(Mis)Shaping Gender Parity Norms: CEDAW's New Guidance on Women's Equal and Inclusive Representation in Decision-Making

Tzili Mor*

As with other core human rights treaties, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), issues general guidance to states parties on how to best comply with treaty obligations given changed or stalled conditions and developments requiring targeted attention. The CEDAW Committee's latest guidance, General Recommendation (GR) 40 (2024), instructs the Convention's 189 states parties on how to advance and uphold the "equal and inclusive representation of women in decision-making systems." The Committee aims to operationalize gender equality in public decision-making, in part with mandated and permanent fifty-fifty men-women quota-like gender parity laws. However, this rigid purported "universal norm and starting point" lacks robust legal grounding, fails to account for inherent tensions and pragmatic implementation challenges, and needlessly sidelines the Committee's own previously articulated flexible substantive gender equality of outcomes approach. Moreover, GR40's ostensibly "radical" new parity standard may propagate an outdated gender binary perspective, eschewing a broader definitional understanding of gender or gender identity. Concerningly, instead of providing clear and authoritative guidance for compliance, GR40 may leave more states parties in a state of confusion rather than enable them to effectively work to accelerate reaching gender equality in decision-making.

I. INTRODUCTION 414
II. NEW GLOBAL GUIDANCE MISSHAPES GENDER PARITY NORMS .. 417
A. Weak Legal Grounding for a Purported "Universal Norm and Starting Point" 418

* Tzili Mor, JD/MSFS, LL.M., Ph.D. in Law candidate, is the former Senior Advisor, Gender and Democracy at the National Democratic Institute for International Affairs (NDI). This Article is based on her work to inform the development of CEDAW General Recommendation 40 during her tenure at NDI. Many thanks for the invitation to present this Article on the "Gender and International Norms" panel at the 2025 Politics and Gender Conference held at Rutgers University, New Jersey. Much gratitude to Mona Lena Krook, Rutgers University; Anne Marie Goetz, New York University; Ramona Vijeyarasa, University of Technology Sydney; and Parvin Huda, DC Bar International Law Community for their thoughtful guiding comments.

B. Departure from Flexible and Goal-Oriented Substantive Gender Equality 420
1. Narrow Fifty-Fifty Parity Supersedes Prior, Nuanced Guidance 420
2. Permanent Rigid Rule Replaces Temporary Special Measures 424
C. Murky Implementation Guidance 426
1. Pitfalls of Numerical Targets..... 426
2. Threats to Women's Leadership Gains..... 428
3. Principals Valued over Gender Equality Principles ... 429
D. Outdated Gender Binary Perspective..... 431
III. CONCLUSION 434

I. INTRODUCTION

Stagnant or declining rates of women's political participation and leadership worldwide have been exacerbated by rising authoritarianism and democratic backsliding, including in previously robust democracies. This reality has spurred renewed calls for more radical efforts to increase and support equal and inclusive representation of women in decision-making systems. Men continue to dominate political leadership roles, women who lead countries remain exceptions, and the number of women cabinet ministers has declined, according to the Inter-Parliamentary Union (IPU) and UN Women's 2025 Women in Politics map.[1] Even after a historic year of elections in 2024 with billions voting in over eighty national elections,[2] gender equality recorded minuscule changes globally with a 0.3% increase of women in parliament and a 0.4% decrease in government positions.[3] Global gender political empowerment remains the largest disparity. Based on an analysis of 146 countries, the 2024 World Economic Forum's Global Gender Gap Report found that reaching

1. *Women in Politics: 2025*, INTER-PARLIAMENTARY UNION (IPU) & U.N. WOMEN (2025), https://www.ipu.org/resources/publications/infographics/2025-03/women-in-politics-2025.

2. Kat Duffy & Katie Harbath, *Defending the Year of Democracy: What It Will Take to Protect 2024's 80-Plus Elections from Hostile Actors*, FOREIGN AFFS. (Jan. 4, 2024), https://www.foreignaffairs.com/united-states/defending-year-democracy.

3. *See* IPU, *supra* note 1; *see also* Press Release, U.N. Women, *Political Leadership Roles in 2025: Men Continue to Dominate* (Mar. 11, 2025), https://www.unwomen.org/en/news-stories/press-release/2025/03/political-leadership-roles-in-2025-men-continue-to-dominate#:~:text=According%20to%20the%202025%20edition,declined%20by%200.4%20percentage%20points; British Group of the Inter-Parliamentary Union, *IPU Analyses Political Leadership Roles in 2025: Men Continue to Dominate* (Nov. 3, 2025), https://www.bgipu.org/activity-reports/political-leadership-roles-in-2025-men-continue-to-dominate/.

gender parity in political empowerment would require 169 years (an increase of seven years over 2023's estimate).[4]

Mainstream efforts to tackle persistent gender inequities in politics typically seek solutions to improve or rebuild, but not dismantle, existing sociopolitical structures. Norm development within the international human rights legal system likewise generally adopts a cautious approach to guiding states on fulfilling their human rights obligations. To do so, expert committees tasked with monitoring core human rights treaties issue general guidance to states who have ratified a given treaty (or convention) on how best to comply with treaty obligations. This is especially important when broad treaty provisions require more detailed explanation, new issues emerge, or changed or stalled conditions and developments demand targeted attention.[5] These general comments or recommendations, issued by a given treaty's oversight committee (also known as a treaty monitoring body, or TMB) carry substantial normative authoritative weight.

Typically, a TMB issues concrete interpretations of treaty provisions to enable more systematic implementation of the treaty by providing specific guidance to states parties. Such guidance helps states parties to better realize treaty provisions, overcome implementation obstacles, and more effectively carry out their treaty responsibilities. The Committee on the Elimination of All Forms of Discrimination against Women (the "Committee"), which oversees its namesake Convention, is likewise authorized to issue general recommendations (GRs) "based on the examination of reports and information received from the states parties."[6] This is typically achieved through a deliberative, consultative drafting process involving States parties, subject matter experts, UN agencies, non-governmental organizations, and civil society actors. As such, legal scholars consider GRs to be a "central facet of the global human rights

4. Kusum Kali Pal, Kim Piaget, Saadia Zahidi & Silja Baller, *Global Gender Gap 2024: Insight Report*, WORLD ECON. F. 5 (June 11, 2024), https://www.weforum.org/publications/global-gender-gap-report-2024/.

5. Treaty Monitoring Bodies, such as the Committee on the Elimination of Discrimination against Women (CEDAW Committee), issue "interpretation[s] of the provisions of its respective human rights treaty" in the form of "general comments" or "general recommendations." Office of the United Nations High Commissioner for Human Rights, *General Comments: Treaty Bodies*, https://www.ohchr.org/en/treaty-bodies/general-comments (last visited Feb. 10, 2026).

6. Convention on the Elimination of All Forms of Discrimination against Women, article 21, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW Convention].

framework."[7] However, as a form of non-binding "soft law," GRs' interpretative legitimacy requires careful drafting of progressive construction of legal standards. Such laddering is often required to scaffold and result in national-level compliance by states parties.[8]

Likely motivated in part by the broader context of glacial progress for women in politics,[9] the Committee of independent experts overseeing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) issued GR 40 (2024) to instruct the Convention's 189 states parties on how to advance and uphold the "equal and inclusive representation of women in decision-making systems."[10] With its latest GR, the Committee laudably aims to accelerate progress in women's representation and operationalize gender equality in public decision-making across all sectors and governance levels.[11] In its quest to outline a speedy roadmap toward women's full enjoyment of their right to equal and inclusive representation, the Committee calls for permanent quota-like gender parity laws mandating fifty-fifty representation of men and women. However, this rigid purported "universal norm and starting point" lacks robust legal grounding, fails to address inherent tensions and pragmatic implementation challenges, and needlessly sidelines the Committee's own previously articulated flexible and goal-oriented approach to substantive gender equality of outcomes. Moreover, GR40's ostensibly "radical" new parity standard propagates an outdated gender binary perspective—of men/women and sex/gender—eschewing a broader definitional understanding of gender and gender identity.[12] Concerningly, instead of providing clear and

7. Ramona Vijeyarasa, *Three Decades of CEDAW Committee General Recommendations: A Roadmap for Domestication, Reporting and Stronger Accountability for Women's Rights*, 25 MAX PLANCK Y.B. OF U.N. L. ONLINE 797 (2022).

8. *Id*.

9. *See, e.g.,* sources cited *supra* notes 1, 3.

10. Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation no. 40 (2024) on the equal inclusive representation of women in decision-making systems, U.N. Doc. CEDAW/C/GC/40 (Oct. 25, 2024) [hereinafter CEDAW GR 40]. The Committee on the Elimination of Discrimination against Women is the body of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee consists of twenty-three experts on women's rights from around the world. United Nations Office of the High Commissioner for Human Rights, *Committee on the Elimination of Discrimination Against Women*, https://www.ohchr.org/en/treaty-bodies/cedaw (last visited Feb. 10, 2026).

11. CEDAW GR 40, *supra* note 10, ¶ 2.

12. *Id*. ¶ 31(d). CEDAW GR 40 calls on states parties to dismantle gender stereotypes by, *inter alia*, taking immediate measures "with parity and *radical inclusion* at its core" (emphasis added). *Id*.

authoritative guidance for compliance, GR40 may leave more states parties unable to effectively accelerate reaching gender equality in decision-making.[13] Instead, the Committee and states parties would benefit from a more consistent and flexible approach that is less focused on strict numerical targets of fifty-fifty women and men and more on enabling supporting factors and substantive equality goals.

II. NEW GLOBAL GUIDANCE MISSHAPES GENDER PARITY NORMS

The new GR identifies a singular roadmap of seven pillars for working toward the equal and inclusive representation of women in decision-making systems:

- (1) fifty-fifty parity between women and men as a starting point and universal norm,
- (2) effective youth leadership conditioned by parity,
- (3) intersectionality and inclusion of women in all their diversity in decision-making systems,
- (4) a comprehensive approach to decision-making systems across spheres,
- (5) women's equal power and influence in decision-making systems,
- (6) structural transformation for equal and inclusive decision-making, and
- (7) civil society representation in decision-making systems.[14]

The GR laudably centers and elevates women's engagement in decision-making as a critical, cross-cutting, and cross-sector prerequisite for substantive equality. It further accounts for the inclusion and intersectionality of women in "all their diversity" and the need for "structural transformations" to that end. While the GR covers broad grounds, this paper primarily focuses on the first and most far-reaching of

13. In contrast, under "Parity in economic decision-making," the Committee requests states parties to merely encourage "gender audits" and calls for incentives for private companies, rather than stipulating legislative and administrative requirements. ("Develop and encourage companies' participation in gender audits to assess their gender-sensitivity, gender-responsiveness and parity level in the division of responsibilities and company culture, providing incentives for good results, and request companies to report annually on measures to institutionalize parity.") *Id*. ¶ 66(k). Thus, the Committee opts for diluted language for the private sector and calls for incentives, but not penalties, for private sector noncompliance with representation of women in all their diversity on equal terms with men. *Id.* ¶ 33(e).

14. *Id.* ¶ 13.

the pillars, the requisite fifty-fifty parity between men and women as "a starting point and universal norm."[15]

A. Weak Legal Grounding for a Purported "Universal Norm and Starting Point"

The Committee focused on the stated urgency to overcome widening gaps and institute better scaffolding for gender equality in politics to introduce a rule of "fifty-fifty parity between women and men in decision-making systems as a starting point and *universal norm*" (emphasis added).[16] However, characterizing fifty-fifty parity in representation as a "starting point" and a "universal norm"—while laudable in some ways—may inadvertently undercut the credibility and utility of this approach by setting up an inflexible rule premised on shaky legal grounding.

The fifty-fifty parity standard in GR 40 lacks persuasive legal grounding and explanation, wants for authoritative foundation, and fails to identify prevailing global or comparative trends that would constitute an emerging norm for such a rigid standard. The GR advances a fifty-fifty gender parity in decision-making systems as the *only path* to decision-making with "real and dynamic meaning and lasting effect".[17] It defines parity as "the full and equal sharing of power on a fifty-fifty basis between women and men [in all their diversity] as a permanent and core feature of all areas, including political, public and economic life."[18] However, most sources cited by the Committee to justify this new *permanent* strict numerical standard either avoid specific percentage goals, apply only to some sectors, or promote lower targets (typically thirty percent) for women's representation. Such an approach risks undercutting the Committee's interpretive standing as gained from its otherwise careful construction.

The GR's Normative Framework section cites several illustrative sources aimed at women's full and equal participation,[19] and though a few

15. CEDAW GR 40 seems to be overbroad, with a kitchen sink approach that includes a range of topics from the disarmament of nuclear weapons to calls to codify the crime of "gender apartheid." *See* CEDAW GR 40, *supra* note 10.

16. CEDAW GR 40, *supra* note 10, ¶¶ 14-15.

17. *Id.* ¶ 14.

18. *Id.* ¶ 15.

19. *See e.g.,* the UN Commission on the Status of Women (CSW) in its 2021 Agreed Conclusions "urges governments at all levels . . . to take the following actions: . . . Encourage the implementation of measures and mechanisms, including appropriate mechanisms to track progress, to achieve the goal of 50/50 gender balance at all levels of elected positions." *See* United Nations Commission on the Status of Women, Agreed Conclusions: Women's full and effective participation in decision-making in public life, as well as the elimination of violence, for achieving

reflect U.N. states parties' consensus, none rises to the level of a universal legal norm as the GR purports.[20] Notably, the cited historic 1995 Beijing Declaration and Platform for Action avoids specifying an explicit numerical gender ratio[21] and opts instead to commit states to establish a goal of "gender balance" or "equal representation of men and women" by, *if necessary*, adopting "positive action" toward a "critical mass of women leaders."[22] The GR also highlights Sustainable Development Goal targets 5.5 (to "ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life") and 16.7 (to "ensure responsive, inclusive, participatory and representative decision-making at all levels"). Neither target, however, has indicators that specifically call for fifty-fifty parity.

While CEDAW, as a treaty,[23] and its interpretation by the Committee rightfully aim to accelerate the development of legal protections and standards around women's human rights, they have to date done so through the articulation of conceptual norms and general aspirational guidance that implicitly accounts for particular contexts and

gender equality and the empowerment of all women and girls, U.N. Doc. E/CN.6/2021/L.3, ¶ 61(1) (Mar. 30, 2021); The Kigali Declaration on Gender Equality and Gender-Sensitive Parliaments as Drivers of Change for a More Resilient and Peaceful World, adopted by the members of the Inter-Parliamentary Union, set an aspirational goal of achieving "gender balance" and "gender parity"—not defined by fifty-fifty numerical terms—in political decision making. The only reference to fifty percent concerns members of parliament setting an example by undertaking fifty percent of caring responsibilities. *See* Inter-Parliamentary Union, Kigali Declaration on Gender Equality and Gender-Sensitive Parliaments as Drivers of Change for a More Resilient and Peaceful World, 145th IPU Assembly (Oct. 15, 2022); noting also a much earlier United Nations' initiative in 2016, Planet 50-50 by 2030 challenges governments to commit to putting women in fifty percent of positions of economic and political power because they are fifty percent of the planet. U.N. President of the G.A., Opening Statement by H.E. Mr. Mogens Lykketoft, President of the 70th session of the General Assembly at International Women's Day: "Planet 50-50 by 2030: Step It up for Gender Equality" (Mar. 8, 2016), https://perma.cc/K4YW-5JYT.

20. CEDAW GR 40, *supra* note 10, ¶ 13.

21. Thirty one years ago, the historic Beijing Declaration and the Platform for Action, adopted unanimously by 189 countries at the Fourth World Conference on Women, highlighted "Women in Power and Decision-making" among twelve critical areas of concern and reasserted the "target endorsed by the [UN] Economic and Social Council of having thirty per cent women in positions at decision-making levels by 1995." U.N., Beijing Declaration and Platform for Action, U.N. Doc. A/CONF.177/20/RES/1, ¶ 182 (1995).

22. *Id.* ¶¶ 182, 190(a), 192(2).

23. *See, e.g.,* CEDAW Convention, *supra* note 6, at art. 2 ("States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women").

circumstances.[24] In contrast, GR 40 adopts a narrow numerical rule. Even if the practice of, for example, legislating quotas, has become a common legal trend, the strict prescription of fifty percent seems both too premature to be deemed as a "universal norm" and impractical to implement.[25]

B. Departure from Flexible and Goal-Oriented Substantive Gender Equality

The new GR's strict fifty-fifty parity rule lacks pragmatic flexibility by imposing a brightline rule that departs from the Committee's own painstakingly developed guidance to states parties on fulfilling their Convention obligations through a substantive equality route with a focus on *temporary* special measures, when needed.

1. Narrow Fifty-Fifty Parity Supersedes Prior, Nuanced Guidance

In GR 40, the Committee outlines the normative obligations of CEDAW states parties to ensure "non-discrimination and substantive equality." It catalogues relevant CEDAW articles and prior GRs on substantive equality[26] that would require assessing "the *de jure* and *de facto* situation of women and implementing policies for substantive equality."[27] That analysis highlights an established understanding that *temporary* special measures designed "to accelerate substantive equality" shall not be considered "a form of discrimination" as they are needed to

24. *See, e.g.,* a study comparing political conditions under which quotas are adopted across eighteen African countries concluded, "That the outcomes of gender quotas are highly contingent on adoption context suggests the need for academics and policy makers to analyze the politics behind these measures to develop country-specific approaches for empowering women in politics." Christie Marie Arendt, *From Critical Mass to Critical Leaders: Unpacking the Political Conditions Behind Gender Quotas in Africa*, 14 POL. AND GENDER 295 (2018).

25. Generally under international law, an emerging international legal standard or norm, even short of peremptory norms, should reflect a demonstrated trend towards consistent acceptance of the principle by a significant number of states, often through nonbinding resolutions, declarations or guidelines, state practice ideally arising out of legal obligation rather than convenience or courtesy, growing consensus by jurists and scholars, and active promotion of the standard through advocacy and policy development. *See, e.g.*, MAKAU MUTUA, HUMAN RIGHTS STANDARDS: HEGEMONY, LAW AND POLITICS 11 (SUNY Press 2016).

26. CEDAW Committee, General recommendation No. 25: Article 4, paragraph 1 of the Convention (temporary special measures), U.N. Doc. CEDAW/C/2004/WP.1/Rev.1 (2004) [hereinafter CEDAW GR 25]; CEDAW Committee, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) [hereinafter CEDAW GR 28].

27. CEDAW GR 40, *supra* note 10, ¶ 24.

"address socially and culturally constructed inequalities."[28] The GR then leaps with no rationale from this flexible approach to achieving substantive equality primarily through instituting temporary special measures to instructing states parties to adopt permanent measures of fifty-fifty parity in law (de jure) and as demonstrated in outcome (de facto). The GR section on non-discrimination and substantive equality concludes that existing national legal systems are currently insufficient and recommends that states parties "[a]mend the constitution and legislative frameworks to institutionalize fifty-fifty parity between women and men in all spheres of decision-making."[29] Therefore, the Committee ignores its own prior guidance[30] and concludes its analysis with narrow recommendations to states parties to institute fifty-fifty parity through constitutional and legislative reforms, action plans, and public outreach that calls for permanent measures.

In GR 40, the Committee invokes GR 23 on women in public life[31] to justify "equal sharing of decision-making power."[32] However, GR 23 does not use the language of parity or specify a fifty-fifty division (or any numerical ratio),[33] but instead opts for the legally-grounded language of "equal opportunity," "basis of equality," "equal terms," "Equal rights to . . . ," "equal account," and "achieve balance."[34] In another prior GR (GR 28), the Committee interprets states parties' core obligation to implement

28. *Id*. ¶¶ 24-5.

29. *Id*. ¶ 26(b); Note also research suggesting disappointing results of such constitutionalization. Adam Chilton & Mila Versteeg, *The Effect of Constitutional Gender Equality Clauses*, 51 J. LEGAL STUD. 329 (2022). ("Across all three methods, we find no evidence that constitutional gender equity clauses improve *de facto* gender equality. However, we find some preliminary evidence that constitutional clauses guaranteeing maternity leave and protecting motherhood may be associated with improved gender equality").

30. *See, e.g*., the Committee's approach is explained in General Recommendation No. 34 on Rural Women: "States parties should take *all measures, including temporary special measures, necessary to achieve the substantive equality* of rural women in relation to land and natural resources, and design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that impede their rights to land and natural resources" (emphasis added). CEDAW Committee, General recommendation No. 34 (2016) on the rights of rural women, U.N. Doc. CEDAW/C/GC/34, ¶ 57 (Mar. 7, 2016).

31. CEDAW Committee, General Recommendation No. 23: Political and Public Life, U.N. Doc. A/52/38 (1997) [hereinafter CEDAW GR 23].

32. CEDAW GR 40, *supra* note 10, ¶ 32.

33. GR 23 mentions a specific percentage amount as an example of "a rule that neither sex should constitute less than 40 per cent of the members of a public body" as a noteworthy measure adopted by States parties to ensure equal participation by women (para. 29) and thirty to thirty-five percent as the critical mass needed for women's participation to have real impact on political style and content of decisions (para. 16). CEDAW GR 23, *supra* note 31, ¶¶ 16, 29.

34. *Id*. at preamble, ¶¶ 3, 14, 32, 45-6.

CEDAW's mandate to eliminate discrimination against women and "achieving women's substantive equality with men . . . [and to] provide a framework for the practical realization of the principle of formal and substantive equality of women and men."[35] The Committee further instructs states parties in GR 28 that

> to facilitate access to and provide for the full realization of women's rights [would require] the promotion of de facto or substantive equality through all appropriate means, including through concrete and effective policies and programmes aimed at improving the position of women and achieving such equality, including where appropriate, through the adoption of temporary special measures.[36]

Moreover, the Committee notes that temporary special measures should only be imposed "where appropriate," and not as a mandated "starting point," as GR 40 outlines.

The Committee in GR 25 on temporary special measures defines substantive equality as "women's de facto equality with men," and specifies that this would include that "women be given an equal start and that they be empowered by an enabling environment to achieve equality of results."[37] It reinforces that "[e]quality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men[,] . . . equality in decision-making and political influence."[38] GR 25 further asserts that only "[u]nder certain circumstances, non-identical treatment of women and men will be required in order to address such differences[including through] a redistribution of resources and power between men and women."[39]

In contrast to GR 40's rigid numerical approach, GR 25 emphasizes tackling underlying causes of discrimination against women by considering the "lives of women and men . . . in a contextual way, and [also considering] measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns."[40]

In addition, the Committee imports the term "parity," which it newly and strictly defines in GR 40 as "the full and equal sharing of power on a fifty-fifty basis between women and men as a permanent and core feature

35. CEDAW GR 28, *supra* note 26, ¶ 24.
36. *Id*. ¶ 20.
37. CEDAW GR 25, *supra* note 26, ¶ 8.
38. *Id*. ¶ 9.
39. *Id*. at ¶ 8.
40. *Id*. at ¶ 10.

of all areas, including political, public and economic life."[41] It further asserts that "[r]eferences to parity in the present general recommendation are always in relation to fifty-fifty parity between women and men in all their diversity."[42] In doing so, the Committee both eschews the common understanding of the term and imposes a new, restrictive numerical definition for substantive equality.

The common definition of parity encompasses a broader sense of equality, i.e., "the quality or state of being equal or equivalent" (Merriam-Webster Dictionary), or "condition of being equal, especially regarding status or pay" (Oxford English Dictionary).[43] The Committee has neither used the term "parity" nor defined it in any of the prior GRs it cites in GR 40. The term is not even mentioned in GR 23 on women in public life (the predecessor GR on the "full and equal" participation of women in politics); GR 25 on temporary special measures stops short of prescribing a numerical target; and GR 28 on the core obligations of states parties likewise opts for broader equality terminology.[44] Until the issuance of GR 40, the Committee had advocated for gender equality as beyond mere numbers, or a "fifty-fifty" world.

Thus, GR 40's strict numerical standard ignores the Committee's own prior guidance and recommendations that exhort states parties to work toward a goal of "equality of results or outcomes" as a guiding legal principle of substantive equality.[45] Adhering to this more nuanced substantive equality standard—as previously articulated by the Committee, and as more reflective of comparative and global equality law[46]—along with goal-oriented benchmarks toward substantive gender

41. CEDAW GR 40, *supra* note 10, at ¶ 15.

42. *Id*.

43. *See Parity*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/parity (last visited Feb. 11, 2026); *Parity*, OXFORD ENG. DICTIONARY, OXFORD U. PRESS, https://www.oed.com/dictionary/parity_n1?tab=meaning_and_use&tl=true#31979983 (last visited Feb. 11, 2026).

44. *See* CEDAW GR 23, *supra* note 31; CEDAW GR 25, *supra* note 26; CEDAW GR 28, *supra* note 26.

45. CEDAW GR 28, *supra* note 26, ¶¶ 16, 24.

46. A review of gender equality legislation in Europe stressed "practical realization" via laws with clearly stated purpose and content, harmonizing wording and definitions, removing legal loopholes, and striving for "realistic implementation and compliance." Biljana Kotevska & Maria Mousmouti, *Comparative Note on Gender Equality Laws Across the OSCE Region*, Biljana Kotevska & Maria Mousmouti, *Comparative Note on Gender Equality Laws Across the OSCE Region*, GEND-All/475/2023 [NS], 2024 (Warsaw), at 2-3, https://share.google/gaGMGx15DVkJI3dc7.; The International Foundation for Electoral Systems, *Lessons on Gender Equality and Women's Political Participation: Election Case Law Analysis Series The International Foundation for Electoral Systems*, (2021), at 12, https://www.ifes.org/publications/ifes-election-

equality of outcomes would have enjoyed stronger legal grounding and greater feasibility of implementation.

2. Permanent Rigid Rule Replaces Temporary Special Measures

The new framing of parity and equality as requiring a fifty-fifty reality as a starting point, universal norm, and *permanent* legal feature, further sidelines the Committee's own past guidance on adopting *temporary* measures to accelerate de facto equality. The Committee has generally only invoked such measures—including positive action and affirmative action—under the umbrella of "temporary special measures" (TSMs) per CEDAW article 4 which clarifies that such measures shall not be deemed as discriminatory given their remedial goal and *temporary* nature. In contrast, GR 40 discards the TSMs framework—temporary requirements en route to equality—in favor of a "permanent and core feature" of fifty-fifty parity as a "legal principle and permanent universal feature of good governance."[47] Moreover, while GR 40 seeks to impose *permanent* special measures as a universal standard across the board, in it the Committee also inconsistently—and without apparent explanation—instructs states parties in some contexts to adopt temporary *and* permanent measures, and in others only temporary measures.[48]

This new framing represents a sharp departure from temporary special measures to permanent rules. For example, after defining parity as the "equal sharing of power on a fifty-fifty basis between women and men as a permanent and core feature of all areas," GR 40 cautions states parties that "[l]egislation guaranteeing parity is thus not intended to be removed once women's historical disadvantages have been redressed but remains as a legal principle and permanent and universal feature of good

---

case-law-analysis-series-lessons-gender-equality-and-womens-political ("courts have, and undoubtedly will continue to have, a significant role in determining whether quotas, and other more progressive forms of affirmative action, are a viable mechanism for advancing gender equality.").

47. CEDAW GR 40, *supra* note 10, ¶ 15.

48. For example, GR 40 calls on states parties to adopt both "permanent and temporary special measures" in para. 26(d) to "[p]romote support for and understanding of the non-discriminatory nature of temporary and permanent measures for parity through educational and awareness-raising measures on substantive equality," and in para. 66(e) to "[e]nsure equal access for women-owned businesses to public and private sector procurement opportunities, including through permanent and temporary special measures . . . ." In contrast, GR 40 raises the adoption of only temporary special measures in the contexts of for example, parity in the digital economy, "innovative sectors" and STEM studies (¶¶ 66 (n), 66(o), 35(n), respectively); support for single parents (¶ 35(r)); and addressing intersectional disparities (¶ 35(j)). CEDAW GR 40, *supra* note 10.

governance."[49] In addition, the GR fails to explain the difference between TSMs (which states parties often interpret as instituting gender "quotas") and parity laws. As such the concepts are conflated and muddle CEDAW's explicit mandate for TSMs under article 4 and the GR interpreting its scope and reach.

In contrast to GR 40's directive that strict parity measures be permanent, CEDAW article 4 unequivocally states that such measures are to be temporary ("these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved").[50] The Committee's key GR on states parties' core obligations to implement CEDAW, GR 28, explains, "The obligation to fulfil requires that States parties take *a wide variety of steps* to ensure that women and men enjoy equal rights de jure and de facto, including, *where appropriate, the adoption of temporary special measures in line with article 4*."[51] As such, GR 28 recognizes that extreme action may be essential to reach substantive equality of results if implemented as a *temporary* special measure—as authorized by the Convention—and only "*where appropriate.*"[52] GR 28 specifically states that "appropriateness" requirements (e.g., the terms "appropriate means" and "appropriate measures") would "comprise measures ensuring that a State party: . . . (d) Adopts temporary special measures that achieve sex non-discrimination and gender equality in practice (fulfil)."[53] Neither the Convention text nor the Committee's prior interpretations and the practice of other treaty monitoring bodies[54] suggest a mandate for non-temporary measures to compel a fifty-fifty ratio of men and women across all areas, as per the new GR 40 guidance.[55]

---

49. CEDAW GR 40, *supra* note 10, at ¶ 15.

50. CEDAW Convention, *supra* note 6, at art. 4(1).

51. CEDAW GR 28, *supra* note 26, ¶ 10 (emphasis added).

52. *See* CEDAW GR 28, *supra* note 26, ¶ 20; *note also*, GR 25 on TSMs: "There is a clear difference between the purpose of the "special measures" under article 4, paragraph 1, and those of paragraph 2. The purpose of article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature" (emphasis added). CEDAW GR 25, *supra* note 26, ¶ 15.

53. CEDAW GR 28, *supra* note 26, ¶ 37(d).

54. *See* CEDAW GR 25, *supra* note 26, ¶ 13, FN 3 ("The practice of treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee, shows that these bodies consider the application of temporary special measures as mandatory to achieve the purposes of the respective treaties"—no reference to imposing or suggesting permanent measures).

55. CEDAW GR 40, *supra* note 10, ¶ 15.

In fact, in interpreting TSMs in the context of women in public life, the Committee in GR 23 stressed that CEDAW article 4 merely "encourages" the use of TSMs to give full effect to CEDAW articles 7 and 8 on equal rights to political and public life and to representation in international bodies. It lists varied "effective temporary strategies" for attaining such equality including "setting numerical goals and quotas and targeting women for appointment to public positions,"[56] but not restricting states to rigid fifty-fifty numerical targets.

C. Murky Implementation Guidance

In addition to GR 40's weak legal grounding for a fifty-fifty parity demand and its departure from the Committee's own prior longstanding flexible substantive equality approach, the GR (1) ignores the failure of most national quotas to reach even lower than fifty percent numerical goals for women in politics, (2) may upend and undermine women-majority contexts and leadership gains, and (3) presumes that merely an equal number of women in decision-making would automatically result in the Convention's goal of greater gender equality and non-discrimination.

1. Pitfalls of Numerical Targets

Most existing national-level quotas are set much lower than fifty percent parity and typically fall short of meeting their quota goals where they do exist. Both realities not only undercut the GR's purported claim that fifty-fifty parity constitutes a "starting point and a universal norm," but suggest a need for a flexible and pragmatic approach, as opposed to a rigid numerical approach, to accelerating the pace of equality of women in decision-making systems, over rigid numerical targets.

Quotas are a commonly employed method to increase women's representation in decision-making bodies. While quotas may lead to greater representation of women and improved perceptions of women in politics,[57] such measures are no panacea, and have overall failed to

56. CEDAW GR 23, *supra* note 31, ¶ 15.

57. *See e.g.*, Jessica Kim & Kathleen M. Fallon, *Making Women Visible: How Gender Quotas Shape Global Attitudes Toward Women in Politics*, 19(4) POL. & GENDER 981-1006 (2023); Punam Yadav, *Do Political Quotas Work? Gender Quotas and Women's Political Participation in Nepal*, 7(2) EUR. J. POL. & GENDER 143 (2024) (In Nepal, political quotas strengthened women's position in society, established women's credibility, and shifted "the social perception of women's presence in politics from being an exception to being an entitlement."); Rikhil R. Bhavnani, *Do Electoral Quotas Work After They Are Withdrawn? Evidence from a Natural Experiment in India*, 103(1) AM. POL. SCI. REV. 23 (2009) (In India, "quotas have

prevent dips or stagnation in the share of women elected.[58] According to the International IDEA Gender Quotas Database, while 138 countries have adopted constitutional, electoral or political party quotas, the average level of representation for women in countries with quotas hovers at around twenty-seven percent.[59] The UN Women's Global Gender Quotas tracker reports that of ninety-four countries with legislative quotas, only thirty-two (slightly more than a third) met or exceeded their legislated quota target (as of January 2024).[60] Of these ninety-four countries, a mere eighteen (less than a fifth) call for fifty percent gender parity,[61] and barely four reached fifty percent or higher of women's representation (i.e., Mexico, Nicaragua, and the United Arab Emirates, with Senegal coming close).[62] Likewise, according to the Council on Foreign Relations' most recent Women's Power Index, which ranks 193 UN member states on their progress toward gender parity in political participation, only six states' national legislatures feature fifty-fifty representation of men and women.[63] This figure has not fluctuated over recent years, whereas, in contrast, the number of women elected to legislatures has fallen.[64] Although 2025 was a record year of elections worldwide, only six parliaments reached an equal or greater representation of women to men in their single or lower chambers.[65]

---

continuing positive effects on women's political representation even one cycle after the quotas are withdrawn.").

58. *See e.g.*, Inter-Parliamentary Union, *Case Studies: When Quotas Go Wrong—and What to Do About It* (Mar. 10, 2022), https://www.ipu.org/news/case-studies/2022-03/when-quotas-go-wrong-and-what-do-about-it; Chin-Huat Wong, *Even the UN Is Struggling to Meet Its Gender Parity Goals*, 360INFO. (Sep. 23, 2024), https://360info.org/even-the-un-is-struggling-to-meet-its-gender-parity-goals/.

59. International IDEA, *Gender Quotas Database: Countries Overview*, https://www.idea.int/data-tools/data/gender-quotas-database/countries (last visited Feb. 17, 2026).

60. United Nations, *Quota Analysis*, U.N. GENDER QUOTA PORTAL, https://genderquota.org/quota-analysis (last visited Jan. 2024).

61. *Id*. Notably, in 2024 there were eighteen of ninety-four states (19%) with legislated fifty-fifty parity quotas, constituting only 9% of 193 UN member states, and 9.5% of 189 CEDAW states parties.

62. The eighteen countries consist of ten in Latin America, three in Africa, two in Southwest Asia and North Africa, two in Europe, and one in Asia. U.N., *supra* note 60.

63. Linda Robinson & Noël James, *Women's Power Index*, COUNCIL ON FOREIGN RELS., https://www.cfr.org/article/womens-power-index (last visited Apr. 1, 2025).

64. Linda Robinson & Noël James, *Women's Power Index Shows Stalled Progress for Women's Political Participation*, COUNCIL ON FOREIGN RELS. (Apr. 3, 2025), https://www.cfr.org/blog/womens-power-index-shows-stalled-progress-womens-political-participation. Note that index "measures women's representation, which refers to the numerical presence of women rather than women's impact or policy preferences." *Id.*

65. The six countries are Rwanda, Cuba, Nicaragua, Mexico, Andorra, and the United Arab Emirates. IPU, *Parliamentary Gender Gap Narrowed over the Past 30 Years but Progress*

Notwithstanding current debates around the benefits, utility and drawbacks of gender political quotas, this poor showing for gender parity even *with legislative* quotas hardly translates into a strong case for an emerging international legal standard for strict numerical outcomes as a prescription for gender equality in decision-making. A mandated fast-track measure of fifty-fifty parity, including in contexts that have historically been unable to meet a lower gender ratio, could risk both a backlash (almost guaranteed given current transnational sociopolitical conservative winds)[66] and a myopic over-emphasis on numbers versus long-term strategies to address underlying structural, systemic, and socio-normative barriers to women's participation in decision-making and leadership posts.

2. Threats to Women's Leadership Gains

The rigid fifty-fifty rule fails to account for the sectors, areas, and geographic contexts where women constitute a leadership or workforce majority. A forced parity rule could perversely require culling the number of women leaders in such contexts. In some situations, a parity law or a fifty-fifty quota could be characterized as gender-neutral and unintentionally set a maximum for women's representation.

For example, GR 40 states that "parity must also be achieved in civil society organizations"[67] and further calls for parity rules "for non-governmental and public and political organizations, including lobby organizations and think tanks"[68] and to "reach parity among university professors."[69] This general list of entities would presumably cover women-headed or dominated entities, such as women's rights organizations, health and welfare organizations, certain academic disciplines and university departments, and medical specialties.[70] While

Stalled In 2024 (Mar. 2025), https://www.ipu.org/news/press-releases/2025-03/ipu-report-parliamentary-gender-gap-narrowed-over-past-30-years-progress-stalled-in-2024.

66. *See* Marina Nord et al., *Democracy Report 2025: 25 Years of Autocratization—Democracy Trumped?*, U. GOTHENBURG: V-DEM INST. 6 (Mar. 2025), https://www.v-dem.net/documents/60/V-dem-dr__2025_lowres.pdf ("It is a truly global wave of autocratization.").

67. CEDAW GR 40, *supra* note 10, ¶ 21.

68. *Id.* ¶ 51(c).

69. *Id.* ¶ 35(i).

70. *See e.g.*, "women predominantly hold management roles in areas traditionally viewed as female centric. For example, 89 per cent of childcare service managers and 78 per cent of aged care service managers are women." INT'L LABOUR ORG., *Where Women Work: Female-Dominated Occupations and Sectors* (Nov. 7. 2023), https://ilostat.ilo.org/blog/where-women-work-female-dominated-occupations-and-sectors/.://ilostat.ilo.org/blog/where-women-work-female-dominated-occupations-and-sectors/.

the Committee exempts affirmative measures that benefit women as necessary to address historic and persistent discrimination, the GR lacks clear guidance about situations where women are already the majority and may consequently need to be displaced by installed male leadership to comply with a strict fifty-fifty parity rule. Moreover, because the Committee deems the rule to be permanent—as opposed to a temporary special measure—it could have lasting and potentially inadvertently adverse outcomes for women in decision-making positions in currently women-headed or dominated entities. For example, would the GR require Rwanda to reduce the number of women in its sixty-four percent women-led parliament[71] or Iceland to recalibrate its women-majority cabinet[72] to better align with CEDAW compliance? Likewise, the GR seems to include no remedial exemption for women's political parties.

In contrast to the GR's fifty-fifty requirement, a flexible approach with benchmarks and goals toward substantive gender equality of outcomes that mandates minimum requirements for women's representation along with legal markers may prove more pragmatic and simpler to implement effectively, while being careful not to potentially undercut women's leadership gains.

3. Principals Valued over Gender Equality Principles

The GR suggests that the inclusion of more women in decision-making systems would automatically lead to gender equality gains in policy and outcomes. As such, it assumes that more women in politics translates into more effective women's rights and gender equality outcomes and greater inclusion. Indeed, research suggests a strong correlation between positive outcomes and the presence of more women in leadership, such as more durable and comprehensive peace agreements,[73] greater legal equality and economic opportunity,[74] and

71. Rwandan Parliament, *Women Representation*, https://www.parliament.gov.rw/women-representation (last visited Mar. 30, 2025).

72. Hallgrímur Indriðason, *Iceland: Equality Must Be Fought in Every Sector*, NORDIC LABOUR J. (Feb. 26, 2025), http://www.nordiclabourjournal.org/i-fokus/in-focus-2025/theme-gender-equality/article.2025-02-20.8567295754. (Iceland's government has seven women and four men ministers).

73. *See e.g.*, Chang, P., Alam, M., Warren, R., Bhatia, R., & Turkington, R., *Women Leading Peace: A Close Examination of Women's Political Participation in Peace Processes in Northern Ireland, Guatemala, Kenya, and the Philippines*, GEO. INST. FOR WOMEN, PEACE AND SEC. (2015), https://giwps.georgetown.edu/resource/women-leading-peace/.

74. Oliver Wyman Forum, *Representation Matters: Women Political Leaders* (2023), https://www.oliverwymanforum.com/global-consumer-sentiment/2023/sep/representation-matters-women-political-leaders.html#fiveDesk.

advanced public confidence in and acceptance of women politicians.[75] In some countries, women policymakers have been more likely than their male counterparts to introduce initiatives on health, education, gender-based violence, family leave, and childcare.[76] In addition, studies illustrate that to be effective, women in political and policymaking systems must constitute a critical mass.[77]

However, inclusion of more women in decision-making alone does not guarantee they will represent or promote gender equality impacts or strengthen other empowerment dimensions[78] per CEDAW's penultimate goal of gender equality and non-discrimination. As such, the GR's emphasis on a strict fifty-fifty descriptive parity may inadvertently encourage women to adapt to existing systems rather than change them in line with CEDAW's underlying equality principles. Even in Iceland, considered one of the most gender-equal countries in the world, the increased share of women in power has not automatically meant a changed system.[79]

The GR states that "[t]he representation of women in civil society is essential for integrating a gender perspective in decision-making and for advising States in the development of gender-responsive legislation and policies."[80] The Committee thus implicitly assumes that merely having women "in all their diversity"—a term the Committee avoids defining—in civil society organizations would inevitably lead to "gender-responsive legislation and policies." (Notably the term "gender-responsive," which appears eight times in the GR, is neither explained nor defined.)

---

75. Kim & Fallon, *supra* note 56.

76. Inter-Parliamentary Union, *Equality in Politics: A Survey of Men and Women in Parliaments* (2008), https://www.ipu.org/resources/publications/reports/2016-07/equality-in-politics-survey-women-and-men-in-parliaments; see e.g., John Hasset, *Summer in the Field: Implementing Political Gender Quotas: Lessons from Mexico,* GLOBAL DEV. POL'Y CTR. (Oct. 1, 2024), https://www.bu.edu/gdp/2024/10/01/implementing-political-gender-quotas-lessons-from-mexico/; Raghabendra Chattopadhyay & Esther Duflo, *Women as Policy Makers: Evidence from a Randomized Policy Experiment in India*, 72 ECONOMETRICA 1409-1443 (2004).; Kathleen Bratton & Leonard Ray, *Descriptive Representation: Policy Outcomes and Municipal Day-Care Coverage in Norway*, 46 AM. J. POL. SCI. 428-437 (2002).

77. Kathleen Bratton & Leonard Ray, *Descriptive Representation: Policy Outcomes and Municipal Day-Care Coverage in Norway*, 46 AM. J. POL. SCI. 428-437 (2002).

78. Bina Agarwal, *Gender, Presence and Representation: Can Presence Alone Make for Effective Representation?*, 53 SOC. CHANGE 34-50 (2023); Pippa Norris, *The State of Women's Participation and Empowerment: New Challenges to Gender Equality*, UN Women Expert Group Meeting Sixty-fifth Sess. of the Commission on the Status of Women (Sep. 28, 2020), https://www.hks.harvard.edu/publications/state-womens-participation-and-empowerment-new-challenges-gender-equality.

79. Indriðason, *supra* note 72.

80. *CEDAW GR* 40, *supra* note 10, ¶ 21.

The assumption that more women in politics equates to more gender-equal policy, egalitarian impacts, or empowerment is particularly problematic given today's rising tides of populist, nationalist, and authoritarian regimes peddling so-called traditional family values and emboldened transnational "anti-gender" efforts.[81] In fact, some recent women-headed civil society organizations have sought to undercut gender equality gains, including in the areas of reproductive and sexual rights and LGBTQI protections.[82] Myriad examples exist of women leaders around the world whose participation in policymaking has *not* translated into progressive, inclusive gender reforms in line with CEDAW's principles and objectives. These examples range from Italy's current and first woman prime minister Giorgia Meloni,[83] to the women recently appointed to the United States government cabinet and judiciary, to most women leaders in Europe affiliated with conservative parties, often with "reactionary positions on gender equalities,"[84] and to a historic legacy of "female dynastic leaders" in Asia unwilling "to challenge the prevailing patriarchal gender ideology."[85]

D. Outdated Gender Binary Perspective

In both content and scope, GR 40 adopts a narrow approach to gender inclusion and equality, and reinforces a men/women and

81. "Moderate and radical anti-feminist forces regard women's rights and gender equality strategies as threatening traditional heteronormative values and institutions, notably the customary division of gender roles in the home and childcare, the family and marriage, and religion, as well as leadership and power in public life. The sense of aggrieved entitlement can trigger anger, fear and even violence." Pippa Norris, *The State of Women's Participation and Empowerment: New Challenges to Gender Equality*, UN Women Expert Group Meeting Sixty-fifth Sess. of the Commission on the Status of Women (Sep. 28, 2020), https://www.hks.harvard.edu/publications/state-womens-participation-and-empowerment-new-challenges-gender-equality.

82. *See e.g.*, Concerned Women for America, which bills itself as "the nation's largest public policy organization for women . . . dedicated to promoting Biblical values and [U.S.] Constitutional principles" successfully advocated for the overturn of the reproductive right to safe abortion in the United States. Katie Everett, *Historic Decision! Victory for Human Rights and Life in Dobbs Decision*, CONCERNED WOMEN FOR AM. (June 24, 2022), https://concernedwomen.org/historic-decision-victory-for-human-rights-and-life-in-dobbs-decision/.

83. Laura Montecchio & Marianna Griffini, *Giorgia Meloni's Ambiguity on Gender Rights*, THE LOOP: ECPR'S POL. SCI. BLOG, https://theloop.ecpr.eu/giorgia-melonis-ambiguity-on-gender-rights/ (last visited Aug. 27, 2025).

84. Costanza Hermanin, *Women Leaders Are Always (from the) Right*, EURONEWS (Jan. 24, 2022), https://www.eui.eu/news-hub?id=women-leaders-are-always-from-the-right&ref=hir.harvard.edu.

85. Mark R. Thompson, *Dynasties' Daughters and Martyrs' Widows: Female Leaders and Gender Inequality in Asia*, ASIA SOC'Y (2021-22), https://disruptiveasia.asiasociety.org/dynasties-daughters-and-martyrs-widows-female-leaders-and-gender-inequality-in-asia.

sex/gender binary that does not reflect currently emerging legal scholarship and understandings of gender identity.[86] Throughout the GR, the Committee repeatedly contrasts and describes the interests and realities of "men and women." Despite its call for "radical inclusion," GR 40 contains only one reference to gender identity and orientation in its twenty-nine pages, the longest CEDAW GR to date.[87] That sole reference is buried in a lengthy list of intersecting forms of discrimination[88] and receives no further attention nor application in any of the GR's substantive recommendations or pillars. Moreover, on eleven occasions, the Committee employs the umbrella phrase women "in all their diversity," without defining or explaining it. The Committee may have chosen this phrase in the interest of political pragmatism. However, utilizing it obscures and subsumes the realities of gender identity and sexual orientation as part of many other categories outlined under the pillar of "intersectionality and the inclusion of women in all their diversity in decision-making systems."[89]

While the GR covers access to sexual and reproductive health and rights information, education and services,[90] it stops short of expressly acknowledging lesbian, bisexual, transgender, queer, and intersex (LBTQI+) women and their particular challenges in gaining equal access to such information, education, and services, let alone the challenges they face in gaining equal access to political participation and influence. Such curtailed access to policymaking adversely affects LBTQI+ women's ability to shape, protect, and fulfill their fundamental civil and human rights including in marriage, family, and personal status laws.

The GR also inconsistently applies the joint framing of women's human rights and gender equality, often reverting to a "women's rights" perspective (or to women's rights as a subset of human rights) rather than to gender equality analysis and perspective. For example, GR 40 observes that "a human rights, including women's rights, perspective" should be adopted to "dismantl[e] gender stereotypes"[91]—instead of suggesting a more holistic gender equality perspective. The Committee further

86. For a critical discussion of currently dominant reliance of international human rights law (IHRL), including by the CEDAW Committee on "the men/women and sex/gender binaries," see, Ekaterina Yahyaoui Krivenko, *Sex and Gender in International Human Rights Law Through the Prism of the 'Women' Category in Recent Case Law,* 24 HUM. RTS. L. REV. 1 (June 2024).

87. Typically, the length of CEDAW General Recommendations range from ten to twenty-five pages. GR 40 is the lengthiest one to date with twenty-eight pages.

88. CEDAW GR 40, *supra* note 10, ¶ 27.

89. *Id.* ¶ 18.

90. *See e.g.*, CEDAW GR 40, *supra* note 10, ¶¶ 55(d), 67, 68(c)-(d).

91. *Id.* ¶ 30.

recommends states parties institute legislative and normative measures that should be "gender-sensitive" but applied and monitored "based on human rights, including women's rights."[92] In discussing empowerment and leadership in the education sector, the Committee calls for the introduction of "women, law and leadership" as an academic discipline"[93] instead of a "*gender*, law, and leadership" that could address gender and power dynamics and barriers affecting all genders. GR 40 also mentions—without definition—the substantive modifiers "gender responsive" eight times, "gender perspective" four times, and "gender transformative" once. The Committee guidance to conduct a "gender analysis" appears only three times in this comprehensive GR and only in the context of training government policymakers and public office holders.[94] Additionally, the GR makes no explicit mention of the terms or concepts of masculinity, though it does cite patriarchy (limited to three mentions confined to one subsection) as an impediment to women's equal and inclusive representation, and describes men and boys as potential "transformative agents for gender equality."[95]

In contrast, women's human rights *and* gender equality perspectives were well integrated in a subsection on "Parity in political and public decision-making" which guides states parties to

> [s]ystematically integrate women's human rights, gender equality and the capacity to interpret the law from a gender perspective in initial training and recurrent capacity-building for judges, prosecutors, law professors and students, police and other law enforcement, and civil servants, in order to address gender bias and stereotyping and ensure gender-responsiveness in judicial and administrative decision-making.[96]

92. *Id.* ¶ 31(d).

93. *Id.* ¶ 35(i).

94. CEDAW GR 40, *supra* note 10, "The Committee recommends that States parties," under the "[r]ight to participate in the formulation and implementation of government policy," to "[e]stablish gender equality mechanisms within decision-making bodies and provide training on gender analysis and integration for law makers and staff to ensure the formulation of gender-responsive legislation, public policies and budgeting" (¶ 47(g)); under the "[r]ight to hold public office and to perform all public functions," to "[a]dopt laws and other measures to ensure parity in decision-making positions at all levels in public administration and the judiciary, including local, customary and informal justice systems, and include the capacity to eliminate gender stereotypes and conduct gender analysis and integration in training and exams for such appointments" (¶ 49(a)); and under the "[r]ight to represent governments at the international level," to "[i]nclude the capacity to eliminate gender bias and stereotypes and to conduct gender analysis and integration in training and exams for diplomatic and ambassadorial appointments" (¶ 55(b)).

95. CEDAW GR 40, *supra* note 10, ¶ 31(d).

96. *Id.* ¶ 49(c).

Likewise, in recommendations on "education towards empowerment and leadership," the Committee calls for "gender-transformative" pedagogies and learning environments and emphasizes gender equality at all education levels.[97] Overall, however, GR 40 perpetuates a binary vision of sex/gender and men/women that favors a simplistic, artificial construction which does not adequately reflect the reality of human bodies and lived experiences.[98]

III. CONCLUSION

The right to participation and representation in decision-making is a foundational civic and human right. Women across myriad identities and geographies often face differentiated experiences of barriers, such as societal prejudice against women's political leadership, a lack of political will on the part of male elites who maintain and benefit from their hold on political power, the exorbitant costs of political campaigning, harmful gender norms, and unchecked rates of gender-based harassment and violence in-person and online, including from women candidates' own political parties. Many of these are highlighted and addressed in this new, commendable effort by the CEDAW Committee to increase gender equality in decision-making systems.

The Committee laudably calls for a "surge in parity" as "key to joint decision-making and to the innovative solutions needed to build resilient societies."[99] Yet, in mischaracterizing a new fifty-fifty gender parity standard as a starting point and universal norm, the Committee advances a rigid and inflexible approach that has weak legal grounding, ignores inherent tensions, and avoids contending with ongoing, often context-specific challenges of inadequate implementation of existing parity measures.

While some contexts would benefit from radical parity measures, those must be situated within a consistent application of a broader set of reforms and a reimagining of power systems that comprehensively address barriers to inclusive and equitable representation and influence at the individual, institutional, and socio-normative levels. In addition, numerical parity should not come at the expense of or as a fig leaf for crucial substantive equality, including in practice, policymaking, or in funding and enforcement priorities. As such the GR could better account for contemporary forms of decision-making capture by non-state actors,

97. *Id.* ¶ 35(b), (d), (h).
98. Krivenko, *supra* note 84.
99. CEDAW GR 40, *supra* note 10, ¶ 4.

private companies, and globalized entities. Finally, despite the GR's call for radical change toward gender parity, it reinforces a binary understanding of gender rather than promoting the adoption of a broader, more inclusive lens that better reflects the reality of human bodies and lived experiences.

As the Committee begins to apply the current GR to states parties in their periodic reviews and concluding observations, it should specify the requisite enabling support factors that take into account the country's *context* as well as transnational factors affecting women's equal and active participation and influence in decision-making, and provide latitude for pragmatic, flexible, and context-specific as well as globally linked temporary and permanent measures. An approach less focused on strict fifty-fifty numerical targets of women and men would enable the Committee and states parties to reimagine a future of gender equality and inclusion-led decision-making and dare to construct better systems rather than merely flood them with quota-driven outcomes.