



# PROMOTING WOMEN'S POLITICAL PARTICIPATION: FROM QUOTAS TO PARITY

A GUIDE TO LEGAL OPTIONS FOR  
THE WEST AND CENTRAL AFRICA REGION



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This guide was conceived by UN Women's Political Participation Team as a regional tool for use and adaptation at country level where UN Women is providing support for legal reforms. The guide is informed by a review of the laws passed during the last ten years in the WCA region and draws on the experiences of legal reforms processes that have been conducted by UN Women partners.

It also contains concrete examples, suggestions and knowledge shared by numerous individuals. Its completion would not have been possible without the core contributions of several individuals, especially: Julie Ballington, UN Women Policy Advisor; Gabriella Borovsky, UN Women Policy Specialist; Lana Ackar, UN Women Policy Specialist; Carlos Valenzuela, Senior Electoral Expert; Maarten Halff, senior electoral adviser; Serge Nanourou, Electoral Officer (UNOWAS); Ify Abraham (Gender and Human Rights Adviser, Change Managers International Network, Nigeria); Hansatu Adegbite, Executive Director, WIMBIZ, Nigeria; Austin Aigbe, Senior Programme Officer, CDD Nigeria; Dieh Mandiaye Ba, Parliamentarian, President of Law, Decentralization, Labour and Human Rights committee, Senegal; Boubacar Bah, Development Expert, UNDP, Guinea; Ramata Derra, Programme Manager, National Democratic Institute, Burkina Faso; Emilie Beatrice Epaye, Parliamentarian, President of Foreign Affairs Committee, CAR; Vanilde Furtado, former UN Women Country Programme Coordinator, Cape Verde; Rokhiatou Gassama, President of the Senegalese Women's Council COSEF, Senegal; Assetou Kaboré, Permanent Secretary, Conseil national de promotion du genre, Burkina Faso; Meima Sirleaf Karneh, Country Representative of the UNOWAS Working Group on Women Peace and Security in West Africa, Liberia; Iheoma Obibi, Executive Director, Alliances for Africa, Nigeria; Felicia Onibon, President, Change Managers International Network, Nigeria; Lucia dos Passos, Parliamentarian, President of the Law Review Committee, President of the Commission for Gender Equality, Family, Youth and People with Disabilities, Pan African Parliament, Cape Verde; Fanta Sow, Responsible for the Governance, Leadership and Political Participation Programme, UN Women, Senegal; Elise Thiombiano, Minister for Culture, Arts and Tourism, Burkina Faso; Adalberto Varela, ICIEG, Cape Verde; and Yarsuo Weh-Dorliae, Democracy, Governance & Public Policy Consultant, Liberia.

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## FOREWORD

Countries in West and Central Africa (WCA) have ratified international and regional instruments pertaining to women's rights and have pledged to implement them. Efforts have been made and progress has been achieved in this regard, including the creation of dedicated ministries and institutional mechanisms to advance women's rights.

However, different sources of discrimination still linger in politics and public life. This guide examines those bottlenecks hampering meaningful equality and power sharing between women and men in decision-making bodies. It shines a light on various options for legal and electoral reforms likely to redress women's low representation in elected assemblies.

Forty years after CEDAW entered into force, the political participation of women is still a challenge across the globe. While it is positive that the representation of women in parliaments has risen globally from 11 per cent in 1995 to 25 per cent in 2021, there are still countries in WCA where women make up less than 5 per cent of parliamentarians.

This guide identifies advocacy messages and legal solutions to encourage governments, parliaments, national institutions, political parties and civil society organizations including women's associations to bring about and reinforce women's sustainable and effective political participation and representation. Through comparative experiences from the region, it explores legal options that may be considered for the adoption of more favourable legal measures fostering greater gender equality and parity.

This legal analysis and guide on women's political participation in WCA aim to motivate all stakeholders to ensure that procedures and practices support women's participation in all spheres. We hope that it will enable lawmakers, researchers and civil society advocates to better understand legal challenges, and will undoubtedly support efforts to make women's political participation in our region more effective.



**Oulimata Sarr,**  
**UN Women Regional Director**  
**West & Central Africa**



## FOREWORD

Advancing gender equality and the human rights of women and girls is at the heart of Canada's international assistance. This is why we are proud to work in concert with strategic partners such as UN Women, which view women's empowerment and full participation in leadership and decision-making processes as fundamental elements of democratic societies that are genuinely inclusive, representative, and sustainable.

According to the Global Gender Gap Report, the most persistent gender gaps exist in political participation. Women face a double hurdle: not only are there significant barriers to attaining leadership positions, but even once they are secured, women are likely to find it difficult to exert real influence in those roles. The absence of full political empowerment of women, including as decision-makers in peace processes, continues to negatively impact the realization of all human rights, economic and social growth, as well as international peace and security.

Women are significantly under-represented as voters, candidates and electoral representatives around the world but more specifically in countries in West and Central Africa. Coupled with the COVID-19 pandemic, which is exacerbating inequalities for girls and women and threatening to unravel decades of progress toward gender equality, meeting and protecting the unique needs of all girls and women is more urgent than ever before.

It was during Prime Minister Trudeau's first official visit to Africa in 2017 that he announced Canada's support to UN Women for the Women's Political Empowerment and Leadership project, which seeks to increase women's full and effective political participation by promoting legislative reforms that ensure their fair access to political life in Countries in West and Central Africa. Among its achievements is support for the National Assembly of Guinea to adopt a Law on Parity, guaranteeing that women represent at least 50% of candidates on electoral lists

We are very proud to have contributed to this guide, which highlights many of the sustained efforts in this area and shares practical examples, suggestions and knowledge from numerous stakeholders seeking to consolidate and deepen women's full participation in political and public decision-making.



**Susan Steffen,  
Executive Director  
Pan Africa and Development Programme**

## ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
AU	African Union
ACHPR	African Charter on Human and People's Rights
CAR	Central African Republic
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE	Council of Europe
CSO	Civil Society Organization
ECOWAS	Economic Community of West African States
EU	European Union
GEO Bill	Gender Equality Opportunity Bill
IDEA	International Institute for Democracy and Electoral Assistance
GBV	Gender-Based Violence
ICCP	International Covenant on Civil and Political Rights
ILO	International Labour Organization
IPU	Inter-Parliamentary Union
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
NDI	National Democratic Institute
NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
SDG	Sustainable Development Goals
TSM	Temporary Special Measures
UN	United Nations
UN WOMEN	The United Nations Entity for Gender Equality and the Empowerment of Women
UNOWAS	United Nations Office for West Africa and the Sahel
WCA	West and Central Africa



# PROMOTING WOMEN'S POLITICAL PARTICIPATION: FROM QUOTAS TO PARITY

## About the Guide

**T**his guide is designed to increase the understanding of the legal obligations of countries in the West and Central Africa (WCA) region to achieve gender equality in decision-making. It focuses on strengthening efforts to improve the legal framework in this region to ensure that laws are clearly drafted, implementable and effective. Special focus will be devoted to the processes by which laws supporting political participation of women are developed, negotiated, drafted, passed and implemented. It aims to strengthen law-making processes that build and secure the legal rights of women who want to run for elections and who are ready to take over leadership positions in their parliaments and governments. Legal instruments are presented that can be used to advance the political participation of women. It explains what Temporary Special Measures are and presents the different types of TSM. The concept of quotas will be examined including the different types of quotas and how they work in practice. Furthermore, this guide presents the different electoral systems in West and Central African countries (WCA), and describes the relationship between electoral systems and successful women candidacies.

The comparative experiences presented in this guide address both examples of good practices and laws that have failed because their regulations are imprecise, unclear and/or lack effective sanctions. The guide presents various provisions of laws resulting from different constitutional requirements or electoral systems, assessing their advantages and disadvantages.

Legislators, governments, experts on legal drafting, and Civil Society Organizations across the WCA region will find guidance in this document. This will include information on how to assess the chances of successful application of quota laws in different contexts and which TSM may be applied in different constitutional and electoral settings. Summary for good legislative practice can be found at the end of the legal guide.



*Photo: UN Women / Women elected members advocating for the parity law, Cape Verde*

## Introduction

Forty years after CEDAW entered into force, the political participation of women is still a challenge across the globe. Women face structural and cultural obstacles to participating in political life. The UN General Assembly resolution 66/130 of December 2011 underlined, “that women in every part of the world continue to be largely marginalized from the political sphere, often as a result of discriminatory laws, practices, attitudes and gender stereotypes...”<sup>1</sup> While it is a success story that the representation of women in parliaments has increased from 11 per cent in 1995 to 25 per cent in 2021,<sup>2</sup> there are still various countries where women make up less than 5 per cent of parliamentarians.<sup>3</sup> Worldwide, in 1995, no parliament had reached gender parity. In 2021, the lower or single chambers of parliaments of four countries have at least 50 per cent women among the parliamentarians.<sup>4</sup> Among the 20 parliaments with a representation of women of more than 40 per cent, five belong to African countries. It is well-known that Rwanda has made the greatest progress with 61 per cent of women in Parliament.

Many African countries are indeed actively developing measures to ensure better political participation of women. Yet, despite the recent progress in terms of boosting women’s representation in parliamentary leadership roles, women are still far away from equal representation in politics and in political decision-making bodies.

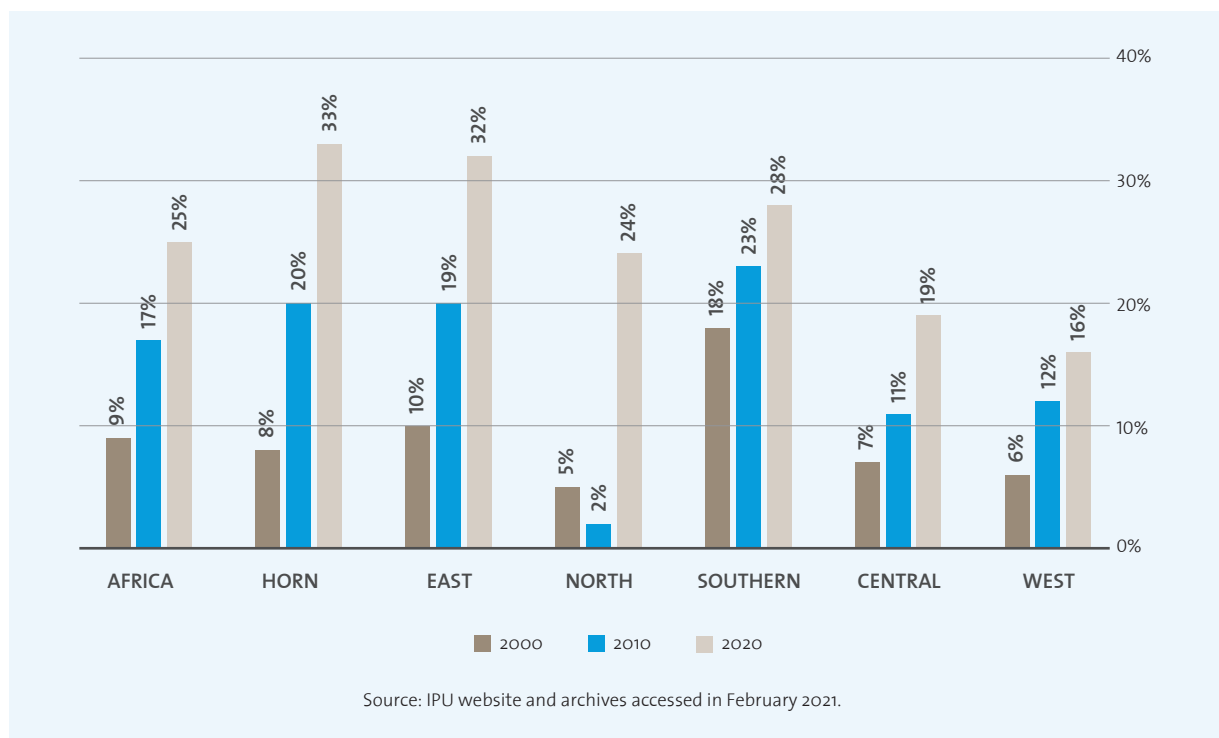
**TABLE 1.**  
**Women’s political participation in Africa and its regions - key indicators 2021<sup>5</sup>**

	Central	West	Africa
Percentage of women in lower house of Parliament	19%	16%	25%
Percentage of women in upper house of Parliament	20%	12%	20%
Percentage of women in Parliament overall	19%	16%	24%
Percentage of women in local government	27%	2%	21%
Percentage of women in political party leadership	7%	11%	12%
Percentage of women in Elections monitoring Bodies	20%	24%	28%
Percentage of women Speakers	18%	16%	21%
Percentage of women mayors of capital cities	43%	20%	19%
Percentage of women in top executive positions	7%	7%	7%
Percentage of women in cabinet	20%	19%	22%

- 1 UN Women, In Brief: Women’s leadership and political participation <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2013/12/un%20women%20briefuswebrev2%20pdf.pdf?la=en>
- 2 UN Women Facts and Figures, Women’s leadership and political participation, 15 January 2021 <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>, IPU Women in Parliament 1995-2020. In lower and single houses of parliament, the percentage of seats held by women increased from 11.6 to 24.9 per cent. Upper houses saw the percentage increase from 9.4 to 24.6 per cent.
- 3 According to IPU monthly ranking of female parliamentarians, there are: three in the Pacific, three in the MENA region, one in the Americas, one in Asia and one in sub-Saharan Africa – nine in total.
- 4 Rwanda, Cuba, Bolivia and the United Arab Emirates. IPU states in its monthly ranking that at least 40% women were elected to parliament in 22 states in 2021, <https://data.ipu.org/women-ranking?month=4&year=2021>
- 5 Idea, Women’s political participation, Africa Barometer 2021, table 1, p. 7 <https://wpp-africa.net/sites/default/files/2021-03/PDF%20Version%20WPP%20Africa%20Barometer%202021.pdf>

Specific data from WCA countries show that although women's political representation has made some progress, the region is behind in comparison with all African countries. Women are nearly absent from local WCA governments, holding only two per cent of seats. Only in Senegal (Saham El Wardini), Sierra Leone (Yvonne Aki-Sawyerr), and Cameroon (Omambele Bindzi Clementine), are women in mayoral positions for those respective capital cities. Women are represented in the governing bodies of political parties in five countries: Senegal, Burkina Faso, Capo Verde, Ghana and Liberia. In Liberia, Howard-Taylor is the country's Vice President, making her the only female Vice President in WCA. There is a lack of women in the cabinets: in comparison to 475 men, only 91 women are appointed ministers in the cabinets of WCA countries in portfolios more traditionally attributed to women.<sup>6</sup> Fifty-four women are members of an electoral management body in WCA.<sup>7</sup>

**FIGURE 1**  
**Women in Parliament (Lower House) in Africa over time<sup>8</sup>**



Although women make up half of the population in WCA countries, they are not proportionally involved in political decision-making. This not only violates the democratic principle of equal and inclusive participation of all citizens, but also means that women's views and interests are not taken into account in government policies. In addition to these more social factors, legal and financial regulations often exclude women from equal political participation. Such regulations can be found in the statutes of political parties or in electoral systems and electoral laws. The reasons for this are manifold. Gender stereotypes, culture, customs and traditions are all potential reasons, but the intimidation of women who are politically active plays a major role. Women's access to political participation is a critical litmus test for democracy and a sine qua non for substantive equality.<sup>9</sup>

- 6 UN Women, Women in politics: 2020 <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/women-in-politics-map-2020-en.pdf?la=en&vs=827>
- 7 Idea, Women's political participation, Africa Barometer 2021, Annex 13
- 8 Idea, Women's political participation, Africa Barometer 2021, p. 7 <https://wpp-africa.net/sites/default/files/2021-03/PDF%20Version%20WPP%20Africa%20Barometer%202021.pdf>, p. 9 figure III
- 9 UN Women, A practitioner's toolkit on women's access to justice programming, 2018 <https://www.unwomen.org/en/digital-library/publications/2018/5/a-practitioners-toolkit-on-womens-access-to-justice-programming>

## Different tracks to political participation

Women's political participation has proven to increase through the application of well-designed quotas. Countries across the continent have achieved a high level of women's representation by using TSM, making them trendsetters and an inspiration for other countries. Out of 54 African countries, 40 countries have introduced policies to promote women in politics at the local and/or national level.<sup>10</sup> The measures themselves vary, ranging from parity laws to legislated quotas to so-called reserved seats and voluntary quotas for political parties. Parity laws (like those found in South Africa, Togo and Senegal) regulate the alternating nomination of an equal number of women and men on candidate lists. Legislated quotas (like those found in Burkina Faso and CAR) require political parties to nominate a certain



Photo: UN Women

percentage of women on their lists. Reserved seats (like those found in Tanzania, Mauritania, Burundi and Uganda) are often regulated in the constitution; they stipulate that women are *required* to be represented in Parliament in a certain percentage. Political parties often opt for voluntary quotas (as in Namibia, Cameroon, South Africa, Mozambique and Botswana) They stipulate in their statutes that the lists of candidates must be equally composed of women and men.

In West and Central Africa, 10 out of 12 countries now have electoral quota laws.<sup>11</sup> Cape Verde adopted its parity law in 2019 and was largely effective in implementing it during the local elections in October 2020; consequentially, 45 per cent of the members of the municipal assembly are women. Mali passed a quota system that was applied to the March 2020 parliamentary elections for the first time; 27.9 per cent of the elected deputies were women.<sup>12</sup> However, in August 2020, as a result of a military coup the Parliament was dissolved. In Burkina Faso, the Central African Republic and Liberia, enforcement of quotas is hindered by a lack of effective legal sanctions for non-compliance.

When looking for comparative perspectives, elected officials in WCA may focus on the context within which other African countries' quota laws have been effective. For example, they may ask: what were the political, administrative and legal factors in those countries that led to the success of a particular type of law (or to its failure)? African lawmakers may also consider the substance and principles of global commitments and translate them into practical steps to better justify and improve the law-making process. These commitments, evident in CEDAW, the Maputo Protocol and the UN Agenda 2030, are important but can only be effective when translated into legal provisions that work within a given country's specific social, political and legal environment.

## General background: Temporary Special Measures (TSM)

The concept of TSM was first enshrined in international law in the CEDAW Convention. Article 4 states that the "adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination". According to Article 7 of CEDAW, "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and ... 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".

10 Idea, Women's political participation, Africa Barometer 2021, Annex 9 <https://wpp-africa.net/sites/default/files/2021-03/PDF%20Version%20WPP%20Africa%20Barometer%202021.pdf>

11 UN Women, WCARO Annual Report 2019, [https://www2.unwomen.org/-/media/field%20office%20africa/images/publications/2021/01/wcaro%20ar/20201218\\_unwomen\\_wcaro\\_annual\\_layout\\_o2\\_web\\_spread.pdf?la=en&vs=2202](https://www2.unwomen.org/-/media/field%20office%20africa/images/publications/2021/01/wcaro%20ar/20201218_unwomen_wcaro_annual_layout_o2_web_spread.pdf?la=en&vs=2202)

12 IDEA Country profile Mali, ipu.org

The agreed conclusions of the Sixty-fifth session of the Commission on the Status of Women (March 2021) encourage the implementation of measures and mechanisms, including appropriate mechanisms to track progress, to achieve the goal of 50/50 gender balance at all levels of elected positions<sup>13</sup>.

The Protocol to the African Charter on Human and People's Rights and on the Rights of Women in Africa (Maputo Protocol), adopted 11 July 2003, binds States Parties to "combat all forms of discrimination against women through appropriate legislative, institutional and other measures," and contains in Article 9 the obligation for Member States to take specific positive action to promote equality.

The CEDAW was reaffirmed by the Economic and Social Council in 1990, who recommended specific targets for increasing the proportion of women in leadership positions to 30 per cent by 1995 and 50 per cent by 2000. The Beijing Declaration and Platform of 1995 contained precise measures to "ensure women's ... full participation in power structures and decision-making".<sup>14</sup> The African Charter on Democracy, Elections and Governance, adopted in 2007, lists among its objectives the aim to "promote gender balance and equality in the governance and development processes." Article 29 links this to the goals of democracy and establishes that State Parties shall create the necessary conditions for full and active participation of women in the decision-making processes and structures at all levels as a fundamental element in the promotion and exercise of a democratic culture.<sup>15</sup> Article 5 of the SDG states: Achieve equality and empower women and girls.<sup>16</sup> These commitments made by States are a basis for the legal interpretation of Article 4 of CEDAW.

Despite widespread approval among international institutions for TSM, the idea of enforcing legal measures that are meant to benefit women is still partly controversial in public and legal spheres around the world. Critics argue that the preferential treatment that measures such as quotas give to women is undemocratic and unfair towards men.<sup>17</sup> Lawmakers and politicians, who often want to uphold the status quo,<sup>18</sup> feel that such treatment gives women a free pass, regardless of their qualifications.<sup>19</sup> Women elected to Parliament under a quota law are often disparaged as token women. Quotas and other TSM sometimes even receive backlash from politically active women, who do not feel that other women should be given advantages, given that they managed to become politically active without any kind of affirmative action. Some women also feel that their inclusion, with the help of a TSM, would be superficial and an unnecessary requirement to uphold a modern and democratic image, thereby diminishing their actual power. Despite the critics, TSM have proven to be necessary and effective method to ensure women's representation in elected assemblies and to counter the exclusion of women in politics. It provides a concrete opportunity for women to be candidates and gives voters, both men and women, a more gender-inclusive choice when voting. Equal representation of women is a core right for citizens.

All WCA States have ratified the CEDAW Convention and the Maputo Protocol; it is, therefore binding for these States. Whether it takes supremacy over national law depends on national constitutions. For example, Art. 98 of the Senegalese Constitution stipulates that international conventions take precedence over national laws. Article 45 of the Constitution of Cameroon also states that "duly approved or ratified treaties and international agreements shall, following the publication, override national laws ...". The Nigerian Constitution clarifies:

13 CSW 65 agreed conclusions: <https://undocs.org/E/CN.6/2021/L.3>

14 UN Beijing Declaration and Platform for Action, 1995; Borovsky, Ballington and Lasagabaster, 2018

15 "State Parties shall take all possible measures to encourage the full and active participation of women in the electoral process and ensure gender parity in representation at all levels, including legislatures." The Protocol on Gender and Development of the Southern African Development Community (SADC), signed in 2008, makes very concrete pledges for action to achieve gender balanced decision-making. Article 12: "States Parties shall endeavour that, by 2015, at least fifty per cent of decision-making positions in the public and private sectors are held by women including the use of affirmative action measures..." (Community of Democracies, 2017)

16 <https://www.un.org/sustainabledevelopment/gender-equality>

17 Karneh, 2020 and Weh-Dorliae, 2020

18 Interview with Emilie Beatrice Epaye, 2020

19 Furtado, 2020



No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.<sup>20</sup> Nevertheless, there has been a development in recent years that the obligations arising from international conventions and decisions of international human rights courts are increasingly no longer considered binding. In Switzerland and Great Britain, for example, there is a debate about changing their respective Constitutions to make this possible. Russia has already passed a law that allows the country to overrule decisions of the European Human Rights Court.<sup>21</sup> With the increase of treaty obligations that may not satisfy the requirements that have been set at the domestic level, we witness a growing reluctance of domestic courts to give supremacy to international law in their domestic legal order. Overall, the attitude of domestic constitutional actors towards international law is ambivalent and frequently inconsistent. A simple hierarchy between international law and national constitutional law, illustrated as a pyramid of norms with international law at its apex, is not generally accepted by all players.<sup>22</sup>

## TSM, QUOTA AND PARITY

The concept of TSM was first enshrined in international law in Article 4 of CEDAW. The African Charter on Human and People's Rights and on the Rights of Women in Africa, adopted on 11 July 2003, contains in Article 9 the obligation for Member States to take specific positive action to promote equality.

Temporary Special Measures (TSM) are a set of positive or proactive affirmative action measures to narrow gender disparities and promote gender equality and women's empowerment.<sup>23</sup> TSM are a variety of actions and regulatory instruments included and permitted under international and domestic law to narrow the gaps between women and men in all economic, social and political spheres.

Gender Quotas represents one type of TSM related to a country's electoral system that is intended to promote women's representation in elected bodies.

Across Latin America and West and Central Africa, legislative quotas of 30 and even 40 per cent are now perceived as insufficient. Parity - unlike quotas - constitutes a principle, not a measure. More specifically, researcher and associate professor Jennifer M. Piscopo states:

"Parity and quotas are normatively and practically distinct: quotas constitute technical, temporary special measures that political parties often exploit, but parity captures a democratic ideal that political parties cannot manipulate ... the equal representation of men and women in public office is not about matching quota laws to electoral institutions, but about achieving a structural prerequisite of the democratic state. Parity is therefore not a means of eliminating past discrimination against women, but an integral part of good governance. Parity therefore means more than technical electoral rules. In this understanding, parity is a policy of the state".<sup>24</sup>

Fifteen years after the Beijing Conference, the Quito consensus emphasized that the discourse had shifted from optional TSM to mandatory and comprehensive action with results guaranteed. The Brasilia consensus went even further, requesting measures to "ensure parity of outcomes". In this new approach, parity represents a way to reinvigorate democracy. Parity underlies democracy.<sup>25</sup>

20 UN Women: Global Gender Equality Constitutional Database <https://constitutions.unwomen.org/en/search?keywords=nigeria&provisioncategory=15be8057f7ff48cfbc52400adb39ed92>

21 Russia passes law to overrule the European Human Rights Court, <https://www.bbc.com/news/world-europe-35007059>

22 Katja Creutz, The Finnish Institute of International Affairs: International law under pressure Affairs [https://www.fia.fi/wp-content/uploads/2017/04/analysis7\\_international\\_law\\_under\\_pressure.pdf](https://www.fia.fi/wp-content/uploads/2017/04/analysis7_international_law_under_pressure.pdf)

23 Gender and law: TSMs to promote Gender Equality, ADB

24 The Quito Consensus: The document calls upon countries to develop electoral policies of a permanent character that will prompt political parties to incorporate women's agendas in their diversity, the gender perspective in their content, actions and statutes, and the egalitarian participation, empowerment and leadership of women with a view to consolidating gender parity as a policy of State; <https://www.cepal.org/en/comunicados/paises-america-latina-caribe-aprueban-consenso-quito>.

25 Jennifer M. Piscopo, Rights, equality, and democracy: the shift from quotas to parity in Latin America



## LAW PREPARATION

Legal systems differ across West and Central Africa, with a particular divide between the Anglophone countries' legal traditions and those of the lusophone and francophone countries. An essential difference between the francophone and the anglophone legal systems is that under the francophone constitutions, the President can issue decrees and ordinances, and the constitutions of these countries specify which laws must be passed as organic laws by an absolute majority or a two-thirds majority of the Members of Parliament. These organic laws are subject to an examination by the Constitutional Court.<sup>26</sup> For example, the electoral law in Guinea is an organic law. In the anglophone tradition, the power to adopt laws is vested in the National Assembly. In addition, most of the laws adopted in francophone countries include a provision stipulating that, "the modalities of application of this law will be specified by a decree".<sup>27</sup> Though, it does happen that a law may never be implemented because of the lack of a decree.

In the anglophone tradition, the power to adopt laws is vested in the National Assembly. Bills are adopted or rejected with the simple majority of the National Assembly or of both houses in a bicameral system. In Nigeria, the President can reject a law passed by both chambers. In this case, the law can still come into force if it is passed again by a two-thirds majority in Parliament.

Constitutional provisions that require equality between women and men, or allow special measures in favour of women, underpin the need for parity laws. The duty to promote gender equality is enshrined in the following Constitutions of WCA countries:

- Guinea<sup>28</sup> included the promotion of gender equality into its new Constitution in 2019;
- according to Article 55 of the Constitution of Cape Verde,<sup>29</sup> the State "shall encourage balanced participation of citizens of both sexes in political life";
- the Burkinabé Constitution of 2012 focuses on gender equality in its Preamble;<sup>30</sup>
- Article 36 of the Constitution of Cote d'Ivoire cites that, "the State works to promote the political rights of women by increasing their chances of access to representation in elected assemblies";
- the Constitution of Ghana<sup>31</sup> stipulates that the state will take appropriate measures to "achieve reasonable regional and gender balance in recruitment and appointment to public offices";
- and Article 7 of the Senegalese Constitution of 2016 "promotes [favorise] the equal access of women and men to the mandates and functions" by law.

These articles serve as the constitutional basis for parity laws.

Before drafting a law, it is advisable to look at the different types of quotas with regard to the chances of their societal, political and legal implementation. To serve the purpose of achieving increased women's political participation, a sound understanding of how quotas should be drafted and how they work in different electoral systems is needed in order for women to overcome the obstacles that prevent them from entering politics. The different types of quotas as well as the electoral systems in WCA countries are presented as follows.

<sup>26</sup> For example, the electoral law in Guinea is an organic law.

<sup>27</sup> See Article 2 quota law of Niger, Law Number 2019-69, 24 December 2019 and the Decree 2020-679, 26 August 2020. Mali, Burkina Faso and the Central African Republic also are following this tradition.

<sup>28</sup> Article 9 of the Constitution, adopted March 2020 by a Referendum: "La République affirme que la parité homme/femme est un objectif politique et social. Le Gouvernement et les assemblées des organes délibérants ne peuvent être composés d'un même genre à plus des deux tiers des membres."

<sup>29</sup> Article 7: "The following shall be the fundamental tasks of the state .... to remove, in a progressive fashion, economic, social, cultural and political obstacles that hinder true equality of opportunity among citizens, especially factors of discrimination against women in the family and in the society;" Article 55, para. 4. "The State shall encourage balanced participation of citizens of both sexes in political life" of the constitution of Cabo Verde

<sup>30</sup> Preamble of the constitution of Burkina Faso: "RECONNAISSANT que la promotion du genre est un facteur de réalisation de l'égalité de droit entre hommes et femmes au Burkina Faso;"

<sup>31</sup> Article 35, para. 6 b)

## 1. Types of quotas

First, a distinction must be made between quotas that are regulated in the Constitution and those that are legally defined either in a separate law or decree or in the electoral law.

Secondly, political parties in many countries have committed themselves to voluntary quotas for the nomination of their candidates.

### 1.1. Reserved seats

These are typically enshrined in the Constitution, the election law, the political party law, or another comparable law. Reserved seat quotas guarantee representation by requiring a certain percentage or number of seats in Parliament to be held by women. A legal basis is necessary to ensure that the determined percentage or the seats reserved for women in the legislature are legally secured and cannot be challenged by any of the contestant parties.<sup>32</sup> However, there are a couple of concerns in terms of effectiveness. The number of reserved seats may be limited so that women still remain a small number of seats in the Parliament. Furthermore, the constitutionally normed quota may be understood as a maximum quota, and thus functions as a glass ceiling.

### 1.2. Legislated candidate quotas

Candidate quotas by law are designed to influence the step from aspirants to candidates for elections at all levels. They usually stipulate that political parties must include a certain percentage of each sex as candidates, either already in the primaries or when nominating electoral lists. Depending on the electoral law, candidate quotas are implemented in different ways, applying to party lists or to a group of single member districts.<sup>33</sup> The proportion can vary from a very low percentage up to parity. As local communities are where day-to-day issues are dealt with, the inclusion of women in local elections should not be underestimated. Research shows that quotas for national elections are highly correlated with local quotas.<sup>34</sup>

When applied during the nomination process, candidate quotas help place women strategically on a party's lists of candidates (or to be nominated in an electoral district) in winnable positions. Placement rules are also applicable when it comes to increasing the representation of women in the election of minorities.<sup>35</sup> Placement provisions can range from being loose, with little regulation set for women to be nominated in a favourable manner (e.g. a certain percentage of proposed candidates have to be women, but there are no obligations as to where to place them, so that — in the electoral systems that use lists — they can be placed at the end of the list where the likelihood of their election is minimal), to strict rules that prescribe a specific ranking of women vis-à-vis men. In the latter cases, rank-order rules are applied, which include the 'zipper system' or 'zebra system', where every other candidate on the list must be a woman. Another possibility is to set a certain percentage ceiling; for example, in the first half of the candidate list, the minimum number of either sex (men or women) is set to one-third of the total number of candidates. Non-compliance with legislative or constitutional quotas can result in penalties for those political entities who did not abide by them. Examples of sanctions issued by the legal authorities of a country can range from disqualifying candidates to the imposition of fines, up to the disqualification of the entire party list.

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32 International Idea, <https://www.idea.int/data-tools/data/gender-quotas/quotas>, Dahlerup, Editor, Women, Quotas and Politics.

33 Mona Lena Krook, Women in Politics, p. 8;

34 Women's political participation, African Barometer 2021, p. 11, table III and IV

35 For example: At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq.



Photo: UN Women

### 1.3 Voluntary party quotas

Voluntary party quotas are regulated by the parties' own statutes, rules or bylaws. They prescribe the nomination of a certain minimum of female candidates. The party statute may also determine the respective minimum and maximum of male and female candidates and the order of their nomination. The IDEA quota project<sup>36</sup> has registered more than 50 countries where political parties apply quotas when nominating their candidates for elections. They are set by the parties themselves to guarantee the nomination of a certain number or proportion of women. Voluntary party quotas prove that women's participation is a concern for the party as such quota regulations are only decided after intensive discussions in the party. Voluntary party quotas can be very powerful. They have the added advantage of greater sustainability, political party ownership and championing on gender parity principles.<sup>37</sup> As the name reveals, voluntary party quotas are not legally binding but incorporated in the statute/bylaws of a political party. Voluntary party quotas contributed to significant advances in the representation of women in national parliaments in countries as diverse as Australia, Germany, Mozambique, Namibia, Nicaragua, South Africa and the United Kingdom.<sup>38</sup> Voluntary party quotas applied to candidate lists should be complemented by ranking-order provisions in order to ensure that women are included in leading positions of the candidate lists and evenly distributed across the entire list of candidates. Parties that have included quotas for women in their statutes are more willing to promote women in politics.

<sup>36</sup> [www.quotaproject.org](http://www.quotaproject.org)

<sup>37</sup> Women's political participation, African Barometer 2021, p. 11, 40

<sup>38</sup> idea.int, Atlas for electoral gender quotas

**TABLE 2.**  
**Quota laws in West African countries<sup>39</sup>**

Country	Type of quota	Sanction for non-compliance	Incentives	Election result <sup>40</sup>
Senegal Law No. 2010-11 instituting absolute parity between men and women entered into force: 28 May 2010	candidate quota with placement rule (Parity)	rejection of the list	none	general election 2017: 41.82 % female MPs
Cape Verde Law n° 68/IX/2019 entered into force November 28th 2019	candidate quota with placement rule (minimum of 40% of each sex)	rejection of the list	none	currently at 38.38% female MPs, in 2021
Nigeria	none	none	none	general election 2019: 7.22% female MPs
Mali Law No. 2015-052 of 18 December 2015 <sup>41</sup> establishing measures to promote gender equality in access to nominative and elective functions	candidate quota (30% gender quota)	rejection of the list	none	National Assembly (dissolved) 2020: 26.67% female MPs <sup>42</sup>
Niger Law No. 2019-69, 24 December 2019 amending and completing Law No. 2000-08 of 07 June 2000 establishing a quota system for elected functions in Government and in the State administration and Implementation Decree 2020-27 of 26 August 2020	candidate quota and reserved seats (minimum of 25% of either sex)	None	none	general election 2020: 25.9% female MPs
Côte d'Ivoire Law No. 2019-870 of 14 October 2019 promoting the representation of women in elected assemblies	candidate quota with alternation system (30% quota for women)	none <sup>43</sup>	additional public funding if the number of female candidates reaches at least 50% in the election of deputies. Additional funding has to be regulated by a decree.	general elections 2021: 12.6% female MPs

39 This table covers quota laws for WCA National Assemblies; see also: UN Women, Temporary Special Measures, Repertoire of Laws West and Central Africa, Mai 2021

40 IPU data and UNWOMEN country offices

41 Les modalités d'application de la loi seront définies par décret pris en Conseil des Ministres.

42 The parliament was dissolved after the Military Coup in August 2020. An interim legislature was appointed in December 2020 (Fisayo-Bambi, 2020)

43 As an incentive additional public funding is foreseen if the number of female candidates reaches at least 50% in the election of deputies.

Country	Type of quota	Sanction for non-compliance	Incentives	Election result <sup>40</sup>
Liberia	none	None	none	general election 2017 (& 2020 Special Senatorial Election): 9.7% female MPs
Burkina Faso Law N°003-2020 of 22 January 2020	candidate quota with alternation system (minimum of 30% of either sex)	None	none, but additional public funds for the election campaign of parties that comply with the provisions of the law <sup>44</sup>	general election 2020: 6.3% female MPs
CAR Law No 16.004 of 24 March 2016, establishing parity between men and women in the Central African Republic, entered into force November 24 2016	candidate quota (35% quota for female candidates)	none <sup>45</sup>	none	general election 2020/2021 : 12,8 % female MPs
Ghana	none	None	none	general election 2020: 14.6% female MPs
Democratic Republic of Congo	none	None	none	general election 2018: 12.7 % female MPs
Guinea Parity Law 2 May 2019 <sup>46</sup>	candidate quota with placement rule (Parity), not yet in force	rejection of the list, but the party concerned may appeal to the competent court	none	general election 2020: 16.67% female MPs
Cameroon	Voluntary Party quota <sup>47</sup>	None	none	general election 2020: 33.9% female MPs
Sierra Leone	none	None	none	general election: 2018: 12.3% female MPs
Guinea Bissau Parity law 2 August 2018 <sup>48</sup>	candidate quota of at least 36 % for women	None	none	general election 2019: 13.7 % female MPs

44 Political parties who comply with the provisions of the law receive additional public funds of 20% for the election campaign (Article 10 of the law). A decree regulates the details (Article 11 of the law)

45 Before submitting the lists of candidates, the parties can file a request to the Constitutional Court that the quota does not have to be applied

46 UN Women: parity laws in West Africa - Cape Verde, Guinea, Senegal

47 Article 151 (3) of the Electoral Code states that each list of candidates must take into account different sociological components of the constituency. It must also take gender into account. No legislated quota for the National Assembly. For the Senate, a legislated quota is in force.

48 <https://uniogbis.unmissions.org/en/guinea-bissau-parliament-passes-law-ensure-gender-balanced-political-representation>

## Summary

The efficiency of quotas laws can be compromised of a number of factors. For example, while they may increase women's numerical representation, quotas do not necessarily result in their substantive representation. They may also become a ceiling rather than a floor for the further growth of women's political participation.<sup>49</sup> This may be the case when reserved seats are used. Even if the Constitution rules, for instance, that "at least 30 per cent" of representation must be women, it is often interpreted as a maximum and not a minimum quota.<sup>50</sup> Voluntary quotas of political parties may exist but go on to be ignored if no intra-party sanctions are in place. If quota laws are well-drafted, they produce higher numbers of elected women which, over time, means that the electorate does not see female political participation as anything out of the ordinary. Gender quotas are effective because they offer voters an opportunity to choose female candidates when they might otherwise not. This not only gives potential female candidates a larger pool of role models, it can change the perception of women holding political office and overall as political leaders.

Hence, while society catches up, the government must step up to support female elected officials and candidates through media training, access to fundraising networks and overall capacity building.

## 2. Electoral systems and their impact on quotas

Whether quota laws are efficient does not only depend on their formulation but also on the environment in which they are applied. It is important to consider what factors determine their effectiveness.<sup>51</sup> Aside from well-formulated quota laws, the electoral system plays an important role. If the electoral system and the quota law do not correspond, this hampers the increase in political participation of women. Most countries have electoral systems based on either majority vote or proportional representation; more women tend to be elected under the latter system.<sup>52</sup>

**TABLE 3.**  
**Electoral Systems in WCA Countries**

Country	Electoral System <sup>53</sup>
Burkina Faso	mixed system of plurality/majority system and proportional system
Cape Verde	proportional representation
Central African Republic	plurality/majority system
Côte d'Ivoire	plurality/majority system
Ghana	plurality/majority system
Guinea	mixed system of plurality/majority system and proportional system
Liberia	Two-Round system (plurality/majority system)
Mali	plurality/majority system
Nigeria	first past the post (plurality/majority system)
Senegal	mixed system of plurality/majority system and proportional system

49 Richard E. Matland, Electoral Quotas Frequency and effectiveness in: Women, Quotas and Politics, 275, 276

50 For example, in Iraq

51 Richard E. Matland, Electoral quotas, frequency and effectiveness, in: Women, quotas and politics, p. 275 ff

52 UN, Women and elections, a guide, 2005.

53 IFES, «Election Guide».



Country	Electoral System <sup>53</sup>
Cameroon	mixed system of plurality and proportional system
Democratic Republic of Congo	mixed system of plurality/majority system and proportional system
Guinea Bissau	proportional representation system
Niger	proportional system, a further eight seats are reserved for national minorities and five seats for Nigeriens living abroad, all elected from single-member constituencies by first-past-the-post
Sierra Leone	plurality/majority system 12 seats are filled by paramount chiefs elected in separate elections

## 2.1 Plurality/majority electoral systems

Most states in the WCA region have plurality/majority electoral systems. In the absolute majority system, a candidate must get 50 per cent plus one vote. Since the amendments to the Constitution that came into force in 1986 in **Liberia**, a so-called simple majority applies to elections. Candidates in constituencies no longer have to be elected by an absolute majority (50 per cent plus one), which was the case under the old Constitution. The simplest form of the plurality/majority system is first-past-the-post (FPTP), which is used in **Nigeria**. In every election district only one member is elected to a legislature. The winning candidate is the one who gains more votes than any other candidate, even if this is not an absolute majority (over 50 per cent) of valid votes. The system uses single-member districts and the voters vote for candidates rather than political parties.

## 2.2 Two-Round system (presidential elections mostly)

In **Ghana, Liberia, Mali, Cote d'Ivoire** and the **Central African Republic** elections take place by the plurality/majority system.<sup>54</sup> The subcategory of the election system in both Mali and Liberia is the Two-Round system (TRS) for the presidential election. The Two-Round system is a plurality/majority system in which a second election is held if no candidate or party achieves a given level of votes, most commonly an absolute majority (over 50 per cent) in the first election round. A Two-Round system may take a plurality/majority form — more than two candidates contest the second round and the one who wins the highest number of votes in the second round is elected, regardless of whether they have won an absolute majority — or a majority run-off form—only the top two candidates in the first round contest the second round.

## 2.3 Proportional representation system (List PR)

Proportional representation (PR) is used in **Cabo Verde**. The 72 members of the National Assembly are elected from 16 multi-member constituencies ranging in size from two to 15 seats. The elections are held using closed lists with proportional representation; seats are allocated using the d'Hondt method. Such a system requires the use of electoral districts with more than one member. Under a List PR system, each party or grouping presents a list of candidates for a multi-member electoral district or a national list, the voters vote for a party and the parties receive seats in proportion to their overall share of the vote. In some (closed list) systems, the winning candidates are taken from the lists in the order of their position on them. If the lists are 'open' or 'free', voters can influence the order of the candidates by marking individual preferences. Moreover, the numerous mathematical<sup>55</sup> and operational subtleties of seat allocation procedures must be taken into account.

<sup>54</sup> Liberia and Ghana: FPTP

<sup>55</sup> La Hague or d'Hondt system

## 2.4 Mixed systems

The Mixed Member Proportional (MMP) system is a mixed system in which the choices expressed by the voters are used to elect representatives through two different systems — one (most often) a plurality/majority system, usually in single-member districts, and the other a List PR system. The PR seats are awarded to compensate for any disproportionality in the results from the plurality/majority system. The mixed system of plurality/majority systems and proportional systems are used in **Guinea, Senegal** and **Burkina Faso**.

In so-called multi-member districts, more than one representative is elected to a legislature. This is the case in **Burkina Faso**<sup>56</sup> where 111 deputies are elected in 45 multi-member provincial constituencies, with each having two to nine seats depending on the size of the constituency.

In **Senegal**, 60 deputies are elected following the proportional representation, and in **Guinea** two-thirds of the members of the National Assembly are elected through a proportional representation system from a single nationwide constituency, while the remaining one-third is elected through a first-past-the-post system in single-member constituencies. Out of 114 members of Parliament, 38 are elected from single-member constituencies based on the 33 prefectures and five communes of Conakry by first-past-the-post voting, whilst the other 76 are elected from a single nationwide constituency by proportional representation. Only 19 women were elected in March 2020.

## 3. How effective are quota laws in the different electoral systems?

There is overwhelming evidence that the type of electoral system instituted can greatly affect women's chances of election. As is now common knowledge, proportional representation systems are viewed as the most 'woman-friendly'.<sup>57</sup> The likelihood of being elected is quite high in a proportional system with national, federal or local lists or in large districts. If a woman is nominated to the first place of a candidate list, she has a good chance of being elected in a small district.<sup>58</sup> Until now, it has been assumed that gender quotas in electoral systems using plurality/majority in single member districts are at the very least complicated but as a rule ineffective.<sup>59</sup> However, a growing number of experiences from countries that use single-member district (SMD) systems have proven several effective methods for applying quotas in single-member district systems.<sup>60</sup> Voluntary party quotas may help to increase women's representation in systems with majority voting rights and in SMDs. If the electoral law stipulates that women must be nominated in single member constituencies where the party was successful in the last election, women have a better chance of being elected.<sup>61</sup>

Given the possibility of "fast track" gender equality through quotas, legislators need to consider not only what type of quota is politically feasible but also in which electoral system.<sup>62</sup> Despite the relatively simple implementation of gender quotas in proportional representation (PR) electoral systems,<sup>63</sup> changes in electoral systems happen if the Constitution is amended and is instituted in post-conflict countries. As each system has pros and cons, another emerging trend is the growing number of countries adopting mixed systems, a combination of FPTP and PR.<sup>64</sup>

56 The National Assembly is made up of 127 deputies.

57 Julie Ballington, Richard Matland, Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes, 2004, p. 4 <https://www.un.org/womenwatch/osagi/meetings/2004/EGMelectoral/EP8-BallingtonMatland.PDF>

58 Julie Ballington, Richard Matland, Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes, 2004, p. 5 <https://www.un.org/womenwatch/osagi/meetings/2004/EGMelectoral/EP8-BallingtonMatland.PDF>; Women's political participation, Africa Barometer 2021, p. 40

59 Dahlerup, Drude, Women in Politics

60 Robert Schuman Centre for advanced Studies, Gender Quotas in Single-Member District Electoral Systems

61 Ibid.

62 IDEA, Stina Larserud and Rita Taphorn, Designing for Equality, Best-fit, medium-fit and non-favourable combinations of electoral systems and gender quotas

63 UN, Women and elections, a guide, 2005

64 Women's political participation, Africa Barometer 2021

In view of the political reality, it cannot be assumed on a regular basis that an electoral system will be changed at the same time as a quota law. In order to achieve the stated gender equality objectives in this area, countries with SMD-based electoral systems may need to identify viable ways to increase the number of women participants within the parameters of majority/plurality systems. Fortunately, there are different methods for successfully implementing quota laws in majority/plurality systems. Of course, there is a risk that parties will try to nominate women in districts where the party has had no chance for years. The parties may also nominate women in small or powerless districts. In this case, however, consideration may be given to introducing a second rule so that parties in districts where their candidates were successful in the last elections are obliged to nominate 40 or 50 per cent women candidates.<sup>65</sup> Also, a rotation system obliging parties to nominate women in districts where men ran in the last election term might motivate political parties to nominate women in constituencies that have been successful for the party in the past.

#### POSSIBLE PITFALLS - EXAMPLE OF TUNISIA VERSUS SENEGAL

The Tunisian case shows that alternation between men and women on candidates' lists<sup>66</sup> and the proportional election system do not lead automatically to parity in the National Assembly. This is because most of the candidates' lists were headed by men. This resulted in women forming 26<sup>67</sup> per cent of the elected members of the National Assembly.

Senegal which has a similar alternation system but a mixed majority and proportional election system has led to a better result: 43<sup>68</sup> per cent of women representation at the National Assembly while most of the candidates' lists were also headed by men.

Therefore, the alternation system works better in a mixed or majority system.

In 2017, the rule of parity was amended in local elections in Tunisia. Political parties were not only required to respect alternation of men and women, but were compelled to alternate men and women as heads of the lists. New Article 49 stipulates that "Candidacies for the mandate of member of municipal and regional councils are also presented on the basis of the principle of parity between women and men as head of party lists."<sup>69</sup>

In Tunisia, the so-called "vertical and horizontal" parity system when implemented during 2018 local elections. Women won 46.68 per cent of seats, of which 55.29 per cent headed the lists, paving the way for them to become heads of municipal councils.

Therefore, alternation of men and women in candidates' lists works well with proportional representation when horizontal and vertical parity is applied.

65 Dahlerup, Drude, Introducing Gender Quotas in Sierra Leone: How to Make Electoral Gender Quotas Work

66 Also called the zebra system

67 IPU data 2021: <https://www.ipu.org/parliament/TN>

68 IPU data 2021 <https://www.ipu.org/parliament/SN>

69 Election law available on the electoral commission website: <http://www.isie.tn/wp-content/uploads/2018/01/Loi-Organique-n%C2%B02017-7.pdf>

## LAW DRAFTING TECHNIQUES

Three aspects are important when it comes to writing comprehensible texts or improving them stylistically, namely: choice of words, sentence structure and structure of the text. This means that rules should be as detailed as necessary and as simple and understandable as possible. This secures the correct application by the electoral commission or

other responsible bodies. The principle of simple and understandable legal language is an art. The process of writing laws often tempts us to construct complicated sentences. Therefore, it is immensely important to constantly ask oneself whether the chosen wording is comprehensible and implementable for every reader of the law, for judges and for the public administration.

**Checklist: Please consider the following questions carefully prior to drafting quotas/TSM:**



### Which problem should be solved?

#### Possible problems:

- a) low representation of women in the Parliament
- b) low representation of women in appointed leadership positions of the government
- c) a) and b) together
- d) women are not well-trained to become parliamentarians or take over leadership positions
- e) a lack of awareness on the importance of women's representation
- f) a lack of gender parity in the Parliament or government
- g) candidates have to pay high fees if they want to run for office
- h) political parties are not willing to nominate female candidates
- i) other

*Please gather all information and statistics on the representation of women. It is crucial to collect data and information that underline the necessity of the new legislation.*

*Please collect all arguments to refute prejudices.*



### What is the goal of the proposed law?

#### Possible goals and purposes of the law:

- a) to increase political participation of women
- b) to increase the representation of women in Parliament
- c) equal representation of women in Parliament on the central/federal, state and local levels
- d) equal representation of women in Parliament and all governmental leadership positions on the central/federal, state and local levels
- e) support independent women to run for elected office
- f) empower women to occupy parliamentary seats and leadership positions by capacity building
- g) other



### Target Group - who should implement the law?

#### Possible target groups of the bill:

- a) political parties
- b) electoral management bodies (EMB)
- c) government
- d) Parliament
- e) other



## Assessment of the political environment

### Who is supporting the bill?

- a) President or Speaker of the Parliament
- b) MPs - of which party?
- c) women's parliamentary network(s)
- d) The Head of State
- e) ministers
- f) women's organizations
- g) judges of the Supreme Court
- h) legal organizations/associations
- i) the media
- j) academics or researchers
- k) traditional and/or religious leaders
- l) other



### Who (of the above) will oppose the bill and why?

#### Possible reasons:

- a) quotas are unconstitutional/undemocratic
- b) 'we don't want token women in Parliament'
- c) women lack the necessary education/experience
- d) quota laws violate customary or religious rules
- e) quotas are destroying the family/traditional division of responsibilities
- f) other



### Prior to drafting, research is needed on the following topics

#### Constitutional provisions

Does the Constitution contain provisions which:

- a) regulate the state structure in a centralized or federal way;
- b) rule a single chamber or a bicameral parliamentary system;
- c) regulate the electoral system (majority system, proportional system, mixed system);
- d) regulate the quorum for the adoption of laws (simple majority, absolute majority, two third majority)
- e) regulate equality between women and men;
- f) prohibit discrimination on grounds of sex;

- g) affirm the admissibility of TSM;
- h) allow quotas for women in Parliament or in other social fields (e.g. education, if yes, what kind of quotas [percentage of reserved seats or others]?);
- i) provide quotas for women;
- j) oblige political parties to allow/ensure female candidates to stand;
- k) ensure that women have equal opportunities to stand for election;
- l) determine what kind of majority in Parliament is needed to amend the Constitution?
- m) other

#### Provisions in the Electoral laws

- a) What kind of electoral system is regulated? Absolute or simple majority system, proportional or mixed system?
- b) How many candidates can be elected in each constituency?
- c) Does it analyse the provisions for the positioning of candidates by political parties?
- d) Does the electoral law allow TSM? If yes, how are they implemented?
- e) What kind of majority in the parliament is needed for the adoption of the law - unicameral / bicameral system?
- f) Are amendments of the Electoral law needed to implement a quota/parity law or TSM? What kind of amendments?
- g) Does the law need a decree for its execution (francophone legal systems)?

#### Political Party law

- a) Are women represented in leading positions of the political parties in your country?
- b) Are voluntary quotas adopted by political parties in your country?
- c) Are there programmes of political parties in your country that support equality between women and men? If yes, what kind of proposals or measures do the programmes provide
- d) Are there registration fees for candidates? If yes, do the parties pay them?
- e) Other

## 1. The drafting process

Think about how your verbiage may be construed so as not to accidentally convey a different intention than that of the legislative sponsor. When you draft legislation, state exactly what needs to be said in the most straightforward manner possible. In the context of legislative drafting, brilliance is conveyed by articulating a legislative sponsor's intent in the clearest and most concise manner possible. If you write in a confusing manner that can later be misinterpreted in application and enforcement, the ensuing issues could be the subjects of lawsuits and undermine your goals.<sup>70</sup>

The following recommendations and examples will guide you through the drafting process.

### 1.1 Analyse the legal framework

To develop a comprehensive law, it is important to analyse in advance the existing legal framework and its constraints and opportunities. The implementation of TSM in law, such as parity, reserved quotas or quotas for political parties and their justification depends heavily on whether or not the Constitution already contains provisions in favour of women's rights and on the electoral system.

It is easier to draft a quota/TSM law if it is already backed by provisions of the constitution such as "equality between men and women" or "the state affirms parity between men and women by Temporary Special Measures".<sup>71</sup> The same applies to the electoral system. If the electoral system is regulated in the constitution, it may be difficult to change it. In this case, either an initiative to amend the Constitution either by introducing proportional representation coupled with a parity rule, or a quota system under majority voting may be explored. For example, the redrawing of constituencies may give women a better chance of being elected. Rotation systems between candidates and substitute candidates are also sometimes used in an effort to bring more women into parliaments.

As there is a large variety of TSM, a careful examination of potential measures that could work is needed. In some countries, political parties receive state funding.<sup>72</sup> Additional TSM in such a case may consist of providing increased state funds for political parties that nominate a certain percentage of female candidates. Preferential treatment of women is another way to increase the political participation of women in parliaments and governments. One way to do this is to lower the requirements that women candidates need to fulfill to be eligible. For instance, it might be reasonable to start by abolishing or adjusting registration fees for women candidates and/or treating political advertising for women candidates preferentially. Political parties can be obliged to exempt women from paying fees for participating in party primaries. Encouraging the candidacy of independent female candidates, combined with capacity-building programmes for women, can also be a way to increase women's political participation. The large variety of possible approaches show how important it is to examine the specific political and legal framework of the country in question and to derive strategies for the planned law or a political programme from this evidence base.

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70 Deborah Beth Medows, Senior Attorney, Division of Legal Affairs, A beginner guide to legislative drafting.

71 "The State shall encourage balanced participation of citizens of both sexes in political life, Art. 55 Constitution of Cape Verde

72 For example, Burkina Faso and Liberia.



## GUINEA: THE CHALLENGES OF LEGAL DRAFTING

Section 8 of the 2019 law on parity stipulates that it can only enter into force once the Electoral Code has been amended and the parity rule has been enshrined therein. For successful implementation of the parity law in the Electoral Code, major hurdles must be overcome. The electoral law in Guinea is an organic law, which can only be amended by a two-thirds majority in Parliament and the approval by the Constitutional Court.

Already, in 2017, an attempt was made to change the Electoral Code to increase the number of women in local and district councils and the National Assembly.<sup>73</sup> Under Article 121, political parties were obliged to present lists with a quota of 30 per cent of women.<sup>74</sup> The Constitution of Guinea stipulates that any amendment to the electoral code must be approved by the Constitutional Court.<sup>75</sup> In 2017, the Constitutional Court rejected the amendment on the grounds that the 30 per cent quota was contrary to the principle of non-discrimination.<sup>76</sup>

In December 2019, the Constitutional Court agreed on constitutional amendments.<sup>77</sup> Article 9 of the new Constitution affirms that male / female parity is a political and societal objective.<sup>78</sup> But sentence two of Article 9 of the Constitution then regulates a minimum quota of 30 per cent. This seems to contradict the parity law.

A legal review of the constitutional provision concludes that the Parity Act of 2 May 2019 is constitutional since this Act achieves the objective of the first sentence of Article 9. Sentence 2 of Article 9 contains a *minimum* quota which must be observed in any case, but may be exceeded.

However, resistance to the implementation of parity may be observed, and a two-thirds majority and again an examination by the Constitutional Court is required to amend the electoral law.

The story of the parity law is not over and it shows how important it is to carefully consider provisions in other laws in order to promote the adoption *and* implementation of a quota law. This example shows that all possible effects of the use of quota mechanisms need to be examined carefully prior to the decision to draft a quota law.



Photo: UNDP

73 According to Art. 102 every local and district council shall have at least 30% of female representatives.

74 Article 121 al.1: Chaque député est représentant de la nation toute entière. Les deux tiers des députés sont élus au scrutin de liste nationale à la représentation proportionnelle. Sur ces listes, au moins un quota de 30% est réservé aux femmes. Celui-ci doit respecter le principe de bon positionnement des femmes sur la liste

75 Article 83

76 The Constitutional Court concluded in its Judgment No. AC 023 of 15 June 2017 that these provisions introduce gender-specific criteria and are contrary to the provisions of Articles 2 and 3 of the African Charter of Human and Peoples' Rights and Articles 1(2) and 8 of the Constitution of Guinea ("Considérant que ces dispositions introduisent des critères basés sur le sexe et l'âge et sont contraires aux dispositions des articles 2 et 3 de la Charte Africaine des Droits de l'Homme et des Peuples (CADHP), 1 al.2 et 8 de la Constitution")

77 Barry, Diawo. «Guinée que contient le projet de nouvelle Constitution proposé par Alpha Condé ?»; Parallel to the elections for the National Assembly the new constitution was adopted by a referendum 22 March 2020.

78 "Article 9. Tous les individus, hommes ou femmes, naissent libres et demeurent égaux devant la loi. Nul ne peut faire l'objet de discrimination du fait notamment de sa naissance, de sa race, de son ethnicité, de son sexe, de sa langue, de sa situation sociale, de ses convictions religieuses, philosophiques ou politiques. La République affirme que la parité homme/femme est un objectif politique et social. Le Gouvernement et les assemblées des organes délibérants ne peuvent être composés d'un même genre à plus des deux tiers des membres."

### LESSONS LEARNED FROM LIBERIA ON THE DRAFTING PROCESS

Lobbying and campaigning is key. The drafters of TSM need strong connections to lawmakers and the relevant committees. These relations need to be maintained and reinforced so that bills do not get rejected or lie dormant, as is the case currently with the Affirmative Action Bill.<sup>79</sup> Keeping in touch with committees and being diligent with communication and queries is necessary.

Engagement with local communities and their eligible voters is also necessary to increase awareness among the population on the benefits of having TSM and the importance of women's representation in politics so that this may have a positive impact on the election of women into office.<sup>80</sup>

Furthermore, the involvement of rural women and grassroots initiatives is fundamental. Karneh<sup>81</sup> argues that the involvement of not just the legislature, government and CSOs, but also the inclusion of grassroots, traditional networks and organizations was a positive experience. Similarly, the drafting process was perceived as a positive experience because the partners involved were motivated and well-connected.<sup>82</sup> The drafting and advocacy processes empowered the women involved and gave them insight into how the political system functions, particularly on the interactions with different committees.<sup>83</sup>

The analysis of the implementation of the Amended Elections Law shows that sanctions and other regulations in the case of non-compliance are necessary for the implementation of TSM.<sup>84</sup> In addition, the positive experience during the drafting process shows that technical know-how is important. Getting experienced technocrats and lawmakers on board, as was the case during the drafting of the Affirmative Action Bill, ensured a technically sound process.<sup>85</sup>

## 1.2 Tailor the approach to your country context and prepare the ground

You may consider at what level the TSM are likely to be accepted; will it be local or national? In federally organized States, it might be a more promising approach to introduce a bill with TSM at the level of one or more of the federal States first, as some of them might be more open to women's political participation. It is also advisable to study best practice examples from other WCA States. The example of the Senegalese city of Touba shows how strong religious influences can be. Although the candidate lists did not comply with the provisions of the parity law, they were not rejected as inadmissible (Article 2).

### SENEGAL: POST-PARITY LAW ADOPTION CHALLENGES

The Gender Parity Law, which is considered one of the most advanced in the region,<sup>86</sup> was adopted in 2010. However, the law was declared discriminatory and unconstitutional by some legislators and public figures who perceived the bill as unjust and a form of preferential treatment towards women,<sup>87</sup> which delayed the process. The law is binding, meaning that non-application leads to dismissal from elections.

Despite secularity being enshrined in the Constitution, religious leaders play a key role in Senegalese political and public life and exercise a large amount of power, albeit indirectly. Historically, these religious institutions have coexisted alongside the secular state and have been key in maintaining political stability. However, the passing of the parity law and the subsequent elections in the holy city of Touba signaled a challenge to the power of the secular state by the religious elite.

The city of Touba is a conservative city that is governed by the Muslim Khalif who enjoys a high level of support and commitment.<sup>88</sup> During the 2014 elections in Touba, the city presented an all-male candidate list of 100 candidates, despite the requirements enshrined in the parity law. This list was not rejected by the Electoral Commission.

79 Interview with Meima Sirleaf Karneh, 2020

80 Interview with Meima Sirleaf Karneh, 2020

81 Ibid.

82 Ibid.

83 Ibid.

84 Ibid.

85 Ibid.

86 Toraasen, 2017

87 Hirsch, Afua, Senegal makes headway on gender equality

88 Interview with Fanta Sow, 2020

### 1.3 Building your alliances and your network of support

Alliance and network around TSM usually take time and require effort and energy, and many women elected members and female organizations find this component the most difficult but the most rewarding.

Improving the participation of women means that those in power - usually men - lose (part of) that power. It is therefore important to win allies for the bill and to promote it in advance.<sup>89</sup>



Photo: UN Women / Cape Verde - UNWOMEN Workshop at the Parliament on Parity law, 2018

#### CAPE VERDE: THE SUCCESS STORY OF ADVOCACY AND ALLIANCES

Political mobilization for a gender parity law took place as a joint effort of women parliamentarians, non-governmental organizations, and political organizations/institutes.<sup>90</sup> In early 2017, members of the Cape Verdean Women's Parliamentary Network (RMPCV), the Cape Verdean Institute for Gender Equality and Equity (ICIEG), as well as leaders and members of various civil society organizations signed a manifesto that problematized the low participation and representation of women in leadership and decision-making. The manifesto also criticized the slow rate of development towards increased women's participation, and campaigned for the swift adoption of measures that would ensure gender equality,<sup>91</sup> a 'strong process of advocacy'<sup>92</sup> within local communities, media professionals, political parties and among the country's large diaspora network.<sup>93</sup> By working closely with political parties, the stakeholders were able to motivate them to introduce parity within the party and create inter-party women parliamentarian associations.<sup>94</sup> Capacity building measures, particularly with parliamentarians, government officials, media and women's organizations, sought to provide the technical knowledge on how to draft and campaign for gender parity.<sup>95</sup> In addition, South-South cooperation with Bolivia, with African countries such as Senegal, Rwanda and Mozambique, and European countries, namely Portugal and Spain, have brought new, different perspectives to the process and have expanded the dialogue based on lessons learned from other countries during similar processes. The documents and declarations that came out of these workshops were used for lobbying and advocacy campaigns.<sup>96</sup>

Forming alliances with allied men in the legislature was important. Commissions were created that included not only allies in the legislature but other important political figures such as the First Lady. Furthermore, the media was actively involved through training and awareness campaigns and the passage of the law was a joint success.

This process, which took more than two years, led to the approval - with a qualified majority - of the parity law by the National Parliament of Cabo Verde in October 2019. The participatory, formative, consensus-building process allowed for immediate compliance with the Law once approved, with the number of elected women in local elections raised from 26 per cent in 2016 to 41.5 per cent in 2020. In the legislative elections of April 2021, the numbers increased from 23.6 per cent in 2016 to 38 per cent in 2021.

89 see checklist above, page ...

90 UN Women, Country Gender Profile, 2018

91 UN Women, Country Gender Profile, 2018

92 Interview with Vanilde Furtado, 2020

93 Interviews with Lucia dos Passos, 2020 and Adalberto Varela, 2020

94 Ibid., 2020

95 Interview with Vanilde Furtado, 2020

96 Interview with Vanilde Furtado, 2020

## 1.4 Advocating and making effective arguments

The arguments for and against quota laws should be carefully examined and presented when writing argumentative papers.

Equally, all the responses to the arguments against the law should be carefully prepared and disseminated.

You may consider the following arguments:

- Elected assemblies represent the entire population and male dominated assemblies do not;
- Women constitute 50 per cent of the population in WCA region/your country and therefore half of the population needs to be represented in decision-making spaces, thereby ensuring that decision making reflects a fuller spectrum of perspectives and analyses;
- TSM are designed to remove the barriers that prevent women from their right to participate in politics/public life and, to reiterate, they are temporary and must be withdrawn once the desired results have been achieved and sustained;
- The experiences and expertise of women are needed in designing laws and policies, and they are much more likely to make them beneficial to both female and male interests without exclusion or discrimination;
- Evidence shows that when women are in decision-making positions, more inclusive decisions are made, different voices are heard, and different solutions are found;
- Qualifications are applicable to men and women;
- Voters will have a full voting choice if candidates' lists are made up by men and women;
- According to practical experiments, women often demonstrate higher standards of ethics, implying that women are more willing to sacrifice private benefits for public good.

## 2. Follow a clear structure when drafting or amending a law

The structure of each draft law is composed as follows:

1. Title
2. Names of the MPs who are sponsoring or introducing the bill or the Government
3. The articles of the bill:
  - a) Preamble
  - b) Definitions (it depends on the law-making tradition in your Parliament whether you start with definitions or put them at the end of the bill)
  - c) Clauses of the law
  - d) Goal and purpose of the law
  - e) Introductory provisions
  - f) Articles covering the subject of the law
  - g) Sanctions / penalties
  - h) Articles covering monitoring the implementation provisions of the law
  - i) Transitional and final provisions
4. Justification of the law or explanatory memorandum (it depends on the law-making tradition in your Parliament, if the explanatory memorandum is at the very beginning of the bill or at the end of the bill)
5. Individual explanation of each clause of the bill if required by the rules of procedure of your Parliament.

Please note that various structures for a law are possible. Countries are developing their own rules for law-making procedures that may differ in some points. But you will always find elements of the presented structure,

and it is advisable to start with dividing the law into parts or chapters and subdivide the chapters, either into sections or into articles.

The aforementioned structure gives you a logical order that helps you to structure a law.

Each bill should have a short title like “Parity Law” or “Gender Equality Law” followed by a mention of the Members of Parliament, the government or the political parties who are sponsoring the bill. For consistency and the purpose of reference, always use the following formulation: “This Act may be cited as ....”. The title should make it clear at first glance what it is about.

The justification of the law is very important. It should be written with the utmost accuracy. The reasons for drafting the law must be explained. All arguments for the law should be unfolded. The counter-arguments should also be dealt with and refuted. The statement of reasons should explain in detail the conformity of the law with the Constitution - by identifying specific articles of the Constitution - and with international conventions - by identifying specific articles of International Conventions. The content of the individual articles of the law can also be briefly presented.



Photo: UN Women

#### **Examples of Amendment Acts:**

Amendment to the Parity Law of .... 2000 (Law Gazette p. ...),

The Parity Law of ... (Law Gazette, year, page) shall be amended as follows:

1. In Article ... the following sentences are appended:

To increase the number of women in elected assemblies, political parties are obliged to conduct annual leadership programmes for women.

2. Entry into force:

This Act shall enter into force on the day following its promulgation.

## EXAMPLE

### I. Justification of the “Law for the establishment of parity between men and women for access to electoral mandates and electoral offices in public institutions” (Parity Law of Guinea)<sup>97</sup>

According to the General Population and Housing Census 2014 (RPH3), women make up 51.7 per cent of the Guinean population, which at that time was 11,253,183, with a population growth rate of about 3.2 per cent. Various governments since the country's national independence in 1958 have all worked for the emancipation of women and, over the years, have taken measures to this end at the legal, institutional and strategic levels. The amendment of the Electoral Law of 24 February 2017 included obligations to increase the number of women in local and district councils<sup>98</sup> and the National Assembly. Art. 121<sup>99</sup> of the amended electoral law of 2017 ruled that at least 30 per cent of the seats were reserved for women. Political parties were obliged to present lists with a quota of 30 per cent women on the lists drawn up for the election of two-thirds of the seats to be filled in the National Assembly. In accordance with the provisions of Article 83 of the Constitution, the organic law on the Revised Electoral Code was subjected to a constitutional review by the Constitutional Court before its promulgation. The Constitutional Court concluded in its judgment No. AC 023<sup>100</sup> of 15 June 2017 that these provisions introduce gender-specific criteria and are contrary to the provisions of Articles 2 and 3 of the African Charter of Human and Peoples' Rights and Articles 1(2) and 8 of the Constitution of Guinea.<sup>101</sup> This judgement of the Constitutional Court is obsolete as Article 9 of the amended Constitution, adopted by referendum 22 March 2020, is a further step to achieve parity between women and men. Article 9 of the amended Constitution puts an emphasis on the equality of men and women by highlighting: “The Republic affirms that parity between men and women is a political and social objective. The government and the assemblies shall not be composed of one gender in more than two-thirds of the members”.

Concerning the opportunity to vote, Article 2 signifies that “Suffrage is universal, direct, equal and secret.” Moreover, it is articulated that all “Guinean citizens of majority, of one or the other gender, enjoying their civil and political rights are electors within the conditions determined by the law.” Article 2 provides that all Guinean citizens of full age, of both sexes, who enjoy their civil and political rights, are entitled to vote under the conditions established by law.

In addition to these constitutional provisions, the country is fully committed to achieve equality between women and men by acceding to:

- the International Covenant on Civil and Political Rights of 16 December 1966 (New York), ratified by Guinea on 24 January 1978, Article 3 of which states: “The States Parties undertake to guarantee the equal right of men and women to enjoy all the civil and political rights set forth in this Covenant”;
- the United Nations Convention of 18 December 1979 (New York) on the Elimination of All Forms of Discrimination against Women (CEDAW), which was ratified by Guinea on 9 January 1978;
- the Protocol to the African Charter on Human and Peoples' Rights of 11 July 2003 on the Rights of Women in Africa.

The National Gender Policy (NGP) was revised in 2017 and provides a strategic framework for programmatic orientation, accompanied by an action plan aimed at making “gender equality a central pillar of the moral

97 The general justification largely adopts the argumentation in the Legal Committee's report on the Parity Act.

98 According to Art. 102, every local and district council shall have at least 30 per cent female representatives.

99 Article 121 al.1: Chaque député est représentant de la nation toute entière. Les deux tiers des députés sont élus au scrutin de liste nationale à la représentation proportionnelle. Sur ces listes, au moins un quota de 30% est réservé aux femmes. Celui-ci doit respecter le principe de bon positionnement des femmes sur la liste.

100 GuiLaw. «Cour Constitutionnelle, Arrêt N° AC 023 du 15 juin 2017 - GuiLaw».

101 “Considérant que ces dispositions introduisent des critères basés sur le sexe et l'âge et sont contraires aux dispositions des articles 2 et 3 de la Charte Africaine des Droits de l'Homme et des Peuples (CADHP), 1 al.2 et 8 de la Constitution”



and ethical values and norms” of Guinean society. Furthermore the government adopted the National Programme for Economic and Social Development (PNDES) in 2016, which promotes the strengthening of the fight against all forms of discrimination against women.

Despite the demographic weight and the government’s efforts mentioned above, women remain underrepresented in decision-making bodies, including public institutions that are fully or partially eligible to vote.

Only 19 Women (16.67 per cent) were elected in the national election in 2020. It should also be noted that Guinea is one of four countries where the proportion of women in the lower houses of Parliament is the lowest in sub-Saharan Africa; the other three countries are Nigeria, Liberia and the Central African Republic, with rates of 7.22 (House of Representatives 2019), 12.3 per cent (2017) and 8.57 per cent (December 2020) respectively. This also explains the priority now given to these four countries by the UN Women’s Project to Support the Political Participation of Women in West and Central Africa.

Moreover, equality between men and women in political and social life is indeed not a favour that should be granted to women, but rather an inescapable necessity of democracy that also ensures the sustainable development of the country. The goal of this Bill is to ensure parity between women and men. It is the result of discussions and consultations carried out by a group of more than 60 MPs, including 26 women parliamentarians, in collaboration with the Ministry of Social Affairs, Women and Children, the Ministry of Justice, civil society organizations and technical partners, including UN Women and UNDP. The Bill consists of eight articles as follows: Article 1 lays down the parity rule; Article 2 defines the scope of the law; Articles 3, 4 and 5 define the mechanisms for implementing parity; Article 6 lists the penalties for non-compliance with the parity rules and remedies available in the event of non-compliance; Article 7 encourages political parties, coalitions of political parties and independent candidates to implement the parity rule at their level; and Article 8 regulates the entry into force of the law.

## **II. Specific explanation of the clauses**

### **Article 1**

Article 1 explains the reason for and the aim of the law. Article 1 clarifies that parity of 50 per cent for women and men has been introduced. The scope of application includes elective mandates, such as elections to the parliament as well as elective positions in public institutions. Eligible positions in institutions include elections to commissions, elected positions in the judiciary and universities, or other elective positions. Since the members of the National Assembly are elected according to a mixed system, in which one-third of members are elected in a single ballot by individual election in constituencies, while the remaining two-thirds of members are elected by a national list election according to proportional representation, the implementation of the law needs different rules for the candidate lists under the proportional system and the single ballot. In the individual election of candidates in single member constituencies, candidates and substitute candidates of different genders shall be nominated. If women are nominated predominantly as substitute candidates, parity is not established.

### **Article 2**

Article 2 contains the basic rule that parity applies to each list of candidates. Each list must have 50 per cent women and 50 per cent men on a parity basis. An exception is made for elections in single districts, which are governed by Article 5. The parity rule is constitutional. It corresponds to Article 9 of the amended Constitution, which was approved by the Constitutional Court and adopted by referendum in March 2020. The earlier decisions of the Constitutional Court are thus no longer valid. Instead, Article 9 affirms the goal of establishing equality between men and women, and contains the provision that no more than two-thirds of one sex may be appointed or elected to any government or assembly. This means that it is constitutionally forbidden for more than two-thirds of one gender to belong to one of the institutions mentioned.

However, it is not forbidden to regulate the parity of the two genders in the nomination of candidates by simple law, such as the present parity law. The parity law meets the declared aim of the Constitution to establish parity.

Article 2 of the law clarifies that parity applies to national and local elections. The details of this are to be regulated in the Electoral Act.

Furthermore, the details of the specific elective offices where parity also applies in public institutions must be regulated by a separate law or regulation.

#### Article 3

Article 3 defines which lists of candidates are concerned. According to this definition, election lists are lists of candidates submitted by individual political parties, associations of political parties and independent candidates, whereby lists of independent candidates may only be submitted for elections at the local level. Article 61 of the Constitution only allows political parties to submit candidate lists for national elections.

According to subsection 2 of Article 3, the lists of candidates must alternately contain one woman and one man. This provision is binding, i.e. it is not a “may” provision, but mandatory. The consequences of non-compliance are regulated in Article 6. The gender of each candidate must be clearly identifiable by the additional designation “madame” (plus name) or “monsieur” (plus name).

#### Article 4

Article 4 regulates that the gender dimension must be taken into account when filling offices or boards of public institutions, whether they are fully or partially electable. This means that, in principle, parity between the sexes must be established. If this is not possible - for example because only one position is to be filled - the gender not taken into account must be considered for the next position. The details should be regulated in the election regulations of the offices or boards to be filled.

#### Article 5

Article 5 refers to the election of MPs in constituencies where only one MP is elected and stipulates that the candidate and the substitute candidate must be of different genders. Since there is a danger that a man will be nominated as a candidate in each case, additional regulations must be made in the electoral law to ensure that women also have a chance to stand in single member constituencies. A provision in the electoral law obliging the parties to nominate equal numbers of men and women in constituencies where their candidate was successful in the last elections would enable parity in these lists of candidates. For example, if a party won four constituencies in the last election, it would have to nominate women as candidates in two constituencies and men as substitute candidates for the next election.

#### Article 6

Article 6 states that the responsible authority shall verify compliance. For national and local elections, the responsible authority is the Electoral Commission. For the offices and boards referred to in Article 4, the responsible authority is the respective authority in charge of the control of these offices or positions.

Para. 2 of Article 6 regulates the rejection of a list of candidates. The list of candidates of a party shall be rejected if it violates the provisions of parity. This is the case, for example, if less than 50 per cent of the candidates belong to one gender or if the candidates are not nominated alternately - meaning one woman, one man. The competent authority must give reasons for its decision to reject the list and inform the party affected by the decision. The party concerned may appeal to the competent court. The procedure shall be in accordance with Article 112 of the Election Act.

### Article 7

According to Article 7, political parties, associations of political parties and independent candidates are called upon to participate in the implementation of the law - in each case at the appropriate level. To this end, the political parties can, for example, regulate in their statutes that women are to be elected to the leadership bodies of the parties on an equal footing and must voluntarily issue rules on how parity can be implemented in the drawing up of electoral lists in such a way that there is parity between the elected women and men possible. Further suitable measures are capacity building of the political parties for women or the covering of registration fees.

### Article 8

Article 8 stipulates that the Parity Act shall not come into force until its provisions have been implemented in the Electoral Act. Articles 2, 3, 5 and 6 must therefore be included in the Electoral Act and further specified. As the Electoral Act is an organic law, the amendments must be adopted by a two-thirds majority and submitted by the President to the Constitutional Court for approval.

### Article 9

Article 9 contains the usual clause for the entry into force of laws.

**A good justification of the law is important because it is used by courts and lawyers as a basis for their legal assessment. The motives of the legislator, which are set out in the Explanatory Memorandum - as well as the verbatim interpretation of the law - give decisive indications as to whether the law or individual provisions of the law are in conformity with the constitution, international conventions and the electoral system.**



Photo: UN Women

### 3. Telling the story

The objectives of the law should be clear before drafting the law. Try to imagine how you would describe the law orally. Where would you start? What would your listener want to know? How would you guide different readers like ministers, parliamentarians, members of political parties, women's organizations or judges and lawyers through the story?<sup>102</sup> Use a moderate tone when drafting your law.

#### 3.1 General clause

It is advisable to start with an overview or a general clause.

***The purpose of the law is:***

- *to eliminate discrimination against women;*
- *to promote equality between women and men through appropriate measures; and*
- *the adoption of Temporary Special Measures.*

or

***The objective of this law is to achieve a more just, democratic and balanced society and to guarantee:***

1. *the equality of rights and duties between men and women,*
2. *the elimination of all forms of discrimination against women and men; and*
3. *equal opportunities to political participation and decision-making positions for both genders.*

or shortly:

***The goal (purpose, aim) of this law is to increase the number of women in national, regional and local parliaments or councils.***

or

***This law aims to establish a representation of X per cent of women in the national Parliament and local councils.***

#### NIGERIA: ANALYTICAL VIEW

The Gender Equality Opportunity Bill (GEO Bill)<sup>103</sup>

The analysis of the GEO Bill shows that imprecisely formulated goals and measures of a draft law make the political defense more difficult.

Although the law aims to eliminate discrimination against women and promote equal rights, this objective cannot be clearly and precisely derived from the purpose and the goal of the Bill:

Articles 1 and 2 state:

#### **Purpose of this Bill.**

The purpose of this Bill is to give effect to:

- (a) Chapters II and IV of the 1999 Constitution of the Federal Republic of Nigeria;
- (b) The International Covenants on Human Rights which affirm the principle of non-discrimination and proclaims that all humans are born free and equal in dignity and rights, and that everyone is entitled to all the rights set out without distinction of any kind including distinction based on sex;
- (c) certain provisions of the Convention on the Elimination of all Forms of Discrimination against Women, and the protocol to the African Charter on the Rights of Women in Africa."

The reason given for the Bill is to implement the chapters of the Constitution and International Conventions like CEDAW and the Maputo Protocol. However, Article 1 remains vague, as it does not clearly define which provisions of the Constitution and of the Conventions are concerned in detail and for what purpose.

<sup>102</sup> Office of the Parliamentary Counsel Drafting Guide, June 2020

<sup>103</sup> See Annex

In order to increase the political participation of women at all parliamentary levels, a separate draft law should be considered, which would exclusively regulate the increase in the proportion of women in parliaments. This might have the advantage that senators and MPs, who are in favour of increasing the political representation of women but who reject other provisions of the GEO Bill for religious, cultural or other reasons, could be won for approval.

### 3.2 Get to the point

It is crucial to find a clear and logical order to tell your story and get to the point quickly. The general clause should already contain the main proposition. Please consider structuring the bill in a way that shows how the provisions fit together. Once the aim of a quota law has been formulated in a general clause, later propositions should build upon earlier ones. For example, do not start with sanctions before a parity rule is drafted. The placement rule should follow the parity rule and not vice versa.

### 3.3 Possible approaches and options?

Following the drafting of the law's objective, it is essential to formulate concrete measures to advance women's participation as precisely as possible. Several options are available when it comes to the quota types.

#### 3.3.1 Parity system

The Parity system seeks to establish an equal representation of each gender. A 50 per cent representation of women and men in parliaments can only be achieved if an equal number of women and men are elected. As soon as an unequal number of candidates is elected, one gender - depending on its position - always wins more seats.

- **Senegal:** Article 1 - "Absolute parity between men and women is established in Senegal in all fully or partially elective institutions."

#### 3.3.2 Alternation system (placement rules)

The alternating or zipper system guarantees that, within the established quota, the candidates on the parties' lists of candidates must be nominated alternately, starting with the first place. For example: -

- **Senegal:** Article 2 of the parity law stipulates that: "The lists of candidates shall be composed alternately of persons of both sexes. Where the number of members is odd, parity shall apply to the next lower number."

As the parity rule applies to the most immediate lower odd number (e.g. in a large multi-member constituency with five seats, a party must have at least three women in its list of five candidates). The results of the 90 members elected by majority in the constituencies of Senegal preferred the election of women.

Another example is Article 2 and 3 of the Parity Law of **Guinea**:

- "Parity applies to any list of candidates for national and local elections, as well as for the holding of elective offices in public institutions ... In the list system there shall be alternation of one man/one woman. Regarding the lists of candidates referred to in the previous paragraph, the sex of candidates shall be referred to as Madam or Mister."

#### 3.3.3 Determining a percentage on candidates list

The Central African Republic Electoral Law requires a 35 per cent quota for female candidates. Within the electoral law of CAR, alternation is not entailed, meaning that women could be placed anywhere on the list.

- **Central African Republic** Article 281 of the Electoral Law<sup>104</sup>:

For the legislative, senatorial and regional elections, political parties, associations and political groupings are required to present at least 35 per cent of their female candidates in accordance with the provisions of Article 31, Paragraph 4 of the Constitution of 30 March 2016.

104 UNWOMEN Repertoire available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca--fr-and-en>

### 3.3.4 Combining a percentage with an alternation system

If the parity law stipulates a quota and placement system, it makes sense to first regulate the quota and then specify how the list of candidates is drawn up. For example, if a parity law regulates a quota of 40 per cent, at least four candidates of one gender must be elected to the first 10 places on the list. Secondly, there are different ways to regulate the distribution of seats as well. The parity law of Cape Verde is an example:

- **Cape Verde**, Article 4: “Parity in political representation is understood, for the purposes of the application of this law, as the minimum representation of 40 per cent of each of the sexes in the candidacy lists for the collegiate bodies of power, namely, the National Assembly, City Council, Municipal Assembly and other supra-municipal or sub-municipal bodies. In order to comply with the provisions of the preceding paragraph, the first two places on the multi-nominated candidate lists presented are occupied by candidates of different sex, and no more than two candidates of the same sex may be placed consecutively in the ranking of the remaining places on the lists.”<sup>105</sup>

*Ideal distribution of 10 seats under legislated quotas of 40 per cent*

F
M
F
M
F
M
F
M
M
M

The Quota law (Loi sur le quota) of Burkina Faso stipulates a quota of 30 per cent. In addition, the first two-thirds of names on each party list must alternate between men and women.<sup>106</sup>

- **Burkina Faso**: Article 3 of the Quota law asserts that, “Any list of candidacies presented by a political party or group of political parties in legislative and municipal elections must include at least 30 per cent of candidates of either sex.”

Article 4 requires: “Each list of candidates presented on the occasion of legislative or municipal elections must alternate between women and men or between men and women.

An alternating list is a list in which the positioning of a candidate of one sex is immediately followed by the positioning of a candidate of the other sex.”<sup>107</sup>

*Example for ideal distribution of every 5 seats under legislated quotas of 30 per cent*

F
M
F
M
M

<sup>105</sup> UNWOMEN Repertoire available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca-fr-and-en>

<sup>106</sup> Article 6: In all electoral constituencies, the lists of candidates shall alternate in the top two-thirds. A list alternating at the top two-thirds is a list in which the positioning of the first two-thirds of the candidates alternates.

<sup>107</sup> UNWOMEN Repertoire available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca-fr-and-en>





Photo: UN Women

The Decree of Côte d'Ivoire provides a special rule for single member constituencies that contributes to the quota being enforced in these constituencies as well, thus increasing the chances of women to be elected to single districts.

- **Côte d'Ivoire:** Article 3:<sup>108</sup> For single-member or candidate lists, a minimum of 30 per cent of women out of the total number of candidates running for election is required. Any list of candidates must respect the alternation of the sexes in such a way that if two candidates of the same sex are nominated, the third shall be of the other sex.
- For single-member constituencies, the minimum quota of 30 per cent women is measured against all election proposals submitted by a party or a party group for all single-member constituencies.<sup>109</sup>

### 3.3.5 Formulation aids - examples to formulate parity and candidate quotas

The following examples may help to draft quota rules:

*Political parties are obliged to nominate an equal number of women and men on their electoral list. In parliamentary and local elections, the nomination of candidates for the party's list must be made in the following order: if a female person is nominated for the first place, a male person is to be nominated for the second place. The candidates for the following places are to be further nominated in this order;*

or

*The electoral list of political parties for national and local elections is to be filled alternately by women and men, whereby the first place can be occupied by a woman or a man. In exceptional cases, the list places reserved for women may also be filled by men if there are not enough female candidates for the election;*

or

*On each of the lists, neither the interval between the number of incumbent candidates of each gender nor the number of substitute candidates of each gender may be bigger than one;*

or (example for alternation of per cent quota)

*The candidate lists will be integrated by sections of five candidacies. In each one of the sections from each list there will be two candidacies of different gender, alternately;*

or

*Each political Party must secure the minimum representation of X per cent of each sex in the electoral candidacy list. The list will be integrated by sections of ten candidacies. In each one of the sections from each list there will be four candidacies of a different sex, alternately. The subsequent places follow the same order.*

<sup>108</sup> Loi No 2019-870 du 14 Octobre 2019, Article 3: Pour les scrutins uninominaux ou de listes, un minimum de 30% de femmes sur le nombre total de candidats présentés au cours de la consultation électorale est exigé. Toute liste de candidature doit respecter l'alternance des sexes de telle sorte que si deux candidatures du même sexe sont inscrites, la troisième soit de l'autre sexe.

<sup>109</sup> Translation of the author. Pour les scrutins uninominaux, le minimum de 30% de femmes exigé s'apprécie au regard du nombre total de femmes présentées par chaque parti ou groupement politique lors d'une consultation électorale, en rapport avec le nombre total de localités comportant aux moins un siège à pourvoir, Décret No 2020-941 du 25 Novembre 2020 du Président de la République Côte d'Ivoire.



Photo: UN Women

To make quotas in single member constituencies effective, the following formulation could be considered:

- *If a male candidate was elected in a single member district in the last election, the party must nominate a female candidate in the same single member district for the next election.*

**Please consider introducing safeguards so that women are not made to renounce their seats in Parliament in order to make them available to men. To ensure that vacant seats are filled by women:**

- *If a female member dies or subsequently withdraws from the National Assembly for any other reason, the vacant seat shall be filled by a woman from the list of that party for which the departed member stood at the election.*

### 3.3.6 Reserved seats

Reserved seats guarantee the election of women by means of a percentage set by law or the Constitution. Country examples are:

- **Niger:** Article 3: “In parliamentary and local elections, the lists submitted by political parties, groups of political parties or groups of independent candidates should include candidates of both sexes. Each candidate list of a political party... must be composed of at least 25 per cent of candidates of both the one and the other sex. **The 25 per cent quota must be respected when proclaiming the results per electoral district and per list.**” (Article 3 of Law 2019-06 of 24 December 2019 amending Law 2000-008 of 7 June 2000).

- “[Each] list of a political party ... must be composed to secure at the proclamation of the final results a proportion greater than or equal to 25 per cent of the elected candidates of the one or the other sex (Article 2).”<sup>110</sup>

- **Burundi:** Constitution 2018, Article 169, 185

Article 169: “The National Assembly is composed of at least 100 deputies at rates of 60 per cent Hutu and 40 per cent Tutsi, of which a minimum of 30 per cent must be women ... In the case that the results of an election do not reflect the percentages outlined above, it proceeds to the rectification of corresponding imbalances by means of cooptation provided for in the Electoral Code.

Article 185: “The Senate is composed of: ... A minimum rate of 30 per cent women is guaranteed. Electoral law determines practical ways and means, with co-optation in due case.”<sup>111</sup>

In the new Constitution of 2018, Burundi maintains the minimum 30 per cent gender quota for women’s representation in the legislature and the executive branch, and extends it to the judiciary.<sup>112</sup>

If an opportunity arises, it is recommended to secure reserved seats through the Constitution. The electoral system should ensure the anchoring of elected women in the constituencies and the legitimacy of their election.

An example for drafting reserved seats in the Constitution:

*The National Assembly shall consist of at least X per cent women parliamentarians*

or

*At least X per cent of Deputies must be women.*

<sup>110</sup> Decree of the President of the Republic, Number 2020-670, 26 August 2020

<sup>111</sup> After the election in May 2020, women hold 38.2 per cent in the National Assembly and 41 per cent of the seats in the Senate.

<sup>112</sup> Article 213. Eligibility for ordinary court judges. The judicial power is structured to reflect in its composition the whole population. The procedures of recruitment and appointment in the judicial corps imperatively obey the concern of promoting regional, ethnic, and gender balances. ... A minimum of 30 per cent of women is guaranteed.

## 4. Sanctions and fines

Election laws regulate sanctions if the submitted electoral lists of political parties do not comply with the legal requirements. A non-conforming electoral list is either rejected by the Electoral Commission or the political party is given the opportunity to correct the electoral list within a certain period of time. However, with the introduction of quota laws, some countries have replaced the sanctions common in electoral law with fines or incentives. Moreover, other countries have been reluctant to introduce sanctions.

### LACK OF SANCTIONS IN LIBERIA

According to the Electoral Law of Liberia, all political parties must ensure that each gender is represented with a minimum of 30 per cent. Article 4.5[1b] of the law stipulates that a “political party or a coalition in its submission to the Commission, of its list of candidates for an election should endeavor to ensure that the governing body and its list of candidates has no less than 30 per cent of its members from each gender.” Article 4.5[1c] furthermore states that a “list of candidates submitted to the Commission for an election should endeavor to have no less than 30 per cent of the candidates on the list from each gender.”

The Elections Commission considered the law “ambiguous and unenforceable” due to the fact that it does not include clear sanctions in case of non-compliance.<sup>113</sup>

### 4.1 Effective sanctions

If a quota law does not provide for efficient sanctions for infringements, it may remain ineffective. Therefore, drafters of quota laws should consider whether the draft law makes it possible to properly control the implementation of the quota system designed and to sanction noncompliance. Common sanctions in electoral laws include: rejection of the candidate list, cancellation of candidate/party registration, withdrawal of public funds, and fines or forfeiture of contributions obtained in contravention to laws or regulations. In order to ensure the implementation of parity laws, it is advisable that any breaches are subject to the same sanctions as other similar breaches of the electoral law.

The following laws<sup>114</sup> provide sanctions:

- **Senegal:** Article 2, para.3 (Law No. 2010-11 of 28 May 2010 establishing parity between men and women): “Lists of candidates must comply with the above provisions failing which they shall be inadmissible.”
- **Cape Verde:** Article 5 (Law No. 68/IX/2019 of 28 November 2019): “In the event that the list does not comply with the provisions of the present law, the nominee’s representative, or the person responsible for presenting the list, is notified, under the terms established in the applicable electoral law, to proceed to the correction, within the period established in referred law.”  
“Article 6: The non-correction of the candidacy lists to the collegiate bodies of the political power, within the terms and deadlines provided for in the respective electoral law, determines their rejection by the Court where they have been deposited and communicated, within forty-eight hours, to the National Elections Commission.”
- **Mali:** Under Article 2 of the law (No. 2015-052 of 18 December 2015, establishing measures to promote gender equality in access to nominative and elective functions), party lists that do not comply with the 30 per cent gender quota will be rejected.  
“Article 2: Regarding the election of representatives to the National Assembly, members of the High Council of Communities or Councillors of Territorial Communities, no list comprised of at least three (03) individuals,

<sup>113</sup> Yates, 2020

<sup>114</sup> UNWOMEN Repertoire of WCA laws available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca--fr-and-en>

pre-sented by a political party, coalition of political parties or coalition of independent candidates, is admissible if it includes more than 70% of women or men.”

A sanction for single member districts could be considered as follows:

*Party nominations for single member constituencies will be rejected by the Electoral Commission if one gender is nominated exclusively in districts where the party's candidate was not elected in the last election.*

## 4.2 Fines and other regulations

Experience with parity laws shows that political parties are often quite unwilling to implement parity if effective sanctions cannot be imposed. Parties also claim that they cannot find female candidates or that women are not willing to run. Experience to date suggests that financial sanctions or even additional funding may not achieve significant results.<sup>115</sup> Examples from countries like France are proving that some political parties prefer to pay fines rather than nominate women candidates to promising positions. Similar instances have occurred in Burkina Faso. Here are some examples of measures that tend not to be effective.



Photo: UN Women

- **Central African Republic:** Article 281, Electoral Code (Law No. 19-0011 of 20 August 2019)<sup>116</sup> “In case of proven inability to meet the minimum 35 per cent quota of women candidates, the candidates, political parties, political associations or political groups must submit their requests to the Constitutional Court at least fifteen (15) days before the official date for the submission of candidacies. The Constitutional Court has eight (8) days to render its decision.”
- **Burkina Faso:** Under the title “Sanctions” the following is stated (Law No. 003-2020/AN on-setting quotas) “Article 10: Any political party, coalition of political parties or coalition of independent candidates that complies with the provisions of this law shall receive additional public funding for the electoral campaign. The additional public funding represents 20% of the total amount allocated by the State for the financing of the electoral campaign.”<sup>117</sup>
- **Côte d’Ivoire:** “Article 5: Any political party or grouping must provide the Election Commission with written information on compliance with the provisions of the present decree when submitting its candidacy documents. Within 30 days following the closing date for the submission of candidatures, the commission in charge of the elections shall draw up a detailed report on the compliance with the provisions of the present decree.  
Article 6: Any political party or political grouping whose number of female candidates reaches at least 50 per cent in the election of deputies ... shall receive additional public funding.”<sup>118</sup>

<sup>115</sup> See Burkina Faso; political parties in France paid high fines in order not to follow the Parity Law.

<sup>116</sup> UNWOMEN repertoire of WCA laws available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca-fr-and-en>

<sup>117</sup> UNWOMEN repertoire of WCA laws available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca-fr-and-en>

<sup>118</sup> Translation of the author: Article 5: Au dépôt du dossier Candidatures, tout parti ou groupement politique doit fournir a la commission chargée des élections, des informations écrites sur le respect des dispositions du présent décret. Dans les trente jours suivant la cloture du depot des candidatures, la commission chargée des élections dresse un rapport détaillé faisant le point sur le respect des dispositions du present decret. Article 6: Tout parti politique ou groupement politique dont le nombre de candidates atteint au moins 50% lors des élections des députés (...) bénéficie d'un financement public supplémentaire. Décret No 2020-941 du 25 Novembre 2020 du Président de la République Côte d’Ivoire

#### CENTRAL AFRICAN REPUBLIC (CAR): POLITICAL PARTIES “CAN’T FIND FEMALE CANDIDATES!”:

Before the December 2020 elections, the political parties in CAR appealed to the Constitutional Court claiming that they could not meet the 35 per cent quota for women. The Constitutional Court upheld this claim and ruled: “The Court notes the impossibility of the applicant political parties to meet the requirements of Article 281 of the Electoral Code with regard to the number of women candidates for the legislative elections of 2020-2021. As the impossibility of meeting the 35 per cent percentage of female candidates is proven, the Court authorizes the political parties to continue the electoral process despite the deficiency noted.”<sup>119</sup>

“The main reason given by the parties was that limited women were willing to run for Parliament. This low participation will not change as long as the political parties exclude women, do not recruit female members and elect women in leadership positions of the party. Capacity-building and civic education programs for women, advocacy and active campaigning throughout the legislative period are needed to attract women to run for Parliament.”<sup>120</sup>

### 4.3 Drafting sanctions

As a matter of principle, political parties as organizations are not liable to prosecution. Only natural persons can be perpetrators. Criminal liability only comes into consideration if the representative body of a party commits an offence in the name of the party, such as electoral fraud. Therefore, infringement of quota laws are regularly not considered as a criminal offence, but infringement on public law.

The most effective sanction is when the list of parties is rejected by the Electoral Commission. For the rule of law, any party whose list violates the provisions of a parity law should be heard before the list is rejected and should also be given the opportunity to correct the list.

The following examples provide technical aid on how to draft sanctions.

Examples that may help to formulate sanctions:

- (1) A candidate list which does not meet the requirements of Article “Y” will be rejected by the Electoral Commission.*
- (2) The right to be heard must be given before the list is rejected.*
- (3) The political Party will be given the opportunity to correct the election list of candidates within “Z” days (hours).*

or

*The Electoral Commission shall reject the registration of the electoral list of a political party, or an alliance of political parties, if the electoral list does not meet the requirements defined by Article “Y” of the Electoral Code.*

or

*Parties not complying with Article “Y” will have 48 hours to rectify their lists. After this period, if still found to be non-compliant, parties will be publicly reprimanded by (the Electoral Commission or other institution) and given an extra period of 24 hours to rectify their list. Finally, if the 24 hours pass and the party is still in a state of non-compliance with quota regulations, its electoral lists will be rejected by the “Z”.*

In addition to the rejection of the candidate party list fines are possible.

Examples:

*Political parties which violate Article “Y” will pay a fine in the amount of “Z”.*

*Political parties that violate Article “X” will not be reimbursed for campaign expenses/ do not receive state funding.*

<sup>119</sup> Cour Constitutionnelle Décision N°023/CC/20 DU 26 Octobre 2020

<sup>120</sup> Interview with Emilie Beatrice Epaye, Députée, présidente de la commission des affaires étrangères; Mrs. Epaye was elected as an independent candidate.



#### BURKINA FASO: CHALLENGES OF THE SANCTION

In the elections on 22 November 2020 in Burkina Faso, only 10 women were elected out of a total of 127 seats. Out of 126 parties that ran, only 23 parties respected the 30 per cent quota. The law does not include sanctions<sup>121</sup> but contains additional funding for political parties who comply with the quota law.

“Political parties in Burkina Faso prefer losing funding rather than including women in the candidates lists. Depending on which nomination procedures are used: national or regional, party leaders and party officials play the gatekeeper role in all cases. As long as women do not play a role in the decision-making bodies of the political parties, quota regulations that favor women will only be adhered to if the entire list of candidates of the party is rejected in case of non-compliance.”<sup>122</sup>

## 5. Formulation aid for additional measures:

It is important to consider what further regulations are necessary to implement the law effectively. Additional rules may be considered. The removal of registration fees for women can be regulated as well as leadership programmes for women who want to run for office.

### 5.1 Examples to promote the political participation of women in political parties by law:

*The political parties shall promote and guarantee equality between men and women in the political life of the country, through nominations for elective positions.*

*To increase the number of women in elected assemblies, the political parties are obliged:*

- *to implement annual capacity and leadership programmes for women; and*
- *to pay the registration fees for female candidates.*

*Political parties are under obligation to conduct leadership programmes to qualify women candidates for parliamentary work. For the training, promotion and development of women members of the party, each political party shall annually allocate two per cent of its normal public funding.*

*The governing bodies of a political party must be represented by at least “X” per cent women.*

*If a party submits to the Electoral Commission a list of candidates nominating at least “X” per cent women, it is exempt from paying a registration fee.*

### 5.2 Promotion of female candidatures

Please refer to the responsible authority (for example, the Electoral Commission)

*The X (responsible institution)*

- *exempts female candidates of registration fees*

*Female candidates may request for their election campaign:*

- *additional free airtime; and*
- *additional billboards.*

*The details will be laid out for each election by a separate regulation.*

121 UNWOMEN Repertoire available at: <https://africa.unwomen.org/en/digital-library/publications/2021/10/repertoire-of-tsm-laws-wca-fr-and-en>

122 Interview with Mme Martine Yabre, Women’s political participation expert 2020





Photo: UN Women

### 5.3 Establishment of a leadership institute

*An independent and impartial institute for the qualification of women parliamentarians shall be established. The institute receives annual funding from the Ministry of "X".*

*The board of the institute consists of one member from each of the parties represented in the National Assembly as well as (insert number) representatives of women's civil society associations. The board is appointed by the women's committee (or insert other body) of the National Assembly.*

### 5.4 Establishment of a commission

*A commission monitors the implementation of the law. The commission consists of three members. The chairperson is appointed by "X".*

*The Commission shall monitor:*

- *compliance with the law;*
- *the results achieved by the law;*
- *whether legislative changes are necessary; and*
- *(others).*

The commission may be a parliamentary commission or may be established within the framework of the electoral law and national electoral commissions.

## 6. Only legal texts written in clear legal language can create legal clarity

TSM laws have to follow the general principle: only legal texts written in clear legal language can create legal clarity. Three aspects are important when it comes to writing comprehensible texts or improving them stylistically. These refer particularly to: the choice of words, sentence structure and the structure of the text as a whole. The language used should be easily comprehensible by everyone. If you are hiring an expert to draft your law, the person must be in a position to understand what the legal and political situation is. Courts should be able to issue a decision based on the regulation in order to avoid misunderstandings. The examples discussed below are not intended to criticize laws in WCA countries, but are meant to show drafting techniques by way of examples. They can be used when amending laws or when drafting new laws.

### 6.1 Scope of the law

Examples:

a) “Absolute parity between men and women is established in (country) in all fully or partially elective institutions”.<sup>123</sup>

Often, wording defining the scope of a law may contain unnecessary descriptions or unclear definitions. For example, the word “absolute” is not legal language and in daily life this adjective is used when one is sure of something that will never change.

The formulation “in all fully and partially elective institutions” is not intelligible at first glance. The user of the law must always decide whether the law is to be applied in the case of a partially elective institution. Here there are two possible solutions: either these selectable institutions are listed under “Definitions” or precisely named directly in the corresponding article.

In light of clear technical legal language, the following wording might be considered:

A 50 per cent parity between women and men will apply to all elections.

*Para. 1 shall apply to the following elections:*

- *Elections to the National Assembly*
- *Local Elections*
- *Other*

or

*Sentence 1 applies to the following ballots:*

- *the elections of the deputies of the National Assembly*
- *Senatorial elections*
- *elections of Regional Councillors*
- *District Councilor elections*
- *the election of City Councillors*
- *other*

a) This law applies throughout the national territory, to all men and women of “Y” nationality, resident or not in (name of the country) and is binding to all individuals or legal entities, whether public or private, national or foreign who operate in the national territory.

The scope of the law is formulated in a complicated way. It could be more simply written as follows:

*This Act shall be binding to all nationals of (name of the country), as well as to all persons or legal entities, whether public or private, national or foreign, operating in the national territory.*

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<sup>123</sup> Parity law of Senegal

## 6.2 Simply constructed sentences

Legislation which can only be understood “based on a subtle knowledge of the subject, exceptional methodological skills and a certain passion for mental problem-solving”<sup>124</sup> does not meet the requirements of precise and clear language. This means that sentences should be simply constructed. If possible, avoid inserting words between the subject and the main verb.

Examples:

- a) “In the event the list does not comply with the provisions of the present law the nominee’s representative or the person responsible for presenting the list is notified, under the terms established in the applicable electoral law, to proceed to the correction within the period established in referred law.”<sup>125</sup>

A more clear and short formulation:

*The candidate’s representative or the person responsible must present the correction of the list within (X number) weeks (include the time limit of the corresponding Article of the Electoral law) if it does not comply with the provisions of this Act.*

The following legal rule is an example of using more words than necessary. “Roundabout” phrases like “for the purpose of” or “according to” or “in order to” often lead to confusion or ambiguity.

- a) “Parity in political representation is understood, for the purposes of the application of this law, as the minimum representation of 40 per cent of each sex .... In order to comply with the provisions of the preceding paragraph, the first two places on the multi-nominated candidacy lists presented are occupied by candidates of different sex, and no more than two candidates of the same sex may be placed consecutively in the ranking of the remaining places on the lists”.

Therefore, it is advisable to make the legal rule simple and understandable:

*Political parties must respect a minimum quota of “X” per cent for female candidates when compiling their electoral lists. The first two places of the lists of candidates shall be filled by candidates of different sexes and no more than two candidates of the same sex will be nominated successively for the remaining places on the list.*

The analysis of the following example illustrates that the content of the article can only be fully understood by reading it several times. It may have been better to form several short sentences or to list the objectives pursued.

- a) “The object of this law is to guarantee an effective equality of rights and duties between men and women, with a view to eliminating all forms of discrimination and creating the same opportunities, namely with regards to political participation and the exercise of positions of decision, aiming to achieve a more just, democratic and balanced society”.<sup>126</sup>



Photo: UN Women

<sup>124</sup> Office of the Parliamentary Counsel, drafting guidance, 2020

<sup>125</sup> Article 5 Parity Law Capo Verde

<sup>126</sup> Article 1, Parity Law Capo Verde

Alternative:

*The aim of this law is to achieve a fairer, more democratic and more balanced society that guarantees:*

- *equal rights and duties between men and women,*
- *eliminates all forms of discrimination, and*
- *ensures equal political participation of women and their equal exercise of decision-making positions.*

### 6.3 Avoid some terms

If you are drafting a TSM law use:

- precise and concrete words rather than vague and abstract words,
- most familiar words, and
- no more words than necessary.

Please avoid policy jargon like “left wing” or “right wing” or slang words like “out of the box” or “chichi”.

Please avoid potentially vague words like “affect, any, prescribe, provide for, make provision about, in relation to, subject to, without prejudice”.

“Any” can be ambiguous.

Example:

*The electoral commission must consult any political party that has submitted a candidate list.*

Does “any” mean one political party or all political parties?

“Provision” may be superfluous:

Example:

*This does not affect the provisions of any regulation under this section.*

If you formulate without “provision” it has the same meaning:

*This does not affect any regulation under this section.*

## 7. Gender-inclusive language

Using gender inclusive language while drafting is needed in order to promote equality between men and women. Laws that exclude references to the female gender do not promote gender equality. Generally speaking: gender-specific words should be replaced with gender-neutral words that have the same meaning.<sup>127</sup> In practice, gender-inclusive drafting requires:

- avoiding gender-specific pronouns, such as “he” when both genders are addressed by the clause, and
- avoiding nouns like e.g. “Chairman”.

It is generally accepted that gender-specific language should only be used for references to persons of one gender or the other, for example in provisions that deal with women taking maternity leave. In all other cases, it should be avoided.

### 7.1 Techniques to avoid gender-specific language

The following writing techniques should be considered to avoid using a gender-specific pronoun:

- Use the singular “they” and its other grammatical forms (“them”, “themselves” and “their”) to refer to indefinite pronouns and singular nouns. But take care to ensure that the plural does not create an ambiguity that would be avoided if the singular were used.

Instead of: an official shall carry out his duty

Consider this: *officials shall carry out their duties ...*

- Replace the masculine pronoun with an article;

Instead of: If a notice has been requested under paragraph (1)(b), but the Commissioner receives no such notice, the Commissioner shall advise the complainant in **his** report under subsection (2).

Consider this:

*If a notice requested under paragraph (1)(b), has not been submitted the Commissioner shall advise the complainant in **the** report under subsection (2).*

In this case, subsection (2) says that the Commissioner issues the report so it is not necessary to refer to “his” report.

- Use both pronouns “he” and “she”

“He” or “she” is also possible where individuals and other legal persons are in view. However, “he or she” should not be used if an entity is included in the noun that is followed by the pronouns. Please note: Frequent repetition of “she” and “he” can be awkward.

- Use a neutral word or phrase such as “person”, “any person”, “every person” or “no person”

Instead of:

After the term of a member ends, **he** may carry out the duties of a member in respect of a matter that was referred to the Commission under subsection 26(4) while **he** was a member.

The following would avoid gender specificity:

*After the end of a member’s term of office, **he or she** may perform the duties of a member who has resigned from the Commission.*

- Repeat the noun

Instead of:

If a judge is satisfied that it is reasonable in the circumstances to do so, **he** must issue a warrant.

<sup>127</sup> Department of Justice Canada ‘Legistics - Gender-neutral Language’ Available at: <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p15.html>. Accessed: 20.07.20

Consider this:

*If a judge is satisfied that it is reasonable in the circumstances to do so, **the judge** must issue a warrant.*

This technique must be used with caution since it may become too cumbersome if the noun must be repeated several times

- Rewrite the sentence in order to eliminate the pronoun completely.

Instead of:

A fisheries officer may issue a fishing licence and **he** may register the licence if **he** considers that the applicant has met the licence requirements.

Consider this:

A fisheries officer may issue and register a licence if **the applicant** has met the licence requirements.

The gender specific noun most likely to be encountered is “Chairman”. “Chair” or “Chairperson” is now widely used in legislation. Instead of “Congressman” the term “Parliamentarian” or “Member of Parliament” is used.<sup>128</sup> An alternative to “Spokesman” is using “Representative”. There are a number of ways to avoid using gender-specific language. Many gender-specific terms may be replaced with gender inclusive terms that have the same meaning.

#### DRAFTING LAWS: REMEMBER THE GENERAL PRINCIPLES

Before beginning to write a law, the objective and the purpose of the law must be clear. What is the goal of the proposed law? Which problems is it meant to solve? Who is the target group, and which tools are available to reach the stated goal? What could be the best strategy to reach this goal?

Any law drafting initiative must be preceded by research into the field of regulation. In the case of political participation of women, this means undertaking research on the legal, political, social, cultural, psychological and economic situation regarding equality between women and men. This includes a literature review and an analysis of the legal framework.

Prior to drafting, the existing information about the content of the planned law shall be communicated with political parties, civil society organizations (CSOs), the media and other relevant stakeholders to be involved in the process. Full transparency improves the quality of the legislation and helps to identify potential obstacles or resistance for implementing the planned law. Expert interviews and facilitated stakeholder discussions or focus groups may prove useful in this respect as well.

##### 1. Preparatory steps prior to drafting

You may use this checklist:

- Who is calling for action? (Parliament or MPs, the executive branch, political parties, CSOs, the media, scientists/technocrats or research institutions)
- What reasons are given?
- Is action necessary at all?
- Is action required at the national level or can the problem be better addressed on the state level?
- Who is affected by the planned law?
- Which facts have to be investigated? What kind of data needs to be collected?

128 <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/gender-inclusive%20language/guidelines-on-gender-inclusive-language-en.pdf?la=en&vs=2129>



- What specific problem is to be resolved by the proposed law? What has the analysis of the problem shown?
- What difficulties, obstacles, resistance or conflict in the area of regulation may arise and for what reasons?
- Can the legislative goal be reached without a new law? What are the alternatives?
- Is the goal of the law achievable and implementable?

Next, the concept of the law should consider the following aspects:

- What is the normative content of the new law: Granting of rights? Abolition of rights? Governing behavior? Conferring jurisdiction?
- Who is the target group of the law: everybody, citizens, authorities, political parties, women's organizations, etc.?
- Is the new law self-executing or just a normative framework that leaves the execution to other bodies?
- Is it necessary to amend other laws to enforce the law?

## **2. The Drafting Process**

General instructions as to structure, form and style of the draft law

A law:

- must be clear, precise, coherent and as simple as possible;
- demands suitable terminology, adequate sentence structure, logical order of ideas and a coherent structure of expressions;
- should be legible and avoid unnecessary words; and
- should not use terms with a distinct meaning to avoid confusion.

Legal language

Drafting a law requires a specific technical and scientific legal language. It has to be precise. Finding a balance between readability for the public and the required scientific language is a challenge. Definitions can be collected in the introductory part or at the end of the law. The used terminology shall be constant and uniform. As a general rule: each idea should be expressed by a single phrase. The style should ensure maximum understanding, precision and concision to rule out any ambiguity. Gender responsive or gender-neutral language is a must.

To meet the goal of formulating a law that is precise, clear, coherent and as simple as possible, the following drafting rules are helpful:

- Be clear, to-the-point, simple and brief
- Use words with a precise legal meaning
- Do not use redundant legal phrases
- Do not use slang, abbreviations or acronyms
- Keep sentences as brief as possible
- Use a list to describe multiple duties
- Use 'shall' only to impose a duty to act
- Use present tense and the active voice

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# APPENDICES

## Legal Glossary

Absolute majority or majoritarian	Designed to produce an absolute majority (50 per cent plus one) of votes
Amendment	A change made to a legal document or Act of Parliament
Appeal	The review of the decision of a lower court by a higher court. If an appeal is successful, the higher court can change the lower court's decision.
Bill	A proposal for a new law, or a proposal to significantly change an existing law
By-laws	A name sometimes used to describe the rules made by local government councils, Governments and Parliaments
Case law	Law or common law based on the reasons judges have given for their decisions in court cases, and which judges in later, similar cases are bound to follow. Case law is also called 'common law'.
Constituency	A synonym for an electoral district used predominantly in some anglophone countries. See Electoral district
Convention or Treaty	A treaty is an agreement in written form between nation States (or international agencies, such as the United Nations, that have been given treaty-making capacity by the States that created them) that is intended to establish a relationship governed by International Law. It may be contained in a single instrument or in two or more related instruments such as an exchange of diplomatic notes. Various terms have been used for such an agreement including treaty, convention, protocol, declaration, charter, covenant, pact, act and or statute. The particular designation does not affect the agreement's legal character.
Closed list	A form of List PR in which electors are restricted to voting only for a party or political grouping, and cannot express a preference for any candidate within a party list. See also Open list and Free list
Decree	A command given by a public authority. For example, a health authority might decree that animals with a contagious disease be quarantined.
Electoral Law	One or more pieces of legislation governing all aspects of the process for electing the political institutions defined in a country's constitution or institutional framework
Electoral System	That part of the electoral law and regulations which determines how parties and candidates are elected to a body as representatives. Its three most significant components are the electoral formula, the ballot structure and the district magnitude.
Judicial review	The court's review of an administrative decision on the basis of a legal error in the decision-making process. For example, a court can review a decision by an official on the grounds that the official is biased. See also administrative act
Jurisdiction	The authority of a court or tribunal to hear matters brought before it
Legislation	A law or a set of laws that have been passed by Parliament. The word is also used to describe the act of making a new law.
Lower house	One of the two chambers in a bicameral legislature, usually seen as comprising 'the representatives of the people'. It is the more powerful chamber when the powers of the two chambers are unequal.



Mandatory	Required by law to be done
Multi-member district	A district from which more than one representative is elected to a legislature or elected body
Open list	A form of List PR in which voters can express a preference both for a party or grouping and for one, or sometimes more, candidates within that party or grouping. See also Closed list
Ordinance	A rule made by the government or an authority
Organic law	Organic laws are a short, fixed list of statutes specified in the constitution. They have constitutional force and thus overrule ordinary statutes. Organic laws form the foundation of a government, a constitution is a particular form of organic law for a sovereign State.
Parallel system	A mixed system in which the choices expressed by the voters are used to elect representatives through two different systems, usually one plurality/majority system and one proportional representation system, but where no account is taken of the seats allocated under the first system in calculating the results in the second system
Plurality/majority systems	Plurality/majority systems are based on the principle that a candidate(s) or party with a plurality of votes (i.e. more than any other) or a majority of votes (i.e. 50 per cent plus one—an absolute majority) is/are declared the winner(s). Such a system may use single-member districts—for example, First Past the Post, Alternative Vote or the Two-Round system—or multi-member districts—for example, 181 the Block Vote and Party Block Vote
Reserved seats	Seats in which a determinable criterion such as religion, ethnicity, language or gender is a requirement for nomination or election
Rules of Procedures	Also called <b>rules of order</b> , the generally accepted rules, precedents, and practices commonly employed in the governance of deliberative assemblies. Such rules are intended to maintain decorum, to ascertain the will of the majority, to preserve the rights of the minority, and to facilitate the orderly transaction of the business of an assembly.
Simple majority	A majority of more than 50 per cent of the members present and voting in the House
Single-member district	An electoral district from which only one member is elected to a legislature or elected body
Sunset	Used to describe a part of a law that states when it will end, or the conditions under which it will end
Upper house	One of the two chambers in a bicameral legislature, often seen either as containing 'the representatives of regions/federal states' or as 'a chamber of review'. The less powerful chamber when the powers of the two chambers are unequal









WCARO  
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