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**A Quota for Women  
in Local Government in Sri Lanka:  
Questions of Equality, Modernity and Political Leverage**

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INTERNATIONAL  
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**International Centre for Ethnic Studies**

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## **Acronyms and Abbreviations**

Proportional Representation	PR
First Past the Post	FPTP
United People's Freedom Alliance	UPFA
Sri Lanka Muslim Congress	SLMC
Democratic National Alliance	DNA
Janatha Vimukthi Peramuna	JVP
Muslim Personal Law	MPL
Muslim Women's Research and Action Forum	MWRAF
National Committee on Women	NCW
Parliamentary Select Committee on Electoral Reform	PSCER
Sri Lanka Federation of University Women	SLFUW
Sri Lanka Freedom Party	SLFP
Tamil National Alliance	TNA
United National Party	UNP
Women and Media Collective	WMC

## **ICES Working Papers:**

1. Kodikara, Chulani. "Only Until the Rice Is Cooked?: The Domestic Violence Act, Familial Ideology and Cultural Narratives in Sri Lanka," ICES Working Paper 1, May 2012.
2. Chaaminda, Sumith. "Fishing in Turbulent Waters," ICES Working Paper 2, August 2012.
3. Kodikara, Chulani. "Women in Local Government from 2006 to 2011: A Comparative Analysis of Representation of Women and Nominations for Women," ICES Working Paper 3, August 2012.
4. Ismail, Qadri. "On (not) Knowing One's Place: A Critique of Cultural Relativism," ICES Working Paper 4, August 2013.

# **A Quota for Women in Local Government in Sri Lanka: Questions of Equality, Modernity and Political Leverage<sup>1</sup>**

## **Introduction**

Women's representation in elected political bodies in Sri Lanka, at the levels of local and provincial councils as well as in parliament, is among the lowest in the world. The Sri Lankan case is illustrative of how strong social development indicators for women in areas such as health or education do not necessarily translate into increased political representation. Yet the government, most political parties and the judiciary have resisted introducing affirmative action to enhance women's representation in elected political bodies. This is despite the fact that such measures are now commonplace, with over 100 countries employing quotas or reservations as a means of addressing gender imbalances in political representation. This paper maps and attempts to explain this resistance, especially towards the institution of mandatory legal quotas for women in political party candidate lists for local government bodies.

While at the heart of the global debate on quotas for women in political institutions are competing notions of equality, a close study of their diffusion reveals that they are often leveraged by a range of socio-political and economic factors. Drawing from this comparative literature, I make two key arguments in this paper. Firstly, that the resistance to a legally mandated quota for women in politics in Sri Lanka is rooted in a lack of commitment to substantive equality and the entrenchment of a model of formal equality which constructs difference, citizenship and belonging in ways that naturalize and render invisible a range of exclusions, including women's under-representation in elected political bodies. Secondly, I also argue that this resistance can be attributed to the absence of certain factors that can put pressure on the state to conform to what appears to be an emergent global trend. Particularly salient in Sri Lanka is the absence of three of the most common factors that have driven the spread of affirmative action for women in politics, namely, the state's desire to project modernity through higher levels of women's political representation, a domestic women's movement with sufficient political traction to influence the state and political society in this regard, and susceptibility to international pressure during a transition from war to peace that can precipitate a change in the political architecture which expands women's political representation.

This paper builds on insights from conversations with fellow activists, political leaders and public officials over the years. I also draw on party manifestos and political speeches to examine the discursive construction of women and their social roles by political leaders. The paper is structured as follows: I begin by looking at the history of the demand for a quota for women in local government in Sri Lanka, followed by an exploration of the

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<sup>1</sup> I would like to thank Prof. Jayadeva Uyangoda, Prof. Susan Williams, Dr. Mario Gomez, Mirak Raheem and Vijay Nagaraj for detailed comments on earlier drafts, which helped substantially improve this paper.

normative underpinnings of this demand in Part II. Parts III and IV trace the response of the UPFA government which has been in power since 2005 and the judiciary, respectively, to this demand. In part V, I locate the resistance to instituting a quota for women in Sri Lanka within the context of its postcolonial transformation into a Sinhala-Buddhist state with institutionalised identity-based discrimination and a lack of commitment to enshrine substantive equality in law. Part VI considers political factors beyond a commitment to substantive equality that have played a critical role in the diffusion of quotas for women elsewhere and their absence in the Sri Lankan context. I conclude with a discussion of the strategies and options available to the women's movement to increase women's representation in local government by means of a legally enforceable quota or otherwise.

While the paper is preoccupied with the state response to the demand for affirmative action for women in local government focusing particularly on the period 2005 to 2012, it also seeks to shed light on the manner in which the postcolonial Sri Lankan state has responded to claims for equality by diverse groups and the extent to which it has legally recognised or mis-recognised social and gender identities.

### **A History of the Demand for Affirmative Action for Women in Local Government in Sri Lanka**

In October 2012, the government of Sri Lanka had an opportunity to take a significant step towards enhancing the representation of women in local government bodies when it enacted the Local Authorities Elections (Amendment) Act. The primary goal of the Act was to replace the proportional representation (PR) system of elections with a hybrid system that combined PR with a first-past-the-post system (FPTP). However, the amendment also abolished the 40% mandatory quota for youth introduced in 1990 and instead provided that “25 percentum of the total number of candidates and additional persons whose names appear in each nomination paper ... may consist of women and youth” (Section 22(4)(2B) of the Local Authorities Elections (Amendment) Act).

Ironically, Section 22(4)(2B) was intended as a response to a long-standing demand by women's organizations in Sri Lanka for a mandatory quota of 33% women in party nomination lists at the local government level. This demand was made in the context of the extremely low level of representation of women in local government – about 2% – and the low number of nominations given to women by the major political parties – about 3-7% of those nominated. While an earlier version of this Act tabled in parliament in 2008 made no mention of a quota for women or youth, this provision falls far short of what is needed to increase women's representation at the local level, firstly, because the quota is a combined quota for women and youth, and secondly, being only a discretionary rather than a mandatory quota, political parties have no obligation to follow it. In comparison to quota provisions for women elsewhere in the world, including South Asia, it is one of the weakest.

Women in Sri Lanka gained the right to vote in 1931, 17 years before independence. In the post-independence period, Sri Lankan women made rapid progress in relation to health,

education and employment, and their human development indicators are still considered a model for South Asia. However, as in other countries where positive socioeconomic indicators have not automatically translated into political empowerment, women's representation in elected political bodies has remained abysmally low. In parliament, the percentage of women has stagnated between 1.9% and 6.5%. In provincial councils, which were established as a second tier of government in 1988, women's representation has never exceeded 6.0%. In local government the statistics are even more dismal with women's representation hovering between 1.0% and 2.0% (Kodikara 2009).

Major socio-political upheavals, including a civil war that lasted 30 years, a shift to neoliberal economic policies in 1977 and an electoral system based on PR in 1988 have had no significant impact on the levels of representation of women in elected political bodies. While there are a number of reasons for this, political parties have been identified (by women's organizations) as one of the biggest obstacles to advancing women's representation. Their lack of internal democracy, the absence of women in the higher echelons of party decision-making, the lack of support for women candidates and entrenched networks of patronage stretching from the national to local levels are among the major barriers to increasing women's representation. While most political parties in Sri Lanka have a women's wing and substantial numbers of women members, these wings do not function to increase women's representation. They are not autonomous and exist mainly to mobilize the female constituency in support of male candidates during elections. In periods between elections, women's wings engage in the provision of welfare services and income generation services for their members. For women who are genuinely interested in politics, membership in women's wings does not pave the way to mainstream politics and political leadership (Kodikara 2008). Nomination statistics speak for themselves. While the number of women candidates running for election has increased by leaps and bounds since the introduction of PR, a closer look at these numbers reveals that this is due to fringe parties and independent groups, which seldom win, filling their lists with women. Major political parties with stronger electoral fortunes continue to fail to nominate women in any significant number. As a result, the overall increase in nominations has not translated into electoral gains for women. A study conducted by the International Centre for Ethnic Studies (ICES) in five districts across the country revealed that the percentage of nominations granted to women by the major parties and their coalitions at the 2006 and 2011 local government elections ranged from a low of 3.4% (the ruling UPFA) to a high of 16.5% (the TNA) (Kodikara 2012).<sup>2</sup>

It is in this context that the demand for affirmative action for women in local government emerged in the late-1990s, clearly influenced by the global discourse on enhancing women's representation. Local government institutions became the focus of this demand based on pragmatic considerations. It is the elected political body that is closest to and most convenient for women to participate in; moreover, women activists also considered

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<sup>2</sup> Official national-level statistics for nominations are not available. These statistics are from a study of nominations lists of the United People's Freedom Alliance (UPFA) led by the Sri Lanka Freedom Party (SLFP), the United National Party (UNP), the Janatha Vimukthi Peramuna (JVP) and the Tamil National Alliance (TNA) conducted in the five districts of Badulla, Galle, Kurunegala, Moneragala and Trincomalee.

that it would be nearly impossible to obtain a quota for women at other levels, although a demand for a quota for women in the national list to parliament has been sporadically made prior to parliamentary elections.<sup>3</sup>

In the mid-1990s, when constitutional reform was again part of the government agenda for resolving the ethnic conflict, quotas for women first emerged as a subject of a constitutional amendment. In fact, the draft constitution of 1997 made provision to reserve 25% of all nominations for women at local government,<sup>4</sup> for women without a great deal of advocacy by women's organizations. But this very quickly came up against opposition from various constituent political parties of the government itself. When this draft was taken up for debate in August 2000, it was dropped mainly due to objections from leaders of the Sri Lanka Muslim Congress (SLMC) that they would not be able to find the required number of women candidates (Jayawardena and Kodikara 2003; Gomez and Gomez 2001). The 2000 draft constitution eventually only made reference to "adequate representation of women, as far as practicable."

As the prospect of constitutional reform gradually melted away in the late-1990s, women's organizations began to focus their energies on a) securing legal reforms instituting a mandatory quota, and b) getting political parties to voluntarily adopt quotas for women. At the outset, the demand was for a 33% quota in nomination lists. However, in the course of extensive discussion and debate about the quota issue in the late-1990s to early 2000, women's organizations recognized that a percentage for women in the nomination list would not ensure that 33% of women would be elected in a system of elections based on proportional representation and preferential voting. The discussions therefore, also focussed on amendments to the electoral system that went beyond mere inclusion of a quota, particularly on the need to abolish the system of preferential voting in favour of closed lists where women are placed in winnable positions.<sup>5</sup> However, with the appointment of the Parliamentary Select Committee on Electoral Reform (PSCER) in 2003, women's organizations engaged even less with the broader issue of electoral reform, given that it became a highly politicized discussion between the major and minor political parties in parliament.

From 2003, the PSCER became the primary target of advocacy by women's organizations demanding quotas. When the Committee called for representations from the public, several women's organisations made written submissions with a series of recommendations

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<sup>3</sup> A national list Member of Parliament is an unelected member who is appointed by a political party or an independent group. The number of national list MPs allocated to a contending party or independent group depends on the proportion of their share of the national vote. A total of 29 national list MPs are appointed alongside 196 elected MPs (elected from 22 multimember electoral districts), making a total of 225 members in the Sri Lankan parliament.

<sup>4</sup> See para. 42 of the Regional List of the Constitution.

<sup>5</sup> The percentage of women elected through a quota system ultimately depends on a number of factors including the size of the quota, whether it is mandatory or not, and whether it is an open or closed list PR system. In a closed list PR system, voters simply choose the party they prefer and the party determines the rank order of candidates. This means that parties can include some candidates in winnable positions (perhaps members of minority ethnic and linguistic groups, or women) who might have difficulty getting elected otherwise. In an open list PR system candidates are elected entirely according to voter preferences and it is therefore not possible to guarantee that a percentage of women are elected (Matland 2005).

that sought to address the problem of women in politics. Some of these organizations also gave oral evidence before the Committee (Kodikara 2009).<sup>6</sup>

The PSCER'S response to this demand was, however, lukewarm, and in its recommendations it placed the responsibility of increasing nominations for women on political parties. It did not lay down any provisions or directions about how nominations and representation of women may be increased at each level of government excepting in the case of the national list.<sup>7</sup> In the case of the national list, it recommended that every third candidate nominated by the party secretary should be a woman.<sup>8</sup> Following this report, the Ministry of Local Government and Provincial Councils drafted two bills, i.e., The Local Authorities (Special Provisions) Bill to amend the Municipal Councils Ordinance, the Urban Councils Ordinance and Pradeshiya Sabhas Act No. 15 of 1987, and the Local Authorities Elections (Amendment) Bill. There was no mention of a quota for women in either.

The two bills were, however, subsequently challenged in the Supreme Court by the SLMC and had to be shelved until approval was received from all Provincial Councils. Following this process, they were again gazetted on 4 October 2010 and tabled in parliament on 21 October 2010. Although in a second incarnation of the bill Article 22(4)(2B), which provides for a combined discretionary quota for women and youth, was included mainly due to intense pressure brought by women's organizations as well as some women parliamentarians and provincial councillors. However, women's organizations were not satisfied with its formulation as a discretionary provision. A number of women's organizations therefore, challenged the bill in the Supreme Court. The Supreme Court in a decision given in November 2010 upheld all the provisions of this bill as constitutionally valid, paving the way for its adoption by parliament.<sup>9</sup>

### **The Case for a Quota for Women**

The core idea behind quotas and reservations is to redress the historical imbalance in the numbers of women in political institutions. While they may be justified on grounds of deliberative democracy or simply the symbolic value of acknowledging and addressing underrepresentation arising from a history of marginalization and discrimination, feminists who support and advocate for quotas see them primarily as representing a shift from a formal to a substantial conception of equality (Kapur and Cossman 1996; Menon 2000; Williams 2009, 2012). The formal model of equality, which remains dominant around the

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<sup>6</sup> This included written submissions made by the Mothers and Daughters of Lanka (a network of over 50 women's organizations) and the International Centre for Ethnic Studies together with Women and Media Collective (WMC), Muslim Women's Research and Action Forum (MWRAP) and Sri Lanka Federation of University Women (SLFUW).

<sup>7</sup> In its recommendations dated 5 June 2007, the Committee states: (i) Political parties should include provisions in their policies to ensure nominations of women candidates in order to guarantee better representation of women in Parliament, Provincial Councils and Local Government bodies, and (ii) Necessary legal provisions be formulated to make it mandatory that every third candidate nominated by a party secretary from the national list shall be a woman candidate.

<sup>8</sup> A legal 1/3 reservation in the national list would, however, not serve its purpose, unless it is also made mandatory that the party adhere to a closed national list submitted prior to the elections. Currently, political parties are not bound by the list submitted when appointing national list MPs.

<sup>9</sup> SC Special Determination No. 2-11 of 2010.

world, aims to achieve fairness by treating all individuals in the same way. Expressed in the formulation ‘all person are equal before the law and have equal protection of the law,’ this model of equality ignores attributes of sex, race, culture, class, etc., in formulating laws and policies. In terms of gender, this means that there are no special rules in favour of women in any sphere of life (Williams 2012: 835). As Williams further points out, while formal equality can be a big improvement over traditional rules that often treat women much worse than men, sometimes it is simply not enough. If women have been systematically disadvantaged due to certain social, economic or cultural background conditions or discriminated against in a particular way, then treating them the same as men will end up keeping them unequal (Williams 2012; see also Childs 2008; Bird 2003). Nancy Fraser elaborates on this question of structural discrimination or disadvantage:

Modern societies have institutionalized a status hierarchy between men and women in which there are clausal norms that value traits associated with “men” or “masculinity” above traits associated with “women” or “femininity”. And because these norms are not just in people’s heads but actually institutionalized in social arrangements, the result is that women are impeded or blocked from full participation on the same terms with men. For example, women cannot today participate in the labour market on the same terms with men because of care work responsibility: whether it’s child care or older care or other forms of household responsibilities. That is a result of a norm – that this is somehow feminine, that it is women’s work that would emasculate a man to do. ... But you could also say – and this is interconnected – that women are also blocked from full participation by lack of resources. We know that the poverty rate is higher for women than for men in almost all societies, largely because when men work, it is the woman who has to raise and support children. So we have what we call “female headed family”, meaning a woman who is paid less than men and has to support children and so on. That is an issue of distribution not recognition. But they are connected. Together, these forms of distributive inequality and this force of misrecognition or status hierarchy work to make women's full equal participation difficult or impossible. (Fraser 2008)

This is why a substantive model of equality is necessary. The substantive model looks not at whether the law is treating everyone in the same way, but whether the law is causing an increase or decrease in equality as a practical matter. Underlying the feminist demand for quotas for women in political institutions is, therefore, the conviction that women’s underrepresentation in political institutions, almost an universal phenomenon, is neither natural nor just, but a result of structural discrimination that can only be remedied by “an exogenous shock” such as quotas (Baldez 2006).<sup>10</sup> Thus in a substantive model of equality,

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<sup>10</sup> The exception is the Nordic countries, where representation of women in elected political bodies saw a gradual increase from the 1970s aided by a number of structural changes in these countries, such as secularization, the emergence of strong social-democratic parties, expansion of the welfare state, an educational boom, women’s entrance into the labour market in large numbers and changes in the electoral system. Strategic factors, especially the various strategies employed by women’s organizations in the Nordic states in order to raise women’s political representation, were also important. Political party quotas for women came in the 1980s when representation of women in elected political bodies had already reached a certain percentage, and even then not all Nordic political parties used quotas. Those that did were the parties in the centre and on the left. Furthermore, Danish parties that introduced quotas abolished the system after only a few years. The Swedish principle of ‘every second a woman’ is not even considered a quota system by the general public, even if it is in fact a radical one, demanding and, in many cases, leading to 50% of each sex (Dahlerup 2003).

quotas are seen as fulfilling the demands of equality rather than creating an exception to it (Williams 2009: 58).

In Sri Lanka, women's rights activists have most often tended to rely on the slogan of 'underrepresentation of women' in making the demand for affirmative action, highlighting the obstacles to women's political participation as well as quota initiatives in South Asia, rather than making explicit the normative principles underlying this demand. Yet two documents authored by women's organizations submitted to the PSECR make it clear that the principle of substantive equality is very much at the heart of the demand made by these organizations.<sup>11</sup> To quote one, signed collectively by the ICES, WMC, MWRAF and SLFUW:

The core idea behind quotas is to ensure that women are not isolated in political life and to shift the burden of recruitment from individual women to those who control the system of recruitment. ... Those who support quotas see it primarily as a shift from one concept of equality to another, i.e., from the concept of formal equality to substantial equality. The classical liberal notion of equality removing formal barriers, for example giving women the right to vote and be elected to political office, is considered sufficient to ensure equality for women, whereas under a substantive model of equality 'real equal opportunity' is not achieved through removal of formal barriers. ... equality of opportunity and resources require, at times, that individuals or groups be treated unequally, especially when they are disadvantaged due to conditions/circumstances beyond their control, i.e., in a situation of direct discrimination as well as a complex pattern of hidden barriers which minimize and most often prevent women from influencing the political decision-making process.<sup>12</sup>

### **The Response of the Current UPFA Government**

What has been the response to this demand by the current regime that has been in power since 2005? The UPFA's response to this demand has shifted over the years from recognizing the need for quotas to refuting them. In a development that was initially considered to be significant by women's organizations, both major political parties, the UNP and SLFP, rhetorically recognized the need to implement a quota for women in local government. The UNP was the first to include a promise to implement a quota in its Women's Manifesto prior to the December 2001 parliamentary elections. The manifesto clearly articulated a commitment to increase women's representation at local government level within five years, through a 25% reservation in nomination lists. However, as the UNP regime was ousted in 2004, this promise could not be tested. By 2005, Mahinda Chinthana, the election manifesto of the SLFP presidential candidate Mahinda Rajapaksa, under the section titled *Diriya Kantha* Programme promised "to increase the number of nominations of women to a minimum of 25 percent of the total number of candidates in respect of provincial councils and local government authorities". Although he and the UPFA (led by his party) have been in power since 2005, no effort has been made to

<sup>11</sup> See submission to the Parliamentary Select Committee made by ICES, WMC, MWRAF and SLFUW, 13 October 2003; submission made by the Mothers and Daughters of Lanka, 19 September 2006. Both documents are reproduced in Kodikara (2009).

<sup>12</sup> Submission to the Parliamentary Select Committee made by ICES, WMC, MWRAF and SLFUW, in Kodikara (2009).

implement this promise. Instead, by the 2010 presidential elections, a considerably watered-down and vague version of this commitment was included in the 2010 manifesto,<sup>13</sup> which has since been adopted as the country's development policy framework. According to the framework, women's participation in *decision making* is mandatory. However, it has to be assumed that decision making here refers to elected political bodies, since the sentence that follows refers to nominations, but how such participation is to be made mandatory remains unclear. The paragraph merely states that "women at grassroots will be *encouraged* to organize and act as catalysts in community development" and "participation ... in decision making will be *promoted* by ensuring female nominations to contest elections."<sup>14</sup>

In fact, parallel to the developments taking place at the party level, the UPFA government began to question the need for a quota for women even at the level of local government on the ground that Sri Lankan women enjoy equal status with men, and therefore, it would be an insult to propose any form of positive discrimination in their favour.

The government, drawing on Sinhala-Buddhist nationalist discourse, has argued that Buddhism liberated women long before the colonial encounter and the advent of the modern nation state.<sup>15</sup> Moreover, the strong human development indicators of women, especially statistics pertaining to life expectancy, levels of literacy, sex-ratio, school enrolment and maternal health, coupled with Sri Lanka's history of having had two women at the helm of government, are presented as evidence that the rights granted to women by Buddhism have been sustained by the postcolonial welfare state. Consider the following narratives on the status of women in Sri Lanka rendered at domestic and international forums. Mahinda Rajapaksa, as prime minister, had this to say at the 62<sup>nd</sup> session of the UN General Assembly in New York:

Sri Lanka was one of the first developing countries to promote universal health and education, gender equality and social mobilization. We have been able to achieve exceptional socio-economic indicators – way ahead of those normally expected of a country in the lower-middle income range – and are on the way to achieving or surpassing many of the Millennium Development Goals.

Despite 25 years of brutal terrorism, we have been able to continue with this social development. ... Women in pre-colonial Sri Lanka enjoyed rights that are prescribed under the Convention on the Elimination of All Forms of Discrimination against Women – including rights of property ownership and inheritance rights. It was certainly no accident that Sri Lanka produced the first democratically elected woman Prime Minister in the world in 1960.<sup>16</sup>

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<sup>13</sup> <http://www.treasury.gov.lk/publications/mahindaChintanaVision-2010full-eng.pdf>.

<sup>14</sup> *Sri Lanka: The Emerging Wonder of Asia, Mahinda Chintana: Vision for Future*, The Development Policy Framework, Department of National Planning, Ministry of Finance and Planning, 2010.

<sup>15</sup> These proclamations of equality exist side by side with exhortations about the ideal woman in Sinhala-Buddhist culture and the proper code of conduct, dress and behaviour of such a woman, which privilege chastity, obedience, docility, piety and commitment to nurturing and servicing roles within and outside the home (Jayawardena 1992).

<sup>16</sup> Address by Mr. Mahinda Rajapaksa, president of the Democratic Socialist Republic of Sri Lanka, at the UN General Assembly, 62<sup>nd</sup> Session, 25 September 2007, [http://www.undemocracy.com/generalassembly\\_62/meeting\\_5](http://www.undemocracy.com/generalassembly_62/meeting_5), viewed on 6 February 2012.

At the SLFP Women's Congress held on 7 March 2011, he further claimed that "as Sri Lankan women are far ahead of men they don't need to ask for equality or higher percentages ... as soon as we get home they take control over us" (*Hamawitama onun inne idiriyen, gedara giya gaman ape palanaya athata ganne kauda?*).

Or women themselves, their timidity and lack of interest are blamed for their underrepresentation in local government. Tissa Karaliyadda, the minister of Child Development and Women's Affairs, in an interview with the *Sunday Times* in 2010 is on record saying, "it is only now Sri Lanka's rural women are emerging from the shadow of men. We want women who are politically and socially aware to join politics but I have found that they are reluctant to do so."<sup>17</sup> The prime minister at the government's International Women's Day celebrations in 2011 stated:

I cannot accept the claim that women in Sri Lanka suffer discrimination. The general belief is that most women are obstructed from entering politics but there is no legal obstruction as far as I know ... Rural women are still shy to come forward (*Gramiya kanthawa ediriyata emata lajjasbeelithwayak dakweema*).

Even Left political parties within the ruling alliance, with a history of mobilizing young men and women, are now apt to express this view. Vijitha Herath, the general secretary of the Democratic National Alliance (DNA – breakaway from the JVP) in conversation with me stated that while there are young dynamic capable women in the party, they are unable to do politics following marriage because of the workload at home, traditional norms, personal problems and financial constraints. He went on to state, "We have a practical problem. Not an attitudinal problem. We are unable to find women." According to him, to solve this problem what is needed is not affirmative action, but a "social revolution."

Maithreepala Sirisena the general secretary of the UPFA, expressing his views on the popular TV talk show "Sammuthiya" on the issue of women in political decision making, stated that a candidate's gender is not relevant to a discussion about nominations and that "political parties are not interested in gender equality, but in who can win elections." According to him there are no winning horses among women:

Just because we implement a quota for women, this problem will not be solved. That is very clear. ... If we nominated 94% of women and 6% of men, what will be the result? As the general secretary of a political party, I have sat innumerable times at interview boards to select candidates. That is why I am saying, when we select candidates, whether the candidate is a man or a woman is not the question. Whether you are a man or woman victory is an issue for both. I firmly believe that at elections candidates must have the qualities necessary to win elections.

The problem is not that not enough women are getting nominations. If that is the problem, then all the women we give nominations should be winning elections. But

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<sup>17</sup> "Time to Step out? Is Affirmative Action the Only Way Forward for Women Looking to Play a Bigger Role in Politics Here?" *Sunday Times*, 3 October 2010.

that is not the case at present. Say we give 100 women nominations, how many can win? If you give 25% to women can all the women win? Today most people who apply for nominations, they have not built their profile within their communities as politicians. If you think of this as a social problem, yes then we all have the responsibility to address that problem. We are not against a quota, but a quota will not resolve this problem.

This same discourse is reflected in official policy documents. Sri Lanka's 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> combined report to CEDAW, submitted in 2010, states “[w]omen continue to enjoy rights equal with men in political and public life. However, the number of women participating in active leadership roles in the political arena continues to be minimal. Although a larger number of women have assumed supportive roles, the number of women standing for election, and being elected to national, provincial and local government bodies indicates *reluctance on the part of women to engage in active political work*” (emphasis added).<sup>18</sup> The report goes on to state that although an attempt has been made to reserve a mandatory quota in the nomination list exclusively for women, and political parties have been advised to consider this principle, *the environment has certainly not been conducive to creation of a sense of confidence amongst women that it is an area that they could engage in*.<sup>19</sup> In information the government provided to the Committee in a follow-up submission, it continues to hold Sri Lankan women responsible for their underrepresentation in political institutions while attempting to sidestep the responsibility of the state and political party structures to address such underrepresentation through affirmative action and other strategies.<sup>20</sup> It is of course exactly this kind of reasoning that the idea of substantive equality and affirmative action for women in political bodies seeks to challenge and address (Matland 2005).

### **Judicial Attitude towards the Women's Quota**

The Supreme Court – the highest court of the land – was presented with an opportunity to deliver its view on a mandatory quota for women in local government and the broader question of substantive equality, when the Local Authorities Election Amendment Bill was challenged by women's organizations in October 2012. The women's organizations in their petition (supported by nine other petitioners who were challenging other provisions of the bill) argued that section 22(4)(2B) should be made mandatory on the basis of the following constitutional provisions, policy commitments as well as international conventions and norms:

- (a) Art. 12(1), 12(2) of the constitution, which guarantees equality, read together with Art. 12(4) that allow for special provision to be made by law for the advancement of women;

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<sup>18</sup> Sri Lanka's 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> period report submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/LKA/5-7, 9.

<sup>19</sup> Sri Lanka's 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> period report submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/LKA/5-7, 9.

<sup>20</sup> CEDAW/C/LKA/C/7/Add.1. Information provided by Sri Lanka in follow-up to the Concluding Observations, 23 September 2013.

- (b) Art. 27(2)(a) of the Directive Principles of State Policy of the constitution, which enjoins the state to establish a democratic socialist society and the full realization of the fundamental rights and freedoms of all persons, including equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation;
- (c) Sec 2(1)(b) of the Women's Charter adopted by Cabinet in 1993, which specifically recognizes that the state shall take all appropriate measure to eliminate discrimination against women in the public and private sectors, in the political and public life of the country and ensure to women, on equal terms with men, the right to equitable representation in the nomination process at the national, provincial and local government elections;
- (d) Sri Lanka's commitments under the Beijing Platform for Action as well as CEDAW, which imposes a positive duty on the state to take affirmative action to redress underrepresentation of women in elected political bodies.

The Supreme Court in a decision given in November 2010 rejected these arguments and upheld all the provisions of the Local Authorities Elections Bill including Art. 22(4)(2B) as constitutionally valid, paving the way for the adoption of the bill by parliament. The court held that while Art. 12(1) of the constitution read together with Art. 12(4) allows for special provision to be made for the advancement of women, children or disabled persons, the latter cannot be used as a weapon in order to depart from the basic principle laid down in Art. 12(1) of the constitution. The court stated:

Art. 12(4) of the constitution is not a weapon, but only a shield for the state in order to justify any kind of departure from the mainstream purely to encourage the advancement of women, children or disabled persons. Accordingly, Art. 12(4) cannot be used to authorize affirmative action on behalf of women, children and disabled persons.

Citing the earlier case of *Ramuppillai v. Festus Perera*<sup>21</sup> where the court held that any differentiation made on ethnic grounds per se would be abhorrent and violative of the fundamental right to equality, the court went on to state:

Paragraphs (2), (3) and (4) of Article 12 are essentially explanatory and declaratory of the principle of equality and do not add to or detract from that principle. Art. 12(4) in particular does not authorize affirmative action ... but out of an abundance of caution, declares that nothing in Art. 12 shall prevent affirmative action; apart from proved inequality, Art. 12(4) would not permit for example a quota of 60% being stipulated for women in any sphere.

The court also stated:

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<sup>21</sup> 1991, Sri Lanka Law Report 11.

In order to ensure equal treatment in elections, especially for the voter to choose the most suitable candidate, it would be essential to remove any unnecessary restrictions in order to have a meaningful exercise of franchise. Introduction of a restrictive quota would not be a meaningful step in the light ensuring such franchise and also would not be a step taken to guarantee the right to equal protection in terms of Art. 12 of the constitution.<sup>22</sup>

It could be argued that what the petitioners were demanding – to declare that a discretionary provision regarding political parties be made mandatory, and to separate women and youth as categories eligible for separate quotas – was beyond the constitutional mandate of the court. Nevertheless, the court appears to go further and rule that the provision does not even authorize voluntary positive action by the government if it chooses to do so. In its interpretation of Article 12(4), the court does not make a distinction between the existence of a positive right to affirmative action (which a litigant can enforce through the court) on the one hand, and a more limited interpretation that the section authorizes the state to institute affirmative action, if it chooses to do so. Article 12(4) is understood by the court as coming into play only in the case of “proved inequality.” This judgement underlines the court’s failure to understand the concept of substantive equality (Goonsekere 2012), a failure that has dogged the court since independence. It also illustrates the inability of the court to understand the concept of equality in all its permutations.<sup>23</sup>

In contrast, the Indian Supreme Court in similar circumstances and interpreting very similar provisions of the Indian constitution<sup>24</sup> has shown a willingness to embrace a model of substantive equality. It has relied on principles of international law and engaged in judicial activism, particularly when it comes to gender-based violence. In the case of *Vishaka v. Rajasthan*,<sup>25</sup> a class action filed by a group of social activists and NGOs in response to the gang rape of a social worker in Rajasthan, the court proceeded to draft a detailed sexual harassment code and impose a duty on employers, public and private, to prevent sexual harassment at the workplace and to provide a grievance procedure for employees. The court justified its decision on the ground that sexual violence is a recurring phenomenon and the legislature had failed in its duty to take appropriate action. In interpreting the fundamental rights contained in the Indian constitution, the court looked to international law, stating that “any international Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.” The court also pointed to key provisions of the CEDAW, and concluded that gender equality

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<sup>22</sup> SC Special Determination No. 2 – 11 of 2010.

<sup>23</sup> I am grateful to Prof. Susan Williams for pointing out this distinction.

<sup>24</sup> Art. 14 provides that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Art. 15(1) provides that the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Art. 15(3) authorizes the state to make special provision for women and children.

<sup>25</sup> A.I.R. 1997 S.C. 3011.

includes protection from sexual harassment and the right to work with dignity (Kaufman 2006: 610-11).

### **Ideas about Equality within the Sinhala-Buddhist Polity**

The idea of equality enshrined within the discourses of political parties and the Supreme Court decision discussed above is, of course, equality conceptualized in terms of sameness. It assumes men and women as abstract individuals with equal opportunity to participate in politics without recognizing histories of exclusion as well as structural barriers to accessing formal rights enshrined in law (Kapur and Cossman 1996).

Taking a cue from Krook, Lovenduski and Squires (2009) and Nivedita Menon (2000), I want to build up an argument that debates at the party level and the judiciary are framed or informed by values at the national level, and the resistance to quotas for women in local government in Sri Lanka should not be and cannot be understood only in terms of attitudes towards women. Rather it has to be located and addressed within the context of Sri Lanka's postcolonial transformation into a Sinhala-Buddhist state and its engagement with claims for equality particularly by its Tamil minority.

In the immediate pre- and post-independence era, ideas about equality among the Sinhala-Buddhist political elite were very much shaped by the view that "ethnic and religious minority groups, particularly Tamils and Christians were favourably treated by the colonial state; that they continued to enjoy undue privileges even after independence at the expense of legitimate rights of the Sinhalese and that this historical wrong needed to be corrected" (Uyangoda 2001: 95). Based on this narrative of a 'privileged minority' pitted against a 'besieged majority,' the two major Sinhalese political parties that emerged following independence, the SLFP and UNP which have dominated parliament in turns, sought to build a Sinhala-Buddhist state that privileged their own community and discriminated against the minorities. Tamil demands for equal representation and later some form of power-sharing as well as protection from discrimination were completely disregarded. The Sinhala Only Act of 1956 and the policy of standardization of university education between 1971 and 1977<sup>26</sup> blatantly discriminated against Tamils, affecting access to employment in the public and private sectors as well as the armed forces and police.<sup>27</sup>

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<sup>26</sup> Under this scheme merit was abandoned as the sole criteria for university admissions in favour of a system of standardization, when the government found that over 35% of Tamil students gained entrance to the faculties of science, engineering and medicine while the Tamil population constituted only 11.1%. The objective was to reduce the number of Tamil students who were eligible to gain admission to university and increase the number of Sinhalese students. Under this scheme, the number of students qualifying in each language became proportionate to the number sitting the examination in that medium, resulting in Tamil students having to obtain higher aggregate marks than their Sinhala counterparts to gain admission to the above faculties. Although the system was abandoned within a few years in favour of district quotas, the latter were also initially more beneficial to the Sinhalese, until Jaffna District became recognized as a disadvantaged district in 1993 (K M. de Silva 1997: 248-49).

<sup>27</sup> Muslims were not as affected by these policies as the Muslim leadership did not mind serving the cause of Sinhalese nationalism in return for certain privileges and protection of Muslim religious identity (Zackariya and Shanmugaratnam 1997).

Despite the potential of Art. 29(4) of the Soulbury Constitution to protect minority rights, in the immediate post- independence period, the Supreme Court failed to strike down patently discriminatory legislation.<sup>28</sup> H.L. de Silva later noted:

that the rather restrictive view taken (in these cases) as to the efficacy of section 29 as a safeguard of minority interest appears to have demoralised minority groups to such an extent that they were discouraged from carrying on any further agitation before any judicial forum for many years thereafter. Had those decisions gone the other way, the political history of modern Sri Lanka would in all probability have been quite different. (de Silva 1987: 87)

A new constitution adopted in 1972 conferred official status to Buddhism (the religion of the majority of the Sinhalese community) and declared Sri Lanka to be a unitary state, while dropping article 29(2) of the Soulbury Constitution that decreed that parliament could not enact any legislation that made persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religion were not made liable. Minority grievances arising from these provisions were seen simply as grievances arising from their loss of privilege in areas of education, employment, commerce and trade enjoyed in the past rather than as a result of discrimination.

The 1978 constitution, drafted in the backdrop of some Tamil militant groups taking to armed struggle, attempted to address some of the grievances of the Tamil-speaking minority. Tamil was recognized as one of the official languages of Sri Lanka, and discrimination on the basis of ethnicity among other grounds was made unconstitutional and justiciable in the highest court of the land. Yet provisions relating to the unitary character of the state and foremost place given to Buddhism remained and the constitution itself provided for a wide array of limitations on fundamental rights, including in the interest of national security, public order and the protection of public health or morality (Art. 15(7) of the 1978 constitution). The approach to equality then merely moved, out of

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<sup>28</sup> Three decisions in the post-independence period stand out in this regard. In one of the first cases to come before the Supreme Court of independent Ceylon, the Citizenship Act No. 18 of 1948 was challenged on the ground that it had the effect of denying citizenship to a large number of Tamil plantation workers of Indian Origin. The court upheld the law and held that although the Act had the effect of denying citizenship to Indian Tamil workers, its scope and effect should be ascertained from its actual words rather than its effect, and that the actual words did not in fact discriminate against plantation Tamils. In the second case, when the (Ceylon) Parliamentary Elections Amendment Act was challenged on the ground that it violated Art. 29 of the Soulbury Constitution by disenfranchising a large number of Indian Tamil plantation workers (franchise rights were denied on the basis of lack of citizenship rights), the Supreme Court again held that the legislation did not explicitly make persons of the Indian Tamil community subject to disabilities that other communities were not subject to. The court held that it would not be astute to attribute to parliament objects or motives that were beyond its powers. In the third case of *Attorney-General v. Kodeswaran*, the Supreme Court took an even more technical approach in considering the validity of a government circular issued under the Official Languages Act, which made Sinhala the sole official language while making it imperative for Tamil officers to acquire proficiency in Sinhala. When a government officer challenged the validity of the circular under Art. 29 of the Constitution, the District Court upheld the petitioner's contention, but the Supreme Court set aside the lower court judgement on the ground that the petitioner had no legal right that could be made the subject of a declaration. The major issues – the validity of the Official Language Act and the circular – were not addressed (Gomes 1991: 6). Art. 29(2) very specifically stipulated that no law shall: (a) prohibit or restrict the free exercise of any religion; or (b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or (c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; 29(3) provided that any law made in contravention of subsection (2) shall, to the extent of such contravention, be void.

necessity, from privileging the majority community to a formal approach to equality which failed to address the history of discrimination against minorities or recognise rights claims based on a collective minority identity (Wilson 1998: 34 -54). Even as the conflict escalated into full scale civil war, the state still failed to devolve greater political power to the Tamil dominated North and East of the country or introduce equal opportunity legislation<sup>29</sup> in the face of virulent resistance by Sinhala-Buddhist hardliners,<sup>30</sup> underscoring the stranglehold of majoritarian identity politics on debates concerning equality.

An attempt in 1990, at recognising and reversing past discrimination in the public service, by introducing quotas for the Tamil minority in recruitment and promotions, was also struck down by the Supreme Court,<sup>31</sup> largely on account of extremely poor drafting and an even poorer defence of it, reinforcing the lack of commitment on the part of the state to ensuring substantive equality (Coomaraswamy 1990; Gomez 1990).

This refusal to recognise difference however goes beyond ethnic identity. In a bizarre development, in 1995, the demand by human rights activists to repeal section 365A of the Penal Code, which criminalized homosexuality between men, resulted in the word ‘man’ in the section being replaced with the word ‘person’, thereby including women within the ambit of the law. Ironically, the constitutional provision on equality was invoked by the state to justify the amendment.<sup>32</sup> In addition to signaling an approach to recognition that is in effect violent and penal, it also epitomizes how the postcolonial Sri Lankan state wields equality as a weapon in the service of patriarchal ends.

Arguably the only concessions to group ‘disadvantage’ not based on an overtly ethnicized and essentialized notion of ‘difference’ that can be defended on a normative standard of substantive equality are district quotas for university admissions currently in place (which has its genesis in the policy of standardization) and the youth quota in local government that was in place from 1990 to 2012. In its current manifestation, district quotas for university admission apply to all courses other than arts and traditional medicine, under which admissions are made on a three-tier criteria of merit judged at the national and district levels. Accordingly 40% of the available places are filled in order of Z scores ranked on an all-island basis, and up to 55% of places are allocated to the 25 administrative

<sup>29</sup> An attempt to introduce equal opportunity legislation in 1999 was bitterly opposed and thwarted by Sinhala-Buddhist nationalist elements (among others) after the bill was drafted and presented in parliament. Within seven days of it being placed on the order paper of parliament, 42 petitions were filed in the Supreme Court challenging its constitutionality. Equal opportunity in education proved to be the contentious provision, with many protests stemming from a fear that the more prestigious government schools which give preference to Buddhist students could be held accountable for discrimination in admissions to these schools. The government gave into these Sinhala Buddhist pressures and withdrew the bill (Satkunanathan 1999).

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<sup>31</sup> Ramuppillai v. Festus Perera, 1991 1 Sri Lanka Law Report 11.

<sup>32</sup> “Celebrating Pride Sri Lanka, Equal Ground,” 9 July 2010, <http://groundviews.org/2010/07/09/celebrating-pride-in-sri-lanka/>.

districts in proportion to the total population of each district. The remaining 5% of places are allocated to educationally disadvantaged districts in proportion to the population of each such district, that is, on the ratio of the population of each such district to the total population of the number of disadvantaged districts; currently 16 districts are classified as underprivileged.<sup>33</sup>

The Supreme Court in upholding university quotas in *Seneviratne v. University Grants Commission* (1980),<sup>34</sup> held that having regard to national policy and national interest, the University Grants Commission was entitled to formulate a policy of admissions to universities, which was not based solely on merit, provided the criteria adopted for classification was not arbitrary and had a rational relation to the object intended. According to the court, the district-wise allocation withstood this test and did not violate the constitution. The court went on to say that “[i]t is a settled principle of construction of a legal document such as a Constitution that it must be considered as a whole and that the Directive Principles of State Policy contained in Chapter VI of the Constitution must be given due recognition ... as part and parcel of the Constitution. They are in the nature of an instrument of instructions which both the legislature and executive must respect and follow.” While this decision draws from a model of substantive equality, when it came to affirmative action for women the Supreme Court chose to disregard its own dictat, “demonstrating some of the unresolved contradictions in Sri Lanka’s public culture of rights, equality and justice and revealing the contending constructions of past as well as present discrimination and deprivation” (Uyangoda 2001).

The 40% mandatory quota for youth in nominations in local government was introduced by the Premadasa government following a recommendation of the Presidential Commission of Youth,<sup>35</sup> that such a quota would among other measures “address the youth discontent, disquiet and unrest which led up to the southern insurrection between 1988-1989” and rectify an imbalance in the system by giving “voice to a large number of voters who strongly feel that their interests are not adequately articulated” (Presidential Commission on Youth 1990: 15). The Commission was of the opinion that youth are “a distinct and separate group which requires separate representation and ... that the system does not give them an opportunity to represent and act upon their views” (1990: 14). The Commission hoped that a quota would “instill in youth confidence that the democratic process is open and that they can become part of its decision making” (1990: 15).

Political expediency rather than a commitment to substantive equality has determined the trajectory of the university and youth quotas discussed above. While the university admissions policy does address the disadvantage suffered by rural students without the same access to quality education, it has become a mechanism to avoid addressing the

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<sup>33</sup> <http://www.cmb.ac.lk/student-affairs/admissions/>.

<sup>34</sup> S.C. Application No. 88/1980, 6 and 7 October 1980.

<sup>35</sup> The Commission received 1,862 written representations from the public and heard evidence of 520 persons including Cabinet ministers, Members of Parliament, members of local administrative bodies, political parties, NGOs and experts on the issue.

uneven quality of education across the country, thereby in fact perpetuating discrimination of a different kind. As K.M. de Silva points out, it has perhaps become a formidable obstacle to the development of a national pool of competent students who measure up to the standards of their peers in other parts of the Third World (de Silva 1997: 283). The youth quota was the price the government was willing to retrospectively pay for the violence unleashed by the second southern insurrection, which cost at least 60,000 lives. Yet the potential of this quota to politically empower youth was never fulfilled given the lack of commitment within political parties and lack of interest within youth groups themselves. Increasingly it came to be seen as a burden by political parties and its transformation to a 25% discretionary quota shared with women elicited hardly any comment or opposition, even though the marginalization of youth from political processes remains a critical problem in Sri Lanka.

Thus the concept of substantive equality as a way of addressing diverse forms of social and economic inequality has little currency within the Sri Lankan polity. The current approach to equality hinges on the presumption that cultural and social identity (at least, to the extent it is divergent from its majoritarian formulation) is irrelevant and unimportant. The only sphere where there is legal recognition of minority identity is with respect to personal status and family law. Successive governments have recognized the right of the Tamil and Muslim minority communities to determine the content of their family laws, but at the expense of women's right to equality within the family. For instance, repeated calls for reform, of Muslim Personal Law (MPL) to address discrimination against women from within the Muslim community, have fallen on deaf ears. On the pretext of safeguarding the cultural and religious rights of the Muslim minority, the state has followed a policy of non-interference on the question of MPL, rendering unequal treatment of women, a problem of the community and not of the state. Thus, the Sri Lankan state, driven by the twin impulses of ethnic majoritarianism and patriarchy, has deployed legal equality as a weapon to simultaneously essentialise and assimilate.

### **Quotas for Women and Sri Lankan Exceptionalism**

Yet, is a commitment to substantive equality the only determinant of a quota for women in politics? In this section of the paper I want to place the resistance to a mandatory quota for women in local government in Sri Lanka in a global context. Over 100 countries to date have adopted some sort of quota/reservation for women, in what is being described as “a global phenomenon,” “a quota fever” and “a remarkable achievement of the women's movement” (Dahlerup 2003). These quotas have taken different forms, from voluntary or mandatory party quotas in nomination lists, to constitutionally or legally mandated reservation of seats. Krook notes that in the 50 years between 1930 and 1980, only 10 countries established quotas, followed by 12 additional countries in the 1980s, but in the 1990s quotas for women appeared in more than 50 states, joined by nearly 40 more since the year 2000 (Krook 2006). This number includes all of the countries in South Asia (except Sri Lanka) and a number of countries emerging from war and conflict that

formulated new constitutions and legal orders.<sup>36</sup> The percentage of seats/nominations allocated for women through these measures ranges from 10% to 50%, while the standard is to ensure at least 30% of seats for women, considered to be the ‘critical mass’ that is necessary for transformational change. Not all quota measures are of course equally effective, and similarly designed quotas can have widely different outcomes, giving rise to a rich body of scholarship that has attempted to untangle the various factors that need to be considered in their design and implementation, to ensure that the problem of underrepresentation is in fact addressed (Hoodfar and Tajali 2011).

From a normative perspective, evolving notions of marginalization, equality and representation have played a critical role in some cases of quota adoption. In France, for instance, the demand was initially resisted on the ground that it challenged the republican ideal of universal citizenship and equality, but by 2000 French feminists were able to reconceptualize the demand in terms of ‘parity of sexes,’ which found acceptance within the French polity (Hoodfar and Tajali 2011: 110-23). But the global diffusion of quotas for women has not always stemmed from principled concerns (Krook 2008: 355). A close reading of the literature on quotas reveals that while normative values such as substantive equality and deliberative democracy is at the heart of the ‘demand’ for quotas, it cannot however fully explain their ‘supply.’ The literature analyzes a number of ‘pragmatic’ political imperatives that have forced the hand of political elites, irrespective of whether they are committed to equal representation of women (Dahlerup 2006; Krook 2008). For the purpose of this paper, I will focus on three factors that I consider to be significant, i.e. state reform projects with involvement of the international community, pressure from a strong women’s movement and state modernization projects.

In post-war contexts, where international actors have been active in transitions from war to peace or from authoritarian rule to democracy, the intersection between the women’s movement at the local level and the international community or international pressure alone has been a decisive factor in quota adoption (Dahlerup 2006: 295-96; Krook 2006: 115). In Afghanistan, for example, the inclusion of a 25% quota for women in the lower house and a 17% quota in the upper house in the 2004 constitution were the result of massive pressure from the UN Special Mission to Afghanistan (Towns 2010: 7). Scholars have also noted that in such contexts, where elections are being held for new democratic institutions under new rules and with new demarcations of voting districts there is less resistance from male leaders, as women are able to enter the political process without directly displacing male incumbents (Hassim 2009: 9).

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<sup>36</sup> This global phenomenon is now also driving an international movement to include more women in public companies. Norway, France and Spain have already adopted quota requirements for the inclusion of women on the boards of publicly listed companies. Italy, the Netherlands and Belgium are considering adopting similar measures. Similarly in the UK, there is a call for measures to boost female board participation, while reserving the idea of having quotas if progress is not made soon. In Australia it is reported that parliamentarian Joe Hockey made headlines when he told reporters that he doesn’t “understand how you can claim that as a director of a company that all wisdom and knowledge lies in the hands of men only” (Women on Boards Report, 8 March 2011, Governance Metrics International, [http://info.thecorporatelibrary.com/Portals/30022/docs/wob2011\\_06172011.pdf](http://info.thecorporatelibrary.com/Portals/30022/docs/wob2011_06172011.pdf)).

The fear of losing women's votes and support is another key factor in the global diffusion of quotas (Krook 2008). This was the case in Argentina in November 1991, where the demand for a 30% quota for women in all candidate lists came from a cross-party women's alliance comprised of women from political parties and civil society organizations, including women parliamentarians. Women legislators initially raised the issue in parliament and also lobbied their colleagues when the bill came up for discussion, while the women's movement mobilized to raise media and public awareness. None of the parties had a position regarding the quota and it was expected that the Chamber of Deputies would vote against the bill. Yet President Menem's ruling party voted in favour of the bill, for fear of losing women's support (Hoodfar and Tajali 2011: 113).

Dahlerup (2006) and Towns (2010) point to a further motive behind the introduction of gender quotas – the desire to appear modern. Towns explains that the increased representation of women in political institutions has become a symbol or marker of modernity, and that the global diffusion of quotas has been driven by the desire of states to be seen as 'advanced,' 'modern' and 'developed democracies,' with political institutions that are conducive for investment and market-based growth, as opposed to those that are 'traditional' and characterized by age-old and backward political practices.<sup>37</sup> She argues:

Any actor, whether a state, international organisation, transnational social movement or other, invoking norms in advocating for a new policy must refer to and grapple with international social hierarchies. In the case of sex quotas ... a state's standing in the hierarchy between 'modern' market democracies and 'traditional' society provides meaning to and importance for increasing the level of female legislators via national quota legislation. (2010: 4)

Political elites may also view quotas as a relatively easy way of demonstrating commitment to women's rights without altering existing structures of power and marginalization at the root of women's subordination. According to Krook;

More specifically because quotas target political office, they are consistent with the broader ethos of neoliberalism focused on non-intervention in the economy. At the same time, they enable governments to appear responsive to the demands of civil society for changes in the status of women, without the need to pursue more thoroughgoing changes in the social and economic standing of women and other marginalised groups. (Krook 2008: 357)

There is then clearly a gap between the demand for affirmative action, which has been primarily articulated by women's organizations based on normative concerns, and the widespread supply of quotas by political elites that may be based on more pragmatic motives (Dahlerup 2006: 295).

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<sup>37</sup> From a pragmatic perspective it should also be noted that more often than not quotas have come into being in new democracies.

In Sri Lanka, in the absence of political and judicial commitment to the idea of substantive equality, what leverage can quota advocates claim? While Sri Lanka is in a post-war situation, in the absence of a comprehensive and inclusive post-war state reform and state building process with involvement of international actors, it is futile to talk of international pressure that could force the hand of this government. In fact the international community enjoys little influence over domestic, political and social policy. In any case quotas for women have not been a priority for the international community in the Sri Lankan context. Rather, their preoccupation has been on how to exert pressure to find a political solution to the ethnic question or enforce accountability for alleged war crimes and other human right violations. Unlike in other contexts, the promise of being catapulted into political modernity through implementation of a quota for women has also not held the same allure for Sri Lankan political leaders due to strong perceptions about tradition and modernity that are linked to Buddhism outlined previously.

It then remains to interrogate the strength of the women's movement. The demand for quotas in Sri Lanka has been articulated by women's organizations with support at times from the organs of the national gender machinery, such as the National Committee on Women (NCW) and the Ministry of Women's Empowerment, but with little mass grassroots support. Given the nature of the political limitations of the actors making the demand, activism on this front has in the main taken the form of 'strategies of request' (de Alwis 2009) – signature campaigns, newspaper advertisements, charters, petitions and memoranda to political parties as well as dialogues with senior party leaders – rather than 'strategies of refusal,' i.e., oppositional or confrontational means such as strikes, go slows or other forms of civil disobedience (de Alwis 2009: 87).

While women's organizations have over the years invested much time and energy to mobilize support, most women leaders within political parties, barring a few exceptions, have remained indifferent to the issue. Despite numerous consciousness raising campaigns and programmes, there continues to be a lack of awareness concerning women's under-representation as a critical issue of concern. A public survey done in 2008 by a coalition of women's NGOs revealed that over 75% of those surveyed were unaware of the number of women in parliament and local government (Kodikara 2009: 59). Further, a survey conducted by the International Centre for Ethnic Studies in 2011/2012 involving all women elected to local government, following the 2011 local government elections, found that over 60% of them were unaware of the percentage of women in local government.<sup>38</sup>

## **Conclusion**

In this paper, I sought to analyze affirmative action measures for women in local government as a site of struggle among women's organizations, political parties and the government over competing ideas of gender equality. I also argued that this struggle

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<sup>38</sup> Unpublished survey conducted by the International Centre for Ethnic Studies with women elected to local government following the 2011 local government elections.

cannot be understood only in terms of attitudes towards women or as a purely normative struggle unmediated by other factors.

And it leads me to the question: What can women's rights activists do to increase representation of women in local government? I believe that the analysis in this paper points to the need for a long-term perspective and long-term strategies that can address the barriers to political and judicial recognition of substantive equality on the one hand, and strategies that look beyond affirmative action on the other. These strategies far from being mutually exclusive are closely interdependent.

First, if the resistance to a mandatory quota for women in local government is seen as a symptom of the inability and unwillingness of the postcolonial Sri Lankan state, largely in the grip of Sinhala-Buddhist majoritarianism, to recognize 'difference,' it is necessary to work towards building alliances and solidarities across the many identity-based struggles for justice in the country. The demand for affirmative action to address political underrepresentation for women must be part of a larger struggle for substantive equality for all. Following Nancy Fraser this would mean building and strengthening alliances with all status groups in the Weberian sense, that are "distinguished by the lesser esteem, honor, and prestige they enjoy relative to other groups in society whether gays and lesbians, whose sexuality is interpreted as deviant and devalued in the dominant culture, or racialized groups, who are marked as different and lesser" (2000: 50). However, building such an alliance presents significant challenges, for it also involves recognizing and contesting the gendered notions of citizenship and patriarchy at work within these groups including minority communities and political parties. The narratives of challenge and contestation generated by women from ethnic and religious minority groups are therefore crucial in generating a broader reverse discourse that can challenge both racism and sexism.

A long-term strategy to increase women's representation in local government has to also keep alive in the public sphere the debate about underrepresentation of women and the need for affirmative action while intensifying efforts to deepen and expand the constituency in support of such measures. This includes leveraging political will within the opposition. For example, the UNP appears more favourable to a mandatory quota for women in local government, and there are a few MPs within the party who have shown a willingness to champion such measures. Recently, UNP MP Rosy Senanayake sought to present a Private Members bill to amend section 22(4)(2b) to ensure 30% of nominations for women and 20% of nominations for youth, but was thwarted by the government whip who claimed that she had not followed proper parliamentary procedure.<sup>39</sup>

It is also crucial for women's organizations to resist and challenge the narrative of equality being deployed by the government, which has no basis in the realities of Sri Lankan women's lives. These reverse discourses of women must be amplified onto a larger canvass

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<sup>39</sup> "Government Thwarts Rosy's Efforts to Get More Women," *Daily Mirror*, 11 July 2013, <http://www.dailymirror.lk/news/32264-govt-thwarts-rosys-move-to-get-more-women.html>.

and platforms including alternative and mainstream media. The inevitable contestation between these dominant and reverse discourses will be central to developing new ways of thinking and acting that can advance substantive equality for all groups including women.

In the interim, it is important to explore other ways to increase representation not dependent on a legally enforceable quota by working with grassroots women and women within political parties in a more concerted manner than has been attempted in the past. This would entail building and strengthening women's leadership from below, which can challenge underrepresentation within political parties, making alliances with leaders of political parties who are favourable to affirmative action for women, and challenging the biases and prejudices among the voting population against women politicians and candidates.

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Women's representation in elected political bodies in Sri Lanka, at the levels of local and provincial councils as well as the parliament, is amongst the lowest in the world. The Sri Lankan case is illustrative of how strong social development indicators for women in areas such as health or education do not necessarily translate into increased political representation. Yet the government, most political parties and the judiciary have resisted the introduction of affirmative action to enhance women's representation in elected political bodies. This is despite the fact that such measures are now commonplace across the world with over 100 countries implementing quotas as a means of addressing gender imbalances in political representation. This paper maps and explains this resistance, especially the institution of mandatory quotas for women in political party candidate lists for local government bodies.

While at the heart of the global debate on quotas for women in political institutions are competing notions of equality, a close study of their diffusion reveals that they are often leveraged by a range of socio-political and economic factors. Drawing from this comparative literature, I make two key arguments in this paper. Firstly, that the resistance to a legally mandated quota for women in politics in Sri Lanka is rooted in a lack of commitment to substantive equality and the entrenchment of a model of formal equality which constructs difference, citizenship and belonging in ways that naturalize and render invisible a range of exclusions, including women's under-representation in elected political bodies. Secondly, I also argue that this resistance can be attributed to the absence of certain factors that can put pressure on the state to conform to a global trend. Particularly salient is the absence in Sri Lanka of three of the most common factors that have driven the spread of affirmative action for women in politics, namely, the state's desire to project modernity through higher levels of women's political representation, a domestic women's movement with sufficient political traction to influence the state and political society in this regard, and susceptibility to international pressure during a transition from war to peace.

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