotiation process.
- **December 2013 - January 2014:** More advanced Public Consultations will be held with invited representatives on certain issues, to ensure continuity in the ways those issues are addressed. Ensure that women's organisations are involved in this process.
- **January – December 2014:** Throughout 2014, the Constitutional Committee Secretariat will be collating recommendations received from the Public Consultations, as well as public submissions, to put into a report to be received by the Oversight Committee. If there is anything from the amendment recommendations submitted by civil society that is not included in the report then the organisations responsible should send those same recommendations to the Secretariat as a public submission.
- **June 2015 - early 2016:** Voters will need to register to participate in the referendum on the constitution during this time. The government or civil society should announce and publicise a "Women's Registration Day" to encourage women to vote on the final constitution.

Any amendments that are not made through the formal negotiation progress may still be made through the Parliament. Processes to amend the constitution can only be initiated by a Federal or State government, represented by a Minister, a Member of Parliament or citizen's petition containing at

least 40000 signatures. It is suggested that the most effective strategy to propose amendments to the current constitution will be through a sympathetic Member of Parliament. In this case, the current Deputy Minister of Justice is proposed. The strategy for proposing these amendments is described above. All other recommendations are outlined in more detail below.

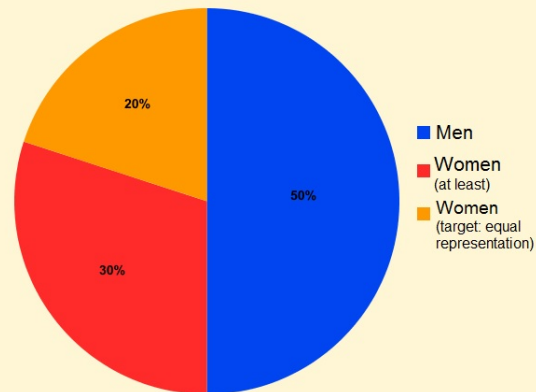
5.1.1 Gender quotas

Constitutionally mandate 30% gender quotas:

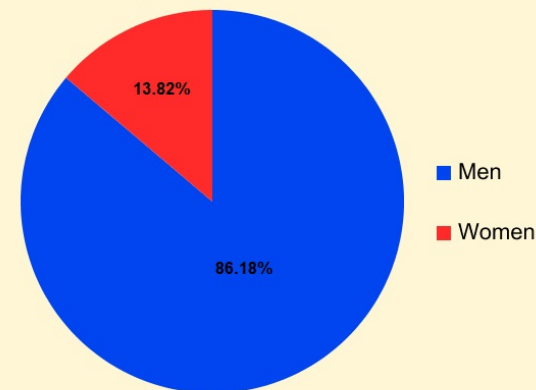
1. Amend Art 64(2) to state that 83 of the 275 Members of the House of the People shall be reserved for women. A list of candidates to fill these positions will be issued by a joint assembly composed of elders and members of Executive Committees of women's organisations at the local and national level.
2. Amend Art 72 to state that 18 of the 54 members of the Upper House will be reserved for women; one from each of the regions that existed in Somalia by 1991. A list of candidates for these positions shall be issued by a joint assembly composed of members of local governments, elders and members of Executive Committees of women's groups from within the region.
3. Amend Art 109A(2) to expand the Judicial Services Committee from 9 to 11 members, and insert a subsection requiring that the additional two members must be chosen from national women's organisations.
4. Amend 109A to include a subsection which requires that the Judicial Services Committee appoint people with the objective of the progressive realisation of the 30% quota.
5. Write an explanation for the quota, based on the assessment of experts that a "critical mass" is needed to ensure the influence of women, and the support of

the 30% goal for Parliaments worldwide by the UN Economic and Social Council and the United Nations Beijing Declaration and Platform for Action. Include this explanation in the report to be attached to the draft constitution.

Target Representation of Women in Parliament



Current Representation of Women in Parliament



Source: Open Democracy

It is noted that the Garowe II Principles mandate that 30% of seats in parliament must be reserved for women. This commitment, however, has not been implemented in practice. This principle is also in danger of being removed at the political whim of future legislatures. The requirement in Article 5 that women be represented 'in an effective manner' in all branches of government is too vague to be enforceable. It is therefore suggested that the gender quota system be mandated and explained in detail in the constitution, rather than being left to the Parliament to

implement. The 2016 Vision Conference held in March 2013 committed again to institutionalising gender equality in all government institutions. A gender quota is the best way to ensure that this happens in reality.¹³⁵

The experiences of other jurisdictions with a quota system illustrate the need for laws that specify in more detail how the system is to work. In Kenya, for example, where the constitution mandates a quota system but does not describe how it is to be implemented, the male dominated party has yet to pass laws which give it effect. A recommendation for the enactment of legislation providing for the implementation of the quota system is therefore contained in the section on recommended legislation below.

Unfortunately, Article 5 cannot be amended, as it is stated in Article 132 of the provisional constitution that no amendment to the Founding Principles in Chapter 1 may be considered. It is possible, however, to provide for the mechanics of a gender quota in the House of the People and the Upper house in the Articles specifically relating to the composition of those bodies, as suggested above. Describing the mechanics of how such a system is to work in practice renders it unlikely that Parliament will be able to ignore, defer, misinterpret or deliberately pass legislation which is ineffective in enforcing the quota, as has been the case in Kenya.

The Federal Government of Somalia is currently undertaking discussions on how its voting system will function in practice. It is therefore too early to decide how the quota will fit within the system that is eventually agreed upon. However, it is suggested that the constitution mandate that separate joint assemblies are created for the appointment of female candidates, which include members of Executive Committees of

women's groups at national and local levels. This is stipulated by the constitution of Rwanda, where the quota system works extremely effectively. The manner in which these candidates will be voted for by the public must be concluded at a later date.

It is also recommended that the constitution provide for a gender quota to be implemented within the judiciary. This will give women the ability to influence the interpretation of the law, providing a greater opportunity for the implementation of gender equality within a Sharia framework. However, given the lack of female lawyers currently within the country, it is realistic to require that the quota be achieved progressively.

5.1.2 Rights that Address Specific Gender Issues

Draft provisions that explicitly protect women in the following areas:

1. Inheritance:

- Amend Art 26 to include a provision stating that the descendants of deceased persons holding interest in land shall be entitled to that land, subject to a valid will.

2. Land rights:

- Amend Act 26 (1) to read, 'Every person has the right to own, use, enjoy, sell, and transfer property (a) of any description, and (b) in any part of Somalia.'
- Amend Art 43 to include a provision which provides that gender discrimination in law, customs and practices related to the ability to own and control land and property must be eliminated.

3. Citizenship rights:

- Amend Art 21 to specifically provide that both genders hold equal rights to citizenship and are equally able to transfer their citizenship to their

¹³⁵ Above n 134, p 3.

children.

4. Reproductive Healthcare:

- Amend Art 27(2) to specifically include reproductive healthcare.’

5. Equal Parental Responsibility:

- Amend Art 28 to state that every child is entitled to parental care and protection, and that includes ‘an equal responsibility of the mother and the father to provide for the child, whether they are married to each other or not.’

6. Equality of both partners to a marriage:

- Amend Art 28 to state that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.
- Amend Art 28 to state that marriages concluded under any tradition or system of law are recognised.

7. Right to refuse to undergo, perform or witness cultural practices:

- Draft a provision which states that no person may compel another person to perform, observe or undergo any cultural practice or rite.

8. Dignity of women

- Amend Article 16 to state that laws, customs or traditions that are against the dignity, welfare or interests of women or which undermine their status are prohibited.

The passing of each of these amendments will require significant lobbying with religious leaders and a structured engagement in *ijtihad* in order to be able to pass. Religious leaders should be approached to formulate progressive interpretations of sharia in relation to each of the above issues, and in particular of women’s inheritance, land, marriage and parental rights.

The most gender sensitive constitutions contain a charter of rights that is not only objectively comprehensive, but which also responds to specific challenges historically faced by that country’s women. Somalia’s provisional constitution does this in several respects, but most notably in relation to the prohibition of FGM, SGBV, sexual harassment and discrimination in the workplace. However, Somali women have also faced challenges similar to those experienced in Kenya and Rwanda relating to the denial of the rights contained above. The suggestion that the Somali constitution emulates Kenya’s strong protections of women’s land rights and the Rwandese constitution’s quota system, for example, are very important in the context of protecting women’s rights within both Sharia and customary legal frameworks.

5.1.3 Interpretation of Rights, Including How to Apply Customary and Sharia Law

Ensure that Somali judiciaries interpret the rights contained in the Constitution and other legislation as expansively as possible by amending Article 40 to provide:

1. When interpreting the rights set out in this Chapter, a court:
 - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - b. must consider international law; and
 - c. may consider foreign law, though it is not bound to follow these decisions.
2. When interpreting any legislation, and when developing the customary law, a court must apply the law in a manner that is consistent with the constitution and which does not violate human rights or offend public decency.
3. The recognition of the fundamental rights set out in this Chapter does not

deny the existence of any other rights that are recognized or conferred by Sharia or legislation to the extent that they are consistent with the Constitution.

The possibility that the rights enshrined in the constitution or contained in other legislation may be restrictively interpreted by judiciaries or Parliaments is a commonly cited concern. The provisional constitution goes some way towards addressing this by providing that the court ‘may’ consider international law. However, in order to guarantee the highest standard of protection for Somali citizens, it is suggested that courts are mandated to consider both international law and ‘the values that underlie an open and democratic society based on human dignity, equality and freedom’, as stipulated in the South African constitution.

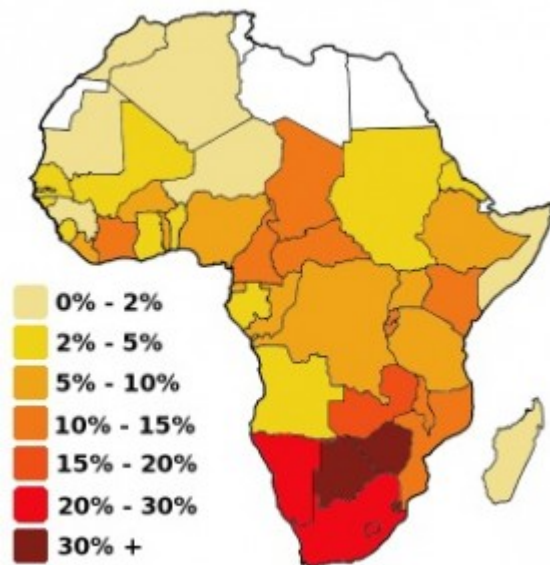
The discussion regarding the scope of the adoption of Sharia law between the judiciary and the Ministry of Justice is ongoing. Currently, Sharia is the primary form of law used in family and personal matters, but it is anticipated that the role of Sharia may increase under the new system. It is recommended that this increase in the reach of Sharia law is made subject to the condition that it remains consistent with the constitution. This will prevent the adoption of laws that have a limiting effect on the rights of women.

The third clause suggested above is adjusted from the current Somali constitution. The suggested article is in line with the Constitution’s deference to Sharia law, and encourages progressive interpretation of such laws by referring only to the ‘rights’ conferred by Sharia. However, the clause has been amended to exclude reference to customary law, which should not be used to override the rights guaranteed in this chapter.

3.1.4 Onus on State to Provide Certain Rights

Develop the constitution to contain positive obligations on the state to enforce the rights of women in the following ways:

1. Amend Article 39 to provide that the state ‘has a duty to enact legislation providing for adequate procedures for the redress of violations of human rights.’
2. Amend Article 27(4) to provide that the state ‘has a duty to take measures to achieve the progressive realisation’ of the rights contained in the Article (rather than simply imposing a duty on the state not to interfere in the enjoyment of those rights).
3. Amend Article 11 to provide that the state ‘has a duty to enact legislation to prohibit discrimination of the type described in ss (2) and (3), and to take measures, including affirmative action, to address such discrimination’.
4. Amend Articles 15, 24 and 28 to provide that the state ‘has a duty to enact legislation to enforce’ the rights enshrined in those sections.
5. Amend Article 30 to provide that the state ‘shall devise and implement effective programmes for balancing and promoting education for women and girls’.
6. The changes suggested for Arts 21, 25, 26, 27 and 30, above, and the suggested Article providing no person may compel another to perform or undergo any cultural practice should also have provisions added to give the state a duty to enact legislation to achieve the realisation of those rights.



Percentage of annual budgets allocated to health services in African countries, 2011. Source: Yale Journal of Medicine and Law.

The Somali provisional constitution guarantees extensive civil, political, economic, social, cultural and environmental rights. Nevertheless, it is suggested that the document be amended to place the onus on the state to guarantee those rights in all areas, rather than simply bestowing them on the citizen. Most of the suggestions above are taken from the Kenyan and South African constitutions. The South African constitution is notable in that it places obligations on the state even in regards to economic, social and cultural rights. It provides that the government must take measures to achieve the “progressive realisation” of rights to housing, healthcare, including reproductive healthcare, food, water and social security.¹³⁶ In 2002, the High Court ordered the Department of Health to remove restrictions on HIV treatments, proving that the constitutional provision requiring the state to provide such rights can be effectively enforced.¹³⁷

The Somali constitution does contain positive obligations of the state in some

¹³⁶ Constitution of South Africa, Sections 26(2) and 27(2).

¹³⁷ *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 721 (CC).

areas. It provides, for example, that mother and child care is the ‘legal duty of the state’,¹³⁸ suggesting that the state may be prosecuted for failing to provide maternal and reproductive healthcare to people in need. In a general sense, Article 39(1) provides that the law ‘shall provide for adequate procedures for the redress of violations of human rights’, Article 27(4) states that economic, social and cultural rights shall not be ‘subject to the interference of the state’, and Article 11(4) allows for the possibility of affirmative action policies to be implemented. Article 27 also requires that women and other historical victims of discrimination ‘get the necessary support to realize their socio-economic rights.’¹³⁹

The duty on the state in regards to these rights should be worded more strongly to give the state the obligation to pass laws for the protection of both civil and political rights, the progressive realisation for economic, social and cultural rights, and the implementation of affirmative action laws. Further, an obligation should be placed on Parliament to pass laws in other areas important for the protection and promotion of women, as suggested above.

5.1.5 Relationship with International Law

Ensure Parliament and the Judiciary are bound by international law by including an Article which provides that:

- All ratified treaties shall be automatically imported into domestic law and will have higher authority than domestic laws, other than the constitution.

The constitution provides that the courts may consider international law when interpreting its Bill of Rights, but does not require them to do so, and does not automatically include international law into

¹³⁸ Above n 32, Article 28(2).

¹³⁹ *Ibid*, Article 27(5).

its domestic legal framework. It is recommended that a provision is included to automatically incorporate the tenets of ratified international treaties and international customary law into Somalia's domestic legal system, and to give those laws higher authority than domestic legislation.

5.1.6 Gender Commission

Promote gender equality within the Constitutional Commissions and create a separate Gender Commission:

1. Amend Article 111 to state that:
 - In all commissions, no less than 30% of appointees must be female.
2. Expand the bodies listed in Article 111 to include a Gender Commission, with responsibilities including the following:
 - To provide a vehicle for the cooperation of women in national and local governments, and between women in government and women in civil society;
 - To monitor and supervise on a permanent basis compliance with principles of gender equality in relevant laws, policies and government activities, especially those relating to development;
 - To submit to various organs recommendations aimed at improving gender equality in their composition, activities and objectives.

It is commendable that the Somali provisional constitution establishes numerous constitutional commissions, including an Ombudsman and a Human Rights Commission, and that it has mandated that the Parliamentary Services Committee be represented equally by both genders. However, it is recommended that the constitution also provide for a body

specifically tasked with the duty of ensuring that the constitution's provisions on the rights of women are enforced and that the gender equality in representation requirement is extended to include all commissions.

5.1.7 Gender equality within the Truth and Reconciliation Commission

Ensure female representation on the Truth and Reconciliation Commission by amending Article 111I to include the following:

- (2)(a) No less than 30% of appointees to the Truth and Reconciliation Commission must be female.
- (3) The Truth and Reconciliation Commission will hold specialised hearings on the unique human rights abuses faced by women.

Women have faced distinct challenges and human rights abuses throughout the conflict period, including increased risk of displacement and being targets of SGBV. The South African experience indicates that these uniquely female experiences risk being ignored or downplayed in the reconciliation process. At present, the provisional constitution directs that the Truth and Reconciliation Commission shall be comprised of traditional elders and leaders, members of the Federal Parliament, respected members of civil society, judges and security personnel. This would result in an extremely male-dominated Commission.

It is therefore recommended that Article 111I is amended to ensure that women's issues are fully addressed in the reconciliation process and that women are equally represented on the commission.

5.2 Ratification of International and Regional Conventions

The Somali executive should:

- Ratify the Convention on the Rights of the Child
- Accede to the Convention on the Elimination of all forms of Discrimination Against Women
- Accede to the Maputo Protocol
- Accede to the Rome Statute

5.3 Suggested Legislation and Policies

The following section contains suggestions on the following three issues:

1. How the Somali Parliament can develop its capacity for drafting legislation;
2. Which laws the Parliament should concentrate on developing and passing to protect the rights of women; and
3. Which policies the Somali government should concentrate on developing and passing to protect the rights of women.

5.3.1 Improvement in Legislation Drafting Capabilities

The Somali Parliament should develop its legislative drafting capabilities in order to draft and propose laws including those suggested below.

- A committee on drafting comprised of Somali and international experts should be established to train interested Somali MPs on the drafting of legislation.
- The committee should prepare an Action Plan for drafting and proposal of legislation.
- This training should proceed on an ad hoc basis. MPs wishing to propose legislation to protect the rights of women

should participate in the training before developing and proposing a draft Bill to be discussed by Parliament.

5.3.2 Suggested Legislation

The Somali Parliament should pass the following laws:

- Sexual Offence Act
- Quota System Act
- Land Inheritance Act
- Protection Against Domestic Violence Act
- Workplace Equality Act

Given the prevalence of SGBV violence in Somalia and the weakness of the laws currently in place to address it, the most important law to push for is the Sexual Offences Act. However, it is recognised that this may be one of the most difficult to advocate for.

In this respect, Somali activists and women's groups may take from the experiences of their counterparts in Kenya, whose campaign to pass the Sexual Offences Act was difficult and protracted, but ultimately successful.

- **The Sexual Offences Act should:**

- Establish rape as a discreet crime, rather than categorising it as an 'unnatural offence', carrying a minimum sentence of ten years imprisonment;
- Criminalise gang rape;
- Criminalise marital rape;
- Criminalise all other sexual offences, including sexual assault, sexual harassment, defilement, sexual offences relating to children, trafficking for sexual exploitation, deliberate transmission of HIV or any other life threatening STD/I, etc.

- A prohibition on adducing evidence as to character and previous sexual history of the victim in defending a rape allegation.
- Guidelines as to burden of proof and assessment of evidence.

Another important law to pass as soon as possible is legislation providing for the implementation of the quota system. However, this law can only be passed after a conclusion has been reached about the manner in which the public will vote for Members of Parliament in Somalia.

- The **Quota System Act** should create a mechanism which ensures the quota system is enforced in practice.

Other laws to advocate for include those listed below. These laws are listed in order of those that are most likely to pass first, judging by the experience of other countries.

- A **Land Inheritance Act**, which:
 - Includes women in the process of land access, acquisition and control, regardless of their marital status
 - Provides for equal ownership of land between husband and wife
 - Allows women and girls to inherit

customary land

- Specifically prohibits discrimination based on gender in matters relating to ownership or possession of rights over land

- A **Protection Against Domestic Violence Act**, which:

- Criminalises sexual abuse within the family
- Criminalises all forms of violence against women, including threats of physical violence
- Prohibits economic abuse, defined as one person controlling the finances of another or disposing of property to which they have an interest without their permission
- Prohibits emotional abuse, defined as degrading or humiliating behaviour

- A **Workplace Equality Act**, which:

- Prohibits discrimination in the workplace
- Prohibits sexual harassment in the workplace
- Establishes affirmative action policies in public workplaces



How Bills may be introduced and debated in the Somali Federal Parliament

However, debate on suggested Constitutional amendments can only be initiated by the House of the People.

- Amendments to the law prohibiting FGM, which provide for criminal sentences both for those who carry out FGM and those who fail to report its practice.

5.3.3 Suggested Policies

Draft gender-sensitive policies to be presented to the Executive, including:

- A National Gender Policy, including a section on the implementation of Resolution 1325;
- A Gender Violence Policy;
- A Gender Mainstreaming and Institutional Capacity Development Program;
- An Economic Empowerment Policy

It is encouraging that the Somali government has a roadmap in place for the creation of a **National Gender Policy**. As well as the actions and objectives listed in the current Roadmap, it is suggested that the National Policy include:

- Gender Focal Points in every government department to ensure that they are operating according to the principles of gender equality;
- Provisions for the progressive realisation of a system in which every expenditure made by the government is assessed to ensure compliance with the principles of gender equality.

The current Roadmap stipulates that the national policy should respond to UN Security Council Resolution 1325. It is recommended that this part of the policy include action to:

- Support women's peacebuilding initiatives;

- Increase women's role and visibility in conflict resolution and peacebuilding endeavours;
- Prevent and prosecute SGBV;
- Take into account the particular needs of women and girls in conflict, refugee camps and settlements.

Other recommended policies are listed below. Several of these policies below may be practically implemented by civil society, but with the support of the government.

- A **Gender Violence Policy**, which includes:
 - Working with CSOs and/ or the UN to provide training for police and security forces, both on gender sensitivity in conducting their affairs and how to respond to allegations of incidents of SGBV;
 - Working with CSOs to support the pre-existing one stop centres for SGBV survivors with medical, psychosocial and legal support;
 - Establishing SGBV and child protection committees within local governments;
 - Establishing gender desks and free hotlines at all police stations and military and security headquarters;
 - Working with CSOs to form a men's association tasked with sensitising the male population to SGBV.
- A **Gender Mainstreaming and Institutional Capacity Development Program**, which includes strategies to:
 - Raise awareness of gender issues amongst the population;
 - Provide training for government workers in gender mainstreaming;
 - Assistance and funding made available for CSOs working on women's issues.

- An **Economic Empowerment Policy**, which includes:
 - A focus on empowering the most vulnerable, including women;
 - Microfinance programs which include the economic empowerment of women as a key objective.

5.4 Capacity Building for Women's Groups

The Somali Parliament should work with CSOs and the UN to increase the capacity of women's groups by:

- Establishing a cross party caucus of female parliamentarians to work together on issues of common importance to women;
- Establishing a body, or using the Gender Commission, to coordinate the activities of women in local governments and customary structures;
- Establishing a national Gender Cluster to coordinate meetings and projects between women in government, civil society and the private sector;
- Approaching the UN and CSOs to provide grants for women's groups making a positive and tangible contribution to the rights of women in Somalia.

As noted in section four, the examined countries have been the most successful in pushing for gender reform where women's groups have been well-organised and well-resourced, and where their efforts have been coordinated across governmental and civil society levels.

There is currently a vibrant network of women's groups functioning across all sectors of Somali society. Many of these groups already have strong connections with both the Somali government and international development partners. Somali

Women's Agenda (SWA) was established in 2007 as a platform for women's organisations and activists.¹⁴⁰ This umbrella organisation is therefore well placed to be the focus for programs that link CSOs with government bodies. In this respect, inspiration may be taken from the National Gender Cluster and the Women's Council in Rwanda.



SWA: traditional leaders, diaspora, young women and mentors from the international community

¹⁴⁰ Somali Women's Agenda, 'About Us', <http://somwomenagenda.org/about%20us.html>, (accessed 24 October 2013).

6. Conclusion

Somali women face many of the same challenges as women in Rwanda, South Africa, Kenya, Djibouti and Malaysia. Somali MPs can learn from the experiences of these nations when pushing for reform. None of the examined societies changed instantaneously and all continue to face obstacles in the progression towards true gender equality. However, all of them have begun the gradual progression towards lasting change.

The current transitional nature of the Somalia's political and constitutional system provides a rare opportunity to change the country's direction in the field of women's rights. The recommendations contained in this report will enable Somali Parliamentarians to begin the process of developing legal, governmental and social institutions to embrace principles of gender equality and commit to the practical realisation of all rights for all Somali citizens.

Annexes

ANNEX 1 Full list of provisions in the Somali constitution relating to women

<i>Role of Islam</i>	
Article 2- State and Religion	(1) Islam is the religion of the State. (2) No religion other than Islam can be propagated in the country. (3) No law can be enacted that is not compliant with the general principles and objectives of Shari'ah
Art 4	(1) After the Shari'ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country. It binds the government and guides policy initiatives and decisions in all sections of government.
Art 40	(2) When interpreting the rights in the Constitution, the court may consider Shariah, international law and decisions of courts in other countries, though it is not bound to follow these decisions. (4) The recognition of the fundamental rights set out in this Chapter does not deny the existence of any other rights that are recognized or conferred by Shari'ah, or by customary law or legislation to the extent that they are consistent with the Shari'ah and the Constitution.
<i>Specific References to Women/Gender Rights</i>	
Article 5- Founding Principles	A5 (5) Women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions.
Article 10- Human Dignity	(1) Human dignity is given by God to every human being, and this is the basis for all human rights. (2) Human dignity is inviolable and must be protected by all. (3) State power must not be exercised in a manner that violates human dignity.
Article 11- Equality	(1) All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth or dialect shall have equal rights and duties before the law. (2) Discrimination is deemed to occur if the effect of an action impairs or restricts a person's rights, even if the actor did not intend this effect. (3) The State must not discriminate against any person on the basis of age, race, colour, tribe, ethnicity, culture, dialect, gender, birth, disability, religion, political opinion, occupation, or wealth.
Article 15- Liberty and Security of the Person	(2) Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment. (4) Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited. (5) Abortion is contrary to Shari'ah and is prohibited except in cases of necessity, especially to save the life of the mother.
Article 24- Labour	(5) All workers, particularly women, have a special right of protection from sexual abuse, segregation and discrimination in the work place. Every labour

Relations	law and practice shall comply with gender equality in the work place.
Article 27- Economic and Social Rights	(5) It shall be ensured that women, the aged, the disabled and minorities who have long suffered discrimination get the necessary support to realize their socio-economic rights.
Article 28- Family Care	(2) Mother and child care is a legal duty of the State. (3) Every child has the right to care from their parents, including education and instruction. (5) A marriage shall not be legal without the free consent of both the man and the woman, or if either party has not reached the age of maturity.
<i>General Rights</i>	
Article 13-Right to Life	Everyone has the right to life
Article 14- Slavery, Servitude and Forced Labour	A person may not be subjected to slavery, servitude, trafficking or forced labour for any purposes.
Article 16- Freedom of Association	Every person has the right to associate with other individuals and groups.
Article 17- Freedom of Religion and Belief	Every person is free to practice his/her religion.
Article 18- Freedom of Expression and Opinion	Every person has the right to have and express their opinions.
Article 20- Freedom of Assembly, Demonstration, Protest and Petition	Every person has the right to organise and participate in meetings and to demonstrate and protest peacefully without requiring prior authorisation.
Article 21- Freedom of Movement and Residence	(1) Every person lawfully residing within the territory of the Federal Republic of Somalia has the right to freedom of movement, freedom to choose their residence, and freedom to leave the country. (2) Every citizen has the right to enter and to remain in the country, and has the right to a passport.
Article 22- Rights of Political Participation	(1) Every citizen has the right to take part in public affairs. This right includes: (a) The right to form political parties and to participate in the activities of political parties; and (b) The right to be elected for any position within a political party. (2) Every citizen who fulfils the criteria stated in the law has the right to elect and to be elected.

	(3) The rights stated in Paragraph (1) and (2) shall be exercised in accordance with this Constitution and a law enacted by the Federal Parliament.
Article 23. Freedom of Trade, Occupation, and Profession	Every citizen has the right to choose their trade, occupation or profession freely.
Article 25. Environment	(1) Every person has the right to an environment that is not harmful to their health and well-being, and to be protected from pollution and harmful materials. (2) Every person has the right to have a share of the natural resources of the country, whilst being protected from excessive and damaging exploitation of these natural resources.
Article 26. Property	(1) Every person has the right to own, use, enjoy, sell, and transfer property. (2) The state may compulsorily acquire property only if doing so is in the public interest. Any person whose property has been acquired in the name of the public interest has the right to just compensation from the State as agreed by the parties or decided by a court.
Article 27. Economic and Social Rights	(1) Every person has the right to clean potable water. (2) Every person has the right to healthcare, and no one may be denied emergency healthcare for any reason, including lack of economic capability. (3) Every person has the right to full social security. (4) Every person has the right to protect, pursue, and achieve the fulfilment of the rights recognised in this Article, in accordance with the law, and without interference from the state or any other party. (5) It shall be ensured that women, the aged, the disabled and minorities who have long suffered discrimination get the necessary support to realize their socio-economic rights
Article 30- Education	(1) Education is a basic right for all Somali citizens. (2) Every citizen shall have the right to free education up to secondary school.
Article 32. Right of Access to Information	(1) Every person has the right of access to information held by the state. (2) Every person has the right of access to any information that is held by another person which is required for the exercise or protection of any other just right. (3) Federal Parliament shall enact a law to ensure the right of access to information.
Article 33. Just Administrative Decisions	Every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.
Article 34. Access to Courts and Legal Defence	(1) Every person is entitled to file a legal case before a competent court. (2) Every person has the right to a fair public hearing by an independent and impartial court or tribunal, to be held within a reasonable time, and to determine: (a) Any question of civil rights and obligations; or (b) Any criminal charge.

	<p>(3) Every person is entitled to defend him or herself from the case he or she is party to, whatever the level or stage of the proceedings may be.</p> <p>(4) The state shall provide free legal defence to the people who do not have the means of doing so themselves.</p> <p>(5) The state shall provide free legal defence to individuals or communities if they are legally pursuing the public interest</p>
Article 39. Redress of Violations of Human Rights	<p>(1) The law shall provide for adequate procedures for redress of violations of human rights.</p> <p>(2) Redress of violations of human rights must be available in courts that the people can readily access.</p> <p>(3) A person or organization may go to court to protect the rights of others who are unable to do so for themselves</p>
<i>Independent Commissions</i>	
Article 11B- Human Rights Commission	<p>There shall be a Human Rights Commission that shall be mandated to:</p> <p>(a) Promote respect of human rights, and the culture of human rights;</p> <p>(b) Promote the protection, development, and attainment of human rights; and</p> <p>(c) Monitor and assess the observance of the conduct of human rights in the Federal Republic of Somalia</p>
Article 11D Parliamentary Service Commission	<p>(1) At the beginning of the term of the House of the People, both Houses of the Federal Parliament shall establish a Parliamentary Service Commission serving for the term of the House of the People.</p> <p>(2) The Parliamentary Service Commission shall consist of:</p> <p>(a) The Speaker of the House of the People as chairperson;</p> <p>(b) The Speaker of the Upper House as vice-chairperson;</p> <p>(c) Four (4) members elected by the House of the People from among its members, of whom at least two (2) shall be women;</p> <p>(d) Two (2) members elected by the Upper House from among its members, of whom at least one shall be a woman;</p>
Article 111J. The Office of the Ombudsman	<p>The Ombudsman shall:</p> <p>(a) Investigate complaints regarding allegations or outright violations against basic rights and freedoms, abuse of power, unfair behaviour, mercilessness, lack of clemency, indiscipline or disrespect towards a person that lives in Somalia by an officer who works at the various levels of government, an apparently unfair behaviour, or act in a corrupt manner, or a behaviour by an officer deemed as illegal by a democratic society or regarded as mischief or injustice</p>

ANNEX II Provisions in the Djibouti constitution relevant to women

General	<ul style="list-style-type: none"> • Art 1: The state shall ensure the equality of all citizens before the law, without distinction as to sex. • Art 5: Universal suffrage • Art 6: Political parties may not identify themselves on the basis of sex 	
Enshrined Human Rights	<i>Equality clause</i>	<ul style="list-style-type: none"> • Art 10: All people are equal before the law
	<i>Rights against abuse</i>	<ul style="list-style-type: none"> • Art 16: No one shall be subjected to torture or to inhuman, cruel or degrading treatment or punishment
	<i>Property rights</i>	<ul style="list-style-type: none"> • Art 12: Right of all people to private property
Structural Protections	<i>International law</i>	<ul style="list-style-type: none"> • Art 37: All ratified treaties shall be automatically imported into domestic law and will have higher authority than domestic laws, other than the Constitution
Human Rights Bodies	<ul style="list-style-type: none"> • Constitutional Council (shall ensure compliance with the Constitution) 	

ANNEX III Provisions in the Kenyan constitution relevant to women

General	Commitment to protecting the individual and the family, and to ‘values of human rights, equality... social justice and the rule of law’.	
Enshrined Human Rights	<i>Obligations of the State</i>	<ul style="list-style-type: none"> • Art 21(3): all state organs and all public officers must address the needs of vulnerable groups, including women. • Art 27(4): The State may not discriminate; (6): the State must put in place measures including affirmative action to address discrimination against women; (7): the state ensures that not more than two-thirds of members of elective/ appointive bodies will be the same gender
	<i>Equality clause</i>	<ul style="list-style-type: none"> • Art 27(3): Guarantees gender equality in political, economic and social spheres. • Art 45: guarantees equality of partners in a marriage no matter what system of marriage
	<i>Rights against abuse</i>	<ul style="list-style-type: none"> • Art 29: Right to freedom and security of the person, which includes the right not to be (c) subjected to any form of violence from private or public sources; (d) subjected to physical/ psychological torture
	<i>Land/ property rights</i>	<ul style="list-style-type: none"> • Art 40: Right to acquire and own property- (a) of any description; and (b) in any part of Kenya
	<i>Reproductive rights</i>	<ul style="list-style-type: none"> • Art 43: Right to healthcare, including reproductive healthcare • Art 26: Abortion is prohibited unless life or health of mother is in danger
	<i>Other rights</i>	<ul style="list-style-type: none"> • Art 38: Guarantees all political rights • Art 44: A person shall not compel another person to

Structural Protections		<p>perform, observe or undergo any cultural practice or rite.</p> <ul style="list-style-type: none"> Art 53(1): Right of every child to parental care, which includes equal responsibility of the mother and the father.
	<i>Limitation of equality right</i>	<ul style="list-style-type: none"> Art 25(4): Provisions on equality will be qualified to the extent 'strictly necessary' for application of Sharia law
	<i>Government representation</i>	<ul style="list-style-type: none"> Arts 81, 97, 98, 152, 175: Establishes quota for parliament and federal and local executives Art 91: All political parties must promote gender equality Art 100: Parliament must enact legislation to protect certain groups, including women Art 171, 172: Judicial Service Commission (who appoints judiciary) must consist of half women and half men and must be guided by principles of gender equality Art 232: Values of the public service include providing equal appointments for women
	<i>Relationship with customary law</i>	<ul style="list-style-type: none"> Art 1 (4): Any law, including customary law, that is inconsistent with this Constitution is void
	<i>Relationship with Sharia law</i>	<ul style="list-style-type: none"> Art 170: Upholds jurisdiction of Khadi courts for Muslims in personal and family law matters
	<i>International law</i>	<ul style="list-style-type: none"> Art 1(5) and (6): The general rules of international law and ratified treaties shall form part of domestic law
	<i>Citizenship</i>	<ul style="list-style-type: none"> Arts 13-15: Protects citizenship of all Kenyans
	<i>Other</i>	<ul style="list-style-type: none"> Art 60: Land in Kenya must be managed equitably, and 'gender discrimination in law, customs and practices related to land and property in land' must be eliminated Art 68: Parliament must enact legislation to protect the dependants of deceased persons holding interests in land Art 73: leaders must be chosen on basis of personal integrity and cannot behave improperly
Human Rights Bodies	<ul style="list-style-type: none"> The Commission for the Implementation of the Constitution The National Gender and Equality Commission The Kenya National Human Rights Commission The Commission of Administrative Justice <p><i>Regulation</i></p> <ul style="list-style-type: none"> Art 59(2): "The functions of the newly established Human Rights and Equality Commission include... to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming..." Art 250(12): The Chairperson and vice-chairperson of a commission shall not be of the same gender. 	

ANNEX IV Provisions in the Rwandan constitution relevant to women

General	<ul style="list-style-type: none"> • Para 9: Reaffirms adherence to human rights enshrined in, inter alia: UDHR, ICCPR, ICESCR, CEDAW, CRC, Banjul Charter • Para 10: Commits to ‘ensuring equal rights between Rwandans and between women and men’. 	
Enshrined Human Rights¹⁴¹	<i>Obligations of the State</i>	<ul style="list-style-type: none"> • Art 10: Duty of state to respect, protect and defend the human person
	<i>Equality clause</i>	<ul style="list-style-type: none"> • Art 11: Prohibits discrimination between people on any basis, including sex. • Art 16: Right to equality before the law. • Art 37: Right to equal pay for equal work.
	<i>Rights against abuse</i>	<ul style="list-style-type: none"> • Art 15: Gives people right to physical and mental integrity and prohibits physical abuse
	<i>Property rights</i>	<ul style="list-style-type: none"> • Art 29: Right of all people to private property
	<i>Other rights</i>	<ul style="list-style-type: none"> • Art 45: Right to participate in government
Structural Protections	<i>Government representation¹⁴²</i>	<ul style="list-style-type: none"> • Art 9: Establishes a quota system by which ‘women are granted at least 30% of posts in decision making organs. • Art 76: Explains how the quota system is to work
	<i>Relationship with customary law</i>	<ul style="list-style-type: none"> • Art 51, 201: The State has the duty to safeguard cultural traditions practices so long as they do not conflict with human rights, public order and good morals.
	<i>International law</i>	<ul style="list-style-type: none"> • Art 190: ratified treaties form part of Rwandan law and supersede domestic laws, other than the Constitution
	<i>Citizenship¹⁴³</i>	<ul style="list-style-type: none"> • Art 7: Protects citizenship of all Rwandese
	<i>Other</i>	<ul style="list-style-type: none"> • Art 8: Establishes universal suffrage
Human Rights Bodies	<ul style="list-style-type: none"> • National Commission for Human Rights • The Office of the Ombudsman • The Gender Monitoring Office 	

¹⁴¹ Rwanda Constitution, Title II, Chapter I

¹⁴² Rwanda Constitution, Title I, Chapter I

¹⁴³ Rwanda Constitution, Title I, Chapter I

ANNEX V Provisions in the South African constitution relevant to women

General ¹⁴⁴	Founding values include: <ul style="list-style-type: none"> • Human dignity, equality and human rights and freedoms. • Non-racialism and non-sexism 	
Enshrined Human Rights	<i>Obligations of the State</i>	<ul style="list-style-type: none"> • S9(2): The state may take measures to advance people who have been discriminated against. • (3): The state may not unfairly discriminate directly or indirectly against anyone on grounds including gender, sex, pregnancy, marital status and sexual orientation. • (4): Legislation must be enacted to prevent or prohibit unfair discrimination. • S26 & 27(2), s29(1)(b): The state must take measures to achieve the progressive realisation of rights to: housing, healthcare (including reproductive healthcare), food and water, social security and education.
	<i>Equality clause</i>	<ul style="list-style-type: none"> • s9(1): Right to equality before the law and (2) enjoyment of all rights and freedoms; (3) the state and (4) individuals may not unfairly discriminate.
	<i>Rights against abuse</i>	<ul style="list-style-type: none"> • S12(1): Rights against violence, torture and cruelty from public and private sources; (2): Right to bodily and psychological integrity, including rights: (a) to make decisions concerning reproduction; and (b) to security in and control over one's body.
	<i>Property rights</i>	<ul style="list-style-type: none"> • s 25: No arbitrary deprivation of property
	<i>Citizenship</i>	<ul style="list-style-type: none"> • s 20: No citizen may be deprived of citizenship.
	<i>Other rights</i>	<ul style="list-style-type: none"> • s 26, 27, 29: Right to housing, healthcare services (including reproductive healthcare) food, water, welfare and education • s 34: Access to courts
	<i>Interpretation of rights</i>	<ul style="list-style-type: none"> • Section 39: When interpreting the Bill of Rights, the Court (a) must promote the values of human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law
Structural Protections	<i>Government representation</i> ¹⁴⁵	<ul style="list-style-type: none"> • Section 46: The National Assembly electoral system should result in proportional representation.
	<i>Relationship with customary law</i>	<ul style="list-style-type: none"> • Section 211(3): The courts must apply customary law when that law is applicable, subject to the Constitution.
	<i>International</i>	<ul style="list-style-type: none"> • S231(4): Ratified laws only become domestic law when

¹⁴⁴ South African Constitution, Chapter I: Founding Provisions

¹⁴⁵ South African Constitution, Chapter IV

	<i>law</i>	<p>enacted by Parliament, but self executing treaties become law unless inconsistent with a domestic law</p> <ul style="list-style-type: none"> • S232: Customary international law automatically becomes law unless inconsistent with a domestic law
Human Rights Bodies	<ul style="list-style-type: none"> • Human Rights Commission • Commission for Gender Equality • The Public Protector <p><i>Regulation</i></p> <ul style="list-style-type: none"> • Section 193: Commissions should reflect broadly the race and gender composition of South Africa. 	

ANNEX VI Provisions in the Malaysian constitution relevant to women

<i>Relationship with Islam</i>	<ul style="list-style-type: none"> • Art 1: Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation. • Art 74: Parliament may make laws with respect to the ‘ascertainment of Islamic law and other personal laws’
<i>Equality clause</i>	<ul style="list-style-type: none"> • Art 8 (1): all persons are equal before the law • Art 8(2): no discrimination against citizens on the ground of... gender... in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
<i>Property rights</i>	<ul style="list-style-type: none"> • Art 13: no person may be deprived of property without adequate compensation under a valid law
<i>Other rights</i>	<ul style="list-style-type: none"> • Art 11: Freedom of religion

ANNEX VII Other Muslim majority countries considered for inclusion in this Guide

The below table illustrates countries that had been considered for inclusion in this Guide but were excluded for the reasons listed below. The primary reason is that there has been no practical implementation of the country's gender equality framework, the constitution is only in draft form or the constitution provided for the separation of Church and State.

Country	Reason for Exclusion
<i>Afghanistan</i>	The constitution of Afghanistan prohibits discrimination on the basis of gender and provides for equality before the law. It also reserves 25% of the seats in the House of Representatives and 17% of the Senate for women. Despite these developments, enforcement of human rights is rare and opposition by traditionalist members of Parliament has allowed discriminatory Bills to pass into law, while blocking attempts to protect women. ¹⁴⁶ In addition, the constitution provides that courts may revert to the Hanafi school of Sharia law wherever the constitution is silent. A school of thought used by the Taliban to dramatically limit the freedoms of women and children. ¹⁴⁷
<i>Egypt</i>	At present, Egypt's constitution is only in its draft stages. The most recent draft contained no provisions safeguarding the equality of women, referring to them only as 'mothers' and 'caregivers'. No women were involved in the drafting process. ¹⁴⁸
<i>Indonesia</i>	The guarantees to gender equality in Indonesia's constitution are not enforced in practice. For example, Indonesian law provides that the husband must be the head of the household and allows for early marriages. Criminal Sharia law is practiced in Aceh, including the caning and stoning of women. ¹⁴⁹
<i>Iraq</i>	While Iraq's constitution arguably marked a transition to democracy, most women within the country report that their freedoms have become more

¹⁴⁶ Eg, the passing of a law legalising marital rape in 2009: Boone, J., 'Worse than the Taliban' - new law rolls back rights for women', *The Guardian*, 31 May 2009, <http://www.theguardian.com/world/2009/mar/31/hamid-karzai-afghanistan-law> (accessed 7 August 2013); the passing of a law removing the quota system for provincial governments in 2013: M. Arghandiwal, and A. Ibrahim, 'Afghan Women lose political power as fears grow for the future', *Reuters*, June 17 2013; and the blocking of a violence against women Bill in 2013: Sethna, R., 'Afghan women's rights under threat', *The Guardian*, 20 June 2013, <http://www.theguardian.com/global-development/2013/jun/20/afghan-womens-rights-under-threat>, (accessed 7 August 2013).

¹⁴⁷ Constitution of Afghanistan Art 130; Travis, H., 'Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq', *Northwestern Journal of International Human Rights*, vol. 3, no. 1, 2005, p 6

¹⁴⁸ Alami, M., 'Egypt Constitution will be bad news for women, activists say', *USA Today*, Jan 13 2013, <http://www.usatoday.com/story/news/world/2013/01/11/egypt-constitution-women-rights/1784135/> (accessed 7 August 2013).

¹⁴⁹ CEDAW, 'Stronger legislative, policy frameworks have lead to progress in promoting, protecting Indonesian women's rights, anti-discrimination committee told', General Assembly WOM 19/14, 11 July 2012, <http://www.un.org/News/Press/docs/2012/wom1914.doc.htm>, (accessed 3 September 2013)

	curtailed than they were before the previous regime. No women were involved in the constitutional drafting process. ¹⁵⁰
<i>Kyrgyzstan</i>	LAW originally planned to include Kyrgyzstan in the report on the basis of its Muslim majority population and significant advances in the field of women's rights. However, the Kyrgyz constitution provides for the separation of religion and State, giving Islam a subordinate position in comparison to the status it enjoys in Somalia.
<i>Pakistan</i>	The Pakistani constitution prohibits discrimination on the basis of sex. In practice, however, Pakistan's record in terms of enforcing women's rights is extremely poor. In 2012, the Global Gender Gap Index rated Pakistan 134th out of 135 countries. ¹⁵¹
<i>Tunisia</i>	Tunisia's constitution is currently in draft form. Debates between the Islamist government and secular opposition are far from settled. It is unclear whether the constitution will provide for a secular or Sharia-based legal system and whether it will protect gender equality in its final draft. ¹⁵²
<i>Turkey</i>	References towards Islam in the Turkish Constitution were removed in 1928. ¹⁵³ Today, Article 2 of the Constitution states that Turkey is a secular state. ¹⁵⁴

¹⁵⁰ Above n 152 (Travis), p 26- 28

¹⁵¹ World Economic Forum 2012, pp 10- 11

¹⁵² Deutsche Welle, 'Tunisia's long, difficult path to a new constitution', <http://www.dw.de/tunisia-long-difficult-path-to-a-new-constitution/a-16835667>, (accessed 7 August 2013).

¹⁵³ BBC News, 'Turkey Profile', <http://www.bbc.co.uk/news/world-europe-17994865>, (accessed 22 October 2013).

¹⁵⁴ Constitution of the Republic of Turkey, Article 2.

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