

Political Rights of Women between the Empowerment of the Legal Text and the Marginalization of the Actual Reality: Case Study of Algerian Legislation and International Conventions.

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ABSTRACT

Algeria provided for a set of legal mechanisms, which would strike a balance in political representation between men and women. Despite all the efforts made to enable women to contribute to the development of society, their political participation has not reached the level of national legislation and international conventions due to many obstacles to their effective implementation. Therefore, the study aims to determine the suitability of legislation with what is enshrined in the actual reality of the political rights of women, and the disclosure of the extent of Algerian legislation cope with what is supported in international conventions on women's political rights. Perhaps this leads us to address the questions posed by the study are: How can the state to consolidate the political rights of women on the ground? What are the mechanisms for

protecting these rights under the legal system? Is Algerian legislation in line with what is enshrined and adopted in international conventions and conventions on the political rights of women as an effective component of the overall development of society?

Keywords: Algeria, enshrined, marginalization, empowerment, Algerian legal system

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INTRODUCTION

Women's issues are the subject of much debate between jurists, politicians and researchers, for this reason, the various Algerian legislations include the political rights of women, which stipulate the right of women to vote and to run, the right to hold public office, and the establishment of political parties.

Algeria has strengthened its protection of women's rights following its accession and ratification of several international conventions, Such as the UN Convention on the Elimination of All Forms of Discrimination against Women.

The various amended Algerian constitutions also provided for a set of legal mechanisms that would balance political representation between men and women.

This study sheds light on the evaluation of the role of the national and international legal system in promoting the political rights of women and the extent of their devotion in their real lives.

IMPORTANCE OF THE STUDY

- 1- The importance and seriousness of the study is determined by the relationship of the legal system to the promotion and activation of the role of women in political life and how to maintain their status as an active member of society.
- 2- Clarify the position of the Algerian legal system on the importance of preserving women's effective participation and exercise of their political rights.

OBJECTIVES OF THE STUDY

- 1- Determining the compatibility of national legislation with the established and enshrined de facto political rights of women.
- 2- Identify the degree of awareness of Algerian women of their political rights and the extent of their interaction with them.

- 3- To reveal the suitability of the Algerian legislation to what is adopted in the international conventions on the political rights of women as an effective element of development within society.

The study methodology

Ingres Morris defines the approach as "An organized set of processes that seek to achieve a goal" (Ingres Morris, 2004, p 98), Also, EL-Said Ahmed Mustafa Omar defines the approach as: "A series of procedures the researcher seeks to follow in the framework of commitment to the application of certain rules" (EL-Said Ahmed Mustafa Omar, 2002, p 166). As we seek information to identify the role of the national and international legal system in promoting the political rights of women and the extent of their devotion in their real lives.

We can say that this study falls within descriptive research, which relies on the use of descriptive method, which is interested in explaining and clarifying situations and events. The study of this subject requires the use of the historical approach, which helped us to shed light on the position of national and international legislation and the extent of urging women to exercise their political rights.

It also helped us to study the historical development of women's political role through the stages of constitutional amendment.

The analytical approach was also used to mention the characteristics and conditions of the relationship between the legal texts and the process of spreading awareness among different segments of society on the need to preserve the entity of women and their role in achieving comprehensive development.

In order to address the problem of research, we considered to divide the research into two subjects:

- We studied the theory of how to promote and embody the political rights of women under national legislation and international conventions (the first topic).
- We discussed the practical side by studying the actual reality

of women and the challenges of their participation in political life (second topic).

The first topic: women's political rights between Algerian legislation and international conventions

The first requirement: the position of the Algerian legislator on women's political rights

1- Women's right to vote

The right to vote means positive participation in elections and referendums (Boutrriaa Chamama, 2011, p15). Considering that the Constitution is the statute of the State and the supreme legal norm, it explicitly affirms the right of women to vote as a constitutional right and obliges non-discrimination of the sex of any kind (Saadi Nourdine, 1991, p135):

- The Constitution of 1963, in its article 10, states that "the main objectives of the People's Democratic Republic of Algeria are: to resist all forms of discrimination, in particular racial and religious discrimination";
- Article 12 states: "All citizens of both sexes have the same rights and the same duties";
- Article 13 also stipulates: "Every citizen who has completed 19 years of age shall have the right to vote." Article 13 of the 1963 Constitution establishes the right to vote.
- With regard to the 1976 Constitution, many articles affirm the right of women to exercise all their political rights:
 - Article 39 states that: "Fundamental freedoms, human rights and citizens shall be guaranteed. All citizens are equal in rights and duties. Any discrimination based on prejudices relating to sex, race or craft shall be repealed",
 - While Article 42 of the same Constitution states: "The Constitution guarantees all political, economic, social and cultural rights of Algerian women",
 - Also, Article 58 states: "Every citizen who meets the legal requirements shall be considered a voter and is eligible for election."It is clear that the constitutional founder gave women all their rights and focused on their political rights, specifically the right to vote (Khaled Mostafa Fahmy, 2007, p125)
- The 1989 Constitution formed a new era and established multi-party, political and media pluralism. It emphasizes equality without discrimination between citizens; as stated in Article 28: "All citizens are equal before the law and cannot invoke any discrimination as a result of birth, race, sex, opinion, or any other personal or social condition or circumstance".
 - Article 47 also explicitly provides for the right of women to vote: "Every citizen who meets the legal requirements may be elected and elected".
- With regard to the 1996 Constitution, Article 62 came in the same direction as Article 47 of the 1989 Constitution: "Every citizen who meets the legal requirements may elect and be elected".
The Constitution's use of the word citizen in article 47 is gender-specific and is in the process of excluding

discrimination in all its forms (Zad Elkheir Taitila, 2014, p 16).

This is a confirmation and recognition by the constitutional founder of the right to vote for women without any discrimination between them and men (Harizi Zakaria, 2001, p 107).

- The amendment of the 2008 constitution added new to women's political rights; Article 31 bis has been added: "The State shall promote the political rights of women by expanding the chances of their representation in elected councils (Hafsia Ben Achi, Hussein Ben Achi, 2014, p 108).
 - The right of women to vote is also explicitly reflected in the organic law on elections, as various Algerian laws relating to the organization of elections redrafted this principle, starting with the law of 1980 to 2012 (Boutrriaa Chamama, 2011, p 77).
 - The majority of laws and texts relating to elections equal women to men with respect to voting, starting with Law 80-08 (Articles 4 and 7, paragraph 2), and Law 89-13 in Articles 3 and 7, and Law 97-07 in Articles 5, Up to Law 12-01 () in Article 3
 - It should be noted here that Algerian women have often been unable to exercise their right to vote because of proxy voting, because this type of vote is an obstacle to women, depriving them of their full role.
 - However, in 1997, by virtue of Ordinance 97-07, the principle of voting personality was effectively enshrined where proxy voting was abolished (Akreib Asia Ben Madi Namira, 2013, p17). Article 31 of the new law 12-01 states that voting is personal, which reads as follows: "Voting is personal and confidential" (Benjaballah Souad, 2004, p158).
- #### 2- The right of women to stand for election
- The right of candidacy is defined by applying for the right of membership in the parliaments, whether parliament or local councils (municipal, state), by applying for candidacy to the competent authority and offering an acceptable electoral program to citizens and fair competition in the candidacy (Khaled Mostafa Fahmy, 2007, p137).
- Freedom of candidacy and decent admission before 2008
 - The right to stand for Algerian women has been constitutionally guaranteed since Algeria's independence (Zad Elkheir Taitila, 2014, p 18); the right to stand in the 1963 Constitution was implicitly recognized. It did not contain articles expressly stipulating this right, whether at the national or local level, except as provided for in article 27: "The national sovereignty of the people exercised by its representatives in the National Assembly and nominated by the National Liberation Front".
 - Under this Constitution, the right to stand for election to office is not addressed, but it has accepted the Universal Declaration of Human Rights 1948, which stipulates equality in Article 21: "Everyone has the right to take part in the government of his country, directly

- or through freely chosen representatives” (Akreib Asia Ben Madi Namira, 2013, p20).
- The Constitution of 1976, stipulated this right in Article 58 of the Constitution, which states that: "Every citizen who meets the legal requirements is considered a voter and electable (Msrati Salima, p192).
 - We find that the constitutional founder did not put gender differences to run for president, the problem lies in practice and reality shows the weak presence of women at the level of electoral structures (Taiboubi Amira, 2012, p81).
 - As for the 1989 Constitution, Article 28 stipulates: "All citizens are equal before the law and cannot invoke any discrimination due to birth, sex, opinion, or any other personal or social condition or circumstance" (Zad Elkheir Taitila, 2014, p 16).
 - As for the 1996 Constitution, it stipulates the right to run for public office according to Article 62 of the 1996 Constitution.
 - It is noteworthy here that the four constitutions granted Algerian women their right to stand for election, but the difference is that under unilateralism the right of candidacy was restricted to members of the National Liberation Front, while in the context of multi-partyism has opened the door for political activism has become free (Msrati Salima, p192).
- Involving women by force of law (after 2008)
- The political participation of Algerian women has been expanded, and the year 2008 is considered a victory for them. An organic law has been prepared that allows the application of Article 35 on the promotion of women's political rights (Ben Achi Hafsia, Ben Achi Hussein, p 107), This is what the President of the Republic pledged in a historic speech (Speech of the President of the Republic, 2008).
- Organic Law 12-03 also stipulates the activation of the political participation of Algerian women through Article 4: "The declaration of candidacy stipulated in the Law on the Electoral System", Article (6): "In the cases of disagreement provided for in the organic law on elections and the laws relating to the municipality and the state, the candidate or elected shall be replaced by a candidate of the same sex (Law 12-03), This is aimed at strengthening the political status of women and expanding their chances of being represented in elected assemblies at all levels.
- After the amendment of 2008, the quota system was implemented in 2012, which is a mechanism to enhance women's participation in political life by allocating seats in elected councils up to 30%, 40% minimum and 50% maximum (Djeral Kahina, 2015, p21).
- The quota system allowed women to participate in the electoral process fairly as an effective partner in the development of society (Issam Ben Cheikh, 2011, p269).
- 3- The right of women to hold public office
- Holding public office is a legal means of exercising a competition for power between the sexes in a legitimate and fair manner (Mehrez Mabrouka, 2014, p25).
- Women hold senior positions in the State
- Ordinance No. 06-03 of 15/7/2006, the general basic law of the public service, the principle of non-discrimination between women and men in employment, the power of appointment to senior positions in the State is based on experience and competence.
 - According to Article 6 of Ordinance 06-03, the competent discretion is in charge of appointing a staff member.
 - But what we observe when applying the article 62 of the Constitution 1996 of modest attendance, which is almost non-existent for women as a candidate to run public affairs at the state level (Kaderi Abdelaziz, 2013, p79).
 - Women were able to represent 64.5% of the electorate and participated in 50.6% of that percentage, and 77.33% of the electorate cast their votes (Issam Ben Cheikh, 2011, p279).
 - The participation of women in the nomination was the candidacy of Mrs. Louisa Hanoune, the President of the Labor Party, who participated in 2004 and won more than one million votes in the 2009 elections (Issam Ben Cheikh, 2011, p279).
 - As for the ministry, the highest position of Algerian women in the political sphere was in the period of the late President Chadli Ben Jadid. Ms. Zohour Winisi held several ministerial positions (Harizi Zakaria, 2011, p99).
 - As for the presence of women at the government level, their entry was in 1982, But at low rates, women are appointed only to positions on social issues (Kaderi Abdelaziz, 2013, p111).
 - Article 78 of Law 12-01 stipulates that both sexes may run for local people's councils as follows:
- ✓ Municipal People's Councils
 - Article 16 of the 1996 Constitution stipulates: "The elected council shall be a decentralized base and the place of citizens' participation in the conduct of public affairs", **The Municipal People's Assembly elects its members by direct universal suffrage for 5 years** (Jahimi Hadda, 2014, p56).
 - Women have seen remarkable progress in their representation, especially in the local elections held on 29/11/2012; this was reinforced by the enactment of Law 12-03, which imposed a quota system, on the expansion of women's fortunes in elected councils.
 - At the municipal level, the quota system allocated 12% of the seats (Youtji Samia, 2015, p11).
- ✓ State People's Councils
 - The representation of women in the state people's assemblies was very weak. The number of women candidates for the elections in 1969, about 125 women was elected, including 45 women.
 - During the seventies, the presence of women on the level of these councils is almost non-existent, but during the period of Algeria's adoption of multiparty in the 1989 Constitution, the representation of women witnessed a decisive increase compared to the previous

one (Hamza Nach, 2012, p91).

- 4- Women's right to establish political parties
- Article 10, paragraph 1, of the Political Parties Act states: "Every Algerian man and woman of legal age shall attain the legal age of majority, and shall hold Algerian nationality in one political party" (Msрати Salima, P208). At the time of the establishment of the party, article 17 of the same law stipulates that a proportion of women must be represented within the founding members.
- Article 24 of the 12-04 Law on Parties states that "the number of congresses shall include a percentage of women and shall have the same opportunity to determine the details of the party and its bodies and statute.

The second requirement: the position of international conventions on women's political rights

- 1- Charter of the United Nations 1945
 - The UN Charter is the first international convention to explicitly state the principle of equality between men and women and non-discrimination in all rights (Ghanem Lahcen, 2013, p 17).
 - Article 1 of the Charter states: "Respect for and promotion of human rights and fundamental freedoms of all people without distinction as to race, sex, language or religion, and no distinction between women and men (Mohamed Saadi, 2002, p 63).
 - United Nations instruments have focused on equality in human rights, In particular with regard to women's rights, by calling on States parties to strive to eliminate all forms of discrimination between women and men, and also contributed to the promotion and promotion of women, especially in the political field (Hala Said Tebsi, 2011, p28).
- 2- Universal Declaration of Human Rights 1948
 - Algeria joined the list of countries that have ratified the Universal Declaration of Human Rights in 1963, where it has shown its commitment to equality between men and women (Youtji Samia, 2015, p 9).
 - The Universal Declaration of Human Rights constitutes the general international legal framework guaranteeing women's political rights (Bara Samir, 2015, p 235).
- 3- International Covenants on Civil and Political Rights 1966
 - Article 3 of the First International Covenant of 1966 states: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant".
 - Algeria ratified the International Covenants on Civil and Political Rights and the Optional Protocol on 16 May 1989. It was published in the Official Gazette of the Democratic Republic of Algeria with explanatory statements of articles: 23-22-3 in the first preambular

paragraph of the Covenant.

- The International Covenant on Civil and Political Rights (ICCPR) has focused on the principle of equal rights and recognition of equal rights, which do not differentiate all elements of the human family.
 - With regard to the 1981 Convention, this includes the abandonment of all forms of discrimination against women, ratified by Algeria on 22 January 1996, with reservations in articles 9-2 / 15-2 / 16-29-1.
- 4- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
The General Assembly of the United Nations encouraged the steps to prepare and conclude this Convention to eliminate all forms of discrimination against women. It was officially adopted as an international convention on 18/12/1979.
In 2003; The Convention has been ratified by 171 countries, including 16 Arab countries (Algeria, Jordan, Comoros, Iraq, Kuwait, Morocco, Saudi Arabia, Tunisia, Lebanon, Libya, Egypt, Yemen, Djibouti, Bahrain, Mauritania, and Syria).
The Convention, which consists of 6 parts and 30 articles in addition to its preamble, recognizes that discrimination against women constitutes a violation of the principles of equal rights and respect for dignity, and constitutes an obstacle to women's equal participation in political, social and cultural life.
Articles 3.4.5 provide for positive measures to ensure de facto equality in all fields and for women to exercise their human rights and fundamental freedoms and to modify social and cultural patterns of behavior that perpetuate the inferiority of women or gender or those based on stereotypical roles of men and women.
Article 7 and 8 stated that discrimination against women in political and public life must be eliminated at the national and international levels.
 - 5- Charter of the League of Arab States
A permanent Arab Human Rights Committee was established in 1968 to deal with all matters relating to rights at the Arab and international levels.
In 1976, a special department for women's affairs was established at the level of the League of Arab States. In September 1994, the Arab Charter for Human Rights was issued by the Council of the League of Arab States (Mehrez Mabrouka, 2014, p56).
 - 6- Arab Charter on Human Rights
Approved in Tunis on 23/5/2004; several provisions relating to the equal rights of men and women are included.
Article 3 states: "Men and women are equal in human dignity, rights and duties in the light of the positive discrimination established by Islamic law and other divine laws, legislation and covenants in force in favor of women.
Accordingly, each State Party undertakes to take all necessary measures to ensure equal opportunities and effective equality between women and men in the

enjoyment of all the rights set forth in this Charter”.

7- African Charter on Human and Peoples' Rights Approved by the African Presidents Council on the occasion of the 18th Ordinary Session of the Organization of African Unity (OAU) in Nairobi, Kenya on 27/6/1981, and entered into force on 21/10/198.

The African Charter contains several provisions relating to equality between men and women, including political rights.

Article 13 of the African Charter on Human Rights explicitly stipulates equality in political rights:

- All citizens have the right to participate freely in the management of public affairs of their country, directly or through freely chosen representatives, in accordance with the provisions of the law.
- All citizens also have the right to hold public office in their country.
- Everyone has the right to benefit from public property and services in full equality before the law.

The second topic: the actual reality of the role of women Algerian government institutions

The first requirement: the fact that women are represented in constitutional institutions

1- The status of women in the National People's Assembly

Women entered parliament immediately after independence in 1962 in the legislative body called then the Constituent Assembly, which included 10 women, and in 1964 the number fell to two women, but in the parliamentary phase of 1977 to 1982, the number rose to 10 women, and then fell again to 5 women in custody from 1982 to 1987 (Zad Elkheir Taitila, 2014, p18).

In the parliamentary period 1977-1982, the number of women rose to 10 out of 261 deputies, and in the 1982-1987 parliamentary period, the number of women fell to 7 out of 295 deputies (Didane Mouloud, 2015, p391). It is worth mentioning that the political participation of Algerian women is nothing more than a picture of the extent to which the state applies the democratic approach (Badi Samia, 2015, p128).

2- The status of women in the National Assembly

The National Assembly was approved by the Constitutional Review of 1996, where the number of women did not exceed 3 of the 68 seats (Mohoubiamin, 2012, p80).

The Algerian legislator has approved the right to stand for membership in the Council of Nation. This is reflected in the first paragraph of Article 107 of Organic Law 12-01 on the Electoral Law, which reads: “Every member of a municipal or state assembly that meets the legal requirements can be a member of the National Assembly”. This is in order to expand the chances of women's participation in elected councils according to Article 35 of the 1996 Constitution: "The State shall promote the political rights of women by expanding their chances in elected councils" (Onahi Hani, Hammou Abdelmalek, 2015, p 80).

3- Constitutional Council

It is noteworthy that the composition of the Constitutional Council did not include the component of women only in January 1999, after 10 years of the life of the Council. The first woman, “Ghania Labyed”, was appointed in January 1999 to March 2005, representing the State Council, and a second woman, “Fella Hani”, was appointed by the President of the Republic to the Constitutional Council between 2001-2004 (Laachab Mahfouz, 2001, p 155).

As for the period from March 2005 to 2014, within the composition of nine members also known the presence of Ms. “Farida Laroussi” as a member of the Constitutional Council (Hosni Boudyar, 2003, p 107).

In April 2011, Ms. Hanifa Bin Shaaban and Mrs. Fawzia Bin Qala were also present as members in March 2012 (The Constitutional Council's composition document).

4- Ministries

The first presence of women in the ministry was in 1982 () when the first Algerian minister, Mrs. Zohour Wenissi, and the deputy minister, Mrs. Leila El Tayeb, were appointed.

The role of women as ministers was limited to attention to social issues as well as family issues.

As for the period 1982-1988, two women were appointed to ministerial positions among 33 ministers, but from 1988 to 1991, no woman headed the ministry (Mohoubiamin, 2012, p 102).

In the period from 1991-1994, we find seven (7) women ministers (Hamza Nach, 2012, p 96).

In the period 1995-2003, there were eight women ministers (Mohoubiamin, 2012, p 102).

It is worth mentioning here that a woman was appointed for the first time (in the post of governor) in 1999 under the authority of President Abdelaziz Bouteflika.

During the 2003 Ministerial Amendment, the number of women in the ministry rose to four, and President Bouteflika in 2008 promoted the first woman to the rank of general in the National People's Army (Djeral Kahina, 2015, p 141).

The second requirement: the challenges facing the political participation of women

1- Special difficulties

It is a set of barriers associated with the woman's own and related personality, which can be mentioned as follows:

- Family factors
The fact that married women are obliged to play the role of housewife is a strong reason for many presidents not to grant women their right to be promoted in senior leadership positions, as their many commitments negatively affect their political participation and reduce their efficiency in managing senior positions.
- subjective factors
 - Women's preference for social issues over political issues.
 - Such leadership work requires women to travel and

meetings and work on holidays and vacations, and this is the rejection and disapproval of the family.

- The inability of women to leave their children and husband for these positions.
- Women fear the negative perception of society towards the political attitude of women.

2- General difficulties

The marginalization of women in political life is due to several factors, the most important of which are:

- Socio-cultural factors
 - Popular culture, customs and traditions: men are better able to bear the consequences of political action, and there are aspects that women are unable to engage in because of their difficult.
 - Socializing: School, street, and family are effective tools that enable an individual to socialize, These institutions have inherited children certain concepts about women, such as the need to recognize that they have certain limits that must not be exceeded because their capacity is weak compared to men, especially in the field of political leadership (Ghazi Rababaa, Issue 5, p 171).
- Political factors
 - The legislative framework for positive discrimination in favor of women has been delayed.
 - Weak and fragile party support for women.
 - Weak media focus on female models that have achieved successes and achievements in the field of political leadership and strategic positions in the country.
 - Failure of the media to give women adequate opportunity to communicate their voices.
 - The tendency of the media practice to isolate the issues of women's participation in political life and enable them to enjoy all their political rights from citizenship issues.
 - The absence of media initiatives aimed at raising awareness and organizing media campaigns to encourage and encourage women to engage in politics (Issam Ben Cheikh, 2011, p 279).

3-Religious factors

Islamic law has preserved women's political rights, and these rights cannot be revoked; however, it may happen that doctrinal opinions differ between opponents and supporters in the extent of women's involvement and equality with men in political rights (Yahyaoui Oumar, 2001,p 87).

The rights that Islam has attributed to women are: the right to vote, the right to participate in meetings, the right to defense and war, the right to participate in political representation and the issuance of political decision

It should be noted that the participation of women in political affairs is significant in Islamic history, where the mosque was the House of Public Affairs and women attended the mosque and participated in the opinion and advice.

- Women also participated in immigration and sales.
- Women participated in peace and war.

- Women who have been urged by the special respect of Muslims through reality find the mother of the faithful Khadija may Allah be pleased with her, and her great role in the lives of Muslim politicians (- Mohammed Tayeb Dehimi, 2015, p 31).

CONCLUSION

Proceeding from the above, we find that despite the enhancement of women's participation in political life, both through the conventions and conventions ratified by Algeria. Or at the level of internal laws that have been included in order to enable women to achieve their political role effectively, especially after the activation of the quota system that seeks to expand the fortunes of women in elected councils.

However, these endeavors have not been able to achieve the principle of equality between men and women, especially with regard to their political rights, due to several obstacles and difficulties, especially public and general, such as the lack of acceptance of the idea of equality between men and women, especially in leadership positions, and discouraged women in the challenges and political battles; In addition, women's lack of awareness of their legally established political rights and a lack of community confidence in women's skills and abilities.

In order to find the necessary and effective solutions to eliminate all forms of discrimination against women and de facto gender inequality we propose some recommendations that can be applied in practice:

- Raising women's awareness of their political rights through their effective integration into political life.
- Developing women leadership skills.
- Empowering women to participate in political life through the effective application of legal texts through realizing gender equality.

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