

# NEW ELECTIONS AND OLD CONCERNS: FEMALE POLITICAL RIGHTS AS A CONSTANT FIGHT

## NOVAS ELEIÇÕES E ANTIGAS PREOCUPAÇÕES: OS DIREITOS POLÍTICOS FEMININOS COMO LUTA CONSTANTE

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### ABSTRACT

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In this study it is argued that female participation in politics is a basic requirement for achieving a democracy of greater quality, as well as for protecting the political rights secured in the international human rights system. Thus, by interpreting democracy beyond its mere procedural dimension, this paper proposes an analysis of the crisis of political participation, which is exacerbated by the exclusion of entire sectors of the population from the full exercise of their political rights, allowing them simply to vote and nothing more. Therefore, given that women's difficult access to elected positions has been confirmed by recent Brazilian

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Supreme Electoral Tribunal studies, it becomes evident that our affirmative actions' system is insufficient to fight this reality. Finally, we will seek to discuss new participation mechanisms, especially those regarding new perspectives in Brazilian legislation.

**Keywords:** democracy; political rights; gender equality; gender electoral affirmative actions.

### RESUMO

Defende-se no presente trabalho que a participação feminina na política constitui requisito básico para a realização democrática de qualidade e para garantia dos direitos políticos conferidos no sistema internacional de direitos humanos. Assim, a partir de uma aceção de democracia que exceda sua mera dimensão procedimental, propõe-se uma apreciação da crise de participação política que é agravada pela exclusão de setores inteiros da população do pleno gozo de seus direitos políticos, que em muito deve superar o simples ato do voto. Deste modo, tendo-se em vista que o pobre acesso das mulheres a cargos eletivos é fato confirmado pelas recentes pesquisas do Tribunal Superior Eleitoral brasileiro, sendo evidente que nosso sistema de cotas é insuficiente para combater tal realidade, buscaremos discutir novos mecanismos de incremento da participação feminina, com fito nas novas visões legislativas brasileiras.

**Palavras-chave:** democracia; direitos políticos; igualdade de gênero; cotas eleitorais de gênero.

### INTRODUCTION

In today's issues of democratic conceptual foundations, the quality of democracy, especially regarding the effective inclusion of so-called social minorities<sup>1</sup>, has become a recurring and recognized debate necessary to overcome structural inequalities in electoral systems and the actualization of political rights. In recent years, multiple authors, especially in Latin America, have made numerous efforts to clarify the discussion on the quality of democracy and have used this concept in research on this form of government, aiming towards the full realization of human rights<sup>2</sup>.

Such a discussion obviously runs through the very concept of democracy, an obstacle in itself difficult to overcome and worthy of extensive and dedicated studies, from the most varied perspectives. In this sense, in his work, Giovanni Sartori highlights that when evaluating a democracy from the point of view of

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<sup>1</sup> The use of the generic expression "social minorities" in the discussions arising in the area of human rights is repeatedly criticized, in view of the fact that they are usually majorities, such as women. However, considering such groups as politically underrepresented, the use of the expression without major digressions about such criticism will be adopted.

<sup>2</sup> GUGLIANO, Alfredo Alejandro. Apontamentos sobre o conceito de qualidade da democracia. *Revista Debates*, Porto Alegre, v. 7, n. 1, p. 229-243, jan-abr. 2013.

the etymological definition of its very concept “the insufficiencies are related to the definition, and not to reality”<sup>3</sup>. In fact, it is undeniable that the substantial challenge of conceptually delineating what constitutes democracy ends up generating significant difficulties in identifying it, so that only then can any eventual discussion about its quality in analyses and practical studies be admitted.

Considering the traditional – merely procedural – conception, democracy would be simply reduced to majority government marked by the periodic exercise of suffrage<sup>4</sup>. It is evident, however, that this minimalist definition does not reflect the completeness of contemporary democratic aspirations: when dealing with the theme in the preface to Friedrich Müller’s work<sup>5</sup>, Fábio Konder Comparato stated that “there is no innocent sovereignty”, because we know that the majority of the people is capable of “democratically crushing the minority, in the name of the national interest” or in the name of other interests, such as “social exclusion, segregation, religious fundamentalism”<sup>6</sup>.

Thus, it is based on this premise that the so-called representative democracy – whose legitimacy is based on the “will of the majority” – might become a true tyranny of the majority from the perspective of social minority groups, with the permission of the current legal system, which endorses repression. Countless historical examples portray such a scenario, not only in wars and revolutions, in which majorities make decisions that violate fundamental rights of minorities, but also in political daily life, in which minority groups are forced to assimilate their will, as legitimate holders of power.

Thus, “the dominance of the majority, a characteristic of democracy, presupposes by its essence a position of the minority, and also politically recognizes such opposition and protects it with fundamental rights and freedoms”. In this sense, “the stronger the minority, the more democratic politics will seek compromises and favor conciliation”<sup>7</sup>.

It is crucial, therefore, that democratic readings and interpretations be carried out in the light of the principle of dialectics, built on the recognition of the existence

<sup>3</sup> SARTORI, Giovanni. *O que é a democracia?* 1. Ed. Curitiba: Instituto Atuação, 2017, Coletânea da Democracia, tradução de Georgia de Souza Cagnet.

<sup>4</sup> TAVARES, André Ramos; BUCK, Pedro. Direitos Fundamentais e Democracia: complementariedade/ contrariedade. In: CLÈVE, Clémerson Merlin; SARLET, Ingo Wolfgang; PAGLIARINI, Alexandre Coutinho (org.). *Direitos Humanos e Democracia*. Rio de Janeiro: Forense, 2007. p. 171.

<sup>5</sup> MÜLLER, Friedrich. *Quem é o Povo? A questão fundamental da democracia*. 3. Ed. São Paulo: Max Limonad, 2003. p. 27-28.

<sup>6</sup> UCHÔA, Marcelo Ribeiro. Poder, direito e democracia: O papel dos direitos humanos na realização do bem comum. Available at: [http://www.ambito-juridico.com.br/site/index.php?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=5377](http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=5377). Access 02/10/2020.

<sup>7</sup> DANTAS, Ana Cecília de Moraes e Silva. *Democracia, Representatividade e Participação: e as mulheres na política?* Available at: [www.periodicos.ufpb.br/index.php/ged/article/download/9704/5287](http://www.periodicos.ufpb.br/index.php/ged/article/download/9704/5287). Access: 02/10/2020.

of multiple forces, with divergent interests and opposing views, that can enjoy the same space of legitimacy in a frank and strong debate. It is understood, therefore, that for a democracy to be considered “truly just” – in that it favors the common good over private interests – it must take human rights as the main benchmark<sup>8</sup>.

In this scope, the Universal Declaration of Human Rights itself states in its article 21 that “everyone has the power to take part in the government of their country, directly or through representatives”, thus demonstrating that in the political sphere all citizens have the right to exercise their electoral capacity, whether active or passive. In the case dealt with in the present work, this right was restated and reinforced by the Convention on the Political Rights of Women, ratified by Brazil in the 1960s, which provides that “women shall be entitled to vote in all elections on equal terms with men, without any discrimination”.

At this time, taking as a starting point this dialectical relationship with human rights and its intrinsic notion of equality, it is unacceptable that the relationship between representativeness and democracy be dealt with in a trivial and simplistic way. One must search for substantive elements that make it possible to overcome the typical contradictions of populist democracy<sup>9</sup>, discussing not only the existence of procedural democracy but also its quality, never losing sight of reflections on human rights and notions of citizenship.

On the subject, Alfredo Gugliano<sup>10</sup> clarifies that when relating quality of democracy to citizenship, spaces would be left open on the value of the capacity of democratic governments to create forms of political management that can ultimately complement elections, recovering the real meaning of democracy as a form of government in which citizens are important, not only to create governments, but to govern. According to the author, this is the horizon that opens up for debates on the quality of democracy and that represents a great challenge for researchers on this issue.

Thus, the discussion about the analysis of the democratic quality resulted in several analytical currents, with most of the concepts under discussion originating from a vision of democracy centered on pluralist paradigms.

José Corbetta and Aníbal Pérez Liñan<sup>11</sup>, for example, when carrying out a comparative study on four different periods in the history of Argentina, under

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<sup>8</sup> MÜLLER, Friedrich. *Quem é o Povo? A questão fundamental da democracia*. 3. Ed. São Paulo: Max Limonad, 2003. p. 27-28.

<sup>9</sup> OLIVEIRA, Emerson Ademar Borges. Idealismo e Falibilidade na concepção da democracia. *Revista da Faculdade Mineira de Direito*, v. 18, n. 26, 2015.

<sup>10</sup> GUGLIANO, Alfredo Alejandro. Apontamentos sobre o conceito de qualidade da democracia. *Revista Debates*, Porto Alegre, v. 7, n. 1, p. 229-243, jan-abr. 2013.

<sup>11</sup> CORBETA, José. LIÑAN, Aníbal Pérez. Calidad de la Democracia y Perspectiva Histórica: Un Análisis del Caso Argentino. *Revista Instituciones y Desarrollo*, n. 10, p. 149- 169, 2001.

light of the parameters of democratic quality, used four dimensions, namely: the validity of political rights and civil liberties; governance; representativity; and citizen participation.

Diamond and Morlino<sup>12</sup>, for their part, assert that the existence of differences between countries would not prevent the development of a standard analytic procedure on democratic quality regardless of particular circumstances. With this objective in mind, they suggest the development of eight dimensions related to different constitutive themes of a Polyarchy, including respect for social and political freedoms and progressive implementation of equality policies, the latter of which could include gender affirmative actions, discussed in the present work.

It is precisely in this direction that the subject of this work is inserted: for the structuring of a regime of democratic quality, it is essential that the effective participation of women in spaces of power be guaranteed, even through the progressive implementation of gender equality policies. It is fundamental, however, that these policies also effectively guarantee basic political rights.

Nevertheless, as will be discussed, gender affirmative actions currently applied in Brazil are ineffective in guaranteeing the equal exercise of passive electoral rights by women, who continue to face underrepresentation incompatible with human rights and democratically insufficient – even less so when discussing democratic quality.

### **THE INEFFECTIVENESS OF THE CURRENT GENDER AFFIRMATIVE ACTIONS MODEL IN THE BRAZILIAN ELECTORAL PROCESS: POWER IS MALE**

The numerical majority in Brazil<sup>13</sup>, women are gradually acquiring greater social and economic relevance, currently representing around 44% of the formal labor market and constituting the majority in essential sectors such as public administration, education, health, social services, housing, food and household services<sup>14</sup>. In 2015, for example, 40% of Brazilian households were already run by women<sup>15</sup>.

<sup>12</sup> DIAMOND, Larry. MORLINO, Leonardo. The Quality of Democracy: An Overview. *Journal of Democracy*, v. 15, n. 4, out. 2004.

<sup>13</sup> According to data from the Brazilian Institute of Geography and Statistics (IBGE), the Brazilian population is 48.2% male and 51.8% female. In: IBGE – Instituto Brasileiro de Geografia e Estatística. Conheça o Brasil – População: Quantidade de homens e mulheres, 2019. Available at: <https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/18320-quantidade-de-homens-e-mulheres.html>. Last access: 02/10/2020.

<sup>14</sup> IBGE – Instituto Brasileiro de Geografia e estatística. Pesquisa Nacional por Amostra de Domicílios Contínua 2019. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101678.pdf>. Last access: 02/10/2020.

<sup>15</sup> IPEA. Retrato das Desigualdades de Gênero e Raça – 1995 a 2015. Available at: [https://www.ipea.gov.br/portal/images/stories/PDFs/170306\\_retrato\\_das\\_desigualdades\\_de\\_genero\\_raca.pdf](https://www.ipea.gov.br/portal/images/stories/PDFs/170306_retrato_das_desigualdades_de_genero_raca.pdf). Access: 02/10/2020.

For José Eustáquio Diniz Alves<sup>16</sup>, there was no historical moment more favorable to the achievement of gender equality than the beginning of the 21st century. When dealing with the current scenario, he adds that structural transformations, added to the efforts undertaken by the feminist movements, highlighted the illegitimacy of the artificial asymmetries between men and women.

However, even when combined with international<sup>17</sup> and Brazilian<sup>18</sup> democratic ideals, the demographic expansion and the growing social relevance of women did not translate into a significant increase in the effective participation of Brazilian women in the different spheres of public and private sectors<sup>19</sup>, affecting the full realization of political rights and, consequently, human rights.

In the present work, the almost untouched perpetuation of the gender gap identified in Brazilian political representativeness stands out: despite efforts to the contrary, power is masculine, and politics, an environment of passive resistance against female leadership<sup>20</sup>.

For Rosalba Todaro, “there is a social gender order that interacts with a general social order”<sup>21</sup>, constituting a system of male and female social relations from which a sexual division of labor is extracted from symbolic sexual factors, it being undeniable that gender is also a decisive factor in political relations – in the sexual division of labor that permeates Brazilian society, politics is not a feminine space.

Joan Scott, for her part, highlights a “sexually based social reality”<sup>22</sup>, in which “sexual difference has been conceived in terms of the domination and control of women”<sup>23</sup>, especially in the political sphere, in which gender control goes back to the very construction of the first notions of democracy.

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<sup>16</sup> ALVES, José Eustáquio Diniz. Et al. “Meio século de feminismo e o empoderamento das mulheres no contexto das transformações sociodemográficas do Brasil”. In: BLAY, Eva A.; AVELAR, Lúcia (orgs.). *50 Anos de Feminismo: Argentina, Brasil e Chile: A construção das mulheres como atores políticos e democráticos*. 1.Ed., São Paulo: Editora da Universidade de São Paulo, 2017. p. 52.

<sup>17</sup> Among the numerous examples are the Universal Declaration of Human Rights and the Convention on the Political Rights of Women.

<sup>18</sup> In this context, there’s particular importance to the argumentation of Flávia Piovesan, in the sense that the Brazilian Constitution strengthens and improves the Brazilian democratic stimulus by enshrining participatory democracy establishing mechanisms of direct participation in the people’s Sovereign power, guaranteeing equity and equality between men and women in general (art. 5, I, Federal Constitution). In: PIOVESAN, Flávia. In: BARSTED, Leila L. e PITANGUY, Jaqueline (orgs.). *O progresso das mulheres no Brasil: 2003-2010*. Rio de Janeiro: CEPIA; Brasília: ONU MULHERES, 2011. p. 63.

<sup>19</sup> PANKE, Luciana. *Campanhas eleitorais para mulheres: desafios e tendências*. 1ª Ed. Curitiba: Editora UFPR, 2016. p. 59.

<sup>20</sup> Ibidem.

<sup>21</sup> Ibidem. p. 195.

<sup>22</sup> SCOTT, Joan. Gênero: uma categoria útil de análise histórica. *Educação e Realidade*, v.15, n. 2, 1990. p. 79.

<sup>23</sup> Ibidem. p. 81.

In the same vein, Luciana Panke<sup>24</sup> adds that the development of the female experience, from the perspective of gender relations, was directly associated with power relations, in which sexism and patriarchy defend male domination – a construction that acquires special strength in political relations. Thus, for male candidates, the barriers of party support, campaign financing and obtaining a reliable team are significantly reduced by the eminently masculine characteristics of this power-hungry territory.

These findings of studies of democracy and citizenship from a feminist perspective are confirmed by the recent surveys carried out by the Superior Electoral Court (TSE), from which one can conclude that Brazilian women, despite constituting 52% of the country's electorate in 2018<sup>25</sup>, comprise only 15% of parliament. Brazil therefore occupies the 134th position in political gender equality among 193 countries<sup>26</sup>.

Currently, only 77 of the 513 Brazilian federal deputies are women and only 12 of the 81 senators elected in 2018 are women, according to a report by the United Nations and the Inter-Parliamentary Union<sup>27</sup>.

With mediocre performance, we currently occupy a more unfavorable position in the world ranking than four of the five countries elected by the United Nations as “the worst to be a woman”<sup>28</sup>: Honduras, Democratic Republic of the Congo, Egypt and Saudi Arabia.

It is not surprising, therefore, that the Brazilian percentage of women in Parliament is well below both the world average, which is nearly 23%, and the average for the Americas, which is nearly 28%. It is also not surprising that the first female bathroom for parliament members in the Brazilian Senate was only opened in January 2016<sup>29</sup>.

Clearly, the percentage data presented reflects a disproportion that demonstrates how much the alleged national democracy denies women minimal participation in the decision-making inherent to the political process in true

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<sup>24</sup> PANKE, Luciana. *Campanhas eleitorais para mulheres: desafios e tendências*. 1ª Ed. Curitiba: Editora UFPR, 2016. p. 196

<sup>25</sup> TSE. *Mulheres representam 52% do eleitorado brasileiro*. Available at: <http://www.tse.jus.br/imprensa/noticias-tse/2018/Marco/mulheres-representam-52-do-eleitorado-brasileiro>. Access: 02/10/2020.

<sup>26</sup> Agência Câmara de Notícias. *Baixa representatividade de brasileiras na política se reflete na Câmara*. Available at: <https://www.camara.leg.br/noticias/554554-baixa-representatividade-de-brasileiras-na-politica-se-reflete-na-camara/>. Access 02/10/2020.

<sup>27</sup> Ibidem.

<sup>28</sup> SELBY, Daniele. *These are the worst countries to be a woman*. *Global Citizen*. Available at: <https://www.globalcitizen.org/en/content/worst-places-woman-yemen-congo-saudi-arabia/>. Access 02/10/2020.

<sup>29</sup> ALEGRETTI, Laís. *Plenário do Senado terá banheiro feminino 55 anos sua inauguração*. *GI*. Brasília, 05 de jan. de 2016. Available at: <http://g1.globo.com/politica/noticia/2016/01/plenario-do-senado-tera-banheiro-feminino-55-anos-apos-inauguracao.html>. Access: 02/10/2020.

representative democracies,<sup>30</sup> in contradiction to the very democratic foundations and constitutional determinations.

When dealing with female political representativeness in Brazil, Clara Araújo points out that:

[...]The unequal participation of women in political spaces, particularly those that demand representation, is based on historical reasons, related to the process of exclusion of women as political subjects of rights at the time when the figure of the politician was institutionalized in the public sphere (our translation)<sup>31</sup>.

The author goes even further when analyzing that “the historical background marked the insertion of women in the political world”<sup>32</sup>. In fact, historically and worldwide, women’s political representation is far from desirable.

For no other reason, international organizations have been engaged in the dissemination of data and reports on the subject, including defending the institution of gender affirmative action to ensure that women will constitute, at least, “critical minorities”, comprising 30% to 40% of national Parliaments<sup>33</sup>. Currently, it is estimated that half of countries use some kind of electoral gender affirmative action<sup>34</sup>, precisely due to the need of carrying out progressive implementation of equality policies as proposed by Diamond and Morlino when dealing with the quality of democracy.

The Gender Affirmative Actions’ Project proposed by the UN and the Inter-Parliamentary Union provides for three types of affirmative actions, in order to increase the participation of women in political representation.

According to Drude Dahlerup<sup>35</sup>, the gender affirmative quota system employed in politics can have the following configuration, normally replicated in legislative initiatives aimed at reducing under-representation of women in politics: 1. Reserving seats for women in Parliament; 2. Gender quotas legally required for the list of candidates; 3. Quotas voluntarily constituted by political parties.

<sup>30</sup> In addressing the issue, Vergo and Schuck point out that the proposal for parity democracy emerges as a strategic framework in combating the male monopoly in the exercise of power in all spheres of decision-making. In: VERGO, Terezinha Maria Woelffel; SCHUCK, Elena de Oliveira. A representação política das mulheres enquanto desafio à qualidade da democracia. *V Congresso Uruguaio de Ciência Política*, out. 2014. p. 3-4.

<sup>31</sup> ARAUJO, Clara. Construindo novas estratégias, buscando novos espaços políticos – as mulheres e as demandas por presença. In: MURARO, Rose Marie; e PUPPIN, Andréa Brandão (orgs.). *Mulher, Gênero e Sociedade*. Rio de Janeiro: Relume Dumará. FAPERJ, 2001.

<sup>32</sup> Ibidem.

<sup>33</sup> DAHLERUP, Drude. About Quotas. Quota Project. Available at: <http://www.quotaproject.org/aboutQuotas.cfm>. Access 02/10/2020.

<sup>34</sup> Ibidem.

<sup>35</sup> Ibidem.



Brazil is no exception to this rule. In the country, the legislation passed to improve women's opportunities to enter political life has been categorized under #2 in the scheme proposed by Dahlerup since 1995, the year in which Brazilian Federal Statute No. 9,100/95 came into force, determining that at least 20% of vacancies for each party or coalition were to be filled by one of the genders. Brazilian Federal Statute No. 9.504/97 (Electoral Law) increased the minimum percentage of each gender to 25%, being raised again to 30% in subsequent elections, a percentage currently maintained.

In addition, in 2009 the electoral reform introduced by Brazilian Federal Statute No. 12.034/09 instituted new provisions in the Political Parties Act (Brazilian Federal Statute No. 9096/1995) in order to stimulate the promotion and diffusion of female participation in politics when determining that the resources of party funds must be applied in the creation and maintenance of programs to promote and disseminate women's political participation in at least 5% of the total transferred values.

These measures, however, have not been as fruitful as expected: the quality and effectiveness of the methods and legislation currently in use must be questioned, since the quotas adopted in the Brazilian system, as well noted by Raquel Preto<sup>36</sup> “invite women to the ball, but do not invite us to dance”, allowing for serious flaws that prevent actual female participation in democracy and the achievement of “greater equality”<sup>37</sup>.

This fact is clearly seen in the Electoral Justice databases: although the quotas have been in force since 1995<sup>38</sup>, acquiring the current format in 2010<sup>39</sup>, further developments have been rather timid: from 5% of seats in the Brazilian Parliament in 1990<sup>40</sup>, we have moved to 15 % in 2016<sup>41</sup>.

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<sup>36</sup> Notes taken during the speech of Lawyer Raquel Preto, at the 6th Paraná Lawyers Conference, in August 2017.

<sup>37</sup> SARTORI, Giovanni. *O que é a democracia?* 1. Ed. Curitiba: Instituto Atuação, 2017, Coletânea da Democracia, tradução de Georgia de Souza Cagneti. p. 205.

<sup>38</sup> Law no. 9,100/1995 prescribed the requirement to register at least 20% of female candidates for each party or coalition, inaugurating the affirmative action policy in Brazil.

<sup>39</sup> As ruled out by the Superior Electoral Court in the 2010 elections, paragraph 3 of article 10 of Law No. 9,504/97, in the wording given by Law No. 12,034/2009, establishes the mandatory observance of the minimum and maximum percentages of each sex, which is measured according to the number of candidates actually registered.

<sup>40</sup> KARPSTEIN, Carla. Representatividade feminina na política e nas cadeias de comando: a meritocracia e o preconceito. *Gazeta do povo* Available at: <http://www.gazetadopovo.com.br/vida-publica/justica-e-direito/artigos/representatividade-feminina-na-politica-e-nas-cadeias-de-comando-a-meritocracia-e-o-preconceito-53h8jn34e47v46uv058javwo4>. Access: 02/10/2020.

<sup>41</sup> Agência Câmara de Notícias. Baixa representatividade de brasileiras na política se reflete na Câmara. Available at: <https://www.camara.leg.br/noticias/554554-baixa-representatividade-de-brasileiras-na-politica-se-reflete-na-camara/>. Access 02/10/2020.

The reasons for the low development that has taken place are related to the many obstacles faced by female candidates, related not only to deficient or inefficient legislation, but also to the lack of campaign funding and symbolic violence: sexism, objectification, stigmatization<sup>42</sup>. Pierre Bordieu claims to always see “male domination and the way it has imposed itself and sustained itself, the best example of that paradoxical submission, a consequence of what is seen as symbolic violence, a numbing violence, an insensitive and invisible violence to the victims themselves”<sup>43</sup>. Victims who do not recognize the violence they suffer and who also do not know the ways to remedy it<sup>44</sup>.

The discussions about the stagnation in the percentage of women parliament members that affects Brazilian women are summed up in a re-victimization, in view of the many allegations of electoral fraud: in the 2016 municipal elections, across the country, 14,417 women were registered as candidates, but did not receive a single vote – not even their own. In 2018, 24 people registered zero votes at the ballot box, 21 of whom were women<sup>45</sup>.

The high number of these occurrences indicates that there is a movement of fraudulent electoral applications – when the party launches candidates only to fill the mandatory quota of 30%, without investing in the campaign of these candidates – rendering the electoral rule meaningless.

In the 2008 Brazilian elections, the judicial orientation of the Superior Electoral Court (TSE) was effectively transformed, based on the judgement of the Special Electoral Appeal No. 14-9/PI<sup>46</sup>, a process in which the background discussion was precisely the electoral fraud to the gender quota. In this judgment, in a pioneering way, the TSE understood that registering candidates with the only goal of filling quotas constitutes electoral fraud, allowing for judicial measures

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<sup>42</sup> PANKE, Luciana. *Campanhas eleitorais para mulheres: desafios e tendências*. 1ª Ed. Curitiba: Editora UFPR, 2016. p. 42.

<sup>43</sup> BORDIEU, Pierre. *A dominação masculina*. 2ª Ed. Rio de Janeiro: Bertrand Brasil, 2002. p. 31.

<sup>44</sup> The “Women in Politics” survey conducted by the Brazilian Institute of Public Opinion and Statistics (IBOPE) and Instituto Patrícia Galvão in 2009 draws attention to data that reveal Brazilians’ lack of knowledge about gender electoral quotas – only 24% of respondents knew about it. When informed about the gender quota law, 75% of respondents were in favor. Available at: [http://agenciapatriciagalvao.org.br/wp-content/uploads/2009/08/pesq\\_mulheropol.pdf](http://agenciapatriciagalvao.org.br/wp-content/uploads/2009/08/pesq_mulheropol.pdf). Access: 02/10/2020.

<sup>45</sup> Agência Estado. Maioria dos “candidatos laranjas”, que não receberam nenhum voto, é mulher. *Correio Braziliense*, 18 de out. de 2018. Available at: [https://www.correiobraziliense.com.br/app/noticia/politica/2018/10/18/interna\\_politica,713521/maioria-dos-candidatos-laranjas-e-mulher.shtml](https://www.correiobraziliense.com.br/app/noticia/politica/2018/10/18/interna_politica,713521/maioria-dos-candidatos-laranjas-e-mulher.shtml). Access: 02/10/2020.

<sup>46</sup> AGRAVO REGIMENTAL NO RECURSO ESPECIAL ELEITORAL Nº 35.880 (42427-91.2009.6.00.0000) – CLASSE 32 – LUZILÂNDIA – Piauí de Relatoria do Ministro Arnaldo Versiani. Available at: <https://tse.jusbrasil.com.br/jurisprudencia/19108043/agravo-regimental-em-recurso-especial-eleitoral-agr-respe-35880-pi/inteiro-teor-104259678>. Access: 02/10/2020.

in those situations in which the circumvention of the legislation was identified. Until then, the only means for suing against such occurrences was through an *Ação de Impugnação de Mandato Eletivo* (AIME), a judicial action to prevent the candidate from taking office. Among other hypotheses, this suit may be filed against situations in which a candidate seeks to obtain a mandate through fraud.

A year later, the Brazilian Electoral Justice innovated by understanding the possibility of investigating electoral quota fraud through an Electoral Judicial Investigation Action (*Ação de Investigação Judicial Eleitoral*, AIJE). This decision was widely questioned by scholars, since statutory requirements for said electoral action has no provision for applicability in cases of fraud.

Attempts to circumvent the gender quota system and other minority representation guarantee systems are not exclusive to Brazil: in 2009, the Mexican case of the “Juanitas”, processed in the Superior Electoral Court under No. SUP-JDC 12624/2011 and its respective attachments, became known precisely due to an electoral maneuver to circumvent the local quota legislation. In this famous case, political parties filled gender quotas with wives, sisters, daughters and other women with close personal ties to male political leaders, who, when elected, yielded their positions to male alternate representatives. By decision of the *Tribunal Electoral del Poder Judicial de la Federación*, political parties were obliged to present at least 40% of candidates of a single gender, being mandatory that candidate and alternate be of the same gender<sup>47</sup>.

However, it was only very recently that similar decisions started to be adopted in a more significant way in the Brazilian Electoral Justice: the Electoral General Attorney Office began to take an active position in November 2016, by sending guidance to the Regional Attorneys<sup>48</sup>, which, in turn, instructed the local public attorneys of the electoral zones to initiate preparatory electoral procedures with a view to ascertaining the actual truth to applications of women who did not receive any votes.

After investigating fraud in fulfilling the minimum percentage of 30% of the quota for each gender, the instructions were to propose electoral lawsuits against those responsible.

Nonetheless, it was observed the great damage that the increased filings of such actions had been causing to the women who, often unsuspectingly, were

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<sup>47</sup> BUENO, Emma Roberta Palu; COSTA, Tailaine Cristina. Meu pé de cota laranja: a Justiça Eleitoral e seu papel na garantia da efetivação da participação da mulher na política. In: SALGADO, Eneida Desiree; KREUZ, Letícia Regina Camargo; BERTOTTI, Barbara Medonça Bettotti. *Mulheres Por Mulheres: memórias do I encontro de Pesquisa por/de/sobre mulheres*. Porto Alegre: Editora Fi, 2018.

<sup>48</sup> Orientação Genafe 01/2016 do Ministério Público eleitoral. Available at: <http://www.mpf.mp.br/pgr/documentos/Orientaon01Mulheres.pdf>. Access: 02/10/2020.

part of electoral coalitions containing gender fraud: since the fraud was a legal defect of origin, many elected candidates passed to run the serious risk of having their mandates annulled and revoked.

Thus, in 2017, in a controversial decision, it was determined the exclusion of women as parties judicial actions against elected candidates, under the risk of – in combating ilegal behavior that could damage affirmative actions – acutally harming members of the minority that should have been beneficiaries of such actions. That is, if electoral mandates are judicially contested and lost, it will only be in relation to the male candidates involved, which generated a lot of controversy.

Based on this guidance, countless electoral lawsuits were promoted across the country, with special concern for the termination of the mandates of only male candidates, making exception for the mandates of female candidates. Some authors point out, to which Jose Luis Blaszak agrees, that it would not be technically correct to partially cancel the DRAP (declaration of regularity of party acts) without affecting both genders' applications, men and women alike<sup>49</sup>. Nevertheless, such decisions have been made under the argument of protecting the *intuito legis*, the legislative intention.

It is evident, therefore, that it is not by chance that debates about party quotas in the Legislature have been rich in argumentation, both in terms of the constitutionality and conventionality of such affirmative actions and to show the weight of cultural barriers in interpretations about the representativity of women in elective offices.

Essentially, what it is discussed in the present work is if the persistent problem of under-representation could not be solved only with the adoption of more aggressive legislation that would, in fact, guarantee a reserved number of seats in Parliament – as the #1 modality of the scheme produced by Dahlerup, thus abandoning the questions related to eventual original legal defects in the coalitions generated by the “registration quotas”, which would be replaced by the so-called “seat quotas”.

## **THE IMPLEMENTATION OF POLICIES ON GENDER ELECTORAL AFFIRMATIVE QUOTAS THAT ENABLE THE REALIZATION OF QUALITY DEMOCRACY IN BRAZIL**

Evidently, from the above, legislative changes are necessary with regard to the allocation of special funds from the party fund, since the lack of support from the political parties themselves is a constant feature of women's electoral campaigns<sup>50</sup>.

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<sup>49</sup> BLASZAK, José Luís. Opinião: Abusos na proposição de ações sobre cotas de gênero nas eleições. Available at: <https://www.conjur.com.br/2017-abr-20/jose-blaszak-abusos-proposicao-acoes-cotas-eleitorais>. Access: 02/10/2020.

<sup>50</sup> PANKE, Luciana. *Campanhas eleitorais para mulheres: desafios e tendências*. 1ª Ed. Curitiba: Editora UFPR, 2016. p. 59.

Therefore, considering the insufficiency of the system currently in force in the country, it is crucial to analyze the legislative proposals that address, directly or indirectly, female participation in politics and its adaptation to international human rights documents aimed at the actualization of female political rights and, consequently, of the greater quality of democracy.

Regarding the proposals that originated in the Chamber of Deputies there is Proposal of Constitutional Amendment (PEC) No. 205/07, authored by Deputy Luiz Carlos Hauly and others, and PEC No. 371/13, authored by Deputy Iriny Lopes and others, which is currently attached to the first proposal.

PEC No. 205/2007 adds new paragraphs to article 45 of the Brazilian Constitution, which reserves vacancies for women in both the Chamber of Deputies and the Federal Senate. For the Chamber of Deputies, the percentages set would be of 20% for the 2010 elections, and from 25% for the 2014 elections to 33% for the subsequent elections. For the Senate, a third of the representation of States and the Federal District in the Federal Senate would be reserved for women in the 2010 and subsequent elections. Note that the dates foreseen in the proposal have already expired, but the reserve determinations, if they are to be temporally adapted at the time they are eventually approved, would have a definitive character.

As for the proposed amendments to the Constitution presented within the scope of the Federal Senate, there is PEC No. 98/2015, and PEC No. 23/2015. The first adds Article 101 to the Transitional Constitutional Provisions Act to reserve vacancies for each gender in the Chamber of Deputies, in the Legislative Assemblies of the states, in the Legislative Chamber of the Federal District and in City Councils. This proposition is still at the Chamber of Deputies, as PEC No. 134/2015 from the Federal Senate, and is awaiting to be voted since 2016. If this project is approved, the presence of at least 10% of women in the legislative would be mandatory in the next elections, 12% female participation would be mandatory in a second next election and 16% in a subsequent third election. After this period, the obligatory provision of such percentages will be extinguished, as an increase in female participation in politics is expected to have been generated after 12 years.

Another Proposal of Constitutional Amendment (PEC), under No. 23/2015, proposed by Senator Vanessa Grazziotin and others, in turn, adds article 16-A to the Brazilian Constitution, to enforce gender parity in the seats of the Chamber of Deputies, of the Legislative Assemblies of the states, of the Legislative Chamber of the Federal District and of the City Councils. In its original wording, the PEC provides for the allocation of at least 50% of the vacancies for each gender, under statutory enforcement, allowing, in the hypothesis of an odd number of vacancies, that the number of elected members of a sex outnumber the number of elected members of the other sex by one.

With regard to the propositions of subconstitutional nature, it should be noted that its origins are closely associated with the work of special commissions dedicated to political reform. There is special relevance to Bill No. 6593/2013, authored by Deputy Henrique Fontana, which is a far-reaching proposal that provides for the electoral system establishing proportional elections as a whole and for the exclusive public financing of electoral campaigns. This proposal was the result of efforts undertaken within the scope of the Special Commission for Studying Political Reform, installed in 2011, which had deputy Henrique Fontana as rapporteur.

Also noteworthy is the Manifesto of Civil Society for Political Reform, a document signed by more than one hundred Brazilian civil society organizations, including the National Confederation of Bishops of Brazil (CNBB), Brazil's Order of Attorneys (OAB) and the Social Movements for Political System Reform Platform. The project of bill, a popular initiative on political reform and transparent elections, seeks to guarantee the alternation of gender in the parties' predefined lists in proportional elections, with a two rounds voting system.

It should be noted that this political reform project is also being processed in the Chamber of Deputies. The proposal was taken over by countless deputies, led by Deputy Luiza Erundina, who, while safeguarding due credit to the institutions that led the civil society movement in favor of political reform, presented it as a parliamentary initiative bill to her fellow parliamentarians. Currently, the proposal is pending in the Chamber of Deputies as Bill No. 6316/2013.

The difference between the two proposals examined above resides in the fact that, in the case of the civil society project, the gender alternation in the list is absolute, respecting parity, whereas, in the case of the Chamber of Deputies proposal, the alternation contemplates the existence of an alternation on the gender of the candidates for every three positions on the list.

Had they been approved, any of these proposals for gender alternation in the composition of predefined lists would necessarily produce an increase in the number of candidates with actual possibilities of being elected. In fact, the alternation proposed by civil society would be equivalent to a quota of at least 50% for women in party applications. Deputy Henrique Fontana's proposal is less than that, setting a minimum of one-third for women within an alternation scheme for every three candidates.

Such questions, as shown, are extremely relevant, especially when we consider the importance and urgency of the topic: there is a notable resistance to discussing legislative proposals for quotas in plenary sessions in parliament, purposefully perpetuating the gender gap in politics. On October 3rd, 2016, women occupied the National Congress to pressure its current president to initiate voting procedures on PEC No. 134/2015, from the Federal Senate, which had already

been approved at the Senate itself, and was scheduled in that day's agenda, ready for voting in the Chamber of Deputies since 2016, to no avail<sup>51</sup>.

It should be noted that several countries have already obtained quite satisfactory results with a seat quota, with a world average of approximately 25% of female participation. However, it should also be noted that far beyond the modification of the Brazilian quota system for seat reservation, greater attention to gender equality issues would have significant impacts, since in none of the countries studied, the female participation of above 20% seat quotas has been dissociated from public policies for female empowerment<sup>52</sup>.

This year, new elections are approaching without any legislative change to guarantee greater female representation. It is up to us to have a broad and in-depth discussion of the theme, accompanied by strong social pressure for public policies on female empowerment and to bring a social call for more effective quotas, so that in the future we can celebrate the actualization of women's political rights and the consequent improvement of Brazilian democratic quality.

## FINAL CONSIDERATIONS

Female under-representation in politics today is a direct consequence of the exclusion of women from public space, a situation that has long been seen as natural. In Brazilian society, which has patriarchal foundations, women gradually entered this space and broke the duality between the private sphere, a place reserved for women, and the public sphere, reserved for men. Nonetheless, this movement that occurred and occurs at a slow pace, is far from configuring a linear and growing trajectory, because the attacks and setbacks go hand in hand with the victories of women, and they continue to encounter several barriers in their path.

It was at the municipal level that, in 1928, a woman was elected for the first time.

Luíza Alzira Soriano Teixeira was elected the first mayor of Brazil, in the city of Lajes, Rio Grande do Norte. 92 years later, in 2020, in a universe of 5,568 municipalities, only 649 are governed by women. According to the Brazilian Institute of Geography and Statistics (IBGE) data, although women make up 51% of the Brazilian population, they govern only 12% of the municipalities. It is also important to highlight that the number of mayors elected in 2016 was lower than in 2012.

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<sup>51</sup> BRITO, Débora. Deputadas discutem com Maia PEC que cria cota para mulheres no legislativo. Available at: <http://agenciabrasil.ebc.com.br/politica/noticia/2017-08/deputadas-discutem-com-maia-pec-que-cria-cota-para-mulheres-no-legislativo>. Access 02/10/2020/

<sup>52</sup> IDEA. Gender Quotas Database. Available at: <https://www.idea.int/data-tools/data/gender-quotas>. Access: 02/10/2020/

According to data from the Instituto Alziras, 91% of the total female mayors in office since 2017 were elected in municipalities with up to 50,000 inhabitants, which means that municipalities governed by women cover only 7% of the country's population<sup>53</sup>.

According to the Superior Electoral Court, of the 5,568 Brazilian municipalities, 2,963 have a female majority in the electorate. However, in only 24 municipalities women are the majority in the City Councils. And what is even more alarming, in 1,286 municipalities all councilors are male<sup>54</sup>.

When thinking about women in politics, one cannot help but take into account that women do not constitute and have never constituted a homogeneous group. If women were and still are excluded, those who suffer other types of discrimination besides gender discrimination are even more excluded.

The right to vote was extended to women in Brazil in 1932, but when it was recognized voting was not mandatory, and only married women who had the authorization of their husbands or single women and widows with their own income could vote. In 1933, the right to vote was again ensured, but this time only to women who exercised paid functions in public positions<sup>55</sup>. In other words, since its recognition, guaranteeing voting rights to “all” women masks the exclusions of many and the different vectors of power to which they are subjected.

If the number of women in political office at the municipal level is already low, even more so is the number of black women in charge. Currently, black women represent 27% of the Brazilian population, but are in charge of only 3% of Brazilian municipalities.

Of the 57,800 city councilors elected in 2016, only 328 are black women, amounting to 0.6% of the total, and 2,546 are brown women, 4.4% of the total. And even their being elected cannot be considered an absolute success, because many of these women continue to be discriminated against and persecuted in their political life, as happened with Marielle Franco. Murdered on March 14th, 2018, Marielle was the only black woman in the legislature of the Rio de Janeiro City Council.

According to former Minister Marina Silva, “all women who managed to enter politics by some means that were not through special protection, through being someone's daughter or wife, are pioneers”. And the current scenario,

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<sup>53</sup> Instituto Alziras. Perfil das Prefeitas no Brasil (2017-2020). Available at: <http://preefitas.institutoalziras.org.br>. Access: 02/10/2020.

<sup>54</sup> TSE. Eleições 2016: número de prefeitas eleitas em 2016 é menor que 2012, 08 de nov. de 2016. Available at: <http://www.tse.jus.br/imprensa/noticias-tse/2016/Novembro/eleicoes-2016-numero-de-preefitas-eleitas-em-2016-e-menor-que-2012>. Access: 02/10/2020.

<sup>55</sup> Agência Senado. Direito ao voto reconheceu a cidadania. Available at: <http://www.senado.gov.br/noticias/jornal/cidadania/MulheresPolitica/not03.htm>. Access: 02/10/2020.



increasingly marked by attacks on minorities, makes the issue even more complex. According to Silva, “in other scenarios, it was already difficult. Imagine now, in a context where people no longer have any ethical, moral and humanitarian interdictions to try to disqualify these groups”<sup>56</sup>.

Many have said that the year 2020 can symbolize a watershed when it comes to women’s candidacies at the municipal level, because these will be the first elections in which the parties will have to allocate 30% of the electoral fund to finance female candidates. In addition, from this year on, in combination with the Declaration of Regularity of Party Acts (DRAP), each party must submit a list of candidates who will dispute the municipal election to the Electoral Justice.

Nevertheless, the electoral records no longer present such hopeful data. According to the databases of the Superior Electoral Court, out of the 19,141 candidates, only 2,496 are women and their names are not a majority in the race for mayor in any of the 33 parties. To put it another way, in 2020, only 1 in 10 applications in City Hall electoral races belongs to a woman. The percentage of women running for mayor is the same recorded in the 2016 and 2012 elections, which demonstrates that the scenario we live in today can remain the same, increase in a very timid manner or even worsen, as occurred from 2012 to 2016.

If the barriers were already numerous beforehand, the COVID-19 pandemic appears as one more obstacle. According to researcher Ermelinda Ireño, who defends the equal occupation of men and women in Parliament, women can be the most affected in municipal elections, in her words:

Are men and women who are at home with their children establishing the same activities? Or has the accumulation of activities returned to the hands of women? And this accumulation of activities in the hands of women will prevent them from playing the game, it will prevent them from going to the arena in the same way as men. I think that this scenario of municipal elections will be detrimental to the participation of women (**our translation**)<sup>57</sup>.

If the journey was already long and at a slow pace before, it is now possible for us to move backwards, which makes the discussion about a pluralist and feminist view of electoral quotas for women even more urgent, in order to enable a quality democracy.

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<sup>56</sup> TAVARES, Joelmir; GARCIA, Guilherme. Instável, avanço da atuação feminina na política será testado com novas regras. *Folha de São Paulo*, 01 de set. de 2020. Available at: <https://www1.folha.uol.com.br/poder/2020/08/instavel-avanco-da-atuacao-feminina-na-politica-se-ra-testado-com-novas-regras.shtml>. Access: 02/10/2020.

<sup>57</sup> Agência Câmara de Notícias. Debatedoras cobram punição para partidos que não cumprem cota de 30% de mulheres candidatas. Available at: <https://www.camara.leg.br/noticias/680749-debatedoras-cobram-punicao-para-partidos%E2%80%A8%E2%80%A8-que-nao-cumprem-cota-de-30-de-mulheres-candidatas/>. Access: 02/10/2020.

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