Numbers vs. Interests:  
Women's Political Representation in the  
South African Communal Land Rights Act  

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Introduction

Throughout the past fifteen years, improving women's political participation and representation has been a global trend. Increasingly, the international community is viewing women's political representation as a measure of modernity and democratic legitimacy. This paper evaluates this trend, based on the question: Does women’s increased political representation ensure that women’s interests are represented in government? I differentiate between descriptive and substantive political representation to better highlight the question. Descriptive representation is simply numerical or demographic representation; are there women in government? Substantive representation is more complex; do women in government strategically pursue policies that improve the quality of life for women? Using the distinction between descriptive and substantive representation, this paper addresses the question: Does descriptive representation guarantee substantive representation? Based on a case study of women’s political representation in South Africa, and specifically the Communal Land Rights Act, I argue that women’s descriptive representation needs to be balanced by a strong women’s movement in order to secure women’s substantive representation.

Globally, over the past decade the percentage of women in national assemblies has increased from 11.6 percent in 1995 to 19.1 percent as of February 2010 (UNIFEM 2008: 21; Inter-Parliamentary Union 2010a). Increasingly, there has been pressure from international institutions such as the United Nations and the international women’s movement to improve women’s political representation. However, while there have been concentrated efforts to increase women’s descriptive representation, less attention has been paid to what women do in government once they get there. In fact, the increase of
women in national legislatures has “lead to unprecedented historical leaps in women’s representation without simultaneous changes in women’s socio-economic position,” challenging widespread “ideas and theories about the relationship between women’s political representation and their socio-economic position,” (Dahlerup 2006: 4). This worldwide trend has questioned how effective women in parliament are at pursuing policies that expand women’s rights and improve women’s socio-economic positions.

This trend is apparent in South Africa. South African women currently occupy 44.4 percent of parliamentary seats (Inter-Parliamentary Union 2010b). Yet, as Shireen Hassim states, “South Africa’s political representation performance in the ten years since the inception of democracy significantly outstrips its performance in improving women’s economic position,” (2006a: 110). For example, as of 2000 women held 30 percent of seats in Parliament, yet 60 percent of female-headed households were poor compared to only 31 percent of male-headed households (World Bank 2000). Given this trend that women’s increased political representation has not translated into socio-economic gains for women, I find it important to consider not only what effect women representatives have, but also their relationship to women outside of the political sphere. Is increasing women’s political representation an effective strategy for achieving gender equality?

Beginning in 1990, South Africa began its four-year transition from the racially oppressive apartheid regime to democracy. Given the strength of both the apartheid regime, the National Party, and the opposition party, the African National Congress (ANC), South Africa’s transition to democracy came about through a multi-party negotiating process. The transition period presented an unparalleled opportunity for South Africa. Finally, a democratic constitution, and a reorganized electoral system and
institutional structure would grant all South Africans their citizenship rights. Furthermore, the negotiated transition was an unprecedented opportunity for marginalized groups to demand representation and rights in the new democratic South Africa.

During the transition, a strong women's movement was aware of the great potential the transition held, but also of its limited time frame. Within just four years, the women's movement, led by women politicians and activists, successfully drafted a charter of women's rights to be included in the new Constitution, lobbied the ANC to accept a 30 percent quota for women's representation in Parliament, and established institutional accountability mechanisms within the state to monitor its commitment to women's rights. Due in large part to the timely work of the women's movement, South Africa has unprecedented civil, political, and socio-economic rights for women.

South Africa presents an interesting case study, because internationally South Africa is regarded as a model for women's political inclusion, participation, and representation. Theorists have identified five factors as being crucial to establishing and securing women's substantive representation – a critical mass of women in parliament, government commitment to gender equality, a post-conflict climate of political transition, institutionalized accountability mechanisms, and a strong women's movement. Indeed, an evaluation of South Africa based on these five conditions renders it a success.

However, a closer look at how women prioritize their interests in Parliament and the relationship between women in Parliament and the women's movement challenges the widely held view of South Africa as a model of women's political representation. The case study of the Communal Land Rights Act serves this purpose by highlighting how
women in Parliament chose to pass a piece of legislation that limited rather than expanded women’s access to and control over land. As such, the Communal Land Rights Act presents an example in which women in Parliament did not prioritize the interests of rural women. Thus, it questions the difference between women’s descriptive and substantive representation. However, before I turn to the case study of South Africa and specifically the Communal Land Rights Act I define the key terms used in this paper, outline the theoretical underpinnings of women’s political representation, and situate South Africa within this literature to better understand why it is perceived as such a success.

Literature Review: Theoretical Underpinnings of Women’s Political Representation

Definitions

In order to properly evaluate the question of whether or not women’s descriptive representation guarantees women’s substantive representation it is necessary to define two key terms: political representation and women’s interests. Furthermore, it is essential to outline the basic assumptions regarding the relationship between the two terms. These two terms set the stage for defining and evaluating the effectiveness of the tools states use to ensure women’s descriptive and substantive representation, namely gender quotas and national gender machinery. I now turn to the definition of political representation.
Political Representation

Political representation indicates a great deal about citizenship. Different forms of political representation indicate decisions “about who is and is not a citizen, and who may and may not be represented,” (Lovenduski 2005: 3). For democracies, political representation – who has the right to be represented – is often a measure of legitimacy (Lovenduski 2005: 3). In this way, increasing women’s political representation has been argued by some to be an indicator of and even a prerequisite for democracy (Dahlerup 2006: 16).

In the past fifteen years, women’s political representation in African countries has increased tremendously. Theorists have suggested that this trend is directly related to international image; developing countries pursue increases in women’s political representation to create a modern image of a legitimized democracy (Dahlerup 2006: 4; Tripp, Konate, Lowe-Morna 2006: 121). Interestingly, some of the countries most resistant to increases in women’s political representation are long established democracies such as the United States and Britain (Bacchi 2006: 33; Squires 2007).

Although typically one thinks of political representation based on democratic elections, Hannah Pitkin (1967) identifies four different types of political representation: authorized, descriptive, symbolic, and substantive. Joni Lovenduski offers good definitions for Pitkin’s four categories of representation. She describes them as

- **authorized**, where a representative is legally empowered to act for another;
- **descriptive**, where the representative stands for a group by virtue of sharing similar characteristics such as race, gender, ethnicity or residence;
- **symbolic**, where a leader stands for national ideas; and
- **substantive**, where the representative seeks to advance a group’s policy preferences and interests, (Lovenduski 2005: 3).
For the purposes of this paper I focus specifically on descriptive and substantive representation.

Several theorists have differentiated between descriptive and substantive representation. Pitkin (1967) makes the distinction between representation as “acting on behalf of” and representation as “standing in for.” Nancy Fraser (1995) uses the terms recognition and redistribution to differentiate between descriptive and substantive representation. Fraser raises the concern that an emphasis on recognition of identity (descriptive factors) undermines the goal of general equality, “universal leveling” or redistribution (substantive representation). Gretchen Bauer and Hannah Britton (2006) make the distinction between demographic (descriptive) and strategic (substantive) representation (3). Furthermore, Anne Marie Goetz and Shireen Hassim (2003) identify descriptive and substantive representation as “feminine presence” and “feminist activism,” respectively (5).

Throughout all of these various terms, the clear distinction between descriptive and substantive representation regards the transformative effects of the representation. An increase in the number of female representatives (descriptive representation) will only transform dominant gender hierarchies if those representatives pursue women’s interests, strategically advocating for policies and programs that increase women’s quality of life (substantive representation). The relationship between women’s political representation and women’s interests helps differentiate between women’s descriptive and substantive representation. Essentially, given the question: are women’s interests represented, if the answer is yes, then we can say that there is substantive representation; if the answer is no, then most likely descriptive representation is in play. I now turn to the definition of
women’s interests to better highlight the distinction between women’s descriptive and substantive representation.

*Women’s Interests*

There are largely two sides to the debate regarding women’s interests. On one side are those who argue that all women have universal interests. This camp assumes that all women will have shared interests based on their gendered identities. This theory is embodied by second wave feminism. Second wave feminism, largely led by Western feminists, attempted to unite women based on their subordination under the gender division of labor, and exclusion from the public sphere. It used the rhetoric of sisterhood to advance the notion that women as a group have specific interests particular to them. For second wave feminism, women were identified as a unified group, sharing universal interests.

On the other side of the debate are theorists who debunk second wave feminism and the idea of women’s universal interests. These theorists contend that women’s interests are influenced by their multiple identities not only their gendered identity (Alvarez 1990; Dahlerup 2006; Goetz and Hassim 2003). This school of thought is represented in third wave feminism. In contrast to second wave feminism, third wave feminism argues that women’s individual interests will differ depending on their other social identities such as race, class, ethnicity, and ideology. Third wave feminism embraces the diversity of women’s multiple identities and the differing experiences, concerns, and interests that women have based on these identities. Sonia Alvarez clearly states the position of third wave feminism, “When one considers that women span all
social classes, races, ethnicities, religions, nationalities, political ideologies, and so on, then an infinite array of interests could be construed as women’s interests. Gender, class, race, ethnicity, sexual preference, and other social characteristics determine women’s social positioning and shape women’s interests,” (1990: 23).

Given this context of women’s multiple identities formulating what is and is not a women’s interest can be difficult. Maxine Molyneux (1998) defines women’s interests as “those [interests] arising from the social relations and positioning of the sexes,” (1998: 231). However, within this broad category of interests, Molyneux offers an analytical distinction. She differentiates between two types of interests: strategic interests and practical interests. Strategic interests are those interests “involving claims to transform social relations in order to enhance women’s position and to secure a more lasting re-positioning of women within the gender order and within society at large,” (Molyneux 198: 231). Practical interests refer to interests “based on the satisfaction of needs arising from women’s placement within the sexual division of labor,” (Molyneux 1998: 231).

Goetz provides a particularly good definition of practical interests. She states that practical interests are those interests “which arise from [women’s] lived realities as socially gendered individuals (1997: 23). Essentially, the difference between strategic and practical interests lies in the transformative nature of the interest: is the interest aimed at transforming gender hierarchies overall or is it focused on meeting women’s needs such as access to land, water, food, an income?

The distinction between strategic and practical interests may seem clear cut. However, in Africa the distinction becomes easily blurred. As Bauer and Britton state, “For many African women, practical needs are in fact strategic needs. Women’s access to
strategic needs is the only way to ensure the security of their practical needs,” (2006: 20).

In Africa, in order for women to secure food, housing, land they must challenge the dominant gender hierarchies. The case study of the Communal Land Rights Act examined later in this paper illustrates the blurred line between women’s strategic and practical interests in South Africa. It highlights Bauer and Britton’s claim that for African women, often the only way to achieve practical interests is through strategic interests.

The debate between second and third wave feminism directly relates to the distinction made between descriptive and substantive representation. Although women’s interests are not the only factor, the way women’s interests are conceived affects the relationship between descriptive and substantive representation, namely the notion that descriptive representation guarantees substantive representation. I now turn to related literature that discusses the relationship between women’s political representation and women’s interests, and the meanings and influences it has for women in Africa.

**Descriptive and Substantive Representation: Factors and Conditions**

In light of the growing global trend of women’s increased political representation, several authors offer their insights regarding the relationship between women’s political representation and women’s interests. Does women’s increased political representation ensure that women’s interests are represented in government? Based on the distinction between descriptive and substantive representation the question becomes: Does descriptive representation guarantee substantive representation? Underlying this broad question, two more practical questions can be applied to both descriptive and substantive representation: What conditions or tools promote women’s descriptive/substantive
representation? And what barriers prevent women’s descriptive/substantive representation? I begin with the debate surrounding the relationship between descriptive and substantive representation, namely does descriptive representation ensure substantive representation for women.

*Representation: Competing Interests*

In this section I present the arguments both in favor and against the hypothesis that descriptive representation guarantees substantive representation. Arguments for assume that representatives share the same interests as their constituents. In the case of women’s representation this would mean that women political representatives share the same interests as women constituents. Jane Mansbridge notes, “In ‘descriptive’ representation, representatives are in their own persons and lives in some sense typical of the larger class of persons whom they represent,” (1999: 629). Furthermore, she connects descriptive representation to shared interests by stating, “‘Being one of us’ is assumed to promote loyalty to ‘our’ interests,” (Mansbridge 1999: 629). This assumption relates to the second wave feminism notion that all women possess similar interests, that having women representatives present in legislature (descriptive representation) automatically ensures that women’s universal interests will be represented (substantive representation). Thus, for second wave feminists, descriptive and substantive representation are one and the same.

The United Nations Development Fund for Women (UNIFEM) supports this position. UNIFEM’s 2008/2009 report, *Progress of the World’s Women*, finds that women in parliament tend to (1) bring stronger attention to and prioritize women’s
issues; (2) decrease practices of corruption in government; (3) encourage women in civil society to increase their political engagement; and (4) help ensure better delivery of government services to women and children (2008: 26-27). What is important to note regarding the UNIFEM report is underlying the positive affects of women’s increased political representation is the assumption that women in parliament prioritize women’s interests. This is in line with second wave feminism, because it presupposes that their gendered identity is the strongest identity for women in parliament.

Based on women’s competing identities and the ability of these identities to shape each woman’s interests differently, lies the competing argument that representation in numbers does not ensure substantive representation. In line with third wave feminism, Thenjiwe Mtintso, a female ANC member of the first South African Parliament, states, “there is no universal women’s interests that can be politically represented by any women’s or gender group in Parliament,” (2003: 569). She notes a differentiation between women’s presence and women’s representation, “many women can be present in Parliament but that would not mean that a universal category, ‘woman,’ is represented. There is a need to distinguish between the presence of women and the representation of women,” (Mtintso 2003: 571). Furthermore, Mtintso dispels the notion that descriptive representation guarantees the transformative nature of substantive representation. She states, “presence and even representation of some vague category ‘woman’ does not necessarily suppose a gender transformation agenda, as women do not necessarily represent or even have a common understanding of patriarchy and gender relations,” (2003: 571).
As Mtintso highlights, women are not homogeneous. Each woman has different interests shaped by her various identities and experiences. This diversity of women’s reality has important salience with regard to women’s political representation and the assumption that having women in government ensures that women’s interests are not only represented but also strategically pursued.

In line with Mtintso, V. Spike Peterson and Anne Runyan differentiate between having women in office and pursuing a feminist agenda. They state, “There is no one-to-one relationship between the presence of women in politics and the extent of feminist politics. Women cut across the political spectrum and can just as easily hold antifeminist views or very narrow feminist commitments that justify the opening of doors for women like themselves to be in power but do not translate into supporting policies that improve conditions for all women or ‘other’ women,” (2010: 137). Peterson and Runyan support the third wave feminism argument, identifying political identity as one that can divide women’s interests. As will be illustrated in the case of South Africa political identity and women’s alliance to their political parties is one of the main factors that limits women’s substantive representation.

Spinning the third wave feminism argument, Mansbridge argues that assuming women’s universal interests is a cost to women’s political representation. She identifies two costs of descriptive representation. Firstly, she states, “The greatest cost in selective descriptive representation is that of strengthening tendencies toward ‘essentialism,’ that is, the assumption that members of certain groups have an essential identity that all members of that group share and of which no others can partake,” (Mansbridge 1999: 637). She defines essentialism as “assuming a single or essential trait, or nature, that binds
every member of a descriptive group together, giving them common interests that, in the most extreme versions of the idea, transcend the interests that divide them,” (Mansbridge 1999: 637). Essentialism directly relates to the arguments put forth by second wave feminism, that all women share universal interests based on their identity as women.

Secondly, Mansbridge identifies the potential for reduced accountability as another cost. “The descriptive characteristics of a representative can lull voters into thinking their substantive interests are being represented even when this is not the case,” (Mansbridge 1999: 640). This seems to be in direct opposition to the UNIFEM report, which noted that women’s descriptive representation is likely to increase women in civil society’s political activity (2008: 27). However, what both Mansbridge and UNIFEM highlight is the relationship between women representatives and women in civil society. As will be discussed in the next section, the strength of this connection strongly influences the link between descriptive and substantive representation.

Both arguments for and against the assumption that descriptive representation equals substantive representation involve women’s interests. Arguing for the assumption are theorists who contend that women’s interests are universal based on their gendered identity. Arguing against the assumption are those who claim that descriptive representation in no way ensures substantive representation, because women have diverse sets of interests based on their interconnected identities. Mansbridge argues that this diversity in interests is in fact most likely to lead to substantive representation (1999: 638). Perhaps the best way to conceptualize the relationship between descriptive and substantive representation is identified by Goetz and Hassim. They argue that “descriptive representation may be a necessary first step to the institutional
transformation that is required if ‘substantive’ representation is to be achieved,” (2003: 5). Adopting Goetz and Hassim’s progression from descriptive to substantive representation, I now turn to the tools and barriers that best promote and prevent first women’s descriptive representation and secondly women’s substantive representation.

**Descriptive Representation: The Use of Quotas**

Based on Goetz and Hassim’s claim that descriptive representation is a necessary first step towards attaining substantive representation, I examine how women’s descriptive representation is best achieved and what challenges it faces. Specifically, quotas are often used to ensure descriptive representation. Focusing heavily on the trends in African countries, this section will define quotas, present arguments both in favor of and against women’s quotas, and highlight the conditions under which quotas are most likely to succeed.

Although quotas are best known in relation to the Nordic countries, more recently African countries have adopted quotas. As of 2005, half of all African countries (23) had adopted some form of legislative quota for women (Tripp 2005: 51). With only three exceptions (Uganda, South Africa, and Mozambique), all of these countries adopted quotas following the 1995 Fourth World Conference on Women in Beijing (Tripp 2005: 51-52). An outcome of this conference was the United Nation’s Beijing Platform for Action (BPA), which outlines guidelines to ensure women’s equal participation in government decision-making and power structures (United Nations 2009b). Legislative quotas were included in the BPA recommendations. Following the World Conference on
women the UN and international women’s movement began to pressure national governments to adhere to the BPA guidelines, including quotas.

Quotas have had a positive impact on the number of women parliamentarians in African countries. As of 2005, Aili Mari Tripp notes, “In those African countries with quotas, on average, 17 percent of legislative seats were held by women, compared with nine percent of seats in countries without quotas,” (2005: 52). This is consistent with a worldwide trend of women’s increased political representation. As UNIFEM’s 2008/2009 Progress of the World’s Women report states, “the proportion of women in national assemblies has accelerated over the past decade from 11.6 percent in 1995 to 18.4 percent as of May 2008,” (2008: 21). Previously, the rate of increase had been much slower, rising less than one per cent from 1975 -1995,” (UNIFEM 2008: 21). The adoption of quotas throughout the world has influenced the trend of women’s increased political representation.

While Sub-Saharan Africa as a region falls behind the Nordic countries, the Americas, and Europe OSCE member countries (excluding Nordic countries) in terms of women’s political representation with an average of 18.8 percent of women representatives in national government, several African countries are in the top 25 countries with the highest proportions of women legislators. As of February 28, 2010 Rwanda has the highest percentage of women in parliament with 56.3 percent. South Africa is ranked third behind Sweden with 44.5 percent of women representatives. Other African countries in the top 25 are Mozambique (9), Angola (10), Uganda (21), Burundi (22), and Tanzania (23) (Inter-Parliamentary Union 2010a). All of these countries have over 30 percent women representatives in parliament. In comparison, the United States
ranks 73rd, tied with Turkmenistan, with 16.8 percent of female political representatives in national government (Inter-Parliamentary Union 2010a).

Although the Nordic countries are best known for high rates of women's political representation, African countries are quickly gaining recognition. Within fifteen years the percentage of women's political representation in Africa increased from eight percent in 1990 to 14.5 percent in 2005 (Tripp 2005: 48). Drude Dahlerup differentiates between the paths that Nordic countries and African countries took to achieve women's increased political representation. He terms the progression of women's political representation in Nordic countries the incremental track, defined as small increases of women's political representation over a long period of time. "It took approximately 60 years from women's enfranchisement for Denmark, Norway and Sweden to cross the 20 percent threshold and 70 years to reach 30 percent," (Dahlerup 2006: 7).

In contrast, in African countries this time period was much shorter. Dahlerup terms the sudden increase of women representatives in African countries the fast track. In South Africa, for example, although white women had the right to vote in 1930 black women did not secure the right to vote until 1994 (United Nations 2009a). After the election of that same year women occupied 27.7 of parliamentarians (Hassim 2006b: 174). This means that is took zero years from women's enfranchisement for South Africa to cross the 20 percent threshold. This sudden increase of the number of women in parliament is largely due to quotas.
Definitions and Types of Quotas

While some assume that quotas ensure women’s substantive representation, I present quotas as a tool used to secure women’s descriptive representation. Carol Bacchi defines quotas as, “a form of affirmative action, aimed at increasing women’s representation in elected legislative bodies,” (2006: 32). Specifically, Dahlerup defines electoral quotas as “regulations that in public elections require a certain minimum in numbers or percentage of a specific group,” (2006: 19). In this way, quotas ensure women’s descriptive representation by requiring that a specific percentage of women be represented in legislative bodies.

Dahlerup (2006) identifies three different types of quota systems. He distinguishes quotas based on changing the composition of representatives as three different levels: (1) the pool of potential candidates; (2) the candidates who stand for election; and (3) those elected (19). Having ‘women’s short lists’ is a type of quota that targets the first level. Reserved seat quotas represent the third level. The second level, candidate quotas for party lists is the most popular. Quotas that target the second level can either be mandated by law or constitution or be decided on voluntarily by one or more political party. Dahlerup (2006) describes these two strategies as legal quotas and party quotas, respectively (20). Legal quotas require that all political parties comply to the quota, whereas in the case of party quotas “some political parties may have quotas, while others in the same country reject the idea,” (Dahlerup 2006: 20).
Arguments For Quotas: Gender Equality and Democratic Legitimacy

Anne Phillips identifies four broad groups of arguments in favor of quotas for women’s political representation. She states,

There are those that dwell on the role model successful women politicians offer; those that appeal to principles of justice between the sexes; those that identify particular interests of women that would be otherwise overlooked; and those that stress women’s different relationship to politics and the way their presence will enhance the quality of political life, (1995: 62-63).

Several authors support Phillips categorization, but most seem to focus on two arguments for quotas: gender equality and democratic legitimacy. Bacchi presents the argument in favor of gender equality, “A key argument used by defenders of quotas is that women are entitled to equal citizenship and equal rights,” (2006: 40). Furthermore, Tripp makes the argument for equality even in the face of women’s competing interests, “Women’s increased representation enhances equality, fairness, and justice in representation as a group in society that has been marginalized from governance regardless of whether women as a group have shared interests,” (2005: 48-49).

Furthermore, several theorists use gender equality as a sign of democratic legitimacy and good governance (Peterson and Runyan 2010; Tripp 2005; Goetz and Hassim 2002; Dahlerup 2006). As Peterson and Runyan state, “Feminists have long made the argument that getting more women into political office is not only a matter of fairness but also crucial for having any true democracy,” (2010: 126). Both the United Nations and international financial institutions support, “the argument that gender equality [is] necessary both for democratization and as a feature of a modern market economy and good governance,” (Peterson and Runyan 2010: 126). Thus, quotas can
expands the legitimacy of a regime and influence its international image (Tripp 2005: 49; Goetz and Hassim 2002: 307).

_Arguments Against Quotas: Meritocracy and Patronage Politics_

Two arguments are made against the notion of quotas. The first is based on meritocracy. As Bacchi states, “Affirmative action and hence electoral quotas are described as bypassing competitive processes and hence as ignoring the merit principle which, it is argued, ensures that the best person will be selected for the job,” (2006: 33). Furthermore, Phillips notes the concern that using a quota will decrease the quality of political representatives. She argues, “opponents of gender quotas are most likely to take their stand on a general critique of affirmative action, on the paucity of ‘experienced’ women, and the risk that the overall caliber of politicians will fall.” (Phillips 1995: 60). Furthermore, there is concern that women elected through quotas will not be taken seriously, because they are perceived as filling the quota rather than having the merit to be a representative on their own (Phillips 1995: 60; Tripp, Konaté, Lowe-Morna 2006: 124). Winstone Hamadulu, councilor for Chakunkula ward in Lusaka, Zambia, aptly describes this position,

> If we have women in parliament that are there to fulfill quotas, they cannot be respected. The challenge is to win an election on your own merit, not by grace. Other women who win fair and square will also be disadvantaged because they will be perceived as having got their positions by a quota, instead of sheer hard work, (quoted in Tripp, Konaté, Lowe-Morna 2006: 124-125).

The second argument against quotas for women legislatures is related to patronage politics. This argument poses that women will be chosen to fill quotas based on their affiliations to party leaders. As Aili Mari Tripp, Dior Konaté, and Colleen Lowe-
Morna state, "there are many critics of quotas, even among feminists in Africa, many of whom believe the practice leads to tokenism and can become yet another mechanism in the service of patronage politics," (2006: 124). As I will discuss later, provisions in the Communal Land Rights Act are a case in which quotas were seen as being used to further patronage politics.

Successful Conditions

Overall, even supporters of quotas as a tool to increase women's descriptive representation acknowledge that quotas are not a perfect answer. However, there are four conditions under which quotas are the most effective at securing women's descriptive representation. These conditions include the type of quota, the nature of the political regime in power, the type of electoral system, and post-conflict climates. Specifically, I examine the characteristics of African countries that have adopted quotas in terms of these factors.

Of 23 African countries with parliamentary quotas for women, seven have quotas that are constitutionally mandated, four have quotas that are legally mandated, and twelve have party mandated quotas (Tripp 2005: 50-52). Although party quotas are the most popular, those countries with constitutionally mandated have the highest average percentage of women in legislature. Yet, party quotas can also successfully increase the proportion of women legislatures. In South Africa the ANC was the first political party to adopt a quota for women's political representation in 1994. However, the ANC's quota naturally influenced other political parties to include more women. Since 1994 the
proportion of women’s political representatives has increased across the political party spectrum (Hassim 2006b: 174).

Secondly, although increased democratic legitimacy has been used as an argument for quotas, democracy is not a necessary requirement for women’s quotas. In Africa, countries with quotas for women’s representation are spread evenly across three categories of political regimes: democratic, semi-authoritarian, and authoritarian. As Tripp (2005) notes, of the nine democratic African countries three (Botswana, South Africa, and Mali) have legislative quotas for women. Sub-Saharan Africa has 25 countries that fall into the category of a semi-authoritarian regime. Of these 25 countries, nine have some form of political quota for women (Burkina Faso, Cote d’Ivoire, Ethiopia, Kenya, Uganda, Tanzania, Senegal, Mozambique, and Niger). Finally, out of the ten countries with authoritarian regimes in sub-Saharan Africa four have women’s quotas (Rwanda, Equatorial Guinea, Eritrea, and Cameroon) (Tripp 2005: 54). Thus, for each type of regime slightly half of the countries in Africa have quotas for women’s political representation. However, Tripp (2005) does note that democratic leaning countries such as Botswana, Mali, Mozambique, Namibia, Senegal, and South Africa are more likely to have party quotas rather than legal quotas (54). Thus, although some arguments for quotas claim that quotas are an indicator of democratic legitimacy, “In Africa today, there is no correlation between democracy and women’s representation,” (Tripp et al. 2009: 9).

Thirdly, what does seem to make a difference, however, is the type of electoral system. Historically, the countries with the highest proportions of women in their national legislature have tended to have proportional representational (PR) electoral systems.
rather than plurality-majority systems or semiproportional systems (Bauer and Britton 2006: 6). As Goetz states, systems of proportional representation (PR) are thought to “undermine voter reluctance to select women candidates because the focus of the vote is on the party, not the individual candidates,” (1998: 250). However, although PR systems tend to take the focus off of women and place it on political parties, Goetz notes that the PR system does have barriers as well.

On the one hand, the PR system makes women’s position in politics more tenable and legitimate because they have achieved it through popular election. On the other hand, their freedom to raise feminist concerns, particularly in these are seen as oppositional and divisive, is more tenuous. Without a constituency they cannot threaten to deliver their local popularity — their seat — to another party in the next election, since no one voted for them specifically. They have no leverage to exert if there party neglects issues of importance to them, (Goetz 1998: 251).

As the case of South Africa will illustrate, the dominating agenda of political parties has significant influence on the ability of women legislatures to pursue a feminist agenda. Yet, despite this concern, PR electoral systems are viewed as the most favorable with regard to successfully increasing women’s representation in national government.

Lastly, periods of political transition and the end of conflict heavily influence the success of quotas. As Tripp (2005) and Tripp, Konaté, and Lowe-Morna (2009) point out, African countries with quotas for women’s political representation are not necessarily democratic. However, regardless of regime type, several African countries, such as Uganda, South Africa, Mozambique, Rwanda, and Senegal, instituted quotas following the end of a conflict or during a political transition. Furthermore, these countries are among the African countries with the highest proportions of women in national legislature. Bauer and Britton (2006) note three conditions that a post-conflict climate provides: (1) opportunities for reconfiguring gender relations due to disruptions of those
relations cause by prolonged conflict; (2) a pocket of women activists and exiles willing and able to run for political office; and (3) a strong women’s movement involved in the political process emboldened by their experiences of struggle during conflict (11). Indeed, all of these factors were present in South Africa during its transition from apartheid to democracy in 1994.

Since 1995, quotas have been widely adopted by African countries to increase the percentage of women representatives in national legislatures. Pressure from the international women’s movement and policies such as the UN’s Beijing Platform for Action swayed African governments to agree to women’s quotas. Part of this commitment to women’s quotas may stem from the desire of African governments to appear more modern and democratic to the international community. Indeed, arguments for quotas and women’s political representation have centered on equality and democratic legitimacy. However, the condition of quotas in Africa highlights that a regime does not necessarily have to be democratic for quotas to be successful. In fact, Rwanda, which currently has the highest percentage of women in national parliament in the world, is ruled by an authoritarian regime (Inter-Parliamentary Union 2010a; Tripp 2005: 54).

In Africa, although the type of quota, the type of political regime, and the type electoral system are factors, the post conflict climate of a country tends to be the most important condition under which women’s quotas are successfully adopted and fulfilled. Generally though, in Africa, quotas successfully increase women’s descriptive representation. However, while securing descriptive representation is certainly a first step, a high percentage of women in national legislature does not necessarily guarantee
women's substantive representation. Yet, there are certain conditions and tools that help ensure that substantive representation will follow descriptive representation.

**Substantive Representation: Accountability Mechanisms**

Although quotas are designed as a tool to increase women's descriptive representation, even with quotas descriptive representation does not guarantee substantive representation. As Dahlerup states, "If there is prejudice against women in a society, as is often the case, quotas do not remove these barriers for women to full citizenship," (2006: 14). However, there are factors that help ensure the progression from descriptive to substantive representation. These conditions include a critical mass of women in parliament, strong government commitment to gender equality, national gender machinery, and a strong women's movement in civil society.

**Critical Mass**

Generally, quotas are set at 30 percent. This number is based on critical mass theory. Dahlerup (1988) first applied the idea of a critical mass to women's political representation. Critical mass is needed for women representatives to recruit other women (Bauer and Britton 2006: 4-5). Furthermore, as Mansbridge states, women in politics "also need a critical mass to convince others – particularly members of dominant groups – that the perspectives or insights they are advancing are widely shared, genuinely felt, and deeply held within their own group," (1999: 636). Recently, however, in many countries women activists have called for quotas to be increased to 50 percent to more accurately represent women, who make up half of the population. A 50/50 campaign is
currently under way in South Africa (Hassim 2003b). In general, it is more likely that
women legislatures will be able to pursue women’s interests when they have a critical
mass. This argument is in line with Goetz and Hassim’s (2003) thought process that
descriptive representation is first necessary step towards securing women’s substantive
political representation.

**Government Commitment**

A strong government commitment to gender equality has been noted as a
necessary condition for women’s descriptive representation to translate into substantive
representation. Although women may have descriptive representation in government, the
political will of the state greatly determines how effective women can be. As Tripp states,
“The success of quotas in enhancing women’s role in parliaments and governance
depends on the political will of the government to support women’s rights,” (2005: 56).
The issue of necessary political will raises the question of whether or not the state can be
an avenue for pursuing women’s interests. Is the state inherently patriarchal? Or, is the
state, autonomous from male interests, an ally for women’s movements?

On one hand are feminist theorists who argue that the state is inherently
patriarchal, because as an institutional representation of the separation between the public
and private spheres of human activity, the state represents the hierarchal gender division
of labor. For these theorists,

because the state remains male-dominant, State-promoted changes in women’s
status will seldom significantly alter existing gender power arrangements. Instead,
State gender-related reforms will tend to ‘modernize’ or update existing patterns
of gender inequality – that is, preserving male supremacy while providing capital
with greater access to female labor, (Alvarez 1990: 30-31).
Viewed as inherently patriarchal, even with women’s quotas, the state will prevent women’s substantive representation.

On the other hand are those who argue that the state is not patriarchal. Rather, they claim that the state is autonomous from male interests. Under this assumption women’s movements must use the state as an ally (Alvarez 1990). Goetz notes this point,

The reason the state has been such an important focus of feminist efforts to redress gender injustices is because the state is assumed (or hoped) to have a degree of autonomy from patriarchy and hence, to the degree that the state assumes responsibility for women’s interests, it can provide a resort of appeal against the power of men, (2003a: 69).

With this view, feminists can use the state as an ally to achieve gender equality. However, even as an ally, the state can limit the demands and change the strategies feminist employ to secure their interests. “Indeed, engagement with the state necessitates an imperative of compromise and the need to adjust radical demands to those that are politically feasible (Prugl, 2004: 6). In turn, this may lead to a measure of dependence and implicit agreement to abide by state rules,” (Hankivsky 2005: 984). Thus, feminists and feminist movements must navigate the boundaries between the state and feminist demands, continually challenging the state and re-evaluating their demands so as not to be co-opted by state interests or framework.

As addressed earlier, the democratic nature of a regime is not a determining factor in securing women’s descriptive representation. Nor is it a determining factor to ensure women’s substantive representation. However, regardless of the type of regime in power, the state must be autonomous from male interests. To help ensure women’s substantive representation, the state must have a commitment to women’s rights and gender equality and the political will to allow women’s interests to be pursued in government. Thus,
broader political framework of the state and the political norms that it promotes can constrain or facilitate women’s substantive representation (Tripp 2005: 49).

**National Gender Machinery**

As discussed earlier, at times states adopt quotas for women’s political representation in order to project the image that they are modern and/or to consolidate their democratic legitimacy. However, as Goetz and Hassim note,

> Often states make commitments to advance women’s rights without the means of doing so, perhaps keen to receive the plaudits associated with demonstrating gender sensitivity, yet secure in the knowledge that the domestic women’s constituency is too weak to hold it to account, (2003: 6).

National gender machinery, referred to by some theorists as women’s policy agencies, was created as a mechanism of accountability, to build gender sensitivity into state accountability systems and institutionalize women’s interests into the state apparatus. In this way, just as quotas can be seen as a tool to increase women’s descriptive representation, national gender machinery is a tool to increase women’s substantive representation.

Initially, national gender machineries “emerged as instruments for advancing women’s interests after the World Conference of the International Women’s Year in Mexico City (1975)” during the International Decade for Women (Rai 2008: 73). However, like quotas, national gender machinery was widely adopted following the United Nation’s 1995 Beijing Platform for Action, adopted at the Fourth World Conference on Women in Beijing (Rai 2008: 73). The Beijing Platform for Action defines national gender machinery as “the central policy coordinating unit inside the government. Its main task is to support government-wide mainstreaming of a gender
equality perspective in all policy areas,” (1995: para. 201). National gender machineries are designed to ensure that the state remains accountable to women by institutionalizing their interests. As of 2004, 165 countries had some form of national gender machinery (Squires 2007: 33).

It is important to note the central role of the state for national gender machineries. As Goetz states, national gender machineries “are created on the premise that the state must take a lead in promoting gender equality. They are a form of institutionalized or bureaucratic representation of women,” (2003a: 69). In this way, national gender machinery is based on the position that the state is not inherently patriarchal, but rather that it is a vehicle for furthering gender equality.

As with quotas, many theorists argue that democratization is necessary for national gender machinery to be effective. Furthermore, again like quotas, these theorists view establishing women’s institutions within the state to be a sign of democratization and good governance (Rai 2003; Staudt 2003). However, again, Africa illustrates that democratization is not necessary for national gender machineries. In fact, a large portion of African countries that have adopted women-friendly policies do not have democratic regimes. In Africa, increases in women-friendly policies and institutions have largely been the result of the end of conflict. As Tripp et al. note,

The postconflict period leveled the playing field and the process of rewriting constitutions and reconstituting the political order afforded women new opportunities to insert themselves in new ways into the polity. The disruptions of war dislodged traditional gender roles, opening up new possibilities for women. In some cases, it also disrupted potential opponents of gender-based reform and disorganized them. Women seized such opportunities in almost all constitution-making processes throughout Africa that came about as a result to the end of conflict, (2009: 5).
Thus, although a regime may not need to be democratic in nature, women generally have the best chance of increasing their political powers and gender equality after a conflict and during a political transition. Therefore, in order for women’s state institutions to be effectively integrated into the state apparatus it is imperative that, if a state does undergo a political transition, national gender machinery structures are established during the transition rather than during the consolidation of the regime.

Institutionalizing women’s interests in the state involves working within the state system while at the same time criticizing and monitoring it (Hankvisky 2005: 983). This “position ‘in and against’ the state” clearly highlights the mission of national gender machinery to both advise and monitor the state with regard to women’s interests (Rai 2008: 74). In order to effectively hold the state accountable to gender equality, national gender machinery must have the autonomy and legitimacy to pursue women’s interests without co-optation, both within and outside of the state.

Many theorists have suggested that a strong women’s movement outside the scope of the state is an essential component of national gender machineries (Rai 2003; Rai 2008; Honculada and Ofreneo 2003; Meintjes 2003; Hames 2006; Lovenduski et al. 2005). As Jurgette Honculada and Rosalinda Pineda Ofreneo state,

A vibrant women’s movement plays a critical role vis-à-vis a national women’s machinery – lobbying for its creation, providing leadership and direction, pioneering new initiatives such as gender training are key components of gender mainstreaming, and serving as a gadfly when government fails to deliver, (2003: 131).

Furthermore, a strong women’s movement is needed to increase the position of national gender machinery vis-à-vis other state bodies and to ensure that national gender machinery institutions are not marginalized within the greater state apparatus (Rai 2003).
In addition, Shirin Rai even goes as far as to suggest “If national machineries are unable to generate a dialogue with civil society because they are perceived as unaccountable, arrogant and removed from concerns of women’s groups organizing in the field, the purpose for which national machineries have been created would not be achieved,” (2003: 267). The general consensus among theorists is that in order for national gender machinery to be successful, it must have close ties with a strong and vibrant women’s movement in civil society.

While quotas are used as a tool to increase women’s descriptive representation, national gender machinery can be viewed as a mechanism to further women’s substantive representation. Judith Squires (2007) clearly links quotas and national gender machinery. She notes that both quotas and national gender machinery use targeted positive action policies to increase women’s descriptive and substantive representation in the policy-making and decision-making arenas. “As such they complement one another by offering two modes of group representation for women,” (Squires 2007: 78). Thus, using quotas and national gender machinery together, there is a greater chance that both women’s descriptive and substantive representation will be achieved.

Women’s Movements

Strong women’s movements are seen to be a necessary component in establishing women’s substantive representation (Bauer and Britton 2006; Hassim 2006; Lovenduski et al. 2005; Tripp 2009). A vibrant women’s movement not only helps establish communication between women politicians and women in civil society, it also vocalizes women’s interests and holds women in legislature accountable to pursuing women’s
interests within the state. As discussed earlier, a barrier to women's substantive representation is the diversity of women's interests. With regard to women politicians, political interests may dominate their gendered interests. As Bauer and Britton note, women's movements can help women politicians pursue women's interests. They states, "The support of women's movements has also been found to be crucial in ensuring that women legislators promote an agenda in which women's issues are prominent," (Bauer and Britton 2006: 9).

For the purposes of this paper, women's movements can be defined as "movements that have named women as the primary constituency that they are mobilizing. They have built organizational and/or political strategies around the concerns of women," (Tripp et al. 2009: 14). Furthermore, "Women's movements give social and political expression to women's gender interests," (Alvarez 1990: 23). Thus, women's movements can been seen as a grouping of women's organizations that pursue women's interests, attempting to raise awareness of women's issues and providing resources for women to overcome gender inequality. In terms of the state, women's movements can elect to either engage with the state or work outside of it.

Women's movement's have two key functions: to vocalize women's interests and to hold the state accountable with regard to pursuing policies that promote gender equality (Hassim 2006b: 4). Thus, for the purposes of this paper, a strong women's movement is one that has the organization, autonomy, capability, and mobility to vocalize women's interests, pressure the state and women representatives to pursue women's interests, and hold the state accountable to its commitment to gender equality.
Africa has a rich history of women’s movements throughout the continent. Most recently, the countries with the strongest women’s movements in Africa are Cameroon, Kenya, Mali, Senegal, Tanzania, Uganda, and to a lesser degree Ghana, South Africa, and Zimbabwe (Tripp et al. 2009:16). Of these countries women represent over 20 percent in the national legislature in three of them (South Africa, Uganda, and Tanzania) (Tripp et al. 2009: 50-52). It is interesting to note that Rwanda, the African country with the highest percentage of women representatives in parliament, does not have one of the strongest women’s movements. Viewing a strong women’s movement as a helpful factor to assure women’s substantive representation, this would seem to suggest that in Rwanda while women have a high level of descriptive representation they do not have substantive representation.

Indeed, Bauer and Britton (2006) note that party politics greatly influence the choices of women representatives in Rwanda. With regard to women representatives, they state, “their actions are always governed by the agendas of their respective parties. As elsewhere in Africa, women legislators in Rwanda are constrained by the partisan nature of parliamentary politics because their political survival depends on their political parties,” (Bauer and Britton 2006: 22). A strong women’s movement can help women politicians overcome the pressures of their respective political parties by illustrating that

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1 Tripp et al. (2009) evaluate the strength of women’s movements based on (1) the ratio of women’s human rights organizations relative to the overall figure for human rights organizations in a country; (2) the ratio of women’s organizations in the UN Economic and Social Council relative to the overall number of organization from a country (3) the number of women’s organizations in a country relative to women’s organizations in other countries based on the countries that attended the 1995 UN Conference on Women in Beijing; and (4) the proportion of news coverage of women’s issues relative to general articles in each country (16-17).
there is a vocal and mobilized women’s constituency and holding women in parliament accountable pursuing women’s interests.

A strong women’s movement makes women’s substantive representation more likely, however two key barriers present challenges to women’s movements. The first is the relationship between women politicians and women activists. Specifically, while periods of political transition are often the best opportunity for women to gain descriptive and substantive representation, Georgina Waylen (1994) notes that during political consolidation a chasm often develops between women in office and women in civil society. It is not uncommon that a strong women’s movement during a transition will fragment during democratic consolidation and women representatives will gradually lose touch with the women’s movement (Waylen 2007: 534, 538). Much of this has to do with how women legislators prioritize their interests. As discussed earlier, women representatives’ political self-interest is a concern regarding proportional representation electoral systems. The priority of political interests over women’s interests by women representatives is a key component of the South African case study in this paper.

A second barrier facing strong women’s movements is autonomy. Molyneux (1998) makes the distinction between three different “ideal” types of autonomy: independent organizations, associational forms, and directed collective action. According to Molyneux, an independent women’s movement “is defined as a self-governing community which recognizes no superior authority.” Autonomous women’s movements “are characterized by independent actions, where women organize on the basis of self-activity, set their own goals and decide their own forms of organization and forms of struggle.” In comparison, women’s organizations based on associational forms have a
quasi-independent status. By choosing "to form alliances with other political organizations with which they are in an agreement on a range of issues," "power and authority in this model are negotiated," (Molynuex 1998: 228). The risk of associational autonomy for women's movements is co-optation by other political organizations. Lastly, directed collective action applies to women's movements that are "subject to a higher (institutional) authority, and [are] typically under the control of political organizations and/or governments," (Molyneux 1998: 229). In this case, a women's movement does not have the authority to set its own agenda.

Tripp identifies four reasons why autonomy is so important for women's movements. With autonomy women's movements can (1) pursue their own agenda even if it means opposing the dominant political organizations; (2) select their own leadership; (3) engage in collective action to improve their communities; and (4) challenge the existing discriminatory distribution of resources and power (2000: 6-7). However, given the post-conflict climate of political transition in a number of African countries, it can be difficult for women's movements to establish autonomy. In the face of political transition and liberation movements, women's movements must often decide between integration and autonomy (Molyneux 1998: 228). As Hassim states, "Because women's political activism in postcolonial contexts has been enabled by larger struggles against colonial and class oppression, the result is a more highly developed politics of alliance rather than autonomy," (2006b: 9). Remaining autonomous is a challenge for women's movements, however, autonomy is essential in order for women's movement to effectively hold the state accountable to women's interests.
While the autonomy of women's movements is a challenge generally, having more women in parliament often compounds the threat of co-optation, because often women are recruited from strong women's movements. As Bauer and Britton note a "potential negative consequence of more women in parliament is the often unanticipated loss of women leaders from civil society organizations," (2006: 28). With their leaders in office, not only do women's movements run the risk of decreased mobilization, they also may be more likely to be co-opted because the close relationship with women in parliament negatively affects their autonomy. With increases in women's political representation "Gender activists and women's organizations may find themselves walking a thin line between cooperation with the government and co-optation by the government," (Bauer and Britton 2003: 23).

Both quotas and national gender machinery focus on working within the state. While increasing women's descriptive and substantive representation within government is essential to ensure gender equality, women cannot focus their efforts solely on the state. Women's increased political representation must be balanced with a strong women's movement in civil society in order to achieve substantive representation. Vibrant women's movements not only vocalize women's interests, but also hold women in parliament accountable to women as a constituency. "Thus, while getting women into office is a vital part of a national strategy for women's empowerment, it is also important to maintain the strength of civil society groups," (Bauer and Britton 2005: 28).

Descriptive representation is a crucial first step in securing women's substantive political representation. However, changing the gender composition of political representatives "cannot guarantee that women's needs or interests will then be addressed.
The only secure guarantees would be those grounded in an essential identity of women,” (Phillips 1995: 82). Rejecting the notion of women’s essentialism, this section has discussed two mechanisms of accountability: national gender machineries and strong women’s movements. The key to linking descriptive and substantive representation lies in clearly projecting women’s interests and ensuring that women legislatures actively and strategically pursue those interests. Facing the reality that women have multiple identities and competing interests, accountability mechanisms are critical to ensuring women’s substantive political representation.

Conclusion: Methodology

This chapter addressed the theoretical underpinnings of two related questions: Does women’s increased political representation ensure that women’s interests are represented in government? And, based on the distinction between descriptive and substantive representation, the question: Does descriptive representation guarantee substantive representation? Quotas are often used to establish women’s descriptive representation. I identified four conditions that affect quotas for women’s political representation: the type of quota, the type of political regime, the type of electoral system, and post-conflict climates. Overall, countries with post-conflict political climates are most likely to adopt quota quotas, and quotas are most successfully fulfilled in countries with proportional representation electoral systems. Furthermore, I identified four factors that help secure the progression between descriptive and substantive representation: critical mass, government commitment, national gender machinery, and a strong women’s movement.
In this paper, my methodology is based on these conditions and factors. Using the four conditions that increase the likelihood of women’s descriptive representation, I evaluate the position of women in South Africa’s Parliament. In addition, I evaluate women’s substantive representation in South Africa based on the four factors outlined in this chapter. Specifically, I use the Communal Land Rights Act to illustrate what conditions are most important for women’s substantive representation to be present in South Africa and the implications of these findings. I now turn to the case of South Africa.

South Africa: Perfect Conditions

South Africa has been internationally applauded for its commitment to gender equality. During its transition to democracy a strong women’s movement successfully championed for women’s rights in the Constitution, pressured the African National Congress (ANC) to adopt party quotas, and implemented national gender machinery. Furthermore, within the first term of parliament women successfully passed several “women’s laws,” expanding the rights of women. In this chapter I evaluate women descriptive and substantive representation in South Africa based on the conditions and factors that I presented in the previous chapter.

Descriptive Representation

Women’s descriptive representation can be greatly influenced by quotas, affirmative action targeted towards increasing women’s political representation. The type of quota, type of political regime, type of electoral system, and political climate can all
influence quotas. Generally, the most successful quotas are in countries with proportional representation electoral systems that established quotas during a post-conflict climate of political transition.

Firstly, South Africa has party quotas as opposed to legal quotas. This means that the political parties in South Africa can either choose to adopt or reject a quota for women representatives. During the democratic transition, the majority party, the ANC, established a quota of 30 percent for women, to be fulfilled in the first democratic elections in 1994. Following the 1994 elections women constituted 35.7 percent of ANC representatives and 27.7 percent of the total number of representatives in Parliament. In 1994, out of six represented political parties in parliament, only one political party did not have any women representatives. Following the 1999 elections women made up 30 percent of the total number of parliamentarians in South Africa. After the 2004 elections that percentage increased to 32.75 percent, with six out of eleven political parties having women representatives. Of all of these six parties (African National Congress, Democratic Alliance, Inkatha Freedom Party, United Democratic Movement, Independent Democrats, and African Christian Democratic Party) the Inkatha Freedom Party had the lowest percentage of women representatives (18.5 percent) while the United Democratic Movement had the highest percentage (44.4 percent) (Hassim 2006b: 174).

As of today, South Africa, with 44.5 percent of parliamentarians as women, ranks third globally in terms of the percentage of women in national legislature (Inter-Parliamentary Union 2010b). Clearly, quotas in South Africa have been effective. Although the ANC was the only political party to formally adopt a quota before the 1994
election, most parties did encourage women's representation in some form (Britton 2002: 51, 53). This is evident in that the percentage of women representatives has increased between the 1994 elections and the 2009 elections, not only within the ANC, but also among South Africa's various political parties.

Secondly, as of 1994 South Africa has a democratic regime in power. Trends in Africa demonstrate that a political regime does not have to be democratic in order to have women's descriptive representation, however in South Africa women's descriptive representation was marginal before its democratic transition.

Thirdly, South Africa has a proportional representation (PR) electoral system. Throughout the world, the countries with the highest proportions of women political representatives at the national level have PR systems. PR systems allow voters to vote for a party instead of an individual. This helps women get elected despite voter discrimination towards women. Yet, it also limits the ability of women to pursue women's interests in parliament. Often, under PR systems, women are more accountable to their political parties than to the women constituency, because their place on the party list is tenuous. Unless there is a strong women's movement holding women representatives accountable, it can be difficult for women in parliament to go against party interests to pursue women's interests, because there is not a visible constituency voting specifically for them. While this had an effect in South Africa, prioritizing party interests over women's interests is a common theme throughout countries with electoral systems based on proportional representation (Phillips 1995: 76-77).

Fourthly, in South Africa, the ANC adopted a quota for women's political representation during a time of political transition. The end of apartheid represents a post-
conflict climate in that there was the opportunity for political change and new political institutions. Specifically for women, the post-conflict climate had two effects that helped it achieve increased descriptive representation: the political climate to establish a quota and the creation of a group of women capable of running for office.

As Bauer and Britton (2006: 11) state, a post-conflict climate provides opportunities for reconfiguring gender relations. Often quotas are most successful when they are established after conflict, because women take advantage of the opportunity to transform gender relations. Britton notes that international electoral scholars and women activists advised South Africans “to secure the quota before the first election,” (2002: 49). Indeed, a party quota was adopted by the ANC in 1994, during South Africa’s transition from apartheid to democracy. Britton further states that “Had they [South Africans] waited until after the first election, male incumbents would have been much less likely to relinquish their seats or their positions on the party lists,” (2002: 49). Consistent with trends throughout Africa, the success of South Africa’s quota and the remarkable increase of women representatives in Parliament is due, in part, to women politicians and a strong women’s movement capitalizing on a political climate of transition.

In addition, as further noted by Bauer and Britton (2006: 11) a post-conflict climate can create a pocket of women activists and exiles both willing and able to run for political office. This was certainly the case in South Africa. During apartheid, women protested alongside men against the authoritarian regime (Walker 1991). Furthermore, many women were exiled during apartheid. Living abroad, they were influenced by Western notions of feminism and gender equality. Coming back to South Africa during
its transition to democracy these women infused the country with qualified women leaders willing to enter politics. Indeed, bringing attention to the legitimacy of these women, Hassim (2006b: 201) notes that many of the women filling the ANC quota would have been on the ANC's party-list regardless of the women's quota. Although critics of quotas base their arguments on meritocracy, for the most part, women representatives in South Africa's parliament were perceived as qualified to be there in their own right rather than earning their seat in parliament simply based on filling a quota (Britton 2005).

Of the conditions under which women's quotas are most likely to succeed, all of them were present in South Africa. South Africa has a proportional representation system, a supply of capable women politicians, and the ANC party quota was established during the post-conflict climate of political transformation. Indeed, women's descriptive political representation has increased following each of South Africa's four elections since its democratic transition. Thus, in having secured women's descriptive representation, the question turns to how South Africa measures in terms of women's substantive representation.

*Substantive Representation*

Descriptive representation is the first step towards achieving substantive representation for women. Four factors contribute to whether or not descriptive representation progresses towards substantive representation: critical mass, government commitment, national gender machinery, and a strong women's movement. I now evaluate South Africa in terms of these factors.
The minimum for critical mass is determined to be 30 percent (Dahlerup 1988). After the first democratic elections in 1994, although women representatives had succeeded in reaching the ANC's 30 percent party quota, with 27.7 percent, women constituted just fewer than 30 percent of total parliamentarians. By the next election in 1999, women parliamentarians secured critical mass, making up exactly 30 percent of the representatives in parliament. Thus, at the time the Communal Land Rights Act was passed before the 2004 elections South Africa had fulfilled the critical mass criteria (Hassim 2006b: 174).

Additionally, in South Africa there is a strong formal government commitment to gender equality. In terms of formal equality, women's rights in South Africa are unprecedented. As expanded on later, a vocal women's movement in South Africa during its transition helped establish a wide range of formal rights for women in the South African Constitution. When the Constitution was passed by Parliament in 1996, the ANC majority helped to secure more detailed rights for women, including rights to freedom and security of the person that are explicit on bodily autonomy, freedom from violence, and reproductive choice and a prohibition against any expression that amounts to advocating gender hatred and constitutes incitement to harm, (Albertyn 2003: 604).

Furthermore, not only did the state establish civil and political rights for women, as a welfare state, it also placed emphasis on women's social and economic rights (Hassim 2006a). With regard to socio-economic rights, the Bill of Rights promises social assistance to all South Africans in need, prohibiting "unfair discrimination on the basis of sex and gender and [requiring] positive measures for the achievement of gender equality," (Goldblatt 2005: 243). Thus, in South Africa women have significant formal rights, both civil and political, and social and economic.
Moreover, government commitment to gender equality is evident in the tools the government promotes. Firstly, as noted above, quotas are used as a means to increase women’s descriptive representation. Secondly, as a way to help ensure women’s substantive representation, national gender machinery can be established as an accountability mechanism to monitor the government’s commitment to gender equality and women’s interests.

In line with its commitment to women’s rights, the South African government has a complex system of institutions that make up its gender machinery. During South Africa’s transition to democracy, women activists and women politicians “recognized that institutionalizing women’s issues within the new democracy would be essential for securing long-term advancements for women,” (Britton 2005: 128). Drawing on lessons from Australia, Scandinavia, Canada, Bangladesh, and Uganda, women politicians and activists in South Africa decided against the single mechanism approach argued for the UN (United Nations 2009b). Instead, South Africa has seven different structures which all fall under the umbrella title of the National Machinery for Advancing Gender Equality in South Africa. This decentralized approach, with two structures located in the government, three in the Parliament, and two independent bodies, was adopted to prevent a single women’s Ministry or Department from being co-opted and marginalized.

Overall, South Africa’s national gender machinery can be summarized in the following tables, based on the location of each component, the year it was created, and the purpose it serves.
### Government Institutions

<table>
<thead>
<tr>
<th>Office of the Status of Women (OSW)</th>
<th>1994</th>
<th>Oversees the development and implementation of a national gender policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department Gender Desks</td>
<td>1994</td>
<td>Monitors the implementation of policies and the delivery of government services in each department</td>
</tr>
</tbody>
</table>

### Parliament Agencies

<table>
<thead>
<tr>
<th>Joint Monitoring Committee on Improving the Quality of Life and Status of Women (JMC)</th>
<th>1996</th>
<th>Monitors the government’s implementation of CEDAW and advises and monitors legislation in Parliament for gender sensitivity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s Empowerment Unit</td>
<td>1994</td>
<td>Trains women parliamentarians for new roles as legislators</td>
</tr>
<tr>
<td>Parliamentary Women’s Group (PWG) (no longer in existence)</td>
<td>1994</td>
<td>Links women legislators and women in civil society and promotes cross-party mobilization</td>
</tr>
</tbody>
</table>

### Independent Bodies

<table>
<thead>
<tr>
<th>Commission on Gender Equality (CGE)</th>
<th>1996</th>
<th>Monitors and evaluates government policy based on gender equality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women’s Budget Initiative (WBI)</td>
<td>1996</td>
<td>Tracks government budgets and expenditures from a gender perspective</td>
</tr>
</tbody>
</table>

While this is a very brief description of South Africa’s national gender machinery, it highlights the seven components and the individual purposes that they serve. Overall, these components are accountability mechanisms used to advise and monitor the South African government with regard to gender sensitivity and, specifically, women’s interests.

Like quotas, national gender machinery is most successful when it is established during a political transition. The opportunity for new institutions during political transition allows women’s accountability mechanisms to be fully integrated into the state apparatus. Although some components were established during the consolidation of South Africa’s democracy, in South Africa, women politicians, women activists, and women academics seized the opportunity created by South Africa’s political transition...
and established the basic structure of South Africa’s national gender machinery before the first democratic elections. 

*Women’s Movements*

South Africa had a vibrant and mobilized women’s movement leading up to and during its transition to democracy. The Women’s National Coalition (WNC) represents the height of the women’s movement. Founded on April 25, 1992, the WNC successfully brought together women involved in all spectrums of South African society (Murphy 2003:31). Women within the Coalition represented political parties, special interest groups, religious groups, trade unions, national networks, regional organizations, and community associations (Mabandla 1995; Connell 2002; Cock and Bernstein 2001). All in all, in its inception the WNC was comprised of a remarkable seventy organizations and eight regional coalitions, all differing in size, ideology, and organizational culture (Hassim 2006b: 136). These numbers would later expand to 90 individual organizations and 13 regional coalitions by 1994 as the WNC pursued the first women’s nationwide campaign in South African history (Waylen 2007: 531). Specifically, the WNC sought to create a women’s constituency capable of demanding participation in the democratic transition process and ensuring gender equality in the new South African Constitution.

The WNC was able to unite a wide range of women and a broad spectrum of organizations. Although the WNC stayed away from a specifically feminist discourse, it did rely on the historical pattern of women’s suppression, silence, and subordinate citizenship in South Africa. This history had important implications given the political climate of transition and the widespread fear that women would be excluded from the
negotiation process that was determining the future of South Africa. Thus, “A pragmatic unity among women within the WNC was brought about not in the name of feminism but by a shared sense of women’s exclusion from the negotiation process that marked South Africa’s transition from authoritarian rule,” (Cock and Bernstein 2001: 138).

Unity based on women’s shared oppression and exclusion is consistent with second wave feminism, however, in reality the WNC was organized more in line with third wave feminism. Despite the motive behind its mobilization, one of the sustaining forces of the WNC was its commitment to inclusivity based on diversity and a realization that women indeed do have multiple identities. Indeed, the WNC “did not attempt to create a new, shared definition of the women of South Africa,” (Cock and Bernstein 2001: 143). Rather, the WNC encouraged diversity of identity among its members, rejecting the language of sisterhood. This receptivity to the reality of women’s multiple identities encouraged participation and inclusivity, factors essential for establishing women as a strong political constituency.

The commitment of the WNC to inclusion and diversity was evident during its Charter Campaign. Arguably the most successful aspect of the WNC, the Charter Campaign was the basis for the Women’s Charter for Effective Equality. Based on grassroots, participatory and inclusionary fieldwork by WNC member the Women’s Charter was seen to represent the interests of South African women as a whole. The Women’s Charter identified five key issues: women’s legal status, women and land, women and violence, women and health, and women and work, all governed by the WNC’s overarching themes of women’s affirmative action and political representation (Murphy 2003: 32).
Broadly, the WNC hoped that the Women's Charter, especially its participatory process, would heighten awareness and build consciousness for women's rights. More narrowly, the WNC hoped that the Women's Charter would "influence the national political process of writing the constitution and designing the new political system," (Waylen 2007: 530). Hassim notes the two goals of the Women's Charter campaign, "The campaign was intended to be both a mobilizing and educational (consciousness-raising) tool, as well as a concrete set of demands to be used at the level of national politics," (2006b: 140-141).

The Women's Charter represents the main channel through which the WNC articulated its constituents' demands to the South African government. The WNC pursued a participatory approach to ensure that women from all sectors of South African society had the chance to influence the Women's Charter. As Jacklyn Cock and Alison Bernstein note, "The needs that were codified in the charter were not fixed or given at the outset; they were generated, articulated, and circulated within a process of organizational development," (2001: 140-141). The WNC refused to "frame women's issues in any a priori way," (Cock and Bernstein 2001: 143). As Rondala Murphy states, the objective of the Women's Charter "was to determine [women's needs, concerns, and aspirations] in a way that empowered women to define their own conception of what 'rights' they sought to obtain," (2003: 31). Based on this approach, over the course of the coalition an estimated three million women contributed to the Charter Campaign, voicing both their hopes and fears for a new South Africa (IISD 2010).

The participatory process of the Charter Campaign came together in what co-convener of the WNC, Frene Ginwala dubbed "Operation Big Ears." This name was
meant to reflect the WNC sponsored field research used to generate the rights outlined in the Women’s Charter. Specifically, the name was adopted from Ginwala’s speech at the founding of the coalition. She urged the coalition to “grow ‘big ears’ that reach the farthest corners of the land. Let us encourage women to speak of their problems and how they understand and experience gender oppression in their daily lives,” (Ginwala 1992, quoted in Hassim 2006b: 142). The WNC’s field research worked to reach wide cross-section of women, from the political elite leading the campaign to the most marginalized rural black women. Hassim aptly describes this process,

One hundred field workers would be focusing group discussions with women across the country during a period of three months. This process would identify issues that women had in common as well as their divergent interests. It would provide information for the coalition’s strategic mobilization and politicize women about their oppression; it also would link grassroots-level politics to national processes, (Hassim 2006b: 143).

The Charter Campaign, and the WNC generally, was so successful, because it was able to overcome the two key barriers that the literature on women’s movements highlighted. Firstly, there was a close relationship between women politicians and the women’s movement. Women from various political parties were members of the WNC. This allowed the WNC to pursue strategies of cross-party mobilization to leverage political parties to adopt women-friendly policies (Britton 2002: 41). Furthermore, these women politicians, together with women activists, and women academics formed what was termed a “triple alliance,” which allowed the WNC to pursue its goals from different angles (UN-INSTRAW 2000: 169). Overall, the WNC “represented an extraordinary convergence of women,” illustrating the ability of a women’s movement to have close relations with women politicians.
Furthermore, the WNC was able to bring together women politicians, activists, and academics while still remaining autonomous. Despite a widespread liberation movement during South Africa's political transition, the WNC maintained its autonomy. According to Molyneux's three distinctions, while the WNC did choose to pursue some strategic alliances, it can be categorized as an independent organization. As Gerorgina Waylen states, "It was capable of action independent of other groups and organizations," (2007: 530). With women setting the agenda, the WNC focused on the best strategies to accurately represent the demands of a wide range of women in South Africa such as the participatory and inclusionary Charter Campaign. Furthermore, its autonomy allowed the WNC to successfully lobby political parties to include more women, illustrated by the ANC quota. As discussed later in this paper, while the autonomy of the WNC is, in part, what made it so successful during the transition, attempting to remain autonomous largely caused the downfall of the WNC during South Africa's democratic consolidation.

The Women's Charter was formally adopted at the WNC National Convention, held the 25\textsuperscript{th}-27\textsuperscript{th} of February 1994 (Murphy 2003: 32). In August that same year the Women's Charter was presented to Parliament where delegates from across the political and social spectrum approved the charter (Cock and Bernstein 2001: 139). The success of the Charter Campaign established the WNC as a voice for women at the national level and a legitimate political force, "lending the organization unquestionable political credibility in a context in which women's demands for representation were constantly denigrated," (UN-INSTRAW 2000: 169; Hassim 2006b: 143). However, perhaps more importantly, the WNC illustrates the strength and depth of the women's movement in South Africa during its transition to democracy.
Thus, South Africa ranks well with regard to the factors that help ensure women’s substantive representation. South Africa has a critical mass of women in Parliament, a strong government commitment to gender equality, a national gender machinery largely established during a period of political transition, and a strong women’s movement that helped establish women’s position within the government during South Africa’s democratic transition.

Overall, South Africa has successfully achieved women’s descriptive representation. Furthermore, it seems to have all of the requisite factors for translating women’s descriptive representation into substantive representation. Indeed, within the first democratic term, women parliamentarians successfully changed the parliamentary culture and passed legislation that increases women’s rights. Specifically, women in Parliament reorganized the Parliamentary calendar to make it consistent with the school calendar to better accommodate women parliamentarians that are mothers (Britton 2005: 126).

In addition, Parliament passed a series of “women’s laws.” The first “women’s law” to be passed by Parliament concerned abortion rights. The Termination of Pregnancy Act passed in 1996, provided “women with access to abortion under broader and more favorable conditions than previously,” (Hassim 2006b: 201). Also in 1996, Parliament passed The Films and Publication Act, restricting the content and usership of pornography. In the months before the end of the first term, Parliament fast-tracked the Maintenance Act, the Domestic Violence Act, and the Customary Marriages Act in 1998. These laws, improve the position of mothers dependent of financial support from past partners, criminalize domestic abuse, and legalize customary marriages while abolishing
the minority status of married women under customary law, respectively (Hassim 2006b: 201-202). These laws expand women’s reproductive rights, rights to bodily integrity, rights to government benefits and services, and challenge the patriarchal nature of traditional customary law. Certainly, this legislation seems to suggest that an increased presence of women in parliament has made some difference with regard to parliamentary culture and women’s laws and policies.

Thus, an evaluation of South Africa in terms of the factors that best promote women’s descriptive and substantive representation suggests that at the time of South Africa’s democratic transition, all of the conditions were present to achieve women’s substantive representation. I now turn to the Communal Land Rights Act as a piece of legislation that illustrates that women’s substantive representation is, in fact, not present in South Africa.

The Communal Land Rights Act of 2004

To provide for legal security of tenure by transferring communal land, including KwaZulu-Natal Ingonyama land, to communities, or by awarding comparable redress; to provide for the conduct of a land rights enquiry to determine the transition from old order rights to new order rights; to provide for the democratic administration of communal land by communities; to provide for Land Rights Boards; to provide for the co-operative performance of municipal functions on communal land; to amend or repeal certain laws; and to provide for matters incidental thereto. (Government of South Africa 2004: 2).

Land rights are extremely valuable for African women, especially rural women. As Tripp et al. state, “Land is of critical importance to women because they depended on it for agricultural production and therefore their livelihoods,” (2009: 131). However, throughout Africa, women face constraints regarding their access to and ownership of land. In fact, in Africa, “Unequal access to land is one of the most important forms of
economic inequality between men and women and has consequences for women as social and political actors,” (Tripp et al. 2009: 131).

In South Africa, rural women are much more likely to be poor than rural men, in part because of their limited access to land. As of 1999, with 57%, the majority of African women live in rural areas compared to only 17 percent of colored women and 8 percent of white women (Kehler 2001). Furthermore, as of 1997, 65 percent of female-headed households in rural areas were poor compared to 54 percent of male-headed households (Hassim 2006a: 121). Specifically, African rural women are the demographic category most likely to be poor in South Africa (Baden, Hassim, Meintjes 1998). As Johanna Kehler states, “Black rural women are the ones faced with an even greater lack of access to resources and prosperity and therefore live under immense poverty,” (2001).

During the first term of South Africa’s democracy, from 1994-1999, women’s access to land was considered in the 1994 Land Reform Pilot Programme which included women headed households on project beneficiary lists (Walker, 2005: 301-302). However, in 1999 South Africa changed course, adopting the Land Redistribution for Agricultural Development (LRAD) in 2000. Within the LRAD “‘Race’ and historical disadvantage, rather than poverty or need (or gender), now became the key criteria for beneficiary selection,” (Walker, 2005: 302). Thus, as of 2000, women have been viewed as an “add-on” instead of a critical population for land reform and redistribution.

The Communal Land Rights Act (CLRA) held the potential to reverse this trend by acknowledging women’s vital relationship to land, challenging the patriarchal nature of traditional authorities and customary law, and expanding rural women’s access to and ownership of land. However, instead, the CLRA did the opposite, limiting women’s
rights to land and increasing the powers of patriarchal traditional authorities. Although there are several aspects of CLRA, I focus on the two objectives that had the largest consequences for women's land rights. These two objectives were (1) to transfer state owned KwaZulu-Natal Ingonyama land to rural communities and (2) to restore "old order" rights as "new order" rights. In this chapter I will address these two objectives and the effects that they have on women's right to land. Specifically, I argue that rather than expanding women's rights to land, the CLRA limits women's access to land and ownership by expanding the authority of traditional leaders and formalizing gender discrimination.

Firstly, the transfer of state owned land to communities outlined in the CLRA, limits women's access to and ownership of land, because it vests power over land to traditional authorities who govern through customary law. "The term customary law refers to customs and traditions which have historically regulated social relations in indigenous communities" (Cock and Bernstein 2001: 147). Historically, customary law is deeply patriarchal, defining women in terms of their relationship to men. With regard to land, under customary law ownership is most often registered in the name of the male representative of the family, whether a father, husband, or son (Cross and Friedman 1997: 24). For example, "A married women's access to land is defined by her relationship with her husband, or if deceased through his male relatives or his sons," (Rangan and Gilmartin 2002: 641). It is not uncommon for widowed women to be the mercy of their husband's relatives and there are countless stories of widows getting forced off of their land after their husband has passed away (Claassens and Ngubane 2008). Given the patriarchal nature of the customary law, especially with regard to land rights, it seems
remarkable that a government so seemingly committed to gender equality would grant traditional councils control over the allocation of land.

However, the authority of traditional leaders is consolidated in the role communities play in the CLRA. The CLRA grants the transfer of land to communities rather than individuals. As Aninka Claassens states, "The Act does not acknowledge the family-based nature of land rights in rural areas. Instead it provides that rights vest in 'communities' or 'persons,'" (2005b: 11). Without individual rights to land, women's rights to land are dependent on the community authorities. While this in itself does not determine women's access to and ownership of land, a closer look at how communities are defined reinforces the power of traditional leaders.

In the Act the definition of community is vague, however, "a senior official of the Department of Land Affairs told the Land Portfolio committee that the department estimates that there are 892 communities eligible for transfer of title. This is the number of tribal authorities in South Africa," (Claassens 2005a: 44). Although Hassim states that, under the CLRA, after the transfer of land, "Communities would then be given discretion as to whether the land would be held by communal title or subdivided and registered in the names of individuals," (2006b: 203), equating communities with traditional authorities grants the historically patriarchal authorities with the power to divide and allocate land.

The definition of communities as traditional authorities in the CLRA stems from controversy over the Traditional Leadership and Governance Framework Act (TLGFA). Considered a sister Act to the CLRA, the TLGFA was passed by Parliament in 2003, a year before the CLRA. The TLGFA sets up conditions under which "tribal councils" can
transition to become traditional councils with legalized legislative powers. Specifically, the TLGFA makes the following two conditions: 40 percent of the traditional council must be democratically elected for a five year term and 30 percent of the traditional council must be women (Government of South Africa 2003: 10). Traditional leaders greatly opposed these two stipulations, and criticized the Act “for failing to meet promises that traditional leaders would be given appropriate legislative powers,” (Claassens 2005a: 66).

While the 30 percent quota for women on traditional councils seems to suggest that traditional councils are giving up some of their patriarchal legacy, in reality the quota is more symbolic than substantive. Although 40 percent of the traditional council must be elected members, the other 60 percent of members can be “selected by the senior traditional leader concerned in terms of that community’s customs, taking into account the need for overall compliance with paragraph (b)” (paragraph (b) requires that 30 percent of the council be women), (Government of South Africa 2003: 10). Section 3(2)(c) of the TLGFA effectively allows the senior traditional leader to handpick women to fill the quota, because the 30 percent women can be included in the 60 percent of traditional council members that are not elected. Indeed, The Programme for Land and Agricultural Studies (PLAAS) Submission to the Portfolio Committee for Land and Agriculture argued, it is very unlikely that the 30% quota will come from the royal family and be comprised of female relatives of the chief. Can women handpicked by chiefs really be relied on to represent the interests of ordinary rural women, and to address the legacy of gender discrimination against women practiced under customary law? (PLAAS 2003).
By filling the 30 percent quota for women on traditional councils with women handpicked by senior traditional leaders, it is highly unlikely that these women will challenge the interests of traditional authorities in favor of rural women's interests. Thus, for traditional councils, there is little chance for women's substantive representation.

As mentioned above, traditional leaders greatly opposed the provisions outlined in the TLGFA. In fact, both traditional leaders and the Inkatha Freedom Party threatened to boycott the 2004 elections based on objections to the TLGFA (Claassens 2005: 66). Some activists argue that this threat is what caused a last minute change to the CLRA regarding its definition of communities.

Originally, version 8 of the draft CLRA defined community in terms of land administration committees. This draft of the CLRA limited the number of traditional leaders that could be members of the land administration committees to 25 percent (Walker 2005: 312). The other 75 percent of the land administration committee would be elected community representatives. The land administration committees are responsible for making community decisions regarding land allocation. Specifically, these powers include the power to allocate and register land rights and to represent the community as the owner of the land (Government of South Africa 2004: 24). The proposed proportions of the land administration committees in version 8 of the CLRA did not consolidate power into the hands of the traditional authorities, but rather granted more power to elected community representatives.

However, in October 2003, only a month before the CLRA was passed through Parliament, the CLRA was dramatically changed to redefine land administration committees as traditional councils (Claassens 2005a: 45). Section 21(2) of the CLRA sets
out this change 

(2) If a community has a recognised traditional council, the powers and duties of the land administration committee of such community may be exercised and performed by such council,” (Government of South Africa 2004: 22). Thus, the powers of the land administration committee set out in the Act were then transferred to the traditional council. As Cherryl Walker states, the CLRA “empowered reconstituted Traditional Councils...to become the all-important land administration committees that would manage communal land once it had been formally transferred into community ownership,” (2005: 312). This change was welcomed by traditional leaders and succeeded in easing some of the tension, between the ANC on one side and traditional leaders and the Inkatha Freedom Party on the other, that the TLGA had ignited (Hassim 2006b: 204). Indeed, “Once the changes to the CLRA were made public, however, vocal opposition to the TLGFA died down and various traditional leaders made statements welcoming the CLRB as ‘finally’ giving traditional leaders their due,” (Claassens 2005a: 66). However, while the new definition of land administration committees may have pleased traditional leaders, by expanding the authority of patriarchal traditional leaders, it effectively limited women’s rights to land.

The second aspect of the CLRA that has a negative effect on women’s land rights is its objective to restore “old order” rights as “new order” rights. The CLRA defines “old order” rights as derived “from or is recognised by law, including customary law, practice or usage,” (Government of South Africa 2004: 8). As discussed earlier, in practice customary law is deeply patriarchal. The CLRA proposes that these “old order” rights be formalized as “new order” rights. “New order” rights are defined in the CLRA as “a tenure or other right in communal or other land which has been confirmed, converted,
conferred or validated by the Minister in terms of section 18,” (Government of South Africa 2004: 8).

As the definition of “new order” rights in the CLRA implies, the Minister of Land Affairs can update “old order” rights by confirming them as “new order” rights (Government of South Africa 2004: 18). Thus, “The Act provides that the Minister (as opposed to a traditional council) will determine both the content and holders of new rights,” (Claassens 2005a: 77). This means that the Minister of Land Affairs has the authority to grant women the rights to ownership or occupation of land, by overriding “old order” rights and decisions made by traditional councils. Although traditional leaders opposed this stipulation, as an entrenched right in the Bill of Rights, women’s organizations and the Commission on Gender Equality argued that gender equality should not be subject to discretion, which creates conditions for potential abuses of power (Hassim 2006b: 205).

Claassens makes the argument that

The contradiction [between “old order” rights and women’s rights] would disappear if women’s use and occupation rights also [fell] within the definition of old order rights. If they [did], then women’s use and occupation rights could be formalised and registered alongside those of men, and their security would be guaranteed through the registration of overlapping new order rights, (2005b: 12).

However, “old order” rights are based on apartheid law, which prohibited the allocation of land to women and registered family-held land exclusively in the male household head (Rangan and Gilmartin 2002: 641). Based on this definition of “old order” rights, women’s rights to land ownership are not included. Rather, women are dependent on male household heads for their land security. Thus, by updating “old rights” as “new rights,” the CLRA formalizes and legalizes gender discrimination. Claassens and Sizani
Ngubane note that, “If the government had chosen to place its emphasis on use rights as opposed to old order rights, it could have bolstered women’s land rights,” (2008). However, by prioritizing “old order” rights over use rights, the CLRA limited women’s land rights.

Without legal access to or ownership of land it is easily possible for women to be kicked off of the land they may have inhabited for years. The CLRA had the potential to expand rural women’s rights to land and to challenge the patriarchal practices of traditional leaders governing under customary law. However, instead, the CLRA expands the power of traditional authorities by defining land administration committees as traditional councils and reinforces discrimination against women by restoring “old order” rights as “new order” rights. By doing so, the CLRA, rather than increasing women’s rights to land, presents more barriers for rural women living on communal land to access and own land.

Findings: Substantive Representation in Question

Rather than adhering to principles of gender equality, the CLRA expands the authority of traditional leaders, entrenches past discriminatory practices towards women and limits women’s right to land. Indeed, the CLRA has been challenged by women’s organizations and the specifically the Commission on Gender Equality (CGE) as unconstitutional. Yet, despite this opposition, the CLRA was unanimously adopted by Parliament, including women representatives (Claassens 2005b: 5). Why did this happen? Is the outcome of the CLRA an indicator that women’s substantive representation is not present in the South African Parliament? To answer these questions, I first assess the
trends in Africa with regard to women’s land rights, focusing specifically on Uganda and Mozambique to situate the CLRA within the larger context of women’s land rights in Africa. Secondly, I evaluate the South African Parliament at the time the CLRA was passed based on the four factors that help ensure women’s substantive representation: critical mass, government commitment, national gender machinery, and a strong women’s movement.

_African Trends_

Land is on the legislative agendas of many African parliaments. In the face of increased commercialization of land and problems of land scarcity, traditional leaders throughout Africa have used customary law and patrilineal culture to place greater constraints on women’s access to land, (Tripp et al., 2009: 131). In response, “women MPs are challenging their male counterparts to include the issue of gender within the discussion of land rights and in the context of customary law,” (Bauer and Britton, 2006: 20). Furthermore, “Women’s movements in Africa have increasingly been adopting rights-based approaches that challenge customary land tenure arrangements,” (Tripp et al., 2009: 131). Indeed, arguments against the CLRA were based on women’s equal rights and rights to land based on past discriminations. However, even with women’s movements gaining momentum around women’s right to land, the results of challenging traditional leaders and securing women’s right to land have been mixed. The Land Acts passed in Uganda and Mozambique illustrate cases in which women’s rights to land were restricted and expanded, respectively.

In Uganda, women failed to secure a co-ownership clause in the amendments of the 1998 Land Act (Tripp 2006: 123). The co-ownership clause would increase women’s
rights to land ownership, challenging Uganda's patrilineal society. Although there was a strong women's movement in Uganda, the co-ownership clause was still excluded from the Land Act's amendments. Up until the Land Act, the women's movement had supported Ugandan President Yoweri Museveni's pro-women policies. However, the tension between the women's movement and the President over the co-ownership clause "put loyalties of key women politicians to the test and forced them to make difficult choices between support for the women's movement and a political career endorsed by the president and his Movement," (Tripp 2006: 124). Women politicians in Uganda largely chose to side with the government's position. Opposition to the co-ownership clause came from women parliamentarians and women ministers. The vice president, women parliamentarian Specioza Wandira Kazibwe even told the women's movement that she opposed the clause because in her opinion "women need only access to rather than control of land," (Tripp 2006: 125). In Uganda, with regard to the co-ownership clause in the 1998 Land Act, women parliamentarians chose to side with the government position, oppose the opinion of the women's movement, and not expand women's land rights.

In contrast to the Ugandan example, the Mozambican women's movement successfully reformed Mozambique's 1997 Land Act to expand women's right to land. Although, like both Uganda and South Africa, customary law is still practiced in Mozambique, the Land Act protects women's access to, control over, and ownership of land (Tripp et al., 2009: 135). Specifically, "the new law protects women, especially those who are widows, divorced, and single mothers, who need access to land to survive," by guaranteeing women the right to own land (Tripp et al., 2009: 135).
Furthermore, although Mozambique’s Land Act recognizes customary law and customary tenure systems, the law also makes the provision that customary law cannot violate women’s rights (Tripp et al., 2009: 135). While a similar provision was made in the case of South Africa, instead of expanding women’s land rights, especially single women’s access to land, the CLRA makes it more difficult for rural African women to secure ownership of land.

Although the outcomes of the Ugandan and South African cases, on one hand, and the Mozambique Land Act on the other differ with regard to women’s land rights, all three point to three strong factors that influenced the outcome of legislative land reform: government commitment to women’s rights, government influence over women parliamentarians, and a strong women’s movement. As the Ugandan cause illustrates, government commitment can either make or break policies that promote women’s rights. Furthermore, although President Museveni was known for his pro-women policies, his opposition to the co-ownership clause influenced women parliamentarians and largely prevented the co-ownership clause from being included in the 1998 Land Act. Although the government opposition was not as strong in Mozambique, women’s rights to land were expanded in the 1997 Land Act, because a strong women’s movement organized collective mobilization. This coordination resulted in the women’s movement being included in Mozambique’s Land Forum, in which two hundred local and national organizations discussed the components of the Land Act. Thus, because of a strong, organized women’s movement, women were able to positively influence Mozambique’s Land Act. As both Uganda and Mozambique demonstrate, the outcomes in Africa with regard to expanding women’s land rights has been mixed, thus the result of the CLRA is
not out of line with legislation pertaining to women’s land rights in other African
countries.

**Critical Mass: South Africa has the Numbers**

Firstly, in 2004 there was a critical mass of women in Parliament. A critical mass is
determined to be 30 percent. The CLRA was fast-tracked at the end of the second
democratic term of Parliament (1999-2004), before the 2004 elections (Walker 2005:
312). However, even before the 2004 elections, with exactly 30 percent of the
parliamentarians as women, women in the South African parliament had a critical mass
(Hassim 2006b: 174).

**Government Commitment: Women’s Rights vs. Traditional Authorities**

The second factor, government commitment to women’s rights, is a bit more
difficult to determine than critical mass. Internationally, the South African government is
perceived to have a strong commitment to gender equality and women’s rights. Often, the
Equality Clause in South Africa’s Bill of Rights is sighted by academics as the most
progressive in the world. Section 3 of the Equality Clause states,

> The state may not unfairly discriminate directly or indirectly against anyone on
> one or more grounds, including race, gender, sex, pregnancy, marital status,
> ethnic or social origin, colour, sexual orientation, age, disability, religion,
> conscience, belief, culture, language and birth, (Government of South Africa
> 1996: Section 9 (3)).

In addition, the South African Parliament approved the Women’s Charter for Effective
Equality in 1994, expanding women’s rights in the Constitution. Furthermore, during its
first term, Parliament passed several pieces of legislation that expanded women’s rights.
This would all seem to suggest that the South African government has a commitment to women’s rights and gender equality.

However, the South African government also has a commitment to traditional authorities. The Constitution recognizes and protects the status of traditional authorities and customary law. It states in Section 211 of the South African Constitution,

(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs, (Government of South Africa 1996: Section 211(1) and (2)).

As Haripriya Rangan and Mary Gilmartin state, “Customary law does not operate on the principle of gender equality,” (2002: 639). This would seem to suggest that customary law contradicts the Equality Clause in the Constitution.

However, during the multi-party negotiation process that guided South Africa’s democratic transition, women activists and politicians went head to head with traditional leaders over the Equality Clause in the Constitution. Specifically, women delegates from the Women’s National Coalition (WNC) set out to “to ensure the inclusion of nonsexism in the constitutional principles,” (Waylen 2007: 531). This included securing “an equality clause in the constitution that would override customary law,” (Waylen 2007: 531).

As the CLRA illustrates, customary law is historically patriarchal. Frene Ginwala, the co-convener of the WNC at the time even argued that without the Equality Clause women living under customary law, often the most marginalized women in South Africa – black, rural women – would become second class citizens, without access to their full rights of citizenship (Cock and Bernstein 2001: 147). However, while women from the WNC maintained that women’s rights in the new Constitution should include all women,
even those living under customary law, traditional leaders argued that customary law, as legally recognized, should be exempt from the Equality Clause. In the end, women’s rights defeated customary law and a provision was made in the Constitution that customary law would not be exempt from the Equality Clause. While traditional authorities still discriminate against women, it is important to note that in this case women political representatives did challenge traditional leaders and succeeded in securing a victory for women’s rights (Rangan and Gilmartin 2002: 641).

A second example of a confrontation between women’s rights and traditional authorities is the Customary Marriages Act of 1998. The Customary Marriages Act legalizes customary marriages and abolishes the minority status of women married under customary law (Hassim 2006b: 202). Without legal recognition, women married under customary law, have little power to divorce or leave their husbands unless they are willing to give up everything. The Customary Marriages Act grants more authority to women married under customary law, because with their marriages legally recognized by the state, women can legally divorce their husbands and demand settlements.

The Equality Clause’s authority over customary law and the Customary Marriages Act both illustrate that women’s rights can outweigh the interests of traditional leaders. Furthermore, they demonstrate that government commitment to women’s rights can overcome pressure from traditional authorities. Thus, the CLRA seems to be more of an exception rather than the norm in South Africa. Some South African activists and academics have proposed that the last minute changes in the CLRA were a result of a pre-election pact with the government and traditional authorities (Ahmed 2004). This would suggests that although the historical precedent is that women’s rights outweigh the
interests of traditional leaders, the political will to pursue women’s rights or to prioritize women’s rights over pressure from traditional authorities was not present at the time of the CLRA.

National Gender Machinery: Working Accountability?

Thirdly, there was working national gender machinery in place at the time of the CLRA. Furthermore, the components of this accountability mechanism did raise objections to the CLRA. Specifically, the Joint Monitoring Committee on Improving the Quality of Life and Status of Women (JMC) in Parliament and the independent Commission on Gender Equality (CGE) raised objections. The Joint Monitoring Committee suggested that the 30 percent quota for women members on traditional council’s be increased to 50 percent to better reflect the makeup of rural populations and to give women more leverage and decision-making power within the council (Hassim 2006b: 205). Furthermore, having 50 percent of the traditional council members as women would prevent senior traditional leaders from handpicking women representatives. If 40 percent of the members have to be elected and 50 percent must be women, then at least 10 percent of the women representatives would have to be elected.

Furthermore, the JMC also raised objections to the CLRA through a submission to the portfolio committee on Land and Agricultural Affairs. The chairperson of the JMC, Lulu Xingwana criticized the power given to traditional councils. She claimed that granting more power to traditional councils over land “would reinforce patriarchal power relations and impact negatively on women,” (Claassens 2005b: 21) Furthermore,
Xingwana was concerned that the CLRA “would strengthen the status of traditional leaders at the expense of women’s rights,” (Claassens 2005a: 64).

The criticism of the CLRA by the CGE was a bit more forceful than that from the JMC. The CGE accused the CLRA of being unconstitutional according to section 25(6) of the Constitution. Section 25(6) provides that “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress,” (Government of South Africa 1996: Section 25(6)). The CGE’s argument is based on African women’s past racial and gender discrimination under apartheid. Based on the patriarchal nature of customary law and the racial discrimination of apartheid, the CGE opinion argued that the CLRA undermined rather than enhanced women’s land security, by formalizing rights old order rights (Claassens 2005b: 9).

In a submission to the Portfolio Committee on Agriculture and Land Affairs, representing the CGE, Geoff Budlender claims that the CLRA “strengthens and reinforces the results of a discriminatory system which has conferred primary rights on men and only secondary rights on women,” (Ahmed 2004). Furthermore, the CGE specifically “warned that the creation of nonelected bodies with decision-making power over women’s access to key economic resources set up a form of secondary citizenship for black rural women, who would be discriminated against on the basis of both race and gender,” (Hassim 2006b: 205). The CGE argued that, for rural African women, rather than expanding their rights to land, the CLRA would effectively limit their access to land.

In fact, due to the arguments made by the CGE that the CLRA contradicted Section
25(6) of the Constitution and undermined women’s rights both to equality and land security, amendments were made with regard to how “old order” rights are defined (Claassens and Ngubane 2008). Specifically, Sections 4(2) and 4(3) were added. Section 4(2) state and 4(3) state,

4(2) An old order right held by a married person is, despite any law, practice, usage or registration to the contrary, deemed to be held by all spouses in a marriage in which such person is a spouse, jointly in undivided shares irrespective of the matrimonial property regime applicable to such marriage and must, on confirmation or conversion in terms of section 18(3), be registered in the names of all such spouses.

4(3) A woman is entitled to the same legally secure tenure, rights in or to land and benefits from land as is a man, and no law, community or other rule, practice or usage may discriminate against any person on the ground of the gender of such person (Government of South Africa 2004: 10).

Although these changes seem to change the nature of the CLRA, a closer look renders them not as transformatory as they first seem. Firstly, section 4(2) relates only to married women. While section 4(2) allows for co-ownership of land between two spouses, it excludes other family members from having rights to the land. This has negative consequences for any female member of the family that is not a wife such as widows, unmarried women, and divorced sisters (Claassens 2005a: 10). Furthermore, if a man has more than one wife, only one of his wives will have legal access to the land.

Secondly, Section 4(2) contradicts Section 4(3). Although based on Section 4(3), women are entitled to the same land rights as men, Section 4(2) potentially contradicts Section 4(3) by vesting the power to access and own land in the hands of a male and his spouse, “to the exclusion of other female family members, in particular a man’s mother and sister,” (Claassens 2005a: 54). Although the changes in the CLRA grant married women greater land rights, based on the contradiction between Sections 4(2) and 4(3), the CLRA seems to continue to entrench discrimination against single women. As of 2003,
41 percent of rural women over the age of 18 neither were not household heads nor married to household heads (Statistics South Africa 2003). Thus, the CLRA continues to exclude 41 percent of rural women from having legal rights to land security. Furthermore, both Sections 4(2) and 4(3) refer to usage rights, which as noted above contradicts the nature of “old order rights.” In addition, as Claassens and Ngubane note that although Section 4(2) and 4(3) were added, “the provisions dealing with the powers of traditional councils were not materially changed,” meaning that ultimate control over the land is still vested in patriarchal hands. Thus, although some changes were made in response to the arguments put forth by the CGE, ultimately, the CLRA still limited women’s land rights by discriminating against women based on marital status and vesting power in traditional leaders.

Although not all of the components of South Africa’s system of accountability mechanisms raised objections to the CLRA, both the JMC and the CGE argued against the CLRA on the basis that if implemented it could have negative consequences for rural African women. However, despite the objections of South Africa national gender machinery, Parliament still passed the CLRA. This questions the power, leverage, and effectiveness of South Africa’s institutionalized accountability mechanisms for women’s interests.

The Women’s Movement: Fragmentation and Demobilization

Fourthly, although women’s organizations did mobilize around the CLRA, the women’s movement during South Africa’s democratic consolidation was not as strong as it was during the democratic transition. Specifically, several authors have noted the
weakness of the rural women's movement in South Africa (Walker 2005; Hassim 2006b). Although the demobilization of women's movements following a political transition is a common trend, the literature on women's political representation notes that a strong women's movement is key factor to ensuring women's substantive representation (Bauer and Britton 2006: 9). As discussed earlier, three functions define a strong women's movement: establishing a clear channel of communication between the women's movement and women in parliament, vocalizing women's interests, and holding women representatives accountable to women's interests. In this section I present the arguments against the CLRA made by women's organizations and highlight their ineffectiveness in the context of the demobilized national women's movement, represented by the fall of the Women's National Coalition (WNC).

Women's organizations strongly opposed the CLRA. Although the CLRA was fast-tracked through Parliament, time was made for public hearings. The CLRA affects 15 million people's lives, however the public hearings for the Act only lasted four days (Govender 2004). Still, the hearings generated an unprecedented display of activism against the Act (Walker 2005: 312). Of the 30 submissions heard during the hearings, one was from a representative from the Rural Women's Movement.

The Rural Women's Movement (RWM) is an overarching network of rural and indigenous women's organizations. According to its website it was founded with the goal of representing women's specific needs and lobbying for policy changes that would reflect these needs. The RWM website states, RWM was initiated in 1998 and was officially launched in November 1999 by 250 participants representing more than 200 community based organizations (CBOs), NGOs and the representatives from the Commission on Gender Equality and the Human Rights Commission, (Rural Women's Movement 2009).
Furthermore, The majority of members are widows, single mothers, young women, married women, deserted women and the youth whose ages range from 16-84. RWM made up of marginalized groups who are suffering and confronted by issues of poverty and oppression,” (Rural Women’s Movement 2009). The mission of the RWM, as well as the women it represents, have specific relevancy to the CLRA in that it is largely these rural women that the legislation affects.

Indeed, representing the interests of rural women, the RWM raised its voice against the CLRA. Pregs Govender, a former ANC representative of Parliament and the chairperson of the JMC, recounts the hearing,

During hearings for the Bill in November, Mama Shabalala, a senior member of the Rural Women’s Movement, went to Parliament. She believed that the party of Chief Albert Luthuli would act to ensure justice for poor rural African women. She presented cases of evictions of widows and divorced women, ending with an impassioned plea: ‘If the Bill gives amakhosi [meaning chiefs or lords in Zulu] power over land our suffering will become worse. We will go back to the old days - yet we have been looking forward to rights of our own. If Parliament does not hear us and does not understand that we are talking about our lives, and suffering that is happening every day, then it is like the amakhosi. It also does not respect us,’ (2004).

Mama Shabalala petitioned Parliament to consider the position of the women that the CLRA would affect. She vocalized the interests of the poor, rural women to Parliament. This seems to suggest that there was a channel of communication between the rural women’s movement and women in Parliament and that in the case of the CLRA rural women’s interests were vocalized. However, Parliament, even women in Parliament did not take heed to rural women’s interests, indicating that the rural women’s movement was unable to hold women in Parliament accountable to women's interests.
Although the RWM and other women’s organizations did object to the CLRA, this was within the context of a demobilized and fragmented national women’s movement. In particular, the fall of the WNC highlights the weaker position of the women’s movement during South Africa’s democratic consolidation. Specifically, the barriers that the literature on women’s movements highlighted, namely the relationship between women’s movements and women in Parliament and autonomy, contributed to a weaker national women’s movement in South Africa.

During South Africa’s transition to democracy the WNC established itself as a visible political constituency of women and a voice for women at the national level (UN-INSTRAW 2000: 169). The WNC successfully integrated women into the multi-party negotiation process that determined the framework for the new democracy and drafted the Women’s Charter for Effective Equality, which was included in the new South African Constitution. Furthermore, based on a participatory and inclusionary ideology that embraced women’s diverse identities, the WNC united activists, academics, and politicians from various political parties, organizations, networks, and coalitions.

The success of the WNC can be described as the height of South Africa’s women’s movement. Following South Africa’s democratic transition, the women’s movement lost some of its momentum during the consolidation of South Africa’s democracy (Connell 2002; Hassim 2006b) Specifically, in South Africa, three conditions contributed to the demobilization of its women’s movement, namely that having achieved its goals it lost its uniting focus, had to re-establish its autonomy, and lost its strong leadership. Furthermore, these conditions redefined the relationship between women politicians and the women’s movement.
As discussed earlier, the WNC was able to unite a variety of women from different backgrounds. A fear of political exclusion in the building of South Africa’s new democracy motivated women to mobilize at the national level and successfully involve women in the democratic transition. However, having achieved women’s political inclusion in the new democracy, the WNC no longer had specific goals around which to unite a widespread and diverse group of South African women.

During the democratic transition the WNC illustrated an unprecedented ability to remain autonomous from South Africa’s larger liberation movement. In an attempt to preserve this autonomy, following the first democratic elections in 1994 the WNC made a controversial decision, seen by many activists as a strategic error, that women in political parties could no longer play a leadership role within the WNC (Waylen 2007: 538). This decision was suicide for the WNC. However, the WNC felt it was a necessary decision to prevent co-optation by the government.

As the literature on women’s political representation notes, it can be hard to sustain a strong women’s movement after a political transition because often the leaders of the movement are elected into government. Given the decision by the WNC to preserve its autonomy by not allowing women in Parliament to represent the leadership of the WNC, the WNC lost the majority of its leadership. This was especially the case because not only were women politicians elected in the 1994 elections, but women activists and academics as well. For example, the convener of the WNC, Frene Ginwala, was elected to Parliament in 1994. With so many leaders of the women’s movement elected into office, the 1994 elections left the WNC without a second tier of leaders to replace the women that had entered Parliament.
Engulfing the leadership of the women's movement into the government not only left the women's movement without strong direction, but also changed the nature of the relationship between the women’s movement and women politicians. Specifically, the 1994 elections created vertical ties between women in Parliament and the women's movement rather than the horizontal ties and “triple alliance” that had been present during the democratic transition. This shift in the nature of the relationship between women politicians and the women’s movement did not have a large effect during the first democratic term from 1994-1999 because so many women in Parliament still had close ties to the women’s movement based on their participation during the democratic transition.

However as Britton (2005) notes, the second democratic election in 1999 ushered in a new type of professionalized women parliamentarian (144). The professionalization of women parliamentarians has been a trend throughout legislatures internationally (Sawer 2000). Unlike their counterparts in the first democratic term, these women did not have close ties to the women’s movement were more unlikely to have participated in the women’s movement during the democratic transition (Britton 2005: 144-145). Rather, these professionalized women parliamentarians are least likely to resemble the average South African women. Rather, they are likely to be elite and well educated, with a background in politics (Britton 2001; Britton 2005: 153). Thus, this professionalization of women parliamentarians contributed to the growing distance between women in parliament and the women’s movement initiated after the 1994 elections.

Thus, although individual women’s organizations such as the RWM did raise objections to the CLRA, these organizations were not backed by a unified national
women's movement. Specifically, after South Africa's democratic transition the loss of the women's movement leadership into the government threatened the movement's autonomy and altered the nature of the relationship between women politicians and the women's movement. Overall, consistent with international trends, the women's movement in South Africa lost momentum following the end of its democratic transition. As illustrated by the CLRA, this had serious consequences for women's substantive representation in South Africa.

Overall, at the time of the CLRA, South Africa did not have all of the factors that help ensure women's substantive representation. While women held a critical mass in Parliament, there were weaknesses regarding government commitment to women's rights, a national gender machinery, and a strong women's movement. Firstly, although the Equality Clause and the Customary Marriages Act illustrate that the South African government has tended to prioritize women's rights over customary law, the CLRA reversed this trend by promoting the interests and authority of traditional leaders and customary law. Secondly, while the JMC and the CGE did raise objections to the CLRA, neither of these accountability mechanisms succeeded in fully eliminating gender discrimination from the CLRA or limiting the power of traditional leaders. Lastly, individual women's organizations such as the RWM, representing the interests of African rural women, did voice their concerns about the CLRA to Parliament, but there was not a strong national women's movement capable of holding women in Parliament accountable to these interests. As the CLRA so clearly illustrates, the shortcomings of these three factors created barriers to women's substantive representation.
Conclusion and Implications: An Issue of Women’s Interests

The case study of the Communal Land Rights Act (CLRA) demonstrates that large increases in women’s descriptive representation do not guarantee women substantive representation. Even though women’s political representation in South Africa has been internationally perceived as a success story, and indeed during its democratic transition it established the four factors that help ensure women’s substantive representation, barriers faced women’s substantive representation with regard to the CLRA. Namely, although government commitment to women’s rights, institutionalize accountability mechanisms, and the women’s movement were present they were relatively weak. What does this mean in terms of women’s interests? Does this indicate an inability or unwillingness to have women’s interests represented in South Africa’s Parliament? If so, how can women’s interests gain greater recognition and representation within Parliament? Acknowledging the diversity of women’s interests, this chapter attempts to address these questions by analyzing the influences that shape the interests of women in the South African Parliament and what consequences these influences have on women’s substantive representation.

As the case of Uganda’s Land Act illustrated, government opinion can greatly influence women parliamentarians. Specifically, it can force women parliamentarians to choose between supporting government interests or women’s interests. In Uganda, it was the president that directly influenced women politicians; under South Africa’s proportional representation system, political parties have the greatest potential to influence women politicians’ interests.
The CLRA highlights the division between political party interests and women’s interests and the influence party politics has on women parliamentarians. The result of the CLRA has been criticized as a pre-election pact between the ANC and the Inkatha Freedom Party (supported by traditional leaders) to ease traditional leader’s negative reaction to the Traditional Leadership and Governance Framework Act (TLGFA) (Ahmed 2004). This ANC deal making appeared to have an effect on women ANC representatives. As Hassim notes, although individual ANC women representatives did make reservations about the CLRA, “when it came to voting on the bill in Parliament, none of the ANC women MPs voted against it or officially abstained,” (2006b: 207). This would seem to suggest that in the case of the CLRA, ANC women prioritized party interests over African rural women’s interests. In fact, the trend throughout South Africa’s democracy seems to be that women MPs will vote according to the position of their political party.

Fortunately, for women in South Africa, the party line is often on the side of women’s rights. All of the “women’s laws” passed during the first democratic term of Parliament, from 1994-1999, had the support of the ANC, the majority political party. Although ANC women MPs pushed for the legislation, ultimately, they rarely went against their party lines. For example, the Termination of Pregnancy Act passed in 1996, which expanded women’s reproductive rights by legalizing abortion through the thirteenth week of pregnancy, was heavily supported by the ANC. In fact, The TPA was consistent with the ANC’s health policy and campaign platform (Hassim 2006b: 201).

Thus, women voting for the TPA, although they were supporting women’s interests for expanded reproductive rights, they were not going against their party line to
do so. In fact, "The ANC MP Jennifer Ferguson created national controversy when she abstained from voting on the bill, thereby violating the ANC’s policy," because she was conflicted about legalizing abortions past twelve weeks, (Britton 2005: 117). This suggests that ANC women parliamentarians were expected to side with party line even when it went against their personal positions or beliefs. Thus, although the majority of women in Parliament did support the legislation, “the Termination of Pregnancy Act was possible because the ANC leadership was willing to back it and use mechanisms of party discipline to ensure that its MPs voted in favor of legislation,” (Hassim 2003b: 513).

Approval of the CLRA in Parliament supports the trend that women in parliament tend to vote according to the position of their political parties, even if it limits women’s rights. Even though individual women in Parliament made reservations to the CLRA, including then Speaker of Parliament, prior WNC co-convener Frene Ginwala, women in Parliament approved the CLRA (Claassens 2005a: 46). Why is this the pattern in South Africa? The literature on women’s political representation has highlighted that women have a diversity of interests based on their competing identities. Based on differing interests, women in Parliament may be more likely to pursue an agenda in line with their political party rather than in line with women’s interests in order to further their political careers. Furthermore, “Even where women MPs are committed to broad principles of gender equality, their definitions of what this means, their strategies for achieving equality, and the constituencies of women they represent may be vastly different,” (Hassim 2003a: 93). Thus, often, the largest barrier to women’s substantive representation is women themselves.
Worldwide, proportional representation (PR) electoral systems seem to divide women’s interests based on political identity. The benefit of a PR system is that it discourages voters from voting against women candidates, because voters vote for a party rather than individuals. However, without a visible constituency voting exclusively for them women have little leverage within their political party. Often this means that in order to remain on the party list for the next election, women need to prove their commitment to their political party (Phillips 1995: 76). Women do this by abiding by the party line. Although one expanded women’s rights while the other limited women’s rights, both the Termination of Pregnancy Act and the Communal Land Rights Act, respectively, are examples in which women parliamentarians voted according to their party line, consistent with their political self-interest. Taking into the consideration that women representatives in South Africa are becoming increasingly professionalized, women’s political identities and interests may become even a larger factor for the South African women’s movement to contend.

The position of political parties is an essential factor in how successfully women’s rights are pursued in parliament. The position of political parties, or in the case of South Africa the dominant political party, can either promote or limit the scope of women-friendly laws and policies. The influence of political parties begs the question: Can women’s interests be pursued in parliament regardless of political party interests?

As the case of the Mozambique Land Act demonstrated, an organized and mobilized women’s movement can successfully expand women’s access to and ownership of land. In South Africa, although women’s organization such as the Rural Women’s Movement (RWM) did raise objections to the CLRA and vocalize rural
women's interests to Parliament, there was not a united national women's movement capable of holding women in Parliament accountable to rural women's interests.

As discussed earlier, the Women's National Coalition, which successfully lobbied for women to partake in the democratic negotiation process, drafted the Women's Charter for Effective Equality, and helped women politicians establish South Africa's national gender machinery, dissipated following the 1994 democratic election. Having achieved its goal of securing women's political inclusion and expanding women's rights in the new South African Constitution, the WNC lacked a concrete agenda. Furthermore, in an attempt to retain its autonomy, the WNC not only lost its leadership to Parliament, but also weakened its tie with women politicians.

While the size, diversity and unity of WNC has been unparalleled in South Africa, or even internationally, the WNC failed to realize its potential during the consolidation of South Africa's democracy. Specifically, at the dawn of South Africa's democracy the WNC helped institutionalize the women's movement in the state through national gender machinery. As the literature on national gender machinery notes, institutionalized accountability mechanisms are most successful when they are created during a political transition. Thus, although it was imperative for the long term success of South Africa's national gender machinery, and for women parliamentarians more generally, to establish institutional structures, this focus on accountability measures within the state took away from the role of the women's movement as an accountability device outside of the state. However, the ability to hold the government accountable to women's interests is a key function of a strong women's movement, especially given the salience proportional representation electoral systems give to women's political interests.
As noted throughout this paper, a strong women's movement is a key factor in ensuring women's substantive representation. In the case of the Communal Land Rights Act, political will and party politics seemed to be the determining factors that shaped women in Parliament's decision to prioritize the authority of traditional leaders over women's land rights. At the time of the CLRA, while individual women's organizations did mobilize against the Act, the national women's movement in South Africa was weak. However, as the Women's National Coalition suggests, women in South Africa can mobilize a mass, national-based women's movement capable of challenging entrenched patriarchal practices and pursuing women's strategic interests.

While it may be unfair to compare the women's movement for a nation-wide democratic transition to the women's movement in the case of the Communal Land Rights Act, the CLRA does illustrate that even with women's descriptive representation in Parliament, women substantive representation is not guaranteed. Rather, for women's substantive representation to be present, there must be a strong women's movement capable of pressuring women parliamentarians to prioritize women's interests above party interests.

Thus, the implications for women's political representations are that in order for descriptive representation to develop into substantive representation, there must be a strong women's movement capable of shaping the interests of women representatives. Without a women's movement visibly articulating the interests of women in society, especially given the rise of professionalized women parliamentarians, women political representatives are more likely to prioritize the interests that further their political careers. Often, this means siding with the interests of their political parties.
As the case of South Africa illustrates, while political party interests and women’s interests can overlap, a strong women’s movement helps to ensure that women’s substantive representation is present even when women’s interests conflict with party interests and political will. Most importantly, for women’s substantive representation to be most likely, women must not only focus on pursuing their interests within the state, but also on balancing women’s increasing political representation with an equally growing women’s movement outside of the state. In South Africa, following its transition to democracy, while women did secure women’s descriptive representation and establish women’s accountability institutions within the state, these actions were not matched with sustaining a strong women’s movement to monitor the new democratic government.

This paper began by asking the question: does women’s descriptive representation guarantee women’s substantive representation? The literature on women’s political representation suggested that four factors help ensure women’s substantive representation: critical mass, government commitment to women’s rights, national gender machinery, and a strong women’s movement. In the case of the Communal Land Rights Act in South Africa, women’s substantive representation was not present in Parliament, because even though it effectively limited women’s land rights by consolidating the power of traditional leaders with regard to land allocation the Act was approved in Parliament.

The CLRA illustrates that government commitment to women’s rights and party politics are important factors that can greatly influence women’s substantive representation. However, a strong women’s movement can overcome government
influence by establishing women as a visible political constituency and holding women in Parliament accountable to women’s interests. Thus, while critical mass, government commitment to women’s rights, and national gender machinery are important for women’s substantive representation, when political will does not favor women’s interests there must be a strong women’s movement capable of challenging the government and demanding that women’s interests be considered in government. Without a visible and vocal women’s movement, when push comes to shove, women’s interests are likely to be sidelined in government decision-making practices.

This paper based its findings on the conditions in the South African Parliament and specifically the case of the Communal Land Rights Act. It is limited in its findings in that it did not deeply consider the implementation of legislation, including the CLRA, passed by the South African Parliament. To truly evaluate whether or not women’s substantive representation is present in South Africa further research should address the barriers, if any, facing the implementation of legislation that applies to women. This would help determine whether or not women’s substantive representation is present within government departments and local governments that implement policies, giving a broader picture of the condition of women’s interests in South Africa.

The question of whether or not women’s descriptive representation guarantees women’s substantive representation has important implications not just in South Africa, but globally as women’s descriptive representation continues to increase throughout the world. While many authors have highlighted the need to differentiate between women’s descriptive and substantive representation, policy recommendations for women’s political inclusion, participation, and representation have largely focused on how to secure
women's descriptive representation. Using South Africa as a case study, this paper is an attempt to contribute to the literature that acknowledges the need for not only women's descriptive representation, but women's substantive representation as well.
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