



Report

Intersectionality and Electoral Justice

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Introduction

This paper explores the role of intersectionality in the context of electoral justice, seeking to understand specifically how race, ethnicity, and gender intersect to impact women's ability to exercise their political-electoral rights, particularly with respect to accessing electoral justice.¹ The paper begins with a discussion of whether/how the political rights of Indigenous women, Afro-descendant women, and women from other ethnic identities are guaranteed (or not) through legal frameworks and recognized and enforced by key decisions of electoral courts. This includes an analysis of several illustrative cases as well as an assessment of strategies and other interventions states have used to promote the effective political representation of Indigenous women, Afro-descendant women, and ethnic-minority women. The paper concludes with a discussion of promising practices and recommendations.

What is intersectionality?

The concept of intersectionality was so named in 1989 by Dr. Kimberlé Crenshaw, a law professor in the United States. Dr. Crenshaw used the term to describe the exclusion of the specific experiences of Black women in the context of discussions of race and gender politics in the United States because “both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender” (Crenshaw, 1989, p. 140). She noted that because “the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated” (Crenshaw, 1989).

“courts seem to think that race discrimination was what happened to all black people across gender and sex discrimination was what happened to all women, and if that is your framework, of course, what happens to black women and other women of color is going to be difficult to see.” – Dr. Kimberlé Crenshaw

While the concept of intersectionality began with this discussion of race and sex in America, it has broadened beyond the United States and evolved to encompass the experiences of people multiple marginalized identities. This includes but is not limited to, women; LGBTQI+ people; members of diverse racial, ethnic, and religious identities; Indigenous peoples; displaced persons; older people; young people, and persons with disabilities. There is now additional attention paid to the way this diverse set of identities

¹ As detailed further in the next section, discussions of intersectionality include an array of identities, including gender identity, sexual orientation, age, disability, religion, and human mobility status, among others. The discussion in this paper is focused on the intersection of gender and racial and ethnic identities.

may interact to result in disadvantage or discrimination that amounts to more than the sum of their parts. For example, as described by UN Women, intersectionality is “understood as the need to analyze overlapping categories and situations of inequality in which women find themselves that, therefore, multiply the discrimination they suffer” (UN Women, 2021). In some instances, the broadening of this concept of intersectionality has resulted in the discounting of the specific impact race has on the experiences of women seeking to participate in politics.

“a multidimensional and intercultural approach is required that takes into account factors such as ethnicity, race, age, sexual orientation, gender identity and disability or migratory status, among others. These factors affect the full exercise of their rights, including their political rights, considering women in these situations, due to pre-existing structural forms of discrimination and harmful practices, face greater barriers to organizing, building a political career and making their voice heard through social movements.” - UN Women

As detailed in the next section, women of all identities continue to face cultural, societal, and structural barriers to their participation in political and electoral life. These challenges and barriers are particularly high for women with multiple marginalized identities. And, as

was the case in 1989, when Dr. Crenshaw coined the term, they may be highest for women of color, Indigenous women, and women of diverse ethnic identities, hence the focus on these groups in the discussion that follows.

Legal and policy framework

In 1995, 189 countries adopted the Beijing Declaration and Platform for action, setting non-binding strategic objectives and actions to advance gender equality in 12 areas, including “women in power and decision-making” (United Nations, 1995). Despite this consensus, and considerable progress, thirty years later women remain under-represented in elected leadership and other decision-making roles. According to UN Women, women represent only 27.2 percent of seats in national parliaments (lower/single houses) and serve as heads of state or government in just 29 countries; only six countries have achieved parity in their national legislature (UN Women, 2025). Representation of Afro-descendant women, Indigenous women, and women from diverse religious and ethnic identities is even lower, although comprehensive data is not available, itself an indicator of insufficient attention to intersectionality.²

In addition to the Beijing Declaration, the international community has adopted other policy statements as well as binding international laws and treaties to affirm a global commitment and requirement to action to achieve gender equality. Article 3 of the International Covenant on Civil and Political Rights (ICCPR) requires States Parties to

² See, e.g., UN Women, 2021: “The lack of systematized and periodic official data in most countries, not only disaggregated by sex, but also based on these criteria [i.e. other intersectional identities], hinders the formulation of evidence-based policies.”

“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” while Article 26 guarantees equal protection of the law including against “discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth of other states” (United Nations (General Assembly) 1966). Article 7 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) speaks specifically to the requirements that states parties take actions toward “eliminating discrimination against women in the political and public life of the country” including with respect to voting, contesting for office, and holding public office (United Nations, 1979).

The CEDAW Committee further detailed actions States Parties should take in General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems. One of the seven pillars outlined in the General Comment, is “intersectionality and the inclusion of women in all their diversity in decision-making systems” (United Nations, Committee on the Elimination of Discrimination against Women [CEDAW], 2024). The Committee notes that “women subjected to intersecting forms of discrimination will encounter additional barriers to access decision-making roles” and that the entire Comment should be “interpreted within an intersectional framework” (CEDAW, 2024). In General Comment No. 39, the Committee specifically considers the experiences of Indigenous women and girls, including the discrimination they face on the basis of their individual and collective identities, noting that individual discrimination “takes intersecting forms and is carried out by both State and non-State actors” (CEDAW, 2022). The Committee also recognizes that Indigenous women do not enjoy equality before the law, which impedes their ability to access and receive justice. This combines with exclusion from “decision-making in local, national and international processes, as well as in their own communities and Indigenous systems” due to “multiple and intersecting barriers to effective, meaningful and real participation” to likely result in particular challenges accessing electoral justice (CEDAW 2022).

Latin America and the Caribbean

Developments in binding regional agreements and national laws have taken steps to acknowledge the impact that intersectionality has on the ability of women of diverse ethnic identities, Afro-descendant women, and Indigenous women to exercise their political and electoral rights. The Latin America and Caribbean region has the most robust regional legal framework in this connection. For example, the American Convention on Human Rights recognizes the human rights of all persons without discrimination (Article 1) as well as the right to participate in government (Article 23) and enjoy equal protection of the law and right to remedy (Articles 24 and 25, respectively) (Organization of American States, 1969). The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women reaffirms women’s entitlement to all human rights, including the right to take part in decision making and the right to equal protection “before the law and of the law” (Article 4) (Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 1994). The Brasilia Consensus, adopted in 2010,

acknowledges the “double discrimination” faced by women of diverse backgrounds, including Afro-descendant women, Indigenous women, young women, and women with disabilities, and calls for measures to ensure their participation in leadership and decision-making (Economic Commission for Latin America and the Caribbean (ECLAC), 2010). Through the Regional Gender Agenda, the member states of the Economic Commission for Latin American and the Caribbean (ECLAC) have adopted a “comprehensive, integrated, and cumulative roadmap” to support national actions to achieve gender equality (ECLAC, 2023). The Regional Gender Agenda includes the Brasilia Consensus, as well as a number of other commitments noting the intersectional nature of the discrimination women face in seeking to exercise their political and electoral rights.³

Likewise, the Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance underscores the obligation of States to guarantee equality and non-discrimination, including in cases of multiple or aggravated discrimination, and to adopt special measures to ensure the full and effective exercise of human rights by groups historically subjected to racial discrimination (OAS, 2013). Furthermore, the work of the Inter-American Commission on Human Rights, through its Special Rapporteurship on the Rights of Indigenous Peoples and its Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination, has contributed to the development of inter-American standards by promoting access to the system, producing thematic reports, and issuing recommendations to States aimed at addressing structural discrimination and ensuring the effective protection of the rights of Indigenous and Afro-descendant peoples, particularly those facing situations of heightened vulnerability.⁴

Additionally, the Inter-American Model Law on Parity between Women and Men in Political and Public Life, developed by the Inter-American Commission of Women (CIM) in 2025, provides guidance through model provisions aimed at guaranteeing the political participation of women who face intersecting forms of discrimination. Article 5 establishes that parity between men and women must include effective and inclusive representation of diverse population groups, including those based on race, ethnicity, and cultural identity (CIM, 2025). The Model Law also calls for the collection and production of disaggregated data to assess compliance and the incorporation of intercultural and territorial approaches, along with a human rights and gender perspective to guarantee the exercise of women’s political rights (CIM, 2025).

³ To date, the Regional Gender Agenda includes Regional Action Plan for the Integration of Women in the Economic and Social Development of Latin America (1977), the Regional Action Program for Women in Latin America and the Caribbean 1995-2001 (1994), the Santiago Consensus (1997), the Lima Consensus (2000), the Mexico Consensus (2004), the Quito Consensus (2007), the Brasilia Consensus (2010), the Santo Domingo Consensus (2013), the Montevideo Strategy for the Implementation of the Regional Gender Agenda within the Framework of Sustainable Development towards 2030 (2016), the Santiago Commitment (2020), the Buenos Aires Commitment (2022) and the Tlatelolco Commitment (2025).

⁴ Additional information can be found at: <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/r/dpad/default.asp> and <https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/R/DPI/mandato.asp>.

Countries in the region – particularly in Latin America – are leading the way with respect to women’s representation in politics, including by enacting laws that specifically criminalize violence against women in political and public life (United Nations and RCP LAC, 2024)⁵ and advancing legislation to promote parity in elected and appointed positions (ECLAC, 2023).⁶ The participation of women in national parliaments exceeds the global average by 9.3 percentage points with some countries making particular progress (United Nations and RCP LAC, 2024). Mexico, for example, is one of only six countries in the world that has achieved parity in the legislature, and in 2024 the country elected a woman president for the first time (UN Women, 2025). However, this overall progress across the region, as UN Women reports, “has not translated into an increased representation of indigenous, Afro-descendant or young women, women with disabilities, or migrant or sexually diverse women” (UN Women, 2021). Indeed, while some countries have reserved seats in their legislative branches for representatives from Indigenous populations, those seats have historically been occupied by men (UN Women, 2021).⁷ For Afro-descendant women – a population estimated at approximately 75 million people across the region, ranging from 10 percent of the population in Central America to up to 50 percent of the population in Brazil and the Caribbean – representation is even more limited. Some data indicates that “only 0.1% of women parliamentarians are of African descent, which means neither affirmative nor parity measures have had a quantitative impact on their access to certain positions of power” (UN Women, 2021).

Europe

As in Latin America and the Caribbean, regional conventions in Europe enshrine principles of non-discrimination and the enjoyment of universal human rights, including the right to equal participation in political and electoral processes. For example, Article 14 of the European Convention on Human Rights specifies that all rights in the Convention “shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Council of Europe, 1950). The Charter of Fundamental Rights of the European Union guarantees equality under the law (Article 20), non-discrimination (Article 21), equality between men and women “in all areas” (Article 23), and the right to vote and stand as a candidate in election to the European Parliament (Article 39) and in domestic municipal elections (Article 40) (European Union, 2012).

⁵ According to UN Women’s Regional Gender Equality profile for Latin American and the Caribbean, “13 countries recognize this form of violence in their regulations and six of them have adopted specific laws” https://lac.unwomen.org/sites/default/files/2025-01/en-regionalgenderprofile-ro_apr24-24_1.pdf.

⁶ Nine countries currently have electoral legislation that includes parity and nine others have quotas that call for a gender representation ranging from between 20% and 40% in electoral candidatures (ECLAC, 2023).

⁷ Bolivia and Guyana appear to be the exceptions as in Bolivia “the approval of parity for popularly elected posts has led to a significant participation of indigenous women” and in Guyana “there are several indigenous women among the ten women currently holding ministerial positions.”

While these human rights conventions are silent on the topic of intersectionality, the European Commission has emphasized intersectionality in the Gender Equality Strategy 2020-2025⁸ and the EU Roadmap for Women's Rights, released in March 2025. Specifically, the Roadmap for Women's Rights includes among its eight principles: "Principle 7: Political participation and equal representation - Every woman has the right to actively and safely participate in public life" and "Principle 8: Institutional mechanisms that deliver on women's rights - Advancing women's rights requires effective gender mainstreaming, financing and institutional infrastructure, as well as gender-sensitive research, data collection, design and planning that address women's needs with an intersectional approach" (European Commission, 2025).

The EU's definition of intersectionality referred to in the Gender Equality Strategy is as follows: "[a]nalytical tool for studying, understanding and responding to the ways in which sex and gender intersect with other personal characteristics/identities, and how these intersections contribute to unique experiences of discrimination" (European Commission, 2020). This definition does not include any specification of the types of compounding discrimination women are likely to face, including that based on race. In fact, activists have noted that discussions of intersectionality in Europe often seek to discount the role of race, reflecting "a context that overemphasizes colour-blindness and post-racialism" (European Network Against Racism (ENAR), 2019). As detailed in a report by the Center for Intersectional Justice (CIJ), this manifests most extremely in the removal of discussions of race entirely from laws and policies in France, with the result that "French citizens who belong to racial or ethnic minority groups are rendered invisible" (ENAR, 2019). In Germany, an emphasis on the term ethnicity has replaced race, while discussions of racial discrimination have instead focused on xenophobia (ENAR, 2019).

Among other consequences, this has resulted in challenges collecting race-based data in some European countries and in the discounting of the experiences of Afro-descendant women and other women of color in discussions of intersectionality. As the authors conclude: "The lack of evidence coupled with a lack of understanding of intersectionality makes it very difficult for the administration of justice to take place in intersectional discrimination cases" (ENAR, 2019). It is not only civil society that has taken notice of this issue. The European Parliament, in a 2022 Resolution on Intersectional discrimination in the EU: socio-economic situation of women of African, Middle-Eastern, Latin American and Asian descent included a robust discussion of race and intersectionality, including the following: "whereas the impact of racism and the process of racialisation is often overlooked as an important phenomenon preventing equality in Europe; whereas intersectional policies cannot be implemented without centring racialised people at the intersections of discrimination." (European Parliament, 2022). This is an essential point, not only for this discussion of intersectionality in the context of electoral justice, but because some of Dr. Crenshaw's first examinations of intersectionality involved the

⁸ See, e.g.: "The strategy will be implemented **using intersectionality** – the combination of gender with other personal characteristics or identities, and how these intersections contribute to unique experiences of discrimination – **as a cross-cutting principle.**" <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0152>

inability of Black women in the United States to seek redress – in their case for employment discrimination – in court. Without the ability to recognize the combination of discrimination on the basis of both race and gender, courts insisted on pursuing a single-issue analysis of either discrimination on the basis of race or on the basis of sex; under either analysis the claims of the black women plaintiffs were unpersuasive to the court.⁹

In the 2024 European Parliament elections, women won 38.5 percent of seats, representing a slight reduction from the previous parliament (European Commission, 2025). Eleven Member States have legislative gender quotas in place which apply to the lists of candidates for national elections, but in only six Member States do women make up more than 40 percent of the parliament (European Commission, 2025). The Nordic countries of Sweden (45.6%), Finland (45.5%), and Denmark (44.7%) lead the pack in terms of women's representation, although none have reached parity (European Commission, 2025). The overall average across the EU stood at 33.1 percent in 2024 (European Commission, 2025). While the EU's gender equality report does not break down this data along racial or ethnic lines individual studies have discussed the experiences of women members of racial minorities in these political bodies. For example, a 2025 study of MPs in Sweden found that “[w]hile both men and women with immigrant backgrounds experience discrimination, women MPs with an immigrant background seem particularly exposed insofar as they are targeted both on the basis of gender and racialization of their immigrant backgrounds.”¹⁰ This intersection of gender and racial discrimination was most prominent in the context of online abuse targeting Swedish MPs (Albertson & Erikson, 2025).

Africa

The African Charter on Human and People's Rights, which entered into force in 1981, guarantees nondiscrimination on the basis of, among others, race, ethnic group, color, or sex (Article 2) and the right to participate in the government, the right of equal access to public service, and the equality of all persons before the law (Article 13) (African Union, 1981). Article 18(3) provides that the State “shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions” (African Union, 1981). A separate Protocol to the African Charter, known as the Maputo Protocol, entered

⁹ “*DeGraffenreid v. General Motors* was a 1976 case in which five black women sued General Motors for a seniority policy that they argued targeted black women exclusively. Basically, the company simply did not hire black women before 1964, meaning that when seniority-based layoffs arrived during an early 1970s recession, all the black women hired after 1964 were subsequently laid off. A policy like that didn't fall under just gender or just race discrimination. But the court decided that efforts to bind together both racial discrimination and sex discrimination claims — rather than sue on the basis of each separately — would be unworkable.” <https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination>

¹⁰ See, Racism and Gender in the Parliamentary Workplace: Insight Into Immigrant Background MPs' Experiences of Discrimination in Sweden, SPS <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-9477.70006>. The authors also note the challenges of addressing race directly in Sweden: “Against the backdrop of Sweden's unwillingness to recognise race and racialized structures, our findings confirm previous research on how a strategy of ‘colour-blindness’ (e.g., Hübinette et al. 2023) may, in practice, conceal racism.”

into force in 2003 (African Union, 2003). The Maputo Protocol directs States Parties to “combat all forms of discrimination against women through appropriate legislation, institutional and other measures,” to ensure equality for men and women before the law and to take “appropriate measures” to ensure women’s equal access to justice (African Union 2003). Article IX of the Maputo Protocol specifies women’s right to participation in the political and decision-making process and directs States Parties to take “specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action (African Union, 2003).”

Aside from a guarantee of non-discrimination, these documents do not address issues of intersectionality. Indeed, researchers have noted the “limited knowledge and information about an intersectional approach to women’s participation in leadership and decision making” in Africa, raising questions “on how more women who are living in rural areas, from ethnic minorities or Indigenous backgrounds, are younger or unemployed or living with disabilities can be brought into the political arena” (Chikwanha & Moyo, 2024). For example, as one scholar notes, “ethnicity is crucial in the context of Kenyan electoral politics, as the country’s population is composed of more than 40 ethnic nationalities and political parties tend to organize largely on the basis of ethnic affiliation” (Ranta, 2024). This implicates ethnicity as a key identity that combines with gender to impact women’s access to political and electoral representation. Yet, the Kenyan Constitution, speaks broadly of marginalized communities, marginalized groups, vulnerable groups, and “ethnic and other minorities” rather than more specific identities (Ghai, et al., 2013).

To support women’s representation in practice, countries in sub-Saharan Africa have instituted gender quotas and taken other affirmative actions. This has resulted in mixed impact, depending on institutional design and political context. Rwanda, for instance, is frequently cited for having the highest rate of women’s representation in Parliament in the world at nearly 64 percent in the lower house. Some scholars have noted, however, that “high numbers of women parliamentarians may ultimately legitimize the non-democratic conduct of authoritarian regimes whose policies are detrimental to poor women from non-dominant ethnic groups” (Ghai, et al., 2013). In Kenya, a Constitutional provision which is designed to prevent more than two-thirds of one gender from occupying elected bodies, has never been fully implemented, and as of the 2022 elections, women make up 23 percent of the lower house of parliament (Interparliamentary Union (IPU), 2025). Overall, “women constitute just a quarter of the 13,057 parliamentarians in Africa - 26% in the lower houses, and 21% in the upper houses of parliament” (International IDEA, 2024). With her election in 2024, President Netumbo Nandi-Ndaitwah of Namibia became only the second elected woman head of state in Africa.¹¹ Taken together, this evidence suggests that, while progress has been made in advancing women’s political representation, achieving parity remains an ongoing challenge in many contexts.

¹¹ Ellen Johnson Sirleaf was the first and only other elected female head of state on the African continent. Samia Suluhu Hassan, the current president of Tanzania, came into that position after the death of her predecessor. Other women have served as head of state or government through indirect election. See: https://www.uneca.org/sites/default/files/Gender/eca-fast-facts_women-leadership-and-political-participation.pdf

Barriers to political and electoral leadership

Despite these international, regional, and national legal frameworks, and overall advancements for women in descriptive leadership in countries around the world, Afro-descendant women, Indigenous women, and ethnic minority women continue to face significant challenges in accessing political leadership. Gender-based violence (GBV), a global phenomenon and the result of “a patriarchal culture founded on structural discrimination and unequal power relations between men and women,” is chief among these (UN Women, 2021). This violence is often specifically connected to women’s intersectional identities. As documented in Colombia, while eight out of ten women candidates experienced political violence in 2023, those most affected were those from Black, Afro-Colombian, Raizal, and Palenquera communities, along with women with disabilities, older women, and lesbian women (UN Women, 2025). “Afro-descendant women leaders can be at risk in all spaces of their lives, not only for defending their territories but also for stepping out of stereotypical gender roles” (Kirby & Urueña, 2020). In Zimbabwe, a survivor of violence was told by a local council chief that she deserved what happened to her because she did not behave according to social norms for women (Bardall, et al, 2018). Further, the responses to victims of violence are “so inadequate as to be all but designed to delay justice and leave survivors at risk” (Kirby & Urueña, 2020). This compounding impact of violence, where women are targeted in their communities for seeking leadership and denied justice through formal structures, make it particularly difficult for women with intersecting identities to exercise their rights.

Women also face economic discrimination which impacts their ability to participate in political processes on an equal basis. Women generally, and women from ethnic minority groups, Indigenous women, and Afro-descent women in particular, are overrepresented in households living in poverty (UN Women, 2021).¹² In addition, women from these groups are also more likely to live in rural and remote areas, reducing their access to decent work, education, and basic government services. As a result of these economic disparities, women from these groups who seek to engage in politics face additional challenges with accessing political party structures, connecting to networks of political and financial support, and funding their campaigns. This includes paying for security given the high levels of gender-based violence women experience while campaigning and often accommodating the extra cost of needing to travel with a male family member due to cultural prohibitions against women traveling alone. When faced with elections violations, they may also face specific challenges associated with access to justice, including access to information about where and how to file their claims, challenges paying court and

¹² See, e.g., the LAC region where, as of 2022, there were 118 women living in poverty for every 100 men and “households in poverty continue to concentrate a greater proportion of women in ages of greatest productive and reproductive demand.” https://lac.unwomen.org/sites/default/files/2025-01/en-regionalgenderprofile-ro_apr24-24_1.pdf

attorney's fees, and the expense of travel to access electoral dispute resolution (EDR) processes (Waugh, 2024).¹³

National governance structures and traditional means of governance amongst Indigenous and ethnic minority groups may also specifically disadvantage women members who seek to exercise their political and electoral rights. In parts of Africa, for example, “particularly in the rural areas, traditional political structures govern alongside the more modern democratic institutions” and many of these structures are patriarchal in organization, with control in the hands of male elders (Anderson, et al, 2025).¹⁴ In some contexts women in rural areas and Indigenous women are socialized to believe they are not capable of leadership, and this may combine with lack of access to formal education to undermine their faith in their ability to take on roles in politics and governance.¹⁵ In addition, for women who are members of pastoral groups like the Maasai, for example, “the whole design and institutional set-up of the political arena in many parts of Africa tends to be inaccessible” given that governance structures are centralized in urban areas and the official language used (often English or French) may exclude speakers of Indigenous languages (Chikwanha & Moyo, 2024).

The lack of inclusion of Indigenous languages in formal government structures serves to exclude Indigenous peoples from politics in many parts of the world. The International Foundation for Electoral Systems (IFES) conducted research in Guatemala, Kenya, and Nepal regarding the experiences of Indigenous Peoples, especially Indigenous women and Indigenous persons with disabilities, when participating in electoral processes. As reported by participants in Guatemala, for example, when Indigenous women attend meetings, they are overlooked as speakers in favor of those women who are of Spanish descent (IFES, 2024). This intersects with gender discrimination at the local level. For example, one Indigenous woman, who was elected as part of her municipal council but was never allowed to chair the council as promised, reported “[a]t the community level, there are patriarchal pacts between male leaders that make it difficult for women to participate in decision-making processes” (IFES, 2023). Even when language is not a specific barrier, researchers have noted the impact of the intersection of “patriarchal, racist, and classist violence, limiting women’s right to organization and political participation,” which persists even when Indigenous women are in decision-making roles (Rights + Resources, 2025).

¹³ In an IFES study on women's access to electoral justice, the lack of resources to pursue electoral complaints was found to be primary challenge for women. See, <https://www.ifes.org/publications/electoral-justice-all-practitioners-guide-increasing-womens-access-electoral-justice>

¹⁴ See also: Political Economy Analysis of Women and Participation in Politics in Kenya: <https://africa.unwomen.org/sites/default/files/2023-06/Political%20Economy%20Analysis%20on%20Women%20Political%20Participation%20in%20Kenya.pdf>

¹⁵ In Guatemala, for example, most Indigenous women do not attend school, averaging just two years of formal education: <https://www.ifes.org/publications/engaging-indigenous-peoples-elections-0>.

The impact of electoral systems

The electoral system can make a difference in the ability of women and members of other underrepresented groups to exercise their political and electoral rights. As the Venice Commission noted when discussing the rights of national minorities, states can develop specific rules to ensure the participation of certain groups. This might be through set-asides of a certain number of seats in an elected body or through a boundary delimitation process “applied with the intention of making it easier for minorities to be represented.”¹⁶ While the Venice Commission has generally looked favorably on the delimitation of electoral constituencies to ensure the representation of national minorities, because women are members of every group of national minorities, across all constituencies, the delimitation of specific constituency boundaries is unlikely to ensure their equal representation in elected bodies.

The use of a “reserved seats” quota, wherein a certain number of legislative seats are set aside specifically for a particular group to ensure their representation in an elected body has been applied in a variety of contexts, with outcomes that vary depending on their institutional design. In some cases, the women-specific seats are vigorously contested during the election; in others, the seats are meant to be “elected” by Members of Parliament.¹⁷ Depending on the structure and implementation of the quota, reserved seats can serve to establish a “second-class” MP wherein those holding the seats are seen to be less deserving because they have not contested for their seat in an open contest and may also not represent a determined geographic constituency. For example, in Bangladesh the reserved seats systems “may have contributed to tokenism of women representatives and further marginalization due to, among other factors, overlapping mandates and lack of constituencies for women elected through TSMs. This reality underscores that more meaningful, as opposed to mere numerical representation for women, is a necessary goal (Paasilinna, 2016).”¹⁸ Further, the existence of reserved seats have been used by political parties as a justification for not running women candidates in open seats, removing them from the broader political process. In South Asia, where a historical caste system has further segmented society, some countries have reserved seats for women from specific minority groups. In others, gender quotas

¹⁶ Compilation of Venice Commission opinions and reports concerning electoral systems and national minorities (June 2019)

¹⁷ See, e.g. Bangladesh where winners of reserved seats are meant to be “elected” by Members of Parliament (MPs) but are, in reality, appointed by MPs based on party representation. Unlike the 300 constituencies for general seats, the country serves as one large district for the reserved seats (Paasilinna, 2016).

¹⁸ As Paasilinna notes, this is not meant to impugn quotas and other forms of temporary special measures: “This practice is in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Bangladesh in 1984, which specifies that “these types of measures shall not be considered discrimination as defined in the present Convention.” CEDAW and other international agreements have institutionalized and elevated TSMs out of the now widely-held belief that increasing the number of women representatives can have far-reaching, positive effects for gender equality and society as a whole.”

have impacted the ability of people from lower castes to be elected, as more elite women are likely to be elected to the reserved seats.¹⁹

In the Code of Practice in Electoral Matters, the Venice Commission did note that “rules could be adopted guaranteeing some degree of balance between the two sexes in elected bodies, or even parity” (Council of Europe (Venice Commission), 2002). The Commission has also noted that “an individual may at times be impacted by several discriminatory factors (Venice Commission, 2002). For instance, female ethnic minorities often find themselves doubly disadvantaged with regards to political and social rights” (OSCE/ODIHR & Venice Commission, 2020). While describing these multiple forms of discrimination as having “cumulative effective” the Commission did specifically acknowledge that grounds for discrimination can in fact intersect to “produce new and unforeseen effects” which must be addressed accordingly by preventative measures (OSCE/ODIHR & Venice Commission, 2020).

In fact, women contesting for office must clear several hurdles to ultimately secure a seat in an elected body and the type of electoral system can impact the number and height of those hurdles. As a general matter, single-member districts and races determined on a first past the post basis, where only one person is elected with either a plurality or majority of the vote, are seen to disadvantage women. In multi-member districts, where multiple people will be selected to represent a constituency and voters generally select either an entire closed list or express a preference for candidates within a list, women are seen to have a better chance of being selected.²⁰ However, an open list system, as is in place in Brazil for example, can “increase intra-party competition, further fragment the vote, and require the implementation of more personalized and expensive campaigns” (Sacchet & Speck, 2017).

¹⁹ See, e.g., the historic experience in India where a study of the intersection of caste and gender quotas in Delhi revealed: “These between-group differences have historically led to upper caste Hindu women being overrepresented among female politicians and activists in India. As the theory predicts, the existence of these cross-group differences in social attitudes meant that the imposition of gender quotas in Delhi changed the caste composition of elected candidates... reservation for women increased the probability of a constituency electing a candidate from a caste with less traditional gender norms by 8.7 percentage points. In practice, this increase benefited members of the Hindu upper castes, in particular the Brahmins and Banias, while the representation of members of the Other Backward Classes (OBC) category declined.” https://www.rochester.edu/college/faculty/alexander_lee/wp-content/uploads/2019/08/ajps_ca.pdf?ref=hir.harvard.edu

²⁰ As detailed by Fairvote.org: “Political scientists believe multi-member districts (MMDs) reduce barriers for women that are perpetuated by single-member systems. For example, MMDs have lower incumbency rates and lower thresholds to win, both of which make it easier for women to beat out male incumbents and win a seat. Multi-member districts also give political parties incentive to promote women in their ranks. In single-member races, parties are more likely to prioritize and support the election of an incumbent or “sure bet” candidate – a candidate that is statistically more likely to be male. But with multiple seats on the line in an MMD, parties actively seek out female candidates to appeal to broader portions of the electorate and win more seats.” <https://fairvote.org/proportional-representation-is-the-key-for-stronger-women-s-representation/>

Under either model, political parties often play a significant role in the outcome of the election, serving as gatekeepers to women's ability to appear on the ballot at all or to appear high enough on a closed list to ultimately be elected to office. For example, political parties may run a certain proportion of women candidates across legislative districts, but if they only run women in single-member districts where the party does not have a strong presence or high hopes of winning, they will be able to comply with a mandated quota while undermining the ability of women to secure seats.²¹ On the other hand, a well-designed quota – using a “zipper” system or other specification with respect to list order – in a closed proportional representation system can significantly increase the chances that women will be elected.²² In Mexico, for example, a combination of legislative commitment, civil society action, and rigorous judicial enforcement overcame significant political party resistance to legislative quotas to ultimately realize the goal of “parity in everything” (IFES, 2023). The Venice Commission has identified closed party lists as a mechanism for ensuring that women or members of other marginalized groups are ultimately included in elected bodies (Venice Commission, 2021).

In addition to the laws and electoral system in place to support women's equal participation in political processes, women must also be able to enforce their rights through the electoral dispute resolution system. One of the reasons that the party nomination process has been such a barrier for women, is that party leadership – which tends to be dominated by men – often makes candidate nomination decisions in non-transparent, closed-door sessions where women are often not invited or permitted. If women aspirants have issues with how certain candidates were selected, the options for recourse are either non-existent, or processes exist but are conducted in a way that is unfair and biased toward the preferences of male party leadership.²³ A fair and just EDR process is essential to ensure that this bias does not persist in the courts.

Courts in action – promising practices to advancing intersectionality

²¹ IFES research in Kenya found that political parties play an important role as gatekeepers choosing to field women candidates in party strongholds (where people are more likely to elect the party's representatives regardless of gender) or prioritizing men candidates in those races. One interviewee stated, “the primary process is the often the hardest part; 60 percent of women lose at the primary level – it's a negotiated democracy.” <https://www.ifes.org/publications/electoral-justice-all-practitioners-guide-increasing-womens-access-electoral-justice>

²² A zipper system mandates that parties alternate male and female candidates on their party lists so that at least half the slate is women. A less robust quota may require that a woman appear at least every three places.

²³ “A 2018 IFES Electoral Integrity Assessment in Kenya found that, even though party primaries occur, ‘many candidate positions are ‘pre-negotiated’ by party leaders, elders, ethnic leaders, and wealthy aspirants.’ The assessment also found that, while more parties had established internal EDR procedures than in previous elections, the procedures and structures ‘were all centralized with core party leadership,’ who tend to be men.” <https://www.ifes.org/publications/electoral-justice-all-practitioners-guide-increasing-womens-access-electoral-justice> (internal citations omitted)

A brief discussion of several key cases related to women with multiple marginalized identities is included below to identify some of the particular challenges that Indigenous women and Afro-descendent women have in faced when engaging in the EDR process. These cases also help to identify promising practices and needed reforms to increase access to electoral justice.

South Africa – Can an Indigenous woman to run as an independent candidate?

In 2019 the Constitutional Court of South Africa considered an appeal of a decision from the High Court of Western Cape.²⁴ The question for the court was whether provisions of the Electoral Act which required candidates to contest for election on a party slate – meaning they could not contest as independent candidates – were Constitutional. In the court of first instance the complainants, the New Nation Movement²⁵ and Chantal Revell, princess of the Korana Royal Household of the Khoi and San First Nations people, an Indigenous group native to South Africa, argued that certain provisions of the Electoral Act were unconstitutional and invalid because they effectively prevented independent candidates from running for election. As the Court put it: “does this channelling to membership of political parties infringe certain rights enjoyed under the Bill of Rights by individuals or, more specifically, would-be independent candidates?” The Electoral Act was also challenged on the question of whether the requirements that candidates run as members of a political party interfered with the freedom of association.

With respect to the freedom of association, the Court noted: “A conscious choice not to form or join a political party is as much a political choice as is the choice to form or join a political party; and it must equally be deserving of protection.”²⁶ The Court went on to observe that “[t]he protection of the right is about giving associations, whatever their size, room to achieve the objectives for which they exist.” In considering whether the Electoral Act interfered with the negative version of the right of freedom of association – that is the right to not associate – the Court engaged in an analysis of international law including decisions from the European Court of Human Rights and the African Court on Human and People’s Rights. Based on the reading of cases from those Courts, the Court found the negative right to association also guaranteed.

In this case, Ms. Revell argued that she, a representative and leader of the Korana nation, was averse to forming or joining a political party. The Court noted: “Hers is not a for-the-sake-of-it objection.... as a leader of a nation, she does not want to be constrained by that kind of partisanship that comes with being a member of a political party...Being free

²⁴ New Nation Movement NPC and Others v President of the Republic of South Africa and Others [2020] ZACC 11

²⁵ The NEW NATION MOVEMENT (NNM) describes itself as “a NON-PARTISAN, all-inclusive Peoples' Movement. It is made up of patriotic and committed South Africans that want to work together in ways that will advance the best interests of the nation and all South Africans, both now and in the future. The NNM is not a political party. It is a network of like-minded South Africans from all walks of life, irrespective of race or language; religion, belief, gender or social standing, who speak with one voice and objective; that is, to exercise their collective influence to build a better South Africa.”

²⁶ New Nation Movement NPC and Others v President of the Republic of South Africa and Others [2020] ZACC 11

of those shackles will make Ms Revell directly answerable to her nation, not to a political party.”²⁷ Importantly the Court acknowledged that “[r]ights-protection is about all those the Bill of Rights seeks to protect. It is not only about the protection of majorities. In fact, in some instances the interests of minorities may cry out for singular protection.”²⁸ In this case, Ms. Revell was expressing a minority opinion in desiring to not join a political party, but it is a powerful note in a case involving a woman leader of an Indigenous group, herself a minority in need of the Court’s protection. The Court determined that “insofar as the Electoral Act makes it impossible for candidates to stand for political office without being members of political parties, it is unconstitutional.”

The law was ultimately changed in time for the 2024 elections to allow for independent candidates. Despite her critical role in making it possible for independent candidates to contest for election, Ms. Revell did not run for office. Six independent candidates did contest, two of whom were women; no independent candidates were elected (International IDEA, 2024). While the ability to run as an independent candidate did not increase the representation of Indigenous women in the South African legislature in 2024, this right could provide an important avenue in future elections and in other contexts, especially given the struggles that many women candidates face in navigating political party power structures.²⁹ There are, of course, particular and often considerable challenges that result from running as an independent candidate, including the additional financial resources required when candidates cannot access party resources or the public funding allocated to political parties. These challenges are compounded for women candidates – and especially women from ethnic minority groups, Indigenous women, and Afro-descent women – who often have fewer financial resources and networks to draw from.

Cases from Mexico – balancing Indigenous rights and gender equality

In 2020 Mexico’s Supreme Election Tribunal (Tribunal Electoral del Poder Judicial de la Federación or TEPJF) considered a case at the intersection of gender equality and the rights of Indigenous Peoples to govern their own affairs. In Mexico, in districts where more than 60 percent of the population consists of Indigenous persons, elections are run under Indigenous Normative Systems, consistent with Indigenous customs. Mexico also prioritizes equality in treatment between men and women, including in the exercise of their political and electoral rights.

²⁷ Ibid

²⁸ Ibid

²⁹ In Bolivia, for example, the Supreme Electoral Tribunal changed the rules for candidacy to allow Indigenous peoples to nominate their own candidates outside of the political party process and for those candidates to be elected through territorial customs. In the 2020 elections, several Indigenous women were nominated as candidates and four were elected to serve in the legislative assembly as representatives of the special peasant indigenous electoral districts, occupying more than half of the seven seats set aside for Indigenous peoples. For more see: <https://www.unwomen.org/en/news/stories/2021/3/what-leadership-looks-like-cecilia-moyoviri-moye>

In the case of the City Council of the Municipality of Coicoyán de las Flores, the freedom of Indigenous groups to run their own elections resulted in the denial of an Indigenous woman's request to run for office. The complainant, Isabel Sierra Flores, a Mixtec woman from the community indicated her desire to run for office in local elections. She was told by local Indigenous authorities that only party candidate lists headed by men could be registered because "our electoral process has always been carried out in this way in our community."³⁰

The Xalapa Regional Chamber found her grievances to be groundless. The Regional Court noted that ensuring gender equality in Indigenous communities "must be guaranteed on the basis of their own internal regulatory system" and held that "in order to consider gender-based acts of discrimination to be accredited, the mere statements of the alleged victim are not enough, but there must also be minimal elements of proof that lead to sustaining that the alleged conduct was in fact based on gender elements." The plaintiff appealed the decision.

The TEPJF was asked to consider whether Indigenous customs for men to elect political leaders outweigh the principles of non-discrimination, equality and gender parity, as well as the right of "every woman . . . to a life free of violence, both in the public and private spheres" and to "freely and fully exercise their political rights."³¹ In a split ruling, the TEPJF ordered the Regional Chamber to reconsider the case utilizing "a gender-based and cross-sectional approach" and "the reversal of the burden of proof established in this ruling" in making its decision. The TEPJF noted that, "although it is true that the Municipality of Coicoyán de las Flores has the collective rights of self-determination, self-government, and autonomy to elect its authorities or representatives in accordance with its norms, procedures, institutions, and traditional practices, to do so it must not contravene the fundamental rights and recognized principles in the Federal Constitution." In short, the tribunal found that, while Indigenous communities do have a right to choose their leaders according to their customs and traditions, that right is not absolute and does not trump Mexico's constitutional commitment to gender equality.

As mentioned above, the TEPJF emphasized that the Regional Chamber must reconsider the case in light of a reversal of the burden of proof, which the Court has determined applies in the case of acts of political gender violence. As a result, "the evidence provided by the victim enjoys a presumption of veracity regarding what happens in the events described."³² The Court also noted that "any action or omission directed against an indigenous woman, with the purpose of restricting, limiting or annulling the exercise of her

³⁰ "Article 2, Section A, fraction III of the Federal Constitution, and 16, seventh paragraph, of the Particular Constitution of Oaxaca, recognize the right of indigenous communities to free self-determination and autonomy to elect, in accordance with their traditional norms, procedures and practices, the authorities or representatives for the exercise of their own forms of internal government, guaranteeing the participation of women in conditions of equality with respect to men, in a framework that respects the federal pact and the sovereignty of the states." (note this is a machine translation into English of the Spanish decision)

³¹ <https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-REC-102-2020>

³² <https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-REC-102-2020>

right to vote, whether active or passive, constitutes an act of political gender violence” in accordance with the Convention of Belém do Pará, the Convention on the Political Rights of Women, and CEDAW. The Court noted reversing this burden of proof maximizes at least two rights – “effective access to justice” and “the specific right of indigenous women to have a culturally appropriate defense”, deemed to be particularly important due to the special vulnerability faced by this group “as a consequence of the structural inequality reflected in their social, political and legal reality.”³³

In this case, and across their jurisprudence, electoral courts in Mexico have demonstrated their commitment to upholding gender equality and protecting the rights of Indigenous communities to manage their own affairs, including by electing their political leaders. In so doing, the courts have highlighted both domestic law and international law enshrining equality and non-discrimination³⁴ as well as acknowledging that “there are certain inequalities in fact that can legitimately translate into inequalities in legal treatment, without such situations being contrary to justice; on the contrary they can be an effective means of protecting those who are in disadvantaged circumstances.”³⁵ This includes the adoption of affirmative actions through which the State may grant certain groups differentiated treatment as a way of achieving the elimination of discrimination or historical disadvantage and “to make material equality a reality.” Striking this balance has required the collection and analysis of gender and race disaggregated data and the careful monitoring of that data by election institutions to honor the principle of progressivity.³⁶

Afro-descendant women – a continued struggle for equal access in Brazil

As noted above, Afro-descendants make up the majority of people in Brazil and Afro-descendant women account for at least half of that group. Yet, Afro-descendant people and Black women in particular have not been afforded adequate opportunity for participation in political and electoral life. As of 2022, women constituted just 18.1 percent of Brazil’s federal deputies, with Black women accounting for 31.9 percent of that group. While this is up from 19.6 percent of women deputies in 2014, the first year that Brazil began collecting race-disaggregated data, Black women’s participation in politics in Brazil continues to lag behind their representation in the population. Per statistics from the Supreme Electoral Tribunal (the Tribunal Superior Eleitoral or TSE), 53 percent of the voting population is made up of women and 28 percent of those women are Black. However, Black women accounted for only 7 percent of the people elected in the 2022

³³ Ibid.

³⁴ See, e.g. *SUP-JDC-338/2023 and consolidated cases* in which the TEPJF cited the Federal Constitution – “our Constitution establishes that all persons are equal before the law, and no discrimination may prevail based on nationality, race, sex, religion or any other personal or social condition or circumstance” – as well as the Inter-American Court establishing equality before the law, equal protection before the law, and non-discrimination as *jus cogens*.

³⁵ Ibid.

³⁶ See, e.g., *SUP-JDC-338/2023 and consolidated cases*: “the principle of progressiveness gives rise to the obligation for the legislator - whether formal or material - to extend the scope and protection of human rights; and for the implementer, the duty to interpret the rules in such a way as to extend, as far as legally possible, these aspects of rights.”

municipal elections (Brasileiro, et al, 2024) and out of 80,000 Black women candidates that contested for office in 2024, only 10.9 percent were elected (Conectas, 2025).

There are a number of reasons for this continued underrepresentation. For one, Black women face significant economic barriers. They face less secure housing, experience higher levels of unemployment, lower wages, and lower levels of education and do, and are seen to be responsible for, the majority of paid and unpaid care work (Conectas, 2025). As researchers note, the representation of Black women in popular culture in Brazil – on TV and movies as domestic workers and in other lower-wage jobs – serves to reinforce the societal perception that Black women “belong” only in certain roles. This perception, combined with other forms of discrimination and lower levels of economic resources, serves to reinforce the expectation that Black women should not occupy political leadership.

Further, as is the case across the Americas, violence against Black women in Brazil, and particularly Black women in politics, is unacceptably high. As the OAS noted, “[t]he exclusion of Afro-descendant populations from public spaces is reflected in the absence or limited presence of Afro-descendant women in political parties, decision-making spaces, and representative bodies” (OAS, 2025). The OAS attributed this to the high levels of gender-based violence they face, citing specifically the experiences of activists from Brazil’s quilombola communities (OAS, 2025). In the 2024 municipal elections, Black women candidates, including Black transgender candidates, faced significant levels of gender-based violence, including death threats and other online attacks.³⁷

To address some of these challenges, Brazil put into place specific laws and regulations, including gender-based quotas, to support the increased representation of women in elected office. For example, in 2017, following the outlawing of corporate political donations in Brazil in 2015, the Special Campaign Financing Fund (FEFC per the Portuguese acronym) was established to allocate public resources to campaigns.³⁸ And, more importantly, in 2022 judicial action by Brazil’s Supreme Court and the TSE resulted in the mandatory allocation of 30 percent of the FEFC for women candidates as well as the distribution of public radio, TV time, and advertising in proportion to the percentage of Black and female candidates.³⁹

These measures brought life to gender quotas which have been in place in one way or another since 1995, including the requirement that 30 percent of political party

³⁷ <https://www.pbs.org/newshour/world/brazils-trailblazing-transgender-candidates-face-violence-and-death-threats-as-they-campaign>. As documented in numerous news stories regarding the record-setting number of women federal deputies elected in 2022, “There are countless black female parliamentarians who demand special protection for themselves and their families so that they can exercise their mandates, given the volume of threats they receive exclusively because of politics and their condition as black women.” https://mst.org.br/2023/08/01/participation-of-black-women-in-brazilian-politics-increases-but-violence-persists/?utm_source=chatgpt.com

³⁸ Brasil. (1965). *Código Eleitoral* [Electoral Code] (Law No. 4,737, July 15, 1965). Presidência da República, Casa Civil [Presidency of the Republic, Civil House]. www.planalto.gov.br

³⁹ <https://international.tse.jus.br/en/affirmative-actions/expanding-womens-participation>

nominations go to women. In explaining the decision to allocate and protect these resources, the TSE, through Minister Luís Roberto Barroso, first acknowledged the beneficial role that increasing women's access to public campaign financing, by requiring political parties to designate specifically available funding, played in increasing women's representation.⁴⁰ The court then made the following observation: when analyzing the intersection between gender and race, it can be seen that politics has produced undesirable secondary effects. A study by FGV Direito (FGV Law School) on the Chamber of Deputies election found that white women candidates received a percentage of party funding (18.1%) proportional to their candidacies (also 18.1%). However, Black candidates continued to be underfunded by the parties. Although Black women represented 12.9% of the candidacies, they received only 6.7% of the funding. Black men also received disproportionate funding from parties (16.6%) compared to their candidacies (26%). Only white men were overfunded (58.5%) compared to their female candidates (43.1%).⁴¹

While acknowledging the responsibility of the legislature in establishing affirmative action policy – including that needed to address the unintended consequence of Black candidates not fully benefiting from the affirmative actions in place with respect to campaign financing and airtime – the court noted its “role in ensuring the fundamental rights of historically vulnerable groups, such as women, Black people, and homosexuals, against direct or indirect discrimination is legitimate.” In 2021 Brazil also passed a specific law prohibiting political gender violence, defined as “actions or omissions that cause harm or suffering to one of more women, with the intention of nullifying, preventing, depreciating, or hindering the enjoyment and exercise of political rights, simply because they are women.”⁴²

In addition to the regulations discussed above, the TSE has played an important role in helping to enforce the rights of women, including Black women, through their adjudication of election cases and rigorous enforcement of the law. This has been essential to ensuring that quotas are implemented by political parties in a way that respects not just the letter but the spirit of the law. For example, the TSE and regional electoral courts have considered cases of alleged “ghost candidates” - those included on party lists and on ballots only to fulfill the 30 percent quota requirement.⁴³

⁴⁰ “In 2018, the number of female candidates elected to the Chamber of Deputies grew 51% compared to the 2014 election, while in the legislative assemblies, the growth was 41.2%.” (QUERY No. 060030647, Judgment, Rapporteur Min. Luís Roberto Barroso, Publication: DJE - ElectronicJustice Journal, Volume 199, Date 10/05/2020, Page 0). (<https://www.tre-rs.jus.br/jurisprudencia/emtemanovo/propaganda-eleitoral/arquivos-propaganda-eleitoral/tre-rs-tse-0600306-47-2019-6-00-0000>) – machine translated from Portuguese

⁴¹ Ibid

⁴² Law 14,192, of August 4, 2021.

⁴³ One press report found that: “Political parties who support men also put forward “ghost candidates” – women who appear on the ballot but never campaign, and often never even vote for themselves. Out of hundreds of thousands of candidates in municipal elections in 2024, Global Press Journal found that 1,823 received zero votes — a key red flag.” <https://globalpressjournal.com/americas/brazil/brazils-gender-quotas-undermined-by-rampant-election-fraud/>

In one such case, the regional electoral tribunal considered the late submission of a woman candidate on a party list to prevent the party from dropping below the 30 percent threshold required for women candidates. The court noted that the candidate in question received only 14 votes for a federal deputy race and campaigned so minimally as to not take advantage of the public advertising funding and time. The court ultimately found “solid and reliable evidence... that the candidate was artificially registered by the party for the position of federal deputy solely to meet the proportionality of gender quotas.”⁴⁴ The party’s actions were characterized as “serious discrimination and inequality based on gender and race (art. 93-C, §§ 1º, 2º and 3º, of TSE Resolution No. 23.610/19), resulting in severe harm to the party’s women—in particular, to the candidate’s genuine promotion—and to the Black men and women who ran for the party.” As a result, the entire party list was invalidated and the votes provided to the candidates on that slate were annulled.

In taking this action, the court recognized the harm at the intersection of race and gender that results from political parties manipulating the quota system to their own advantage. This attempted abuse of the gender quota – part of a much larger phenomenon in at least the last two elections according to media reports – demonstrates the additional work ahead to create societal attitudes and expectations that begin to keep pace with legislative and judicial action.⁴⁵ That is, that political parties see the advantage in running diverse slates of candidates, even in excess of quota requirements, because doing so redounds to their benefit. This will require electoral institutions and the electorate to insist upon political candidates and representatives that reflect the diversity of their society, in gender, race, and beyond. In that case, Brazil’s Afro-descendant women leaders should find themselves well-represented on political slates as well as in elected office at all levels.

Key themes

The courts in each of these cases have taken important steps to help protect the political and electoral rights of women of diverse racial and ethnic identities recognizing the challenges that Indigenous and Afro-descendant women have faced in seeking leadership roles. In protecting the rights of independent candidates to contest for office in South Africa, the court made clear the value of a candidate running free of political party allegiance, an opportunity that is especially poignant for an Indigenous woman leader seeking to represent her people rather than a party. Further, that freedom, recognized in other contexts, may make it easier for other women to access the ballot, free of the challenges of navigating intra-party politics.

⁴⁴ Action for Impeachment of Elective Mandate No. 060000224, Judgment, Judge Patricia Da Silveira Oliveira, Publication: DJE - Electronic Official Gazette, 07/18/2024.
(<https://www.tre-rs.jus.br/jurisprudencia/emtemanovo/cassacoes/arquivos-de-cassacoes/tre-rs-0600002-24-2023-6-21.0000>)

⁴⁵ https://www.tre-sp.jus.br/comunicacao/noticias/2025/Maio/tribunal-reconhece-fraude-a-cota-de-genero-pelo-agir-e-anula-votos-para-deputado-estadual?utm_source=chatgpt.com

In Mexico, which has one of the most thorough and well-regulated set of affirmative actions to help ensure that elected bodies better reflect the population, the court sought to ensure that the opportunity for Indigenous peoples to manage their own electoral process did not interfere with the right of Indigenous women to participate. Given the challenge that some Indigenous women have faced in being included in traditional Indigenous governance and in national politics, this oversight by electoral mechanisms is an important check.

Finally, the cases in Brazil illustrate the continued challenges Black women face in being elected, even as their numbers have increased as candidates.⁴⁶ The measures that the electoral authorities have taken to incentivize the inclusion of women candidates on party lists and increase the resources available to Black women candidates may have created some perverse incentives for political parties to run these ghost candidates just to meet the quota. This not only disempowers the individual candidates running but also serves to reinforce the false notion that Black women are not serious political actors. The courts must continue to sanction this behavior with strong enough penalties to provide a true disincentive, not just for the false candidates but for the political parties who include them on their slate.

Recommendations

While the cases above provide examples of ways that courts have addressed issues of intersectionality in electoral justice, there remain many opportunities for jurisdictions to improve the treatment of women with multiple marginalized identities and to protect their ability to participate in political and electoral processes on an equal basis.

Comprehensive disaggregated data collection and analysis

As noted above, the lack of comprehensive disaggregated data in many places makes it difficult for electoral entities to identify instances of discrimination, craft solutions, and track progress. Understanding the participation of women from all backgrounds in political and electoral processes requires the collection and analysis of detailed data. This includes data disaggregated by gender, race, ethnicity, age, sexual orientation, gender identity, and disability, along with any other relevant categories. To this end, the identified resistance to acknowledging the impact of race in countries in Europe, for example, has resulted in key data not being collected, a practice that should be addressed.

⁴⁶ “In the 2022 elections in the Northeast, for every 6 white men who ran for office, 1 was elected; for every 14 white women who ran for office, 1 was elected; for every 16 Black men who ran for office, 1 was elected; for every 35 brown women who ran for office, 1 was elected; and for every 75 Black women who ran for office, 1 was elected.” https://revistaafirmativa.com.br/em-2024-candidaturas-autodeclaradas-negras-pela-segunda-vez-superam-o-numero-de-brancos/?utm_source=chatgpt.com

Race and gender disaggregated data should be collected by electoral management bodies, courts, registrars of voters, and other relevant entities to better track the characteristics of voters, candidates, elected officials, political party officials, and parties to electoral complaints. Ideally this data will be shared between entities and made public to support progress and accountability. It is this kind of data that has allowed electoral entities in Mexico, for example, to develop and enforce a system of affirmative actions that seeks to progressively realize the promises of equality guaranteed by national and international law.

Develop and enforce a robust legal framework that advances equity and equality

As detailed in the examples above, electoral courts have ruled to protect the rights of women of diverse and intersecting identities, even when the result is a penalty on some women candidates, as in Brazil. However, a robust legal framework, shored up by regularly updated electoral and judicial regulations based on data, is required to support judicial action. To that end, legislatures and electoral actors should take seriously their commitments under international law and the provisions of their own constitutions to enact legislation that advances both equity and equality, including the institution of affirmative actions to increase the participation of women in politics, with a specific focus on women with intersecting marginalized identities⁴⁷. This includes increasing quota thresholds; improving campaign finance laws to better support women candidates; advancing measures, including legislation, to eliminate political violence; and increasing penalties for violations of electoral laws. It also requires reviewing any such provisions that are designed to protect minority identities to ensure that they don't inadvertently disadvantage women.

Increase access to electoral justice processes

Women remain under-represented as litigants in electoral cases, a phenomenon that may extend to women who are also members of ethnic or racial minorities or Indigenous women. Women candidates or aspirants in many places have less access to information regarding electoral justice processes – the result of gatekeeping of information by political party leaders, the fact that women have less access to information generally and have lower levels of education and economic resources. This is particularly impactful for Indigenous women, ethnic minority women, and Afro-descendant women who are more likely to live in remote areas, speak a language other than the one used in court proceedings, and have more limited access to transportation and media.

⁴⁷ As stated in the introduction, the intersectional approach is understood as a cross-cutting analytical framework that examines how multiple and overlapping forms of discrimination—such as those based on gender, ethnicity, socioeconomic status, and sexual orientation, among others—interact. Measures aimed at enhancing political participation should therefore be applied to all groups facing discrimination, men or women. However, this work seeks to highlight that women belonging to historically marginalized groups often encounter compounded barriers that require targeted responses.

To address this issue, electoral courts should seek to make court services more readily available to all potential litigants, first addressing those barriers that particularly impact women, including court fees and the cost of traveling to file complaints. This may involve ensuring that electoral justice systems have localized offices or resources, so complainants do not have to travel far to file complaints, provide evidence, or attend court proceedings. Courts should also conduct gender-responsive outreach campaigns so more people are aware of the steps to take in filing claims and provide that information and access to proceedings in minority languages. Courts should consider eliminating fees to file electoral complaints for women complainants and provide information on pro bono legal resources so that candidates with fewer resources may still be able to access representation.

Provide training for EMB and EDR personnel

Women who appear before electoral courts have often had a number of adverse experiences before having the opportunity to have their complaint addressed. Therefore, EMB and electoral justice personnel should receive training and technical support to provide gender-responsive EDR services so that women with intersectional identities are not further discriminated against or traumatized when bringing their case to court. Designated trained gender personnel and well-resourced and empowered Gender Offices can help ensure that EMBs and election courts treat all complainants with respect and provide equal access to justice. This training should include specific information about the particular challenges women from diverse backgrounds may experience, including background information on intersectionality, unconscious bias, and gender-responsive justice.

Conclusion

This paper has focused on the experiences of Indigenous women, ethnic minority women, and Afro-descendant women in exercising their political and electoral rights and the specific challenges they face due to their multiple marginalized identities. Of course, this is only one aspect of intersectionality and only covers cases in a few countries. Research into the experiences of women with disabilities, LGBTQ women, young women, displaced women, and women from distinct ethnic groups in other parts of the world – for example Roma women in Europe, among others – is warranted to understand their experiences with electoral justice. In addition, ways that quotas are designed (or not) and enforced to address intersectional identities and the associated compounding disadvantages deserves additional study to ensure that they are not having unintended negative consequences.

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