

From the recognition of rights to their actual exercise: the reality and the must be of the rights of women*

Del reconocimiento de los derechos a su realización efectiva: el ser y el deber ser de los derechos de las mujeres

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SUMMARY

The article focuses on showing with arguments the convenience to show specifically the rights of women in the global context of human rights; to move towards a more respectful model of those differences requiring recognition of singular identities, to move from recognition of the woman's rights to their actual development, to recognize that the issue of women's rights is not a universal but local reality that requires mechanisms capable of transcending national borders, culture, race, religion or social standing; of visualizing how the respect for the women's right acts as a propagator of economic growth and contributes to accelerate the development. To conclude that the promotion of women's rights should no longer be regarded as a women's issue but as a big problem of social justice and as a brake on progress that affects women and men.

Keywords: women's rights, human rights, discrimination, social justice, human dignity.

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RESUMEN

El artículo se centra en demostrar con argumentos la conveniencia de mostrar específicamente los derechos de las mujeres en el contexto global de los derechos humanos, de avanzar hacia un modelo más respetuoso de las diferencias que requieren el reconocimiento de las identidades singulares, para pasar del reconocimiento de los derechos de la mujer a su propio desarrollo, para reconocer que la cuestión de los derechos de la mujer no es una realidad universal, sino local que requiere de mecanismos capaces de trascender las fronteras nacionales, la cultura, la raza, la religión o la posición social, de visualizar cómo el respeto por los derechos de las mujeres son como un acto propagador del crecimiento económico y contribuye a acelerar el desarrollo. Para concluir que la promoción de los derechos de la mujer ya no debe ser considerada como un asunto de mujeres, sino como un gran problema de la justicia social y como un freno al progreso que afecta a mujeres y hombres.

Palabras clave: derechos de la mujer, derechos humanos, discriminación, justicia social, dignidad humana.

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The convenience of dealing specifically with the rights of women within the global context of human rights

The movement for the emancipation of women has been recognized as the biggest and perhaps the only successful revolution of our time¹. Some people have referred to the XX century as the Century of women².

Surely, the normative, social and cultural development of the last times has evolved towards a transformation, not seen before in the relationships of gender at an international level. But this reality co-exists with the one that reveals about glass ceilings, the salary gap, about the estimated 70% population living in poverty in the world who are in fact women, the fact that they suffer the most violence and impunity and even more, about the fact



For achieving such social transformation, it is necessary to analyze, among other aspects, whether the role that women and men play in society is the most adequate in order to advance towards the construction of a more equitable world.

that there is no country in the world where there are equal opportunities for women and men.

Those statements about the XX century indicate that we have knocked down many walls; in the XXI century we need to put

1. This paper belongs to the Consolider-Ingenio 2010 project: “El tiempo de los derechos (The time for Rights)”. CSD2008-00007.

2. “È da ritenere che il movimento per l’emancipazione delle donne sia la più grande (sarebbe in ogni caso tentato di dire l’unica) rivoluzione del nostro tempo”, a text included in the lesson with which N. BOBBIO opened the course *La natura del pregiudizio* in the Technical Industrial Institute Amadeo Avrogado, which took place from the 5th of November to the 17th of December, 1979 in the program “Torino Enciclopedia. Le culture della città”. The text can be consulted at <http://centrogobetti.it>.

Cfr. CAMPS, V. *El siglo de las mujeres*, Cátedra, Madrid, 1998.

up many bridges that allow us to dream with a new emblem for this century: the century of people, equal men and women, all different but capable of building our own lives only by subscribing to the conditioning factors that we chose, and by being aware of the fact that within the choices we take, opportunities and challenges and also difficulties are implied as well as effort, sacrifice and even self-sacrifice.

The advance in the rights of women, of the rights of all human beings is not always a predictable process, it must be observed. Experience has proved that not all voices are heard as a single one, there are dissonant tones. Judith Butler says that in life, all of us are amateur philosophers creating a view of life of what is right, of what is fair and what is not,

of what the necessary and sufficient conditions for life might be³. Taking responsibility for shaping a collective future implies hearing all those voices, it also implies negotiation and cooperation rather than struggling, and being able to combine theory and action in order to get an efficient social transformation towards a sustainable progress.

For achieving such social transformation, it is necessary to analyze, among other aspects, whether the role that women and men play in society is the most adequate in order to advance towards the construction of a more equitable world. Provided the fact that no theory of social justice nowadays is segregated from the language of Human Rights, and that a society cannot be considered equitable without acknowledging and

guaranteeing human rights, the exercise of the rights of women deserves special attention.

Ortega would say that the election of a given type of woman is one of the key factors in history⁴. It is the history in which women have remained in many cases, invisible and hidden or with their hands tied behind their backs or subordinated. It is a history that has evidenced that the identities and differences between the sexes are not as important as the relations of domination and submission. In it, several institutions have contributed through the exercise of certain forms of violence not tangible but “symbolic” or “vague”, even “imperceptible” for their victims who have witnessed how a universal and particular view of the hierarchy between the sexes has been validated.⁵

3. Cfr. BUTLER, J. “La cuestión de la transformación social”, in BECK-GERNSHEIM, E., BUTLER, J. and PIGVERT, L., *Mujeres y transformaciones sociales*, trans. C. Vendrell y E. Oliver, El Roure, Barcelona, 2001, p. 7.

4. Cfr. ORTEGA Y GASSET, J., “Estudios sobre el amor” (1941), in *Obras completas*, Tomo V, Alianza, Revista de Occidente, Madrid, 1983, p. 620.

5. Cfr. BOURDIEU, P., *La dominación masculina*, trans. J. Jordá, Anagrama, Barcelona, 2000, pp. 12, 51. It is also said there’s an “erotization” of violence towards women as a strategy through which seduction, gallantry and persuasion, women accept it without rebelling. Cfr. BERBEL SÁNCHEZ, S., *Sin cadenas. Nuevas formas de libertad en el siglo XXI*, Narcea, Madrid, 2004, pp. 171, 173.

If they way in which women has been historically regarded is transferred to the concept of human being as a subject of law and with a legal personality, this “subject” which some call human being would be “unknown”, in the words of Ortega. He would say there were only “men and women” and acted accordingly⁶. The way women were treated was a consequence of the conception of women as someone “substantially confusing”, a “twilight being”, someone “of secret nature” a “form of humanity inferior to the masculine” weak and with an “inferior vitality for humankind” whose destiny was “to be seen by men”⁷. From that viewpoint, it is not hard to imagine that historically speaking, there has not been equity in the rights exercised by men and those which women could access.

The connection of Human Rights and Equity of Gender with development has been

manifested from international levels. The Human Development Report of the year 2000 shows the conception that human rights and human evolution/development share the goal of guaranteeing freedom, wellbeing and dignity to human beings and also, share the mission of making possible that Human Rights become a universal fact in the XXI century. The report conceives Human Rights as an intrinsic part of development/evolution and development/evolution as a means to make Human Rights a reality. If this connection between Human Rights and development was exposed explicitly in the year 2000, back in 1995 it had been said that without equity of gender human development would be seriously threatened. The report shows the vast difference among the capacities of women and their chances to exercise those capacities, it analyses the lack of recognition to female work; includes objectives ori-

ented towards making the opportunities for men and women equal and presents figures about gender to evaluate evolution/development⁸.

Considering that those difficulties related to the rights of women and consequently to human development were made public in 1995 and still happen/take place nowadays, the pretention of human rights as a universal fact makes us face the need, not only the convenience, of dealing specifically with the rights of women in the global context of human rights.

A brief historical review to the process of recognition of human rights explains why we have to and must speak about the rights of women and shows that it can be useful in order to get a better chance of success in dealing with the challenges of the XXI century in the field of rights.

6. Cfr. ORTEGA Y GASSET, J., *El hombre y la gente*, Alianza, Madrid, 1994, p. 135.

7. *Ibidem*, pp. 136-143.

8. The Reports about Human Development –United Nations Program for Development (PNUD)– can be found at <http://hdr.undp.org/es/informes/mundial/idh>



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The foundations which shall give way to the recognition of human rights are laid within modernity. The splitting of public and private scenarios and the privileged location, even exclusive in each one of them of the genders shall determine the future of the rights of women.

The fake globalization of the subject of human rights in modernity

Too frequently and very especially in the field of rights, the

condition of human being of women has been forgotten, and this fact has influenced sexual duality which, in the best scenario, is defined by the male and related to him –by contrast

or opposition to him. A human being can be defined by opposition, it can be said to be one by naming the other before itself, but in alterity there's reciprocity. Transitionally however, women has been defined without considering such reciprocity, she has been characterized by what she is not or by, what the male does not want to be. Men have thought and defined her in relation to him, to what he wanted her to be, without regarding her as a similar human being⁹.

As a result of that behavior, women's identity has not always been considered as an entire entity which needs to be defined, precisely as an entity, by women themselves. Before being a woman, she has been a daughter, a wife or a mother. In this sense, Mary Wollstonecraft referred to women as "those fantastic half-beings" subjugated to real or natural laws, according to the cases of the men who surround them¹⁰. It is the protection of a given

9. Cfr. LIPOVETSKY, G., *La tercera mujer. Permanencia y revolución de lo femenino*, trans. A. Alapont, Anagrama, Barcelona, 1999, p. 218.

10. Cfr. WOLLSTONECRAFT, M., *Vindicación de los derechos de la mujer*, trans. C. Martínez Gimeno, Cátedra, Madrid, 1994, pp. 157, 160.

role, the unavoidable faith of the feminine gender, of that who must not be done but who must exist¹¹. Or, it is the celebration of femininity which due to a “mysticism”, assigns a certain role to her which sacrifices her development as a human being.¹²

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The first model of human rights was based on categories which pretended to be universal, abstract and objective and it was shown as a fake universality of a particular being: male and owner, excluding

from his scope of action those who lacked property and women. The illustrated thought which was the basis of the first human rights, those who men have just for the sake of existing, those of participating in a common and universal nature, were not the rights of women or of other collectivities. It seems to be that the human condition of women was forgotten, having bearing on the sexual duality in order to deny her identity as a person and as the subject of human rights. To illustrate this point, it is merely enough to recall some of the philosophers who supported the thinking of the origin of human rights: Locke, Rousseau or Kant.

Locke criticized the position of Filmer when he tried to justify the absolute authority of the father over the family and the authority of the monarch over

the people having recourse to the divine disposition and to natural rights¹³. For him, there was not a natural right of dominion over the children for the simple sake of having bred them. Even supposing it were so, he states he would not give to the father anything more than a shared dominion with the mother because “no one can deny that the mother not only has an equal part but a bigger part”¹⁴. If, regarding the children, there is shared power and responsibility for both parents, in the matter of the relations between them, the husband and wife partnerships is established through a voluntary pact between man and woman, without granting the husband an absolute power over the woman. Nonetheless, when the interests and shared properties are at stake, then the government “naturally” favors the man for being stronger

11. Cfr. CASSANO, F., *Approssimazione. Esercizi di sperienza dell'altro*, Il Mulino, Bologna, 1989, p. 67.

12. Cfr. FRIEDAN, B., *La mística de la feminidad*, trans. M. Martínez Solimán, Cátedra, Madrid, 2009.

13. Cfr. FILMER, R., LOCKE, J., *La polémica Filmer-Locke sobre la obediencia política* (it contains el Patriarca o el Poder Natural de los Reyes and the Primer Tratado sobre el Gobierno Civil), bilingual edition, trans. C. Gutiérrez de Gamba, Instituto de Estudios Políticos, Madrid, 1966, pp. 8, 16.

14. *Ibidem*, p. 157.

and more capable¹⁵. Property, which is a condition for citizenship, autonomy and freedom, in Locke's thinking, shall be responsibility of the male in the husband and wife partnerships. Thus, while in the political society the natural dominion of the patriarch is denied, the same situation shall not take place within the family through the ruling of family property.

For Rosseau, it is within the family where the good citizens are formed. But this role is reserved for men only. A Woman can only be a good daughter, a good mother and a good wife. She shall not take the step to become a citizen despite all her excellent qualities. The great theorist of equality stated that men and women have "the same organs, the same needs, and the

same faculties" and that "in everything that is not related to sex, the woman is a man" or that one of the marvels of the world is to "have created two human beings so alike and to have created them so different from each other". He explains as well that one of the two beings must be "active and strong and the other passive and weak", or that "women depend so much on men thanks to her wishes and to her needs". Her character and personality is very diverse and as a consequence, her education should be diverse too. In this sense, "the education of women shall be directed to men" and it must be oriented to "be liked by men, be useful to them, be honored and loved by men, to teach them when they're young, take care of them as adults, give them

good advice, comfort them and to make their lives kind and sweet", for she was done to "subjugate to/accept men's wishes and stand his injustice" and her only glory is in their husbands' esteem/"¹⁶. Kant also excluded women from citizenship because there wasn't in her, like in children, the natural characteristic to acquire such condition¹⁷.

The transitional, social and legal composition of the family has been precisely, one of the decisive factors for the discrimination of women and for the location of patriarchy in the structural basis of society. It is a type of structure that shapes the political and legal organization, the culture, interpersonal relations and the very personality and which could not sur-

15. Cfr. LOCKE, J., "Segundo ensayo sobre el gobierno civil", in *Dos ensayos sobre el gobierno civil*, trans. F. Jiménez Gracia, Espasa-Calpe, Madrid, 1991, pp. 249-262. It has been understood that Locke's consideration about the separation of family, from politics and the State, have influenced the legislation dealing with the legal condition of women, specially of married women. This effect is produced when the female and male become one single person: the male. Cfr. JÓNASDÓTTIR, A. G., *El poder del amor. ¿Le importa el sexo a la Democracia?*, trans. C. Martínez Gimeno, Cátedra, Madrid, 1993, p. 206.

16. ROUSSEAU, J. J., *Emilio o De la educación*, trans. M. Armiño, Alianza, Madrid, 1990, pgs. 484-485, 493-494, 502, 538, 556.

17. Cfr. KANT, I., *Teoría y práctica*, trans. J. M. Palacios, M. F. Pérez López y R. Rodríguez Aramayo, Tecnos, Madrid, 1986, p. 34. This is the statement of freedom designed by the classical contractual theories, in which only the male is included, excluding women. With regard to that, it is said that it is a history of liberation manly only, in which a previous sexual contract in which the private field of family is configured and in it, women are subjugated to men, without reaching the condition of female citizen. Cfr. PATEMAN, C., *El contrato sexual*, trans. M. L. Femenías, Anthropos, Barcelona, 1995, pp. 11, 15, 58-65.

vive without leaving a deep mark in the family as a key element in the strategies of social and cultural reproduction¹⁸.

From the natural sexual division –the word “natural” understood in biological terms–, we moved to the assignation of social roles which have supported a political, social and economic order of domination of one gender over the other. The assignation of the masculine and feminine roles, the unequal distribution of the functions, powers and rights between the genders, are the central point at which life can change, inside and outside the family, from modernity to the relatively recent dates. Gender is thus, fundamental criteria to differentiate functions. It is the construction of sexuality as a means to exercise power: “the middle-class ideal of freedom,

is as well, the patriarchy ideal of sexuality”¹⁹.

In order to strengthen that masculine power it became mandatory to build up a way of life based on the divorce of the public and private fields. The public field referred to transe, industry and politics and in it, the male was positioned with a productive function. Meanwhile, the activities of women were reduced to the private sphere, reserved for the family, with her corresponding reproductive functions lacking social value. In this form, the competition within the professional field among the spouses is avoided, along with the tensions that may arise from it²⁰. Besides, the public sphere, where the male gains fulfillment, will be characterized by the recognition of rights, legality, rationality, the agreement

and the negotiated coexistence. On the contrary, the private field, where women seek fulfillment, is left apart from that type of behavior and would remain ruled by a certain equilibrium and natural harmony, not negotiated, of hierarchies, submissions, dependencies, which in turn shall become a place suitable for domination and subordination²¹. Within the sphere of family, the principles of justice which human rights claimed for and acknowledged, did not rule. Family was thus, a place for the privacy of men and a place for supporting the deprivation of rights for women. Women will not be then, citizens of full rights²².

With the purpose of reducing women to her role of carer, of someone not responsible for the home, her possibilities for education and to prac-

18. CASTELLS, M., points out that without a patriarchy model of family, it was “being exposed as a form of arbitrary domination and would end up being abolished”, ID., *La era de la información. Economía, sociedad y cultura*, Vol. 2. El poder de la identidad, Spanish version of C. Martínez Gimeno, Alianza, Madrid, 1998, p. 157.

19. IZQUIERDO, M. J., *El malestar de la desigualdad*, Cátedra, Madrid, 1998, p. 362.

20. Cfr. PARSONS, T., “La estructura social de la familia”, en FROMM, E., HORKHEIMER, M., PARSONS, T. y otros, *La familia*, trans. J. Solé-Tura, Península, Barcelona, 1998, pp. 54-57.

21. Cfr. MIYARES, A., *Democracia feminista*, Cátedra, Madrid, 2003, pp. 61-62.

22. Cfr. PATEMAN, C., *El contrato sexual*, cit., pp. 58-65.

tice a profession were limited. For a very long time, only the jobs that implied an extension of the maternal vocation of women, were admitted for her²³. Deepening even more into discrimination, the State remained neutral before them, since they moved within the private sphere, a crossing line for public intervention²⁴. Home becomes the “ideal space of emotional life”, “a shelter for men where the responsibility of taking care of the family is the woman’s task”²⁵. In those conditions, home wasn’t precisely a shelter for women. Some people see it in fact, as a trap in which, in some occasions clear signs of “exploitation” have been evidenced. It is a place for abuse where there can be no intervention for the manifestations of power of

men over women, for considering home as a private field. The *femina domestica* will thus give way to a “tame femininity” or to an “ideology of domesticity”²⁶.

Paradoxically, the competitive and free economy of the *laissez-faire* was not reflected in a sexually free society. The gloomy middle-class person focused on sexuality stressing on stereotypes and the polarization of roles and sexual attributes. The “*homoeconomicus*” and the “*femina domestica*”, with her talents wisely given by nature, are part of a perfect union that avoids “dangerous rivalries” between the genders, inside and outside the family²⁷.

Modernity freed people from many ties but brought as well

anti-modernity for it was not capable of freeing the human being of the conditions of gender. The very same promise of liberation was able to justify feminine domination. In the cultural field where the first human rights are born, women are not free, nor equal, nor can compete or are the holder of rights. Women are given other tasks that differ from the tasks of a citizen. The law and a manly moral make control stronger over a woman who loses her individuality and her freedom in order to benefit her family circle. She is economically dependent, immersed into an intellectual lethargy, absorbed by what is concrete and daily, shallow and worthless; the *modus vivendi* of women has necessarily been in contact with the home, with the reclu-

23. Ortega would claim that the most masculine trace of all is professionalism and its lack had the sense of femininity of the male. Cfr. ORTEGA Y GASSET, J., *El hombre y la gente*, cit., p. 134.

24. Cfr. MONEREO ATIENZA, C., *Desigualdades de género y capacidades humanas*, Comares, Granada, 2010, p. 108. Regarded as a natural obligation, the meaning of female work in the production chain has been completely ignored, without considering that female work reproduced and made productive work possible.. It has been shown as an example, that the education of Emilio, as a future citizen, would not have been possible without the education of Sofia, the woman who assisted him..

25. Cfr. McDOWELL, L., *Género, identidad y lugar. Un estudio de las geografías feministas*, trans. P. Linares, Cátedra, Madrid, 2000, p. 118.

26. *Ibidem*, pp.121, 123, 134. In this conditions, the right to privacy could not have the same meaning for men and women. What meant a right for men, was a deprivation of rights for women Cfr. IZQUIERDO, M. J., *El malestar de la desigualdad*, quot, p. 337.

27. Cfr. LOWE, D. M., *Historia de la percepción burguesa*, trans. J. J. Utrilla, Fondo de Cultura Económica, México, 1986, pp. 197-201.

sion in a family sphere which led, according to some opinions, to her “becoming-a-thing-process” with representations of her that are often similar to a sexual object rather than to a person, preventing the participation of the feminine universe into public life²⁸.

The incorporation of women into the sphere of human rights

In line with the process of exclusion of the rights for women, the denounce about the lack of justification for such pretention was done, along with the demand for identical rights for men and women. It is said, in this sense, that “feminism is the unwanted child of Illustration”²⁹. Condorcet pointed out in 1790, that “women must hold the same rights, and how-

ever, in no free Constitution they exercised the right to citizenship”³⁰. Olympe de Gouges, is author in 1791 of the Declaration of rights of women and the female citizen; it is an exact copy of the French Declaration of rights of men and the male citizen with an explicit inclusion of women as a holder of the same rights. Her Declaration started with a question addressed to men: “Man, Are you capable of being fair?, a woman questions you”³¹. In the year 1792 Mary Wollstonecraft wrote the Vindication of the rights of women, with which she claims for justice for the other half of human race through respect to the rights of women³².

In 1869 John Stuart Mill, using a perspective of the liberal approach of human rights and the need of exercising those

rights equally on both men and women, declares that the emancipation of women shall not come into being until women are not recognized with equal rights to those of men, free access to all jobs, to the teaching and until the power of the male is not vanished in the family. Until then, the situation of women would be in a similar position to that of slavery. He appealed to the abolition of legal obstacles in order to make possible the full exercise of women’s capacities and the free development of her personality. His essay is based on the belief that the relations of dependency between the sexes are “wrong in themselves” and that they are “one of the main obstacles for the progress of mankind”; He stressed as well the need to substitute those relations by relations of “perfect equality, without privilege or

28. Cfr. MILLETT, K., *Política sexual*, trans. A. M. Bravo García, Cátedra, Madrid, 1995, p. 118

29. VALCÁRCEL, A., *Feminismo en el mundo global*, Cátedra, Madrid, 2009, p. 60.

30. CONDORCET, “Cartas de un burgués de Newhaven a un ciudadano de Virginia”, en PULEO, A. (Ed.), Condorcet, De Gouges, De Lambert and others. *La ilustración olvidada: la polémica de los sexos en el siglo XVIII*, Anthropos, Barcelona, 1993, p. 95.

31. DE GOUGES, O., “Los derechos de la mujer”, en PULEO, A. (Ed.), Condorcet, De Gouges, De Lambert and others. *La ilustración olvidada: la polémica de los sexos en el siglo XVIII*, quot., p. 154

32. WOOLLSTONECRAFT, M., *Vindicación de los derechos de la mujer*, Debate, Madrid, 1998, p. 16.

power for one of the genres or of any kind incapacity for the other”³³.

These manifestations to defend the rights of women try to evidence that the identification of the concept of human linked to the concept of man, lacked in fact, the pretention of universality, and evidenced, on the contrary a contingent nature born out of concrete historical and political circumstances which interpreted, from a particular perspective, who were to be holders of rights and what had to be its contents.

The rights-holder, just like any other build-up category, is always unfinished and in progress, open to new precisions according to the cultural perspectives of the right moment for the ethical and social transformation of the new human being, holder of rights, excluded before³⁴. For that

reason, freedom and equality, in universality terms are still in the new century the greatest vindications of the transitionally excluded groups and, among them, women take one of the privileged positions.

Modernity was presented then with great soundness regarding the differences and discriminations derived from gender, a huge resistance to change was shown, we are now facing a new modernity or the eternal and unfinished modernity, in a constant role of dissolution of solids. It is a stage of “liquid” modernity where there is a constant criticism to the homogenization of individuals under alleged normality. It is the “history of the lawbreaker, unlimited and erosive modernity”³⁵ which appeals once more to the human being as a right-holder, and where women does not stand apart from universal referents. Women vindicates

her condition of human being, in conditions of equality with men.

Since human rights are not static, the universality of the model has been able to expand in two senses: for the rights themselves and for the holders of rights. The alleged normality that has been able to configure certain rights which were configured to be enjoyed by concrete subjects in every moment is not neutral. For that reason the change in the paradigm from modernity to our days has made it possible to swift from a blending and excluding model in some cases, to a model that is more respectful to differences and that implies the recognition of particular identities. If the first generation of rights was recognized by having an abstract right-holder, in the second generation of rights, a process of specification of the right-holder

33. MILL, J. S., *La esclavitud femenina*, trans. E. Pardo Bazán, Artemisa, Madrid, 2008, pp. 59-60.

34. Cfr. BUTLER, J., “La cuestión de la transformación social”, en BECK-GERNSHEIM, E., BUTLER, J. and PUIGVERT, L., *Mujeres y transformaciones sociales*, quot., pp. 25-26.

35. BAUMAN, Z., *Modernidad líquida*, trans. M. Rosenberg y J. Arrambide Squirru, Fondo de Cultura Económica, Buenos Aires, 2006, p. 12.



The recognition to women of the same rights that men already enjoyed. her incorporation to the generic concept of men as a human being is a new step in the process of generalization of the rights. However, the recognition and the positive appraisal of the differences between men and women implies an authentication to the recognition of the specific rights of women, and above all, to the specific guarantees to gain an effective exercise of rights.

ers was carried out, incorporating to those abstract and universal rights other rights that considered the person from the perspective of certain specific conditions: work, illness, unemployment, disability, childhood, or the gender, among other circumstances, have become reference criteria to protect the people who are into di-

verse situations, vital for their development.

From the point of view of that first model of rights, the recognition to women of the same rights that men already enjoyed. her incorporation to the generic concept of men as a human being is a new step in the process of generaliza-

tion of the rights. However, the recognition and the positive appraisal of the differences between men and women implies an authentication to the recognition of the specific rights of women, and above all, to the specific guarantees to gain an effective exercise of rights.

From the recognition of the rights of women to their real fulfillment

The potentiality of rights, referring to its real achievement, needs an adequate system of guarantees. For this adaption to become a reality, it is mandatory to bear in mind the situation of those who can be more vulnerable, as it is the case for women due to different circumstances. The difficulties of women to exercise her rights become evident in the very fact that no nation in the world nowadays, has actually reached equal conditions of opportunity for both genres. They are linked to the problems of social justice of greater relevance; they are part of the current expressions in developed countries, issues like glass ceilings, salary gaps, double shifts, and violence of genre or threats of

social exclusion. The problems related to those situations are more urging in under developed countries, where poverty, the distribution of wealth, nutrition, health, literacy teaching, land rights, the right to work, and to a freely consent marriage are a sign, or instead, the lack of these rights for women, are the unmistakable sign of the fact that an important part of humankind is deprived of the necessary conditions that have allowed to construct the central concept of Kantian dignity. Women subjugated to extremely low conditions of life, immersed into dependency relationships and, in some cases, into abusive relationships turn out to be, handicapped in her acts, if not in their rights, to be able to shape and choose her own life plan.

Thus, it does not seem to be a redundancy or a platitude, to say that human rights are of

and for women. In fact, in the Vienna Conference of human rights 1993, the need for declaring openly that the rights of women and girls, as an inalienable part of the universal human rights was identified; it was also declared that the violations to women, in case of armed conflict, are also violations to the fundamental principles of human rights, and the fact that violence against women, sexual harassment and feminine exploitation are incompatible with human dignity and must be abolished.

On the other hand, the lack of an undisputed evidence relating human rights to the rights of women, is manifested whenever a State pleads cultural, religious or national sovereignty reasons to justify discrimination due to genre in its legal systems, and when, using identical reasons, they oppose to establish actions that may put an end to those practices³⁶.

It is a fact that not in very few countries, the rights of women are rejected systematically with legitimizing pretensions, like the respect to transitions or cultures, which configure as a universal pattern, the superiority of men.

There's no need to get to the point of showing the lack of recognition to the rights of women; the persistence in the exercise of unequal conditions is verifiable all over the world. This is because the conquest has taken longer and the economic, social and cultural conditions required for the egalitarian exercise have not been given, or because the subject, the model of rights has been and still is, the male. The fact is that many women, specifically due to her gender, continue to suffer nowadays relevant shortages in the recognition of her rights, serious violations to them and a decrease in their effectiveness³⁷.

36. "La mujer en el año 2000: igualdad entre los géneros, desarrollo y paz en el siglo XXI". This is the name that adopted the United Nations Conference in New York from the 5th to 9th of June in 2000, in which, it was stated that the fight against the discrimination of women is not an urgent matter in most parts of the world and, as a consequence of that, women do not benefit equitably from development, becoming that 70% of the population of the world that lives in poverty.

37. The Freedom of movement, sexual freedom, the right to integrity, the right to marry, to property and to inheritance are examples of civil rights; the active and passive right to vote, belong to political rights. In the case of social and economic rights,

In this scenario and from a conception of respect to human rights, to their equality and universality, it is mandatory to be alert to the old or new laws imposed, including or excluding people in the sphere of rights and the specific guarantees required by several collectivities in order to make real their rights recognized³⁸. In any case, the generic prohibition against discrimination is not enough to locate women in an equal position to men in her condition of citizen and right-holder who enjoys her rights. The incorporation of women

to a model of rights, initially conceived by and for men, has not turned out into a parallel enjoyment of rights independently from the holder. That is the importance of dealing with the rights of women.

Taking human rights seriously, also those of women, and the aim to make them real when they want to enjoy of them, implies the existence of an approach of gender in the knowledge and analysis of human rights³⁹. A look to the topic of rights from the perspective of genre cannot avoid con-

sidering the real liberties that women and men enjoy respectively, when choosing a certain way of life⁴⁰. It is quite easy to prove from the consideration of those parameters, that if rights, resources and opportunities become fundamental in order to guarantee the dignity of human beings, the analysis of the historical, social, cultural and economical circumstances that determine those rights, resources, opportunities and, in the end, warranties of effectiveness in men and women is not less important⁴¹. From that perspective, certain

they are linked to wage labor, where men al hombre becoming the indisputable and direct receptor of them, whereas women, located in the reproductive field, are an indirect recipient.

38. Cfr: FERRAJOLI, L., *Derechos y garantías. La ley del más débil*, trans of. P. Andrés Ibáñez and A. Greppi, Trotta, Madrid, 1999, pp. 73-97.

39. LÓPEZ MÉNDEZ, I. "La dimensión de género de los derechos humanos y la cooperación internacional", in LÓPEZ, I. y ALCALDE, A. R. (Coords.), *Relaciones de género y desarrollo. Hacia la equidad en la cooperación*, Instituto Universitario de Desarrollo y Cooperación, Catarata, Madrid, 1999, p. 138.

40. Amartya k., Sen, revised the theory of justice by Rawls and stressed the relevance of an aspect of well-being: in order to understand it one mustn't think of what a person has got, but what a person can get to do with what (s)he has. For so doing, justice can only be evaluated in terms of freedom and real equality. It is not enough to enjoy formal equality in the possession of primary goods: freedom, opportunities and economical resources. Only equality in capacities represents the real freedom of a person when choosing a modus Vivendi. These capacities depend on diverse parameters: biological, social, cultural o any other type. These parameters establish the group of possibilities of reaching goals which are at hand, the real possibility of achieving the objectives. Within the context of inequity between men and women, diversity in the rate of conversion of primary goods into capacities maybe crucial in the field of rights. The biological factor (pregnancy or breastfeeding) as well as social factors (conventional distribution of roles in the family), disadvantage women, even if they enjoy of the same primary goods as men. Cfr: SEN, A., *Bienestar, justicia y mercado*, trans. D. Salcedo, Paidós, Barcelona, 1997, pp. 25-29, 80, 115. ID., *Nuevo examen de la desigualdad*, trans. A. M. Bravo, Alianza Madrid, 2004, p. 104.

41. Women do not have support for the fundamental functions of human life in most parts of the world; they do not eat right; they have an inferior level of health; they are more vulnerable to physical violence and to sexual abuse; it is much less likely for

rights can focus especially on women, because they respond to conditions or needs that belong exclusively to the feminine gender like for example, rights related to reproductive health, maternity and violence of genre. On the other hand, if it is possible to avoid that women are excluded de facto from the exercise of certain rights, it is mandatory then, to consider warranties that arise from diverse experiences, necessities and conditions of vital development that can be conceived from the singularity of the right-holder and that may allow to ensure an effective access to the rights.

The internationalization of the problematic of the rights of women

If it is important to consider rights from a gender point of

view to achieve their effectiveness, it is also relevant from a global point of view. The problematic regarding the rights of women is not a domestic but a universal reality which requires resources capable of transcending national, cultural, race, religion or social class borders and which may allow the chance to consolidate those rights. It is a global reality that is manifested through categorical facts such as the feminization of poverty which has become part of the language of the reports of international organizations; or the constant condemn of structural violence against women derived from relationships of power between men and women and which affect the familiar, work and social spheres and which evidence an unequal access to resources; or the generalized incorporation of women to the labor market in job insecurity

with the accumulation of shifts and in lack of social protection, or the use of women as a weapon to throw at the enemy in situations of war⁴². We should also bear in mind that a public condemn of the most brutal way of discrimination to women, violence of gender as a form of violence against human rights and the rights of women and girls as inalienable part of human rights, was not exposed until the year 1993 in the Vienna Conference of human rights. Since that relatively recent moment, women cease to be a private issue to become a public topic, a subject of human rights.

In the process of internationalization of human rights, the inclusion of women as right-holders has always been mentioned; this fact proves the existence of sexual discrimination and the worry which that

them to be literate and even less, to have professional or technical education, if they try to get a job position, they must face biggest obstacles than men such as wage discrimination. In many places of the world, they lack full legal equality, they cannot access political life, there is no equality in their access to the right to private property, to contractual rights, to have freedom of association, to mobility, to the right to marry, to religious freedom; they are subjugated to do double shifts reducing their possibility to access their right to relax and the chance to carry out cognitive and imaginative tasks. Cfr. NUSSBAUM, M., *Las mujeres y el desarrollo humano. El enfoque de las capacidades*, trans. R. Bernet, Herder, Barcelona, 2002, p. 27.

42. Cfr. MAQUEIRA, V., "Mujeres, globalización y derechos humanos", en ID., (Ed.), *Mujeres, globalización y derechos humanos*, Cátedra, Madrid, 2010, pp. 17, 51-52.

situation represents. In the Universal Declaration of Human Rights of 1948, equality of rights for men and women is alluded from its Preamble⁴³.

The International Pact on Civil and Political Rights of 1996, gathers the commitment of all State Members to respect and guarantee the rights recognized in the Pact without distinction of gender⁴⁴. It points out that the State Members are committed to “ensure to both, men and women, equal title to enjoy the economical, social and cultural rights” listed on the Pact⁴⁵. Article 1 of the American Convention on Human Rights 1978, establishes the commitment of the State Members to respect the rights

and freedoms recognized in it and to guarantee their exercise, without any type of discrimination due to gender. Furthermore, the Additional Protocol to the convention on Economic, social and Cultural rights of 1998, contemplates the implementation and strengthening of programs addressed for women to “count on an effective possibility to exercise her right to work”⁴⁶.

From the 50’s on, the international community deals with the topic of the development of the rights of women through different texts. Some of them respond to specific and urgent problems such as the Convention of political rights of women of 1952, the Convention

on the Nationality of married woman of 1957, the Declaration about the protection of the Rights of women and Children in states of emergency or in armed conflict of 1974, or the Declaration of the elimination of violence against women of 1993. Other are of a more general character, like the Declaration on the elimination of discrimination against women of 1967 or the Convention about the elimination of all forms of discrimination against women.

The Convention on the elimination of all forms of violence against women (CEDAW), approved by the General Assembly of the United Nations on December 18th 1979, in force since 1979, establishes specific

43. In article 7, equality of all human beings before the law is stated as well as the right to equal protection of the law against any type of discrimination that may breach the Declaration or against any provocation to that discrimination.

Equality to the rights to marry, in the matrimony and in case of its dissolution and the free and full consent of the bride and groom are recognized (article 16). The right to get, without any type of discrimination, an equal salary for equal work is also granted (article 23) and the right during maternity to special assistance and care (article 25.2).

44. Article 2.1. And in order to deepen into the issue, Article 3 mentions the commitment to “guarantee equality to enjoy civil and political rights to men and women”, and not admitting restriction or detriment of these rights “under the laws, conventions, regulations or costumes” (article 5.2).

45. Article 3. In article 7.a. ii) names that “women must enjoy work conditions never inferior to those of men, with equal salary for equal work”.

46. Article 6.2 states so. It is interesting to manifest that those programs pretend to incorporate, an “adequate family assistance” to the possibility to exercise their right to work, Likewise and relating to the family, in article 15.2. a) of the Protocol refers to the assistance and special aid “to the mother before and during delivery, and a reasonable time afterwards”.

rights and obligations for the States in relation to the rights of women⁴⁷. The Preamble of the Convention exposes the relevant discriminations that women still suffer and the violations to the respect of human dignity. It also points out the multiplying effect in terms of well-being and development that is gained for women, for the family, for society and for humanity when discrimination is put to an end. And finally, the need to modify not only the transitional role of women, but also, that of men in order to achieve some kind of shared responsibility within the familiar sphere and in society as a group.

Article number 1 of the Convention defines what is un-

derstood by discrimination of women as

any type of distinction, exclusion or restriction based on gender aimed at or which tries to overturn the recognition, enjoyment or exercise by women, independently from her marital status, on the basis of equality of men and women, of human rights and the fundamental liberties in the political, economical, social, cultural and civil spheres or in any other field.

The commitment of State members to adopt all the necessary measures to ensure full development of women, guarantee the exercise of human rights for men, in all fields, especially in the political, social, economical and cultural ones⁴⁸. It legitimizes the positive mea-

asures and the special measures of protection to maternity⁴⁹. It also conceives maternity as a social function, promotes the modification of socio-cultural patterns which are based on the idea of relations of superiority-inferiority between the sexes or in sexist stereotypes and draws attention to a shared responsibility in education and care of the children⁵⁰. Throughout the body of the Convention, a list of rights relating to all fields of personal fulfillment for women, is build up⁵¹.

With the purpose of making the rights listed in the Convention effective, a Committee for the Abolition of Discrimination against Women is created to which State Members must submit reports about the mea-

47. Resolution of the General Assembly of the United Nations 34/180, of 18 December 1979.

48. Article 3.

49. Article 4.

50. Article 5.

51. This is how the active and passive right to vote is recognized; the right to participate in public jobs, associations and social, political and job organizations; the right to exercise jobs of representation in national and international bodies; the right to have a nationality and regarding her offspring's nationalities; the right to education and to access professional training in equal conditions to those of men; the right to work, to conciliation, to health and social security; rights to access credit; to participate in sport, culture and to relaxation; her full legal capacity in contractual terms is recognized as well as for the administration of goods and her access and participation in legal proceedings; is also mentioned her right to move; her freedom of election of residence and domicile; her free access to marriage in conditions of equality; her right to family planning and equality of rights regarding her offspring (articles 7 to 16).

asures being adopted and the progress reached about the topic. Such Committee can do suggestions or recommendation based on the reports transmitted by the State Members⁵².

The CEDAW is the most relevant international legal instrument in terms of full and specific protection facing all types of discrimination against women. Nonetheless, its compulsory, multilateral and global dimension characters is diminished by the number of reservations made by the State Members, some of which are contradictory to the very object of the Convention. On the other hand, it must be pointed out that there is little efficiency in the assessment techniques for the compliance of the Convention, which are basically centered in the reports that the same State Members submit to the Committee for the Abolition of Discrimination against Women.

However, with CEDAW the international instruments for the pro-



The outstanding role that women may have to activate development is a consequence derived not only from the necessary and reciprocal implication of human rights but also for the prominence that women may gain as a receiver and active participant in the process.

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tection of the rights of women are not ended. The World Conference on Human Rights, approved on the 25th of June of 1993, the Declaration and Program of Action of Vienne. Among the “deep” concerns with which the Conference is

initiated are “the diverse forms of discrimination and violence women are exposed to, all over the world”⁵³. In that sense, it is stated that the rights of women and the girls are an “unalienable, integrating and indivisible part of the univer-

52. Articles 17 to 22.

53. Just like the violations to human rights during armed conflicts, which affect civil population, “women in particular” (Declaration and Program of Action of Vienne I. 29).

sal human rights” and that the “urgent” objectives of the international community are to reach “full participation, in conditions of equality for women in political, civil, economical, social and cultural life... and the elimination of all forms of discrimination based on genre”. Likewise, the “governments, inter-government institutions and non government organizations are invited to intensify their efforts in order to favor the protection and promotion of the human rights of women and the girls”⁵⁴.

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More specifically, it is “earnestly”, requested to the World Conference on Human Rights, that women are granted with “full enjoyment” in conditions of equality of all human rights and that it becomes a “priority” for all governments and the United Nations. The importance of the integration and participation of women as an “agent and beneficiary” in the process of development and “specially” the need to eliminate all forms of violence against

women, in her public and private life to “eradicate” any transitional practice or costume that may affect negatively and that may generate detrimental consequences for the rights of women, of implicit or explicit nature. It also attributes to the United Nations the duty to promote the universal ratification by all the States of the Convention about the Elimination of all forms of discrimination against women⁵⁵.

In line with the emergence of those international texts, the year 1975 was declared by the United Nations as the International Year of Women, and the decade from 1976-1985 was declared The United Nations Decade for Women, under the motto: Equality, Development and Peace. In 1975 the First World Conference on Women took place in Mexico. Three more conferences followed this one: Copenhagen, 1980; Nairobi, 1985 and Beijing, 1995.

From the perspective of a global problematic that affects

all humanity, these diverse international initiatives as a field of thought, participation and proposals have contributed making public for worldwide affairs, the specific difficulties that women face in the field of human rights, their recognition and exercise. In that manner, it has been possible to notice about the lack of recognition of the human rights of women in many States, about the disparity between the recognition of the rights and the capacity to exercise them, of the conception of women as passive receiver of support and assistance. The social and political role of women has been vindicated, her right to participate in the decision-making and decision-generation processes, the empowerment and equal distribution of power, the need to establish positive actions to favor women, the elimination of stereotypes and the necessary contribution of women to development and piece. In conclusion, there has been an international call in which is manifested that humanity will

54. Declaration and Program of Action of Vienne I.18.

55. *Ibidem*, II. 3. 36, 38, 39.

not be able to overcome its great problems without the recognition and protection of the rights of women. Pretending to solve matters as overpopulation, poverty, literacy teaching, malnutrition, health or mortality implies having a look at women, disregarded and necessarily located in the center of all those problems.

If a perspective of gender is mandatory to sort out such big problems, it would not be possible to omit it in order to assume the great challenges this century brings, like sustainability, progress and development.

The rights of women, enclave of social justice and progress

Attempting to and applying rigorously the rights of women to overcome problems and face challenges typical of our times is necessary, convenient and in attention to the delay in comparison with the rights of men, it should be urgent

already. If, for one thing, this verification of reality demands making universal the legal recognition of the rights of women, for the other, one must be aware of the fact that the social practices deny in certain occasions what the laws recognize and that we must take action against that effect. It can be proved that in spite of the recognition of the rights of women as integrative part of human rights, the violations to the rights that women suffer, only because of their gender condition, are not always considered violations under the support of supposedly cultural reasons. In many parts of the world, equal rights for men and women are not recognized, or the specific rights of women, like those relating to maternity, sexual or reproductive health. Similarly, in the exercise of rights with legal coverage, it remains frequent to avoid the special difficulties that women face in order to exercise them in real conditions of equality of opportunities. Rights are still not defined with equal par-

ticipation by men and women, thus, the vision of rights from the view of the needs of men survives, that is the transitional pattern of the right-holder, or considering women regarding certain rights of her role as child minder, and being the infant the one who benefits from the rights since it is the one they “must” look after⁵⁶. It must not be forgotten as well that the poverty of women is very much connected to her limitations to access property, to get a contract, to get credit, to work, and to her situation inside her family.

If ending up with discrimination of women in the world is an objective to be considered in itself because it implies respect to human dignity, to the human being and to her rights; it is an objective to be considered too, because she can be an active agent, a right holder and promoter of them.

The outstanding role that women may have to activate development is a consequence

56. These are some of the great challenges of social and cultural rights, of the rights of conciliation of work, family and personal life or to the attention to dependency.

derived not only from the necessary and reciprocal implication of human rights but also for the prominence that women may gain as a receiver and active participant in the process⁵⁷. In this sense, it is noticed that the respect to the rights of women acts as a propagator of economical growth and contributes to accelerating development because it has a multiplying effect in the well-being of the community where women live their lives. The access of women to the rights also allows her to access resources of subsistence that improve the family and the society, it can contribute to balance the relationships of power inside and outside the family union, it influences positively to improve life conditions, health conditions and education of the context of situation, it promotes the reduction of birth rate and of child mortality and can generate economical ben-

efit to the community through a domineering system and the increase in the demand of services⁵⁸.

Among the UN Millennium Development Goals are the support to the equality of gender and the empowerment of women. It also is an objective to reduce the number of people who live in poverty, improve the conditions of health, employment and education. Indeed, equality of gender and empowerment of women can be, a powerful instrument to reach the other objectives before mentioned. The policies of equality of gender can be very useful to reduce the number of people who live in poverty; we must bear in mind that 70% of the population who is poor, are women. Likewise, the policies of equality can be useful to improve the conditions of health in general and, particularly, the

conditions of women, considering that women are granted less economic resources in terms of health services. There are but a few doubts about the beneficial effects of the policies of equality in education, since, on women, are centered the highest rates of analphabetism and the difficulties to access education in all its stages.

Regarding employment, the full integration of women to the labor market is one of the key aspects of progress due to its transforming effect on economy and society. The aspects to implement are several and range from the impossibility to access work to discrimination inside the labor market, which can be manifested in the wages or in promotion.

Even though these evidences and others exist about the importance of the recognition of

57. Cfr. The United Nations and the Advancement of Women, 1945-1995, The UN Blue-Books Series, Vol. VI, UN Department of Public Information, New York, 1995, p. 26. The report of the General Secretary can also be consulted: Economic international development and Cooperation: efficient mobilization and integration for women in development, A/48/393, 20th of September, 1993. Cfr. JACOBSON, J. L., Discrimination of Gender. An obstacle for sustainable development, Hegoa, Bilbao, 1993. Cfr. GÓMEZ ISA, F., "El derecho al desarrollo en el 25 aniversario de la Declaración sobre el derecho al desarrollo", *Derechos y Libertades*, N° 26, Época II, enero 2012, pp. 196-200.

58. Cfr. FOLGUERAS, P., "La equidad de género en el marco internacional y europeo" y GARCÍA SAINZ, C., "Trabajo, género y desarrollo en Latinoamérica y Europa" en MAQUEIRA, V., (Ed.), *Mujeres, globalización y derechos humanos*, cit., pp. 148, 183, 196.

the role of women in economy, education, health, the social and family structures, they are not still in the center of the decisions about these topics. We stand a high chance to see that if there is no change in the participation of women and men in the most relevant centers of decision, it would be difficult to achieve an equal progress that is more adjusted to the real necessities of its agents and beneficiaries, women and men. For that reason, it will be mandato-

ry to position women's voices in private and, above all, public discourse; it will also be necessary to retrieve her memory, to rescue her experiences and recognize her work, hidden, in so many cases, and her proposals of transformation and progress in a world that, is inevitably and fortunately shared by women and men⁵⁹.

The significance of the issues set out in this text and the effects on the conditions of life

and the development of all human beings allows us to conclude that the enforcement of the rights of women must not be regarded as a matter of women. The borders of discrimination would not be overcome unless they are studied in all their dimensions, as huge problems of social justice that hold back progress and which affect women and men and that, therefore, we and they must face jointly.

59. "The public world cannot continue to be deprived of women. And, above all, of the new humanizing and civilizing discourse they propose", RENAÚ, M. D., *La voz pública de las mujeres. Contra la "naturalidad" de la violencia, feminizar la política*, Icaria, Barcelona, 2009, p. 104.