

## **Agora Arab Digest-May 2014**

### **Women in the new Tunisian Constitution**

Inclusive and effective political institutions (parliament, constituent assemblies, and political parties) are critical to respond to citizen's expectations for voice, development and accountability: this requires a constant engagement with political actors on the ground, a high level of trust-building measures, responsiveness to quickly deliver on very technical demands and adaptability to volatile and highly fluid political environments<sup>1</sup>.

These issues are particularly relevant in post-Revolution Tunisia, as they were central demands driving the uprising against Zine el Abidine Ben Ali's regime in 2010 and 2011.

#### **I- The Importance of Women's Political Participation**

The inclusion of women, youth and marginalized groups in political processes and institutions is key to ensure proper representation and to meet the expectations of the constituencies. As a broader range of citizens take part in the political process, institutions become more responsive to the needs of all citizens. Expanding women's political participation leads to tangible gains for democratic governance. When women are empowered as political leaders, countries often experience higher standards of living and positive developments. Expanding political participation to include women can improve the functioning of governments, legislatures, and political parties, and can help government provide more tangible benefits for citizens. Yet women remain underrepresented in politics worldwide.

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<sup>1</sup>[http://www.agora-parl.org/sites/default/files/lessons\\_learned.pdf](http://www.agora-parl.org/sites/default/files/lessons_learned.pdf)

## II- Gender Representation

Tunisia was known for its modern legislation on women's rights. The first wave of reform came in 1956 under President Habib Bourguiba in an effort to modernize the country at a fast pace whereas the second wave came in the 1990s as a response to women's activism<sup>2</sup>. Women have played a key role in Tunisian society according to statistics from 2011, representing 26% of the working population, 50% of students, 29% of magistrates and 24% of the Tunisian diplomatic service<sup>3</sup>. Furthermore, women's political representation in the Tunisian parliament was one of the highest in the entire Arab region, namely 27.6% in the election of 2009. However, a fear of backlash was omnipresent following the Arab spring with respect to women's rights.

Following the social stir, the High Commission for the Achievement of the Objectives of the Revolution, Political Reforms and Democratic Transition was appointed and given the task to draft the rules for the election of a constitutional assembly. The result was the adoption of an electoral system of proportional representation in multimember constituencies (with up to ten seats per constituency). An astonishing radical quota system was adopted, the so-called 'zipper-system' which allowed for open and equal women political participation.

### Decree Law N 35 on Election of the National Constituent Assembly

#### **Article 16:**

Candidates shall file their candidacy applications on the basis of parity between men and women. Lists shall be established in such a way to alternate between men and women. Lists that do not follow this principle shall only be admitted when the number of seats, in the relevant constituency, is odd.

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<sup>2</sup> [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM\\_NT%282012%29462502\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT%282012%29462502_EN.pdf)

<sup>3</sup> <http://www.europeanforum.net/country/tunisia>

Women participated in large numbers in the October 2011 National Constituent Assembly (NCA) elections as candidates and campaigners, encouraged by the country's new electoral law requiring gender parity on political party candidate lists<sup>4</sup>.

	Legal source	Details
<b>Quota type: Legislated Candidate Quotas</b>	Electoral law	The National Constituent Assembly is composed of 217 members elected from 33 constituencies by the list proportional representation system. According to Article 16 of Decree 35: 'Candidates shall file their candidacy applications on the basis of parity between men and women.'
<b>Legal sanctions for non-compliance:</b>	Electoral law	Lists that do not follow the principle of gender parity will only be admitted when the number of seats, in the relevant constituency, is odd (Article 16) .
<b>Rank order/placement rules:</b>	Electoral law	"Lists shall be established in such a way to alternate between men and women" (Article 16).

As a result of the newly introduced legislation for parity and alternation provisions in candidate lists, which mandates that women represent 50 percent of candidates on party lists and that candidate names on party lists alternate by gender, about 5000 women candidates participated in the election. Sixty-seven seats were allocated to women in the National Constituent Assembly. Women headed only 7% of more than 1,500 candidate lists and only one woman was given the chance to lead a political party (Maya Jribi-PDP Party).

<sup>4</sup> <https://www.ndi.org/files/Tunisia-Gender-Assessment-National-Constituent-Assembly-ENG.pdf>

### **III- Fewer women in the parliament**

Despite the strong affirmative measure by Tunisia that required the implementation of the principle of gender parity and the inclusion of such a high number of women candidates in party lists did not eventually result in equal representation of women in the National Constituent Assembly. Due to low district magnitude, it was very difficult for a party list to win more than one seat per constituency and 93 per cent of the candidate lists were headed by men. This resulted in women now forming approximately 31% per cent of the elected members of the Assembly.

### **IV- UNDP's Support to gender equality during the Constitutional process**

In addition to providing technical expertise and support throughout the whole process, particular emphasis has been placed by UNDP on assisting the National Constituent Assembly in ensuring an inclusive constitutional process, including extensive public consultation and engagement with civil society organizations across the country. Gender issues and the importance of entrenching women's equality in the constitution have been key themes in the dialogue.

During the course of 2012 and 2013, UNDP supported a dialogue process between the members of the National Constituent Assembly, citizens and civil society organizations in Tunisia's 24 governorates. These activities involved 80 members of the Assembly, who benefited from training on legislative and constitutional drafting and public consultation techniques.

More than 5,000 citizens, 300 civil society organizations and 320 university representatives gave their contributions during the course of the dialogue.

Focusing on the inclusion of sexual equality and the participation of women in public life in the Constitution, UNDP has supported Tunisian parliamentarians' knowledge of international best practice on gender equality, quotas, and constitutionalization of equality provisions including but not limited to the following activities<sup>5</sup>:

- In-depth technical expertise concerning some of the constitutional and legal provisions that were subject to intense negotiations during the National Dialogue process that was organised to resolve the political impasse that occurred between July and December 2013.
- United Nations observations on the draft Constitution of 1 June 2013
- International conference on the political participation of women was held on October 2012 and was attended by the President of the Republic and the United Nations Resident Coordinator.
- Conference on the civil and political rights of women held in March 2013 with the participation of 40 women members of the Assembly who exchanged views with top ranking female political figures from South Africa.
- Training on the operation of the Parliament and the role of women parliamentarians. Four members with institutional responsibilities at the National Constituent Assembly benefited from training on parliament operations during a study week at the French Parliament.

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<sup>5</sup> Project of Support to Constitution-building, Parliamentary Development and National Dialogue in Tunisia Activity report- Jan 2014

Finally, the public consultation process has not only helped make the process more inclusive and transparent, but also helped reflect the Tunisian people's outlooks for their state. The National Constituent Assembly's sites civil rights and liberties as major elements required results sited by the civil society<sup>6</sup>.

### **V- Gender Provisions in the new Constitution<sup>7</sup>**

The constitution is ground-breaking in its provisions to assure women's equality, in explicitly committing to eliminate violence against women, in promoting women's assumption of positions of responsibility in all sectors, and in working towards parity in all elected bodies within the country. Such clear recognition of the importance of equality and of the state's responsibility to enable the realization of equality is rare in constitutions anywhere in the world.

The activism of Tunisian women for equal rights has long been a feature of Tunisian society and an inspiration to other countries of the region. Equality was guaranteed in the previous constitution and in legislation on personal status. The new constitution extends these rights, reflecting the results of an inclusive and intensive process of dialogue throughout the country on the content of the new constitution.

Tunisia's National Constituent Assembly has a relatively high proportion of women members; 67 of 217 or 30.8%, placing it in the upper range of democratic parliaments. The high proportion of women members, as well as activism of women in civil society, meant that gender issues were treated seriously during the national constitutional dialogue and in the Assembly discussions and debates.

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<sup>6</sup> [http://www.anc.tn/site/main/AR/docs/societe\\_civile/presentation.jsp](http://www.anc.tn/site/main/AR/docs/societe_civile/presentation.jsp)

<sup>7</sup> [http://www.agora-parl.org/sites/default/files/advances\\_for\\_women\\_in\\_the\\_new\\_tunisian\\_constitution\\_1.pdf](http://www.agora-parl.org/sites/default/files/advances_for_women_in_the_new_tunisian_constitution_1.pdf)

The electoral law under which Assembly members were elected in the first free democratic elections after the revolution, in October 2011, ensured that women would be equally represented on party lists, and in alternate order of preference.

It is notable that the most expansive and contentious of the gender-related provisions, Article 46 on protection of women's rights, was supported by 75% (50 of 67) women deputies, compared with 59% of the Assembly as a whole, and 51% of male deputies. It is also important to note that the equality provisions garnered support from women across the political spectrum.

In terms of specific provisions on gender equality:

- The preamble frames the constitution in the context of the “equality of rights and duties between all citizens, male and female”
- Article 21 confirms equality of rights and duties and outlaws prohibits gender discrimination: “All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination.”
- Article 34 guarantees women's representation in all elected bodies
- Women's accrued rights are guaranteed, effectively constitutionalizing equality provisions already existing in laws such as the Personal Status Code (article 46)
- The state is required to ensure that women and men “have access to all levels of responsibility in all domains”; this provision was broadened in discussions just before adoption of the constitution, so that it will cover the private as well as public sector (article 46)
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- The state will work towards parity in all elected bodies, including not only the new parliament, the Assembly of the Representatives of the People, but also in local elected councils. Discussion during the constitutional debate suggested this would require parity in candidacies of women and men (article 46)
- The state will take “all necessary measures in order to eradicate violence against women.

In order for these provisions to be implemented, as well as the other rights and freedoms outlined in the Constitution will need to be entrenched in organic and ordinary laws that implement the constitutional framework, and the UNDP project will be working to support the new Tunisian parliament in these legislative responsibilities.

The new Assembly of representatives which will be elected in the forthcoming period has thus a long road ahead in order to ensure the proper and full implementation of perhaps one of the most progressive gender provisions not only in the Arab world but globally.

#### **VI- The New Electoral Law: first use of post-constitutional gender parity**

On 1 May 2014 Tunisia’s National Constituent Assembly (NCA) adopted a new electoral law by 132 votes to 11, with nine abstentions. The law’s adoption is another milestone in the democratic transition process and the implementation of the new Constitution adopted on 27<sup>th</sup> January. The new law paves the way for organizing parliamentary and presidential elections to equip the country with its first permanent political institutions.



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As a step towards increasing female representation in politics, the law calls for gender parity through vertical alternation at the level of the electoral lists. As such, if the head of the list is a man, the alternate must be a woman.

### **The way forward -Effective legislature**

In order to ensure the successful implementation of the constitution, capable and effective legislatures are imperative. It is within this scope that UNDP worked towards ensuring access to international and comparative parliamentary best practice, prioritised South-South parliamentary assistance, and focused on building partnerships with sister parliaments.

Furthermore, UNDP helped in establishing partnerships with parliamentary departments that will fuel the sustainable exchange of good practices in addition to key training sessions for the NCA members as well as the parliamentary administration.

The three features hailed by the UN guiding principles on constitution-making are inclusiveness, participatory and transparent processes. Within this scope UNDP invested in the information infrastructure and encouraged interaction with grass roots to promote the transparency of the NCA activities.