



Women's Empowerment and Its Limits

Interdisciplinary and
Transnational Perspectives
Toward Sustainable Progress

Edited by
Elisa Fornalé
Federica Cristani

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ISBN 978-3-031-29331-3

ISBN 978-3-031-29332-0 (eBook)

<https://doi.org/10.1007/978-3-031-29332-0>

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FOREWORD

ENGENDERING SUSTAINABILITY

In writing about sustainability, immediately, automatically, and mandatorily, I think about gender equality. The simple reason for this and the link between these two concepts has been vastly pointed out by specialists, researchers, academics, politicians, and diplomats, among others. Indeed, Principle 20 of the Rio Declaration states, “[w]omen have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development”.

It seems that it is quite clear and evident that in order to face some of the major challenging threats related to sustainability of today’s world (namely, climate change, social justice, growth, and development), a gendered approach is crucially required. The discussions occur not just because women’s rights and opportunities are fundamental human rights, but because sustainable development cannot be reached without women having access to the same conditions and opportunities as men. And this matter affects us all; it is not a question of whether we are women or men, Latin Americans or Europeans. We all have spent the last six decades trying to be creative in solving the problems that the unsustainable growth model has brought and its aftereffects.

Today, we have one of the keys to answer this dilemma, and we all agree on it: gender equality must be reached. It is imperative to close the gaps and foster women’s empowerment if we truthfully aspire to sustainable development.

The multidisciplinary consensus about the interrelationship between gender equality and sustainability has become one of the major topics in the fields of international relations, diplomacy, and economics. Unfortunately, and paradoxically, these fields have been historically and traditionally driven by men, which gave them strictly masculine characteristics, which leaves them bonded under an incomplete paradigm.

The path to building strong foundations aimed at gender equality is steep and rocky. Cultural barriers have to be removed for the purpose of raising societies with equal (or at least less unequal) opportunities for women and men. When we talk about cultural changes, we know that those cultural changes require a significant amount of time and persistence. They need to go through generations and they always face resistance.

In spite of the steep and rocky path to gender equality, people and societies are moving forward in this regard. This book is a proof of that. The demonstrations held every 8th of March in different locations around the globe are also a proof of how women's endurance pushes forward cultural changes. Public policies, such as quota mechanisms, are also proof of the efforts that governments pursue to "level the playing field".

In order to clarify the fact that we are moving forward, I would like to share the example of the experience of Chile regarding participation of women in politics (a key domain that determines development). In 2015, an initiative for a quota mechanism came into force in Chile. It obliges political parties to present lists of parliamentary candidates with no more than 60% representation for either sex. It also establishes that at least 10% of the total amount of money that each political party receives as a contribution must be used to promote political participation of women. This quota mechanism is a temporary measure that, since its enforcement, has triggered significant improvements in the composition of the Chilean Parliament: in the Chamber of Deputies, female participation increased from 15.8% in 2013 to 22.6% in 2017 and then to 35.5% in the 2021 elections.

Another illuminating and unique example that appeared in Chile is the innovative and progressive agreement among the main political forces in the country by which it was agreed that Chile would have a new constitution written by a gender-parity body.

When looking for examples in other fields, it is inspiring to see that Chile became the first country in the world to incorporate gender matters in free trade agreements as a chapter in itself that is separate from labor articles. To comply with the gender chapters, national institutions must

adapt in order to generate the conditions that would allow for capacity development, financial inclusion, female leadership, development of women's networks, promotion of female entrepreneurship, and the structures to collect statistical data with a gender perspective, among many other assignments that ensure women's participation in international trade. All these enhancements are indicative of the fact that we are moving forward along this steep and rocky path to gender equality and sustainable development.

Notwithstanding, it is imperative to keep looking for alternatives and mechanisms that would endeavor to achieve gender equality because while the abovementioned steps forward occur in Chile, women's rights are trampled in other areas of the globe, and steps backwards are happening every minute somewhere on the Earth.

Gender equality is a path that never ends; it is not enough to include a gender chapter in a free trade agreement to achieve gender equality and close the gaps. Also, it is not enough to establish quota mechanisms to increase the number of female representatives in politically influential positions.

It is important to outline that the path to gender equality has numerous manifestations; some steps are taken through international conferences at a high or technical level, others in the streets of different cities, others in houses and schools, and, as stated above, others are taken through public policies and government measures. All have the same purpose—that of achieving gender equality, and we, as all the members of society, have a role to play in it.

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ACKNOWLEDGMENTS

This book originates from the September 2020–May 2022 Gender Lecture Series “Know the GAP! Talking Gender, Equality and Diversity”, organized by Prof. Elisa Fornalé at the World Trade Institute (WTI). First and foremost, we would like to express our gratitude to the Office for Equal Opportunities of the University of Bern for encouraging the development of this timely initiative and for funding activities that led to this manuscript. Special thanks go to Karin Beyeler for her help and advice. Special thanks also go to the participants at the Gender Lectures, who, through their engagement in fruitful debates, gave us the opportunity to enrich our knowledge and understanding of the complexity of this topic.

Prof. Elisa Fornalé would like to warmly thank the Know the GAP! team members Sophia Thompson, Francesco De Fino, and Tamara Koehler for always being a source of help. She wants to say a special thank you to Prof. Joseph Francois, the managing director of the WTI, who gave her the necessary confidence to create this powerful team. Prof. Fornalé is especially thankful for the grant received from the Swiss National Science Foundation for her project “*Gender Equality in the Mirror: Clothing the Invisibility of Women’s Participation at International Level*” (No. 100011_200462/1).

Dr. Federica Cristani expresses her gratitude to the Know the Gap! Gender Team and to Prof. Elisa Fornalé for her ideas and guidance during the process that led to this manuscript. Thanks are also due to the Institute of International Relations (IIR) in Prague for encouraging and supporting the production of this book project. Special thanks are due to Prof. Veronika Bílková, Head of the Centre for International Law at IIR, the

Research Director Associate Prof. Jakub Eberle and the Director Associate Prof. Ondřej Ditrych for their support and enthusiasm for the book project, and to all the colleagues at the IIR who have supported it.

Lastly, we would like to express our gratitude to all the staff of Palgrave Macmillan, Arun Prasath, Nina Guttpalle, and Brian Halm for their valuable support and our rewarding working relationships with them. We must also thank the authors, who have always showed an incredible degree of commitment to this joint effort. Their contributions of original research and their patience during the editorial process made this excellent publication possible. Finally, many thanks to Gabriel Olegário and Giada D'Andrea (IIR) for assisting with the editing and to Jan Hrubín (IIR) for proofreading the manuscript.

CONTENTS

1 Women’s Empowerment and Its Limits: Setting the Scene Elisa Fornalé	1
 Part I Know the Limits: The Status of Women Empowerment in the Sustainability Discourse	 13
2 Women’s Empowerment: A Historical Introduction Iole Fargnoli	15
3 Achievements and Hurdles Towards Women’s Access to Climate Justice Sara De Vido and Elisa Fornalé	33
4 Minority Women, Human Rights, and Cultures in the Multicultural Discourse Costanza Nardocci	53

Part II Test the Limits: Where Is Gender Equality in the Sustainable Development Policy Framework?	77
5 Including the Gender Dimension in the “Investment and Sustainable Development” Discourse: Where Do We Stand Now?	79
Federica Cristani	
6 The Climate Crisis in Fiji: The Grim Realities and Available Opportunities for Gender and Climate Justice	97
Nalini Singh	
7 The Ambivalent Parity: The Italian Constitution and Women’s Rights	109
Marilisa D’Amico	
Part III Cross the Limits: Innovation for Engendering Sustainable Development	137
8 Introducing Data Feminism	139
Catherine D’Ignazio and Lauren Klein	
9 Gender Equality and Artificial Intelligence: SDG 5 and the Role of the UN in Fighting Stereotypes, Biases, and Gender Discrimination	153
Fabian Lütz	
10 The Need for Women in Space	181
Aisha Jagirani	
Index	197

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LIST OF TABLES

Table 9.1	A comparative table on human and algorithmic decision-making in the context of non-discrimination (simplified)	163
Table 9.2	A comparative table of international and regional AI frameworks with relevance for gender equality and non-discrimination	172



CHAPTER 1

Women’s Empowerment and Its Limits: Setting the Scene

Elisa Fornalé

1 INTRODUCTION

In 2020, the sixty-fourth session of the United Nations (UN) Commission on the Status of Women (CSW) raised attention to the urgency of strengthening synergies between sustainability and gender by highlighting key areas (human rights/women’s empowerment/power asymmetries) that could serve as the roadmap to reviving state ambition in relation to these issue areas. Indeed, gender equality is “a necessary foundation for a peaceful, prosperous and sustainable world”;¹ many reports have been devoted

¹ UN Sustainable Development Goals. 2015. Goal 5: Achieve gender equality and empower all women and girls. <https://www.un.org/sustainabledevelopment/gender-equality/>. Accessed 1 November 2022.

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to the linkages between sustainability and gender—for example those drafted by agencies of the UN, the Organisation for Economic Co-operation and Development (OECD), the World Bank and the European Commission, just to mention a few—and the recurrent message is that sustainability and gender are “mutually reinforcing”, since “[a]chieving gender equality calls for looking beyond social and economic inequalities and diving deep into the disproportionate effects of systemic issues [...] which could further exacerbate the former”.² But how to include the gender dimension in the sustainability discourse in an efficient way? And how to address the persisting challenges, especially in the post-pandemic times?

As the most recent sustainable development goal (SDG) report, “Progress on the Sustainable Development Goals: The gender snapshot 2021”—prepared by UN Women and the UN Department of Economic and Social Affairs—has highlighted, the “pandemic is clawing back [the] limited progress in the past 25 years on expanding women’s rights and opportunities, including for economic participation and political voice”.³ Indeed, the “corona shock” is almost a textbook example of how unequal and exclusive access to the workforce and economic opportunity, political participation and socio-legal recognition still is for women as compared to men in many places and spaces around the world, as a result of systematic discrimination and violations of basic human rights.⁴

² OECD. 2021. Gender and the Environment. Building Evidence and Policies to Achieve the SDGs. <https://www.oecd.org/env/gender-and-the-environment-3d32ca39-en.htm>. Accessed 1 November 2022.

³ UN Women. UN Department of Economic and Social Affairs. 2021. Progress on the Sustainable Development Goals: The gender snapshot 2021. <https://www.unwomen.org/en/digital-library/publications/2021/09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2021>. Accessed 1 November 2022.

⁴ Commission on the Status of Women. 2020. 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 Women and Girls. Report of the Secretary-General. E/CN.6/2021/3; Hellum and Sinding Aasen (2013); Htun and Weldon (2018); Jaggar (2020); Charlesworth and Chinkin (2022).

2 ENGENDERING SUSTAINABILITY: THE PURPOSE AND SIGNIFICANCE OF OUR BOOK

This book embraces the “most popular idea” of sustainability to identify persistent barriers as well as opportunities for achieving women’s cultural, civic, normative and decision-making empowerment.⁵ The overall aim of this edited collection is to contribute to the search for sustainable development by adopting a gender approach in the face of complex global challenges which represent “old” or ongoing problem areas where we observe backlashes from deepening inequalities and regression in democratization, lacks in women’s economic security and social development, and the gender divide in technological innovation. In so doing, the book aims to elaborate on the notion of women’s empowerment, a crucial dimension in the implementation of sustainable development goals, at the intersection of law and social sciences.

“Power”, the “root-concept of empowerment”, is a crucial social phenomenon for societies.⁶ It shapes hierarchies and inequalities among social groups on the basis of ethnicity, gender, social class, religion and disability, among others, intersecting lines of discrimination. Hence, the attempts to conceptualize how intersecting power relations and domains of power influences gender (in)equality, democracy, participation and access to a fully inclusive citizenship, represent 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. According to Collins and Bilge,⁷ “power relations are to be analysed both via their intersections, for example, of racism and heterosexism, as well as across domains of power, namely structural, disciplinary, cultural, and interpersonal. The framework of domains of power provides a heuristic device or thinking tool for examining power relations”.

During the COVID-19 pandemic, for instance, 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 owing to the lack of adequate resources—knowledge,

⁵ Bosselmann (2011) and Fornalć (2022).

⁶ Tasli (2004); Batliwala (1994); Kabeer (1994); Rowlands (1995, 1997, 1998).

⁷ Collins and Bilge (2016), p. 200.

economic resources, technology, mobility and other assets.⁸ While the turn to the digital has had impacts on most aspects of life, local conditions and historical trajectories determine access to or exclusion from digital tools and social media (the so-called digital divide), shape their outcomes and lead to differences in the impacts of hazards on different social groups.

The degree of preparedness to handle hazards and disasters is also related to the response to “slow violence”,⁹ which refers to the constant and progressive environmental degradation caused by irresponsible exploitation of natural resources and the absence of adequate responsible preventive policies. Slow violence may or may not lead to major disasters but has a disproportionate impact on women and girls. Climate change is an edifying example of slow violence. In this regard, it is crucial to highlight the topic chosen by the sixty-sixth session of the Commission on the Status of Women in 2022: “gender equality and the empowerment of all women and girls in the context of climate change, environmental and disaster risk reduction policies and programmes”. Women and girls, along with other vulnerable groups, such as indigenous peoples, and local communities, are the ones who “are the most affected by land and resource tenure insecurity and environmental degradation”, as they “disproportionately suffer the effects of biodiversity loss”.¹⁰ In the light of this, could power relationships be turned around to give women the ability to better cope with present and future crises?

Much significant work on the role of power in society has been published in the past few decades,¹¹ whereas theoretical and empirical investigations—based on an emphasis on intersectionality and understood from a strong legal perspective—into the construction of the empowerment-sustainability nexus are less numerous.¹² Women’s empowerment and sustainability are closely interlinked, as was well illustrated during the sixtieth session of the UN Commission on the Status of Women, whose key

⁸ In line with a report published by the UN Secretary General on Women in Development, “The crisis caused by the COVID-19 pandemic has deepened gender inequalities in the world of work, decimating economic sectors where women workers are overrepresented and causing a shadow pandemic of escalating violence against women and girls”. UN Secretary General. 2022. Women in Development. UN Doc. A77/243; Campbell et al. (2020).

⁹ Nixon (2011).

¹⁰ Commission on the Status of Women. 2022. Sixty-sixth session. CSW66 (2022). <https://www.unwomen.org/en/csw/csw66-2022>. Accessed 1 November 2022.

¹¹ For example Kabeer (2001); Moser (1989) and Rowland (1985).

¹² D’Ignazio and Klein (2020); Collins and Bilge (2016) and Fraser (1989).

priority theme was “women’s empowerment and its links to sustainable development”; the “agreed conclusions” adopted by the Commission include a set of guidelines on the most efficient implementation of the UN sustainable goals in a “gender-responsive manner, so as to ensure that no one—no woman and no girl—is left behind”.¹³ As illustrated by van Eerdewijk et al., women’s empowerment could be achieved by the “expansion of choice and strengthening of voice through the transformation of power relations, so women [would] have more control over their lives and futures”.¹⁴

Moreover, even if we endorse a widespread use of women’s empowerment, this “mot passe-partout” is not an easy concept for translation—in terms of both its content and scope. Everyone agrees with the need for it, as studies in women and development have addressed the potential power-consciousness, but it is much less clear how to really get there.¹⁵ This clearly emerged from the work of the sixty-fifth session of the Commission on the Status of Women (CSW) on “women’s full and effective participation and decision-making in public life”. The CSW “recognizes that progress in achieving gender equality and the empowerment of all women and girls, and the full enjoyment of their human rights has been held back owing to the persistence of historical and structural unequal power relations between women and men”.¹⁶

A comprehensive conceptualization is lacking, and further research is urgently needed to create a dialogue between inquiry and praxis.¹⁷ To rethink the idea of women’s empowerment—understood as a collective project of “global citizens”—our book suggests to focus on three interconnected dimensions: its universality, since it is vitally important to

¹³ Commission on the Status of Women. 2016. Women’s empowerment and the link to sustainable development. Agreed conclusions of the 2016 session of the United Nations Commission on the Status of Women. CSW60 (2016). <https://www.unwomen.org/en/csw/previous-sessions/csw60-2016>. Accessed 1 November 2022.

¹⁴ van Eerdewijk, Anouka et al. 2017. White Paper: A Conceptual Model of Women and Girls’ Empowerment. KIT Gender, Bill & Melinda Gates Foundation. <https://www.kit.nl/publication/white-paper-conceptual-model-of-women-and-girls-empowerment>. Accessed 1 November 2022.

¹⁵ Tasli (2004); Kabeer (1994, 2001); Friedman (1992).

¹⁶ Commission on the Status of Women. 2020. 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 Women and Girls. Report of the Secretary-General. E/CN.6/2021/3.

¹⁷ Collins and Bilge (2016).

advance values-led transformations not limited to a geographic, cultural or religious context;¹⁸ its long-term relationship with power in its multiplicity of forms (socio-economic, political, cultural) that needs to be constantly challenged to facilitate transformative processes and its inclusiveness so as to emphasize the need to have a “diversity of women’s empowerment” so that we could understand the intersectionality not only of gender disempowerment. To challenge the *status quo*, our edited volume adopts an interdisciplinary approach to investigate the limits of women’s empowerment to achieve sustainability: first, by unpacking regimes that affect women’s inclusive citizenship and reversing “disempowerment” (know the limits); secondly, by taking into account concrete examples of limits in practice (test the limits) and third, by exploring how the rise of new technologic innovations may (or may not) contribute to make “limits obsolete” (cross the limits?) (Delmas-Marty, 2019). Our book focuses on different dimensions (historical, cultural, socio-economic, cultural, and normative) to frame a new understanding of how achieving gender parity in a sustainable way.

3 THE STRUCTURE OF THE BOOK

Against this challenge, the book will investigate the limits of women’s empowerment by unpacking power relationships and highlighting invisible barriers to make change irreversible in three key areas.

(a) Know the Limits: The Status of Women’s Empowerment in the Sustainability Discourse

The book starts by developing a historical account of (in)equalities in sharing of power and participation, which is a central part of the sustainability narrative. The analysis then moves on to capturing the central role of the human rights project in removing barriers and grounding the emerging international consensus on supporting women’s empowerment. Chapter 2, “Women’s Empowerment: A Historical Introduction”, provides a unique picture of the difficult conjugation between women and power in history to highlight the parallels and antinomies of a

¹⁸For instance, the recent data provided by the Gender Social Norms Index (hdr.undp.org/sites/default/files/hd_perspectives_gsni.pdf) for the year 2020 confirm that gender equality has not been achieved in any country in the world (this tool is published by the United Nations Development Programme).

centuries-long inequality between the genders. The third chapter, “Achievements and Hurdles Towards Women’s Access to Climate Justice”, discusses whether and how women face challenges in accessing climate justice by clarifying the linkages between environmental changes and human rights to assess the current evolution in the Sustainable Development Agenda (notably SDG 5: achieve gender equality and empower all women and girls by 2030).

Part I also identifies which of the human rights dimensions may play a positive role in redressing gender inequality and deconstructing legal and institutional barriers, also within a multicultural discourse. Chapter 4, “Minority Women, Human Rights and Cultures in the Multicultural Discourse”, examines women’s human rights within the frame of multicultural theories.

(b) Test the Limits: Where is Gender Equality in the Sustainable Development Policy Framework?

To complement Part I, Part II will “test” the limits of women’s empowerment within the legal and policy framework of sustainable development, taking three emblematic topics as terms of reference: economic development, climate change and constitutional rights.

Chapter 5, “Including the Gender Dimension in the ‘Investment and Sustainable Development’ Discourse: Where Do We Stand Now?”, provides an in-depth analysis of the ways in which gender equality could inform a new paradigm of economic development at the international level. Chapter 6, “The Climate Crisis in Fiji: The Grim Realities and Available Opportunities for Gender and Climate Justice”, outlines the gendered dimension of climate change and disasters by using the Pacific as a case study. Chapter 7, “The Ambivalent Parity: The Italian Constitution and Women’s Rights”, adopts a normative approach to focusing on women’s participation in order to assess how women’s political rights have developed so far. Specifically, women’s participation in politics may be useful for introducing regulations intended to achieve more inclusive societies, including gender parity. The chapter’s taking of a case study approach (i.e. the Italian case) will allow the reader to get a more diverse and comprehensive view of the “global” limits of women’s empowerment in its complex and multidimensional forms.

(c) Cross the Limits: Innovation for Engendering Sustainable Development

The last part will concentrate on the gendered dimensions of digitalization and technical innovation practices at international and domestic levels to move beyond the current understanding of sustainability. On the one hand, the analysis will address the challenges that the rapid digitalization of work, schooling and social life, which was accelerated by the COVID-19 pandemic, could raise for the achievement of inclusive development. As highlighted by Phumzile Mlambo-Ngcuka, the Executive Director of UN Women, “(u)nless women play an equal role in designing and using digital technologies, progress on women’s rights could be reversed”.¹⁹ On the other hand, the reflection will discuss the crucial need to ensure diversity in the scope and innovation of new technologies to accelerate progress for all. The proportion of women currently occupying positions in science, technology, engineering and/or mathematics (STEM)-related fields, such as outer space fields, is still very low, especially at the top positions. This raises serious concerns in terms of inclusion and substantive equality. Part 3 will therefore shed light on the story of women in this respect with a focus on emerging sectors where women’s participation may fulfil the imperative of closing the gender divide. Chapter 8, “Introducing Data Feminism”, aims to show how scholarship can be transformed into action: how feminist thinking can be operationalized in order to imagine more ethical and equitable data practices. Chapter 9 deals with “Gender Equality and Artificial Intelligence: SDG 5 and the Role of the UN in Fighting Stereotypes, Biases and Gender Discrimination”. This chapter is framed by the sustainable development goals (SDGs), especially SDG 5, and includes a brief overview of the broader policy and institutional framework of the UN. Chapter 10, “The Need for Women in Space”, claims that “space is beyond gender. Space has no boundaries; it inspires and fascinates everyone equally, yet it is astonishing that there are hardly a few female astronomers and space scientists in history”. The chapter highlights the importance to evaluate the situation of women in science, technology, engineering and/or mathematics (STEM)-related careers and education (particularly space science- and technology-related fields), the challenges faced by them

¹⁹ Phumzile Mlambo-Ngcuka. 2020. The Role of Digitalization in the Decade of Action. UNCTAD News. <https://unctad.org/news/role-digitalization-decade-action>. Accessed 1 November 2022.

and the role of intergovernmental organizations such as the United Nations Office for Outer Space Affairs (UNOOSA) and the Asia Pacific Space Cooperation Organization (APSCO) in promoting and facilitating the involvement of women in space.

4 BACKGROUND

The calls for gender equality are increasingly being heard. In Switzerland around half a million women joined the women's strike in June 2019 to demand gender equality, and in October of the same year, more women than ever before competed successfully for parliamentary seats. In 2019, the World Trade Institute (WTI) created a permanent equality committee to implement the Gender Action Plan (GAP). Our committee's motto is "Know the GAP!". This has been a great opportunity to make a strong contribution to promoting awareness of and discussion about gender equality, diversity and resilient inequalities within our academic community and in a broader context. Firstly, we created an "intellectual hub" that engages the academic community through addressing crucial gender issues and combines a theoretical and an empirical approach. Secondly, by seizing this historic moment when the recognition of this subject matter is high on the political agenda at national and international levels, the academic community has a real opportunity to make an impact in the policy sphere by fostering a dialogue between scientists and policy makers. Thirdly, and perhaps most importantly, by expanding the knowledge of scholars in this area we could strengthen their active involvement in the achievement of the United Nations' sustainable development goal (SDG) 5—that of gender equality. Against this background, we initiated the "Gender Lecture Series—Know the GAP". This volume includes a revised version of the lectures delivered during this incredible series.

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PART I

Know the Limits: The Status of Women Empowerment in the Sustainability Discourse



CHAPTER 2

Women's Empowerment: A Historical Introduction

Iole Fargnoli

1 INTRODUCTION

Inequality in society has been the norm in history and was typical for the hierarchical social organization of antiquity. Therefore, it does not surprise one that a gender disparity characterized ancient societies: the essential role of protection of the community against enemies was assumed by the male, while the female was destined for reproduction due to biological reasons. This male/female dichotomy concretely meant that the weak female needed to live under the firm hand of a male authority.¹

It is not easy to describe briefly the legal rules in the different societies that history has known over many centuries. The complexity increases in the light of an obvious fact: history tells us about soldiers, politicians and important personalities that were men and very rarely women. It is

¹ D'Ambra (2007), p. 12.

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therefore evident that there are very few voices or tracks of women in history and that there are incomparably less of them than those of men; they have been in actual fact cancelled by history.²

To try to create an overview of the female condition in history, I will impose chronological limits on myself. I will sketch a description—on the basis of written sources and the material culture—of the legal condition of women in ancient Greece and Rome. These legal experiences are essential in history because they provide a model of women's subalternity during the later centuries. It was necessary to wait a long time before a scientific discussion started to crash into the unicity of the patriarchal social organization model and therefore established the basis of the female movement that has changed women's condition in the twentieth century.

2 GREEK WOMEN

The female image goes back to the theorizing of great authors like the ancient poet Hesiod,³ the poet Simonides of Amorgos,⁴ the tragedian Euripides⁵ and especially Aristotle. The last mentioned author, a philosopher who has strongly influenced every form of knowledge in Western history, wrote that men have the same authority over women that the State has over men,⁶ and he theorized that even in reproduction, the essential function of women, the key role is that of men, as they change the female substance with their sperm,⁷ thus making new life possible. The power of men over women thus obtained a "scientific" justification. In Greece, women's condition was slightly different in the single city-states. In the well-documented situations in Sparta, Gortyna and Athens, the best status for women was in the militaristic Sparta.

² Cantarella (1986), p. 22.

³ Hesiod, *Opera et dies* ("Ἐργα καὶ Ἡμέραι"), paras. 373–375: "You trust a thief if you trust a woman". This translation and all the subsequent ones in this chapter are provided by the author.

⁴ Simonides, para. 7.21: "The gods have made one of earth—their gift to man! She's lame and has no sense of either good or bad".

⁵ Euripides, *Hippolytus* ('Ιππόλυτος), paras. 616–617: "O Zeus, why did you ever set women in our sunlit world to lead men astray with their corrupting ways?"

⁶ Aristoteles, *Politica* (Πολιτικά) IA, 12, 1259. See Sissa (1993), p. 83 ff.

⁷ Aristoteles, *De generatione animalium* (Περὶ ζώων γενέσεως), 728a.

2.1 Spartan Women

Even if the main task of women was the reproductive one of perpetuating the lineage, Spartan women underwent a plan of intense physical training and an abundant diet.⁸ Women received a strict and comprehensive education by the institutions based on the same values and worldview as the education for men, so that they could read and write. At the same time women were forbidden to wear luxurious clothes and hairstyles (women were not allowed to wear jewellery, their clothes consisted of a short tunic held at the hips by a belt and they were not allowed to colour these tunics). There was no form of “domestic confinement”: women could participate in the social life of the polis.

Adultery was allowed, but only under certain conditions: the woman's partner had to be a Spartan citizen in good health so that he could procreate potential warriors. Even a “loan of wives” was possible: if a free man needed an heir, he could “borrow” another man's partner.

Spartan hereditary law was very unusual in comparison to Greek paradigms if it earned Aristotle's indignant statement that Spartan women “owned two-fifths of the entire territory”.⁹ These women could inherit property and manage it themselves, even if they inherited amounts that were half of what men inherited; they could dispose of considerable wealth and often took on the role of householder as their husbands were often engaged in military training or wars.

It is not certain whether a man's legal guardianship over a woman in a particular condition, a so-called heiress (“patroiòkos”), existed also in Sparta. If a woman had neither a father nor a brother born of the same father, she was under a guardianship exercised by her closest male relative or, in the case of marriage, by her husband. If this system existed in Sparta, these rules were likely less stringent there.

2.2 Dorian Women

A little bit harder was the condition of women in Gortyna, a town in ancient Crete in which the Dorians, a Greek ethnic group different from the Ionians, lived. This is very well documented because of a monumental

⁸See *infra* Section 3.

⁹Aristoteles, *Politica* (Πολιτικά) II 1259b, 13–1270b, 6.

inscription which dates back to the fifth century B.C. and contains a rich sequence of provisions, especially concerning the family law.¹⁰

Women were considered true heirs of a part of the property of both of their parents, with their male children being the heirs of another part, and enjoyed their own patrimony, of which they had exclusive administration and which, upon their death, would go to their children and other relatives.

But emblematic was the condition of the “*patroiòkos*”, the woman who had neither a father nor a brother born of the same father.¹¹ Her nearest male relative (a paternal uncle and a son of a paternal uncle) was to marry her. If it did not happen, there were meticulous rules: if the nearest relative did not want to marry her and she was not yet of age, the decision was postponed; if she was already of age and the male relative did not want to marry her, the relatives appealed to a judge, who established a time limit of two months for the marriage ceremony to take place; if it did not take place, the heiress could marry another relative, and she could choose from among those of the clan who had asked her to marry them; if there were no next of kin, the woman could marry whomever she wished. But only by not marrying any of her relatives could she keep the house and half of the property.

2.3 Athenian Women

In Athens, whose political and cultural role led to its legal rules to influencing other poleis in Greece, the condition of women was surely worse than in Sparta and Gortyna. Considered as inferior creatures, women were integrated into the city not as citizens, but as daughters or wives of citizens, and had no legal or political rights, including the right to vote and the right to be elected as a member of the assembly. They spent most of their time at home with the only exceptions being special religious festivals in which they could participate. Everything that was useful for a young Athenian girl to learn—household work, spinning and weaving wool, cooking and occasionally some elements of music and reading—she learned from her mother, a female relative or the family servants. They did not have an adequate education. The young girl’s guardian—her father or grandfather or legal guardian—selected her husband, deciding for her and without her consent being necessary. Therefore, the woman was subject to

¹⁰ Martini (2005).

¹¹ Codex 8.40–42.

guardianship during her entire life (with the guardian being her father, husband, son or closest male relative) and had no capacity to act on her own.

A law attributed to Solon stated that if a father found out that his daughter was having sex before marriage, she ceased to belong to the family and could be sold. Her prospects of marriage were then closed—hence, the importance of custody as a guarantee of preservation of the conditions of access to marriage. The main reasons for marriage were reproductive and religious reasons: one married in order to have sons, at least one who would perpetuate the race and assure his father that the rituals honouring the family's ancestors would continue, which was considered indispensable for the happiness of the deceased in the hereafter. The dowry a woman brought with her was administered by her husband because she could not freely dispose of her possessions. Married women also hardly ever left the house and were never present in the Athenian public places. They also were not allowed to be interested in what went on outside the home, as that was considered to be matters for men. Only women from less wealthy families could more easily frequent public places and thus have a social life, since their going outside was a necessity.

Disconcerting to modern eyes is the treatment of an only daughter of a man without living male heirs (a female heiress, called an “*epíkleros*”, which is nearly equivalent to the Spartan and Gortynian “*patroiòkos*”). This seems to be a discipline that was decided upon by Solon. Athenian women had no property, so in order to keep their father's estate in the family, they had to marry the father's nearest male relative (who could guarantee at least three sexual performances per month to ensure the birth of an heir). If, however, the only surviving daughter was already married but without children, the next of kin could dissolve the marriage and marry her. When one of the nearest relatives refused to marry her, the next one was to consider doing so; if all the relatives in this succession refused to marry her, she had to accept a marriage request from anyone.

Conjugal fidelity was only required from the woman. There was a total asymmetry of marital duties. The man could surround himself with other female figures in addition to his wife: the concubine (often a foreigner, equal to his wife in duties but unmarried), the “*etèra*” (a sort of “paid” but highly educated companion) and the prostitute. Also at the master's disposal was the slave girl. While the man was not punished for his adultery, the adultery of the woman was punished as a crime and an offence against the community.

Against this cultural situation the voice of Aristophanes, one of the most well-known comedians of all time, stands out. He wrote and released into Athenian theatres three comedies that constitute a “feminine trilogy”.¹² The most successful comedy of this trilogy, *Lysistrata*, is attested to be the first depiction of a women’s strike in history. The female protagonist that gives the comedy its title invents a strike to stop a war that is raging at the time. She gives the men an ultimatum: if the men do not stop the war, she and the other women from all of Greece will refuse to offer themselves to their husbands; the loss for the men is so strong that they give up on the war. It is possible to read this masterwork by Aristophanes as a derision of women, whose only tool to oppose their own will to that of a man is their bodies, but I think that in this comedy, the great dramatist gave us the image of a successful heroine in a patriarchal society as a utopia.

3 ROMAN WOMEN

“In many parts of our law the condition of women is below that of men”. With these few words, one of the greatest jurists of the Roman era described the condition of women at that time.¹³ The male/female dichotomy was evident also in Roman law, as the famous jurist Papinian recognized. Although a definition of a woman cannot be found in the sources,¹⁴ epithets like “cognitive foolishness” (*imbecillitas mentis*), “fickleness” (*levitas animi*) and “bodily weakness” (*infirmitas sexus*) very often follow from the qualifications that women earned in the Greek world.¹⁵ But the condition of the Roman ones seems to be much better, as Cornelius Nepos¹⁶ clearly attests, than that of the retired and sheltered woman in Greece.

To understand women’s condition in Rome it is necessary to distinguish whether they were under legal authority. In the society that developed the first system of law in history, which continues to be a model for modern law systems after many centuries, a man’s legal authority over a

¹² *Ekklesiazousai* (Women in Parliament), *Thesmophoriazusae* (Women celebrating the festival of the Thesmophoria) and *Lysistrata*.

¹³ The statement is in the Digest, D. 1.5.9 (Papinianus 31 quaestionum): *In multis iuris nostri articulis deterior est condicio femininarum quam masculorum.*

¹⁴ Thomas (1993), p. 105.

¹⁵ See, above all Cantarella (1985) and Cantarella (1998).

¹⁶ Cornelius Nepos, *De viris illustribus*. Praef., 2–7. See especially Kreck (1975), p. 33.

woman was clearly established in three different types:¹⁷ the paternal power (*patria potestas*), the woman's subordination to her husband's legal power (*manus*) and guardianship (*tutela*). It is evident that this tripartition counts only for free women, while slave women were objects of property (*dominium*) and therefore under the control of their master.

During the life of the *paterfamilias* the women in his family lived under his legal authority. Only with marriage could they be transferred to the authority of their husband, but even when married, they could continue to remain under the *patria potestas*. If their father or husband died, or they got divorced, they could become *sui iuris*, which means under no authority. In these cases the woman still needed a guardianship, but the guardian had no control over her behaviour or her property. Guardianship of women (*tutela mulierum*) meant only that the woman's guardian, who was usually her closest male relative on her father's side (*agnatus*), had to give his consent to certain legal and business activities that she undertook.

In Roman law, a signal of a balance in the relationship between a male and a female seems to be the right to divorce. Marriage was a mutual agreement between a man and a woman, and divorce was possible at all times for both. This meant that a woman could divorce her husband even unilaterally. Though this right mirrors a female condition that remained unrecognized until the twentieth century, we do not know how often a woman's unilateral divorce from her husband really happened in the daily life of ancient Rome.

If they were not under the legal authority of a father or a husband, Roman women could own property.

Another important bastion in the relationship between a male and a female in the Roman times was the inheritance law, which did not distinguish between genders. This kind of equality was never again recognized until the twentieth century. Women could inherit property like men and leave their property by a last will to whomever they wanted. A proof that women could become very rich in ancient Rome is a law from 169 B.C., the *lex Voconia*, which—among other norms—limited the possibility for women to inherit because men with a property valued at 100,000 asses or more were prohibited from making women their heirs.¹⁸

¹⁷ See Grubbs (2002), p. 20.

¹⁸ For a recent source on this, see McClintock (2022), p. 43 ss.

3.1 Women's Empowerment in the Imperial Era

The end of the Republic and the beginning of the Principate with Augustus meant much better conditions for women.¹⁹ The most significant innovation was the possibility of a woman emancipating herself from her guardianship. With the *lex Papia Poppea* women that were not under the authority of their father or husband could earn the right of three children (*ius liberorum*). This right meant that women that had at least three children needed no guardianship. Women that had been slaves in the past (freed women) had this right after having four children, but they could also reach this condition. This important reform by Augustus was motivated by the promotion of marriage and procreation, but it brought independency to women in that they could manage all their affairs without asking for any permission if they fulfilled the condition.

But the legislation of Augustus made the condition of women even worse in terms of other aspects. Adultery, which until that time had been a matter of the family and not of the public community, started to be perceived as a crime punishable by law. Augustus established that the unfaithful wife in a case of an extramarital relationship could be lawfully killed by her father or—with some different conditions—by her husband.²⁰

Therefore, it is not easy to give a univocal image of Roman women, even in the imperial times, and sometimes literary testimonies from ancient Rome contained a strong critique against women, like the satire by Juvenal²¹ that contains the well-known parody on the theme of whether or not a man should marry that made the satirist the paradigm par excellence of misogyny.

To summarize the condition of Roman women in a nutshell, although their well-being was contingent upon their relationships with their fathers and husbands, Roman women enjoyed great property rights and the freedom to divorce, with an improvement in these areas in the imperial era.

The diffusion of Christianity on the Roman territory limited this freedom to divorce and, at the same time, confined the role of the woman in some aspects. Although Jesus made clear his way of relating to all people without prejudices or discrimination, the first interpreters like Paulus the

¹⁹ On the legal aspects, see Peppe (2016).

²⁰ On adultery, see Botta (2020), p. 13.

²¹ Juvenal, Satire 6.

Apostle²² and Tertullian, the so-called father of early Latin Christianity,²³ highlighted the subalternity of women to men,²⁴ establishing, for example, the obligation of woman to cover their heads during certain functions and underlining that the man and the woman are different results of the creative act of God, because God created the man first and then from him the woman and not vice versa.

3.2 Roman “Empresses”

The better conditions for women during the Roman Empire compared with the previous times are documented also by accounts of the existence of female emperors. They did not have direct power, but as wives of the emperors they had not only a dialogue with the most powerful person in the region but even a formal recognition of their high function.

Livia Drusilla was the first Roman woman to have a formally exposed position. Her husband Octavian Augustus, the first *princeps* in Roman history, added to her name the title “Augusta”,²⁵ though it was only when he was on his deathbed in 14 A.D. Livia had in fact managed to influence, even in an important way, the decisions reached by the imperial family at a time when there was no room for women in politics by converting, as far as she was concerned, the female figure from a simple bride to a character with her own, in some ways autonomous, dimension. A strong critique of her behaviour that especially argued that she was a bad mother for Tiberius, was written by Svetonius.²⁶ This is also our richest source of information about her.

After Livia there were no more *Augustae* of equal incisiveness and visibility, although there are testimonies of other consorts of successive emperors being given this title, such as Iulia Agrippina, the wife of Claudius; Poppea, the wife of Nero; or Julia Domna, the wife of Septimius Severus, who was famous for her political and social influence.

The empress that really had an impact in the power management was Theodora, but it was more than three hundred years after Julia Domna.²⁷ Theodora worked as a dancer and theatre actress before marrying Justinian,

²² Paulus, First Letter to the Corinthians 11.5–6.

²³ Tertullianus, *De virginibus velandis* 1.1.

²⁴ See, above all, Witherington (1988).

²⁵ Temporini-Gräfin Vitzthum (2002), p. 48 ff. and Hartmann (2007), p. 187 ff.

²⁶ Svetonius, *Divus Augustus* 84.

²⁷ On Theodora, see Leppin (2002), p. 437 ff.

the future emperor of Byzantium. Although contemporary sources, especially Procopius, criticized her strongly, telling all the worst details about her past and behaviour,²⁸ she demonstrated her capacity for pride and courage—for example in 532, when Nika's insurrection led to the burning of the capital. It developed into a civil war, and Justinian risked losing his throne and was already contemplating abandoning everything to save himself. But Theodora, in the presence of the court and already ready to abandon Byzantium, said that she preferred death to escape. Justinian and his generals, ashamed of their cowardice, decided to be as brave as she.

Also in the legislation it is possible to see Theodora's influence. The emperor Justin, Justinian's uncle and predecessor, arrived to protect comedians and prostitutes, allowing them to leave the stage and abolishing the barriers that prevented their marriages with senators and high dignitaries.²⁹

Theodora seems to have had an impact even on criminal law. Justinian's constitution, in C. 9.13.1.3b,³⁰ established that in case of a woman being kidnapped, the woman is no longer responsible even if she had wanted to be kidnapped, because she was induced, willingly or not, by the *nequissimus homo*, who, with hateful arts, had manipulated her. Such a prescription for the benefit of the woman was the first in the history of repression of sexual crimes.

3.3 Silent Roman “Empresses”: Four Examples

An in-depth view of four women that were awarded the title of Augusta is interesting because the accounts of these women are rare cases of

²⁸ For example Procopius, *Historia arcana* 9.11–22.

²⁹ C. 5.4.23 (Imp. Iustinus A. Demosteni PP. a. 520–523), in particular, 1a: “Those who may be united with them need be under no apprehension, nor think that such marriages are void by the provisions of former laws; but, on the other hand, they shall remain valid, and be considered just as if the women had never previously led dishonorable lives, whether their husbands are invested with office, or, for some other reason, are prohibited from marrying women of the stage, provided, however, that the marriage can be proved by dotal contracts reduced to writing”.

³⁰ C. 9.13.1.3b (Imp. Iustinian. a. 533): “If, however, the ravishers themselves refrained from the commission of this crime, being deterred either by fear, or by the severity of the punishment, no reproach can be brought against the woman, whether she gave her consent or not, because this law has been enacted to protect women from the treachery of wicked men, who intend to employ violence. For unless a man solicited her, and deceived her by his detestable arts, he did not induce her to submit to such dishonor”.

testimonies about women in ancient Rome; such accounts are rare even for women who obtained top functions through marriage.³¹ Tranquillina, Otacilia, Etruscilla and Salonina were “empresses” during the third century crisis between 241 and 250; they were married to Gordian III (the first of the so-called “barracks emperors”), Philipp the Arab, Decius and Gallienus, respectively. But the names of these “empresses” are almost unknown to the general public and we mainly have information about them from numismatic sources, while literary testimonies about them are very few—here, like in most of the recorded cases of women in ancient Rome, the text devotes at most only one sentence to any one of them.

From the moment of her wedding with the emperor Gordian III in 241, Tranquillina was made “Augusta” by a decision of the Roman Senate. The couple had no children. The marriage brought Gordian III the invaluable support of his wife’s father Timesitheus, a capable man who became the emperor’s right-hand man. About Tranquillina it is known only that after the wedding, she followed her husband and father to Asia Minor, where the need to defend the borders prevailed. The year of her death is unknown, but it is assumed to be after 244, that is after the death of her husband.

Immediately after Tranquillina, the next “empress” was the wife of “Philip the Arab”, Otacilia Severa, who was elevated to the rank of “Augusta” in 244, when Philip became emperor. The imperial couple had two children: Severus Filippus and Ulpia Severina. Coins with the image of Otacilia and even remains of her statues are preserved, but since the minting of the former stopped in 248, this suggests that she died before Philip was killed in 249. Particularly interesting is the testimony of Eusebius of Caesarea, who reported on a private correspondence between Otacilia and Origen of Alexandria, one of the main Christian writers of this era. Hence, there is the hypothesis that Otacilia was close to the Christians, if not a Christian herself, at a time when that was still very difficult for those who approached the message of Christ and rejected the traditional Roman religion.

Cupressenia Etruscilla became “Augusta” after Otacilia, when her husband Decius was named as Philip’s successor. It is, however, doubtful whether the conferral of the title took place at the very beginning of his reign, in 249, or perhaps only the following year. The couple had two

³¹ Späth (1994), p. 159 ff.

sons: Erennius Aetruscus and Valens Hostilianus. Compared to the two “empresses” who had preceded her, Etruscilla appears to have played a more recognizable role. Numerous coins attest to her imperial title. Her honour was so recognized that fifty different cities minted coins for her. Decius also commissioned an engraving in which his image was next to that of his wife, with the inscription *fecunditas* on the side. Alongside Etruscilla—so we can conjecture—he wanted to be the founder of a new dynasty that would defend Rome and its values.

Regardless of her personality, about which we have no information, whether Etruscilla had any political role as the emperor’s consort may depend on the fact that she enjoyed two advantages over her predecessor. Firstly, she came from an important family: her name clearly suggests that she came from a noble Etruscan family. Moreover, she was no longer very young in age when she was an “empress”. In fact, her portrait on the coins suggests that she was well over forty at the time of her husband’s rise to power, a fact that is also consistent with the fact that Decius was also no longer young when he came to power. Compared to those who had preceded her, Etruscilla was then a more mature and aware person.

Cornelia Salonina became “Augusta” after Etruscilla as wife of the emperor Gallienus, with whom she had two sons: Valerian II and Saloninus Valerianus. She probably did not become “empress” at the same time as her husband came to power in 253. The related inscriptions and coins do not allow us to reconstruct when Salonina was appointed “Augusta” or how long she lived. The Arch of Gallienus, a gate in the Servian Wall in Rome, is dedicated not only to her husband but also to her with the words “Saloninae sanctissimae Augustae”. About her it is known that she had intellectual interests because together with her husband she conversed with the philosopher Plotinus, who planned, with imperial support—so Prophyrius tells us—to found a city for philosophers called Platonopolis. This ideal city, which in the end was unfortunately never realized, was supposed to be inspired by the philosophy of the Platonic republic and was to be built in Campania on the site of a destroyed city, perhaps near the ancient Vescia, between Naples and Gaeta.

Salonica was not only cultured but gifted with political acumen. She feared more than her husband the usurper Ingenuus, who in 260 moved against Gallienus from Pannoia and in the end failed to usurp him of power, but nevertheless murdered his eldest son. The Byzantine writer

Zonaras³² also tells of Salonina's presence in the camp near Milan, where she demonstrated her audacity in wanting to accompany her husband on the expedition against the usurper Aureolus. Salonina even ran the risk of being kidnapped, but during a kidnapping attempt, she was saved at the last moment by the prompt intervention of a soldier. If history has left to us so few pieces of information about these "empresses", it is evident that their public voice was really very feeble. Perhaps this thunderous silence is made evident also by the fact that no authors criticized them—like when Svetonius criticized Livia and Procopius criticized Theodora—with the result that history nearly cancelled the tracks of their existence.

4 “PATRIARCHY DEPENDS ON CULTURE, NOT ON NATURE”. THE STUDIES OF JOHANN JAKOB BACHOFEN IN THE NINETEENTH CENTURY

From antiquity the social organization model of women being subordinate to men continued in the Middle Ages and the modern era with a worsening of women's condition compared to that of the Roman Empire.³³ But when the nineteenth century arrived, it was in this moment that there were the first attempts to subvert or at least discuss the patriarchy.

The sharpest personality in this field was Johann Jakob Bachofen (1815–1887). A Swiss man from a wealthy family, at the time a counsellor of the Court of Appeal in Basel and a student of Friedrich Karl von Savigny, Bachofen wrote a book about matriarchy in 1861.³⁴ This historian of law hypothesized the existence of a form of social organization based on a matrilineal family in which power, including social power, would be owed to women.³⁵ This happened—in his theory—at the time of the appearance of the Indo-European civilization and therefore before the affirmation in the Greek world of an absolutely androcentric and patrilineal society.

³² Zonaras, *Annalibus*, ad ann. 261.

³³ Even during the Middle Ages, women were subjugated first to their fathers and then to their husbands, and a patriarchal structure prevailed within the family. The patriarchal model also prevailed during the modern age. We need only recall the fate of the French political activist Olympe de Gouges, who was condemned to the gallows by order of the revolutionaries for demanding equal rights and equal duties for women and men.

³⁴ Bachofen (1861).

³⁵ About the centrality of his research, see Georgoudi (1993), p. 497 ff.

A determining text for Bachofen's reconstruction is a famous episode from the *Iliad*. Before a duel, the Greek Diomedes, the son of a patriarchal culture, asks the Lycian Glaucus about his lineage. Glaucus replies that there are no fathers and sons, "generations of men are like the leaves. In winter, winds blow them down to earth, but then, when spring season comes again, the budding wood grows more. And so with men: one generation grows, another dies away".³⁶ Not only the population of Lyci (in the territory of present-day Turkey)—as Glaucus tells it—but also other populations in other places had this matrilineal social organization: the Picti (a pre-Celtic population of Britain in the territory of present-day Scotland), perhaps the Etruscans (because of their funerary inscriptions with only the mother's name, and the father's being included only in exceptional cases), people in the Greek territory—for example in Limnos, Lesbos and Crete and even in Locri (in the territory of present-day Italy) and Cantabria (in the territory of present-day Spain), and people in Egypt and India. Women did not become part of the husband's family in this system, as children were considered to enter the woman's family through the maternal line. On the basis of ancient myths, which Bachofen interpreted intuitively because the myth is an essential form of human language, narratives by ethnographers such as Herodotus and interpretation of symbols found on archaeological finds and tombs, Bachofen established the importance of the origin of religion in order to reconstruct the culture of a people.

Then the Swiss historian identified the radical change from this ancient matrilineal experience to the patriarchy in the Greek literature. It is in the tragedy by Aeschylus that Orestes is said to have killed his mother Clytemnestra to avenge his father Agamemnon's murder at the hands of his mother, but—whereas he is guilty—Apollo and Athena absolve him of the matricide as innocent. In the fiction of the tragedy, the absolution of Orestes as a mother-killer is a sign of the official transition from matriarchy to patriarchy. The absolution of the matricide marked the new patriarchal order and the defeat of matriarchy.

Regardless of the truth of this theory, the most interesting part of Bachofen's theory is the understanding of the social position of women as fundamental for the understanding of culture in every age, but especially in ancient times. Extraordinary for that era is also his aim to demonstrate

³⁶ *Iliad* 6.123 ff. S. Bachofen ([1861](#)), p. 5 f.

that patriarchy depended not on nature but on culture. Through a challenge of powers, the male arrived to dominate the female with a model that has been successfully followed for centuries, but that did not belong to nature.

5 FROM YESTERDAY TO TODAY: WOMEN'S EMPOWERMENT IN THE TWENTIETH CENTURY

Bachofen caused only a little reaction in the science of his time because his innovative message was presented without real historical evidence and at the same time because of the complex style of his prose. But his theory of cultural evolution has strongly inspired later ethnological and social philosophical studies. It is held as a milestone of research on the evolution of women's history³⁷ and a starting point on the way to the most significant change in the conditions of women, which took place in the 1960s.

It is, in fact, only in recent history that women's protests funnelled into the so-called female movement that was finally successful in gaining better conditions for women. In its different waves this movement could combat social, political and financial inequality. The principal claims were women's suffrage, political equality, education for women, the right to property, marital freedom as well as the condemnation of domestic abuse and sexual violence. With the female movement the studies on the history of women also started.³⁸ A centuries-old social organization based on male/female disparity started to finally crack in the direction of a power balance change and gender equality.

³⁷ To provide some examples of this later literature, McLennan (1865) wrote of a primitive time of matrilineal organization, apparently without having read Bachofen; McLennan argued that if female infants were killed and thus only a few women were captured by men to become their brides, it became difficult to ascertain paternity and thus the descent was reckoned matrilineally; another key position was provided by a study by Lewis H. Morgan (1877), which speculated about an organization based on maternal kinship that preceded the patriarchal family; then in the 1980s, the archaeologist Gimbutas (1989) proposed the thesis that between the fifth and third millennium B.C., a culture that emerged from the Volga Basin erased a society that flourished between the eighth and fourth, in which the power was exercised by women, and it was only afterwards that this culture became androcentric and patrilineal.

³⁸ See especially Pomeroy (1975).

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CHAPTER 3

Achievements and Hurdles Towards Women's Access to Climate Justice

Sara De Vido and Elisa Fornalé

1 INTRODUCTION

Access to justice is also fundamental in international environmental law and in climate change law more specifically.

In the last few years, there has been a panoply of cases brought forward as class actions or public interest litigations to make states responsible for

Sections 2 and 2.1 have been written by Sara De Vido; sections 3, 3.1 and 3.2 are by Elisa Fornalé. The introduction and conclusion are the outcome of a common reflection.

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not taking adequate measures to counter climate change.¹ The existence of these cases offers the opportunity to learn from the actual and potential subjects how the enjoyment of their human rights has been and might be affected by state inaction on climate change, and to try out a new space for actions that enable one to spell out states' obligations and the "attribution of duties" in concrete terms. As highlighted by Wewerinke-Singh, "whilst various recent studies have highlighted the potential of rights-based climate litigation, we have only very limited understanding of its true effectiveness (and indeed its potential drawbacks)" in addressing climate injustice and climate rights.² It remains unclear, however, to what extent and how climate litigation, while boosting participatory democracy, could act as a catalyst for legal, social and political change.³ This chapter is not intended to explore climate justice *per se*, though, but rather to investigate how it intersects gender or, more accurately, how to endorse a gendered approach to climate justice to overcome the challenges that inhibit any substantive redress.⁴ Indeed, most definitions of climate justice acknowledge the unequal impacts of adverse climate impacts and consider how to address these inequities, but less attention has been paid to how to empower individuals, particularly women, by ensuring the fulfilment of their rights and by avoiding exacerbating pre-existing inequitable socio-economic conditions. The overall purpose of the chapter is to inform the climate action debate with a critical legal reading of climate (in)justice in relation to gender, class and race.⁵ To do so, first, we analyse access to justice in international human rights law to stress the existence of *de facto* inequalities with regard to women. Secondly, we look at how gendering access to climate change can be a tool for empowering women and making measures to deal with climate change much more effective. As MacGregor acknowledged more than ten years ago, the academic analysis of climate justice focused on "capitalist and colonial relations of inequality", but

¹ Savaresi (2019); Savaresi and Setzer (2022). In January 2022, the climate litigation databases developed by the Sabin Centre for Climate Change Law at Columbia Law School (<http://climatecasechart.com>) and the Grantham Research Institute on Climate Change and the Environment at the London School of Economics (<https://climate-laws.org/>) listed 90 climate change cases against states that relied on human rights-related arguments.

² Wewerinke-Singh and Antoniadis (2022). See also Knox (2009).

³ Rodriguez-Garavito (2019).

⁴ Lyster (2016).

⁵ Greal (2014); Shue (2016); Heyward and Roser (2016); Grahn-Farley (2022); Chinkin & Charlesworth (2022).

“there remains a curious silence on gender relations in the mainstream literature and policy discourse”.⁶ It was curious, as pointed out by the author, because there had been a growing recognition of the disproportionate impact of climate change on women and girls, which, however, was not connected to an increase in attention to the topic of women’s access to environmental and climate justice.⁷ It is even more curious, 12 years later, to see that gender and climate change are indeed addressed by legal scholarship, but the legal analysis is fragmented and limited, especially with regard to how “structural inequality” affects justiciable claims for women’s rights in the contemporary climate crisis.

2 ACCESS TO JUSTICE IN INTERNATIONAL HUMAN RIGHTS LAW: A GENERAL OVERVIEW

Access to justice is of fundamental importance for the individual whose rights have been violated and it is an essential component of the system of protection and enforcement of human rights.⁸ It can be considered in a general manner as the possibility for an individual to bring a claim before a court in order for the case to be adjudicated. In other words, it is a synonym of judicial protection.⁹ Access to justice can also be appreciated in a broader sense, though, as the right of an individual not only to enter a court but also to have his/her own case ‘investigated, heard and adjudicated in a fair manner’, not necessarily by courts of law but by anybody that performs a dispute settlement function.¹⁰ In this second meaning, it is confirmed by some specific provisions of human rights treaties, such as Article 2(3) of the International Covenant on Civil and Political Rights

⁶ MacGregor (2010, pp. 223–224).

⁷ As highlighted by the 2022 report of the United Nations’ Intergovernmental Panel on Climate Change (IPCC) and the 2022 agreed conclusions of the Commission on Women, the climate breakdown risks disproportionately affecting the rights of women and girls and it is becoming increasingly central to identify the obstacles that could prevent their access to justice in this regard (IPCCC. 2022. Climate Change 2022: Impacts, Adaptation and Vulnerability. IPCC Sixth Assessment Report. <https://www.ipcc.ch/report/ar6/wg2/>. Accessed 30 October 2022; Commission on the Status of Women. 2022. Agreed Conclusion. E/CN.6/2022/L.7).

⁸ Francioni (2007, p. 64); Francioni (2008, p. 30).

⁹ Francioni (2007, p. 68); See also CEDAW. 2019. Guidelines on CEDAW General Recommendation No. 38 on Trafficking in Women and Girls in the Context of Global Migration (CEDAW/C/G38).

¹⁰ Francioni (2007, p. 69).

(ICCPR), which deals with remedies provided by “judicial, administrative or legislative authorities”, as well as Article 13 of the European Convention on Human Rights, which obliges States parties to provide an “effective remedy before a national authority”. In the context of women’s rights, Article 2, letter c) of the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) requires states “to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”.

Access to justice, meant as access to courts of law, is a component of the right to due process, as the European Court of Human Rights has constantly affirmed in its jurisprudence. In *Golder v. UK*,¹¹ for example, the Strasbourg Court argued that “the fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings”, and that the right of access to justice constitutes an element that is inherent in the right stated by Article 6(1) of the European Convention on Human Rights on the right to a fair trial.¹² Moving to the American continent, the Inter-American Court of Human Rights, in the case against Colombia regarding the *Massacre of Mapiripán*, argued that there is a link between Articles 25 (access to justice, the right to an effective remedy) and 8 (guarantees of the due process of law) of the American Convention on Human Rights.¹³

Access to justice can be analysed according to a double perspective: on the one hand, there is access to justice at domestic level, within the jurisdiction of a specific state, and on the other hand, there is access to justice at regional level (a notable example being access to regional courts of human rights, such as the European Court of Human Rights) and international level (UN treaty-based bodies) beyond the jurisdiction of a state. The procedural capacity of the individual to bring complaints in front of regional human rights courts and UN treaty bodies has been considered as “one of the most significant developments in international human rights law in the last six decades”.¹⁴ The interplay between these two levels can be easily explained by the dynamics of the mechanism of individual

¹¹ European Court of Human Rights, *Golder v. the United Kingdom*, Application No. 4451/70, judgement of 21 February 1975.

¹² *Ibid.*, paras. 35 and 36.

¹³ Cançado (2011, p. 64).

¹⁴ Cançado (2011, p. 17).

complaints in international human rights law and by its rules of procedures. If the domestic system fails to protect his/her rights, an individual, provided that admissibility requirements varying from system to system are met, can bring his/her complaint in front of a supranational mechanism of protection, which can lead to the adoption of either binding (e.g. the judgements rendered by regional human rights courts) or non-binding outcomes (e.g. the views of the UN treaty-based bodies).¹⁵

2.1 De facto Inequalities in Women's Access to Justice

“All persons shall be equal before the courts and tribunals”, reads the International Covenant on Civil and Political Rights (Article 14[1]). *De jure* equality has become the cornerstone of the system of protection of human rights. Nonetheless, the problem in granting access to justice is not so much (at least not in the majority of countries) *de jure* equality, but rather *de facto* equality. Women's access to justice systems is hindered by structural patterns of discrimination in the action of public authorities. As the CEDAW Committee highlighted in its General Recommendation No. 33 (2015):

The centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgments/decisions due to the lack of trainings, delays and excessive length of proceedings, corruption, etc.) all prevent women from accessing justice.¹⁶

The Committee identified six components in this regard: ‘justiciability, availability, accessibility, good-quality, accountability of justice systems and the provision of remedies for victims, which have been considered as necessary to ensure access to justice. Intersecting factors make access to

¹⁵ For more on the mechanisms of protection of human rights, see, *ex multis*, Shelton (2013), De Schutter (2019) and Smith (2021).

¹⁶ Committee on the Elimination of Discrimination against Women (CEDAW). 2015. General Recommendation on Women's Access to Justice. CEDAW/C/GC/33, para. 13; See also CEDAW. 2019. Guidelines on CEDAW General Recommendation No. 38 on Trafficking in Women and Girls in the Context of Global Migration (CEDAW/C/G38).

justice more difficult for women who are discriminated against not only on the basis of gender but also because of other compounded grounds'.¹⁷ States bear legal obligations to provide reparations to women whose rights under the CEDAW have been violated (GR No. 28, para. 32) and to "ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate".¹⁸

The root cause of gender-insensitiveness in courts can be found in the persistence of stereotypes. Rebecca Cook and Simone Cusak define a stereotype as "a generalized view or preconception of attributes or characteristics possessed by, or the roles that should be performed by, members of a particular group".¹⁹ In her report, Simone Cusack highlighted the presence of "judicial stereotypes"²⁰ by describing how "such stereotyping causes judges to reach a view about cases based on preconceived beliefs, rather than relevant facts and actual enquiry".²¹ The consequences are particularly relevant because they affect the entire jurisdictional procedure:

It may, for instance, distort judges' perception of the facts, affect their vision of who is a 'victim', and influence their views about witness credibility. Ultimately, however, it compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice and the revictimization of complainants. Eliminating judicial stereotyping is therefore a crucial step in ensuring equality and justice for victims and survivors.²²

Article 5(a) is the CEDAW's key provision on countering stereotypes against women. It defines the obligation states must abide by to "modify and transform gender stereotypes and eliminate wrongful gender

¹⁷ Ibid., para. 8.

¹⁸ CEDAW. 2010. General Recommendation on the Core Obligations of States Parties under Article 2. CEDAW/C/GC/28, para. 34.

¹⁹ Cook and Cusack (2010).

²⁰ Cusack, Simone. 2014. Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-Based Violence Cases. Commissioned by the UN Office of the High Commissioner for Human Rights. <https://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping.doc>. Accessed 30 October 2022.

²¹ Cusack (2014, p. ii); Esquivel (2016) and Carant (2017).

²² Cusack (2014, p. ii).

stereotyping”.²³ In *A.F. v. Italy*, the CEDAW Committee²⁴ recalled “that women face many difficulties in gaining access to justice because of direct and indirect discrimination, as defined in paragraph 16 of general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention”, and that such inequality is “apparent not only in the discriminatory content and/or impact of laws, regulations, procedures, customs, and practices, but also in the lack of capacity and awareness of judicial and quasi-judicial institutions to adequately address violations of women’s human rights” (para. 7.5).²⁵

There is not a similar provision entailing legal obligations to eradicate stereotypes against women in the European Convention on Human Rights. However, the European Court of Human Rights has recently decided a case of re-victimization owing to the presence of resilient judicial stereotypes in the Italian system. In *J.L. v. Italy*,²⁶ a woman was sexually abused by six men in a car while she was drunk, unresponsive and in a state of shock. The Italian Court of First Instance held that J.L. was subjected to criminal sexual acts (but not rape) whilst in an “inferior” physical/psychological state. Six men were convicted in the case. However, on appeal, the upper court agreed with the accused, referencing J.L.’s sexuality and family/personal life, and called her “fragile”, “vulgar” and “lascivious”. The reasoning was clearly biphobic and sexist because it stressed the woman’s behaviour so as to blame the victim for what happened. Given the fact that she gave consent to some precedent behaviours towards her, the court assumed, in a stereotyped way, that the perpetrators of the violence legitimately assumed that her actions during that night indicated consent. The European Court of Human Rights, by six votes to one, held that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. Without pretending to exhaust the complex analysis of the case, it should be highlighted that the Court found that the language and arguments used by the

²³ Karen Tayag Vertido v. The Philippines, CEDAW/C/46/D/18/2008, 22 September 2010.

²⁴ *A.F. v. Italy*, CEDAW/C/82/D/148/2019, 18 July 2022.

²⁵ Ibid. “Under article 5 (a) of the Convention, States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies” (para. 7.5).

²⁶ European Court of Human Rights, *J.L. v. Italy*, Application No. 5671/16, judgement of 27 May 2021.

court of appeal ‘conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence.’ The Strasbourg Court acknowledged that the Italian legislative framework was satisfactory, but not its application which interfered with the right to private life that is protected by the European Convention. The Court did not analyse the case under Article 14 (prohibition of discrimination), which could have been useful in addressing access to justice as a gendered matter where stereotypes flourish.²⁷

3 CLIMATE JUSTICE: FROM SILENCING TO EMPOWERING WOMEN

There is increasing evidence that worsening weather conditions linked to climate change—such as desertification, flooding and sea-level rise—aggravate the exercise and enjoyment of the rights of women by increasing unequal treatment and intersectional discrimination.²⁸ The feminist critique of sustainable development goals addresses Agenda 2030s neglect of economic and social structures and structural power relations that place women in a subordinate position to men.²⁹ The current system is based on a male and anthropocentric perspective, which misses the point of seeing the degradation of the environment as the product of decades of environmental exploitation and domination of human beings³⁰—the privileged category composed, as highlighted by feminist legal scholarship, of able-bodied, middle-class, heterosexual men³¹ from developed countries.³² The degree of preparedness to handle hazards and disasters is also related to the response to “slow violence”,³³ which refers to the constant and progressive environmental degradation caused by irresponsible exploitation

²⁷ For a critical analysis of the case, see Ilieva (2021), who stresses, for example, that the Court ignored the authorities’ failure to offer J.L. any support—they offered her no psychological counselling, practical assistance or social intervention.

²⁸ Maguire (2019); Celorio (2022); General Assembly (GA). 2019. Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women. A/HRC/C/41/26.

²⁹ Esquivel (2016), Carant (2017).

³⁰ Nixon (2011).

³¹ Jones and Otto (2019).

³² De Vido (2021).

³³ Nixon (2011).

of natural resources and the absence of adequate responsible preventive policies.³⁴

When it comes to taking action in the context of climate change, meaningful participation and access to justice are key “to empowering people to engage in climate action and for climate action to be responsive to their needs”³⁵ This section aims to discuss the current status of international law by illustrating some of the contemporary challenges to ensuring a number of substantial and procedural obligations for the protection, respect and fulfilment of the rights of women.

With the adoption of the Paris Agreement in 2015, the gender implications of environmental concerns started to gain visibility at international level. The preamble of the Paris Agreement in particular acknowledges the need for the States parties to recognize “their respective obligations on human rights” as well gender equality and empowerment of women (para. 11 of the Preamble, Jepsen et al. 2021). Gender is included also 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”). As wisely illustrated by Farley,³⁶ women’s empowerment and gender are among the priority themes of what some scholars identify as a new form of regime where the climate justice agenda and the human rights agenda are unified. Nevertheless, the Paris Agreement failed to identify and define specific positive obligations that could ensure a concrete development in this regard.

One of the first UN treaty bodies to address the complex gender-environmental nexus has been the CEDAW Committee. It did so with the adoption in 2016 of General Recommendation No. 34, which made a significant link between the adverse impact of environmental degradation and the protection of rural women.³⁷ Then it did so a second time in 2018

³⁴ As illustrated by Nixon “slow violence” means “a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all” (Nixon 2011, p. 2).

³⁵ UN Secretary General (UNSG). 2022. The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations. A/HRC/50/57, para. 32.

³⁶ Grahn-Farley (2022).

³⁷ The CEDAW Committee adopted a statement on gender and climate change in 2009 to highlight that “all stakeholders should ensure that climate change and disaster risk reduction measures are gender responsive, sensitive to indigenous knowledge systems and respect human rights. Women’s right to participate at all levels of decision-making must be guaranteed in climate change policies and programmes”, CEDAW, 44th Session, August 2009, “Statement of the CEDAW Committee on Disaster Risk Reduction, Gender and Climate Change” (Borras-Pentinat 2022, p. 113; Simm 2019).

with the adoption of General Recommendation No. 37 on “the gender-related dimension of disaster risk reduction in the context of climate change”. With this recommendation the CEDAW Committee wanted to ensure that women or girls are not identified as “passive vulnerable groups” (para. 7) by ensuring a greater engagement of women in decision-making processes by adopting appropriate measures. The content of General Recommendation No. 37 is structured around three key themes: (1) substantive equality and non-discrimination; (2) participation and empowerment; (3) access to justice.³⁸

Last part in particular refers to the need to assess the adequacy of existing normative instruments for granting access to legal remedies (justiciability) and dispute resolution mechanisms by enhancing women’s “legal literacy” (availability). It urges states to ensure the exercise of their right to information in this context by providing information on existing policies, and also to ensure flexible and free access to legal venues and mechanisms, in particular those for reporting gender-based violence (accessibility), and make available low-cost administrative systems to provide official documents (e.g. birth, death, and marriage certificates and land registration documents) in case of disasters. Whether there are judicial responses exist that would grant access to justice to women who face violations of their rights, it is crucial to include a specific temporal dimension in the related policies. In fact, several rights, such as women’s right to sexual and reproductive health, could have been affected by slow violence connected with environmental degradation or a sudden-onset event.³⁹

3.1 The Role of Women in Climate Justice

A right-based approach to climate action cannot be achieved without turning upside down our perspectives on the role of women, as agents of change, in environmental matters. This year’s session of the Commission on the Status of Women (CSW) placed particular emphasis on how the skills and knowledge affected by climate change should enforce climate policy making by grounding the overall action in values such as

³⁸ CEDAW. 2018. General Recommendation No 37 on Gender Related Dimensions of Disaster Risk Reduction in a Changing Climate. UN Doc CEDAW/C/GC/37, para. 37.

³⁹ De Vido (forthcoming 2023).

accountability, participation and equality.⁴⁰ The CSW highlighted the importance of engaging with persisting inequality and discrimination that could have far-reaching consequences for women's full enjoyment of access to justice in the climate debate. As outlined by the CEDAW Committee, "discrimination against women is based on their sex and gender. Gender refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on biological differences, which are constantly reproduced by the justice system and its institutions"⁴¹ (para. 7.6).

To fully achieve access to justice for women, there are three interconnected thematic areas that need to be addressed to reframe the role of women within the global climate change debate: (1) empowering women by reversing their prominent representation as "passive victims" of climate change so that they would be represented as active agents by implementing their participatory rights; (2) strengthening the gender-climate nexus by adopting normative measures in a multilevel perspective; (3) establishing new accountability mechanisms or improving the existing ones.

The CEDAW Committee, in its concluding observations, has played a very important role in identifying a "gender-specific approach to climate change" by clarifying the content of states' obligations in the design of legal and regulatory measures to prevent, adapt to and respond to the adverse impacts of environmental changes.⁴² Special attention has been dedicated to recommended actions for upholding women's rights in rural areas by increasing their active participation together with adopting a human rights-based perspective on climate change.⁴³ We provide a few recent examples of recommendations adopted by the CEDAW Committee that highlight the need to frame an active role of women: in the case of Cabo Verde, the CEDAW Committee encouraged efforts to increase the "meaningful participation of women in the development and implementation of those initiatives [climate change and disaster risk reduction]";⁴⁴ in the case of Fiji the CEDAW Committee recommended "strengthen[ing]

⁴⁰ Commission on the Status of Women. 2022. Agreed Conclusion. E/CN.6/2022/L.7.

⁴¹ A.F. v. Italy, CEDAW/C/82/D/148/2019, 18 July 2022.

⁴² Celorio (2020).

⁴³ CEDAW, Concluding Observations, Maldives, 23 November 2021; CEDAW, Concluding Observations, Suriname, CEDAW/C/SUR/CO/4-6, 14 March 2018; CEDAW, Concluding Observations, New Zealand, UN Doc CEDAW/C/NZL/CO/8, 25 July 2018.

⁴⁴ UN Doc CEDAW/C/CPV/CO/9, 30 July 2019, para. 36.

gender analysis and mainstream[ing] the concerns and rights of women by having them participate in the discussions and decisions on comprehensive measures for adaptation and mitigation in their communities”,⁴⁵ and also in the case of Cambodia the CEDAW Committee expressed that it is urgent to “ensure the effective participation of women, not only as those who are disproportionately affected by the effects of climate change and disasters but as agents of change, in the formulation and implementation of policies and action plans on climate change and disaster response and risk reduction” (para. 43).⁴⁶ These are not isolated cases; concerns about the role of women in climate-affected situations are becoming more and more frequent, as confirmed by the Concluding observations (COs) adopted by the CEDAW Committee in its Session 81 in July 2022.⁴⁷ In particular, in the case of Bolivia the CEDAW Committee drew attention to the “limited access to justice, support services for victims of gender-based violence against women, education, information and communications technology and health care” for rural women in the context of climate change⁴⁸ (para. 31).

For the purpose of our analysis, it is important to highlight that these concerns for the protection of women’s rights in the context of climate change are identified in countries where specific concerns are formulated regarding granting of access to justice as well. Illustrative of this are the COs adopted by the CEDAW Committee for Cambodia, where the CEDAW Committee reiterated that women are disproportionately affected by climate change, and before this point, the COs include an entire section on women’s limited access to justice that highlights that “there are significant barriers to access by women and girls to justice and effective remedies for violations of their rights, particularly for rural women, indigenous women, women belonging to ethnic minority groups and women with disabilities”. These barriers include:

- (a) Social and cultural stigmas, which deter women and girls from registering their complaints, particularly with regard to domestic violence and rape;

⁴⁵ UN Doc CEDAW/C/FJI/CO/5, para. 54.

⁴⁶ UN Doc CEDAW/C/KHM/CO/6, 12 November 2019.

⁴⁷ UN Doc CEDAW/C/MGL/CO/10, 12 July 2022.

⁴⁸ “(b) Rural women’s and girls’ limited access to justice, support services for victims of gender-based violence against women, education, information and communications technology and health care”, UN Doc CEDAW/C/BOL/CO/7, 12 July 2022.

- (b) Limited access to information on the mechanisms and procedures for seeking remedies for violations of the rights of women and girls, especially in rural areas;
- (c) The lack of gender sensitivity in the justice system, including negative attitudes on the part of judges, prosecutors, law enforcement officials and lawyers towards women reporting violations of their rights;
- (d) Corruption and the lack of independence of the judiciary, which continue to impede women's access to justice (para. 10).

These examples facilitate our understanding of how the risk of women's human rights being violated in the context of climate change could not be addressed in isolation without taking into consideration the structural challenges that women are already facing in specific vulnerable areas.

Nevertheless, more efforts are needed to adopt gender considerations in the implementation of integrated climate and disaster reduction action not only at global level but also at domestic level. During the formal meetings that took place during the CSW66,⁴⁹ member states delivered important statements that highlighted emerging good practices towards achieving women's empowerment by illustrating climate change, environmental and disaster risk reduction policies and adopted programmes. For instance, the Association of Southeast Asian Nations (ASEAN)'s representative provided interesting insights into the ongoing regional efforts to advance "gender-responsive climate action".⁵⁰ In particular, the ASEAN Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025 and Sustainable Development Goals adopted in 2017 calls for incorporating "gender into sustainable development, particularly in addressing climate change and disaster management".⁵¹ In 2017, Egypt adopted the National Strategy for the Empowerment of

⁴⁹The recordings of the CSW66 official meetings are available at <https://www.unwomen.org/en/csw/csw66-2022/official-meetings>. Accessed 30 October 2022.

⁵⁰Jenny Yi-Chen Han, Camille Pross, Rashi Agarwal, and Andreea Raluca Torre. 2022. State of Gender Equality and Climate Change in ASEAN. <https://asiapacific.unwomen.org/en/digital-library/publications/2022/08/state-of-gender-equality-and-climate-change-in-asean>. Accessed 30 October 2022.

⁵¹ASEAN Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025 and Sustainable Development Goals. 2017. <https://asean.org/asean-declaration-on-the-gender-responsive-implementation-of-the-asean-community-vision-2025-and-sustainable-development-goals>. Accessed 30 October 2022.

Egyptian Women 2030,⁵² which includes a specific section on how to “[s]trengthen women’s ability to cope with environmental risks, climate change and unsustainable consumption” (p. 65). More recently, in 2021 the United States adopted the National Strategy on Gender Equity and Equality, which includes among its strategic priorities “promot[ing] gender equality in mitigating and responding to climate change”⁵³.

Those laws and policies provide concrete examples of a new emerging trend of incorporating gender equality considerations at domestic and regional levels, but the goal is still far off and it is essential to remove the tendency to describe women as vulnerable groups rather than as agents of change. In order to move more efficiently, we need an all-of-government approach that would incorporate also the coordination and capacity-building of the judiciary and law enforcement officers, together with ensuring access to capacity-building programmes for women and legal access to financial support to enable gender-responsive climate change, environmental and disaster risk reduction actions.

Critically, the 2022 report of the UN Secretary General highlights how “people in vulnerable situations have played an important role in advancing climate justice” by taking various steps such as engaging in climate litigation.⁵⁴ In the last few years, we have seen several cases that seek to hold governments to account for climate inaction based on human rights grounds. Now there is a landmark case before the European Court of Human Rights called Senior Women for Climate Protection v. Switzerland,⁵⁵ where an association of older women and four individual women are challenging their government for its failure to adopt sufficient measures to prevent climate change. In their application, they affirm how health is threatened by heat waves which are made worse by the climate crisis, and point to the lack of adequate measures for climate change risks

⁵² National Council for Women (NCW). 2018. National Strategy for the Empowerment of Egyptian Women 2030. Vision and Pillars. <http://ncw.gov.eg/wp-content/uploads/2018/02/final-version-national-strategy-for-the-empowerment-of-egyptian-women-2030.pdf>. Accessed 30 October 2022.

⁵³ White House. 2021. National Strategy on Gender Equity and Equality. <https://www.whitehouse.gov/wp-content/uploads/2021/10/National-Strategy-on-Gender-Equity-and-Equality.pdf>. Accessed 30 October 2022.

⁵⁴ UNSG. 2022. The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations. A/HRC/50/57, para. 32.

⁵⁵ The case *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* (application no. 53600/20) has been allocated to the jurisdiction of the Grand Chamber of the European Court of Human Rights on Friday, 29th April 2022.

that have severe impacts on their right to life and family life by exposing them to the serious risk of heat-related mortality.⁵⁶

To conclude, a few considerations about accountability and available mechanisms are required when highlighting the precarious lives of female environmental human rights defenders.⁵⁷ The UN Secretary General, together with the UN Special Rapporteur on Violence Against Women and Girls and Its Causes and Consequences, raised attention to the increased rate of femicide and acts of harassment, violence and other criminal acts against women who defend ecosystems affected by the adverse impacts of climate change.⁵⁸ According to available data, in 2020, “331 environmental defenders were killed, including 44 women, 69 per cent of whom were defending land rights, the rights of indigenous peoples and environmental rights and 28 per cent of whom were defending the rights of women”.⁵⁹ In this context, there is a critical need to ensure that accountability mechanisms and procedures are in place to investigate and sanction these abuses and to avoid to exacerbating the social consequences of limiting women’s participation, freedom of expression and impunity.

3.2 An Intersectional Approach to Climate Justice

To conclude, the chapter aims to raise attention to how the concept of intersectionality is becoming crucial to advancing the climate debate. Intersectionality theory helps to realize a paradigmatic shift towards an analysis able to capture the complexity of the situation of the position of people affected by climate change and recovers their social and environmental injustice visibility. In her analysis Simm raises attention to the need to go beyond the binary between men and women in disasters by recalling that “differences within categories may be more important than

⁵⁶ Bahr et al. (2018); Schmid (2022).

⁵⁷ Special Rapporteur on violence against women, its causes and consequences. 2022. Violence against indigenous women and girls. A/HRC/50/26.

⁵⁸ See the most well-known case of this sort, that of Berata Caceres, a global environmental activist who was assassinated in 2016. She played a key role in denouncing the lack of consent and free consultation for the construction of the dam in Honduras. (UNSG 2022, p. 19; Special Rapporteur on violence against women, its causes and consequences. 2022. Violence against indigenous women and girls. A/HRC/50/26, para. 51).

⁵⁹ UN. 2020. Final Warning: Death Threats and Killings of Human Rights Defenders. Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. A/HRC/46/35, GA. 2019. Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women. A/HRC/C/41/26, para. 25.

differences between categories”.⁶⁰ She offers as an illustrative example the 2015 Hurricane Katrina, which had worse impacts for black and poor women than for white women or black men.⁶¹ The adoption of an intersectional approach to climate justice guides not only the appraisal of how discrimination manifests itself in the theory and practice of climate justice and human rights but also “the interpretation of applicable norms” by raising attention to the potential disadvantages that affect climate resilience.⁶² These multiple aspects are connected with the fact that climate impacts are not a monolith because societies live different experiences of marginalization and discrimination. These are nonetheless grounded in structural inequalities and domains of power that are persistent and resilient in all societies. The question is how international law could inform the development of new instruments.

4 CONCLUSIONS: DO WE HAVE A CHANCE TO AVOID THE WORST?

This chapter illustrated how it is not only exposure to certain hazards, disasters, pollutants and climate change but also the economic and social situation of women that reduces their ability to recover—from both major disasters caused by chronic emergencies and chronic emergencies themselves—and perpetuates their marginalization and exclusion.⁶³ Women and girls are disproportionately affected by climate change and environmental degradation: this risk is not related to their biological sex, but rather to gender inequalities and gender norms that are rooted in societies.

It is noteworthy that the gender-climate nexus is gaining prominence at international level; nevertheless, much work is needed to advance its conceptualization by taking under consideration the need to strengthen substantive and procedural obligations. Our overview highlighted some of the critical challenges that persist in granting access to justice to women in the context of climate change. It is emblematic that women’s voices are not properly taken under consideration due to their absence from decision-making processes and actions for addressing the adverse impacts of climate change. Women’s participation and leadership in this regard ensures an

⁶⁰ Simm (2019, p. 150).

⁶¹ Simm (2019, p. 150).

⁶² Moreno-Lax (2021, p. 43).

⁶³ Commission on the Status of Women. 2022. Agreed Conclusion. E/CN.6/2022/L.7.

expansion of the content of the right to life, health, non-discrimination and access to justice. There are also concerns about the absence of gender equality legal standards in the designs of laws, statements, regulations and policies that are conceived to address environmental harm.

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CHAPTER 4

Minority Women, Human Rights, and Cultures in the Multicultural Discourse

Costanza Nardocci

1 CONNECTING CULTURES AND SOCIAL GROUPS IN MULTICULTURAL SOCIETIES

Contemporary societies are increasingly witnessing profound transformations. One deals with the creation of ethnically and culturally diverse legal systems, where individuals and groups are expected to live together peacefully on the same territory.

States' reactions to the multiethnic and multicultural evolution of societies are not stark or unique—quite the opposite. The comparative perspective on this offers a wide range of strategies states resort to cope with cultural diversity.

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Assimilation, pluralism, and multiculturalism¹ represent the three most widely used models to guarantee the peaceful cohabitation among individuals and groups belonging to different ethnicities and cultures.

Despite the efforts made and the research conducted for the purpose of implementing the best approach, the reality proves that the aim of preserving the political and territorial unity of the state while simultaneously ensuring the respect for the heterogeneous cultural rights of those living within the state represents one of the biggest challenges of present times (here we should emphasize the importance of protecting the right to culture, among others, the UN Committee on Economic, Social, and Cultural Rights interpreting Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICERCR) and, also, the Committee on Economic, Social, and Cultural Rights).²

How to reconcile unity and differences without ending up in forced assimilation practices, and how to safeguard cultural pluralism without boosting ethnic conflicts among social groups, and favoring the hierarchical structure of the society, are two of the key questions states are required to tackle.

In this complex situation, women occupy a rather simple place.³ Often denied the same rights as men, women experience discrimination and inequalities as a result of their subordinate position regardless of their ethnic or cultural belonging or their affiliation to a majority or minority group.

Beyond the global gender gap affecting all women, those belonging to minority groups are nevertheless more exposed to discriminations as a result of their sexual, cultural, religious, and/or ethnic affiliation. Intersectionality⁴ therefore lies at the core of the understanding of the notion of minority women as those belonging to ethnic and racial minorities as well as women affiliated to indigenous communities. The status and

¹ Kymlicka (1996), Taylor (1994), and Parekh (2006).

² See UN 1966. Resolution of the International Covenant on Economic, Social and Cultural Rights, 2200 (XXI). U.N. GAOR, 21st Sess. U.N. Doc., A/6316, 993 U.N.T.S. 3. Article 15; Committee on Economic, Social & Cultural Rights: Report on the Seventh Session. E/1993/22—E/C.12/1992/2, paras. 202–223; General Discussion on the Right to Take Part in Cultural Life as Recognized in Article 15 of the Covenant. U.N. Doc. E/C.12/1992/SR.17.

³ Benhabib (2018).

⁴ Crenshaw (1991), Crenshaw (1989), but also, see CEDAW Committee. 2010. General Recommendation No. 28: On the State's Core Obligations. CEDAW/GC/C/28.

condition of minority women in Western democracies constitute the subject of this chapter.

The analysis moves from the definition of the concept of minority women⁵ as a concept that departs from the intersection between the notion of a minority and the concept of intersectionality and that is used to identify women who happen to belong to communities and social groups that do not occupy a dominant position in the given society and their rights in the broader context of the minority rights discourse.⁶ The chapter will subsequently examine some selected emblematic European and non-European examples of legislative and judicial responses to the challenges faced by minority women in the exercise of their fundamental right to equality, self-determination, and culture.

2 MINORITIES, INTERNAL MINORITIES, AND WOMEN

One of the biggest challenges in discussing minority women and their status in contemporary multicultural societies draws from the lack of a unanimous and internationally agreed definition of the notion of minority groups.

The first known definition of a minority group is attributed to Louise Wirth, who considered a minority as “a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society [...] for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination”.⁷

The debate that followed the Second World War was not so much in line with Wirth’s proposal. On the contrary, the main divergent arguments in this debate revolved around the perceived dichotomous relationship between so-called subjective and objective identification criteria. According to the first theory in the debate, which is centered on the individual’s feeling of affiliation to a specific group, a social group exists in as much as it “exhibits the conviction that it constitutes a nation, or a part of a nation, which is distinct from the national body to which the majority of the populations belongs” (the so-called sense of an individual belonging to a

⁵ Xanthaki (2018) and Xanthaki (2020).

⁶ See CEDAW Committee, Concluding Observations on Turkey; Canada; Kenya; UN OHCHR (2014); Spiliopoulou Åkermark (2000).

⁷ Wirth (1945).

social group).⁸ Juxtaposed to this thesis, Laponce⁹ suggested instead that a minority group exists only in the presence of purely natural and external human facets (e.g. racial or ethnic traits and/or other forms of somatic and exterior traits). Despite the efforts, neither of the two definitions reached a wide international consensus, and neither contributed to offering a comprehensive definition of what it matters to be called a minority group, especially for the law.

More recently, following the notion suggested by Francesco Capotorti¹⁰ as the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1979, a broader consensus was reached at least on some of the key elements contributing to the qualification of a social group as a minority compared to the dominant or majority group. In his famous “Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities”, Capotorti defined a minority as “[a] group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.¹¹

Capotorti’s definition now continues to represent the starting point of any analysis of minority groups and their rights.¹² Yet, the notion possesses several limits, and the reality proved that this notion does not adequately respond to the emerging features and heterogeneity of minority groups worldwide because of these limits.

Above all, reference should be made to the quantitative argument, which is no anymore considered a requisite for any type of minority.¹³ Think of indigenous communities¹⁴ and natives, like the Indians in Canada and North America, who were numerically superior to the European

⁸ Claude (1995).

⁹ Laponce (1960).

¹⁰ Capotorti, Francesco. 1979. Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities. E/CN.4/Sub.2/384/Rev.1.

¹¹ ibid., p. 96.

¹² ibid.

¹³ Thornberry (1991).

¹⁴ Anaya (2004).

colonizers but still ended up occupying a subordinate position due to the imbalance in terms of power and economic resources between the competing groups.

A second challenging aspect pertains to the nationality of those affiliated with the minority. Capotorti's definition states that minorities must be nationals of the country they live in, but this does not correspond to the key traits of the so-called new minorities,¹⁵ meaning those composed of non-citizens of the state they reside in or simply inhabit. In other words, Capotorti regarded only the so-called kinship minorities as minorities, and at the time, immigration was certainly not so predominant as to impose an amendment on his initial definition.¹⁶

Beyond these two elements, the definition of a minority which Capotorti¹⁷ paved the way for should certainly be considered for its perfect combination of subjective and objective criteria, which undoubtedly constitutes a real facet of a minority group.

Before looking at what happens inside minority groups and, more closely, at women's condition within such groups, it is worth recalling that the literature has classified minority groups into at least two major groups over the years. According to Laponce,¹⁸ who was the first proponent of this theory, minorities should be distinguished from one another in terms of their relationships with the dominant group. In as much as a minority aims at being assimilated into the majority, claiming equal rights before the law, these groups should be called "minorities by force" in the sense that these groups would want to be treated as equal to the majority, but they are denied this possibility. On the other hand, Laponce¹⁹ observed that in as much as a minority wishes instead to preserve its cultural, religious, and ethnic identity, it could be qualified as a "minority by will" to emphasize its willingness to remain separate and preserve its differences from the majority.

In terms of equality claims, in the end, the distinction between these two types of minorities lies in their different demands: formal equality for the minorities by force, and equality as difference for the minorities by will.

¹⁵ Capotorti (1979).

¹⁶ ibid.

¹⁷ ibid.

¹⁸ Laponce (1960).

¹⁹ ibid.

The reason seems to hinge on the above-mentioned classification, which tackles the relationships between the minority group and the state, and which greatly matters when the minority group hosts other minorities within its internal organization, even when it does not do so deliberately. Here, precisely, is when women (and minors) come into play.

The truth is that “these minority groups are rarely homogeneous; they often contain other minorities”²⁰ that claim a diverse set of rights compared to those that the minority of belonging is entitled to. These groups are often called double or internal minorities to underscore that within one single minority group already suffering from a subordinate position within the state, there might be other social groups that do not fully share the rules governing their community of affiliation.

This misalignment with the internal rules of the minority is increasingly common in the case of women when internal relationships and family relationships are not inspired by the principle of equality between men and women.

When there is a controversy within the group, those who do not agree with the majority within the majority are called a double minority or an internal minority, whereas when the dissent is only by an individual, the dissenting member is defined as the dissident member. The individual, belonging to the minority group, nevertheless, refuses to submit to the rules of the minority. How the dissent manifests itself within the minority group is diverse and heterogeneous, but there are at least two aspects to keep in mind that reflect two types of rights claimed by the dissenter(s): individual and collective rights.²¹

First, the dissent may be shared by two or more members of the minority. In this hypothesis, the right advocated is often collective²² and opposed to the minority of belonging and sometimes even to the state.

Where, instead, the dissent is brought up by a single individual, the rights are more commonly of an individual nature and opposed to the group, whereas the state looks to the legal system to find adequate protection.

Certainly, this reconstruction is oversimplified, but the aim is to portray the differences between being a member of an internal minority and simply being a dissenting member. Often, the latter finds it much more

²⁰ Green (1992).

²¹ Kymlicka (1989).

²² Douglas (1991) and Green (1991).

challenging to leave the group, whereas the former might try to influence the governance of the minority, relying on the internal minority's numbers and the powers it gained within the minority.

Despite the debate on the feasibility of depicting women as a social or a minority group, which will be further addressed, it is more important to consider that women belonging to minorities, even marginalized categories of minorities, so-called minority women, rarely act as a collective unity, which recalls the notion of internal or double minorities, whereas their relationships with the minority group they are affiliated with are of a much more individualistic nature with women acting as single dissident members against the minority group.

The next paragraphs will hinge on the theories supporting or contradicting the conceptualization of women as minorities, but a section of the analysis will examine the notion of minority women, their status within larger states, and their claims in conflicts arising within the group, against the state or both for overlapping or partially different reasons.

3 WOMEN AS A MINORITY OR WOMEN AS A MINORITY WITHIN A MINORITY?

Despite the extremely diverse features of its components, the feminist movement has for long decades reasoned about the feasibility of qualifying women as a unifiable social group, a minority group, or simply a group since women, as argued, represent nothing else but half of the population.²³

In understanding women as a minority group, and as long as women should have been perceived as a group deserving protection, the discussion revolved around the opportunity to provide women with special guarantees envisioning “other” or “special” rights under state laws²⁴ and international human rights law.

Examining such a complex debate in depth would go well beyond the scope of the chapter. Nevertheless, it might be useful to recall at least two main theories arguing in favor of or against the qualification of women as a minority group. The discussion closely intersects with that concerning the recognition of women’s human rights, alongside traditional human rights, as rights belonging to women in light of their specificities and

²³ Cook (1994), Charlesworth (1994), Deller Ross (2013) and D’Amico (2020).

²⁴ D’Amico (2020).

sex-based differences compared to those attributed to men.²⁵ The opportunity to challenge the universalistic approach to human rights, and embrace a gender-sensitive perspective, and the qualification of women as a minority group, while overlapping, nevertheless do not perfectly match, but they are not mutually exclusive either.²⁶

There might be arguments in favor of gender-specific rights that, at the same time, reject the idea of women as a minority group and vice versa. An example is offered by reproductive rights. Reproductive rights are no doubt “gendered” as they are inherently of a female nature, at least when they impact on pregnancy-related rights, but they do not presuppose that women are subordinated to men. They rather reflect into the law the inherently biological differences between men and women, which are grounded essentially in the concept of motherhood, which is interpreted in light of women’s role in carrying out pregnancies, as rights associated with reproductive choice and childbirth.²⁷ Other rights, instead, are simultaneously gendered and minoritarian when exercised by women belonging to minorities in Western countries: the wearing of the Islamic headscarf perhaps represents the most notorious and emblematic symbol of the tension between the two lines of thoughts.²⁸

Certainly, though, the more women are perceived as a social group separate from men in that their differences lie at the intersection between gender and race or ethnicity,²⁹ the more their claims for special rights gain space, but very often without benefiting from adequate protection under domestic and supranational systems of laws.³⁰

Going one step back to the debate about whether women are a minority group, in a nutshell, those who argue that women should be considered a minority rely on the following arguments: they believe that women very often occupy a subordinate position within the larger society in both private and public life; they do not always enjoy rights equal to those of men; they have a common human trait (sex/gender) that is inherent and generally immutable; they share a sense of solidarity as members of a disadvantaged group; and, finally, they are used to claiming special rights as a consequence of their socially based and nature-based differences.

²⁵ Minow et al. (2008).

²⁶ Xanthaki (2019).

²⁷ Deller Ross (2013).

²⁸ Brems (2014).

²⁹ Nardocci (2016).

³⁰ Bond (2003).

Conversely, the opposite thesis strongly fights the idea that women constitute a category in need of protection for the following reasons: it is not always true that women find themselves in a subordinate position compared to men in society; the fact that women are not numerically inferior means that they are not a minority in this sense—even though, as shown already, the quantitative argument has proved to be irrelevant for the definition of a group as a minority; despite their differences connected with their sex, women are recognized as equal before the law according to national constitutions and international human rights law; they sometimes simply claim the same rights as everyone else, usually men, and at the same time, they do not always demand special rights.

The last hypothesis is rather important as it proves that women can be part of the majority or a minority group with the consequence that, depending on the first condition, women's status and claims might widely vary depending on their membership in the majority or a minority. Once again, intersectionality is the axis along which women's rights are built and invoked.

Looking back to Laponce's³¹ categorization, women might therefore identify as either a minority by force that wishes to assimilate into men's social status and to be equal to them under the law or minorities by will—when in addition to the demand for formal equality before the law, they likewise aim to preserve their ethnic and cultural differences as inalienable facets of their identity as members of the minority of belonging.

Eventually, the intersection between race, ethnicity, religion, and cultures plays a prominent role in the identification of women living in already existing minority groups.

At the same time, these women might sometimes be against the rules governing the internal life of the minority and happen to be situated in a highly challenging position, being simultaneously in opposition to the minority group and the state of their citizenship, nationality or residence.

Choosing to define these women as an internal or double minority allows us to move on to the concept of minority women. Before investigating whether and how the law, international and domestic courts have tackled their demands for the protection that they require, there are some preliminary aspects to consider.

As said, minority women are women that are affiliated with a minority group, and intersectionality is the concept that helps to trace the

³¹ Laponce (1960).

boundaries between those who can be defined as minority women and those who cannot.

Regardless of whether a woman is a minority or a majority woman, meaning a woman affiliated with the dominant group, there are basic human rights (*rectius*, women's human rights) that are commonly shared by the two categories, and others that only pertain to the former.

When talking about minority women and going beyond the traditional or "universal" human rights that all women should be entitled to regardless of their ethnic or racial affiliation, one of the major differences between majority and minority women rests on culture and its space and legitimacy under state laws. In other words, from the perspective of minority women being guaranteed their "special" rights, what matters is the role attributed to their minority culture in the state. Women who belong to minority groups are not, in fact, always recognized as having their (minority) cultural rights, and the lack of recognition makes it particularly difficult for minority women to exercise the same rights that majority women benefit from regularly.

Together with the right of minority women to enjoy their culture and identity as part of the group—as a right enforceable from the standpoint of the relationship between minority women and the state—minority women should also be recognized as having additional rights deriving from their likely subordinate position in the minority group itself. One example is the right to equality based on sex not only outside but especially within the minority, which is sometimes neglected or refused by the predominant male-oriented culture governing the group. Other controversial rights are the right to exit freely from the group³² and the right to opt between being subjected to the rules of the minority and being subjected to state laws. This is especially true in cases of states that acknowledge a system of personal laws and/or customary laws.

To conclude on this point, therefore, not only are minority women different from the women belonging to the majority because of their specific human traits (e.g. their race, ethnicity, or religion), but they are also different in light of the rights they claim before the group, the state, and, often, both entities.

³² Green (1998).

4 LAWS AND COURTS BEFORE MINORITY WOMEN

An additional facet of the debate on minority women and their rights covers states' preferred positioning regarding cultural diversity. The extent to which minority women are protected or neglected in terms of the forms of their recognition within the state greatly reflects the latter's attitude toward the minority groups residing on its territory.

There is a variety of strategies states resort to cope with cultural diversity. The historical and contemporary comparative experiences offer a thorough spectrum of the endless existing possibilities.

Despite the multifaceted mechanisms, the related literature is used to distinguish between two options: states wishing to accommodate cultural diversity by recognizing that minority groups have a different set of rights and certain levels of autonomy,³³ whether personal or territorial; and states preferring not to give space to parallel systems of law besides state law, that opt for strategies ranging from attempts to assimilate minorities into the majority (e.g. France; Canada before 1982) to tolerating cultural diversity without explicitly recognizing systems of territorial (TA systems) or non-territorial autonomy (NTA systems).

Territorial autonomy presupposes that the minority is entitled to self-government rights on a defined territorial area under the sovereignty of the state. Self-government rights encompass legislative and/or judicial autonomy from every field of law or from limited parts of the law, particularly in private and family life, with the minority benefiting from its own laws and special Courts (concept of legal pluralism).³⁴ Whereas territorial autonomy rests on the territorial criteria and is interpreted as an autonomy that applies solely to those residing on the territory at issue, non-territorial autonomy is limited to the personal criteria: the state will allow the minority to enjoy special rights due to their ethnic, religious, or cultural affiliation, but it does not permit significant departures from the equal applicability of state law to all citizens that will remain subject to it regardless of their communitarian affiliation. In both cases, ethnic minorities are recognized as having degrees of autonomy from the state and control over their members, and in some instances of both types of autonomy, collective autonomy may lead to risks for women belonging to minority groups as a result of violations perpetrated against them by the minority group.

³³ Malloy and Palermo (2015).

³⁴ Merry (2005), Ruth et al. (2018).

Besides mechanisms of autonomy, states can instead choose not to recognize cultural diversity, confine the boundaries of its relevance for the law to the private sphere or safeguard the principle of pluralism without guaranteeing collective cultural rights. Should this be the case, minority women may be prevented from expressing their belonging to the minority group in public spaces (e.g. in cases of assimilationist states) and thus suffer from more frequent violations of their right to culture by the state.

Although the approaches to cultural diversity might be widely different, states' reactions have always had an impact on minority women, whose features are largely dependent on whether and how the state chooses to acknowledge or, rather, neglect the relevance of culture under the law.

In TA and NTA systems, minority women generally benefit from the cultural rights recognized for the minority. The types of rights and guarantees conferred to minority women are therefore "decided" upon not only by the state according to its Constitution and national laws but also by the group. This means that autonomy, whether it is territorial or non-territorial, is beneficial to minority women as long as the group endorses the principle of gender equality and recognizes minority women's constitutional rights plus their cultural, but not their non-discriminatory rights.

On the opposite side, states that do not approach multiethnicity by relying on autonomy mechanisms may respond very differently to the demands of the minority and of the women belonging to it. Thus, there will be cases where culture has no say in the majoritarian legal system—or at least where minority cultures do not have a say in it—and minority women won't enjoy their right to culture in the public space; cases where some cultural rights are guaranteed, but only to the extent that they do not harm women; and cases of mixed recognition of minority cultural rights where minority women are allowed to manifest their identity in limited areas, even in the public sphere.

Before examining how selected European and non-European states respond to the challenges faced by minority women, one last aspect is worth considering.

The difference between autonomy and non-autonomy regimes does not merely rest on the possibility for minority women in the first but not in the second case being able to publicly exercise their right to culture. It also affects the nature—individual versus collective—of the right invoked by minority women toward the group, the state or both, meaning toward the entity responsible for the violation or the lacking safeguard.

In states allowing forms of autonomy (TA or NTA systems), the conflicts more usually arise within the minority group because the state opts to refuse to interfere in matters affecting the governance of the minority group. Should this be the case, the minority woman may claim that her right to dissent and to not act in compliance with the internal rules of the minority was violated. When, instead, a relationship is directly established between the state and the women belonging to a minority group, the right that can be subjected to possible violations more often manifests a mixed nature, being at the same time an expression of an individual right (the right to personal identity), but also a collective right (the right to culture).

Something different happens in states that adopt heterogeneous mechanisms to recognize, tolerate, or even actively promote minority cultures without including self-government rights. Here, minority women might more often claim that their collective right to culture was denied before legal systems that deny them the right to orient their private, family, and public life in a way consistent with their cultural or ethnic affiliation. This does not necessarily mean that minority women are always in line with the group they are affiliated with—quite the opposite. Nevertheless, when the state does not recognize the existence of the group as a legal or quasi-legal and sovereign entity, it is more difficult for minority women to bring claims deriving from intra-communitarian conflicts before state courts.

All the above are models and certainly not exclusive examples of a reality that continues to demonstrate its complexity. Yet, they might offer some preliminary lines to orient the following analysis of the emblematic real-life cases discussed further in the chapter.

5 EUROPEAN RESPONSES TOWARD MINORITY WOMEN: CULTURE(S) MEET(S) RELIGION

The European Union represents a good case study for investigating minority women's condition when cultures manifest themselves via customs or other religiously motivated practices. Despite the diversity existing within the European Union in terms of the ethnic, cultural, and religious composition of the member states and their legislative regulations of so-called *forum externum* aspects of freedom of religion, the two options of accommodation of cultural diversity discussed above have been at the center of emblematic cases brought before European courts.

First is Greece, which is an interesting example of a state recognizing a mixture of territorial and non-territorial autonomy systems. It does so in regard to the Muslim minority in Western Thrace, but it was condemned by the European Court of Human Rights (ECtHR) in December 2018 for not allowing the members of the minority to opt for state laws instead of being compulsorily subjected to Sharia law.

The case was about Molla Sali, a woman member of the Muslim community of Western Thrace, who was prevented from benefiting from the applicability of state law in a matter of inheritance law and who was, conversely, obliged to comply with Sharia law. The case represented the first time a European supranational court decided on a conflict arising within a minority group. Sali claimed to be a victim of gender discrimination as a result of the provisions of Sharia law. Beyond the criticism the judgment gave rise to,³⁵ Molla Sali v. Greece represents a typical conflict arising between a dissident member, often a woman, her group of belonging and the state: the group is in the conflict because it does not safeguard her right to equality based on sex; the state is in the conflict because it did not protect the right to exit the group of the dissident and, in this case, to opt between Sharia law and state law. Eventually, the ECtHR condemned Greece for not allowing the members of the Muslim minority to choose between personal law and state law.

If Molla Sali progressively contributed to unraveling the challenges often faced by minority women, suggesting possible ways to overcome the difficult choice between remaining in or leaving the group, Europe proved to be not so wide open or sensitive to minority women's rights in cases involving the place of religion in the public sphere. An emblematic example is offered by the "Islamic headscarf saga", which shortly afterwards occurred as a series of cases before the European Court of Human Rights³⁶ and the European Union Court of Justice.³⁷

Despite the differences in the circumstances of the facts, all the cases dealt with the displaying of an Islamic headscarf in public spaces (e.g. schools, universities, or workplaces), and in all of them European Courts considered the prohibitions of the wearing of headscarves consistent with

³⁵ Nardocci (2016).

³⁶ See, among others, S.A.S. v. France; Lachiri v. Belgium.

³⁷ See Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV, and Asma Bougnaoui, Association de défense des droits de l'homme [ADDH] v. Micropole SA, 2017, and IX v. Wabe eV, and MH Müller Handels GmbH v. MJ, (2021), Nardocci (2019a).

EU law and the European Convention of Human Rights (ECHR) states' laws that prohibit its wearing, even regardless of the type of veil at stake. From the perspective of minority women, the problematic part of these approaches is the integral or partial denial of their right to express their cultural and religious identity, especially where no other fundamental competing interests and freedoms are violated, and there are no requests to balance such interests and freedoms.

The conflicting relationship between the cultural and collective, but also individual, identity of minority women, and the majority culture, which is portrayed as universal and applicable to all, is a risk to take into consideration when examining the condition of minority women in the West. It seems that when states decide not to allow minorities to have some sort of autonomy, it becomes extremely difficult for women to express some elements of their cultural affiliation. At the same time, though, it is also true that the state might play the role of a guardian for the safeguarding of minority women's rights when being a member of the minority group results in forms of violence or so-called slavery-related conducts.

To conclude on this, it appears that the states and supranational courts testify to a variety of options in dealing with minority women's claims to their right to culture and its safeguarding when it is coupled with their religious beliefs, but maybe it is the case that only in a structured system of cultural accommodation may minority women be entitled to a true right to culture.

5.1 ... Culture(s) Meet(s) Violence

If religion intersects with minority cultures without a single overarching regulation for this across Europe at the domestic level, states' legislations proved to be more coherent and to endorse a quite homogeneous approach to cultural practices encompassing violence customs in clear violation of fundamental human rights.³⁸ Here is where minority women's right to culture meets an obstacle whose overcoming would imply a denial of basic human rights, such as the right to personal integrity, the right to equality, and the right to individual (not merely collective) self-determination.

The reference here is to violent practices that were recently qualified as contemporary forms of slavery or slavery-related conducts such as forced

³⁸ D'Amico and Nardocci (2021).

marriages, sexual abuse and exploitation, female genital mutilation, and sex trafficking.

Gender and intersectionality once again play a leading role and justify the association between being a minority woman and slavery-related conducts because minority women are disproportionately more exposed to such conducts. In the report “Contemporary forms of slavery affecting persons belonging to ethnic, religious and linguistic minority communities”, released on July 19th, 2022, by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, it is stated that “[d]eep-rooted intersecting forms of discrimination, in combination with multiple other factors [...] are the main causes of contemporary forms of slavery affecting minorities [and that t]hey are often the result of historical legacies, such as slavery and colonization, systems of inherited status, and formalized and State-sponsored discrimination”.³⁹

Women belonging to minorities are more likely to be victims of forced or child marriages, especially in South-Eastern Europe, although data shows that even Western Europe is not immune to this phenomenon as some statistics gathered in the United Kingdom demonstrated a high percentage of marriages of girls under the age of 18 years old that were connected with nationals of Afghanistan, Pakistan, India, Bangladesh, and Somalia. Sexual slavery among such groups is also very common, particularly in times of war and during armed conflicts, as it happened to Tutsi women during the 1994 Rwanda genocide and, in more recent times, to Rohingya women in Myanmar, Yazidi women under the Da'esh regime (since 2014), and minority women and girls in Ethiopia. Despite the efforts of the international community and of African States that are gradually criminalizing the practice, an additional example of a harmful practice minority women are highly subjected to is female genital mutilation.

It goes beyond the scope of the chapter to explore all the connections between cultures and violence against minority women and girls and to examine and compare global legislative responses to the issue. Nevertheless, there is a hope that states will start looking closer at women belonging to minorities who live on their territory. As the Special Rapporteur remarkably concludes in his report, there is no doubt that “[m]inority women

³⁹ Human Rights Council. 2022. Contemporary forms of slavery affecting persons belonging to ethnic, religious, and linguistic minority communities. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. A/HRC/51/26, para. 8.

and girls are disproportionately affected by poverty, ethnic prejudice, stigmatization, and gender-based restrictions, and [...]hey [...] face an increased risk of child/forced marriage and sexual slavery".

Framed from the angle of intra- versus inter-communitarian conflicts, meaning those arising within and/or outside the group, and regardless of the responsible (the group or the state), when minority cultures meet violence against their women there is only one claim: the individual claim of the minority woman toward the minority group and the state in which she demands to be adequately protected without the latter neglecting to intervene for non-interference reasons and the former's human rights violations being condoned.

6 BEYOND EUROPE: NATIVES AND INDIGENOUS WOMEN AS INTERNAL MINORITIES

Until now, when discussing minority women, the point of reference was women belonging to national, ethnic, and racial minorities. In contrast, extra-European experiences allow for an investigation into the status of other categories of minority women, such as indigenous women⁴⁰ and women members of native populations.⁴¹

For the purposes of the chapter, it should be recalled that indigenous women belong to minority groups that differ from the "traditional" ethnic and national minorities, as international human rights law confirmed, providing the former with a specific set of protections, namely the 2007 United Nations Declaration of the Rights of Indigenous People.

Native and indigenous communities are commonly recognized all over the world as having self-government rights in the form of territorial autonomy. Canada and the United States are the preferred examples to describe the challenges encountered by these "other" minority women. More specifically, in this regard, we can look at two emblematic cases that were judged by the US Supreme Court and the United Nations Human Rights Committee.

Canada and the United States are certainly not the only countries experiencing forms of internal governance that favor a peaceful cohabitation among ethnic communities, but the chosen judgments here are exemplary in that they demonstrate how being a minority woman might sometimes

⁴⁰ Stamatopoulou (2007) and Xanthaki (2018).

⁴¹ Barker (2017).

result in a risk of human rights violations. This might not always be due to behaviors of the community of belonging, as sometimes it could even be caused by the preferred policy of non-interference endorsed by the state.

Both cases are similar in their factual circumstances. They involve two women, one belonging to the native community of Santa Clara Pueblo in the United States and the second to the indigenous Maliseet community in Quebec, Canada.

The two women similarly chose to get married to a non-member of their group and both women shared the same destiny as they were subjected to similar strict and gender-based discriminatory rules. Marriage outside of the community implied the given member's loss of the status of a member of the group, as well as that of their sons and daughters, and that they would also lose a series of rights related to property, education, housing, and social assistance.

In these cases, the gender inequality underlying the regulations of the native and indigenous communities was challenged before the US Supreme Court (*Santa Clara Pueblo v. Martinez*) and the UN Human Rights Committee (*Lovelace v. Canada*), respectively. Conversely to what happened in *Santa Clara Pueblo v. Martinez*, the rule applied in *Lovelace* was not enforced under any laws adopted by the indigenous community itself, but it was provided under the Indian Act adopted by Canada for the first time in 1867, which provided indigenous communities with legislative and judicial autonomy within their reservations.

Besides this difference, which is, by the way, remarkable as it shows that sometimes the state could be the first actor responsible for violations of minority women's rights, the cases were similarly decided.

Both courts ruled out any violation of the principle of gender equality, and especially the UN Human Rights Committee did not even take it seriously into consideration.

Both judgments were unanimous conclusions, but with different reasonings. The US Supreme Court ruled out any violation of the constitutional principle of gender equality based on its precedents that recognized Indian reservations as "quasi-sovereign" entities that were allowed to govern themselves without any legitimate interference by the Federal Government. The US Supreme Court limited the enforceability of the Constitution to eliminate obstacles to the development of the Indian reservation's autonomy. This is a self-restraining approach that nevertheless clearly conflicts with the constitutional and supranational obligation to

ensure the protection of the right to equality and non-discrimination based on sex.

In contrast, in *Lovelace v. Canada*, the judgment was in favor of the applicant but not because she was found to be a victim of gender-based discrimination. Rather, the UN Human Rights Committee simply stated that the claimant's request to be back in the reservation without losing her rights following the dissolution of her marriage with a non-Indian man did not amount to a violation of the cultural identity of the group set forth under Article 27 of the International Covenant of Civil and Political Rights (ICCPR), which safeguards the right to enjoy the right to culture "in community with others". Thus, there was no mention of gender in the judgment. And yet the gender argument came back several years later, thanks to Ms. Sandra Lovelace's grassroots activities that contributed to amending the Indian Act in a way consistent with the 1982 Canadian Bill of Rights and the principle of gender equality.

With its peculiar facets and focus on systems of territorial autonomy and natives and indigenous women, the non-European comparative perspective depicts all the complexity of being minority women. Indigenous and native women are subjected to sometimes even double types of oppressions that are perpetrated by the group while also resulting from the passivity of the state or its endorsement of the internal affairs of the group.

Even though Europe knows examples of indigenous communities, such as the Sami population in Northern Europe, the status of minority women belonging to indigenous or native communities is certainly better described in the Americas, where cases of simultaneous intra- and inter-communitarian conflicts with women's rights at stake are still widespread and linked to poverty, lack of education, and, more recently, climate change-related issues.

7 EMPOWERING, NOT "HELPING" MINORITY WOMEN

Much has been said about why and how much minority women are exposed to human rights violations worldwide, inside and outside the group they are affiliated with.

As a concluding note, there are two aspects worth highlighting to mark the scene and pave the way to a future understanding of the needs of minority women.

The first is more theoretical and revolves around the opportunity to challenge universalism as applied to women's human rights by adopting an intersectional approach inclined toward a deeper recognition (first) and

understanding (later) of the cultural and ethnic implications of being a woman belonging to a minority group within a majoritarian context. This would mean favoring dialogues between cultures, especially those between majority and minority cultures, and condemning the latter to the extent that they violate women's human rights that are truly universal for all women. Some examples of rights of this sort are the rights to personal integrity, equality, and self-determination, and a bunch of rights significantly impaired by harmful practices that are sometimes perpetrated within minority communities.

Moreover, moving on to the second point, there should be a more robust and global commitment to boost and support minority women's empowerment. This might especially but not exclusively happen through the fight against poverty in the Southern parts of the globe. The fight against poverty should be placed among the top priorities in working toward the empowerment of minority women, as it affects women's health, education, and ability to occupy the public sphere and play a leading role in that context. It is widely known that the gender gap is a global issue bridging together all women. It is likewise undoubtedly true that the more women belong to minorities, the more they will identify as internal minorities facing double discriminations, inequalities, and exclusion.

Instead of demanding that "them" be like "us", or pretending that they are, we—as Western women—should instead start listening to, understanding, and accepting differences.⁴² Not every difference is a violation of a minority woman's right. Sometimes it is, sometimes it is not.

To live peacefully together, while respecting one another, the first thing would be to trace a line between these two options—in a nutshell distinguishing between harmful and non-harmful practices—even when the violation of the right implies a practice or custom we do not understand. Minorities are called minorities because they are something else, something "other",⁴³ and the gender perspective reflects this reality. Minority women deserve to be as equally respected and protected as majority women when it comes to their presumably universal human rights and their claims of having a right to a cultural identity that (also) possesses a strong collective nature.

⁴² Benhabib (2018) and Xanthaki (2019).

⁴³ Benhabib (2012).

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PART II

Test the Limits: Where Is Gender
Equality in the Sustainable
Development Policy Framework?



CHAPTER 5

Including the Gender Dimension in the “Investment and Sustainable Development” Discourse: Where Do We Stand Now?

Federica Cristani

1 INTRODUCTORY REMARKS

To date, international investment law has lacked a comprehensive gender-perspective analysis.¹ This has been due to the particular nature of international investment law, which has developed as *lex specialis* within public international law, whose traditional objective was limited to the protection of foreign investment in the territory of host countries.

¹While, instead, the relationship between trade and gender has become the subject of more in-depth studies and initiatives: suffice to recall, among others, the initiatives that have been taken place most recently within the framework of the World Trade Organization (WTO), like the WTO Informal Working Group on Trade and Gender, which was established on 23 September 2020, and the WTO Gender Research Hub, which was launched in May 2021. For a general comment, see Kumar Sinha and Anand (2021).

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However, in the last decades, international investment policies have increasingly taken into account a number of additional objectives in their scope—for example human rights, labour rights, etc.—and, as has been rightly stated, “today’s investment regime is at the center of multiple legal spheres and networks” and “is informing other regimes and certainly becoming one of the most dynamic fields of international law [...Foreign direct investments] are virtually present at each and every level of our daily lives”.²

In particular, international investment policies and gender policies have become closely interlinked. Indeed, foreign direct investment (FDI) can introduce technical know-how, enhance work force skills, increase productivity, generate business for local firms and, as such, may have an impact on women’s employment, especially in developing countries, as well as on women’s access to financial resources, as shown in a recent study produced by UK Aid.³

However, FDI may also have a negative impact on gender policies.⁴ This was very well highlighted already in 2014 by the United Nations Conference on Trade and Development’s (UNCTAD) report on the impact of foreign investment by transnational corporations (TNCs) on women in host states.⁵ The report stressed that while FDI may create new employment opportunities for women in host states, they can also have a detrimental effect on women when, for example, TNCs exploit the disadvantageous condition of women in the labour market of the relevant state.⁶ At the same time, the report points out the difficulties in gathering complete data on the impact of FDI on women in host countries, given that “the FDI impact on gender in developing countries is not well documented”.⁷

² Chaisse et al. (2021).

³ Dawar, Kamala. 2021. A Guide to Include Gender in Investment Agreements. Technical Report. London: UK Aid. p. iv. <https://sro.sussex.ac.uk/id/eprint/99596/>. Accessed 27 October 2022.

⁴ Adhikari et al. (2022).

⁵ UNCTAD. 2014. Investment by TNCs and Gender: Preliminary Assessment and Way Forward. Investment for Development Policy Research Series. https://unctad.org/en/PublicationsLibrary/webdiaeia2014d4_en.pdf. Accessed 27 October 2022.

⁶ Adhikari et al. (2022, pp. 7–8).

⁷ Adhikari et al. (2022, p. 8).

In the last years, academic scholars and international organizations have been focusing on the relationship between international investment policies and gender policies in order to start closing this data and knowledge gap. We can briefly mention the 2012 World Bank report *Gender Dimensions of Investment Climate Reform: A Guide for Policy Makers and Practitioners*,⁸ the 2021 UNCTAD report on *Multinational Enterprises and the International Transmission of Gender Policies and Practices*,⁹ the 2022 Human Rights Office of the High Commissioner (OHCHR) report on *International Investment Agreements’ Impacts on Women’s Rights*,¹⁰ as well as the work of several scholars.¹¹

One question to be raised in the analysis of the relationship between international investment policies and gender policies is how gender equality may inform a new paradigm of “sustainable investment” at the international level, or more specifically, whether international investment policies that are more “gender-responsive”—that is that expressly refer to gender issues/policies—can contribute to sustainable development.

Indeed, while “[m]obilizing investment and ensuring that it contributes to sustainable development is a priority for all countries”, as stressed by the 2015 UNCTAD *Investment Policy Framework for Sustainable Development* report, we should recall that the achievement of sustainable development encompasses gender policies as well. And indeed, the United Nations has recognized gender equality and empowerment of women and girls as one of the sustainable development goals (SDG 5),¹² and it has also been highlighted that FDI can be a “tool to support the targets of the fifth UN Sustainable Development Goal”.¹³ Actually, as also stressed by the 2021 UNCTAD report on *Multinational Enterprises and the International Transmission of Gender Policies and Practices*, investment policies can

⁸ Simavi et al. (2012).

⁹ UNCTAD. 2021. Multinational Enterprises and the International Transmission of Gender Policies and Practices. <https://unctad.org/webflyer/multinational-enterprises-and-international-transmission-gender-policies-and-practices>. Accessed 27 October 2022.

¹⁰ OHCHR. 2022. International Investment Agreements Impacts on Women’s Rights. <https://www.ohchr.org/sites/default/files/2022-06/International-Investment-Agreement-Impacts-on-Womens-Rights.pdf>. Accessed 27 October 2022.

¹¹ See, among others, John et al. (2018), Kumar Sinha, and Anand (2021), Bjorklund, et al. (2020), Williams (2015) and Ng’ambi, and Chisanga (2020).

¹² UN Sustainable Development Goals. 2022. Gender Equality and Women’s Empowerment, <https://sustainabledevelopment.un.org/topics/genderequalityandwomensempowerment>. Accessed 27 October 2022.

¹³ Karadima (2021).

promote “the transmission of positive gender policies” across countries.¹⁴ As also outlined in one of the very few studies on the relationship between FDI and women’s empowerment, foreign investment affects gender development and influences women’s welfare.¹⁵ Thus, there is a close connection between FDI, sustainable development and women’s empowerment, as restated in the 2017 Buenos Aires Joint Declaration on Trade and Women’s Economic Empowerment signed by 118 members states of the World Trade Organization (WTO), according to which “international trade and investment are engines of economic growth for both developing and developed countries [...] [I]mproving women’s access to [...] national and international economies contributes to sustainable economic development”.¹⁶

But is international investment law well equipped for the gender and sustainable development challenge? In this chapter we will approach this question by focusing on the regulatory framework of international investment law, namely on the provisions of international investment agreements.

The next paragraphs will offer an overview on whether and how international investment agreements include gender provisions and, in turn, how to assess the impact of international investment agreements (IIAs) on gender policies and in particular on the achievement of SDG 5 (achieve gender equality and empower all women and girls).

2 GENDER PROVISIONS IN INTERNATIONAL INVESTMENT AGREEMENTS: WHAT ARE THE (NEW) TRENDS?

Gender-related issues have started to be included in international investment agreements (IIAs) in 2000, when the relevant debate started to arise in investment treaty-making.¹⁷

¹⁴ UNCTAD. 2021. Multinational Enterprises and the International Transmission of Gender Policies and Practices. <https://unctad.org/webflyer/multinational-enterprises-and-international-transmission-gender-policies-and-practices>. Accessed 27 October 2022.

¹⁵ Ouedraogo and Marlet (2018).

¹⁶ WTO, 2017. Joint Declaration on Trade and Women’s Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017. https://www.wto.org/english/news_e/news17_e/mc11_12dec17_e.htm Accessed 27 October 2022.

¹⁷ For a comprehensive analysis of gender language in IIAs, see most recently Kumar Sinha and Anand (2021), p. 109. All the investment and free trade agreements cited here are available, unless otherwise stated, at the website of the UNCTAD’s Investment Policy Hub. <https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping>. Accessed 27 October 2022.

As regards gender policies to be respected by foreign investors in host states, “gender equality” has started to be expressly referred to as part of the standards of corporate social responsibility that investors are encouraged to adopt. We can mention in this respect the investment chapter of the Agreement between the United States of America, the United Mexican States and Canada (USMCA); according to Article 14.17 (corporate social responsibility), foreign investors are encouraged “to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility [...] which may address areas such as labor, environment, *gender equality*, human rights, indigenous and aboriginal peoples’ rights, and corruption” [emphasis added].¹⁸ A similar provision is also included in the investment chapter of the Canada–Chile Free Trade Agreement (FTA).¹⁹ In both cases, the “gender equality” concept has not been defined in the given treaty. Moreover, the provisions on corporate social responsibilities include mere suggestions but not obligations for foreign investors; accordingly, it would be difficult for the host state to blame (and start an arbitral proceeding against) foreign investors for not having taken into account gender issues in their internal policies. On the other hand, when it comes to including gender issues in the commitments addressed to the state parties, we can outline, in general, three main tendencies.

The first one is not to include in IIAs express references to gender policies, but rather to include provisions that provide state parties with the regulatory power to take measures that can ensure gender equality and/or, more generally, sustainable development. For instance, Article 3(2) and Article 3(3) of the South Africa–Ethiopia bilateral investment treaty (BIT) require the state to respect the most favoured nation and the national treatment standards of protection towards foreign investors. However, Article 3.4 affirms that those standards of protection “shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from [...] any law or other measure the purpose of which is to promote the achievement of equality in its territory or designed to protect or advance persons, or categories of persons, disadvantaged by unfair

¹⁸ The Agreement between the United States of America, the United Mexican States, and Canada, which was adopted on 30 November 2018 and entered into force on 1 July 2020.

¹⁹ Article G-14 bis of the Canada–Chile FTA, as amended in 2017.

discrimination in its territory”.²⁰ Several BITs concluded by South Africa²¹ and some BITs concluded by Nigeria²² contain similar provisions.²³

Quite unique in this respect is the Argentina–Japan BIT, concluded in 2018, which includes exceptions to the most favoured nation and the national treatment standards of protection that allow state parties to take a number of specific measures in the social services sectors. Indeed, according to Clause 10 of Annex II of the Argentina–Japan BIT,²⁴ “Japan reserves the right to adopt or maintain any measure relating to investment in public law enforcement and correctional services, and in social services such as income security or insurance, social security or insurance, social welfare, primary and secondary education, public training, health, child care and public housing”,²⁵ while according to Clause 4, “Argentina reserves the right to adopt or maintain any measure to grant rights or preference to indigenous peoples, minorities, vulnerable groups or groups at a social or economic disadvantage”.²⁶ Even though gender policies are not expressly mentioned, the reference to measures aimed at supporting the social welfare or the vulnerable groups may well encompass gender policy measures.²⁷

When gender policies are included in provisions of this kind, it is up to the state party to decide whether it will adopt the relevant measures. Accordingly, the development and implementation of gender policies remain in the discretionary power of the state.

The second tendency is to include in IIAs an express obligation of the state parties to ensure gender equality as part of the standards of treatment of foreign investors.²⁸ For instance, according to Article 4.1(c) of the 2020 India–Brazil BIT, which is the most recent BIT, “[n]o Party shall subject investments [...] to measures which constitute [...] targeted discrimination, such as [discrimination based on] gender, race or religious

²⁰ 2008 South Africa–Ethiopia BIT, Article 3, para. 4.

²¹ We can recall, for example, the 2000 Nigeria–South Africa BIT (Article 4, para. 4), the 2009 South Africa–Zimbabwe BIT (Article 3, para. 4), the 2007 South Africa–Guinea BIT (Article 4, para. 4), and the 2005 South Africa–Congo BIT (Article 4, para. 4).

²² See, for example, the 2002 Algeria–Nigeria BIT (Article 4, para. 4) and the 2000 South Africa–Nigeria BIT (Article 4, para. 4).

²³ Kumar Sinha and Anand ([2021](#), p. 116).

²⁴ Kumar Sinha and Anand ([2021](#), p. 116).

²⁵ Clause 10 of Annex II of the 2018 Argentina–Japan BIT.

²⁶ Clause 4 of Annex II of the 2018 Argentina–Japan BIT.

²⁷ For a comment in this respect, see Kumar Sinha and Anand ([2021](#), p. 116).

²⁸ Kumar Sinha and Anand ([2021](#), p. 110).

belief”.²⁹ The same provision is also present in the India–Belarus BIT,³⁰ which in turn is based on the 2015 Model Indian BIT.³¹ Also the Brazil–UAE BIT,³² the EU–Viet Nam Investment Protection Agreement,³³ the Brazil–Guyana BIT³⁴ and the Serbia–Turkey BIT³⁵ contain similar provisions for the protection of investors from gender discrimination.³⁶

The inclusion of gender equality in the standards of treatment of foreign investors seems a very good strategy for allowing its effective implementation. Indeed, provisions including standards of treatment in IIAs are binding on state parties and can be enforced before an investment arbitral tribunal. To date there is no publicly available record of any investment arbitration claiming a breach of a standard of treatment of foreign investors on gender equality grounds³⁷; however, it should be noted that its inclusion in BITs has been quite recent, and it is still too early to predict its role in investment arbitration case law.

The last tendency—and the most recent one—is to start including ad hoc gender-related provisions in the model BIT.³⁸ This is what happened with the 2019 Model BIT of the Netherlands, which has been praised as “paving the way with progressive rules on sustainable development and gender empowerment”.³⁹ Indeed, it is the first Model BIT to recognize in its preamble the “importance of equality between men and women when formulating, implementing and reviewing measures within the field of international trade and investment”.⁴⁰ And in the text of this Model BIT,

²⁹ Article 4.1(c) of the 2020 India–Brazil BIT.

³⁰ 2018 India–Belarus BIT, Article 3.1 (iii).

³¹ 2015 Model Indian BIT, Article 3.1 (iii).

³² 2019 Brazil–UAE BIT, Article 4.2 (iii).

³³ EU–Viet Nam Investment Protection Agreement, Article 2.5(2)(d). The EU–Viet Nam Investment Protection Agreement was signed on 30 June 2019 (not yet in force).

³⁴ 2018 Brazil–Guyana BIT, Article 4.1 (iii).

³⁵ 2018 Serbia–Turkey BIT, Article 3.3 (d).

³⁶ Kumar Sinha and Anand (2021, p. 115).

³⁷ According to the data available on the website of UNCTAD’s Investment Policy Hub, which is available at <https://investmentpolicy.unctad.org/investment-dispute-settlement>. Accessed 27 October 2022.

³⁸ A Model BIT is a template agreement drafted by countries and used as the basis for the negotiations of investment agreements with other countries. While not binding instruments, Model BITs are still useful tools for understanding what the priorities and expectations of the drafting country for future BITs are. For a general overview of the rationale of Model BITs, see Nam (2017).

³⁹ Duggal and van de Ven (2019).

⁴⁰ 2019 Model BIT of the Netherlands, Preamble.

gender issues are expressly referred to on three occasions. Firstly, gender is expressly mentioned in Article 9(2), according to which any gender-based discrimination towards an investor or his or her investment shall be considered a breach of the standard of fair and equitable treatment.⁴¹ Secondly, gender equality is referred to in Article 20(2), which requires the appointing authority to take gender and geographical diversity into consideration when appointing arbitrators to the arbitral tribunal under the BIT.⁴² And indeed this latter reference—to date, the Model BIT of the Netherlands remains unique in including a provision of this kind⁴³—goes in the direction indicated in the UNCITRAL Working Group III’s report of its 38th session, where it expressed that it is desirable to bring considerations of gender and geographical diversity into the appointments of investment arbitrators.⁴⁴

But maybe the most interesting highlight of the Model BIT of the Netherlands is the inclusion of the gender perspective in the provision on sustainable development under Article 6.3, according to which the parties recognize the importance of promoting gender policies and removing barriers to the participation of women in the economy, which is pivotal for the achievement of sustainable development and improving women’s empowerment.⁴⁵ The express reference to gender policies was introduced in the last version of the Model BIT that the Dutch Ministry of Foreign Affairs prepared in 2018 after a public consultation on the improvement of the model bilateral investment treaty and the relevant discussion in the

⁴¹ 2019 Model BIT of the Netherlands, Article 9, para. 2.

⁴² 2019 Model BIT of the Netherlands, Article 20, para. 2.

⁴³ This is confirmed by a research of the available IIAs included in the UNCTAD Investment Policy Hub, which can be accessed at <https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping>. Accessed 30 October 2022.

⁴⁴ Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its resumed 38th session, United Nations Commission on International Trade Law, January 2020, A/CN.9/1004/Add.1, <https://undocs.org/en/A/CN.9/1004/add.1>. Accessed 27 October 2022.

⁴⁵ The 2019 Model BIT of The Netherlands, Article 6, para. 3, according to which the parties “emphasize the important contribution by women to economic growth through their participation in [...] international investment. They acknowledge the importance of incorporating a gender perspective into the promotion of inclusive economic growth. This includes removing barriers to women’s participation in the economy and the key role that gender-responsive policies play in achieving sustainable development”.

Dutch Parliament.⁴⁶ This provision remains isolated in the realm of IIAs.⁴⁷ However, it opens up the way to finally expressly recognizing the linkage between international investment, sustainable development and gender policies—though it is not very clear as to how the commitment to “removing barriers to women’s participation in the economy”⁴⁸ can be efficiently implemented by state parties. Moreover, this provision has been left out of the scope of the dispute settlement mechanism between the host state and foreign investors,⁴⁹ de facto ruling out any form of control over states in the adoption and implementation of measures in this regard. It remains to be seen whether and how this provision will be included in forthcoming BITs that will be negotiated based on this Model BIT.

Overall, though important steps have been taken in introducing a gender perspective in IIAs, some gaps remain. In this regard, it should be noted that as in the case of gender issues included in the above-mentioned corporate social responsibility provisions, when it comes to the commitments addressed to the state parties, the concept of gender equality is not defined in the relevant IIAs. This gap, coupled with the fact that the inclusion of such provisions in IIAs is a quite recent practice and there have not been, to date, any investment arbitration cases started under these treaties that could help in shedding lights on the meaning of this concept, makes it quite difficult to understand what the parties had in mind when drafting the investment agreements⁵⁰ and particularly which gender policies they wish to implement through IIAs and whether there is a consistency in the understanding of the scope of such policies across different IIAs.

⁴⁶The discussion in the Dutch Parliament is not accessible through its official webpage <https://www.houseofrepresentatives.nl>. Accessed 30 October 2022. A summary of the relevant consultation data is available at Overheid.nl: Nieuwe modeltekst investeringsakkoorden. <https://www.internetconsultatie.nl/investeringsakkoorden>. Accessed 27 October 2022. However, the summary does not provide useful insights into the reasons why this provision was included or background information on its drafting. See Duggal and van de Ven (2019).

⁴⁷ Since the adoption of the Model BIT, the Netherlands has not concluded any IIAs so far, which makes it difficult to assess whether these provisions can be acceptable for other states when drafting IIAs.

⁴⁸ 2019 Model BIT of the Netherlands, Article 6, para. 3.

⁴⁹ 2019 Model BIT of the Netherlands, Article 16.

⁵⁰ Additionally, the preparatory work on these treaties has not been made public, which makes understanding the willingness of the parties even more complicated.

3 ASSESSING THE IMPACT OF IIAs ON GENDER POLICIES

As outlined in the previous paragraph, only recently have IIAs started to expressly include gender-related issues in their texts. And only in one case so far—that is in the Model BIT of the Netherlands⁵¹—has the linkage between gender and sustainable development been expressly recognized in the framework of a BIT—though in a non-enforceable form.⁵²

Even when gender policies are included in non-binding or non-enforceable provisions, these new trends are certainly to be welcomed, especially when taking into consideration the impact of FDI on gender policies and sustainable development. But how is it possible to assess the impact of IIAs on gender policies and on the achievement of SDG 5?

The impact of IIAs in sustainable and gender policies was already well outlined in the 2018 report on “International Investment Agreements and Industrialization: Realizing the Right to Development and the Sustainable Development Goals” submitted by the Working Group on the Right to Development of the Human Rights Council.⁵³ This report is the first international document to analyse in detail how IIAs impact the women and gender issue through the lens of sustainable development.

The report starts by stressing the impact of IIAs on gender policies and women’s empowerment. In particular, investment treaties and investment policies affect the role of women in small and medium enterprises (SMEs), while investor-state dispute settlement (ISDS) in the natural resources and

⁵¹ As mentioned above, the Netherlands has not drafted any BITs based on its Model BIT so far. Accordingly, it is too early to say whether it has opened up a new era of more gender-inclusive BITs.

⁵² Duggal and van de Ven (2019).

⁵³ Muchhala (2018). The report was commissioned by the Working Group on the Right to Development of the OHCHR and then presented at the panel session on “Transformation towards Sustainable and Resilient Societies” during the 19th session of the Working Group that took place between 23 and 26 April 2018 (Human Rights Council, Report of the Working Group on the Right to Development on its 19th session [Geneva, 23–26 April 2018], A/HRC/39/56, 29 June 2018).

extractive sectors affects women, especially in developing countries; furthermore, foreign investment affects women’s employment.⁵⁴

When it comes to SMEs, it is worth recalling that according to the International Trade Centre’s SME Competitiveness Outlook 2021, “small and medium-sized enterprises (SMEs) represent about 90% of firms and account for more than 50% of employment worldwide, with almost 40% of small businesses owned by women”.⁵⁵ In this respect, the Working Group on the Right to Development’s report restates that “supporting the development of domestic SME sectors is crucial for advancing gender equality and women’s rights”.⁵⁶

As regards the ISDS system, the report recalls that “[t]he majority of known outstanding ISDS cases under US FTAs and BITs, and nearly half of the 129 cases pending before the World Bank’s investment dispute facility, involve natural resources, which women across developing countries traditionally use and depend on”.⁵⁷ In such cases, the gender perspective—and the importance of natural resources and the impact of extraction industries on the most vulnerable groups in the host countries—has never been duly considered by the arbitral tribunal, which is a tendency that should definitely change.⁵⁸

Finally, with respect to women’s employment, the report points out that while FDI can have a positive impact on women’s employment, at the

⁵⁴ “Investment protection, particularly on the scale demanded by BITs, gives rise to significant gender concerns in relation to the impacts of investor protections and consequently compromised policy space of governments on gender equality, women’s rights, women’s empowerment and gender-based outcomes” (Muchhala (2018), para. 69). The report stressed that “[t]hree specific channels [...] provide a mere snapshot of the complex landscape of women’s rights in the context of investment and [sustainable] development. They are, first, that of women’s entrepreneurship role in small and medium enterprises (SMEs), second, ISDS [investor-state dispute settlement] cases in the natural resources and extractives sector and third, women’s employment and working conditions” (*ibid.*, para. 70). See also Simavi et al. (2012).

⁵⁵ Cristani, Fornalè and Busch (2021). See also ITC. 2021. SME Competitiveness Outlook 2021: Empowering the Green Recovery. <https://intracen.org/resources/publications/sme-competitiveness-outlook-2021-empowering-the-green-recovery>. Accessed 27 October 2022.

⁵⁶ Muchhala (2018, p. 71).

⁵⁷ Muchhala (2018, p. 74).

⁵⁸ Muchhala (2018, p. 75). For a comment on this, see Kumar Sinha and Anand (2021, p. 102). We can briefly mention, in this respect, Burlington Resources, Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5 and The Renco Group v. Peru, ICSID Case No. UNCT/13/1.

same time it can become a matter of concern, especially in developing countries, where women are still working in conditions of “low wages, wide male-female wage gaps, [as well as poor] quality of employment and prospects for training and advancement in education, skills upgrade and management and leadership roles”.⁵⁹ Accordingly, a more in-depth consideration of how FDI can positively impact employment for women should be carried out by states in their investment policies and when drafting IIAs.

One important tool for adopting gender-responsive policies in the framework of investment protection is the so-called gender-impact assessment, which has been described as “an ex ante evaluation, analysis or assessment of a law, policy or programme that makes it possible to identify, in a preventative way, the likelihood of a given decision having negative consequences for the state of equality between women and men”.⁶⁰ Gender-impact assessment involves two steps: firstly, an analysis of the existing gender-related policies and, secondly, an assessment of the projected impact on women and men of any measures, law, or policy.⁶¹

When it comes to IIAs, a gender-impact assessment might help in making investment agreements more gender-responsive. This is in line with the suggestions already put forward by the UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements,⁶² which recalled that “specific attention should be given to the impact of trade and investment agreements on gender equality”.⁶³

To date, there is no available information on any IIA including a gender-impact assessment—which should be taken into due consideration in future investment treaty-making.⁶⁴

The only non-economic assessment mechanism that has been included in an IIA to date is the environmental and social impact assessment

⁵⁹ Muchhalia (2018, p. 76).

⁶⁰ For an overview, see European Institute for Gender Equality. 2016. Gender Impact Assessment: Gender Mainstreaming Toolkit. <https://eige.europa.eu/sites/default/files/mh0416171enn.pdf>. Accessed 27 October 2022.

⁶¹ ibid. For a comment on this, see Kumar Sinha and Anand (2021, p. 120).

⁶² Human Rights Council. 2011. Report of the Special Rapporteur on the Right to Food, Olivier De Schutter. Addendum on Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements. A/HRC/19/59/Add.5. <https://undocs.org/A/HRC/19/59/Add.5>. Accessed 27 October 2022.

⁶³ ibid., para. 5.1. For a comment on this, see Kumar Sinha and Anand (2021, p. 120).

⁶⁴ Kumar Sinha and Anand (2021, p. 120).

procedures included in the 2016 Morocco–Nigeria BIT—which is signed but not yet in force.⁶⁵ Under Article 14 of the BIT, foreign investors shall perform an environmental impact assessment according to the laws of the host state, together with a social impact assessment of the investment. The latter should be conducted according to the standards adopted by the Joint Committee of the BIT⁶⁶—a committee established by the Parties for the administration of the BIT and composed of representatives of both state parties.⁶⁷ Since the Morocco–Nigeria BIT has not entered into force yet, the Joint Committee has not been established and to date there is no news as to which kinds of standards it might require foreign investors to fulfil in the social impact assessment. However, a social impact assessment may well encompass a gender assessment—though this is not expressly mentioned in the provision (or elsewhere in the BIT).⁶⁸ Though it is not yet in force, the impact assessment mechanism provided for in the Morocco–Nigeria BIT is very innovative⁶⁹ and can serve as a model for the future introduction of ad hoc gender-impact assessment mechanisms in IIAs.

4 SOME CONCLUDING REMARKS

The above analysis shows that IIAs increasingly include gender-related provisions, according to which state parties can adopt measures and policies that would mainstream gender policies into the investment environment. Though gender policies are not always included in binding and enforceable provisions, the references to them in IIAs are an important step (hopefully) towards the development of a new generation of more gender-responsive investment treaties.

⁶⁵ Kumar Sinha and Anand (2021, p. 120).

⁶⁶ Article 14 of the Morocco–Nigeria BIT: “(1) Investors or the investment shall comply with environmental assessment screening and assessment processes applicable to their proposed investments prior to their establishment, as required by the laws of the host state [...]. (2) Investors or the investment shall conduct a social impact assessment of the potential investment. The Parties shall adopt standards for this purpose at the meeting of the Joint Committee [established by the Parties for the administration of the BIT ...]”.

⁶⁷ Article 4 of the Morocco–Nigeria BIT.

⁶⁸ Kumar Sinha and Anand (2021, p. 121).

⁶⁹ Also, the dispute settlement mechanism of the BIT can well cover disputes that fall under Article 14, which deals with the impact assessment. See Articles 26 and 27 of the Morocco–Nigeria BIT.

However, some important gaps remain. In addition to the practice of including gender-related commitments for states in non-binding or non-enforceable provisions—which makes their practical implementation quite challenging—what is still missing is IIA provisions that would require foreign investors to respect gender policies as part of their core obligations—and not merely as part of an invitation to adopt general standards of corporate social responsibility. This was already proposed by UNCTAD in its report on “Investment by TNCs and Gender: Preliminary Assessment and Way Forward [sic]”.⁷⁰ The report, in particular, invites states to “assess the potential impact of FDI in specific industries with regard to employment by gender [...] promot[ing] investment by socially responsible TNCs [...or developing a] strategy for engaging in international investment agreements [that] consider gender-related issues”.⁷¹ To date, the Morocco–Nigeria BIT seems to be the only IIA to include obligations for foreign investors, as it does so with the provision stipulating the environmental and social impact assessment mechanism.⁷² If efficiently implemented, such a mechanism might well encompass a gender-impact assessment as well, thus making foreign investors accountable for the gender impact of FDI. Indeed, FDI can contribute to a more gender-responsive investment regime and to the achievement of SDG 5.

Going back to the question posed at the beginning of this chapter, is international investment law well equipped today for the gender and sustainable development challenge? Actually, the IIA treaty-making is going in the right direction, namely towards a more gender-responsive shift and the implementation of SDG 5, though the path is still a long one.

The increase in inclusion of the above-mentioned provisions in IIAs would allow states to reconcile gender policies with the goals of investment protection and increase the access of women to contributing to and benefiting from the opportunities of foreign investment, with a positive impact on women’s empowerment.⁷³ As affirmed by the above-mentioned UNCTAD report, “[g]overnments need to adopt a strategy towards gender development (as one of the pillars of the sustainable development goals), [and] embed it within the [...] development strategy [...in the

⁷⁰ UNCTAD. 2014. Investment by TNCs and Gender: Preliminary Assessment and Way Forward. Investment for Development Policy Research Series. https://unctad.org/en/PublicationsLibrary/webdiacia2014d4_en.pdf. Accessed 27 October 2022.

⁷¹ ibid., p. 34. See also Chaudhary (2020).

⁷² Gazzini (2017).

⁷³ Kumar Sinha and Anand (2021, p. 125).

field of] trade and investment”.⁷⁴ This has been reiterated in the most recent report of the United Nations Human Rights Office of the High Commissioner (OHCHR), “International Investment Agreements Impacts on Women’s Rights [sic]”, according to which “[p]arties should conduct human rights impact assessments of trade and investment agreements with a focus on gender. [...] All stakeholders should consider the inclusion of women’s rights in international investment agreements [...Indeed, e]conomic growth, and inclusive and sustainable development cannot be achieved without realizing gender equality and women’s rights”.⁷⁵

However, as outlined, the shift towards more gender-responsive IIAs has been quite recent; it remains to be seen how the above-mentioned provisions and mechanisms will be implemented by foreign investors and states, and what their real impact on women’s economic empowerment and sustainable development will be.

Acknowledgements Many thanks are due to Ms. Giada D’Andrea, Research Assistant at the Institute of International Relations in Prague (CZ), for her invaluable research support.

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⁷⁴ UNCTAD. 2014. Investment by TNCs and Gender: Preliminary Assessment and Way Forward. Investment for Development Policy Research Series, p. 33. https://unctad.org/en/PublicationsLibrary/webdiaeia2014d4_en.pdf. Accessed 27 October 2022.

⁷⁵ OHCHR. 2022. International Investment Agreements Impacts on Women’s Rights. <https://www.ohchr.org/sites/default/files/2022-06/International-Investment-Agreement-Impacts-on-Womens-Rights.pdf>. Accessed 27 October 2022.

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CHAPTER 6

The Climate Crisis in Fiji: The Grim Realities and Available Opportunities for Gender and Climate Justice

Nalini Singh

1 THE CURRENT SITUATION

Fiji is made up of more than 330 small islands in the idyllic blue South Pacific Ocean.¹ The small island state is prone to natural disasters and the impact of the climate crisis, which includes both fast- and slow-onset changes.² Fast-onset changes include extreme weather events like cyclones,

¹This chapter draws upon the Author's contribution to the Asian Development Bank's report on "Women's Resilience in Fiji: How Laws and Policies Promote Gender Equality in Climate Change and Disaster Risk Management" (2022) and the paper ('Women's Resilience to Disasters and Climate Change') presented at the sixty-sixth session of the Commission on the Status of Women that took place from 14 to 25 March 2022. The paper has been discussed as part of the *Expert Group Meeting: 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*.

²IPCC (2022).

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droughts and heavier rainfalls which bring about flooding, and slow-onset changes are occurrences such as sea-level rise, land degradation, ocean acidification and salinization. In some cases, the damages may permanently change some places: for example rising seas encroaching on low-lying islands and land, or drought shrinking freshwater resources and turning once-productive farmland into barren land. These changes are felt across many communities and villages because adverse weather conditions result in damaged food crops, homes being destroyed, small businesses shutting down, food insecurity and other interlinked vulnerabilities.³

Both globally and in Fiji, gender inequality manifests in daily life in four key interactive ways⁴: traditional and narrow gender roles determine how women and men can and should behave; men and boys have power and control over women and girls, and society is groomed to accept the inequality; peer relations between men and boys promote aggression and disrespect towards women and girls; and violence against women and girls is accepted and justified.⁵ Climate change and disasters only deepen existing inequalities for women and girls in Fiji.⁶ Women and girls are more likely to live in poverty compared to men; have limited access to resources, land and assets; and face the cultural, attitudinal and institutional barriers that affect women's ability to participate in decision making, especially around building resilience. The Special Rapporteur warned that the escalating effects of the climate crisis could deepen gender inequality and physical and sexual violence (e.g. in Vanuatu, Spain, Australia and Haiti).⁷ The reality is that women and girls are often disproportionately affected by the impacts of climate change (e.g. Fiji) and this risk to increase gender-based violence (GBV) assault during and after disasters.⁸ Furthermore, the prevalence of toxic patriarchal values seeping through institutional structures and frameworks makes it that much harder for

³ Pill (2020).

⁴ Government of Fiji. Advisory Group for the Fiji National Action Plan. [2019](#).

⁵ SPC's Suva Regional Office, Beijing+25: Review of progress in implementing the Beijing Platform for Action in Pacific Island countries and territories Suva, Fiji, 2021.

⁶ Ibid.

⁷ '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, UN Doc. A/77/136, 11 July 2022.

⁸ Prevention web ([2021](#)).

women and girls to actively access, participate in and contribute to discussions, and make decisions on issues that affect them.⁹

These underlying issues mean that in the context of the climate crisis and disasters, women will struggle significantly compared to men. As highlighted by the UN Secretary General, ‘it has never been more urgent to adopt gender-responsive, climate-resilient and sustainable food and energy systems that have women and girls at their centre. This means ensuring women’s and girls’ voice, agency, participation and leadership in the decisions and policies that are being developed at all levels’.¹⁰

2 THE FIJI GOVERNMENT’S RESPONSE TO MAINSTREAM GENDER IN THE CONTEXT OF CLIMATE CHANGE AND DISASTER RISK REDUCTION?

The nature of Fiji connects with the future of Fiji, and this is dependent on how its people are building resilience to both the fast and slow onset of the climate crisis. Decisions on responses to sudden-onset disasters and adapting to permanently changed environmental conditions “impact all social groups within the population differently”.¹¹ And indeed, “gender inequalities influence the ability of women and men and different social groups to build resilience”.¹² Men and women are also differently impacted by the disasters and social disruptions of the climate crisis. Gender inequalities limit “all women’s lives, and access to resources, income, education and health presents additional challenges for women in terms of coping with disasters and responding to climate change”.¹³

The Government of Fiji has put emphasis on the ‘gender-based vulnerabilities of women to disasters’ and the climate crisis.¹⁴ In 2018, the Government of Fiji during the consideration of its Fifth Periodic Report in front of The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee highlighted that important initiatives are implemented at international (e.g. steering the twenty-third session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in November 2017) and local levels (e.g.

⁹ Fiji Women’s Rights Movement (FWRM) (2017).

¹⁰ UN Secretary General, 2022. The Report on the ‘Women in Development’.

¹¹ Asian Development Bank (2022), p. 3.

¹² ibid.

¹³ ibid.

¹⁴ Government of Fiji (2017).

regional training facility for women) to empower rural as ‘agents of change in building a more climate-resilient Fiji’ (para. 8).¹⁵

It is important to note that whilst Fiji is in the frontlines of the climate crisis, there are persisting knowledge gaps on historical data, specifically to clarify the diverse impacts of climate chance-induced disasters on women and men at domestic level. If we use post-disaster needs assessments (PDNAs) as tool of reference, we can identify some elements of interest: for instance, direct impacts are observed in ‘the loss of housing and possessions, and damage to crops, agricultural production, and businesses’.¹⁶ Clearly, these disruptive impacts affect directly the family life and can increase the exposure to gender-based violence (GBV).¹⁷ In this regard, the Government of Fiji expressly highlighted the need to draft gender-responsive relocation plans apt to take under consideration of women’s needs.¹⁸ As warned by Sima Bahous, the Executive Director of UN Women to the UN Security Council, ‘violent conflict, displacement, the repercussions of the global pandemic and the growing climate emergency’ that are all happening at their highest price from women and girls and this demands for collective and urgent attention from local to global levels.¹⁹

Over the last decade or so a plethora of key laws and policies have been adopted by the Government with the aim of being more gender responsive in general, facing the climate crisis and disaster risk reduction.²⁰ Foremost, the Fiji Constitution (2013) addresses gender equality and prohibits discrimination on all grounds. Also importantly, the National Gender Policy (2014) and Women’s Plan of Action have been adopted by the Ministry of Women, Children and Poverty Alleviation.²¹ More recently, the Climate Change Act 2021, the National Climate Change Policy 2018–2030 (NCCP), the National Adaptation Plan, the Displacement Guidelines, the Planned Relocation Guidelines and the National Disaster Risk Reduction Policy 2018–2030 (NDRRP) have been adopted, which clearly confirm the strong commitment on this topic by the Government of Fiji.²² Important developments are also on-going as the drafting process

¹⁵ CEDAW/C/SR.1578 (2018).

¹⁶ Asian Development Bank (2022), p. 22.

¹⁷ Ibid., p. 22.

¹⁸ CEDAW/C/SR.1578 (2018).

¹⁹ Sima Bahous, Statement, October 2022.

²⁰ See the extensive analysis provided by the Asian Development Bank (2022), p. 22.

²¹ Currently, both these initiatives are under review.

²² Fiji Climate Change Portal. <https://fijiclimatenechangeportal.gov.fj/>. Accessed 31 October 2022.

of a National Disaster Risk Reduction Management (NDRRM) Bill, which will attempt to move forward the normative framework ‘toward a more gender-responsive DRM’.²³

This is despite numerous consultations with women’s groups, who have provided ample information with evidence for more gender input. In direct contrast, without consultation with civil society and women’s groups, the Fijian Ministry of Economy has recently developed its Environmental and Social Management Safeguard (ESMS) Policy and Gender Equality and Social Inclusion (GESI) Policy, claiming that they meet international standards. The Ministry’s website states that ‘[t]hese policies were developed in line with the Environmental Management Act and the National Gender Policy, making the Ministry of Economy the first [to have] such policies implemented. Accordingly, these policies help guide, measure, and administer strong environmental and social principles in projects and programmes’.²⁴

These policies and laws do articulate, to some degree, the importance of gender equality and gender responsiveness as the guiding overarching principle in the key thematic areas that these policies cover. In particular, the Fiji Government is committed to gender responsiveness in the allocation of resources, humanitarian assistance and coordination, budgeting and funding, relocation and evacuation, and building resilient communities, to name just a few areas.

However, Fiji’s progress in the implementation of the mentioned policies and laws has been slow. True progress in this regard is measured when the institutions mandated to enforce these policies are able to implement them effectively. Additionally, more effort needs to be put into building synergies with existing policies to help in bridging the gap and ensuring a consistent language which is in clear alignment with the policies mentioned herein.

So what more can Fiji do to ensure that women and their concerns are at centre-stage and that they will not be left behind?

²³ Asian Development Bank ([2022](#)), p. 22.

²⁴ Ibid.

3 STRENGTHENING RESPONSES TO VIOLENCE AGAINST WOMEN IN HUMANITARIAN SETTINGS

In humanitarian/disaster settings, one of the key challenges is around addressing violence against women and girls. Women in all their diversities face multiple forms of discrimination and violence, and the lack of a specific language in policies and protocols that would address these multilayered forms of discrimination and vulnerabilities. These gaps in policies and protocols do correlate with women and girls experiencing a higher risk of violence during disasters, which is especially the case for lesbian, bisexual and trans women (LBT) and women living with disabilities. Additionally, the documents also lack a language around adequate privacy, security and safety measures to prevent violence against women in a humanitarian setting. This translates into the first responders, the Fiji Police, health service providers, etc., not being trained to identify vulnerable women and girls and provide the right responses to and treatment for their needs.

On a positive note, Fiji does have the *National Service Delivery Protocol for Responding to Gender Based Violence (2018)*, which has a Gender Based Violence Referral Pathway Developed for Emergencies/Disasters. It involves all key stakeholders and outlines key roles and responsibilities.²⁵ Additionally, Fiji has embarked on an ambitious all of government and population initiative to develop a *National Action Plan to Prevent Violence against All Women and Girls*.²⁶ This is a key plan that, when implemented, would be transformational in addressing the root cause of gender-based violence.

4 WHERE IS THE DATA THAT MATTERS? THE LACK OF SEX- AND AGE-DISAGGREGATED DATA

There are many gaps in the data collected and published by the Government. When the gendered impact of the climate crisis is understood by all stakeholders, then one does wonder why data disaggregated by sex is not collected and published systematically. The lack of sex-, age- and even location-disaggregated data on specific groups of women facing multiple forms of discrimination and violence, such as LGBT women, women with disabilities, ageing women, etc., leads to policy, protocols

²⁵ Government of Fiji. Ministry of Women, Children and Poverty Alleviation ([2018](#)).

²⁶ Asian Development Bank ([2022](#)).

and budget decisions excluding their specific needs. This only adds onto the lack of a specific language and information that are needed to make effective gender-responsive interventions to address the violence against specific groups.

The importance of disaggregated data (sex, location and age) cannot be underscored enough. All decision-making processes must be evidence-based and all responses must be targeted towards and tailor-made for women in their locations. There is some hope that soon the Government, through its National Women's Machinery, will publish its first ever Country Gender Assessment, which would provide much needed up-to-date data on the statuses of diverse women in Fiji.

5 PARTICIPATION OF WOMEN IN DECISION-MAKING PROCESSES

The 2022 The Asian Development Bank (ADB) report states that

overall, the socioeconomic profile of women in Fiji does not provide a good basis for women's resilience to disaster and climate risks, as women start significantly behind men in access to secure and well-paid employment, occupy few senior and decision-making roles, and suffer very significant levels of sexual harassment in the workplace and domestic violence at home. These forms of inequality and discrimination need to be addressed broadly as part of gender equality in national sustainable development, specifically through gender-responsive climate change and DRR.²⁷

Women make up almost half of the population of Fiji and they live dispersed across the many islands. As such, it is important to ensure that women have equal participation in decision making at all levels, and even more so in national disaster management and climate crisis response. This was highly recommended by the CEDAW Committee in its Concluding Observations on Fiji, by observing that 'that at the national level women are largely excluded from the process of drafting and implementing policies and action plans on climate change and disaster risk reduction, even though they are, on the one hand, disproportionately affected by climate

²⁷Asian Development Bank ([2022](#)).

change and, on the other, the best agent for change in their communities²⁸ (para. 53).

This ensures women's agency, capabilities and skill in the proactive role they play in post-disaster relief work within their families and communities. The Global Gender Gap Report (2022) ranks Fiji in the 97th position in terms of political empowerment out of the 146 countries examined in the report.²⁹ At the local level, women make up less than 25% of the local government with only 2% of the field staff being female.³⁰ At the community level, women are not consulted and their opinions and wisdom are not heard or included in considerations.

Women's meaningful participation in all levels of governance, decision making and consultations in reference to national disasters and the climate crisis, including the Disaster Management Committees at the local levels, must be a priority for the Government so that the needs of women are taken into consideration and the related issues are heard.

6 GENDER-SENSITIVE AND -RESPONSIVE RESOURCE MOBILIZATION

There are substantial differences between Fijian women and men in terms of labour participation. Around 37% of all Fijian women are engaged in paid employment, and the corresponding figure for Fijian men is approximately 76%.³¹ As highlighted by the report of the Asian Development Bank, 'women's labor force involvement varies depending on whether they are in low-, medium-, or high-income brackets. The highest workforce participation is among women from low-income levels'.³²

In this situation, disasters and the climate crisis have great implications for women's livelihoods as the majority of women in Fiji are involved in informal sectors which are particularly vulnerable to any type of shock. Hence, there is a need to have a gender-responsive post-disaster funding support and relief and resourcing across all sectors as opposed to a

²⁸ CEDAW/C/FJI/CO/5 (2018).

²⁹ World Economic Forum (2017).

³⁰ Commonwealth Local Government Forum (2010).

³¹ World Bank Group. Gender Data Portal. <https://genderdata.worldbank.org/>. Accessed 31 October 2022.

³² Asian Development Bank (2022), p. 14.

compartmentalization of gender needs so that they would fall only under one particular ministry.

The Fiji Government is currently piloting the Gender Transformative Institutional Capacity Development Initiative, which aims to have all government ministries and agencies planning and implementing gender-responsive programmes and budgets.

7 CONCLUSION

It is a foregone conclusion that the world is not moving fast enough to halt and reverse the impacts of global warming. Countries like Fiji, while bearing the brunt of the impact of the climate crisis without having contributed to it, have to work fast to ensure that their citizens are looked after in the best possible way. However, there can be no shortcuts in doing this. It is imperative that gender equality is addressed in all legislation and policies. It is also imperative for all policy and law makers to use evidence which includes disaggregated data for decision making. Gender has to be mainstreamed across all programmes and budgets implemented by all government ministries. And finally, women must be guaranteed a seat at the table or the mat, and their voices and opinions must be sought for every step of the way if we are truly to build a resilient and prosperous Fiji in the face of the climate crisis.

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CHAPTER 7

The Ambivalent Parity: The Italian Constitution and Women's Rights

Marilisa D'Amico

1 INTRODUCTION: THE ITALIAN CONSTITUTION AND WOMEN'S RIGHTS—WHERE DO WE STAND?¹

Equality between men and women is solemnly enshrined in the Italian Constitution.

Members of the Italian Constituent Assembly came to this conclusion after a debate from which it emerged, among other things, that “no democratic development, no substantial progress may occur in the life of a people if the full emancipation of women does not accompany it”.²

¹This chapter draws upon D'Amico, Marilisa and Costanza Nardocci. 2021. Gender-Based Violence between National & Supranational Responses: The Way Forward. Napoli: Editoriale Scientifica and D'Amico, Marilisa. 2020. Una parità ambigua. Costituzione e diritti delle donne. Milano: Raffaello Cortina Editore.

²Mattei, Teresa. 1947. Constitutional Assembly, Session of 18th March 1947.

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Looking at the Italian Constitution is fundamental for underpinning the persistent criticism of it and for unveiling the ambiguity of the constitutional principle of gender equality.

Gender equality is proclaimed under Article 3, which, in establishing both the principle of formal equality and the principle of substantive equality, on the one hand, prohibits discrimination based on gender and, on the other, legitimizes the adoption of positive measures aimed at removing barriers which *de facto* impede the equal participation of men and women in the political, economic, and social life of the country.

But gender equality is further endorsed in the text of the Italian Constitution by additional specifications. Hence, Article 29 proclaims the moral and legal equality of spouses within the family; Article 37 stipulates the principle of equality of working men and women, while emphasizing the role of motherhood; Article 51 pertains to equal access of men and women to public offices and elected positions; and Article 117, paragraph 7, extends a similar obligation to Italian regions, ruling that they must remove every obstacle that may prevent gender equality in social, cultural, and economic life and promote equal access to elective offices for both women and men.

Despite such a constitutional framework, the full realization of gender equality is still undergoing severe challenges, and this is why I refer to the constitutional principle of equality between men and women as an “ambiguous parity”.³

However, something different should be acknowledged. Through public statements and measures adopted by public authorities, the view that there is a need to change society’s perspective in light of the numbers and skills of women that are coming to be recognized as a resource rather than a problem is starting to spread.

In addition, even the institutional framework changed. Despite some issues still being unsolved, important regulatory provisions were approved about the balance of top positions in the economic sphere, in the field of political representation and, partially, at the institutional level.

A crucial role has been played by several legislative actions such as the Law on Stalking,⁴ the ratification of the Istanbul Convention on violence against women and domestic violence, and Law No. 69 of 2019, the

³ D’Amico (2020c).

⁴ Law Decree No. 11 of 2009, which was then transposed into Law No. 38 of 2009.

so-called Red Code, which introduced measures to tackle gender violence, whereas, however, the phenomenon still persists and seems to worsen.

Moreover, it is worth to highlight some significant achievements: above all, recently, a woman was appointed President of the Italian Constitutional Court, within which women sat only since 1996, and currently, four of the fifteen members are women.

As I said before, several dilemmas continue to be left open. In spite of the progress made, various institutions exclude women, in particular where the ways of "engagement" are entrusted to non-transparent and co-opting mechanisms.

In this regard, some examples should be noticed. The Boards of the Independent Administrative Authorities are still mainly composed of men. Violence against women is intensifying and hampering the progress of women in many contexts, particularly in the workplace and in a society that seems to be holding back women's increased autonomy and determination.

The workplace remains marked by great imbalances: women currently find themselves in a weaker and more insecure position, especially after the COVID-19 pandemic, which affected their employment and prospects.

Even in the judiciary, we find deep contradictions. Though women are the majority in the judiciary, a huge disproportion persists in the apical and semi-apical positions and there is still a quasi-absence of women from the body of self-government of the judiciary, the so-called Superior Council of the Judiciary (C.S.M.).

A profound transformation of viewpoints and fields of investigation occurred and is currently underway even in the field of Constitutional Law, where the so-called Woman Factor moved from being considered a neglected sector to recently being placed at the core of research, monographs, scientific papers, publications, conferences, and seminars.

This chapter aims at reflecting on the following question: "Where do we stand?".

In a nutshell, this chapter focuses on the challenging and still ambiguous aspects of the implementation of the Italian constitutional principle of equality between men and women.

2 THE ORIGINS OF GENDER DISCRIMINATION

As stated by Eva Cantarella, writing about women in ancient times is hard because it requires the writer to unravel pages of silence⁵—a silence on women's condition and on very significant women, a silence based on the circumstance that, as it still happens nowadays, history has been written by men, talks about a society of men, and speaks mainly to men.

The origin of gender discrimination goes back to ancient Greece, where it was strongly linked to sexual difference, as it was described in the myths as a difference that relies not only on nature, but also goes along with social and cultural elements.

The images created by the authors are very effective.

The first Greek poet to speak about gender differences is Hesiod; this occurs in his “Works and Days”, where he describes the birth of the first woman, Pandora.

In his work, Hesiod tells us that Pandora was sent to the earth to punish men after Prometheus had stolen the fire to give it to men. Pandora, as her name explains, received a gift from each god: from Hephaestus an aspect similar to the so-called virgin and caste, and from Aphrodite the ability to seduce, but it was Hermes who gave her an impudent mind and an ambiguous nature (see “Theogony”).

Hesiod narrates that when she was standing before Epimetheus' vase, since she was curious, as every woman is, Pandora opened it and from the vase came out all the calamities of the world. When she closed the vase, the calamities were already gone and humanity did not rest on anything but hope (Elpis).

An additional element featuring in the myth deals with how Pandora was created. Unlike Eva, Pandora was not born out of a male body. Pandora was built by Hephaestus, who built her by hand and with water and earth; the word “diversity” is not enough to describe the female identity.

Pandora was different. Not surprisingly, Hesiod says that from her derives “the gender (genos), the tribes (phylai) of women”: women's genos is a separate gender; it is different from men's to the extent that, in Hesiod, women are bound to Pandora, as they were born with her. Women reproduce themselves autonomously without any contribution from men.

⁵ Cantarella (2012) and Cantarella (2018).

Another interesting overview is that offered by Semonides of Amorgos, who shows very clearly the origin of the female identity as something different and inferior to that pertaining to men.

What is also noteworthy is another aspect related to the origin of gender differences in ancient Greece.

According to ancient Greek culture, women possess a different mind from that of men because women do not have the logos. The only intellect possessed by women is the Metis. The Metis is a type of intellect that recalls the myth of Metis, the first wife of Zeus, who was swallowed by Zeus while pregnant based on the assumption that her baby would have dethroned Zeus. Having eaten Metis, Zeus, as a result, ended up possessing both types of intellect and gave birth to Athena, who was in fact born out of his mind.

There are profound differences between Metis and Logos: the former is a lower intelligence that is different from the great and bright Logos. The Metis does not classify and does not build categories, but, rather, it is concrete and focused on a single case, on a specific problem; it is the result of experience and reflection and, more importantly, never reaches goals in a coherent way.

But gender difference was not described only by poets.

The same conclusions and assumptions were brought up by Greek tragedians.

It is very well known that Orestes in the *Oresteia*, after the killing of his mother, is not punished by the first tribunal in history because he is considered the son of his father but not of his mother and this is because women's role in reproduction was at that time completely neglected.

The idea that women were not involved in reproduction was later on shared by philosophers and, in particular, by Aristotle.

According to Aristotle, there exist two types of love: *eros* and *filia*. And there are also different types of *filia*: that between equals, meaning friendship, and that between spouses, where women are considered to be inferior to men.

Even his description of reproduction relies on a woman being considered as a passive and cold material that has only the function of receiving men's seed, which only in itself generates life and warms it up.

This way Aristotle gives us a strong stereotype that juxtaposes women, who are made of a cold material and are considered passive entities, to men. Aristotle depicts women as the dark and men as the light; women as

material and men as spirit; and women as the left hands and men as the right hands.

There is also a completely different stream in the Greek world represented by Socrates and Aspasia, who advocated for emancipated and empowered women, but nevertheless it was not so significant.⁶

There are also several historical hypotheses that claim the existence of a matriarchal society in Greece and Rome.

Nevertheless, both Greece and Rome, even with their different features, were patriarchal societies and this contributed to the assumption that patriarchy is the only social organization.

If we reason on the basis of Bachofen's theories of matriarchy, it clearly emerges that sexual difference has, over the centuries, resulted in women's inferiority.

The origin of public institutions and even of public law is a "male" origin: they constitute a public sphere from which women were expelled for thousands of years until the last century, when, starting with the recognition of women's right to vote, women entered into the public sphere though still remaining marginalized and discriminated against.

While in ancient Greece the first gender discrimination stereotypes were born, the Roman society was even better at implementing a social organization based on a patriarchal model whose features we can find even today.

Roman women were forced to get married very early and their only function, as was made clear by the related ceremonies and costumes, was reproduction.

The ancient world also gives us a patrimony of women having no or only a limited role in their children's education. In the Greek society, women played a mere natural role, as they were totally excluded from their sons' and daughters' education, and in the Roman one, women had a fundamental educative role as wives and mothers, since they were to teach their sons to be good "citizens".

To conclude, from the Greek society we derive the idea, which is still so severely widespread in contemporary societies, of the natural difference between men and women that lies behind gender stereotypes and women's condition of inferiority.⁷

⁶ Cantarella (2010).

⁷ Mill (1869).

3 BORN EQUAL, BUT NOT YET A FULLY GENDER-EQUAL DEMOCRACY

One aspect only recently came to light: the significant contribution of women to the Constituent Assembly in the construction of the women's rights platform of the Italian Constitution, which was so innovative in terms of the transformation of the society in 1948, and the fundamental choices that featured in all the principles of the Constitution.

These women, the Founding Mothers, were just 21 members of the entire Assembly, which was composed of 556 members in total. They did not act alone but in complete harmony with the most advanced women's society in Italy at the time. Thanks to their joint action, they played a fundamental role in structuring the principle of equality in its double dimension, namely, its formal and substantial dimension.

In this regard, it should be noted that on 26 June 1946, the "Union of Italian Women" (UDI) submitted to the women elected to the Assembly a list of rules to include in the Constitution. They asked for "legal equality with men in all fields; recognition of the right to work and access to all schools, professions and careers; the right to adequate protection enabling women to fulfil their duties as mothers; equal evaluation, treatment and compensation to that of men for equal work, performance, and responsibility".⁸

The members of the Constituent Assembly were responsible for achieving the gender equality goal, which was marked by a lack of significant derogations, such as those aimed at excluding women from the administration of justice. In this respect, indeed, someone said that for some appointments "related to judicial and military offices" the equal positions of men and women were "unacceptable", since "[...] the woman in some moments of her life has not the full capacity to work".⁹

Also, it was said that even if it could be possible to put men and women on an equal moral level, "we can not ignore the diversity of the tasks and their functions within the family. There is a natural obstacle. The small, small difference between man and woman (laughs)".¹⁰

The cohesion of women within the Constituent Assembly is evident when we consider, for example, the common opposition which was voiced

⁸Tola (2016), translation provided by the author.

⁹Molè, Enrico. 1946. Constitutional Assembly, Session of 20th September 1946.

¹⁰Molè, Enrico. 1947. Constitutional Assembly, Session of 18th April 1947.

against the proposal to recall in Article 51 of the Constitution the concept of “aptitudes” as an exception to the proclamation of the principle of equality of access to public and elected offices.

This proposal was defeated by the women, who certainly were not unaware of the fact that this word could have been a substantial obstacle: “[s]ince aptitudes are only proven through work, if women are excluded from certain jobs, they will never prove their ability to do them”.¹¹

Moreover, the affirmation of the various corollaries of the principle of gender equality in the Constitution did not represent a foregone conclusion. What should also be considered here is the debate that arose around the principle of equality in terms of access to public offices (Article 51), the workplace (Article 37), and the family (Article 29).

The principle of equal democracy is explicitly enshrined in Article 3 of the Italian Constitution. Today, this is the basis for introducing anti-discrimination measures to ensure the presence of women in institutions.

It is worth underlining that the implementation of the concept of “equal democracy” means exceeding the logic of “quotas” and of the consideration of women as a disadvantaged and weak group seeking protection. Instead, the presence of women should not be regarded as a concession, but as a right of all women, which must be fully implemented if democracy is to be achieved. Our Founding Mothers were aware of this and fought for it.

In this respect, it is fair to recall the words of Teresa Mattei: “there can be no single step towards democracy that is just formal, but not substantial; there can be no single step on the road to civil and social progress which cannot and should not be taken by women together with men if we truly desire that the conquest affirmed by the Constitutional Charter become a stable reality for life and the better future of Italy”. Then she added, “no democratic development, and no substantial progress is made in a people’s life unless it is accompanied by complete female emancipation”.¹²

In short, the democracy that our Founding Mothers fought for was a highly egalitarian democracy, and this was certainly without any ambiguity. In addition, in light of the purity of the equal values promoted by the women in the Constituent Assembly, we can highlight the clearly

¹¹ Agamben, Maria Federici. 1947. Constitutional Assembly, Session of 22nd May 1947.

¹² Mattei, Teresa. 1947. Constitutional Assembly, Session of 18th March 1947.

anti-fascist trait that was a characteristic of all of the 21 female members,¹³ while the opposite was the case for a considerable number of the other (male) members.

Indeed, many of the men who wholly joined the fascist regime ended up writing the Constitution and, above all, implementing it. We can recall Gaetano Azzariti, who, during the fascist regime, held the role of Chairman of the “Court of the Race”, and then, after the establishment of the Republic, became President of the Constitutional Court.¹⁴

Similarly, Constantine Mortati was initially an ideologue of the fascist regime and was later fully integrated into the dynamics of the new constituent power, becoming perhaps the most authoritative constitutionalist of the Italian Republic.

Consider, then, Vincenzo Gueli, who, together with others, justified a casual transition from the fascist regime to the democratic Republic, which was “cloaked in legal technicality”,¹⁵ and who was particularly skeptical of the establishment of the Constitutional Court, as Italy passed from the fascist regime to the republican age.

Thus, the Constitution was born from the commitment of women and men, and its implementation was reserved solely for the men, often those who were already in charge of the institutions of the fascist regime.

However, without taking away anything from the fundamental contribution of these men, some questions arise spontaneously: was the application of the Constitution being entrusted to men one of the reasons for its slowness? And, again, is a democracy that was realized as a democracy for men and women but where women were excluded for decades, truly a democracy? And, again, does a re-reading of that founding moment and of the years when we built our life together become more urgent, as such re-readings already occurred in the most recent years?

¹³ Trucco (2016).

¹⁴ D'Amico (2020a).

¹⁵ Bin (2016).

4 THE ENFORCEMENT OF THE ITALIAN CONSTITUTION BETWEEN THE LEGISLATOR AND THE CONSTITUTIONAL COURT

If the Funding Mothers succeeded in affirming the principle of equality in all its forms, the concrete implementation of the Constitution, mainly left in the hands of men, was (and perhaps, in part, still is) rather tricky.¹⁶

In fact, the innovative scope of the constitutional text was originally devalued in its essential sense, which paved the way to the thesis in which the Constitution is interpreted as a text made up of programmatic norms that are not immediately applicable. Valerio Onida, in a well-known essay, described how the implementation was slow and contradictory because of a “happy” connection between the younger judiciary and the Constitutional Court, which began to operate only in 1956.¹⁷

Let us also look at the long way women’s rights came in terms of their implementation.

Until 1960, discriminatory legislation was justified and maintained: an example is Law no. 1441 of 1956, which established that out of the six popular judges to be added to the judges of the Courts of Appeal, at least three of them should be men. This provision was ruled to be in compliance with the Constitution (and, in particular, with Articles 3 and 51) by the Constitutional Court, which wanted to leave to the Parliament “some sphere of appreciation in dictating the modalities of application of the principle for the purpose of a better organization and a more profitable operation of the various public offices, and also with the intent to better use the attitudes of the people”.¹⁸

In order to “save” possible exceptions to the principle of equality within a constitutional framework, the Constitutional Court affirmed, again in the same ruling, that “the capacity of women has been fully recognized. The numerical limitations are inspired by another criterion, that is, the proper functioning of the formation of the Court [...]. The different provisions of the Law of 1956 are, therefore, above different levels, which exclude the possibility of contrasts”.

¹⁶ Cartabia (2017).

¹⁷ Onida (1977).

¹⁸ Italian Constitutional Court, Judgment No. 56 of 1958. See Crisafulli V. (1958).

Yet, the prediction of a ceiling appears to have been driven by the belief that it would not be appropriate for women to carry out some specific activities.

Instead, a significant shift is represented by Judgment No. 33 of 1960,¹⁹ where the Constitutional Court stated that Article 7 of Law No. 1176 of 1919 was unconstitutional. This norm excluded women from a set of important public offices involving the exercise of political rights and powers.

This decision is even more significant when one considers that the Constitutional Judge decided to declare the rule unconstitutional by changing the approach of the referring order. It mainly focused on the violation of the principle of legality and, therefore, on a formal and technical profile.

The Court declared the law unconstitutional for a substantive reason, as it infringed the principle of equality between the sexes.

In the Court's words, "a rule that consists in excluding women in general from a broad category of public employment, [must] be declared unconstitutional for the irremediable contrast in which it arises with Article 51, which proclaims access to public offices and elective offices of members of the one and the other sex in conditions of equality".

Reading the arguments behind the decision, one cannot deny that there was still some resistance to a complete affirmation of the principle of equality between men and women, but the judgment remains emblematic because it marked the expulsion from the order of a discipline that prevented women from gaining access to key positions in the administration. Finally, it brought the principle of equality between the sexes out of the inconsistent framework of the "programmatic norms".

Moreover, it should be recalled that this change was accepted thanks to the tenacity of a citizen, Rosanna Oliva, who rebelled against her exclusion from the office of prefect. Costantino Mortati defended her.

The Constitutional Court therefore induced a change of perspective, going so far as to say that Article 51 of the Italian Constitution should be considered a corollary and a "confirmation" of Article 3 of the Constitution and of the rule that prohibits any discrimination based on sex.

Finally, it is important to emphasize that this was a crucial step for the admission of women to the judiciary, which occurred shortly afterwards. With Law No. 66 of 1963, the legislator opened the door for women's access to all jobs and professions, including the judiciary. As is well known,

¹⁹ Crisafulli (1960), Esposito (1960) and Mortati (1960).

the entry of women into the judiciary occurred in 1965, following the victory of some women in the first competition for judiciary positions that was not solely reserved for men.

Later, a key role in implementing the constitutional principle of gender equality, in politics especially, was played by the Italian Constitutional Court. Women's political representation represents, in fact, another perspective for investigating the health status of the constitutional principle of gender equality.

There are at least two judgments worth mentioning here.

In Judgment No. 422 of 1995, the Constitutional Court held that in general and without exception, the principle of formal equality must be applied in electoral matters. The consequence was that any regulation aimed at introducing references to the "sex" of representatives, even if formulated in neutral terms, would be considered as being contrary to this principle.

The judgment was widely criticized.²⁰ The Constitutional Court, in fact, proceeded from a false "historical" representation when it affirmed that the applicability of the principle of substantive equality should be excluded from the field of political rights. The Court seemed to ignore that at the time the Constitution came into force the issue of the low numbers of women in elected assemblies was not perceived as a constitutional issue because women had not yet had the opportunity of becoming members of such assemblies. Judgment No. 422 of 1995 had a far-reaching impact in that the arguments endorsed by the Constitutional Court cast aside the regulations that were the object of the question of constitutionality, and it also precluded further possibilities of legislative intervention in order to foster a gender balance within political bodies.

Following this judgment, a second landmark case was that of Judgment No. 49 of 2003.²¹

It has to be recalled that in the years following Judgment No. 422 of 1995, the constitutional framework changed profoundly because of the coming into force of Constitutional Law No. 2 of 2001, whose Article 2 makes provisions for the Regions with Special Statutes, providing that "in order to achieve a more equal representation of the sexes" regional law must "promote equal opportunities for those standing in elections". Regions with Ordinary Statutes likewise started to be asked to act in

²⁰ D'Amico and Concaro (2006).

²¹ Carlassare (2003).

compliance with these principles in accordance with the newly enacted Article 117, § 7 of the Italian Constitution.

It was also in these same years that the Italian Parliament committed to the process of passing a constitutional law that came into force only in 2003, which was aimed at amending Article 51 of the Constitution in order to make explicit the need to promote equal opportunities for those standing for elective and public offices.

These changes in the constitutional framework boosted policies that progressively promoted gender equality.

First off, the Aosta Valley Region decided to introduce a legislative resolution according to which lists of candidates had to consist of “representatives of both sexes” under penalty of being declared null and void. The paradox here was that the Italian Government, after having amended Article 51 of the Constitution, at the same time decided to dispute the constitutionality of the Aosta Valley regional law on the grounds of its presumed violation of the constitutional principle of equality.

However, this time, with Judgment No. 49 of 2003, the Constitutional Court “saved” the law, overruled its precedent of 1995, and affirmed that the resolution using a neutral reference (“both sexes”) affected only the way lists are made up—and did not impact on the electoral competition itself—and thus would not be considered in breach of Articles 3 and 51 of the Italian Constitution.

5 THE EMBLEMATIC CASE OF WOMEN IN THE JUDICIARY

The issue of women's representation in constitutional bodies or in bodies of constitutional importance, such as the Superior Council of the Judiciary (C.S.M.), is an emblematic feature if we want to reason on the *status* of gender equality in Italy today.²²

Right now, it is very problematic to believe that the presence of women within the C.S.M. is a “mere” request of women and not, on the contrary, a problem to be solved to renew the self-governing body and to allow it to go beyond self-referential logics.

That being said, the weak presence of women in the judiciary's self-governing body takes on an even more dramatic consistency when we consider that for some time now, women have been the most represented gender in courts.

²² D'Amico et al. (2017).

The latest report of the Statistical Office of the C.S.M., published on the occasion of the 8th of March 2022, shows that of the 9787 Italian judges, 4293 are male and 5283 female. Thus, women account for 55% of the judiciary.

This apparent increase in the female component, however, has not been accompanied by an appropriate gender re-balance either in the higher positions or in the C.S.M.

In those positions, women are still under-represented, especially in the prosecution offices.

However, positive signs may be found in the presence of women in the following significant positions: the Deputy President of the Court of Cassation and the Deputy Prosecutor at the National Anti-Mafia and Anti-Terrorism Directorate.

As far as the composition of the C.S.M. is concerned, it is not possible to see such positive changes there. Today, only six women sit on the C.S.M., all of them belonging to the magistrate component. In any case, it is worth noting that compared to the previous councils, the number of women increased, especially considering that in the 2010–2014 period, there were only two women there. In the 2018 electoral round, the difficulty of guaranteeing parity even in the election of non-magistrate members became evident, as the Parliament only elected male members.

The problem of women's under-representation in the top of the judiciary and in the C.S.M. has been the subject of deliberations of the C.S.M. itself and of legislative proposals to change the electoral system of the self-governing body.

As of today, these legislative proposals have never been approved definitively.

Regarding the C.S.M. resolutions, on the 2nd of April 2014 the Council approved the resolution on "Gender quotas: an indispensable enrichment of democratic representation". It is based on a skillful approach and a conscious reconstruction of the evolutionary trends of the Italian legal system. It provides a correction to the method of election of the C.S.M., requiring the introduction of a double gender preference mechanism in the election of the judges and a minimum gender quota of 1/3 for both the magistrate and the non-magistrate component.

In spring 2016, the "Ministerial Commission for Changes to the Constitution and Functioning of the C.S.M." discussed corrections to the system for electing the magistrate component of the body. It expressed the need to respect specific "essential" requirements, including "the principle

of gender parity”, which would be rendered effective with reference to the different electoral system being taken into consideration from time to time.

Then in 2017, there was the so-called Ferranti law proposal, which, similarly, did not aim to force the desired result through the provision of quotas, preferring instead to introduce rules affecting the presentation of candidacies, the order in which the list of candidates is compiled, and the voter's vote, with a double gender preference mechanism.²³

Several proposals for electoral reforms of the C.S.M. have been finally presented in the current legislature: some focus only on the issue of gender representation, while others are organic proposals that also introduce rules to promote equality.

The “Bonafede” proposal presented on 28 September 2020 by the previous Minister of Justice aimed to introduce a rather complex electoral mechanism as part of a broader reform of the electoral system. The proposal provided that in the first round of voting, the voter or elector may express up to four preferences, and established the rule that “if the voter expresses more than one preference, they must be expressed on the ballot paper as alternating candidates of different genders”. The new text of Article 23 lays down that each constituency must list a minimum of ten candidates, with five for each gender, and that gender parity must be respected even if the list contains a higher number of candidates. Furthermore, if there are fewer than ten nominations or the nominations do not respect gender parity, the central electoral office shall, in a public session, draw lots for the missing nominations so that by drawing from separate lists by gender, the minimum number of nominations is reached, and gender parity is respected. Even in the second round, where the possibility of expressing two preferences is provided for, it is stipulated that if there are two expressed preferences, they must be for candidates of different genders.

The approval process of the “Bonafede” law proposal proved particularly complex in light of the change in the governmental composition.

First of all, the Minister of Justice appointed a commission of experts chaired by Professor Massimo Luciani to propose “interventions for the reform of the judicial system through the formulation of amendments to draft A.C. 2681” (i.e. the so-called Bonafede proposal).

The commission drew up a report that, although it was primarily devoted to other issues, introduced some amendments aimed at affecting

²³ Ferranti (2017).

the gender balance of the magistrate component. The report also has the positive aspect of suggesting including an explicit reference to the principle of gender parity in the section dealing with the election of the non-magistrate component. The report states that the “commission is aware of the probable lack, at present, of suitable legal instruments to remedy the violation of this principle in parliamentary elections, but considers that their indication is nevertheless appropriate as a guideline for the discretion of choice”. Thus, it has highlighted the fear of the ineffectiveness of the proposed measure.

The “Luciani Commission’s” proposals were, in part, taken up by a maxi-amendment presented by the Government in February 2022, which also modifies the mechanisms aimed at promoting gender representation in the C.S.M. that were originally indicated by the “Bonafede” law proposal.

On the one hand, with regard to the election of the judges’ part in Article 29 of the proposal for A.C. 2681, the Government requires that “[i]n each college there must be at least six candidates and that each gender must be represented by not less than half of the effective candidates”. With regard to the ballot and the declaration of those elected, it is worth mentioning Amendment 33.2, which states that in the event of a tie, “the gender least represented at national level shall always prevail”.

On the other, it is important to note that the Government enhances the “Luciani Commission’s” proposal to amend Article 28 concerning the eligibility of non-magistrate members. The Government’s maxi-amendment calls for the text of the rule to be amended to take into account “Articles 3 and 51 of the Constitution on the protection of gender equality”.

In addition, the Government proposed amending Article 2 of the Bonafede law proposal concerning the “assessment of aptitude and merit” in the sense of “also assessing the magistrate’s ability to implement the organizational project (letter m) fully and, in the event of an equal evaluation of candidates, letting the less represented gender prevail if on a national or district basis, there is a significant disproportion in managerial and semi-directorial positions between genders”.

These latest proposals, which seek to affect the elections of both the magistrate and the non-magistrate component, represent a welcome step forward. However, beyond the individual mechanisms chosen to promote equality, the problem seems to be another one: women’s

under-representation in the C.S.M., which is mostly addressed as a marginal aspect.²⁴ In other words, the scarcity of women is hardly perceived as a fundamental aspect of the renewal of a male-only judiciary that, nevertheless, happens to be in deep crisis.

6 ON TO PRESENT TIMES: WOMEN'S PRESENCE IN DECISION-MAKING BODIES DURING THE COVID-19 PANDEMIC

As is well known, the issue of the “health status” of the principle of equality within our institutions emerged forcefully during the outbreak of the health emergency.²⁵

The impact of the COVID-19 pandemic was powerful: it intervened in already existing discriminations, performing a deflagrating function concerning the existing issue within the legal system.²⁶

Nationally and also globally, in decision-making places and in the scientific world, at the very beginning of the pandemic, women disappeared. The public scene was, in fact, exclusively dominated by men.

As I have stated elsewhere,²⁷ if we look at the apex institutional positions that managed the crisis in its initial moment, we find only men at the top and in the command groups, from the Prime Minister with his male staff to the President of the Republic, who was also “advised” by men, to the commissioners who managed the emergency, to the task force set up for “phase 2”, which was led by another man, Vittorio Colao.

The absence of women in the task forces was highly criticized: there were many complaints, appeals, letters, and public statements to the government denouncing this situation, which led the Prime Minister, while phase 2 was already underway, to integrate the two task forces.

But even more evident was, and still is, the situation at the scientific level: we saw very few women among the scientists, virologists, and doctors, an almost invisible presence of women there, and the few women who were there were mostly isolated voices.²⁸

²⁴ Pezzini (2021).

²⁵ Nunes Santos (2020).

²⁶ D'Amico and Catelani (2021).

²⁷ D'Amico (2020b).

²⁸ Andersen et al. (2020).

As stated, women appeared, as a consequence, more vulnerable “to the risks associated with carrying out work, as well as being exposed to greater responsibilities in care and nursing activities, particularly [in regard to the care] of the weaker subjects (children, the elderly, the sick)”.²⁹

The “reappearance” of women in the family dimension in light of the flagrant absence of women in the decision-making places led to significant results in terms of women bearing the workload and domestic violence.

It is now well known that those who paid dearly for the crisis are young people, precarious workers, and women. In general, more than 30% of women in the European Union work part-time in what can be defined as the informal economy, which is characterized by fewer labor rights. As for Italy, according to data from March 2021, out of 101,000 newly unemployed people, 99,000 were women.³⁰

In 2020, twice as many women lost their jobs as men: as we know, the fall in the employment rate was 1.3% among women against a negative 0.7% among men.

Moreover, the employment rate gap between women and men increased from 17.8 percentage points in 2019 to 18.3 percentage points in favor of the latter.³¹

In addition to the percentages just mentioned, it is essential to consider the fact that women experienced fewer re-entries into the labor market and suffered a substantial penalization in terms of new recruitments.

The data on gender-based violence is also worrying. As shown by an ISTAT study on emergency calls (dated the 13 May 2020), during the lockdown, there were 5031 valid calls to the emergency hotline 1522, which was 73% more than during the same period in 2019, when there were 2013 victims who asked for help through it (+59%).

Moreover, the data collected from the judicial offices between the 1st of August 2019 and the 31st of July 2020 show, in fact, “how the percentage of proceedings registered for the crime of ill-treatment of family members and cohabitants increased by 11% with a significant increase in complaints occurring precisely between 1 January and 31 May 2020”.³²

What has just been reported is no coincidence as “closure, lack of movement, control and oppression represent, in fact, typical modalities of

²⁹ Ciancio (2020) and García Rubio (2020).

³⁰ Giangualano (2021).

³¹ Marinelli (2021).

³² Loi and Pesce (2021).

the conduct of ill-treatment in the family (Article 572 of the Criminal Code) and persecutory acts (Article 612 bis of the Criminal Code) [...].³³

Generally, suppose it is possible to say that physical violence against women has increased during the lockdown. In this way, we can say that the “very general” protection of collective health has been preferred over the “more particular” safeguard of women, which has been waived.

Finally, consider that the use of the Internet during the pandemic led to an increase in online gender violence and in the numbers of online sexual abuses.

7 TWO RECENT MATTERS OF WOMEN'S RIGHTS: GENDER EQUALITY AND SOCIAL CONSCIENCE

Despite the evolution of the legal system and case-law and the centrality of gender-related matters in recent public policies, full equality cannot yet be perceived as a certainty in Italy.

Two issues raised before the Constitutional Court beautifully describe this situation. The first is the rule governing the automatic and compulsory assignment of the paternal surname to a newborn, which resulted in the Constitutional Court's Order of Self-referral No. 18 of 2021³⁴ and the recent Decision of the Constitutional Court No. 131 of 2022.³⁵ The second is the issue of the rule on the selection of educational staff based on gender in boarding schools and in the so-called *educandati*, which was declared inadmissible by the Constitutional Court with Judgment No. 1 of 2022.³⁶

These two questions of constitutionality deserve to be jointly considered as they share the common reference made by the Constitutional Court to the existing link between gender equality and “social conscience”.³⁷

First of all, initially, the question of constitutionality about the automatic attribution of the paternal surname was declared (manifestly) inadmissible by the Constitutional Court three times because it was deemed to fall within the legislative discretion and therefore to fall outside of the

³³ Filice (2020).

³⁴ Malfatti (2021).

³⁵ D'Amico (2022).

³⁶ Siccardi (2022).

³⁷ Zanon (2017) and Zanon (2021).

Court's competences.³⁸ On this, it should be pointed out that the Court declared the question of constitutionality inadmissible despite considering that—as stated in the judgment—“it was possible, and probably consonant with the evolution of the social conscience, to replace the rule in force concerning the determination of the distinctive name of the members of the family constituted by marriage with a different criterion that would be more respectful of the autonomy of the spouses”. Only ten years later, that same rule, which was deemed no longer consistent with the values rooted in the social conscience, was declared unconstitutional by Ruling No. 286 of 2016 for violation of Articles 2, 3, and 29 of the Constitution since it was considered to be a “legacy of a patriarchal conception of the family rooted in the Roman tradition of family law and of a power within marriage that is now a thing of the past, and is no longer consistent with the principles underlying the legal system and the constitutional value of equality between men and women”.

In closing its argumentation, the Constitutional Court also specified that “pending an urgent legislative intervention intended to organically regulate the matter, according to criteria finally in keeping with the principle of equality”, the general provision of the attribution of the paternal surname to the newborn should remain legally binding in the absence of an agreement of the parents.

While waiting for the legislative intervention called for by the Constitutional Court, the automatic attribution of the paternal surname once again became the subject of another question of constitutionality. As a proof of the close connection between the principle of gender equality and the evolution of the “social conscience”, the Court of the city of Bolzano raised a question about the constitutionality of the provision set forth under Article 262, first paragraph, of the Italian Civil Code “in the part in which it does not allow parents, by mutual agreement, to transmit to their child, at the moment of birth, only the maternal surname”.

The Constitutional Court considered “logically prejudicial” to the question raised by the Court of Bolzano “the question concerning Article 262, first paragraph, of the Civil Code, which requires only the acquisition of the paternal surname”. The Court, therefore, raised before itself the question of the constitutionality of Article 262, first paragraph, of the Civil Code “insofar as, in the absence of a different agreement between the parents, it requires the acquisition at the birth of the paternal surname,

³⁸ Orders Nos. 176 and 586 of 1988 and Judgment No. 61 of 2006.

instead of the surnames of both parents, with reference to Articles 2, 3 and 117, first paragraph, of the Constitution, the latter in relation to Articles 8 and 14 of the ECHR". The Court then upheld the question raised before itself in a recent decision that went beyond its previous decision, as it introduced the rule of the double attribution of both parents' surnames, which replaced the previous rule of the compulsory attribution of the father's surname alone, which had been upheld in the outcome of Judgment No. 286 of 2016.

As the Court was faced with a legislator incapable of "listening" and incorporating the ongoing and traceable changes in the society by intervening in conformity with the principle of gender equality, the case clearly shows how the Constitutional Court has been the true protagonist of the social change. It was the Court that actually gave a voice to the instances of equality in compliance with the constitutional principle of gender equality.

However, references to "social conscience" in the constitutional jurisprudence have not always led to progress on the side of gender equality.

Emblematic of this opposite trend is the recent Judgment of the Constitutional Court No. 1 of 2022, which declared inadmissible the question of the constitutionality of the rule about the regulation of boarding schools whose staff is still selected on the basis of "the need for boarding school activities to be entrusted to male and female educational personnel respectively".³⁹

Despite the fact that the rule at issue affects the core of the principle of equality, as it involves a gender distinction contrary to Articles 3 and 51 of the Italian Constitution, the Constitutional Court declared the question inadmissible because the verification of the ongoing compliance of the purposes governed by the rule at issue "with the orientations and values rooted in the social conscience would require a reconsideration of the discipline of educational institutions in its entirety, which is within the legislator's discretion".⁴⁰

In this case, the reference to the legislator's competence to verify the consistency of the *ratio legis* with the values rooted in the "social conscience" places a brake on the principle of gender equality. The brake cannot be justified in light of the constitutional, normative, and jurisprudential development on the principle of gender equality from the entry into force

³⁹ Article 4b, paragraph 3, of Law Decree No. 255 of 2001.

⁴⁰ Constitutional Court, Judgment No. 1 of 2022.

of the Constitution until today. Selecting educational personnel on the basis of whether the activity to be assigned is “male” or “female” in nature rests on the unacceptable and old argument that there are functions more suited for females and others for males. This argument, as seen already, was vigorously opposed by the members of the Constitutional Assembly and has been overcome by the case-law of the Constitutional Court on Article 51 of the Constitution. Moreover, as the judge *a quo* rightly pointed out, the recognition and safeguard of the principle of gender equality in this field should not even be proven, as it is “pacific”, not questionable.

In other words, the Constitutional Court’s decision of inadmissibility is not only inconsistent with the “values rooted in the social conscience”, but seems to be in contradiction with the current context, which is inspired by the constitutional principle of gender equality.

8 CONCLUDING REMARKS: THE AMBIGUITIES (NUMBERS THAT MATTER, NUMBERS THAT ARE NOT ENOUGH)

As can be inferred from what has been discussed so far, there is an important point which needs to be emphasized if we, as women, want to truly address, from a more substantive than formal perspective, the reasons and the possible remedies for the persistent inequalities suffered by Italian women (or not only Italian women).

The Italian Constitution was born “equal” thanks to the contribution of women members to the work of the Constituent Assembly and despite their numerical disparity. These members only recently started to be remembered and studied for their important role. It is, as was said at the beginning, a problem of “point of view”: the history of our constitutional state is a history of men, as men were entrusted with the concrete realization of the Constitutional Charter in the early years of the Republican and Democratic State. The slow and ambiguous realization of the principle of gender equality touches upon the legal, cultural, and substantial disparity between women and men that still does not seem to have been solved or overcome.

Before closing, two aspects deserve to be underlined.

The first concerns the legislative progress made over the last twelve years. I leave aside the issue of gender-based violence to focus, instead, on the introduction of key anti-discriminatory rules and, in some cases, the

introductions of true “quotas”, which range from Law No. 120 of 2011 in the field of economy to the legislative provisions regarding electoral laws (e.g. think of the provisions concerning local authorities;⁴¹ statutes and regional laws of Italian Regions,⁴² the European Parliament;⁴³ and the national Parliament⁴⁴). These norms are extensive and positively affected the numbers of women in certain fields. Let's think about listed and publicly held companies: in 2011, before the entry into force of Law No. 120 of 2011, the percentages of women in these companies were very low: 7% in listed companies, but the corresponding figures rose to 17% and 20% for publicly held and privately held companies, respectively. In 2021, the Consob Report noted the affirmation of a trend that, in 2019, significantly increased the presence of women in certain types of companies: the percentages of women in listed and publicly controlled companies were 39% and 33%, respectively, in contrast to the conversely smaller percentages of women found in banks (18%) and corporations (22%).

Italy, which was at the bottom of the scale in this respect in Europe, now becomes an example to follow, as was the case with the Northern European countries before it.

Yet, taking stock of more than ten years after the law came into force, we can, unfortunately, see that the transformation seems to be only in numbers and tackle only the top positions. However, despite a better balance between men and women on company boards, there is still no concrete structure of work in companies that would be more sensitive to women's issues (e.g. a greater flexibility of working hours, and smart working, regardless of the issues related to the COVID-19 pandemic).

Again, when focusing on the Italian Parliament, where women are finally present in significantly greater numbers (in 2004, women accounted for only 9.9% of all MPs, but in 2021, the figure was 35.8%), it is necessary to ask whether these numbers have significantly changed the substance of the politics.

In some cases, it seems that they have not. Let us think of the Italian Parliament, where the percentages of women members in the Senate of the Republic and the Chamber of Deputies are 34.38% and 31.27%, respectively. But in 2018, when twenty-one individuals were to be

⁴¹ Law No. 215 of 2012 and Law No.56 of 2014.

⁴² Law No. 20 of 2016. See Groppi 2020 and Bissaro 2021.

⁴³ Law No. 65 of 2014.

⁴⁴ Law No. 165 of 2017.

appointed for the positions of a constitutional judge, non-magistrate members of the C.S.M., and the self-governing bodies of the special magistracies, exactly twenty-one men were elected to these positions, sweeping away years of study and reflection on the need for women to be there to transform things and prove that female skills exist and contribute to the quality of decision-making processes.

Therefore, as of today, I believe that anti-discrimination rules and a numerical balance are certainly necessary, but by no means sufficient, and that it is especially up to women sitting in top positions to boost the change.

One last point should be stressed. It is perhaps possible to state that alongside the promotion of the constitutional values and the principles of formal and substantive gender equality in institutions and civil society, it seems of no small importance to spread the culture of a language respectful of women (in both the online world and the so-called *onlife* world)⁴⁵ that is guaranteed by the combined constitutional provisions of Articles 2 and 3 of the Constitution, which affirm the principles of dignity and non-discrimination as supreme principles of the legal system.

The relationship between the dissemination of “sexist” images and language and the perpetuation of a culture that discriminates against women and incites violence has been demonstrated. It is likewise evident that it is not only norms that are useful for and capable of promoting a wide-ranging and profound cultural change. Norms help and should act as a guide, especially in light of the positive scope of the formation and dissemination of a culture of respect for existing differences, the principle of equality and gender equality, and the principle of anti-subordination from early childhood.

Communication and the media must be changed—not only in universities, and not only with resolutions against discriminatory language, but by holding those who make use of sexist messages responsible, even on social networks, because sexism is a serious matter and must be sanctioned by all public institutions.

This is because, as has been said, “language is more than blood”, and words can change the reality so that it would favor the spread of a culture of rights. And in our language, the female point of view should and must be present, both formally and substantially.

⁴⁵ Floridi (2020).

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PART III

Cross the Limits: Innovation for
Engendering Sustainable
Development



CHAPTER 8

Introducing Data Feminism

Catherine D'Ignazio and Lauren Klein

We live in an age of incredible and increasing growth in computing power. When the first personal computers were introduced to the public, in 1977, a top-of-the-line machine—the Apple II—came with 4 KB RAM, a screen that could show only 24 lines of text (and even then, only in capital letters), and an audio cassette interface (remember those!?) for reading and recording data.¹ But fast forward to the present. We now have computers in the form of phones that fit in our pockets and—in the case of the 2020

¹ After several years of selling computer kits which had to be assembled at home, in 1977, three companies released pre-fabricated machines: the Apple II, the Commodore PET, and the TRS-80. For more on the history of computing, see the website of the Computer History Museum, <https://computerhistory.org/>. Accessed 30 October 2022. For more on the history of women in computing, see Light (1999) and, more recently, Hicks (2017).

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Apple iPhone 12 Pro—that can hold 1.5 million more bits of information in their memory than the first Apple II. That rate of growth is astounding, and we've witnessed equally exponential growth in our ability to collect and record information in digital form. Unfortunately, we've witnessed the same growth in the ability to have information collected about us.

The act of collecting and recording data about people is, of course, not new at all. From the registers of the dead that were published by church officials in the early modern era to the counts of Indigenous populations that appeared in colonial accounts of the Americas, data collection has long been employed as a technique of consolidating knowledge about the people whose data are collected and therefore consolidating power over their lives.² The close relationship between data and power is perhaps most clearly visible in the historical arc that begins with the logs of people captured and placed aboard slave ships, which reduced richly lived lives to numbers and names. It passes through the eugenics movement in the late nineteenth and early twentieth centuries, which sought to employ data to quantify the superiority of white people over all others. It continues today in the proliferation of biometrics technologies that, as sociologist Simone Browne has shown, are disproportionately deployed to surveil Black bodies.³

When Edward Snowden, a former US National Security Agency contractor, leaked his cache of classified documents to the press in 2013, he revealed the degree to which the federal government routinely collects data on its citizens—often with minimal regard to legality or ethics.⁴ At

² On death tables, see Wernimont (2018); on colonial counting, see Farrell (2016); for a survey of how European nations have collected statistics on minoritized ethnicities, see Simon (2012); and for an in-depth analysis of the politics of the US Census, see Anderson (1988).

³ For a powerful reckoning with this history, see Johnson (2018). For a study that focuses on the legacy of eugenics, see Spade and Rohlfs (2016). For a transhistorical study of the surveillance of Black people, see Browne (2015).

⁴This was something that community organizations (especially those led by members of targeted groups) and scholars had been saying for years. And there is a whole interdisciplinary field called surveillance studies that theorizes and studies practices of surveillance. Sociologist Simone Browne describes the field in her 2015 study *Dark Matters*. “Since its emergence, surveillance studies has been primarily concerned with how and why populations are tracked, profiled, policed, and governed at state borders, in cities, at airports, in public and private spaces, through biometrics, telecommunications technology, CCTV, identification documents, and more recently by way of Internet-based social network sites such as Twitter and Facebook” (13). Rita Raley and other scholars characterize contemporary digital monitoring practices as “dataveillance”; see Raley (2013).

the municipal level, too, governments are starting to collect data on everything from traffic movement to facial expressions in the interests of making cities “smarter”.⁵ This often translates to reinscribing traditional urban patterns of power such as segregation, the overpolicing of communities of color, and the rationing of ever-scarcer city services.⁶

But the government is not alone in these data collection efforts; corporations do it too—with profit as their guide. The words and phrases we search for on Google, the times of day we are most active on Facebook, and the number of items we add to our Amazon carts are all tracked and stored as data—data that are then converted into corporate financial gain. The most trivial of everyday actions—searching for a way around traffic, liking a friend’s cat video, or even stepping out of our front doors in the morning—are now hot commodities. This is not because any of these actions are exceptionally interesting (although we do make an exception for Catherine’s cats) but because these tiny actions can be combined with other tiny actions to generate targeted advertisements and personalized recommendations—in other words, to give us more things to click on, like, or buy.⁷

This is the data economy, and corporations, often aided by academic researchers, are currently scrambling to see what behaviors—both online and off—remain to be turned into data and then monetized. Nothing is outside of *datafication*, as this process is sometimes termed—not your search history, or Catherine’s cats, or the butt that Lauren is currently using to sit in her seat. To wit: Shigeomi Koshimizu, a Tokyo-based professor of engineering, has been designing matrices of sensors that collect data at 360 different positions around a rear end while it is comfortably ensconced in a chair.⁸ He proposes that people have unique butt signatures, as unique as their fingerprints. In the future, he suggests, our cars could be outfitted with butt-scanners instead of keys or car alarms to identify the driver.

⁵ For example, Logipix claims to sell cameras and software that detect traffic violations, faces, and “suspicious activity”. See Logipix, Safe and Smart Cities. 2019. <http://www.logipix.com/index.php/safe-and-smart-cities>, Accessed 30 October 2022.

⁶ On segregation, see Ruha (2019). On overpolicing, see O’Neil (2016) and Eubanks (2018). For an exploration of how civic “data dashboards” package these data up for the public, see Mattern (2015).

⁷ For evidence of Catherine’s exceptionally interesting Maine Coon cat named n00b, see <https://www.instagram.com/p/BgxGicVlhTW/>. Accessed 30 October 2022.

⁸ Koh (2012).

Although datafication may occasionally verge into the realm of the absurd, it remains a very serious issue. Decisions of civic, economic, and individual importance are already and increasingly being made by automated systems sifting through large amounts of data. For example, PredPol, a so-called predictive policing company founded in 2012 by an anthropology professor at the University of California, Los Angeles, has been employed by the City of Los Angeles for nearly a decade to determine which neighborhoods to patrol more heavily and which neighborhoods to (mostly) ignore. But because PredPol is based on historical crime data and US policing practices have always disproportionately surveilled and patrolled neighborhoods of color, the predictions of where crime will happen in the future look a lot like the racist practices of the past.⁹ These systems create what mathematician and writer Cathy O’Neil, in *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy*, calls a “pernicious feedback loop”, amplifying the effects of racial bias and of the criminalization of poverty that are already endemic to the US.

O’Neil’s solution is to open up the computational systems that produce these racist results. Only by knowing what goes in, she argues, can we understand what comes out. Transparency is a key step in the project of mitigating the effects of biased data. Yet we can do more than auditing discriminatory systems after the fact. Our current world requires more, and this is where *data feminism* comes in.

Data feminism is a way of thinking about data, their analysis, and their display, that is informed by the rich history of feminist activism and feminist critical thought. Data feminism begins with a belief in gender equality, and a recognition that achieving equality for folks of all genders (and all races, and all sexual orientations, and all locations in the world) requires a commitment to examining the root causes of the inequalities that certain individuals and groups face today. In the case of PredPol, data feminism would additionally require that we trace its biased data back to their source. The root cause of the racial bias in the “three most objective data points” that PredPol employs is the long history of the criminalization of Blackness in the US, which produces biased policing practices, which produce biased historical data, which are then used to develop risk models for

⁹For more information on this, see Predpol Inc. 2020. Predictive Policing Technology. <https://www.predpol.com/technology/>. Accessed 30 October 2022. On the racist history of policing, see Browne (2015), Ruha (2019), and O’Neil (2016).

the future.¹⁰ Tracing these links to historical and ongoing forces of oppression can help us answer the ethical question, Should this system exist?¹¹ This is the work of data feminism too. And in the case of PredPol, the answer is a resounding no.

Understanding this long and complicated chain reaction is what has motivated Yeshimabeit Milner, along with US-based activists, organizers, and mathematicians, to found Data for Black Lives, an organization dedicated to “using data science to create concrete and measurable change in the lives of Black communities”.¹² Groups like the Stop LAPD Spying coalition are using explicitly feminist and antiracist methods to quantify and challenge invasive data collection by law enforcement.¹³ Data journalists are reverse-engineering algorithms and collecting qualitative data at scale about maternal harm.¹⁴ Artists are inviting participants to perform ecological maps and using AI for making intergenerational family memoirs.¹⁵

¹⁰ Predpol Inc. 2020. About us. <https://www.predpol.com/about>. Accessed 30 October 2022. Even after the legal strictures of slavery were lifted with the ratification of the Thirteenth Amendment in 1865, the proliferation of so-called Black Codes abounded. These were laws passed primarily in the South that restricted Black citizens' freedom of movement, access to opportunities, and protection under the law. Although they were challenged by the public and in the courts, they were difficult to fully dismantle. Indeed, in most Southern states, if they were repealed, they were simply replaced with regulations that used vague language to justify the same anti-Black policing and violence. Those regulations were reinforced by the introduction of Jim Crow laws in the late nineteenth and early twentieth centuries, which legalized racial segregation across the South. Scholars such as Alexander (2012) and filmmakers such as Ava DuVernay, in *The 13th* (Kandoo Films, 2016), have demonstrated incontrovertible evidence that this history is not over and persists today in mass incarceration and biased police practices.

¹¹ There is now a whole podcast devoted to the question of whether a particular technology should exist or not: see Fake, Catarina. 2019. Should This Exist? <https://shouldthisexist.com/>. Accessed 30 October 2022.

¹² To learn more about Data for Black Lives, visit <http://d4bl.org/>. Accessed 30 October 2022.

¹³ See the report by Stop LAPD Spying Coalition. 2013. “To Observe and to Suspect”: A People’s Audit of the Los Angeles Police Department’s Special Order 1. <https://stoplapdspying.org/wp-content/uploads/2013/04/PEOPLES-AUDIT-UPDATED-APRIL-2-2013-A.pdf>. Accessed 30 October 2022.

¹⁴ See Angwin et al. (2016) and Gallardo (2018). We discuss risk assessment algorithms in detail in Chap. 2 and maternal mortality in Chap. 1 of *Data Feminism*.

¹⁵ See, for example, Mogel, Lize. 2022. Walking the Watershed (2016–present). <http://www.publicgreen.com/projects/watershed.html>. Accessed 30 October 2022.

This work is by no means limited to the US. In Tanzania, for example, the group DataZetu (“Our Data” in Swahili) worked with community partners to run a design competition for creating fabrics with statistics about gender-based violence embedded in the patterns and then held a fashion show with the winners. Activists in Latin America are documenting the women, girls, and trans people murdered in feminicides, and civil society groups are creating data standards and building networks to use data to challenge gender-based violence.¹⁶ In Argentina, groups like Economia Feminista (“Feminist Economics” in Spanish) are using crowd-sourced data to build feminist voter guides, which they distribute through a website called Feminindex. The list goes on.

Moreover, all these projects are data science. Many people think of data as numbers alone, but as these projects demonstrate, data can also consist of words or stories, colors or sounds, or any type of information that is systematically collected, organized, and analyzed. The *science* in data science simply implies a commitment to systematic methods of observation and experiment. Throughout this article, we deliberately place diverse data science examples alongside each other. They come from individuals and small groups and from across academic, artistic, nonprofit, journalistic, community-based, and for-profit organizations. This is due to our belief in a capacious definition of data science, one that seeks to include rather than exclude, and does not erect barriers based on formal credentials, professional affiliation, size of data, complexity of technical methods, or other external markers of expertise. Such markers, after all, have long been used to prevent women from fully engaging in any number of professional fields, even as those fields—which include data science and computer science, among many others—were largely built on the knowledge that women were required to teach themselves.¹⁷ An attempt to push back against this gendered history is foundational to data feminism, too.

¹⁶The Latin American Initiative for Open Data (ILDA) has been workshopping a data standard for the collection of femicide data in the region which can be accessed here: <https://idatosabiertos.org/guia-para-protocolizar-procesos-de-identificacion-de-feminicidios/>. Accessed 30 October 2022.

¹⁷This phenomenon, though new to data science, is unfortunately very, very old. In their now-classic book *Witches, Midwives, and Nurses: A History of Women Healers*, Barbara Ehrenreich and Deirdre English detail the history of obstetrics in the US, in which evidence-driven female midwives were replaced by ridiculous-theory-having male obstetricians after the advent of formal medical schools. The same phenomenon can be found in the kitchen, with women performing most home cooking, unpaid altogether, while men attend culinary school to become celebrity chefs. See Ehrenreich, Barbara and English, Deirdre (1973).

1 WHICH FEMINISM? WHOSE FEMINISM?

Feminism has been defined and used in many ways. Here and in our book, we employ the term *feminism* as a shorthand for the diverse and wide-ranging projects that name and challenge sexism and other forces of oppression, as well as those which seek to create more just, equitable, and livable futures. Because of this broadness, some scholars prefer to use the term *feminisms*, which clearly signals the range of—and, at times, the incompatibilities among—these various strains of feminist activism and political thought. For reasons of readability, we choose to use the term feminism here, but our feminism is intended to be just as expansive. It includes the work of regular folks and public intellectuals, as well as organizing groups that have taken direct action to achieve the equality of the sexes. It also includes the work of scholars and other cultural critics who have used writing to explore the social, political, historical, and conceptual reasons behind the inequality of the sexes that we face today.

In the process, these writers and activists have given voice to the many ways in which today's status quo is unjust.¹⁸ These injustices are often the result of historical and contemporary differentials of power, including those among men, women, and nonbinary people, as well as those among cisgender and transgender people, white women and Black women, academic researchers and Indigenous communities, and people in the Global North and the Global South. Feminists analyze these power differentials so that they can change them. And while such a broad focus—one that incorporates race, class, ability, and more—might sound strange to those who think feminism is only about gender, the reality is that any movement for gender equality must consider the ways in which various forms of privilege, on the one hand, and oppression, on the other, are *intersectional*.

Because the concept of intersectionality is essential for understanding and applying data feminism, let's get a bit more specific. The term was coined by legal theorist Kimberlé Crenshaw in the late 1980s.¹⁹ In law

¹⁸The scholarship on this subject is vast. Key anthologies include Guy-Sheftall (1995) and Moraga, Cherríe and G. Anzaldúa (1981). For a recent anthology in this tradition, see *The Crunk Feminist Collection*, edited by Cooper, Brittney C et al. (2017).

¹⁹Scholars often cite two of Crenshaw's early legal essays for the genesis of the term: "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics" (1989) and "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991).

school, Crenshaw had come across the antidiscrimination case of DeGraffenreid v. General Motors. Emma DeGraffenreid was a Black working mother who had sought a job at a General Motors factory in her town. She was not hired and sued GM for discrimination. The factory did have a history of hiring Black people: many Black men worked in industrial and maintenance jobs there. They also had a history of hiring women: many white women worked there as secretaries. These two pieces of evidence provided the rationale for the judge to throw out the case. Because the company did hire Black people and did hire women, it could not be discriminating based on race or gender. But, Crenshaw wanted to know, what about discrimination on the basis of race and gender together? This was something different, it was real, and it needed to be named.²⁰

Key to the idea of intersectionality is that it does not only describe the intersecting aspects of any particular person's identity (or *positionalities*, as they are sometimes termed).²¹ It also describes the intersecting forces of privilege and oppression at work in a given society. *Oppression* involves the systematic mistreatment of certain groups of people by other groups. It happens when power is not distributed equally—when one group controls the institutions of law, education, and culture and uses its power to systematically exclude other groups while giving its own group unfair advantages (or simply maintaining the status quo).²² In the case of gender

²⁰ While Crenshaw (1989, 1991) names the concept, the idea of intersectionality has a long history in Black feminism, notably in the Combahee River Collective, who famously described systems of oppression as “interlocking” in “The Combahee River Collective Statement” (1978). Combahee River Collective. 1978. The Combahee River Collective Statement. <http://circuitous.org/scraps/combahee.html>. Accessed 30 October 2022. Scholars have also traced intersectionality as a concept back to the nineteenth-century work of scholar/activist Anna Julia Cooper; see May, Vivian M. (2012).

²¹ *Positionality* is a term that describes how individuals come to knowledge-making processes from multiple positions, including race, gender, geography, class, ability, and more. Each of these positions is shaped by culture and context, and they intersect and interact. We, the authors, have a statement about our own positionalities as an appendix in *Data Feminism*.

²² On the popular educational site Everyday Feminism, the comic artist Robot Hugs explains what oppression feels like at the individual level: “[It is] when prejudice and discrimination is supported and encouraged by the world around you. It is when you are harmed or not helped by government, community or society at large because of your identity”. Hugs, Robert. 2017. Having Trouble Explaining Oppression? This Comic Can Do It for You. Everyday feminism. <https://everydayfeminism.com/2017/01/trouble-explaining-oppression/>. Accessed 30 October 2022.

oppression, we can point to the sexism, cissexism, and patriarchy that are evident in everything from political representation to the wage gap to who speaks more often (or more loudly) in a meeting. In the case of racial oppression, this takes the form of racism and white supremacy. Other forms of oppression include ableism, colonialism, and classism. Each has its particular history and manifests differently in different cultures and contexts, but all involve a dominant group that accrues power and privilege at the expense of others. Moreover, these forces of power and privilege, on the one hand, and oppression, on the other, mesh together in ways that multiply their effects.

The effects of privilege and oppression are not distributed evenly across all individuals and groups, however. For some, they become an obvious and unavoidable part of daily life, particularly for women and people of color and queer people and immigrants: the list goes on. If you are a member of any or all of these (or other) minoritized groups, you experience their effects everywhere, and they shape the choices you make (or don't get to make) each day. These systems of power are as real as rain. But forces of oppression can be difficult to detect when you benefit from them (we call this a *privilege hazard* in our book). And this is where we come back around to the idea of data feminism. Our starting point is something that feminists know to be a basic truth but that goes mostly unacknowledged in the field of data science: power is not distributed equally in the world. Those who wield power are disproportionately elite, straight, white, non-disabled, cisgender men from the Global North.²³ The work of data feminism is, first, to tune into how standard practices in data science serve to reinforce these existing inequalities and, second, to use data science to challenge and change the distribution of power.²⁴ Underlying data feminism is a belief in and commitment to *co-liberation*: the idea that oppressive systems of power harm all of us, that they undermine the quality and validity of our work, and that they hinder us from creating a true and lasting social impact with data science.

Throughout its own history, feminism has consistently had to work to convince the world that it is relevant to people of all genders. We make the same argument: that data feminism is for everybody. (And here we borrow

²³We discuss these demographics and the matrix of domination that they create and sustain, in detail in Chap. 1 of *Data Feminism*.

²⁴Note that the latter is quite different from data for good. We explore these differences in depth in Chap. 5 of *Data Feminism*.

a line from bell hooks.)²⁵ You may have already noticed that the examples we use are not only about women, nor are they created only by women. That's because data feminism isn't only about women. It takes more than one gender to have gender inequality and more than one gender to work toward justice. Likewise, data feminism isn't only for women. Men and nonbinary and genderqueer people are proud to call themselves feminists and use feminism in their work. Furthermore, data feminism isn't only about gender. Intersectional feminists have keyed us into how race, class, sexuality, ability, age, religion, geography, and more are factors that together influence each person's experience and opportunities in the world. Data feminism is about power—about who has it and who doesn't. Intersectional feminism examines unequal power. And in our contemporary world, data is power too. Because the power of data is wielded unjustly, it must be challenged and changed.

2 DATA FEMINISM IN ACTION

Data is a double-edged sword. In a very real sense, data have been used as a weapon by those in power to consolidate their control—over people as well as places and things. Indeed, a central goal of *Data Feminism* is to show how governments and corporations have long employed data and statistics as management techniques to preserve an unequal status quo. Working with data from a feminist perspective requires knowing and acknowledging this history. But this flawed history does not mean ceding control of the future to the powers of the past. Data are part of the problem, to be sure. But they are also part of the solution. Another central goal of the data feminism project is to show how the power of data can be wielded back.

To guide us in this work, we have developed seven core principles. Individually and together, these principles emerge from the foundation of intersectional feminist thought. Most of the chapters in our book are structured around a single principle from this list. The seven principles of data feminism are as follows:

Examine power: data feminism begins by analyzing how power operates in the world;

²⁵ See Hooks (2000).

- Challenge power:* data feminism commits to challenging unequal power structures and working toward justice;
- Elevate emotion and embodiment:* data feminism teaches us to value multiple forms of knowledge, including the knowledge that comes from people as living, feeling bodies in the world;
- Rethink binaries and hierarchies:* data feminism requires us to challenge the gender binary, along with other systems of counting and classification that perpetuate oppression;
- Embrace pluralism:* data feminism insists that the most complete knowledge comes from synthesizing multiple perspectives, with priority given to local, Indigenous, and experiential ways of knowing;
- Consider context:* data feminism asserts that data are not neutral or objective. They are the products of unequal social relations, and this context is essential for conducting an accurate, ethical analysis;
- Make labor visible:* the work of data science, like all work in the world, is the work of many hands. Data feminism makes this labor visible so that it can be recognized and valued.

In our book, we explore each of these principles in more detail, drawing upon examples from the field of data science, expansively defined, to show how the given principle can be put into action. Along the way, we introduce key feminist concepts like the matrix of domination (Patricia Hill Collins), situated knowledge (Donna Haraway), and emotional labor (Arlie Hochschild), as well as some of our own ideas about what data feminism looks like in theory and practice. To this end, we introduce readers to a range of folks at the cutting edge of data and justice. These include engineers and software developers, activists and community organizers, data journalists, artists, and scholars. This variety of people, and the variety of projects they have helped to create, is our way of answering the question: What makes a data science project feminist? As will become clear, a data science project may be feminist in content, in that it challenges power by choice of subject matter; in form, in that it challenges power by shifting the aesthetic and/or sensory registers of data communication; and/or in process, in that it challenges power by building participatory, inclusive processes of knowledge production. What unites this broad scope of data work is a commitment to action and a desire to remake the world to be more equitable and inclusive.

Our overarching goal is to take a stand against the status quo—against a world that benefits us, two white, cisgender, non-disabled college

professors located in the Global North, at the expense of others. Our principles are intended to function as concrete steps to action for data scientists seeking to learn how feminism can help them work toward justice and for feminists seeking to learn how their own work can carry over to the growing field of data science. They are also addressed to professionals in all fields in which data-driven decisions are being made, as well as to communities that want to resist or mobilize the data that surrounds them. They are written for everyone who seeks to better understand the charts and statistics that they encounter in their day-to-day lives and for everyone who seeks to communicate the significance of such charts and statistics to others.

Our claim, once again, is that data feminism is for everyone. It's for people of all genders. It's by people of all genders. And most importantly: it's about much more than gender. Data feminism is about power, about who has it and who doesn't, and about how those differentials of power can be challenged and changed using data. We invite you to join us on this journey toward justice and toward remaking our data-driven world.

Acknowledgments: More About *Data Feminism* This chapter draws upon *Data Feminism*, an open access book published by MIT Press in 2020. You can read it for free online at <https://data-feminism.mitpress.mit.edu/> or buy it from your local independent bookstore.

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CHAPTER 9

Gender Equality and Artificial Intelligence: SDG 5 and the Role of the UN in Fighting Stereotypes, Biases, and Gender Discrimination

Fabian Lütz

1 INTRODUCTION

Gender inequalities and discrimination are a global problem affecting all countries of the United Nations (UN). Since the rise of digital technologies, such as artificial intelligence (AI) and the use of algorithms, new challenges have arisen for achieving gender equality as more and more human decisions are replaced or supported by AI or algorithms. Gender equality policies work on the assumption that humans are biased,¹ but

¹ For gender bias and policy options from a behavioral science perspective, see Iris Bohnet (2016). The author would like to thank the UN library in Geneva and its helpful team for having been able to conduct some of the research and writing of this chapter in the UN library.

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algorithms face “machine bias”² as well due to their design or the underlying data sets. While some argue that digital technologies could be an opportunity to overcome some of the gender inequalities, many warn of the new dangers associated with the use of AI and algorithms, particularly for disadvantaged groups of society where inequalities have been governing daily life since centuries ago.³ Several studies at regional and international level draw attention to the risk that AI potentially poses for women’s rights.⁴ Interestingly, opinions of women and men tend to differ on the possible benefits of AI; while men are more optimistic, women seem to be more pessimistic about them.⁵ In terms of general progress toward global gender equality,⁶ the World Economic Forum (WEF), which recently addressed the issue of AI and gender,⁷ highlighted in its 2022 report that the global gender gap will still take 132 years to close, compared to the estimate of 136 years in 2021.⁸ Against this background and in light of the prevalence of digital technologies impacting the life of both women and men, there is an urgent need to address the issues of bias and non-discrimination in the area of AI and algorithms. Recent examples of biases

²Fry (2018), pp. 77–80.

³On algorithms and inequality, see, for example, Eubanks (2018).

⁴United Nations High Commissioner for Human Rights. 2021. The Right to Privacy in the Digital Age. A/HRC/48/31; United Nations Human Rights Council. 2022. Rights of Persons with Disabilities, Report of the Special Rapporteur on the Rights of Persons with Disabilities. A/HRC/49/52; European Commission, Directorate-General for Justice and Consumers, Gerards, J., Xenidis, R. 2021. Algorithmic discrimination in Europe: challenges and opportunities for gender equality and non-discrimination law. European Publications Office. <https://data.europa.eu/doi/10.2838/544956>; UNESCO. 2020. Artificial Intelligence and Gender Equality: Key Findings of UNESCO’s Global Dialogue. GEN/2020/AI/2 REV.

⁵See Weforum. 2022. Gender Artificial Intelligence Driveless Cars. <https://www.weforum.org/agenda/2022/08/gender-artificial-intelligence-driverless-cars-technology-opinion>. Accessed 31 October 2022.

⁶For a good overview, see Schulz (2022).

⁷See Weforum. 2019. This is why AI has a gender problem. <https://www.weforum.org/agenda/2019/06/this-is-why-ai-has-a-gender-problem/>. Accessed 31 October 2022.

⁸See Weforum. 2022. Gender Artificial Intelligence Driveless Cars. <https://www.weforum.org/agenda/2022/08/gender-artificial-intelligence-driverless-cars-technology-opinion>. Accessed 31 October 2022, Weforum. 2022. Global Gender Gap Report 2022. Insight Report. https://www3.weforum.org/docs/WEF_GGGR_2022.pdf. Accessed 31 October 2022 and Weforum. 2021. 136 years is the estimated journey time to gender equality. <https://www.weforum.org/agenda/2021/04/136-years-is-the-estimated-journey-time-to-gender-equality/>. Accessed 31 October 2022. In 2018 it was estimated that it will take 108 years, and in 2019, 99.5 years.

or gender-based discrimination include job advertisements in the STEM sector,⁹ lower credit card limits for women,¹⁰ less efficient AI face recognition technology for women,¹¹ AI recruitment tools of private companies,¹² online technology hiring platforms,¹³ different treatment of women and men in regard to employment opportunities,¹⁴ unequal representation and gender stereotypes in image search results for certain occupations,¹⁵ gender bias in machine translation,¹⁶ and some well-known natural language processing (NLP) models that are gender biased.¹⁷

Considering the variety of different spheres of life and applications that have been found to be prone to gender biases and discrimination, this can have considerable impact on women's working life and life in general. The urgency for action in this regard due to the prevalence of AI in the data-driven world¹⁸ has been revealed by UN Woman, which has run an advertisement campaign to draw attention to the inadequate search results that can be produced by algorithms to the detriment of women.¹⁹ To rely on an expression of MARY BEARD, algorithms could be understood not only as "mechanisms that silence women"²⁰ but also as mechanisms that shape and perpetuate stereotypes, gender roles, biases, and discrimination.

Sustainability or long-termism, as recently advocated for by WILLIAM MACASKILL, who calls on "scholars and policymakers to design new governance systems to ensure that A.I. is developed for the benefit of all

⁹ Lambrecht and Tucker (2019).

¹⁰ Vigdor, Neil. 2019. Apple Credit Card Investigation. *The New York Times*, November 10.

¹¹ Latonero, Mark. 2018. Governing Artificial Intelligence: Upholding Human Rights & Dignity. Report. Data & Society, 9. <https://datasociety.net/library/governing-artificial-intelligence>. Accessed 31 October 2022.

¹² See Dastin, Jeffrey. 2022. Amazon scraps secret AI recruiting tool that showed bias against women. Reuters. <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scaps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>. Accessed 31 October 2022.

¹³ Smith and Rustagi (2021).

¹⁴ Datta et al. (2014).

¹⁵ Kay et al. (2015).

¹⁶ Prates et al. (2020).

¹⁷ Kurita et al. (2019).

¹⁸ For the role of big technological companies in managing data, see also Zuboff (2019).

¹⁹ See UN Women. 2013. UN Women ad series reveals widespread sexism. <https://www.unwomen.org/en/news/stories/2013/10/women-should-ads>. Accessed 31 October 2022; Kartik Hosanagar, A Human's Guide to Machine Intelligence: How Algorithms Are Shaping Our Lives and How We Can Stay in Control (Penguin Books, 2020), pp. 42–43.

²⁰ Beard (2017), p. xi.

humankind”,²¹ should be incorporated into the approach to AI regulation from a gender equality perspective. In order to achieve such an adequate governance system that would benefit both women and men, a human perspective, but also a gender-responsive approach²² or even a gender-transformative approach²³ and expertise that addresses gender roles, needs to lie at the basis of regulation and algorithmic assessment.²⁴

This contribution will first present the framework and objectives pursued by the Sustainable Development Goals (SDG), especially SDG 5, and sketch out their importance in light of AI (Sect. 2). After we identify the policy goals of SDG 5, the broader policy and institutional framework of the UN will be presented and discussed (Sect. 3). This section notably includes the legal and policy framework, the main actors of the UN system involved in gender equality policy, and a short outlook on the way forward. Drawing on some of the available literature and policy proposals, the last section will sketch out some of the elements of a forward-looking, sustainable, and antifragile UN framework that could be used to address

²¹ See MacAskill (2022b), Greaves and MacAskill (2019), and MacAskill (2022a), pp. 9–29.

²² For gender-responsive approaches, see Budlender et al. (2002), Kalbarczyk et al. (2022), and Nelson, Sibyl, and Sophia Huyer. 2016. A Gender-Responsive Approach to Climate-Smart Agriculture: Evidence and Guidance for Practitioners. Climate-Smart Agriculture Practice Brief. <https://ccafs.cgiar.org/resources/publications/gender-responsive-approach-climate-smart-agriculture-evidence-and>. Accessed 31 October 2022.

²³ Gender-transformative approaches go further than mere gender-blind, gender-aware, or gender-responsive policies by addressing the causes of gender-based inequalities and working toward transforming harmful gender roles, norms, and power relations. See UNICEF. 2019. Technical note on gender-transformative approaches in the global programme to end child marriage phase II: A summary for practitioners. <https://www.unicef.org/media/58196/file>. Accessed 31 October 2022. Originally, the so-called *gender equity continuum* could be found in Pederson et al. (2015). Examples at UN level include UN Woman (like the UN Inter-Agency Network on Women and Gender Equality. 2021. Repository on Resources and Tools for Capacity Development on Gender Mainstreaming within the United Nations System. <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/How%20We%20Work/UNSystemCoordination/IANWGE/IANWGE-Resources-and-tools-for-capacity-development-in-gender-mainstreaming-en.pdf>. Accessed 31 October 2022); the FAO (like FAO. n.d. Joint Programme on Gender Transformative Approaches for Food Security and Nutrition. <https://www.fao.org/joint-programme-gender-transformative-approaches/overview/gender-transformative-approaches/en>. Accessed 31 October 2022); and UNFPA (like UNFPA, UNICEF, UN Women. 2020. Technical Note on Gender-Transformative Approaches: A summary for practitioners. <https://www.unfpa.org/resources/technical-note-gender-transformative-approaches-summary-practitioners>. Accessed 31 October 2022).

²⁴ Pasquale (2020).

the challenges of AI regarding gender equality (Sect. 4). The contribution is rounded out by a conclusion and an outlook for the UN's role in preserving gender equality in the age of algorithms (Sect. 5).

2 THE SDG 5 FRAMEWORK IN LIGHT OF ARTIFICIAL INTELLIGENCE

Among the SDGs, which constitute a political instrument at UN level,²⁵ SDG 5 aims at achieving gender equality and empowering all women and girls, which is the key objective of the UN's sustainable development actions in the area of gender equality. Within its remit, SDG 5 could also provide an adequate framework to address some of the challenges that arise with the use of technology, especially AI and algorithms.²⁶ In addition, the goals set within SDG 5, particularly the targets and indicators, provide a mostly good framework for measuring the progress toward achieving gender equality in relation to technology issues, such as gender bias or algorithmic gender discrimination.²⁷

2.1 SDG 5: Achieve Gender Equality and Empower all Women and Girls

The general goal of SDG 5 (to achieve gender equality and empower all women and girls) can be subdivided into nine more specific targets with corresponding indicators to measure the progress achieved in each area. While all are relevant in their general dimension, that of achieving gender equality, including in cases where technological impacts lead to bias and discrimination, some are more directly relevant as they highlight the technological dimension—for example, target 5.b, which calls for enhancing the use of enabling technology, in particular, information and communications technology, to promote the empowerment of women. As for the general targets that could be relevant in relation to gender bias and algorithmic discrimination, we should especially note 5.1, which calls for

²⁵ Schulz (2022), p. 40.

²⁶ This chapter will not discuss technical details of AI and algorithms and will use the terms of AI and algorithms to describe the multiple techniques typically regrouped under them. For a basic understanding of how algorithms work, notably in the area of gender equality, see Table 9.2. and the non-technical explanations in Lütz (2022a). For a more technical description, see Früh and Haux (2022).

²⁷ For more on SDG 5 in general, see Eden and Wagstaff (2021); Solomon et al. (2021); Iijas (2021).

ending all forms of discrimination against all women and girls everywhere, 5.4, which regards the recognition and valuation of unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family as nationally appropriate, and 5.c, which calls for adopting and strengthening sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

Enhance the Use of Enabling Technology (5.B)

It is clear that AI and algorithms could be used to advance the cause of gender equality and women's rights. To this end, enhancing the use of enabling technology, in particular information and communications technology, to promote the empowerment of women seems like a laudable aim of the SDGs. However, the indicator 5.b.1 (Proportion of individuals who own a mobile telephone, by sex) does not seem adequate in the light of technological progress to capture the full progress that needs to be achieved and that will be achieved. Having a mobile phone with Internet access enables women to participate in the digital sphere, and by doing so, they enrich the databases with more "female" data, which helps, in turn, to reduce the gender data gap²⁸ and leads to more representative data sets. But this indicator not only neglects the women who contribute to the online world via regular computers, Internet cafés, or publicly available computers at libraries, schools, and universities, but most importantly it only focuses on the user aspects of their contribution, such as participating in social media and online platforms. The key element for advancing equality, however, is also to a large extent situated in the design and programming side of algorithms and the AI industry, where a lack of female talent favors some of the biases and discriminations caused by algorithms. In relation to digital skills and the convergence between women and men, it has been observed that "there is still a severe gender balance issue, in particular between women and men with more advanced ICT skills, with only 19% of ICT specialists and one in three science, technology, engineering and/or mathematics (STEM) graduates being women, which may affect the way digital solutions are devised and deployed".²⁹ Promoting diversity and hiring more female AI programmers could alleviate the

²⁸ Buvinic and Levine (2016); Perez (2019).

²⁹ European Commission, Digital Economy and Society Index (DESI) 2021, p. 16, available at: <https://digital-strategy.ec.europa.eu/en/library/digital-economy-and-society-index-desi-2021> (Accessed 29 September 2022).

gendered perspective of AI and technology and help reduce algorithmic discrimination.³⁰ Women need to be not only equal users of the technologies but also designers and coders of the algorithms that have become vital for decision-making in daily life. AI recruitment tools, for example, could be a helpful ally in recruiting more women in the AI industry by overcoming some of the hiring biases and variability in human judgment/noises³¹ of (human) managers.³² Enabling technologies could also play a vital role within the gender-transformative approach by using the benefits of AI to overcome traditional gender roles, stereotypes, and social norms that are often perpetuated in the world of data.

End All Forms of Discrimination Against All Women and Girls Everywhere (5.1)

Target 5.1 is the core target focused on eliminating all forms of discrimination against women and girls, and it uses wording from the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW is the central comprehensive instrument at UN level to combat gender-based discrimination and could serve as the legal instrument to anchor attempts to include algorithmic discrimination in antidiscrimination laws.³³ In addition, the wording “all forms” seems to suggest that new forms of discrimination, such as algorithmic discrimination, are covered under this target as well. This enables UN policy makers to come forward with solutions addressing issues of gender bias and gender-based algorithmic discrimination and measure their efforts toward achieving those objectives. In this respect, indicator 5.1.1 asks whether or not legal frameworks are in place to promote, enforce, and monitor equality and non-discrimination on the basis of sex. Within this indicator and a more ambitious approach, progress could also be measured in relation to legal frameworks that specifically address the impacts of technology on gender equality and in particular biases and algorithmic discrimination that increasingly occur. Such a forward-looking approach and reading of target 5.1 would enable policy makers to conduct more future proof

³⁰ In the EU, only around 22% of programmers are women. See European Commission and Directorate-General for Communication. 2020. Striving for a Union of Equality: The Gender Equality Strategy 2020–2025. <https://doi.org/10.2775/671326>.

³¹ For more on noise in human decision-making and how algorithms could help overcome this decision error, see Kahneman, Sibony and Sunstein (2021).

³² Houser (2019).

³³ For a legal view on the human rights implications and how to regulate gender-based algorithmic discrimination, see the chapter by Lütz (2023a).

policies. Furthermore, the word “everywhere” is literally to be understood as “everywhere in the world” but could also be interpreted as meaning including not only the offline but also the online world. Forms of discrimination, harassment, and online hate speech, for example, are of ever-growing concern to women around the world because in terms of gender equality and empowerment of women and girls it can have side-effects in terms of silencing them and taking up roles in society and the world of work. Therefore, technologically caused discriminations should be covered and measured as well in order to address those issues in adequate legal frameworks.

*Unpaid Care, Infrastructure, and Social Protection Policies
and the Promotion of Shared Responsibility Within the Household
and the Family (5.4)*

Although at first sight not obviously connected to the digital sphere and algorithmic discrimination, target 5.4 pinpoints crucial issues that are linked to the formation of biases and algorithmic discrimination. If the issue of recognition and valuation of unpaid care, childcare infrastructure, and the equal sharing of caring responsibilities is not properly addressed, this reinforces stereotypes and biases which are mirrored in the data sets used by algorithms.³⁴ The UN could look into and be inspired by regional efforts in this regard, such as the European Union’s adoption in September 2022 of the European Care Strategy (ECS) in order to address the issues of care, including child care infrastructure, in relation to gender inequalities.³⁵ The ECS notably highlights that “[i]nadequate care services have a disproportionate impact on women as supplementary or informal care responsibilities still fall predominantly on them and this affects their work-life balance and options to take on paid work”.³⁶ The ECS addresses key issues of gender equality and work-life balance which can cause obstacles on the way to achieving equality between women and men and concludes that “[i]mproving the care sector helps ensure that both women and men can participate in work and society on an equal footing, while caring for their loved ones”.³⁷

³⁴ See Lütz (2022a, 2022b).

³⁵ European Commission. 2022. Communication on the European Care Strategy. COM(2022) 440 final.

³⁶ Ibid., p. 2.

³⁷ Ibid., p. 23.

The labor market is often seen as a prism for gender inequalities in general,³⁸ and thereby not only the gender balance in a given profession, the temporary presence or absence of women in the workplace and different treatments in the workplace are key to understanding gender inequalities. Some authors therefore call for a “quantum leap for gender equality in the world of work”³⁹ to single out that despite some progress having been made, huge gender inequalities remain, notably in the workplace. The EU, for example, attempts to tackle gender stereotypes around care by communication campaigns, notably to attract more men to the care sector, thereby reducing inequalities.⁴⁰ The mentioned areas not only influence access to and progress in careers and the labor market but could also affect issues such as access to credit or financing for start-ups. The inequalities and patterns dominating the world of work, work-life balance, and caring duties are mirrored in the data used by algorithms to predict and make decisions, including in the work-related sphere. Work-life balance legislation and policies are, in that sense, key to achieving more equality between the sexes.⁴¹ Reducing gender inequalities in the real world therefore always has beneficial impacts on biased data sets and algorithmic discrimination.⁴² In light of the above, reducing biases and algorithmic discrimination in the work place is therefore of great political importance.⁴³ The UN gender equality actors should notably closely work with institutions whose work on the topic is well advanced such as the European Institute for Gender Equality (EIGE)⁴⁴ or the International Labor Organization (ILO) in order to ensure that the world of work is free of gender biases and discrimination in the digital world.⁴⁵ Consequently, indicator 5.4.1, which assesses the proportion of time spent on unpaid domestic and care work by sex, age, and location, is probably insufficient

³⁸ Pauline Delage (2018), p. 47.

³⁹ Beghini et al. (2022), p. 53.

⁴⁰ European Commission. 2022. Communication on the European Care Strategy. COM(2022) 440 final, p. 12. See also the campaign of the European Commission #End-Gender-Stereotypes launched on 8th March 2023, https://end-gender-stereotypes.campaign.europa.eu/index_en (Accessed on 31 October 2022).

⁴¹ Oliveira et al. (2020).

⁴² For algorithmic discrimination and gender equality, see Lütz (2022a, 2022b).

⁴³ For ways to assess potential biases and the discriminatory potential of algorithms, see Emre Kazim et al. (2021).

⁴⁴ European Institute for Gender Equality. 2022. Artificial Intelligence, Platform Work and Gender Equality. <https://doi.org/10.2839/805305>.

⁴⁵ See International Labour Office. Bureau for Gender Equality. 2004. Promoting Gender Equality: Guide on ILO Conventions and Recommendations of Particular Concern to Women Workers. Geneva: International Labour Organization.

for catching the full dimension of the problems described in the target. It would be also good to measure the take-up of family leaves in order to assess the sharing of family leaves and duties in terms of equality, as this would more accurately reflect where inequalities reside.

Policies and Enforceable Legislation for the Promotion of Gender Equality and the Empowerment of All Women and Girls at All Levels (5.C)

Within indicator 5.c.1, which aims to assess the proportion of countries with systems to track and make public allocations for gender equality and women's empowerment, one could also consider all policies that aim at fighting gender biases, the gender data gap, and gender discrimination caused by algorithms.

SDG 10: Reduce Inequality Within Countries

Alongside SDG 5, other SDGs have gender equality components, and SDG 10 is of particular relevance. Notably target 10.2, which aims to empower and promote the social, economic, and political inclusion of all, irrespective of sex, by 2030, is of relevance.

Equally, target 10.3, which aims to ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies, and practices and promoting appropriate legislation, policies, and action in this regard, can be a compass for developing and implementing gender equality policies. In the context of the present analysis, any such attempt to eliminate discriminatory laws and policies could be understood as including those practices that cause discrimination by AI systems, for example, in relation to the job market.⁴⁶

2.2 *Harness the Power of AI for Gender Equality*

As touched upon in the previous subsection on the SDG 5 targets, AI causes not only biases and discrimination but has a huge potential for supporting gender equality efforts. Gender equality advocates, individuals, and public authorities could use the power of AI to increase gender equality, for example, by detecting existing biases and discriminatory patterns in AI systems. As algorithms are more powerful and quicker than humans, they could be used to screen huge data sets or decision-making systems to identify problematic data sets and AI designs (Table 9.1).⁴⁷ On this basis,

⁴⁶ See Lütz (2023b).

⁴⁷ See the comparative Table 9.1.

Table 9.1 A comparative table on human and algorithmic decision-making in the context of non-discrimination (simplified)^a

	<i>Humans</i>	<i>Algorithms</i>
Abstract reasoning, legal reasoning, and exercise of “discretion”	Very good	Very poor
Pattern recognition in large data sets	Very poor, very slow	Very good, very fast
Ability to learn and apply knowledge	From one case humans can learn and apply knowledge to other cases	Algorithms need many cases and a lot of data to learn and apply the “learned” information to new cases
Understanding causes (“Why”)	Very good	Very poor
Finding correlations	Very poor and very slow	Very good and very fast

^aThis table is inspired by Lee (2021)

authorities could then address in a more targeted way where to focus gender equality policies. Also, a better enforcement of the laws by public authorities as well as a less discriminatory treatment by private companies could be achieved by streamlining the decision-making process with AI. More specifically, algorithms could help ensure a more coherent decision outcome by reducing noisy human decisions.⁴⁸

2.3 *The Goals of the UN to Ensure Gender Equality and Its Monitoring*

In various policy documents, the goals for gender equality have been described as fundamental and intrinsic rights and values.⁴⁹ The traditional areas of measurement such as work, time, knowledge, money, power, and

⁴⁸Kahneman et al. (2021).

⁴⁹See Parliamentary Assembly of Europe. Committee on Equality and Non-Discrimination. 2020. Report Preventing Discrimination Caused by the Use of Artificial Intelligence. Doc 15,151, para. 66. On the Council of Europe, see the website <https://www.coe.int/en/web/genderequality/-/artificial-intelligence-and-gender-equality>. Accessed 31 October 2022.

violence⁵⁰ show that the progress in this regard is small but there. In order to ensure an adequate measurement, a relevant data collection needs to be in place.⁵¹ It is advocated here that the measuring of the progress needs to include a stronger technological dimension, in particular in relation to AI and algorithms. Only an inclusion of those issues in the monitoring and referencing in the annual Global Sustainable Development Report of the UN⁵² can ensure that the topics are taken up beyond the UN, notably by civil society actors and regional and national actors worldwide. As a matter of illustration, the SDG report 2022 only mentioned “artificial intelligence” or “AI” once, namely, in the phrase “the use of innovative approaches, such as mobile phone surveys and artificial intelligence, should be accompanied by an assessment to ensure that innovations are not inadvertently excluding or harming the most vulnerable groups”.⁵³

3 THE POLICY AND INSTITUTIONAL FRAMEWORK AT UN LEVEL TO ENSURE GENDER EQUALITY IN THE ALGORITHMIC AGE

Although not specifically addressing issues of bias and discrimination arising from the use of AI, the UN legal and policy framework comprises some tools that could be used to diminish negative impacts of algorithms on gender equality. Alongside this, the numerous UN actors involved in gender equality policy could be mobilized to address biases and algorithmic discrimination in a more targeted way.

⁵⁰ See, for example, the categorization in the European Institute for Gender Equality. 2021. Gender Equality Index. <https://eige.europa.eu/gender-equality-index/2021>. Accessed 31 October 2022, UN Women. 2022. UN Women Highlights 2021–2022. <https://www.unwomen.org/en/annual-report/2022#our-results>. Accessed 31 October 2022 and the European Commission for examples of the use of the terms (female) economic empowerment, leadership, and political participation. Also see European Commission and Directorate-General for Communication. 2020. Striving for a Union of Equality: The Gender Equality Strategy 2020–2025. <https://doi.org/10.2775/671326>.

⁵¹ However, a problematic aspect of measuring progress on SDG 5 is the lack of sufficient data, as currently the data is only 47% of what would be sufficient according to the latest UN Women report on progress on the Sustainable Development Goals. See UN Women. 2022. Progress on the Sustainable Development Goals: The Gender Snapshot 2022. <https://www.unwomen.org/en/digital-library/publications/2022/09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2022>. Accessed 31 October 2022.

⁵² United Nations. 2022. The Sustainable Development Goals Report 2022. <https://unstats.un.org/sdgs/report/2022/>. Accessed 31 October 2022.

⁵³ Sachs et al. (2022), p. 6.

3.1 The Legal and Policy Framework for Gender Equality

In terms of goals and the human rights framework, the UN Charter⁵⁴ and the civil rights covenants⁵⁵ pose the general principles that create the foundations within which gender policy actions are formulated.

More specifically for gender equality, Art. 2(b) of CEDAW⁵⁶ lays down concrete rights and obligations that need to be respected by the signatory parties. The two key obligations imposed on states by CEDAW are to “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”⁵⁷ and to address “prejudices” and “stereotyped roles for men and women”.⁵⁸ The mandates of UN bodies⁵⁹ also shed some light on the capabilities of the UN system to address gender inequalities, be it in the offline or the online world. While some resolutions of the General Assembly or the Human Rights Council address gender issues, digital issues and especially algorithmic discrimination largely remain uncovered.

Finally, policy orientations and the current work of the UN are mostly reflected in some key reports. Among the more relevant reports are the UNESCO report on AI⁶⁰ and the reports of the Special Rapporteurs in relation to digital privacy⁶¹ and poverty and race,⁶² which identify the issue of algorithmic discrimination.

⁵⁴ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, notably the Preamble and Article 1(3).

⁵⁵ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, notably Art. 3.

⁵⁶ Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), New York, 18 December 1979.

⁵⁷ Art. 2b of CEDAW.

⁵⁸ Article 5(a) of CEDAW.

⁵⁹ See notably subsection III. 2. for the roles of different UN actors active in gender equality policies, see also Mona Lena Krook and Jacqui True (2012).

⁶⁰ UNESCO. 2020. Artificial Intelligence and Gender Equality: Key Findings of UNESCO’s Global Dialogue. GEN/2020/AI/2 REV.

⁶¹ United Nations High Commissioner for Human Rights. 2021. The Right to Privacy in the Digital Age. A/HRC/48/31.

⁶² United Nations Human Rights Council. 2022. Rights of Persons with Disabilities, Report of the Special Rapporteur on the Rights of Persons with Disabilities. A/HRC/49/52.

3.2 Key Actors of the UN System Involved in Gender Equality

A key role regarding the protection against gender-based algorithmic discrimination should be played by the relevant gender equality actors⁶³ of the UN system.⁶⁴

First of all, this includes the General Assembly (GA),⁶⁵ which has a clear human rights mandate that enables it to adopt political statements or resolutions to frame the discussion on AI and gender discrimination.⁶⁶ It has been active on gender equality rights, notably by adopting, among others, UN Resolution 1325 (“Women, peace and security”).⁶⁷

Second, numerous UN bodies are involved in daily gender equality policy actions. First and foremost UN Women,⁶⁸ which delivers programs, policies, and standards that uphold women’s human rights and ensure that every woman and girl lives up to her full potential, has declared itself as the “global champion for gender equality”.⁶⁹ UN Women is very active in all areas of gender equality, including monitoring the progress of SDG 5 and related advocacy and PR actions.⁷⁰ Recently, UN Women has acted as a convener for the Generation Equality Forum, which notably launched a “5-year action journey to achieve irreversible progress towards gender equality, founded on a series of concrete, ambitious and transformative actions, including \$40 Billion in financial commitments”.⁷¹ Progress on the commitments, which can be of a financial, policy/programmatic, or advocacy nature, is measured on the accountability platform,⁷² which

⁶³ Parts of (section 2) on the UN actors are modeled on a paragraph in one of my previous articles—F. Lütz (n32)—but they are basically a greatly expanded and revised version of the original paragraph.

⁶⁴ Mégret and Alston (2020).

⁶⁵ Mégret and Alston (2020), pp. 99–131.

⁶⁶ Taylor and Mahon (2019).

⁶⁷ United Nations Security Council. 2000. Resolution 1325. S/RES/1325. See Willett (2010), Puechguirbal (2010), and Shepherd (2008).

⁶⁸ For a good overview of UN Women, see Bloch (2019).

⁶⁹ See the website of UN Women at <https://www.unwomen.org/en>. Accessed 31 October 2022.

⁷⁰ See UN Women. 2022. Are we track achieve gender equality 2030. <https://data.unwomen.org/features/are-we-track-achieve-gender-equality-2030>. Accessed 31 October 2022.

⁷¹ See Forum Generation Equality. n.d. <https://forum.generationequality.org/home>. Accessed 31 October 2022.

⁷² See Commitments Generation Equality Forum. <https://commitments.generation-equality.org>. Accessed 31 October 2022.

notably includes an action coalition in the area of technology and innovation for gender equality.⁷³

The United Nations Development Programme (UNDP), which implements many programs related to gender equality, also puts into place a UNDP Gender Equality Strategy⁷⁴ and measures progress in the area of gender equality.⁷⁵

Third, subsidiary human rights organs, such as the Human Rights Council (HRC),⁷⁶ frequently address questions of gender equality, including some issues of AI and its impacts on gender.⁷⁷

Fourth, the Commission on the Status of Women (CSW)⁷⁸ could serve as a laboratory for ideas on how to ensure HR protection when AI is impacting gender equality. For its 67th session in 2023, the priority theme is entitled “Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls”. The CSW is the principal global intergovernmental body exclusively dedicated to promoting gender equality and the empowerment of women, and it adopts recommendations in the form of negotiated and agreed conclusions during the yearly sessions. Civil society is very active in supporting the yearly CSW conference and tries to promote its aims of gender equality.⁷⁹ Through the Member States and civil society organizations included in the yearly meeting, the CSW’s advocacy can spread globally and positively influence the advancement of gender equality, which could also be an opportunity to deal with the digital aspects of inequalities.

⁷³ See Commitments Generation Equality Forum. 2022. Technology and Innovation for Gender Equality. Action Coalition. https://commitments.generationequality.org/sites/default/files/2022-08/technology_and_innovation_1.pdf. Accessed 31 October 2022.

⁷⁴ See UNDP. 2022. Gender Equality. <https://www.undp.org/speeches/gender-equality-undp>. Accessed 31 October 2022; UNDP. 2020. Gender Strategy 2020 Annual Report. <https://www.undp.org/sites/g/files/zskgke326/files/2021-07/UNDP-Gender%20Strategy-2020-Annual-Report.pdf>. Accessed 31 October 2022.

⁷⁵ For criticism of the measuring via the gender-related development index, see Dijkstra and Hamner (2000); Dijkstra (2002); and Permanyer (2013), p. 110.

⁷⁶ Permanyer (2013), pp. 181–239; see also Fredman, Sandra, and Beth A. Goldblatt. 2015. Gender Equality and Human Rights. Discussion Paper. New York: United Nations Entity for Gender Equality and the Empowerment of Women. <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/Goldblatt-Fin.pdf>. Accessed 31 October 2022.

⁷⁷ United Nations Human Rights Council. 2022. Rights of Persons with Disabilities, Report of the Special Rapporteur on the Rights of Persons with Disabilities. A/HRC/49/52.

⁷⁸ Mégret and Alston (2020), pp. 253–291. ECOSOC resolution 11(II) of 21 June 1946.

⁷⁹ For a civil society actor’s view, see Rosche (2016).

Finally, UN organs monitoring treaty compliance, such as the Human Rights Committee or the CEDAW Committee on the Elimination of Discrimination against Women,⁸⁰ could help to prevent algorithmic discrimination and monitor compliance, either on the basis of an extensive interpretation of the existing text or on the basis of a treaty specifically on discrimination and AI, but such a treaty has not been adopted yet. Historically, CEDAW is generally considered to have contributed to increasing women's human rights protection, notably with regard to mainstreaming gender analysis and integrating women's rights into the general human rights framework and increasing domestic and national efforts to implement gender-relevant policies and legislation.⁸¹ The CEDAW Committee could play a vital role via its general recommendations (such as the upcoming general recommendation n°40 on the equal and inclusive representation of women in decision-making systems) and monitoring and enforcement mechanisms⁸² based on its generous and broad interpretation and application of the right to non-discrimination and equality.⁸³ Since the adoption of the Optional Protocol to CEDAW, the communications (Art. 2) and the inquiry procedure (Art. 8) grant new enforcement possibilities to CEDAW that are potentially useful for exploring algorithmic discrimination.⁸⁴ Nevertheless, one needs to keep in mind the infrequent use of these mechanisms and the related lengthy procedure that could be ill-equipped to deal with issues of AI.

All these UN actors could shape the political discourse and develop policies and legal rules that would address the positive and negative impacts of AI on gender discrimination.

3.3 The Way Forward

Having identified some of the advantages and shortcomings of the UN policy framework, it is clear that the tools that are currently available do not ensure an adequate follow-up of gender equality problems in the age of algorithms.⁸⁵

⁸⁰ Rosche (2016), pp. 393–439.

⁸¹ Bayefsky (2000).

⁸² Sokhi-Bulley (2006).

⁸³ Cusack and Pusey (2013), Englehart and Miller (2014), and Sokhi-Bulley (2006).

⁸⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. 1999. UNGA 40; A/RES/54/4.

⁸⁵ For this expression, see Abiteboul and Dowek (2020).

As a matter of illustration, the visibility of the gender-based discrimination resulting from AI and the surrounding problems is very low in the actions of UN Women and other UN agencies.⁸⁶ More could be done by emphasizing the importance of the topic, notably in light of the 67th CSW session covering technological change and achieving gender equality and the empowerment of all women and girls.

Consequently, the following section will look into possible future actions, sketch out the next steps, and illustrate the elements of a substantive and institutional framework for gender equality that could be deemed to be sustainable and antifragile in dealing with current and future gender inequalities.

4 TOWARD A FORWARD-LOOKING, SUSTAINABLE, AND ANTIFRAGILE UN FRAMEWORK FOR GENDER EQUALITY

The Cambridge Dictionary defines “sustainable” as “able to continue over a period of time” and, in relation to the environment, as “causing, or made in a way that causes, little or no damage to the environment and therefore able to continue for a long time”.⁸⁷ In essence, when this is applied to gender equality, any related legal and policy framework should be built in such a way so as not to damage or limit positive impacts on gender equality. A policy needs to be sustainable. Considering that the right to equality between women and men is a fundamental and human right, it imperatively needs to be protected across the world, no matter whether the inequalities are caused by humans or algorithms.

However, any gender equality policy needs to be robust and antifragile⁸⁸ in order to deal with current and future gender inequalities, which include classic but also algorithmic discrimination. It needs to be equipped to deal with newly arising phenomena such as discrimination caused by AI and algorithms.

⁸⁶ Although it is not exhaustive or representative of all the work done by UN Women, but still symptomatic, a search on the UN Women website yields only one search result for “Artificial Intelligence”. UN Women. 2021. Integrate intersecting inequalities leave no one behind. <https://data.unwomen.org/features/integrate-intersecting-inequalities-leave-no-one-behind>. Accessed 31 October 2022.

⁸⁷ See Dictionary Cambridge. n.d. Sustainable. <https://dictionary.cambridge.org/dictionary/english/sustainable>. Accessed 31 October 2022.

⁸⁸ Taleb (2012).

4.1 AI as a Moving Regulatory Target

While it is clear that AI technology is developing fast and changing rapidly, this cannot be used as an argument for not regulating it. Regulation of it needs to be innovative in the sense that it could adapt to changing circumstances in order to capture new developments, address new risks, or adapt to new specificities.⁸⁹ Another possibility is to draft legislation in broad terms that would allow the law to accommodate newly arising circumstances such as technological developments. In addition, legal interpretation by judges equally paves the way to interpreting the law in the spirit of potential technological changes and ensuring its appropriate enforcement. Therefore, the fact that AI technology is developing fast is in no way a barrier to effective regulation. On the contrary, UN agencies dealing with gender equality should be equipped with the right tools to support the fight against biased data and algorithmic discrimination on the basis of a sound legislative framework and policy tools.

Finally, the very reason why an ambitious AI regulation that would address the issue of biases and gender-based discrimination is needed is that AI is already creating harm to gender equality. The simple fact that a new technology is available does not mean that the classic protection against gender discrimination should be undermined.

4.2 Some Elements of a Sustainable and Robust Framework

First and foremost, any framework must be clear on the objectives it aims to achieve and use precise terms and goals. In that regard, using the popular terms in AI regulation such as fairness,⁹⁰ trust,⁹¹ or

⁸⁹An example of this can be seen in EU legislation, where the Artificial Intelligence Act foresees an Annex that can be changed in the delegated acts procedure by the European Commission without the involvement of the co-legislators. This notably concerns the AI systems that fall under the regulation. Any regulation could be modeled on such an approach that entrusts a regulatory authority to respond to changing needs without modifying the core of the legislative framework.

⁹⁰Wachter et al. (2020, 2021); Bringas Colmenarejo et al. (2022); Angerschmid et al. (2022).

⁹¹On the notion of “trust”, see Rossi (2018); Sutrop (2019); Thelisson et al. 2017. Regulatory Mechanisms and Algorithms Towards Trust in AI/ML. Paper presented during the proceedings of the IJCAI 2017 Workshop on Explainable Artificial Intelligence (XAI), Melbourne, Australia; Eva Thelisson 2017 Towards Trust, Transparency and Liability in AI/AS Systems. Paper presented during the proceedings of the IJCAI 2017 Workshop on Explainable Artificial Intelligence (XAI), Melbourne, Australia; Middleton et al. (2022).

trustworthiness⁹² poses certain risks due to their ambiguity and vagueness. Instead of such a vague terminology, it is preferable to use as concrete concepts as possible rather than abstract concepts. It is therefore preferable to identify combating gender-based discrimination as a goal rather than as fair or ethical AI, which means different things to different people and is very much content-dependent. Not only does this increase legal certainty, but it also facilitates the measurement of effective enforcement and the achievement of SDG 5.

Establishing a legal or policy framework at UN level also has the advantage of ensuring global regulation for the global AI. As algorithms do not stop at borders, their regulation can only be effective if at least some basic principles of regulation are agreed at global level.⁹³

Among the key elements, there must not only be objectives such as transparency, documentation of the algorithmic decision-making process, and accountability, but also the right tools to achieve the goals. Concretely, any legislative or policy frameworks in this regard should prescribe bias audits,⁹⁴ algorithmic impact assessments,⁹⁵ or any other similar process that would assess the occurrence of biases and discrimination in the algorithm's decision-making process (Table 9.2).⁹⁶ Once the right tools are further specified, it is important to ensure the objectivity and impartiality of the screening process for biases and discrimination, which could be hampered if no third party is involved in the process.

⁹² For the literature on “trustworthiness”, see notably Hamon et al. (2022); Ashoori and Weisz (2019); Jain et al. (2020); Larsson et al. (2020).

⁹³ See in this regard also the Federal Department of Foreign Affairs of Switzerland. 2022. Artificial Intelligence and International Rules. Report for the Federal Council, pp. 8–9. <https://www.news.admin.ch/newsd/message/attachments/71099.pdf>. Accessed 31 October 2022.

⁹⁴ For more on bias audits, see Brown et al. (2021).

⁹⁵ On AI impact assessments, see notably Mantelero (2018).

⁹⁶ Several policy proposals mention such processes—for example, the European Commission. 2021. Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts. Com(2021) 206 Final; Parliamentary Assembly Council of Europe. Committee on Equality and Non-Discrimination. 2020. Report Preventing Discrimination Caused by the Use of Artificial Intelligence. Doc 15,151, para. 3.3 (“*Regular testing, evaluation, reporting and auditing against state-of-the-art standards related to completeness, relevance, privacy, data protection, other human rights, unjustified discriminatory impacts*”) and the Council on Artificial Intelligence. 2019. Recommendation. OECD/LEGAL/0449, para. 2.3 (b) (“*assessment mechanisms*”).

Table 9.2 A comparative table of international and regional AI frameworks with relevance for gender equality and non-discrimination

	<i>UN AI report 2021^a</i>	<i>CoE Rec 2020^b</i>	<i>OECD 2019</i>	<i>EU AI Act 2021^d</i>
Legal nature	Report (calling on UN members)	Recommendation (addressed to States)	OECD Legal Instrument: Recommendation, ^c intergovernmental standard	Proposal for a Regulation, binding EU law for 27 Member States
Objective	Inform states and incentivize them to act	Guidelines on addressing the human rights impacts of algorithmic systems	Principles for a responsible stewardship of trustworthy AI	Harmonized rules on AI
Definition of AI	“a constellation of processes and technologies enabling computers to complement or replace specific tasks otherwise performed by humans, such as making decisions and solving problems, which includes but is not limited to machine learning and deep learning”.	“Algorithmic systems” are understood as applications that, often using mathematical optimization techniques, perform one or more tasks such as gathering, combining, cleaning, sorting, classifying, and inferring data, as well as selection, prioritization, the making of recommendations, and decision-making (para 2) (+)	An AI system is a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.	“Artificial intelligence system” (AI system) means software that is developed with one or more objectives, of the techniques and approaches listed in Table 9.2 and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with (Art. 3(1)).
Reference to Human Rights Principle of non-discrimination Gender (equality)	9x (24, 31, 38, 45, 47, 57, 58, 59, 61) 4x (14, 16, 26, 49)	116x ^f	6x 1x	79x to Fundamental Rights 16x 2x (1.1, 1.2a) 5.5) 1x (p. 4)

Human centered/ fairness	Ix §4 (fairness)	—	1.2	“Human centric” AI (p.1)
Trust(worthy) Reference to other instruments	— UN instruments	— Convention for the Protection of Human Rights and Fundamental Freedoms, United Nations Guiding Principles on Business and Human Rights, general reference to CoE framework and jurisprudence of the ECHR	33 ^x OECD instruments, Sustainable Development Goals set out in the 2030 Agenda for Sustainable Development adopted by the United Nations General Assembly (A/RES/70/1) as well as the 1948 Universal Declaration of Human Rights	24 ^x UN Convention on Rights of the Child
Transparency Explainability Accountability Legal remedies	§4 §4 §4 § 38 and 59	8 ^x 2 ^x 7 ^x 10x (preamble, 1,2,4)	1.3 1.3 1.5 —	24 ^x Recital 38 3 ^x Art. 71 (penalties), no individual rights for EU citizens

^aUnited Nations High Commissioner for Human Rights. 2021. The Right to Privacy in the Digital Age. A/HRC/48/31. Technically, it is not a framework but gives useful indications for future legal and policy frameworks at UN level with regard to gender and algorithmic discrimination

^bCouncil of Europe. 2020. Recommendation of the Committee of Ministers to Member States on the Human Rights Impacts of Algorithmic Systems. Recommendation Cm/Rec(2020)1

^cCouncil on Artificial Intelligence. 2019. Recommendation. OECD/T/LEGAL/0449

^dEuropean Commission. 2021. Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts. COM(2021) 206 Final

^eOECD legal instruments are not legally binding, but practice accords them great moral force as representing the political will of adherents

^fThe number indicates the frequency of the topic occurring in each given text

4.3 *Institutional Cooperation*

Finally, institutional cooperation not only among UN bodies but also more generally between the UN and other regional organizations, such as the OECD,⁹⁷ the EU, the Council of Europe or ASEAN, plays a vital role. The ILO, whose mandate includes the promotion of gender equality in the world of work, notably adopted many conventions and resolutions⁹⁸ that touch on gender issues, and the mix of the tri-partite structure and its wide ratification could not only create acceptance of it worldwide but also facilitate progress.⁹⁹ Including digital and AI issues in any future convention could advance gender equality in general and particularly in the digital sphere.¹⁰⁰ Moreover, the UN could serve as a good forum to unite different actors from around the world that could share best practices and mutually inspire each other in order to move forward in addressing issues of bias and gender-based algorithmic discrimination.

5 CONCLUSION AND OUTLOOK

The article argued for a new robust and antifragile policy framework to be established ideally at global level and enforced by UN actors together with states in a decentralized way.

It was shown that stereotypes, biases, and gender discrimination are a frequent phenomenon in the online world. However, despite media attention and political discussions, relatively little has been done so far to guarantee gender equality and freedom from discrimination in a world in full digitalization. To remedy this concern, a harmonized regulatory approach

⁹⁷ Council on Artificial Intelligence. 2019. Recommendation. OECD/LEGAL/0449.

⁹⁸ International Labor Organization. 2009. Committee on Gender Equality—International Labour Conference https://www.ilo.org/gender/Events/WCMS_111473/lang%2D%2Den/index.htm. Accessed 31 October 2022.

⁹⁹ See notably the four key ILO gender equality Conventions: the Equal Remuneration Convention (No. 100), the Discrimination (Employment and Occupation) Convention (No. 111), the Workers with Family Responsibilities Convention (No. 156) and the Maternity Protection Convention (No. 183), all available at <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000::NO:::>. Accessed 31 October 2022.

¹⁰⁰ See, for example, the discussion of the research department of the ILO, which reflects on inequalities and price discrimination but does not specifically address the risk of gender inequalities when AI is used in the world of work. Ernst et al. (2019).

at UN level should be favored rather than diverging national rules due to the global nature of AI technologies. Under the auspices of the UN and involving the expertise available at UN level on gender equality, the emerging discussions and reports should be turned into concrete political actions, conventions, and resolutions. The progress at UN level could serve as a role model for all the UN Member States and translate into worldwide progress.

In accordance with the motto “Leaving no one behind”, women and girls should be put higher up on the agenda when it comes to AI and algorithms by recalibrating policies and legal frameworks to take account of new technological developments and to ensure that the gender equality framework at UN level remains sustainable, robust, and antifragile. A good place for first steps for concrete political action and a blueprint for a framework on how to address gender inequalities in the age of algorithms could be the ambitious recommendations put forth during the 67th session of the CSW in 2023, which will be dedicated to the priority theme of “Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls”.¹⁰¹ Concrete ideas and objectives developed as outcomes of this session in consensus with all the Member States could then cross-pollinate other UN organs in order to take more formal and binding forms, such as resolutions or conventions. Nevertheless, no legislative and policy framework will lead to significant changes without accompanying policy measures that would encourage more

¹⁰¹The main outcome of the CSW67(2023) will be agreed conclusions. At the time of writing, the zero draft of these agreed conclusions suggested to “Establish mandatory requirements for impact assessments and due diligence mechanisms to identify, prevent and mitigate societal risks and the negative impacts of digital technology on women and girls, especially by including affected groups, women’s rights organizations and human rights experts” and to “Adopt regulations mandating evaluation and audit requirements for the development and use of artificial intelligence to provide a secure and high-quality data infrastructure and systems that are either continually improved or terminated if human rights violation or gendered bias are identified” (points ff and gg) of zero draft agreed conclusions, Commission on the Status of Women Sixty-seventh session 6–17 March 2023, Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls, p. 14, available at: https://www.unwomen.org/sites/default/files/2023-02/CSW67%20Agreed%20Conclusions_zero%20draft_1%20February%202023.pdf.

girls and women to study subjects relevant for AI and pursue careers in the field of AI. Chances for a more gender equal world in the age of algorithms are higher not only if women participate on an equal footing with men in all spheres of social, political, and economic life, but also if they have the same power as men when it comes to the creation of data sets and the design of AI technologies and algorithms.

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CHAPTER 10

The Need for Women in Space

Aisha Jagirani

1 “THE MAGNANIMITY OF THE UNIVERSE HAS NO GENDER LIMITATION ... SPACE IS BEYOND GENDER”

Space inspires, fascinates, and instigates the desire to search. The young, the old, the rich, the poor, the literate, the illiterate, all races, and all of humankind feel connected with space in one way or another. The fantastic beauty of skies, stars, and space, which initially was the source for creating peace and a sense of serenity, soon turned out to be of more use for humanity. When humankind tried to explore space, it started to give benefits beyond our imagination. The services we get from satellites and space technology applications surpass our expectations. The world has significantly benefited from space science, applications, and communication technology.¹ Soon after the launch of Sputnik in 1957, our outer space capability has grown remarkably. Witnessing the landing of men on the Moon, flights of space shuttles, the construction of a space station (which serves as a laboratory for humans in space where various types of

¹ Greenblatt and Anzaldua (2019).

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experiments could be conducted), and thousands of satellites with enormous applications have changed our perception of the utilization of outer space.

Space technology has enhanced the quality of various aspects of life on Earth, such as healthcare, communications, live streaming of your favorite games, navigating your routes while traveling, recreation, and entertainment. The impact of space technology and its immense applications have changed how we live and operate in the present world, have opened up many opportunities, and brought about a sense of excitement that inspires us to keep exploring, discovering, and creating. Space is now considered the final frontier, and mankind can't wait to explore more and more of it, but it is also a strong reminder of how small our world is compared to the universe: “[t]he benefits humanity currently derives from space, plus the vast anticipated future benefits of it, overwhelmingly support the case for the continued exploration, development, and settlement of space”.²

Space is a place that seems accessible to everyone, since it appears to be above us anytime and anywhere, and gives us the feeling that everything is possible and there are no limits to what can be achieved. If space magnanimity inspires all equally, then what could be the reason that in the history of humankind, we don't see women astronomers as much as male astronomers? What is the reason that in the list of famous astronomers who have shaped astronomy and the modern use of space and helped us to understand our universe, only a few women appear, and those who do appear there are mostly from the nineteenth century?³

Could the reason be that women were not paying attention to the skies and didn't care about the phenomena while men did so or that men had more time to be free and look at the skies and ponder the secrets of the universe while women were too busy with raising children, household work, making food, and working in fields? This in itself signals a gender disparity that lasted since ages ago. It is necessary to identify the patterns of gender disparity in space.

² Greenblatt and Anzaldua (2019).

³ Tillman and Harvey (2022).

2 RETROSPECT: WOMEN IN SPACE

Astronomy is known as the oldest field among the natural sciences and “the first natural science to reach a level of sophistication and predictive ability, which it achieved already in the second half of the 1st millennium BCE”.⁴

The history of astronomy is usually thought of as a history of men or rather a few men, such as Ptolemy, Copernicus, Kepler, and Newton, who changed our perception of the universe. However, the history of astronomy has many more secrets and many more people whose work contributed to and allowed for the development of theories and knowledge about the universe and skies. Their work, although small or at times not exciting, led to significant steps later. Surprisingly, many among them were women, but they not as popular as the men were. Theano was one such example, together with Hypatia, Hildegard, and Sofie Brahe.⁵ Women somehow made their way to developing their scientific interests, but it was not an easy option for all women. Women were generally excluded from most educational institutions, and most of their work was generally ignored or wrongly attributed to men.⁶

Despite the underrepresentation of women in the scientific community, numerous ground-breaking contributions to science were made by females. A short overview of some of the women and their works is given below:

Caroline Herschel (1750–1848) was the first woman ever to discover a comet and to receive an honorary membership in Britain’s prestigious Royal Society.⁷ Interestingly Herschel used to assist her older brother William in his astronomy work, doing tasks such as polishing mirrors and other assistant tasks. One of the significant works in which she helped her brother was their compiling of a 20-year night sky survey that included 2500 new nebulae and star clusters. These were compiled into the “New General Catalogue”.⁸

⁴ Britannica. n.d. History of Astronomy. <https://www.britannica.com/science/astronomy/History-of-astronomy>. Accessed 10 August 2022.

⁵ For their biographies, see Álvarez, M.Á., Díaz, Á.I. (1998). Women in the History of Astronomy. *Astrophysics and Space Science* 263, 401–404.

⁶ Álvarez and Díaz (1998).

⁷ Tillman (2012).

⁸ Howell (2022).

Henrietta Swan Leavitt (1868–1921), American astronomer, discovered the “relationship between period and luminosity in Cepheid variables and pulsating stars”.⁹ Leavitt received an appointment at Harvard Observatory in 1902 and got involved in a great project of determining the brightness of all measurable stars. The project was led by Edward C. Pickering. Leavitt devised new methods of analysis. In particular, her North Polar Sequence was then used in the 1913 “Astrographic Map of the Sky” project. Her work led also to the determination of “the distances of many Cepheid stars and consequently also those of star clusters and galaxies”.¹⁰

Annie Jump Cannon (1863–1941) is known as the “census taker of the sky”.¹¹ Cannon was an extraordinary astronomer who revolutionized the way classification of stars was done. She developed the important “Harvard spectral system” and “classified about 350,000 stars manually”.¹² She was the “first woman to receive a Doctor of Astronomy degree from Groningen University, and an honorary degree from Oxford University”, together with the “Henry Draper Medal of Honor by the National Academy of Sciences in 1931”.¹³ She studied Physics and Astronomy at college and graduated in 1884 and ended up working at the Harvard College Observatory. She made various achievements in her career. As a woman, she contributed exceptionally to astronomy. She participated in the “first X-ray experiments in the USA and the development of a new system to classify stars based on their temperature called the Harvard Spectral Classification System”.¹⁴ She cataloged “about 350,000 stars in her lifetime” and the International Astronomical Union adopted her “method as the official spectral classification system”.¹⁵

Mary Golda Ross (1908–2008) is a celebrated figure in the Cherokee Nation in North America. She loved math and science and excelled in her

⁹ Britannica. n.d. Biography & Facts about Henrietta Swan Leavitt. <https://www.britannica.com/biography/Henrietta-Swan-Leavitt>. Accessed 23 August 2022.

¹⁰ Britannica (n.d.) and 150 Years Later, Her Star Is Still Rising. 2018. The Harvard Gazette. <https://news.harvard.edu/gazette/story/2018/07/henrietta-swan-leavitts-research-transformed-astronomy>. Accessed 23 August 2022.

¹¹ Alexander, Kerri Lee. 2020. Annie Jump Cannon. National Women’s History Museum. <https://www.womenshistory.org/education-resources/biographies/annie-jump-cannon>. Accessed 23 September 2022.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

field. Her story is a great example of a community dismissing gender inequality and treating women as their heroes. The alluring charms of stars fascinated her so much that she left her career in aviation and switched to one in space technology. She made substantial contributions to the US space program, including the development of the “operational requirements for the Agena B, which sent a secret spy satellite into orbit”.¹⁶ In 1942, after completing her education and master’s degree in engineering at UCLA, Ross was employed by Lockheed and became an integral part of their design team. She helped to design airplanes during World War II and helped to develop an early design concept for flyby missions to Venus and Mars.

Valentina Vladimirovna Tereshkova (1937–) was a Soviet cosmonaut and the first-ever woman to travel into space. Tereshkova had no prior pilot training, but she was an accomplished amateur parachutist. Based on her parachuting experience, she was accepted into the cosmonaut program in the Soviet Union and she was the first women who went into space. As the craft took off, on June 16, 1963, she said, “Hey sky, take off your hat. I’m on my way!”. Tereshkova orbited the Earth 48 times in 70.8 hours, a period under three days. It is interesting to mention here that Yuri Gagarin, the first man in space, only orbited the Earth once. Even the four American astronauts who flew into space before Tereshkova, orbited the Earth a total of 36 times. When Tereshkova was orbiting the Earth, the Soviet leader Nikita Khrushchev spoke to her and said, “Valentina, I am very happy and proud that a girl from the Soviet Union is the first woman to fly into space and to operate such cutting-edge equipment”.¹⁷

Sally Kristen Ride (1951–2012) was the first American female astronaut. Following in the footsteps of Valentina Tereshkova and Svetlana Savitskaya, she had the honor to become the third woman in space when she was launched off on 18 June 1983 aboard the STS-7 mission of the space shuttle Challenger.¹⁸

¹⁶ Cherokee Rocket Scientist: Mary Golda Ross. 2020. Science ATL. <https://scienceatl.org/cherokee-rocket-scientist-mary-golda-ross/>. Accessed 1 August 2022.

¹⁷ Biography. Valentina Tereshkova. 2016. <https://www.biography.com/astronaut/valentina-tereshkova>. Accessed 1 August 2022.

¹⁸ The Women Who Have Shaped Space Exploration. 2020. Dylan Taylor. <https://dylan-taylor.org/the-women-who-shaped-space-exploration/>. Accessed 23 September 2022.

Despite all the gender disparities, there are females who made incredible contributions to the development of space exploration, science, and technology. Besides the women mentioned above, there are still lots of other female historical figures who made significant contributions to the field of space science and technology; some of them were kindly recorded in history, while some other were left in a blind spot like Edith Gustan. This is not a coincidence but a result of the history of gender bias endured by women working in science, technology, engineering, and mathematics (STEM), particularly space-related fields. The anecdotes of these women professionals remind society of not only the great scientific contributions women have made in human history but also the need to eradicate gender biases, especially in STEM fields, in order to accelerate and facilitate the development of science and technology.

3 THE DILEMMA: SPACE FOR WOMEN

After decades since the explosion of feminist movements calling for gender equalization in all aspects of social life started in the late 1960s, the large gender gap in STEM-relevant fields, especially in space science and technology, still persisted. As a consequence of the gender stereotypes embedded in the nineteenth- and twentieth-century human society, women were originally considered unsuitable for STEM-relevant training or activities, which resulted in a large gender gap in STEM professions such as engineer and astronomer.¹⁹

Indeed, “[g]lobally, women represent only around 30 percent of STEM researchers”.²⁰ Women continue to be underrepresented in science, technology, engineering, and mathematics, representing only slightly more than 35% of the world’s STEM graduates. Women are also a minority in scientific research and development, making up less than a third of the world’s researchers.²¹

Unfortunately, space fields are no exception to this pattern in terms of both education and careers. For instance, in the field of astronomy, there is still an implicit bias in favor of men in terms of invited speaker

¹⁹ Makarova et al. (2019).

²⁰ UN Space4Women. History and Background of Space4Women. n.d. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 3 November 2022.

²¹ UN Space4Women. United Nations. n.d. <https://space4women.unoosa.org/events/2017/expertmeeting>. Accessed 24 August 2022.

opportunities or paper citations. These factors could considerably reduce women's representation in STEM-related fields by undermining their recruitment and promotion potentials.²² Moreover, despite the empirical and scientific evidence which proves women's biological advantages and superior performance in space travel, according to NASA statistics, out of all the 566 people who have ever traveled to space, only 65, or namely 11.5% of them, were women.²³ Only 15 female astronauts conducted a spacewalk, compared to over 210 men who did so. It was only after 220 spacewalks and 20 years of progress at the International Space Station (ISS) that two female astronauts were finally able to take part in a single extravehicular activity.²⁴ Moreover, in the space workforce, "lower figures have been communicated over the years for women [...], with only very insignificant changes in this regard in the last two to three decades".²⁵ According to data provided by Space4Women (a United Nations Office for Outer Space Affairs (UNOOSA) project—see below), women represent only around 20–22% of the space industry workforce, which is on par with statistics from 30 years ago, and women CEOs represent only 19% of the leaders in aerospace and defense.²⁶

That women are underrepresented in STEM is not accidental; rather, there are numerous factors that influence the "low participation rates of women and girls in STEM education" and the STEM workforce.²⁷ These have roots in culture, history, education, government, and even societal treatment. Some examples of such factors are a lack of support from families when their young female members wish to pursue STEM careers, inequality in the labor market and wage gaps, prevailing gender stereotypes in society, and the lower numbers of female teachers of STEM subjects compared to those of their male counterparts. Also, the available

²² Parletta (2021) and Caplar et al. (2016).

²³ Gorman (2020).

²⁴ UN Space4Women Project. n.d. United Nations Office for Outer Space Affairs. <http://unoosa.org/oosa/en/ourwork/topics/spaceforwomen/index.html>. Accessed 24 August 2022.

²⁵ UN Space4Women. n.d. History and Background of Space4Women. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 30 November 2022.

²⁶ Ibid.

²⁷ UN Space4Women Project. n.d. United Nations Office for Outer Space Affairs. <http://unoosa.org/oosa/en/ourwork/topics/spaceforwomen/index.html>. Accessed 24 August 2022.

opportunities for career counseling, scholarships, and mentoring for women in STEM are minimal. Moreover, there is a lack of role models who could inspire girls and allow them to interact with them. And above all, there is a “limited understanding of the value of STEM fields”.²⁸

4 THE ARGUMENT: THE NEED FOR WOMEN IN SPACE

At international level, gender equality is more and more recognized as a topic of crucial importance, which is underlined by the fact that in 2000, one of the United Nations' Millennium Development Goals (MDGs) was devoted to “promoting gender equality and empowering women”²⁹ (SDG 5).³⁰

Globally, despite the great progress in some countries, only limited progress in this respect has been achieved overall. According to the World Economic Forum's 2022 Global Gender Gap Report, “which examined over 190 countries, inclusion, equality, empowerment, and gender parity will not be attained for almost”³¹ 132 years and the global gender gap has been closed by 68.1%.³² Gender equality still remains a big challenge, and “women have a critical role to play in achieving all of the Sustainable Development Goals”.³³

However, to understand why gender equality is more pertinent in STEM education and space-related fields, the following points need to be taken into consideration:

Argument 1: The gender ratio in the world in 2021 was 101.68 males per 100 females, which is expected to decline to 100.296 by 2100.³⁴ If

²⁸Ibid.

²⁹UN Space4Women. n.d. History and Background of Space4Women. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 30 November 2022.

³⁰Sustainable Development. n.d. United Nations. <https://sdgs.un.org/goals#history>. Accessed 3 July 2022.

³¹UN Space4Women. n.d. History and Background of Space4Women. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 30 November 2022.

³²World Economic Forum (2022).

³³UN Space4Women Project. n.d. United Nations Office for Outer Space Affairs. <http://unoosa.org/oosa/en/ourwork/topics/spaceforwomen/index.html>. Accessed 24 August 2022.

³⁴Gender Ratio in the World. 2021. Statistics Times. <https://statisticstimes.com/demographics/world-sex-ratio.php#:~:text=The%20population%20of%20females%20in%20the%20world%20is,in%202,021%20is%20101.68%20males%20per%20,100%20females>. Accessed 23 July 2022.

almost half of the world population is composed of females, the role of the female in every field of life should also be equally guaranteed, not only for making an equal standing of women but for the sustainable development of societies, countries, and the world. And a prosperous world could not be imagined without the contribution of women, which comprise almost half of its population.

Argument 2: According to United Nations statistics on population, 61% of the global population lives in Asia (4.7 billion), 17% in Africa (1.3 billion), 10% in Europe (750 million), 8% in Latin America and the Caribbean (650 million), and the remaining 5% lives in North America (370 million) and Oceania (43 million).³⁵ Less than 30% of the female population participate in the labor market in South Asia, West Asia, and North Africa.³⁶ Asia hosts most of the world's population; the situation of women in this region certainly represents the situation of most women in the world. Regarding STEM careers, only 20.6% of Asian women are employed as scientists or engineering professors, which is the lowest percentage in this variable for all races and genders. Additionally, only 0.9% of Asian women are employed as scientists/engineers in a business or industry, which is, once again, the lowest figure for this variable.³⁷ Thus, improving the situation of women in STEM could bring better socioeconomic opportunities to the Asian region and the world.

Argument 3: Among the 17 Sustainable Development Goals collectively adopted by the international community for global development, the top priority is Sustainable Development Goal 1—No Poverty. As highlighted by the Space4Women project, the space sector tends to offer high-earning jobs in a fast-growing sector, which can lead to the reduction of poverty and the achievement of the targets of SDG 1. Hence women in space can directly contribute to reducing poverty.

Argument 4: According to SDG Goal 5—Gender Equality, the empowerment of women is central to realizing women's rights and reducing risks of violence, discrimination, and other types of abuse against women. The equal empowerment and participation of women is a necessary foundation for a peaceful, prosperous, and sustainable world. This also has direct

³⁵ Population. United Nations. <https://www.un.org/en/global-issues/population>. Accessed 23 July 2022.

³⁶ The World's Women 2020: Trends and Statistics. United Nations Department of Economics and Social Affairs. <https://www.un.org/en/desa/world%20%99s-women-2020>. Accessed 24 August 2022.

³⁷ Phanich (2021) and Wu and Wei (2011).

implications for the opportunities for better employment of women. The disparities between the salaries of men and women are huge; “[a]round 49% of the world’s working age women are in the labor force, compared to over 75% of working age men”, and “women earn 23% less than men” globally.³⁸ STEM is one of the important areas where women can contribute significantly and through which the disparity of income can be greatly reduced.

Argument 5: SDG Goal 8—Decent Work and Economic Growth: “90% of future jobs will require STEM related skills”.³⁹ Women must possess sufficient skills and education to be competitive in the employment market. Also, reducing the gender gap may bring as much as \$12 trillion to the global GDP by 2025.⁴⁰ Since the STEM field tends to offer high-paying jobs, providing equal opportunities to women in STEM education and STEM careers can significantly diminish the disparities. Particularly the space industry is a rapidly growing industry. The space economy was valued at \$385 billion in 2020⁴¹ and \$469 billion in 2021⁴² and is estimated to triple in the next 30 years. Women cannot be deprived of availing themselves of the opportunities in the space sector. Also, for the growth of the space sector itself, quality manpower would be an essential requirement. Only by promoting women in the STEM future can quality manpower be ensured in space and in all fields of STEM.

Argument 6: SDG Goal 9—Industry, Innovation, and Infrastructure: Studies conducted by various private and public sector organizations show that a diversity of skills and perspectives and increasing gender parity lead to greater innovation and success. Also, STEM fields have a growing influence on society and are key to dealing with global challenges. Women only “represent 35% of all students enrolled in STEM-related higher

³⁸ UN Space4Women. About Space4Women. n.d. <https://space4women.unoosa.org/about>. Accessed 24 August 2022.

³⁹ Ibid.

⁴⁰ How Advancing Women’s Equality Can Add \$12 Trillion to Global Growth. 2015. McKinsey & Company. <https://www.mckinsey.com/featured-insights/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth>. Accessed 3 July 2022.

⁴¹ The Space Economy Report 2020. 2021. Euroconsult. <https://euroconsult-ec.com/node/625>. Accessed 19 July 2022.

⁴² The Space Report 2022 Q2, The Authoritative Guide to Global Space Activity. 2022. Space Foundation. www.TheSpaceReport.org. Accessed 23 September 2022.

education”⁴³: 42% of female academics are assistant professors, 34% are associate professors, and 24% are full professors.⁴⁴ Providing women and girls with equal access to STEM fields and leadership jobs is critical to addressing these challenges, especially for the ensuing innovation and development of industries; human resources cannot be treated on the basis of gender. Innovation has no gender limitations.

Argument 7: Space operations started with the then two superpowers in 1957. More than 80 states are operating in space and have assets in space applications.⁴⁵ In 2021 alone, 31 states and international intergovernmental organizations registered more than 1936 space objects.⁴⁶ Space applications have become indispensable for the socioeconomic development of countries. The modern form of government relies more on information-based decision-making. Space assets can contribute greatly to defense and civilian purposes and also enable governments to monitor SDG targets.

Space science, space technology, and their application “will contribute to bettering humankind and the sustainability of our planet” in many areas, such as communication, urban management, disaster monitoring and mitigation, agriculture, climate change, transportation, health, and many more spinoffs and applications.⁴⁷ The need for “women in space” is not only a matter of gender equality anymore; it is more a matter of sustainable development of the space sector and the world at large. It shall be an essential requirement of countries to give the utmost importance to the STEM education and development of women.

⁴³ UN Space4Women. About Space4Women. n.d. <https://space4women.unoosa.org/about>. Accessed 24 August 2022.

⁴⁴ Space4Women. United Nations. n.d. <https://space4women.unoosa.org/events/2017/expertmeeting>. Accessed 24 August 2022.

⁴⁵ UNOOSA Annual Report 2020. 2020. United Nations Office for Outer Space Affairs. https://www.unoosa.org/documents/pdf/annualreport/UNOOSA_Annual_Report_2020.pdf. Accessed 19 July 2022.

⁴⁶ UNOOSA Annual Report 2021. 2022. United Nations Office for Outer Space Affairs. https://www.unoosa.org/documents/pdf/annualreport/UNOOSA_Annual_Report_2021.pdf. Accessed 20 September 2022.

⁴⁷ UNOOSA. n.d. Space4Women Project. <https://www.unoosa.org/oosa/en/ourwork/topics/spaceforwomen/index.html>. Accessed 3 November 2022.

5 THE REALIZATION: WHAT HAS BEEN DONE

The gender disparity in space exploration, science, and technology is a reality. The international space community takes it seriously and realizes the importance of addressing the issue with utmost seriousness. Practical measures have been taken that can bring positive changes in bridging the wide gender gap in STEM, particularly the outer space field. The first United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE I) took place in 1968. On the occasion of the 50th anniversary of this conference (at the UNISPACE+50 conference), the Committee on the Peaceful Uses of Outer Space (COPUOS), which is a multilateral intergovernmental platform for addressing issues related to space, identified and endorsed seven thematic priorities (TPs). One of the aims of TP 7—“capacity-building for the twenty-first century”—was to define “innovative approaches to capacity-building and outreach activities and promote efforts to encourage STEM education, with a special focus on women in developing nations”.⁴⁸

The United Nations Office for Outer Space Affairs (UNOOSA) has been advocating and working for “the empowerment of women and girls to achieve gender parity”.⁴⁹ UNOOSA, as an international intergovernmental body, provides a platform for the space community to have wider discussions and deliberations on all space matters.⁵⁰ On 11 February 2020, on the occasion of the International Day for Women and Girls in Science, UNOOSA launched the Space4Women project⁵¹ “to promote gender equality and women’s empowerment in [...] the space sector”.⁵² Also, its second objective is to strengthen the awareness, capacity-building, and skills development of individuals and institutions for women’s education in the space field.

Efforts are made by the international space community, including intergovernmental, non-governmental, and other institutions, to promote

⁴⁸ UN Space4Women. n.d. History and Background of Space4Women. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 30 November 2022.

⁴⁹ Ibid.

⁵⁰ Space4Women. United Nations. n.d. <https://space4women.unoosa.org/events/2017/expertmeeting>. Accessed 24 August 2022.

⁵¹ United Nations (2022) and United Nations Expert Meeting on Space for Women (2022).

⁵² UN Space4Women. n.d. History and Background of Space4Women. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 30 November 2022.

women in STEM and space fields also through expert meetings. Such events help to bring “together decision-makers and experts from international organizations, governments, and non-governmental organizations, as well as other high-ranking officials and representatives of the private sector and research institutions to discuss”⁵³ potential measures for promoting women in space fields. The International Astronautical Federation, under the International Astronautical Congress, organized the IAF IDEA “3G” Diversity Day, which was held in 2018 during the 69th International Astronautical Congress in Bremen, Germany, and it provided an entire day dedicated to diversity.⁵⁴ The European Space Policy Institute brought together “speakers from major international organizations to discuss the case for greater diversity and the challenges and opportunities related to increasing women’s involvement in [...STEM] fields, as well as enhancing the gender balance and diverse representation in international organizations”.⁵⁵ The Asia-Pacific Space Cooperation Organization (APSCO) and the Inter-Islamic Network on Space Sciences and Technology (ISNET) also actively co-organized workshops and lectures within their member states and international institutions to promote women’s education about and participation in space sciences, particularly in Asia and the Pacific region.⁵⁶

6 PROSPECTS: WOMEN IN SPACE

At various international space forums and platforms, experts address the challenges around women’s empowerment in the aerospace industry and STEM fields and highlight the need to absorb female labor into the space sector in the face of a changing space environment. There is a need to ensure equal access for women in all these sectors with a focus on equipping them with the skills for work areas that are thriving instead of dying.

A more close collaboration with relevant entities and international organizations is required for the promotion of women’s empowerment;

⁵³ Space4Women Project. n.d. United Nations Office for Outer Space Affairs. <http://unoosa.org/oosa/en/ourwork/topics/spaceforwomen/index.html>. Accessed 24 August 2022.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ APSCO/RCSSTEAP Workshop on Space4Women. 2020. APSCO <http://www.apSCO.int/html/comp1/content/NewsHighlights/2020-08-14/54-392-1.shtml>. Accessed 18 July 2022.

the usage and creation of various online, social media, and open-source tools were recommended for data collection and sharing, informing the public of the employment opportunities provided by the space sector, and addressing gender stereotypes in society. Moreover, the private sector's decisive role in recruiting women and retaining and promoting women's participation in the space sector was underlined, and hence a public intervention was recommended. As for promoting STEM education, the creation of scholarship and mentorship programs, especially for girls and women, was suggested.

Moreover, the Space4Women project aims at, “[c]reating sound and effective policies in this area requires [a] dialogue between [the] relevant actors. Bringing together representatives from governments, the private sector, academia, civil society, and public entities to share ideas and opinions on how we can best address the issue in international conferences is the most appropriate path forward in identifying best practices and accumulating support and resources for”⁵⁷ achieving the targets of women's empowerment in space.

Concrete actions are required to examine the participation of women in the aerospace sector. Also, evidence-based measures, including those for making leadership positions more accessible to women, are required to support and increase the number of women in the space sector. Besides that, an evaluation of the current status of the female workforce in global space agencies is required and quantitative methods and statistical approaches should be used to measure the impacts of gender empowerment activities.

7 STEM, SPACE, AND WOMEN HAVE A LONG WAY TO GO

In spite of the strong realization, acceptance, and admitting of the gender disparity and the various measures that have been taken to address the issue, there is still a dire need to create awareness of it and enhance the related outreach activities. The measures could include the following:

⁵⁷ UN Space4Women. n.d. History and Background of Space4Women. <https://space4women.unoosa.org/content/history-and-background-space4women>. Accessed 30 November 2022.

- Raising awareness of women's role in advancing space science, technologies, applications, and space exploration so as to inspire the young generation and particularly young girls⁵⁸;
- Identifying the challenges and opportunities for women in the aerospace sector, which could help the space sector to aim for specific solutions⁵⁹;
- Establishing connections among various stakeholders, which could lead to a fast improvement of women's situation in space sciences;
- Changing the cultural perceptions that women cannot work in technical, scientific, and engineering fields, which could help change the mindset;
- Establishing a supportive culture and supportive family systems that would encourage women's education in STEM and space fields, as the role of societies cannot be ignored;
- Governments and industries must provide equal career opportunities to enhance women's participation in the aerospace field;
- Women who have achieved leadership positions in aerospace fields and other STEM areas can be presented as inspirations and role models to motivate and inspire young girls;
- Continued discussions and deliberation are required to identify solutions for women and girls that would overcome the current gendered structures of inequality⁶⁰;
- A focus on capacity-building is required to make women capable of shouldering responsibilities equally.

There is no doubt that space is limitless, and the opportunities and benefits it provides to mankind are also limitless. It will continue to inspire generations. If space is considered as the final frontier, with almost 50% of the Earth's population being female, how could this final frontier be explored, and how would its benefits be brought to humanity if women did not make an equal contribution to space research?

⁵⁸ UNOOSA. n.d. UN/Brazil/United Arab Emirates. Space for Women Expert Meeting: Initiatives, Challenges and Opportunities for Women in Space. <https://www.unoosa.org/oosa/en/ourwork/topics/spaceforwomen/Events/space-for-women-conference.html>. Accessed 3 November 2022.

⁵⁹ Ibid.

⁶⁰ Ibid.

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INDEX¹

A

Access to justice, 33–45,
44n48, 48, 49

AI, *see* Artificial intelligence

Algorithm, 143, 153–155,
157–164, 157n26,
159n31, 168, 169, 171,
175, 176

Algorithmic age, 164–169

Anti-discrimination, 116, 132

Artificial intelligence(AI), 8, 153–176,
157n26, 170n89,
170n91, 174n100

Athens, 16, 18

B

Bachofen, Johann J., 27–29,
29n37, 114

C

Capotorti, Francesco, 56, 57

Chile, vi, vii

Civil rights, 165

Civil society, 101, 132, 144, 164,
167, 194

Climate change, v, 4, 7, 33–35, 34n1,
40–48, 41n37, 97n1,
98–101, 103–104

Climate crisis, 35, 46, 97–105

Climate justice, 7, 97–105

Commission on the Status of Women
(CSW), 1, 4, 5, 42, 97n1, 167

Conscience, 127

social (*see* Social, conscience)

Constitution, vi, 24, 61, 64, 70
Italian (*see* Italian Constitution)

Covid-19 pandemic, 3, 4n8, 8, 111,
125–127, 131

¹ Note: Page numbers followed by ‘n’ refer to notes.

D

Data

feminism, 139–150

Development, v–vii, 3, 5, 7, 8, 36, 40, 41, 43, 48, 70, 82, 84, 89, 91, 92, 103, 109, 116, 129, 157, 170, 175, 175n101, 182–186, 189, 191, 192

sustainable (*see* Sustainable development)Disaster, 4, 7, 40, 42–48, 97–100, 102–104, 191
disaster risk reduction, 4, 41n37, 42, 42n38, 43, 45, 46, 99–101Discrimination
gender (*see* Gender, discrimination)
systematic (*see* Systematic discrimination)

Diversity, 6, 8, 53, 63–65, 86, 102, 112, 115, 158, 190, 193

E

Economic

development, 7, 82

empowerment, 93, 164n50

inequalities, 2

participation, 2

security, 3

Education, 8, 17, 18, 29, 44, 44n48, 70–72, 84, 90, 99, 114, 146, 167, 175, 185–188, 190–195

Employment, 80, 89, 89n54, 90, 92, 103, 104, 111, 119, 126, 155, 190, 194

Empowerment

women (*see* Women, empowerment)

Engendering, v–vii, 3, 8–9

Equality, 8, 21, 29, 37, 38, 42, 43, 55, 57, 58, 61, 62, 66, 67, 71, 72, 83, 85, 90, 109–111, 115, 116, 118–121, 123–125, 127–129, 132, 142, 145, 188

gender (*see* Gender, equality)

Europe, 66, 67, 69–71, 131

European Commission, 2, 170n89, 171n96, 173

European Union, 65, 67, 126, 160, 161, 170n89, 174

F

Feminism, 139–150

data (*see* Data, feminism)

Fiji, 43, 97–105

Flooding, 40, 98

Foreign direct investment (FDI), 80–82, 88–90, 92

G

Gender

bias, 153–176, 186

discrimination, 3, 43, 54, 66, 85, 100, 103, 110, 112–114, 146, 153–176

equality, v–vii, 1, 2, 4, 5, 7–9, 29, 41, 46, 49, 64, 70, 71, 81–87, 89, 89n54, 90, 93, 100, 101, 103, 105, 110, 115, 116, 120, 121, 124, 127–130, 132, 142, 145, 153–176, 188, 189, 191, 192

gap, vii, 54, 72, 154, 158, 162, 186, 188, 190, 192

responsiveness, 101

stereotype, 38, 39n25, 114, 153–176, 186, 187, 194

Girls, 3–5, 4n8, 7, 18, 19, 35,

35n7, 42, 44, 44n48, 45,

47n57, 48, 68, 69, 81,

82, 97n1, 98–100, 98n7,

102, 144, 157–162, 166,

167, 169, 175, 176, 185,

187, 188, 191, 192,

194, 195

H

- Hierarchy, 3, 149
 Human rights, v, 1, 2, 5–7, 34–41,
 41n37, 45–48, 53–72, 80, 83,
 93, 159n33, 165–169, 171n96

I

- ICCPR, *see* International Covenant on Civil and Political Rights
 Identity, 43, 57, 61, 62, 64, 65, 67,
 71, 72, 112, 113, 146, 146n22
 Inclusion, vii, 6, 8, 85–87, 92, 93,
 162, 164, 188
 Indigenous, 4, 41n37, 44, 47, 47n57,
 47n58, 54, 56, 69–71, 83, 84,
 140, 145, 149
 Inequality, 2, 3, 4n8, 7, 9, 15, 29, 34,
 35, 37–40, 43, 48, 54, 70, 72,
 98, 99, 103, 130, 142, 145, 147,
 148, 153, 154, 156n23,
 160–162, 165, 167, 169,
 169n86, 174n100, 175, 185,
 187, 195

Inter-American Court of Human Rights, 36

International Covenant on Civil and Political Rights (ICCPR), 36, 37, 71

International investment agreement, 82–87, 92, 93
 policy, 80, 81, 87

Intersectionality, 4, 6, 47, 54, 55, 61,
 68, 145, 146, 146n20

Investment, 79–93

Italian Constitution, 109–132

J

- Justice, v, 7, 97–105, 115, 148–150
 access (*see* Access to justice)

L

- Latin America, 144, 144n16, 189

M

- Media, 4, 132, 158, 174, 194
 Minority, 44, 53–72, 84, 186
 Multiculturalism, 54

N

- Narrative
 sustainability, 6

O

- OECD, *see* Organisation for Economic Co-operation and Development
 Organisation for Economic Co-operation and Development (OECD), 2, 173, 174
 Outer space, 8, 181, 182, 192

P

- Paris Agreement, 41
 Parity, 7, 109–132, 188, 190, 192
 Participation, v–vii, 3, 5–8, 41–44,
 47, 48, 86, 86n45, 87, 99,
 103–104, 110, 187,
 189, 193–195
 Patriarchy, 27–29, 114, 147
 Political life, 110, 176
 participation, vi, 2, 110, 164n50
 rights, 7, 18, 27n33, 29,
 119, 120
 scientist, 9
 voice, 2

- P**
- Power
 - asymmetry, 1
 - relations, 1, 3, 5, 40, 98, 156n23
 - Prejudices, 22, 40, 69, 146n22, 165
- Q**
- Queer, 147
 - Quota mechanisms, vi, vii
- R**
- Racism, 3, 147
 - Religion, 3, 25, 28, 56, 61, 62, 65–69, 148
 - Relocation, 100, 101
 - Reproductive choices, 60
 - health, 42
 - Responsibility, 83, 87, 92, 102, 115, 126, 158, 160–162, 195
 - Rome, 16, 20–22, 25, 26, 114
- S**
- Science, technology, engineering, and mathematics (STEM), 8, 155, 158, 186–195
 - Sea level rise, 40, 98
 - Sexual assault, 68, 127
 - Sexual harassment, 103
 - Slow-onset events, 97, 98
 - Social conscience, 127–130
 - protection, 158, 160–162
 - relations, 149
 - Space
 - industry, 187, 190
 - outer (*see Outer space*)
 - STEM, *see* Science, technology, engineering, and mathematics
 - Subalternity, 16, 23
- S**
- Sustainability, v–vii, 1–3, 6–8, 155, 191
 - Sustainable development, v, vii, 3, 5, 5n13, 7–9, 45, 79–93, 103, 157, 189, 191
 - Sustainable development goals (SDG), 2, 3, 7–9, 40, 45, 81, 82, 88, 92, 153–176, 164n51, 188–191
 - Systematic discrimination, 2
- U**
- UN, *see* United Nations
 - UNCTAD, *see* United Nation Conference on Trade and Development
 - United Nation Conference on Trade and Development(UNCTAD), 81, 92
 - United Nations (UN), 2, 5, 8, 36, 37, 98n7, 153–176
 - Department of Economic and Social Affairs, 2
 - sustainable development goals (*see* Sustainable development goals)
 - Women, 2, 100, 164n51, 166, 169, 169n86
- V**
- Violence, 4, 4n8, 24n30, 29, 39, 40, 41n34, 42, 44, 44n48, 47, 67–69, 98, 98n7, 100, 102, 103, 110, 111, 126, 127, 130, 132, 143n10, 144, 164, 189
 - Vulnerability, 98, 99, 102
- W**
- Women
 - Athenian, 18–20
 - cultural, 3

- empowerment, v, 1–9, 15–29, 41, 45, 72, 81, 82, 86, 88, 89n54, 92, 157, 158, 160, 162, 167, 189, 192–194
Greek, 16–20
minority, 53–72, 186
participation, vi, vii, 7, 8, 47, 48, 86, 86n45, 87, 103–104, 194, 195
rights, v, vii, 1, 2, 7, 8, 35, 35n7, 36, 41, 41n37, 43–45, 47, 61, 66, 67, 70, 71, 89, 89n54, 93, 109–132, 154, 158, 168, 189
Roman, 20–27, 114
strike, 9, 20
unemployment, 126
World Bank, 2, 81, 89