

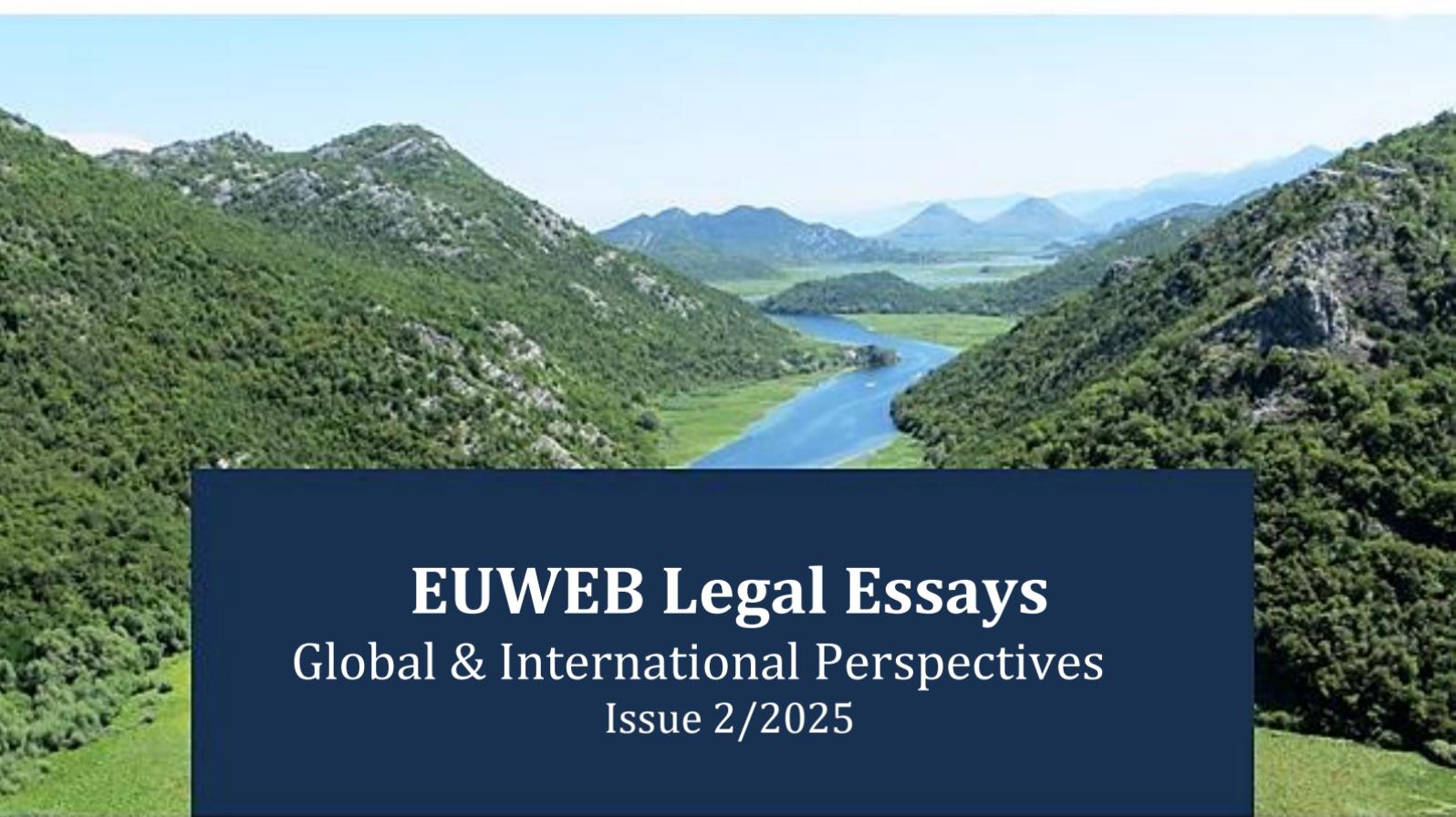
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# FROM UNEQUAL PARTICIPATION TO GENDER PARITY: THE NEW CEDAW GENERAL RECOMMENDATION NO. 40

by Elisa Fornalé\*

SUMMARY: 1. Introduction. – 2. Participation and the Shift to Gender Parity. – 3. The Human Rights Project: The Internal and External Dimension of Participatory Rights. – 4. Participation and Representativeness at International Level. – 4.1. Embracing Gender Parity at the United Nations: A Closer Look at UN Treaty Bodies. – 4.2. Gender Parity on the Bench: The Role of Female Judges in International Courts. – 4.3. Gender and Diplomacy: An Exploratory Inquiry. – 5. Gender Parity: The Defining Principle for the Paradigm Shift. – 6. Conclusions.

## 1. Introduction

Unequal participation of women in decision-making systems has been a long-standing challenge at the domestic, European and international level.

According to the UN Women, as of 10 January 2024, “*there are 26 countries where 28 women serve as Heads of State and/or Government. At the current rate, gender equality in the highest positions of power will not be reached for another 130 years*”<sup>1</sup>. Challenges of achieving gender parity also affected the last elections at the European Parliament elections<sup>2</sup>.

The pandemic emergency offered just one example of how the current structure of power risks perpetuating unequal participation of women, particularly in facing emergency situations<sup>3</sup>. The emergency regime institutionalized has excluded the participation of women from the emergency task forces – “*defined as the institutional*

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<sup>1</sup> See generally E. JOHNSON SIRLEAF, *Half of the World Goes to the Polls in 2024. Let’s Ensure Women’s Voices Are Heard*, in *THE GUARDIAN*, 2024, available at <https://www.theguardian.com/global-development/2024/mar/06/elections-vote-women-gender-equality-leadership-harassment>.

<sup>2</sup> EUROPEAN INSTITUTE FOR GENDER EQUALITY (hereinafter EIGE), *Despite Hopes for Progress, European Parliament Elections led to a Decline in Women’s Representation*, 2024, available at <https://eige.europa.eu/gender-statistics/dgs/data-talks/despite-hopes-progress-european-parliament-elections-led-decline-womens-representation>. Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Roadmap for Women’s Rights*, of 7 March 2025, COM(2025) 97 final.

<sup>3</sup> C. GERMANO, E. FORNALÉ, *Gender Equality in Crisis: Emerging Challenges for Democratic Legitimacy*, in E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, Leida, 2022.

face of a ‘mandemic response’<sup>4</sup> to the crisis’<sup>5</sup>. This imbalance at the domestic level and at the international level has attracted severe criticism, by not allowing them “to make the decisions that affect their lives”<sup>6</sup>.

In March 2021, the UN Commission on the Status of Women (CSW) raised the attention of the international community on the pressing need to achieve “women’s full and effective participation and decision-making in public life”<sup>7</sup>. As outlined, in the GQUAL campaign<sup>8</sup>, among others, “women are underrepresented in virtually every international body responsible for adjudicating, monitoring, and developing international law”<sup>9</sup>. As Cynthia Enloe made clear, “[w]omen need to be made visible in order to understand how and why international power takes the form it does”<sup>10</sup>.

To face these challenges, in November 2022, the CEDAW Committee launched the process for the adoption of the General Recommendation “On Equal and Inclusive Representation of Women in Decision-Making Systems” (no. 40 – hereinafter GR 40) that aims for the acceleration of bringing about “equality and combat[ing] the growing inequalities exacerbated by increased discrimination, risks of regression in women’s

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<sup>4</sup> See the “White House Coronavirus Task Force” established by the United States. See also the Emergency Committee on COVID-19 created by the World Health Organization in which women made up less than 20% of the membership; C. WENHAM, J. SMITH, R. MORGAN, *COVID-19: The Gendered Impacts of the Outbreak*, in *The Lancet*, Volume 395, 2020, pp. 846-848.

<sup>5</sup> C. GERMANO, E. FORNALÉ, *Gender Equality in Crisis: Emerging Challenges for Democratic Legitimacy*, in E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, Leida, 2022.

<sup>6</sup> See generally UN SUSTAINABLE DEVELOPMENT GROUP (hereinafter UNSDG), *Policy Brief: The Impact of COVID-19 on Women*, 2020, available at <https://unsdg.un.org/resources/policy-brief-impact-covid-19-women>; See generally WORLD BANK, *Gender Dimensions of the COVID-19 Pandemic*, Policy Note, 2020, available at <http://documents.worldbank.org/curated/en/618731587147227244/Gender-Dimensions-of-the-COVID-19-Pandemic>; EIGE, *Gender Equality Index 2022: The COVID-19 Pandemic and Care*, 2022, available at <https://eige.europa.eu/publications-resources/publications/gender-equality-index-2022-covid-19-pandemic-and-care>; See generally C. GERMANO, E. FORNALÉ, *op.cit.*; See generally T. ALON, M. DOEPKE, J. OLMESTEAD-RUMSEY, M. TERTILT, *The Impact of the Coronavirus Pandemic on Gender Equality*, in *National Bureau of Economic research*, Working Paper no. 26947, 2020, available at <https://cepr.org/voxeu/columns/shecession-she-recession-2020-causes-and-consequences>; K. KNOP, *Re/statements: Feminism and State Sovereignty in International Law*, in *The Nature of International Law*, London, 3 (<https://www.taylorfrancis.com/chapters/edit/10.4324/9781315202006-14/re-statements-feminism-state-sovereignty-international-law-karen-knop>), in *Transnational Law and Contemporary Problems*, Volume 3(304), 1993, pp. 293-344.

<sup>7</sup> See generally R. RUBIO-MARÍN, W. KYMLICKA (eds.), *Gender Parity and Multicultural Feminism: Towards and New Synthesis*, Oxford, 2018.

<sup>8</sup> The GQUAL campaign has been launched in 2015 to increase women’s representation in international tribunals and monitoring bodies. The founding Declaration and the Action Plan are available at <https://gqualcampaign.org/about-the-campaign/>. See generally GQUAL AND THE WORLD TRADE INSTITUTE, *Beyond Parity: Economic Empowerment, and Promoting Equal and Inclusive Representation of Women in Decision-Making Systems*, Blog, 2024. On 23 February 2024, the World Trade Institute together with GQUAL and the Institute of International Relations Prague held a conference titled *Promoting Equal and Inclusive Representation of Women in Decision-making Systems: a Holistic Approach to Economic Empowerment* at the University of Bern in Switzerland.

<sup>9</sup> International Human Rights Law Clinic (IHRLC), *Achieving Gender Parity on International, Judicial and Monitoring Bodies. Analysis of International Human Rights Laws and Standards Relevant to the GQUAL Campaign*, 2017, IHRLC Working Paper Series No. 4.

<sup>10</sup> C. ENLOE, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*, Berkeley, Los Angeles, London, 1990, p. 198. This has in turn led to the concept of “worlding women”, namely to the need to “tak[e] women’s experiences of the international seriously [...] and] make visible places and ways that women are in the world”; J.J. PETTMAN, *Worlding Women: A Feminist International Politics*, London, 1996, pp. 10-11.

*rights and multiple crises*”<sup>11</sup> by identifying how to support equal and inclusive representation<sup>12</sup>.

This article aims to provide a legal analysis of women’s participatory rights to identify gaps in existing legal measures and how the new GR40 will strengthen the development of a systemic normative framework. In doing so the article focus on: first, describing the legal roots of participatory rights in human rights law and legal measures adopted by CEDAW Member States<sup>13</sup> to foster participation at the domestic level; second, defining current challenges and gaps for participation at the international level by focusing on three areas (international organizations, international judiciaries, diplomacy); and, third, by focusing on how redefining the contours of the debate by making a more comprehensive case where gender parity could become a ‘permanent feature of our societies’<sup>14</sup>.

## 2. Participation and the Shift to Gender Parity

As stated by the Secretary-General of the United Nations “*the key to reinvigorated and reimagined governance lies with truly meaningful participation of people and civil society in the decisions that affect their lives*”<sup>15</sup>.

But what do we mean by *participation*? As it is very well delineated in the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the CEDAW) – and as is further detailed in this article – “*participation is not just to vote*”<sup>16</sup>.

The Beijing Declaration and Platform for Action, which was adopted on September 15, 1995 and was extremely influential in this regard. This Declaration for the first time

<sup>11</sup> *Concept Note on the Future General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems*, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/general-discussion/2023/2022-11-11/Concept-note-GR-40.docx>.

<sup>12</sup> E. FORMALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *Submission to the General Discussion on the “Draft General Recommendation on Equal and Inclusive Representation of Women in Decision-making Systems”*, CEDAW Committee, 2023, available at <https://www.ohchr.org/en/events/events/2023/half-day-general-discussion-equal-and-inclusive-representation-women-decision>.

<sup>13</sup> The CEDAW Convention has been adopted by the UN General Assembly Resolution 34/180, of 18 December 1979, UNDOC. A/RES/34/180 and 189 Member States have ratified it.

<sup>14</sup> In the context of the European Union’s legal framework, the analysis holds particular relevance, given that its legal framework currently lacks a specific legislative instrument addressing women’s participatory rights in public life. In fact, despite the comprehensive gender equality architecture established both in EU primary law, where gender equality is fostered as one of the aims of the Organization, and in the several targeted measures, such as the Directive (EU) 2022/2381 of the European Parliament and of the Council, *on improving the gender balance among directors of listed companies and related measures for corporate governance*, of 23 November 2022, in OJ L 315/44, pp. 44-59, there isn’t a dedicated legal instrument on political and public participation in the EU legal framework. The relevance of the GR40 is further amplified since all EU Member States are parties of the CEDAW Convention.

<sup>15</sup> See generally U.N. SECRETARY-GENERAL, SECRETARY-GENERAL’S REMARKS AT HIGH-LEVEL SIDE EVENT: PARTICIPATION, HUMAN RIGHTS AND THE GOVERNANCE CHALLENGE AHEAD [AS DELIVERED] (Sept. 25, 2020), [un.org/sg/en/content/sg/statement/2020-09-25/secretary-generals-remarks-high-level-side-event-participation-human-rights-and-the-governance-challenge-ahead-delivered](https://www.un.org/sg/en/content/sg/statement/2020-09-25/secretary-generals-remarks-high-level-side-event-participation-human-rights-and-the-governance-challenge-ahead-delivered).

<sup>16</sup> E. FORMALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *Submission to the General Discussion on the “Draft General Recommendation on Equal and Inclusive Representation of Women in Decision-making Systems”*, CEDAW Committee, 2023, available at <https://www.ohchr.org/en/events/events/2023/half-day-general-discussion-equal-and-inclusive-representation-women-decision>.

expressly linked equal participation of women and men in decision-making to the notions of democracy and justice<sup>17</sup>.

Nevertheless, equal participation has not fully arrived: women's involvement is explained separately from reflecting on the complementarity of its domestic tradition with the international equality and it risks becoming insulated from the rise of new avenues of gender relations to realize "*the goal of parity of participation*".

Innovative research explored the relevance of what Rubio-Marín defined as "*the participatory turn*": "*the shift towards participatory gender equality*" in the domain of power and authority<sup>18</sup>. The adoption of temporary measures (such as electoral gender quotas and parity mechanisms) has progressively paved the way to endorse substantial equality of the women's rights to participation in decision-making at the domestic level. Given the need to rethink allocation of powers and challenge male domination, equitable participation of women in decision-making became a defining issue of contemporary politics and the legal domain. It provides a compelling case for reflecting on how a greater participation of women in the political sphere could ensure women's representation.

*'Participation and representation are complementary'*<sup>19</sup>. In political theories, however, both concepts are vague and indeterminate. As illustrated by Fornalé et al. *'formalistic participation of women (more women in Parliament, for example) might lead to more attention for women's issues, but this is not necessarily so. We need substantive participation of engaged and committed women'*.<sup>20</sup> Numbers and/or percentages cannot be enough to represent women.<sup>21</sup>

Accordingly, the right to participation of women can be efficiently achieved when gender parity and non-discrimination are also guaranteed. The rights to equality and non-discrimination have been expressly included in manifold international human rights instruments like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>17</sup> UN, *Beijing Platform of Action*, Strategic Objective G.1, *Women in Power and Decision-making*.

<sup>18</sup> R. RUBIO-MARÍN, W. KYMLICKA (eds.), *Gender Parity and Multicultural Feminism: Towards and New Synthesis*, Oxford, 2018.

<sup>19</sup> E. FORNALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *op.cit.*; B. WAMPLER, *Participation, Representation, and Social Justice: Using Participatory Governance to Transform Representative Democracy*, in *Deepening Democracy*, Volume 44(4), the A. well emphasized "*the complementary nature of participation and representation*", p. 672.

<sup>20</sup> E. FORNALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *op.cit.*

<sup>21</sup> Also worth reflecting on is the academic literature that studies the relationship between the representatives and the represented, like the work of Rosie Campbell, Sarah Childs and Joni Lovenduski, who conducted an "*empirical test of whether there is congruence between the political attitudes of women politicians and women citizens*", concluding that "*women and men on average have different ideas about the roles of each sex and these might be described as uncrystallized or not fully conscious interests, with potentially considerable consequences for substantive political representation. In short, while women may not want more women representatives, they continue to need them*" (R. CAMPBELL, S. CHILDS, J. LOVENDUSKI, *Do Women Need Women Representatives?*, in *British Journal of Political Science*, Volume 40(1), 2010, pp. 171 and 194). Similarly, Beth Reingold asks: "*Does the election of more and more women mean that women will be better represented?*" (B. REINGOLD, *Representing Women. Sex, Gender, and Legislative Behavior in Arizona and California*, Chapel Hill, 2000, 2). On the same topic, see also Z. HESSAMI, M. LOPES DA FONSECA, *Female political representation and substantive effects on policies: A literature review*, in *European Journal of Political Economy*, Volume 63, 2020; K. CELIS, S. CHILDS, J. KANTOLA, M.L. KROOK, *Rethinking Women's Substantive Representation*, in *Journal of Representative Democracy*, Volume 44(2), pp. 99-110 and K. BECKWITH, *Numbers and Newness: The Descriptive and Substantive Representation of Women*, in *Canadian Journal of Political Science*, Volume 40(1), 2007, pp. 27-49.

As illustrated by Fornalé et al. women's participation support governance of different areas (e.g. education, work, trade, migration and climate change), for this it is crucial to ensure their meaningful participation<sup>22</sup>.

### 3. The Human Rights Project: The Internal and External Dimension of Participatory Rights

Participatory rights, here understood as the right to access and participate in decision-making processes, the right to hold public office and perform public functions, the right to influence politics and the right of women to non-discrimination, are articulated in the Convention on the Elimination of Discrimination Against Women (CEDAW). Articles 7 and 8 adopt a broad scope, *“not merely aimed at guaranteeing the right to vote, but rather at ensuring an active and responsible role for women in the development of government policies and their implementation, as well as ensuring the representation of women in public offices at the domestic and international levels”*<sup>23</sup>.

The CEDAW represents a landmark document, as it includes what has been labelled as *“the shift towards participatory gender equality”*<sup>24</sup>, namely a shift in the wording of international human rights instruments from mere statements of formal equality and formal references to the right to political participation to more articulated positive obligations on the part of states to ensure women's equal opportunities when it comes to participatory rights.<sup>25</sup>

Article 7<sup>26</sup> describes positive duties to *“ensure women's right to access to decision-making together with their right to participate in the formulation of government policy and its implementation”* (Article 7a)<sup>27</sup>. Article 7 also includes: *“the right to hold public office and perform all public functions at all levels of government (Article 7b), and non-discrimination obligations with regard to the right to participate in non-governmental organizations and public life”* (Article. 7c)<sup>28</sup>. The scope of the provision also includes

<sup>22</sup> E. FORNALÉ, *Embracing Gender Parity at International and European Level*, in S. DE VIDO, M. FRULLI (eds.), *Commentary to the Istanbul Convention*, 2023, pp. 62-73, p. 67; E. FORNALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *op.cit.*

<sup>23</sup> E. FORNALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *op.cit.* See generally A. HELLMUM, H. SINDING AASEN (eds.), *Women's Human Rights. CEDAW in International, Regional and National Law*, Cambridge, 2013. The linkage between participatory rights and gender equality has been well framed in the 1952 Convention on the Political Rights of Women, which recognizes the right of women to participate in the democratic processes of states, as well as the commitment of states to ensure gender parity in representative institutions. Convention on the Political Rights of Women, Mar. 31, 1953, Treaty Series Vol. 993, at 35. For a comment, see F. GASPARD, *Unfinished Battles: Political and Public Life*, in H.B. SCHÖPP-SCHILLING, C. FLINTERMAN (eds.), *The Circle of Empowerment: Twenty-five*, New York, 2007.

<sup>24</sup> R. RUBIO-MARÍN, *Women's Participation in the Public Domain under Human Rights Law: Towards a Participatory Equality Paradigm Shift*, in R. RUBIO-MARÍN, W. KYMLICKA (eds.), *Gender Parity and Multicultural Feminism: Towards a New Synthesis*, p. 66.

<sup>25</sup> *Ibidem*, p. 71.

<sup>26</sup> Article 7 Convention on the Elimination of All Forms of Discrimination against Women, 1979, GA Res 34/180: *“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country”*.

<sup>27</sup> E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, cit.

<sup>28</sup> *Ibid.*

*“that women be given the opportunity to have a real and viable input in all decision-making processes”*<sup>29</sup>.

When it comes to the implementation of Article 7, the CEDAW General Recommendation No. 23 identifies specific mechanisms apt to address the imbalance of participation of women and increase their equal access to politics<sup>30</sup>.

In line with the CEDAW Committee approach, it became apparent at the domestic level how the use of temporary special measures consolidated what Rubio-Marín defines as the “participatory turn”, namely a shift from “formal” to “substantive” equality<sup>31</sup> (see above). For instance, in Latin America several countries adopted quota laws already in the 1990s<sup>32</sup>.

Article 8 addresses the participation and representation of women in international positions (“the external dimension of participatory rights”)<sup>33</sup>, as the *“CEDAW became the first international instrument to address explicitly the issue of women’s participation at international level”*<sup>34</sup>. States Parties are required to *“take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their governments at the international level and to participate in the work of international organizations”* (Article 8). Given its plain text, gender equality is framed to ensure that women could represent Member States at the international level and to participate in the work of international organizations as members of international tribunals and international organizations such as the UN, which play *“key roles in developing international law and human rights”*<sup>35</sup>.

The achievement of equal participation and representation at the international level requires: first, to comply with equality criteria during the appointment process, and second, to adopt transparent selection processes at the domestic level<sup>36</sup>. By ensuring women participation, both provisions strengthen non-discrimination<sup>37</sup>.

In the next section, the analysis will seek to understand whether the distinction between the internal and external dimension of participatory rights reveals a gap in terms of the parity and equality principles by obscuring the relevance of Article 8. In line with the overall aim of the General Recommendation 40 adopted by the CEDAW Committee

<sup>29</sup> S. WITTKOPP, *Article 7*, in P. SCHULZ, R. HALPERIN-KADDARI (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, Oxford, 2022, pp. 198-220.

<sup>30</sup> See generally CEDAW, CEDAW, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures*, UNDOC. HRI/GEN/1Rev.7, 2004.

<sup>31</sup> R. RUBIO-MARÍN, W. KYMLICKA (eds.), *Gender Parity and Multicultural Feminism: Towards and New Synthesis*, Oxford, 2018.

<sup>32</sup> See generally A. PIATTI-CROCKER (ed.), *Diffusion of Gender Quotas in Latin America and Beyond*, Lausanne, 2011.

<sup>33</sup> E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, cit.

<sup>34</sup> *Ibidem*.

<sup>35</sup> C. MARTIN, *Article 8 of the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A Stepping Stone in Ensuring Gender Parity in International Organs and Tribunals*, in INTLAWGRRLS, *Blog on International Law, Policy and Practice*, 2016, available at <https://ilg2.blog/2016/01/13/article-8-of-the-convention-to-eliminate-all-forms-of-discrimination-against-women-cedaw-a-stepping-stone-in-ensuring-gender-parity-in-international-organs-and-tribunals/>; S. WITTKOPP, *Article 8*, in P. SCHULZ, R. HALPERIN-KADDARI (eds.), *op.cit.*; E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, cit.

<sup>36</sup> S. WITTKOPP, *Article 7*, cit., p. 198. E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, cit.

<sup>37</sup> C. GERMANO, E. FORNALÉ, *Gender Equality in Crisis: Emerging Challenges for Democratic Legitimacy*, in E. FORNALÉ (ed.) *Gender Equality. Reflecting on Power, Representation, and Global Justice*, cit.

– illustrated above – it is crucial to conceptualize the role of affirmative actions in this neglected area as well.

#### 4. Participation and Representativeness at International Level

The CEDAW aims to ensure women's presence "*as delegates and representatives of their own countries at international level and [as participants] in the work of international organizations*"<sup>38</sup>. Slaughter and Charlesworth highlighted how the "unrepresentativeness" of more than half the world's population was a reality and that it clearly undermined "*international institutions' claims to internationalism*"<sup>39</sup>. Article 8 should be read together with the principle of equality and non-discrimination; as has been very well recalled by the Human Rights Council Advisory Committee in its most recent report on women's representation of women in human rights organs and mechanisms, "[u]nderrepresentation of women in international bodies and mechanisms has a significant impact on the human rights to equality and to non-discrimination"<sup>40</sup>; the report highlights that "[t]he rights to equality and to non-discrimination extend to the right of women to equal participation in all spheres of life, including international decision-making"<sup>41</sup>.

The CEDAW Committee, in its interpretation of Article 8, has recalled the duty of Member States to adopt temporary measures<sup>42</sup> – such as a quota system, in both the diplomatic service and the participation in international organizations – and as highlighted by Martin this duty has "*almost universal validity given that the Convention is one of the widest ratified human right treaties at international level*"<sup>43</sup>.

However, the number of women currently elected in positions at international level Member States is still low. The aim is to outline challenges that persist in three areas at the international level where, in line with Article 8 of the CEDAW, equality in participation and representation of women has been identified as crucial: women and international bodies; women and the international judiciary; women and diplomacy. For each area of action, the Article identifies formal and informal mechanisms of exclusion to clarify the ability/inability of affirmative actions to affect the perpetuation of gender divides. By bringing these different areas together, the Article aims to highlight the weaknesses of the externalization of the participatory regime at the roots and to define

<sup>38</sup> HRC, *Convention on the Elimination of All Forms of Discrimination against Women*, of 18 December 1979, Resolution 34/180, UNDOC. A/RES/34/180, para. 22.

<sup>39</sup> A. SLAUGHTER, H. CHARLESWORTH, *The Gender of International Institutions*, in *American Society of International Law*, Volume 44, 1995, p. 79 and ff.

<sup>40</sup> Human Rights Committee, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance. Report of the Human Rights Council Advisory Committee*, of 21 May 2021, UNDOC. A/HRC/47/51, para. 6.

<sup>41</sup> *Ibidem*, para. 7.

<sup>42</sup> CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women, The Netherlands*, CEDAW/C/NLD/CO/5, 2010, para 33: "*The Committee calls upon all the governments of the State party to accelerate their efforts to achieve equal representation in their elected bodies and, with that aim, to adopt temporary special measures, in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25, in particular quotas, numerical goals and measurable targets aimed at increasing the participation of women, including migrant and minority women in political and public decision-making at all levels, in security and defence sectors, as well as the representation of women in the diplomatic service and international organizations*".

<sup>43</sup> C. MARTIN, *op.cit.*; E. FORMALÉ, *Embracing Gender Parity at International and European Level*, cit., in S. DE VIDO, M. FRULLI (eds.), *op.cit.*, pp. 62-73, p. 67.

the contours and the content of the common responsibility of the Member States for providing a systemic oversight.

#### 4.1. Embracing Gender Parity at the United Nations: A Closer Look at UN Treaty Bodies

The UN Secretary-General has made achieving gender parity at the UN an urgent priority<sup>44</sup>. This topic is crucial because even though the UN Secretary-General is making significant progress in achieving gender parity at the UN<sup>45</sup>, critical challenges persist in increasing the participation of women for positions nominated by States<sup>46</sup>. This is true especially if we look at six treaty bodies where the representation of women is below – or only slightly above – 40 per cent.<sup>47</sup>

In 2014, the UN General Assembly issued Resolution 68/268 on “*Strengthening and enhancing the effective functioning of the human rights treaty body system*” to request the Office of the UN High Commissioner for Human Rights and the Secretary-General as well as States Parties to support equal representation in the membership of the human rights treaty bodies<sup>48</sup>.

In 2019 the Human Rights Council adopted the Resolution 41/6<sup>49</sup> that created an Advisory Committee to draft a report on this thematic area, together with the Working Group<sup>50</sup> and the CEDAW Committee<sup>51</sup>. In line with this, the UN Human Rights Advisory

<sup>44</sup> See generally E. FORNALÉ, *Embracing Gender Parity at International and European Level*, cit., pp. 62-73.

<sup>45</sup> The 2021 report provides data on women’s representation in the United Nations for the period from 2018 to 2019, in line with the General Assembly Resolution 74/128. See generally UN General Assembly, *Improvement in the Status of Women in the United Nations Systems, Report of the Secretary-General*, of 1 July 2021, UNDOC. A/76/115.

<sup>46</sup> “In some Committees there are only two members who are of a different gender from the others (annex XXIII). (...) The practice of States presenting ‘clean slates’ – meaning an equal number of candidates for the positions to be filled – does not encourage a competitive election process. There is currently no transparent process to evaluate the merits of the nominated candidates”. The report highlights that “[f]or some time, women have been underrepresented in not only human rights organs and mechanisms, but also in the United Nations system in general”. HRC, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance. Report of the Human Rights Council Advisory Committee*, of 21 May 2021, UNDOC. A/HRC/47/51; ID., *Status of the Human Rights Treaty Body System. Report of the Secretary-General*, of 10 January 2020, UNDOC. A/74/643, para. 59.

<sup>47</sup> As of 18 September 2024, the representation of women was below 40% in the Human Rights Committee (39%), the Committee on Economic, Social and Cultural Rights (33%), the Committee against Torture (20%), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (29%) and the Committee on Enforced Disappearances (40%), while in the Committee on the Elimination of Racial Discrimination the corresponding figure has been slightly above 40% only from 2018 (being at 44% as of 18 September 2024).

<sup>48</sup> See generally UN General Assembly of the United Nations, *Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System*, of 9 April 2014, UNDOC. A/RES/68/268.

<sup>49</sup> HRC, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance*, of 21 May 2021; ID., *Status of the Human Rights Treaty Body System. Report of the Secretary-General*, para. 66.

<sup>50</sup> Established by the HRC at its fifteenth session in 2010 with Resolution 15/23. For more information see the official website available at: <https://www.ohchr.org/en/issues/women/wgwomen/pages/wgwomenindex.aspx>.

<sup>51</sup> The Committee on the Elimination of Discrimination against Women is the monitoring body of the CEDAW. For more information, see the official website available at: [https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx#:~:text=The%20Committee%20on%20the%20Elimination%20of%20Discrimination%20against%20Women%20\(CEDAW, rights%20from%20around%20the%20world.](https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx#:~:text=The%20Committee%20on%20the%20Elimination%20of%20Discrimination%20against%20Women%20(CEDAW, rights%20from%20around%20the%20world.)

Committee was asked to illustrate “*current levels of representation of women in human rights organs and mechanisms such as the Advisory Committee, the treaty bodies and the special procedures established by the Human Rights Council*”<sup>52</sup>.

In drafting its report, the Advisory Committee organized four regional consultations: one in Bangkok, one in Geneva and two remote consultations with stakeholders from Latin America and Africa, respectively<sup>53</sup>. And especially from the consultation with the stakeholders from Latin America, the Advisory Committee included some specific points in the report, namely “*the lack of a transparent and public procedure for identifying candidates at the national level [, which] makes it difficult for women to become aware of available vacancies and compete fairly*”.

For example, Guatemala explained that it lacked an institutionalized system for disseminating information about the presentation of candidatures for United Nations treaty bodies<sup>54</sup>, there is the fact that “*the election of candidates at the United Nations level is frequently subject to an exchange of votes where gender balance is not given proper consideration*”<sup>55</sup>, there is also the fact that “*some of the requirements for positions on United Nations treaty bodies are often seen as obstacles for women candidates [like] the unpaid nature of treaty body memberships[, which] is a barrier for women who are unable to afford unpaid employment*”<sup>56</sup>, and there are still “[i]nsufficient State efforts to systematically publicize and widely disseminate information on available vacancies[, which] constitutes a challenge for women candidates”<sup>57</sup>.

In 2021, the UN Human Rights Council Advisory Committee adopted its final report and its recommendations made evident the need to advance the internal-external dimension of women’s representation and participation<sup>58</sup>.

The recommendations focused on the need to reframe the selection processes by adopting objective criteria, public procedures, and by ensuring that calls for vacancies are publicly available. The Office of the High Commissioner for Human Rights could drive these changes by supporting a wide dissemination of future vacancies.

At the domestic level: the principles of transparency and equality need to inform the selection procedures<sup>59</sup>; at the international level: the principles of impartiality, merit and independence need to guide to transformation of traditional selection processes “*mainly dominated by unwritten rules*”<sup>60</sup>.

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<sup>52</sup> HRC, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance*, of 21 May 2021, UNDOC. A/HRC/47/51, para. 1.

<sup>53</sup> HRC, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance*, of 21 May 2021, UNDOC. A/HRC/47/51, para. 4; ID., *Status of the Human Rights Treaty Body System. Report of the Secretary-General*.

<sup>54</sup> *Ibidem*, para. 48.

<sup>55</sup> *Ibidem*, para. 52.

<sup>56</sup> *Ibidem*, para. 55.

<sup>57</sup> *Ibidem*, para. 61.

<sup>58</sup> E. FORMALÉ, *Embracing Gender Parity at International and European Level*, cit., pp. 62-73, p. 70. See generally HRC, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance*, of 21 May 2021, UNDOC. A/HRC/47/51.

<sup>59</sup> UN General Assembly, *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance*, cit., para. 18.

<sup>60</sup> E. FORMALÉ, *Embracing Gender Parity at International and European Level*, in S. DE VIDO, M. FRULLI (eds.), *Commentary to the Istanbul Convention*, 2023, pp. 62-73, p. 70. See generally S. HENNETTE-VAUCHEZ, *Gender Balance in International Adjudicatory Bodies*, in *Max Planck Encyclopaedia of International Law*, 2019.

#### 4.2. Gender Parity on the Bench: The Role of Female Judges in International Courts

Following on from the situation described in the previous section, the aim of this second part is to provide some insights into the inclusion of women in international courts. Today, the research agenda is making significant progress towards questioning the gendered dimensions of the international judiciary<sup>61</sup>. Research has already shown that increasing the number of female judges in a judicial setting would not only have a symbolic meaning or merely address the willingness to ensure some equality standards on the bench. On the contrary, female judges can add a different perspective on the interpretation and application of law<sup>62</sup>. Accordingly, we can say that “*parity on judicial benches matters*”<sup>63</sup> and indeed, States are increasingly required to adopt special measures in order to ensure some degree of priority consideration, and statutes could include any special provision on the presence of men and women on the bench<sup>64</sup>.

The paucity of women on the bench is a recognized issue: as of 18 September 2024, women comprise 27.78% of international tribunals and even though the statutes of international courts call for a fair representation, parity is far from being reached<sup>65</sup>. In this respect, one illustrative example is the International Tribunal on the Law of the Sea (ITLOS). As of 18 September 2024, six of its 21 judges are women, but until 2011 no woman had ever served on the ITLOS. In its statute the ITLOS doesn’t include any specific gender criterion; it simply requires that its members are “*elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea*” (Art. 2) while a “*whole representation of the principal legal systems of the world and equitable geographical distribution*” are ensured<sup>66</sup>. Despite the fact that it has been one of the latest international tribunals to nominate women, the results of its recent election process highlighted that gender balance has been prioritized in the national nomination processes<sup>67</sup>.

This case highlights how the appointment process, the dynamics, and the barriers to be overcome by women judges at the international level are shaped by the lack of formal pathways for the regulation of the entry of women to international courts<sup>68</sup>. According to Ni Aloain, increasing attention needs to be paid to the “*institutional culture that sustains*

<sup>61</sup> N. AOLAINE, *More Women – But Which Women? A Reply to Stéphanie Hennette Vauchez*, in *European Journal of International Law*, Volume 26(1), 2015, pp. 229-236; F. TULKENS, *More Women – But Which Women? A Reply to Stéphanie Hennette Vauchez*, in *European Journal of International Law*, Volume 26(1), 2015, pp. 223-227.

<sup>62</sup> For a general introduction, see R. HUNTER, *An Account of Feminist Judging*, in R. HUNTER, C. MCGLYNN, E. RACKLEY (eds), *Feminist Judgments: From Theory to Practice*, Oxford, 2010, pp. 30-43.

<sup>63</sup> J.L. CORSI, *Legal Justifications for Gender Parity on the Bench of the International Court of Justice: An Argument for Evolutive Interpretation of Article 9 of the ICJ Statute*, in *Leiden Journal of International Law*, Volume 32(4), 2021, pp. 977-1000.

<sup>64</sup> F. TULKENS, *op.cit.*; S. KENNEY, *Gender and Justice: Why Women in the Judiciary Really Matter?*, London, 2013; GROSSMAN, *Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?*, in *Chicago Journal of International Law*, Volume 12(2), 2012, pp. 647-684.

<sup>65</sup> According to data provided by GQUAL’s monitoring process of international tribunals and bodies disaggregated by gender.

<sup>66</sup> United Nations Convention on the Law of the Sea, 10 December 1982, Annex VI: *See generally* Statute of the International Tribunal on the Law of the Sea, of 10 December 1982.

<sup>67</sup> *See generally* International Tribunal on the Law of the Sea (ITLOS), *List of Candidates for the Election of Seven Members of the International Tribunal for the Law of the Sea*, 2020; A.N. HONNIBAL, *ITLOS: Election of Seven Members of the Tribunal*, in *De Maribus*, 2020, available at <https://demaribus.net/2020/08/28/itlos-election-of-seven-members-of-the-tribunal/>.

<sup>68</sup> L. CHAPPELL, G. WAYLEN, *Gender and the Hidden Life of Institutions*, in *Public Administration*, Volume 91(3), 2013, pp. 599-615; G. HELMKE, S. LEVITSKY, *Informal Institutions and Comparative Politics: A Research Agenda*, in *Perspectives on Politics*, Volume 2(4), 2004, pp.725-740.

and enables” women’s participation and shapes informal pathways for the regulation of the entry of women into international courts; this could be done by collecting evidence of the extent to which institutionalized culture influences appointments in the international judiciary<sup>69</sup>.

#### 4.3. Gender and Diplomacy: An Exploratory Inquiry

In the last part, the Article identifies some emerging concerns about state practices in appointing representatives internationally in line with the wording of the CEDAW (Article 8)<sup>70</sup>.

Despite significant concern about the gender dimension of diplomatic practices, very few studies dealing with it were available at the time of the adoption of the CEDAW<sup>71</sup>. Data available illustrates slow progress towards increasing women’s presence in government structures, not least because of the continued inequality of representation in this area<sup>72</sup>. For instance, 20.54 % of the world’s ambassadors were women in 2023<sup>73</sup>.

What is increasingly interesting is to examine whether participation at the international level has a direct link with development at the domestic level. The Article raises two questions: first, whether the spread of gender quotas as the “*preferred institutional mechanism*” to increase women’s participation in general has a catalytic effect on diplomatic representation<sup>74</sup>; and second, whether the adopted constitutional amendments and legal guarantees have also embraced parity of representation at the international level by contributing to the elimination of indirectly and directly discriminatory legislation and practice on recruitment, selection, and promotion procedures in diplomatic service.

Through an in-depth analysis of reports submitted by Member States to the CEDAW Committee and concluding observations adopted by the CEDAW Committee it is possible to provide some tentative replies to these questions. The preliminary results allow us to confirm that a limited number of measures have been taken by States to increase gender representation at the international level, in particular in foreign affairs<sup>75</sup>.

<sup>69</sup> M. N. BARNETT, M. FINNEMORE, *The Politics, Power and Pathologies of International Organizations*, in *International Organizations*, Volume 53(4), pp.699-732; M. ELSIG, M. POLLACK, *Agents, Trustees, and International Courts: The Politics of Judicial Appointment at the World Trade Organization*, in *European Journal of International Relations*, Volume 20(2), p. 391 and ff.

<sup>70</sup> The CEDAW Committee has raised the attention of States members to ensure that women “*be given equal opportunities to be recruited, selected, and promoted*” to/for diplomatic positions.

<sup>71</sup> See generally CEDAW, *Report of the Secretariat on the Implementation of Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women, Analysis of Articles 7 and 8 of the Convention*, of 30 November 1993, UNDOC. CEDAW/C/1994/4.

<sup>72</sup> G. SLUGA, C. JAMES (eds.), *Women, Diplomacy and International Politics since 1500*, London, 2015.

<sup>73</sup> *Women in Diplomacy Dashboard*, available at <https://womenindiplomacy.ae>. See also: A. TOWNS, *More Female Diplomats in the World Today*, 2023, available at <https://www.gu.se/en/news/more-female-diplomats-in-the-world-today>. The GenDip Dataset on Gender and Diplomatic Representation maps “*all bilateral ambassadors in the world posted between 1968 and 2021*”. The dataset contains “*89,263 ambassador postings from 222 current and former countries*”. See also: B. NIKLASSON, A.E. TOWNS, *Diplomatic Gender Patterns and Symbolic Status Signaling: Introducing the GenDip Dataset on Gender and Diplomatic Representation*, in *International Studies Quarterly*, Volume 67(4), 2023, pp. 1-10.

<sup>74</sup> M. PISCOPO, *States as Gender Equality Activists: The Evolution of Quota Laws in Latin America*, in *Latin American Politics and Society*, in *Latin American Politics and Society*, Volume 57 (3), cit.

<sup>75</sup> Out of 565 reports submitted from the entry into force of the CEDAW until 2023 there is no reference to the adoption of specific measures, as temporary measures, to increase women’s participation at the

There is a generalized lack of information about “*efforts to establish objective criteria and processes of the appointment and promotion of women to relevant positions and official delegations*”. At the same time, also the CEDAW Committee devoted less attention to the implementation of Article 8 in its Concluding Observations<sup>76</sup>.

More research is needed to clarify states’ obligations under Article 8 by explaining how it applies to gender parity at the international level. This aspect is extremely relevant for the future implementation of GR40, which could help in identifying the potential to strengthen the internal/external dimension of the participatory turn.

## 5. Gender Parity: The Defining Principle for the Paradigm Shift

The CEDAW Committee, within its mandate, elaborates general recommendations<sup>77</sup>. The topic identified for this General Recommendation is not only relevant but extremely urgent. New responses are needed and among these, the CEDAW Committee identifies the achievement of parity as the first one.

The CEDAW Committee adopted the Concept Note in November 2022<sup>78</sup>. Then the concept note has been presented and discussed during the Half-Day of General Discussion on the Equal and Inclusive Representation of Women in February 2023<sup>79</sup>. The CEDAW Committee piloted the concept of an “Informal Group of Friends of the GR” that met a few times informally with the Chair of the CEDAW WG, Dr. Nicole Ameline (convened by France), briefed by the chair about the GR priorities. Members of the group were 55 and they are State parties that expressed interest in the GR during the half-day of general discussion and in the following discussion with the GR 40 Chair. Between July 2023 and February 2024 several Expert Group Meetings took place<sup>80</sup>.

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international level. The data refers to the database of the GEM project, accompanied by two tools for navigation: The first is an interactive map showing the global evolution of CEDAW implementation and offering country-specific information; The second is a graphical tool that provides a comparative overview of women’s participatory rights and CEDAW committee’s recommendations in this area. Both tools can be freely accessed at the following link: <https://www.womenandparticipation.org/index.php/resources/gem-tools>.

<sup>76</sup> Out of 2082 Recommendations formulated by the CEDAW Committee on Articles 7 and 8, only 255 were devoted to Article 8. In addition, out of 255 39 recommended the adoption of normative measures and 45 the adoption of Temporary Special Measures.

<sup>77</sup> Article 21 of CEDAW. CEDAW, *CEDAW General Recommendation No. 40 (2024) on the Equal and Inclusive Representation of Women in Decision-making Systems. A Parity and Paradigm Shift. Parity: from a Cause to a Norm. From Leaving no one Behind to Bringing Everyone Along*, 2023, available at: <https://www.ohchr.org/en/events/events/2023/half-day-general-discussion-equal-and-inclusive-representation-women-decision>.

<sup>78</sup> *Concept Note on the Future General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems*, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/general-discussion/2023/2022-11-11/Concept-note-GR-40.docx>.

<sup>79</sup> See generally E. FORNALÉ, S. DE VIDO, A. DI STASI, F. CRISTANI, A. IERMANO, *op.cit*; see also, *Submission to the General Discussion on the Draft General Recommendation on Equal and Inclusive Representation of Women in Decision-making Systems*, CEDAW COMMITTEE, 2024, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-recommendation-no-40-equal-and>.

<sup>80</sup> Among the topics addressed: Feminist governance; AI and representation of women in decision making; Feminist foreign policy; Feminist economic governance. See generally GQUAL AND THE WORLD TRADE INSTITUTE, *Beyond Parity: Economic Empowerment, and Promoting Equal and Inclusive Representation of Women in Decision-Making Systems*, Blog, 2024.

The development and adoption of the new General Recommendation on the “*Equal and Inclusive Representation of Women in Decision-making Systems*”. This important process led by the CEDAW Committee, and the General Recommendation represents a critical opportunity for providing guidance to State parties on the implementation of the fundamental obligations of the CEDAW Convention – which includes the rights of women to inclusive and effective participation in both the public and private sectors<sup>81</sup>.

During the Committee’s 88th session, the Committee held a technical briefing for States parties to update States parties about the current draft and the elaboration process. The Committee adopted the GR 40 at its 89<sup>th</sup> session on 22 October 2024.

The content of the GR40 aims to achieve an ambitious change of perspective that will prevent women from simply being slotted into existing male-dominated relations. As described by the CEDAW Committee, the scope of this General Recommendation is to “*ensure equal and inclusive representation of women in all systems where decisions are taken, including in economic life*”<sup>82</sup>. The overall objective is to foster a paradigm shift towards identifying the changes required to achieve parity that means “*full and equal sharing of power*” to be reached by “*mandatory, long term and permanent measures*”<sup>83</sup>.

To this end, the GR40 include seven specific objectives: 1) 50:50 gender parity in decision-making systems; 2) Youth Leadership; 3) Intersectional equality and inclusion of all women in decision-making systems; 4) A comprehensive approach to decision-making systems; 5) Women’s equal power within decision-making systems; 6) Structural transformation of equal and inclusive decision-making systems; 7) Civil society participation in decision-making systems.

The CEDAW Committee for the very first time is providing a definition of “parity” as a core principle to achieve a transformative change. Despite States parties have adopted parity laws or included parity in their constitution, the CEDAW Committee adopted an advanced definition of this concept to make a distinction from “the logic of quota”. As defined by the GR40: “*‘equal and inclusive representation’ as fifty-fifty parity between women and men in all their diversity in terms of equal access to and equal power within decision-making systems, hereinafter also referred to simply as ‘parity’*” (para. 2)<sup>84</sup>.

This new Recommendation would significantly contribute towards identifying the changes required to achieve parity, not only at the domestic but also at the international level, such as in the composition of international tribunals and monitoring bodies. The CEDAW Committee recommends achieving parity in the diplomatic appointments; to establish transparent procedures to appoint women at the international level in official delegations; together with the implementation of a “feminist foreign policy” as a tool for strengthening women’s empowerment. In line with this, concrete measures are required to ensure that selection and nomination processes for positions in international organizations reflect transparency and merit-based selection procedures.

<sup>81</sup> GQUAL AND THE WORLD TRADE INSTITUTE, *Beyond Parity: Economic Empowerment, and Promoting Equal and Inclusive Representation of Women in Decision-Making Systems*, Blog, 2024.

<sup>82</sup> <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/grecommendations/gr40/CEDAW-general-recommendation-40-flyer.pdf>.

<sup>83</sup> Statement by Patricia Schulz, available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/cedaw/general-discussion/2023/gr40-patricia-schulz.docx>.

<sup>84</sup> See generally CEDAW, *General Recommendation No. 40 on the Equal and Inclusive Representation of Women in Decision-Making Systems*, 2024, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations>.

## 6. Conclusions

This article started from the need to identify how to implement participatory rights at the domestic and the international level. This article aimed to redefine the contours of the debate by making a more comprehensive case than that offered by the current conceptualization of women's participation and by assessing the normative implications of the internal/external dimension of participatory rights.

So far, women's participation was conventionally associated with legislation that opened the door to female engagement in politics at the national level. Indeed, there is a lack of attention to the gender imbalance at global level. At the international level it appears even more serious than at the domestic level and it is clearly essential to analyze the persistent structural challenges and barriers. The article conducted a preliminary analysis of how women are appointed and selected in three contexts: international organs (the United Nations), the international judiciary, and diplomacy. State practice confirms the lack of sufficient information on measures adopted at the domestic level to ensure transparent nomination procedures for positions at the international level. This is also reflected in reports submitted by States parties to the CEDAW Committee where not adequate attention is devoted to describing adopted measures to implement Article 8.

The point is that we *“should not assume too early” that the problem of women's participation at the international level will sort itself out as a direct progress of a domestic struggle, instead, the need to engage critically with the informal and discretionary mechanisms that may increase the inclusion of women at the international level*<sup>85</sup>. This could help in identifying new answers to unequal participation and representation. By providing a new understanding of normative and institutional expressions of participatory rights in a systematic way, the CEDAW GR 40 could take the lead in the *“building of a parity-based system”*<sup>86</sup>.

### ABSTRACT

*Why does equal participation matter in our society? Contemporary crises, in all their multi-fold manifestations, show how participation (among citizens, at and between institutional levels) acts as a catalyst for coping strategies by ensuring social cohesion. Current structures of power risk perpetuating inequality between men and women. Instead, it is imperative to understand the normative implications of participatory rights and how institutional encounters, habits and practices still prevent women's full participation in public life.*

*Building on the results of the SNF GEM Project (Gender Equality in the Mirror) this article investigates potential “building blocks of women's participation” at the domestic and the international level by making plain the need to strengthen their complementarity. To this end, the analysis provides insights on the adoption of the CEDAW General Recommendation No 40 on “Equal and Inclusive Representation of Women in Decision-Making Systems”.*

### KEYWORDS

*CEDAW, Equality, Parity, Participation, Political Rights.*

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<sup>85</sup> E. FORNALÉ (ed.), *Gender Equality. Reflecting on Power, Representation, and Global Justice*, cit.

<sup>86</sup> CEDAW, *General Recommendation No. 40 on the Equal and Inclusive Representation of Women in Decision-Making Systems*, cit., para. 3.

DALLA PARTECIPAZIONE SQUILIBRATA ALLA PARITÀ DI GENERE: LA  
NUOVA RACCOMANDAZIONE GENERALE N. 40 DELLA CEDAW

**ABSTRACT**

*Perché una partecipazione paritaria è importante nella nostra società? Le molteplici crisi contemporanee, in tutte le loro manifestazioni, dimostrano come la partecipazione (tra i cittadini, a livello istituzionale e tra le istituzioni) funga da catalizzatore per le strategie di risposta, garantendo la coesione sociale.*

*Le attuali strutture di potere rischiano di perpetuare la disuguaglianza tra uomini e donne. È invece fondamentale comprendere le implicazioni normative dei diritti di partecipazione e come gli incontri istituzionali, le abitudini e le pratiche continuino a impedire la piena partecipazione delle donne alla vita pubblica.*

*Presentando i risultati del Progetto di Ricerca SNF Gender Equality in the Mirror, il presente contributo introduce i potenziali “elementi costitutivi della partecipazione delle donne” a livello nazionale e internazionale, chiarendo la necessità di rafforzarne la complementarità. A tal fine, l'analisi fornirà approfondimenti sull'adozione della Raccomandazione generale n. 40 della CEDAW sulla “Rappresentanza paritaria e inclusiva delle donne nei sistemi decisionali”.*

**KEYWORDS**

*CEDAW, Diritti Politici, Eguaglianza, Parità, Partecipazione.*