

Submission to the General Discussion on the Draft General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems

Dear Madam, dear Sir,

We welcome the opportunity to contribute to the General Discussion on the Draft of the 'General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems' by drawing attention to and making suggestions on the following topics: A. On Terminology: Participation and Representation in Decision-Making Systems; B. The Internal/External Dimension of Gender Parity; C. What Future for Inclusiveness in a World of Polycrisis: Reflecting on Past (COVID-19) and Upcoming (Climate Change) Emergencies.

Introduction

Gender inequality is newsworthy all around the globe and this is not poised to end any time soon. In the past months, we have witnessed the strengthening of a transnational and global call to address the retreat and push-back against the rights of women and girls, aggravated by crucial implementation gaps. As of September 2022, key reports have been submitted and discussed by the UN General Assembly in New York, which deal with 'the gendered consequences of exogenous shocks and crises'. This includes the Report on violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response submitted by the UN Special Rapporteur on Violence Against Women and Girls (hereafter the Special Rapporteur); the report on Women in Development by the UN Secretary-General, and the UN Secretary-General's report on the Intensification of efforts to eliminate all forms of violence against women and girls. These reports all illustrate how structural inequities amplify and reproduce broader power imbalances and vulnerabilities, by increasing global gender injustice and undermining gender parity.

'Power', the 'root-concept of empowerment', is a crucial social phenomenon. It shapes hierarchies and inequalities among social groups based on ethnicity, gender, social class, religion and disability, among others, intersecting lines of discrimination. Hence, attempts to conceptualize the way in which intersecting power relations and domains of power influence participation, representation, democracy, participation and access to a fully inclusive citizenship, are a key priority for a sustainable future. Culture, economic, political and contextual history, knowledge and habits that impact power relationships need to be identified to disentangle the matrix of gender inequalities.

We welcome the proposal of the General Comment (GC) to 'change the paradigm' and to break the circle of disempowerment by enhancing inclusive representation of women. We believe that this very timely GC could play an important role in rethinking the idea of women's empowerment. Despite











general endorsement of the widespread support of women's empowerment, this 'mot passe-partout' is not an easy concept for translation – either in terms of its content or its scope. Everyone agrees with the need for it, but it is much less clear how it can be achieved.

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Proposed issues to be addressed by the GC:

A. On Terminology: Participation and Representation in Decision-Making Systems (part 1/6/7)

The 65th session of the UN Commission on the Status of Women (CSW), which took place in March 2021, rekindled the interest of the international community in an issue that seems far from being resolved: namely 'women's full and effective participation and decision-making in public life'. This is an aim that the Commission has strenuously defended since its creation in 1946. Suffice it to recall that in 1953 the Commission was working towards the adoption of the first text of international law on this subject: the Convention on the Political Rights of Women (which entered into force in 1954).

In its Concluding Observations, the CSW 'emphasizes that the full and equal representation of women and men at all levels of decision-making in executive, legislative and judicial branches of government and the public sector and in all spheres of life is needed to promote peaceful, just, inclusive and sustainable societies. It notes that women's participation and leadership are needed in the formulation and implementation of government policies and regulations in order to reflect women's and girls' specific needs' (Para. 18, 2021).

Participation and representation are complementary.² In political theories, however, both concepts are vague and indeterminate. Thus, definitional work should address the meaning of these two words in pursuing gender equality. Formalistic participation of women (more women in Parliament, for example) might lead to more attention for women's issues, but this is not necessarily so. We need substantive participation of engaged and committed women. Representation of women should be meant as representation of all women to fight intersectional discrimination³. Women cannot be represented only by numbers and percentages.⁴

⁴ Also worth reflecting on is the academic literature that studies the relationship between the representatives and the represented, like the work of Rosie Campbell, Sarah Childs and Joni Lovenduski, who conducted an "empirical test of whether









¹ Commission on the Status of Women (CSW), *Women's Full and Effective Participation and Decision-Making in Public Life, as Well as the Elimination of Violence, for Achieving Gender Equality and the Empowerment of all Women and Girls*, Report of the Secretary-General, 21 December 2020 (UN Doc. E/CN.6/2021/3). See also the concept note (EGM/CSW/2021/CN) submitted by the Expert Group Meeting on 'Women's Full and Effective Participation and Decision-Making in Public Life, as Well as the Elimination of Violence, for Achieving Gender Equality and the Empowerment of all Women and Girls', in September 2020 and report (EGM/2020/Report) submitted in October 2020.

² Brian Wampler well emphasized "the complementary nature of participation and representation" (Brian Wampler, "Participation, Representation, and Social Justice: Using Participatory Governance to Transform Representative Democracy" 44(4) *Deepening Democracy* (2012), 672).

³ Research on political representation begins with Hanna Pitkin's seminal work (1967), where she explores and identifies four types of representation: 'formalistic, the formal bestowing of authority onto a person to act for another; descriptive, the correspondence between the characteristics of the representatives and the represented; symbolic, a diffuse meaning of representation that is viewed and perceived by the represented; and substantive, when the representative acts for the represented'.



Women's participation and leadership ensures gender equality and a governance of different areas (e.g. education, work, trade, migration and climate change) that is gender-sensitive. We need to ensure the full, equally meaningful participation of women, paying particular attention to enabling their role at all levels, including in local, national and international decision-making fora. This will be achieved by identifying the ways in which one can support, resource, value and recognise women's voice and agency. For this reason, it is invaluable to collect information on existing best practices and programmes designed to remove structural barriers and to engage with women's organisations in the formulation and implementation of action.

B. The Internal/External Dimension of Participative and Representative Governance (parts 6/7)

As is well known, the right of women to political participation is now articulated in Articles 7 and 8 of the Convention on the Elimination of Discrimination Against Women (CEDAW). These are articles with a broad scope, not merely aimed at guaranteeing the right to vote, but rather at ensuring an active and responsible role for women in the development of government policies and their implementation, as well as ensuring the representation of women in public offices at the domestic and international levels. The 'typology of measures' suggested by the CEDAW Committee (General Recommendation No. 23) encourages, for instance, the creation of objective processes for the appointment and promotion of women and the adoption of quota mechanisms or numerical goals for women candidates in elections. These measures are intended to address not only the imbalance in the participation of women and men, but also to remove some of the obstacles, especially institutional and systemic barriers, which still prevent women from having equal access to politics, and thus to create an enabling environment for women to participate.

The CEDAW is the first international instrument to clearly address (in Article 8) the issue of equal participation and representation at the international level, calling upon States to ensure women's presence 'as delegates and representatives of their own countries at international level and to participate in the work of international organizations'. Martin, on several occasions, has recalled that this duty has 'almost universal validity given that the Convention is one of the widest ratified human right treaties at international level'. Despite the substantial recommendations made by the CEDAW Committee to

there is congruence between the political attitudes of women politicians and women citizens", concluding that "women and men on average have different ideas about the roles of each sex and these might be described as uncrystallized or not fully conscious interests, with potentially considerable consequences for substantive political representation. In short, while women may not want more women representatives, they continue to need them" (Rosie Campbell, Sarah Childs and Joni Lovenduski, "Do Women Need Women Representatives?" 40(1) British Journal of Political Science (2010), 171 and 194). Similarly, Beth Reingold asks: "Does the election of more and more women mean that women will be better represented?" (Beth Reingold, Representing Women. Sex, Gender, and Legislative Behavior in Arizona and California, University of North Carolina Press 2000: 2). On the same topic, see also Zohal Hessami and Mariana Lopes da Fonseca, "Female political representation and substantive effects on policies: A literature review" 63 European Journal of Political Economy (2020) 101896, Karen Celis, Sarah Childs, Johanna Kantola andMona Lena Krook, "Rethinking Women's Substantive Representation" 44(2) Journal of Representative Democracy, 99 and Karen Beckwith, "Numbers and Newness: The Descriptive and Substantive Representation of Women" Canadian Journal of Political Science (2007), 27.

⁵ Claudia Martin, "Article 8 of the Convention to Eliminate All Forms of Discrimination against Women (CEDAW): A Stepping Stone in Ensuring Gender Parity in International Organs and Tribunals" (INTLAWGRRLS, 13 January 2016) https://ilg2.org/2016/01/13/article-8-of-the-convention-to-eliminate-all-forms-of-discrimination-against-women-cedaw-a-stepping-stone-in-ensuring-gender-parity-in-international-organs-and-tribunals.











address the issue while fulfilling their reporting obligations, Member States have been quite slow to move beyond the internal dimension of participatory rights. This has obscured the international dimension of Article 8, which is less often addressed in the normative commitments, and this leads to the risk of underestimating the relevance of the role of affirmative action in this neglected area as well. The final report, which was adopted by the UN Human Rights Council Advisory Committee in 2021, offers a unique opportunity to examine the internal–external dimension of women's representation and participation.⁶ At the domestic level, the recommendations address how States could improve and revise their selection procedures to ensure that the principles of transparency and equality are taken into consideration during the identification, nomination and appointment of more female candidates.⁷ The recommendations go in the direction of limiting the 'power to nominate' of States by opening up the selection processes to objective criteria and to a public procedure. Among the good practices identified by States, the report highlights the value of making calls for vacancies publicly available.⁸ In this context, the Office of the High Commissioner for Human Rights could also play a significant role by ensuring the wide dissemination of information about future vacancies and by supporting States in adopting a transparent and open nomination procedure that includes gender parity as a criterion.

At international level, recommendations converge on the principles (impartiality, merit and independence) that should inform the appointment of candidates selected at domestic level. In particular, Member States would be committed to a process of standardization and codification of the election criteria that could govern a process hitherto mainly dominated by unwritten rules. To redress this situation, Member States could be required to report on the implementation of Article 8 of the CEDAW Convention in their periodic reports. The Office of the UN High Commissioner for Human Rights could also play a significant role here, by identifying new mechanisms for nominating and electing candidates for international positions. This could go together with collecting data and progress indicators, as well as creating an evaluation system.

<u>Understanding National Compliance with Articles 7 and 8 of the CEDAW Convention</u>

It is increasingly pertinent to ask how the governance, institutions and law can be improved¹¹ and empirical research is needed in this area. The GEM project¹², currently led by Professor Fornalé and funded by the Swiss National Science Foundation, focuses on compliance with Articles 7 and 8 by all Member States of the CEDAW.¹³ The project team is conducting a regional comparative analysis to

¹³ See the website www.womenandparticipation.org









⁶ General Assembly (GA), *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance*, UN Doc. A/HRC/47/51, 21 May 2021.

⁷ GA (n. 55) 18.

⁸ Interestingly Guatemala highlighted the relevance of involving non-governmental organizations during the selection process and Mali recommended making information about open positions available (A/HRC47/51, 14).

⁹ Vauchez Stephanie Hannette, "Gender Balance in International Adjudicatory Bodies", Max Planck Encyclopaedia of International Law, July 2019.

¹⁰ GA (n. 55) 19.

¹¹ UN Human Rights Council, Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance, Report of the Human Rights Advisory Committee, 21 May 2021, A/HRC/47/51.

¹² Gender Equality in the Mirror: Clothing the Invisibility of Women at International Level (GEM).



identify emerging trends. In particular, the review of Article 8 aims at gathering empirical data on measures adopted to ensure the participation and representation of women at international level. To this end it is crucial to distinguish between implementation, compliance and effectiveness. ¹⁴ Not only is the adoption of measures at domestic level relevant, but compliance requires an exploration of how States adhere to domestic implementation measures. Some measures are procedural (such a national reporting), whereas others are substantive.

The preliminary results of the empirical research conducted in the GEM project revealed that States devoted greater attention to implementing and complying with Article 7; compliance and implementation of Article 8 is less evident at both the reporting and substantial level. Few of the Member States include accurate information about the content of commitments adopted at domestic level and, in most cases, the information provided includes data on numbers but not on measures adopted to secure compliance.

We are aware that compliance could be affected by several factors, and we invite the CEDAW Committee to devote attention in its Concluding Observations and the review of reports submitted by Member States to detecting and identifying the complex factors – political, economic, administrative, hard or soft law obligations – that prevent States from making greater and specific efforts to comply with their obligations under Articles 7 and 8. Generally, this is a reflection of unequal and inadequate participation and representation of women in decision-making processes.

In line with this, there is a need to address how countries' compliance with international obligations can be strengthened by taking into consideration two dimensions: the capacity to comply and the intention to comply.

C. What Future for Inclusiveness in a World of Polycrisis: Reflecting on Past (COVID-19) and Uncoming (Climate Change) Emergencies (part 6/7)

Global crises, such as the COVID-19 pandemic, wars, economic crises and climate disasters are 'produced and mediated by existing gender inequalities and discriminatory gender norms across societies' (EGM, 2021). We invite the CEDAW Committee to consider the evolution of the concept of gender parity. In line with this, we wish to draw attention to the evolving nature of the concept, to identify new and forthcoming challenges:

1) Gender Parity in Times of Emergency

During the COVID-19 pandemic, economic, political and humanitarian regimes of power have disproportionately pushed women and girls backwards by affecting their capacity to take action and build a resilient future. This is a consequence of the lack of adequate resources – knowledge, economic resources, technology, mobility, and other assets. As the lockdown became more globalised at the

¹⁴ Edith Brown Weiss, Rethinking Compliance with International Law, in Benvenisti, E., & Hirsch, M. (Eds.). (2004). The Impact of International Law on International Cooperation: Theoretical Perspectives. Cambridge: Cambridge University Press (140).



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beginning of the pandemic, several governments assumed emergency powers. This approach developed by adopting an opposing two-pronged approach: on the one hand an ongoing limitation of human rights placing an ever-increasing workload as well as the family burden of care on women, and on the other a gradual and progressive reduction of women's active participation in managing the crisis and the subsequent reconstruction phase. The pandemic emergency has made it clear how the current structure of power risks perpetuating unequal representation of women.

The whole process of institutionalisation imposed in response to COVID-19 pandemic has involved only a small proportion of women occupying positions in international and domestic institutions, such as 'technoscientific' ones, created by Member States to face the pandemic. The involvement of the socalled 'task forces' is not in itself an absolute institutional novelty, since in the past, ad hoc bodies had been established in emergencies, such as earthquakes or natural disasters, or to facilitate the achievement of specific goals. Unsurprisingly from February 2020, when the first signs of the Coronavirus emergency surfaced, and then more so during the full-blown epidemic, multiple task forces were set up in haste with experts called to assist government bodies, both centrally and locally. These bodies were somewhat undefined and flexible, as confirmed by the names they were given: technical committees, study groups, working groups, and control room, etc. A case in point was the Emergency Committee on COVID-19 set up by the World Health Organization, in which women made up less than 20% of the membership. This imbalance was also evident in the all-men emergency task forces established at domestic level, which defined the institutional face of a 'mandemic response'. The available data highlighted that only 3.5% of the task forces created in 87 countries ensured gender parity. 15 This imbalance in decisionmaking power affects the degree to which the realities of women are taken into consideration, by not allowing them to make the decisions that affect their lives.

The debate in terms of international law has also drawn attention to the admissibility of restrictions and derogations from human rights *during states of emergency*. In the presence of a serious and exceptional situation, which could affect the survival of the democratic state, some human rights can be limited or derogated by applying the criterion of proportionality and necessity. This regime is explicitly configured in some international treaties, such as the International Covenant for Civil and Political Rights (Article 4), the European Convention on Human Rights (Article 15) and the Inter-American Convention on Human Rights (Article 27), which govern a special regime for the protection of human rights. Unlike the provisions present in the instruments mentioned above, the *CEDAW does not allow a regime of derogations* even in emergency situations and this 'non-derogability' attributes them 'a special place in the hierarchy of right'. Therefore, even in the cases mentioned above, if the agreement regime admits specific and temporary limitations, 'the commitment to women's equality' cannot be compromised.

It is time to reflect on the critical issues raised by the pandemic emergency in relation to women's participation, specifically by focusing on how the creation of temporary decision-making bodies, such

¹⁵ Germano Chiara and Fornalé Elisa, "Gender Equality in Crisis: Emerging Challenges for Women's Participation" in Fornalé Elisa (ed), Gender Equality in the Mirror (Brill, 2022).



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as task forces, and the procedure for the selection of 'experts' need to be informed by the principles of transparency and accountability.

2) Women's Meaningful Participation and Climate Change

As experts note, environmental degradation does not affect all people in the same ways. Gender, class and generation play a key role in the exposure to risks, and women are particularly vulnerable to climate and environmental harm (the UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 2022, para. 43). The UN Special Rapporteur on Violence against Women contributes to a critical appraisal of how the climate breakdown risks disproportionately affecting women and girls by intensifying their vulnerability to human rights violations and slow violence. This situation necessitates clarification of human rights obligations in the context of the gender–climate nexus by ensuring the fulfilment of women's rights and avoiding exacerbation of pre-existing inequitable socio-economic conditions. Against this background, the priority theme of this year's session of the CSW focused on means of: 'achieving gender equality and the empowerment of all women and girls in the context of climate change, environmental and disaster risk reduction policies and programmes' to identify persistent barriers as well opportunities for achieving gender parity. This topic is critical given that the impact of climate change-linked crises – such as COVID-19 – amplify existing gender inequalities and prevent equal participation.

The CSW, in its 2022 Concluding Observations, requires an exploration of the normative implications of the gender–climate nexus by drawing attention to the fact that women are among the most at risk, for instance, to the adverse impacts of environmental degradation.¹⁶

On 1 October 2022, Claudia Mahler, UN Independent Expert on the enjoyment of all human rights by older persons stressed that States should 'identify and integrate the specific needs of older women into the planning, response and recovery stages of emergency and humanitarian action as well as in climate change, disaster risk reduction measures and peacebuilding. States should include older women in all relevant policy design, implementation and monitoring and take the necessary steps to ensure older women have access to information on legislation, policies and services that affect their lives in order to be able to make informed decisions and participate meaningfully.'¹⁷

Finally, the gender–climate nexus was addressed during the work of the COP 27.¹⁸ The preamble of the Paris Agreement acknowledges the need for the States Parties to recognize 'their respective obligations

¹⁸ Gender and climate change. Draft conclusions proposed by the Chair UNFCCC. Subsidiary Body for Implementation (SBI) FCCC/SBI/2022/L.32, 2022. Among the preparatory documents for the COP27, we include the synthesis report by the



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¹⁶ The concluding observations will be reviewed during the sixty-seventh session of the Commission on the Status of Women, which will take place from 6 to 17 March 2023. One stated aim is to '(f) Identify and eliminate all forms of discrimination against women and girls in the context of climate change, environmental degradation and disasters, in relation to land tenure security and access to, ownership of and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance, and ensure women's and girls' access to justice and accountability for violations of their human rights, with particular attention given to older women, widows and young women', CSW66 Agreed Conclusions, E/CN.6/2022/L.7, 29 March 2022, p. 14.

 $^{^{17} \}quad A vailable \quad at \quad https://www.ohchr.org/en/statements/2022/09/un-expert-praises-older-womens-resilience-face-ongoing-emergency-challenges.$



on human rights' as well gender equality and empowerment of women (para. 11 of the Preamble). Gender is also included in Article 7.5 ('adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach'), and Article 11.2 ('capacity building should be [...] gender -responsive'). The decision adopted on 19 November 2022 on gender and climate change 'recognizes with concern the unprecedented crisis caused by the coronavirus disease 2019 pandemic, the uneven nature of the global response to the pandemic and the pandemic's multifaceted effects on all spheres of society, including the deepening of pre-existing inequalities, including gender inequality, and resulting vulnerabilities, which negatively impacted the implementation of the gender action plan, which has negatively impacted the implementation of effective gender-responsive climate action, and urges Parties to accelerate their efforts to advance implementation of the enhanced Lima work programme on gender and its gender action plan.'¹⁹

Changing the Paradigm: From Powerless to Powerful Gender Parity

To conclude, we believe that if we are to build resilient futures for our societies we need to identify and address persisting gaps and challenges that prevent inclusive participation and representation. Achievement of this outcome would require the following actions:

- i) Identifying measures to increase women's and girls' representation and participation at domestic and international level (Normative Gap);
- ii) Revising formal and informal arrangements that affect meaningful participation (Transparency Gap);
- iii) Strengthening reporting mechanisms to implement national commitments and obligations (Compliance Gap); and, finally,
- iv) Ensuring the effectiveness of the reception of governmental policies and human rights standards (Accountability Gap).

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This note is submitted by the following scholars, experts on gender studies, human rights and international law:

1) Elisa Fornalé is a Swiss National Science Foundation Professor at the World Trade Institute, University of Bern, Switzerland. Since 2021, she has led the *Gender Equality in the Mirror: Clothing the Invisibility of Women at International Level (GEM)* project (www.womenandparticipation.org). The GEM project's overall aim is to put forward a two-dimensional approach (internalization/externalization) to increase women's participation at domestic and international level by making plain the need to strengthen their complementarity. GEM has the following objectives: understanding the roots of participatory rights in human rights law; investigating the role of affirmative actions in accelerating participatory equality by providing the first comprehensive analysis of measures adopted by Member States of the CEDAW; conducting in-depth empirical case studies in international domains (international organizations, international jurisdictions and diplomacy) selected for their exposure to women's underrepresentation. Since 2017, Professor Fornalé has been the Principal Investigator of the project Framing Environmental Degradation, Human Mobility and Human Development as a Matter of Common Concern (www.climco2.org), which is exploring the adverse impacts of slow-onset events and human rights protection. Since 2021, she has been the appointed Co-rapporteur of the International Law Association Committee on International Law and Sea Level Rise.

Secretariat: Implementation of gender-responsive climate policies, plans, strategies and action as reported by Parties in regular reports and communications under the UNFCCC process, FCCC/CP/2022/6, 16 September 2022.

¹⁹ Decision -/CP.27, Intermediate review of the implementation of the gender action plan, available at https://unfccc.int/documents/624406.











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- 5) **Anna Iermano** is Assistant Professor of International Law, Department of Legal Sciences-University of Salerno. Ph.D. in "European Area of Freedom, Security and Justice" (EU Law). Member of the "Observatory on the Area of Freedom, Security and Justice" (responsible for the section "Judicial cooperation in criminal matters" and "Administrative cooperation") and of the Editorial Board of the online scientific Review "Freedom, Security and Justice: European Legal Studies". Adjunct Professor in EU Law Department of Legal Sciences/Specialization School for legal professions (2013-2021). Research Fellow in EU Law and International Law (2009-2021).

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