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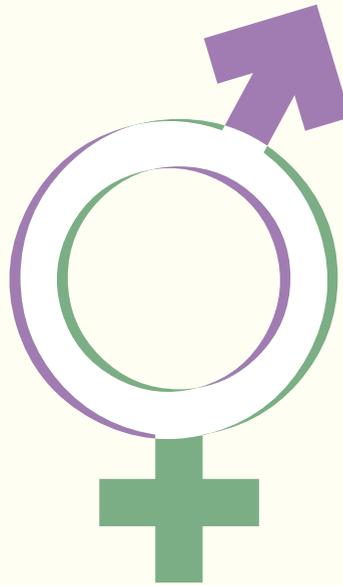
لجمع سوريات من أجل الديمقراطية
Syrian Women For Democracy

INTERNATIONAL CONFERENCE

ELECTORAL SYSTEMS AND GENDER EQUALITY IN DEMOCRATIC TRANSITIONS

27-28 FEBRUARY, 2018, GENEVA

CENTRE INTERNATIONAL DE CONFÉRENCES
DE GENÈVE (CICG)



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Electoral Systems and Gender Equality in Democratic Transitions

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INTRODUCTION

While democracy is classically defined by the presence and health of its institutions – such as political parties and independent elections – it is growingly acknowledged that democracy is deficient if public decision-making is not equally shared by women and men. According to international human rights standards, there is a state obligation to ensure the equal participation of women and men in political and public decision-making. The absence of women is thus problematic both from a democratic and human’s rights perspective. In conflict and a post-conflict context, where society has not had the conducive environment to foster an egalitarian conception of gender roles, the voting system can be a decisive factor to favor the participation of women. Indeed, the choice of an election system can provide the possibility to have women’s voices heard, ensuring that the historical imbalance in their political participation as candidates or voters is corrected in a fair manner.

The electoral system that promotes women’s political participation also reflects on the social structures and affect positively the entire democratic process in the country. Indeed, such a process incorporates an effective strategy of transparency, integrity and comprehensiveness of the elections in all stages; starting with the electoral system and management of the electoral process, as well as ensuring the electoral environment that guarantees civil peace, non-violence and participation. The role of independent civil society in political transition is particularly important. As it does not seek political power, it is often the only voice promoting human rights values and concerned with monitoring the power of the State. Despite the state of repression, war crimes, crimes against humanity and ongoing violations of human rights in Syria, human rights activists have been able to organize and play an important role in the struggle for freedom and democracy. Since 2012, the Coalition of Syrian Women for Democracy has been working to prepare for the future political phase in Syria. With the support of EuroMed Feminist Initiative, the Coalition has worked on building gender-inclusive constitutional principles based on respect for and implementation of women’s rights and gender equality.

The International conference *Electoral Systems and Gender Equality in Democratic Transitions* was organized by the Coalition of Syrian Women for Democracy and EuroMed Feminist Initiative on the 27 -28th February, 2018 at the Centre International de Conférences de Genève (CICG), Switzerland. The conference took place in the frame of the program “Towards Sustainable Peace and Democracy in Syria Through Strengthening Civil Society and Women’s Rights” funded by Sweden.

The conference provided an interactive space for exchange of knowledge and lessons learned from good and bad practices and experiences of existing electoral systems. It enabled an open discussion on the optimal electoral system promoting the political participation of women in Syria as voters and candidates, supporting the efforts of Syrian human right, women’s rights activists to form alliances and advocate for best options, taking lessons from other countries. Three working groups shared analyses and ideas and provided recommendations for an electoral system favouring women’s participation and gender equality in Syria in regards to the composition of the lists and electoral procedures, quotas and electoral environment.

Lama Kanout
General Coordinator
Coalition of Syrian Women for Democracy

Lilian Halls French
Co-President
EuroMed Feminist Initiative

WELCOME AND OPENING

Ms. Nada Nader, Head of International Cooperation, EuroMed Feminist Initiative

We are very pleased to welcome you today. On behalf of the EuroMed Feminist Initiative, I would like to thank the speakers, facilitators, and all of the participants for having met our call.

The conference, “Electoral Systems and Gender-based Equality in Democratic Transitions”, is held in partnership between the Coalition of Syrian Women for Democracy and the EuroMed Feminist Initiative, as part of the program Towards Sustainable Peace and Democracy in Syria Through Strengthening Civil Society and Women’s Rights program sponsored by Sweden. Our partnership with Syrian colleagues and friends dates back to 2011, since our initial contribution to supporting their work towards a political solution to the conflict and a peaceful transition through a gender-sensitive process. Despite the deterioration of the situation in Syria, especially on the security and humanitarian levels, civil society activists, gender and legal experts and lawyers are determined to pursue the opportunity to change and seek to build a democratic system that respects human rights. However, democracy is deemed invalid if it fails to equally engage both women and men in decision-making.

There is a strong incentive to focus today on gender-sensitive electoral processes. While Syrian women played a key role at all levels in the beginning of the revolution, they are now marginalized in all political negotiations and processes, including those with progressive and democratic facades. In this stunning contrast, and in a country that is still experiencing a bloody warfare that obstructs guaranteeing and promoting gender equality, an electoral system can be a crucial factor for facilitating the participation of women.

This conference brings together experts, academics, and civil society activists to distil their experiences and expertise. In truth, it reflects our habitual way of working, which is rooted in the exchange of experiences, good practices and learned lessons. Speakers have come from Syria, Sweden, Egypt, South Africa, Tunisia, Algeria, Bolivia, and Switzerland. The event also seeks to strengthen international solidarity among defenders of human rights and women’s rights in Syria.

During the two days of the conference, we will try to answer five key questions:

1. What are the best practices and lessons learned from the building of post-conflict electoral systems?
2. What forms of electoral systems can promote women’s participation, gender equality and support for democracy?
3. What is the role of civil society in the process of constitution building and general elections?
4. What are the main challenges facing Syrian women inside and outside Syria in the electoral process?
5. What role can the international community play in supporting an electoral system that respects the principles of gender equality in Syria?

We trust the conference will provide a venue for fruitful discussions that may pave the way for further work towards a wider integration of women’s rights.

Ms. Lama Kannout, General Coordinator of Coalition of Syrian Women for Democracy

Choosing an electoral system is a matter of utmost importance for nation-states because of its foundational relationship with the course towards and transition into democracy. This is especially true in countries emerging from conflict, where people, both women and men, suffered under an authoritarian dictatorship for decades. In such nations it is all the more crucial that marginalized and oppressed women and men have their voices heard, and that they all participate in the decision-making process. Another point of utmost importance is ensuring that the historical disempowerment of women politically be rectified justly, since their participation, effectively, and not only symbolically, is closely related to the social, political, economic, cultural, and legal structures. This could either impede or facilitate their energies in contributing to the building of a free society and a nation of citizenship and democratic political parties.

The legislator's political will and choice of an electoral system designed to enhance equality is not only reflected in promoting the political participation of women and the inclusivity of participation in the electoral process, i.e. it is not only reflected in direct results, but it is also implicated with the social structure, development, and the democratic process in its entirety. In addition to effective strategic planning, and in order to ensure the transparency, integrity and inclusiveness of the elections in all of its stages, including the electoral system itself, the electoral behaviour, and the management of the electoral process, as well as levelling up the electoral environment, all of this could guarantee a peaceful electoral process and prevent conflict and violence.

Historically in Syria, women have been appointed to seemingly important positions in government, such as Vice-President (March 23, 2006) as well as Speaker of the Legislative Assembly (People's Assembly, June 6, 2016) or ministers, as they reached 9% in 2010¹, but these actions were accompanied by the removal of any political persuasion the public sphere may have held, by politicizing the systematic violence directed against politicians and activists under a dictatorship that did not compromise any of its authority by appointing women to political seats, but instead used that to polish its image. Not to mention that the opposition at the forefront of the political scene was not free of patriarchy itself, and that its proclaimed discourse on democracy and citizenship bifurcated when it came to the participation of women in political life. In fact, it was satisfied with demonstrating merely symbolic female representation. Women were effectively excluded and isolated, and their abilities were questioned as decision makers.

When both negotiating delegations agreed, under pressure by a feminist-led international community, that "women should enjoy full political rights and opportunities on an equal basis with others, including their effective representation and participation in institutions and decision-making structures, taking into account the level of women's representation by 30% at least," the political process escaped the hands of the Syrian players and fell into the hands of both international and regional players.

Upholding women's rights and participation means neither a struggle for an exclusionary authoritarian power, nor the polishing of an oppressive regime, nor the encouragement of women to be promoted in an oppressive class. Shifting all focus to the Constitution, without a real political transition, prompts me to ask a fundamental question: **Are the elections in Syria an end or a means?**

¹ Dr. Shaher Ibrahim Al Shaher, "Political Participation of Women in Syria", in Journal of Criticism and Enlightenment, February 2015, p. 10. <https://bit.ly/25fcw1M>, webpage consulted on 15/02/2018

Since its establishment in 2012, the Coalition of Syrian Women for Democracy (CSWD) has been preparing for the future phase in Syria, publishing several booklets on gender-sensitive and democracy-consistent constitutional principles, based on the respect for and implementation of women's rights and gender equality, supported by the EuroMed Feminist Initiative (EFI).

With the participation of experts in electoral systems, experts in law, women's rights advocates, and experts in gender, this conference serves as an interactive and knowledge-grounding space, reflecting the principles of democratic transformation in Syria, the environment that will allow for this transformation to enhance the commitment to gender equality in all of the processes of the democratic transition, and to promote the effective political participation of women and to equip them with the knowledge necessary for them to mobilize, advocate, and form alliances, as well as to enable them to learn from the experience of other countries.

The conference will also provide indicators and references for the process of peace negotiations in Syria concerning the dangers of calling for early elections without a real political transition and before building a new legal system committed to human rights and adequate legal and institutional frameworks for the electoral environment.

The history of the oppression of women is a history of delayed freedom in any society. The equal representation of women in all decision-making positions is the starting point of the liberation of society. To those who want to coerce people into choosing between different forms of tyranny, those who say that change is impossible, or that it leads to worse outcomes, we say: We are committed to the Syrian call for freedom set in 2011 as the seeds of hope for radical change. We want to found Syria on the bases of democracy, gender equality, and human rights. Investing in freedom, equality, and justice is necessary for Syria to recover from the disastrous effects of war.

I Enabling Women's Representation and Supporting Democratization through Institutional Changes: Electoral Systems, Quota Systems

How to empower women and support democratization through institutional changes: constitution, electoral system, quota system

Ms. Drude Dahlerup, Professor of Political Science, Stockholm University

1. A New Global Discourse: No democracy without the full participation of both women and men

Are women the laggards in the development of democracy? "First we introduce democracy, and then women can be included", it is said. Alternatively, the inclusion of women is seen as conducive and even necessary for transitions to democracy, and for what the UN Platform for Action, adopted in Beijing, 1995, calls a prerequisite for the "proper functioning of democracy."

*Achieving the goal of equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning."
(Beijing Platform for Action, Art. 183)*

Today, we see a new global discourse on the need to include women in all processes of democratization. United Nations Security Council Resolution 1325 on the inclusion of women in reconciliation and peace processes is part of this new agenda, and so are the Sustainable Development Goals (SDG), to be achieved by 2030:

*Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in politics, economics, and public life.
(Sustainable Development Goals, Goals 5.5)*

Notice that the SDG talk about *effective* participation – not just being present – and about women in *leadership positions* in all spheres, political, economic and public life. However, how do we define democracy?

A Basic Definition of Democracy:

1. Free, equal and fair elections based on universal suffrage
2. Transparent and accountable political institutions with a low level of corruption
3. Independent judiciary and the rule of law
4. Freedom of speech and assembly and freedom of the press
5. Minority rights

However, universal suffrage is just a minimum demand. The new global discourse insists on an *all-inclusive democracy*. This implies that the elected assemblies should reflect the social composition of the population: women and men, majority and minorities. Today, an all-male, or even a heavily male dominated assembly or government is losing democratic legitimacy.

I would add that it is necessary to make a distinction between *participation and representation*. Why? Because participation in principle is open to everyone. You can join a political party tomorrow

or start participating in a social movement or voluntary civil society work, if you wish. Representation, in contrast, is about being elected or appointed to political positions. It is a question of power to attain such positions. It is, unfortunately, not enough to be suitable and good! To be selected, you usually need the support of someone already in power. In most countries, political parties, or others who control the nomination process, are the real *gatekeepers* to elected positions. The problem is that the political parties are not sufficiently inclusive when it comes to women, youth and minorities.

2. The Choice of Electoral System – A Gender Perspective

The choice of electoral system is one of the most important for a new democracy. All electoral systems have their advantages and disadvantages. In addition, no electoral system is gender neutral. This implies that when a new electoral system is about to be selected, it is important to scrutinize every possible system from a gender perspective. The proportional representation system (PR) is known from research to be the best for women's representation, although it does not always produce good results. However, on average, countries with PR systems have a higher political representation of women than majoritarian systems, with the mixed systems in between. Before we discuss why this is the case, the overall advantages and disadvantages of the major electoral systems will be outlined.

- **List Proportional Representation (PR)²**

The political parties nominate lists with many candidates.

In a PR system, the parties will be represented in parliament in accordance with their share of the votes nationally. If a party receives 10 % or 25 % of the votes, the party will get close to 10 % or 25 % of the seats in parliament (regional councils and local councils.) The country can be one large constituency in a PR system, like in small countries such as Israel and the Netherlands. However, most countries are divided into a number of local constituencies such as the Scandinavian countries, Belgium, Spain, Argentina, and South Africa.

The election will normally result in a parliament with many parties, depending, however, on the threshold installed for a party to enter parliament. In Denmark, parties have to have a minimum of 2% of the votes nationally; in Sweden the threshold is 4 %; 5% in Germany and as high as 10 % in Turkey. Because of a larger number of parties, coalition and/or minority governments are more likely in PR systems and there is no need to hold by-elections. *PR is more favorable for women's representation since each party nominates a plurality of candidates.*

- **Plurality/Majority Systems**

Usually, in a plurality/majority system, the political parties nominate only one candidate per constituency (single-member districts). This system gives independent candidates a better chance of election than PR systems. The candidate with the most votes wins (plurality). In a two- round system, a majority of the votes is required. In a plurality/majority system, we find stronger links between the representative and his or her constituency than is usual in a PR system. However, there is a *low degree of representativity, and many votes are wasted*. It favors the larger parties, and therefore leads to fewer parties in parliament, and consequently, usually results in majority governments. Examples include United Kingdom, India, and United States. It would be wrong to say that women's representation cannot be high in plurality/majority electoral systems, but it is more difficult than in a PR system. (See below.)

² For details of electoral systems, see *Electoral System Designs*, International IDEA, can be downloaded from www.idea.int. This publication also includes a section on women and electoral systems.

- **Mixed Systems**

There are different types of mixed systems, but the main principle is the combination of PR and plurality/majority systems. (See the description of those two systems above.)

Since PR gives women a better opportunity of being nominated and elected than plurality/majority systems, the mixed system's distribution of seats between the PR and the plurality/majority part is extremely important. For example, in Egypt's new Constitution, the PR-seats only constitute 20 % of parliament. In Germany, where half the seats in the parliament are elected through PR and the other half through Plurality/majority, women usually win the highest share in the PR section – strong evidence of the varied results from different electoral systems, all other factors being equal. Unfortunately, the gender perspective tends to be neglected in the many contemporary constitutional reforms, in which *mixed systems are becoming more and more popular*.

Why does PR tend to give women more opportunities than plurality/majority systems?

When the voters enter the polling station, the candidates have already been chosen. Moreover, apart from electoral systems based on primaries, voters in general have limited knowledge about how the candidates have been selected. In political science, we talk about “the secret garden of politics.” In the election, voters can decide the relative strength of the parties; and in case of open or semi-open electoral lists, they can also cast their vote for specific candidates. Nevertheless, it is the political parties, who have selected the candidates, among which the voters can choose. The political parties are the gatekeepers to elected positions.

Electoral systems are not gender-neutral. A global calculation shows that women's parliamentary representation is highest on average (25 percent) under proportional representation electoral systems (PR); lowest in plurality/majority systems like those in the USA, UK and India (19 percent); with mixed systems in the middle (22 percent).³ To understand the differences between the systems, we will need to look at the way the political parties make their nominations.

When in plurality/majority systems, there is only one candidate per party in each constituency (single-member districts), and the winner takes it all, the local nominating party may fear a negative reaction from (male) voters if the party's only candidate is a woman (majority or minority). In PR systems, in contrast, each party presents a list with many candidates in each constituency. This system is more open to newcomers such as women and minorities, because the nominating party does not have to throw out the male incumbent candidate, who usually comes first. Within the PR system, researchers have looked into whether large electoral districts or large parties in each district, and whether closed or open lists with preferential voting is best for women's representation. The basic question is whether we assume that the political parties or the voters (female voters only?) are likely to be the most supportive of increasing women's representation at a given time.⁴

Do women vote for women - do men?

The female voters are often blamed for women's under-representation. It is argued that women voters do not vote for female candidates, but is this fair? We know that not all women voters vote

³ *Atlas of Electoral Gender Quotas*, published by International IDEA, 2013, p. 23.

⁴ Miki Caul Kittilson and Leslie A. Schwindt-Bayer (2012), *The Gendered Effects of Electoral Institutions*, Oxford University Press; Gregory D. Schmidt (2008), “The election of women in list PR systems: Testing the conventional wisdom,” *Electoral Studies*, 28 (2), pp. 190–203; Richard Matland and D.T. Studlar (2002), “Electoral systems and women's representation,” *Representation*, 39 (1), pp. 3–14. Drude Dahlerup (2006), *Women, Quotas and Politics*. Routledge.

for female candidates, since they may not agree with the candidates' point of view. However, what about the male voters? Survey data are needed to answer this question, but are seldom available. One of the few studies of its kind, an analysis from Finland which has mandatory preferential voting in a PR system, showed that three-quarters of the male voters practiced "same-gender" voting, (i.e. they voted for a male candidate), while female voters split their votes between the almost equal number of female and male candidates.⁵

3. The Under-Representation of Women in Politics

The last decades have witnessed a considerable increase in women's political representation in elected assemblies. Yet, male elites still grossly occupy political positions. In addition, the rule is that the higher up the ranks, the fewer the women. Maybe we should turn the question of why women are under-represented around, and instead ask *why men are over-represented?* This question may lead us to a more realistic understanding of women's under-representation. We need to change the focus from women's alleged lack of qualifications or political interest to the lack of inclusiveness on part of the political institutions, especially the political parties. I would argue that there are a sufficient number of qualified women in leadership positions in civil society organizations to fill all the parliaments in the world! The widespread discussion of women's lack of qualification is mistaken. Women are just as qualified or unqualified as the men are! Yet, we should remember that democracy is about representation of voters, not university education.

The following table reveals major regional differences, yet all regions are coming closer to the world average of 24% (December 2018). In the 1990's, women had only about 10 % of the seats in the worlds' parliaments. The highest increase, statistically, has come in the Arab countries, which used to be at the bottom in the competitions between the regions. Today, the Pacific has the lowest average.

Table 1: Women in Parliament – Major Regions in the World

** All tables in this paper have been updated after the conference.*

World average: 24% (single or lower houses).

Regional differences:

| REGION | AVERAGE |
|------------------------------------|---------|
| Nordic Countries | 42.3% |
| Americas | 30.3% |
| Europe (OSCE), excl. Nordic | 26.5% |
| Sub-Saharan Africa | 23.8% |
| Asia | 19.7% |
| Arab Countries | 18.7% |
| Pacific | 15.5% |

Source www.ipu.org, December 2018.

⁵ Anne Maria Holli and Hanna Wass (2010), "Gender-based voting in the parliamentary elections of 2007 in Finland", *European Journal of Political Research*, 49, pp. 598–630.

Will the increase continue in the future? If we look at the elections in 2017, in all 34 cases (both lower and upper chambers), we find an increase in women’s representation in 18 elections, a status quo in one, and actual decrease in 15 cases. It would be wrong to lean back and think that gender equality will come by itself. Rather, we see an increasing number of backlashes. What can be done?

4. Gender Quotas in Elections – a controversial, yet also popular global trend⁶

- *The first free election*

In post-conflict countries, many people, especially among the younger generations, argue during the first election after the conflict, that now when the elections are ‘free’, we do not need any quota regulations. Many believe that women now have the same opportunity to become elected as everyone else.

It is, however, naive to believe that free elections alone can remove all patriarchal structures. The first election in Egypt after the fall of President Mubarak reveals this: women only got 2% of all seats in the first free election.

We have to always scrutinize the selection process and ask who controls the nominations. It is the existence of an ‘old boy network’, which points to the necessity of quota regulations.

The following table on women’s representation in a selected number of MENA countries (December 2018) shows the ability of quota systems to include more women in the political decision-making processes rapidly. The last elections (Syria 2016, which was boycotted by many citizens) and Lebanon (2009) show that countries without any quota system tend to have the lowest representation of women. Many will no doubt remember that in the 1990s, Syria was among the Arab countries with the highest representation of women in parliament. That is not the case any longer because of quota adoption by other MENA countries.

Table 2: Women’s representation in Parliament in selected MENA countries

| COUNTRY | PERCENTAGE OF WOMEN | ELECTORAL SYSTEM | QUOTAS |
|---------|---------------------|------------------|-----------------|
| Tunisia | 31 | PR | Candidate Quota |
| Algeria | 26 | PR | Reserved Seats |
| Morocco | 21 | PR | Reserved Seats |
| Jordan | 15 | SNTV | Reserved Seats |
| Egypt | 15 | Mixed | Reserved Seats |
| Syria | 13 | Majority | None |
| Lebanon | 3 | Majority | None |

www.ipu.org; www.quotaproject.org

⁶ See Drude Dahlerup: *Has Democracy Failed Women?* Polity Press, 2018.

- **Different quota systems**

Table 3: Many different types of quotas for elections

| By law 1+2+4: | |
|----------------------|---|
| 1. | Candidate quotas by law, binding for all parties (setting % of the candidates) Ex. Tunisia: 50-50% (parity) |
| 2. | Reserved seats quotas by law (member of the elected – guaranteed seats for women or minorities). Ex. Morocco, 60 seats reserved for women and 30 for youth of both sexes, elected from a nation-wide list (PR). Ex. Jordan, 18 seats reserved for women, given to those women candidates, who got the highest percentage of the personal votes in their constituency without being elected (Plurality/Majority system) |
| 3. | Party quotas, adopted by individual parties in a country (setting % of the candidates), ex. ANC, South Africa: 50-50% (parity) |
| 4. | 'Soft quotas'. Setting targets and goals (Individual parties) or financial incentives (law) |

*Information on the variety of gender quota systems for elections can be found on the global quota website, www.quotaproject.org, which shows the adopted quota systems, country by country. See also *Atlas of Electoral Gender Quotas. International IDEA* (www.idea.int)*

Around 90 countries in the world have now adopted gender quotas for political elections in their Constitutions or electoral law, either in the form of legislated candidates' quotas for the electoral lists, as in Tunisia (see the table); or in the form of reserved seats as in Morocco, Jordan and Egypt. While legislated candidate quotas target the gender composition of the electoral lists and do not guarantee the election of more women, reserved seats quotas reserve a specific number of seats for women among those elected. Only women candidates can compete for these seats. When adopted by Constitution or law, quotas will be binding for all political parties.

In about 40 countries, some political parties make use of voluntary party quotas for their own electoral lists, as for instance in Sweden, Norway and South Africa. It is typically the Green and Left Parties, which have made their own quota regulations in their statutes, for instance a rule of a minimum of 50%, 40% or 25% candidates of each gender on their electoral list for election. Taken together, this means that in more than half the countries of the world some quota systems are in use.

Gender quotas for elections can be for women or gender neutral. Most quota regulations are gender neutral, prescribing a minimum of, for instance, 25%, 30% or 40% for both sexes, which equals a maximum of 75%, 70% or 60 % for either sex.

- **Sanctions for non-compliance**

Sanctions for non-compliance are important. Financial fees do not work well, because the bigger and richer parties tend to ignore the rules, as it happened in France previously. The best system is where the electoral authorities have the power, and use it to reject lists, which do not have the required number of women. That works, since all political parties want to be able to stand for election: that is their reason d'être.

Table 4: Sanctions for non-compliance

| Legal quota system: |
|---|
| 1. Rejection of the list (Costa Rica, Spain, Slovenia, Tunisia, France at the local level) |
| 2. Financial penalty (France at the national level, Portugal) |
| 3. Financial incentives if a party has over a certain number of women as candidates (Georgia, Ireland, Morocco) or among the elected (Colombia) |

For quotas regulating the gender composition of the lists – be it legislated or voluntary – rank order rules are important. A seemingly radical 50-50 quota rules may result in no, or very few women elected, if most of the women candidates are just placed at the bottom of the list.

Table 5: Rank – order rules are necessary

| Candidate quotas: |
|---|
| 1. Zipper system – alternation men and women throughout the list (Most Green parties, most parties in Sweden, Tunisia, and Costa Rica from next election) |
| 2. The top two cannot be of the same sex (Belgium +50% for whole list) |
| 3. 40:60 for every 5 posts on the list. If less than 5 ‘eligible’ posts, as close to 40:60 as possible (Spain) |
| 4. One out of every group of 5 candidates must be a woman (East Timor) |

In *Sweden*, the Social-Democratic Party demands that their local branches follow the so-called zipper system, alternating female and male all through their electoral lists (voluntary candidate quotas).

South Africa has also adopted the zipper system by law for local elections, while voluntary party quotas exist for national elections. The ANC has adopted a 50% quota for their national lists.

In *Tunisia*, the zipper system was introduced for the first free election in 2011 by law (PR, closed lists). The first result was disappointing, since women obtained 27% of the seats – against 28% in the last election under Ben Ali. How could that be the result under the radical zipper system? The reason was, that with the many new parties – over 80 parties - most parties only had one candidate elected in a constituency. Since only 7% of the top candidates were women, most elected were men, except for the Islamist Ennahda party, which elected 42 women, because the party gained 2-4 seats in most constituencies. In the 2014 election, women gained 31% of the seats.

5. When Do Electoral Quotas Work?

Table 6: Gender and Minorities Quotas and the principle of merit

| Are gender quotas and quotas for minorities a violation of the principle of merit? |
|---|
| <ul style="list-style-type: none"> • Depends on the diagnosis of why women/minorities/immigrants are under-represented |
| <ul style="list-style-type: none"> • If societal systems were fair, we would not need quotas. But existing systems favor men or elite men from the majority population |
| <ul style="list-style-type: none"> • Quotas are a compensation, maybe temporary, for the structural barriers and direct discrimination of women and minorities |

Table 7: Gender Quotas – Success or Failure?

| GENDER QUOTA – SUCCESS OR FAILURE The success depends on: |
|--|
| 1. The type of quota provisions |
| 2. The electoral system, PR/SMD, size of electoral district |
| 3. The will of the political parties, the gatekeepers |
| 4. The strength of the women’s movements |
| 5. Rank order rules and strong sanctions for non-compliance |

The devil in the details

It is important to realize that gender quotas for election are no miracle cure for all the problems women face in politics, including sexual harassments, sexualized hate-speech, fewer financial resources, etc. Electoral gender quotas are exclusively about *descriptive representation*. That is, the numbers and the gender composition of elected assemblies. To what extent women politicians engage in substantive representation, that is representing the claims brought forward by women’s movements, depends on so many different factors: left-right divisions, cooperation between women MPs (women’s caucuses), the support of male MPs, and the general discourse in a society on gender inequality. Especially important is the strength of the feminist movements, the cooperation between women politicians and supportive male MPs on the one hand and the women’s independent organizations in civil society on the other hand. It is, however, also a question of political will. Not all women politicians are women’s rights advocates, but all research shows that women politicians more than their male colleagues see gender inequality as a problem and are more active to place such issues on the political agenda.

What we know is, that constructed in a way, which matches the electoral system in a country, gender quotas can lead to remarkable leaps in women’s representation in politics, as we have seen it in a number of countries such as Bolivia, Rwanda and Senegal. It took most old democracies 100 years to reach 25%-40% women in parliament and local councils by *the incremental track model*. In contrast, many post-conflict countries make use of *the fast track model* by adopting quotas in order to rapidly include the under-represented parts of the population⁷. Gender quotas have been adopted recently in countries where there is a will to include all parts of the society in decision-making as part of the reconciliation process (see Aili Mari Tripp, *Women and Power in Postconflict Africa*, Oxford University Press, 2015).

⁷ “Quotas as a Fast Track to Equal Representation for Women – Why Scandinavia is no longer the model” (with Lenita Freidenvall), in *International Feminist Journal of Politics*, March 2005, vol. 7, no 1: pp. 26-48.

The legal framework for the electoral process and women's representation

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Although the Beijing Conference held in 1995 initiated a process that led to an increased number of women elected to legislative bodies, the Inter-Parliamentary Union (IPU) indicated that, in January 2007, only 19 national parliaments had exceeded the target of 30% representation of women.

Both the electoral system and the quota system are fundamental factors influencing the political representation of women. The *Designing for Equality* guide provides an overview of how the quota system can be tailored for different electoral systems. It also addresses methods to achieve the target of increasing the political representation of women by utilizing different choices for electoral systems and quotas. It therefore serves as a reference tool for all those working to promote the political participation of women. (*Designing for Equality*, the International Institute for Democracy and Electoral Assistance – IDEA).

There are many ways to increase the representation of women: Electoral systems based on proportional representation tend to increase the number of elected women by eliminating the need for political parties to search for the candidates that are most likely to win. In general, electoral systems based on larger constituencies (i.e., constituencies that elect more representatives) compel political parties to nominate more women on their electoral lists, with a greater balance in the gender composition of these lists increasing the chances of parties winning more seats. Some countries using the proportional electoral system require political parties to include a certain percentage of female candidates in their lists.

Quota

The quota system is an affirmative action that helps women overcome the obstacles that limit their participation in politics compared to their male peers.

Legal Quota vs. Voluntary Quota

There are different legal, constitutional, and voluntary variations of the quota system. Constitutional quotas are explicitly dictated by the Constitution, whereas legal quotas are those explicitly dictated by the electoral law, the bylaws of political parties, or any other law applicable in the concerned nation. In terms of content, constitutional and legal quotas are based on legislation that political parties or entities are obliged to abide by; in case of non-compliance with these legislations, breaching parties or entities face repercussions determined by the law. These repercussions may vary from the disqualification of candidates to the disqualification of the entire non-compliant political party.

On the other hand, voluntary quotas are voluntarily adopted by political parties to ensure the nomination of a specific number or percentage of women on their electoral lists. As is clear from its name, this form of quota is non-binding, and non-compliance does not represent a violation.

Applying the quota

The quota system can be applied during the nomination stage but can also be applied to the final outcome of the elections.

Quota Applied During the Nomination Stage

The application of the quota system during the nomination process is designed to facilitate the nomination of women in strategic positions on electoral lists (or to ensure their candidacy in specific constituencies) in order to ensure that they have equal (or almost equal) opportunities to be elected. This strategy can either be loose and not set encouraging candidacy regulations (for example, setting a minimum of 20% of seats for women on the list without clear rules concerning their order on the list, which may result – in the electoral systems that use the list-system – in pushing them to the bottom of the list where their chances of being elected become thinner) or could be stricter and set specific arrangements for women compared with men on the lists. In this case, the arrangement may take the form of an alternating system where women exchange ranks with men on the list. The other option may be to set a specific cap on candidacy rates – for example, in the first half of the candidates the minimum for either sex will be at least one-third.

The quotas applied during the nomination stage can be voluntary for political parties to adopt, but they can also be formally legislated through law and therefore obligatory, such as through the electoral law or the Constitution.

Outcome-targeting quota

The outcome-targeting quota ensures a specific percentage (for example 20%) or a specific number (for example 20 out of 100 seats) of seats are reserved exclusively for women. Electoral lists or constituencies composed solely by women can be considered an outcome-targeting quota. This form assumes that running in these constituencies or electoral lists is limited to women. The best loser system can also be considered as another form of this type of quota. In this system, candidates with the highest number of votes, not exceeding the allocated quota, win regardless of the number of votes collected by male candidates.

The Constitution, electoral law, political party bylaws, or any other law must explicitly state any form of quota that targets the outcome in order to ensure their application, and to ensure that women win these seats without competing with other candidates and political parties. In the case of the best loser system, it is important that the legal framework dictate this quota, so that political parties agree to grant a seat to female candidates instead of male candidates.

In addition to these mechanisms applied to electoral processes, women can be appointed directly to legislative bodies – for example, per a decision by the executive authorities.

Systems that guarantee the representation of women differ in their degree of efficacy and success in practice. For example, the adoption of the quota system can guarantee the election of women, but many – especially women – see this as a conciliatory measure aimed at neutralizing women, limiting their role, and allowing relatives and friends of male politicians to win rather than giving women a real opportunity to enter the political domain.

Winning a seat in parliament does not necessarily mean being part of the decision-making process. In some countries, women elected to decision-making positions are marginalized and undermined, especially when they are elected under a law that reserves certain seats for women only. However, interested and involved institutions should pursue women empowerment by means of capacity-building programs. These can help undo the implications of the period of time in which women had been marginalized, allowing female actors to achieve greater presence in the public sphere and be part of the political process on their own. That said, exploiting the opportunity provided by the

quota system has, in several countries, led women to demonstrate their presence and make effective contributions in decision- and policy-making, thereby influencing the traditional approach to political action.

The proportion of seats held by women in parliaments in the Arab world clearly reveals the challenges present to reaching equal representation. The percentage from 1990 to 2015 is 4% to 19% as shown below in some countries:⁸

| Country | 1990 | 2015 |
|----------|------|------|
| Egypt | 4% | 15% |
| Emirates | 0% | 23% |
| Jordan | 0% | 12% |
| Bahrain | | 8% |
| Algeria | 2% | 32% |
| Syria | 9% | 12% |
| Iraq | 11% | 27% |
| Morocco | 0% | 17% |
| Tunisia | 4% | 31% |
| Yemen | 4% | 0% |
| Oman | | 1% |

Electoral System

There is often not enough time for post-conflict dialogue and negotiations on transitional electoral systems where political developments resulting from a peace agreement or the fall of a dictatorial regime could prompt immediate elections. However, there are some issues concerning the design of the electoral system in these circumstances, which have to be addressed.

Different electoral systems need different durations to develop the infrastructure necessary to their implementation. Voter registration and constituency registration, for example, require more time to accomplish, and this may lead to difficulties affecting the legitimacy of the entire electoral process. In any case, the electoral system chosen for the first transitional elections may not be the best one in the long term. However, constantly changing the electoral system may prevent voters, candidates or parties from getting accustomed to the system adopted each time, which is also an unwanted implication.

An important issue concerning the process of selecting an electoral system is asking: Who would implement the process? In other words, who is authorized to put the question of the choice of the electoral system on the political agenda, and who is responsible for proposing new or amended systems, and by what means? What are the means provided by the political and legal framework for this process of change or amendment? What are the requirements of dialogue and debate required for the new or amended system to be considered legitimate and acceptable? And how is this change or amendment implemented after being approved?

⁸ <http://data.worldbank.org/indicator/SG.GEN.PARL.ZS>

Related links:

www.quotaproject.org

www.idea.int/publications/catalogue/designing-equality-best-fit-medium-fit-and-non-favourable-combinations?lang=en

Recommendations

1) Electoral Management:

Forming of a professional, impartial and independent electoral management body (EMB) and enacting a law regulating its composition, responsibilities and internal regulations – including the financial, legal, administrative and technical specifics of the board of commissioners and the EMB's executive administration. Independent electoral management is the cornerstone for both building and deepening democracy, as well as challenging the stereotype that citizens have about flawed elections run by the executive authority. It is critical for the success of the independent IMB to set clear criteria for the selection of its members, as well as to have electoral management offices in all governorates.

2) Electoral System:

Adopting an electoral system based on proportional representation to conduct parliamentary elections. Some experts prefer to use the closed list system in the elections following the transition into democracy (South Africa 1994, Iraq 2005). Proportional representation systems guarantee the representation of different political forces and the various components of society in parliament, such that none of these forces feel excluded from the political domain and turn against the democratic process. It is also preferable to use the quota system to ensure representation of different minorities in parliament.

3) Division of Constituencies:

Committing to the administrative boundaries of the state and the governorates as a basis for the division of constituencies in the first stage.

All countries with formal criteria for redistribution require that constituencies be as equal to population as possible. Many States determine the limits of leniency, or permissible deviations in population or seat share. The population or seat share is simply the population in the area to be subdivided into the number of seats in the Legislative Council (or constituencies) to be allocated to that area.

Establishing a professional and neutral entity for the division of constituencies, provided that this entity is independent from the executive authority and redistributes constituencies at regular intervals.

4) Voter Registration:

Establishing a registry of voters based on the national number database applied in Syria for years. This registry ensures the registration of all eligible voters automatically without the need for a new registration process. The national ID database contains the data of all Syrian citizens, including for each citizen a distinctive number composed of 11 numbers, a photo ID and fingerprints.

Through the national ID database, IDPs, emigrants and refugees who lost their identity cards will be able to obtain new identity cards and participate in the elections.

5) Absentee Ballots

Adopting the system of voting from abroad to involve Syrian refugees in different countries in the elections. It is possible to achieve electronic connectivity between the Syrian embassies and consulates abroad and the Syria-based electoral management committee in order to prevent repeated voting via the national ID database.

II Building the electoral system after the conflict and related challenges

Women and Electoral Reform: Lessons from Post-Conflict Societies in the Global South

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Introduction

The Syrian crisis/war has had a devastating impact on all its citizens, fuelling large scale migration, infrastructural devastation and further destabilization of the Middle-East. Thinking about a post-conflict settlement cannot start soon enough and it is with the perceptions of a new regime in mind that we start to think about the inclusion of women in a post-conflict settlement as well as in a post-conflict political system.

The formation of a new regime is based on the following assumptions:

- That the violence will stop.
- That there is a commitment to democratic government with regular elections.
- That there is a commitment to the inclusion of a diversity of constituencies – women, ethnic groups, religious groups, people with disabilities, gay people etc.
- That there will be a multi-party state with electoral competition (and not a one party state).
- That men will not use their patriarchal privileges to justify the exclusion of women.

United Nations Resolution 1325 specifically names war time violence and rape as serious atrocities against women because of the changing nature of warfare in which civilians become targeted. It acknowledges how women and children are differentially impacted by conflict, through their displacement in larger numbers than men, and it calls for the inclusion of women in peace processes in order to create lasting peace and political stability. It also calls for women's increased role in decision-making with regard to conflict prevention and resolution. The resolution also reaffirms the importance of the implementation of international humanitarian and human rights law that will protect the rights of women and girls during war. The importance of mainstreaming a gender perspective into peace keeping operations is emphasised.

It is with UN Resolution 1325 in mind that I write this paper on the inclusion of women in a post-conflict Syria through the electoral system in a context where women will be central to post-conflict reconstruction and care after the vast devastation of the Syrian civil war.

Changes after conflict have the following characteristics:

- Structural – women return after conflict with more skills acquired elsewhere.
- Demographic – often women are in a majority because of the number of men killed.
- Political – the urgency of regime change, putting a new, more women-friendly regime in place.
- Cultural – a change in gender roles because of women's greater independence brought on by, for example, forced migration.⁹

⁹ Hughes, M M (2009) "Armed Conflict, International Linkages, and Women's Parliamentary Representation in Developing Nations" *Social Problems*, 56:1, p.180.

The paper will focus on women's inclusion through electoral design, expressing support for a quota system. It will draw on lessons from African countries where Rwanda now has the highest percentage of women in a legislature of all countries in the world with 64% since the 2013 election, because of the post-conflict settlement and quota adoption. It also draws on lessons from South Africa and Botswana.

Women and Representation

Women's representation draws on three different understandings of representation: descriptive, substantive and symbolic. It is preferable that the eventual outcome of regime change will lead to all three forms of representation:

Descriptive:

This is the inclusion of women through getting them into legislatures (and executives) through numbers. This is the first dimension of representation when numbers really matter to show citizens that women can be political leaders. There is an understanding that there needs to be a *critical mass* of women to change political culture. This is considered about 30%, but 50% is even better. The aim is to work toward critical mass. There is currently a debate about whether critical mass should be the aim, or rather the aim should be getting *critical individuals* with a feminist consciousness into parliaments, who will set an agenda on women's issues through *critical acts*.¹⁰

Substantive:

This type of inclusion leads to agenda setting and the making of legislation and policy around women's issues. It is based on the assumption that women will represent other women through raising issues around women's rights, women's empowerment and women's needs created by the conflict. A range of contextual or institutional factors need to be considered, such as parliamentary rules and practices and masculine legislative norms that will have an influence on the inclusion of women.¹¹ Women who have a gender/feminist consciousness improve the prospects of substantive representation and it is therefore important to include women who were activists during the conflict and who have connections with women's movements/organizations who can help set an agenda for women.

Research in the global North has shown evidence of substantive representation that has increased the number of policy proposals put forward on women's issues.¹²

Symbolic:

Through the visible inclusion of women in politics, citizen's attitudes about women as political representatives and political leaders start to change. It means that women's presence has a symbolic impact on voters' perceptions of women and ideas about gender roles. Survey research has shown that women believe that governments are more democratic when women are included.

¹⁰ Childs, S and M L Krook (2006) "Should Feminists Give Up on Critical Mass? A Contingent Yes", *Politics and Gender*, 2(4), pp 522-530. And Childs, S and M L Krook (2009) "Analysing Women's Substantive Representation: From Critical Mass to Critical Actors" *Government and Opposition*, 44(2), pp125-145. International Institute for Democracy and Electoral Assistance (IDEA) (1998) *Women in Parliament: Beyond Numbers*, Stockholm, Sweden (updated version, 2005)

¹¹ Franceschet, S, M L Krook and J M Piscopo (eds) (2012) *The impact of Gender Quotas*. Oxford: Oxford University Press, p.9

¹² *Ib*

These three types of representation can only be achieved through a thorough understanding of how they are enabled or limited by electoral systems. The rules and functioning of electoral systems to a large extent determine if and how women enter parliaments.¹³

Electoral systems

The majoritarian, or “first past the post” system encourages competition between candidates in single or multi-member districts. This often leads to a zero-sum game where women lose when they compete directly with a male candidate in the same constituency. This can be ascribed to voters’ perceptions that women are not good political leaders. It makes parties reluctant to put forward women candidates, based on the idea that it is a zero-sum game. In multi-member districts, parties will at least put forward women candidates that have a chance of winning.¹⁴ It is, however, a system that is not very women friendly.

Proportional representation where parties get the percentage seats in relation to the percentage support it gets in an election is far more favourable to women, especially where a closed list is used. A closed “zebra” list works the best. This type of list gets parties to make a commitment that every second name will be that of a women candidate. Usually a quota for women is introduced that will commit parties to include a certain percentage of women. Party quotas vary between 30% to 50%. From the perspective of descriptive representation, women should at least get 50% representation because they are often more than 50% of the population, especially in post-conflict countries. A zebra list puts women in electable positions.

Including Women through Quotas

Quota adoption has become quite prevalent globally during the last few decades because of political crisis, democratic transitions and post-conflict reconstruction, combined with large scale activism by women’s movements and transnational non-governmental organizations, as well as the establishment of national gender machineries in the state, also called women’s policy agencies.¹⁵ Women’s alliances with transnational actors (such as, for example, EuroMed Feminist Initiative) and international pressure give the struggle for quotas legitimacy.¹⁶ The struggle for quota adoption is often difficult if a quota needs to be fit into an existing institutional framework. Here, post-conflict settlements have an advantage because a new system needs to be designed from scratch.

Quotas are established in different ways – there are constitutional quotas, where they are protected by the Constitution, legislative quotas, where the quota is written into legislation, and voluntary party quotas, which means that party leaders, who are normally men, have to be convinced of its merits. Reserved seats are also a form of quota but seems to produce small changes in women’s representation,¹⁷ because they are often viewed as an add-on to the electoral system and in some cases only women vote for them, thereby reducing its legitimacy and creating the perception that women are inferior representatives, who got in through “special seats”¹⁸.

¹³ *Ib.*, p.9

¹⁴ Franceschet, S, M L Krook and J M Piscopo (eds) (2012) *The impact of Gender Quotas*. Oxford: Oxford University Press, p.7

¹⁵ Krook, M L (2009) *Quotas for Women in Politics*. Oxford: Oxford University Press, pp 28-29. *Ibidem*, pp 31-33.

¹⁶ *Ib.*, p.39

¹⁷ *Ib.*, p.39

¹⁸ Bauer, G (2008) “Fifty/fifty by 2020” *International Feminist Journal of Politics*, 10:3, p.359.

Examples of countries with proportional closed list systems combined with voluntary party quotas are South Africa with a 50% quota that has 42% women in parliament, Namibia with a legislative and voluntary party quota with 41% women representatives and Angola with a legislative quota of 40%. Botswana and Kenya with majoritarian systems have 10% and 20% women in parliament respectively, illustrating the difference between majoritarian and PR electoral systems.

The use of quotas is called the “fast track” of getting women in legislatures, because if women have to get there without a quota, called the incremental track, it takes very long to reach parity.¹⁹ In many countries, women have leapt from single digit numbers to over 30 to 50% through quotas. If the USA can be considered an example of the difficulties of the majoritarian system for women’s representation, it is evidenced in the fact that the USA only has 19% women in Congress.

Reasons why quotas are important

Quotas are important when women mobilize to increase women’s representation, and when political elites recognize the strategic advantage of having quotas. They are also important when they are consistent with emerging notions of equality and are supported by international norms and transnational practices. It needs to be remembered that quotas are about representation, not educational qualifications – an excuse often used to scrutinize women’s merits, when men’s merits are not scrutinized.²⁰

When are quotas less successful? Research has shown that where women’s movements are not strong it is more difficult to introduce quotas. Quotas may also not be successful when internal party politics are undemocratic and factionalized, and the party system is weak. Where legislatures are weak and dominated by executives quota introduction is also more difficult. In one-party dominant states, women’s representation may be used to legitimate authoritarian governments.

Quotas in Africa

21 countries in Africa have quotas. Post-conflict conditions and political transitions offered opportunities for the introduction of quotas eg. in Namibia, Mozambique, Rwanda, Somalia, South African, and Uganda. It is important to use the political opportunity structures that are created during a crisis to include women’s quotas. I will now discuss three countries in Africa to illustrate some point around quota introduction in the global South.

Three Case Studies from Africa

Rwanda

Rwanda pursued three types of quotas at the same time: reserved seats, party quotas and legislative quotas. Women’s councils were established on the local, regional and national level and reserved seats were filled through these councils.

Rwanda has a two tier system for the selection of members of the lower house, the Chamber of Deputies. 53 out of 80 are directly elected to the Chamber of Deputies, using a closed list PR

¹⁹ Dahlrup, D and L Freidenvall (2005) “Quotas as a ‘Fast Track’ to Equal Representation for Women”, *International Journal of Feminist Politics*, 7: 1, pp 26-48

²⁰ International Institute for Democracy and Electoral Assistance (IDEA) (1998) *Women in Parliament: Beyond Numbers*, Stockholm, Sweden (updated version, 2005)

There is no mandatory quota, but parties have to take gender equity into consideration. Parties do put women on these lists and also nominate them for cabinet positions. The remaining 27 seats are reserved seats, indirectly elected – two for youth, one for disabled and 24 for women elected by district level women’s councils (which is a 30% quota)²¹. The reserved seats represent different geographic regions²². Women can therefore make up more than 50% of representatives depending on how many get in through the party lists. Currently Rwanda has 64% women in government.

The inclusion of women in political positions had an impact beyond the political sphere. It increased women’s social mobility, and economic positions. Greater contact with government officials led to the willingness to criticize government²³. On a symbolic level, quotas achieved the following for women in Rwanda: women found it easier to speak out in public and became entrepreneurs in the political arena, they gained greater access to education, they entered into joint decision making with men over domestic resources, and women indicated that they found respect, while rural women agreed that women’s innate dignity became recognized.²⁴

One of the downsides is that being a woman representative increased the workloads of rural women who still had to do their care work at home.

It is, however, the case that substantive representation is difficult to achieve under the leadership of Paul Kagame’s one party state. The RPF party is authoritarian and it uses women’s representation to legitimize Kagame’s government²⁵. It is therefore difficult for women to set a women’s agenda, but they did manage to unite women around gender-based violence and drafted a bill on violence, and they put some discriminatory cultural practices on the agenda²⁶ (Burnett, 2013).

What the case of Rwanda shows is that having more women in government when it is a one party dominant system with authoritarian tendencies does not make the government more democratic, but it leads to significant changes in attitudes about women’s competence. It also leads to greater political, social and economic agency among women citizens (Burnet, 2011: 330).

South Africa

South Africa incorporated a 30% voluntary party quota of the African National Congress (ANC), the ruling party, into a proportional closed list system during the transition process for the 1994 freedom election. The quota was achieved because of strong activism by the South African women’s movement, the Women’s National Coalition (WNC) and the ANC Women’s League. A zebra list was not used at the time of the first election which meant that women were clustered from number 80 onward. Since 2007, the ANC has increased its quota to 50%. A zebra list is now used, ensuring that nearly every second name is that of a woman. South Africa currently has 42% women in parliament, leading to descriptive representation.

²¹ Bauer, G (2008) “Fifty/fifty by 2020” *International Feminist Journal of Politics*, 10:3, pp348-368.

²² Bauer, C and J E Burnet (2013) “Gender Quotas, Democracy and Women’s Representation in Africa: Some Insights from Democratic Botswana and Autocratic Rwanda” *Anthropological Faculty Publication*, Paper 2. Page. 7.

²³ Franceschet, S, M L Krook and J M Piscopo (eds) (2012) *The impact of Gender Quotas*. Oxford: Oxford University Press, p.205

²⁴ Burnet, J E (2011) “Women Have Found Respect: Gender Quotas, Symbolic Representation, and Female Empowerment in Rwanda” *Politics and Gender*, 7, pp 317-320

²⁵ Bauer, C and J E Burnet (2013) “Gender Quotas, Democracy and Women’s Representation in Africa: Some Insights from Democratic Botswana and Autocratic Rwanda” *Anthropological Faculty Publication*, Paper 2.p.112

²⁶ Burnet, J E (2011) “Women Have Found Respect: Gender Quotas, Symbolic Representation, and Female Empowerment in Rwanda” *Politics and Gender*, 7, p.330.

In the first five years of the democratic government, many of the leaders of the WNC, who were also feminists, became members of parliament and it was during this time that many laws were made to benefit women. It shows that the quota, combined with feminist understandings of politics, are powerful tools to enable the substantive representation of women's interests.

After the first five years of democracy, the South African government falls short of substantive representation because South Africa is a one party dominant state and many of the feminists who were in parliament in the first five years have left parliament. The ANC got more than 50% of the vote in every election since 1994, making party turnover difficult. The ANC, as the ruling party, is suffering from serious factionalism and weak internal party democracy that makes it very difficult for women to put women's issues on the agenda. The situation is further complicated by a weak legislature that is dominated by a strong executive. The ANC Women's League (ANCWL) plays an important role to get women onto the party list which means that women members of parliament are beholden to the ANCWL as well as the party leaders who put them on the list. The ANC Women's League represents nationalist politics that frame women as mothers, rather than as emancipated women, and is embroiled in ANC factionalism.²⁷ The issue of accountability to voters in the absence of constituencies remains a challenge. Accountability is stronger where there is no one-party dominance.

Descriptive representation in South Africa has, however, contributed to symbolic representation. Voters are far more used to seeing women in political positions, and as members of parliament as well as Ministers, and attitudinal change about women as political leaders has occurred.

Botswana

Botswana has a majoritarian electoral system with only 10% women. While it does not have descriptive representation, it does have some substantive representation due to *critical acts* by *critical individuals*. Women MPs have introduced important laws that empower women, such as making it possible for women to become traditional leaders – positions traditionally only held by men. The contribution of women is, however, related to law reform, rather than more widespread empowerment of women²⁸.

Botswana did introduce voluntary party quotas, but parties are not enthusiastic about them. It is clear that in the absence of a quota (Botswana did not go through democratic transition) women's issues are not considered important, and Botswana cannot claim representation in any of the three categories of representation.

Thinking about Electoral Design

The following aspects of electoral design are important when negotiations start:

- There needs to be a commitment by parties to include women, and not merely as tokens.
- Proportional representation should be viewed as a preferred electoral system (it has other benefits too – it gives smaller parties a probability of being represented in parliament and it is easy to understand where citizens' levels of education vary).

²⁷ Hassim, S (2014) *The ANC Women's League*. Johannesburg: Jacana (Jacana Pocket Book) ; and Gouws, A (2011) "Women's Representation in Government: Quotas, Substantive Equality and Self Interested Politicians" *Transformation*, 77, pp80-99.

²⁸ Bauer, C and J E Burnet (2013) "Gender Quotas, Democracy and Women's Representation in Africa: Some Insights from Democratic Botswana and Autocratic Rwanda" *Anthropological Faculty Publication*, Paper 2: 109).

- Strong activism by women and women’s organizations is necessary for the successful adoption of quotas.
- It is important to negotiate women’s policy agencies during negotiations, later it may not be possible. Hughes²⁹ points out how crucial policy agencies are in in post-war reconstruction.
- Women should establish a parliamentary caucus as a support structure after they have been elected and where a gender agenda can be formulated across party lines.

Conclusion: Getting In and Staying In

Quotas get women in, but it does not necessarily mean substantive representation. Staying in means success with symbolic representation. There needs to be the political will from the side of men politicians to view women colleagues as equals. Women’s inclusion should be promoted as an issue of justice, and specifically gender justice, that will reduce women’s exclusion from decision making.

Women should be clear on why quotas are introduced – is it to promote women’s equality and gender justice, or to legitimate governments? If the latter is the case, women should use their presence to strengthen their positions in politics and to turn their presence into power as Anne Phillips³⁰ has suggested.

In post-conflict countries, where ethnic or religious identities weigh strongly, there will be a strong inclination among male politicians to view these identities as priorities for accommodation. Women should resist this urge and demand to be included as women who may have other intersectional identities (such as ethnic identities) on grounds of the common denominator of their gender identities. Women deserve to be taken seriously in post-conflict negotiations. In deeply patriarchal societies like Syria, women need to mobilize and they need to strategize beforehand. That is why mobilization through women’s movements with the co-operation of international or transnational organizations cannot be emphasized enough. Here, the strategies of the women in Liberia to end the civil war and elect the first women president in Africa, Ellen Johnson Sirleaf, should be taken into consideration. Christian and Muslim women worked together to end the war and to demand their inclusion in the post-conflict Liberia (see the film “Pray the Devil Back to Hell”).

Women have to insist on a gender quota to ensure at least descriptive representation to start with.

²⁹ Hughes, M M (2009) “Armed Conflict, International Linkages, and Women’s Parliamentary Representation in Developing Nations” *Social Problems*, 56:1, p 196

³⁰ Phillips, A (1998) “Democracy and Representation: Or Why Should it Matter Who Our Representatives Are? In A Phillips *Feminism and Politics*. Oxford: Oxford University Press.

Women's Political Participation in Tunisia: The Test of Parity

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Introduction

The pursuit of equality between women and men cannot be isolated from the pivotal stages that Tunisia has undergone in its contemporary history. Since Tunisian independence, Tunisian women have been able to acquire important rights pertaining to their private lives as well as their participation in public affairs. After its promulgation of the Personal Status Act in 1956 and by virtue of its 1959 Constitution, which made equality the basis for the enjoyment of rights, Tunisia is considered one of the leading countries in the area of women's rights, which set equality as the basis for the enjoyment of rights. The Republic of Tunisia also ratified most conventions in this area, such as the 1968 Convention on the Political Rights of Women, the 1969 International Covenant on Civil and Political Rights, and the 1985 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

However, the social and political movements that toppled the political regime in 2011 revealed the fragility of these gains during the transitional process. The matter of guaranteeing rights and freedoms on the basis of gender equality was the most contentious point of foundational course between 2012 and 2014. But the space for freedom provided by the revolution made it possible to intensify and strengthen the struggle to maintain these gains and to promote equality, and the democratic transition has opened up numerous opportunities for the development of women's rights and the strengthening of their representation in the political field. The vigilance and vitality of civil society and of democratic political movements has allowed for many gains to be made. The 27 January 2014 Constitution adopted human rights for women on the basis of equality, non-discrimination, ensuring equal opportunities for both sexes, and adopting a new approach based on the need for the State to take a number of legal measures to eliminate gender disparities in the exercise of rights, including parity at the level of elected bodies. Despite the encouraging legal and political context of women in Tunisia, the persistent gap in equality between the legal and the actual makes this progression necessary.

Integration is a crucial criterion for the success of the electoral process, due to its close association with how transparent and comprehensive the elections are. The right to vote is a general right that is closely associated with citizenship and democracy. Often this criterion is evoked because it targets groups of citizens that are legally considered voters, such as persons with disabilities or who are illiterate, and women, especially rural women.³¹

While the law has played a significant role in the history of the emancipation of women in Tunisia, the gap between their legal rights and the effective implementation of these rights still persists because Tunisia has not adopted a comprehensive approach to gender. It remains that the greatest challenge is to translate constitutional principles through laws that are in line with the Constitution's text on the one hand and the actual implementation of these rights on the other. In this context, the participation of women in decision-making remains limited, and politics has remained largely dominated by men. In addition to the social, cultural and financial obstacles to the entry of women

³¹ Report on the voter registration forum, the Independent High Electoral Commission, on 4 and 5 March 2015.

into politics, institutional factors, such as the electoral system adopted³² and the party system, affect the chances of women being elected and having access to leadership positions. Additionally, the needs and aspirations of women and the value of their contribution to the management of public affairs are still absent in public policies and development plans and budgets. The electoral participation of women in Tunisia remains caught between two contradictory directions: the will to modernize through a number of special measures to promote the participation of women in the electoral administration and the electoral process as a whole on the one hand, and the stereotypical perceptions of the role of women and men and political and administrative practices which often hinder women's access to decision-making positions on the other hand.

The principle of parity is one of the best solutions adopted³³ to support the political participation of women concretely, because it best embodies the principle of equality and equal opportunities. Other States have opted for temporary special measures, such as the quota system. 108 States apply a constitutional, legal or voluntary quota system (automatically adopted by political parties) or a system where seats are reserved for women. These positive measures have been of varying importance in improving the representation of women in decision-making positions,³⁴ but despite including the principle of parity and the rule of alternating the ranks of male and female candidates in Tunisian law since 2011,³⁵ it has yet to achieve the desired results. Not to mention that the compliance of political parties with these rules has been mostly situational in the electoral timeline. After the 14 February 2017 electoral law augmented vertical parity with horizontal parity in municipal and regional elections, the upcoming municipal elections scheduled on the 6th of May 2018 represent a real test of the principle of parity.

The fact that both the traditions related to democratic elections and the independent electoral administration in Tunisia are rather recent makes matters even more challenging. Chapter 126 of the 2014 Constitution included an Independent Supreme Electoral Committee as another independent

³² Women's chances of being elected in the proportional representation system are higher than in the majority voting system. For example, a 2007 study by the International Federation of Parliaments shows that in 2007, women worldwide gained more seats in parliamentary chambers, thanks to proportional voting (18.3%), compared to 13.8% of women who were elected by majority vote.

³³ Both France and Senegal adopt the principle of parity.

³⁴ In Algeria, Organic Law No 12.03 of 12 January 2012 on ways of expanding the chances of women's representation in elected councils and bodies has approved the quota system. Article 2 stipulates that "the number of women in each candidate list, free or submitted by a party or several political parties, shall be no less than the following percentages, depending on the number of seats contested: for the elections of the People's Provincial Assemblies: 30% when the number of seats is 35, 39, 43 and 47 seats, 35% when the number of seats is 51-55 seats. As for the election of the People's Municipal Assemblies, 30% of the assemblies in districts and municipalities of populations more than 20,000. Article 3 provides for the distribution of seats between the lists according to the number of votes obtained by each list, and "the percentages specified in Article 2 above shall be allocated to candidates in the order of their names in the winning lists." In Morocco, Organic Law No. 59.11 (2011) provides for the quota system for the election of the members of the Regional Councils. Chapter 76 provides for the creation for each prefecture, province or prefecture of arrondissements two constituencies, one devoted to women. This shall not preclude any woman's right to run in the other constituency. Furthermore, Chapter 77 requires that the number of seats in the women constituency in each prefecture, province or prefecture of arrondissement shall be at least one-third of the number of seats allocated to the whole prefecture, province or prefecture of arrondissement.

³⁵ Chapter 16 of Decree No. 35 of 10 May 2011 on the election of the National Constituent Assembly reads, "Candidacy shall be submitted on the basis of parity between women and men, and candidates shall be ordered on the basis of alternation between women and men. A list that does not respect these principles shall only be accepted within the limits of the odd number of seats allocated to some constituencies." The same chapter was adopted in the Basic Law for the 2014 Legislative Elections (Chapter 24).

constitutional body³⁶ delegated with the task of "running and organizing the elections and referendums, supervising them at all stages, ensuring the integrity, impartiality and transparency of the electoral process, and declaring the results." The committee also has regulatory authority in its area of expertise. As for the composition of this committee, the chapter merely stated that it would consist of "nine neutral, competent and impartial independent members, serving for a one six-year term with one third of their members being turned over every two years." The task of this ISEC reflects a clear decision to give the electoral process the transparency and integrity that it requires to break with what had been prevalent in the past decades. Under the former regime, the Ministry of Interior oversaw the entire electoral process and was considered deficient and prone to political manipulation, and thus was not trusted by most citizens.

The purpose of this study is to assess the extent to which the electoral process in Tunisia takes gender into account; it does so by assessing the participation of women in the different electoral processes and activities. Gender equality in running public affairs requires that the effective participation of women in decision-making structures be supported, and this is done by recognizing the principle of gender equality in candidacies and in voting, and by taking all of the necessary measures to encourage women to register in electoral lists and to exercise their right to vote in person, in addition to empowering them economically and building their political capacity so that they can effectively exercise the right to run in, and hold, elections. This is in addition to parity in all elected institutions that contribute to public decision-making.

1. Legal Framework for the Political Participation of Women

The suffrage of Tunisian women was adopted before the first Constitution of the Tunisian Republic on 1 June 1959, immediately after the promulgation of the Personal Status Code and its implementation. This took place in accordance with the decree regulating the municipal elections of March 14, 1957, which states in Chapter 7 that, "excluding those who are not eligible to vote as per the law, Tunisian men and women above the age of 20 are legible voters." Although the 1959 Constitution and the 1969 Electoral Code approved the equality of women and men in political participation, the representation of women in the elected bodies remained low, and their presence in public and political life remained weak. The men of the ruling party nevertheless dominated government.

The transitional context that began in January 2011 opened new horizons for the actual practice of citizenship for women and men alike, and it represented an opportunity for the development of women's rights and the strengthening of their representation in the political sphere. And then the first real, pluralistic, and credible elections took place, the National Constituent Assembly elections, marking the end of the majoritarian system and its replacement with proportional representation. The 10 May 2011 Decree on the election of the National Constituent Assembly included the principle of parity between women and men, and stipulated that electoral lists rotate and that any list that is not compliant is disqualified (Chapter 26).

This decree, which was adopted by the Supreme Court to achieve the objectives of the revolution, gathered, paradoxically, all political groups such that they are composed by two thirds that had voted against the one third that did not. Progressive and feminist activists struggled for the inclusion of parity in the electoral law of the National Constituent Assembly to ensure the appropriate

³⁶ The establishment and organization of the Permanent Electoral Body was provided for by Basic Law No. 23 of 20 December 2012, replacing the Provisional Electoral Commission, which had overseen the elections of the National Constituent Assembly in 2011.

representation of women in the Council responsible for formulating a new social and political contract for Tunisia. This is considered a pioneering endeavour, as it has never been witnessed in Tunisia or in the region. The Coordinator of the Parity Support Group believes that parity is not at all premature, and that “every law is ahead of its time and the society in which it grows.” She also contended that the primary enemy of equality is ignorance and that “the battle for parity is a cultural battle par excellence.”³⁷

Many criticized the principle of parity, and it did not gain the consensus of the political class. Some considered parity a coercive principle that inflicted harm on small parties in the interior,³⁸ that it is only a “fallacy” and a “decorative inclusion” that is incompatible with the “natural” peculiarities of women who are incapable of working in the politics, while others considered it to be degrading and insulting to women.³⁹

With the promulgation of the 27 January 2014 Constitution, women's rights were enhanced in a variety of domains including political participation in general, and electoral participation in particular. The preamble stated that “the State guarantees the supremacy of the law, respect for freedoms and human rights, the independence of the judiciary, and the equal rights and duties of all citizens both men and women...” The principles of gender equality and non-discrimination in the Constitution were also affirmed through an explicit provision in Chapter 21 of the Constitution that: “Female and male citizens are equal in rights and duties and are equal before the law without discrimination” within the framework of a civil state (Chapter 2). Article 34 guarantees the right to vote, cast ballots, and to run for elections in compliance with the law, while emphasizing the importance for the State to ensure the representation of women in elected bodies. Chapter 46, which was written specifically to address the rights of women, included in the Constitution the protection of the gains by women, the principle of parity, and the protection of women against all forms of violence: “The State is committed to the protection and promotion of the acquired rights of women. The State guarantees equal opportunities for women and men to hold various responsibilities in all domains. The State seeks to achieve equality between women and men in elected bodies. The State shall take measures to eliminate violence against women.”

Chapter 74 addressed presidential elections by affirming that both women and men enjoy this right by gendering language in this chapter specifically, stipulating that: “The candidacy for the presidency is the right of every Tunisian female or male voter who has been a national since birth...” Article 24 of Basic Law No. 16-2014 dated 26 May 2014, on legislative elections, provides that the nomination “is based on the principle of parity between women and men and their rotation within electoral lists. Any list that is not compliant with this principle is accepted only insofar as it is required by the individual number of seats allocated to certain constituencies.” The same two principles were applied to supplemental lists.⁴⁰

³⁷ Statements by Amal al-Za'aibi, "Three questions addressed to Ms. Faiza Sakandarani," *LA PRESSE*, Thursday, September 8, 2011

³⁸ For example, the Al-Wafa Party, the 14th January party, the Free Tunisia Youth Movement, and the Umma Cultural Unitarian Party.

³⁹ Initial Report No. 2 on Media Observation in the Transition Period, 1 March to 25 September 2011, ATFD-AFTRD-CNLT-SNJT-OLPEC.

⁴⁰ Chapter 21 of the Basic Electoral Law of 26 May 2014: "A supplementary list of no less than two candidates, and in all cases no more than the number of candidates on the original list, bearing in mind the provisions of Chapters 24 and 25."

This chapter is criticized for sufficing itself with horizontal parity, which may render the constitutional goal of establishing parity in the elected bodies only an illusion. A group of members of parliament challenged the constitutionality of the draft of Chapter 24 before the Provisional Body to Review the Constitutionality of Laws on the grounds that Chapter 46 aims to implement the principle of parity not only at the level of electoral lists but also in the composition of elected bodies, which requires the state to do all that is necessary to achieve this target, including legislation, so that the elected bodies are equally divided between men and women.

Previous experiences in Tunisia proved that parity of candidates was not enough to achieve parity in the composition of the elected body. The results of the elections in 2011 and the election of the members of the Supreme Independent Electoral Commission did not lead to parity at the level of composition, despite the parity at the level of candidacy, as the Constituent Assembly was only 30% female.

However, the Provisional Body to Review the Constitutionality of Laws rejected this interpretation in its decision No.2 of 19 May 2014, reasoning that:

“Where Chapter 46 of the Constitution also requires that the State seeks to achieve equality between men and women in the elected bodies, which was achieved by Chapter 24 of the draft of the electoral law, the matter of appeals, by discussing nominations on the principle of parity between women and men... this constitutional direction explicitly intends to make an effort to represent women in elected bodies in order to achieve equality...

In light of the preceding, Chapter 24 of the draft of the electoral law is consistent with the provisions of the Constitution...”

This resolution reflects a formal and conservative interpretation of the principle of parity and reflects a certain confusion between conflicting considerations: the adoption of equality and equal opportunities in the law on the one hand, and the heavy burden of discriminatory traditions and practices against women, especially regarding their participation in public life, on the other.

Within this framework Basic Law No.7 of 2017 dated February 14 2017, which amended the electoral law No.16-2014 dated 26 May 2014 relating to municipal and regional elections, paid particular attention to drawing lessons from the experiences of 2011 and 2014, and that is by approving both horizontal as well as vertical parity better fulfilling the requirements set by Chapter 46 of the Constitution. In addition to vertical parity, Chapter 49 of the 2017 law included the principle of parity between women and men in heading party and coalition lists that run in more than one constituency. Horizontal parity is considered a condition for the acceptance of candidacy, where the lists of parties or coalitions that do not respect this rule are not approved unless they become compliant before the legal deadlines determined by the Rectification Commission. In the absence of rectification, the Commission determines the disapproved lists by taking precedence in the submission of candidacy. It is important to determine priority on the date of submission or renewal of the candidacy application during the application period. For local elections, the proportional representation system was retained with the largest residue but with a 3% threshold, which aims to ensure pluralism in the elected bodies.

On the other hand, Basic Law No.58 dated 11 August 2017, which relates to the elimination of violence against women, included a number of measures to eliminate all forms of physical,

sexual, moral, economic, and political violence, by adopting a comprehensive approach to addressing its various forms through the prevention, pursuit and punishment of perpetrators, and through the protection of victims. This law pioneers the criminalization of political violence, as it is widely defined as “any discriminatory act or practice aimed at depriving or hindering women from engaging in any political, party or organizational activity, or any fundamental right or freedom.” Chapter 18 provides for the punishment of every “perpetrator of political violence at a rate of 1,000 dinars. And in the form of a lute, the penalty shall be increased to six months in prison.” This law therefore protects female activists in the political sphere from gender-based political violence, which is considered a violation of their human dignity and of the principles of equality and non-discrimination.⁴¹

2. Participation of Women as Voters

Decree No.35-2011 relating to the elections of the Constituent Assembly, permitted the Electoral Commission to decide how to improve registration in 2011, for two registration mechanisms were adopted, namely, voluntary registration and electronic registration. The Commission was able to register more than four million voters. The registration process that lasted until July 28 2011 witnessed an upward trend of no more than 1,350,240 citizens. It was characterized by a low turnout of women reaching only 13.07% compared to 20.31% for men. This number has increased to an estimated 4,200,000 registered voters, with 37.27% being women and 62.37% being men.

Table on registration rates in the elections of the National Constituent Assembly in 2011 (Report of the Supreme Independent Electoral Commission -IHEC)

| | |
|--|--------|
| Percentage of women's enrolment in general, according to the IHEC's report | 37.27% |
| Ratio of men recording | 62.73% |
| Women between 18 and 30 years old | 48.64% |
| Women between 31 and 40 years old | 39.33% |
| Women over 50 years old | 36.63% |

In 2014, only voluntary registration was approved, and the total number of voters reached 5,285,136 people, which means that this method only succeeded in garnering 900,000 additional voters. Despite the committee's efforts to raise awareness and the registration services being brought closer to the citizen, the registration process did not achieve its target, because the registration rate remained slow.

⁴¹ Ms. Durrat Mahfouz, a sociologist and gender expert, collected the testimonies of a number of women candidates for the 23rd of October 2011 elections who reviewed the forms of discrimination and difficulties encountered during the election campaign. "In Tunisia, there is a bad representation of politically engaged women," said one female engineer in Kairouan. "I was subjected to verbal abuse in a popular neighbourhood (Tadamon neighbourhood, a suburb of Tunis) and one man I met told me he would not vote for me because women are arrogant when in power," another candidate told Mahfouz. A third woman said "People thought it was weird; 'Woman candidate!,' They often said to me, or 'If you give us something in return we will vote for you.'" I had two popular meetings, one of which was disastrous, and my phone was stolen, so we ended up in the police station. People used to come to us when we were hanging our posters, proposing to protect me. It was really scary."

Due to the increasing frequency of registration during the last days of the registration period, which was due to end on 22 July 2014, daily registration rate increased from 27,591 voters registered on 10 July 2014 up to 91,980 voters registered on 22 July 2014, the committee decided to extend the registration period until 29 July 2014, as the maximum period possible that respects the electoral dates already set, particularly those relating to appeals against the initial lists of voters. However, this extension only garnered an additional 147,038 voters, increasing the number to a total of 759,424 voters, which represents 76.45% of the total number of those registered in 2014. Voters registered during the first period of the registration campaign by means of an unstructured data service that allowed for the registration of 439,055 voters represented 57.8%, while 284,468 voters registered via the registration system at the registration offices represented 37.46%. The number of registered voters through the WAP reached 35,901 voters, representing more than 52% of the total number of voters who completed the registration process during the first period and whose number reached a total of 68,962 voters.

In view of the limited results of the registration campaign as well as in conformity with the desire of the committee to target as many potential voters as possible and in response to the requests completed by some parties and civil society organizations, a second registration period was organized from the 5th to the 26th of August 2014, which allowed for the registration of voters without allowing for the right to run for legislative elections, since it was impossible to control the final list of registered voters during the new period before the candidacy for legislative elections was opened. This second period allowed for the addition of 233,389 new voters, which represented 23.53% of all voters registered during 2014, through the unstructured data service, and that allowed for the registration of 13,113 voters, or 56.09% of the total number of registered voters in the second period, while 97,744 voters were registered through the registration system, which represented only 41.79%. In contrast, there were 4,932 registered voters online estimated to be 13.8% of the total of 35,582 Tunisians living abroad who registered during the second period. This low rate can be explained by the coincidence of the second registration period with a large number of Tunisian expatriates spending their annual vacation in Tunisia. The number of registered voters represents 75% of the possible electoral body⁴².

The number of registered females was 2,446,393, estimated to be 46.10% of the total registered voters, while the number of registered youth aged 18 to 35 was 1,914,850 persons, estimated to be 36.09%.

As for the municipal elections scheduled for May 6th 2018, 52% of those registered were men while 48% were women.

While organizing the 2014 elections, the committee faced many difficulties including the absence of any updates of the register of voters belonging to 2011 and the delay in the registration of voters for many reasons, with the latter being completed in a tight timeframe that did not allow for all citizens who met the voter requirements to be registered. In addition to all of this, there was a shortage in registration agents, and most of those who were registered online in 2011 believed that they would be automatically registered in 2014, which led to many complaints being received, in addition to the lack of voter education concerning conditions for registration and the right to participate in the elections.

⁴² Report on the Registration of Voters, the Independent High Commission for Elections, on 4 and 5 March 2015.

During the voter registration phase, there were no serious efforts to formulate the criterion for integration and to find practical solutions to some of the difficulties faced by persons with disabilities, those who are illiterate, and the elderly, in order to facilitate their registration. These difficulties included headquarters of subsidiary committees being unprepared to receive these groups of voters and failing to raise awareness about the multiple particularities of each kind of disability, in addition to the absence of efforts to simplify procedures and the lack of adequate dissemination of information to other groups, such as rural women who lack traditional means of communication or interest in public affairs due to overwhelming work-related concerns and lack of awareness about the importance of political participation.



Source: The Independent Supreme Electoral Committee’s report concerning the Legislative and Presidential Elections, March 2015.

However, some of the measures proposed by the ISEC produced a positive effect by increasing the number of those registered, both women and men. Among those measures was the extension of the registration period and the release of public service announcements by the committee in order to raise awareness among both male and female citizens concerning the importance of registering and voting, and urging them to do so.

On the other hand, a committee comprised of representatives of the ISEC and a number of ministries (Ministry of Interior, Ministry of Justice and the State Secretariat for Women and Family) was formed in 2014 in order to empower a number of rural women in obtaining national identification cards, with the total number of women without ID cards in Tunisia estimated to be 300,000⁴³. A

⁴³ Report on the Registration of Voters, the Independent High Commission for Elections, on 4 and 5 March 2015.

study by the Center for Research Studies, Documentation and Information on Women showed that 18% of rural women do not have an identification card; this requires special attention and requires coordination between various administrative offices in order to issue national identification cards. Due to the delay in organizing the campaign, as well as not taking all possible measures to make it successful, only a modest number of 3,000 rural women were allowed to obtain an ID card.

Ensuring the integration of the registration process in particular with regard to rural and illiterate women, requires an integrated awareness-based and comprehensive educational strategy, concerned with the need to register in order to exercise the right to vote. All of this must be in line with the requirements of each target group, through the adoption of non-stereotyped communication channels, such as the use of regional radio stations, local development organizations, the Women's Union, farmer and craftsmen association and others, in view of the existence of previous links of trust and cooperation between these organizations and rural women, or by allocating mobile registration teams to target rural women in their workplaces, such as agricultural estates and dispensaries, or professional or social inclusion centers when dealing with young people.

The ISEC should work with relevant ministries such as the Ministry of Social Affairs concerning illiterate people and people with disabilities, and with the Ministry of Women, Family and Childhood, concerning women, especially rural women, and with the Ministries of Education, Higher Education, Scientific Research, Youth, Sports and Local Affairs in order to ensure a database for each category of these groups in light of which the ISEC should build its strategy of action, whether in terms of awareness and public service announcements, or implementation of the registration process.

3. Participation of women as candidates

Although the 1 June 1959 Constitution and the 8 April 1969 Electoral Code recognized the principle of equality in political participation, the representation of women in the elected councils remained low. Their presence in public and political life was weak, due to the prevalence of stereotypes and the absence of special legal measures taken in order to overcome them. During the 1990s, the ruling party “Le Rassemblement Démocratique”, adopted the voluntary quota system, which has developed to settle around 25 percent of its lists of candidates running for legislative and municipal elections. This led to a gradual increase in the participation of women in both legislative and municipal councils. However, the assessment of this measure cannot be done in isolation from the nature of the authoritarian political regime and the dominant party system, which was likely to adopt the case for women's rights for political propaganda purposes and in order to polish the Regime's image, especially in front of the international community.

The registration process should not be limited to temporary and limited campaigns in terms of time frame, which proved not to achieve the desired efficiency. Instead, permanent registers should be opened, with registration ending at a reasonable date, before any future election.⁴⁴

After the 2011 Revolution, while all political parties respected the equality in numbers between men and women in the composition of electoral lists running for the National Constituent Assembly and the People's Assembly elections as it was a prerequisite for the acceptance of proposed lists by the electoral subsidiary bodies, the absence of a legal obligation to allocate a percentage of women at the head of electoral lists didn't allow for a significant increase in the degree of the representation of women within elected councils. The result currently remains modest and reflects

⁴⁴ Report on the Registration of Voters, the Independent High Commission for Elections, on 4 and 5 March 2015.

the lack of genuine conviction in the principle of parity in most parties, who adopted this principle as an electoral tactic and not as a governing principle for political parties and public life as a whole. This significantly hinders the emergence of female political leadership and prevents complete gender equality.

In the 2011 National Constituent Assembly elections, the number of lists accepted to run for elections in the republic was 1,518 and in the foreign electoral districts 147. 5,502 women ran for the National Constituent Assembly, making this 47% out of the total number of candidates, estimated to be 682.

The ISEC was a key element in ensuring respect for the legal provisions related to parity, equality and rotation, since the subsidiary bodies refused to accept lists that did not respect one of these two conditions. The subsidiary bodies rejected 188 lists that did not meet the legal requirements (number of candidates, voter status, parity and/or rotation).

The percentage of lists led by women was only 7% (128 lists). This percentage varies according to the nature of the lists: 3% for independent lists, 7% for party lists and 35% for coalition lists.⁴⁵ At the district level, the largest representation of women was in the heads of the lists in Tunis 1 (20 of the lists). In contrast, no women were placed on top of lists running in Jendouba, Kairouan, Sidi Bouzid and Qibili.

All of these indicators point to a lack of genuine conviction in parity by most political parties. Gender equality was respected, but only starting from the second place in the list. All of this reflects the grounding of stereotypes and the traditional distribution of gender roles, all of which significantly hinder the emergence of female political leadership.⁴⁶

Many men and women still reject female political leadership and consider public space to not be their natural place.

It is also important to note the poor media coverage of women during their campaigns. Women, whether political actors, candidates, party leaders or heads of lists, had little access to media coverage. This coverage was estimated to be at 2.02% by the written press, 4.92% by radio broadcasts and 2.02% by TV channels.

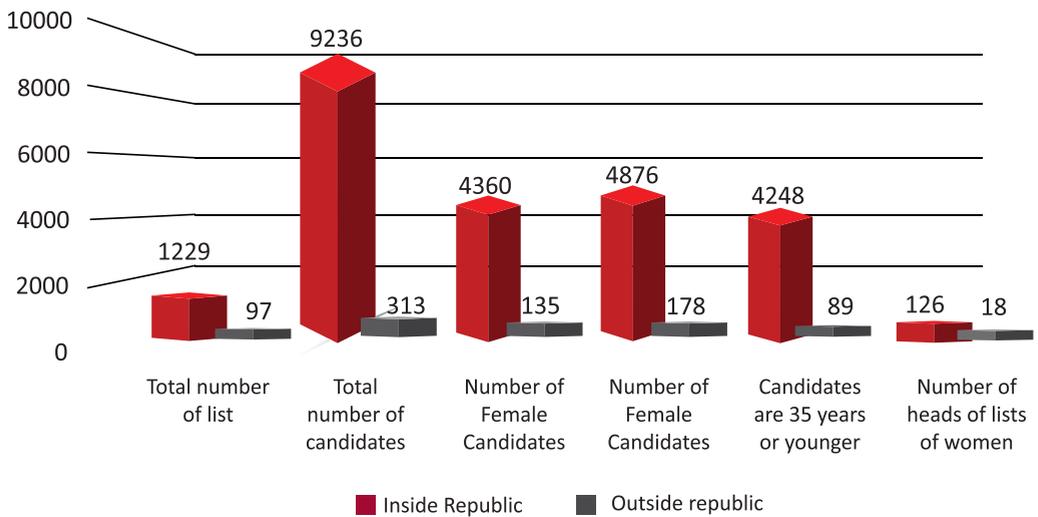
Nevertheless in 2014, 1,327 candidates ran for legislative elections with women representing 47% of all candidates, but only 148 lists or 12% of all lists, were headed by women, only a slight advance from the 2011 elections. In the same context, women headed electoral lists in all constituencies, in contrast with the 2011 elections, but in varying proportions. While there was only one woman in each of Al-Kef and Al-Kasserine districts, the number of women leading lists was 10 in Nabeul-1 and 12 in Tunis-2.

⁴⁵ Parity was not put in practice in relation to the heads of candidate lists, except by one electoral coalition, the Democratic Modernist Pole, which presented 16 women as heads of its 33 lists.

⁴⁶ Ms. Durrat Mahfouz study as referred in footnote 41.

| Electoral District | Total number of posts | Number of posts with male presidency | Number of female presidential lists | Ratio of lists Women's Presidency |
|--------------------|-----------------------|--------------------------------------|-------------------------------------|-----------------------------------|
| Kasserine | 69 | 68 | 1 | 1.4% |
| CAF | 38 | 37 | 1 | 2.6% |
| Medenine | 34 | 31 | 3 | 9% |
| Manouba | 59 | 53 | 6 | 10% |
| Jendouba | 60 | 54 | 6 | 10% |
| Beja | 44 | 39 | 5 | 11% |
| Tribal | 27 | 24 | 3 | 11% |
| Monastir | 36 | 32 | 4 | 11% |
| Sfax 2 | 44 | 39 | 5 | 11% |
| Plug | 46 | 41 | 5 | 11% |
| France 2 | 18 | 16 | 2 | 11% |
| Mahdia | 30 | 26 | 4 | 13% |
| Ben Arous | 50 | 43 | 7 | 14% |
| Ariana | 55 | 47 | 8 | 14% |
| Sousse | 41 | 35 | 6 | 14% |
| Nabeul 1 | 32 | 27 | 5 | 15% |
| Bizerte | 46 | 38 | 8 | 17% |
| Tunis 1 | 46 | 37 | 9 | 19% |
| France 1 | 19 | 15 | 4 | 21% |
| Germany | 13 | 10 | 3 | 23% |
| Tunisia 2 | 50 | 38 | 12 | 24% |
| Italia | 19 | 14 | 5 | 26% |
| Nabeul 2 | 36 | 26 | 10 | 28% |
| American | 13 | 4 | 4 | 30% |

Table of distribution of women, female list leaders, by constituency (in ascending order)



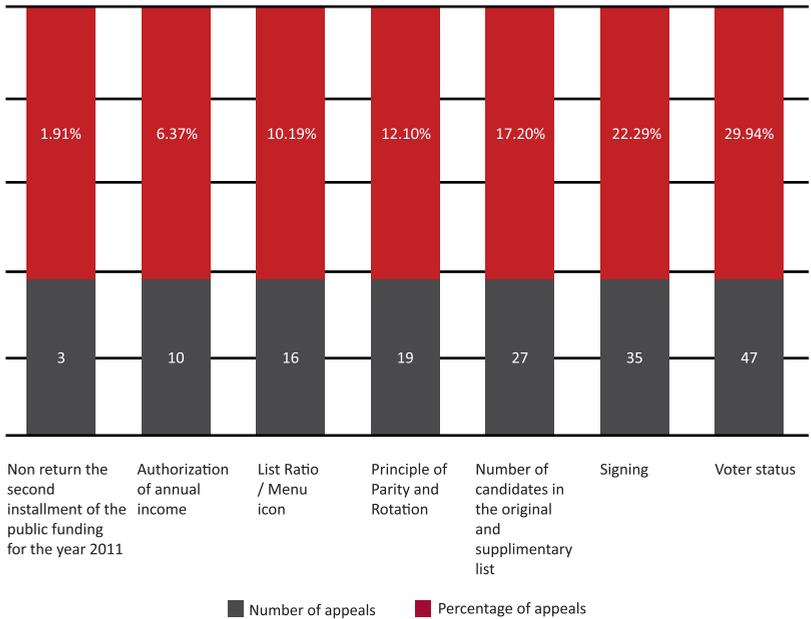
Distribution of Candidates by Constituency, Sex and Age⁴⁷

It should be recalled that when the ISEC took decisions on nominations, it rejected 163 candidacy requests and accepted 1,230 within the constituencies inside the Republic. Outside the Republic, 15 candidates were rejected and 96 candidates were accepted to be nominated in electoral lists.

In examining the nature of electoral disputes related to candidacy, we find that the most prominent aspect of the appeals is that the procedures for signing the application for candidacy by some candidates in the lists were not completed, or that lists did not have the required number of candidates set assigned to each constituency, or that the principle of parity was not respected and that the rotation rule was not obeyed in terms of the composition of both the original and supplementary lists.

⁴⁷ Report on the Legislative and Presidential Elections, the Independent High Commission for Elections, March 2015.

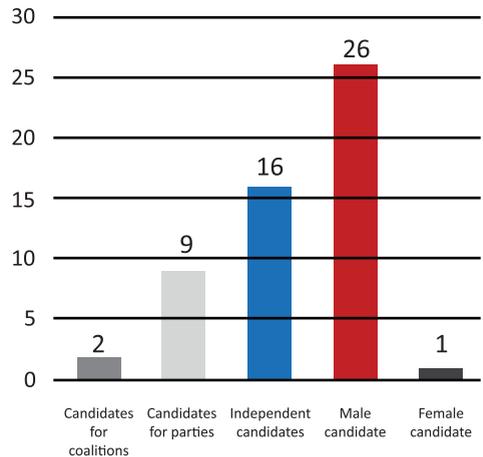
The Issue of Appeals in Legislative Elections - Primary Stage⁴⁸



These violations reflect the fact that candidates lacked sufficient knowledge of electoral law, which can be explained by the laws late issuance, on 26 May 2014, while the candidacy for the legislative elections was opened on the 22nd of August 2014. Therefore, in the future there will be a tendency to leave enough time for parties and candidates wishing to run for elections, and for civil society members after the issuance of the legal framework governing the elections, to study it and become familiar with its various provisions.

With regards to presidential elections held on 23 November 2014, for the first time in Tunisia a woman was nominated out of a total of 27 running candidates.

The Affiliations of Candidates admitted to Presidential Elections and their Distribution According to Gender⁴⁹



Media coverage of the candidates' campaigns during legislative and presidential elections of 2014 remained limited. The media generally paid greater attention to the campaigns of male candidates, especially those who were already deputies in the Constituent Assembly or party leaders.

In this regard, the joint decision between the ISEC and the Supreme Independent Authority for Audiovisual Communication, dated July 5 2014, concerning the regulation of the special rules of the electoral campaign and the referendum, related to media and audiovisual communication and its procedures, should be noted, in addition to the decision of the ISEC No.25-2014 dated on 8 September 2014, which decided on the general rules to be observed by the media during the election campaign, including the respect of the principle of parity and ensuring equal opportunities among candidates, and not to advocate for hatred, violence, intolerance and discrimination based on religion, race, ethnicity or gender.

While the mention of such controls was positive, it should be revised to integrate gender, by emphasizing the need for media and audio-visual outlets to respect the right of access to media on the basis of equality of opportunity and based on equality between male and female candidates. It remains a fact that various types of media outlets were not fair in covering the activity of female political actors and female candidates before and during the election campaign.

The municipal elections scheduled on 6 May 2018 will be held in 350 municipalities.⁵⁰ Each municipality represents a constituency, which poses a real challenge to the participation of women, both as voters and as candidates, especially in rural municipalities and in the South and West of the country. This pushed some political parties to present independent lists in order to bypass the condition of parity. According to the statistics published by the ISEC regarding the municipal elections scheduled for 2018, changes in the nature of the lists are as follows: Partisan to Independent: 8 Coalition to Independent: 2. There were 2,173 lists, 177 of which were coalition based, 897 were independent, and 1,099 were Party lists. The percentage of lists rejected due to the lack of horizontal parity was 6.6%, which is lower than the rates recorded in the 2014 elections. This indicates an increase in the ability of political actors to follow the electoral law due to the accumulation of experience.

The local context is characterized by weak structured parties with limited reach, and activity closely related to electoral timeframes. This is due to the fragility of the recent party system that is still forming in Tunisia. While political parties are considered to be one of the most important institutions for enhancing equality between the two sexes in democratic nations, the party system in Tunisia is generally characterized by a weak internal democracy and by an uneven distribution of party responsibility between the two sexes. Women occupy lower ranks in these parties, or primarily play supportive roles, while their representation in decision-making positions is limited. This marginalization becomes more pronounced at the level of local and regional party offices, where men take over the lion's share of responsibilities at the core of these structures and at the level of candidacies. In the 2014 elections, only one woman ran as the head of her list, in both the

⁵⁰ Notably, municipalities used to cover less than 10% of the national territory. About 3.5 million Tunisians live outside the municipal system and thus on the margins of actual citizenship, which is a direct cause of the developmental gap that has been worsening for decades. The Constitution of 2014 committed to the principle of equality between male and female citizens, and to the achievement of justice between different regions. It led to the decentralization of the entire national territory and the mainstreaming of the municipality-based administrative regulation. The Prime Minister issued a number of orders between 2015 and 2016 to expand the territorial space of municipalities located within the centers of commissions, along with the creation of a number of new municipalities that reached up to 86, the total number coming to 350 municipalities.

Al-Kef and Al-Kasserin constituencies. As for the 2011 elections, not a single woman ran as the head of her list in the Jendouba, Al-Kairouan, Sidi Bouzid and Qibili constituencies. It is interesting, however, that women have nevertheless found means to contribute to political activity and discussion over and above the traditional party way, primarily in civil society and particularly in the increasing number of organizations in Tunisia that have reached around 20,000.

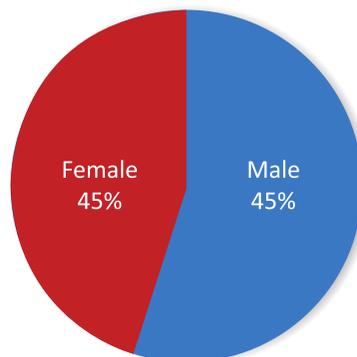
The local context also presents many challenges for the effective participation of women, as southern, western and rural areas still have a more limited capacity when compared to coastal areas and the Capital in harbouring female leadership, and this is due to several social, cultural, and economic factors. One important structural hurdle hindering the political participation of women in these aforementioned areas is the lack of social services and basic infrastructure due to a developmental disparity with coastal areas and the Capital. The pervasiveness of patriarchy and the persistence of tribal culture in these areas hinder the development of equal citizenship, and there is a scarcity of leading women that could otherwise set an example for other women against the domination of the media, as well as political and economic centres and networks by the patriarchal system.

4. Participation of women in voting

The percentage of voters in the National Constituent Assembly elections on 23 October 2011 reached 51% of the total electorate. The participation rate increased in 2014 to reach 61.8% in the legislative elections in constituencies inside Tunisia, and 64.56% of Tunisians participated in the first round of the presidential elections and 59% in the second. It is notable that the statistics released by the ISEC did not include a distribution by the sex of the number of voters and this prevents us from knowing the percentage of women who voted, and the same commission has promised not to repeat that same mistake in upcoming elections.

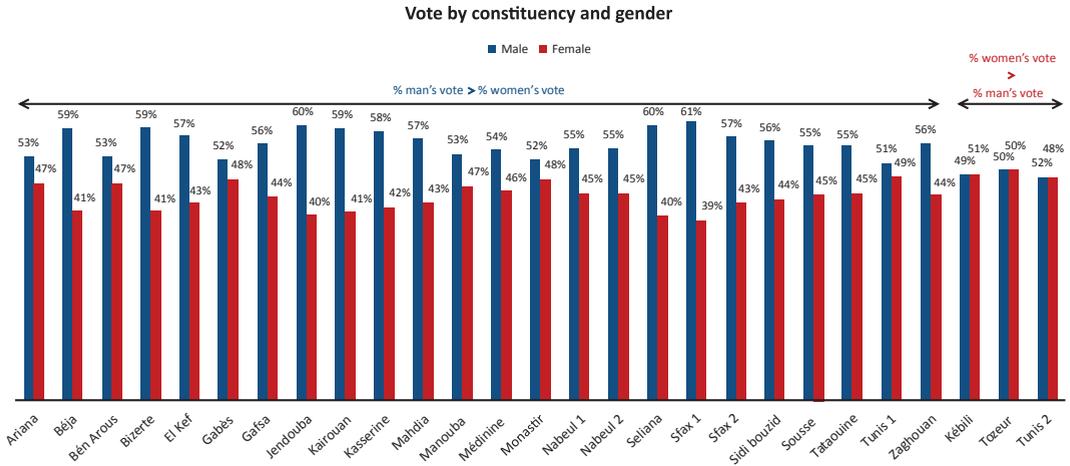
In a related context, according to the reports presented by several organizations that observed the elections according to sex during the 2014 legislative and presidential elections in Tunisia, the participation rate of women was less than that of men.⁵¹

Percentage of vote by gender



⁵¹ Report on the Observance of the Legislative and Presidential Elections in Tunisia in 2014 from a Gender Perspective, prepared by Gender Concerns International and the Tunisian League for the Defense of Human Rights, the Tunisian Association of Democratic Women and the Tunisian Women's Association for Development Research, February 2015.

In this regard, it is important to emphasize how important it is for the ISEC to adopt a gendered approach when preparing different statistics and statements related to the different electoral processes, particularly those pertaining to voting, and to release their findings for civil society organizations to acquire them and to study and evaluate them so that they can use them to improve legislation, activities and practices.

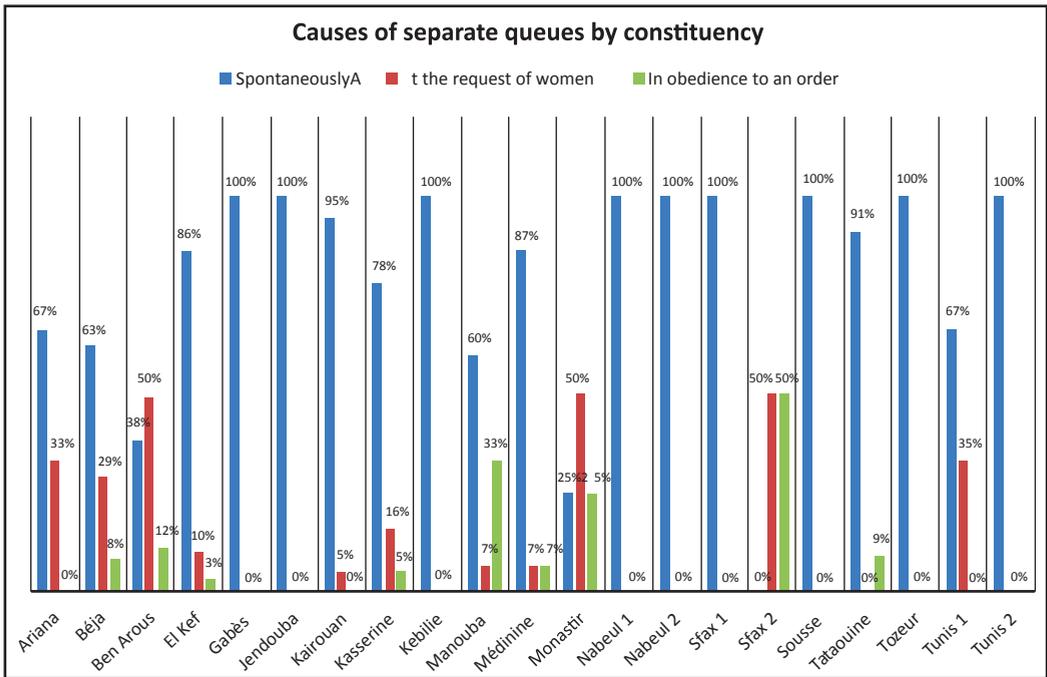


Voting took place in a safe environment where on the day of the elections security and armed forces, including female personnel, were clearly seen surrounding polling stations in order to secure them. There were no discriminatory or violent behaviours documented in the polling stations against female voters or female polling station members. It was also noticed that priority was given to the elderly and to pregnant women.

It was a smooth voting process compared to the 2011 elections, and the waiting periods were estimated to be one hour shorter. This was primarily due to Article 119 of the electoral law instructing the commission to cap polling stations at 600 voters.

Monitoring the elections in terms of gender⁵² reveals that polling stations were of mixed genders except in one third of them. In polling stations where voters were separated, they had either separated spontaneously, or per the request of the polling station members or women voters themselves.

⁵² Report on the Observance of the Legislative and Presidential Elections in Tunisia in 2014 from a Gender Perspective, prepared by Gender Concerns International and the Tunisian League for the Defense of Human Rights, the Tunisian Association of Democratic Women and the Tunisian Women's Association for Development Research, February 2015.



5. Participation of women in elected councils

Despite the fact that both the 1 June 1959 Constitution and the electoral code published on 8 April 1969 recognized the principle of equality in political participation, the representation of women in elected councils remained low and their presence in the public and political domains remained weak. This was due to pervasive stereotypes and the absence of any specific legal measures to overcome them.

During the first legislative elections after the 1959 independence, only 1 out of the 90 National Assembly members was a woman, occupying only 1% of all seats. The representation of women gradually increased to reach 27.5% of parliamentary seats in 2009, where women were elected to 59 seats out of a total of 214. This was because the Rassemblement Constitutionnel Démocratique (RCD), the ruling party at the time, had adopted the voluntary quota system (25%).

In the period preceding 2011, a gradual increase in the percentage of female municipal councillors, from 13.3% in 1990 to 16.6% in 1995 and reaching 26% in 2005 and then 32.8% in 2010, can be seen. This increasing percentage is due to the RCD's adoption of a voluntary quota system by allocating a minimum of 25% seats to women.

Despite this notable development in the participation of women in municipal councils, women have faced several difficulties in reaching higher positions in these councils. Their numbers have remained limited in positions such as head of the municipality (five), secretary of the head of the municipality (thirteen), and head of a municipal constituency (ten).⁵³ In addition, their distribution among different committees was not balanced, as they were often members in committees concerned with social affairs, family, and volunteer work, domains that represent an extension of their traditional social roles.

⁵³ These percentages relate to the period between 2005-2010 according to the Ministry of the Interior Affairs.

The 23 October 2011 elections were the first democratic, free, and transparent elections in Tunisia. 59 women were able to get elected to the Foundational National Committee, representing 27% of the total 217 seats, and this was because of the principle of horizontal parity and the rule of alternating candidates.

The resignation of a few members of parliament (MPs) in order to take up positions in the executive power allowed for 3 more female MPs, making 62 in total, further enhancing the representation of women.

In the 2014 legislative elections, the percentage of elected women increased, and according to IPU ranking based on the number of female MPs in 2017, the number of female MPs in the house of commons elected in October 2014 was 68 out of a total of 217, amounting to 31.34%. This puts Tunisia ahead of all Arab countries, which average at 18.2%, and puts it above the international average, which is 23.5%.⁵⁴ After the resignation of a few MPs appointed to ministerial positions, the representation of women in the Tunisian parliament further increased to 75 female MPs which amounted to 34.56%,⁵⁵ putting Tunisia at the forefront of Arab countries in this regard. It is worth noting that the increase in the percentage of female representatives on the national scale is primarily due to the two main political parties, Al-Nidaa' and Al-Nahda, in which the percentage of women who were heads of their lists did not exceed 12%, winning more than one seat in many constituencies.

Women are distributed in descending order, as follows:

| Name of the list | Nature of the list | Number of seats won | Number of seats held by women |
|--------------------------|---------------------|---------------------|-------------------------------|
| Tunisia Appeal Movement | Party | 86 | 35 |
| Renaissance Movement | Party | 69 | 26 |
| Free Patriotic Union | Party | 16 | 2 |
| Popular front | Coalition electoral | 15 | 2 |
| Prospects for Tunisia | Party | 8 | 0 |
| Conference for Democracy | Party | 4 | 0 |
| Movement of the People | Party | 3 | 0 |
| Initiative Movement | Party | 3 | 0 |
| Democratic Current | Party | 3 | 1 |

⁵⁴ <http://archive.ipu.org/wmn-f/world.htm>

⁵⁵ Official website of the Assembly of the Representatives of the People: http://www.arp.tn/site/main/AR/docs/composition/compos_s.jsp

At the local scale, it is worth pointing out that after the 2011 revolution, municipal and regional councils were dissolved and special delegations were appointed by the executive power temporarily until local elections were held. The limited number of women in these temporary structures and their scarcity in leading positions is generally noticeable, as the determinants of these structures did not include balance between the two sexes. For the first time after the 6 May 2011 revolution, and after being postponed several times, municipal elections are going to be held on the 6 May 2018. These councils will operate according to the provisions set in the 27 January 2014 Constitution, which grounds a system of governance based on the enhancement of participation in public affairs on the basis of equality between men and women in the elected councils by adopting a new vision for managing local affairs based on the decentralization and democracy of proximity in both its representative and participatory senses. These are important steps in the path towards reducing the developmental disparity between different regions and the grounding of actual equality between men and women, and the fulfilment of dignity and social justice.

The draft of the code of local groups referred by the house of commons for ratification in 2017, approved a set of measures to ensure the actual equality between women and men. The most important of these measures was ensuring a balanced representation for both sexes in managing local councils with adopting an approach that is based on resolving the differences between the two sexes in order to achieve equality not only by acquiring rights but also by their tangible implementation in all domains pertaining to local councils.

It is worth noting that this approach was integrated into the draft of the code of local groups in its June 2016 issue because of the efforts of the National Committee for Gender Equality in Governing Local Affairs. This committee was established in 2015 as an initiative by the Center for Research, Study, Documentation, and Information on Women, the International Center for Local Development and Good Governance, and the regional office of the Dutch Agency for International Cooperation of Municipalities, sponsored by the Ministry of Women, Family, and Childhood, and with the participation of many active organizations in the domains of citizenship and defence of women's rights in Tunisia.

Following the parliament's work, in particular the committee concerned with organizing the military force's administration and its affairs during February 2018, it becomes obvious that the parliament disregarded some of these achievements. This represents a violation of equality, equal opportunities, and parity, which are rights guaranteed by the Constitution in its chapters 21, 34, and 46, and the different international conventions that were ratified by Tunisia on human rights in general, and women's rights in particular. This was pointed out by the Civil Coalition For Individual Freedoms, which consists of 36 organizations, in its statement released on the 23 February 2018.⁵⁶

This retreat is apparent in the draft of the code of local groups by:

- Not adopting parity in all of the chapters related to the composition of local power structures.
- Eliminating a gendered approach that addresses manifestations of discrimination against women and aims to achieve actual equality between the two sexes when setting, implementing, and evaluating developmental policies and plans, and budgets, projects, and local programs.

⁵⁶<https://www.facebook.com/notes/le-collectif-pour-les-libert%C3%A9s-individuelles/>

The adoption of this traditional and conservative methodology in drafting laws by the legislative assembly represents a real obstacle for reducing the differences between the two sexes and developing the rights of women on the ground. The lack of positive and renewed approaches in legal texts and in policies in general has kept Tunisia at the bottom of the list in the World Report on Closing the Gender Gap published by the World Economic Forum,⁵⁷ as it ranked 117th out of a total of 144 countries in 2017. Tunisia's rankings in the four sectors covered by the report were: 131st in economic participation, 99th in education, 71st in healthcare, and 55th in political participation.

All of this contradicts the state's new political orientation, where the Council for Equality and Equal Opportunities for Women and Men was established under the supervision of the prime minister⁵⁸, the main task of which is to integrate a gendered approach to planning, programming, evaluating, and the budgeting of the law to eliminate all forms of discrimination between women and men and achieving equality between them. We can notice the same orientation in Chapter 17 of the draft of the Basic Law No.71/2015 on the General Budget, where a gendered approach was adopted in setting the objectives and indicators when putting the General budget in the different domains of public policy.

Such an alternative is also completely disconnected from the dynamism civil society is witnessing. There have been numerous national and local initiatives since 2015 in order to implement gender equality charters in the conduct of local affairs according to a participatory approach in between public bodies and civil society. In this context, the National Charter for Equality between Women and Men in Managing Local Administration has been prepared as an initiative by the Center for Research, Study, Documentation, and Information on Women, the International Center for Local Development And Good Governance, and the regional office of the Dutch Agency for International Cooperation of Municipalities, sponsored by the Ministry of Women, Family, and Childhood, and with the participation of many active organizations in the domains of citizenship and in defence of women's rights in Tunisia. On the local scale, several municipalities, including Jendouba, Bajah, Tibar, Al-Kef, and Al-Kasserin, have implemented urban charters for equality between women and men according to the same participatory methodology. An annual plan for investing in the Médenine municipality based on a gendered approach permitted that priority be given to public awareness, given its intimate relationship with women's need for freedom of movement while ensuring their safety. On these grounds, the code for local groups should take into consideration the accumulative aspect of our institutional experiences and to guarantee their sustainability.

Adopting a gendered approach and taking positive measures to accomplish actual and essential equality between the two sexes in governing local affairs is not only a constitutional entitlement but a necessity for improving the living conditions of citizens, developing their framework for living, and achieving sustainable and just development.

Conclusion

Complete citizenship for women will not be accomplished without enhancing their equal participation in decision-making positions, and this requires social, economic, political, and legal efforts.

⁵⁷ Government Order No. 626 of 2016 dated 25 May 2016 concerning the creation of the Counterparts Council for Equality and Equal Opportunities Between Women and Men, Official Printing Office of the Republic of Tunisia, No. 45 of 3 June 2016, 2016, p. 1776 et seq.composition/compos_s.jsp

⁵⁸ Government Order No. 626 of 2016 dated 25 May 2016 concerning the creation of the Counterparts Council for Equality and Equal Opportunities Between Women and Men, Official Printing Office of the Republic of Tunisia, No. 45 of 3 June 2016, 2016, p. 1776 et seq.

On a social level, it is necessary to recruit with the purpose of changing patriarchal mentalities and grounding a new collective consciousness free of stereotypes and supportive of the presence of women in public space and their involvement in leadership positions. Grounding a culture of citizenship and human rights within social visions, practices, and relations takes a long time, and involves the realms of family, education, media, and civil society.

At the social level, mobilization is necessary to change masculine mentality, and establish a new collective consciousness that is free of stereotypes and supportive of the presence of women in public space and of their leadership roles. Perceptions, practices and community relations within a culture of citizenship and human rights takes a long time to accomplish though, and happens mainly through family education, general education, media outlets, and civil society.

Enhancing the participation of women in public affairs represents the heart of a legal system and general policies targeting the development of female leadership.

The legislator is called upon to make explicit recommendations on horizontal parity in legislations related to all types of elections, for it is important to develop what has been gained and to achieve actual parity in the composition of elected bodies. It is also crucial that special measures are not limited to supporting the political participation of women in only one political activity such as candidacy, but party law should include special measures and procedures to support the representation of women within party leadership committees both locally and nationally.⁵⁹ The emergence of women in public space and their increasing participation in determining important political choices and in supervising their execution should lead to a gradual and tangible change in matters concerning women and their status in society. This will create a new dynamic that challenges stereotypes that limit women to traditional roles and will contribute to the emergence of local female political leaderships that are influential in policy making, as role models for young women that motivate their professional and political aspirations.

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⁵⁹ For instance, Article 26 of the Organizational Law No. 29.11 (2011) on political parties in Morocco stipulates the need for women to participate in party organizations and to adopt the quota system: "Each political party works to expand and generalize women and youth participation in the country's political development. To this end, every political party seeks to achieve a third for the benefit of the women within its national and regional bodies in the light of the progressive realization of the principle of parity between women and men. In addition, Chapter 29 requires that rules of procedures of each political party be provided for the Commission for Parity and Equal Opportunities.

The promotion of women's political rights in Algeria: Broadening the representation of women in elected assemblies

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Various international legal instruments have legitimized affirmative action, encouraging the Algerian state⁶⁰ to think about favoring women's access to representation.

What does **affirmative action** mean and what is its purpose?

The foundation of positive discrimination promoted by international institutions refers to a substantive equality principle carried out through actions, aimed at eradicating past or present inequalities suffered by a group of people by granting it temporarily some preferential benefits. More precisely, the idea is to translate into facts a principle of gender equality enshrined in law, through the implementation of preferential measures for women. In other words, it involves introducing corrective measures to promote effective equality. The objective is actually to correct, upstream, sometimes on a case-by-case basis, situations of negative segregation of which women are victims.

As a translation of this international claim, a constitutional revision took place in Algeria on November 15, 2008⁶¹. This amendment⁶² to the 1996 Constitution has increased women's access to elected assemblies by expanding women's representation in the political arena. Thus, in its application, a draft organic law has come to define the modalities of enlargement of women's representation in the elected assemblies. Its scope is rather wide: the term "elected assemblies" includes both the parliament and local communities. It concerns elections at the National People's Assembly, the Wilaya People's Assemblies, the Municipal People's Assemblies, the Daïrate, and any area with a population above 20,000 inhabitants.

Concretely, positive discrimination goes through stages: the first one being the creation of quotas and achieving parity the ultimate goal. Therefore, faced with this perfect seal that otherwise prevents women from accessing elective responsibilities, the quota system, although imperfect, is nevertheless a course to be taken. Thus, quotas in politics can be defined as a positive discrimination measure setting a percentage for the representation of a specific group (women in this case). Applied for elective offices, quotas range from 20% to 30%, rarely exceeding the 30% threshold set by the Economic and Social Council of the United Nations.

However, it is well known that women's representation is particularly favored by proportional list voting within the framework of a large constituency, blocked lists, a mandatory quota, and strict rules to put women candidates («Beaded» lists), that is, alternating with at least one-third of eligible women, and effective sanctions for non-compliance.

⁶⁰ Algeria joined on 22/01/1996 the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). J.O.R.A.D.P. N ° 6 of 01/24/1996.

⁶¹ Law N: 08619 of November 15, 2008 revising the Constitution. J.O.R.A.D.P.N: 63 of 16 November 2008. P. 8.

⁶² Article 31 bis reads as follows: "The State shall promote the political rights of women by increasing their chances of having access to representation in elected assemblies. The detailed rules for the application of this article are laid down in the organic law.

In Algeria, the electoral system is based on proportional representation, with the setting up of an eligibility threshold.⁶³

Their place in eligible positions will depend on the attitude of the political parties' initiative. What are the implications of this organic law on the promotion of the political rights of Algerian women?

1. Quotas imposed by the organic law

Two kinds of quotas have been imposed through Organic Law 12-03⁶⁴:

- One for the registration in the application presented by each political party or by independent candidates (article 2);
- One for the distribution of seats won (article 3).

So at both levels, a number of seats are required to be reserved for women. It must be emphasized that, in general, a quota of resources does not guarantee that women will actually be elected, unlike performance quotas.

- A female quota imposed on the application list

The initial article 2 of the government draft bill imposed a quota of at least one-third of the total number of female candidates on each list. In other words, the government draft required parties or independents to imperatively include a third of female candidates on their lists.

The Minister of Justice at the time, Mr. Tayeb Belaiz had spared no effort to defend the imperative of a quota for women in elected assemblies. In support of this, he noted that the present rate of representation of women in the National People's Assembly (APN) does not exceed 7.7% and 5.1% in the Council of the Nation. Female senators were all appointed in the presidential third by the President of the Republic. The situation is not better in elected local assemblies, as there are only 3 women elected as presidents of the Municipalities (APC) and none of them are presidents of the People's Wilaya Assembly⁶⁵ (APW). As a matter of fact, the minister behind the draft articles specifies that each list of candidates must imperatively include a proportion of women who cannot be under a third of the total number of candidates on the list.

However, this elected women's quota draft will face strong resistance from the People's National Assembly's MP's. The amendments they introduced to the bill will implement a very complicated system of percentages according to the number of seats to be filled. In other words, the female representation rate will be proportional to the number of seats allocated to an electoral district.

A quota with differentiated rates proportional to the number of seats per wilaya:

- 20% when the number of seats is equal to 4 seats.

⁶³ A rate of 5% for the election to the People's National Assembly (A.P.N.) and 7% for local authorities. However, the law does not include any obligation to place women in an eligible position.

⁶⁴ Organic Law n ° 12-03 of 12 January 2012 setting the terms increasing the chances of women's access to representation in elected assemblies. JORADP (Official Journal)N ° 01 of 14/01/2012. P. 39, available at <https://www.joradp.dz/FTP/JO-FRANCAIS/2012/F2012001.pdf>

⁶⁵ It is the equivalent of a province.

- 30% when the number of seats is equal to or exceeds 5 seats.
- 35% when the number of seats is equal to or exceeds 14 seats.
- 40% when the number of seats is equal to or exceeds 32 seats.
- 50% for the seats of the national community abroad.

Moreover, it turns out that this system suffers from excessive complexity and it does not technically apply in several cases; when it is confronted with the reality of the field, it can give inconsistent results.

Thus, this gradual process is now dependent on the number of seats allocated to each constituency. It ranges from 20% to 50%. If we take an example concerning the parliament, we must, therefore, refer to the annex⁶⁶ of the ordinance n° 02-04 of 02/ 25/2002, determining the constituencies and the number of seats to be filled for the election of parliament, in force at that time.

1st Case: The draft bill sets up a minimum percentage of 20% for electoral districts⁶⁷ with 4 seats, that is to say, for 14 provinces out of the 48 of the country. But, it must be emphasized that within the wilayas⁶⁸ (provinces) concerned, no woman will be included in a list for one single reason, for, if we multiply 4 seats by 20%, we get a technically impossible result. In other words, no woman in these areas will have access to the registration phase on a list. The National People's Assembly (APN) Legal Commission tried to justify its approach by the necessity of matching this law, temporarily, with the social reality and the weight of traditions within the country. In doing so, a notion of gradualism that will be favored by a change in mentalities through school is put forward. Admittedly, the main issue of the underrepresentation of women in politics is that women are very often stigmatized by prejudices rooted in a society characterized by a patriarchal structure. In this case, it is assumed that these prejudices will eventually disappear as society evolves.

2nd Case: Then, there is the rate of 30%, which will apply for the 29 electoral constituencies of more than 5 seats⁶⁹: the result is 1.5 seats. During the application, some would be tempted to give a single seat, others would opt for 2 seats. This may, therefore, give rise to multiple interpretations. Therefore, details must be provided as to their application. In other words, specific criteria for implementation are needed. As there are no specific criteria, and provisions pertaining to quotas are vague, political parties enjoy a considerable margin of appreciation in applying quotas as they wish.

3rd Case: In addition, the 35% rate is reserved for constituencies with 14 or more seats. In this case, only two wilayates are concerned: Tizi-Ouzou with 14 seats, and Oran with 15 seats: meaning 5,25 seats.

⁶⁶ Order No. 02-04 of 25/02/2002 amending Ordinance No. 97-08 of 06 March 1997 determining the electoral constituencies and the number of seats to be filled for the election of parliament. J.O.R.A.D.P. No. 15 of February 28, 2002. P.22. and 23.

⁶⁷ The organic law relating to the electoral system of 06/03/1997 states in its provisions relating to the election of the members of the A.P.N. in its article 101 that "[] the basic constituency for the election of the members of the National People's Assembly is fixed at the territorial limits of the wilaya. In other words, each wilaya is an electoral district.

⁶⁸ These wilayates are the following: Adrar, Laghaut, Bechar, Tamanrasset, Saida, El Bayadh, Illizi, El Tarf, Tindouf, Tissemsilt, Khenchela, Naama, Ain Temouchent, Ghardaia.

⁶⁹ These are the following wilayates: Wilaya of Oum El Bouaghi, Wilaya of Batna, Béjaïa, Biskra, Blida, Bouira, Tébessa, Tlemcen, Tiaret, Djelfa, Jijel, Skikda, Sidi Bel Abbès, Annaba, Guelma, Constantine, Médéa, Mostaganem, M'Sila, Mascara, Ouargla, Bordj Bou Arreridj, Boumerdès, El Oued, Souk Ahras, Tipaza, Mila, Ain Defla, Relizane

4th Case: Concerning the 40% rate, this will apply only for the capital city, because only Algiers has 32 seats: meaning 12,8 seats .

5th Case: Finally, the Algerian community abroad is entitled to a percentage of 50%. Nationals residing abroad are represented by 8 elected members. And, if the problem does not arise for zone 1 and zone 2⁷⁰, on the other hand, it raises difficulties for zones 3⁷¹, 4⁷², 5⁷³ and 6⁷⁴.

Indeed, each has a single seat. How to technically distribute a single seat between a man and a woman since the amended bill states that the distribution is 50/50? In other words, can we divide a single seat between two people? So, apart from the 2 electoral districts at the level of France which each have 2 seats respectively, for the other 4, the effectiveness of this system will be purely symbolic. In all good logic, can we introduce parity when the constituency includes only one seat?

- **A quota of seats reserved for women**

In the second stage, which concerns elected representatives, quotas take the form of a gradual percentage of seats reserved for women. This is the next step after the elections, in terms of the lists that get seats, and they must be distributed among the elected representatives. In other words, it concerns the seats won by a political party or independents, and the quota is to give a percentage of the number of seats won. If the original article 3 of the draft organic law provided for a quota of 30%, which took the form of reserved seats, the new article 3 as amended, gives them a percentage, on the number of seats won, according to the rates previously defined in Article 2⁷⁵ above. It requires that women be given variable rates, depending on the number of seats allocated to each constituency. In other words, the percentage system will be gradual and proportional to the number of seats per constituency.

Therefore, a certain percentage of seats, the same one described in the amended article 2 of the draft organic law, is obligatorily reserved to the candidates according to their nominative ranking in the lists⁷⁶. Here is what the Constitutional Council tells us: "(...) under Article 3 the distribution of seats is made in proportion to the number of votes obtained and the proportions fixed in Article 2 are obligatorily reserved to female candidates according to their nominative rankings in the lists".

Thus, an exception will be made to the common rule of distribution of seats established by the electoral law which implies to obey the order of ranking of the candidates on the list presented. A legal problem will arise in relation to the draft organic law on the electoral system. Indeed, 2 articles risk contradicting the principle contained in this article 3, article 72 for the APCs and APW which states that "the allocation of seats among the candidates of a list must obey the ranking

⁷⁰ These zones belong to France, which alone has 4 seats. CF Executive Decree No. 02-87 of 05/03/2002 determines the modalities of application of the provisions of article 5 of the ordinance n° 97-08 of March 06, 1997, which determines the constituencies and the number of seats to provide for the election of parliament. J.O.R.A.D.P. n° 16 of 05/03/2002. P.6.

⁷¹ Europe has only one seat.

⁷² This zone includes the Arab Maghreb and Africa.

⁷³ This zone brings together the Arab world.

⁷⁴ This zone includes America and Asia-Oceania.

⁷⁵ It is therefore necessary to reiterate the same remarks as those made for the amended Article 2.

⁷⁶ Opinion n° 05 / A. CC / 11 of December 22, 2011 relating to the control of the conformity of the organic law fixing the modalities of enlargement of the representation of the women in the elected assemblies, to the Constitution.

order of candidates on this list" and Article 91 which states, for the NPC, that: "The seats are allocated to the candidates in the order appearing on each list". Admittedly, it would have been more judicious to include, at the beginning of this article, the following formula: "notwithstanding the provisions contained in the organic law laying down the procedures for enlarging the representation of women in elected assemblies..." Otherwise, it would have been necessary to combine specific rules concerning the distribution of the seats.

It is therefore necessary to reiterate the same remarks as those made for the amended Article 2. But, in any case, even if the bill does not provide for classification rules, the risk of having political parties include candidates at the bottom of lists should not, in principle, affect the result! Because, it must be emphasized, the distribution of seats does not depend on the ranking, but is carried out according to a global system and according to a gradual percentage varying according to the number of seats allocated to each constituency. For example, for a rate of 40% and a list that has won 10 seats, women are given 4 seats (even if they are ranked among the last 20) and 6 for men.

The problem with article 3 is to know who will control this distribution. The law was flawed: no penalty, in case of non-application of Article 3, is provided, and legal norm not followed by sanction becomes an ineffective provision. It must, however, be recognized that the system existing in the original project presented by the Ministry of Justice was clearly simpler and would have undoubtedly been better at promoting the representation of women. In addition, the initial choice of 30%⁷⁷ was a percentage more in keeping with the spirit of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Unfortunately, the amendments made to it by the People's National Assembly darkened some of its provisions, mainly articles 2 and 3. Indeed, at all levels, the application of these gradual rates becomes a real headache for legal professionals and faced with a useless complexity, it is appropriate to make reservations. It must be admitted that the text can hardly be understood. The application of this organic law will require the modification of the electoral division. We will get back to this in the second part.

2- Implications of the law

Regarding the implications of the organic law, several questions arise: The first point is to know whether there are rules regarding placement on the lists. The second point is to know whether there are support measures, that is, the control of lists and sanctions. Finally, what lessons can be drawn from the Algerian experience after setting up the system?

- How to register on a list

For access to electoral mandates, the inclusion of one's name on electoral lists established by political parties is an important step. In Algeria, nothing in the organic law of 2012 specifies the Men/Women classification order on the lists. It resulted that a large number of female candidates

⁷⁷ As a reminder, it is the UN Economic and Social Council that advises a quota of 30% of women. International law does not have binding legal measures likely to impose a concrete application; therefore, many of its provisions have remained a dead letter in many states. However, even if it often cannot guarantee the effectiveness of its norms, the pressure it imposes on the rulers, by mobilizing the international public opinion, makes obvious discriminations of women, undoubtedly much more difficult.

found themselves relegated to the bottom of the list, in an ineligible position⁷⁸. In fact, it is generally established that even a criterion of 40 per cent of women, for example, can lead to total absence of women elected .

This undoubtedly results from women's positioning in the voters lists presented. Many of the candidates ended up at the bottom of the list, or at best in the eighth or ninth place, thus reducing their chances of being chosen by voters.

The main issue is, therefore, the place occupied by women on the list that should offer them a real chance of election. A quota in the nominations does not necessarily guarantee the election of these women, even if they are on the winning lists. If the designation is the crucial stage of the voting process, it is the parties that, although subject to the influence of voters, remain the bearers of this decision. Success depends, then, largely on the political will of the staffs of the parties that invest in the female candidates. In the first stage of a selection process, political parties designate their candidates and put them on their lists for election. However, whatever the percentage, it can be misleading, if the political parties wish to just symbolize the female participation. Women are actually often regarded as a burden to political parties because they have to bind with the quota imposed on them. For many, the law on quotas imposing female representation on the lists presented has, over time, become a constraint for some political parties thus required to present women with no conviction.

The selection of candidates goes necessarily through the higher instances of the political parties, and it is necessary to have their approval to be selected as a candidate. If women represent more than the majority of the voting population, then the parties would have no choice then to play the game and forget about their misogyny, which is a real obstacle. It is their responsibility, even though they are still reluctant to invest in female candidates, as they fear to lose a monopoly that would shock the male conscience. Therefore, to prevent the misogyny of some political staffs leading them to systematically relegate women to the bottom of the list, without any chance of being elected, as this has already happened for some countries, details must be provided as to how register names on the lists, that is to say, the so-called position that each candidate has to occupy. In Algeria, during the first application, in 2012, the former Minister of Interior had even sent an instruction to political parties imposing on them to apply man/woman alternation for the first two seats obtained from the list.

However, during the legislative and local elections of 2017, the presence of women at the top of political party's lists was poor. Thus, the increasing presence of women on electoral lists⁷⁹ seems to be accepted, but there is still reluctance to place them at the top of the list.

- **Support measures**
- ***List control, sanctions***

⁷⁸ The 1994 law introduced a quota of one-third women on the lists, but nothing had been specified as to the place they should occupy. In the 1999 legislative elections, 39% of women were candidates and only 23.3% of those elected. In 2001, the Belgian Constitution was changed and new laws were passed: there must now be as many women as men on the lists and the first two candidates must be a man and a woman. This has been a real breakthrough, and during 2003 legislative elections, women's percentage at the Belgian National Assembly moved up to 34.6%.

⁷⁹ Thanks to the implementation of the January 12, 2012 organic law, which determines the modalities of the enlargement of the representation of women in the elected assemblies, the rates reached during the Municipal Assemblies elections in 2012 were estimated at 16.56 % , or 4.119 women against 0.76% in 2007 and 29.69%, or 595 women elected against 6.89% in 2007, for APW.

To increase the number of elected women, international bodies are calling for incentive and binding quotas.

For some countries, a policy of financial sanctions has been seriously considered. However, while some may think that incentives are sufficient, others are sceptical of their effectiveness, believing that they must be sanctioned to be taken into consideration. Sanctions should be tough and followed by strong legal constraints. Indeed, any quota policy is considerably reduced by the low penalties associated with non-compliance of the prescribed obligation. In our country, it is necessary to mention that the sanction set up by article 5 of the 2012 organic law, which invalidates the lists⁸⁰ for non-compliance with the imposed rules (that is to say that the list does not present enough women), is not only the most effective, but also the most radical. In this respect, if the registration on the candidature lists according to the gradual rate is not compliant, this entails the rejection of the whole list⁸¹. This will force political parties to work hard to recruit enough women to avoid having their lists rejected. If the authority responsible for controlling these lists is not specified in the organic law, this task will be entrusted to the Minister of Interior. In practice, the Ministry of Interior⁸² would cancel all lists that do not meet the conditions required. However, if failure to comply with this rate results in the rejection of the list, a fixed deadline for bringing the rejected list into compliance is, nevertheless, granted by law. In the end, there is no doubt that the list control constitutes an essential guarantee for the effective application of the system.

- *Specific financial assistance from the State*

Currently, feminists require that party funding be granted on the basis of female representation. "Tightening the purse strings" can certainly overcome the most tenacious resistance. We understand that money can overcome tenacity⁸³. With the 2012 organic law, political parties or independents who have promoted the representation of women, and obtained women elected in the assemblies, will receive specific financial assistance from the State. Article 7 states that the specific financial assistance of the State will depend on the number of women candidates elected at the Assemblies; in other words, on the prorata of the female candidates elected to the different assemblies. The State provides encouragement for those who spare no effort to promote the election of women and to further promote the position of women within elected assemblies. This is a requirement from the Algerian feminist movement: that party funding be granted on the basis of women's representation. In this case, it is necessary to introduce provisions concerning the financial sanction of parties that do not comply with the principles imposed to increase the chances of women's access to elected assemblies.

- *Replacement rules*

Therefore, when an elected member does not complete his/her mandate, he/she will be replaced by a candidate of the same gender from the list presented at the poll.

⁸⁰ Sanctions can be pecuniary, as is the case in France at the national level.

⁸¹ Article 5 of the Organic Bill laying down the procedures for enlarging the representation of women in elected assemblies.

⁸² For example, France assigns to the prefect the task of refusing the filing of a list that does not comply with this principle.

⁸³ Nadia Lamlili and Abdel Latif El Azizi in the numbers 258 from 27/01 to 2/02/2006 and 259 from 3/02 to 9/02/2006 from Tel Quel .Source: <http://www.telquel-online.com>

3. Lessons to be learned from the Algerian experience

Even if difficulties arose during its implementation, the year 2012 was undoubtedly a historic moment: 31% of those elected were women. This has significantly changed the representation of women⁸⁴, hitherto circumscribed to barely thirty seats won in 2007. Was this a result of a law establishing a quota of women in elected assemblies? Thanks to the tenacious political will of the President of the Republic, the organic law did not stand as a paper barrier against the resistance of former challengers. Indeed, the presidential boost has quickly produced its effect. The objective was to promote Algerian women by putting in place mechanisms to facilitate social evolution and the result came quickly; 2012 marked a massive flow of women into the People's National Assembly previously occupied mostly by men. The strong presidential will has come over the misogyny of the political parties' staff. Indeed, problems arose when a party had to dismiss the outgoing candidate because it was necessary to impose the candidacy of a woman. In these circumstances, only seats where the former MP did not run for re-election provided a real chance for women. This prompted the President of the Republic to intervene by order to increase the number of seats at the National People's Assembly (APN) from 389 seats to 462; 73 additional seats for women, in the 2012 legislative elections, in accordance with Ordinance No. 12-01 of 13 February 2012 determining the voting constituencies and the number of seats to be filled for the election of the National People's Assembly⁸⁵.

History seems to prove that setting up a quota system is easier in a new political regime than in a long-established regime where the seats are already "occupied" and where, consequently, a conflict can break out between new groups and those traditionally holding the seats. Obviously, the quota system is also likely to create serious conflicts within political parties, because it is clear that former challengers, already elected, who would like to run again for elections, will see their chances reduced, to the benefit of female "usurpers". As a result, the quota policy is leading to sordid calculations within the political party's staffs, as many politicians do not intend to let a woman challenge their seats on the voting lists, even though in 2017, the rate of women having reached MP's position has dramatically decreased compared to that recorded during the 2012 legislative elections. The figures speak for themselves: 118 women elected to the Assembly on May 4, 2017⁸⁶ against 146 in 2012. The number of women elected to the House in 2017 (118) has decreased significantly compared to the number recorded in the 2012 legislative elections (146). What has happened since, and how can the current decline be explained?

Some will undoubtedly say that their influence within the institution is thwarted by the growing conservatism of society. Progress is therefore slow and has caught women between a "glass ceiling" (which blocks their career) and a "sticky floor" (which keeps them in lower positions)⁸⁷.

It should be noted that in 2017, the Algerian political field has become considerably fragmented. The large number of smaller political parties, which received approval after 2012, and ran in parliamentary elections, skewed the results. Indeed, several lists have obtained a single seat that went to the benefit of the man heading the list, in general, the founder of the political party.

⁸⁴ The rate of women's representation in the Algerian parliament was 31.6%, according to this ranking, established by the Inter-Parliamentary Union. <http://www.radioalgerie.dz/news/fr/article/20160116/64685.html>

⁸⁵ JORADP N°8 15/02/2012. P.

⁸⁶ One hundred and eighteen women will sit in the newly elected People's National Assembly, the majority of which come from the two ruling parties: FLN (50 women elected) and RND (32 elected women).

⁸⁷ https://www.lemonde.fr/sciences/article/2012/05/24/la-chercheuse-entre-plancher-collant-et-plafond-de-verre_1707073_1650684.html#kP5qqReWGdtZw3AV.99

In addition, we must not rely on any natural evolution: politics remains, par excellence, the thing of men. It therefore appears that progress is not simply achieved, that it requires constant efforts, action and tenacious political will. The opposing dynamics (Resistance to women's quotas) are so strong that quotas alone are not enough to ensure a balance of opportunities in the political arena. Parties can present the required number of women while finding other ways to circumvent the spirit of quotas. As a result, the female quota can easily be forgotten without continued lobbying. In the official discourse of the Algerian State, the emancipation of women would be the corollary of the economic development led by the State. However, this speech has, from the beginning, been faced with political discourses of women of exclusion based on religious and patriarchal references. In conclusion, we must recognize that there is a glass ceiling very difficult to break, and a very hard way towards emancipation.

III Reform of electoral system, political parties and the role of the civil society in the electoral process

Algerian fight for changing electoral processes

Ms. Nafissa Lahrèche, Founder and President of the Algerian Association for Women in Communication, Algeria

The constitutionality of equality

Women's accumulative struggle within the Algerian Revolution has always been a model for Algeria's post-independence fight to set the balance straight. After women had returned home, having reached a sense of national stability, their gains have been minimized rather than developed and promoted by virtue of the spirit of the Constitution.

The post-independence Algerian State limited its women's empowerment programs to education and employment by enacting gender equality laws, while loosening family and personal status laws, along with restricting general liberties. This has led to an environment where a new women's human resistance emerged, calling for greater freedoms and more dignity, and gaining the support of former female strugglers, *mujahidat*, and university and college students. The focus of consensus of this women's struggle was on repealing or amending the family law, which they considered discriminatory. As such, amendments to the laws on citizenship and family, despite some shortcomings in the latter's case, were the first steps on a long road which revealed to be strong after the issuance of the Family Law in 1984.

Consequently, this date marked a second breakthrough for Algerian women in their struggle for freedom, which legally sets the goal for women's political, social and legal advancement. This has been at the core of many international regulations on women ratified by the State of Algeria, especially after the constitutional amendment of 1989 that activated the social and political movement. This amendment paved the way for political pluralism and led to the establishment of political associations; while Article 5 restricts forming political associations based on gender affiliations, which allowed the founding of 60 political parties, including one party founded and headed by a woman.

Moreover, the constitutional amendment of 1996, which was submitted to a referendum and subsequently supported by Decree 97.09 in March 1997, stated in its Articles 42, 123 and 179 on the conversion of political associations to parties, and in Article 5, that parties cannot be founded on a gendered or violent basis. By doing so, it emphasized the principle of gender equality that was a fundamental principle since the first Constitution of Algeria.

Constitutional and legal amendments

In the elections of same year of 1997, only 13 women nominated by a total of 60 political parties were elected to the parliament, and 78 women out of 1281 female candidates reached local councils. Women constituted half of the voting base: Out of the 15 817 306 eligible voters, 7 368 605 were women, despite the fact that Algeria had ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) one year earlier.

In the 2002 electoral cycle, 147 women were elected to local councils out of 3679 female candidates, and in the parliamentary elections of 2007, 27 women out of 694 candidates were elected. The ruling party's share was 10 women, losing in the process 10 other positions. Nevertheless, other democratic parties could not secure more than one female seat. These negative results in terms of women's candidacy and electability have necessitated a negative reaction by civil society actors concerned with women's issues, who had struggled to establish equality laws for 20 years. As a result, they began to propose changing the rules of the game by introducing new mechanisms and quick solutions.

How was the notion of quota first introduced?

The experience of Algerian women struggling to amend the laws, and the campaigns they have undertaken to amend citizenship and family laws have served as a ground for a new base of struggle that was strongly opposed by Islamists and conservatives. The feminist proposition of representation in the elected councils constituted a point of convergence during the dialogue inside the collective movement. The first awareness-raising campaign on the right of women to political participation was launched in 2002 by the National Association Femmes en Communication (FEC) in partnership with CEDAW Committee. Around 200 women from different social spectra, political trends, social positions and a variety of associations participated. The questions raised were: Why are women a minority in the elected councils? Who is to be held responsible for that: women themselves, the laws, society, or the political class? Why are women alienated from positions of leadership? Is it because of an inherent weakness, or rather an active discrimination against them? These were some of the issues that were discussed and were yet to be answered. Other meetings and discussions went on for several years, and they concluded with one single answer: imposing the quota on parties as a temporary solution until politicians are convinced of the necessity of actual equality and are ready to willingly adopt the principle of parity. The amendment of citizenship and family Laws of 2005 gave women needed motivation to continue their struggle until their goals are achieved. A study on Women's Participation was conducted in 2006 by CEDAW Committee, in collaboration with allies in Morocco and Tunisia. This study confirmed the fact that the Maghreb society is not against the participation of women in politics, concluding that quotas are an appropriate solution, with different arrangements to be tailored according to the particular circumstances of each country.

All of this fueled the feminist movement; adopting the quota mechanism as a quick, temporary solution and as a result, a number of seminars were held on the subject. Three constitutive seminars were held by the CEDAW Committee as well, preparing partisan women for future leadership positions in their respective parties. Then ensued the formation of a large women's coalition of female members of political parties, trade unions and women's associations, in preparation for making the case for the participation of women in politics. In the final stage, this coalition adopted the case, along with a proposal of a new electoral system that adopts quotas as a legal provision through which women can be politically integrated.

Thus, women's activism was empowered after the ruling political leadership accommodated its demands, codifying them by the constitutional amendment of 2008. This clearly stipulated the representation of women in political action under the title of "political partnership" and the principle of "promoting political practices of women through elected councils."

Women's political participation

The quota share means that the percentage of women in electoral lists can be no less than a certain number of seats, which ranges according to administrative divisions between 20% and 50%. In the case of 30/35 seats, the percentage is 40%, and it is estimated in all cases to be 30% and can never exceed 50%.

In 2012, the amendment was consolidated by the enactment of an organic law that defined women's participation in the candidate lists for local and national elections by a minimum 30%. It was soon followed by the amendment of the membership law, legislating the rejection of any electoral list not meeting this percentage requirement or not ordering the names of women alternately with those of men. Then, there was the amendment to the Parties Law No. 12.04 on 12 January 2012, which amended the Law 15.01 of the same year. In Article 17, this amendment rejects the licensing of any party whose lists "do not have a quota of no less than 30% in its constituent assembly," as well as its bureaus, councils and public congresses. This organic law concerning the participation of women led to the most significant result in the history of the Algerian Parliament, translated in the election of 146 women. It is thus considered one of the most important step of political integration of women, despite its several shortcomings. For example, it concerns only elected councils; it is also difficult to determine the number of partisan candidates of both genders, which makes it harder to monitor, although easier to apply to newly formed parties founded after these new laws.

The results of these elections caused a slanderous media frenzy and a huge political campaign questioning the competence of the elected women. The president of one of the political parties (Hams) called for the withdrawal of the organic law, in particular its Article 31 and Article 29, as well as for the withdrawal of the quota principle in any constitutional amendment in the future, framing it as a call for a return to legitimacy. A number of parties in parliament similarly tried to oppose the law and urged others not to vote for it. The governmental representative, however, played a critical role in defending the law, strongly advocating for voting for it, in recognition of women's rights and as a means of doing them justice.

Associations that initiated the movement for the women engagement in the political sphere (FEC and CEDAW) Committee were aware of the threats of questioning the capabilities of women politicians. Therefore, they worked to empower women politically and to strengthen their advocacy and communication ability. At the end, the Elected Councils' Women Network was formed through the training programs implemented in coordination with well-known international organizations working in this field.

The latest constitutional amendment of 2016, embodied in Law No. 16-01 on 6th of March 2016, contained the constitutional amendment in force that supported the previous articles. It did not only reconfirm the principles of equality that previous Constitutions stipulated, but also added in its Articles 32, 34, 35, and 36 parity at work and professional and institutional advancement. Notably, it stressed, for the first time, the principle of parity in the fields of labor and economic and administrative governance.

The extent of the success of the Algerian experience

Despite that clear and firm assertion in the Constitution of 2016, the 2017 elections were rather disappointing, with only 119 women elected; that is, with 26 seats lost, mostly belonging to the ruling party that lost many of its posts in these elections. The law enforcement was also subject

to the calculations of communal mindsets deeply biased against women's rights; however, the reference to all these formulas in the Constitution remains of great importance.

Concluding remarks

It should be emphasized that there is no impediment limiting the rights of women or legitimizing discrimination and inequality at all different levels of responsibility, which we cannot overcome. It is not right nor acceptable to limit women's capacities to family affairs, as suggested by the mindset of old-fashioned gender roles which casts doubt on the ability of women, by considering the house as their one and only space, while other tasks remain solely for men. Women have always proved their abilities; the struggles and initiatives of enlightened female leaders have consistently managed to dispel all doubts.

I do not intend to pre-empt your recommendations on how best to activate the role of women in political participation, especially in strengthening and expanding their participation in the elected councils. This dialogue concerning men and women remains a preoccupation for all of us: to consolidate the values of equality, to narrow down the area of discrimination, and to remove the obstacles preventing women from actively participating in our societies. Women are more than half of society, and society cannot flourish without their effective participation. Many positive and negative results can be deduced from this process, the most important of which is that development in the absence of women has become impossible, because women do not just constitute more than half of society at the quantitative level, but also on the qualitative level as well, given the sensitive role they play in the process of socialization, the basis of human building and human nurturing.

Change can only be achieved when women are united and when their efforts are combined and sustained, and we can have our demands intelligently met without clashing with the political power.

The introduction of the "Article of Forgiveness" into our proposals has created a great division between women and women's associations in particular. But it is expected to understand that we cannot gain everything. There are also consensual balances in the penal code that cannot be disrupted. Forgiveness is a term enshrined in most of the cases of violent crimes in the penal code.

This process of struggle, and its arguments in particular, has established the authority of large coalitions in democratic movements, or those claiming to be democratic. We saw their inability to adopt women's causes, which are indeed democratic and human rights demands. It has also exposed their contradiction and failure in choosing their alliances. Finally, this feminist struggle has also exposed the uncompromising nature of the Islamist trend and its aggressive attitude towards women, which justified the use of all means, including youth and women themselves, to undermine the law.

How civil society made Bolivia's electoral system more inclusive

Ms. Cecilia Cordova, Coordinator of the Project INSPIRED, Bolivia

This presentation will focus on the role of civil society, particularly women's organisations, in terms of the progress made by Bolivian women with respect to legislation and public policies promoting their political participation, as well as the challenges they face to make these achievements effective. It will highlight how the contributions made by different organisations made the electoral system more inclusive, and how they propose to tackle the current barriers linked to political harassment and violence towards women.

Introduction

Women have always played an important role in Bolivian history. Women's organisations were key actors against dictatorships and have become mobilisers for the protection of their territories. However, despite their presence in these emblematic moments, the number of women in positions of power in the State and in civil society hardly reflected the important contributions women have made to Bolivia's history.

There has been important progress in regards to national legislation to promote women's political participation, particularly in formal spaces. These achievements would not have happened without the continuous work of women's organisations who first fought for a quota law, which led to a change in the electoral regime, leading to parity in political representation.

This progress was not without challenges, as women participating in politics have had to face different kinds of barriers, including harassment and violence. As a result, again, social organisations were key in demanding protection from the State, resulting in the passing of a Law tackling political violence and harassment towards women.

A little bit of history

Women's organisations and feminist movements in Bolivia, most of them from urban, middle class backgrounds, started advocating for women's political participation in the 1990s, a few years after the country put an end to dictatorships. Women from civil society organisations and political parties came together to create the Political Forum of Women. Although their goal was to reach parity, their strategy focused on a step-by-step approach that would allow them to achieve important milestones, by taking advantage of the interest in political reforms. As a result, the Law of Popular Participation, in 1994, used non-sexist language, although it still did not include a quota system. This would come in 1997 with the Law of quotas, which established a 25% quota for the Senate Chamber and 30% for the Chamber of Deputies.⁸⁸ Afterwards, a new Electoral Code was passed in 2001, to enforce parity in municipal councils.

As many civil society organisations fought for their right to participate in political processes without having to become a party, a law was passed in 2004 to facilitate the inclusion of indigenous organisations and political associations in electoral processes. This law also mentioned parity.

⁸⁸ Avances en la participación política de las mujeres. Caminos, agendas y nuevas estrategias de las mujeres hacia la paridad en Bolivia, Marlene Choque Aldana, 2014, p355, [*Progress in the political participation of women. Women paths, agendas and new strategies to achieve parity in Bolivia, Marlene Choque Aldana, 2014, p355*] http://tse.go.cr/revista/art/17/choque_aldana.pdf

After some political turmoil in 2003, a process to change the Political Constitution started in Bolivia through a Constituent Assembly, with elected representatives. The quota for women's participation was increased to 40%. This finally led to a new Electoral Regime, adopted in 2010, which would enforce gender parity for all elections and for all types of organisations and levels of government. This Law also states that at least 50% of the candidates for single-member constituencies should be women.

Throughout this process, women's organisations continued their lobbying and advocacy activities. Every success was seen as an opportunity to push for more, and a variety of organisations made continued efforts, as a relay race, to keep the pressure on political and social actors. The Constituent Assembly was seen as another opportunity for a major change, and women's organisations, in alliance with other civil society organisations, pushed for an increase in the quotas. The new Constitution was approved in 2009 through a referendum and it included many articles that promote gender equity in Bolivia. This was seen as another opportunity by women's organisations, which then focused on the need for a new legislation that would guarantee the implementation of the Constitution.

What happened in practice?

As the first Law of quotas was made effective, for the municipal elections in 1999, it was evident that changing the legislation was not enough. Many candidates for municipal Councils, who were registered as women, were in fact men, who used female names to try to access a position of power in their local governments ("Victoria" instead of Victor or "Carla" instead of Carlos, for example). Women's organisations denounced this situation, but this proved that political parties were not interested in including women on their lists, not even to help them comply with the legislation.

This did not discourage women, who continued mobilising and lobbying to improve the legislation, but also to show the importance of having women in the different levels of government. The women who had achieved positions in the Parliament were important allies, and showed Bolivian society, that women could contribute through their participation in the political system.

However, it became evident that the women who were benefitting the most from these improvements were middle class, urban women. Women from indigenous, *campesino*/small farmers and miners groups started to demand their space as well. These women had already been politically active for a while, both through grassroots movements, mainly in the *campesino* sector, through indigenous communal governments, or through Mother's clubs and Wives' clubs. They had been important actors in the fight for democracy, and in situations that required mobilisation and sacrifice, but they were still not recognised as valid political actors, neither in the formal political environment nor in their own sectors⁸⁹.

Women from different backgrounds were challenging the status quo, and they made the most of the opportunities they had to learn about politics, laws, human rights and other topics that would strengthen their leadership, whether it was through participation in social organisations, or through trainings provided by NGOs. As mentioned above, this led to more inclusive laws that promoted parity in social organisations, and eventually in the different levels of government, through the changes in the Electoral Regime.

⁸⁹ Hilando Fino Desde El Feminismo Comunitario, Julieta Paredes, 2008, p6, [*Thorough Analysis From the Feminist Grassroots*, Julieta Paredes, 2008, p6] <http://mujeresdelmundobabel.org/files/2013/11/Julieta-Paredes-Hilando-Fino-desde-elFem-Comunitario.pdf>

These changes can be seen in the following data:

- In 1985, there was one titular female deputy and no female senators.
- In 1989, there were 4 titular female deputies and no female senators.
- In 2010, there were 33 titular female deputies and 17 female senators⁹⁰.
- After the 2009 elections, 47% of senate seats were occupied by women.
- In the same year, women represented 43% of the total number of council members, compared to 19% before the application of parity⁹¹.
- The percentage of councilwomen at a national level reached 47% in the 2015 elections⁹².
- In the same election, 29 women were elected as mayors, in comparison to 23 in 1999⁹³.

This increased participation had unforeseen negative consequences that the media and society were not discussing, but that were raised on the agenda of women's organisations. Female leaders and politicians had been subject to threats, harassment and physical aggression, either to force them to resign, or to stop them from having different political positions, or from looking too closely at corruption cases, particularly at the municipal level. This was not limited to the public sector, as was manifest in indigenous and civil society organisations. As a study on gender dynamics in the Amazon states: 'men still think that giving more room for participation to women implies a loss of their privileges'⁹⁴.

Despite women being vocal about this for a few years, there were no formal mechanisms in place to protect women from political harassment and violence. Between 2004 and 2012, Bolivian police received more than 4,000 harassment complaints from women participating in politics⁹⁵. Finally, the murder of Councilwoman Juana Quispe in 2012 prompted the government to pass a law to: 'Establish mechanisms to prevent, attend to and sanction against cases of political harassment and/or violence toward women, to guarantee their political rights'⁹⁶.

⁹⁰ Informe Foro Nacional De Analisis De Propuestas Para La Aplicación De La Ley No 243 Contra El Acoso y La Violencia Política Hacia Las Mujeres: Proceso De Elaboracion De Política Pública Y Reglamentacion De La Ley No 243 "Contra El Acoso Y Violencia Política", 2013, [Report of the National Forum on the Analysis of Proposals for the Implementation of the Law N°243 Against Harassment and Political Violence Against Women: Preparation Process of Public Policies and Regulation of the Law N°243 "Against Harassment and Political Violence", 2013.] http://info.comvomujer.org.pe/catalogocomv/o/21_Informe_Foro%20Nacional_Aplicaci% f3n_Ley_N%b0243_BO_2013.pdf

⁹¹ Pensando los feminismos en Bolivia, Conexión Fondo de Emancipación, 2012, p288, [Thinking about feminism in Bolivia, Conexión Fondo de Emancipación, 2012, p288] www.conexion.org.bo/uploads/Pensando_lo_s_Feminismos_en_Bolivia.pdf

⁹² Porcentaje de Mujeres y Hombres en 20 Concejos Municipales, Observatorio de Género, [Percentage of Women and Men in the Town Councils, Gender Observatory] www.coordinadoradelamujer.org.bo/observatorio/index.php/general2niv/mostrar/boton/2/sub/17/id/50/tem/2

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⁹⁵ iKNOW Politics Report on Violence Against Women in Politics, iKNOW Politics, 2014, <http://iknowpolitics.org/en/learn/knowledgeresources/report-white-paper/iknow-politicsreport-violence-against-women-politics>

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Did this work?

Although it was first perceived as an important achievement for women, social organisations and female leaders started questioning this law for its many shortcomings. Its reach is limited to women who are candidates, or who have been elected to public office; there is no clarity about the procedures for presenting a complaint or denunciation, nor on how to implement the law effectively at different levels of government⁹⁷. The law recognises four different ways for women to present a case: administrative, criminal, constitutional, and electoral. For the administrative option, this means presenting the case to the organisation that employs the aggressor, and for the electoral procedure, the law has been interpreted as requiring the resignation of the woman presenting the case, before denunciation may be considered⁹⁸.

These deficiencies moved women to action, again. The National Association of Councilwomen, and civil society organisations worked together to advocate improving the law. They worked on proposals to amend the Law, and to draft a regulation, that would make its implementation more simple and effective.

Through the work of Bolivian NGOs, such as UNITAS and Fundación Machaqa Amawta, women from across the country, who had received political training, were brought together to build these proposals and positions that would reflect the reality faced by women from grassroots movements, municipal Councils and the Parliament. These organisations created a National Commission that included men to lobby the Ministry of Justice, and they worked together with public authorities, in a process that resulted in the approval of a regulation in 2016. Amongst the most important changes, women celebrated particularly the inclusion of social organisations in the regulation.

Their work was not limited to the improvement of legislation, as experience had shown that laws and policies alone were not enough. Instead, UNITAS and Fundación Machaqa Amawta also focused on working with women and men at the grassroots level, to challenge the traditional perceptions of what roles women and men should play in politics and society.

Conclusions

The reality of women's political participation in Bolivia shows that the changes and progress achieved would not have happened without the involvement of women's organisations. These women's organisations were the ones who lobbied for quotas as the country was recovering from a period of dictatorships, and they were the ones who kept pushing for more, to reach parity, and to promote a more inclusive electoral process.

Their persistence and willingness to improve existing laws have been crucial not only to achieve equal representation, but also to tackle the obstacles women still face in politics. The capacity of women's organisations to work in partnership with other civil society organisations and NGOs has strengthened the electoral system in Bolivia.

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IV. Challenges to have a Democratic Electoral Process in Syria

Preconditions for a successful first election in Syria

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This intervention is based on a paper prepared by the UNDP in partnership with the International Institute for Democracy and Electoral Assistance (IDEA).

The first elections in Syria, as described by the UN Security Council Resolution 2254, will succeed inasmuch as it succeeds in the following:

- That the election results reflect a genuine representation of the democratic choice of Syrian voters.
- That the elections, which are by their very nature divisive, do not impede or disrupt the existing efforts to bring about peace.
- That the electoral process establishes the importance of Syrian citizenship and prohibits discrimination based on gender, language, religion, political and other opinion, ethnicity, social origin, wealth, birthplace or any other type of discrimination that threatens peace.
- That the electoral process is fully accessible to Syrians inside and outside of the country. The practical barriers that prevent people from voting or running – such as those relating to refugee status or displaced persons such as loss of identity documents, or other unfair legal barriers such as the requirement of long stay in the country of residence – must all be addressed so that Syrians qualify to vote in national elections or referendums.
- Although some interim measures, such as international monitoring, may be necessary to ensure the freedom and fairness of the first elections after the restoration of peace, emphasis should be placed on making the electoral process sustainable and nationally feasible in the near future.
- In all cases, electoral laws and institutions help to ensure the legitimacy of the results of the first elections. Steps to strengthen legitimacy include ensuring the independence of the electoral process as much as possible, the openness and inclusiveness of the drafting of electoral laws and the administering of electoral processes, the adoption of measures to reduce the cases of fraud, intimidation of voters and all other electoral crimes and violations.

However, 2017 may seem too early a time to think of holding free and fair elections in Syria. There are many, many conditions that must be met before the elections can be held in a manner favoring legitimate results. Fulfilling these conditions is not easy; many require years of peace, or a long-term intention to reconcile, which takes a long time following a prolonged conflict.

- As for the conditions of the initial electoral process, they are:
- A sufficient level of peace and stability that allows for the preparation and conduct of elections. Elections require security, because threats of violence or intimidation would decrease voter turnout, and lead to results considered illegitimate by many. It is hoped an agreement between the main parties in Syria's complex political environment would lead to peace and stability. This may be limited to an agreement to stop the violence, or it may

include a broader political settlement. The additional challenge here is to ensure that security forces, paramilitary groups and other actors on and off Syrian soil do not intimidate voters and candidates or obstruct the electoral process, both inside and outside Syria, where millions of Syrians currently reside.

- UN Resolution 2254 calls for elections after the drafting and adoption of a new, fair and legitimate Constitution. The approval of a definitive mass of Syrians involved in the electoral process of the mechanism of selecting those who draft the Constitution, the mechanism for ratifying the Constitution, and the contents of the Constitution itself, all determine whether this important condition was achieved before the first elections.
- Peace and stability, however important, are not sufficient conditions for elections. Syria needs the time and determination to establish or re-establish an effective social contract among all of its citizens. There is a need for a continuous national dialogue or another mechanism to promote reconciliation between all groups in the country and abroad, and to ensure that the fighting groups are transformed from warring enemies into political rivals. Whatever the shape of this process, it is crucial to guarantee to Syrians the commitment of the main actors and stakeholders in addressing future challenges constructively and, ultimately, enabling Syrian voters to determine the course of their country through the electoral process.
- It is also crucial that the country's basic infrastructure such as transport, electricity, buildings, and the overall economic situation are strong enough to allow for effective elections. Syria is unlikely to recover soon from the effects of internal violence coupled with "economic sanctions" imposed on it by other countries. The infrastructure also includes an appropriate electoral infrastructure – that is, sufficient logistical capacity to provide electoral materials to polling stations in Syria and all diaspora countries in the world, and the ability to organize elections and count votes in polling stations.
- On the other hand, elections require a sufficient amount of data, such as population, voter registration information, and possibly border-related electoral data. Modern technological approaches to elections may address some of these challenges. International actors can also be of help in this regard.
- The presence of an appropriate legal and institutional framework for the elections to be recognized as legitimate by the Syrian stakeholders. This includes not only the establishment of a national electoral management body, but also the support of other necessary elements for a credible electoral process, such as an independent judiciary and a system for settling electoral disputes. In addition, laws and institutions must ensure the electoral rights of Syrians outside the country and enable them to vote and run without any practical or legal obstacles.
- Electoral laws and institutions should enable women to participate in the electoral process as candidates, voters and leaders in the management of the electoral process itself, whether in the national electoral management body or in the bodies responsible for monitoring and resolving elections-related disputes.

- Electoral laws and institutions should convey the voice of all Syrian groups and support the active participation of young people, diverse Syrian components and other groups as participants in the electoral process, on the one hand, and leaders in the electoral management on the other.
- The legal framework includes the laws pertaining directly to the electoral process itself, as well as the legal provisions guaranteeing freedom of movement for all parties involved in the democratic process, including laws governing political parties, civil society organizations, electoral monitoring organizations, the media. The legal framework also includes laws that generally guarantee freedom of expression, the establishment of associations, freedom of assembly, and other rights necessary to democracy. To ensure the constitutionality and integrity of these laws, independent judicial institutions must be established, with the authority to review laws and amend those that do not meet constitutional or international standards.
- Establishing laws and building institutions that identify and combat corruption in the private and public sectors (particularly the role of the private sector in electoral funding), because corruption in either sector corrupts the integrity and legitimacy of the elections.
- It is important at an early stage to develop and diversify civil society organizations so that they can make constructive contributions to the drafting of laws and the electoral process, monitor all phases of the process, help ensure that the results of the elections are genuine, expose fraud attempts and help empower all groups inside and outside Syria to express their views.
- Broad program-based political parties or alliances may not be an essential prerequisite for Syria's first elections, but in the long run it will promote debates on policy that focus on national concerns rather than narrow interests of specific groups in society. Thus, it will be necessary to build political parties in an atmosphere of equal opportunities, so that no single party monopolizes political power just because it has more resources, such as financial wealth or organizational capacity.
- Voters must be aware of the purpose of voting, how to vote or register for voting, and the powers and responsibilities of those for whom they vote for. It is also important that voters recognize the importance of voting, that the election of a national or local leader or of national or local representatives results in leaders accountable to the people who elect them, and that voters can elect new leaders if the older ones fail to live up to their promises.
- Ideally, the turnout among eligible voters, both inside and outside Syria, should be high among the various groups so that the elected leadership represents this diversity.
- Elections are conducted in a timely manner and in a way that does not impede achieved progress. This means that it may not be realistic to define the electoral time-frame 18 months after the new Constitution is finalized, as stated in UN Resolution 2254.

The establishment of state institutions in general, and independent electoral and judicial institutions in particular, the strengthening of an active and non-partisan civil society sector, and the rebuilding of the Syrian economy and infrastructure are only some of the many conditions that may take a considerable duration to realize. One of the considerations that determines whether the elections will support and not hinder progress is to establish an electoral system ideal for promoting peace and stability, and to define the first elections that guarantee a minimum threat to peace and stability (referendum, local, parliamentary and presidential elections, or a combination thereof).

The challenges facing Syrian women in the electoral process as candidates and voters

Ms. Lama Kannout, General Coordinator of Coalition of Syrian Women for Democracy, Syria

The tyrannical regime has instrumentalized the elections in order to restrict the access to the political domain and to strengthen its clientelist system. The aim of the elections thus became to legitimize the monopoly of power and to diverge the People's Council from its role as a monitor to the government's work. This turns the General Council's members -both women and men - into competitors for the regime's approval, seeking to secure their share of the spoils rather than to implement political and economic programs..

Accordingly, the early call for elections will obliterate any possibility of building democracy and will undermine women's political participation in the electoral process. These risks manifest in the following:

1. *The course of the political solution* so far is geared towards neglecting the transitional government and the political transition set by UN resolutions, putting the Constitution and the formation of the constitutional committee at the forefront of the debate. The political process is thus like a cart put before the horse and expected to move forward!

The Constitution was not the main issue posed by the revolution, nor was it at the heart of the conflict. The revolution was aiming for a real political change that would transform Syria from a tyranny to a democracy and a state of citizenship and dignity. The Constitution is a social contract for all Syrians, women and men alike, and it is set by an elected body or a committee appointed by an elected body, freely and fairly, in an environment that protects human rights and human freedom – rather than by a list of individuals set by foreign states and by the United Nations to form a constitutional commission with questionable legality and consequences.

2. *Disarmament and demobilization of combatants*: Failure to do so poses the risk of a violent outbreak in the transitional elections, especially if the results exclude one of the conflicting sides. In addition, voting will be influenced by arms, which undermines the whole process. The militarization of the revolution, for example, has negatively influenced the extent of women's participation in the public sphere and decreased their representation in local councils in rebel-controlled areas; in Idlib, for instance, their participation dropped from 25% in 2012 to 0% in 2014.

3. *The course of gender-sensitive transitional justice*. Which most notably means:

- That war criminals do not govern us, and that the circle of spoils distributed by tyranny cease to be expanded.
- A definitive message to end the cycle of impunity that is widely normalized in Syria.
- Transitional justice does not only mean accountability, reparation, compensation to victims, institutional reform and promotion of individual and national reconciliation; it is also an opportunity to change the violent legal system oppressing women, amplifying the effects of war on them.
- Among the issues that transitional justice focuses on in the framework of institutional reform is *the restructuring of the security apparatus*: this apparatus is the crown jewel of the regime and its iron arm that allows it to govern the country through the reign of fear. Its personnel enjoy legal immunity and freedom from any form of accountability, not to mention its definitive

mention its definitive say and patronage networks that make its authority, corruption, and crimes absolute. Therefore, any step towards democracy can only be initiated by its restructuring and regulation by clear laws, putting its work under judicial supervision, abolishing all laws that protect its personnel from accountability, and training them to adhere to human rights.

4. *The expulsion of militias and armies from Syria by a Security Council resolution.*

The challenges of women's political participation at the level of political forces and parties that have presented themselves as a democratic alternative:

A research paper that I had prepared on women's political participation in these political forces has revealed an authoritarian and undemocratic reality, as well as an exclusionary and discriminatory situation against women and their role as decision makers and contributors to Syria's future. This reality has led to their exclusion within the political laboratory and the dominance of cliques and quotas in all forms, ultimately leading to the exclusion of competent women.

The research also revealed the absence of sensitivity among political forces regarding the impact of violence, moral damage, and defamation in politics, warranting a pressing need for addressing these issues.

Those who considered the quota to be controversial and undemocratic recognized that it was a necessary measure to consolidate a community culture that believed in women's capability and competence, and in the inevitability of their equal standing with men in leadership positions. Those who objected, on the other hand, did not provide an alternative to overcoming the exclusion and marginalization of women. Significantly, all female politicians endorsed the necessity of quotas as a temporary measure.

In the light of these findings, the biggest challenge facing female politicians and workers in the public domain lies in activating the role of parties and independent agents in the preparation of electoral lists, and in working with allies who believe in women's causes to form a political will that seeks radical change in gender equality and justice.

Review of the general election law in Syria (Law No. 5 of 2014):

The aim of the law is to elect the President of the Republic, the members of the People's Council and the members of the local administration bodies.

1. The linguistic structure of the electoral law is based on gender inequality. The law speaks of males (citizen, candidate, president, voter, farmer, worker) and does not recognize the citizenship of women, as it only recognizes women as mothers or wives. For example, Article 28/b concerning the voter's data record and his "mother's first name and last name" and sex, and in Chapter 5 (Article 30/c) specifying the conditions and procedures for running for the Presidency of the Republic: "Not have been married to a non-Syrian woman."

A gender-sensitive language is required, including *the addition of the words "women and men" after general phrases such as "all citizens" or "individuals," emphasizing the consideration of women and men as equal in human value and before the law.* For language is, as the German philosopher Heidegger said, the house of being. The dominance of the masculine pronoun makes language an authoritarian tool, discriminatory against women, and intersecting – if not identifying – with male domination, hierarchy, and violence against women.

2. Quotas: The law does not allocate any quota for women even though Article 22 (on quotas) states that: “at least fifty percent” of the 250 seats in the People’s Council are allocated to workers and farmers, and “at least fifty percent in the local councils” (Article 24).

3. Although the electoral law has set the legal cap for spending, there exist many gaps in applying this cap. Spending on campaigns is one of the major obstacles for greater participation by women, who do not have the financial capacity that men often have – hence the term “feminization of poverty” – and are often far from the influential networks. In addition, the figures indicate that the overall poverty rate in Syria is estimated at 85.2% in 2015.

4. Chapter 5 (Article 30/e) on the conditions and procedures for running for the Presidency of the Republic states that the candidate must “have been a resident of the Syrian Arab Republic for at least 10 continuous years” when applying for candidacy. This deprives residents outside Syria, women and men, of the right to run.

5. *Article 2* of the law refers to the right of candidates to monitor the elections. And *Article 16* stipulates “Enabling the media and the press to monitor the polling and counting process,” without any reference to the right of civil society organizations in monitoring the process, and without mentioning any independent neutral party overseeing the conduct of the electoral process.

Partial judiciary – Higher Judicial Committee members lacking independence:

6. Stated in *Article 8* are the tasks and method of the formation of the Higher Judicial Committee for Elections,” which is entrusted with administering elections and referendums by fully supervising the elections of the People’s Assembly and local administrative councils. It “consists of seven members appointed by the Supreme Court formed by the judges of the Court of Cassation, and other seven for precaution.” *The independence of the committee stipulated by this article is false,* because Article 132 of the Constitution states: “The judiciary is independent, and the President of the Republic guarantees this independence, assisted by the Supreme Judicial Council.” In fact, the President of the Republic presides over the Supreme Court, as stated in Article 133.

Furthermore, *Article 10* of the law states: “*The Higher Judicial Committee assumes guaranteeing the proper application of the provisions of this law, administering the presidential elections under the supervision of the Supreme Constitutional Court, and the full supervision of the elections process.*”

In reality, it is the Supreme Constitutional Court that decides on the validity of the appeals against the election of the President of the Republic (Article 82) and against the election of members of the People’s Council (Article 83). As per Article 141 of the Constitution, “The Supreme Constitutional Court shall consist of at least seven members, one of whom shall be a president and all of whom shall be appointed by the President of the Republic by decree.”

Article 15 of the law indicates that “The Elections Committee shall be formed of three civilian public servants per the governor’s decision in each polling station to administer the station...” This is further evidence that not only does the commission lack impartiality, but also that the entire electoral process and its results are controlled.

7. Syria shall be considered a single constituency (*Article 18*) for the purpose of electing the President of the Republic and the referendum.

And for the purpose of electing members of the People's Council, "Each governorate shall be considered a constituency in electing its representative [...] except Aleppo which will consist of two constituencies: the constituency of the city of Aleppo, and the constituency of the districts of the governorate of Aleppo" (*Article 20*). In larger constituencies, parties are more likely to diversify their candidates, create a balance between them, and nominate women for high positions. In cases where one candidate is required, parties often choose a man.

But large constituencies need abundant financial resources for campaigning. In the Syrian case, this benefits the rich and war profiteers in particular, as well as the Baath party, whereas it weakens the ability of female candidates to run.

8- In Chapter 5 (*Article 30*), the law specifies the conditions for candidacy for the Presidency of the Republic, which include "being a Syrian citizen by birth to parents who are Syrian citizens by birth..." *These conditions exclude not only women – which is confirmed in the Article 84/b of the Constitution which requires the candidate for the Presidency of the Republic to "not have been married to a non-Syrian woman" – but are also an exclusion of all Kurdish men and women who have been deprived of Syrian citizenship.*

9. *Article 34* requires that the candidate for the Presidency of the Republic must receive written endorsement for his candidacy from at least thirty-five members of the People's Council. In the current situation, with the domination of security apparatus and its favoritism, it is impossible to obtain this number of endorsements.

10. *Article 13* states that the Syrian citizen who is not resident in Syrian territory shall have the right to exercise his right to elect the President of the Republic, provided that there is no legal impediment to doing so. Realizing this, however, requires the dismissal of all wrongful charges against the opposition and activist men and women, including their legitimate right to voluntary repatriation.

11. Elections Committee throughout the electoral process, which may result in corruption and biased interventions in the elections.

In a legal, political, social and economic environment grounded in gender inequality and discrimination against women, support for women's participation in the elections should be programmed comprehensively. This should begin by addressing the challenges that impede women's participation as voters and candidates, mainstreaming gender equality in all areas, mustering political will and allocating resources necessary for implementation.

The programming includes:

The adoption of a proportional electoral law, while committing to temporary measures (such as the quota system), provided that the number of women running is not to be capped. Proportional representation is one of the most appropriate systems for the representation of women in parliament, and it will open the door for political change. Among its particular features are political pluralism, limited number of lost votes, easier election of women, easier voting from abroad, less areas monopolized by one party, and potential increase in the participation rate.

At the level of electoral management bodies: Enhancing women's participation in leadership positions within the electoral management, appointing advisors and experts in gender issues as well as training current staff on these issues. It is also required of this management to conduct

a comprehensive analysis and develop a plan that addresses discriminatory policies against women and the gaps that affect their participation. Examples include:

Collection and analysis of voter registration data and turnout in terms of gender; awareness-raising campaigns targeted for male and female voters, supervised by experts in gender; and committing to investigating any non-compliance with gender equality.

It is important to identify the obstacles women face in the electoral process in order to address them, and it is necessary to tightly regulate and monitor funding and spending of electoral campaigns, both in law and practice.

The role of the media: It is also necessary to organize the media, to obtain constitutional rights guaranteeing a free media with freedom of expression, to educate media personnel on the purpose and procedures of the elections, and to commit to providing a positive and professional image of women.

For the official media, a decree should stipulate without any complications equal representation, whether between competing parties or independent candidates, or between men and women.

Private media outlets should also adhere to the above, set a fixed tariff for broadcasting campaigns, and prepare a code of conduct that would prevent defamation, violence and discrimination in general and against women in particular.

Violence and discrimination against women:

Constitutionally:

Legislating gender equality and the adoption of affirmative action (quotas), the protection of women from gender-based violence and threats of violence in both the public and private sectors; as well as allocating resources to counter such violence, and prohibiting gender-based discrimination without precluding affirmative action.

- The adoption of a unified, civil personal status law is the guarantor of equality between citizens of all genders and community groups.
- Preparation of a national plan for resolution 1325.
- Intelligent and innovative awareness-raising campaigns that support women's political participation and address misogyny and conservative societies that exclude women from the public sphere and co-opt their votes and bind them to the political choices of their male relatives.

The role of civil society organizations: Explicitly granting civil society organizations, in the electoral law, the right to monitor the electoral process according to international standards set by the Declaration of Principles for International Election Observation.

The training of staff to write reports from a gender perspective, which aim to monitor the status of Syrian female candidates and voters in the electoral process and to compare what's on paper with what's in practice, not only to gather data on their votes and participation rate but also to produce a gendered analysis of the dynamics of social, political, cultural and economic factors that limit or prevent their participation in public affairs. Monitoring includes the three stages of the electoral process: before, during, and after.

Political parties:

Parties have an important role to play in attracting leading local women with the capability to deal with social issues and public affairs, supporting their participation, empowering members financially and in terms of media exposure, and ensuring a 50% quota for women candidates as well as alternating their names with those of men.

Emphasizing the importance of women joining the electoral lists from the outset of setting the lists – rather than adding them later after the establishment of the election manifesto (i.e. not dealing with them as decoration candidates merely to gain the votes of women’s supporters, but instead as political actors.)

Feminist and women organizations

It is of great importance to mobilize and to highlight the power of women and feminist votes, their influence on the electoral contest and their ability to represent the issues relevant to women in decision-making positions. Equally important is to identify strategic partners capable of forming a strong alliance supportive of women and their causes. Experience over the past six years has shown that political alliances that led the Syrian opposition – along with Islamists – came at the expense of women’s balanced participation within these forces. Therefore, the power of women’s votes, both quantitatively and qualitatively, as well as the votes of their supporters from civil society organizations, is the determining factor in imposing their candidates and putting forward the list that represents their ambitions for freedom and justice. This requires vigorous work of women networking, advocating for their rights, adopting their demands, involving the media, and providing the necessary funds to fight in both politics and in the media. It also requires the training of women looking to run as candidates and delegates, and the creation of multiple mechanisms to address both:

1. Cases of violence in all forms, including ideological violence that undermines women’s ability to lead and influence decision-making.
2. Gender discrimination and the obstacles that women encounter, which include but are not limited to: the registration process, the lack of documentation, the distances they need to cross, etc.

Finally, the entry of women into the political arena has always been one of the most difficult aspects of penetrating the public sphere. It represents a breach of the hierarchical and authoritarian structure on which patriarchy is built. Indeed, the inclusive approach that we are demanding is but a way to create a revolutionary political discourse that challenges the different structures of the state and the authoritarianism of the institutions of subjugation and control, all in order to uproot the patriarchal structure.

V. The role of Syrian women and men on the electoral constituencies and civil society organizations in the electoral process

The Role of Civil Society in Constitution-Building and General Elections

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The elections are an important means for representing the aspirations of citizens. It is more than a mere technical process, and is not an automatic outcome of the Constitution and electoral law. It is a cultural, political, social, and economic process, despite happening over a short period of time. In light of all of that, several questions arise concerning how the electoral process takes place and how social participation is mobilized. Also, is it possible, through a prior agreement, to obtain fairer and more representative electoral results? Many other questions arise with the quotas and social representation according to shares or other means, or with the different possible electoral mechanisms.

In this paper, we will try to provide tentative answers to some of these questions, focusing on the essence of the electoral process as a democratic means that reflects the interests of the community and its choices, and reflects the image of social cohesion and justice and the rights enjoyed by citizens. It seems to us that this trend is more appropriate, given the abuse, murder, violence, destruction, and displacement that our country and its citizens have suffered for more than seven years, leading to the fragmentation, division, and impoverishment of Syrian society. This means, in our opinion, restoring the consideration for Syrian life and the culture of respect for others, coexistence, cooperation, and solidarity. Therefore, our legal and legislative texts in themselves do not achieve justice, equality and respect for human rights, but it is society and its living culture, and its participation through institutions – including civil society organizations – that guarantee rights and social justice.

Syria is the plight and crisis of humanity

Local and international subjugation forces are ravaging the Syrian people, and everywhere on Syrian soil the blood of children mixes with the blood of the elderly and that of other men and women. This cannot be stopped because of barbaric forces concerned only with their own interests. This has been the case in ancient history, but today in the 2010s, while we claim to have made unprecedented human and humane progress in history, how could this happen? The world sees through advanced communication technology how aircrafts and canons are used now to slaughter unarmed populations. This violation against human rights and the most basic right (the right to life) that fails to provoke any real and effective reaction indicates a paralysis that has befallen the humanitarian system on a global scale since World War II. In their “Universal Declaration of Human Rights,” nations declared that they had learned from the tragic results of their wars, and that “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.”⁹⁹ That is why nations announced their commitment to human rights and promised to pursue their implementation and see to their protection in all places.

⁹⁹ Universal Declaration of Human Rights, UN General Assembly Resolution A/RES/217, 10 December 1948.

Indeed, there has been actual progress in social awareness of human rights and dignity and in social justice, but the political choices governed by the interests of neo-liberalism aligned with oppression and extremism have pitted these allied forces against the aspirations of people towards freedom and progress. The Syrian people that revolted, demanding freedom, dignity, justice, and basic rights, posed a real danger to the oppressive regimes in Syria and its neighbors, and the subjugation forces did not come to circumvent these demands as had happened in other Arab Spring countries. It was therefore necessary to punish Syrians and to tear them apart. It is a shame that the forces of freedom in the world have not yet realized that the “war on terror” is a banner behind which subjugation forces hide to destroy people demanding their freedom. These forces have witnessed, that less violent movements such as Occupy Wall Street and protests in Europe and other parts of the world, had been easily dissolved. It is in fact a fight for human rights and freedom, and those fighting for freedom must unite to proceed with human progress for the sake of all of humanity.

Decades of tyranny in Syria have led to the absence of freedoms and any active role of civil society. Furthermore, the bloody struggle has exacerbated this ripping of the social fabric, the erosion of values and standards of conduct that allow for coexistence and for the ideals of freedom, equality and the rights and roles of citizens – particularly women who have been excluded by violence.

There will come a time when the violence and murder will end, and there will then be a need for tools to help build a humane society, free of violence, hatred, tyranny, and extremism; tools that help restore rights and serve justice to the oppressed. Some see the Constitution as an entry point, and it is indeed an important tool, but what are the foundations on which the Constitution could be based and who writes the Constitution? What are the mechanisms to build a Constitution, based on the principles of human rights, justice and equality? And how can civil peace and stability be maintained, and the return of tyranny and violence be averted? Is a rational and moral elite sufficient to accomplish this? These questions among others we are trying to explore by tackling the Constitution as a “sovereign” legal power that governs the political process and the conditions of social evolution, as well as the essential and active role of civil society in drafting, protecting and guaranteeing the commitment to the Constitution. We see this as a necessary entry point for an objective evaluation of the electoral process, given the organic bond between the Constitution and the electoral process. Some modern Constitutions have included an “electoral law” to ensure the fairness the law and prevent tampering with it by seeking easy amendments. We are attempting in this regard to offer a reading of the Syrian electoral law and the law on constitutional court as two examples of the enshrining oppression alongside the Constitution. And in the conclusion, we propose an alternative vision based on activating the role of civil society.

Constitution as governing principles for the political process and social evolution: how can it be constructed, and by whom?

Much is at stake in terms of the results on the mechanisms of exiting the Syrian crisis and the direction that it takes, for any solution that does not satisfy the aspirations of the Syrian people for freedom and justice will not be successful and will not pave the way back to stability, security, and civil peace. Not serving justice to those who were oppressed and had their rights violated will not allow for a sustainable solution for the conflict. As such, continuing to abide by the current Constitution means prolonging the oppression and marginalization of society and of its aspirations. The 2012 Constitution confers the monopoly of the three authorities on the President of the Republic (the head of the executive authority who has the right to legislate as per Article 113 and who also heads the High Judicial Council as per Article 133). In addition, the President is entitled to appoint “public and military servants and to terminate their service as per the law, Article 106,

and he is the one to appoint and dismiss the Prime Minister, the ministers and their deputies, as well as to dissolve People's Council (Articles 97 and 101). He is also not accountable for his actions, except in the case of treason (according to the Constitution of 1950, he is to be referred in this case to the Supreme Constitutional Court). Furthermore, tailored specifically for the current president [Bashar al-Assad], Article 155 guarantees him the right to run twice after his term ends. Based on this, the current Constitution can neither guarantee the end of tyranny nor the non-repetition of all of the crimes that have happened over the past years.

The importance of the Constitution derives from the fact that it establishes binding and rationalizing criteria for authority, thus constituting a guarantee for the safety of exercising power and for the protection of citizens. According to classical literature, the mandate of the Constitution is based on two main axes. The first concerns the organization of powers and their separation from each other, and the second concerns the protection of citizens.¹⁰⁰ This is far from technical, as it constitutes a political issue par excellence, one that reflects the vision and interests of those who draft the Constitution. The failure of the Constitution to accomplish either of these two main pivotal roles implies a structural failure that requires a serious reconsideration of the Constitution itself, for the Constitution should reflect a social balance and a fair representation of the interests of the different groups that make up society, which places the responsibility of its impartiality on those who draft it. In fact, the notion of "social cohesion" that the Constitution ought to reflect is what led to likening it to a social contract. The importance of social cohesion gains significance during conflicts and wars that lead to social divisions and to the erosion of social values and of the ideals of human rights and citizenship. This necessitates a reformulation of national and social agreements, which no one side alone can reach, and which requires a direct dialogue between different social groups, and an agreement over the basic principles of coexistence, as well as over the Constitution and the nature of the political and economic regime desired.

Accordingly, only an independent civil society that represents people is capable of conducting this dialogue and reaching agreements that achieve justice and guarantee rights (human rights and citizenship). If Rousseau speaks of small communities that can apply direct democracy, such as the island of Corsica, the basic concept is public and democratic dialogue or deliberation, according to Amartya Sen.¹⁰¹ Therefore, the symbolism of the notion of "contract" should not disturb the outcome of free social agreement. Rousseau assumes impartiality, integrity, and a deep knowledge of society as characteristics of a legislator. He says that "in order to discover the rules of society that are best suited to nations, there would need to exist a superior intelligence, who could understand the passions of men without feeling any of them, who had no affinity with our nature but knew it to the full, whose happiness was independent of ours, but who would nevertheless make our happiness his concern..."¹⁰² Rousseau places great importance on the role of a legislator, considering him a superman that does not rule or assume sovereignty. "This office, which sets up the Republic, nowhere enters into its Constitution."¹⁰³ The centrality of the impartial, honest and neutral character drafting the Constitution (the contract) in Rousseau's view is apparent, and hence granting him ideal characteristics as if he was a transcendent being is an attempt to confirm the impartiality of whoever set the foundations and principles of laws and Constitutions that govern social relations.

¹⁰⁰ En guise d'introduction: La théories constitutionnelle et le droit constitutionnel positif, Michel Troper , Qu'est – ce qu'une constitution. [As an introduction: constitutional theory and positive constitutional law, Michel Troper, What is a constitution?]

¹⁰¹ 108 ص. 2010، لبنان، بيروت، 2010. [Amartya Sen, *The Idea of Justice*, translated by Mazen Jandali, *Ad-dar Al-Arabiya Li-l'uloum Nashiron, Beirut, Lebanon, 2010, p.108.*]

¹⁰² جان جاك روسو مواطن جنيف في العقد الاجتماعي أو مبادئ القانون السياسي ترجمة وتقديم وتعليق عبد العزيز لبيب، إعداد المنظمة العربية للترجمة، توزيع مركز دراسات الوحدة العربية، بيروت، لبنان، 2011. [Jean Jacques Rousseau, *On the Social Contract or Principles of Political Law*, translated, introduced and commented upon by Abdelaziz Labib, published by the Arab Organization for Translation, distribution by the Center for Arab Unity Studies, Beirut, Lebanon, 2011, p. 124.]

¹⁰³ Ibid., p. 126.

Rawls takes the same direction in his *A Theory of Justice* (1971), stating that justice is guaranteed by institutions founded in just ways. Rawls emphasizes the importance of building just institutions, noting that justice as fairness is a political notion that applies to the structure of political and social institutions rather than being merely an ethical belief. He sees that the primary structure of society (the various political and social institutions and the relations between them) must be founded on the principles of justice.

But how are these fair conditions for cooperation (the organization of society as a fair system for cooperation) to be set? According to Rawls, these conditions of fairness are located in “the original position”, through the agreement of representatives of free and equal citizens on the fair common relations of social cooperation.”¹⁰⁴ These rational people can reach an agreement on the “feasibility” of the principles of justice on the condition of a “veil of ignorance,” meaning the unfamiliarity of the representatives with the mandating authorities and the social privileges they enjoy or will enjoy later on, in addition to their enjoyment of rationality, morality and a knowledge of the objective situation of society sufficient to reach an agreement on the foundations and effective methods of achieving the well-being of society. They follow in their drafting of the Constitution or of any policies the principles of social justice.

Different viewpoints agree on the necessity of the impartiality and integrity of those entrusted with the task of preparing the Constitution. This is considered an ideal “hypothetical” situation, and because of that, it is often stripped of its importance. “Public deliberation,” i.e. common conversations on public affairs, is therefore the most appropriate means to reaching social agreements that provide justice and equal rights for all citizens. This requires that society is equipped with individual and collective liberties, as well as an active civil society; a representative and responsible civil society that leads dialogue in public spaces, paves the way to a social culture and cultural capital that is reflected in the structure, principles, and regulations of the Constitution. For the Constitution in and of itself provides legal guarantees for rights and liberties that may remain on paper and not be applied in reality (such as gender equality). The transformation of gender equality into a societal culture that transcends customs and traditions is of no less importance than it being expressed in the Constitution. A civil society is where individuals work jointly in public spaces to express their interests, to influence policies and to regulate and monitor the government’s exercise of authority, discussing public matters and collective and individual behaviors, and entrenching through dialogues the values of human rights, justice, and equality. By doing so, it also establishes an agreed upon standard and value system that defines social behavior and transforms into cultural and social capital. Simultaneously, civil society activists develop means to mobilize, advocate, and establish social networks and communication links that expand advocacy for their causes. Therefore, they uphold the values of solidarity and trust, which in turn increases the worth of “social capital”¹⁰⁵ and is reflected in the Constitution by entrenching the values of citizenship, justice, and equality. In many countries, Constitutions offer women a symbolic right to political participation, without actually facilitating the capacity to practice that right.¹⁰⁶ In that regard, social culture plays an important role in capacity-building and in empowering women in practicing those rights, which can be accomplished by civil society through awareness-raising and educational campaigns, as well as actual engagement of women in civil society organizations. This engagement enhances the institutional, cultural, and social environment in which individuals grow

¹⁰⁴ John Rawls, *ibid.*, p. 207.

¹⁰⁵ The role of civil society in elections, Shauma Mottiar, *Journal of African Election*, Volume 9- No.1, 2009.

¹⁰⁶ Martha C. Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice* *Feminist Economics Journal*, 9 (2-3), 2003.

up and learn that they are free and equal with other citizens, as well with the other sex, which also enriches “cultural capital” and increases the quality of democracy in general.

The realization of a fair and just Constitution does not automatically lead to a fair and just society. The implementation of the Constitution and the agreement on mechanisms of implementation cannot be left to the government and its executive bodies, and this is proven by the experiences of many countries. The absence of social dialogue and public scrutiny of the government renders some articles in the Constitution obsolete due to conflicting interests, the absence of implementation mechanisms, or the dominion of an opposing culture. This places on civil society the responsibility of monitoring the government’s performance and its commitment to the Constitution, and that of removing predominantly negative culture. Therefore, the active and continuous involvement of civil society in all Constitution-building stages, from drafting and promoting and mobilizing ideas and values, through working to implement and protect the social gains they achieve, up to leading the processes of amendment to achieve the aspirations and goals agreed upon in society, is crucial. The commitment of the executive authority to social participation and dialogue with civil society in certain countries has played a very important role in developing and enhancing the democratic regime. The British Columbia experience in Canada is an example of the success of this cooperation between the executive authority and civil society, with the purpose being to advance participation and democracy through delegating the amendment of the electoral law to a group of randomly appointed civilians who reflect the opinions of different social groups. This form of social participation in writing or amending the Constitution is what may guarantee that the ambitions and interests of different social groups are being duly expressed.¹⁰⁷

Returning to the mechanism of writing the Syrian Constitution, the difference lies in how the economic system or the structuring of the state gets chosen or decided, as a small group selectively appointed by the regime decides on the state system and economic model without referring to any public debate and dialogue over possible alternatives. The Syrian economic model had been set in the previous Constitution (of 1973) to be socialist, but it has become liberalized in the new Constitution, without this major change being debated by the various groups of citizens, subjected to an analysis of causes and consequences, or balanced between the different interests of the various groups.

The mechanism of preparing the Syrian Constitution and its articles reflects a pattern of exclusion and marginalization of public opinion and community participation, with considered disregard of civil society and its role in public dialogue and expression of different interests and aspirations. This role is often expressed in the elections and the mechanism of representing social forces. The close relationship between the electoral law and the Constitution entails a mode of governance and method of power-sharing through superficially democratic-seeming elections.

The electoral law as one manifestation of the Constitution in equal rights and freedom of expression

Elections represent an opportunity to exercise social and individual responsibility for implementing the Constitution. They also represent a method of legitimizing the government as appointed by elected bodies with powers conferred upon it by the Constitution. According to Derick Marco,

¹⁰⁷ بريتش كولومبيا: جمهور المواطنين يشارك في تصميم النظام الانتخابي، جمعية مواطني بريتش كولومبيا للإصلاح الانتخابي، أشكال النظم الانتخابية، دليل المؤسسة الدولية IDEA. [British Columbia: Citizen Participation in Electoral System Design, Citizens’ Assembly on Electoral Reform (British Columbia), International Institute for Democracy and Electoral Assistance (IDEA) Guide, IDEA.]

“credible elections should be seen as the elections that the people use to express their will in an environment clear of terror, violence and coercion; an environment characterized by full participation that allows voters to exercise their right to vote.”¹⁰⁸ Credibility of elections is a critical priority, as it provides trust in the electoral process and therefore allows for an effective participation by political parties and voters, which contributes to civil peace and stability. Elections should reflect the diversity of opinions and the different interests of different social groups; in other words, the participation of all ideologies and guaranteeing that they be represented fairly, so that the elections truly express the will of the people through the representatives that they chose to express their ambitions and interests. Additionally, the presence of a professional and impartial legislative committee is necessary to guarantee the integrity of the electoral process, and it represents an integral part of the electoral environment.

Elections represent an opportunity for social dialogue over social and national priorities, and to then draw the government’s framework and agenda from the societal outcome expressed by the elections. Civil society plays a prominent and effective role in elections, representing the opportunity in which it can perform its social and political role in expressing the people’s opinions and demands, while also serving as a space to spread civic education and citizenship values. In addition, cooperation between civil society and electoral committees grants elections more credibility. The KwaZulu experience in South Africa demonstrated that the participation of civil society and non-governmental organizations in democracy workshops and in deepening democratic culture and citizenship values contributes to increased voter turnout and to gradual exclusion of violent and extremist forces – which had their parliamentary representation diminish by more than 50% over 15 years.¹⁰⁹ This confirms the effective role of civil society in enhancing democracy in general.

There is an increased need for an active civil society role in post-conflict contexts, as well as in closed cultural environments or ones that oppose progressive ideals of equality and justice. The participation of women and their equal rights with men is one example of the huge role civil society has to play. The historical oppression of women that persists today complicates their abilities and freedoms to choose what they want to be and accomplish. The elimination of this oppression and the removal of the obstacles that prevent women from self-realization often collide with tradition and prejudice. The dedicated work by civil society and the spreading of a human rights culture and civic education would promote the principles and values provided by the Constitution and would transfer them into the cultural and behavioral norm. Like many ideals, entrusting the protection of group interests and public interest to women will not come to fruition in the elections without the support of standard social behavior and dialogue that brings together different social groups. A society embodying inalienable civil human rights, and embodying the ideals of equality and justice, is the only real guarantor of women gaining their full rights, regardless of the freedom guaranteed to them by the Constitution.

Elections need a law that regulates the electoral process and provides adequate legal guarantees for justice and inclusiveness. The confidence of both candidates and voters in such a law is the foundation of their confidence in the electoral process as a whole, and is also the source of their motivation to actively participate in the electoral process.

¹⁰⁷ 17 ص 2009. [Derek Marco, معهد الديمقراطية، جنوب افريقيا، دور الانتخابات في السلم الاجتماعي والتنمية، برنامج الأمم المتحدة الإنمائي، 2009. ص 17.] *Institute of Democracy, South Africa, Role of Elections in Social Peace and Development, United Nations Development Program (UNDP), 2009, p. 17.*

¹⁰⁹ Shauma Mottiar, The role of civil Society in elections. *Journal of African Election*, Volume 9, No.1, 2009

General Elections Law in Syria (Law No. 5 of 2014)

Article 8 of the Syrian electoral law stipulates the formation of the Higher Judicial Committee for Elections, which shall administer and supervise elections and referendums.

Furthermore, Article 22 of the law stipulates that a minimum of 50% of the elected bodies consist of workers and farmers, which represents a violation of the essence of the electoral process that is supposed to reflect the composition of society and its choices, i.e. the candidates to whom it entrusts its representation. Having more than 50% of seats allocated for workers and farmers nominated by their unions restricts voter freedom and undermines the chances of many candidates competing for the rest of the seats, which perpetuates inequitable distribution of seats within one constituency.

On the other hand, Article 62 restricts the right to monitor the electoral process and the counting of votes to the candidate or his/her representative, as well as to the media. The law does not mention any role for civil society or independent monitoring bodies, which breaches the credibility and transparency of the electoral process.

While post-conflict nations generally seek to include and involve displaced persons and refugees in the electoral process as a means of restoring national and social cohesion, Article 105 of the law deprives most displaced persons and refugees of the right to participate, stipulating that “the voter shall vote with his regular and valid Syrian passport with a departure stamp from any Syrian border departure point.” In reality, the official authorities have withdrawn from all border points except those bordering Lebanon, which means that refugees in other neighboring countries and around the world who had to leave in emergency conditions have not had their passports stamped. Furthermore, many Syrian refugees would not dare to visit their embassies in fear of being imprisoned, plus many of them have expired passports. Running the elections under such conditions excludes millions of Syrians from the electoral process.

Supreme Constitutional Court (Law No. 7 of 2014)

The Supreme Constitutional Court is composed of eleven members appointed by the President of the Republic with a renewable decree of four years (Article 3/a). That the President of the Republic can alone appoint the members of the Constitutional Court sheds doubt on the impartiality of the Court, raising the concern that it may be subordinate to the President, undermining its credibility as well as its ability to prosecute the President and object to presidential legislative decrees it may consider unconstitutional. Democratic nations are generally moving towards making constitutional courts entirely independent, or appointed – sometimes partially – by the parliament, and all of them are cautious as to not allow the President to exert any influence on the appointment of their members. They also terminate a certain percentage of their members periodically.

In Syria, the Court reviews the constitutionality of the bills and legislative decrees at the request of the President of the Republic (Article 11/b) or at the objection of the President or of five of the members of the People’s Council (Article 12/a). As a result of restricting the court’s say to the President’s request, it has not reviewed any law or constitutional amendment for years, not to mention that due to martial law, the court has had its function impeded. In addition, Article 67 indicates that “any law submitted by the President to referendum and gains public approval” cannot be reviewed by the Court.

The Court has thus become a tool for the President to obstruct laws and bills. For instance, Article 12/a grants the Court the ability to suspend any law, should the President of the Republic object to it or by five members of the People's Council "immediately after the objection is documented in a special record at the court."

The Court Law also restricts the right to appeal election results by candidates who lose, and the right to appeal against the winners to the same electoral group (Article 31), which prevents civil society and independent monitoring bodies to appeal the results. Moreover, appeals are lodged only against certain individuals, and not against the entire electoral process and any misconduct by the Higher Committee.

The legislative and legal system (the Constitution, the electoral law and the Supreme Constitutional Court) facilitate the oppression and the exclusion of civil society from actively participating in developing legislation. This has caused a sense of mistrust by citizens and voters in the electoral process and in its ability to represent them and their choices and ambitions. This mistrust has been reflected in a low turnout in all electoral processes nationwide, which compelled the regime to transform working spaces into polling stations so that it is easier to monitor the participation of state employees and to hold them accountable.

An alternative vision and orientation change (an active role for civil society)

1. The general environment

We have attempted in the preceding two paragraphs to emphasize the importance of public dialogue in the formulation of the Constitution, the electoral law, and the electoral process, as well as the importance of the participation of civil society in drafting the Constitution and other legislations and of its role in observing the application of law enforcement. The active role of civil society serves as guarantor of freedoms and rights, and indeed gives life to legislation and laws. Yet the question remains: Within what framework and environment does civil society function? And what is the nature of the institutions through which it does? In trying to answer these questions, two main factors are relevant: Human rights and justice, in addition to factors such as the fair participation of institutions and social integration, among others. The environment referred to is a society of public and individual liberties in which the values of human rights and dignity are upheld for all its members. The prevailing culture and social behavior reflects the commitment of society and its keenness to maintain and protect human rights in Syria. On the other hand, justice is a social and economic policy that considers citizens equal and grants them equal access to political participation, empowerment and social justice. In its broadest and most comprehensive sense, justice includes remedies that compensate for what the oppressive regime had historically produced in terms of inequality of capacities and opportunities, including its oppression of women and their inalienable rights equal to those of men. The environment referred to is a participatory environment, where individuals have equal rights to participation, equal capacities that enable them to participate, and public and private institutions that guarantee their rights and protect their freedom from any violation or transgression. A society that upholds the values of equality, the right to participate, freedom of expression, and equal citizenship rights; such is the environment that forms the framework of recognition and protection of rights.

2. Social dialogue and alternative vision

In light of recognized rights, equal participation in social dialogue is guaranteed in an atmosphere of freedom safeguarded by society. Social dialogue leads to a mutual recognition among different

social groups, and to a recognition of responsibility after all of the violations that had taken place, and thus to the healing of the consequent schism, the realization of rights and the restoration of civil peace and social cohesion. This dialogue also leads to common national and social agreements and goals, and to a wide discussion on mechanisms of implementation and social priorities; it is through these social dialogues that a national vision on what society aspires to be in future generations is reached. Social dialogue is an individual and collective dialogue that is fed by the intellectual and cultural programs set by civil society organizations, where society formulates its cultural makeup and normative values that it sees fit for its identity and future; it is this that holds civil society socially and politically responsible for proposing initiatives, seeking solutions, and presenting more coherent visions. In a free society, individuals are not pawns, but rational, intellectual beings guided in their assessment by reason and morality, through which they formulate their shared vision of society and its development.

What has afflicted the Syrian people during the past seven years, and over the many years prior, needs collective attention to emerge from the slaughtering and fragmentation of both society and humanity, as well as a vision for a future where human rights and values of justice and freedom flourish. This should include a range of visions:

A **cultural vision** to eliminate the concepts and values that intrude on national culture, such as fanaticism, exclusion, violence, dehumanizing others and encroaching upon their dignity; a vision that revives the culture of human rights, citizenship and mutual respect, the culture of solidarity, tolerance and public interest; the vision that justice and equality are the basis on which humans meet and form societies; a vision that nurtures the culture of responsibility towards other people, animals, and nature; a culture that advances the care for the environment in human societies, restoring the understanding of collective environmental heritage and the responsibility for preserving and protecting it;

A **social vision** that upholds equal rights and justice at all levels, and citizenship rights that are based on human rights; a vision that is nurtured and served by just, responsible and transparent institutions that work to enable citizens to reach genuinely equal opportunities and protect their right to participate and to advance humanely, socially, and ethically; a vision that entrenches a culture and behavior of equality between genders and between citizens, and that develops a sense of individual and collective responsibility, as well as moral responsibility for the violations of human and individual rights or the rights of any group regardless of its size; a vision that develops a sense of responsibility towards future generations and towards transferring human, social, and cultural capital that permits them to lead a more secure, affluent and prosperous life;

An **economic vision** that is founded on the ideals of inclusive development, which enhance the values of cooperation and common interests, rather than competition and inhumane efficiency; an economic development that achieves justice and common wellbeing, diminishes social inequalities and encourages sharing the fruits of development; an economic vision that enhances the social sovereignty over national resources and defends the country's resilience and independence; a knowledge-based development that builds on the scientific and technological progress humanity has achieved; a development based on the actual sharing of public interest to which both private and communal sectors contribute, to be led by the state through its professional, independent and transparent institutions.

Challenges faced by Syrian women refugees in neighbouring countries during the electoral process

Ms. Roula Rekbi, Coalition of Syrian Women for Democracy, Syria

Challenging stereotype in asylum countries

A few days ago I attended a panel discussion about our cities and the relationship between homeland and exile. The panellists talked about alienation, loneliness, nostalgia, loss, and isolation. I left with a head full of dark questions, which only faded under the positive influence of a play written and performed by a group of young Syrian women about refugee life and suffering. It told the story of how they came out of their small or large tribulations with psychological or physical damage that left negative impacts on the life of some and positive ones on those of others. What surprised me is not only their beautiful and sincere performance, but the beautiful personal developments it managed to reveal: The transition from a state of disguise to the state of trust and freedom of expression through body or speech, and the ability to express without fear of social or political censorship. One of them had redefined the homeland, saying: "Syria is my country and is valuable to me, but what a shame it is that it did not provide me with the safety and stability, the peace of mind, and the company of family and friends, which constitute the homeland given to me in Lebanon; for the homeland is not a pile of stones, a land and streets." Another young girl spoke of the blackmail and the outrageous molestation that she had been subjected to, and how she learned not only to overcome them, but to transform them into life lessons. Many of these stories were transformed through these girls' narrations into beautiful and tragic epics, yet none of them lamented their misfortune, and none of them cried to their lost dreams or lost loved ones. Rather, every single one of them has lived or is living a real tragedy, and most were able to transform that pain into positive energy and a desire to move forward.

Most Syrian families in Lebanese refugee camps belong to the middle or lower class, and are living in tents or common housing amid extremely harsh conditions. The war led to radical changes in family dynamics. Most men became unemployed and were no longer the heads of their families, whereas many women were forced to work. Some had believed that they would never have to work after marriage and that it was the husband's role to provide money and security for the family. Those women turned from being dependent to providing for their households, and therefore men lost one of their most important traditional roles, that of being in control of their families as breadwinners. Some of them considered this a great loss, while others were brought closer to their families: "Before the war, my husband provided for all of our family's needs, and now that has become my role." This role swapping has led to a positive development for a lot of women who had suffered from patriarchal marginalization and domination. Now these women have dared to demand that household responsibilities and care for children be split, and many husbands have agreed to do so.

Having suffered from various forms of violence in the past, beginning with religiously rooted patriarchal violence and not ending with systematic political violence, Syrian women have now managed to break the stereotypical role in their countries of asylum. Many of them have dared to demand divorce, others have sailed the sea and risked their lives so that their families reach safe shores. Certainly, friction with other customs and cultures has played a role, but changing gender roles in wartime may lead to the exposure of a long list of preconceived definitions of how to be a real man, or a perfect woman. The deception that women have been exposed to by the saying "Paradise lies beneath the feet of mothers" – which had long turned women into reproductive machines and socialized them since childhood to embrace this function – has been overcome by many refugee women due to the heavy moral and material responsibilities they have shouldered, and through their struggle with a difficult and exhausting life.

The legal and living conditions of Syrian refugee families in Lebanon

Seven years after the beginning of the revolution in Syria, the Syrian refugees registered in Lebanon – estimated to be about one million people – find themselves in poverty and debt. The percentage of families living in extreme poverty, i.e. on less than \$2.87 per person a day, has reached 58% in 2017, compared to 52% in 2014, according to a study by the UNHCR. This is knowing that the Lebanese poverty line is \$3.84 per person, and Lebanese families living on that poverty line amount to 76%. Employment opportunities are few or almost nonexistent, due to legal constraints related to residency and Lebanese laws. As such, 36% of Syrian families have no working family members, and 53% have only one working family member, and 11% have two members working.

Acquiring documents remains the biggest challenge for families in Lebanon, with legal residence continuing to decline significantly. In a UNHCR, UNICEF, and WFP survey conducted in June 2017, 74% of respondents between the ages of 15 and above said they lack legal residence. At the household level, only 16% of families had all of their family members with legal residence, and less than half had only one family member with legal residence. Notably, families with no family members with legal residency increased from 20% in 2015 to 55% in 2017. The \$200 cost of a legal residency was considered the main barrier to the renewal of residency, with other barriers including the absence of a Lebanese *kafeel* (sponsor) or a legal lease – as most families live in random shelters, deprived of basic human conditions.

Birth certificates are the other challenge: 17% of families are able to complete the four steps of newborn registration, which are:

1. Birth certificate from the hospital or midwife
2. Registration of the birth certificate at the *mukhtar* (local public official)
3. Registration of birth in the civil register
4. Registration of birth in the register of foreigners, which requires parents to submit Syrian marriage certificate, proof of legal residence in Lebanon, and above all of that, for the registration to be transferred to the civil record in Syria, it has to be ratified by the Ministry of Foreign Affairs and by the Syrian embassy.

This policy changed in September 2017. The impact of this change on the asylum community has yet to be observed.

Currently, 20% of households in Lebanon are headed by women, who are in some cases the only source of income – as their husbands have been killed, arrested or forcibly disappeared. Refugee women are also vulnerable to harassment and wage discrimination, for a woman's monthly income is \$159, while that of a man is \$206. Added to this is that the human rights set out in international conventions are frequently violated.

The lack of legal documents has put Syrian refugees at risk of being arrested, and this has hindered their access to jobs, schools, and healthcare. Their priorities are summarized as follows:

Sensing security and freedom from eviction, civil identification documents, food security, rectifying their economic situation, healthcare and education.

Electoral challenges

Does international law protect the right to vote for citizens living abroad? Who has the right to vote abroad?

Participation is a unique feature of democracy. It requires a consultative process conducted by the state in the appropriate time and adds to the latter's authority public legitimacy. Article 25 of the International Covenant on Civil and Political Rights states that the right to participate includes the right of individuals to vote and to be elected, and to take part in the conduct of public affairs. According to Article 25 of the Covenant, states must take positive measures to ensure the full and effective enjoyment of the right to participate. States are also required to ensure that persons unjustifiably deprived of the right to participate in political and public affairs have full access to justice and the mechanism of elections.

Article 4 of UN Resolution 2254 states that: "support for free and fair elections, pursuant to the new Constitution ... administered under supervision of the United Nations, to the satisfaction of the governance and to the highest international standards of transparency and accountability, with all Syrians, including members of the diaspora, are eligible to participate."

How can this item be translated into Syrian reality in light of diaspora conditions?

1. "Free and fair elections ... under supervision of the United Nations." Certainly "under supervision of the United Nations" is a serious phrase, and the UN has provided assistance to more than 100 countries since 1989. Most UN projects have been limited to technical assistance and coordination of international assistance for conducting elections, in addition to providing the high committee of elections with advisers as happened in Iraq in 2005, without playing a directly regulatory role. The Syrian situation, however, is different, and no one expects that the UN will organize meaningful national elections. Experience has demonstrated the UN failure to deliver aid to the besieged areas, despite there being an international mandate. The final say has been reserved for branches of the security intelligence and its violent practices. Add to that the fragmentation of much of Syria's population, estimated to be 21 million before the war, across different countries around the world. The UNHCR states that 4.3 million Syrian citizens have been displaced to neighbouring countries and should have the ability to vote for their country's future, yet the Syrian government is unable to organize voting from abroad and will certainly oppose the right of refugees to vote, since many have fled mainly to escape the Assad regime.
2. Article 30/e of the Syrian electoral law stipulates that the candidate shall be a resident of the Syrian Arab Republic for a period of no less than ten consecutive years at the time of applying for candidacy, a strange condition clearly aimed at excluding the opposition. Another crippling condition is the obtention of a written nomination by 35 members of the People's Council.
3. The voter residing outside the Republic shall be registered with his passport with a departure stamp from any Syrian border departure point, but a significant segment of Syrians have fled in irregular ways, which consequently deprives them of the right to vote.
4. The above-mentioned lack of official documents for refugees in Lebanon, in addition to fear and the dominion of pro-regime forces over the labor market available to Syrians, will negatively affect their freedom of choice.

Finally, the biggest challenge to any electoral process inside and outside Syria is the establishment of a genuine democratic system based on equal rights of citizenship, guaranteeing freedom and justice and respect for human rights and women’s rights. Those who will vote desire to know to which country they are returning to, whether or not they will be able to own a house instead of their destroyed one, and if they will at all be thrown into jail simply for having expressed their political views. Thus, if the electoral process is not accompanied by a real political transition, it will be a repetition of all of the sham electoral processes that we have seen before, which means a return to the square one of violence.

Electoral districts and gender in the new electoral law

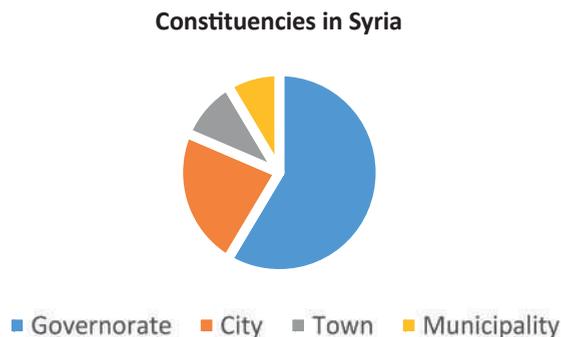
Ms. Sawsan Zakzak, Syrian Women League, researcher, Syria

The fourth paragraph of UNSC Resolution 2254 includes a clear reference to “free and fair elections... to the satisfaction of the governance and to the highest international standards of transparency and accountability, with all Syrians, including members of the diaspora, eligible to participate, as set forth in the 14 November 2015 ISSG Statement.”¹¹⁰ The huge complexities that accompany this process of peace-building in Syria and the complexities related to each of its steps are no secret, especially if the influential players in the Syrian negotiations are counting on the new Constitution and elections (the content of which is yet to be determined) as a primary door to building peace in Syria.

Because of these complexities, the design of any electoral process in Syria needs to discuss the most minute details, not only because of the ongoing armed conflict, but also because of the prolonged absence of real elections at all levels of the country for over 60 years. Since women in Syria constitute more than half of the population, and if the task of rebuilding Syria is to be their responsibility, then including their empowerment and equality in the electoral programs adds new dimensions that have to be taken into consideration in the designing of this electoral process. The constituency, in all its aspects, is in many respects one of the most influential factors in the elections.

What is a constituency?

A constituency is an independent territorial unit, or a unit chosen solely for the purpose of elections, that is specified in order to hold elections for one or more seats in an elected body or for a decision-making position.



(Measurements in this graph do not match the real spaces of these circles)

¹¹⁰ Resolution 2254 (2015) Adopted by the Security Council at its 7588th meeting, on 18 December 2015.

Constituencies according to the types of general elections in Syria:

- Local administration elections:¹¹¹

- Governorate: The geographical area within the administrative and local division of the Syrian Arab Republic that includes several cities, towns, municipalities, villages and farms, and a governorate can be one city.
- City: Any governorate center, district or locality with a population of more than 50,000.
- Town: Any sub-district center, locality or a collection of localities with a population of between 10,001 and 50,000.
- Municipality: Any locality or collection of localities with a population of between 5,001 and 10,000.

- People's Council elections:¹¹²

- There are 15 constituencies.
- Each governorate is a constituency with the exception of Aleppo, which is divided into two constituencies: the city of Aleppo and the districts around Aleppo.

- Presidential elections:¹¹³ Syria as a whole is a single constituency.

Mechanisms for determining constituencies

There are a variety of mechanisms around the world to determine electoral constituencies, some of which specify seats or constituencies for women or other groups of people. Among the most prominent mechanisms used are:

- Determining the actual census and comparing it with voter registration data,
- Deputies for a specific number of populations, and an equal representation of all constituencies,
- Respecting the boundaries of administrative divisions in determining constituencies,
- The allocation of separate seats for minorities in the country, or the allocation of seats or special constituencies for specific groups such as women, laborers and farmers.

The forms of voting and the determining of electoral constituencies and gender

The form of voting in an electoral system and the size of the constituencies are mutually influential. For example, in small constituencies one vote is used, according to the number of seats in parliament, such that the number of votes in one constituency is the same as that in other constituencies. In this way, each voter elects only one candidate. The chances of women succeeding using this form of voting are often lost in our country because it is often the "local leader" or the representative of the ruling party that is capable, both financially and morally, of garnering more votes.

¹¹¹ Legislative Decree No. 107 of 2011 on local administration in Syria.

¹¹² Constitution of the Syrian Arab Republic issued in 2012.

¹¹³ Ibid.

On the other hand, mixed elections are used in two different forms:

- A geographical constituency based on administrative divisions,
- Another constituency that may be:
 - Of the national list in which a specific number of candidates run regardless of their original constituency;
 - Party lists in which party representatives can compete either in the national constituency or in smaller constituencies,
 - These constituencies may be designated to elect representatives of so-called religious or ethnic “minorities.”

In this type of electoral system, a voter casts two or more votes, one for a candidate, which is used to select a representative for a constituency, and another for the party list, national list or minority list. Sometimes a voter from one minority is not permitted to vote for a candidate on another minority’s list.

The chances of women succeeding in elections are naturally much higher in this type of electoral system: either by allocating quotas for women or by running in national lists that render them competing among themselves. One example of that is Morocco prior to the quota system, where thirty women succeeded in the national list, increasing the percentage of female representatives from 0.7% to 10.7%. Another way is running on party lists, which requires other types of regulations, like alternating between men and women on the party list (man-woman or woman-man).

In some countries, more than one mechanism can be used to vote in multiple constituencies or in one constituency. In Jordan,¹¹⁴ Article 8 of the Election Law No. 25 of 2012 stipulates:

A) The Kingdom shall be divided into a number of local constituencies allocated one hundred and eight parliamentary seats, in accordance with the schedule annexed to this Law.

B) Women shall be allocated 15 parliamentary seats, and the names of the winners shall be determined according to the provisions of Article 51 of this Law, in addition to the seats obtained by women in accordance with the provisions of paragraphs (A) and (C) of this Article.

C) A general electoral constituency shall be established in the Kingdom, provided that the list is closed and proportional and includes all of the regions in the Kingdom, not excluding the members of the Badia constituencies and the quotas stipulated in this Law. This constituency will be allocated twenty-seven parliamentary seats, with the conditions and procedures to run on this list determined by the provisions of this Law and the executive instructions issued per this Law.

D) Each voter shall have two votes as follows:

- One vote for the local constituency
- One vote for the general constituency.”

In Jordan, there are 270 geographical constituencies, with each 145,000 citizens having one. As for the representation of women, there is one constituency for every 350,000 women. Remaining is a

¹¹⁴ Jordanian Independent Election Commission website.

proportional representation, with one constituency for every 575,000 citizens. In 2016 the **number of the House of Representatives seats was 130**, including 15 for women, 9 for Christians, and 3 seats for Circassians and Chechens.

In Pakistan¹¹⁵ there are three types of seats in the National Assembly:

- 272 general seats: The representatives in the general seats are elected on the basis of simple majority based on 272 individual constituencies;
- 60 seats reserved for women: filled on the basis of a system of proportional representation based on the number of general seats in all constituencies;
- 10 seats reserved for non-Muslims (Hindus, Christians and others): filled according to the same system of proportional representation but with the entire country as a single constituency.

Women and non-Muslim candidates are selected from closed lists that are submitted by political parties.

Challenges related to determining constituencies:

Who determines constituencies? This question may seem unnecessary to ask in countries that are in a state of stability and rotation of power, because there are three options for these countries to determine their constituencies:

- A legislative authority: Running the risk of being influenced by the parties that won in the last elections;
- An executive authority: Also running the same risk;
- An independent commission: Running the risk of only appearing formalistically neutral. It is possible to improve the performance of this commission by:
 - Allowing representatives of all major parties to serve on the body that makes the decisions to re-divide;
 - Allowing representatives of major political parties to analyze the potential partisan impact of the re-division plan prior to the adoption of that plan;
 - Listening to the objections made by the public (citizens or civil society) to the proposed plan, if there were any, and designing the final map after considering these objections.

In New Zealand, for example, there exist legal texts that address the representation of the indigenous Maori people, in addition to sixty general legislative constituencies. The representation committee establishes several constituencies specifically for Maori people. For instance, there were five such constituencies in 1993, six in 1998, and seven in 2011. These Maori constituencies are geographically defined and distributed across general electoral constituencies, and for the sake of voting in Maori constituencies instead of a general constituency, Maori voters should register in a Maori list, although this remains optional. A Maori can vote in a general list instead, if they so choose. With this electoral feature, Maori people have been represented proportionally in the Legislature relative to the percentage that they make up in the population for over a decade.

¹¹⁵ Online source.

In Syria, however:

The issue of determining constituencies in Syria, like any country yet to emerge from armed conflict, is one of the biggest problems facing the design of the electoral process, especially with:

- The urgent need for the electoral process to be a lever for the establishment and building of peace, especially with the society being divided, some societal phenomena being reverted to pre-national affiliations, and social division reaching splits within the same family.
- Resolution 2254 itself has stipulated an electoral process involving “all Syrians, including members of the diaspora, eligible to participate, as set forth in the 14 November 2015 ISSG Statement.” But how will those millions of Syrians living outside of the country participate?
- The growing role of warlords and war merchants, and the great opportunities they have to influence decision-making with regard to determining constituencies that ensure their success;
- The failure to ensure an equal representation of the regime and its opposition in governing bodies. The regime may resort to distributing “rewards” for those who stand by it, and to facilitate their success in the elections in accordance with special arrangements for constituencies so as not to compete with each other;
- The absence of partisanship in the country, which will make the election according to proportional party regulations very difficult, and it may only be a play to distribute “crumbs” to the parties nurtured by the regime;
- The fear of resorting to a mixed electoral system assigning seats to a number of citizens on the grounds that they belong to “minorities”;
- The absence of women from the military field will make the issue of fair representation fall outside the interests of the contestants, especially when all warring parties deny women’s grievances with all their national ramifications.

Problems, or inevitable questions:

- Does the larger constituency benefit from the strengthening of national unity in a divided country?
- Can women succeed in small constituencies under the domination of warlords in a society that does not respect women’s rights?
- Can new ways be found for candidates with poor financial capabilities, especially women, to communicate with voters (as Dr. Aref Dalila did in his campaign)?
- Is it possible for the votes of prisoners not deprived of their political rights, and those who are not free to vote for whoever they choose, to alter the results of the elections?
- Could the stripping of the political rights of dozens of thousands of Syrians be addressed?
- Could a national list be chosen along with a regional list?

VI. International support and commitment to gender sensitive electoral system

OHCHR'S engagement in the context of electoral processes: women's political rights

Ms. Georgina Mendoza Solorio, Women's Human Rights and Gender Section, OHCHR, Switzerland

I would like to thank the EuroMed Feminist Initiative for inviting me to participate at this conference and share with you OHCHR's experience addressing women's political rights when engaging in electoral processes.

Genuinely free and fair elections are a necessary and fundamental component of sustained efforts to protect and promote human rights for all. Participation in political life, as candidates and voters, cannot be effectively exercised unless everyone enjoys a number of other basic rights (e.g., freedom of expression and peaceful assembly, freedom from fear and intimidation) without discrimination.

Can we describe as free and fair, elections in contexts where women, -half of the population- are impeded to participate equally with men?

According to the latest data from the Inter-Parliamentary Union, 23.5% of total parliamentarians worldwide are women. This figure is behind the goal established in the Beijing Platform of 30%. Even though some progress has been achieved, for example, in the number of women politicians at sub-national levels, candidates and voters, women continue to face multiple challenges to exercise their right to participate in political life, due to power imbalances in society based on entrenched gender roles and stereotypes. Women continue to be underrepresented at decision-making positions at the local level, as governors or mayors, but also at the highest level of decision-making; as of today, less than 20 women serve as Heads of State/government, according to the latest estimates of UN Women.

Some of the barriers faced by women to participate in political life include: non-compliance with legal guarantees regarding quotas and their lack of enforcement, persistent traditional and patriarchal attitudes, limited access to political networks, insufficient capacity-building and campaign funding for potential female candidates, and the underrepresentation of particularly disadvantaged groups such as young women, women with disabilities and women belonging to minorities. Different types of violence against women by State or private actors in electoral processes is another factor, which prevents them from standing as candidates, discourages them from voting or is used to punish them for being active in the electoral process or to coerce their political choices.

In post-conflict contexts, challenges to ensuring women's participation and promotion of gender equality are related among others to decisions on the choice of electoral systems. In this sense, the CEDAW Committee states in its General recommendation No. 30 (on women in prevention, conflict and post-conflict situations), that "substantive progress towards the equal participation of women as candidates and voters, in addition to the holding of free and fair elections, will not be possible unless appropriate measures are taken, including the creation of a gender-responsive electoral system and the adoption of temporary special measures to enhance women's participation as candidates and ensure a proper voter's registration system and that female voters and female political candidates are not subject to violence by State or private actors."

What does OHCHR do?

OHCHR's engagement in electoral processes is underpinned in its mandate, which requires increased attention to human rights concerns, including gender-based discrimination related to the electoral process (not technical aspects of elections) as well as on the UN policy framework on Electoral Assistance. The form of this engagement depends on whether there is a field presence or not, as well as on the mandate and capacity of such a presence. Specific deployments to further strengthen capacities in the field or to support the RC and UNCTs are also possible. The High Commissioner, based on his/her independent mandate, can also decide to establish fact-finding missions to look into human rights violations in the context of electoral processes (e.g., Kenya in 2008). OHCHR can also provide support to investigative bodies established by the HRC, SC and the SG to investigate these matters.

Various types of activities can be initiated/strengthened to address human rights concerns along the three phases of an electoral process (pre-polling, polling and post-polling):

1. Monitoring

Monitor the human rights situation in a particular context before, during and/or after an election with the aim to foster an environment conducive to inclusive elections and ensure the respect of relevant international human rights norms, in particular, freedom of expression and opinion, freedom of peaceful assembly, freedom of association, freedom of movement, freedom from discrimination, including gender-based discrimination and freedom from fear and intimidation. Also, depending on the legal, social and cultural circumstances, specific strategies to monitor the participation of women along the electoral process can be developed. For example:

In 2009, during the presidential and provincial elections in Afghanistan, the human rights component of the United Nations Assistance Mission in Afghanistan (UNAMA) developed checklists focused on women's participation with the aim to ensure that HROs would integrate a gender dimension while monitoring political rights. For example, there can be limitations to women's freedom of expression while campaigning, such as being unable to use the media to campaign; and violence against female candidates (threats, harm, etc). The aim was to understand to what degree cultural and traditional practices as well as the security environment affected women's capacity to participate in the elections differently from men.

2. Technical assistance / Capacity building

Technical assistance / Capacity building: aimed at government counterparts, NHRIs, CSOs, the media and any other relevant stakeholder playing a role in the electoral process with the aim that all play a constructive role and contribute to fostering an environment which guarantees dialogue, and peaceful, free and fair and transparent elections. The lack of knowledge of the role of each actor in the electoral process often creates a dysfunctional process. OHCHR has confirmed that training tailored to the role of each actor is effective in contributing to a better understanding of roles and contributes to the creation of an enabling electoral environment. In this sense, training for security forces, for example, could be tailored to their need in protecting human rights while fulfilling their task of ensuring order during the electoral period, while the media could be trained on professional and non-discriminatory coverage of electoral processes.

In 2012, OHCHR built the capacity of CSOs in Senegal and supported women's organizations in the establishment of a "Women Situation room for peace and security including peaceful elections in Senegal". In partnership with UN WOMEN, and UNDP, the Platform brought together more than 60 women's organizations. The Platform's intervention focused on mobilization, mediation and monitoring as it brought together thousands of rural women from all regions of Senegal. The Platform succeeded in creating a space of dialogue between key actors of the electoral process and managed to advocate effectively before major political leaders, religious leaders as well as electoral bodies to make them aware of their role in ensuring the elections are peaceful and fair.

The Platform enabled women to "dare to speak" and to fully assume their right to freedom of expression. This initiative also allowed them to be more aware of their capacity to mobilize actors and influence them to take better account of women's concerns, to promote women's rights for greater participation in public life and to play a significant role for peace-building in the political and social space. Furthermore, the activities of the Platform significantly contributed to strengthening women's political leadership in Senegal.

Also in 2017 in Senegal, the office supported the implementation of the parity law through technical assistance to the National Gender Observatory and Women Electoral platform. It also supported the Observatory in producing a documentary film on the adoption of the law for dissemination in the sub-region as a best practice.

3. Advocacy

Advocacy with the view to prevent violence and human rights violations, mitigating them or addressing them, depending on the situation (e.g., campaigns for peaceful elections and general advocacy for electoral laws and institutions compliant with human rights).

In the Gambia and ahead of the forthcoming local elections in April 2018, OHCHR organized jointly with the West African Network for Peace building, the CSOs Gender Platform and the Women's Bureau, a dialogue aiming to encourage political parties to look into their methods of work and explore ways to overcome barriers to women's political participation. The meeting brought together all political parties of the country, CSOs and gender activists, including the Chairman of the Independent Electoral Commissions and the Speaker of the National Assembly, who opened the meeting. It seems that as a result of that meeting, targeted discussions will follow regarding the candidate selection policy.

In November 2017 and based on the UN call for increasing the role of Afghan women in election process and strengthening women's participation in all aspects of the electoral process, UNAMA HRS focused its Global Open Days with a series of nationwide dialogues around women, peace and security. Afghan women outlined the challenges women face as voters, candidates and activists. They stressed that real participation in elections means that women have the capacity and freedom to vote for candidates of their choosing, without force or pressure. The discussions also focused on the necessity for a secure environment in which women may cast their votes, as well as the difficulties women in remote, rural districts face, particularly in terms of the distances they must travel to reach polling centres.

These are just some examples of OHCHR interventions to ensure that human rights and gender concerns are addressed during electoral processes and most importantly on the types of support that OHCHR can provide to civil society organizations involved in electoral processes.

VII. RECOMMENDATIONS WORKING GROUPS

Electoral system favouring women's participation and gender equality in Syria:

1. Composition of the lists and electoral procedures

Participants discussed around the need adopting a comprehensive approach and acting on several levels:

- Formation of a higher committee for elections which is independent and made from members of civil society, and whose decisions are subject to objection before the higher committee
- Adoption of the mixed electoral system, consisting of 50% proportionality through party lists and 50% through individual voting starting from small constituencies.
- Party lists are divided into 50% women and 50% men candidates.
- In individual voting, 30% of seats are reserved for women.
- The electoral law shall declare null and void any ballot paper that does not include the percentages decided upon.

2. Quotas

A debate on whether a quota system should be provided for in the Constitution and thus granted constitutional protection or rather in the election law and thus granted legal protection enjoyed by regular laws took place, taking into account that granting the quota system constitutional protection means that it would require the majority that is usually needed for an amendment of a constitutional text. This also grants a degree of inertia that cannot be easily amended to keep up with subsequent developments. On the other hand, granting the quota system legal protection in the election law means that it can be amended by a majority required to amend legislative texts, which means a degree of flexibility to amend it in accordance with subsequent developments. At the same time, however, this may make it too easy to amend, and that may be catastrophic, in case the amendment was biased against women (such as eliminating the quota or reducing it despite the need to maintain or to increase it).

- Two electoral systems are proposed:
 1. A mixed system (50% according to the block voting system and 50% according to the system of proportional representation at the level of one constituency) forcing the parties to have 50% of their lists as women candidates and following the principle of horizontal and vertical parity in competing lists.
 2. A mixed system (35% according to the system of proportional representation at the level of one constituency and 65% according to the multi-constituency majority system) with a quota of 35% reserved for women within the seats allocated to each system. (This system has gained more support within the working group).
- Provide incentives for parties to nominate more women, such as granting them an extra bonus from government funds to support them or giving them extra free broadcast on the radio.
- Impose sanctions on parties that violate the rules related to supporting and increasing the participation of women in the electoral process (such as disqualifying electoral lists or depriving parties of part of the government's funding).

- Women’s role and participation in the electoral process should be reinforced as a whole, from the voter registration stage to the stage of monitoring electoral process.
- Legislate the rules that protect the right of women to exercise their constitutional right to participation in public affairs and public life, whether as voters or as candidates, and to combat the phenomena of depriving women from freely expressing their views, such as so-called family voting or proxy voting.
- Increase the legal penalties related to offences against female voters or candidates participating in public affairs based on their gender in order to deter gender-based crimes.
- Elevate the role of civil society organizations in raising awareness and educating about elections, and directing efforts towards the reforming of misogynistic mentality wherever it exists, not only to empower women but also to educate misogynistic people, whether men or women, on the importance of women’s active role and on their rights to participate in public life on equal grounds with men.

3. Electoral environment

Political environment:

1. A political settlement that produces a neutral environment allowing all Syrian men and women to participate
2. The neutrality of state institutions towards all Syrian men and women without any particular dominating party
3. Justice, Equality: Ensuring full gender equality at all stages of the political process
4. Building the course of transitional justice

Security environment:

1. A state of peace and security that allows for this practice and for freedom of movement within the country
2. Eliminating militarization and proliferation of weapons while ensuring freedom and transparency
3. The neutrality of the army and security apparatus and their non-interference in political and electoral life

Legal and legislative environment:

1. A constitutional framework governing the electoral process, including ensuring the right of voting for all Syrians inside and outside Syria
2. Parties law, associations law, media law, and elections law
3. A free and independent judiciary

Organizational environment:

1. An independent, impartial body representing the various segments of society that abides by gender equality and enjoys high credibility and efficiency.
2. Ensuring the freedom of civil society organizations to monitor the electoral process and to create appropriate conditions for its taking place, including community awareness.
3. Protection of electoral centers.

The International conference *Electoral Systems and Gender Equality in Democratic Transitions* was organized by the Coalition of Syrian Women for Democracy and EuroMed Feminist Initiative on the 27 -28th February, 2018 at the Centre International de Conférences de Genève (CICG), Switzerland. The conference took place in the frame of the program “Towards Sustainable Peace and Democracy in Syria Through Strengthening Civil Society and Women’s Rights” funded by Sweden.

With the participation of experts in electoral systems, experts in law, women’s rights advocates, and experts in gender equality, this conference served as an interactive and knowledge-grounding space, reflecting the principles of democratic transformation in Syria, the environment that will allow for this transformation to enhance the commitment to gender equality in all processes of democratic transition, to promote the effective political participation of women and to equip them with the knowledge necessary for them to mobilize, advocate, and form alliances, as well as to enable them to learn from the experience of other countries.

INTERNATIONAL CONFERENCE

ELECTORAL SYSTEMS AND GENDER EQUALITY IN
DEMOCRATIC TRANSITIONS

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DE GENÈVE (CICG)