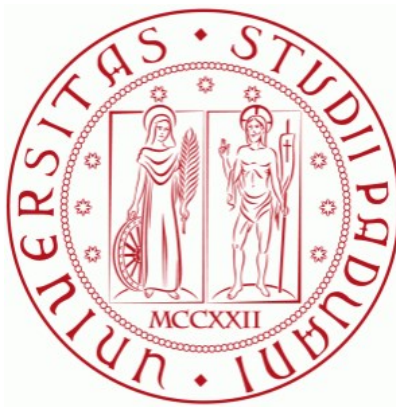


# UNIVERSITÀ DEGLI STUDI DI PADOVA

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**Master's degree in  
Human Rights and Multi-level Governance**



“THE IMPACT OF FEMINIST CONSTITUTIONALISM ON THE PROTECTION OF  
WOMEN'S RIGHTS: COMPARATIVE ANALYSIS OF NATIONAL  
CONSTITUTIONS”

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“Rights should not be understood as trumps”. - Ronald Dworkin

## **Acknowledgement**

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## **List of Acronyms**

CSP – Personal Status Code

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

EFTA – European Free Trade Association

FGM – Female Genital Mutilation

LGBTI – Lesbian, Gay, Bisexual, Transgender, and Intersex

MENA – Middle East and North Africa

NGOS – Non-Governmental Organizations

SO – Strategic Objectives

UDHR – Universal Declaration of Human Rights

UN – United Nations

WEF – World Economic Forum

## **Abstract**

Throughout four chapters, this research goes into an analysis of the influence and effectiveness of the application of feminist constitutions in the promotion and protection of women's rights in different democratic settings. Chapter I, "Literature Review," lays the theoretical and contextual foundations for the research, exploring the historical and contextual background of the problem, formulating the research question and specific objectives, and delving into feminist interpretations, the concept of feminist constitutionalism and its impact on the promotion of gender equality in democratic societies. It also investigates the crucial role of constitutions in safeguarding women's rights and the challenges faced by countries in implementing constitutional policies and reforms aimed at gender equality.

Chapter II, entitled "Case Studies of Feminist Constitutions," focuses on three emblematic cases: Iceland, Tunisia and Bolivia. These countries were strategically selected for their geographic, cultural and socioeconomic diversity, which allows for an enriching comparative analysis of the implementation of feminist constitutions in different contexts. Iceland represents a highly developed nation with a long tradition of promoting gender equality. Tunisia, on the other hand, is located in a region of democratic transition in North Africa, and Bolivia stands out for its rich ethnic and cultural diversity in South America. Through these case studies, we examine in detail how each country has addressed the issue of gender equality in its constitutional framework and what impact these measures have had on women's rights.

Chapter III, "Analysis of the Impact of Feminist Constitutions on Women's Rights," delves into the concrete assessment of the extent to which feminist constitutions have achieved tangible improvements in women's lives in the countries studied. It considers concrete advances and achievements in areas such as political participation, equality in the workplace and education, protection against gender-based violence and the eradication of gender discrimination. Criticisms and possible limitations of these constitutions are also addressed, recognizing that their implementation may face political, social and cultural obstacles. Furthermore, it



elaborates on the need for broader societal changes that support the effective implementation of feminist constitutions, as these measures constitute only one component of a broader approach to addressing gender inequality and violations of women's rights.

Chapter IV, "Feminist Constitutions as a Solution to Women's Rights Violations," constitutes the culmination of the research by exploring in depth the transformative potential of feminist constitutions. It discusses how these constitutions can address the root causes of women's oppression, including the transformation of social norms and values rooted in gender inequality. It highlights their ability to promote gender-sensitive interpretation and application of the law, which is critical to ensuring equal justice. A convincing case is made for why feminist constitutions are presented as an effective solution to women's rights violations, as they not only establish a solid legal basis for gender equality, but also foster a cultural and social change necessary to eradicate gender discrimination and violence.

Ultimately, this research aims to shed light on the impact and implications of feminist constitutions in different democratic contexts, providing a critical assessment of their effectiveness and offering key recommendations for other democratic countries considering adopting similar measures. The thesis seeks to contribute to the academic and policy debate around gender equality and women's rights, highlighting the fundamental role that feminist constitutions play as powerful tools in promoting a more just and equal society for all people, regardless of their gender.

## **Methodology**

This research will use a qualitative and comparative case study approach to analyze the implementation of feminist constitutions in three "Democratic" countries: Iceland, Tunisia and Bolivia, "success" cases regarding the adoption of feminist constitutions. I made this choice based on the relevance of their contextual and social diversity. Considering that these nations represent three distinct contexts in terms of geography, culture and socio-economic development. With the intention of capturing a wide range of experiences and outcomes in relation to the implementation of constitutions and their influence on women's rights.

First, a detailed literature review of the existing literature on feminist constitutionalism and its impact on women's rights will be carried out in order to establish a solid theoretical framework for the research. Specialized databases such as JSTOR, ScienceDirect and Google Scholar will be used, and articles and books that have been published in the last ten years will be selected.

The selected samples will then be processed. The information will be accessed through primary and secondary sources, such as constitutions and laws applicable to women's rights, reports from international and national organizations and academic studies. The selection of the three countries mentioned will be also based on criteria of availability of relevant information for the research and representativeness of the different geographical contexts, being countries belonging to three different continents, Europe, Africa and America, as well as their representativeness of the different cultures.

Once the samples have been developed, a comparative analysis of the feminist constitutions of each country will be carried out, using content analysis tools to identify and classify the main aspects of the feminist constitutions, such as the inclusion of specific women's rights, the elimination of gender discrimination in the law, and the promotion of gender equality. In addition, the implementation and monitoring mechanisms of these constitutions will be analyzed in order to identify the strengths and weaknesses of each system.

In terms of ethical considerations, measures will be taken to ensure the quality of the data collected, such as verification of the source of the information.

As limitations of the research, it is recognized that the information may not be complete or that there are factors that have not been considered in the comparative analysis. In addition, it is recognized that the sample of countries selected is not representative of all cultural and geographic contexts in which feminist constitutions have been implemented.

To validate the results of the research, data triangulation will be used, comparing the results obtained from different sources of information.

In summary, this research seeks to analyze the impact and consequences of the implementation of feminist constitutions in different cultural and geographical contexts, with the objective of determining whether the feminist constitution is an effective solution to the violation of women's rights in countries considered democratic. In addition, it seeks to identify best practices and lessons learned in the implementation of these constitutions, in order to provide recommendations to other democratic countries that wish to solve or improve their problems of violation of women's rights and, therefore, decide to implement a feminist constitution.

## **CHAPTER 1. LITERATURE REVIEW**

### **1.1. Background and Context of the Issue**

Due to historical circumstances linked to patriarchy and colonialism, numerous countries still maintain laws or provisions that show discrimination in their legal systems. In many other countries, laws still do not proactively and explicitly ensure that men and women enjoy equal rights in areas such as equal salary, labor rights, family law issues and protection against harmful practices.

Despite the fact that, in 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) established a blueprint for women's rights, which included a commitment to incorporate the principle of equality between men and women in both law and practice. Since then, the Beijing Declaration and Platform for Action in 1995 and the 2030 Agenda for Sustainable Development have reinforced the global drive to achieve gender equality and women's empowerment. However, despite these advances, there are still many discriminatory laws against women in many countries around the world. This is largely because laws have traditionally been drafted by men, without taking into account the perspectives and priorities of women and girls in their design and implementation. Despite this, opportunities remain to address these gaps in legislation and actively promote equal rights for all.

It should be noted that 189 of the 193 UN member states have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and 114 have ratified the Optional Protocol (United Nations, 2023).

In 2020, a review of the 1995 Beijing Platform for Action was carried out to commemorate its adoption 25 years ago. This review resulted in the creation of the "Political Declaration of the 25th Anniversary of the Fourth World Conference on Women" within the framework of the Commission on the Status of Women. In this declaration, member states expressly committed themselves to "Eliminate all discriminatory laws and ensure that laws, policies and programs benefit all women

and girls, are fully and effectively implemented, and are systematically evaluated to ensure their effectiveness and that they do not create or reinforce inequalities and marginalization." (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021).

The analysis of the 25 years of the Beijing Declaration and Platform for Action showed that there have been significant advances in legal reforms around the world, which have established a solid foundation for progress. Currently, 191 constitutions include provisions on equality and non-discrimination, while 24 of them contain specific provisions on women's rights.

During the period from 2008 to 2017, 274 legal reforms related to gender equality have been implemented in 131 countries. Despite this progress, there are still many countries that maintain laws that actively discriminate against women and girls or have gaps and contradictions in legislation, which negatively affect their ability to fully enjoy their rights and lead safe, peaceful and prosperous lives (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021).

This situation highlights the fundamental responsibility of parliamentarians in the creation of laws. It is their duty to bring about transformative change in the lives of women and girls, using their mandates to amend supreme laws to enact legal frameworks that address gender issues and ensure that all members of society enjoy equal rights in both theory and practice. In addition, parliamentarians have an obligation to monitor policies and budget allocations to ensure that these laws translate into gender equality in all sectors of society. It is their role to ensure that laws are implemented and reflected in a more just and equal society for all.

The development of laws that promote gender equality remains a challenge around the world. Often, laws are created without the active participation of women in the design and implementation process, which can lead to the creation of discriminatory laws. However, legal reforms can be a powerful tool to address these gaps in legislation and actively promote equal rights for all. It is therefore important that governments and other relevant actors work together to ensure that laws are fair and

inclusive for all people, regardless of gender. Only by creating laws that promote gender equality can it be guaranteed that all people have equal rights and opportunities in society.

In addition, it is pertinent to mention that "Achieve gender equality and empower all women and girls" is goal number 5 of the United Nations Sustainable Development by 2030 (ONU MUJERES, 2022).

In this thesis I will first provide brief information about what constitutionalism is, the importance of a constitution and the impact it has on a State, and later I will also discuss the impact it has on women's lives.

Rubio Marín argues that constitutionalism has always been a project designed to make "subjects" citizens with rights. In a political sense, modern constitutionalism is also the expression of the vision of the State and its powers, its rules of operation and limits are usually reflected in different ways in the constitutions (Rubio Marín, Gendered nationalism and constitutionalism, 2022)

It is conceivable that most people may have a superficial notion of what a constitution represents and its purpose. Even myself, before I embarked on my law studies, shared a simplified view of the Constitution as "the law that rules the government of a country". While this definition is broadly true, fundamental questions arise: does it really fulfill that purpose, and what is its true impact on society? These questions motivate us to look deeper into the meaning and role of the Constitution in the political and legal structure of a nation. There are multiple concepts of what a constitution is, from which I have chosen the ones that make the most sense to me and could help to understand the topics to be developed in this thesis.

UN WOMEN defines constitutions as the most authoritative expression of the governance and accountability systems of States and therefore represent the potential opportunities and threats to the advancement of gender equality (UN Women, Policy Briefs Series, 2017).

Another definition is that Constitutions are the maps of power that connect the social, legal and political aspects of the States and the people that compose it, in turn they are the result of a negotiated intersection of interests and that is why their process is so significant. (Houlihan, 2019)

And finally the definition of Velázquez Ocampo, who maintains that Constitutional texts represent the agreements between the diverse ideas and needs of the people and allow the latter to coexist (Velázquez Ocampo, 2019).

The above definitions can be translated to mean that a constitution is the ultimate expression of a state's governance and accountability systems, connecting the social, legal and political aspects of society, the result of negotiated agreements among diverse ideas and needs of the people who compose it. It represents the supreme authority and potential for advancing towards gender equality and therefore what it establishes could be the key for a society to function in the best way.

Therefore, the elaboration of a constitution implies the creation of a fundamental legal framework that defines the structures and principles on which a State is governed, a subject that we will address in more depth below from a feminist perspective, but not before touching on the subject in a general overview.

It is also necessary to make sure to work on its development. A true "Constitution-making" is not only the drafting of the Constitutional Charter, but also encompasses everything involved in its implementation and enforcement. Constitution-making is an inclusive process that combines the legal, political and social aspects of the transformation of a state, in which it does not end with the promulgation of the constitutional text, but extends to its implementation, harmonization of the law and the efforts required to give meaningful effect to constitutional commitments. Thus, the framework of "constitution-making" recognizes that the constitutional text alone is not sufficient to institutionalize new constitutional orders. "Constitution-making is thus only one element of constitution-building, which relies on the development of the constitutional text, as well as its adoption and ratification for its entry into force. (Houlihan, 2019).

This is a path that involves challenges and perseverance, but which offers the possibility of laying solid foundations for the development and well-being of a just and equitable society. In this study, I will approach this topic from a feminist perspective, focusing on women's equal and fair participation in the constitution-making process.

Women's participation in constitutional transformation increased after the end of the Second World War when compared to the previous years. This process began slowly with the help of states that allowed a small number of women to be part of constitutional bodies throughout the 1970s. From this, policies began to emerge at the global level for the construction of the international framework for gender equality, starting with the inclusion of women in political life and in the processes of constitutional reforms in peace and security (Houlihan, 2019). Women had a scarce participation in the constituent courts and the political world, because at the time, much was made by and for men. (Álvarez Rodríguez, 2020).

Currently women participate more in constitution-building than in constitution-making, unfortunately because the main actors in the latter are politicians and jurists, who are predominantly men (Houlihan, 2019). This is a topic that I will develop later with a special emphasis on the active inclusion of women.

A basic principle of feminism relates to the different interpretations of the right to equality. The first struggles for equality began by seeking formal equality by opposing stereotypes. Despite some victories, this struggle continues from a global perspective.

Topics previously categorized as taboo have begun to become relevant in discussions, generating a substantive change in constitutional texts.

Baines in her work *Feminist Constitutionalism* gives us a clear example of what this branch of law is called upon to do. Constitutional Law must redirect reproductive and social rights, as well as regulate the rights of minorities, without treating them as secondary issues but as central issues that deserve the same attention as issues of



national security or the separation of powers of a state. Take the case of thinking about "national security", the scope of this might not be limited to borders and armed forces, but might also call for protection and safety in homes and on the streets, protect physical abuse, sexual, emotional, medical and nutritional offenses and in turn not only call for the protection of a nation from bombs, missiles and weapons (Baines, Barak-Erez, & Tsvi, 2012). Unfortunately women have been treated as minorities, following Baines, Constitutional Law could be the tool to redirect women's rights.

By studying the history of the modern world we can realize that women in general have not written or agreed upon constitutions. Constitutions have been written throughout history by powerful men without taking into account the opinion of women, as if they did not exist. Recently, however, women are beginning to have a voice in constitutional processes.

Evidently, feminist constitutionalism is a challenge at the global level and to shape it, it is necessary to draw on the experiences of women in the various countries of the world. For this reason the use of Comparative Law will give us much light on the differences between the various constitutions in the world, from the oldest to the newest and, therefore, will not help us to know the role that the constitutions have in the issue of gender justice (Gómez Fernández, 2019).

The University of Melbourne's Constitution Transformation Network has identified three constitutional approaches to sex and gender:

1. Gender-exclusionary constitutions: these constitutions explicitly or implicitly view citizens as male-only. They may use masculine pronouns in provisions or interpret neutrally worded provisions as excluding women.
2. Gender-neutral constitutions: These constitutions include men and women in formal equality, but do not address past discrimination and historical marginalization, nor do they implement corrective measures to ensure equal opportunities and

outcomes. Positive and negative discrimination on the basis of gender and sex is inadequate or expressly prohibited.

3. Gender-sensitive constitutions: These constitutions recognize the historical differences and experiences between men and women, and strive to promote substantive equality. They define equality substantively, beyond the formal, and allow for the implementation of special measures to redress past disadvantages. They also incorporate provisions that address the substantive concerns of women, including those challenges they face exclusively or disproportionately, such as maternal health and sexual and gender-based violence. In addition, they understand that all sections of the constitution will have gender implications.

In recent times, there has been a significant growth of studies focusing on constitution-making processes and constitutional texts themselves, with particular attention to gender issues. This is particularly concerned with the intersections between the constitution-making process and the content of constitutions in relation to gender issues (Houlihan, 2019).

In general, older constitutions, such as the United States constitution, do not tend to mention gender equality expressly, while newer constitutions such as Canada's (1982) and South Africa's (1996) do. This has provided a great deal of support for equality issues at the national level (Baines, Barak-Erez, & Tsvi, 2012).

When women are governed by norms, whether based on religion, family practices, or laws, they are the ones who have the right to participate in the making and transformation of those norms. All members of a society have the right to participate.

Undoubtedly stereotypes and discriminatory approaches have left their mark on legal and constitutional traditions and for this feminist interpretation could be an effective tool in gradual legal change (Baines, Barak-Erez, & Tsvi, 2012).

More than half of the national constitutions in the world were drafted or revised in the last decades, yet the issue of women's participation in these processes remains a topic of discussion that has been omitted (Baines, Barak-Erez, & Tsvi, 2012).

It is worth mentioning that this topic is not something of recent years, calls for change in constitutions to include women can be traced back to ancient times.. For example, Mary Wollstonecraft's "the Vindication of the Rights of Woman" (1792), where she shared ideas in favor of women's education and their contribution to society and Olympe de Gouges' "Declaration of the Rights of Woman and of the Citizen" (1791), which is the version of the "Declaration of the Rights of Man and the Citizen" where she added the voice of women, in defense of women's reproductive autonomy, equality between women and men and some other situations that harmed women (Velázquez Ocampo, 2019).

It is essential to highlight that inequity in the legal sphere is not limited to a technical issue, but has a direct impact on the reality lived by women and girls.

## **1.2. Research Question and Objectives**

The research presented below addresses a set of fundamental questions revolving around the protection and promotion of women's rights through constitutions. In a global context where significant challenges to gender equality and women's rights persist, these issues become crucially important. In the following, I briefly outline the central questions that this thesis sets out to address.

First, the question arises as to whether the problems of enforcing women's rights are rooted in constitutional omissions, defects or gaps. Does the problem of enforcing women's rights originate from any omission, defect or constitutional gap?. This question explores the relationship between countries' fundamental legal frameworks and the effective protection of women's rights, exploring the possible influence of constitutional deficiencies on the persistence of gender inequalities and rights violations.

Secondly, it seeks to analyze the impact and consequences of the implementation of a truly feminist constitution in a society. What would be the impact or consequences of implementing a true feminist constitution in a society?. This question invites us to consider how an explicitly feminist orientation in a constitution

could transform the legal, political and social dynamics in a country, and what would be the effects of such a transformation.

The third question focuses on the potential of feminist constitutions to transform legal systems and guarantee the rule of law for women. What is the potential of feminist constitutions to transform legal systems and guarantee the rule of law for women? This inquiry explores how gendered constitutions can modify and strengthen existing legal systems to ensure gender equality and the effective protection of women's rights.

The fourth question focuses on the decision to be explicit in the constitutional text about women's rights. Would it be better to be explicit in the constitutional text about women's rights, i.e., to mention them textually in the constitution and not just make reference to respect for human rights in general, would this cause a positive and effective change? It investigates whether the direct and specific inclusion of women's rights in the constitution, as opposed to a more general mention of human rights, could have a positive and effective impact on the promotion and protection of women's rights.

Finally, it addresses the fundamental question of whether a feminist constitution is really the solution to women's rights violations. Is a feminist constitution really the solution to women's rights violations? This question critically evaluates the role and scope of feminist constitutions in redressing gender inequalities and eradicating women's rights violations, exploring their effectiveness and limitations.

Through the investigation and analysis of these questions, this thesis strives to shed light on the relationship between constitutions and women's rights, as well as on the potential of feminist constitutions to drive significant advances in gender equality and the protection of human rights.

### **1.3. Feminist Interpretations**

It is well known that feminism does not refer to a single theory, but that there are several theories that support this ideology and therefore there are several interpretations in the field of feminism that lead to different directions. In the following I will mention some of the feminist theories to show the different ideologies that exist in this regard.

Liberal feminism focuses mainly on equality of opportunity and rejects stereotyped distinctions between women and men. It reiterates the general application of gender-neutral texts for both men and women (I mention below some examples in which gender-neutral wording led to discriminatory interpretations). It also aims to give limited meaning to provisions that do contain a difference between female and male (Baines, Barak-Erez, & Tsvi, 2012). This feminism is the one that enjoys the greatest predicament, since it advocates equal rights for women in a progressive manner. A feminist current that operates from within the system, promoting the implementation of public policies that ensure equality and the absence of discrimination, delegating much of the work to institutional work (Álvarez Rodríguez, 2020).

Cultural feminism has a perspective in which it highlights the different voices of women who object to binary normative decisions and has served as inspiration for interpretative tools that inject into current law the will to recognize positive duties. This interpretation has played a key role in the context of many constitutions that have been vague in this area.

Radical feminism focuses on the liberation of women from subordination to men in society and their subjection to violence, its interpretation aims and seeks a more effective resistance to such oppression, considering sexual harassment and pornography as a form of discrimination as mentioned by Catharine MacKinnon.

In general terms, feminism would be the doctrine that considers the equality of rights between men and women to be just, and therefore it is a movement aimed at achieving it. But if history has taught us anything it is that it is a very broad and

diverse political and social movement with so many branches and interpretations, with different objectives, goals and discussions, i.e., all feminist political currents share common values such as equality, justice and freedom, but have different perspectives on what constitutes inequality, injustice and oppression.

It is worth mentioning that the various interpretations have created conflicts among feminists because of the controversies within the interpretive arena among the various schools of feminist thought.

Having the knowledge of the diversity that exists among women can provide an nuanced option that is more adequate for their representation.

Based on the premise that all strands of feminist legal theory agree that the law is patriarchal and that it is necessary to dismantle that system, the various currents of feminism have paid much attention to the field of law. Because of this, it has been stated that "law has played a prominent role in the struggle for women's equality, both as a sphere that needs to be reformed and as a means to carry out such reform." (Álvarez Rodríguez, 2020).

Various authors have explored the field of inclusive Constitutional Law, who have proposed various strategies to be able to advance in the field of women's rights through Constitutional Law.

What is feminism with the use of Constitutional Law? I will now explain the application of feminism within Constitutional Law, the ways in which feminists use law as a means to generate social change and in turn in Constitutional Law.

#### **1.4. Feminist Constitutionalism**

As I have already mentioned, the issue of constitutionalism had to wait until after World War II to arrive at the proclamation of the constitutional equality of women through the recognition of the equality of women's rights with men, not to be discriminated against on the basis of sex in general, including political rights. Evidently, this proclamation did not lead to women's equal political empowerment.

Basically, women obtained "constitutional equality" before the cultural, social and legal foundations of the separation of spheres and gender in the Western world had been eliminated, which occurred until the 1960s and 1970s as a legacy of the second wave of feminism. Women also remained politically powerless for a long time. It was not until the 1990s that the world began to worry about the systematic and continuing under-representation of women in politics, as well as their absence in decision-making and positions of authority (Rubio Marín, Women and participatory constitutionalism, 2020)

Since the beginning of this century, feminists within the constitutional field have made progress exploring and denouncing the lack of representation of women in the governing structures of states as a deficit that not only remains in that, but also goes beyond that, it becomes a problem of equal rights, compromising the legitimacy of the state (Rubio Marín, Women and participatory constitutionalism, 2020)

Recently the concept of "Constitutionalist Feminism" has emerged in academic projects as a way to examine the relationship between feminism and Constitutional Law. The redefinition of constitutionalism with a feminist optic (Velázquez Ocampo, 2019), that is, to conjugate the feminist idea with the constitution.

Another concept defines it as "the use of constitutional powers and provisions to improve the conditions of women" (Ishwara Bhatt, 2001)

Feminist analysis of constitutional law has so far focused mainly on the denial and limitation of women's equal rights since the creation of constitutions. It has recently begun to question the gender composition of state institutions, as well as the gendered implications of various forms of and structures of power (Rubio Marín, Gendered nationalism and constitutionalism, 2022).

From a feminist perspective, constitutions are the artifacts of male legal intervention that define states and institute their governance. With certain exceptions, it is mostly men who have written and also interpreted constitutions, under the terms they themselves set. The feminist constitutionalism movement seeks to orient the

constitution from a gender perspective. The constitutional discourse of feminism incites to attend the problems faced by all women in their real lives (Velázquez Ocampo, 2019).

A feminist constitutionalism would be inspired by alternative principles and would confront male supremacy. It would demand the substantive equality of women in the constitutional document and as a consistent reality in the social order, all this in a society that is recognized as unequal for reasons of sex and gender. Respect and dignity would be sought to be accorded to women in an appropriate manner in all social orders, as they would be accepted in every environment without preferential exemptions or setbacks in the necessary changes. It would positively affect both the state and the law.

But what does Constitutionalist Feminism seek within the scope of Constitutional Law? According to Velázquez Ocampo, it seeks social and political changes for women. With what tools? Using constitutional design, constitutional reforms and the interpretation of said legal text, among others. Challenging the traditional positions of law. With these interventions, the new and old constitutions would change their form to adjust to a world that is more dynamic and requires a different treatment for women (Velázquez Ocampo, 2019).

Evidently there have already been interventions in Constitutional Law by feminists in which they have participated in various forms, such as through discussions on abortion, affirmative action, and sexual harassment.

Another concept of feminist constitutionalism is provided by Baines, who argues that it is the project of rethinking Constitutional Law in a way that can re-direct and highlight feminist experience and thought. She aspires to explore the relationship between Constitutional Law and feminism by seeking to redefine the idea of constitutionalism from a feminist perspective. In turn, as does Constitutional Law, feminist constitutionalism embraces the two fundamental dimensions of institutions and rights. In this context, it covers electoral law on the issue of parity in



representation and evaluates the judicial control of legislation in its duty to promote women's rights (Baines, Barak-Erez, & Tsvi, 2012).

Since 1989, Catharine Mackinnon has defended that women have been absent in the constituent processes, they have not drafted the constitutions and men have not taken them into account when drafting them either. And she indicates that for this reason, any Constitution based on liberalism is nothing more than an expression of the way in which those liberal men of the wealthy classes understand the world. Being then the law the most important form of social power, the Constitution, as the supreme legal norm, occupies the top of the legal hierarchy and therefore there is a great interest in reflecting this (feminist) vision in this norm (Álvarez Rodríguez, 2020).

Velázquez Ocampo argues that there are two ways to generate change for women's rights. One of them is the "Constitutional", where women participate in creating the new constitutions, which includes the proposal of the constitutional text, the deliberation about the topics to be included and the application and execution of what is manifested in the constitutional charter. The other is the path of "constitutional interpretation" where feminists find ways to achieve their goals of equality and non-discrimination through judicial decisions, that is, they propose arguments to judges with which to adopt different ways of looking at women's circumstances. Both paths with the intention of achieving advances in the women rights agenda (Velázquez Ocampo, 2019).

Despite the fact that women make up the majority of society, it has been a tendency to ignore them in constitutional processes or there have also been several cases in which they themselves refuse to participate in these processes. As was the case in Syria, where several women rejected political leadership opportunities for the reason of their false belief that men are better prepared for it (Velázquez Ocampo, 2019).

If what is wanted is to guarantee women that they can develop freely according to their own criteria and beliefs, the ideal framework is that of Constitutionalism, starting from a feminism of freedom and equality (Álvarez Rodríguez, 2020). As argued in

the book *Feminist Constitutionalism: Global Perspectives*, women's participation essentially changes the constitutional text, addresses unique and taboo issues in the national lens and empowers women who take part (Baines, Barak-Erez, & Tsvi, 2012).

Constitutionalist Feminism needs to be employed as an approach to fully analyze the constitutional charter.

Why constitutionalize?, in recent years feminism has conquered rights that women did not have. Gómez Fernández says "Constitutionalize in order not to go backwards". Constitutionalizing is essential for the constitutional text to faithfully reflect society and the political relations it contemplates. It also serves as a more solid basis for continuing to build public policies that equalize responsibilities and rights. Constitutionalizing also implies the integration of fundamental policy choices, such as respect for the principle of parity in the distribution of power, the right to equal marriage and divorce, equal rights and obligations of spouses in marriage, the obligation to share domestic responsibilities and care for dependents, full equality of guardians and parents in their childcare responsibilities, maternity protection the right to equal treatment and opportunities in employment, the guarantee of electoral parity, the balanced presence of men and women in government and administration bodies, the definition of a model of coeducation, the enshrinement of sexual and reproductive rights, and the recognition of the right to a life free of violence and the prohibition of inhuman or degrading treatment, all in close connection with the preservation of human dignity (Gómez Fernández, 2019).

So, what is the difference between a feminist Constitution and a Traditional Constitution. Up to this point it is concluded that the difference between feminist constitutions and traditional constitutions lies in their approach and content. Feminist constitutions are those that incorporate gender principles, values and approaches to ensure equal rights and opportunities between women and men, as well as to address historical and structural gender inequalities. Feminist constitutions include explicit provisions that recognize gender equality and prohibit discrimination based on gender. They incorporate a gender perspective throughout the text, considering

the differences between men and women and addressing their specific inequalities and needs. In addition, they focus on guaranteeing specific rights for women, such as equal pay and protection against gender-based violence. They also promote women's political and social participation through gender quotas in decision-making bodies. They recognize and protect unpaid care work and family life, historically associated with women. And finally, they address gender stereotypes, promoting a culture of equality and respect, issues that I will address later. Unlike traditional constitutions that do not explicitly mention gender equality and may not take into account the particular experiences and needs of women in society.

#### **1.4.1. Constitutional Designed by Women (Constitution-making)**

I will now address the issue of "Constitution-making" design, which is an avenue of intervention that involves women's participation in the constitutional process. Throughout history, women's participation in constitutional bodies around the world rarely exceeded 5 to 10 percent until the 1990's. In recent decades there has been considerable growth in women's participation in constitution-making bodies. In fact, in an analysis of twenty constitutional reform processes between 1990 and 2015, on average 19 percent of the members of constitutional bodies were women (Rubio Marín, Women and participatory constitutionalism, 2020).

Over the past twenty years, there has been a significant increase in the inclusion of women in the constitution-making process. More and more women are taking on roles as drafters and technical specialists, or acting as representatives of the needs and interests of their communities. However, despite these advances, women's equal participation in constitutional reform has yet to be achieved, an aspect that has not yet been sufficiently researched (Tamaru & O'Reilly, 2018).

Velázquez Ocampo sustains that for this intervention to be truly effective, it requires a real commitment and commitment to progress in order to improve the condition of women, and for the most part it also requires the interest and willingness of women themselves to get involved and participate in activities of a political nature. The

inclusion of women in these processes provides access to a more democratic and just society.

Academics such as Helen Irving, Vivien Hart, Alexandra Dobrowolsky and Paula Monopoli, consider "Constitution-making" as an arena in which to expose issues and discussions that are related to "life" and "law", in relation to what is and what society wants (Velázquez Ocampo, 2019).

Laura Lucas argues that there is a presumption in the framework of "Constitution-making" in which women should be protected but that the issues really relating to them are not complex enough to request the presence of specialists who can design the constitutional framework specifically for them (Lucas, 2009).

In the realm of "modern constitutionalism", constitution-making is said to be the "act of culmination leading to the constitution as a final agreement or social contract". However, civic constitutionalism conceives constitution-making as a conversation that invites all possible stakeholders and is open to listening to new voices and issues, with the goal of reaching a workable agreement "that is sustainable for all rather than surely stable". This is why the exclusion of women from the beginning and their gradual inclusion in constitution-making would arguably imply some corrections to the original constitutionalism (Rubio Marín, Women and participatory constitutionalism, 2020).

*"Constitution-making demands the participation of women in the discussions about the rights they will be entitled to, the way in which they will be guaranteed and, certainly, the inclusion of women in the space of constitutional design, a space in which they have remained on the margins and in which inequity and subordination of women have been characteristic features" - Velázquez Ocampo.*

Women's participation in constitution-making can contribute to the creation of a truly inclusive constitution. By including specific mechanisms in the constitution to ensure the protection of women's rights, future discussions on the interpretation of norms can be avoided. In this way, concrete provisions can be established that ensure the

effective protection of women without leaving room for doubt or ambiguity (Velázquez Ocampo, 2019).

Women have the greatest capacity to recognize and understand their own interests, which are diverse and multifaceted. Their experiences as women belonging to different social, economic and cultural groups qualify them to have an active voice in the constitution-making process. Nevertheless, constitutions and their influence on people's lives remain complicated for many people to understand. They can be daunting documents to read, and the impact and consequences of constitutional provisions can be difficult to anticipate (International Institute for Democracy and Electoral Assistance (IDEA), 2016).

When developing a constitution, it is vital to thoroughly analyze the initial work, debates and documents, and cross-check them with gender perspectives, which address three crucial aspects within comparative law. First, it must be verified whether there was adequate representation of women in the process. Second, it is essential to examine whether proposals that safeguard women's interests were promoted. Third, it is necessary to assess whether these efforts achieved significant advances that were incorporated into the norm in the form of articles, or whether they generated notable side effects, whether positive or negative. The same considerations will be applied when drafting amendments to the Constitution (Álvarez Rodríguez, 2020).

Katz argues that the failure to promote the inclusion of gender issues in the constitutional reform agenda from the outset may result in gender considerations becoming a mere reflection for the drafters and this would make them susceptible to being abandoned (Rubio Marín, Women and participatory constitutionalism, 2020).

Once the constitution-making process is over, the road to constitutional construction continues. Simply enacting a new constitutional text is not sufficient to realize substantive rights in the legislative and political realm. In many transitional contexts, implementation faces a variety of political and institutional challenges and resistance. In addition to common problems related to shortages of state resources,

capacity and political will, effective and gender-sensitive implementation often encounters key obstacles.

First, alliances built in favor of women's rights during the drafting process are often temporary and diminish once the urgency of drafting has passed. This is due to lack of financial and human resources, divergent priorities and personal responsibilities of activists, as well as general fatigue.

Second, constitutional mechanisms designed to enhance women's political participation, such as quotas, often face backlash in the years following their implementation. For example, in Kenya, the Constitution establishes a quota for women elected to the National Assembly and Senate. It also requires the state to take measures to ensure equal representation of both sexes in elected or appointed bodies. However, effective and consistent implementation of this rule has been a challenge. Over the past decade, there has been growing opposition, especially among young men, who use more violent rhetoric against quotas and gender equality. This demonstrates that the struggle for effective implementation of gender rights remains a complex and evolving task (Houlihan, 2019).

Gender-responsive legislation begins by changing or eliminating laws that show discrimination based on sex, both directly and indirectly. It also involves establishing new laws that support the principle of gender equality and ensure equality in everyday life. This includes ensuring the protection of women and girls against any discrimination, violence or abuse that disproportionately affects them (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021).

In addition, studies have shown that women's participation in peace processes has a significant impact on both the development of such processes and their outcomes. When women influence peace or transition negotiations, there is a greater likelihood that the parties will reach lasting and sustainable agreements. In addition, women tend to integrate other marginalized groups into peacebuilding and governance efforts, making them more inclusive and effective.

In countries where there is greater representation of women in parliament, there is a lower likelihood of involvement in inter-state or civil conflict, as well as a reduction in human rights abuses at the national level. While the sense of causality in these relationships is not always clear, these findings merit the attention of those analyzing or designing constitutions in the context of peace processes or transitions (Tamaru & O'Reilly, 2018).

During political transition in certain countries, it is common for the parties involved to negotiate key constitutional principles before formally initiating the reform process. These principles set the rules on who can participate, what roles they can assume, and what structures will influence decision making, and are usually defined before the entities responsible for carrying out the constitutional reform are elected or appointed.

In this dynamic, women have a greater likelihood of success in participating in constitutional reform processes when they have presented a united front in their efforts to increase women's inclusion. It is also relevant that they leverage connections with civil society to expand women's access beyond direct participation in the process. These strategies allow women to have a more meaningful voice and a more active role in shaping future constitutions during these periods of political change (Tamaru & O'Reilly, 2018).

Historically, women have been ignored in peace and constitution-making processes due to a lack of consideration of their needs and concerns or by mistakenly assuming that procedural neutrality and constitutional language will be sufficient to address gender issues. To ensure that the constitution reflects the whole society, it is necessary to address these blind spots and patriarchal norms that relegate women to an inferior position in political and public life. In addition, specific issues such as reproductive rights and sexual autonomy, as well as sexual offenses and aspects related to the family and women's socioeconomic status, must be addressed constitutionally to ensure adequate and equal protection of women's rights. Currently, these issues are often left out of constitutional texts and delegated to the

legislative sphere, which makes them more vulnerable to political pressures and limits their recognition and protection (Suteu & Draji, 2015).

### **1.5. The Role of Constitutions in Protecting Women's Rights**

Constitutions are a fundamental element in guaranteeing women's rights. Over the past decades, there has been a shift in constitutional content from gender neutrality to gender specificity. This shift has been particularly notable in Africa, Asia and the Americas, where numerous gender-related constitutional reforms have taken place. Although many constitutional reforms occur in an ordinary political context, the most significant ones tend to occur during periods of substantial political change. Since 1995, a total of 44 sub-Saharan constitutions have been rewritten or are in the process of being rewritten. The use of pronouns (he/she) in constitutions such as those of Ethiopia, Morocco, and Tunisia is an example of constitutional language working to reorder and reshape society.

An analysis of UN Women's constitutional database highlights the commitment of many constitutions to the protection of women's rights and gender equality. Most constitutions include general provisions on equality and non-discrimination, and many go further and contain specific provisions on gender equality, such as protection against violence, access to education and political quotas. In some cases, constitutional reform has also involved modifying the language used in the constitution. For example, the constitutions of Ecuador and South Africa are examples of constitutions that promote substantive equality: the former makes explicit reference to substantive equality and the latter includes a unique combination of excluded grounds of discrimination, such as pregnancy, marital status, sex, gender, and sexual orientation (UN Women, Policy Briefs Series, 2017)

Education, employment, dignity, violence, health, and participation are key issues addressed in constitutions. However, it is of concern that none of these are specifically addressed from a gender perspective in many current texts. It is crucial that women be integrated into the constituent power pact in order to achieve a harmonious society for decades to come. Women's education, their participation in



decision-making, their position in the family, their access into the world of work, their control over their bodies and their protection from structural violence are constitutive elements of our political communities. Feminism has built its major claims around these issues, focusing on them in different historical moments and social contexts. Moreover, they are crucial for the construction of the image of women in society and for defining social development goals, as evidenced in the UN Millennium Development Goals. Therefore, they should be considered in the elaboration of constituent covenants (Gómez Fernández, 2019).

General recommendation 33 of the Committee on the Elimination of Discrimination Against Women on Women's Access to Justice (CEDAW GR 33) sets out the categories of laws which impact on the rights of women and girls. In addition to civil, family and criminal law, it indicates that Constitutions, for obvious reasons, have the greatest impact.

National constitutions represent the highest form of law in each country and establish the rights and powers of the population and state institutions. Because of their fundamental legal importance, modifying or amending constitutions is a more complex process compared to ordinary laws. Ratification of constitutions can vary and often involves parliament, independent constituent assemblies and/or referendums. This makes it difficult to incorporate new clauses promoting gender equality or eliminating discriminatory provisions.

In constitutional reform processes, a critical opportunity arises to conduct a gender audit to assess whether current provisions reflect non-discrimination and promote gender equality. If gaps or problems are identified, parliamentarians can work proactively with other stakeholders to advocate and promote constitutional reforms that strengthen equal rights for women and girls.

In contrast, ordinary laws are passed by parliament with a majority vote and endorsed by the executive. Many countries, especially those that suffered colonization and have colonial laws in place, maintain norms that foster discrimination and do not reflect contemporary human rights values. Even in cases

where colonialism is not a factor, some laws have simply become obsolete and need to be reviewed and updated to reflect the principles of an inclusive and respectful society that values the equality of all people. In practice, this will require parliamentarians to consider the need to repeal or amend existing laws and/or enact new comprehensive gender equality legislation. (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021)

In the development of the constitution in some countries the feminist agenda and the constitutional project have gradually been applied to each other. Three areas stand out significantly (based on the basic egalitarian measures implemented in the early 1980s, which are the basis for everything that has happened since): the incorporation of the principle of non-discrimination in the workplace, measures to improve the representation of women in political institutions, and the fight against gender violence (Álvarez Rodríguez, 2020).

Some comparative studies show that women's participation is highly positive and necessary. Analyzing the constituent processes in Afghanistan, Colombia, Kenya and Nicaragua (and also considering relevant aspects of the processes in South Africa and Rwanda), several lessons and trends can be drawn. First, it shows that the voice of women influences the final content of the constitutional text. For example, in South Africa, the Constitution is drafted with gender-neutral language, except for the right to passive suffrage, where it is recognized that "women and men" are eligible to avoid invisibilizing and perpetuating the stereotype that women are intruders in the public sphere. Secondly, women's participation raises issues that had never before been discussed in the public debate. This is especially evident in the cases of Nicaragua and Colombia on issues such as divorce and abortion. Although these issues had varying degrees of success in their constitutional recognition, they helped other related issues to come to light and be publicly discussed, creating a dialogue that could contribute to future discussion of other issues. Third, the defense of women's fundamental rights implies a real and tangible empowerment of women. Constituent processes help large sectors of the population that have remained politically inactive to participate in the debate at the national and

international level about the goals and objectives of society (Álvarez Rodríguez, 2020).

How do constitutions influence women's lives?

So far, the literature has focused on evaluating the success and impact that women have had in relation to their constitutional participation in shaping constitutions and also on evaluating the impact that the constitutional texts themselves have had on the legislative and governmental agendas of the countries. Despite this, little progress has been made on the benefits of women's constituent mobilizations with respect to their status as citizens. In this regard, it has been argued that a constituent process that pays attention to gender issues can be a model to be followed in the public sphere and increase women's capacity to participate in public life, defend their interests and denounce the transgression of their rights. Nicaragua and Tunisia are national examples of how women's participation in the constituent process had a lasting impact on the agenda and contributed to the development of women's capacities and their role in the democratic transition. In Tunisia, the participatory constitution drafting process enabled connections between local actors and advocates in other MENA countries, and allowed civil society to regain agency in the struggle for women's rights, replacing the old hegemonic framework of women's rights with a new bottom-up model based on popular discourse and civil society-led initiatives (Rubio Marín, Women and participatory constitutionalism, 2020)

It should be understood that the legal systems of countries cannot be redirected or transformed without first modifying their foundations. As an example of the impact that a Constitution has on the lives of women, we have the case of Anglo-American countries, United States of America, Canada and Great Britain, where women were denied the right to vote in the 19th century because the rules of the constitution were written with a masculine terminology, for example with "Men" and "He", or also, because it was given a gender interpretation, such as "persons" as referring to "men" (Baines, Barak-Erez, & Tsvi, 2012).

It is important to talk about the possible contribution or contribution that feminist interpretation has given to Constitutional Law and therefore to the lives of women

The extent to which significant constitutional change can effectively transform underlying social values and traditions without broad mobilization of civic education and sustained political will is uncertain. The constitution alone cannot completely transform a society. Therefore, it is important to manage public expectations about what a constitution can and cannot achieve, and resources must be mobilized to build a culture of respect for human rights, the rule of law and constitutionalism. In some cases, certain constitutional choices may have more symbolic than operational value. For example, in Somalia, the constitution prohibits female genital mutilation (FGM) in Article 15(4), but this prohibition has limited scope in practice. Criminalizing FGM in the penal code could have a similar legal impact. However, raising the issue to the constitutional level sends a conscious signal, despite its limited application in reality. Building a constitutionalist culture and internalizing constitutional values by institutional actors can take time and effort. It requires concerted education and training of public officials, elected officials and the general public (Álvarez Rodríguez, 2020).

Finally, international frameworks and mechanisms related to gender equality and democracy often lack the strength to counter regressive national reforms. This highlights the importance of strengthening and enforcing international mechanisms to protect women's rights and ensure effective implementation of progressive constitutional reforms (Houlihan, 2019)

## **1.6. Feminist Constitutionalism and True Democracy**

Democracy is a political system that involves periodic elections and a diverse party system, where all individuals have equal access to power, duties and responsibilities. This system guarantees freedom, dignity, physical and psychological integrity, as well as gender equality in access to resources, opportunities, health, education and participation in decision-making. In addition, it promotes the elimination of any form of discrimination based on gender, ethnicity,

beliefs or other characteristics, and comprehensively addresses women's rights as universal human rights (Suteu & Draji, 2015). Based on the above, it is concluded that democracy, when effectively implemented, becomes an engine for social inclusion and progress in a just and equitable society.

Therefore, it is inferred that countries that claim to be democratic should have a democratic constitution, which would be one that is based on democratic principles, guaranteeing the rule of law, respect for human dignity and the human rights of all people, regardless of gender. It also promotes gender equality and the principle of non-discrimination. The democratic constitution establishes the political and legal foundations, values and institutions necessary to ensure democracy in the country. (Suteu & Draji, 2015)

Blanca Rodríguez Ruiz and Ruth Rubio Marín argue that the model of democracy inherited from constitutionalism is based on a social-sexual contract ideology that structurally limits women's citizenship. Evidently this idea of democracy is not working for women themselves.

A democratic constitution acquires its legitimacy from the popular will, and women must be recognized as equal members of the "people" in whose name the constitution is established. Commitment to democracy therefore also means ensuring the active participation of women in the constitution-making process and making sure that their rights are adequately addressed in the constitutional text. Ultimately, true democracy cannot exist without gender equality. Committing to a gender-sensitive constitution is not only a democratic imperative, but also has a long-term positive impact on the resulting constitutional culture and practices. Women can bring highly relevant attitudes and experiences to the development of democratic constitutions, and their increasing participation in this process will enrich and strengthen evolving constitutional practice. (Suteu & Draji, 2015)

The rationale for being able to change regulations regarding increased public participation in constitution-making is commonly based on participatory democracy. (Rubio Marín, Women and participatory constitutionalism, 2020)

The general participation of women and the general participation of participatory constitutionalism are naturally connected by the growing concern about democratic legitimacy. In addition to generating a shift in formal and substantive paradigms in gender equality, there are grounds to suggest that the participatory gender turn is not only limited to women's rights and opportunities, i.e., gender parity in participation is a requirement of democratic legitimacy and also a necessary tool for gender equality, related to participatory constitutionalism to improve overall representation in decision making, generating that the public sphere is dominated by men and women equally. (Rubio Marín, Women and participatory constitutionalism, 2020)

The current growth of women in constitution-making bodies also speaks of the growth of women's participation in parliaments and legal issues in line with the growth of this awakening in participation and the increase in demands for democratic participation globally since the third wave of democratization in the 1990s. (Rubio Marín, Women and participatory constitutionalism, 2020)

Women's participation in constitution-making not only increases the democratic legitimacy of the process, but also challenges the structure of modern constitutionalism and vindicates women's status as equal rule-makers and constitutional subjects. (Rubio Marín, Women and participatory constitutionalism, 2020)

Full democracy requires equal participation of women in all areas of public life, including the Constitution. Without this equal participation, true democracy cannot be achieved. The representation of women in political and governmental leadership positions is underrepresented and unequal worldwide. Only one-fifth of members of parliaments are women, while in 2015 only 19% of heads of state or government were women. Furthermore, only 18% of cabinet ministers are women, and they are often assigned to portfolios related to social issues rather than key areas such as economy, finance, defense or justice. In half of the countries, men outnumber women in positions of judges and magistrates, and the representation of women decreases significantly in the judicial hierarchy. In 2015 only 19% of supreme courts

have a woman president, and women are severely underrepresented in leadership positions in political parties and local governments. (Suteu & Draji, 2015)

*“If a political system neglects women's participation, if it evades accountability for women's rights, it fails half of its citizens. Indeed, true democracy is based on the realization of human rights and gender equality. If one of these falters, so do the others”* - Vivien Hart (Hart, 2003).

The female population represents approximately half of the world's population. Therefore, it is reasonable to consider that women are not a "group" to be "integrated" into a society run by a diverse majority. Women and men are almost equal in number and should therefore have equal rights, obligations and access to power and wealth. However, gender discrimination is widespread and present throughout the world, limiting women's access to power. The only solution is to change the fundamental political model reflected in the Constitution.

It is essential to give constitutional status to parity democracy, following the French example but taking it even further. Parity should be incorporated into the Constitution as a constitutional principle, complementing equality and political pluralism. From this higher value, it should be mandatory to apply parity in the composition of constitutional bodies and, eventually, even in the composition of the legislative chambers. Currently, parity is based on the idea of a balanced presence of both sexes, as an obligation for political parties and as a means for the political system. However, we should move towards a paradigm shift, where parity (absolute or relative) is an obligation of result for the system itself.

Women constitute half of humanity's potential intelligence and capabilities, and their under-representation in decision-making positions is a loss for society as a whole. A balanced participation of women and men in decision-making can generate different ideas, values and behaviors, leading to a fairer and more balanced world for both women and men. The under-representation of women in decision-making positions prevents them from fully assuming the interests and needs of society as a whole. For all of the above reasons, it is simply necessary to work on the construction of a

parity democracy. Because, in the 21st century, we cannot continue to maintain that our constitutional systems are democratic systems if that democracy openly or through subterfuges, such as those we have tried to expose in these pages, excludes half of the population (Gómez Fernández, 2019).

"Parity democracy, that is, one in which there is a balance of the presence of women and men in all institutions, is another way of reprising democracy, improving it. It should lead to a collaboration of women and men, to a sort of new social contract between the sexes". It is "a new way of organizing social relations between the sexes, on the basis of the equal value and dignity of women and men, which is postulated here, and which is logically deduced from the fact of taking into account, in the definition of democracy, the gendered duality of humanity" (Sineau, 2004). The proposal of parity democracy does not imply dividing the world into two equal parts. On the contrary, it seeks to overcome the original division of the world into two parts, since it clearly recognizes its existence. This initiative is based on a lucid awareness of the reality of the division, instead of ignoring it (Gómez Fernández, 2019)

"Because only parity democracy is democracy. It is government of the people. A people in which we are also part of it."- Gómez Fernández

### **1.7. Addressing Gender Equality on a Constitutional Framework**

Irving argues that when discussing gender and constitutional design, it is essential to carefully consider the scope of the words to be included in the constitution. In this way, one can anticipate and anticipate the different interpretations that a Constitutional Court may offer in the future. It is important to keep in mind that the institution of the Constitutional Court itself must also be contemplated in the constitution, in order to guarantee its existence and functioning within the established normative framework (Irving, 2011).

Gender Equality is the principle of gender equality refers to women and men enjoying the same opportunities, rights and responsibilities in all areas of life. All



people, regardless of their sex, have the right to work and support themselves, to reconcile their professional and family life, to participate in political and public life on equal terms, and to live without fear of abuse or violence. Gender equality also means that women and men are of equal value and equally protected in law and in practice (Suteu & Draji, 2015).

UN Women gives us the following broad definition: "A term that refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development" (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021)

Constitutions can contribute to gender equality in several ways. First, by including provisions that clearly protect rights and are enforceable, the state is obliged to comply with them, showing its commitment to gender equality. Second, these provisions send a clear message about the nation's values, even to those who may resist gender equality policies. Third, because they are more difficult to change than ordinary legislation and are not subject to political change, constitutional provisions are more effective in protecting women's rights. Finally, these provisions can influence legislation and executive policies, increasing the likelihood of judicial decisions favorable to gender equality (International Institute for Democracy and Electoral Assistance (IDEA), 2016).

There are various approaches to gender equality, which are broadly divided into two related categories: formal equality and substantive equality. Almost all constitutions developed since World War II have included gender equality and non-discrimination clauses (Lucas 2009: 134), which are the basic provisions guaranteeing formal equality. However, an increasing number of constitutions drafted in the last 20 years also include gender-specific provisions and inclusive drafting styles to recognize, protect and promote substantive equality. While formal legal equality is a necessary condition for access to decision-making spaces and representation, it is not sufficient. To achieve equitable outcomes, women must have equal access to opportunities and resources, which requires the recognition of their unequal position in society and the adoption of measures to overcome the conditions they face, enabling them to take advantage of those opportunities and resources (International Institute for Democracy and Electoral Assistance (IDEA), 2016)

The existence of several factors has contributed to the acceleration of gender-sensitive constitutional reforms in post-independence constitutions, among them are: the rapid and widespread ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) beginning in the 1980s; the proclamation of International Women's Year in 1975 and subsequent world conferences on women in 1975, 1980, 1985, and 1995; the rise of civil society activism since the 1970s; and the mobilization of women in the context of democratic transitions and post-conflict settlements.

The Convention establishes in Article 2(a) the obligation of States Parties to incorporate the principle of equality between men and women in their constitutions or legislation, and to ensure its effective implementation through legislation and other appropriate means. Therefore, the Committee on the Elimination of Discrimination against Women calls upon States to report on measures taken to ensure the elimination of discriminatory constitutional provisions. Even in March 2016, the United Republic of Tanzania and Vanuatu

were part of a group of States recommended by the Committee to undertake a comprehensive review of their constitutional provisions to ensure equality and the elimination of any discriminatory definitions under the Convention (UN Women, Policy Briefs Series, 2017).

What does a gender-responsive constitution look like? A gender-sensitive constitution integrates the establishment of the rule of law, equality between women and men, and respect for the human rights and dignity of all people, regardless of their gender. Such a constitution gives special consideration to gender issues and assesses how constitutional provisions affect gender equity. It uses gender-sensitive language and contains specific provisions to promote gender equality. Although social, political, and cultural contexts may vary, a gender-responsive constitution is based on universal and indivisible norms and standards of human rights for all people (Suteu & Draji, 2015).

Constitutional reform provides a valuable opportunity to transform governance by including guarantees of women's rights, inclusive language, and the creation of institutions that promote gender equality. Similarly, marginalized groups, including LGBTI people, minorities, indigenous and economically disadvantaged groups, have seized this occasion to protect their rights. As a national foundational document, the constitution can support the advancement of women in political, economic and social life by regulating relations between the state and its citizens, as well as between individuals, organizations and businesses.

Postcolonial constitution-making has shown a significant trend towards open and participatory constitutional review processes from a broad perspective. In this context, gender equality advocates have seized the opportunity to influence constitutional design from different venues, such as women's movements, gender machineries, constitutional review bodies, parliamentary gender caucuses, law reform commissions, the UN system, regional bodies and other development actors.

In this sense, strategic alliances among these actors have been fundamental to include and maintain gender equality in the constitutional agenda. These alliances have been developed within the framework of democratic, transparent and relatively open processes, which has allowed for greater participation and input from different actors in the constitutional review. In this way, gender equality has been successfully promoted and maintained as an important issue in post-colonial constitution-making (UN Women, Policy Briefs Series, 2017).

UN Women stresses that gender equality is largely dependent on equality before the law, as women and girls rely on the laws of their country to protect, respect and enforce their rights. Laws that discriminate against women and girls, and deny them equal rights with men and boys, undermine their trust in society and send the message that gender discrimination is a normal, acceptable and expected practice. When discriminatory laws leave women and girls behind, they are often permanently excluded from the benefits of development. On the other hand, the enforcement of just laws based on the principles of equality and non-discrimination can contribute to progress toward just, peaceful and inclusive societies, environmental and climate justice, equal participation in decision-making at all levels, universal access to essential public services, and economic prosperity for all. All aspects of the law-constitutional, civil, criminal, labor, and administrative-that discriminate against women and girls require immediate attention (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021).

So why include a gender approach in constitutions? There are two main categories of approaches to gender equality: formal equality and substantive equality. Formal equality seeks equal treatment of women and men before the law, addressed in constitutions by prohibiting gender discrimination and affirming equality. It is crucial for exercising rights such as freedom of expression and fair due process of law. On the other hand, substantive equality goes further, recognizing past discrimination and the political, economic and social barriers

that women face in accessing opportunities, rights and decision-making. It also recognizes the differences between men and women due to the reproductive capacity of some women.

Substantive equality seeks equality of access and outcomes, being a more comprehensive notion. When a group lacks substantive equality, equal treatment does not guarantee similar outcomes due to prior inequalities. For example, if girls have fewer educational opportunities than boys, even if the university treats men and women equally, women will be disadvantaged in applications for admission. In addition, equal treatment may disadvantage women and contribute to their inequality, as they may face difficulties in obtaining stable employment, leading to poverty and poorer health and social outcomes.

In summary, gender equality approaches seek to address both formal equality and substantive equality to overcome historical inequalities and promote equity in all spheres of life.

The above factors have different impacts depending on the context. Discrimination faced by women can be combined with other forms of discrimination, such as ethnicity, religion, sexual orientation, among others, deepening their disadvantage, which is known as multiple discrimination.

Substantive equality seeks to recognize gender differences and expand opportunities for women based on these differences. For example, policies that prohibit discrimination against pregnant women and grant maternity and paternity leave allow them to reconcile work and motherhood. These measures reduce their vulnerability to poverty, provide them with financial resources and enable them to develop professional skills. Provisions are also included that prohibit violence against women, both in the private and public spheres, recognizing that gender-based violence limits their opportunities and is a violation of fundamental rights. The substantive approach seeks to remove

obstacles and ensure equality in all aspects of women's lives (International Institute for Democracy and Electoral Assistance (IDEA), 2016).

A gender-sensitive constitution is especially valuable during periods of transition to democracy. Women can play a crucial role in overthrowing authoritarian regimes and facilitating the transition to democracy. For example, in Latin America, women's rights organizations were pioneers in demonstrating against authoritarian regimes and contributed significantly to reviving civil society during transitions to civilian regimes in the 1980s in the region (Suteu & Draji, 2015).

Rubio Marin says that the disparity of presence between women and men in the representative bodies of a state are problems considered as issues of Constitutional Law or issues of citizenship and democratic representation.

There are currently a large number of studies on constitutional design. In spite of this, the topic of gender disappears as a referent. In research that focuses on constitutional identity, legitimacy, constituent power and other topics related to constitutional design, the gender issue is practically omitted in its entirety (Velázquez Ocampo, 2019).

The literature on gender composition starts from the hypothesis that the smaller the number of women in a group, the fewer are those who participate and influence it and consequently the greater the gender gap. This is called the "gender role" hypothesis, which encompasses three points. First, being part of a numerical minority diminishes women's status in the group and thus their participation and authority in discussions; second, it is argued that women speak and participate less when there are fewer women because of existing gender-based norms of interaction, in which men tend to adopt stereotypical "masculine" characteristics where there is "individual assertion, competition and dominance" when they are on stage; and lastly, the disadvantage that women have when political issues are discussed is especially significant, since men are mostly

considered competent and enjoy greater status in debates on issues that are considered "masculine", a phenomenon that has been encouraged by the media when they conduct interviews with men to obtain information on some process. Due to the above, women are mostly benefited in their own spaces of debate, in order to concretize their interests, given that they often remain unfinished (Rubio Marín, Women and participatory constitutionalism, 2020).

Gender-sensitive constituent processes have had broader mobilizing effects, encouraging women to participate in public life and to defend their rights and interests, building their capacities and supporting their role in the democratic transition (Rubio Marín, Women and participatory constitutionalism, 2020).

In terms of the connections between the process and content of gender-sensitive constitution building, research and experience have highlighted several key factors that can influence constitutional outcomes.

First, it has been observed that women are more likely to have their design priorities taken into account if they can make their proposals and themselves politically useful to powerful groups, or at least not contrary to their interests.

Success in getting women's design priorities on the agenda is linked to the ability of advocates to position themselves as allies of other groups and to integrate the latter's interests into their proposals. It is essential that women participate not only as representatives of their gender, but also as active members of all other parties and groups committed to the common cause, sharing objectives and collaborating with them as "active participants." In contrast, participation as a separate interest group with a separate agenda tends to be less successful in getting their proposals heard and considered (Houlihan, 2019).

Second, throughout the process of building a constitution, both internal and external activists must coordinate effectively to establish common terms and approaches that shape a context-specific women's rights agenda, tailored to

each context and considering intersections and diverse perspectives on gender roles.

This involves challenging and re-evaluating the supposed conflicts between a feminist agenda, the rights of religious or cultural groups, complementary approaches to women's gender roles, the resources and capacities of the State, and the entrenched interests of men, especially with regard to special measures. Experience has shown that reaching consensus among diverse ideologies and perspectives can be challenging, even under the most favorable conditions, as women's constitutional rights interests and approaches are as varied as women themselves (Houlihan, 2019).

Third, it is critical to provide women with tailored learning opportunities and resource support so that they can effectively identify, assess, and contextualize the wide range of gender-related issues at stake in a constituent process.

Fourth, women constituents must strike a balance between uniting around "women's issues" while advocating for broader design priorities that integrate or reflect gender considerations. While recognizing that women's interests and priorities are as diverse as women themselves, "best practices" often suggest that women focus on a loosely defined women's rights agenda. This can lead to public assumptions that women politicians and activists focus only on so-called "women's issues," reinforcing assumptions about their role in constitution-making. Instead, it is important to consider all aspects of constitutional design from a gender perspective (Houlihan, 2019).

Within the key considerations of broader design priorities is the choice of gendered language. The use of gender-inclusive language is both legally and symbolically relevant. Language that reflects gender inclusiveness shows a commitment to gender equality and can challenge common stereotypes that political leaders are exclusively male. On the other hand, neutral language



avoids using masculine or feminine terms when gender is not relevant to the text. However, it is important to keep in mind that there is a risk that this type of language can later be interpreted as excluding women (Houlihan, 2019).

The inclusion of Bills of rights and the integration of rights throughout the text are critical to achieving a gender-sensitive constitution. Positive rights, such as access to education and health care, are closely related to gender, as women often require more public assistance than men. Historically, specific rights such as citizenship, land ownership and protection from violence have been drafted in ways that exclude and marginalize women. This has been done, among other things, by prioritizing rights to privacy and family life over women's individual rights. During the drafting of such provisions, it is crucial to pay careful attention and consider the impact they may have on women.

In addition, the role of religious, customary or traditional law also has significant implications for women. It is important to consider how these legal and cultural sources may affect rights and gender equality in the constitution building process.

Fifth, it is critical to design public consultation processes in a way that ensures the full participation and effective hearing of women's voices through key institutions. Consultation issues should not be limited exclusively to what are traditionally considered "women's issues". It is essential that gender concerns and perspectives in all relevant areas of the constituent process be comprehensively and comprehensively addressed.

Finally, in negotiating women's strategic interests in the constituent body, the political context and political parties, as well as perceptions of international normative frameworks and external influence, must be taken into account. These factors can influence how gender equality issues are addressed and prioritized in the constituent process. It is critical to consider these elements to ensure an

effective and robust approach to the inclusion of women's interests in constitution-making.

A gender-sensitive constitution would also correct the historical absence of women in the constitutional arena, allowing their participation as constitution makers and guaranteeing their constitutional rights and duties. The omission of women from the constitutional text has had a negative impact both symbolically and in practical reality, stigmatizing them. In addition, a gender-sensitive constitution also seeks to correct the economic consequences of women's exclusion from the public sphere. It recognizes the critical role of women in the economic reconstruction of societies, as their empowerment promotes economic recovery and sustainable development. This constitution can drive broad social reform to remove legal barriers that restrict women's participation in the labor force, guaranteeing equal rights in areas such as property, inheritance and contracts, prohibiting discrimination and ensuring an equitable allocation of resources for women's training. It can also address indirect factors that generate gender-based economic inequalities, such as gender-based violence, customs that confine women to the domestic sphere, and unequal child and family care responsibilities (Suteu & Draji, 2015).

It is true that a constitution alone cannot fully guarantee women's rights, and a combination of constitutional provisions and activism is necessary to realize the initial promises. Despite this, a constitution that reflects women's interests and rights is preferable, as they would be worse off without it, even if the struggle for their rights continues after it is drafted. It is likely to take many years of legal refinement and challenge to close the gap between the promise and reality of gender equality and to achieve its fulfillment. However, once incorporated into the constitution, gender equality provisions provide a legal basis for upholding women's rights and guide subsequent legislation and judicial interpretation of constitutional rights. In short, the constitutional inclusion of gender equality and non-discrimination provides the legal basis for advocating for more gender-

sensitive policies, laws, and judicial decisions. This legal empowerment complements the recognition of the moral imperative behind the adoption of a gender-sensitive constitution (Suteu & Draji, 2015).

International instruments mandating gender equality, non-discrimination and engendering the constitution:

- A. United Nations Charter (1945)
- B. Universal Declaration of Human Rights (UDHR) (1948)
- C. International Covenant on Economic, Social and Cultural Rights (1966)
- D. International Covenant on Civil and Political Rights (1966)
- E. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979)

To combat discrimination, CEDAW proposes a series of affirmative actions that should not be considered discriminatory acts as defined in the Convention. This provision is clearly established in the first paragraph of Article 4, which states that: "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved".

- F. Security Council Resolution 1325 (2000)

In addition, regional agreements impose a responsibility on States to recognize the principle of gender equality, prohibit discrimination and require the creation of national constitutions.

- A. European instruments: Two groups of European instruments are particularly relevant in this context: those of the Council of Europe, such as the 1950 European Convention for the Protection of Human Rights and Fundamental

Freedoms (ECHR), and those of the European Union, such as the 2000 Charter of Fundamental Rights of the European Union.

- B. African instruments: In this case, I refer to the African Charter on Human and Peoples' Rights of 1981, and the Protocol on the Rights of Women in Africa of 2003, also known as the "Maputo Protocol", which is annexed to the African Charter on Human and Peoples' Rights. The African Court on Human and Peoples' Rights is the body responsible for enforcing the Charter and receives complaints from individuals and non-governmental organizations.
- C. American instruments: Here I refer to the American Declaration of the Rights and Duties of Man of 1948, where its Article 2 addresses equality and non-discrimination, establishing that "all persons are equal before the law and have the rights and duties enshrined in this Declaration, without distinction as to sex or other status". I also mention the 1969 American Convention on Human Rights, which declares the duty of States Parties to protect the rights of all persons under their jurisdiction without discrimination on grounds such as "sex", and to ensure equal protection of the laws for all. The Inter-American Court of Human Rights resolves disputes in which States Parties are accused of violating their obligations under the Convention, and has developed an extensive jurisprudence on gender equality and non-discrimination.

The Inter-American Commission on Human Rights has also compiled legal norms applicable to gender equality in the Inter-American system, based on the Court's jurisprudence and State practice.

- D. Arab instruments: In the Arab region, there is a dearth of regional sources related to human rights in general and women's rights in particular. This is despite the urgent need for such instruments due to the restrictions imposed on Arab women in many countries, either by discriminatory constitutional and legislative provisions or by religious concepts and social customs. The main

regional instrument is the 2004 Arab Charter on Human Rights, adopted on May 23, 2004 (Suteu & Draji, 2015).

### **1.7.1. Engendering Constitutional Language**

The gender-sensitive nature of a constitution is also manifested in the language used in it. The choice of words is not neutral, but may reflect gender stereotypes that are perpetuated in the constitutional text. Feminists have long advocated drafting laws in "gender-neutral," "gender-inclusive," or "non-sexist" language. They have also highlighted the importance of recognizing the so-called "male rule," which assumes that the masculine pronoun "he" includes the feminine "she," and which has not arisen by chance, but has served to maintain the invisibility and inferiority of women and should be abandoned.

Constitutions and legislation are especially crucial spaces where "discourse is often framed by the male voice, resulting in the absence of women" in both texts and legal protection.

Why should drafters carefully consider the language they use? It is important to pay attention to this aspect during the drafting process for two fundamental reasons. First, the constitution seeks to reflect society's commitment to a set of values, either explicitly or implicitly, and these values should be expressed in gender-sensitive language. In this way, the constitution can send a clear message to current and future legislators to consider the gender implications of legislation. Second, the constitution, by its nature, is more difficult to amend, which can lead to a sexist text becoming entrenched over time. For these two reasons, the choice of terminology has a deeper meaning than a mere technical or cosmetic exercise (Suteu & Draji, 2015). In the words of constitutionalist Helen Irving, "efforts to use gender-inclusive language are not merely a matter of legal precision and formal inclusion. It involves recognizing language as a form of representation." Therefore, advocates of gender-sensitive constitution-making should also seek to influence the language of a new constitution, in addition to advocating for substantive equality and non-discrimination provisions.

## **1.8. Challenges that Countries Face When Implementing Feminist Constitutionalism**

Despite the progress made, there are still challenges and gaps in constitutional reform, according to data compiled by UN Women. For example, 84% of constitutions contain provisions related to customary or religious law. While this is not necessarily of concern for the advancement of women's rights, the CEDAW Committee has expressed concern about the impact that religion and custom can have on women's rights, especially in cases where reservations on personal law and non-discrimination have been made by some 30 states. In addition, 11 constitutions include "rollback clauses" that allow exceptions to non-discrimination clauses on personal law matters, weakening the effectiveness of anti-discrimination provisions to eliminate discrimination against women in law and in practice (UN Women, Policy Briefs Series, 2017).

For post-constitutional reforms to be effective, continued technical and financial support is important.

At the same time, limited evidence from some countries demonstrates the value of constitutions as tools for change. For example, the South African Constitution was a catalyst for a series of legislative reforms addressing gender discrimination. In Ecuador, national studies on unpaid work, the feminization of poverty, domestic chores and the Quito regional conference on women in Latin America and the Caribbean also served as important drivers for promoting constitutional provisions on unpaid care work.

Overall, constitutional reform has made important advances for women's rights through general and emerging provisions. The successful inclusion of gender-sensitive provisions has been the result of strategic alliances between state and non-state actors, especially women's groups. However, these achievements should not obscure the deficits of constitutional reform, particularly the persistence of discriminatory provisions. Constitutions can also be effective in driving legislative and policy changes in favor of gender equality, provided that opportunities are fully

exploited and resources are allocated to that end (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021).

In addition to the traditional exclusion of women from representation within constitutional institutions, one of the obstacles that have prevented women from being present in them and exercising power has been the internal division of their own groups, which has prevented them from acting jointly, especially those committed to the feminist cause. As in the case of Colombia, where a group of feminists tried to organize in the constituent assembly in 1991 but could not manage to settle the issues they had internally between the two most historical currents of feminism (Rubio Marín, Women and participatory constitutionalism, 2020).

In certain countries, in addition to parliamentary laws, religious texts and traditions also act as sources of law, leading to an intersection between the two. In these cases, religious and traditional leaders play a significant role in debates on legislative reform and their views may influence the enactment or feasibility of reforms.

However, it is important to mention that in many countries, there are progressive religious and traditional voices advocating interpretations that support gender equality in these texts. United Nations human rights bodies have stressed on multiple occasions that neither culture nor religion should be used to justify discrimination against women and girls, whether in law or in practice (UN WOMEN. United Nations Entity for Gender Equality and the Empowerment of Women, 2021).

Constitution-making has not helped women to resolve these internal divisions, and has sometimes worsened them, especially when dealing with issues where there are competing views of women's roles and gender relations. This is more common in the Arab world where there have been several recent attempts at constitutional reform and the picture that emerges is one of a society and women divided along secularist-Islamist lines. As was the case in Morocco where women's associations were actively involved but secularist and Islamist feminists had opposing ideas about the state, Islam and gender relations. As in other Arab countries, secular feminists called for a secular state where Islam would remain outside the laws and norms, and where

gender equality could be respected. In contrast, activists from Islamic parties and associations called for the Island as a reference for individual identity and citizenship, and for a gender relationship based around the notion of complementarity rather than equality. Although the influence of religion has not only been exclusive in the field of "Constitution-making" in the Arab world. For example, in Colombia, the Catholic Church has been an obstacle for feminist movements, making it necessary to mobilize to demand abortion rights ("the freedom to choose motherhood"). This is the issue with which most Catholic countries have disagreed the most (Rubio Marín, Women and participatory constitutionalism, 2020)

The principle of secularism defends the separation of religion from the public, political and legal spheres. In this system, decision-making is governed by the public interest, through political and legal institutions independent of religious influence or control. Secularism respects religious diversity and guarantees freedom of belief for all people (Suteu & Draji, 2015).

Another obstacle has presented in other contexts where women who have been selected have not represented the aspirations of feminist groups. Such was the case of Tunisia in whose first free elections in 2011 the majority of women belonged to the opposition constituent assembly (Nahda's Islamist party) (Rubio Marín, Women and participatory constitutionalism, 2020).

Rubio Marin argues that the presence of women does not automatically translate to empowerment, especially those they represent lack experience in decision making, i.e., simply increasing women in representation will not proportionally increase participation in discourse or authority (perceived influence), at least as long as they remain the numerical minority.

Also, many women around the world have been skeptical of constitutionalism and its so-called "lofty promises of democracy, representation, accountability and equality". This is probably a consequence of the traditional exclusion of women in the creation of laws and likewise of constitutions, which have undoubtedly been instruments that have aided gender subordination. Women have also rejected the



opportunity to participate, especially when issues related to the instrumentalization of the women's cause have been addressed. As was the case in Bolivia where a feminist collective called "Mujeres Creando", strongly criticized the Constituent Assembly during the Morales government, since it was believed that Morales used the instrumentalization of gender issues with the intention of consolidating his power (Rubio Marín, Women and participatory constitutionalism, 2020)

Also the degree of geographic centralization/decentralization of the process has also determined the degree of women's participation, favoring certain groups and disadvantaging others. As in the case of Tunisia, which despite the fact that the Constituent Assembly published the debates on the web, access varied according to the center-periphery divide, making the inhabitants of internal regions less involved than those local councils in Tunisia (Rubio Marín, Women and participatory constitutionalism, 2020).

Women are rarely the primary initiators of constitutional reform and face participatory obstacles in joining the process, but have attempted to overcome them through innovative strategies and with the support of international or foreign actors.

Women also faced significant challenges and experienced major obstacles in attempting to influence the constituent processes and their outcomes. These obstacles included the perception of women as mere tokens in decision-making bodies, community and societal hostility towards their inclusion due to entrenched social norms, difficulty in forming strong coalitions, and marginalization of women's demands in favor of the interests of more powerful groups. The cases of Tunisia, Nepal, and the Philippines during their constituent processes clearly exemplify these challenges (Tamaru & O'Reilly, 2018).

Finally, it is not unknown that patriarchy has always been an obstacle to achieving equality between men and women. This type of social organization is one of the most common problems facing most countries in the struggle for women's rights. The concept of "patriarchy" is an old term that did not necessarily originate in feminist theories, as it was mentioned by figures such as Engels and Weber in earlier works.

Both authors recognized that patriarchy represents one of the oldest systems of domination, characterized by the control and supremacy of men over women. Feminist theories, however, have revitalized and updated this concept that had been largely ignored by social scientists or even considered relevant only to describe ancient civilizations. For some feminists, patriarchy is defined as "the manifestation and institutionalization of male dominance over women and children in the family, a dominance that extends throughout society at large." This means that men have power in all key institutions of society and that women are denied equal access to these institutions. However, it is important to note that this definition does not imply that women are completely lacking in power, rights, influence or resources, but underscores the persistent structural inequality (Facio & Fries, 2005). Therefore, it is a problem facing the application of a feminist constitution, because it does not allow progress on the issue of gender equality, affects women in society and violates their rights.

### **1.9. The Political and Social Context of Feminist Constitution-making**

Drafting a constitution is a political process; it is not simply a matter of finding the perfect text in the abstract. Participating in constituent negotiations, which are often contentious, involves making compromises as part of the negotiation process. This may also involve giving in on some substantive priorities related to women's rights. For example, demands for quotas may require additional structural reforms leading to new negotiations, such as redesigning electoral systems as a whole. In addition, specific demands that do not have women's consensus or broader party support may have to be negotiated in exchange for concrete and important gains that lay the groundwork for future advances.

This approach of negotiation and concessions is common when it comes to women's rights, both in peace processes and in constitution-making. To avoid threats to the women's rights agenda, demands should be grounded in human rights and equality principles, and should be built on coalitions that are as inclusive as possible. It is important to base demands on a strong rights framework and build broad alliances

to strengthen the influence and impact of gender equality-related claims in the constituent process (Houlihan, 2019)

### **1.9.1. State Responsibility**

Under international human rights law, states have the responsibility to protect and guarantee human rights. To achieve substantive equality, they must not only prevent discrimination against women, but also take positive actions to protect and fulfill their rights. These actions include legislation, policies and programs that recognize gender inequality and seek to eliminate discriminatory practices and beliefs, as well as proactively address their negative consequences.

States can and, in some cases, are obliged to use positive actions to accelerate substantive equality. These measures fall into three main categories:

Temporary special measures: these are actions targeted at women and/or girls for the purpose of accelerating the improvement of their situation towards substantive equality with men. They are implemented to correct the past and present effects of discrimination, and it is hoped that in the future they can be discontinued once equality is achieved. Examples include quotas for female representation in parliament, selective hiring of women in the civil service, and programs to increase the female presence in higher education.

Special measures: These are laws, policies and actions focused on women due to biological differences related to reproduction. They are non-discriminatory and non-temporary. Examples include reproductive and maternal health care, special accommodations at work and in educational institutions during pregnancy, and maternity leave.

Specially targeted positive action: This category includes general social policies to improve the situation of women and girls. They do not discriminate against men or boys, but seek to achieve substantive equality. Examples include programs that incentivize families to send their daughters to school, allocation of funds to improve access to healthcare for rural women, and training programs for women to acquire

job skills and integrate into the labor market (International Institute for Democracy and Electoral Assistance (IDEA), 2016).

The role of the judiciary is crucial in achieving substantive equality when interpreting the constitution and laws. In several countries, it has been instrumental in moving towards greater equality. To effectively fulfill its role, the judiciary must be impartial, nonpartisan, and free from political influence. Its independence must be guaranteed and protected in the Constitution. Other important aspects of its independence include the appointment, dismissal and promotion of judges; public procedures; the judiciary's budget; the accountability of judges; and its interaction with the executive and the legislature. An independent judiciary will be less susceptible to political or popular pressures when it makes decisions in favor of greater equality, even if these decisions are not popular with the majority of the population or a powerful minority (International Institute for Democracy and Electoral Assistance (IDEA), 2016).

"Women's rights, obligations to ensure gender equality and non-discrimination, and States' commitment to engendering their constitutions are not optional, nor captive to interpretations of religious or moral texts, nor subject to political polarization, but are legally binding under international law" (Suteu & Draji, 2015).

Most countries have ratified treaties that impose the modification of their constitutions and national laws to guarantee women's rights, gender equality and non-discrimination. States therefore have an obligation to fulfill this commitment in good faith, which implies abiding by all obligations, both formal and substantive. International law does not allow States to avoid these responsibilities on the grounds that their national laws do not permit or are incompatible with the treaties. Article 27 of the 1969 Vienna Convention on the Law of Treaties makes it clear that domestic law cannot be used as a justification for breaching a treaty. Women's rights activists should remind the state of its obligations under international law, including full and good faith implementation of treaties, and avoid using incompatibility of domestic law as a pretext to deny women's rights and gender equality (Suteu & Draji, 2015).

### **1.9.2. The Role of Civil Society Organizations and Women's Movements in Advocating for Feminist Constitutions**

Civil society organizations play a key role in law reform processes. In this context, the term encompasses not only human rights and women's organizations, but also community groups, trade unions, religious groups, academics, professional associations, the media and the general public. All of these organizations can play an important role in advancing gender equality and promoting human rights through active participation in the reform of discriminatory laws. Collaboration among these organizations can be especially effective in promoting inclusive and just laws that protect the rights of women and girls, as well as in raising awareness and education about human rights and gender equality.

In recent decades, women in civil society and organizations have created networks and platforms to push for a joint constitutional agenda, leading extensive consultations and large-scale educational campaigns. Often, their purpose was to draft "a women's constitution" in the form of an alternative text, reflecting women's views and interests.

Since the participatory shift in constitutionalism, the possibilities for participation in constitution-making are not limited only to the bodies responsible for drafting and adopting constitutions. On the contrary, there has been a growing conviction of the significance of popular participation such as public debates, open meetings and media publicity, etc.

But despite the obstacles, there is an increasing participation of women in constitution-making. Women as aspirants to the constitutional order and due to their limited access to certain elites within the decision-making process, have used both institutional and non-institutional strategies, relying mostly on the mobilization of civil society. The latter is often supported by international women's movements, with opportunities for networking and sharing experiences, such as the United Nations' World Conferences on Women providing support and motivation. And like the above, examples abound of such organizations and platforms that have been created by

women around the world in order to participate and collaborate on constitutional aspirations. One example is South Africa, where in 1992 the "Women's National Coalition" (WNC) was created by women in the liberation struggle together with various organizations to intervene in the honor-dominated processes leading to the drafting of a "democratic constitution" for South Africa. Its purpose was to coordinate a national campaign to promote the development and education of women and in turn disseminate information about women's needs and goals, uniting women in the formulation of a new constitution that would guarantee women's equality". Another example is that of Nicaragua in 1986 when hundreds of women took to the streets to protest against the language of the first draft constitution (Rubio Marín, Women and participatory constitutionalism, 2020)

In many countries the strategy that has been used by women's mobilizations has been to empower women themselves to draft their own charter, concretizing in a single document the needs and aspirations they have to be adopted in the new constitution. This is the case in Tunisia, where the Association Tunisienne des Femmes Démocrates (ATFD) organized a mock assembly in February 2012 in which they drafted a text called "The constitution for equality and citizenship through women's eyes", which contained women's constitutional aspirations.

Rubio Marin argues that one of the most important variables to consider when assessing the degree of women's participation in constitution-making is the degree to which women themselves and feminist groups are actively organized in civil society at the relevant constitutional moment (Rubio Marín, Women and participatory constitutionalism, 2020).

Despite this, in most cases, women's mobilizations in civil society have not been sufficient in their impact. Rubio Marín argues that in order to achieve greater civil society participation in constitution-making and to avoid a single, dominant party line, it is useful to have formal or informal civil society representatives present in the institutions in charge of drafting the constitution. Representatives can also be pressured to support civil society causes. As in the case of Rwanda, citizens were allowed to participate in constitution-making through large public meetings,

questionnaires, and submission of written comments and proposals, but the information was rarely seriously considered and deliberated. However, gender equality advocates did manage to have an unofficial representative on the Legal and Constitutional Commission (LCC), Judith Kanakuze, who supported their goals and ensured that their proposals were considered (Rubio Marín, Women and participatory constitutionalism, 2020).

The strong will of civil society actively participating in the struggle of public interest has also contributed in the reforms of gender discriminatory laws (UN Women, Policy Briefs Series, 2017).

## **1.10. Feminist Constitutionalism and the Rule of Law**

### **1.10.1. The Potential of Feminist Constitutions to Transform Legal Systems and Guarantee the Rule of Law for Women**

State reports submitted to the CEDAW Committee have indicated that when women have full and equal participation in public life and decision-making, the implementation of their rights and compliance with the Convention is enhanced. On the other hand, when women are underrepresented in public office or when their rights may be violated with impunity, political legitimacy is affected. This leads to a decrease in trust in government, affects the rule of law and makes it difficult to gain public support for collective action. Therefore, any state that seeks to ensure a deep-rooted culture of rule of law in its society must from the outset guarantee in its Constitution the equal participation and rights of all its members. There is reason to believe that combating gender discrimination and ensuring equality cannot be achieved through piecemeal legislation alone, but requires a strong constitutional basis for gender equality. Although not all women will be equally interested in promoting women's rights, on average, greater participation of women in decision-making ensures that gender equality considerations are present in democratic governance in the long term, as well as being an essential requirement for equality itself (Sineau, 2004).

### **1.10.2. How To Ensure The Constitution Is Enforced?**

The reality in international practices shows that many women's constitutional rights remain mere words written on paper, without being effectively protected or activated due to restrictive texts. Sometimes, the situation is even more unfavorable, as women face difficulties in defending their rights due to complicated judicial systems or restrictions that limit their access to constitutional courts, which are the highest judicial authorities.

However, constitutional design offers possible solutions to address these problems and ensure that all human beings enjoy the rights enshrined in the constitution. It is preferable that a constitution, in dealing with women's rights and freedoms, be detailed and clear, thus reducing the need for constant clarification by legislators or judges. It is not useful for constituents to establish principles or rights in a general manner and then leave their regulation to other powers without guarantees for their enforcement. Nor is it beneficial to leave loopholes that allow legislators or the executive branch to restrict or affect rights under pretexts of regulation or states of exception, without establishing a clear and precise regulation for such interference.

Therefore, constitution drafters must understand that a good constitutional bill of rights does not automatically guarantee its application. Advocates of democratic and gender-sensitive constitutions should be aware that even the best rights enunciated in a constitution can face real risks if they are not adequately regulated or if other powers are allowed to restrict them through national legislation or declarations of states of emergency. During the constitution drafting process, it is crucial to address this challenge from the outset by imposing constitutional checks on the possibility of restricting rights through these means. (Suteu & Draji, 2015)



## **CHAPTER 2. CASE STUDIES OF FEMINIST CONSTITUTIONS**

This chapter focuses on a detailed analysis of the evolution of the legal and social status of women at the constitutional level in three diverse countries: Iceland, Tunisia and Bolivia. It will address the implementation of feminist constitutions and their impact on women's rights, as well as the progress of gender equality.

The adoption of a gender approach as a perspective of analysis will allow us to examine the complexity of cultural, political and religious interactions that permeate the social fabric of these countries. Deconstruction and participation will be key tools to overcome the entrenched attitudes that contribute to the inconsistencies between what is contemplated in the legal corpus and the reality at the heart of society.

Aware of the characteristics of internationalism and transnationalism, in combination with a dynamic vision of women's reality, we seek to transcend the dichotomies typical of patriarchal and colonial regimes. The intention is to present a renewed perspective that appreciates and values the margins as spaces of empowerment and progress in the struggle for gender equality.

Through the in-depth analysis of these three countries, the strategies implemented and obstacles encountered on the road to gender equality in the constitutional framework will be explored. Valuable lessons will be drawn from the success stories and areas for improvement will be identified in the cases of failure. The objective is to enrich the debate around the construction and consolidation of feminist constitutions, promoting a more just and egalitarian society for all its citizens.

It is important to note that the implementation of feminist constitutionalism is a constantly evolving process, and its impact on women's rights differs from country to country. Sometimes, this can be challenging, and the success of these efforts depends on a range of social, political, and economic factors.

## **2.1. Iceland**

In 1918, Iceland achieved its independence as a sovereign state, marking a definite distancing from Denmark, and finally proclaiming its independence in 1944 and enacting its constitution. Throughout this period, the concept of women's suffrage began to take root.

Members of parliament debated the issue of women's suffrage on multiple occasions, expressing their support and proposing legislation that was rejected by the Danish Crown, which had a more conservative stance. However, in 1850, Iceland distinguished itself by being the first country to grant equal inheritance rights to men and women. Then, in 1881, a significant event occurred: women were allowed to vote in local and parish elections. Twenty-one years later, women also gained the possibility to represent these governing bodies.

These were the first steps towards substantial change. In the second half of the 19th century, the first organizations focused on the women's movement were established in Iceland. In 1869, a women's association group emerged in rural areas with the primary intention of fostering solidarity among women. Although the group did not define specific political goals, its formation had a cultural impact on Iceland and laid the foundation for other movements.

During the 1960s and 1970s, grassroots activism began to take root as a key method for advancing civil liberties and generating social transformation. On the date of October 24, 1975, designated as Women's Year by the United Nations, women's groups in the Nordic country chose to symbolically "take a break" in order to highlight their insufficient salaries and the absence of recognition towards their role in the social structure (Martins, 2013). The radical feminist movement "Red Stockings" proposed the notion of a "day off" as a form of protest, aiming to create a significant impact. On this date, approximately 90% of women in Iceland participated in the movement, setting aside their professional and domestic duties. Around 25,000 women joined together in a unified front to demand change. This strike was intended to demonstrate the essential importance of women in the Icelandic economy.

Icelandic society immediately experienced the repercussions of this collective absence. Parents took their children to work due to the closure of kindergartens and schools, newspapers could not be printed as the cashiers were mostly women, stores remained closed, telephone exchanges were left unattended and even some radio broadcasts were interrupted.

Five years after the first Women's Protest Day, Iceland had its first democratically elected female head of state, President Vigdís Finnbogadóttir (Chapman).

After the economic crisis that Iceland suffered in 2008, society demanded the creation of a new Constitution, in the search for a new social context.

### **2.1.1. Icelandic Legal and Constitutional Framework:**

The Icelandic constituent process is recognized as one of the most innovative and participatory in the world. In 2010, the commission responsible for drafting the new constitution was composed of ordinary citizens. This commission had ten women and fifteen men, meeting the minimum requirement of 40% required by law to ensure equal gender representation. Its constitution establishes a democratic and parliamentary political system. Although participatory parity is currently still exceptional, it is possible that in the near future it will become an increasingly sought after goal. (Rubio Marín, Women and participatory constitutionalism, 2020).

The concept of equality is specifically addressed in Article 65 of the Constitution, number 33/1944, according to the Constitutional Law Act, number 97/1995, which states that both men and women should enjoy identical rights in all spheres. Iceland represents a representative democracy and a parliamentary republic. Iceland's constitutional document has the highest legal status in the Nordic country's legal system. All rules, regulations and executive measures must be in accordance with its guidelines. The Magna Carta not only lays the foundation for the structure of state power, but also ensures certain essential human rights and freedoms, such as freedom of religion, the right to privacy and the inviolability of home and family, and freedom of assembly and assembly. Fundamental amendments were made to the

human rights provisions of the Constitution in 1995 (The Center for Gender Equality Iceland, 2017). And in 2011, amendments were drafted in the Constitution to render it more representative and inclusive.

As such, Article 65 of the Constitution states that all persons are treated equally under the law and are inherently entitled to fundamental human rights, regardless of gender, religious beliefs, opinions, national origin, ethnicity, skin color, economic status, origin of birth or other characteristics. The same article guarantees that both men and women have equal rights in all respects (Government of Iceland).

Iceland has ratified several international treaties related to human rights, in particular the United Nations Universal Declaration of Human Rights and the Council of Europe's European Convention on Human Rights. The Ministry of Justice is responsible for overseeing any legal amendments necessary to comply with Iceland's international human rights obligations. In addition, the ministry reports to the committees responsible for monitoring the implementation of human rights agreements to which Iceland is a signatory.

The regulations in Iceland concerning gender equality are found in the Act on Equal Status and Equal Rights Regardless of Gender, numbered 150/2020. This law is intended to prevent any form of discrimination based on sex, as well as to maintain a balance of equality between men and women, and to provide equal opportunities for both genders in all spheres of society. The responsibility for enforcing this law lies with the Office of the Prime Minister. To oversee its implementation, there is a special entity known as the Equality Directorate, which is part of the Prime Minister's administration. This entity not only oversees the implementation of the law, but also offers advice, carries out public education initiatives and provides relevant information on gender equality.

Every four years, the Minister for Gender Equality must submit a proposed parliamentary resolution addressing a four-year action plan in relation to gender equality. Before doing so, she collects suggestions made by the various ministries and the Directorate for Equality is consulted. In addition, the discussions that take

place in the Gender Equality Forum must be considered. This gender equality action plan covers projects designed to ensure equal status and equal rights between the genders in Icelandic society. The action plan details specific projects, assigns responsibility for their implementation, estimates their cost and describes the method for evaluating the results of the actions undertaken.

Iceland is the first nation where public and private companies by law since 2018 must demonstrate that they offer the same salaries to men and women who have employees of the same category. This law came about with the intention of closing the wage gap in the Icelandic labor market. Prior to the enactment of the law in 2016 women earned between 14% and 18% less than men in positions of the same category (BBC World, 2018). Complying with the requirements of international treaties, such as the International Labor Organization Conventions, the Beijing Platform for Action and the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).

Both mothers and fathers in Iceland are equally entitled to parental leave of six months each, at 80% of their full salaries, using a "use it or lose it" approach. This policy has resulted in an increase in women returning to the labor market after their maternity leave period.

Along with this measure, the availability of highly subsidized childcare services in Iceland plays a key role in counteracting what is known as the "maternity penalty," which, according to various studies, contributes 80% to gender wage disparities. (World Economic Forum, 2023)

In 2008, amendments were made to the gender equality law (number 10/2008), introducing for the first time a section on quotas. In this article (number 15), it was established that when appointing members to committees, councils and governmental or municipal bodies, equal representation of women and men should be sought, and in cases where the number of members exceeds three, the gender ratio should not be less than 40% for any of them.

In 2009, the purchase of sexual services was prohibited by amendments to Article 206 of the Penal Code (number 19/1940). The promotion and benefit of prostitution, including pimping and other forms of exploitation, became illegal.

In 2010, strip clubs were completely banned through a revision of the law dealing with restaurants, accommodations and entertainment (number 85/2007), with the purpose of eradicating nudity-based profiteering. In the same year, amendments to the laws on joint stock companies (number 2/1995) and limited liability companies (number 138/1994) established the obligation for companies with more than 50 employees to have equal representation of women and men on their boards of directors. In cases where the number of board members exceeded three, the gender percentage could not be less than 40%. These reforms came into force in 2013.

In 2011, Parliament passed a law (number 85/2011) that strengthened provisions for the protection of victims of violence in intimate relationships. Powers were granted to expel the accused of domestic violence from the home and a specific restraining order was implemented in cases of suspicion.

As of 2013, the promotion of gender parity has become a crucial aspect in the business environment. As a result, the inclusion of women on corporate boards is required, with the condition that these boards are composed of at least 40% representation of each gender.(World Economic Forum, 2023).

In 2014, the Althingi (Iceland's National Parliament) passed a law (number 62/2014) that sought to improve various aspects of the existing gender equality law (number 10/2008). This reform arose from the observations of the EFTA (European Free Trade Association) monitoring institution, which noted that the law in question did not adequately reflect concepts such as direct and indirect discrimination, gender-based harassment and sexual harassment. A new article on wage discrimination was also introduced, empowering the secretary to add regulations regarding its implementation.

In 2015, the Althingi passed a new law (number 79/2015) that expanded the existing gender equality law (number 10/2008), prohibiting discrimination in relation to products and services. And in 2016, it amended Penal Act 19/1940 to comply with the Istanbul Treaty, ratified by Iceland in 2011. These changes covered areas such as stalking, harsher penalties for domestic abuse, and extending the statute of limitations for victims under the age of 18. (The Center for Gender Equality Iceland, 2017)

The year 2020 Iceland demonstrated a marked approximation in female labor participation, with a rate of 83.2%, which is close to the percentage of employed men, which was 87.5%, as reflected in the Global Gender Gap Index. In addition, women's access to secondary education surpassed that of men, with 89.2% of women attending compared to 86.3% of men. (La Republica, 2020)

All of the above can be summarized as follows: in Iceland, gender equity, due to its focus on the pursuit of social justice and the guarantee of human rights in its laws and policies, is considered an example of participatory democracy.

### **2.1.2. Current Status of Women's Rights in Iceland:**

According to the World Economic Forum (WEF) for the past fourteen consecutive years Iceland has been the most gender equal country globally, with over 90% parity. This assessment is based on four sectors within the gender equality framework: economic participation and opportunity; health and survival; educational attainment; and political empowerment (World Economic Forum, 2023). Iceland currently scores 0.912 out of 1 according to the World Economic Forum's Global Gender Gap Report 2023 (World Economic Forum, 2023).

Iceland's success to date is also attributed to the power assumed by women, who have been responsible for making visible the reality they face, such as the discrimination they suffer, as well as the sexual harassment and abuse of which they are victims. Furthermore, progress is attributed to the equal collaboration between women and men in decision-making, in addition to a growing support from men

towards the reciprocal concessions necessary to promote gender equality. (World Economic Forum, 2017).

In recent decades, there has been significant progress towards achieving gender equity in Iceland. Notable achievements include a substantial increase in female participation in the political sphere, both at the parliamentary and local levels. Significant legislation has been enacted to foster a more equitable society, such as laws aimed at increasing the presence of women in leadership roles and combating gender-based and sexual violence and harassment.

Iceland has one of the highest female labor force participation rates in Europe. However, gender segregation in the workplace persists, i.e. gender disparities in educational and career choices vary considerably between men and women. Although the gender pay gap has narrowed in recent years, this is true for both earned income and the unadjusted and adjusted pay gap (Prime Minister's Office, Government of Iceland).

In addition, although a number of obstacles have been overcome, challenges remain that require attention. It is vitally important to ensure equal representation of women and men in the future. Some relevant considerations include: ensuring gender parity in committees, councils and government bodies; increasing awareness of environmental issues from a gender equality perspective; continuing the fight against all forms of gender-based violence; encouraging the active participation of more men in the eradication of gender inequality; including the LGBT community more effectively in the promotion of gender equality.

The government has presented a new action plan for gender equality that is awaiting approval. This plan builds on the experience of previous initiatives, being structured in seven sections and introducing 21 projects to be addressed in its implementation period. These proposals encompass: integrating a gender perspective in all areas of government policy and decision-making, promoting equal pay for equivalent work, eradicating gender stereotypes in the workforce and media, promoting gender



equality in educational settings, building a less biased labor market, and promoting equal opportunities for all. (The Center for Gender Equality Iceland, 2017)

## **2.2. Tunisia**

In 2014, a new Constitution was implemented in Tunisia that was notable for its advanced protection of rights and its recognition of equality. The process involved in its creation was remarkable for the attention paid to these fundamental issues

During the Tunisian revolution in 2011 women's groups came together and mobilized to be able to coordinate a strategy to be able to achieve gender parity in the Constituent Assembly. Being supported by young people and members of political parties, who threatened to leave the parties that would not support gender equality.(Houlihan, 2019)

The Tunisian experience, from a gender perspective, makes us change the narrative that presents feminism as an exclusively Western prerogative.

The 2011 revolution gave voice to years of accumulated dissatisfaction in various sectors of Tunisian society. Tunisian citizens held the Ben Ali regime responsible for the poor economic progress in the interior regions, as well as the high rates of poverty and unemployment affecting the working class. They felt marginalized and neglected, and their suffering was compounded by the growing prosperity and privileges of the ruling elite. In addition, they had endured decades of corruption, political repression and violence by the security forces. From conservative Islamist groups to radical secularists, Tunisians demanded a more transparent political environment, starting with the establishment of a representative and responsive government. Tunisian women, in particular, called for greater inclusion and variety in the governmental sphere and in other elected bodies (Tamaru & O'Reilly, 2018).

### **2.2.1. Challenges and Confrontations in the Transformation of the Role of Women in Tunisian Society:**

In 1985, Tunisia ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but with substantial reservations picked up after 2011, an important fact that positioned Tunisia in the international dimension.(Fill, 2019).

In Tunisia, the role of women has been shaped by the intersection of two antithetical civilizational projects: one based on Islamic principles, which is founded on the continuity of a particular social and religious order, and another representing a project of civil society increasingly independent of state control, but still linked to the ideological apparatus underpinning the idea of the modern state. (Fill, 2019)

A diverse set of feminist movements that had focused on the defense of women's rights and gender equality since the protectorate gained strength and gradually managed to occupy the public space and transform themselves into a social subject. The evolution of these women's movements is closely related to the changes in society and governance in Tunisia.(Fill, 2019)

In Tunisia, the interpretation of Islam has prevailed for centuries, according to which women were to stay away from the most critical sectors of community life, and the idea of gender equality has been considered unorthodox and has taken a back seat. Although some Islamic currents have supported gender equality, this perspective has been marginalized in favor of other interpretations rooted in the patriarchal model. In the Islamic world, the principles that establish the status of the person, including family life, the right to property and justice, have been considered absolute and equated with religious precepts. Male supremacy has been regarded as an absolute and infallible dogma describing the conception of society and the correct relationship between the sexes. This dominant male order has been concretized in unequal legal norms, hegemonic political discourses, and the strict imposition of women's role.(Fill, 2019)

The concept of *asabiyya*, which is interpreted as "unifying structural cohesion" or "effective kinship," effectively describes a form of social relationship in which the tribe sees all economic and political roles converge with the patriarchal line. It was within this family context that the role of women and their subordination was predominantly shaped. The laws of marriage and succession, long regarded as essential elements for the preservation of the family state and as the untouchable heart of the *shari'a*, can be understood as emblematic symbols of this conception. For example, marriage was considered a private contract between two families where the woman's consent was not indispensable, while the patrilineal bequest, which was to ensure the strengthening of the family patrimonial units, generally recognized women half of what would have been granted to men under the same conditions.(Fill, 2019)

Both Tunisian Islamic customs and habits, as they were consolidated in the European imagination, have been accused of being deeply misogynistic. Significantly, even Western feminism, which claimed to "liberate" Tunisians from their submissiveness, argued that Islam was inherently oppressive to women and that, being founded on institutions such as veiling and segregation, it caused the backwardness of the entire society. It was believed that these symbols of inferiority needed to be removed to allow Tunisians to free themselves from the degradation and oppression of Islam, and move towards civilization.(Fill, 2019)

Before 2011, equality was not an issue capable of mobilizing autonomous women's movements in Tunisia without external political interference. After 2011, the struggle for equality was articulated mainly in terms of active equality, not only formal, and as an expression of the pluralism necessary for political and social democracy.(Fill, 2019). As a predecessor to this whole movement there existed in 1956 the Personal Status Code (CSP) enacted on an August 13. The CSP was driven directly from power and along with the promotion of women's education, Habib Bourguiba, Tunisia's first president after its Independence, was considered the "liberator of women". He was aware that women were a crucial element in the legal system to bring the country towards modernity, so he made women the "core of his own

political propaganda". Within a few years, the CSP was considered a "revolutionary and irreversible progress" as it sought to combat discrimination and consolidate the role of women in the country's development, granting them unprecedented rights in the Arab-Muslim world. In addition, in 1973 Bourguiba attempted to introduce a bill to discuss equal inheritance between brothers and sisters, but had to abandon this attempt due to fear of provoking violent reactions. The deputies also considered this measure a heresy that went against the hereditary distribution established in the Koran and hadith, and the article involved was finally withdrawn. (Garratón Mateu, *The Unfinished Revolution of Tunisian Women Ten Years*, 2022).

Tunisia was also a pioneer in the regulation of abortion. In July 1965, the first law was passed allowing abortion for women who had more than five children and were within the first three months of pregnancy. Subsequently, in 1973, this practice was authorized for all women, regardless of the number of children. In fact, Tunisia is one of the few Muslim countries that allows abortion (Garratón Mateu, *Revista de Estudios Internacionales Mediterráneos*, 2022).

Faced with the rise of Islamism, the political class chose to remain inactive to avoid "sacrificing themselves in the name of a female emancipation of which they were not completely convinced". This lack of political action was compensated from the 1980s onwards by the emergence of women's associations and organizations that identified with independent feminism, far removed from Bourguiba's state feminism.

Through the Tunisian Association of Democratic Women (ATFD), Tunisian feminists denounced patriarchal oppression sustained by the ambiguity of power, the exploitation of religion and the conventional norm. Thanks to the ATFD, the first Tunisian law against sexual harassment was achieved in 2004. In 2007, the law was amended to set the minimum age of marriage at 18 for both spouses. However, the ratification of the optional protocol to CEDAW in 2008 had a limited impact due to Tunisia's reservations that maintained certain discriminatory norms based on religious grounds (Garratón Mateu, *La revolución inacabada de las mujeres tunecinas diez años*, 2022).

### **2.2.2. The Arab Spring: Tunisian Women's Role in the Struggle for Gender Equality and Democracy:**

Under Ben Ali's government, women were considered a key element within the legal system to lead the whole country towards modernity and fight against anachronistic traditions and backward mentality. Ben Ali's Tunisia was presented to the world as feminist and its president was presented as a guardian of women's rights, thus hiding a substantial democratic deficit behind a state feminism with variable geometry. The new turning point came with the spread of revolts and protests starting in 2010, in an atmosphere of growing opposition to President Ben Ali and the police state. These protests spread across the Arab world, revealing a burden of tensions built up over decades. These protests became known as the "Arab Spring." (Fill, 2019)

During the well-known Arab Spring, Tunisian women were at the forefront demanding structural changes and claiming that "there is no democracy without equality." In crowded squares, demands related to gender equality joined the struggles for rights and democracy, being considered a cross-cutting issue. The emphasis on equality marked a complete reconfiguration of women's agency: for the first time, in a coherent manner, Tunisian women confronted legal disparities while taking on an explicitly legislative intent.(Fill, 2019)

### **2.2.3. Constitutional Process in Tunisia:**

In the October 2011 elections for the national constituent assembly, women managed to fill 59 of the 217 available seats, representing 27% of the total. Following parity rules, more women were included when some male members resigned during the assembly period. Finally, the constituent assembly had a total of 67 women, equivalent to 31% of the members. Although this proportion of female participation is relatively high compared to other constitutional processes, parity advocates wanted an even more equitable representation, approaching 50%. However, because the law did not explicitly require horizontal parity, only 8% of the approximately 1,500 electoral lists were headed by women. This circumstance,

together with the fragmentation of the vote, resulted in only leading male candidates being elected in many parties.

During the early aftermath of the popular uprising in Tunisia, one of the most important achievements was the mobilization of feminists and women already holding political office to achieve the adoption, by decree-law of April 11, 2011, of parity on the electoral lists for the election of the National Constituent Assembly. This was a major step towards gender equality in political representation and allowed women to have a greater voice in political decision-making (Garratón Mateu, *The Unfinished Revolution of Tunisian Women Ten Years*, 2022).

During the process of drafting the new Constitution in Tunisia, voices emerged within the very ranks of Ennahdha (Islamist political party) questioning the precepts of the Personal Status Code that had modified the status of women. The position of the Islamists could jeopardize the rights won by women, and it was therefore urgent to "armor" them by integrating them into the future Constitution. After an intense debate in which feminist associations and civil society played a fundamental role, a compromise was reached with the Islamist party, which finally withdrew its proposal to consider the Sharia as the "frame of reference" for constitutional laws. The involvement in these negotiations of the Islamist women MPs, who constituted almost the totality of the elected women MPs, was decisive, as they were more educated, especially in positive law, than their party's MPs.

The 2014 Constitution grants broad political rights, limits the role of religion and provides for free elections, a major step towards gender equality and democracy in Tunisia, despite being enacted in a climate of great instability. The promulgation of the new Constitution has been a key piece in the Tunisian transition process towards democracy and has established full equality of men and women (Garratón Mateu, *La revolución inacabada de las mujeres tunecinas diez años*, 2022).

After a period of some inactivity due to political uncertainty, there have been developments favorable to women in Tunisia. Feminist mobilization caused the Tunisian government to finally remove, on April 17, 2014, the reservations limiting

the full implementation of the principles of CEDAW, except for the reservation of the General Declaration under which Tunisia committed itself to the United Nations not to take any administrative or legislative decision that could conflict with Article 1 of the Tunisian Constitution, which considers Islam as a state religion. (Garratón Mateu, *The unfinished revolution of Tunisian women ten years, 2022*).

However, feminist associations, such as the ATFD, expressed their dissatisfaction on this point, as they consider that a project of society that does not understand the values of equality between men and women "favors discrimination against women and does not respond to the objectives of the Tunisian revolution". Despite this, the elimination of reservations was an important step in ensuring gender equality in Tunisia and in complying with international human rights standards.

#### **2.2.4. Impact of Women's Participation in the 2014 Constitution:**

In the drafting of the Constitution, women also played a key role through mobilization and advocacy. Their influence was particularly focused on issues related to women's rights and gender equality, getting the constituent assembly to consider these issues as essential aspects in the new constitution, despite differences of opinion within the women's political spectrum.

Women both inside and outside the assembly united around key issues, such as gender equality and equal representation in elected assemblies. For many political parties and civil society organizations, these issues were not priorities. Some male leaders even told the women that "this is not the time to discuss women's rights; we should focus on freedom of expression, among other more important issues. "However, several interviewees stated that, but for the mobilization of women, these rights would not have been incorporated into the Constitution. As Sana Ben Achour, a leading jurist, explained, "It is of great importance that these issues are set out in the Constitution, because although it may be considered just a document...the law has a real and significant impact." (Tamaru & O'Reilly, 2018)

The gender equality debate first gained attention in August 2012, after the publication of the first constitutional draft, which included a controversial clause referring to the "complementarity" of women. As mentioned above, civil society reacted immediately and strongly, with human rights and women's organizations organizing petitions and demonstrations. Thousands of people took to the streets with signs saying "Stand up, woman, for your rights". Liberal feminist activists took the floor to explain why this clause was problematic, arguing that "even if people did not fully understand complementarity, they instinctively rejected this concept." Experts also testified before the constituent assembly to advocate for a change in the language. Under this intense pressure, the assembly abandoned the concept of complementarity in the next version of the constitutional draft.

The debate on gender equality in politics began early in the process, starting in the Higher Authority and continuing in the constituent assembly. Those women who supported parity saw this provision as essential to improving the position of women in Tunisian society. As one assemblywoman noted, women had already achieved education, health, and equality through the personal status code, so it was crucial that they be represented in decision-making, leadership, and political parties. Although women legislators were more present than their male counterparts, in elections for parliament, people preferred men. A change in mindset was also needed. (Tamaru & O'Reilly, 2018).

Discussions in the constituent assembly centered on whether gender parity in legislative elections was necessary, and whether it should be incorporated into the constitution or left to electoral law. Opinions were grouped into two main viewpoints, which are common in quota debates around the world. One argued that unless the law reserved parliamentary seats for women, entrenched conservative traditions in Tunisia would prevent even the most capable female candidates from holding office. The other perspective argued that assigning quotas would weaken women's authority and that their seats should be based solely on merit.

Some assembly members also argued that parity should be included in the electoral law rather than the constitution. However, a group of women and a small group of



men in the assembly, backed by civil society and the UN, strongly warned against this. In an impassioned speech to the assembly, Monia Ibrahim, a representative of Ennahda, strongly criticized parity, arguing that it undermined the principle of equality for which women had fought. The debate became so intense that several assembly members threatened to vote against the entire constitution if this amendment was included.

To ensure the inclusion of parity in the constitution, some women strategically presented the issue as "to be against parity is to be against women." In this way, no party would dare to oppose it, as they would not want to be perceived as adversarial to women's rights or risk the women's vote. Advocates also publicly linked issues such as gender parity and equality to popular revolutionary ideals, such as progressivism, democracy, and modernism. They used phrases such as "There is no democracy without equality" and "Modernity and democracy go hand in hand." They also assured to seek the maximum possible, aware that they would be subject to negotiation with other parties.

Finally, Article 46 and its controversial amendment were approved with 116 votes in favor, 40 against and 32 abstentions. Months later, the national constituent assembly approved a new electoral law confirming vertical parity. Proponents of this provision hoped to achieve horizontal parity as well, which would require alternating male and female candidates on electoral lists.(Tamaru & O'Reilly, 2018).

#### **2.2.5. The New Constitution of Tunisia:**

The new Tunisian Constitution, which came into force on January 27, 2014, expressly recognizes the equality of citizens before the law in Article 21 and charges the state to work towards the realization of social justice, sustainable development and regional balance, focusing on the principle of positive discrimination in Article 12. In addition, the political inclusion of women was enshrined in Article 46 and the state was designated to ensure the representation of women in elected bodies in Article 34. (Fill, 2019)

Although the constitutional charter seemed to bring hope for a radical change in the political role of women, formal equality found its limits in its reduced ability to impact the structure of the family and equal guarantees in the labor system, implying the continuation of the economic imbalance between the sexes and the preconditions of women's subordination. (Fill, 2019)

The revolutionary nature of the Tunisian Constitutional Charter, although compromised by the problem of its concrete implementation on equality issues, lies mainly in the democratic process that preceded its entry into force. This "participatory constitutionalism" led to the consolidation of a pluralist basis from a social, religious, gender and territorial point of view, characterized by the close collaboration between NGOs and the various women's associations.(Fill, 2019)

#### **2.2.6. After the Constitutional Era:**

During the presidential mandate of Béji Caïd Essebsi (2014-2019) in Tunisia, the government initiative to present the Comprehensive Bill on Violence against Women to the National Constituent Assembly in August 2014 was noteworthy. Although ambitious, this project sought to transform social norms and eliminate discrimination entrenched in the Personal Status Code. However, due to lack of consensus, the Draft had to be withdrawn.

In Tunisia, women face various forms of violence, including by police at demonstrations or police stations, often justified for challenging social norms. The urgency to address these issues led to the creation of a specific law in 2017, focused on the prevention, protection and prosecution of gender-based violence. Although the new law was well received and modified discriminatory articles in the Penal Code, it left out certain areas to respect cultural and ideological values. Despite the advances, crimes such as homosexuality, adultery and prostitution still persist. In addition, certain aspects of the Personal Status Code that perpetuate gender discrimination were not modified.

The 2017 Organic Law aims to eradicate violence based on gender discrimination and expands the concept of violence towards women. Although it marks an important step in the fight against gender-based violence, Tunisia still faces challenges in achieving full gender equality and full protection of women's rights.

Despite progress towards women's emancipation, obstacles remain in 2023. The UN Practical Guide on CEDAW, presented in Tunisia in August 2017, noted that the country had outstanding obligations and that provisions in the Penal Code and the CSP contradicted gender equality, as previously discussed. (Garratón Mateu, *The Unfinished Revolution of Tunisian Women Ten Years*, 2022).

Although compared to the MENA region, Tunisia boasts impressive indicators in terms of women's participation in the political and economic sectors, the rural-urban divide remains at the core of deep social and regional inequalities. (Fill, 2019)

Despite ongoing frictions, the daily mobilization of organizations, often in contrast to the political and institutional part of the country, continues to achieve significant results. Among these, the 2017 reform legalizing marriage between Tunisian women and non-Muslim men, as well as the beginning of a legislative process aimed at equal treatment for men and women in matters of inheritance, stand out for their importance.(Fill, 2019)

In addition, in 2017, President Mohamed Beji Caid Essebsi created the Committee for Individual Freedoms and Equality (COLIBE), tasked with issuing a recommendation on legal reforms to improve consistency regarding equality and individual freedom between the existing body of law, the Constitution, and international standards on human rights issues. Issues such as the abolition of the death penalty, equality in inheritance law, and decriminalization of homosexuality were addressed among women's rights.(Fill, 2019)

These advances show that the struggle for gender equality in Tunisia remains a priority for civil society and women's organizations, even in a challenging political and social context.(Fill, 2019)

Despite progress in the struggle for gender equality in Tunisia, many of the claims that animated the revolution remained on paper. There are no effective solutions to address the deep political and social gaps between the center and the suburbs, as well as the existence of wages well below minimum standards, which end up affecting the poorest and most marginalized sectors of the population, often occupied by women.(Fill, 2019)

For this reason, women's economic participation, as well as their limited empowerment at the political level, remain open issues. Despite the favorable legal framework, gender equality in practice still faces significant challenges in Tunisia.(Fill, 2019)

Concrete steps must be taken to ensure that gender equality laws and policies are effectively implemented. This includes providing adequate financial and technical resources for local administrations and civil society organizations working in this area, as well as training public officials to understand and implement women's rights effectively. It is also essential to involve civil society and women in decision-making and in the implementation of policies and programs related to gender equality to ensure that women's needs and concerns are addressed in all areas of society.(Fill, 2019)

Although the country has cutting-edge gender equality legislation, women in Tunisia continue to face economic, social, and political exclusion. This is due to a deeply rooted interconnection between religion, patriarchy and citizenship, which maintains a sense of internalized and institutionalized seclusion.(Fill, 2019)

Tunisia was chosen as the Arab Women's Capital for the year 2018- 2019 and as the International Capital for Equal Opportunities for Women and Men in 2019. Even so, there is still much to be done to address gender inequalities in the country. (Fill, 2019)

Political action is required to address gender inequalities and ensure that the promises of the revolution become a reality for all Tunisian women. Although there

is still a long way to go towards gender equality, women's movements in Tunisia have continuously demonstrated their importance both on the revolutionary stage and in the bottom-up definition of gender politics.(Fill, 2019)

The Tunisian revolution differs from other classical transitions to democratic systems, as the departure of Ben Ali imposed the need to establish a new full-fledged democratic system. In this context, women have played an important role in the transition and in the struggle for their rights, which has become a cross-cutting demand affecting all values and spheres of society. Their active participation in the uprisings has given them greater visibility by symbolically occupying public space to spread the idea that without real equality there can be no democracy.

A decade after the protests that led thousands of Tunisian citizens to take to the streets, the outcome has been mixed. The country is immersed in a deep and complex crisis that has allowed the president of the republic to take full control and suspend parliamentary activity from July 2021, in a maneuver described as a constitutional coup d'état that could lead to an authoritarian drift. During this period, Tunisian women have gained new rights, such as the ability to marry a non-Muslim or the autonomy to declare the birth of their children. However, despite the fact that the 2014 Constitution was presented as the most advanced in terms of women's rights, the proclaimed equality in rights and obligations between the two genders remains more formal than real. (Garratón Mateu, 2022) The inability to pass the equality bill in the inheritance demonstrates the fragility of the positions achieved and the difficulty for women to put an end to practices deeply rooted in Tunisian patriarchal society, beyond religion.

In the public sphere, despite the adoption of norms encouraging women's participation, their presence in politics remains limited, which is also the case in government and in senior positions in public and private companies. The weak incorporation of women in the public sphere and their subordinate status in the personal sphere could partly explain the delay in the modernization of Arab politics, which some neo-Orientalist sectors have attributed to Islam as a possible "inhibiting factor of democracy" .

Although the Constitution formally establishes equality, in reality this equality is far from being realized. Tunisian society is divided into two different socio-political projects: the religious one, promoted by conservative parties, and the secular one, adopted by liberal and leftist parties that defend the separation of religion and state. The debate on women's rights is also present in the religious sector, where women are fighting for their own autonomy. This polarization is also reflected in women's associations, making it difficult to adopt unified positions to defend women's rights.

After overcoming Ben Ali's authoritarianism and embracing a democratic system, Tunisia faces institutional fragility. However, the rise of Islamism and misogyny in patriarchal society, with retrograde attitudes towards the role of women, has driven policies that control the female body, threatening rights.

Béji Caïd Essebsi created the Commission for Individual Liberties and Equality (COLIBE) in 2017, proposing constitutional reforms for hereditary equality, abolishing dowry, the death penalty, and decriminalizing homosexuality. Although he faced conservative resistance that prioritizes the Muslim family, he moved forward with a bill for gender equality in inheritance, not yet passed.

Since the revolution in Tunisia (known as the Jasmine Revolution) feminist movements have not let their guard down and have mobilized to advance women's rights and democracy. In summary, as of April 2021, the following most relevant advances were achieved:

- Despite initial pressure to base the new Constitution on Quranic and Sharia interpretation, the concerted effort of human rights advocates, mostly women, succeeded in influencing the direction of the constitutional process. The result was a Constitution that emphasized human rights and gender equality rather than the initially proposed "complementarity" between men and women.
- Equality is officially recognized and assured in the 2014 Constitution. This principle is explicit in the beginning of the document, as well as in Articles 21 and 46, which

clearly stipulate the State's obligation to safeguard women's rights, boosting their stability and progress through support and promotion measures.

- The State of Tunisia withdrew its reservations to CEDAW in 2014.
- The Organic Law for the Elimination of Violence against Women was unanimously approved by Parliament in July 2017.
- The incorporation of the principle of parity between women and men in 2011.
- In 2015, Parliament passed a law allowing women to travel with their under-age children without parental authorization.

There have been advances but also a strong struggle not to lose what has been gained. From a legal perspective, women in Tunisia have rights established in the Constitution and regulations, a situation that contrasts with that of women in other Arab-Muslim nations. However, in daily life, these prerogatives are far from being fully experienced. Unfortunately, discrimination persists against women in both public and private spaces. (Kennou Sebei, 2021) After overcoming Ben Ali's authoritarianism and embracing a democratic system, Tunisia faces institutional fragility. However, the rise of Islamism and misogyny in patriarchal society, with retrograde attitudes towards the role of women, has driven policies that control the female body, threatening rights.

In July 2021, President Kaïs Saïed invoked the Constitution to dismiss the Prime Minister and suspend the Assembly, generating uncertainty and the threat of a return to authoritarianism. President Saïed has undermined the autonomy of the judiciary through two decrees granting himself the ability to intervene in the careers of members of the judiciary and the prosecutorial corps, even empowering himself to dismiss them arbitrarily. On June 1, 2022, Saïed dismissed 57 judges, magistrates and prosecutors in a capricious manner, citing vague accusations of a political nature such as terrorism, economic or moral corruption, adultery and attendance at events with alcohol consumption.

On July 25, 2022, President Saied consolidated his rule following the approval of a new Constitution in a referendum, which he himself had proposed. This Magna Carta, presented in the midst of an accelerated drafting process and without broad consultation with civil organizations or other political parties, grants greater powers to Saied and weakens the independence of the judiciary. These measures threaten to revert the country to levels of repression similar to those seen before 2011. (Amnesty International , 2023)

Several factors hinder further gains for women, including growing Salafist propaganda, increasing violence against women despite legal measures taken to combat it, the feminization of poverty, and alarming female unemployment (Garratón Mateu, The Unfinished Revolution of Tunisian Women Ten Years, 2022).

Tunisia currently has a score of 0.642 out of 1 according to the World Economic Forum's Global Gender Gap Report 2023, ranking 128th out of 146 countries evaluated in the World Economic Ranking in the fields of Participation and Opportunity, Educational Attainment, Health and Survival and Political Empowerment (World Economic Forum, 2023).

Amnesty International recently stated on July 24, 2023: "In the second year after Tunisian President Kais Saied took power, the country's authorities have taken further steps towards repression by imprisoning dozens of political opponents and critics of the state, violated the independence of the judiciary, dismantled institutional safeguards for human rights and incited discrimination against migrants". Today, human rights are at risk, again (Amnesty International, 2023).

### **2.3 Bolivia**

In 1952, Bolivia recognized women's right to vote, more than twenty years after Ecuador, the first country in the region to do so in 1929.

Throughout the 1970s, in the South American region, feminism experienced a process of incorporation into institutional structures, in many cases facilitated by the



work of non-governmental organizations (NGOs). However, during the 1990s, after two decades of dedication, the feminist movement faced an internal division due to the contradictions that began to emerge. While some women's groups continued to defend the political principles of feminism, other groups chose to align themselves exclusively with the development perspective promoted by development agencies. In other words, the latter adopted the gender perspective, but within a framework more focused on the development aspects promoted by these agencies. Feminist perspectives came together under the umbrella of non-governmental organizations (NGOs) in countries such as Brazil, Chile and Bolivia. This was in part due to the scarce existence of opportunities for civic activism due to the restrictions imposed by the military dictatorships at the time.(Sánchez Borja, 2013).

At the same time, initiatives such as the Foro de Mujeres Políticas and the Coordinadora Política de la Mujer emerged in Bolivia. These organizations aimed to broaden the participation of women as authoritative voices, capable of presenting proposals in the spheres of influence and decision-making in the field of development. Their focus was on the areas they considered relevant to them.

### **2.3.1. Feminism in Bolivia**

The first feminist institutions in Bolivia were founded in 1923. After the end of the Chaco War (1932-1935), a congress led by the feminist institution LFEPA (Legión Femenina de Educación Popular América) took place. During this event, a debate was held on a platform for women's demands, marking the first historical record of its kind in Bolivia. The proposals included the investigation of paternity as a way of correcting the unjust situation faced by children born without fathers. Among the objectives proposed were the defense of civil and political rights, the unconditional right to vote, instruction in sex education and the formation of women's unions, among others. Despite interference from the clergy, the congress did not achieve its objective, but the feminist impulse persisted.

In 1945, through a constitutional amendment, women were granted citizenship to participate in local elections. In the same year, a Women's Committee was

established, composed of various women's groups that jointly presented demands to the government for civil and political rights, equal pay and free access to higher education. In 1947, the Bloque de Jornada Femenina was established and in 1948 the Agrupación Interamericana de Mujeres was created to protect the rights of single, abandoned or divorced mothers. This organization promoted the creation of legislation regarding the investigation of paternity, the legal recognition of children and de facto unions, in addition to promoting women's suffrage.

The 1956 General Elections marked a milestone by allowing indigenous people, women and illiterate people to vote thanks to the establishment of universal suffrage. As in other Latin American nations, in Bolivia, feminist movements became more vigorous from the 1970s onwards. Two outstanding pillars were the mothers' clubs (which did not necessarily embrace feminism), considered one of the main forms of women's popular organization and which emerged at the end of the 1950s; and the peasant groups personified in the Bartolina Sisa Foundation. By 1987, there were close to 4,000 mothers' clubs that brought together 295,000 women in both urban and rural areas.

In 1989, the Women's Platform emerged with the purpose of uniting the efforts of gender entities and women's groups, regardless of whether they were feminist or not, all aligned with the gender perspective promoted by international organizations. The main objective of this platform was to achieve gender equality and promote democratization in everyday relations. In 1991, the II Bolivian Feminist Meeting took place, organized by the Women's Forum. At this meeting held in Santa Cruz, more than 200 women stressed the importance of recognizing social, cultural and economic differences as opposed to the uniformity imposed by the dominant system.

Subsequently, at the end of 1992, the III Feminist Meeting was held in La Paz, bringing together more than 400 women from different ethnic groups and generations. Bolivian feminism can be described as rooted in the population, addressing issues such as economic adjustment, poverty, development, sexuality and colonialism, all of which affect the popular strata. Its evolution and the participation of some of its leaders in the governmental sphere represented a

challenge to action from the state public sphere. Its peak period was in the 1990s, directly linked to the so-called "Second Generation Reforms", led during the presidency of Sánchez de Lozada. (Sánchez Borja, 2013).

### **2.3.2. Bolivia Before the Constitutional Reform:**

During Sánchez de Lozada's first presidential term (1993-1997), his economic approach was aligned with the second phase of structural reforms. From the political perspective, it was based on the "Plan de Todos" (Everyone's Plan), which was based on three pillars: capitalization, popular participation and educational reform. This led to the reduction of ministries and the formation of super ministries, including one dedicated to Human Development, which emphasized attention to marginalized sectors such as ethnic groups and women, an early step in the integration of gender equity in policies and public administration.

The IV World Conference on Women was a milestone in establishing gender equality as an essential component in the solution of global problems. Bolivia, as a signatory of the Beijing Declaration and Platform for Action, incorporated the gender agenda into national policies, in accordance with the World Plan of Action and the Regional Program of Action for the Women of the Americas and the Caribbean 1995-2001. These UN agreements made the gender approach operational, linking the agendas with human rights and women's rights.

The gender mainstreaming process in Bolivia began with gender mainstreaming, which emerged from feminist demands and was consolidated at the Beijing Conference. Although the historical work of organized women is recognized, Beijing marked the beginning of the "era of public policies to achieve gender equity". Beginning in 1995, Bolivia embraced the objective of accelerating the implementation of strategies to eliminate obstacles that hindered women's active participation in all areas of life. This implied the creation of laws, government agencies and public policies to promote a gender perspective and social inclusion.

Prior to 1995, notable legislative advances were made in Bolivia. Law 975 (1988) established that women would enjoy labor protection during pregnancy and up to one year after childbirth. Law 1551 on Popular Participation (1994) promoted the inclusion of women and men in the planning and supervision of municipal management. Law 1565 on Educational Reform (1994) introduced gender equity as a fundamental principle in education. These milestones lay the groundwork for meeting the commitments made at the Beijing Conference.

In 1995, Law 1674 against Violence in the Family was enacted, resulting in the creation of the Vice-Ministry of Gender and Family Affairs. In 1997, the Quota Law (Law 1779) came into force, which requires political parties to promote equal opportunities between men and women, guaranteeing that at least 30% of the lists of plurinominal candidates be made up of women.

A crucial step was taken with Law 1715 of 1996, which ensured equal rights between genders in the distribution and possession of land. These regulations sought to challenge deeply rooted norms in Latin American culture and in rural areas. Despite these achievements, gender differences in education and literacy remained a concern.

During the 1990s, there were prominent institutions on gender issues, such as the Department of Socio-Labor Promotion (1990), the Undersecretariat for Gender Affairs (1993) and the National Women's Program (1993). These initiatives sought to protect women's labor rights, foster egalitarian gender relations and promote social policies for women.

Despite these advances, the implementation of gender equality policies was affected by institutional fragility and discontinuity in governmental changes. However, an increase in the presence of women in representative and decision-making roles was observed after the implementation of the Quota Law.

Until 2001, inequalities persisted in women's economic participation and salaries. Questions arose as to whether policies and laws were effectively bringing about a

change in the situation of women or whether they were merely rhetorical statements. Gender studies in Bolivia until 2006 indicated that gender policies were developed in a context of macroeconomic stability, state modernization and poverty reduction.

The work done during the 1990s laid the groundwork for future actions. This would not have been possible without the influence of international regulations, the actions of women's organizations and external funding through international cooperation. These factors were key drivers of significant changes in gender policies in Bolivia.

In 2006, Evo Morales, a member of the Movimiento al Socialismo-Instrumento Político por la Soberanía de los Pueblos (MAS-IPSP) party, became president of Bolivia. During his term of office, he presented a Government Plan that encompasses citizen security to achieve a quality life, education and the preservation of cultures, as well as aspects related to gender and generations. This program incorporates public policies that seek gender equality and also includes a specific agenda focused on gender issues, which I summarize below.

In the section entitled "Education and Cultures", the Elizardo Pérez and Avelino Siñani Law is presented, aimed at a profound restructuring of the educational system in order to guarantee the quality of public education in a unified National Educational System. This law aims to promote an education rooted in interculturality, which strengthens plurinationality, multilingualism, and promotes gender and generational equity. Education, as a reflection of inequalities, exposes situations of exclusion and discrimination, especially in rural areas and among indigenous and suburban groups and people with disabilities. Such circumstances weaken the very notion of education as a shared public good.

The section "Gender and Generationals" highlights the imperative need to achieve gender equality in pursuit of a dignified life. The intention is to combat racism, discrimination and machismo, reaffirming the international commitments that Bolivia assumed in previous conferences related to population and human rights. The program recognizes legislative and regulatory advances in gender equity since 1995, but highlights the lack of political will, human and financial resources to

implement them effectively, especially for indigenous and rural women. It also points out that these advances took place in a context of economic and political changes that, instead of promoting equity, unleashed economic and political crises, weakening women's rights.

It is criticized that the incorporation of gender, ethnic and generational rights did not consider the unequal distribution of resources and wealth patterns, without addressing underlying economic and political aspects. It highlights the social unsustainability of structural adjustment policies that have increased poverty and inequality. It is argued that to achieve lasting results, gender equality must be addressed in a political and economic context, not merely a cultural one. It proposes the implementation of public policies that integrate equity criteria and gender indicators, from an intercultural and generational approach, backed by adequate resources. This would give rise to a gender agenda rooted in laws and public policies, addressing aspects such as the economy, health, sexual and reproductive rights, and the elderly (Sánchez Borja, 2013).

### **2.3.3. The Constituent Assembly with a Gender Approach**

After presenting his governmental plan, Evo Morales won the elections with the support of 54% of the voters, consolidating his legitimate position as president. He immediately took the initiative to call elections for the formation of a Constituent Assembly, with the goal of drafting a new constitution within one year.

The Constituent Assembly in Bolivia was conceived as a means to redistribute power and build an inclusive and equitable future at a time of historical social division. This assembly took place in a context in which the fundamental problems of the State, such as dependency, diversity and ethnic, regional and social conflicts, became evident.

The 2004 constitutional reform, which gave the green light to the convocation of the Constituent Assembly, conferred legitimacy to this mechanism that would be implemented during Evo Morales' term as president.

The Constituent Assembly was perceived as a peaceful way to "rebuild" the country and became a space to integrate women's demands, transcending the liberal gender approach predominant in many organizations and government institutions. This made it possible to address gender demands in line with socioeconomic, class and ethnicity categories.

With regard to gender-related proposals in the context of the Constituent Assembly, it was noted that a large part of the efforts were focused on the preparatory stage of the convocation. An agreement was reached around the idea of achieving parity and gender alternation in the Assembly, thus ensuring that at least 50% of the participants would be women, surpassing the 30% requirement stipulated by the Quota Law. (Sánchez Borja, 2013).

#### **2.3.4. The New Political Constitution of Bolivia**

The sequences of mobilization driven by indigenous organizations, trade unions and other social groups, as previously mentioned, set the context for the convocation of a Constituent Assembly. These cycles of movements crystallize a process of political change by channeling their concerns through a "popular manifestation that has a profoundly political nature". This culminates in the creation of a new Constitution.

The following is a summary of some of the most relevant articles for this study that were effectively incorporated into the Bolivian Constitution of January 2009 that address women's participation, gender equity and non-discrimination based on gender or other socioeconomic conditions.

Article 8.- Values of unity, equality, inclusion, dignity, freedom, solidarity, reciprocity, respect, complementarity, harmony, transparency, balance, equal opportunities, social and gender equity.

Article 14.- The State prohibits and punishes all forms of discrimination based on sex, color, age, sexual orientation, gender identity.

Article 15.II.- All persons, particularly women, have the right not to suffer physical, sexual or psychological violence, both in the family and in society.

Article 15.III.- The State shall adopt the necessary measures to prevent, eliminate and punish gender and generational violence.

Article 20.- The right to universal and equitable access to basic services.

Article 26.- Participation shall be equitable and on equal terms between men and women.

Article 48.V.- The state shall promote the incorporation of women to work and shall guarantee the same remuneration as men for work of equal value.

Article 48.VI.- The labor immobility of women in a state of pregnancy, and of the parents, is guaranteed until the daughter or son reaches one year of age.

Article 82.- The State shall guarantee access to education and the permanence of all citizens under conditions of full equality.

Article 255.- I. International relations and the negotiation, subscription and ratification of international treaties respond to the purposes of the State. It shall be based on the principles of defense and promotion of human, economic, social, cultural and environmental rights, with repudiation of all forms of racism and discrimination.

Article 256.- I. The international treaties and instruments on human rights that have been signed, when they are more favorable to those contained in the Constitution, shall be applied in a preferential manner over the Constitution.(State of Bolivia, 2009).

We see that Bolivia has devoted considerable efforts to achieve the strategic objectives entrusted to governments, which are summarized in the Beijing Declaration as follows: First, the creation or strengthening of national mechanisms and other government agencies (SO.H1). Second, the integration of the gender perspective in legislation, policies, programs and public projects (SO.H2). And



finally, the elaboration and dissemination of gender-disaggregated data, as well as information aimed at planning and evaluation (SO.H3). (Sanchez Borja, 2013).

As it could be observed, the Main Constitution of Bolivia adopted the idea of gender and integrated it into the constitutional rights; and due to this reason, the constituent body incorporated the principles of Gender Constitutionalism.

As a result of the implementation of the new constitution in 2008, the National Development Plan initiative emerged in Bolivia. This plan had as its primary objective to promote the advancement of the essential aspects of equity and innovation. This strategy became the fundamental framework on which equality and inclusion policies in the country were based.

An example of this orientation is the National Plan for Equal Opportunities, which aimed to boost public policies at the national level by incorporating five main areas: Economy, production and employment; Education; Health; Prevention of gender violence; and Civic and political participation.

The New Constitution incorporated most of the modifications proposed by the governing party, maintaining consistency with international treaties and agreements signed by Bolivia. In the area of international relations, Bolivia played a leading role in promoting the rights of indigenous peoples, with special attention to women belonging to this group. The convergence between international standards and the gender perspective they promote has been fundamental in the configuration of national policies and the formulation of new affirmative measures aimed at women (Sánchez Borja, 2013).

The promulgation and dissemination of the Political Constitution of the State in 2009 marks a fundamental change in the era, indicating that constitutions such as those of Bolivia and Ecuador can be considered as germs of a profound transformation in the paradigm of modern law and the State. This even reaches a point where one can speak of a process of political, social, economic and cultural restructuring. Moreover, in line with the idea of depatriarchalization, this implies putting an end to any form of

subordination, discrimination, racism, machismo and economic marginalization that have been exercised against women (Santalla Sandoval, 2023).

### **2.3.5. Women's Rights Today:**

In Bolivia, there have been positive advances for women, particularly with regard to their political rights, such as the implementation of parity and gender alternation, has generated significant results by generating substantial changes in the composition of political representation in various instances of state leadership. This achievement has been officially recognized by the Plurinational State of Bolivia and is reflected in the current Political Constitution. This constitution establishes notable advances to ensure the effective inclusion of women at decision-making levels and in bodies of authority (Santalla Sandoval, 2023). One of the most notable achievements is evident in the composition of the presidential cabinet, where an equitable distribution has been achieved with 50% women and 50% men at the working table. In addition, significant progress has been made through the implementation of parity and alternation laws, as well as legal measures to address and prevent gender-based violence and harassment.(Sanchez Borja, 2013).

In Bolivia there is a negative view of women's political participation, which is attributed to two main factors. First, the presence of regulations designed to encourage the inclusion of women in roles of citizen representation does not automatically guarantee the effective representation of their interests. Second, efforts to balance gender political participation have been accompanied by an increase in acts of violence directed at women seeking access to positions of citizen representation. This phenomenon is known as "gender-based political harassment and violence", which ranges from physical and psychological violence to obstacles in the performance of their duties, defamation, media harassment, insults, sexual aggression, economic domination and persecution of family members and supporters.

These types of situations are more frequent at the local level of government, since it is at this level that women are most involved in politics through their daily lives, their

immediate surroundings and their participation in community organizations. According to a study conducted by the Association of Councilwomen of Bolivia (ACOBOL, 2005), 65% of councilwomen in large urban municipalities, 32% in medium-sized municipalities, 24% in small municipalities and 22% in those with less than 5,000 inhabitants admitted having been victims of political harassment. (Albaine, 2010)

Numerous challenges persist in terms of inequality, and one of the central problems is physical and psychological violence against women, reaching its most serious expression in femicide. Although there are laws aimed at protecting women from violence, such as: a) the Comprehensive Law to Guarantee Women a Life Free of Violence (Law 348); b) the Law Against Harassment and Political Violence against Women (Law 243); and c) the Comprehensive Law Against Trafficking and Smuggling of Persons of 2012.

In this context, Law 348 places the eradication of this problem as a national priority and a public health issue. It focuses on prevention, protection of women in situations of violence and criminalization of aggressors. It recognizes 16 forms of violence, addressing them from the criminal sphere. It introduces new crimes, including femicide, sexual harassment, family or domestic violence, forced sterilization, breach of duty, sexual suffering and abusive sexual acts.

Despite these efforts, both the State and civil society have yet to develop a set of preventive measures at different levels and contexts to change the sociocultural behaviors of violence, both individual and collective, that tolerate, normalize and perpetuate violence. The family and the school have a crucial role to play in promoting new values that challenge the historical roles assigned to women. In addition, it is necessary to provide training in gender perspective to judges and prosecutors, to ensure strict compliance with regulations and the proper handling of cases of violence (Roca Serrano, 2021).

In many Latin American nations, a shared challenge is faced involving the eradication of gender-based violence, both in the domestic and political spheres,

which is rooted in gender issues. These concerns have led to the enactment of various laws in several countries aimed at addressing this issue. However, despite the progress achieved so far, it is clear that changing behaviors is not just a matter of legislative modifications, but is also related to education and the influence of cultural elements. (Sánchez Borja, 2013).

In 2021, a report presented to the Inter-American Commission on Human Rights by the NGO IPAS Bolivia highlighted that, despite the fact that the Political Constitution of the State recognizes the Sexual Rights and Reproductive Rights of women, there is a lack of concordance due to the absence of a Law on these rights. There is also non-compliance with Constitutional Ruling 0206/2014, which legalizes abortion in cases of rape, statutory rape, incest and when the life and health of the woman are in danger. These cases do not require judicial authorization or initiation of criminal action. However, various structural obstacles limit the effective implementation of these rights, and their access in the public health system is insufficient, influenced by religious groups that hinder access to Legal Termination of Pregnancy.

Between 2014 and 2021, 72,376 cases of incomplete abortions and 508 cases of Legal Termination of Pregnancy were registered in Bolivia. The main cause of these abortions was rape, representing 59.9% of cases, with 11% corresponding to girls, 45% to adolescents and 44% to women over 18 years of age. In addition, unsafe abortion contributes to 13% of maternal mortality in the country.

Despite these challenges, the government has expressed its intention to expand the grounds for abortion and establish specific norms for women's sexual and reproductive rights (IPAS Bolivia, 2021).

Currently, the challenge lies in advancing towards the "decolonization" and "depatriarchalization" of the State. Although these terms are not yet reflected in public policy documents, a depatriarchalization approach has already been established under the Vice-Ministry of Decolonization.

In the Latin American region, there has been a lack of political will on the part of some governments to prioritize the institutionalization of women in ministries, as established in the Beijing Declaration. However, in the Bolivian context, it is encouraging to note that diligent work is being done on gender issues. (Sánchez Borja, 2013).

The respect for gender parity and alternation in the general elections of 2014 and 2020, as well as in the judicial elections of 2011, 2016 and an annulled electoral process in 2019, marked historic milestones. Although this showed progress, female political participation remains limited. Despite their formal inclusion in the structures, women still do not reach the highest authority in these areas, which calls for a debate on democratic quality and citizenship. Despite this, notable progress has been made, such as representation in the Plurinational Legislative Assembly in 2020, where women held 48.8% of the seats. Ultimately, these advances reflect the continued struggle of women to occupy spaces of power and the importance of policies that promote gender equality (Santalla Sandoval, 2023).

Bolivia currently has a score of 0.730 out of 1 according to the Global Gender Gap Report 2023 of the World Economic Forum, occupying 56th place out of 146 countries evaluated in the World Economic Ranking in the fields of Participation and Opportunity, Educational Attainment, Health and Survival and Political Empowerment (World Economic Forum, 2023).

### **CHAPTER 3. ANALYSIS OF THE IMPACT OF FEMINIST CONSTITUTIONS ON WOMEN'S RIGHTS**

The pursuit of gender equality has been a constant in the evolution of modern societies, and on this path to equity, feminist constitutions have emerged as fundamental instruments for transforming the position of women in different national contexts. This chapter dives into an in-depth analysis of the impact that the implementation of a feminist constitution has had on women's rights in three contrasting nations: Iceland, Tunisia and Bolivia. Along the way, it will examine how these constitutions have influenced women's realities in tangible terms, while also considering criticisms, limitations, necessary social changes and the symbolic dimension of their impact.

The chapter begins by assessing the extent to which feminist constitutions have led to concrete improvements in women's lives in the three selected countries. Specific cases of legislative, political and social advances that have emerged as a direct result of these constitutions will be explored, providing an overview of how they have transformed women's realities in various spheres. Unraveling tangible achievements will reveal how feminist constitutions have materialized into tangible improvements in the daily lives of women in Iceland, Tunisia and Bolivia.

However, the implementation of these constitutions has not been without its critics and limitations. These provide a necessary perspective to understand the full picture of implementation and how potential challenges may be affecting the achievement of their objectives.

A full understanding of the influence of feminist constitutions on women's rights cannot be separated from the broader social context in which they operate. This chapter will also examine the fundamental social changes that must occur to fully support the implementation of these constitutions. The interplay between constitutional reforms and cultural transformation is essential to ensure a lasting and sustainable impact on women's lives.

Finally, a question that has been raised about feminist constitutions will be explored: do they have a symbolic rather than substantive impact on women's rights? This inquiry will further explore the possible duality of effects, considering whether these constitutions, in addition to their concrete impact, also have an important symbolic value in the struggle for gender equality.

As we dive into this chapter, we explore the intersection between theory and reality, analyzing how feminist constitutions have shaped and redefined women's rights in Iceland, Tunisia and Bolivia. This analysis provides us with a panoramic view that encompasses both tangible advances and remaining challenges in the journey towards more entrenched and effective gender equality.

### **3.1. To what extent feminist constitutions have brought tangible improvements in the lives of women in these countries?**

As I mentioned in the first chapter, feminist (or gender-sensitive) constitutions are those that recognize the equal rights and opportunities of women and men, and that incorporate measures to promote gender equity. These constitutions have the potential to contribute to improving women's lives in several ways.

First, by guaranteeing equal rights and opportunities under the law. This includes the right to vote, access to education and health care, and equal pay for work of equal value.

Promoting women's political participation, which contributes to increasing women's representation in government and decision-making positions. Also, combating violence against women, since they can include provisions to prevent and punish violence against women, such as sexual harassment, domestic abuse and rape.

The following is an analysis of how feminist constitutions in Iceland, Tunisia and Bolivia have had a significant impact on the lives of women in their respective countries.

**3.1.1 Iceland**

Since the adoption of the constitution, Iceland has made great strides in gender equality. The country has one of the highest female labor force participation rates in the world, and women hold leadership positions at all levels of government, so their needs are being represented. It is important to note that Iceland is a highly developed country in all aspects, economically, socially, environmentally, etc. and that feminist movements have influenced its constitution and laws.

The following is an analysis of the constitutional text and its impact at the legislative level from a gender equality and women's rights perspective:

<p>Does the Icelandic constitution strive to promote substantive equality?</p>	<p>As such, the Constitution establishes that women and men have the same rights in all aspects.</p> <p><i>Article 65 “Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, color, property, birth or other status.</i></p> <p><i>Men and women shall enjoy equal rights in all respects.”</i></p> <p>It is vague and gives no further specification, not even in other articles of the constitution.</p>
<p>Was there a lack of representation of women in the constitutional process?</p>	<p>In the constituent process there was 40% representation of women, a</p>



	<p>requirement that complied with Icelandic law.</p> <p>Also, in 2011 amendments were drafted in the constitution to make it more representative and inclusive.</p>
<p>Did the constitution bring about social and political changes for women?</p>	<p>Women also hold leadership positions in government, including the presidency, vice presidency and prime minister. In the private sector, too, they are occupying hierarchically high positions. This drives the normalization of women holding positions of power, helping to diminish the ideas generated by patriarchy.</p> <p>It should be noted that women in 1975 demonstrated in order to highlight insufficient salaries and the lack of recognition of their role in the social structure. Situations that have changed positively.</p>
<p>Did women's participation change the constitutional text?</p>	<p>Definitely the presence of women influenced its drafting.</p>
<p>Was the principle of parity applied in the distribution of power?</p>	<p>The constitution establishes proportional representation, however, the regulation of positions of power is delegated to national laws.</p>

<p>Is there recognition of the right to a life free of violence, inhuman or degrading treatment, all in close connection with the preservation of human dignity?</p>	<p>In the constitutional text there is no specific reference to this aspect, however the constitution adopts human rights.</p> <p>The parliament passed a law protecting women from domestic violence, which has been strengthened and gives severe penalties to those who commit such acts.</p>
<p>Are there explicit provisions recognizing gender equality and prohibiting gender-based discrimination?</p>	<p>The constitution refers to men and women being equal before the law. Iceland enacted a law that protects discrimination based on gender. The Equal Status and Equal Rights Regardless of Gender Act, identified as number 150/2020. The purpose of this law is to prevent any form of discrimination based on sex, as well as to maintain a balance of equality between men and women and provide equal opportunities for both genders in all spheres of society.</p>
<p>Does it promote a culture of equality?</p>	<p>The state has an Equality Directorate that offers advice, carries out public education initiatives and provides relevant information on gender equality.</p>

<p>Issues that are left out of constitutional texts and delegated to the legislative sphere (which makes them more vulnerable to political pressures and limits their recognition and protection):</p>	<p>Iceland has advanced electoral laws where it promotes equal representation in politics by establishing quotas.</p> <p>In family matters, fathers and mothers in Iceland have equal parental rights and offers childcare services. Allowing women to remain in the labor market during maternity leave.</p> <p>It has regulated private companies so that women have equal representation.</p> <p>It has been the first country to publish a law requiring equal wages for men and women performing the same job role.</p>
<p>Was democracy effectively applied?</p>	<p>Iceland's constitutional process is recognized as one of the most innovative and democratic in the world.</p>
<p>Was there language including in the constitutional text?</p>	<p>The language of the constitution is not inclusive, in some cases referring to "him" and not "her", using generic language.</p>

The Icelandic constitution is very brief overall, with 73 articles<sup>1</sup>. The references it makes to gender equality are vague, however, it has had a significant impact on the

<sup>1</sup> To consult the Icelandic Constitution: [https://www.government.is/library/01-Ministries/Prime-Ministrers-Office/constitution\\_of\\_iceland.pdf](https://www.government.is/library/01-Ministries/Prime-Ministrers-Office/constitution_of_iceland.pdf)

lives of women in the country. In particular, it has contributed to the following advances:

- Increased political participation of women: Iceland has one of the highest female participation rates in parliament in the world, reaching 49.5% in 2023. Women also hold leadership positions in government, including the presidency, vice presidency and prime minister. In the private sector, too, they are occupying hierarchically high positions. This drives the normalization of women in positions of power, helping to diminish the ideas generated by patriarchy.
- Reducing the wage gap: The wage gap between women and men in Iceland has narrowed significantly in recent years. In 2023, the wage gap stood at 9%, down from 20% in 1980.
- Improved protection of women against violence: Iceland has passed strict laws to prevent and punish violence against women, including domestic violence, sexual harassment and rape. Even so, this problem persists in Icelandic society today, but it is being sought to eradicate it.

One specific example that has had a positive impact on the lives of women in Iceland is the law on equal pay for work of equal value, which has helped to reduce the wage gap between women and men. In addition to the empowerment that has been given to women by lobbying for positions of power in all sectors of society.

Through its Constitution and legal system, Iceland is pushing for the empowerment of women by providing them with the necessary legal tools, including in the workplace, with the aim of transforming society in all areas, including the cultural sphere. Icelandic women and laws are backed by a solid foundation which is the Constitution, which despite being vague, the State and the legislatures have been in charge of complying with it by issuing the necessary laws for this.

**3.1.2. Tunisia**

As we have seen, the Tunisian Constitution has been an important instrument for promoting women's rights in the country and in the MENA region. What happened in Tunisia at the constitutional level has been the point of inspiration for other countries having an impact not only on the nation. In recent years, Tunisia has seen significant advances in gender equality, including the passage of a law against domestic violence and the creation of a Ministry of Women, Family and Children.

The following is an analysis of the constitutional text and its impact at the legislative level from a gender equality and women's rights perspective:

<p>Does the Icelandic constitution strive to promote substantive equality?</p>	<p>After 2011 equality was not only formal, but became an expression of the pluralism necessary for political and social democracy.</p> <p><i>Article 21. "Male and female citizens have the same rights and duties, and are equal before the law, without any type of discrimination.</i></p> <p><i>The State shall guarantee citizens individual and collective rights and freedoms and shall provide them with the conditions for a dignified life."</i></p> <p><i>Article 46. "The State undertakes to protect the rights acquired by women and shall work to facilitate their support and development.</i></p>
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	<p><i>The State shall guarantee equal opportunities between men and women in the assumption of different responsibilities and in all spheres.”</i></p>
<p>Was there a lack of representation of women in the constitutional process?</p>	<p>Compared to other constitutional processes, there was a high participation of women of 31%, despite the fact that the ideal would have been 50%, however, women were represented and their participation was reflected in the constitutional text.</p>
<p>Did the constitution bring about social and political changes for women?</p>	<p>Article 34. <i>“The right to elect, vote and be a candidate is guaranteed, in accordance with what the law establishes. The State shall endeavor to guarantee the representativeness of women in elected Councils.”</i></p> <p>Article 46. <i>“... The State shall seek to establish parity between women and men in elected Assemblies...”</i></p> <p>Yes, thanks to the pressure and participation of women it was possible to incorporate women's rights into the constitutional body.</p>
<p>Did women's participation change the constitutional text?</p>	<p>Yes, thanks to the pressure and participation of women it was possible to</p>

	<p>incorporate women's rights into the constitutional body. Their participation was decisive, their influence focused especially on issues related to women's rights and gender equality, achieving that the constituent assembly considered these issues as essential aspects in the new constitution.</p>
<p>Was the principle of parity applied in the distribution of power?</p>	<p>Yes, in its article 46 and later an electoral law was enacted confirming horizontal parity.</p>
<p>Is there recognition of the right to a life free of violence, inhuman or degrading treatment, all in close connection with the preservation of human dignity?</p>	<p>The state preserves human dignity in the following article:</p> <p>Article 23. <i>"The state shall protect the dignity of the human being and his physical integrity, and prohibits moral and physical torture. The statute of limitations shall not apply to crimes of torture"</i>.</p> <p>Likewise, the State commits itself to take the necessary measures against gender violence and rejects violence:</p> <p>Article 47. <i>"...The State shall take the necessary measures to put an end to gender violence." Subsequently in 2017 a specific law was created to prevent, protect and prosecute gender-based</i></p>

	<p><i>violence. Law that left out certain areas to respect cultural and ideological values.”</i></p> <p><i>Article 42. “... The State shall promote cultural creation and enhance national culture to strengthen, diversify and renew it in order to enshrine the values of tolerance, rejection of violence, openness to different cultures and dialogue of civilizations.”</i></p>
<p>Are there explicit provisions recognizing gender equality and prohibiting gender-based discrimination?</p>	<p><i>Article 49. “The law shall establish the rules relating to rights and freedoms and the exercise of both as guaranteed by this Constitution and in such a way that they do not violate its essence.</i></p> <p><i>No amendment may contravene the advances in human rights and freedoms as guaranteed by this Constitution.”</i></p>
<p>Does it promote a culture of equality?</p>	<p>The constitution commits the state to disseminate the culture of human rights. In addition, it contains provisions that such as labor equity between men and women:</p> <p><i>“Article 40. Work is a right of every male and female citizen, and the State shall take the necessary measures to guarantee it on the basis of aptitude and</i></p>



	<p><i>equity. Every citizen has the right to work under appropriate conditions and with a fair wage.”</i></p> <p>Despite this, there is a lack of training for civil servants to understand and implement women's rights effectively.</p>
<p>Issues that are left out of constitutional texts and delegated to the legislative sphere (which makes them more vulnerable to political pressures and limits their recognition and protection):</p>	<p>Tunisia is one of the few Muslim countries that allows abortion.</p> <p>There are issues that do not favor the lives of women because of the religious issue, since the constitution indicates that Tunisia is a state where Islam is the religion practiced.</p>
<p>Was democracy effectively applied?</p>	<p>The constituent assembly was represented by 31% women. Initially fewer women participated. However, their election was through voting.</p>
<p>Was there language including in the constitutional text?</p>	<p>It uses feminine and masculine nouns in some articles of the Law, referring to citizens, women and men, in some articles it is expressed generically.</p>

The Tunisian constitution has 149 articles<sup>2</sup> and adopts women's rights in its precepts. It has had a positive impact on the life of women in the country, although not very

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<sup>2</sup> To access the Constitution of Tunisia: <https://ruidera.uclm.es/server/api/core/bitstreams/2fc8eef4-626c-41fa-99e8-271094bd756d/content>

successful for cultural and religious reasons, and has improved its democratic regime, without reaching an effectively applied democracy. In particular, it has contributed to the following advances:

- The passing of a law against domestic violence that criminalizes sexual harassment, domestic abuse and rape. This law has been an important instrument to increase the protection of women from violence, despite the fact that it is still a problem present in society.
- Improved political participation of women, where women hold leadership positions in government, including the vice presidency and the ministry of women, family and children.
- The establishment of equal rights and opportunities between women and men, and the prohibition of gender discrimination. Causing with this the promotion of the principle of gender equality.
- The creation of a Human Rights Council, which is responsible for monitoring respect for human rights and freedoms and will work towards their consolidation.

Thanks to the participation of women in the drafting of the new Tunisian Constitution, women's rights have been "armored" by enshrining them in the constitutional text.

During the drafting process, it was possible to ensure that the Sharia was not considered as a frame of reference in constitutional laws, thus making it possible to constitutionalize the right to gender equality, which had a positive impact on women's rights. This had a very significant impact on the advancement of equality and democracy, since as I mentioned in chapter two, several scholars consider the Sharia and the Koran a threat and an obstacle to advancing women's rights and, as a consequence, democracy, but Islam remains the state religion. Coming to the conclusion that if women had not been part of the constitutional assembly the situation of women in Tunisia would be even worse.

After the 2014 constitution Tunisia withdrew the reservations it had on CEDAW, being consistent with what its constitution stipulated and being an important step for it to start complying with the human rights standards to which it had committed itself.

Such was the impact that the State issued a law in 2017 to eradicate violence against women in order to achieve gender equality, generating a difference, in addition to creating a committee in charge of issuing recommendations to legal reforms to improve issues related to equality. This is a tool that would undoubtedly help to improve the situation. A clear example of the improvements it generated was that women now have the ability to marry someone who is not Muslim and have the autonomy to declare the birth of their children (things that previously could only be done by men).

### 3.1.3 Bolivia

Its new constitution includes a chapter dedicated to women's rights, which has undoubtedly had a direct impact. It establishes equal rights and opportunities for women and men, and recognizes the importance of women's participation in political and economic life, which is an important factor in the advancement of women's rights in the country and in the search for gender equality.

The following is an analysis of the constitutional text and its impact at the legislative level from a gender equality and women's rights perspective:

<p>Does the Icelandic constitution strive to promote substantive equality?</p>	<p>Yes, it grants the State the obligation to support certain values and it is a broad constitution where certain rights are broadly described, unlike other constitutions.</p> <p>It is important to mention that Bolivia also has a large indigenous population. Therefore, its constitution enshrines</p>
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	<p>rights such as access to basic services in a universal and equitable manner to protect this type of vulnerable groups as well.</p> <p>For example, Article 20. <i>“1. Everyone has the right to universal and equitable access to basic services such as drinking water, sewerage, electricity, gas, postal and telecommunications services.”</i></p>
<p>Was there a lack of representation of women in the constitutional process?</p>	<p>Fifty percent of the participants were women, exceeding the 30% requirement stipulated by the Quota Law.</p>
<p>Did the constitution bring about social and political changes for women?</p>	<p>Article 26. <i>“1. All male and female citizens have the right to participate freely in the formation, exercise and control of political power, directly or through their representatives, and individually or collectively. Participation shall be equitable and equal between men and women”</i></p>
<p>Did women's participation change the constitutional text?</p>	<p>Their participation had a great impact, influencing the drafting of the constitution, making it more specific and inclusive.</p>

<p>Was the principle of parity applied in the distribution of power?</p>	<p>Yes, in fact, the implementation of gender parity and alternation, has generated significant results by generating substantial changes in the composition of political representation in various instances of state leadership.</p>
<p>Is there recognition of the right to a life free of violence, inhuman or degrading treatment, all in close connection with the preservation of human dignity?</p>	<p>Article 15. <i>“I. Everyone has the right to life and to physical, psychological and sexual integrity. No one shall be torture, nor suffer cruel, inhuman, degrading or humiliating treatment. There is no death penalty.</i></p> <p><i>“II. All persons, in particular women, have the right to be free from physical, sexual or psychological violence, both in the family and in the community.”</i></p> <p><i>“III. The State shall adopt the necessary measures to prevent, eliminate and punish gender-based and generational violence, as well as any action or omission aimed at degrading the human condition, causing death, pain, and physical, sexual or psychological, both in the public and private spheres.”</i></p>

<p>Are there explicit provisions recognizing gender equality and prohibiting gender-based discrimination?</p>	<p>The constitution protects gender equality, and promotes women's rights in the workplace.</p> <p>Article 14. "II. The State prohibits and punishes all forms of discrimination based on sex, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, creed, religion, ideology, political or philosophical affiliation, marital status, economic or social condition, type of occupation, level of education, disability, pregnancy, or any others that have the purpose or result of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the rights of all persons."</p> <p><i>"III. The State guarantees to all persons and collectivities, without any discrimination whatsoever, the free and effective exercise of the rights established in this Constitution, the laws and international human rights treaties."</i></p> <p>Article 48. <i>"V. The State shall promote the incorporation of women into the labor force and shall guarantee the same remuneration as men for work of</i></p>
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	<p><i>equal value, both in the public and private spheres.</i></p> <p><i>VI. Women may not be discriminated against or dismissed because of their marital status, pregnancy, age, physical traits or number of children. Women in a state of pregnancy and parents are guaranteed job security until the daughters or sons reach one year of age”</i></p>
<p>Does it promote a culture of equality?</p>	<p>The constitution promotes a culture of respect for human rights and international treaties. It also promotes equality among people, starting with education.</p> <p><i>Article 82. “I. The State shall guarantee access to education and permanence of all male and female citizens in conditions of full equality.”</i></p>
<p>Issues that are left out of constitutional texts and delegated to the legislative sphere (which makes them more vulnerable to political pressures and limits their recognition and protection):</p>	<p>As a result of the new constitution, Bolivia's National Development Plan emerged, which addresses essential aspects of equity and innovation. On which the country's equality and inclusion policies were based, in five areas: Economy, production and employment; Education; Health;</p>

	Prevention of gender violence; and Civic and political participation.
Was democracy effectively applied?	In this case there was a parity democracy effectively applied by the participation of 50% of women in the elaboration of the constitution.
Was there language including in the constitutional text?	It uses feminine and masculine nouns in some articles of the Law, referring to female and male citizens, young women and men, girls and boys, women and men, in some articles it is expressed generically.

The Bolivian constitution is very broad, with 411 articles<sup>3</sup>, bringing some rights to the constitutional level. The State constitutionalized women's rights in a broad manner, compared to the other two countries, forcing the State to develop legal instruments to comply with the provisions of its constitution and thus becoming a main objective of the country to improve the lives of women in terms of their rights. A clear example is the law on gender parity in politics and the creation of a Ministry of Women and Depatriarchalization. Bolivia is seeking to eradicate the social and cultural problem that generates violence against women, patriarchy and machismo, an issue that many academics consider to be the root of the problem. Bolivia is one of the few countries that addresses violence against women explicitly in its constitutional text.

The Bolivian constitution has contributed to the following advances:

- Increased political participation of women, as Bolivia has one of the highest female participation rates in parliament in Latin America, reaching 53% in 2023. Women

<sup>3</sup> To access the Political Constitution of Bolivia: <https://www.aj.gob.bo/uploads/docs/CPE.pdf>



also hold leadership positions in government, including the vice presidency and the ministry of women and depatriarchalization.

- Significant reduction in the wage gap between women and men in recent years. In 2023, the wage gap stood at 20%, compared to 30% in 2009.
- Promotion and pursuit of equal rights. The creation of various laws that protect women from violence, bringing this issue to the level of national priority. And also the recognition of 16 forms of violence.
- The development of the National Development Plan in Bolivia.
- The protection of indigenous rights with a special focus on women.

### **3.1.4. Conclusion**

Overall, feminist constitutions have had a positive impact on the lives of women in Iceland, Tunisia and Bolivia. To date, these constitutions have played a key role in strengthening gender equality of rights and opportunities, encouraging women's political participation and addressing violence against women. However, it is crucial to note that considerable challenges remain in the pursuit of full gender equality and respect for women's rights in these countries.

In Iceland, despite being considered the most gender-equal country in the world, a wage gap between women and men persists, and female representation in decision-making positions remains insufficient, although it is close to achieving full gender equality. In Tunisia, violence against women continues to be a serious problem, and religious barriers represent a significant obstacle. In Bolivia, economic inequalities hinder women's full progress, and violence against women remains a major challenge.

Despite the obstacles, feminist constitutions play a crucial role in promoting women's rights and have demonstrated undeniable success in this area. These constitutions establish a solid legal framework for gender equality, guiding nations towards a more

equitable and just society. It is clear that remarkable progress has been made, and this reflects the priority focus and efforts being made in this regard.

### **3.2. Critiques of feminist constitutions and their potential limitations**

In the previous section, I discussed the positive impact that feminist constitutions have had on women's rights. However, there have been various limitations and obstacles to their effective implementation.

Looking at and analyzing the three cases, one obstacle faced by feminist constitutions is that they are arguably too vague. Some feminist constitutions include general provisions on gender equality, but do not provide specific guidelines on how to achieve it. This can hinder their implementation and their impact on women's real lives. While laws have been issued that comply with and regulate what the constitution states on this issue, it has resulted in legislators being able to create laws that omit certain precepts that could be essential because the constitution is not specific.

However, these limitations do not affect all countries equally. For example, Iceland's constitution provides for equal rights and opportunities for women and men without going into specific details, but the country is considered one of the most egalitarian in the world. In contrast, Tunisia's constitution is not specific enough about the state's obligation to provide the necessary mechanisms to achieve gender equality, resulting in insufficient laws and poor implementation. In the case of Bolivia, although the country has comprehensively incorporated women's rights into its constitution, there are still rights to be constitutionalized to comprehensively address women's rights, and the necessary legislation is on hold.

One of the problems that I consider probably one of the most serious, i.e., hindering the effective implementation of Feminist Constitutions is that they are too dependent on political will. The success of feminist constitutions depends on the willingness of governments and social actors to implement and enforce them. In the cases of Iceland, Tunisia and Bolivia, I could observe that this lack of will stems partly from a

cultural or ideological issue. For example, in the case of Iceland, which has a more ingrained culture of including women and seeking their equality, the political will has been almost impeccable, because although the country has done everything possible to achieve its objective and has issued the necessary laws for this, there have been problems with the application of these laws.

In the case of Tunisia, as I mentioned earlier, its constitution provides for equal rights and opportunities between women and men, but violence against women remains a serious problem in the country. This is because the government has not fully implemented the provisions of the constitution on the protection of women against violence. In the case of Bolivia, in compliance with the provisions of its constitution, the country approved abortion in specific cases, but it is still difficult for women to access this service from the state due to its unwillingness to do so.

Another obstacle, perhaps a bit obvious, is that feminist constitutions can face cultural and social challenges. In some countries, culture and traditions can be an obstacle to gender equality, evidently in some countries this problem affects less than others. This has hindered the application of feminist constitutions and their impact on real life to varying degrees.

For example, Bolivia's constitution establishes equal rights and opportunities between women and men, but economic inequality continues to be an obstacle to the advancement of women in the country. This is because women continue to be underrepresented in decision-making positions and in the most highly paid sectors of the economy, reflecting the patriarchy in the country.

Below, I develop the obstacles per country by categorizing them in three directions: lack of political will, limited or lack of financial and human resources, and cultural and social challenges.

### **3.2.1. Iceland**

The implementation of a feminist constitution in Iceland has seen remarkable progress, but has also faced considerable challenges that demonstrate that there is

still some way to go towards full gender equality. Some of the constraints that have hindered the implementation of this constitution include:

**Lack of political will:** in some cases, the Icelandic government has not fully implemented the constitution's provisions related to gender equality. For example, the effective implementation of the law on equal pay for work of equal value, while helpful, has also been insufficient, perpetuating the gender pay gap, although it has come close to achieving it. The lack of political will is often due to resistance from certain sectors of society that perceive gender equality as a threat to traditional values or as a form of discrimination against men.

**Resource constraints:** Despite being a relatively wealthy country, Iceland has also faced economic problems, such as the economic crisis of 2008, which has made it difficult to allocate adequate financial and human resources for the implementation of the provisions of the constitution. The lack of effective coordination between implementing institutions has led to inefficient use of available resources.

**Cultural and social challenges:** Entrenched gender stereotypes in Icelandic society have been a significant obstacle to gender equality. The persistence of violence against women in the country is partly related to these negative gender stereotypes. Iceland's history of discrimination against women and traditional male dominance throughout its history have contributed to the perpetuation of these stereotypes. In addition, the lack of gender equality education in the Icelandic education system makes it difficult to change these stereotypes.

In summary, although Iceland has made progress in promoting gender equality through its feminist constitution, it still faces significant challenges related to political will, resource allocation, and overcoming entrenched gender stereotypes in society. These obstacles highlight the continued need for sustained efforts to achieve full and effective gender equality in the country.

### **3.2.2. Tunisia**

Similarly, the implementation of a feminist constitution in Tunisia has seen progress, but has also encountered significant obstacles. These difficulties that have hindered its implementation include:

**Lack of political will:** in some cases, the Tunisian government has not fully implemented the constitution's provisions related to gender equality. For example, the law against domestic violence has not been effectively implemented, which has contributed to the fact that violence against women remains a significant problem in the country. The lack of political will is sometimes due to resistance from certain sectors of Tunisian society and religion, which perceive gender equality as a threat to traditional values or as a form of discrimination against men. In addition, political instability due to frequent changes of government has made it difficult to formulate and implement long-term policies. As mentioned above, the current government is jeopardizing the progress achieved so far.

**Lack of resources:** In Tunisia, resources have been limited, making it difficult to implement some provisions of the constitution. The country's economic situation, characterized by poverty and high inequality, has hindered the adequate allocation of resources for the implementation of the feminist constitution. In addition, the lack of effective coordination among the institutions responsible for implementation has led to inefficient utilization of available resources.

**Cultural and social challenges:** Tunisian culture and traditions have posed a challenge to gender equality in some cases. The persistence of violence against women in the country is partly related to gender stereotypes prevalent in Tunisian society. These negative stereotypes are rooted in the history of discrimination that women have experienced in Tunisia, where society has traditionally been dominated by men. In addition, the lack of gender equality education in Tunisia has limited efforts to change these stereotypes and promote a culture of equality, not leaving out the influence of religion, given that Tunisia declared itself an Islamic State and there are many precepts that are contradictory to the law.

In summary, although Tunisia has made progress in promoting gender equality through its constitution, it still faces significant challenges related to political will, resource allocation, religion, and overcoming entrenched gender stereotypes in society. These obstacles underscore the continued need for sustained efforts to achieve effective gender equality in the country.

### **3.2.3. Bolivia**

The implementation of a feminist constitution in Bolivia has experienced progress, but at the same time has faced significant challenges. Despite the achievements made, there is still a long way to go to achieve full gender equality in the country. Some of the constraints that have hindered the implementation of this constitution include:

Lack of political will: in some cases, the Bolivian government has not fully implemented the constitution's provisions related to gender equality. For example, the law on gender parity in politics has not been effectively implemented, resulting in an underrepresentation of women in parliament. Another example is Law 348, which regulates violence against women and focuses on prevention, protection of women in situations of violence and criminalization of aggressors. Despite being a law that recognizes sixteen forms of physical and psychological violence, its application is not being effectively enforced. Consequently, violence is now also found in politics, which is generating fear in women who try to reach power to fight for their rights and therefore impunity due to the lack of government action is hindering progress. This lack of political will is often attributed to resistance from certain sectors of Bolivian society, patriarchy and machismo see gender equality as a form of discrimination against men. In addition, political instability due to frequent changes of government has made it difficult to formulate and implement long-term policies.

Lack of resources: The country's economy is in a complicated situation, marked by poverty and marked inequality. This has made it very difficult to allocate the necessary resources to carry out the constitution in terms of creating employment

programs aimed at boosting women's economic advancement. As I mentioned earlier, women face a higher rate of poverty compared to men and have greater difficulties in overcoming this situation due to the scarcity of available opportunities.

Cultural and social challenges: In most cases, Bolivian patriarchal culture and traditions have posed a challenge to gender equality. For example, violence against women continues to be a serious problem in the country, with many women being victims of femicide, due to the gender stereotypes ingrained in Bolivian society and its patriarchal system and macho culture. These negative stereotypes are rooted in the history of discrimination faced by women in Bolivia, where society, as in many Latin American countries, has traditionally been dominated by men. In addition, the limited dissemination of gender equity education in Bolivia has restricted attempts to modify these prejudices and foster a mentality based on equality. This is despite the fact that Bolivia has a National Development Plan, on which the country's equality and inclusion policies are based.

In short, Bolivia faces challenges related to political determination, resource distribution and overcoming entrenched gender stereotypes and a patriarchal system rooted in society. These challenges underscore the importance of maintaining persistent efforts to achieve true gender equality in the country.

### **3.2.4 Conclusion**

Feminist constitutions represent a valuable resource in the pursuit of gender equality by establishing a legal framework that supports rights and equity between women and men. However, their effectiveness depends largely on several key factors. First, these constitutions must be specifically and precisely drafted, clearly defining the objectives and mechanisms for achieving gender equality. In addition, it is essential to have the strong backing of political will, which implies that governments must be committed to the effective implementation of these legal provisions. Investment of economic resources is also important, but this depends on other factors that are not easy to achieve. Likewise, the promotion of gender equality through feminist constitutions is fundamental and depends on a comprehensive and cooperative

approach, where governments, civil society and women work together to overcome the challenges and obstacles that still persist.

### **3.3. The broader societal changes necessary to support the implementation of feminist constitutions**

Based on the research and analysis I have done on the processes towards gender equality in Iceland, Tunisia and Bolivia, I believe that the biggest and most necessary social changes to support the implementation of feminist constitutions are the following:

Education and awareness of gender equality: fundamental to promote cultural change. This will help eradicate gender stereotypes that contribute to discrimination against women, such as patriarchy and sexist ideas.

Women's economic empowerment: Women's economic empowerment is essential for their independence and autonomy. Women who have access to education, employment and economic resources are more likely to participate in public life and demand their rights.

Women's participation in decision-making spaces: Women's participation in decision-making spaces is critical to ensure that their interests are represented. Women must be represented at all levels of government, in business and in civil society. Being in favor of the quota law where women have half of the participation places. As I mentioned before, leaving women out is leaving out half of the population and therefore it is not equality and directly affects democracy.

I believe that these social changes are necessary to support the implementation of feminist constitutions because they will help to create a more just and equal society for women and will help the effective implementation of feminist constitutions.

In Iceland, Tunisia and Bolivia, it is crucial to implement specific social changes to address persistent challenges related to gender equality. These cultural changes, while requiring time and incremental progress, are fundamental to achieving gender



equality. To achieve this goal, it is essential that governments, civil society and women work together. They must focus on promoting education and awareness of gender equality, empowering women economically and ensuring their active participation in decision-making processes.

### **3.4. The potential for feminist constitutions to become symbolic rather than substantive in their impact on women's rights**

In analyzing the impact of constitutions in the three countries studied, it can be concluded that the possibility of a feminist constitution having a more symbolic than substantive impact on women's rights is a reality that varies on different scales, but is not inevitable. It is clear that constitutions could generate a substantive impact on women's rights if they were effectively implemented.

On the one hand, Iceland's Constitution establishes equal rights and opportunities for women and men, enshrining the principle of gender parity in political, economic and social life. On the other hand, Tunisia and Bolivia have made significant progress in gender equality in recent years. These countries have passed laws to protect women against domestic violence, discrimination and forced marriage, in addition to increasing women's political and economic participation. However, as I mentioned earlier, if there is no political will from both government and civil society to implement the provisions of the constitution, their impact will be more symbolic than substantive.

Below, I mention some factors that I believe could contribute to constitutions having a more substantive impact:

- Political will and government commitment: governments must commit to fully implement the provisions of constitutions, which requires clear leadership and sustained political will.

- Civil society support: Civil society, including feminist and human rights organizations, must support the implementation of the feminist constitution, putting pressure on the government to take the necessary steps to ensure gender equality.
- Education and awareness raising: Education and awareness-raising on gender equality are key to promoting cultural change and eradicating gender stereotypes that contribute to discrimination against women.

If these factors are present, the feminist constitution could have a significant impact on improving women's rights. Despite the progress made in these countries on gender equality in recent years, significant challenges remain, such as violence against women and the underrepresentation of women in decision-making positions. For example, for the feminist constitution to have a substantive impact on women's rights in Tunisia, it is necessary for the government and civil society to work together to overcome these challenges.

In the case of Bolivia, the feminist constitution, which has enshrined more women's rights than the other two, it is important to keep in mind that it is a relatively new document in the country. It was approved in 2009 and is still in the process of implementation. It may take time for the constitution to have a significant impact on the lives of women in Bolivia.

## **CHAPTER 4. FEMINIST CONSTITUTIONS AS A SOLUTION TO VIOLATIONS OF WOMEN'S**

### **4.1. The potential of feminist constitutions to address the root causes of women's oppression and transform societal norms and values**

Analyzing the three case studies, I was able to observe that feminist constitutions have significant potential to address the root causes of women's oppression and transform societal norms and values.

This is because, first, feminist constitutions have recognized equal rights and opportunities for women and men. This is an important step in challenging gender stereotypes and discrimination against women. In addition, they seek to establish principles and guarantees that promote gender equality, recognize women as citizens and subjects that form part of society just like men. It puts women on the same level, leaving out the opportunity for them to be oppressed.

Second, feminist constitutions enshrine the principle of gender parity in political, economic and social life. This helps ensure that women are represented in decision-making spaces and have the same opportunities as men to participate fully in society. Sending a clear message about the importance of treating men and women equally in all aspects of life.

Third, feminist constitutions promote education and awareness of gender equality. This helps to create a more just and equal society for women, to free them from a patriarchal system. Since it can contribute to changing traditional attitudes and values towards women in society.

And finally, the protection of women's rights and access to justice, these constitutions include provisions that specifically protect women's rights, and can strengthen women's access to justice in cases of gender-based violence and discrimination, which can change the way society deals with these problems.

I mention again what UN Women describes: constitutions are the most powerful manifestation of the governmental and accountability systems of states, therefore, they are the instruments that embody the potential opportunities and challenges for promoting gender equality.

In short, feminist constitutions have significant potential to address the root causes of women's oppression and transform societal norms and values by establishing principles of gender equality and women's rights in the fundamental law of the land. However, as I mentioned earlier, they need to be fully implemented and supported with education and awareness-raising to have a transformative impact.

#### **4.2. The potential of feminist constitutions to promote gender-sensitive interpretation and application of the law**

The supreme power of the Constitution in a state is undeniable. As I mentioned at the beginning of this research, the Constitution is the cornerstone of a country, defining its structure and functioning. My central argument here is that when a constitutional text is clear and specific, unambiguous regarding the implementation of certain rights, it leaves no room for legislators to circumvent or legislate according to their own interpretation of the Constitution. Moreover, it serves as a guiding principle for judges in pronouncing judgments and as a guide for the executive branch in their implementation.

Feminist constitutions are constitutional documents that explicitly incorporate the principles of feminism, such as gender equality, non-discrimination and social justice. These constitutions have the potential to encourage gender-sensitive interpretation and application of the law in a variety of ways.

That is, a feminist constitution should enshrine the right to gender equality, non-discrimination and social justice, but also specify that all existing and future laws must be drafted under the principle of equality and with a gender perspective. This obliges legislators to reform necessary laws and to enact new laws under these principles, eliminating the possibility of omissions or ambiguities in their legislation.

In addition, these Constitutions can guide the courts to interpret and apply the law in a way that promotes equal rights and opportunities for women and girls, providing a framework for judges to make rulings based on these same criteria. It also urges the executive branch to implement laws by identifying and addressing laws and practices that discriminate against women and girls.

This approach creates a culture of gender sensitivity in government bodies. These constitutions can also help identify and address forms of gender discrimination. For example, the Icelandic Constitution states that "the state shall take measures to promote gender equality." This provision has been used by the courts to identify and address laws and practices that discriminate against women and girls.

In short, feminist constitutions have the potential to be a powerful tool for promoting gender equality and social justice by explicitly incorporating the principles of feminism, helping to interpret and apply the law in a way that promotes the rights and opportunities of women and girls.

#### **4.3. Why Feminist constitutions as a solution to violations of women's rights?**

As I have developed throughout this research, constitutions in general have a great impact on society. However, feminist constitutions have a positive impact on society and women's rights in multiple ways.

First, these constitutions provide a strong legal framework to safeguard women's rights. Comprehensively, they recognize that gender inequality is a structural issue that permeates laws and institutions, and advocate for profound change in the legal sphere to overcome it.

Second, they encourage women's political participation, giving them an active voice in public affairs. This inclusion is essential to ensure that women's concerns and needs are addressed in decision-making.

Third, these constitutions contribute to forging a more just and equitable society for women. They do not merely proclaim gender equality, but establish concrete measures to ensure that women enjoy the same opportunities and rights as men. For example, they may prohibit gender discrimination in areas such as employment, education and health care, and may even implement quotas or affirmative action measures to boost women's participation in the public sphere.

In addition, these constitutions also stand as guardians of women's rights in the face of discrimination and violence. By explicitly prohibiting gender discrimination and creating protection mechanisms, such as access to shelters and support services, they can play a crucial role in preventing and eradicating violence against women. This includes the prohibition of domestic and sexual violence, and the implementation of measures to ensure women's safety.

Ultimately, feminist constitutions have the potential to be powerful instruments for promoting gender equality and social justice by explicitly incorporating the principles of feminism. Their impact ranges from protecting women's rights to promoting their active participation in society, which contributes significantly to building a more equitable and just environment for all people, regardless of their gender.

#### **4.4. Final Conclusion**

The fundamental question that has guided this research, Is the implementation of a feminist constitution a solution to the violation of women's rights, finds its answer in the conclusions I have reached throughout this study. As I closely analyzed feminist constitutions and their implementation in three nations with different cultural, social and geographical contexts, namely Iceland, Tunisia and Bolivia, I have identified a number of solid reasons to consider these constitutions as an effective tool to improve the situation of women's rights.

First, it is clear that the recognition of women's rights at the constitutional level is of paramount importance because of the central role that constitutions play in the structure and functioning of a state. Constitutions establish the legal foundations and

fundamental principles that govern a society, and no state wishes to be perceived as fragile or in breach of its own constitutional framework. Therefore, by constitutionalizing women's rights, a legal obligation is created that the State is motivated to fulfill in order to uphold its rule of law. Moreover, in contexts where the legal system has historically contributed to the oppression of women, law can become a means to rectify this imbalance.

Second, I have observed that patriarchy remains a common factor in the three countries studied. The persistence of this system makes it difficult to restructure social, economic and cultural policy, and this is where feminist constitutions play a crucial role. By advocating depatriarchalization, these constitutions seek to put an end to any form of subordination, discrimination, racism, machismo and economic marginalization that have been exercised against women. In this sense, they become an effective tool for challenging and changing entrenched power structures in society.

Third, an essential characteristic of a genuine democracy is gender equality. In this sense, a feminist constitution aims to incorporate provisions that guarantee equal rights and opportunities for women and girls. This is fundamental to the development of democratic societies that reflect diversity and promote gender equity as a core value.

It is important to note that feminist constitutions do not represent a magic bullet that solves all the challenges faced by women. However, I see them as the fundamental and essential foundation for advancing gender equality and protecting women's rights. They are a solid starting point that can catalyze significant changes in society and in the legal framework, opening the door to future reforms and the construction of a more equitable and just world for all people, regardless of their gender. In this sense, feminist constitutions represent a powerful and valuable tool in the struggle for women's rights and gender equality.

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