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# OCCUPYING THE STREETS AND SPACES OF POWER: THE PARTICIPATION OF WOMEN IN POLITICS

The Case of Brazil

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Abstract: The aim of this thesis is to investigate whether and to which extent Brazil has been complying with its international obligations on the women's right to political participation. I will elaborate on the relationships between women and politics, proving that gender equality is a condition of democracy. I will then identify what States are expected to do under international human rights law to comply with its obligations on the political rights of women. Finally, I will assess the efficacy of the legal and extralegal measures implemented by Brazil to fulfill women's right to political participation equal to men.

Key words: representation, gender, politics, quotas, women

## TABLE OF ABBREVIATIONS

CEDAW – Committee on the Elimination of All Forms of Discrimination Against Women

CNDM – National Council on Women’s Rights (*Conselho Nacional dos Direitos da Mulher*)

SPM - Special Secretariat on Policies for Women (Secretaria Especial de Políticas para Mulheres)

STF - Federal Supreme Tribunal (*Supremo Tribunal Federal*)

TSE – Superior Electoral Tribunal (*Tribunal Superior Eleitoral*)

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# 1. INTRODUCTION

## 1.1 Context and justification of the topic

*Because it's 2015!*

The year 2020 is an important one. It will be remembered as the year when the lives of probably everyone in the world have substantially changed in a matter of weeks, because of a highly contagious (and very inconvenient) virus that scientists baptized as Covid-19. The Heads of State of France, Italy, Germany, Norway and Canada, along with the presidents of the European Council and the European Commission, published a joint op-ed in which they call for the solidarity of everyone, highlighting the need of a global response to the pandemic - 'we will not truly be safe until all of us are safe', they stated.<sup>1</sup> The pandemic made it clear that the way politicians conduct the situation will determine which countries will leave the crisis faster and with fewer violations of rights.

The present thesis was wholly written during the pandemic. While I was doing my research, I received from a friend who knows about my interest in the participation of women in politics an article published by *Forbes* magazine under the title 'What Do Countries With The Best Coronavirus Responses Have In Common? Women Leaders'. In short, the article suggests that women have a different, better way to conduct crisis and overall to wield power, which was demonstrated by the fact that the countries with the best control of the pandemic were led by women. The article invites the reader to compare women's leadership style with those of 'the strongmen using the crisis to accelerate a terrifying trifecta of authoritarianism: blame-others, capture-the-judiciary, demonize-the-journalists, and blanket their country in I-will-never-retire darkness (Trump, Bolsonaro, López Obrador, Modi, Duterte, Orban, Putin, Netanyahu...)'.<sup>2</sup>

While there are still not many studies on the impacts of having women in public and political office, it is intuitive that there is something wrong when women constitute more than half of the

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<sup>1</sup> 'The global response: Working together to help the world get better' (3 May 2020). <[https://ec.europa.eu/commission/presscorner/detail/en/ac\\_20\\_795](https://ec.europa.eu/commission/presscorner/detail/en/ac_20_795)> accessed 4 May 2020.

<sup>2</sup> 'What Do Countries With The Best Coronavirus Responses Have In Common? Women Leaders' *Forbes* (13 April 2020) <<https://www.forbes.com/sites/avivahwittenbergcox/2020/04/13/what-do-countries-with-the-best-coronavirus-reponses-have-in-common-women-leaders/#611794c23dec>> accessed 14 April 2020.

population in a country but represent less than 15% of the seats in parliament. That is the case in Brazil.

2020 is also the year of the 25<sup>th</sup> anniversary of the adoption of the Beijing Declaration and Platform of Action, through which 189 States agreed to take action on 12 critical areas of concern to advance on women's rights, including 'women in power and in decision making'. The Platform of Action recognizes as a strategic objective to 'take measures to ensure women's participation in power structures and decision making', calling upon governments to 'commit themselves to establishing the goal of gender balance in governmental bodies and committees'.<sup>3</sup>

Although the anniversary of the Beijing Declaration might be overshadowed by the pandemic, it is the ideal moment to assess how much States have progressed on the advancement of the rights of women. In contrast to what common sense may suggest – 'many argue that "now" is not the time to worry about women's issues, when we have a "real" crisis on our hands' – these are times when women need even more to have her rights ensured. Phumzile Mlambo-Ngcuka, executive director of UN Women, has recently reminded that 'there's no gender-neutral pandemic, and this one is no different. Women are affected not just by the virus or the disease, but by the circumstances surrounding it'. On the other hand, she also highlighted that the most critical when it comes to building a better world post-Covid is to put more women in leadership positions – 'Let us try and position women in strategic leadership so they're inside the rooms where decisions are being made; and trust them to make the right decisions for all of us. Let's just get them inside that door'.<sup>4</sup>

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<sup>3</sup> United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, <<https://www.refworld.org/docid/3dde04324.html>> accessed 18 June 2020.

<sup>4</sup> 'There's no gender-neutral pandemic, and this one is no different' *The New York Times* (9 August 2020) <[https://messaging-custom-newsletters.nytimes.com/template/oakv2?uri=nyt://newsletter/7f8c87a0-b2e8-56f9-a9e2-0170db869684&productCode=GN&CCPAOptOut=true&te=1&nl=in-her-words&emc=edit\\_gn\\_20200809](https://messaging-custom-newsletters.nytimes.com/template/oakv2?uri=nyt://newsletter/7f8c87a0-b2e8-56f9-a9e2-0170db869684&productCode=GN&CCPAOptOut=true&te=1&nl=in-her-words&emc=edit_gn_20200809)> accessed 10 August 2020.

Five years ago, when presenting the first gender-parity cabinet in the history of Canada, then-recently elected Prime Minister Justin Trudeau was asked by a journalist ‘why was that (having a gender-balanced cabinet) so important’. His answer sounded obvious: ‘because it is 2015!’.<sup>5</sup>

In Brazil, until 2015, there was no women’s restroom in the Senate plenary hall. Congresswomen had to leave the session and use the ladies’ room in the restaurant close to the plenary hall. The ‘inauguration’ of the first female restroom in the Senate hall in January 2016 was announced and celebrated as an ‘achievement’ of the women’s caucus in the Congress.<sup>6</sup> What are the symbolic and practical messages behind this fact?

Despite the general belief that women are not interested in politics, Brazilian women have been actively engaged in political movements that resulted in the advancement of democracy and human rights. In Brazil, their presence and activism were essential for the abolition of slavery, the end of the military dictatorship, and the fight for political and social rights.<sup>7</sup> Although the number of women occupying positions in the government is low, the intense activism of women in civil society makes it clear that they are interested in taking part in the decisions of the country.

In this context, this research will focus on investigating to which extent Brazil has been complying with its international obligations towards the realization of women’s right to political participation, since its re-democratization, in 1985, up to date. In the next section, I will explain how I structured this paper and which methodology I used to develop my research.

## 2.1 Methodology

The first part of the research (Chapter 2, Women in Politics) is dedicated to answering three relevant questions concerning women and politics. The first question is a very basic one: why do we need to care about improving the participation of women in politics? The second question is

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<sup>5</sup> ‘Justin Trudeau on cabinet’s gender parity: Because it’s 2015’ *The Washington Post* (6 November 2015) <[https://www.washingtonpost.com/video/world/justin-trudeau-on-cabinets-gender-parity-because-its-2015/2015/11/06/66a705fa-849a-11e5-8bd2-680fff868306\\_video.html](https://www.washingtonpost.com/video/world/justin-trudeau-on-cabinets-gender-parity-because-its-2015/2015/11/06/66a705fa-849a-11e5-8bd2-680fff868306_video.html)> accessed 2 August 2020.

<sup>6</sup> ‘Bancada Feminina do Senado conquista direito a banheiro feminino no Plenário’ (6 January 2016) <<https://www12.senado.leg.br/institucional/procuradoria/comum/bancada-feminina-do-senado-conquista-direito-a-banheiro-feminino-no-plenario>> accessed 2 August 2020.

<sup>7</sup> Secretaria Especial de Políticas Públicas para as Mulheres, ‘Conferência Nacional de Políticas Públicas para as Mulheres. Textos e Roteiros de Discussão’ (2007) 29 <[https://www.cdes.gov.br/jspui/bitstream/11451/706/1/doc\\_base\\_iicnppm.pdf](https://www.cdes.gov.br/jspui/bitstream/11451/706/1/doc_base_iicnppm.pdf)> accessed 2 August 2020.



somehow a sequence of the previous one: what are the impacts of having more female politicians, in society and in the political culture? And finally, the third question comes from the popular common sense: do women even want to engage in politics?

The methodology for this chapter consisted essentially of the revision of specific literature on political and social science, focusing on the issue of democracy and representation, gender perspectives, and the interactions between social and cultural patterns and the way women occupy spaces of power. However, since these are not my main fields of studies, I opted for not deepening in the theoretical framework, but rather elaborating basic research, mainly to understand if the whole discussion about women in politics actually makes sense. Also, I sought to confront the theoretical basis from literature with facts from the actual social and political context, by referring to the news on the media.

Chapter 3 focused on examining whether and to which extent Brazil is obliged to uphold the political rights of women at the regional and international levels. To solve this task, I analyzed the main treaties that contain obligations on the women's right to political participation and that Brazil is a party of, and consulted the general recommendations, concluding observations and other interpretative documents issued by the treaties' bodies in order to assess what States are expected to do to fulfill its obligations.

In Chapter 4, I examined the compliance from a legal perspective, that is, whether Brazilian legislation is compatible and sufficient to fulfill the international commitments concerning women's rights. I started by assessing the constitutional framework, using the interpretative decisions delivered by the Brazilian constitutional court. After that, I analyzed the federal legislation, more specifically the laws that provide for quotas and other special measures to increase the participation of women in politics. As it will be explained in the chapter, part of these measures was provided not directly by the law, but from decisions issued by the Judiciary. To measure the efficacy of the quotas, I collected data on the percentages of seats occupied by women at the National Congress, from 1982 (last election before the re-democratization) to 2018 (last election before the present research). Moreover, I revised literature on the electoral system and decisions issued by the electoral tribunals to understand what the shortcomings of the Brazilian legislation were.

Finally, in Chapter 5, I investigated what are the extra-legal measures that Brazil has been taking to promote higher participation of women in politics, examining the reasons why they have not been successful in achieving gender equality in political bodies so far. The departing point here were the reports submitted by the Brazilian State to the Committee on the Elimination of Discrimination against Women, under article 18 of the Women's Convention, as well as the Concluding Observations issued by the Committee. From the information collected in these initial documents, I started my research in other sources. Some of the key sources were the official State's news agency (Agência Brasil), governmental websites, official publications from the Women's Caucus at the National Congress as well as the National Plans on Policies for Women, federal laws and presidential decrees, and news on the media.

## **2. WOMEN IN POLITICS**

This chapter will elaborate on three relevant issues regarding women in politics. In section 2.1 I will expose reasons why it is needed to increase the participation of women in politics. I will then address, in section 2.2, what are the findings so far about the question of whether women in fact represent women and if their presence in parliaments has further influence in the political culture. Finally, in section 2.3, I will explore the link between culture, gender stereotypes and the inclusion of women in political life.

### **3.1 Reasons for the equal participation of women in politics**

Ensuring the effective participation of women at all levels of decision-making in the political sphere, on equal terms with men, is not only a necessary condition to achieve gender equality in society, but it is also a constituent element of democracy.

The concept of democracy has evolved through the centuries and, although contemporarily there is no single model of democracy, there are common features and values that are *sine qua non* components of any democracy. According to the former United Nations Commission on Human Rights (UNCHR) and the United Nations Human Rights Council (UNHRC),

(...) essential elements of democracy include respect for human rights and fundamental freedoms, *inter alia* freedom of association, freedom of expression and opinion, and also include access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and

organizations, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media.<sup>8</sup>

Whereas respect for human rights and fundamental freedoms are essential elements of democracy, democracy, in turn, affords a suitable environment for human rights and fundamental freedoms to flourish. In its resolutions, both UNCHR and UNHRC highlighted the interdependency and mutually reinforcing relationship between democracy and human rights, stressing ‘the right of every citizen to vote and be elected at genuine periodic elections without discrimination of any kind’, ‘the need for equal opportunities for men and women to participate in political and public life’ and ‘equality between men and women in decision-making’ as conditions to consolidate and strengthen democracy and human rights.<sup>9</sup> In a democracy, men and women have the equal right to influence decisions and demand accountability from decision-makers.

While women represent 49.6% of the world population,<sup>10</sup> they occupy only 24.9% of the seats in parliaments, and only 6.6% and 6.2% of the positions as head of states and head of governments, respectively.<sup>11</sup> In other words, despite comprising half of the population, women remain underrepresented in all positions of power and therefore have less influence in decision-making processes concerning their own rights. This discrepancy creates a problem in terms of legitimacy in the decision-making process. As I will demonstrate in this section, ‘democracy, by definition, cannot afford to be gender-blind’.<sup>12</sup>

Although the Convention on the Elimination of All Forms of Discrimination Against Women (Women’s Convention) expressly defines that “the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex”,<sup>13</sup> the Committee on the

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<sup>8</sup> UNCHR Res 2003/36 ‘Interdependence between democracy and human rights’ (23 April 2003), E/CN.4-RES/2003/36 and UNHRC Res 19/36 ‘Human rights, democracy and the rule of law’ (19 April 2012), A/HRC/RES/19/36.

<sup>9</sup> *ibid*; UNCHR Res 2000/47 ‘Promoting and consolidating democracy’ (25 April 2000), E/CN.4/RES/2000/47, and UNHRC Res 28/14, ‘Human rights, democracy and the rule of law’ (9 April 2015), A/HRC/RES/28/14.

<sup>10</sup> World Bank, ‘Population, female (% of total population)’ <<https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS>> accessed 13 June 2020

<sup>11</sup> Inter-Parliamentary Union, ‘Women in Politics: 2020’ <[www.ipu.org/resources/publications/infographics/2020-03/women-in-politics-2020](http://www.ipu.org/resources/publications/infographics/2020-03/women-in-politics-2020)> accessed 13 June 2020.

<sup>12</sup> Julie Ballington, Azza M Karam and International Institute for Democracy and Electoral Assistance (eds), *Women in Parliament: Beyond Numbers* (Rev ed, International IDEA 2005) 24.

<sup>13</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (Women’s Convention) art 1.

Elimination of All Forms of Discrimination Against Women (CEDAW) already clarified that the prohibition encompasses also discrimination on the basis of gender.<sup>14</sup> According to the Committee,

The term ‘sex’ here refers to biological differences between men and women. The term ‘gender’ refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women.<sup>15</sup>

Gender inequality is the product of historical processes of interactions between different social actors and institutions, where women have been traditionally relegated to a second-class citizen position: all across the globe, women acquired the right to participate in political life many decades after men; in a great number of countries, they were allowed to vote and stand for elections much later into the 20th century; in Saudi Arabia, these rights were granted to women only in 2015.

There are three main arguments that sustained the demands of the women’s suffrage movement in the past centuries that are nowadays often present in the contemporary debate on the need to increase the representation of women in politics: the *justice argument*, the *experience argument* and the *interest argument*.<sup>16</sup>

In essence, the *justice argument* advocates that equal participation of women in politics, either in suffrage or in representation, is a natural right, a matter of justice, expressed nowadays in terms of human rights. In other words, assuring the full access of women to political life, equal to men, is a human right obligation and, therefore, should be realized regardless of any discussion on the potential benefits or impacts of having more women in political office.<sup>17</sup>

In international human rights law, the right to equality and the prohibition of discrimination based on sex, especially regarding political rights, are legal obligations prescribed in several international and regional human rights treaties.<sup>18</sup> The respect for human rights and fundamental freedoms is a

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<sup>14</sup> UN Committee for the Elimination of All Forms of Discrimination against Women, ‘General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women’ (16 December 2010) UN Doc CEDAW/C/GC/28, para 2.

<sup>15</sup> CEDAW/C/GC/28, para 5.

<sup>16</sup> Drude Dahlerup, ‘Engendering Representative Democracy’ in Alonso and others (eds), *The Future of Representative Democracy* (Cambridge University Press 2011) 148.

<sup>17</sup> Ibid.

<sup>18</sup> See *inter alia* International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) arts. 3 and 26; Convention on the Political Rights of Women, arts. 1 to 3; Women’s Conventions, arts. 1-3, 5, 7 European Convention for the Protection of Human Rights and Fundamental

constituent element of any democracy; therefore, the quality of democracy depends on the measure of the realization of human rights obligations, which includes the right 'to take part in the conduct of public affairs', without any form of discrimination.<sup>19</sup>

The central idea of the *experience argument* is that women and men have different experiences throughout life and, consequently, different perspectives to contribute to the decision-making process and to influence the agenda-setting. As a result, improving the political representation of women would provide a greater plurality in the political deliberative bodies and lead to more sustainable and responsive solutions to the issues of society.<sup>20</sup>

In this sense, a democratic system would only benefit from having more active participation of women, widening the diversity of backgrounds and perspectives represented in its political bodies, and thus favoring the outcome of more inclusive, sustainable and responsive policies and laws.

The *interest argument* assumes that men and women have different and oftentimes conflicting interests, to such an extent that men would not be able to properly represent women.<sup>21</sup>

The development of grassroots women's movement puts in evidence that women do have distinct political interests from those of men. In Argentina, demonstrations demanding changes on the legislation related to reproductive and sexual health, such as the regulation of abortion, spread all over the streets since 2018,<sup>22</sup> while in Iran women have been refusing to obey discriminatory laws against them, such as the mandatory female dress code.<sup>23</sup> In 2018, in Brazil, more than 2.5 million women spontaneously gathered and started the campaign 'Women United Against Bolsonaro' in a joint effort to stop the advance of Jair Bolsonaro in the presidential elections in that year, and continues nowadays to demonstrate against his discriminatory policies.<sup>24</sup> In the US, women's

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Freedoms (ECHR), arts. 14; American Convention on Human Rights, art. 23; African Charter on Human and Peoples' Rights, arts. 2, 3, 13.

<sup>19</sup> ICCPR, art 25.

<sup>20</sup> Frene Ginwala, 'Forward to the original 1998 version' in Julie Ballington and Azza Karam (eds), *Women in Parliament: beyond numbers* (IDEA 2005) 15.

<sup>21</sup> Dahlerup (n 9) 148.

<sup>22</sup> 'Un Mar Infinito De Pañuelos Verdes' El País (2018) <[https://elpais.com/internacional/2018/12/26/argentina/1545862249\\_741308.html](https://elpais.com/internacional/2018/12/26/argentina/1545862249_741308.html)> accessed 1 July 2020.

<sup>23</sup> 'The Flame of Feminism Is Alive in Iran' Foreign Policy (2019) <https://foreignpolicy.com/2019/03/07/the-flame-of-feminism-is-alive-in-iran-international-womens-day/> accessed 1 July 2020.

<sup>24</sup> 'Stop this disaster: Brazilian women mobilise against 'misogynist' far-right Bolsonaro' The Guardian (2018) <<https://www.theguardian.com/world/2018/sep/21/brazilian-women-against-jair-bolsonaro-misogynist-far-right-candidate>> accessed 1 July 2020.

response to discriminatory policies spilt over the streets and resulted in the election of 131 female legislators:<sup>25</sup> the 116<sup>th</sup> US Congress is the most sex-representative in the history of the US so far, and, as observed by the periodic New York Times, ‘many of these women, spanning generations, serve as firsts in Congress: the first women representing their states, the first female combat veteran, the first Native American women, the first Muslim women, the first openly gay member of the Senate, the first woman Speaker of the House — the list goes on’.<sup>26</sup>

When the political process is dominated by men, decisions that affect all society at large are likely to not take into account the interests of women, in the perspective of women, perpetuating gender inequalities in society:

Law and public policy continue to create and reinforce differences between women and men in property and contract matters (especially regarding marriage, divorce, and widowhood), economic opportunity (including employment, credit, and social security), protection from violence (rape and wife battery), control over fertility and child care, educational opportunities, and civic rights and obligations.<sup>27</sup>

Both arguments – experience and interest – are related to the issue of representation. The disparity between the composition of the population and its representation in political institutions creates a problem in terms of democracy, as one of its tenets is precisely the legitimacy of the decisions, and a crucial element to assess legitimacy is the identity between representants and voters.<sup>28</sup> As Iris Marion Young puts it, ‘a democratic decision is normatively legitimate only if all those affected by it are included in the process of discussion and decision-making’.<sup>29</sup> Assuring the equal political participation of men and women provides political bodies that reflect more accurately the perspectives and interests of the society as a whole, which is needed to ensure the legitimacy of decisions and strengthen democracy.<sup>30</sup>

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<sup>25</sup> ‘The Women in White: Praise From Trump, and Chants of ‘U.S.A.!’ New York Times (2019) <[www.nytimes.com/2019/02/05/us/politics/women-in-white-state-of-the-union.html](http://www.nytimes.com/2019/02/05/us/politics/women-in-white-state-of-the-union.html)> accessed 1 July 2020.

<sup>26</sup> ‘Redefining Representation: the Women of the 116<sup>th</sup> Congress’ The New York Times (2019) <[www.nytimes.com/interactive/2019/01/14/us/politics/women-of-the-116th-congress.html](http://www.nytimes.com/interactive/2019/01/14/us/politics/women-of-the-116th-congress.html)> accessed 1 July 2020.

<sup>27</sup> Virginia Sapiro, ‘When are Interests Interesting? The Problem of Political Representation of Women’ in Anne Phillips (ed), *Feminism and Politics* (OUP 1998)166.

<sup>28</sup> Victor Bekkers and Arthur Edwards, ‘Legitimacy and Democracy: A Conceptual Framework for Assessing Governance Practices’ [2013] *Governance and the Democratic Deficit*, 55.

<sup>29</sup> Iris Marion Young, 36. *Inclusion and Democracy* (OUP 2000) 3.

<sup>30</sup> See Dahlerup (n 9) 145 and Nadezhda Shvedova, ‘Obstacles to Women’s Participation in Parliament’ in Julie Ballington and Azza Karam (eds), *Women in Parliament: beyond numbers*, (IDEA 2005) 33.

Hence, whereas “just fifty years ago, it was considered improper to label a political system undemocratic ‘merely’ because women were excluded”,<sup>31</sup> today it is clear that ‘democracy without women is impossible’.<sup>32</sup> Indeed, the institutional masculinity that has been an invisible and indisputable feature of parliaments for centuries<sup>33</sup> is now seen as clearly inadequate: “an overwhelmingly male House of Commons simply ‘looks wrong’ and ‘suggests’ that women are not capable of being MPs, a contention that is untenable, if not risible, in the twenty-first century”.<sup>34</sup>

In this context, it is not without reason that in Lijphart’s framework to assess the quality of democracy, five out of nineteen indicators are related to gender equality and women’s political inclusion. To Lijphart, the representation of women in parliaments and cabinets is a measure that indicates not only the legitimacy of the political process in regard to women but also to other minorities.<sup>35</sup>

Finally, the three arguments – justice, experience and interest – and their relationship with the quality of democracy is clearly stated in the Beijing Declaration and Platform of Action, in its article 181, which also highlights the correlation between having more women in power and the achievement of equality, development and peace:

Women’s equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women’s interests to be taken into account. Without the active participation of women and the incorporation of women’s perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved.<sup>36</sup>

Therefore, there is no true democracy without women’s full active participation in public and political life. Women and men have the equal right to have their perspectives and interests taken into account in the decision-making process, which favors political plurality and promotes laws and policies that are more sustainable and responsive to the citizens’ needs.

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<sup>31</sup> Dahlerup (n 9) 147.

<sup>32</sup> National Democratic Institution, ‘Democracy Without Women is Impossible’ <[www.ndi.org/democracy-without-women-is-impossible](http://www.ndi.org/democracy-without-women-is-impossible)> accessed 1 July 2020.

<sup>33</sup> Azza Karam and Joni Lovenduski, ‘Women in Parliament: Making a Difference’ in Julie Ballington and Azza Karam (eds), *Women in Parliament: beyond numbers* (IDEA 2005) 188.

<sup>34</sup> Childs, Sarah. *New Labour’s Women MPs : Women Representing Women* (Routledge 2004) 19.

<sup>35</sup> Arend Lijphart, *Patterns of Democracy* (2<sup>nd</sup> edn, Yale University Press 2012) 280.

<sup>36</sup> The Beijing Declaration and the Platform for Action (adopted at the Fourth World Conference on Women, 27 October 1995) art 181.

## 2.2 The impact of equal participation of women in politics

In the previous section, I argued that by achieving gender equality in political institutions, women would be better represented and have their perspectives and interests better taken into account. Women's political inclusion, in turn, would contribute to improve and strengthen democracy. However, do women actually represent women and change the political culture?

Studies in the 1980s developed the idea that it takes a 'critical mass' of 30% of women in parliaments to make a difference in the political arena.<sup>37</sup> The critical mass theory still influences gender-quota policies in different countries across the globe,<sup>38</sup> including Brazil. However, the concept of critical mass itself has been questioned, as other elements and interactions have been proven to impact legislative behavior of women.<sup>39</sup>

Gender studies in politics often distinguish between descriptive and substantive representation. In short, *descriptive representation* focuses on the distribution of seats in parliament, aiming to understand the reasons for the low participation of women in politics. The starting point of the descriptive representation is that the number of women in parliament is an indicator of their political inclusion in society. *Substantive representation*, on the other hand, is rather interested in investigating the actual effects of the presence of women in parliaments.<sup>40</sup> According to this perspective, other variables such as the political environment, gender-based stereotypes, institutional norms, party's affiliation and rules, among other elements, play an important role in the outcome of women's presence in political institutions.<sup>41</sup>

The descriptive representation perspective assumes that, once elected, women will bring to the plenary 'women's perspectives' and will defend 'women's interests'. This assumption, in turn,

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<sup>37</sup> Drude Dahlerup, 'The Story of the Theory of Critical Mass' (2006) 2 Politics & Gender 513-514

<sup>38</sup> <<https://www.idea.int/data-tools/data/gender-quotas/quotas>> accessed 29 July 2020.

<sup>39</sup> Sarah Childs and Mona Lena Krook, 'Critical Mass Theory and Women's Political Representation', Sarah, Childs, and Lena Krook Mona. "Critical Mass Theory and Women's Political Representation." Political Studies 56, no. 3 (2008) 725.

<sup>40</sup> Lena Wängnerud, *Women in Parliaments: Descriptive and Substantive Representation* (Review-article. Annual Reviews, 11 May 2009) 53.

<sup>41</sup> Celis, Karen, and Sarah Childs. *The Substantive Representation of Women: What to Do with Conservative Claims?* (Political Studies 60, no. 1, 2012) 214.



presumes that women have certain perspectives and interests in common, that there is a common 'essence'.<sup>42</sup>

Nonetheless, women do not fit into a single identity; they have different cultural and educational backgrounds, sex orientation, ideologies and political opinions, and come from different social, economic and racial contexts, and, therefore, do not necessarily share the same experiences and interests.

In this regard, Butler emphasizes that

for the most part, feminist theory has assumed that there is some existing identity, understood through the category of women, who not only initiates feminist interests and goals within discourse, but constitutes the subject for whom political representation is pursued (...) Recently, this prevailing conception of the relation between feminist theory and politics has come under challenge from within feminist discourse. The very subject of women is no longer understood in stable or abiding terms (...) there is very little agreement on what constitutes, or ought to constitute, the category of women.<sup>43</sup>

Research focusing on descriptive representation does not address in depth the fact that women are not a homogeneous group and do not necessarily share the same experiences and interests. Because it aims at explaining the reasons for women's exclusion, it rather considers women as a single category, relating it to aspects such as the voter's behaviors, fundraising, and the different electoral systems. The main contributions of studies on descriptive representation are related to identifying the main barriers women face when trying to access power, and the reasons for their historical underrepresentation in parliaments and cabinets.<sup>44</sup>

Research focusing on substantive representation tries to identify what would be the changes that women would add to the political context once in public office – 'internal working procedures? Policy outcomes? Trust in government? Or something else?'.<sup>45</sup> Studies in this field are less developed than those concerning descriptive representation, which is not surprising considering that until recently there were not many women holding political office, either in parliaments and ministerial positions or as heads of governments or state. The substantive representation perspective does not automatically assume that women act 'like' and for women, once the idea of

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<sup>42</sup> Anne Phillips, *The Politics of Presence* (Oxford: OUP 1995) 23

<sup>43</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, Chapman & Hall, Inc 1990) 1

<sup>44</sup> Wängnerud (n 30) 53.

<sup>45</sup> Wängnerud (n 30) 52.

a category 'women' and the very existence of 'women's interest' are highly contested. Because of this, findings in substantive representation derive mostly from empirical investigations.

So far, empirical research on substantive representation conducted in different countries indicated that female representatives tend to advance not only women's rights but also legislation and policies related to social welfare, such as protection of children, family-related issues, education and healthcare. Moreover, women legislators are more likely to promote the feminist agenda, in topics such as domestic violence and abortion, for instance, than their male counterparts<sup>46</sup>. Research also concluded that, overall, countries that have more women in politics are more prone to have gender-equality also in other issues than countries that elect fewer women.<sup>47</sup> Likewise, it was observed that an increased presence of women in parliaments influences the extent to which both male and female legislators consider how a new law would impact on women, as well as affects the number of laws concerning 'problems faced by women'.<sup>48</sup>

It is noteworthy, however, that when investigating whether female MPs legislate differently from men, researchers often subjectively elect women's concerns as being those related to 'women's traditional concerns as caregivers', such as the protection of children and family-related issues.<sup>49</sup> While on the one hand, it is true that, in the private sphere, the responsibility on children and family issues is placed disproportionally on women - which makes it a 'women's issue' -, on the other hand, defining women's interests as such reflects and reinforces the gender-based stereotype of women as natural caregivers, which contributes to their exclusion from public life.<sup>50</sup> In relation to this, CEDAW noted that 'stereotyping, including that perpetrated by the media, confines women

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<sup>46</sup> See Vanessa Cameron, *Women in Politics: Gender, Power and Development* (White Press Academics 2018) 26; Lyn Kathlene, 'Words that Matter. Women's Voice and Institutional Bias in Public Policy Formation' in Susan J. Carroll (ed), *The Impact of Women in Public Office* (Indiana University Press 2001) 22-24; Michele L. Swers and Carin Larson, 'Women in Congress. Do They Act as Advocates for Women's Issues?' in Sue Thomas and Clyde Wilcox (eds), *Women and Elective Office: Past, Present, and Future* (2<sup>nd</sup> edn, OUP 2005) 114.

<sup>47</sup> Wängnerud (n 30) 53.

<sup>48</sup> Susan J. Carroll, 'Representing Women. Women State Legislators as Agents of Policy-Related change' in Susan J. Carroll (ed), *The Impact of Women in Public Office* (Indiana University Press 2001) 6.

<sup>49</sup> Michele L. Swers and Carin Larson, 'Women in Congress. Do They Act as Advocates for Women's Issues?' in Sue Thomas and Clyde Wilcox (eds), *Women and Elective Office: Past, Present, and Future* (2<sup>nd</sup> edn, OUP 2005) 114; Beth Reingold, *Representing Women. Sex, Gender and Legislative Behavior in Arizona and California* (The University of North Carolina Press 2000) 14.

<sup>50</sup> Nichole M Bauer, 'Rethinking Stereotype Reliance. Understanding the Connection between Female Candidates and Gender Stereotypes' (2013) 32 *Politics and the Life Sciences: The Journal of the Association for Politics and the Life Sciences* 37.

in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution.<sup>51</sup>

As previously mentioned in this section, the relationship between descriptive and substantive representation – or in other words, whether more women in politics in fact ensures women’s perspectives and interests in decision-making or not – is complexified by other discussions on the ‘category of women’.

Indeed, in addition to gender, other perspectives *inter alia* race, ethnicity, class and sexual orientation are defining elements of women’s identities and interests, and are mutually constitutive – one cannot be isolated from the other.<sup>52</sup> Therefore, an indigenous woman has different experiences and interests from a white woman, and their perspectives should not be universalized. Moreover, although the advance of women’s rights has been mainly pushed by left-oriented feminist movements, female politicians who do not identify themselves with the feminist agenda also claim to represent women. In this regard, Celis and Childs point out that conservative parties are becoming more descriptively representative in terms of sex, and that within the party women are ‘more likely to adopt a more progressive, liberal and feminist position than their male peers’.<sup>53</sup>

Dahlerup defends that women’s diversity is not an obstacle to establish a relationship between descriptive and substantive representation. To her, “when women are excluded as a category, it is vital to speak about the category ‘women’ and to make strategic moves as women – even if the ultimate goal is that in the future gender should not play any role in politics”. This would not imply in categorizing all women in a single identity, but it is rather a strategy to address discrimination against women.<sup>54</sup>

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<sup>51</sup>UN Committee for the Elimination of All Forms of Discrimination against Women, ‘General Recommendation No 23: Political and Public Life’ (12 August 1997) UN Doc CEDAW/C/GC23, para 12.

<sup>52</sup> Carroll (n 38) 6.

<sup>53</sup> Sarah Childs, *The Substantive Representation of Women: What to Do with Conservative Claims?* (Political Studies 60, no. 1 2012) 216.

<sup>54</sup> Dahlerup (n 9) 150.

Although there is no guarantee of a direct and proportional relationship between descriptive and substantive representation, authors agree that ‘increased descriptive representation increases the probability and holds out the promise of enhanced substantive representation’.<sup>55</sup>

In this perspective, it is intuitive that regardless of the multitude of different identities and interests, having a substantive number of women in political office has the potential, at the minimum, to create the conditions to revise discriminatory laws against girls and women.

In addition to the possible effects on policy and legislation output, Karam and Lovenduski suggest that a larger presence of women in politics could make it more ‘women-friendly’ by promoting changes in its procedures and institutional culture. The establishment of women legislator’s networks, including across party lines, constitute an important innovation in itself, and it is also a tool to enhance other transformations in the political culture. Through women’s alliances, female parliamentarians can work together to jointly address issues that will be voted in the plenary. Moreover, networks can be a platform to nominate and elect women for internal elections and informal positions, expose the absence of women in key positions and support women speakers, and thus improve their internal representation.<sup>56</sup>

Changes in language and discourse are also noted as a relevant aspect in parliaments with a larger number of women:

Drude Dahlerup notes how, prior to the entry of significant numbers of women into the Scandinavian parliaments, most politicians did not have the vocabulary to speak about issues such as discrimination, inequality, sexual harassment or sexual violence. Most had problems even using the word for women and preferred to use euphemisms. (...) In the Netherlands, study of legislative debates reveals how women’s interventions have been associated with changing the way in which abortion policy is debated, notably its shift from a medical or religious issue to an issue of choice. Research from the UK shows that the interventions of women MPs are more likely than those of men to refer to examples of how policies and decisions affect individuals and families, while male MPs invoke abstract concepts such as citizens or constituents.<sup>57</sup>

Finally, a more substantive presence of women in the political arena has the powerful effect to encourage other women to enter politics. Barbara Burrell observes that ‘women in public office

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<sup>55</sup> Carroll (n 38) 4

<sup>56</sup> Azza Karam and Joni Lovenduski, *Op cit*, 199, 203.

<sup>57</sup> Azza Karam and Joni Lovenduski, *Op cit* 199, 202.

stand as symbols for other women, both enhancing their identification with the system and their ability to have influence within it.<sup>58</sup>

Moreover, as women occupy more spaces of power, they not only increase the visibility of what women can do, but they also pave the way for the next generations of girls and women to follow a political career, precisely by promoting changes that make political environment more women-friendly.

### **2.3 Cultural and social patterns, gender-based stereotypes and politics**

According to the Inter-Parliament Union, 16 out of the 20 countries that achieved at least 45% of the seats in Parliament occupied by women have established quota systems. However, there are still a great number of countries that introduced quotas but still have few women in politics.<sup>59</sup>

These facts raise the question: do women actually want to enter politics?

There is a common belief that women are naturally less inclined or uninterested in occupying spaces of power. Those environments are still dominated by an androcentric culture, where women oftentimes have their competence and capabilities questioned.

Empirical research sustains the existence of a 'gender gap in political ambition', pointing out that women are less politically ambitious than men and less likely to consider running for office.<sup>60</sup> However, to what extent this lack of ambition is actually based on the differences of sex? The same study gives a hint that political ambition is not simply derived from a natural desire, but it is socially constructed. According to its findings, 'early political socialization process can clearly instill in many individuals the belief that they have the power to take part in the democratic process'.<sup>61</sup>

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<sup>58</sup> Barbara Burrell, *A Woman's Place Is in the House: Campaigning for Congress in the Feminist Era* (MI: University of Michigan Press 1996) 151.

<sup>59</sup> Inter-Parliamentary Union, *Women in Parliament, 1995-2020: 25 years in review*, 2.

<sup>60</sup> Jennifer L. Lawless and Richard L. Fox, *It Still Takes a Candidate. Why Women Don't Run for Office* (2<sup>nd</sup> edn, Cambridge University Press 2010) 45 and Jennifer L. Lawless, *Becoming a Candidate. Political Ambition and the Decision to Run for Office* (Cambridge University Press 2012) 49-76.

<sup>61</sup> Jennifer L. Lawless, *Op cit* 81.

In this sense, gendered social interactions, rather than sex differences, seem to influence the ambition to run for office, and social and cultural patterns, including gender stereotypes, still play an important role in discouraging women to occupy spaces of power.

Stereotypes are ‘a generalized view or preconception of attributes or characteristics possessed by, or the roles that should be performed by, members of a particular group’.<sup>62</sup> Gender-based stereotypes often rely on ideas of superiority or inferiority of either of the sexes and go hand in hand with fixed parental gender roles. CEDAW pointed both among ‘the most significant factors inhibiting women’s ability to participate in public life’ and stressed the impact that the disproportionate burden of domestic responsibilities on women has on their possibilities to ‘engage more fully in the life of their communities’.<sup>63</sup> To the Committee, they are the root causes of all forms of discrimination against women.<sup>64</sup>

A great amount of prior research in the field of political science, especially from the 1970s to the 1990s, has traditionally pointed gender stereotypes as an element that affects women negatively in the polls, identifying issue-competency and personality-trait stereotypes as some of the factors that weight against women.<sup>65</sup> Those arguments can be summarized along these lines:

Voters hold gender stereotypes that depict women as more nurturing than aggressive, logical or ambitious. Gender stereotypes of women are at odds with voters’ expectations of politicians as tough, ambitious, and strategic individuals. Thus, citizens will vote against a woman politician for being overly nice and insufficiently tough.<sup>66</sup>

More recently, however, these assumptions have started to be questioned as the few existing empirical studies – mostly in the US – observed that although gender stereotypes do impact women negatively in experimental analysis, in a real electoral process the actual competencies and characteristics of female candidates, as well as their party filiation, tend to surpass the abstract

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<sup>62</sup> Rebecca Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2010) 9

<sup>63</sup> CEDAW/C/GC23, paras. 10-11.

<sup>64</sup> CEDAW, General Recommendation No 3: Education and public information campaigns, UN Doc. A/42/38 (1987).

<sup>65</sup> Nichole M Bauer, *Op cit*, 25-26.

<sup>66</sup> Leonie Huddy and Theresa Capelos, ‘Gender Stereotyping and Candidate Evaluation’ in Victor C Ottati and others (eds), *The Social Psychology of Politics* (Springer US 2002) 29.

effects of stereotypes.<sup>67</sup> In other words, the impact of stereotypes is more nuanced than the presumption that they always and automatically will harm female candidates.<sup>68</sup>

Nonetheless, sexism and gender stereotypes still constitute a major hurdle to the active participation of women in public and political life. It is still very present in society discriminatory social and cultural patterns that reinforce the idea that women are natural caretakers and limited to the private sphere, while men are expected to be the breadwinners and occupy public spaces. In the context of the access to political life, harmful gender-based stereotypes affect the inclusion of women in a threefold way: first, they create the belief that women are not interested in or able to occupy spaces of power; second, they reduce the opportunities for girls and women to develop the skills required for participating in politics; and third, they increase the disadvantages for women once they finally decide to enter politics.

Fixed gender roles influence people's own perception about themselves and narrow down their perspectives and ambitions; stereotypes limit one's imagination and thus reduce the scope for dreaming and wishing. In different degrees, more than a lack of interest in acceding power, there is culturally a lack of encouragement or freedom, or sometimes both, for girls and women to express their opinion, make their own decisions and even pursue certain careers.

This limited perspective of choices in life may be shaped through a wide range of ways, from the gendered games in childhood – girls play with dolls and miniature kitchen toys, boys play with building bricks and cars – to the situation where some of the girl's important decisions in life are made not by her, but by her family, according to the community's values.<sup>69</sup>

Those who overcome that first barrier – the one of aspiration – usually face a second layer of difficulties, once opportunities and resources are not equally distributed among boys and girls, men and women. As highlighted by Celis, 'across the globe, gender determines who goes hungry

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<sup>67</sup> Monica C Schneider and Angela L Bos, 'Measuring Stereotypes of Female Politicians' (2014) 35 Political Psychology 245; Leonie Huddy and Theresa Capelos, 'Gender Stereotyping and Candidate Evaluation' in Victor C Ottati and others (eds), *The Social Psychology of Politics* (Springer US 2002); Kathleen Dolan, 'Gender Stereotypes, Candidate Evaluations, and Voting for Women Candidates: What Really Matters?' (2014) 67 Political Research Quarterly 96.

<sup>68</sup> Nichole M Bauer, *Op cit* 22.

<sup>69</sup> Ingrid Westendorp, 'Using culture to achieve equality' in Ingrid Westendorp (ed.), *The Women's Convention turned 30* (Intersentia 2012) 122-123.

and who gets adequate nutrition and water, who can vote, run for office, marry, or have rights to children, who commands authority and respect and who is denigrated and dismissed, and who is most vulnerable to violence and abuse in their own homes and intimate relationships'.<sup>70</sup>

In different gradations, women have been traditionally considered as 'second-class citizens whose place is in the home',<sup>71</sup> being in disadvantage in the distribution of responsibilities, power, recognition, opportunities and privileges. Although entrenched in daily social practices, this discriminatory bias is often invisible, hidden behind a façade of normality, to which girls starts to be exposed at an early age:

Girls' parents may consciously or unconsciously show that they favor their brothers because it has become custom that sons will take (financially) care of their parents in old age, or religious rules demand that only sons perform burial or cremation rituals, or simply because they have the feeling that boys are more worth than girls because they are the future bread winners and leaders. Son preference may be expressed by better food, better health care and better schooling for boys (...) This gender stereotypical upbringing diminishes girls' equal chances to access education, or predestines them for certain types of vocational training. Furthermore, girls grow up with the notion that if they want a family, it will be their task to take care of the household and raise the children, and if they also wish to pursue a career, it is their problem as 'working' mothers to find a solution how to combine their manifold tasks.<sup>72</sup>

These discriminatory treatments exclude girls and women from adequate educational opportunities and hinder the chances of developing the necessary skills to occupy spaces of power. Moreover, the unequal division of family responsibilities results in less time for women to engage in public life while men can fully participate in it precisely because household issues are being fulfilled by women.<sup>73</sup>

Finally, discriminatory gender stereotypes impose a third additional step for women who decide to occupy political office: once in campaign or in term, they confront unique challenges, that men usually do not.

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<sup>70</sup> Karen Celis and others, 'Introduction: Gender and Politics: A Gendered World, a Gendered Discipline' (The Oxford Handbook of Gender and Politics, 12 March 2013) 1-2.

<sup>71</sup> UN doc. A/68/293, Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 9 August 2013, para. 13.

<sup>72</sup> Ingrid Westendorp (n 59) 122-123.

<sup>73</sup> CEDAW/C/GC23, para 20.



Female politicians and candidates are often more questioned about their private life, and criticized on their personal traits, including their physical appearance and other characteristics that have no relevance to the position they are occupying or running for.

Ironically, one of the prominent cases come precisely from the US, where empirical research has concluded that gender-stereotype do not directly affect the results in polls. During her campaign for party nomination for president in 2008, and later for presidency election in 2016, candidate Hillary Clinton would routinely face gender stereotypical hostilities:

Whether it was a heckler calling on Clinton to ‘Iron my shirt’ or a public debate about whether a mother of young children had the time to be vice president, the 2008 campaign was marked by both positive and negative debates about the ability of women to serve in high level office. Any excitement generated by these historic candidacies was tempered by discussions of whether Clinton was too abrasive and not sufficiently warm to be president and whether Palin was smart enough, too pretty, or too encumbered by motherhood to be one heart.<sup>74</sup>

Clinton has been described by Karl Rove as ‘brittle’ and by the head of New York's Republican Party as ‘an angry woman.’ It's the same old story. A strong man is admired. A strong woman is - well, with due deference to a line Barbara Bush once used about Ferraro - it ‘rhymes with rich.’ Female candidates traverse a narrow path, avoiding behaviors that might give rise to stereotypes. Be firm, but not angry. Be compassionate, but not weepy. Too much emotion: dangerous.<sup>75</sup>

While this was an historic step in women's political representation, many have claimed that Clinton's treatment by the media, opponents and some voters demonstrated the extent to which misogyny and gender-based prejudice still exist in American politics. From pundits criticizing her tone of voice and whether she smiled enough, to blatantly sexist paraphernalia being sold at opponent Donald Trump's campaign events (buttons displaying the phrase ‘Trump that Bitch,’ for example), the primary and general elections of 2016 brought discussions of gender, prejudice, and politics center stage.<sup>76</sup>

Whether sexism and gender stereotypes are in fact prejudicial or not for women in the poll results seems to be less important than the very fact that women have to address this extra concern, while male candidates and politicians do not. As noted by Krook and Sanín, some of these acts of sexism constitute *political violence against women*, and they are perpetrated with the precise intention of intimidating female politicians and make them back off from politics. Acts of political violence against women go beyond the simply attack for their political views; they are rather gendered

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<sup>74</sup> Kathleen Dolan, ‘Gender Stereotypes, Candidate Evaluations, and Voting for Women Candidates: What Really Matters?’ (2014) 67 Political Research Quarterly 96.

<sup>75</sup> The Washington Post, ‘The Rules for Female Candidates’ (2007) <<https://www.washingtonpost.com/wp-dyn/content/article/2007/11/06/AR2007110602489.html>> accessed 10 July 2020.

<sup>76</sup> Tessa Ditonto, ‘Direct and Indirect Effects of Prejudice: Sexism, Information, and Voting Behavior in Political Campaigns’ (2019) 7 Politics, Groups, and Identities 590.

attacks, often employing gendered imagery and stereotypes, focusing on women's bodies – frequently depicted in a hypersexualized and derogatory way – and traditional roles (e.g. mothers and wives), to invalidate women's competence as politicians and to suggest that they do not belong to the political sphere.<sup>77</sup>

In Latin America, political violence against women is one of the major obstacles for the inclusion of women in political life. In addition to attacks to their image, female candidates and politicians are subjected to physical, sexual and psychological forms of violence, aiming to silence them, delegitimize their competence and make them invisible. The attacks are perpetrated due to the very and only fact that they are women, and women should not take part in politics. The ultimate goal is to force them to resign their candidacy or position. In extreme cases, femicide is the way women are taken out of the political arena.<sup>78</sup>

As a 2016 IPU study on 'Sexism, harassment and violence against women parliamentarians' demonstrates, political violence against women is a common issue across the globe. The survey, that interviewed female parliamentarians from Europe, Africa, Asia, Americas and Arab, revealed that 81,8% had suffered psychological violence, including 'humiliating sexual or sexist remarks; threats of death, rape, beatings or abduction; disrespectful comments with sexual connotation in traditional media and extremely humiliating or sexually charged images spread through social media'. Besides this, 21,8% and 25,5% have been subjected to actual sexual and physical violence, respectively, and 32,7 % faced acts of economic abuse, including denial of funds and other resources, such as computers, office, staff and security, enjoyed by their male counterparts.<sup>79</sup>

A wide range of other practices – 'imposing, due to gender stereotypes, tasks unrelated to the job itself; giving women erroneous or imprecise information leading to the inadequate exercise of their functions; divulging personal and private information (...); spreading false information with the

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<sup>77</sup> Mona Lena Krook and Juliana Restrepo Sanín, 'Gender and political violence in Latin America Concepts, debates and solutions' (2016) 23 *Política y gobierno* – p. 136-137 and Mona Lena Krook, '¿Qué es la violencia política? El concepto desde la perspectiva de la teoría y la práctica', in Flavia Freidenberg and Gabriela del Valle Pérez (eds), *Cuando hacer política te cuesta la vida. Estrategias contra la violencia política hacia las mujeres in América Latina* (Instituto de Investigaciones Jurídicas 2017) 56.

<sup>78</sup> Flavia Freidenberg, 'La violencia política hacia las mujeres: el problema, los debates y las propuestas para América Latina' in Flavia Freidenberg and Gabriela del Valle Pérez (eds), *Cuando hacer política te cuesta la vida. Estrategias contra la violencia política hacia las mujeres in América Latina* (Instituto de Investigaciones Jurídicas 2017) 3-42.

<sup>79</sup> Inter-Parliamentary Union, 'Sexism, Harassment And Violence Against Women Parliamentarians' (2016).

objective of discrediting a woman's leadership (...); obligating elected women, through force or intimidation, to sign documents or take decisions against their will; systematically restricting access to economic resources which are otherwise available to men'<sup>80</sup> – are employed to frustrate women's work and mitigate their chance to succeed in politics, undermining their career.

While some may naturalize those acts as being mere 'costs of doing politics',<sup>81</sup> the issue cannot be adequately addressed if not recognized as violations on the women's right to political participation.

All these acts of violence and harassment constitute a major obstacle to the realization of women's human rights, as they intend not only to force the resignation of one particular woman, but they aim to overall intimidate women who want to pursue a political career, and, moreover, to reinforce to society at large that women cannot participate.<sup>82</sup>

As Holmaat and Naber well summarize, 'gender stereotypes and fixed parental roles, in other words, run against the very basic idea on which human rights is founded: the capacity of each human being to take rational and autonomous decisions about his or her own course of life (...) They also deny women the freedom to live their lives according to their own choice and convictions about their personal and unique contribution to sustaining and developing humanity'.<sup>83</sup>

A recent episode – again coming from the US – reminds that gendered attacks are as alive as always in politics. The same episode, however, is a robust example of how having more women in politics can be the antidote to confront the sexist culture in the political environment. In a feminist speech on the House floor, Alexandria Ocasio-Cortez denounced the sexist insults that she received from a male representative and outspoken about the misogynist culture in politics in the US:

Representative Yoho put his finger in my face. He called me disgusting. He called me crazy. He called me out of my mind. There were reporters in the front of the Capitol, and in front of reporters, representative Yoho called me, and I quote, 'a fucking bitch'. These are the words that representative Yoho levied against a Congresswoman. The Congresswoman that not only represents New York's 14th congressional district, but every Congresswoman and every woman in this country. Because all of us have had to

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<sup>80</sup> Mona Lena Krook and Juliana Restrepo Sanín, *Op cit* 29-130,141.

<sup>81</sup> Mona Lena Krook, *Op cit* 60

<sup>82</sup> Mona Lena Krook and Juliana Restrepo Sanín, *Op cit* 136-137

<sup>83</sup> Rikki Holtmaat and Jonneke Naber, *Women's Human Rights and Culture. From Deadlock to Dialogue* (Intersentia 2010) 32-33.

deal with this, in some form, some way, some shape, at some point in our lives. This issue is not about one incident. It is cultural. It is a culture of lack of impunity, of accepting a violence, and violent language against women. An entire structure of power that supports that. When I was reflecting on this, I honestly thought that I was just gonna pack it up, and go home. It's just another day, right? (...) I could not allow victims of verbal abuse, and worse, to see that, to see that excuse, and to see our Congress accept it as legitimate, and accept it as an apology. (...) "but when you do that to any woman, what Mr. Yoho did was give permission to other men to do that to his daughters. In using that language, in front of the press, he gave permission to use that language against his wife, his daughters, women in his community, and I am here to stand up to say that is not acceptable."<sup>84</sup>

## Conclusion

The full and active participation of women in the political realm, equal to men, is not only a condition to make their perspectives and interests be taken into account in decision-making, but it also improves the quality of democracy. Although there is not a guarantee that an increase of descriptive representation would automatically increase substantive representation, there is enough evidence that having a significant number of women in political office does improve the chances for women to be substantially represented, and, moreover, has positive impacts on legislative procedures and institutional culture. Finally, even though legislation provides for women's rights to political participation, discriminatory social and cultural patterns and gender stereotypes are a major obstacle to the full inclusion of women in political life.

## **3. LEGAL FOUNDATION: INTERNATIONAL OBLIGATIONS CONCERNING THE RIGHT TO POLITICAL PARTICIPATION OF WOMEN IN BRAZIL**

Brazil is a State party of several human rights treaties, at the international and regional level, from which derive a set of legal obligations concerning political rights and the right to equality. In this chapter, I will assess whether and to what extent Brazil is obliged to uphold the political rights of women at the regional and international levels. I will start addressing the UN system – first the ICCPR, as it gives more general guidelines on the topic; then, the Convention on the Political

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<sup>84</sup> 'Alexandria Ocasio-Cortez Responds to Verbal Abuse by Ted Yoho' *New Yorker* (24 July 2020) <<https://www.newyorker.com/video/watch/alexandria-ocasio-cortez-responds-on-the-house-floor-to-a-verbal-assault-by-representative-ted-yoho>> accessed 27 July 2020.

Rights of Women, the first legally binding instrument to address the issue; and the Women's Convention – and then the Inter-American system.

### **3.1 International obligations – UN treaties**

Although a significant number of countries entitled women to vote and be elected only in the late 20<sup>th</sup> century, the Universal Declaration of Human Rights (UDHR) already recognized, in 1948, the right to political participation of women, stating that 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives', which, in conjunction with the non-discrimination clause in article 2, made it clear that men and women have the same rights.<sup>85</sup> However, despite the uncontested importance and political weight of UDHR, it did not create legal obligations; after its adoption, it still took some years until the political rights of women were legally guaranteed in an international instrument.

The main UN legally binding treaties that address the political rights of women – the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Political Rights of Women and the Women's Convention – combine, basically, three main obligations: the right to equality, the prohibition of discrimination and the right to participate in public and political life, including the right to vote and to be eligible for elections.

Although, at a first sight, the two first obligations may seem to have the same content, they encompass different duties.

The intuitive notion of equality is usually around the idea that all persons should be treated equally and have the same rights; this perception of equality corresponds to the principle of *formal equality*, which requires like cases should be treated alike.<sup>86</sup> However, very often only recognizing the same rights to everyone does not necessarily result in having equal conditions for all persons to enjoy those rights. As demonstrated in the previous chapter, in several situations, women face additional obstacles, that men usually do not, to exercise their rights. Even though formal equality

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<sup>85</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 2 and 21.

<sup>86</sup> Susan Hoffman Williams, *Constituting Equality: Gender Equality and Comparative Constitutional Law* (Cambridge University Press 2009) 9.

between men and women is often granted in domestic law, statistics on several issues – employment, the same remuneration for work of equal value, number of women in management positions, number of seats occupied by women in parliaments, etc. – make it clear that the formal recognition of rights *per se* does not guarantee that women will be able to enjoy them on equal terms with men. Because of this, additional measures may be needed to effectively ensure that women will enjoy the same rights, equal to men. In this sense, the principle of *substantive equality* goes beyond formal equality and focuses on achieving equal results rather than providing equal treatment. As a matter of fact, it is possible that in order to achieve substantive equality it is needed to treat women differently, when they are not in the same situation as men.

The general recommendations and concluding observations issued by the treaties monitoring bodies indicate that within the UN the right to equality focuses on substantive equality. Likewise, the prohibition of discrimination in the UN treaties encompasses both direct and indirect discrimination. Direct discrimination occurs when people in the same situation are explicitly treated unequally, as for example when women are denied rights precisely because they are women. In contrast, indirect discrimination occurs when an apparently neutral provision, applied equally to everyone, ignores pre-existing inequalities and thus affects people disproportionately, creating discriminatory effects.<sup>87</sup> It happens for instance when a labor regulation giving advantages exclusively to full-time employees results in disfavoring female workers, as they are statistically more likely to be working in part-time regime, due to the gendered unequal share of household responsibilities.<sup>88</sup>

In a perfunctory analysis, the prohibition of discrimination may be seen as the negative statement of the right to equality. However, the relationship between these two provisions is more nuanced than that. The prohibition of discrimination is an important element of equality,<sup>89</sup> but the right to equality implies more than simply abstaining from discriminating, especially from the perspective of substantive equality. As defended by Oostland, the right to equality entails a positive duty to

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<sup>87</sup> Jenifer Ross, 'Discrimination', *Employment Law Essentials* (Edinburgh University Press 2010) 170-171 and Oran Doyle, 'Direct Discrimination, Indirect Discrimination and Autonomy' (2007) 27 *Oxford Journal of Legal Studies* 538.

<sup>88</sup> Chris Docksey, 'Part-Time Workers, Indirect Discrimination and Redundancy' (1983) 46 *The Modern Law Review* 504 and 505.

<sup>89</sup> Jenifer Ross, 'Discrimination', *Employment Law Essentials* (Edinburgh University Press 2010) 163.

promote substantive equality – ‘differential treatment is regarded as an essential part of the principle of equality’ –, and it transcends individual cases of discrimination to focus on the exclusion of minorities as a group.<sup>90</sup>

### **3.1.1 International Covenant on Civil and Political Rights**

Like the UDHR, the ICCPR – to which Brazil became a State party in 1992 with no reservations<sup>91</sup> – establishes a general non-discrimination provision, in article 2, but goes beyond the Declaration and expressly provides, in article 3, for the obligation to specifically ensure equality between women and men in the enjoyment of all rights in the Covenant. The prohibition of discrimination is referred to again in article 25 when specifically addressing political rights:

Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.<sup>92</sup>

The Human Rights Committee (HRC) already expressed, in General Comment 18, that ensuring equality must go beyond its formal recognition in law, and eliminate *de facto* discrimination perpetrated either by State or private actors. The Committee also stressed that the realization of equality does not mean giving the same treatment every time, but it rather requires States to take affirmative actions to eliminate the circumstances that cause or help to perpetuate discrimination. When necessary to correct inequalities, temporary preferential treatment to certain non-dominant groups of society is deemed to be legitimate and does not qualify as illegal discrimination.<sup>93</sup>

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<sup>90</sup> Rolanda Oostland, ‘The Principle of Equality’ in Ingrid Westendorp (ed.) *The Women’s Convention Turned 30* (Intersentia 2012) 74.

<sup>91</sup> < [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND) > accessed 27 July 2020.

<sup>92</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 25.

<sup>93</sup> UN Human Rights Committee, ‘General Comment 18’, (10 November 1989) UN doc HRI/GEN/1/Rev.9 (Vol. I) para 5, 8- 10.

This interpretation was reiterated by HRC in General Comment 28 on article 3, that specifically addresses the equality of rights between men and women:

The obligation to ensure to all individuals the rights recognized in the Covenant, established in articles 2 and 3 of the Covenant, requires that States parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights, and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women.<sup>94</sup>

The obligation to promote equality as a duty to take positive measures is repeated by HRC when addressing the joint application of articles 3 and 25, on political rights of women, reinforcing that States parties must ‘take effective and positive measures to promote and ensure women’s participation in the conduct of public affairs and in public office, including appropriate affirmative action’. HRC also clarified that complying with article 3 encompasses the obligation to ‘ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality’, stressing specifically the need to establish equality in parenting roles.<sup>95</sup>

Finally, HRC explains that article 26 is not a mere duplication of article 2,<sup>96</sup> but constitutes an autonomous right that requires States to review their legislation and practices in order to eliminate discrimination against women in all fields before the law.<sup>97</sup>

### **3.1.2 Convention on the Political Rights of Women**

The Convention on the Political Rights of Women was the first international legally binding instrument to grant and protect the rights of women to vote, to run for legislative elections and to occupy public office, aiming to give effectiveness to the principle of equality, expressed in the Charter of the United Nations and on the UDHR. It ensures the following rights:

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<sup>94</sup> UN Human Rights Committee, ‘General Comment 28’, (29 March 2000) UN doc CCPR/C/21/Rev.1/Add.10 para 3.

<sup>95</sup> CCPR/C/21/Rev.1/Add.10 para 5, 25, 29.

<sup>96</sup> Article 26, ICCPR: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>97</sup> HRI/GEN/1/Rev.9 (Vol. I) para 12 and CCPR/C/21/Rev.1/Add.10 para 31.



Article I

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Article II

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article III

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination

The Convention was adopted in 1953, when negotiations on the draft of a covenant on civil and political rights were already taking place in the UN. What would be the motivation of States to opt for a separate treaty dealing specifically with the political rights of women?

A relevant factor that contributed to anticipate the legal recognition of political rights of women at the international level was the creation of the Commission on the Status of Women (CSW), a special body of the UN, in 1946. The CSW, which first aim was proclaimed to be ‘equal participation of women in government and the possibility for women to exercise all the rights and assume all the duties of citizens’, triggered the initiative to create a legally binding document aiming at guaranteeing political rights for women, equal with men.<sup>98</sup>

By the time the Convention was adopted, several countries had not yet recognized political rights for women on an equal basis with men. While in 14 of the existing countries - Afghanistan, Cambodia, Egypt, Iran, Iraq, Jordan, Laos, Libya, Liechtenstein, Nicaragua, Paraguay, Saudia Arabia, Switzerland and Yemen – women had no voting rights at all, in a number of countries where women could vote, that was not on the same conditions as men. Discriminatory treatment was set either by imposing additional or higher requirements for women to exercise their rights – e.g. higher age, educational requirements not imposed on men, necessity to be the head of the family, etc. – or by limiting the voting rights to local elections, for instance. Besides this, political rights of women were sometimes limited to the right to vote, keeping women excluded from the possibility of running for legislative elections and occupying executive and judiciary public office. Moreover, the drafting of the Convention took place in the context of the decolonization

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<sup>98</sup> United Nations, *Convention on the Political Rights of Women: History and Commentary*. New York, United Nations Department of Economic and Social Affairs, 5-6.

movement; there was an expectation that the new independent States could enter the political realm already in alignment with the UN values of democracy and equality.<sup>99</sup>

Therefore, there was an urgency to ensure the political rights of women in a legally binding treaty, which would serve not only as a consolidation of the progress of women's suffrage movement but also as an instrument to open the path for the inclusion of women in political life in countries where their rights were still limited. The decision to approve a separate document as soon as possible, rather than waiting for the covenant on civil and political rights, was proved to be right, as the ICCPR entered into force only in 1976, more than twenty years after the adoption of the Convention.

Brazilian women were allowed to vote and to run for elections since 1932, and, on equal terms with men, since 1946. Therefore, when Brazil ratified the Convention, in August 1963, it made no reservations.<sup>100</sup> The irony, however, is that a few months later, in April 1964, a military coup initiated a long and violent dictatorship, that partially suspended political rights for more than 20 years.<sup>101</sup>

### **3.1.3 Convention on the Elimination of All Forms of Discrimination against Women**

The Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) was adopted in 1979, and while it is one of the international treaties with many ratifications within the UN system (189 States parties), it is also the one with most reservations.<sup>102</sup> Brazil became a State party in 1984 and, although it made reservations to articles 15 and 16, it withdrew them in 1994.<sup>103</sup>

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<sup>99</sup> United Nations (n 86), 13-25.

<sup>100</sup> <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVI-1&chapter=16&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-1&chapter=16&lang=en)> accessed 27 July 2020.

<sup>101</sup> Luiza Damé, 'Há 50 anos, AI-5 suspendia direitos políticos no país' <<https://agenciabrasil.ebc.com.br/politica/noticia/2018-12/ha-50-anos-ai-5-suspendia-direitos-politicos-no-pais>> <<https://www.camara.leg.br/noticias/143270-anos-60-e-70-ditadura-e-bipartidarismo/>> accessed 27 July 2020.

<sup>102</sup> United Nations Treaty Collection. 8. Convention on the Elimination of All Forms of Discrimination against Women <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)> 21 July 2020.

<sup>103</sup> CEDAW/C/BRA/1-5 p. 12

With regard to political rights, the Women's Convention goes further than the Convention on the Political Rights of Women as it provides for a more comprehensive legal protection, in the light of the right to equality, and a catalogue of measures that States parties must undertake.

As stressed by CEDAW in General Recommendation 25, the provisions on articles 1 to 5 and 24 constitute an interpretative framework that guide the application of all other substantive articles of the Convention.<sup>104</sup>

The first three articles give the very basic guidelines to read the Women's Convention. Article 1 defines what 'discrimination against women' mean; article 2 prescribes the core obligations regarding the realization of equality between men and women; and article 3 gives specific commands to ensure the full development and advancement of women.

#### Article 1

For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Although the text explicitly refers only to discrimination on the basis of sex, the description of 'discrimination' in article 1 indicates that it encompasses also discrimination on the basis of gender, which can be confirmed by a joint reading of this provision with articles 2(f) and 5 of the Convention.<sup>105</sup> A systemic interpretation of article 1 also denotes that both direct and indirect discrimination against women are covered by the Convention. Addressing indirect discrimination is especially important as this kind of discrimination 'can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men'.<sup>106</sup>

Article 2 defines the following obligations:

#### Article 2

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<sup>104</sup> UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 25: Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures' (2004) UN Doc CEDAW/C/GC/25 para 6.

<sup>105</sup> CEDAW/C/GC/28, para 5.

<sup>106</sup> CEDAW/C/GC/28, para 16.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 2 addresses the obligations both to eliminate discrimination against women and to establish equality between men and women. As clarified by CEDAW in General Comments 23, 25 and 28, the Women's Convention focuses on substantive equality rather than the mere formal recognition of equality.<sup>107</sup>

The Committee also highlights that compliance with article 2 encompasses the obligations to respect, protect and fulfill the right to non-discrimination and the enjoyment of equality,<sup>108</sup> and specifies which measures States parties should take to meet their obligations under the Women's Convention:

The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps

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<sup>107</sup> CEDAW/C/GC/23, para 18; CEDAW/C/GC/25, para 8 and 35; CEDAW/C/GC/28, para 16.

<sup>108</sup> CEDAW/C/GC/25, para 4; CEDAW/C/GC/28, para 16, .

to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures.<sup>109</sup>

Under article 2, States parties must not only legally condemn discrimination against women, but also elaborate and execute a policy to fully eliminate all forms of discrimination against women, using all appropriate means and without delay. This command implies immediately assessing the *de jure* and *de facto* situation of women and promptly taking concrete steps to eliminate discrimination against women in all fields of life, and achieve substantive equality between men and women. Moreover, CEDAW stresses that the expression ‘without delay’ in article 2 ‘does not allow for any delayed or purposely chosen incremental implementation of the obligations that States assume upon ratification of or accession to the Convention’.<sup>110</sup>

Article 3 reinforces the exigence to take all appropriate measures in all fields to ensure the full development and advancement of women:

Article 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

In General Comment 25, CEDAW highlights the distinction between the temporary special measures prescribed in article 4(1) and the appropriate measures that are expected to be taken under article 3. To the Committee, ‘the provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures’.<sup>111</sup>

Indeed, not all measures designed to achieve and maintain gender equality are supposed to be temporary. In this regard, some of the actions recommended by CEDAW to improve the inclusion of women in public and political life – ‘ensure that women understand their right to vote, the importance of this right and how to exercise it; ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women’s freedom of movement; assist women experiencing such disadvantages to exercise their right to vote and to

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<sup>109</sup> CEDAW/C/GC/28, para 20.

<sup>110</sup> CEDAW/C/GC/28, para 24, 25 and 29.

<sup>111</sup> CEDAW/C/GC/23, para 16.

be elected’<sup>112</sup> – fall under the category of measures of Article 3, and should not be discontinued, as they are permanently necessary to sustain substantive equality.

Article 24 has a similar provision, but it mentions the obligation to adopt all ‘necessary measures’:

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

The command in article 24 is that States parties must do ‘whatever is necessary’ to achieve the full realization of the rights in the Women’s Convention.<sup>113</sup> It can be considered a specification of the obligation in article 3.

Article 4 of the Women’s Convention states that temporary special measures aiming at accelerating substantive equality between men and women and special measures to protect maternity shall not be considered discriminatory, *in verbis*:

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Temporary special measures as defined in article 4(1) aim at accelerating substantive equality and should be applied in all fields *inter alia* political, economic, social, cultural and civil spheres. Article 4(1) can be realized through the means of ‘outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems’. According to CEDAW, those measures are not an exception to the obligation of non-discrimination, but they rather constitute a strategy to fulfill the non-discrimination norm and achieve *de facto* equality between men and women. Once the goal is achieved, temporary special measures must be

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<sup>112</sup> CEDAW/C/GC23, para 45.

<sup>113</sup> Menno T. Kamminga, ‘Due Diligence Mania’, in Ingrid Westendorp (ed.), *The Women’s Convention turned 30* (Intersentia 2012) 407.

discontinued. In addition to its temporary nature, actions under article 4(1) must serve a specific goal – thus the term ‘special’.<sup>114</sup>

The purpose of temporary special measures is to remedy pre-existent inequalities, some of them deep-rooted in society through discriminatory social and cultural patterns. Precisely because of this, ‘questions of qualification and merit [an argument often invoked by quota opponents], in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined’.<sup>115</sup>

Dahlerup reminds that, in politics,

If gender quotas are characterized as ‘preferential treatment’, those disadvantaged – in this case, women – may be stigmatized as people in need of special help. If, however, the problem is located within the realm of practices and norms of political institutions, including those of political parties, affirmative action is not reverse discrimination but rather involves attempts to redress entrenched privilege.<sup>116</sup>

The author also presents an alternative perspective, pointing out that the current structure has ‘*de facto* special treatment favoring males’. From this point of view, a more pertinent question would focus not on the reasons that sustain temporary special measures to increase the participation of women in politics, but rather on what justifies ‘the continuous privileged position of men in leadership’.<sup>117</sup>

In this sense, CEDAW explicitly states that temporary special measures are not discriminatory against men. The Committee also reminds that in addition to qualification and merit, the principles of democratic fairness and electoral choice are also essential factors to integrate the processes of ‘appointment, selection or election to public and political office’.<sup>118</sup>

Although *a priori* quotas do not tackle the issue of gender stereotypes, they manage to give visibility to women, and this can lead to a change in the perception of people regarding female public officials.

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<sup>114</sup> CEDAW/C/GC23, paras 18, 20-22.

<sup>115</sup> CEDAW/C/GC23, para 23.

<sup>116</sup> Dahlerup (n 9) 153.

<sup>117</sup> Dahlerup (n 9) 151.

<sup>118</sup> CEDAW/C/GC23, para 23.

The Women's Convention provides for a separate article to specifically address obligations towards the modification of harmful social and cultural patterns of conduct and gender stereotypes:

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

As demonstrated in the previous chapter, gender stereotypes and harmful gendered traditions are still relevant obstacles for the full enjoyment of women's political rights. In this regard, Ramona Bihola reminds that 'real enjoyment of equality is achieved not only by removing formal barriers; it is achieved when social and cultural structures and power relations that perpetuate models of subordination-domination of sexes are modified'.<sup>119</sup>

CEDAW considers cultural traditions and gendered pre-fixed roles in parenting 'the most significant factors inhibiting women's ability to participate in public life'.<sup>120</sup> It is not without reason that the obligations to modify gender stereotypical conducts and to ensure equality in parenting are addressed in the same article. As observed by Holmaat and Naber, the two provisions are 'two sides of the same coin', and this is precisely because it is not possible to comply with one without tackling the other.<sup>121</sup>

Cusak and Halmaat note that within the UN system, and particularly in the context of CEDAW, there are still gaps of guidance on which concrete steps should States take to fulfill these obligations.<sup>122</sup> Nevertheless, it seems uncontested that complying with article 5 of the Women's

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<sup>119</sup> Ramona Georgeta Bihola, *Transforming Discriminatory Sex Roles and Gender Stereotyping. The implementation of Article 5(a) CEDAW for the realization of women's right to be free from gender-based violence in Jamaica* (Intersentia 2013) 11.

<sup>120</sup> CEDAW/C/GC 23, paras 8-9.

<sup>121</sup> Holmaat and Naber (n 73) 30.

<sup>122</sup> Simone Cusak, 'Building Momentum Towards Change. How the UN's response to stereotyping is evolving', in Eva Brems and Alexandra Timmer, *Stereotypes and Human Rights Law* (Intersentia 2016) 33 and Rikki Holtmaat, 'Preventing Violence against Women: The Due Diligence Standard with Respect to the Obligation to Banish Gender Stereotypes on the Grounds of Article 5(A) of the Cedaw Convention' [2009] *Due Diligence and Its Application to Protect Women from Violence* 76.



Convention goes beyond adopting legal measures, requiring States parties to implement political policies and social measures.<sup>123</sup> Some of the extra-legal actions relate to addressing gender stereotyping in the media and advertising; eliminating gender stereotyping in education, developing non-stereotypical curricula and textbooks; awareness-raising campaigns about the Women's Convention and gender equality; encouraging and facilitating equal parental responsibilities between men and women through legislation, social policies and campaigns, among other measures.<sup>124</sup>

Finally, article 7 addresses specifically the participation of women in public and political life:

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

As stated before, article 7 must be read in conjunction with articles 1 to 5 and article 24. In General Recommendation 23, on Political and Public Life, CEDAW reinforces the obligations of States parties to implement all appropriate measures, including special temporary measures, to ensure the enjoyment of political rights of women, equal with men. The Committee highlights the impact of gender stereotypical image of girls and women and the unequal division of domestic work in excluding women from the public sphere. It also clarifies that the right to political and public life encompasses not only governmental public office in executive, administrative, legislative and judiciary, but also positions in the civil society, such as political parties and trade unions.<sup>125</sup>

Among the measures to be taken by State parties, CEDAW mentions 'recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns

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<sup>123</sup> See Elizabeth Sepper, 'Confronting the "Sacred and Unchangeable": The Obligation to Modify Cultural Patterns under the Women's Discrimination Treaty' (2008) 30 University of Pennsylvania Journal of International Economic Law; Ingrid Westendorp (n 59) 118; Ramona Ramona Georgeta Bihola (n 101) 13; Holtmaat and Naber (n 73) 39.

<sup>124</sup> CEDAW/C/GC36, para 27; Holtmaat and Naber (n 73) 39;

<sup>125</sup> CEDAW/C/GC23, para 5.

directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions'.<sup>126</sup>

Specifically in regard to article 7, CEDAW recommends that States implement measures to, *inter alia*, ensure that women understand their right to vote and how to exercise it; help women to overcome barriers such as 'those resulting from illiteracy, language, poverty and impediments to women's freedom of movement'; implement equality in representation in political bodies; encourage non-governmental organizations and associations to increase women's representation.<sup>127</sup>

### **3 Regional obligations: American Convention on Human Rights**

In addition to the UN treaties, Brazil also has obligations within the Inter-American Human Rights System, notably through the American Convention on Human Rights (American Convention), to which it became party in 1992, with no reservations.<sup>128</sup>

There is no specific provision protecting the political rights of women or even the right to equality between men and women. However, a joint reading of Articles 1(1), 23 and 24 indicates the existence of an obligation towards the realization of the right to participate in government, without discrimination.<sup>129</sup>

While Article 1 imposes the obligation to respect the rights and freedoms recognized in the Convention, it also creates a general non-discrimination norm that encompasses the prohibition to discriminate on the basis of sex:

#### **Article 1. Obligation to Respect Rights**

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

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<sup>126</sup> CEDAW/C/GC23, para 15.

<sup>127</sup> CEDAW/C/GC23, para 45-47.

<sup>128</sup> American Convention on Human Rights <[https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm)> accessed 27 July 2020.

<sup>129</sup> Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969,

Article 23 ensures to ‘every citizen’ the right to participate in government, specifying that the right to vote and to be elected must be carried on through universal and equal suffrage:

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

- a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
- c. to have access, under general conditions of equality, to the public service of his country.

Article 24 guarantees the equal protection of the law:

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

According to both the Inter-American Commission of Human Rights (IACHR) and the Inter-American Court on Human Rights (IACtHR), articles 1.1 and 24 of the American Convention establish ‘the principle of equality and non-discrimination’, which constitutes one of the fundamentals of the Inter-American human rights system and ‘entails *erga omnes* obligations of protection that bind all States and generate effect with regard to third parties, including individuals’.<sup>130</sup>

The Commission’s and the Court’s jurisprudence seems to indicate that within the Inter-American system there is no distinction between the rights to equality and to non-discrimination, or rather that they constitute together a single principle. Nevertheless, the system focuses both on formal and substantive equality, and prohibits both direct and indirect discrimination.<sup>131</sup>

In this respect, IACHR considers substantive equality a relevant guide to public policymaking and an essential element to guarantee the realization of rights and freedoms to historically discriminated and vulnerable groups, among which IACHR highlights the category of women. Moreover, in addition to the concepts of direct and indirect discrimination, the Commission

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<sup>130</sup> Report No. 75/15. Case 12.923. Merit. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para 144.

<sup>131</sup> Inter-American Commission on Human Rights, Compendium Equality and Non-Discrimination, Inter-American Standards, (12 February 2019) OEA/Ser.L/V/II.171 Doc. 31, para 37 and 41.

identifies also the categories of ‘structural discrimination’, emphasizing ‘the need to undertake a broad appraisal of the historical, temporal, and geographic context in cases where patterns of discrimination appear’, and ‘multiple and intersectional discrimination’, recognizing that ‘an intersection of identities and risks can aggravate human rights violations against persons, groups, and communities living in situations of historical vulnerability and discrimination in the Hemisphere’.<sup>132</sup>

The realization of substantive equality is specially put forward by the Court in respect to the enjoyment of political rights:

Article 23 of the Convention not only establishes that its titleholders must enjoy rights, but adds the word ‘opportunities.’ The latter implies the obligation to guarantee with positive measures that every person who is formally the titleholder of political rights has the real opportunity to exercise them. As the Court has previously indicated, it is essential that the State create optimum conditions and mechanisms to ensure that political rights can be exercised effectively, respecting the principle of equality and non-discrimination’<sup>133</sup>

Although the American Convention does not directly address the issue of harmful stereotypical patterns, IACHR has repeatedly manifested that stereotypes, pre-conceived ideas and prejudices perpetuate discrimination against certain persons and populations group, and therefore must be dismantled and the violations derived from them repaired and remedied.<sup>134</sup>

The same goes for temporary special measures. The American Convention does not provide for any kind of affirmative action, but the Court and the Commission already recognized the obligation do adopt temporary special measures to ensure *de facto* equality to traditionally excluded groups in society.<sup>135</sup>

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<sup>132</sup> Inter-American Commission on Human Rights, Compendium Equality and Non-Discrimination, Inter-American Standards, (12 February 2019) OEA/Ser.L/V/II.171 Doc. 31, para 38-42 and 47.

<sup>133</sup> I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 195; I/A Court H.R., Case of Castañeda Gutman v. México. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 145

<sup>134</sup> Access for Justice for Women Victims of sexual Violence in Mesoamerica. OEA/Ser.L/V/II. Doc. 63. December 9, 2011; Violence, Children and Organized Crime. OEA/Ser.L/V/II. Doc. 40/15. November 11, 2015

<sup>135</sup> See *inter alia* I/A Court H.R., *Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 87* and OEA/Ser.L/V/II.171 Doc. 31, para 63.

In the report ‘The Road to a Substantive Democracy: Women’s Political Participation in the Americas’, IACHR refers that

Human rights instruments of the international and Inter-American systems have recognized the need for temporary special measures to remedy or compensate for the effects of past situations of structural discrimination against certain groups, and to avoid the perpetuation of such discrimination (...)

Such measures are qualified as ‘special’ in that they have a specific objective, while their ‘temporary’ nature is conditioned on the results they achieve and sustain for a period of time. Furthermore, international human rights instruments consider such measures to be legitimate to the extent that they represent reasonable, objective, and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved.<sup>136</sup>

In its jurisprudence, the Inter-American system explicitly mentioned ‘the obligation of the States to adopt measures to ensure real and legal equality among people and combat historical or de facto discrimination against a variety of social groups’ and that ‘the implementation of special measures of protection and measures to promote equality – including affirmative action – is necessary to ensure the exercise of rights by certain sectors that are victims of structural equality or long-standing exclusion’.<sup>137</sup>

## Conclusion

As demonstrated in this chapter, Brazil has several international legal obligations concerning the political rights of women, both within the UN system and the Inter-American system. Those obligations are not limited to a formal concept of equality; Brazil is required to take all appropriate measures, including temporary special measures, to achieve substantive equality, and grant and protect the enjoyment of political rights of women, on equal terms with men.

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<sup>136</sup> The Road to a Substantive Democracy: Women’s Political Participation in the Americas”, IACHR OEA/Ser.L/V/II. Doc. 79. April 18, 2011.

<sup>137</sup> IACHR. The Situation of Persons of African Descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, para 203.

#### **4. CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE IMPLEMENTATION OF WOMEN'S RIGHT TO POLITICAL PARTICIPATION IN BRAZIL**

In this chapter, I will assess Brazil's compliance with its international obligations in the perspective of its normative framework. I will start by analyzing whether the Brazilian Federal Constitution is aligned with the international standards of women's right to political participation. After that, I will examine the effectiveness of federal legislation in the realization of these rights.

##### **4.1 Brazilian Federal Constitution**

The 1988 Federal Constitution was the instrument through which democracy was formally consolidated in Brazil, after a 21-year period of military dictatorship. It reestablished the separation of powers, periodic free elections, the rule of law and enshrined a substantive set of fundamental rights and freedoms.

The Constitution gives broad powers to the federal government, whose executive branch is headed by the President, who serves as chief of State and head of government, and holds office for 4 years. The legislative functions at the federal level are exercised by a bicameral National Congress, which is composed of the 'Chamber of Deputies' and the 'Federal Senate'. The representatives for the former are elected by the proportional system, for 4-year terms, while for the latter, by the majority system, for 8-year terms. The Judiciary is composed of courts of general and specialized jurisdiction. The Supreme Federal Tribunal (STF) is the highest judicial instance and functions also as the constitutional court, while the Superior Electoral Tribunal (TSE) is the highest specialized court with electoral jurisdiction.<sup>138</sup>

The relevant constitutional provisions that impact women's political rights are those in articles 1, 3, 5(I), 14 and 17.

Article 1 institutes the fundamentals of the State, while Article 3 defines its fundamental objectives:

Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on:

I – sovereignty;

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<sup>138</sup> CF, art.1, 27, 29, 44-47.

II – citizenship;

III – the dignity of the human person;

IV – the social values of labor and of the free enterprise;

V – political pluralism.

Sole paragraph. All power emanates from the people, who exercise it by means of elected representatives or directly, as provided by this Constitution.

#### Article 3

The fundamental objectives of the Federative Republic of Brazil are:

I – to build a free, just and solidary society;

II – to guarantee national development;

iii – to eradicate poverty and substandard living conditions and to reduce social and regional inequalities;

IV – to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination.

While article 3 expresses that Brazilian State has the objective to ‘reduce’ social inequality, article 5(I) expressly recognizes to everyone the right to equality, stating that ‘all persons are equal before the law, without any distinction whatsoever’, and specifies that ‘men and women have equal rights and duties under the terms of this Constitution’.

Despite the wording ‘equality before the law’ in article 5, STF has repeatedly affirmed that this provision enshrines in fact substantive equality. The Court also confirmed that temporary special measures are not only compatible with the Federal Constitution, but also necessary to the realization of substantive equality. In the view of the Court, “social justice is more than just redistributing wealth created by collective effort; it rather means distinguishing, recognizing and incorporating diverse cultural values into society, values that are often considered inferior to those deemed to be dominant”.<sup>139</sup>

The Constitution defines the political rights and the rules for exercising them in article 14:

#### Article 14

The sovereignty of the people shall be exercised by universal suffrage and by the direct and secret voting, with equal value for all, and, according to the law, by means of:

(...)

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<sup>139</sup> Supremo Tribunal Federal, ‘Arguição de Descumprimento de Preceito Fundamental 186/DF’ (20 October 2014) ADPF 186/DF <<https://jurisprudencia.stf.jus.br/pages/search/sjur281203/false>> accessed 26 July 2029.

Paragraph 1. Electoral enrollment and voting are:

I – mandatory for persons over eighteen years of age;

II – optional for:

a) the illiterate;

b) those over seventy years of age;

c) those over sixteen and under eighteen years of age.

(...)

Paragraph 3. The conditions for eligibility, according to the law, are:

I – the Brazilian nationality;

II – the full exercise of the political rights;

III – the electoral enrollment;

IV – the electoral domicile in the electoral district;

V – the membership in a political party;

VI – the minimum age of:

a) 35 years for President and Vice-President of the Republic and Senator;

b) 30 years for Governor and vice-Governor of a state and of the Federal District;

c) 21 years for federal deputy, state or district deputy, Mayor, vice-Mayor, and justice of the peace;

d) 18 years for city councilman.

Paragraph 4. the illiterate and those that cannot be registered as voters are not eligible.

(...)

A joint reading of articles 5(I) and 14 makes it clear that women and men have the same political rights, and the right to enjoy them on equal terms.

Among other conditions, the Constitution stipulates the need for membership in a political party. This requirement has triggered several lawsuits before STF; plaintiffs claim that it constitutes an additional obstacle for ordinary citizens to run for political office, arguing moreover that the Constitution does not expressly forbidden independent candidacies. The issue is also the object of a constitutional amendment process (PEC 229/08) in the National Congress – which is by the way the locus par excellence where an eventual change on the Constitution in this matter could be voted, since the membership in a political party is explicitly required in the Constitution and the text leaves no margin for diverse interpretation. Up to date, neither the pilot case at the Court or the constitutional amendment process at the Congress have been decided. Therefore, membership in a political party is still a constitutional requirement for running for elections.



Political pluralism – understood by STF as the plurality of political parties, enjoying equal rights<sup>140</sup> – is outlined in article 1 of the Constitution as one of the fundamentals of the State. Article 17, in turn, describes the rules for political parties, ensuring to them ‘autonomy in defining their internal structure and establishing rules on the choice, formation and period of their permanent and provisional organs and on their organization and functioning’, and granting monies from the ‘party fund’ as well as access to free-of-charge access to radio and television.

In Brazil, the issue of political parties is important to women for two main reasons. First, the implementation of the quota system introduced to increase women's participation in politics depends substantially on the action of political parties. However, and this is the second reason, political parties in Brazil lack internal democracy, and are male-dominated<sup>141</sup>: female candidates seldom receive the necessary support from political parties to effectively compete at the polls. As I will demonstrate in the next section, the change of behavior of political parties is an essential element to make the quotas work.

Overall, the Federal Constitution provides for an adequate protective framework, enshrining the right to substantive equality as a fundamental right, in alignment with the ICCPR, the Women’s Convention and the Convention on the Political Rights of Women, as well as with the ACHR.

## **4.2 Federal legislation and the implementation of quotas**

The Brazilian ‘quota system’ combines: (1) quotas in the list of candidates; (2) quotas for campaign funds; and (3) quotas for free-of-charge access to radio and television time frame in electoral campaigns of female candidates.

Initially, however, women had only the quotas in the list of candidates, which was created in 1997 by Law 9.504/1997 (Law on Elections), that defines the electoral rules. The quotas policy

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<sup>140</sup> Supremo Tribunal Federal, ‘Vocabulário Jurídico, Pluralismo’ <<http://www.stf.jus.br/portal/jurisprudencia/listarTesauro.asp?txtPesquisaLivre=PLURALISMO>> accessed 26 July 2020.

<sup>141</sup> Luana Simões Pinheiro, ‘Vozes Femininas na Política’ (Secretaria Especial de Políticas para as Mulheres 2007) 178-185.

introduced by the Law on Elections is overall often mentioned as a failure, and the fact that Brazil remains in the 140<sup>th</sup> position in the IPU ranking of ‘women in parliaments’ confirms it.<sup>142</sup>

As I argued in the previous chapters, the achievement of equality requires more than only legal measures, once patriarchal cultural and social patterns play an important role in perpetuating discrimination against women.

In this section, however, I will demonstrate that the Brazilian legislation itself has flaws that undermine the chances of achieving gender equality in politics. These flaws were partially corrected in 2009, with an amendment in the Law on Elections, and in 2018, with the introduction of quotas for campaign funds and media access by the means of constitutional reviews of Law 9.606/1995 (Law on Political Parties) by STF, and decisions delivered by TSE.

Therefore, the Brazilian ‘quota system’ is not provided by a single document, but it is rather the combination of two federal laws and a sequence of their amendments, constitutional reviews and other remedies by the Judiciary.

#### 4.2.1 Quotas for the list of candidates, created by Law 9.507/1997

Article 10, §3° of Law 9.507/1997 created a 30 percent quota for women in the list of candidates of political parties. Its original wording expressed that:

##### Article 10

Each party may register candidates for the Chamber of Deputies, Legislative Assemblies, Legislative Chamber and Municipal Chambers, up to 150% of the number of seats to be fulfilled.

(...)

§3° From the number of vacancies resulting from the rules foreseen in this article, each party or colligation will reserve a minimum of 30% and a maximum of 70% for each sex on its list of candidates.<sup>143</sup>

Three aspects of this provision are noteworthy to highlight. The first one is that it does not establishes quotas for seats in the legislative houses (reserved seat quotas), but for the list of candidates within the political parties (candidate quotas). Second, it does not create quotas

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<sup>142</sup> IPU, ‘Women in Parliaments 2020’, <https://www.ipu.org/resources/publications/infographics/2020-03/women-in-politics-2020> accessed 29 July 2020.

<sup>143</sup> Lei 9.504/1997 <[http://www.planalto.gov.br/ccivil\\_03/leis/19504.htm](http://www.planalto.gov.br/ccivil_03/leis/19504.htm)> accessed 26 July 2020.

specifically for women; it has a gender-neutral language, that requires parties to reserve a minimum of 30% and a maximum of 70% of the vacancies for each sex. Finally, it obliges parties to ‘reserve’ and not necessarily fill these slots, which in practice led to situations where parties would put forward only male candidates, leaving 30% of the vacancies unfulfilled, and still not violate the law.

The adjustment of the expression ‘reserve’ came more than a decade later, in 2009, through an amendment that changed the wording of article 10, §3º to ‘each party or colligation *will fulfill* the minimum of 30% and the maximum of 70% for each sex on its list of candidates’. With the amendment, political parties are obliged to have at least 30% of women in their list of candidates.<sup>144</sup> However, the percentage of women elected has been consistently under 30% even with the implementation of the quotas.

The table below shows the number of female deputies and senators in the federal elections from 1982 to 2018.<sup>145</sup> As stated in section 4.1, elections to the Chamber of Deputies follow the proportional system, while to the Federal Senate, the majoritarian system. The quotas are applied only to the Chamber of Deputies.

Year of election	Chamber of Deputies (513 members)		Federal Senate (81 members)	
	female deputies	Percentage	Female senators	Percentage
1982	8	1.5%	-	0%
1986	26	5.4%	-	0%
1990*	29	6%	2	6%
1994	32	6%	4	7%
1998	29	5.7%	2	7%
2002*	42	8%	8	15%
2006	46	8.9%	4	15%
2010**	45	8.6%	7	13%
2014	51	13.33%	11	13.6%
2018	77	15%	12	14.8%

<sup>144</sup> Lei 12.034/2009 < [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Lei/L12034.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L12034.htm) > accessed 27 July 2020.

<sup>145</sup> <https://www12.senado.leg.br/noticias/materias/2014/10/16/eleicoes-2014-representacao-feminina-diminui-nas-assembleias-legislativas>; <https://www12.senado.leg.br/noticias/materias/2014/10/16/eleicoes-2014-representacao-feminina-diminui-nas-assembleias-legislativas> accessed 27 July 2020.

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\* first election under the 1988 Federal Constitution

\*\* first election with the 'recruitment' quota

\*\*\* first election after the amendment that replaced the obligation to 'reserve' to 'fill'

Although there has been an increase in the number of seats occupied by women both in the Chamber of Deputies and the Federal Senate, the progress has been extremely slow, and the proportions are still far from reflecting the composition of Brazilian society, where women constitute 51,7% of the population.<sup>146</sup>

In 1986, in the first election after the end of the military dictatorship, there was a significant increase in the number of female deputies, from 8 to 26. As will be addressed in Chapter 5, women's movements had been extremely active in the movements for democratization.<sup>147</sup> However, the promulgation of a new Federal Constitution, in 1988, did not make any significant change in the number of elected women in the polls that followed (1990, 1994 and 1998), which is not surprising, as, although the Constitution enshrined equality before the law, no additional measures had been implemented to promote substantive equality.

Within the Chamber of Deputies, the introduction of quotas for candidates list did not accelerate the inclusion of women. In the 2002 elections, the first one in which quotas were applied, there was a rise of only 2.3 percentual points, and the average did not significantly change in the years that followed. The 2010 election, the first one in which parties were effectively obliged to recruit at least 30% of female candidates (and not only 'reserve' vacancies), was a disappointment, as the number of women elected for the Chamber of Deputies in fact decreased. In the two elections that followed, in 2014 and 2018, there has been a rise to 13.33% and 15%, respectively, which represents an important increment, but still far from achieving a 'critical mass' and even further from gender parity. Therefore, after 20 years, the quotas did not significantly impact the number of women elected for the Chamber of Deputies.

As previously mentioned, the legislation of the quotas has shortcomings that mitigate its efficiency.

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<sup>146</sup> IBGE, 'Quantidade de Homens e Mulheres' (2019) <<https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/18320-quantidade-de-homens-e-mulheres.html>> accessed 27 July 2020.

<sup>147</sup> Fabrícia Faleiros Pimenta, 'Políticas Feministas e os Feminismos na Política: o Conselho Nacional dos Direitos das Mulheres (1985-2005)', (PhD, Universidade de Brasília, 2010), 69 and 96-97.

First, the law does not provide for any sanction in case of non-compliance with the quotas. The only consequence if a party exceeds the limit of 70% is that it is obliged to remove candidates from the over-represented sex, but not to replace them for candidates from the under-represented sex.

Second, in Brazil, candidate quotas are applied to legislative houses that use the proportional representation system with open-list, that is, electors vote directly on the candidate of their preference, and those with more votes are elected, within the number of vacancies defined by the proportion of votes received by the party.<sup>148</sup> However, political science literature suggests that closed or semi-closed lists are more beneficial for women within candidate quotas.<sup>149</sup> Indeed, successful countries that implemented this type of quotas (e.g. Bolivia) added other exigences to the candidates' list, such as parity and alternance, which is only possible in closed or semi-closed lists.<sup>150</sup>

In this sense, within the Inter-American System, ParlAmericas stresses that electoral systems are not gender-neutral, as the combination of its characteristics may impose additional obstacles that reduce the chances of women to be elected.<sup>151</sup> In the UN context, the two General Assembly resolutions on 'Women and Political Participation' urge States to 'review the differential impact of their electoral systems on the political participation of women and their representation in elected bodies and to adjust or reform those systems where appropriate'.<sup>152</sup>

Finally, in a system like the Brazilian one - proportional representation with open list -, candidate quotas would minimally work only if enhanced by additional measures to support female candidacy, such as awareness-raising campaigns to change the party behavior, still immersed in a

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<sup>148</sup> Bancada Feminina, Câmara dos Deputados, Procuradoria Especial da Mulher and Senado Federal, + *Mulheres na Política. Mulher, Tome Partido!*, 25-27.

<sup>149</sup> Araujo (n 140) 13.

<sup>150</sup> IDEA, 'Gender Quotas Database. Plurinational State of Bolivia' < <https://www.idea.int/data-tools/data/gender-quotas/country-view/129/35> > accessed 29 July 2020.

<sup>151</sup> ParlAmericas, 'Promovendo Candidaturas de Mulheres', 7 <<https://www.parlAmericas.org/en/resources/publications.aspx>> accessed 03 August 2020.

<sup>152</sup> UNGA Res 58/142 Women and political participation' (10 February 2004), UN Doc A/RES/58/142, para 1 and UNGA Res 66/139 Women and political participation' (19 December 2011), UN Doc A/RES/66/130, para 6.

very androcentric culture, equal access to resources and media, as well as policies to tackle discriminating gender stereotypes in society.

The limitations of the candidate quotas were acknowledged by the Brazilian State itself, in the 6<sup>th</sup> periodic report to CEDAW, when it recognized that ‘the law must include provisions that establish sanctions, and other effective mechanisms, in order to guarantee compliance with the provisions in force that establish a minimum and maximum percentage, by gender, for candidates to proportionately elected offices’.<sup>153</sup>

Indeed, a study that analyzed the impact of quotas in federal elections in Brazil from 1994 to 2010, suggested that by only increasing the number of female candidates, without implementing any other measure, the quota system results in a numeric decrease on the *odds ratio* of women being elected.<sup>154</sup>

In practice, what happens is that political parties recruit female candidates just to formally fulfill the quota, but do not make any real effort to elect them, as the resources are mostly invested in the campaigns of male candidates. In Brazil, this phenomenon is known as *candidatas laranjas* (‘sacrificial lambs’). As pointed out by Clara Araujo, ‘forming a list of candidates tend to be a formal and legal procedure (...) [it] does not guarantee the support of the party or that the candidate has visibility in the electoral race’.<sup>155</sup>

As warned by Mala Htun, ‘Brazil’s experiences attest to the need to draft quota laws carefully. (...) for quotas to work the law must be written in such a way as to avoid loopholes that permit parties to avoid nominating women or to comply with quotas merely by placing women in supplementary or ‘decorative’ positions on the ballot paper’.<sup>156</sup>

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<sup>153</sup> CEDAW/C/BRA/6, 41.

<sup>154</sup> Teresa Sacchet, ‘Partidos Políticos e (sub)Representação Feminina: um Estudo sobre o Recrutamento Legislativo e Financiamento de Campanha’ in Denise Paiva (org.), *Mulheres, Política e Poder* (Cânone 2011) 166-167.

<sup>155</sup> Clara Araujo, ‘Quotas for Women in the Brazilian Legislative System’. Quotas for Women in the Brazilian Legislative System. Paper presented at the International IDEA Workshop, ‘The Implementation of Quotas: Latin American Experiences’ (Lima, 23–24 February 2003) <[https://aceproject.org/ero-en/topics/parties-and-candidates/CS\\_Araujo\\_Brazil\\_25-11-2003.pdf](https://aceproject.org/ero-en/topics/parties-and-candidates/CS_Araujo_Brazil_25-11-2003.pdf)> accessed 27 July 2020.

<sup>156</sup> Mala N. Htun, ‘Women, Political Parties and Electoral Systems in Latin America’ in Julie Ballington and Azza Karam (eds), *Women in Parliament: beyond numbers* (IDEA 2005) 119.

The issue of ‘*candidatas laranjas*’ was taken to the court and punished for the first time only in 2016 – almost 20 years after the creation of the quotas –, when a decision of TSE revoked the candidacies of the whole colligation list in a certain constituency. Although the Law on Elections does not provide for sanctions for the non-compliance of quotas, the Tribunal understood that the registration of *candidatas laranjas* constituted a fraudulent candidature, and condemned the party on the basis of article 14, §10 of the Federal Constitution, that provides for the impugnation of candidature in case of electoral fraud.<sup>157</sup>

If 20 years ago it would be unimaginable to take that case to the court – institutions would normally turn a blind eye to the issue – the context in 2016 was particularly favorable to address the cause, as feminist and women’s movement both inside the government and in civil society intensified the pressure on institutions to inspect and punish the fraudulent use of quotas.

It was also due to the pressure of the women’s movement that the quotas for campaign funds and access to media were created. A joint action of the National Council for Women’s Rights (CNDM), the Special Secretariat on Policies for Women (SPM), the Women’s Caucus on the National Congress and the women’s and feminists’ movements led amendments and constitutional reviews of legislation, resulting in extra instruments to improve the chances of elections for women.

#### 4.2.2 Quotas for the promotion and dissemination of women in politics and quotas for campaign funds

a) the party fund quota for the electoral campaign, provided by Laws 9.096/1995 and 13.165/2015 (reviewed by STF in 2018)

Law 9.096/1995 (Law on Political Parties), which regulates the functioning of political parties created a ‘party fund’, formed by monies from public and private resources, to give financial aid to political parties. According to the law, the party fund can be used to meet ordinary expenses of

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<sup>157</sup> Tribunal Superior Eleitoral, Recurso Especial Eleitoral 193-92.2016.6.18.0018/PI (TSE Respe 193-92.2016.6.18.0018/PI) <<http://inter03.tse.jus.br/sjur-consulta/pages/inteiro-teor-download/decisao.faces?idDecisao=513402&noCache=-782354934>> accessed 2 August 2020.

the party (maintenance of headquarters, the pay of employees, etc.), as well as expenses with political propaganda and electoral campaigns, among other party-related activities.<sup>158</sup>

Although the party fund exists since 1995, it was only after an electoral reform in 2015, that parties were obliged to use a percentage of the fund to invest in the electoral campaigns of their female candidates. Initially, it was supposed to be a temporary measure, covering not only a minimum percentage but also a maximum. Indeed, Law 13.165/2015, that structured the electoral reform, provided that the reserve of funds for women's campaign should happen only for the three elections following the approval of the reform, and stipulated a minimum of 5% and a maximum 15% of the party fund for that purpose.<sup>159</sup>

In 2018, this provision was subjected to a constitutional review by the Brazilian Supreme Court, that declared both the floor and the ceiling quotas unconstitutional. According to the Court, the minimum allocation of 5% violated the right to equality, as it allowed that 95% of the fund could be spent exclusively with male candidates and, therefore, did not give adequate protection to women's rights. Likewise, establishing a maximum of 15% to finance women's electoral campaigns would rather reinforce inequality than protect women, as it would automatically allocate 85% of the monies to finance men's campaign, which, in addition, would violate the autonomy of political parties, that would not be able to increase the campaign funds for women, if they wish to do so. The Court understood that "there is no reasonable or rational reasoning for the unequal treatment", and declared that the quotas parameters violated articles 1.III (human dignity), 1.V (political pluralism), 3.I (objective to build a free, just and solidary society), 5 (equality) and 17.1 (autonomy of political parties) of the Federal Constitution, as well as articles 2, 3, 5 and 7 of the Women's Convention, offending the right to equality and to live free from discrimination.<sup>160</sup>

Finally, the Court decided that campaign funds should be allocated according to the exact proportion of candidates of both sexes, adjusting the floor to 30%, in equation to the candidate quotas, and abolished the ceiling:

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<sup>158</sup> Lei 9.096/1995 <[http://www.planalto.gov.br/ccivil\\_03/leis/19096.htm](http://www.planalto.gov.br/ccivil_03/leis/19096.htm)> accessed 27 July 2020.

<sup>159</sup> Ibid.

<sup>160</sup> STF, Ação Direta de Inconstitucionalidade 5617, Tribunal Pleno, 3 October 2018 (ADI 5617), p. 10-11 and 27 <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=748354101>> accessed 29 July 2020.



Parties have the autonomy to distribute campaign resources, as long as they do not transpose the strict constitutional limits. In the light of the principle of equality, political parties cannot create distinctions in the allocation of resources based exclusively on gender. Therefore, there is no other admissible constitutional interpretation than the one that determines to political parties the distribution of public resources destined to the electoral campaign in the exact proportion of the candidacies of both sexes, being, in view of the provision in art. 10, § 3, of the Law on Elections, the minimum quota is 30%.<sup>161</sup>

The decision also stressed that if the proportion of female candidates exceed 30%, then the minimum amount of resources to promote women's candidacy should also be raised in the same proportion. Moreover, the Court extended the same fundamentals to declare the temporary nature of the measure unconstitutional; however, it did not explicitly address the specific reasons concerning it.<sup>162</sup>

Therefore, political parties are now obliged to reserve at least 30% of the party fund to finance women's electoral campaigns.

b) the 'electoral fund' quota

The original text of Articles 38 and 39 of Law 9.606/1996 allowed legal persons to make donations not only to the 'party fund', but also directly to political parties.<sup>163</sup> In practice, that meant that companies could give resources directly to the political parties of their 'preference', which caused distortions in the isonomy between parties and at the same time created a dangerous link between private economic sectors and the political sphere.

In 2015, Articles 38 and 39 were subjected to a constitutional review by the Supreme Federal Court, which stressed that 'donation by legal entities to electoral campaigns, rather than reflecting political preferences, denotes a strategic action of these large donors, in the eagerness to strengthen their relations with the public power, in pacts, often lacking a republican spirit', and declared it unconstitutional.<sup>164</sup>

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<sup>161</sup> STF, ADI 5.617 < <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=748354101> > accessed 27 July 2020.

<sup>162</sup> ADI 5617, p. 36.

<sup>163</sup> L. 9.096/1995, art. 38.

<sup>164</sup> STF, ADI 4650, 19 September 2015 < <https://jurisprudencia.stf.jus.br/pages/search/sjur339864/false> > accessed 28 July 2020.

The practical effect of the Court's decision was that political parties could still receive monies from the party fund and from natural persons, but not from companies, which resulted in a considerable diminution of their resources. The party fund itself was diminished, as it could not count on the donations from companies anymore.

The 'response' came a few years later, with Law 13.487/2017, that created the 'electoral fund', a special fund composed only by public resources, especially to finance electoral campaigns.

Although the Law does not provide for any kind of quota, Resolution 23.607/2019 issued by the Superior Electoral Tribunal (TSE) in 2019 creates the obligation for political parties to apply at least 30% of the electoral fund to finance electoral campaigns of their female candidates. Mirroring the STF decision, TSE also determines that, if the number of women running for elections exceeds the 30% minimum quota, then the minimum quota for resources allocated to women's campaign must increase in the same proportion. Moreover, it grants the right for female candidates to manage the monies themselves – instead of the party or other intermediate –, on their own campaign or in the campaign of other women, being expressly forbidden to allocate those resources in benefit of male candidates.<sup>165</sup>

Therefore, political parties have the obligation to apply at least 30% of the monies from both the party fund and the electoral fund to the promotion of women's candidacies.

#### 4.2.3 Quotas for time frame on radio and television

The Law on Elections provides for free-of-charge access to radio and television during electoral campaigns, in the 35-day period that precedes the elections day. The law specifies a schedule with the distribution of time frame according to the position the candidates are running for.<sup>166</sup>

In 2018, TSE delivered a decision recognizing that the same *ratio decidendi* of the Supreme Court's decision that established the party fund 30% quotas for women should be applied to the

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<sup>165</sup> Superior Tribunal Eleitoral, Resolution 23.607/2017, art. 17, paras. 4-6 <[www.tse.jus.br/legislacao/compilada/res/2019/resolucao-no-23-607-de-17-de-dezembro-de-2019](http://www.tse.jus.br/legislacao/compilada/res/2019/resolucao-no-23-607-de-17-de-dezembro-de-2019)> accessed 28 July 2020.

<sup>166</sup> Lei 9.504/1997, art. 47.

time slot in radio and television during electoral campaigns. Therefore, political parties must use at least 30% of their time in radio and television to promote the candidacies of women.<sup>167</sup>

## Conclusion

Political parties are still androcentric institutions, that lack transparency and internal democracy. Because of this, the creation of the candidates' quota alone did not result in the election of more women, as parties would only formally fulfill the minimum vacancies of female candidates but not give any financial or logistic support for their candidacies. As a result of the pressures of women's movements, since 2018 parties are now obliged to invest at least 30% of the campaign funds and of the access to media in the election of their women candidates. The efficacy of this new set of quotas will be assessed in the next elections.

## **5. EXTRA-LEGAL MEASURES FOR THE REALIZATION OF THE RIGHT TO POLITICAL PARTICIPATION OF WOMEN IN BRAZIL**

In this chapter I will investigate how Brazil has been implementing women's right to political participation through extralegal measures, and to which extent it fulfills its international obligations. The first section of this chapter will analyze the interval from 1985 to the first half of 2016, corresponding to the period between the end of the military dictatorship and the second term of Dilma Rousseff, the first female president elected in Brazil. In the second section, I will analyze the second half of 2016 to the beginning of 2020. The impeachment of Dilma Rousseff was chosen as a division line because it represented a major turning point in the governmental policies for women.

### **5.1 From the re-democratization to the election of the first female president: advances and setbacks**

The military dictatorship in Brazil came to an end on 15<sup>th</sup> March 1985, when the country came to be governed again by a civilian President. Although the 1985 elections were still indirect – despite the huge popular movement '*Diretas já!*' demanding direct elections right there – there was an

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<sup>167</sup> Superior Tribunal Eleitoral, CONSULTA N° 0600252-18.2018.6.00.0000 < <https://www.conjur.com.br/dl/voto-rosa-weber-consulta-publica.pdf>> accessed 30 July 2020.

environment of hope and enthusiasm; after 21 years, Brazilians would enjoy freedom and democracy again.

Rounaq Jahan notices that, in Latin America, ‘in countries where the women’s organizations have participated widely in the struggle for democratic renewal, they have been able to later institutionalize these links either through the integration of representatives of civil society organizations, particularly women’s rights non-governmental organizations, in consultative boards or other similar bodies’.<sup>168</sup>

This was the case in Brazil. With the re-democratization, women, who had been actively engaged in the resistance against the authoritarian regime, were especially enthusiastic about expanding their participation in public and political life. They ambitioned not only more room in the civil society, but also an institutional space where they could dialogue with the government. In this context, a special body was created just a few months after the presidential elections, to serve as an intersection between the women’s movements and the government. The National Council of Women’s Rights (CNDM) was created as a national mechanism for gender equality and empowerment of women, within the Ministry of Justice, and subordinated to the Office of the President, to guide the federal Executive branch in its policies for women.<sup>169</sup> The CNDM was responsible for planning, articulating and proposing public policies for women, functioning as an institutional channel to put forward the demands from the feminist and women’s movements. The creation of the Council itself was a revindication from these movements; more specifically, it was a request presented by a group of participants of the VII National Feminist Meeting to the new government, which accepted the demand and sponsored the project.<sup>170</sup>

From 1985 to 1989, the CNDM had an intense involvement with the advancement of women’s rights, in several areas, organizing events and proposing progressive policies for women to the federal government.

Its contribution to the Constituent Assembly (1987-1988) is recognized to have substantially influenced the final text of the Constitution. During the year of 1986, the CNDM articulated a network with state and municipal women’s councils, as well as different associations related to different groups of women, such as domestic and rural workers and unionists, and women’s and

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<sup>168</sup><sup>168</sup> Rounaq Jahan, ‘Strengthening National Mechanisms For Gender Equality And The Empowerment Of Women’ (UN Division for the Advancement of Women 2010) 54.

<sup>169</sup> Lei 7.353 de 29.08.1985 < [www.planalto.gov.br/ccivil\\_03/leis/1980-1988/L7353.htm](http://www.planalto.gov.br/ccivil_03/leis/1980-1988/L7353.htm)> accessed 2 August 2020.

<sup>170</sup> Fabrícia Faleiros Pimenta, ‘Políticas Feministas e os Feminismos na Política: o Conselho Nacional dos Direitos das Mulheres (1985-2005)’, (PhD, Universidade de Brasília, 2010) 69-74

feminist movements all across the country, to encourage women to take part in the constituent process and present their proposals and demands. The staff of the CNDM went personally to all State capitals to invite the female population to contribute to the project of the new Constitution and send their suggestions to the Council. It received hundreds of letters from women – some of them with actual drafts of articles, others only expressing their desire to have equal rights at the workplace, and others with real outbursts – and within the CNDM, a commission of female lawyers read and analyzed all the proposals. Six months before the negotiations at the Assembly started, the CNDM organized a huge event at the National Congress with women from all over the country to discuss the propositions for the new Federal Constitution. The outcome of the meeting was an op-ed named ‘Letter from Brazilian Women to the Constituents’, with the demands of women’s movements.<sup>171</sup>

The ‘Lipstick Lobby’ at the Constitutional Assembly – the label was initially used by the male constituents to mock their female counterparts, but then appropriated by the women themselves – was backed by the CNDM and the women’s and feminist movements. Because of this, the small group of just a few female constituents had a heavier impact at the Assembly. During the negotiations and voting process to approve the new Constitution, the Lipstick Lobby constituents discussed the proposals with the women from the Council and from the women’s and feminist movements and, despite their ideological differences, they voted as a monolith, to guarantee the rights for women on equal terms with men. About 80% of the demands presented in the Letter was approved and incorporated into the Federal Constitution.<sup>172</sup>

In parallel to its contributions to the Federal Constitution, the CNDM promoted several events and campaigns, bringing to the table a progressist agenda, with topics such as women’s labor rights, agrarian reform and racism, topics that are up to date very controversial in Brazil.

In 1987, the CNDM organized the National Meeting of Women and Labor Law, and in the same year published the book “Violence Against Women and Children in Land Conflicts”, denouncing the crimes perpetrated in the land disputes in Brazil. The CNDM sent copies of the book to the Amnesty International and to several international human rights organizations, including bodies at

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<sup>171</sup> Pimenta (n. 172) 83-86

<sup>172</sup> Pimenta (n. 172) 87-93.

the UN. This caused the first clash of the Council with the Ministry of Justice, which considered the publication a ‘subversive act’.<sup>173</sup>

Nonetheless, the CNDM continued its activities with the same autonomy, and in 1988, in the centenary of *Lei Áurea*, the slavery abolition act in Brazil, it launched an awareness-raising campaign on the discrimination against black women. Among the proposals for the campaign, the CNDM – which in 1988 already had a Commission on Black Women – planned to organize lectures and debates in the law schools across the country and arrange a fictional jury tribunal, where the Brazilian State would be judged for violations on the right not to be discriminated against on the basis of race. The counselors of the CNDM were excited about the campaign and had planned to invite Winnie Mandela to preside the tribunal – by that time, Nelson Mandela was in prison because of his struggle against the apartheid regime in South Africa, and Winnie was an icon of the fight against racism. The campaign and the fictional jury did happen, but without the presence of Winnie Mandela and without the support of the government. As soon as the Minister of Justice was informed about the project, he manifested his disagreement with the realization of the jury and declared that there was no racism in Brazil. That was the second clash of the CNDM with the government.<sup>174</sup>

In 1989, the economic crisis and a third clash of the CNDM with the government led the Council to lose its budgetary and institutional autonomy. The Minister of Justice determined a 72-percent cutback on the CNDM’s budget and a reduction of the staff. Nonetheless, even with fewer resources and reduced staff, the Council promoted the campaign ‘Motherhood: Right and Choice, that presented a program of family planning, which included controversial topics for that time, such as contraception methods, abortion and women’s appropriation on their bodies. Moreover, with the support of the UN and the Pan American Health Organization (PAHO), the CNDM presented to the federal government the ‘Letter of Women in the Defense of their Right to Health’, with an extensive list of recommendations concerning the basic rights of women, including their right to decide about their own body and the right to maternity as a free choice.<sup>175</sup>

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<sup>173</sup> Pimenta (n. 172) 95

<sup>174</sup> Pimenta (n. 172) 97-100.

<sup>175</sup> Pimenta (n. 172) 103.

Agrarian reform, land conflicts, racism and sexual and reproductive rights of women are today still some of the unsolved inequalities that Brazil still has to deal with. In the 1980s, when the CNDM brought those topics to the table, Brazil had just left a long period of authoritarianism and was still working to consolidate democracy: Moreover, Brazil was, and still is, a very conservative and sexist society. The activities of the Council were considered ‘subversive’ – a familiar term to the times of dictatorship – and it led to the repression of the Council.

The CNDM was already working with less than 30% of its original budget. In addition to this, the Minister of Justice imposed nominations to the Council – he changed 2/3 of the originally nominated counselors –, in an attempt to distort the purpose of the CNDM, that is, to be an institutional space for the women’s movements demands. Jacqueline Pitanguy, the president of the CNDM, along with other counselors, resigned, in protest. By that time, the CNDM had great support of the press and an extraordinary legitimacy within society; the mass resignation of the counselors was a political act to demonstrate against the authoritarian interference of the Minister of Justice. According to Pimenta, this episode of the mass resignation is considered to be the moment when the feminist movement ‘left’ the CNDM.<sup>176</sup>

From 1989 to 2003, despite all efforts of the new counselors, the CNDM was reduced to an empty body, with no financial or administrative autonomy. Until 1995, Brazil was facing both political and economic crisis, with the impeachment of then-President Fernando Collor de Mello and an escalated inflation. Despite the lack of resources, the CNDM started to slowly recover its legitimacy from 1995 onwards, during the term of President Fernando Henrique Cardoso, but mostly because of the international context, that forced States to undertake more concrete steps to comply with their international obligations.<sup>177</sup> As acknowledged by the Brazilian State, ‘the Beijing Conference was fundamental for the restructuring of the Council’.<sup>178</sup>

It was during this period of slow recovery that the CNDM lobbied and managed to enact the 30-percent quota for the list of candidates, in 1997. A few months later, in 1998, within the neoliberal wave and the reduction of the State, the structure of the CNDM was reduced to two employees.<sup>179</sup>

A substantial change came in 2003 when then-President Luiz Inácio Lula da Silva created the Special Secretariat on Policies for Women (SPM), a secretariat with direct access to the President – and therefore with ‘ministerial status’ –, to be the new national machinery for gender equality

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<sup>176</sup> Pimenta (n. 172) 100, 104-107.

<sup>177</sup> Daniel Pitanguieira de Araujo et al, ‘Conselhos Nacionais de Direitos Humanos. Uma análise de agenda política’ (IPEA 2020) 219.

<sup>178</sup> ‘Brazil’s Response to the “questionnaire on the application of the Beijing Platform for action (1995) and the results of the twenty-third period of the Extraordinary sessions of the general assembly (2000) 26.

<sup>179</sup> Pimenta (n. 172) 138.

and women's empowerment. The SPM had virtually the same functions of the CNDM; the CNDM, in turn, was removed from the Ministry of Justice and became part of the Secretariat.

The creation of the SPM was a turning point in the advancement of women's rights. From 2003 to 2016, the Secretariat had an active role in assisting the federal government in the implementation of policies for women, functioning again as a space for the integration of the demands from the civil society, especially the women's movements, in the State policies.

Among the relevant initiatives to promote the participation of women in politics, the periodic National Conferences on Policies for Women are pointed out as a successful platform for mobilizing women, networking the different segments of women's movements and including their perspectives and interests in the elaboration of the periodic national plans:

Brazil's national conferences organized by the national machineries to participate in the drafting of national gender plans have been a very successful tool that also has succeeded in mobilizing women, bringing gender issues to the public debate and creating a wider base of support. They are important sources of substantive ideas for the elaboration of national plans that truly respond to women's needs and aspirations. These national conferences have been preceded by municipal and/or state conferences where women participate in the drafting of regional plans of action magnifying the power of civil society. This strategy also increases dramatically capacity building. The conferences at all levels provide privileged access to a vigorous debate, and a forum to reach consensus and trust. These conferences have also allowed for the construction of explicit transparencies in the acts of governments and have opened to dialogue the relations between the state and civil society. They can be considered models of solidarity and of permanent dialogue with the social movements. The Brazil experience shows a significant increase in participation and in local leadership development, an effective blend of both strategies.<sup>180</sup>

So far, there have been four national conferences, in 2004, 2007, 2011 and 2016. Some of the objectives and priorities defined in the respective national plans included the achievement of balance of power between men and women, in economic, legal, political and interpersonal spheres; promotion of non-sexist education; diffusion of the non-discriminatory and non-stereotyped image of women;<sup>181</sup> encouragement of greater participation of women in the decision making positions in the Executive, Legislative and Judiciary branches, as well as in political parties, unions and other associations; advocate for having gender parity in the political bodies;<sup>182</sup> promote campaigns to change discriminatory cultural and social patterns and equal parenting responsibilities; advocate for the ampliation of paternity leave and promote the debate on parental leave.<sup>183</sup>

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<sup>180</sup> María Dolores Fernós, 'National mechanism for gender equality and empowerment of women in Latin America and the Caribbean region', *Mujer y Desarrollo* (UN ECLAC 2010) 44.

<sup>181</sup> SPM, 'Plano Nacional de Política para as Mulheres', 11, 15-16

<sup>182</sup> SPM, 'II Plano Nacional de Políticas para as Mulheres', 122.

<sup>183</sup> SPM, 3 Conferencia Nacional de Políticas Para as Mulheres. Resoluções Aprovadas', 7.



Another relevant contribution of the SPM to advance women's participation in politics was the creation, in 2007, of the National Forum of Women of Political Parties, a forum that gathers female representatives from different political parties 'to monitor the advance of women in political parties; to collaborate with the women's political education; to interfere in the Electoral Reform discussions and in the electoral legal framework; to articulate the insertion of women's demands in the electoral platforms; to promote actions that stimulate women's participation in elections, and to effectively participate in the combat against prejudice towards women'.<sup>184</sup>

The SPM also used to work in partnership with the Women's Caucus in the National Congress to develop programs to increase women's participation in politics, such as 'conducting workshops and public hearings, creating special committees, proposing and accelerating the processing of legislation of interest to Brazilian women'.<sup>185</sup>

Finally, the SPM used to be the governmental body responsible for ensuring the compliance of the Women's Convention and all other international treaties that Brazil has ratified, in what concerns women's rights.<sup>186</sup>

A study published by the Economic Commission for Latin America and the Caribbean (ECLAC) in 2010 considered the SPM in Brazil a successful case of promotion of gender equality and women empowerment through formal state policies. The study stressed that 'there is a clear and evident difference between the successes achieved by the mechanisms that have strong support from the executive (Mexico, Brazil) and those that struggle in isolation within the governmental structure, lacking political support from the executive and other political machineries'.<sup>187</sup>

In Brazil, the political support from the federal government in the years that followed the creation of the SPM was materialized first and foremost in a substantial increase of resources that allowed for the implementation of projects to promote women's rights - from 2003 to 2009, the budget of

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<sup>184</sup> CEDAW/C/BRA/7 para 145.

<sup>185</sup> CEDAW/C/BRA/7 para 10.

<sup>186</sup> CEDAW/C/BRA/6 14.

<sup>187</sup> Rounaq Jahan, *Strengthening National Mechanisms for Gender Equality and the Empowerment of Women. A Global Synthesis Study* (United Nations Division for the Advancement of Women 2010) 64.

the SPM increased in 215% -,<sup>188</sup> as well as an ideological alignment of the Workers' Party, then occupying the highest position of the Executive branch, to the feminist and women's movements.

According to the 2010 ECLAC study,

The Brazilian experience suggests a successful combination of all these factors: a national mechanism high at the governmental structure, an enlarged budget, and a vertical strategy that combines national conferences with regional and local conferences with effective and direct participation by community and local leaders. These conferences have allowed for the participation of over 300,000 women on a national level and the establishment of stable regional mechanisms that have developed as effective forums for capacity building and leadership development.<sup>189</sup>

In 2011, Dilma Rousseff was elected the first female president in the history of Brazil. In her inauguration speech, she explicitly addressed herself to the Brazilian women and stressed the historical importance of that moment, as the moment when paths were being opened to other women to become president:

By the sovereign decision of the people, today will be the first time that the Presidential sash encircles the shoulders of a woman. I am immensely honored by this choice the Brazilian people have made, and I recognize the historic significance of this decision (...) And I know that my presidential term must involve the most generous interpretation of this brave vote that the people have made: after electing a man of the people, of the working class, to the presidency, they have decided to call on a woman to take the helm in the country's destiny. I am here to open doors so that in the future many other women can also be President; so that, today, all Brazilian women may feel proud and happy to be themselves. I am not here to boast of my own life story, but rather to praise the life of every Brazilian woman. My greatest commitment, I repeat, is to honor our women, protecting our most vulnerable people, and governing for everyone.<sup>190</sup>

During the terms of Dilma Rousseff (2011-2016), she appointed 18 women ministers to compose her cabinet. It set a record in terms of women in ministerial positions, outnumbering the breakthrough of Lula's terms (2003-2011), when 11 ministries were occupied by women. Before that, the presence of women in ministerial positions was extremely low, with 2 women during the

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<sup>188</sup> María Dolores Fernós, 'National mechanism for gender equality and empowerment of women in Latin America and the Caribbean region', *Mujer y Desarrollo* (UN ECLAC 2010) 33.

<sup>189</sup> María Dolores Fernós, 'National mechanism for gender equality and empowerment of women in Latin America and the Caribbean region', *Mujer y Desarrollo* (UN ECLAC 2010) 49-50.

<sup>190</sup> Dilma V. Rousseff, 'Speech delivered by the President of the Republic of Brazil, Dilma Rousseff, before the National Congress during the Constitutional Oath Ceremony' (1 January 2011) <<http://www.biblioteca.presidencia.gov.br/presidencia/ex-presidentes/dilma-rousseff/discursos/discursos-da-presidencia/speech-delivered-by-the-president-of-the-republic-of-brazil-dilma-rousseff-before-the-national-congress-during-the-constitutional-oath-ceremony>> accessed 9 August 2020.

terms of Fernando Henrique Cardoso (1995-2002), 2 during Itamar Franco's and 1 during Fernando Collor's (1990-1992).<sup>191</sup>

It was under Rouseff's terms that the two last National Conferences on Policies for Women took place, in 2011 and 2016, with particular emphasis on the participation of women in politics.

The 3<sup>rd</sup> National Conference on Policies for Women (2011) resulted in a national plan for the period of 2013-2015, that established five main strategies for increasing the participation of women in politics. The first strategy focused on awareness-raising on the importance of having more women in spaces of power and decision-making, and included actions such as sensitizing the media on the importance of increasing women's participation in politics; promoting capacity-building programs for adult and young women; elaborating campaigns to raise awareness and encourage more female candidacies, as well as greater participation of women in decision-positions within political parties; promote public debates, studies and programs to boost the inclusion of more women in decision-making positions in organizations, unions and private companies; promoting the use of gender-inclusive language in the institutional communication of the Electoral tribunals; and implement and disseminate the international commitments of Brazil in the realm of women's political rights.<sup>192</sup>

The second strategy consisted in creating mechanisms to support women in public and political office, and it included strengthening the National Forum of Women of Political Parties; sensitizing and creating capacity-building programs to increase the number of female candidates, as well as promoting women's agenda within political parties; promoting capacity-building programs for judges of the electoral tribunals, raising their awareness on the sub-representation of women in political spaces and gender issues; and promoting measures to increase the visibility of women in spaces of power and decision-making in the three branches of power.<sup>193</sup>

The third strategy sought to stimulate women to actively take part in monitoring the implementation of public policies for women, through the means of strengthening and creating

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<sup>191</sup> <<https://www.abc.com.br/noticias/politica/2016/05/saiba-quem-foram-ministras-do-periodo-democratico-no-brasil>> accessed 9 November 2019.

<sup>192</sup> SPM, 'Plano Nacional de Políticas para Mulheres (2013-2015)' 55.

<sup>193</sup> SPM, (n. 189) 55-56.

new municipal council on the rights of women; training the counselors in all the existing state and municipal councils on the rights of women; ensuring the autonomy of the CNDM; encourage the participation of black and indigenous women in the elaboration of public policies; and creating technical bodies within state and local councils to monitor and assess the implementation of policies with an intersectional approach, addressing gender, race, ethnicity and sexual orientation.

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The fourth strategy aimed at advocating for the creation, revision and implementation of legislation and normative framework to establish equal opportunities for women to occupy spaces of power, encompassing, among other measures, a partnership with the electoral tribunals to monitor the compliance of the legal quotas for the list of candidates, as well as lobbying for the advancement of affirmative actions to boost the election of more women.<sup>195</sup> It is noteworthy to highlight again that the improvements of the quotas for the list of candidates, as well as the creation of quotas for campaign funds and access to media are the result of the consistent joint advocacy from the feminist and women's movements, the Women's Caucus at the National Congress, and the CNDM and the SPM.

Finally, the fifth strategy pursued the vertical mainstreaming of the gender perspective to consolidate the policies for women in all states and municipalities, through the strengthening and creation of local bodies to help to implement policies for women, in an intersectional approach.<sup>196</sup>

The 4<sup>th</sup> National Conference on Policies for Women (2016) gave sequence to the previous campaign, adding to the new national plan a National Program of Capacity-Building and Political Education for Women. Moreover, it established new goals, such as advocating the democratization and regulation of media and publicity, aiming at combatting stereotyped and degrading image of women; lobbying to increase to 50% the minimum quota of the party fund to promote women's candidacies as well as for the change of the electoral system to adopt closed lists of candidates with gender alternance.<sup>197</sup>

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<sup>194</sup> SPM, (n. 189) 56.

<sup>195</sup> SPM, (n. 189) 56-57.

<sup>196</sup> SPM, (n. 189) 57.

<sup>197</sup> SPM, 'Relatório Final 4ª Conferência Nacional de Políticas para as Mulheres' (2016) 21-22.

Dilma Rousseff had just the time to open the 4<sup>th</sup> National Conference on Policies for Women, on the 11<sup>th</sup> of May 2016. On the following day, the Federal Senate approved the proceedings to start the impeachment process against her, suspending her from office until the 31<sup>st</sup> August 2016, when she was officially removed from the Presidency. In her speech at the 4<sup>th</sup> Conference, Dilma Rousseff called upon women to reaffirm the gender perspectives against misogyny and fundamentalism, and stressed the gender bias aspect of her impeachment:

History will prove how much of violence and discrimination against women this impeachment process, this coup, is based on. We know that the main component of this [impeachment] process is rooted in the fact that I am the first female president to be democratically elected, the first woman to be elected as the president of Brazil.<sup>198</sup>

While the impeachment of Dilma Rousseff was a complex political process, that involved several factors, such as the economic crisis, conflicts of class and the irredemption of her political opponents who lost the 2014 elections, the whole process against her - including the media coverage, the manifestations of the parliaments during the debates, the language used by the supporters of the impeachment - was marked by sexism and misogyny.

## **5.2 From the impeachment of the first female president to the crisis of democracy: setbacks**

The impeachment of Dilma Rousseff launched a period of escalated setbacks for the rights of women. Similar to what happened in 1989, the counselors and the representatives of women's movements in the CNDM signed a joint letter announcing their collective resignation from the Council. They claimed the impeachment process to be a 'mediatic, juridical, parliamentary coup' and stated that they did not recognize the provisory government of Michel Temer, who took office as acting President just after the proceedings of the impeachment started, because they considered it illegitimate.<sup>199</sup>

The mass resignation of the counselors and the loss of support from important organizations of the women's movements impacted on the work of the CNDM, which had its activities suspended until the nomination of new counselors in 2018. Even with a renovated body, the CNDM did not recover

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<sup>198</sup> SPM, (n. 195) 11.

<sup>199</sup> 'Renúncia de conselheiras no CNDM: Estaremos nas ruas, contra a direita, pelos direitos. Fora Temer' (10 June 2016) <<https://soscopo.org/renuncia-de-conselheiras-no-cndm-estaremos-nas-ruas-contr-a-direita-pelos-direitos-fora-temer/>> accessed 10 August 2020.

either its legitimacy towards the women's movement or the autonomy it used to have in the years that preceded the impeachment.<sup>200</sup>

The official photograph of the cabinet of Michel Temer foreshadowed the upcoming scenario: for the first time since re-democratization, Brazil had again a whole cabinet composed only by (white) men.<sup>201</sup> During his term, the SPM had a decrease of 68% of its budget,<sup>202</sup> and it lost again its autonomy and the status of ministry, becoming a secretariat of the Ministry of Human Rights.<sup>203</sup>

As expected, perspectives for women's rights did not improve with the election of Jair Bolsonaro, in 2018.

Bolsonaro's controversial ministerial reform gives a hint of his governing priorities. The former Ministry of Labor was extinguished; some of its functions were distributed among other ministries (Justice, Economy and Citizenship), but there is no specialized body to promote and protect the workers' rights anymore. Likewise, the Ministries of Culture, Social Development, Finances and Planning were dissolved, and some of their former functions relocated to other ministries. Bolsonaro also announced the fusion of the Ministry of Environment and the Ministry of Agriculture – to which Brazilians started to refer as 'the Ministry of the Hen House and the Fox' –, but had to step back due to the strong negative repercussion on society, especially from environmental activists, and from the Ministry of Agriculture itself. However, although the fusion did not occur, the Ministry of Environment lost essential functions to the protection of the environment, such as the competence to control the regularization of rural properties and to inspect nature protected areas.<sup>204</sup>

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<sup>200</sup> Araujo et al (n. 179)

<sup>201</sup> Brazil's Acting President asks confidence and collaboration to solve crisis (*Agência Brasil*, 12 May 2016) <<https://agenciabrasil.ebc.com.br/en/politica/noticia/2016-05/brazils-acting-president-asks-confidence-and-collaboration-solve-crisis>> accessed 9 August 2020.

<sup>202</sup> 'Com queda de 68% no investimento em três anos, Secretaria de Políticas para Mulheres reflete baixa prioridade do tema no governo federal' (*Gênero e Número*, 13 December 2018) <[www.generonumero.media/com-queda-de-68-no-investimento-em-tres-anos-secretaria-de-politicas-para-mulheres-reflete-baixa-prioridade-do-tema-no-governo-federal/](http://www.generonumero.media/com-queda-de-68-no-investimento-em-tres-anos-secretaria-de-politicas-para-mulheres-reflete-baixa-prioridade-do-tema-no-governo-federal/)> accessed 9 August 2020.

<sup>203</sup> Decreto 9.417/2018 <[www.planalto.gov.br/CCIVIL\\_03/Ato2015-2018/2018/Decreto/D9417.htm](http://www.planalto.gov.br/CCIVIL_03/Ato2015-2018/2018/Decreto/D9417.htm)> accessed 9 August 2020.

<sup>204</sup> 'Ministérios do Governo Bolsonaro' (Politize) <<https://www.politize.com.br/ministerios-do-governo-federal-2/>> accessed 10 August 2020.

The reform also extinguished the Ministry of Human Rights, or rather converted it into the ‘Ministry of Women, Family and Human Rights’ (MMFDH), under which the SPM and the CNDM are now placed, with very limited resources. The new ministry is headed by Minister Damares Alves, a conservative evangelical pastor who advocates ‘family values’ in governmental policies.<sup>205</sup> Her controversial statements – ‘it’s a new era in Brazil: boys wear blue and girls wear pink!’<sup>206</sup> – reflect her position on gender issues. In her inaugural speech, Minister Damares announced that she would root the ministry’s policies on Christian standards, prioritizing the family.<sup>207</sup>

While the conservative speech deepens the discrimination against women by reinforcing gender stereotypes and gender-based roles for women and men, the conservative bias of the ministry ignores the root causes of women’s rights violations and, therefore, hinders the achievement of a proper solution.

During the launch of the National Teen Pregnancy Prevention Week, in January 2020, the MMFDH encouraged the practice of sexual abstinence as a public policy to combat early pregnancy<sup>208</sup> – one of the main factors that put girls on the path of poverty and lack of opportunities –, ignoring the fact that 40% to 60% of early pregnancy among adolescent girls in Brazil derive from sexual violence, oftentimes perpetrated by relatives.<sup>209</sup>

While health organizations advocate that sexual education at schools is an effective tool not only to help boys and girls to make conscious choices, but also to prevent unwanted pregnancy, sexually

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<sup>205</sup> ‘Bolsonaro to abolish human rights ministry in favour of family values’ (*The Guardian*, 10 December 2018) <<https://www.theguardian.com/world/2018/dec/06/outcry-over-bolsonaros-plan-to-put-conservative-in-charge-of-new-family-and-women-ministry>> accessed 10 August 2020.

<sup>206</sup> ‘An Official In Brazil’s New Right-Wing Government Said “Boys Wear Blue And Girls Wear Pink” (BuzzfeedNews, 3 January 2019) <<https://www.buzzfeednews.com/article/alexandreorrico/brazil-boys-wear-blue-girls-wear-pink-damare-alves>> accessed 10 August 2020.

<sup>207</sup> Cerimônia de transmissão de cargo à Ministra da Mulher, Família e Direitos Humanos, Damare Alves (TV BrasilGov) <[https://www.youtube.com/watch?v=2Qz\\_tS6zofg](https://www.youtube.com/watch?v=2Qz_tS6zofg)> accessed 10 August 2020.

<sup>208</sup> ‘Foco na abstinência sexual para combater gravidez precoce ignora que meninas são as mais estupradas’ (El País, 31 January 2019) <<https://brasil.elpais.com/brasil/2020-01-31/foco-na-abstinencia-sexual-para-combater-gravidez-precoce-ignora-que-meninas-sao-as-mais-estupradas.html>> accessed 10 August 2020.

<sup>209</sup> UNICEF, ‘Gravidez na Adolescência no Brasil. Vozes de Meninas e de Especialistas’ (2017) 67.

transmissible diseases and to identify situations of sexual abuse, the official position of the MMFDH is that sexual education encourages premature sexual relations in adolescence.<sup>210</sup>

The policy of MMFDH is aligned with the personal perspectives of president Bolsonaro. Overall, the federal government has been reproducing Bolsonaro's misogynistic speech and attitudes, including in Brazil's official positioning in the international community. Since Bolsonaro took office, the president and the Minister of Foreign Relations voted for the removal of expressions such as 'sexual education', 'reproductive rights', 'sexual rights', 'gender' and 'gender equality' from the resolutions and other official texts within the United Nations and the World Health Organization.<sup>211</sup>

Bolsonaro is part of a group of ultra-conservative politicians who claim to be against the so-called 'gender ideology'. As explained by Patternote and Kuhar, 'depending on the country, anti-gender campaigners have combatted LGBT rights, reproductive rights, sex and gender education in schools, gender itself (as meant in gender violence, gender studies and gender mainstreaming)'<sup>212</sup>.

In Brazil, the anti-gender campaign goes hand in hand with the movement 'School Without [Political] Party'. According to this group, teachings on politics, citizenship and fundamental rights, including gender equality, would be a form of 'Marxist indoctrination', as a purported strategy of leftist parties to 'destroy families and influence children'.<sup>213</sup>

The practical consequence of the anti-gender wave and the School Without Party movement is that they endanger the rights of women and sexual minorities, and create a negative environment to the achievement of substantive equality between women and men.

Indeed, it is impossible to raise awareness about women's rights and gender equality, change discriminatory social patterns and harmful gender stereotypes, and empower women and girls

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<sup>210</sup> Felipe Betim (n. 198).

<sup>211</sup> Jamil Chade, 'O Brasil ao lado das Ditaduras Mais Cruéis do Mundo' (El País, 20 July 2019) [https://brasil.elpais.com/brasil/2019/07/18/opinion/1563485645\\_650175.html](https://brasil.elpais.com/brasil/2019/07/18/opinion/1563485645_650175.html)> accessed 10 August 2020.

<sup>212</sup> David Paternotte and Roman Kuhar, 'Disentangling and Locating the Global Right: Anti-Gender Campaigns in Europe', (Politics and Governance, 2018, no. 3) 9.

<sup>213</sup> 'Três ideias sobre doutrinação e "ideologia de gênero" na escola que são falsas' (*Carta Capital*, 26 October 2019) < <https://www.cartacapital.com.br/educacao/tres-ideias-sobre-doutracao-e-ideologia-de-genero-na-escola-que-sao-falsas/>> accessed 10 August 2020.



without consistently addressing these topics through institutional mechanisms, public policies, education and training. However, none of these actions are doable if the government itself negates the existence of gender inequalities and refuses to tackle them.

In harmony with the official discourse that normalizes – and even encourages – the discrimination against women, the measures (or the lack of them) of the federal government make it clear that women’s rights are not among the priorities of the State right now. According to official data, in 2019 the budget executed by the Ministry of Women, Family and Human Rights represented 0,01% of the whole public expenditure.<sup>214</sup>

The perspectives are not promising when it comes to policies to increase the participation of women in politics. In March 2020, when the MMFDH announced the development of a future campaign to encourage women to enter politics – which never happened –, Minister Alves set the goal of electing ‘at least one councilwoman in every legislative municipal house’.<sup>215</sup> In the previous year, she had already mentioned the same target – one councilwoman in each municipality – as a realization of a ‘time for great changes in this nation’.<sup>216</sup>

In a country where women constitute more than half of the population, setting the goal of electing at least one councilwoman in every municipality does not seem compatible with the expression ‘great changes’, and even less with Brazil’s international obligations towards equality and the right to political participation of women. Moreover, in addition to going against the global trend and the feminist and women’s movements, that seek gender parity, the target proposed by the MMFDH is incoherent with Brazilian domestic law, that establishes a 30-percent quota for the list of candidates, denoting a higher standard than the one proposed by the MMFDH.

Finally, the conservative and sexist political framework of the past years has opened the path for proposals of constitutional and legal amendments reviewing rights that were already considered to be settled for women, such as the legalization of abortion in case of pregnancy resulting from rape,

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<sup>214</sup> < <http://www.portaltransparencia.gov.br/orgaos-superiores/81000?ano=2019> > accessed 10 August 2020.

<sup>215</sup> ‘Damares anuncia campanha para mulheres entrarem na política’ (*Agência Brasil*, 6 March 2020) <<https://agenciabrasil.etc.com.br/politica/noticia/2020-03/damores-anuncia-campanha-para-mulheres-entrarem-na-politica>> accessed 10 August 2020.

<sup>216</sup> ‘Ministra Damores destaca a importância das mulheres na política durante marcha em Brasília’ (*Agência Brasil*, 10 April 2019) <<https://www.gov.br/mdh/pt-br/assuntos/noticias/2019/abril/ministra-damores-destaca-a-importancia-das-mulheres-na-politica-durante-marcha-em-brasilia>> accessed 10 August 2020.

which has been guaranteed since 1940. In 2019, there were twelve bills proposing the absolute criminalization of abortion, with the removal of the provisions that allow for exceptions.<sup>217</sup> Likewise, the political rights of women are also endangered. Three bills are being discussed at the National Congress to withdraw the guarantee of at least 30% of women in the list of candidates.<sup>218</sup> The Women's Caucus and the National Forum of Women of Political Parties firmly positioned against the enactment of the bills and declared that women will not accept 'setbacks on the rights to occupy spaces of power and politics, rights that were attained with a lot of dialogue and struggle.'<sup>219</sup>

### Conclusion

The advancement of women's rights in Brazil has been pushed mainly by women themselves – women from the civil society, from the Women's Caucus at the National Congress and from the CNDM and the SPM. The joint action of these actors brought relevant victories for women – quotas for the list of candidates, campaign funds and access to media; revision of discriminatory laws against women; enactment of new legislation that protect women; forums and periodic conferences where women from different organizations meet to share their perspectives and decide about the plan of policies; promotion of capacity-building programs and awareness-raising campaigns.

The relationship between the women's movements and the CNDM/SPM has not always been harmonious, and that is because the legitimacy of the governmental bodies depends considerably on the alignment and support of the federal government, especially the Office of the President. At the end of the day, the ideology of the political party in the Executive branch defines in a great measure how progressist the actions of the Secretariat and the Council will be.

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<sup>217</sup> Projetos de lei da Câmara contrários ao aborto batem recorde em 2019 (*Carta Capital*, 28 September 2019) <<https://www.cartacapital.com.br/sociedade/projetos-de-lei-da-camara-contrarios-ao-aborto-batem-recorde-em-2019/>> accessed 11 August 2020.

<sup>218</sup> Projeto de Lei 1.256/2019, 2.996/2019, 4.130/2019

<sup>219</sup> 'Carta do Fórum Nacional de Instâncias de Mulheres de Partidos Políticos' (28 August 2019) <<https://pt.org.br/carta-do-forum-nacional-de-instancias-de-mulheres-de-partidos-politicos/>> accessed 11 August 2020.

## 6. CONCLUSION

Democracy, by definition, requires the equal participation of women and men in the decision-making process. Achieving gender equality in spaces of power provides for political bodies that more accurately reflect the perspectives and interests of society as a whole, and therefore promotes more inclusive and sustainable policies. Improving the representation of women in political bodies plays a crucial role in the advancement of women's rights. Moreover, as women start to spread their presence in the political arena, they open the path for the next generations of girls and women not only to desire and effectively occupy spaces of power, but to do so with a lot more confidence and ease.

Girls and women face extra obstacles to enter spaces of power, obstacles that men usually are not even aware of. Social interactions and opportunities are gendered; gender determines the distribution of power, responsibilities, education, resources and privileges. This invisible and apparently neutral selectivity has structural and institutional roots, related to the unequal division of labor, through which women have been historically tied to the domestic sphere and unpaid work, and to discriminatory rules – cultural, social and normative ones – that place women steps behind men in the enjoyment of rights. The gender-stereotyped role of women as natural caretakers has been traditionally putting women at a disadvantage in all spheres of life. As feminists in the 1970s had already warned, 'the personal is political'.<sup>220</sup>

Therefore, enabling women to exercise their right to political participation requires States to remove the barriers that reduce women to the private space.

Brazil is a signatory of the ICCPR, the Convention on the Political Rights of Women, the Women's Convention and the American Convention on Human Rights, from which derives the obligation to take all necessary and appropriate measures to guarantee substantive equality between women and men and eliminate all forms of discrimination on the basis of sex and gender. Among other actions, the compliance with this obligation requires the revision of discriminatory legislation, the enactment of new laws that protect and promote women's rights, but also extra-legal measures, especially regarding the change of cultural and social discriminatory patterns of behavior and

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<sup>220</sup> Anne Phillips, 'Feminism and Politics' (OUP 1998)3.

harmful gender-based stereotypes. In addition to permanent policies, temporary special measures must be taken to accelerate the inclusion of women in the political realm.

Although it occupies the 140<sup>th</sup> position in the IPU list of ‘women in parliaments’, Brazil does take measures to advance on women’s political rights. However, so far it has been a solitary – or rather a unilateral – work, undertaken mostly by women, through the feminist and women’s movements, the Women’s Caucus at the National Congress and the national machinery for gender equality and women’s empowerment, namely the National Council on Women’s Rights and the Special Secretariat on Policies for Women.

These stakeholders have successfully opened more space for women in politics; they lobbied and managed to revise discriminatory legislation; enact laws that are more protective for women, including the approval of electoral quotas; promote programs and events aiming at encouraging women to engage in politics and providing capacity-building training. However, despite all these efforts, the proportion of women in political office is still far from reflecting the composition of society.

In my view, there are three main reasons for this, and all of them are related to the major fact that the engagement of men – and here I include civil society, political parties and government – in the protection and promotion of women’s political rights are virtually inexistent. In other words, so far, women’s fight for equal rights still works on the basis of #womensupportingwomen.

I introduced my thesis referring to a recent interview of Phumzile Mlambo-Ngcuka to the New York Times, where she expressed that having more women in leadership positions is an essential condition to build a better world in the upcoming days. To conclude my thesis, I refer again to the same interview, in the part where Mlambo-Ngcuka emphasizes that no significant changes will happen if men do not take part in the process:

*N.Y Times:* It’s very hard culturally and socially to get women to the table. We don’t have a historical precedent for it. So how do we make it happen?

*Mlambo-Ngcuka:* We actually need to engage men. And as much as we do not have enough men who stand up for women’s rights, we have seen a critical mass of men who are willing to use their power and authority to make decisions that promote gender equality. This is the time for them now to do everything they can to bring about change. Frankly, we need to use the crisis to make decisions that can be enforced, that can be enshrined in laws and in policies, that can be implemented.<sup>221</sup>

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<sup>221</sup> ‘There’s no gender-neutral pandemic, and this one is no different’ *The New York Times* (9 August 2020) <<https://messaging-custom-newsletters.nytimes.com/template/oakv2?uri=nyt://newsletter/7f8c87a0-b2e8-56f9-a9e2->

Without engaging the whole society, the chances of achieving substantive equality between men and women are seriously compromised. Having set this premise, I identify three main factors that currently jeopardize the achievement of gender equality in politics.

First, political parties are still an androcentric environment. The ‘new’ system of quotas, after the amendments and constitutional revision in 2018 combining a reserve of 30% in the list of candidates, campaign funds and access to media, has a more effective structure than the original architecture, and should work better in the next elections. However, for the quotas to give effective results, there must be a conjunction of a substantial change in the behavior of political parties – to become more ‘women-friendly’, more transparent and democratic – and more rigorous monitoring of the compliance of quotas. In any case, the adoption of an electoral system based in close lists of candidates with gender alternance would make quotas effective regardless of the behavior of political parties.

Second, the potential and legitimacy of the national mechanisms for gender equality and women’s empowerment, such as the CNDM and the SPM, is highly dependent on the Office of the President, which – again – tends to be male-dominated. In addition, ideological clashes with the government in practice impede any substantial advancement on women’s rights, as ‘strong political will is a primary requirement if national gender mechanisms are to be the principal instruments from inside the governmental structure to promote such change’.<sup>222</sup> As the Brazilian experience demonstrates, the most fruitful periods to CNDM and the SPM were those in which the governmental bodies were aligned to the women’s movements and provided for financial and political support to consolidate their demands. The instability of the relationship between those actors leads to a discontinuity of the progress on the women’s rights agenda.

Third, Brazil is still a sexist society, where the *machismo* is a major obstacle to the elimination of discrimination against women. As observed by CEDAW in the last concluding observations, ‘the persistence of patriarchal attitudes and stereotypes as well as the lack of mechanisms to ensure the implementation of temporary special measures adopted, continue to impede women’s participation

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0170db869684&productCode=GN&CCPAOptOut=true&te=1&nl=in-her-words&emc=edit\_gn\_20200809>  
accessed 10 August 2020.

<sup>222</sup> María Dolores Fernós, ‘National mechanism for gender equality and empowerment of women in Latin America and the Caribbean region’, *Mujer y Desarrollo* (UN ECLAC 2010) 50.

in parliament and in decision-making positions at the state and municipal levels of the public administration'.<sup>223</sup> Even in the 'good times' of the CNDM and the SPM, Brazil did not manage to change the discriminatory gender-based mindset. Now, the social and political environment, especially with the anti-gender and the School Without Party movements (with the explicit support of the President), is completely unfavorable for promoting these changes.

Therefore, the conclusion of this thesis is that although Brazil does take measures to promote women's rights to political participation, they are neither sufficient nor completely appropriate to have a significant impact on the perspectives for women. As the numbers demonstrate, Brazil fails in promoting substantive equality between men and women, including in the enjoyment of political rights. The quotas created for increasing the number of women in the legislative houses have not been working properly; after 20 years of the existence of quotas, the percentage of women at the National Congress is below 15%. In the next elections, Brazil will be able to assess whether the new quotas system is able to accelerate women's inclusion in the political sphere. However, the major obstacle to the effective equality between women and men remains as strong as always: Brazil has not managed to change discriminatory social and cultural patterns.

Finally, the narrative of women's rights in Brazil exposes that the achievement of human rights is not a linear, progressive and stable path. The political turnaround in the past years teaches that human rights cannot be taken for granted.

Defending human rights and democracy is a permanent and daily process that requires individual and collective action, in public and private spheres, in our personal relations and within the institutions we belong to. Education on human rights emerges as an essential element to strengthen democracy and preserve fundamental freedoms and rights. Moreover, sharing experiences and perspectives through a constant dialogue within civil society appears to be a way to promote understanding of diversity, that allows for the coexistence of different perspectives without the need to exclude 'the other'.

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<sup>223</sup> CEDAW/C/BRA/CO/7 para 22.

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