

The Proposed Gender Quota in Lebanon:

Legal Crisis or Democratic Transformation?

Mark El-Makari*

Fifty years after the consolidation of equality between men and women with respect to the right to vote and run for public office with the 1953 Electoral Law, the reality of women's representation in parliament remains far removed from democratic ideals and the aspirations of civil society. As the late Lebanese lawyer and human rights activist Laure Moughaizel stated for a woman to enter parliament in Lebanon, she must be clad in black. Moughaizel's statement is more true today than any time in the past, considering that since 1963 only nine women have joined parliament, most often to fill the seats left empty by a dead husband or a father, or else through kinship relations. Alarming, since 2005 Lebanon has ranked 122nd worldwide for women's participation in national parliaments (Inter Parliamentary Union, 2005), and this behind Iraq which ranked 28, Tunis 36, Sudan 70, Syria 85, Morocco 91, Algeria 115, and Jordan 118, tying with the Libyan Arab Republic, and coming in at two ranks ahead of the Islamic Republic of Iran.

One possible reason for this under representation of women is the disinterest of the Lebanese legislator to deal with this problem by applying a policy of affirmative action that could strengthen women's participation in representative councils. It is important to note here the discrepancy between Lebanon's general and very timid legal landscape on the one hand, and international recommendations and charters on the other. The fourth article of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Lebanon according to Law no. 572 on 24/7/1996, allows member states to take temporary measures to advance gender equality. Nothing significant has been done in this regard. The discrepancy between Lebanese laws and Lebanon's international commitments also appears upon comparing trends in women candidacy and actual representation with the general recommendations that came out of the 1995 Beijing Conference of 1995. The latter has set as one of its goals a ratio of 30 percent in terms of women's participation in representative councils. Lebanon, as a signatory to the Beijing Platform of Action, has taken no steps towards achieving this goal.

The long awaited draft law prepared by the National Commission on Parliamentary Electoral Law Reform (NCELR) that was established by a ministerial decree dated 8/8/2005 included a quota system for women in national elections. Article 64 stipulated that it is obligatory for every list in all districts that fall under proportional representation to

* This paper is an abridged and updated version of a study prepared by Mark Makary in Arabic entitled *Al-kota Al-Nisa'iyya Al-Intikhabiyya Almuqtaraha fi Lubnan: Azma Qanuniyya am tahawwol Dimuqrati* published in *Abaad* No. 11, March 2007.

include among its members a percentage of women no less than 30 percent. The draft law also set a time limit for the adoption of this measure by stipulating that this text is implemented temporarily and for three parliamentary elections only.

The inclusion of the quota system in this draft electoral law constituted a first victory for the cause of women's rights in Lebanon and a fundamental step towards the consolidation of their participation in representative councils. However, the introduction of the quota system in Lebanon is fraught with problems both at the theoretical and practical levels.

The principle of gender quotas raises a legal debate in terms of how much it respects and concurs with the principle of equality established in the Lebanese Constitution. The principle of equality is consecrated in Articles 7 and 12 of the Lebanese Constitution and in Section g (3) of the constitution's preamble as well as in the international treaties mentioned in the preamble. In order to grasp the problem from all its various angles, one must tackle the nature of the quota, which is a form of positive discrimination brought about by a transformation in the concept of equality, shifting it from the notion of "equality – principle" to "equality – objective".

Theoretical Framework: The Nature of the Quota and its Repercussions on the Principle of Equality

It is needless to say that despite their importance, many principles and theories need not be universalized, since they remain directly linked to certain societies and their particular legal systems. Hence, what is acceptable for one society with regards to the principle of equality and its agreement with the quota may not be suitable for another society with other legal specificities.

1. The Quota as a Form of Affirmative Action

a. Defining Affirmative Action and Establishing its Particularities

Affirmative Action¹ is "an obligatory program requiring a preferential distribution of resources and services to members of a minority or a disenfranchised social group in order to compensate for a deficiency in social equality from which it suffers" (Levade, 2004, p. 59). In other words, affirmative action relies on breaching the principle of equality in order to strengthen the same principle.

The theory of affirmative action first appeared in the United States.² It can be defined as "a set of procedures of a general or particular nature, mostly applied in the late 1960s through an initiative by various federal administration apparatuses to grant members of various groups – which had in the past suffered from discrimination with varying degrees – preferential treatment in the distribution of some scarce resources" (Sabbagh, 2003, p. 2). These groups include ethnic minorities (e.g. blacks and Hispanics), and women. The applied affirmative action measures aimed at rectifying the low representational levels of those groups in American society.

The development of the concept of affirmative action coincided with the transformation of the concept of equality from "the equality of opportunities" to "the

1. The French have used the term "discrimination positive i.e. positive discrimination" but some writers saw that the translation should rely on the initial theory of "affirmative action" as adopted in the United States and for which the correct French translation should be "action positive". These same writers recommend replacing "discrimination" with "action" to avoid the negative connotations of the former word. See Stasse (2004) & Perreau (2004).

2. The principle of affirmative action in the US came through two decrees: the first by President Kennedy (no. 10925, 6/3/1961), and the second by President Johnson, (no. 11246, 24/9/65).

equality in outcomes". Indeed, this transformation coincided with the introduction of affirmative action for the first time in US public discourse in the early 1960s. In March 1965, the US Ministry of Labor published a report written by the then minister Daniel Patrick Moynihan entitled: "The Negro Family: the Case for National Action" also known under the name, "The Moynihan Report". This report clearly indicated the government's need to take positive measures to reduce the wide gap between the principle of equality which is theoretically enjoyed by all American citizens on the one hand, and the discrimination suffered by a portion of the population, namely racial, ethnic minorities and women, on the other hand. American president Johnson's speech that same year at Howard University, where the majority of the students were black, emphasized this orientation and the need to target every public policy "not just to guarantee equality in the law – hypothetical equality – but also to accomplish equality in reality in terms of results accumulated by each of the two racial camps" (Sabbagh, 2003, p. 35). Thus, the first actual legal step, through affirmative action, came about in 1969 to embody this trend after the painful racial incidents witnessed in most of the American states. These procedures aimed at tackling the low representation of blacks in companies under contract with the state in the fields of public works, in a framework known as the "Philadelphia Plan" launched by the American government on January 22nd, 1969. That is how the principle of affirmative action first found its footing in the US as one of many means to integrate the various groups under the state, while following the slogan of "fair representation".

Although the policies of affirmative action were born of a special and particular social context governed by profound racial discrimination in the US, many nations around the world adopted these policies in various forms and domains, particularly in the field of employment, public service, and higher education.

Because affirmative action attempts to remedy poor representation, it was inevitable that this strategy be directly and firmly tied to the election process, especially concerning the representation of women who were unable to match men in politics, for a variety of reasons, be they economic, educational, or social. The policy of affirmative action was adopted in electoral laws and entailed allocating to women an obligatory minimum percentage of parliamentary seats or on candidates' lists, as will be discussed later. Yet, this legal institution raises several issues that require further study.

b. Problems of the Quota: Between Adoption and Rejection

It is common knowledge that the quota has been adopted in many developed and developing countries. Electoral quota is adopted on the level of the parliament by more than 50 states around the world.³ Obviously actions towards this end have been accompanied by numerous debates involving the rejection of the quota based on the argument that it is contrary to the principles of merit and equality, or that it constitutes a temporary solution for the problem of representation. Within this course/trajectory, it was inevitable that the gender quota became a source of ongoing debate, which continues to bear on the discussions and programs of various political and civil groups, even women's organizations. It must be noted that both proponents and opponenets of the quota advance their own reasoning. This makes the study of these arguments, whether for or against the quota,⁴ necessary for constructing political, social, and legal frameworks for this issue.

3. See www.quotaproject.org

4. For a comprehensive enumeration of arguments in support of and against the quota, see Karim (2003), pp. 80-85.

The first argument in favor of adopting a gender quota is that the gender quota consolidates women's participation in politics and representational councils. When applying this argument to the Lebanese situation, we find that the quota could constitute an essential incentive for supporting participation in politics. Indeed, successive parliamentary elections have shown that women's participation is almost non-existent in Lebanon. In the 1992 elections for instance, there were four women candidates, of which three won, and those were Nayla Moawad, Bahiya Hariri, and Maha al-Khoury Assad. In the 1996 elections, there were 11 female candidates in all of Lebanon, of which only three won, and these were Nayla Moawad, Bahiya Hariri, and Nohad Said. In the elections of 2000, there were 18 female candidates, of which three won, and these were Nayla Moawad, Bahiya Hariri, and Ghinwa Jalloul. As for the 2005 elections, the number of women candidates dropped to 14, of which six won, namely Nayla Moawad, Bahiya Hariri, Solange Gemayel, Sitrida Jaajaa, Ghinwa Jalloul, and Gilbertte Zuwayn. In 2009, eleven women ran and only four won: Bahiya Hariri, Gilbert Zweyn, Sitrida Geagea, and Nayla Tueini. In analyzing these results, one notices that the percentage of women's participation on the level of candidacy increased from four candidates in 1992 to 18 in 2000 and then dropped in 2005 and 2009 respectively.

These numbers undoubtedly warn of the fragile reality of women's participation in Lebanese politics and highlight not only the need to encourage women to participate but also the necessity of adopting positive measures aimed at encouraging women to run for office and engage in electoral and political activities. Such measures may challenge the dominance of familial ties which continue to determine the representation of women in parliaments until today and ensure more gender equality.

According to advocates of the quota, it is impossible to accomplish these goals except by amending the electoral law to provide for a gender quota. This would constitute within the immediate future a more realistic and easier solution than awaiting a radical change in culture and in society's attitudes towards women.

Opponents of the quota see that the quota is contrary to the principle of political elite formation based on merit (meritocracy) because it relies on the principle of "imposition" (whether on the level of candidacy or seats) solely on the basis of gender. This imposition limits and denies voters' freedom of choice and is therefore undemocratic. Because this argument is important and perhaps worth considering, it is important to indicate a few points that highlight the debates surrounding it.

First, this argument is undoubtedly valid when the quota is imposed on the number of seats in parliament, thereby "reserving" them for women without regard for their merit and their capability to draw voters according to their political agenda and personal characteristics or qualities. But if the quota is adopted at the level of candidates (as is proposed in the draft law prepared by the NCELR in Article 64), whereby a particular percentage of women on electoral lists is required without guaranteeing their entry into parliament, the argument that representation is being imposed does not hold, for the final choice in this case remains with the voter, who can judge the merit and capability of one woman candidate against another.

Second, according to a study by Marguerite Helou (2002), statistics on the political behavior of women in the parliamentary elections have shown that voting for women candidates is not done on the basis of their sex but on the same bases that govern voters' choice of male candidates. The study showed "that the determining factors in defining voters' choice for women are the same as those that govern male voters' choice for all candidates" (Helou, 2000, p. 248). Accordingly, it is accurate to say that with or without the adoption of the quota, merit ranks low on the list of factors governing voters' choices, such as clientelism, sectarianism, and money – all of which play a greater role in the formation of political elites in Lebanon.

It is important to stress one last argument related to the nature of the political and social make-up of the Lebanese system. The adoption of the principle of the gender quota in Lebanon can burden the voter's choice with an additional constraint, i.e. a new quota over and above the many that already govern his/her electoral choices, namely the sectarian and regional quotas. This argument is perfectly true in the case where the quota is introduced within the framework of a majoritarian electoral system with small or medium size districts. In this case, sectarian and regional belongings play an essential role in defining the voter's choice, and accordingly the gender quota would complicate their array of choices and limit their freedom. By contrast, if the quota is adopted at the level of large districts with proportional representation, which is the suggestion made by the NCELR, the two factors of sectarianism and regionalism are automatically weakened and room is made for other factors related more to the political agendas of candidates.

The major problem related to the issue of the quota issue lies in the contradiction between the quota as a legal institution and the principle of equality, and consequently in its inevitable contradiction with the Lebanese Constitution, which consecrates the principle of equality along with many other texts and international treaties.

2. The Quota and the Principle of Equality

The principle of affirmative action has raised many debates and intellectual polemics mostly revolving around the extent to which this legal institution accords with the principle of equality (Stasse, 2004; Sabbagh, 2003; Favoreu, 1996). Opinions are divided into two different views of equality: equality – principle, meaning equality in opportunities, and equality – objective which means equality in outcomes. These diverging views are present in the Lebanese case even if still in their nascent stages.

a. The Constitutionality of the Gender Quota

French jurisprudence defines positive discrimination as "a methodology that requires the formation of breaches to the principle of equality in order to strengthen equality by giving some a preferential treatment" (Levade, 2004, p. 59). Accordingly and in principle, positive discrimination relies on breaching the principle of equality and hence one must question whether the proposal of a gender quota, as it figures in the draft electoral law prepared by the National Commission, contradicts the principle of equality as stipulated in the Lebanese Constitution. It is therefore inevitable for us to look into the possible positions that can be taken by the Lebanese Constitutional Council (LCC) if such a step were to be put forth.

It is obvious that the topic of the constitutionality of affirmative action in general and of the gender quota in particular have never been presented to the LCC due to the absence of a quota in all electoral laws adopted in Lebanon. Consequently, one must seek help in this regard in the interpretations made by the French Constitutional Council (FCC) which looked three times into the constitutionality of laws aiming at amending some electoral laws in France in order to strengthen women's participation.

The first and most important ruling is Ruling no. 146, dated 18/11/1982, regarding the decision to amend the parliamentary electoral law and the law for electing members of municipal councils, as well as concerning the conditions for the registration of French expatriates on electoral laws, which requires the imposition of a 25 percent quota for each of the two sexes on all electoral lists.

The FCC resolved to annul the contested law for being unconstitutional. In Ruling no. 407 dated 14/1/1999, the Council based its decision on the same legal criterion, namely to annul a law that imposed a gender quota on electoral lists. This ruling constituted an entry point into amending the French Constitution by introducing an additional clause stipulating that "this law favors equal access of women and men to electoral functions".⁵ Following this amendment, the law of June 6, 2000 concerning the introduction of the principle of parity between men and women was applied to electoral lists.⁶

Now that the principle of quota is about to become a part of the Lebanese electoral law, it is important to ask whether this principle concords with constitutional laws and whether the LCC will annul the principle in question.

The principle of equality is constitutionally consecrated in Lebanon and it is also mentioned in several legal texts. It is also one of the foundations for constitutional exegesis. Article 7 of the constitution stipulates that "all Lebanese are equal before the law and enjoy the same civil and political rights and bear the same public duties and responsibilities without discrimination between them". Article g (3) of the constitution's preamble stipulates that "Lebanon is a parliamentary democratic republic founded on social justice and equality in rights and duties among all citizens without discrimination against or favoritism towards any of them." Moreover, this principle is consecrated according to the charters of the United Nations, the Arab League, and the International Bill of Rights, whose provisions have become "equal to those of the constitution" since the issuance of the two LCC decrees (97/1 and 97/2 dated 12/9/1997), concerning the law for extending the terms of municipal councils and the law of *makhateer* (i.e.) respectively. As for the LCC's interpretation, it consecrated the principle of equality in many of its decrees, including 92/2 dated 24/11/1999 and 2000/1 dated 1/2/2000.

Although the principle of quota has never been presented to the LCC for consideration, the principle of discrimination has been put forth once in Decree no. 2001/2 dated 10/5/2001, regarding the law which regulates non-Lebanese nationals' acquisition of real estate in Lebanon. The interpretation of the LCC allows the possibility for bypassing the principle of equality in two cases only: first, when different and particular legal situations exist between individuals, and second, when bypassing serves the public interest. According to the LCC, both cases require a pre-requisite that the bypassing

5. Article 3, (5) of the Constitution of 1958.

6. The constitutionality of this law was contested by a sweeping majority after a vote in the French parliament. The FCC established nevertheless and contrary to this vote, the constitutionality of this ruling in two previous rulings mentioned above, no. 429, dated 30/5/2000 in accordance with the amendment Clause 3 of the French Constitution.

of the principle of equality be tied to the purpose of the legislation. Upon reading this interpretation, some may doubt the constitutionality of the quota: are gender differences “different and particular legal situations between individuals” and consequently can justify bypassing the principle of equality? Is encouraging women’s participation in elections in the public interest or for the higher good? And does the gender quota concord with the purpose of the legislation to which it was added, namely electoral legislation?

To answer these questions and to know the extent to which this solution can be implemented on legal grounds regarding the gender quota, we must return to the French decree 51, from which the Lebanese decree has been replicated. The FCC decree states that the breaching of the principle of equality cannot be justified except when “different legal situations exist” meaning that one must apply homologous regulations on homologous situations and different regulations on different situations as long as all this concords with the public interest and the purpose of the law. French jurisprudence has looked closely into the explanation of these statements and has relied on a precise and narrow explanation for it in order to clearly frame this exception: discrimination in rules and breaching the principle of equality are possible as long as this discrimination does not fall under categories prohibited by the constitution, such as race, origins, religion, creed, and sex. The Lebanese constitution for its part underscores the importance of religious belief and social equality and prohibits discrimination in general (preamble, para. c), especially through international charters and the International Bill of Human Rights, which are mentioned in its preamble (para. b). Consequently, any legal text that includes a breach of the principle of equality on the basis of one of these criteria, which is the case of the law that institutes a gender quota, is unconstitutional. As for the public interest, which certainly falls under the constitutional bounds above mentioned, the interpretation of the FCC has given examples: due procedure of justice (Decree no. 127), the continuity of public services (Decree no. 229), and economic growth and the creation of new job opportunities (Decree no. 405). Therefore, encouraging women to participate in politics is not a matter of public interest according to the interpretation of the constitutional council regarding exceptions to the principle of equality.

In accordance with what we have discussed above, the amendment of the constitution becomes a necessary precondition for the adoption of a gender quota in the parliamentary electoral law in Lebanon. Such an amendment could be made by adding a new clause to Article 7 of the constitution, similar to what happened in France in 1999. This would allow legislators to work on strengthening women’s participation in representative councils.

In spite of the existing legal contradiction between the gender quota and the principle of equality consecrated in the constitution, the general Lebanese legal terrain contains factors which can alleviate the degree of this contradiction.

b. Between the Spirit and the Word of the Law: “Equality – Objective”?

The quota is not alien to the Lebanese legal culture; it is in fact at the heart of its political culture. Indeed, the Lebanese system is a consociational democracy based on a proportional (not equal) power sharing formula by the various sects. Ever since the first electoral law was passed in Lebanon in 1922, the Lebanese electoral system

has been characterized by a distribution of seats based on sectarian and regional quotas. This trend has been consecrated in all consecutive electoral laws since 1922 until this day, including the constitutional amendments of 1990. The amended Article 24 of the constitution states that until a new non-confessional electoral law is adopted, “parliamentary seats are distributed equally between Muslims and Christians, proportionally among the various sects of both groups, and proportionally among different regions”. The consecration of the principle of sectarian and regional quota in the constitution may have positive repercussions on the acceptance of the gender quota by the Lebanese in general and by the legal establishment in particular, since they are already “accustomed” to the principle of quota.

Within this framework it is relevant to look at what happened in Belgium, where the society is heterogeneous and the system is based on the representation of all social groups equally, especially on the basis of language. The Belgian legislator introduced the gender quota through the imposition of a maximal limit of two thirds for each gender on the electoral lists and so according to a decree dated 24/5/1994. No one contested this law before the Supreme Court, which is specialized in monitoring the constitutionality of laws, in spite of the fact that it did breach the principle of equality consecrated in the constitution. Indeed, jurisprudence explained the situation by stating that “Belgium is a federal, multi-sectarian country which has introduced this structure (the quota) to its legal system: not only in public service but at the level of organizing constitutional authorities” (Favoreu & Philip, 2005, p. 526).

From an international perspective and in the second half of the 20th century, the subject of furthering equality, more specifically equality between the sexes, was added to the agenda of the United Nations, which witnessed an effective dynamism aimed towards this end, moving from a formal equality to an actual equality. Most important among the steps taken was the decision by the UN General Assembly in 1979 to endorse CEDAW which Lebanon ratified in 1996 according to Decree no. 572 dated 24/7/1996.

The principle of affirmative action as one path towards furthering gender equality formed an essential pivot in the CEDAW convention. The first paragraph of Article 4 of CEDAW states the following: “Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.” Moreover, Article 7 of CEDAW urges all member states to take appropriate measures to end discrimination between men and women in political and public life. The three reports presented by Lebanon⁷ in accordance with Article 18 of the convention emphasize the low level of participation by women in representative councils, especially the parliament. The third and last report presented on 7/7/2006 indicates the possibility of adopting a gender quota by the National Commission of Lebanese Women (NCLW) in its proposal of an electoral law.

The Fourth World Conference on Women held in Beijing in 1995 gave new impetus to the commitment of the UN towards this goal. Lebanon was an active and committed

7. Report no. 1 dated 2/9/2004; Report no. 2 dated 11/2/2005; Report no. 3 dated 7/7/2006. See: www.un.org/womenwatch/daw/cedaw

participant in that conference and stated its commitment to accomplishing most of its recommendations. Clause b of Paragraph 190 of the Beijing platform for action states that governments must implement procedures when necessary for electoral laws, which could encourage political parties to seek the representation of women in representational and non-representational positions equally and according to similar percentages as men. In 1999, the Lebanese state expressed its commitment to accomplish this goal in the unified report included in the work methodologies of Beijing, whereby it sets as a necessary objective the increase of women's participation in decision-making positions to a percentage of no less than 30 percent in 2005.⁸

The Practical Framework: Kinds of Quota and Mechanisms for their Implementation

The adoption of the gender quota in some countries was merely a symbolic accomplishment which did not lead to the advancement of women's participation in politics and representative councils, the goal for which quotas were introduced in the first place. For instance, in Bolivia and Paraguay the percentage of women's representation in parliament remained unchanged after introducing the quota into the legislative system. In other countries such as Brazil and Mexico, the percentage decreased after the implementation of the quota into the legislative system. In still other countries, the quota made only a slight change in the percentage. Consequently, it becomes obvious that the effectiveness of the quota and its relevance remain governed by several factors related to the particularities of the electoral system in which it is implemented and by the many concomitant legal and institutional factors. These include: the adopted electoral system (proportional, majoritarian or mixed), closed or open lists, the size of electoral districts, the adoption of preferential voting system or not, the arrangement of candidates on the list, the penalty imposed upon non-compliance with the quota, etc. All these factors will constitute the focus of the research that follows, through a study of the proposal submitted by the National Commission for Electoral Law Reform (NCELR) and ways of applying it in Lebanon.

1. The Gender Quota in the Proposed System

The quota system proposed in Article 64 of the draft law prepared by the NCELR in Lebanon carries several positive points, which make it more in accordance with democratic principles and electoral principles. Yet, the provisions of Article 64 are prone to remain symbolic and open to manipulation because they lack the necessary legal mechanisms which would have guaranteed their effectiveness.

The suggested quota system in the proposed law for the election of members of the parliament prepared by the NCELR carries several positive points, which make it more concordant with the principles of democratic elections. These consist of the adoption of the quota at the level of candidates, its imposition within the framework of a proportional system in large districts, its adoption as a temporary procedure, and the inclusion of harsh penalties in case of non-compliance. What follows are comments on each of these four aspects.

First, the adoption of the proposed law for the quota system at the level of candidates (rather than seats) safeguards the voter's freedom of choice and encourages women candidates to make maximum personal efforts to enter parliament. By contrast, the

8. For more information on the Lebanese Republic's response to the questionnaire sent to governments concerning the implementation of the Beijing platform for action (1995) and the results of the 23rd special session of the General Assembly (2000), see: the Regional Arabic Conference 10 years after Beijing: A call for Peace, Beirut 2004, www.escwa.org.lb

quota system imposed on seats constrains the choice of the voter and constitutes a serious breach of the principle of equality as it also makes women less eager to engage in electoral races since their parliamentary seats will already be guaranteed no matter what happens.

Second, the draft law is notable for its complete harmonization between adopting the gender quota on the lists of a proportional system on the one hand, and large districts (governorates) on the other hand. Proportionality makes voting fundamentally tied up with political, intellectual, and rational factors whereby the electoral agenda overshadows the political loyalties of candidates, namely their belonging to a political family or particular sect. Concerning districts, the larger the district the further the voter is from the candidate and consequently the freer he/she is from the constraints of the region, the local leadership (*za'ama*) and the sectarian authority. This allows his/her choice to become based on intellectual and political factors because in this case the relationship between the candidate and the voter loses its personal dimension. International experiences have proven that the percentages of women in parliament in electoral systems that adopt proportionality exceed by twofold the percentage of women's participation in majoritarian electoral systems (Norris, 2006), 10.5 percent being the latter and 19.6 percent the former (Inter Parliamentary Union, 2005).

Third, the proposed quota system conforms to one of the main conditions for the gender quota and for policies of affirmative action by suggesting that the quota be a temporary measure for three consecutive electoral terms (Article 64), until the accomplishment of the goals for which the quota was first established. This aspect guarantees that the quota is not transformed into a fixed and eternal basis for discrimination.

Fourth and last, the writers of this draft law have suggested the imposition of harsh penalties on lists which do not respect the quota, including disqualifying the entire lists by concerned official authorities and so according to Article 66 of the proposed law. While such a penalty is undoubtedly among the harshest of its kind, it may lead to placing women's names on lists merely as tokens, regardless of their qualifications and simply to render the list acceptable to electoral authorities. It is therefore better to adopt a different penalty that is more just and less categorical.

In spite of the positive attributes of the draft law proposed by the NCELR, the law lacks a few basic components which could better guarantee the effectiveness of the quota and its relevance, and prevent it from becoming a symbolic legal mechanism devoid of all impact. Noticeable in this respect is that the proposed law includes a number of negative points, which must be remedied in order for it to accomplish its goals. These lie in the arrangement of candidates' names on the lists and the intersection of the quota with the system of preferential voting.

First, concerning the order of the candidates on electoral lists, the NCELR could have adopted what is termed as 'double quota', to be implemented within the proportional system. This system requires that the names of women candidates be placed high on the list according to a particular order (for instance a woman's name after each two men's names). If complete freedom is given to the decision-makers on the list, as is

recommended in the new draft law, they may place women's names at the bottom of the list in a way that severely jeopardizes their chances of winning, given that an advantage is always given to those names appearing high on the list. The system of double quota safeguards against preferential voting consecrated by the draft law as we shall see in what follows.

Second, the proposed law adopted the system of preferential voting by giving the voter the option to use two preferred votes, which could lead to the rearrangement of candidates' names on the list according to the wish of the voter, i.e. contrary to the will of those powerful candidates in the list. This system completely goes against the system of double quota and palliates directly the effectiveness of the quota and its relevance. This is due to the fact that preferential voting makes the possibility of women entering parliament exclusively contingent on the will of the voter, i.e. it paralyzes the applied system of affirmative action. Consequently and in order to guarantee the effectiveness of the quota, it is better to annul the system of preferential voting.

2. Means and Mechanisms Pertaining to the Quota

Aside from the pure institutional and legal factors which govern the effectiveness and relevance of the gender quota and with which we have already dealt, the implementation of the quota is also governed by other factors impacting directly and indirectly the aims for which the quota has been set. Most important among these factors is the penalty imposed in case of non-compliance, the voluntary quota which political parties can impose on themselves, and the role of civil society in overseeing the implementation of the quota.

a. Penalties for Non-Compliance

Undoubtedly, the relevance of the quota and its ability to lead to a serious improvement in women's participation depends principally on the existence of penalties without which the rules of the quota remain formal and symbolic. It should be noted that the implementation of penalties in Lebanon differs from that in other more politically advanced nations, which have integrated the quota into their electoral laws. In such nations, the political forces are composed of stable and organized parties which compete for power in a democratic fashion. In France for instance, the penalty for non-compliance with the principle of parity between the sexes, which was introduced into the electoral system according to the law dated 6/6/2000, is such that parties in infringement of the quota law cease to receive financial assistance from the state. Obviously, this model cannot be replicated in Lebanon because political parties are not structured institutions but rather revolve around sects, a region, or a prominent person and because they are loosely organized. Consequently, and while awaiting the development of political parties in Lebanon, penalties must be implemented outside the party framework where they can take several and various forms.

The NCELR's suggested penalty to disqualify the list categorically as mentioned above, has several shortcomings and therefore should be replaced with other penalties such as leaving those seats which are legally allocated to women empty in case the members of a given list bar women's participation in that list. Such a penalty would lead to the filling of the empty seat with a candidate from another competing list, thus causing the list which received the highest votes to lose one or more seats. This penalty seems

most appropriate to the principles of democracy because it avoids inserting women into lists merely to “fill the gaps” as is often the case when applying the penalty of list disqualification. Also, a penalty could be introduced to deprive a list which does not implement the quota of material assistance from the state, and to give this assistance to other lists which do comply with the required quota. This assistance might include relieving list members of the candidacy fee or other forms of benefits, knowing that such assistance loses its effectiveness when applied within a political environment plagued by bribery and where the costs of electoral campaigns can reach exorbitant heights.

b. The Voluntary Quota in Political Parties

The voluntary quota implemented by political parties according to their own internal regulations (charters, constitutions, bylaws) represents a second kind of gender quota. In this case, the quota can be applied to the total number of those seeking candidacy, all of them members of a party. It can also be directly applied to candidates whereby the party allocates a particular percentage for women from all those who present their candidacy. This kind of quota has been adopted by 161 parties in 73 states. In France, for example, the Socialist Party adopted this measure in 1990 by a percentage of 50 percent for each of the two sexes on its electoral lists. In Denmark, the Socialist People’s Party was the first party in the world to adopt the quota in 1977 by a percentage of 40 percent which was then annulled in 1996. That same party adopted a 40 percent quota on candidates for the European parliamentary elections, which was then annulled in 1999. In the Arab world, the voluntary quota was adopted in Algeria where the National Liberation Front implemented a ratio of two women out of the five highest ranking women candidates in all of the 48 districts; the Movement of Society for Peace adopted a percentage of 20 percent at the level of all candidates in all districts and a percentage of 33 percent on candidates in small districts. Moreover, the Socialist Union of Popular Forces in Morocco adopted a quota of 20 percent on lists. In Tunisia, the Democratic Constitutional Rally adopted a quota of 25 percent on candidacy.

In Lebanon, however, none of the current political parties has yet adopted the principle of the gender quota, whether on the level of leadership positions inside the party or at the level of candidates. This shortcoming is a result of the nature of political life in Lebanon which still revolves around traditional structures such as the sect, the family, and the *za’im* (i.e. local leader). It must be noted, however, that the bylaws and constitutions of some Lebanese political parties include a number of principles dealing with women and their political participation, without any clear or specific mechanism to ensure this participation.

For instance, the charter of the Free Patriotic Movement (FPM) states in principle that: “men and women are equal in rights and obligations, since women are fundamental partners in the building of society and in political decision making”. The FPM also aims to “eliminate all legal and social distinctions between men and women and promote equality through practice on the basis of competence and aptitude”.⁹ This particular clause indicates clearly that the writers of this charter have either intentionally or unintentionally avoided the principle of gender quota and have instead adopted the principle of merit as the sole criterion for women’s participation, without any mention

9. The full text of the Charter of the Free Patriotic Movement is available at: <http://www.tayyar.org/Tayyar/FPMParty/CharterNLogo/Charter.htm>

of how to advance this participation through specific procedures which could lead to accomplishing equality in opportunities. Also, the founding bylaws of the National Liberal Party, which was last amended in 1998 (amended in 19/2/1967, 17/7/1987 and 12/9/1998) does not mention the issue of women's representation, only the principle of absolute equality.

The quota system proposed by the NCELR, in spite of its many shortcomings, does represent an essential progress in terms of advancing women's representation in politics. However, over and above the necessity of amending it with the many provisions above mentioned, this quota system needs the support of civil society which must shoulder the task of facilitating the implementation of the quota and making it more efficient to guarantee the desired outcome. Civil society carries an essential responsibility to support women candidates in all possible ways and, more importantly, in supporting their electoral campaigns logistically and morally when necessary.

The temporary and provisional nature of the quota makes the involvement in civil society a matter of utmost necessity and urgency especially during the first three electoral terms following the adoption of the proposed law. Moreover, civil society has a vital role to play in the public dissemination of information about the quota, as well as in encouraging women's participation in politics and in representative councils. This can be done through collecting statistics, organizing conferences and workshops, and by assisting and encouraging parties to implement the quota in their bylaws.

In conclusion, amidst political contentions and profound disagreements in Lebanon, it remains to be noted that the complete avoidance of the draft law prepared by the NCELR regarding the parliamentary electoral law is deeply regrettable. This proposal has many attributes that can contribute to strengthening democracy and transparency and guaranteeing fair representation. Therefore, it is the task of civil society and the makers of public opinion to remind the public and stakeholders of the draft law prepared by the NCELR, and to work on bringing it up again for debate, and highlighting its many positive aspects.

Mark El-Makary is a lawyer
Translated from Arabic by Samar Kanafani

REFERENCES

- Favoreu, L.** (1996). Principe d'égalité et représentation politique des femmes: La France et les exemples étrangers. Rapport public du Conseil d'État, 48, 395-407.
- Favoreu, L., Philip, L., et al.** (2005). *Les grandes décisions du Conseil constitutionnel*. Paris: Dalloz.
- Helou, M.** (2002). Al-Mar'a wa Intikhabaat 2000: Takris, taqlid aw mu'ashir taghyir? In *Al-Intikhabaat al-Niyabiyya fi Lubnan 2000: Bayna al-'i'ada wal taghyir*. Beirut: Al-Markaz al-Lubnani lil Dirasat.
- Inter-Parliamentary Union.** (2005). *Women in national parliaments: Global charts*. Retrieved August 10, 2007, from <http://www.ipu.org/wmn-e/arc/classif310105.htm>
- Krayem, H.** (2003). *Ta'ziz Tamthil al-Mar'a fi al-Majalis al-Mahalliyya wa Iqtiraah tatbiq al-quota fi Lubnan*. Beirut: Lajnat Huquq al-Mar'a al-Lubnaniyya.
- Levade, A.** (2004). Discrimination positive et principe d'égalité en droit français. *Pouvoirs*, 4 (111), 55-71.
- Norris, P.** (2006). The impact of electoral reform on women's representation. *Acta Politica*, 41, 197-213.
- Perreau, B.** (2004). L'invention républicaine. Eléments d'une herméneutique minoritaire. *Pouvoirs*, 4 (111), 41-53.
- Sabbagh, D.** (2003). *L'égalité par le droit. Les paradoxes de la discrimination positive aux Etats-Unis*. Paris: Economica: Collection Études politiques.
- Stasse, F.** (2004). Pour les discriminations positives. *Pouvoirs*, 4 (111), 119-132.