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## Law and Governance

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# LAW AND GOVERNANCE

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# Introduction

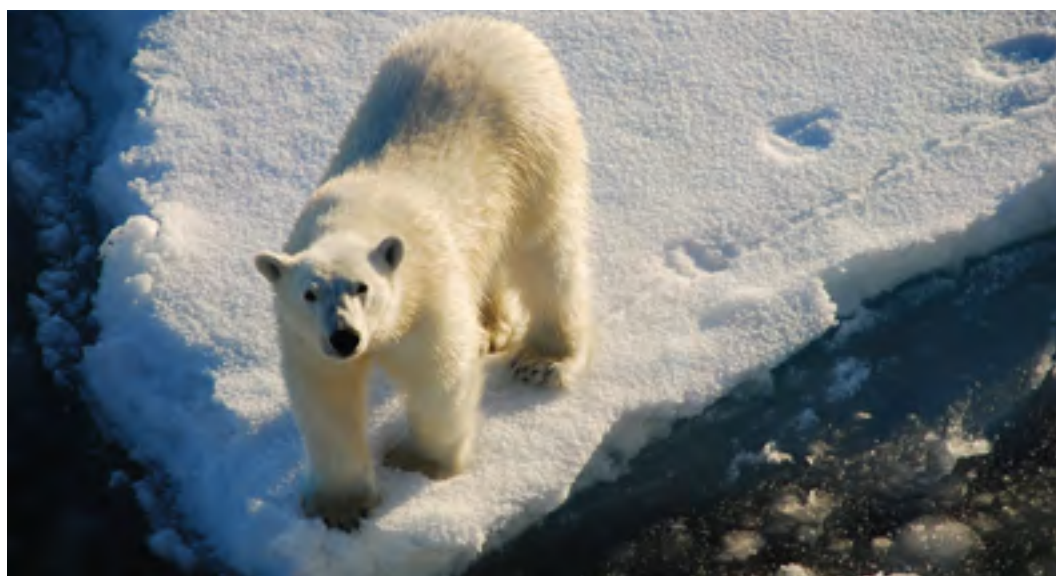
This chapter explores the political and legal obligations for public governance of the Arctic region with respect to gender equality, including special consideration of the Indigenous populations that constitute a significant portion of the population in some areas of the Arctic. Here, the Arctic refers to the region subject to regional governance through various, partly overlapping, bodies (Einarsson et al., 2004; Keskitalo, 2004; Larsen & Fondahl, 2014; Nord, 2016a; Svensson, 2017; Young, 2010).

Gender equality is one of the overarching sustainable development goals in the United Nations 2030 Agenda for Sustainable Development (SDG) and equal rights between men and women is a legal principle in international legal instruments and in most jurisdictions all over the world.

A more pluralistic account of political and legal systems would ideally include self-government and the customary norms and laws of Indigenous Peoples (Watson Hamilton 2013; Webber 2013).<sup>1</sup> However, while these are of enormous importance, the scope of this chapter is limited to formal obligations expressed in political and legal documents. The objective of the chapter is to explore the political and legal commitments for which public governing bodies are accountable, how these bodies express their ambitions regarding gender equality in the Arctic, and how the commitments are fulfilled. The degree to which they meet their international obligations is explored through comments made by the monitoring bodies of international legal instruments.

To understand the complex dynamics of the governance structure in the Arctic, it is necessary to make clear the limitations and the assumptions underpinning the discussion in the chapter and to understand the key definitions and concepts.

Central elements of good governance are the responsiveness of policies and public institutions to the needs of all citizens, the promotion of equal access to resources, rights and voice, as well as a commitment to leave no one behind. And human rights standards and principles, including gender equality, must underpin development. (United Nations Department of Economic and Social Affairs, 2015).



A curious polar bear visits the Arctic Tipping Points project research vessel near Spitsbergen (Svalbard). *Agata Weydmann*

Public governance is informed by far-reaching legal and political responsibilities aimed at achieving gender equality and equal rights for women and men. This chapter is grounded in the following two definitions of public governance: a) the formal and informal arrangements that determine how public decisions are made and how public actions are carried out (Office of the High Commissioner for Human

Rights, n.d.) and b) the political systems – structures, processes, and actors involved in public decision making for a political community – that comprise geopolitics, the international relations among political communities (Poelzer & Wilson, 2014). Policies can take the form of political commitments, such as agreed and adopted plans for action at national or international levels—for example, Sustainable Development Goals (SDGs), gender equality policies, and action plans—and legislation binding actors at various levels of legislative power—for example, Convention on the Elimination of Discrimination against Women (CEDAW), European Court of Human Rights (ECHR), national constitutions, acts, and case law promoting equal rights between men and women and prohibiting discrimination.

The legal systems of the Arctic are diverse (Einarsson et al., 2004; Larsen & Fondahl, 2014). The U.S. has a common law system characterised by a strong emphasis on judicial decisions as an independent source of law. Canada combines a common law system with civil law (in Quebec) and considers itself a mixed jurisdiction. Russia and the Nordic legal systems belong to the civil law tradition, although the Nordic jurisdictions are sometimes identified as a family of their own, the Nordic or the Scandinavian (Agell, 2001); these have comprehensive legislation as the primary source of law. The Nordic states' shared history explains the similarities among their legal systems.

The political systems within the Arctic region are also heterogenous (Einarsson et al., 2004; Larsen & Fondahl, 2014). There are parallel dynamic interactions between these normative systems as they operate within specific historical contexts and through institutions shaped by the political cultures of regions and countries (Larsen & Fondahl, 2014, p. 188). Political and legal systems interact in ways unique to each state even when they belong to the same political or legal family<sup>2</sup>. Most of the Arctic States have a tradition of participatory democracy, mixed economies, and the rule of law, while Russia has a tradition of totalitarian government and a centrally directed economy, relatively recently interrupted after the collapse of the Soviet Union by moves towards democratic governance and a market economy. These different traditions permeate citizens' conception of rights in relation to the state and affect how citizens use courts and seek justice. They influence our very ideas of the rule of law, legal argumentation, the relationship between the state and the individual, and the role of the state.

Global integration and a rights-based approach, with its point of departure in international legal instruments, may erode the fundamental distinction between civil and common law systems. However, although global trends draw towards convergence also in the Arctic, the legal systems in this region continue to exhibit considerable diversity (Einarsson et al., 2004; Larsen & Fondahl, 2014). Institutional and legal changes at the formal level do not change traditions overnight. The rule of law is a work in progress rather than a completed project (Einarsson et al., 2004, p. 103).



Arctic Council flags. *Arctic Council Secretariat*

The accountable subjects for fulfilment of political and legal obligations regarding gender equality in the Arctic are public governing bodies at several levels. The primary responsible subjects are the eight states that govern the region through international law and national jurisdictions: Canada, the Russian Federation, the United States, Denmark, Finland, Iceland, Norway, and Sweden. Three of these are federal states (Canada, Russia, the U.S.) with law-making powers devolved to varying degrees to their northern subunits. The remaining five are unitary states, one of which (Denmark) includes two autonomous territories (Greenland and Faroe Islands). Both Greenland, having opted for self-government in 2009 (Bankes & Koivurova, 2014), and Faroe Islands have distinctive status as autonomous countries within the Kingdom of Denmark and have a high degree of self-government.



Bodies established by the states are accountable within the public governance structure at national levels. The principle of self-determination for Indigenous Peoples is acknowledged through the 2007 Declaration on the Rights of Indigenous Peoples (UN General Assembly, [UNDRIP], 2007), but Indigenous Peoples have limited agency in public governance of the Arctic. In the Arctic Council (the Council)<sup>3</sup>, six Indigenous Peoples' organisations are Permanent Participants with full consultation rights in Council negotiations: Aleut International Association, Arctic Athabaskan Council, Gwich'in Council International, Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North, and Saami Council.<sup>4</sup>

The first section of this chapter defines the central concepts. This is followed by a section examining gender equality in the formal Arctic policy documents of the eight Arctic States and two Indigenous Peoples' organisations, The Inuit Circumpolar Council and the Saami Council. The next section examines the work of the Council on gender equality issues. Thereafter, the political and legal instruments regarding gender equality that are relevant for the Arctic region are introduced and presented in a table.<sup>5</sup> The instruments are further analysed thematically. Another section considers the impact of global agendas and international legal instruments. Policy-relevant recommendations conclude the chapter.

## Central Concepts

The central concepts referred to in this chapter have no single definition. Rather, they are fluid and their meaning is highly dependent on context. Meanings may at times be lost in translation or mutually misunderstood in communication. The linguistic aspect is, in addition to the conceptual, notably important because there is a patchwork of languages in the region: over 40 Indigenous languages and nine official national languages.

The ambiguity of concepts exists also in the political and legal domains, though the legal and political definitions are powerful and have practical consequences. The political and legal obligations addressed in this chapter implicitly or explicitly focus on men and women as sexes and/or genders. Gender identity and expression emerge in various guises and instruct us that not everyone is unambiguously female or male. Gender minorities include trans people, such as transsexual, non-binary gender (transgender) and transvestite people, and intersex people. Gender minorities are still often confused with sexual minorities. Although transgender and/or non-binary people have long been recognised as a third sex or gender in some societies, only relatively recently have they received formal legal recognition.

This section introduces concepts of note without attempting to define them conclusively, with a focus on working legal and political definitions. Gender equality is foremost a political concept, while equal rights between men and women is legal, even though they are closely connected. For example, the SDG goal on gender equality refers to legal concepts.<sup>6</sup>

## Gender equality

The concept of gender equality is at the core of this report, but its meaning remains elusive. The concept as it is most often used in political documents can be understood as specific to women as well as to the relationship between men and women, often understood in terms of shared power and responsibility. Concerns regarding the situation of men are increasingly addressed, for example in the gender equality policies of the Nordic countries. How a gender-equal situation looks and which path leads to gender equality may vary, and it might be easier to identify what is not gender equality. The goal of achieving gender equality is mirrored in a situation of "persisting gender inequality" such as the underrepresentation of women in political leadership; lack of access to education, skills, and opportunities in the labour market; or higher injury mortality among men than women (Larsen & Fondahl, 2014). Gender equality, and in recent years also the empowerment of girls and women, are widely declared in political agendas and agreements. One example is the 2030 Agenda for Sustainable Development and the SDGs (United Nations General Assembly, 2015). While gender equality is not directly defined, there is an assumption of its correlation to power.

The European Institute for Gender Equality (EIGE) defines gender equality as "equal rights (sometimes expressed as treatments), responsibilities and opportunities of women and men and girls and boys" not dependent on sex at birth. It implies that interests, needs, and priorities of women and men should be considered, recognising the diversity of different groups of women and men without meaning that women and men should become the same. Gender equality is not, according to EIGE, a "women's issue" but should concern and fully engage men. It is seen as a human rights issue and a precondition for, and indicator of, sustainable people-centred development.

As international and national commitments to gender equality have transformed over time and have become more far reaching, the pressure on states to commit has increased. One strategy for promoting gender equality, established in international policy through the Beijing Platform for Action in 1995, is gender mainstreaming. Most definitions of gender mainstreaming conform to the UN Economic and Social Council's formally defined concept:

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic, and societal spheres so that women and men benefit equally, and inequality is not perpetuated. The goal is to achieve gender equality (United Nations, 1997, p. 24).

The concept used in political documents is obviously a very limited view of gender equality that does not account for an interest in equality for transgender, non-binary, or other gender identities.

## Equality, equal rights, and non-discrimination

In a legal context, the corresponding (but not similar) concepts are 'equal rights of men and women' and 'non-discrimination' (see e.g., the International Covenant on Civil and Political Rights Arts. 3 and 26; CEDAW Art. 1). According to human rights instruments, all human beings are born equal in dignity and rights (e.g., Universal Declaration of Human Rights, Art. 1). The foundation of the body of human rights law is the Universal Declaration of Human Rights (UDHR), adopted in 1948.<sup>7</sup> All Arctic States support the fundamental principles set forth in the UDHR<sup>8</sup>, a common standard of achievements for all peoples and all nations. Sometimes the name 'the international bill of rights' is given to the UDHR along with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which entered into force 1976, though this is not a formal designation. These two treaties reflect the principles of the UDHR in binding form. All Arctic States are parties to ICCPR, and all but the United States are parties to ICESCR. ICCPR and ICESCR are monitored by the Human Rights Committee and Committee on Economic, Social and Cultural Rights, respectively. Each of the three instruments promises non-discrimination, and ICCPR and ICESCR also have a self-standing provision that promises equal enjoyment of the human rights in the treaties.

To some extent, questions of who should be equal to whom and in what respect remain, but the fundamental principle of equality can be interpreted as formal, substantive, or transformative based on perceptions of how equality should be achieved. Formal equality (de jure equality) means full equality before the law and protection against discrimination. Substantive equality (de facto equality or equality of outcome) requires appropriate measures be taken, including at times temporary special measures. Transformative equality addresses systemic and structural discrimination that may be embedded in laws (and policies) intended to reconsider and transform stereotypes and cultural practices and overcome structural discrimination (Holtmaat, 2013). Most jurisdictions and legal instruments embrace a combination of formal and substantive equality, while some instruments such as CEDAW have a transformative approach, at least to some extent (Hellum & Aasen, 2013a). Political agendas are more likely to embrace elements of transformation.

The non-discrimination principle is included in the constitutions of all the Arctic States, while the protected grounds may vary. Discrimination is however not always based on just one ground, such as sex (and/or gender). Intersectionality is a theoretical framework for understanding how a person's social and political identities combine to create different (sometimes overlapping) modes of discrimination and privileges (Crenshaw, 1989) and how different inequalities intersect, leading to complex forms of discrimination (Kantola & Nousiainen, 2009; Kriszan et al., 2012).



Iceberg in Scoresby Sund, East Greenland. *Thomas Reissnecker*

Intersectional discrimination has been addressed by the UN. A report by the Human Rights Council<sup>9</sup> considers multiple and intersecting forms of discrimination to be obstacles to the full enjoyment of human rights by women and girls. Similarly, in several general recommendations<sup>10</sup>, such as the recommendation on rural women (including Indigenous women)<sup>11</sup>, the CEDAW Committee has increasingly recognised that women may be subject to intersectional discrimination (Hellum & Aasen 2013b, p. 613).

## Sex, gender, gender identity and expression

The earlier human rights instruments use the terms "sex" and "sex-based discrimination", understood as the biological categories of men and women. "Gender" did not appear until the 1990s in the international human rights discourse (Hellum & Aasen, 2013a; Kouvo, 2004). The term "gender", originating in the social sciences and understood as a social category<sup>12</sup>, is rarely used in legal texts but today is used by all human rights treaty bodies without a uniform definition (Freeman et al., 2012; Hellum & Aasen, 2013a).

UN Women defines gender as referring to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as relationships between women and between men.<sup>13</sup> These attributes, opportunities, and relationships are socially constructed and are learned through socialisation processes. They are context- and time-specific and changeable. Gender determines what is expected of, allowed, and valued in a woman or a man in each context. In most societies, there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, and decision-making opportunities. Gender is part of the broader sociocultural context. Other important criteria for sociocultural analysis include class, race, poverty level, ethnic group, (dis)ability, and age.<sup>14</sup> The same definition is used by EIGE, with the addition that gender-based assumptions and expectations generally place women at a disadvantage with respect to the substantive enjoyment of rights, such as freedom to act and be recognised as autonomous, fully capable adults; to participate fully in economic, social, and political development; and to make decisions concerning their circumstances and conditions. Gender is also an important term to understand in the context of gender identity.

# Gender Equality in Arctic Policies

Arctic States, Indigenous Peoples' Organisations, non-Arctic states, and a variety of international organisations have issued Arctic policy documents, some of which include a focus on gender equality. There are several public and semipublic bodies that collaborate on the governance of the Arctic. The Council is the leading intergovernmental forum promoting cooperation in the Arctic<sup>15</sup> (Nord, 2016a, 2016b; Svensson, 2017). While most of the Arctic States have a gender equality policy in place, the Council's "rules of procedure contain no reference to gender and there is no gender policy for the Council as a whole. [Furthermore], while the secretariats are subject to gender regulations in accordance with the State in which they are located; there is no overall gender policy or guidelines which inform the Council's activities" (T. Barry, personal communication, October 16, 2020).

The Council has been criticised for not adequately prioritising gender equality, both internally and among Arctic States (Gunnarsson & Svensson, 2017; Lahey et al., 2014). A study published in 2017 concluded that gender equality seemed to be almost absent in the rhetoric, activities, and outcomes of governance (Svensson, 2017). When gender equality was present, it was mostly as statements about gaps in knowledge (Einarsson et al., 2004; Larsen & Fondahl, 2014) or bare figures without any in-depth analyses or strategies for action. The two Arctic Human Development Reports identified a serious lack of systemic knowledge about gender realities and needs that should be addressed, something that was also pointed at in another study of the Council (Nord, 2016a, p. 84). Its conclusion was that the Arctic governance bodies, including the Council, had so far not given much attention to gender equality and the impacts of economics, policies, and governance on women. Governance in the Arctic was not "taking gender equality seriously".<sup>16</sup> Further, work regarding gender equality has tended to be reactive rather than proactive, and "gender equality, as well as equality between different ethnic groups, has not, so far, been prioritised... despite far-reaching obligations for the concerned states" (Svensson, 2017).

However, since 2013 the Council has been among the variety of supporters and cooperative partners in the Gender Equality in the Arctic Project. That project was initially submitted to the Council by MFA Iceland in cooperation with the Stefansson Arctic Institute and the Centre for Gender Equality. It aimed to promote a dialogue on gender equality in the Arctic region and to raise awareness of the situation of women and men in the Arctic. The project has resulted in a conference, a webpage presenting a wide network of researchers and other stakeholders, and a list of publications on gender equality in the Arctic. This report is a result of that project.<sup>17</sup>



The gavel used by the Chairman of Senior Arctic Officials at Arctic Council meetings. *Linnea Nordström / Arctic Council Secretariat*

## Arctic strategies and policies

Included in this analysis are Arctic policies<sup>18</sup> issued by Arctic States and two of the Indigenous Peoples' organisations (IPO) that are Permanent Participants in the Council. The policies of Observer States and other bodies are not reviewed here. While European Union (EU) policy could be of relevance, as it involves five of the Arctic States, it does not contain explicit considerations of gender equality.<sup>19</sup>

The policies of Arctic States are of analytical relevance from the perspective of governance because they are the representations of governments responsible for international, federal, regional, and national legal and political obligations. While the IPOs are not parties to these obligations in the same sense, they are important agenda setters in the governance of the Arctic.



The Russian Federation, the U.S., and Finland do not address gender equality explicitly in their policies, while others include gender considerations in various forms. In the following, all references to gender, gender/sex equality, men, and women, are reviewed. The sparseness of reflections on and references to gender equality is interesting in and of itself, and confirms previous studies (Gunnarsson & Svensson, 2017; Lahey et al., 2014; Svensson, 2017).

Canada refers to the United Nations 2030 Agenda for Sustainable Development as a key international commitment that informs its Arctic and Northern Policy Framework and expresses its commitment to implementing and measuring progress towards these goals. Among them is the goal to achieve gender equality and empower all women and girls. Specifically expressed are commitments to diversity and equality in policy and programming and to employing gender-based analysis to assess potential impacts on diverse groups of people.<sup>20</sup> One objective is to ensure that Arctic and Northern people, including youth and all genders, play a leading role in developing research and other knowledge-creation agendas.<sup>21</sup> Importantly, the document specifically addresses Indigenous women with the objective of addressing the systemic causes of all forms of violence against them.



Parliament of Finland in Helsinki. *Ninara / Flickr*

The joint policy of Denmark, Greenland, and Faroe Islands for 2011-2020<sup>22</sup> barely addresses gender equality. In a section addressing the difficult social issues that some Arctic communities are facing, an emphasis on social coherence and integration is considered central. Denmark and Greenland are cooperating on projects and knowledge exchange in the social sector, and Greenland is sharing experience on family matters and gender equality with the Nunavut region of Canada.<sup>23</sup> The policy also mentions that the Nordic Council of Ministers has focused on changes in the Arctic from a gender perspective. What this means is, however, not explored.

Gender equality is not significantly addressed in the other states' Arctic policies either. The policy of Iceland vaguely refers to a commitment to promote education about and research on gender equality, as one of many issues to take note of in defining an Arctic policy.

Norwegian policy since 2017 is restricted to emphasising that the best guarantee of sustainable development in North Norway is a diverse labour market that allows women and men, both young and old, to participate in working life. One aim is to build local communities that can attract people of different ages and genders.



Parliament of Norway. *Dmitry Valberg*

Sweden launched a new strategy in October 2020.<sup>24</sup> The previous strategy, from 2011, was restricted to an ambition to "bring the gender perspective to the fore"<sup>25</sup> in Arctic-related cooperation bodies and a desire to support initiatives for increased participation of young people, women, and Indigenous Peoples<sup>26</sup>. The new strategy is more comprehensive and expresses a commitment that international cooperation in the Arctic be guided by basic principles of its foreign and security policy. Among these principles are gender equality and the goals of Agenda 2030. It refers to feminist foreign policy. Gender equality is mentioned as one of several matters of particular relevance to the Barents region (a part of the Arctic region), and the government expresses its intention to work for a gender-equality perspective throughout the activities of Arctic-related cooperation bodies. Moreover, the strategy addresses the problem of out-migration, especially of young women, and the need to create good living conditions to get people to stay, move to, or to move back to the region. A separate section is devoted to gender equality, which emphasises that the full enjoyment of human rights by all women and girls, men and boys is legally binding for all Arctic States.

Of note in this context is the 2009 Nordic Declaration of Solidarity, in which gender equality is one area of intensified cooperation and an integral part of the foreign policy of the Nordic countries, including in Arctic cooperation. The work of the Nordic Council of Ministers has also included a focus on Arctic change from a gender perspective.

The Sámi Arctic Strategy launched by the Saami Council in 2019 does not mention gender in its main part. However, an annex<sup>27</sup> pointing at knowledge gaps and research needs refers to gender under sections on health and well-being and under Duodji, art, and cultural expressions. There are concerns with the knowledge gap on domestic violence experienced by both Sámi men and women to a greater extent than in society at large.<sup>28</sup> The strategy also addresses gender stereotypes such as the strong woman and macho man and the impact such stereotypes may have on physical and mental health. Finally, it calls for discussion and examination of how gender and knowledge, land, and memories are connected to duodji (Sámi handicraft).

The 2010 Inuit Arctic Policy<sup>29</sup> is the only policy (of those studied here) that uses the term "sexual equality" and not "gender equality". Sexual equality refers to men and women and their changing roles. The section on Social Issues: Sexual Equality and the Changing Roles of Women and Men in the Arctic expresses a concern for the need to acknowledge ongoing transformation and its impact on the relationship between men and women. It states that "persons must be guaranteed equality and there shall be no discrimination based on sex. To realise equality of opportunity<sup>30</sup> and rights in Arctic communities, specific affirmative measures will be required in many cases." The policy contains the text of UNDRIP as an appendix. Article 22 of UNDRIP expresses the obligation of states to take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention should be paid to the rights and special needs of Indigenous elders, women, youth, children, and persons with disabilities.

The terminology in the policies varies to some extent. None of the policies refers explicitly to the legal principle of equal rights between men and women or elaborates on the options for interpreting this principle formally or substantively. The Swedish strategy refers to the achievement of full enjoyment of human rights as legally binding for the state. The Sámi strategy mentions the principle of equal treatment, not as a principle regarding the relationship between men and women but for the relationship between the Sámi population and the public. It is more common to use the political conceptual framework of gender equality, with some policies referring to Agenda 2030. The Inuit policy uses the concept of sexual equality. The Norwegian policy and the Sámi strategy do not use either of these terms.

References to CEDAW are rare, but there are many references to UNDRIP. The Inuit strategy refers to both CEDAW and UNDRIP.<sup>31</sup> It explicitly states that the policy should elaborate steps necessary to ensure equality of women and men in accordance with CEDAW. This convention brings far-reaching obligations in accordance with a substantive equality principle and even beyond, with a transformative equality principle when it comes to modifying gender stereotypes. The Canadian Policy Framework expresses the ambition to implement UNDRIP. Denmark calls for the principles of UNDRIP to be observed. Finland declares in their 2013 strategy the ambition to ratify ILO 169 but has still not done so, even though ratification is on the agenda of the current government along with renewal of the Sámi Act.

The strategy for achieving gender equality, gender mainstreaming, which was adopted worldwide in the Beijing Platform 1995 as well as in several countries, e.g., Sweden, in 1994, is not referred to at all. Mainstreaming is mentioned in the Sámi strategy in relation to Sámi peoples' rights.

It appears that with few and vague exceptions<sup>32</sup>, the only genders addressed are men and women. When the Norwegian strategy uses genders, it is not clear whether other categories are included. Given that women and men are explicitly addressed in another related section in regard to the labour market and strengthening local communities, it is reasonable to conclude that gender is intended to mean men and women. The Canadian strategy explicitly includes all genders in ensuring that Arctic and Northern people play a leading role in developing research and other knowledge-creation agendas. It also expresses—although somewhat vaguely—a commitment to diversity. The Sámi strategy addresses non-heteronormative gender roles. Apart from these considerations, broader meanings of gender are not reflected.

The first Arctic Human Development Report (Einarsson et al., 2004) addressed changing gender roles as an important challenge to traditional Indigenous ways of living. Concerns regarding the dichotomy between Western and traditional ways of perceiving men's and women's roles and the relationship between them were raised. The report stated that the different gender roles displayed in many Arctic regions can be seen as complementary rather than opposing. It also considered that the Western feminist critique of paternalistic male bias inherent in Western ways of perceiving the relationship between men and women might be yet another vestige of postcolonialism or ongoing colonialism (Larsen & Fondahl, 2014). These themes might have been expected to be raised in the Arctic policies. However, the only policy that does so is the Inuit Arctic policy, which points at today's changing roles of women and men challenging traditional roles. The policy elaborates upon the ongoing transformation, expresses the importance of valuing both the traditional and modern roles of Inuit women, and acknowledges the need to share family tasks (for example) rather than emphasise separation of roles. It also states that the elimination of all forms of sexual discrimination, whether intentional or accidental, is the responsibility of both men and women. It is a good example of what is meant with the right to maintain, control, protect, and develop traditional knowledge and traditional cultural expressions as expressed in UNDRIP (Art. 31).



Sámi Parliament of Finland in Inari. *Ninara / Flickr*

The Sámi policy also addresses gender roles but not in the same elaborated way as the Inuit policy. Two objectives articulated in the policy are to study all Sámi gender roles including non-heteronormative gender roles; to investigate the links to language, mental well-being, position in society, and gender role patterns; and to study Sámi gender roles and the culturally based expectations for being a strong woman and a macho man and the impacts they have on physical and mental health. The other policies do not address the theme.

To conclude, it is noteworthy that the written policies rarely explicitly express or take as their starting points the political and legal obligations regarding gender equality and/or equal rights for men and women. The Canadian, Inuit, and Swedish policies are exceptions. The Swedish strategy launched in 2020 improved on this from the previous, but at the same time it could be more explicit about how to achieve the full enjoyment of human rights for all. Canada, ICC, and Sweden could promote an overall gender policy or guidelines for the activities of the Council, especially because several of the Arctic States are expected to launch new strategies soon. A collaboration around gender equality in the development of new strategies is recommended. It is also noteworthy that the policies addressing gender equality and diversity are scanty and vague.

## Political and Legal Instruments

The political and legal obligations for the accountable subjects regarding equal rights between men and women and gender equality are extensive. The Arctic States are committed to following international as well as corresponding regional, federal, national, and territorial legal instruments and political agendas. The international legal instruments (treaties, conventions, or covenants) legally bind those states that choose to accept the obligations contained in them by becoming a party. States determine for themselves which instruments they will accept according to the principle of state sovereignty (Besson, 2011). Consequences of the acceptance of the legal instruments include obligations to certain conduct. In relation to the obligations inherent to acceptance of the ICESCR, Johnstone and Ámundadóttir (2013) have argued that the following obligations must be met: to prepare, follow, and update plans of action; to monitor performance; to take some substantive measures; and to eliminate discrimination.

A fundamental distinction is between federal states and unitary states in this respect. In a federal state, the national government has exclusive competence over international affairs (and alone has international personality), but the authority to make laws within the federation is distributed between the national government and the subunits of the federation. In unitary states, all law-making authority lies with the national government, while regions and municipalities have only delegated law-making powers. Denmark, Finland, Sweden, Norway, and Iceland are all unitary states. Canada, the Russian Federation, and the United States of America are federal states and have (at least) a dual-level system. The three territories of the Canadian North lack the status of provinces as subunits of the federation. The Russian federal system is distinctive because the federal government has broad concurrent powers to make laws and because of the large number and diversity of subunits of the federation (Larsen & Fondahl, 2014, p. 99).

Denmark (excluding Faroe Islands and Greenland), Sweden, and Finland are members of the European Union which, while not a federation, requires that members suspend some degree of sovereignty and recognise the law-making power of the EU institutions (Larsen & Fondahl, 2014, p. 100). As members of the European Economic Area (EEA), Norway and Iceland apply most EU norms, including most of the law on non-discrimination. The Arctic States have committed to follow many of the same legal instruments to a certain degree, but obligations, political cultures, and traditions differ at the national level. This leads to different levels of ambition to actively promote gender equality and equal rights for men and women.



Alþingi, Icelandic parliament in Reykjavik.  
*Truba7113 / Shutterstock*

A more detailed list of the political and legal instruments considered in this section is in the insert "Political and Legal Instruments at the International, Regional, Federal, National and Territorial levels" as well as in the appendix available online at [arcticgenderequality.network](http://arcticgenderequality.network). The tables show the international political and legal obligations, the regional political and legal obligations, and the national political and legal obligations regarding equality between men and women in states and territories. The appendix provides additional material for clarity and context.

## The international level

The framework regarding gender equality, equal rights between men and women, and non-discrimination in the Arctic region imposes multiple obligations on states as part of the international community. Full participation and involvement of women in all aspects of life is a prerequisite for achieving global objectives for sustainable development. Table I on international political and legal obligations includes a list of important political and legal documents. It also includes a selection of UN human rights bodies monitoring international treaties. These bodies review reports from the states, as well as shadow-reports from NGOs, and guide states into full implementation of their respective conventions.

**Table I – Overview of political and legal instruments at the international level.**

## The regional level

Table II provides an overview of relevant political and legal instruments at the regional level, such as the Council of Europe, the EU, the EEA<sup>33</sup>, and the Organization of American States (OAS). The Nordic Council of Ministers is included in the part that addresses political agendas, given the extensive cooperation regarding gender equality.

**Table II – Overview of political and legal instruments at the regional level.**

## The federal, national, and territorial level

Table III provides an overview of relevant political and legal instruments at the national and territorial level (Yukon, Northwest Territories, and Nunavut in Canada; Alaska in the U.S.; Kola, Arkhangelsk, Nenets, Yamal-Nenets, Taimyr-Turukhan, North Yakutia, and Chutkotka in the Russian federation; Greenland and Faroe Islands as parts of the Kingdom of Denmark; Finland; Iceland; Norway; and Sweden), and an overview of how gender equality politics is organised and monitored at the national and territorial level.

**Table III – Overview of political and legal instruments at the federal, national, and territorial levels.**

### Open Political and Legal Instrument Tables

As attachment in this PDF document

### Download Political and Legal Instrument Tables

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[dropbox.com/s/z1z0yxdlzvmc1ki/Pan-Arctic\\_Report-GEA3-2021-Political\\_Legal\\_Instruments.pdf?dl=1](https://dropbox.com/s/z1z0yxdlzvmc1ki/Pan-Arctic_Report-GEA3-2021-Political_Legal_Instruments.pdf?dl=1)



# Analysis of Political and Legal Instruments

## The formal, substantive, transformative equality principle(s)

The legal principle of equal rights between men and women, established in most jurisdictions during the 20th century, has developed over time. Today it is accurate to talk about three variants: a formal, a substantive, and a transformative principle. At the same time, it is accurate to say that the substantive and the transformative variants build upon and also oppose the formal (Fredman, 2013). While formal equality means equal rights under the law and protection against discrimination, substantive equality requires appropriate measures be taken, at times including temporary special measures, to achieve de facto equality (equality of outcome). The transformative equality principle addresses systemic and structural discrimination embedded in laws (and policies) and means that stereotypes and practices are to be reconsidered and transformed to overcome structural discrimination (Holtmaat, 2013). Hence, the variants come with different expectations and levels of obligations for the accountable subjects. Special measures to change an unequal situation are sometimes viewed as discriminatory in themselves and colliding with the formal principle. However, temporary special measures are not considered discriminatory if they are appropriate measures to eliminate inequality and to promote equality, according to CEDAW (Art. 4) and the EU Charter of Fundamental Rights (Art. 23). Most policies and legal instruments in the Arctic region embrace a combination of formal and substantive equality principles.

Sandra Fredman has argued for a broadened perception of substantive equality. A more far-reaching equality concept should, according to Fredman, be regarded as having four different dimensions: redistributive, recognition, transformative, and participative. The redistributive dimension concentrates on remedying material and social disadvantages rather than achieving gender neutrality. The second dimension focuses on the need for respect, recognition, and dignity. Misrecognitions, such as stigma, stereotyping or humiliation, and violence on grounds of gender, can be experienced regardless of relative socioeconomic disadvantages. The transformative dimension requires transformation of existing male-oriented institutions and social structures. The last dimension recognises the importance of women's agency and voices. Substantive equality requires decision makers to hear and respond to the voice of women rather than imposing top-down decisions (Fredman, 2013). This rich perception of substantive equality can also be applied to other power structures, institutions, and social structures that impose the dominant or majority society on Indigenous Peoples.

The Constitution of the United States<sup>34</sup> does not contain a principle of equal rights between men and women at all. An Equal Rights Amendment<sup>35</sup> designed to guarantee equal legal rights for all American citizens regardless of sex was proposed in the beginning of the 20th century and approved by Congress for ratification by the states in 1972<sup>36</sup>. Alaska was one of the first states to ratify the amendment in 1972. The amendment, however, was not ratified by three quarters of states as required to become operative and hence failed. There is however federal law on equality that allows for appropriate affirmative action (Title VII of the Civil Rights Act of 1964) and the Constitution of the State of Alaska of 1956 promises equal rights, opportunities, and protection under the law (Article 1, s.1).

The Constitution of the Russian Federation expresses that the state shall guarantee the equality of human and civil rights and freedoms regardless of sex. Men and women shall enjoy equal rights and freedoms and equal opportunities to exercise them (Art. 19).<sup>37</sup> However, there are some examples where the formal legal status of men and women differs, e.g., labour conditions and retirement benefits for women who reside and work in the High Northern regions and equivalent areas of Russia.<sup>38</sup>

Substantive equality is the overarching approach to equality under Canadian law. It focuses on the impact of laws on protected groups, considering social, political, economic, and historical contexts and recognising how differential treatment may be discriminatory because it has a prejudicial impact, results in negative stereotyping, or perpetuates historical disadvantage for a protected group. Differential treatment is sometimes required to ameliorate the situation of the claimant group.<sup>39</sup>

It is up to the courts to interpret guarantees of gender equality in Canada. Gender equality is not defined in the Charter of Rights and Freedoms or in federal, provincial, or territorial human rights legislation. Before the Charter took effect, the Canadian Bill of Rights (CBR) provided a legislative

guarantee of gender equality.<sup>40</sup> The CBR was interpreted very narrowly by the courts, as guaranteeing only formal equality.<sup>41</sup> The Charter has been interpreted by courts as protecting substantive equality. In two 2018 decisions, the Supreme Court of Canada recognised substantive sex equality in the context of pay equity, stating: "To provide no recourse for pay discrimination based on sex, denies substantive equality to working women, entrenching and perpetuating their pre-existing disadvantage".<sup>42</sup> In a 2020 decision, the Supreme Court recognised that facially neutral policies—such as those restricting benefits available to part-time workers—may also discriminate against women.<sup>43</sup> However, courts and human rights tribunals may also find that limits on women's equality are reasonable and justifiable in some circumstances.<sup>44</sup> Canadian law permits but does not require special measures (affirmative action) to promote substantive equality.



The Supreme Court of Canada Building. *Saffron Blaze*

The EEA states are obliged to follow the substantive principle expressed in the Treaties of European Union, and in their own legal systems they also incorporate formal commitments to non-discrimination. Sweden has been criticised by the CEDAW Committee for its gender-blind constitution that expresses a formal equality principle (Svensson & Gunnarsson, 2012). The Committee notes how striking it is that Sweden, characterised as one of the most gender equal countries in the world, is not more progressive in its constitution. The Committee called for CEDAW to be incorporated into domestic law, including the concept of substantive equality. However, the Committee did not take into account that Sweden is bound by the EU treaties expressing the substantive principle. There is also an exemption in the Constitution that permits special measures to promote equality.<sup>45</sup>

All Arctic States, except for the U.S., have ratified CEDAW, which implies that they are obliged to ensure full equality of women before the law, protection against discrimination in the public and the private spheres, improve the de facto position of women, and address gender-based stereotypes that uphold unequal gender relations.<sup>46</sup>

Altogether, the CEDAW provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex. CEDAW is concerned with the impact of cultural factors on gender relations. The Convention enlarges the understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs, and norms, which give rise to a multitude of legal, political, and economic constraints on the advancement of women. The preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States Parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (Article 5). Article 10.c. mandates the revision of textbooks, school programmes, and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural

patterns that define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights regarding education and employment.

CEDAW's focus on the negative impacts of culture and tradition on women's enjoyment of human rights has been criticised, as has the work of the Committee in this regard. There is also critique concerning the tendency of exoticising culture, i.e., seeing culture as primarily located in non-Western societies. Certainly, culture is dynamic and could also have a positive potential (Schweitzer et al., 2014). There may be reason for such a critique, but on the other hand, the Convention and the Committee are aimed at responding to violations of women's human rights wherever they occur. It seems also that over time the Committee has directed its attention to all cultures and traditions, not only the non-Western (Byrnes, 2013).

The preamble of CEDAW envisions a transformative approach, while demanding substantive equality (Hellum & Aasen, 2013a). All Arctic States, except for the U.S., have also ratified the Optional Protocol to CEDAW that entered into force in 2000. This declares that individuals or groups of women can submit communications in which they perceive a breach of the convention that the monitoring committee then reviews.<sup>47</sup>



Hiking in the mining town of Kiruna, in the north of Sweden. Alexander Farnsworth / iStock

Political agendas, often explicitly referring to the legal principles of equal rights but expressed in terms of gender equality (e.g., SDG Agenda 2030), are more likely to embrace the substantive principle with elements of transformation. SDG 5 obliges states around the world to actively work to achieve gender equality and to empower all women and girls. Another example is the Swedish gender equality policy, which aims to bring a gender equality perspective into policymaking on a broad front, both national and international, and advocates equality between women and men, who should have the same opportunities to shape society and their own lives. The policy area includes issues such as power (to shape society and their own lives), influence, finances, education, work, and physical integrity.

Formal equal rights between men and women are not sufficient to ensure equal rights in practice (Fredman, 2013; Zykina & Sazanova, 2017), and the recognition of this fact can be seen in EU case law. Formal equality has gradually been retooled towards substantive equality aims, redefining piecemeal the overarching purpose of EU equality law in the process (De Vos, 2020). It seems to be relatively uncontroversial to determine that an unequal situation exists regarding the distribution of resources or power (shown in various gender gap indexes). The controversies occur when something must be changed in order to achieve equality, such as the transformation of existing male-oriented institutions and social structures. These controversies, and those involving individual-collective, rights-responsibilities, coercion-voluntary, unequal power-different attitudes, etc., should be addressed and contextualised.

## Non-discrimination to achieve equality

The principles of equality are several, as are the measures to achieve the goal of equal rights between men and women/gender equality. The choice of measures reflects the equality principle adhered to. A formal equality principle is fulfilled when and if legislation requires that men or women not be treated differently. Substantive and transformative principles put more demands on the state (or other accountable subjects) to act in some way to ensure the achievement of gender equality, including changed practices, processes, and distribution of power over society and people's own lives.

The primary legal measure is the non-discrimination principle. The 1950 ECHR expresses a formal discrimination principle in the following way: the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, etc. (Art. 14). The principle was expanded in 2000's Protocol No. 12 into a general prohibition of discrimination. The preamble to Protocol No. 12, though not legally binding, states "that the principle of non-discrimination does not prevent states from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures". Even though the protocol has not been ratified by all European Arctic States, the same interpretation of the non-discrimination principle comes with ratifying CEDAW.



Father, mother, son, daughter. Caribou antler carvings by Lola. *Fiona Paton*

The principle addresses, to start with, the relationship between the individual and the state (as for example expressed in Art 1. of Protocol No.12 to the ECHR: no one shall be discriminated against by any public authority). It prohibits any illegal restriction of human rights established in international conventions and different treatment of men and women. Having different legal rights for men and women and treating men and women differently is thus not in accordance with the formal principle. However, the obligations following from the political and legal documents presented in this chapter have further implications. The states have committed themselves (in varying degree) to eliminating discrimination and to promoting equal rights between men and women (or gender equality) where such do not exist, going beyond mere non-discrimination. Furthermore, even the non-discrimination principle expressed in several legal documents does not hinder different treatment, at least temporarily, if the purpose is to achieve equality of outcome (e.g., CEDAW, EU Treaty, Protocol No. 12).

These obligations mean that the states are responsible for ensuring full equality of women before the law and in the public sphere. Moreover, they are also responsible for ensuring full protection against discrimination in the private sphere, to improve the de facto position of women, and to address gender-based stereotypes that uphold unequal gender relations. Non-discrimination therefore also addresses individual or group behaviour in relation to other individuals or groups. There is no doubt that states are expected to actively prevent discrimination between individuals and groups, for example in private housing or employment relationships. CEDAW requires States Parties to condemn discrimination against women in all its forms and to pursue by all appropriate means and without delay a policy of eliminating discrimination against women (Art. 2).

Not every constitution in the Arctic includes an explicit non-discrimination principle regarding sex. The Constitution of the Kingdom of Denmark (applying to Greenland and Faroe Islands) and the U.S. Constitution do not. However, both states have laws prohibiting discrimination and Denmark is also obliged to follow EU law on this matter.

The main scope of national legislative provisions on non-discrimination is the labour market and the workplace. All Arctic States have such provisions. The Canadian Federal Human Rights Act and Employment Equity Act (1995) and Title VII of the Civil Rights Act of 1964 in the U.S. are some examples. The Russian labour code provides for equality of labour rights and opportunities and from a formal and legal point of view there is no outright discrimination in terms of rights, although some examples of differences in the formal legal status of men and women do exist. These include regulations concerning labour conditions and retirement benefits for women who reside and work in the High Northern regions and equivalent areas of Russia.

Some of the states have legislation with an extended scope. Human Rights Acts in Nunavut, Yukon and The Northwest Territories prohibit discrimination by public and private sector actors in the areas of employment, tenancies, services, and facilities available to the public. In addition, the Yukon Act also includes the negotiation or performance of contracts.

National legislation on non-discrimination in the EEA countries has developed from the same focus on labour market, in line with the development of EU law. EU law has expanded the non-discrimination principle over time from a prohibition of sex discrimination in employment to a more general principle aimed at gender equality. In Finland, the Equality Act generally applies to all societal activities and all areas of life, except relationships between family members, other private relationships, or activities relating to religious practice. The Swedish Discrimination Act embraces the specified fields of working life, education, labour market policy activities, employment services not under public contract, starting or running a business, professional recognition, membership in certain organisations, goods, services and housing, health and medical care, social services, the social insurance system, unemployment insurance, financial aid for studies, national military service, and civilian service.

Icelandic and Norwegian legislation apply to all spheres of life. When it comes to special measures to promote gender equality and eliminate gender-based harassment and violence in addition to hiring quotas (not lower than 40%), the scope of the Icelandic Act is limited to workplaces, national and local committees, councils, and boards.

## Measures to promote full and effective equality

In addition to international obligations and national constitutions, most Arctic States have national legislation embracing non-discrimination and other special measures to promote equality between men and women, such as affirmative action, positive action, or temporary special measures (CEDAW Art. 4[1]), measures taken to overcome disadvantages. As mentioned before, the legal principle of equality between men and women is normally expressed as a prohibition against differential treatment of anyone (discrimination) based on a protected characteristic, with exceptions for special measures that promote equality of outcomes. The CEDAW Committee has in its General Recommendation No. 25 affirmed substantive equality over formal equality, making it clear that affirmative action is by no means a breach of equality but may be necessary to achieve substantive equality (Fredman, 2013).

Finland and Sweden both explicitly permit special measures, and these are also recognised as lawful under EU law. The Finnish and Swedish Discrimination Acts prohibit discrimination based on sex/gender and other grounds and require special measures. The Swedish Act defines such measures as "prevention and promotion measures aimed at preventing discrimination and serving in other ways to promote equal rights and opportunities regardless of gender, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age within a given establishment". The requirements are directed primarily towards public authorities but also apply to non-state actors such as employers and education providers.

The Icelandic Gender Equality Act includes articles on special measures to promote gender equality and eliminate gender-based harassment and violence. In employment cases where two applicants are equally qualified, the applicant of the sex underrepresented in the workplace is to be preferred. The



Act also puts much emphasis on eliminating gender stereotypes and practices that must be the focus of change to overcome structural discrimination (i.e., moving towards transformative equality). One of the explicitly expressed aims of the Act is "specifically improving the position of women and increasing their opportunities in society" (Art. 1).



Faroese children's choir in traditional dress in Torshavn, Faroe Islands. *Stockcam / iStock*

In the Russian Federation, there are no legal provisions on special measures. However, a first step is the National Strategy of Actions for Women for 2017–2022. It contains actions aimed at safeguarding the health of women of all ages, promoting economic advancement of women, fostering continuous improvement of their income and welfare, preventing social disadvantage and violence against women, enhancing women's participation in political and public life, and advancing official statistics related to matters of women's position in society.<sup>48</sup>

## Gender mainstreaming and gender budgeting to achieve equality

Gender mainstreaming and gender budgeting are important political measures that promote gender equality.<sup>49</sup> They remind policy makers to consider the different implications of their decisions on different groups of men and women.<sup>50</sup>

Gender mainstreaming is obligatory in all public institutions and administration in Iceland and Sweden. Gender mainstreaming should be applied to all decision making, actions, and projects included in gender equality action plans. All workplaces (public and private) with a certain number of employees shall have current gender equality action plans, which the Directorate of Equality monitors periodically. The gender equality action plans may be used as tools to implement gender equality work in companies and institutions.

Gender budgeting is part of the implementation of the strategy on gender mainstreaming. It is used in several states and focuses on the tax-and-spend decisions of government institutions. It has been the central political strategy in Sweden since the 1990s<sup>51</sup>, in Iceland since 2009, and mandatory at state level since 2016<sup>52</sup>. Several municipalities in Sweden have also implemented gender budgeting methodology. Canada implements Gender-Based Analysis Plus (GBA+) across all federal departments and agencies. The process of applying GBA+ helps to ensure that the development of policies, programs and legislation includes the consideration of differential impacts on diverse groups of women, men and gender-diverse people.<sup>53</sup>

Other tools exist to promote gender equality. For example, STEM and Gender Advancement is a gender equality promotion instrument in science, technology, engineering, and mathematics designed to provide a gender-responsible view on climate change in the Arctic (Heikkinen et al., 2020). Gender mainstreaming also includes environmental impact legislation.

## Sex and gender diversity

The political and legal obligations regarding equal rights between men and women and gender equality are based on a presumption that there exist two biological sexes: men and women. Even though the concept of gender opens for an understanding of a) the two categories as consisting of or restricted to more than biological sex and b) the existence of more than two categories, the legal approach historically and primarily addresses equality between men and women or the relationships between men and women. There is a sliding scale between sex/gender perceived as a question of individual identity and sex/gender conceptualised as an organisational principle and power structure of social stratification. The Swedish gender equality policy explicitly talks about equal shared power and responsibilities between men and women, while SDG 5 connects the goal of gender equality to human rights and the empowerment of women and girls. The most important legal document on an international level, CEDAW, is also women-specific: it addresses women as a disadvantaged group in comparison with men and only women can bring complaints under its optional protocol. This women-specific perspective has been problematic in Sweden because its policy addresses both men and women (as reflected upon when ratifying CEDAW, prop. 1979/80:147, 5). Legislation is neutral and can be used (and has been used) by both men and women to challenge discrimination.

Implementing equality in law a gender-blind format can "lead to inadequate protection of women against direct and indirect discrimination and hinder the achievement of substantive equality".<sup>54</sup> The CEDAW Committee hence argues that all legislation should be gender-sensitive instead of gender-neutral/gender-blind.<sup>55</sup>

Legal documents in Sweden, Norway, and the EU have over time wound up addressing the specific disadvantaged position women have and protecting both men and women from discrimination based on sex in non-discrimination acts. The Icelandic Act still acknowledges the lack of women's equality, while the Swedish Discrimination Act does not. In addition, other identity markers such as gender identity and sexual orientation have come under non-discrimination legislation. At a policy level, LGBTQ+ groups have been addressed and explicit actions have been taken to protect and promote their rights and to include them as protected through non-discrimination provisions. Still, the overview of the political and legal documents in this chapter shows that the focus is on men and women, and perhaps even more on women.

Iceland's government is committed to achieving gender equality through a policy agenda that combats inequality and inhibitive gender roles and structures. Men and boys must be involved in and invited to participate in gender equality work. Gender equality must be central to all decision making and resource allocation. The aim is clearly to transform the society.

Over time, most jurisdictions have extended the non-discrimination principle to include protection from discrimination based on gender identity and sexual orientation, as in Finland, Norway, and Sweden. The Equality Act in Finland prohibits discrimination based on gender identity and expression, and new provisions to that effect were included in the Act to clarify and broaden the scope of the protection of gender minorities. The premise behind the amendments is the notion of gender diversity and individual gender experience and expression. In the Equality Act, the phrase "gender identity" refers to an individual's experience of their own gender. The phrase "gender expression" refers to expressing one's gender through clothing, behaviour, or by other means. The antidiscrimination regulations of the Equality Act also apply to discrimination because an individual's physical gender-defining characteristics are not unambiguously female or male.

In Iceland, the Gender Equality Act has been limited to women and men since 1976. However, the recently adopted Gender Equality Act (150/2020<sup>56</sup>) also includes persons who do not align with the female or male gender binary. The Act on Gender Autonomy provides for the right of persons to define their own gender to guarantee the recognition of their gender identity. The objective of this Act is also to guard the rights of persons to physical integrity. Gender equality is viewed as a matter of unequal power of women and men and is informed by a structural understanding of equality.



Women singing in Arkhangelsk, one of the largest cities in the Russian Arctic. *Gargonia / iStock*

Canadian law provides protection against discrimination based on sexual orientation and gender identity/expression in addition to sex/gender. While rights are guaranteed to individuals, protected grounds such as sex relate to groups, allowing for some focus on structural and systemic discrimination rather than merely individual identity.<sup>57</sup> The courts for example recognise sexual harassment as a question of abuse of power rather than of femininity or masculinity.<sup>58</sup> The Canadian Charter leaves equality rights open ended to allow the inclusion of new groups, such as LGBTQIA2S+ people.<sup>59</sup> In Russia, same-sex sexual activity between consenting adults in private was decriminalised in 1993 but not declassified as a mental illness until 1999. Even today, same-sex couples and households headed by same-sex couples are ineligible for the legal protections available to opposite-sex couples.

Discrimination may occur on several grounds. Intersectional discrimination has been addressed by the UN. A report by the Human Rights Council<sup>60</sup> addresses multiple and intersecting forms of discrimination as an obstacle for the full enjoyment of human rights by women and girls. In several general recommendations, for example the recommendation on rural women (including Indigenous women)<sup>61</sup>, the CEDAW Committee has recognised that different women may be subject to intersectional discrimination (Hellum & Aasen, 2013b, p. 613).

Canadian human rights law and policy recognises intersectional discrimination, i.e., gender inequality as it intersects with other grounds or modes of discrimination (Canadian Human Rights Act s. 3.1). This is seen as an important recognition for promoting gender equality in the Arctic, particularly for Indigenous women. In the *Kell* case<sup>62</sup>, the CEDAW Committee expressly recognised intersectional discrimination by Canada, referring to its General Recommendation No. 28. Iceland and Sweden do not currently have provisions on intersectional discrimination in their legislation (Schömer, 2012). However, it is possible to combine several grounds of discrimination in the same case.

Simplified, there appear to be two contradictory or at least distinct ways of addressing sex/gender. One is as a question of identity based on sex (the bodily aspect) or gender (the social aspect), and the other is as a question of conditions and power inherent in belonging to a certain group. The former seems to come with (although it is not derived from) an idea of the state as passive, with a rights discourse (individual human rights), protection from discrimination on an individual basis, and a more explicit women-centred agenda. The second seems to come with an idea of an active state (or other subject), a structural understanding of the relationship between men and women on a group level, a redistributive and equalising discourse, sex/gender as having structural and practical implications, and addressing the importance of both men and women taking part in all spheres of life. Even though the various political and legal systems within the Arctic region (Einarsson et al., 2004; Larsen & Fondahl, 2014) have moved closer to each other through the global agendas and legal instruments, they are still different. The Nordic countries, and to some extent Canada, adhere to the second way of addressing sex/gender, while the U.S. aligns with the former. The Russian Federation is not clearly close to either of them.

# The Importance of Global Agendas and Legal Obligations

Arctic States and Indigenous Peoples cooperate in several intergovernmental bodies, forming the geopolitics of the Arctic. Gender equality is a primary concern for the global community, one that is firmly emphasised, at least on a rhetorical level. A common concern for gender-unequal situations is expressed in global agendas that invoke a quest for measures to eliminate that inequality. The instruments for achieving the goal vary. Some are legally binding, others are voluntary. The importance of global normative instruments should be neither overly stressed nor underestimated. Some are expected to be implemented at a national level, and there are monitoring processes that facilitate such implementation. Gender equality might have been expected to be more pronounced in the Council, but this is not borne out in the evidence, as already discussed.



The UN Sustainable Development Goals

In 2015, the UN General Assembly, in which all UN Member States have a seat, adopted by consensus the 2030 Agenda for Sustainable Development. At the core of this agenda is the 17 Sustainable Development Goals that aim to address present-day social, economic, and environmental challenges. Agenda 2030 recognises the central role that achieving gender equality and empowering all women and girls plays in realising all 17 SDGs, beyond the stand-alone SDG 5 to achieve gender equality and the empowerment of all women and girls. Agenda 2030 asserts that the full participation and involvement of women is necessary for achieving international community objectives on sustainable development and that it should serve as an instrument to review countries and to put pressure on them to take action. The voluntary national reviews database<sup>63</sup> shows that this is the case. A 2020 report in which 47 countries presented national reviews (Finland was the only one of the Arctic States that took part in this) stated:

Although gender equality and women's empowerment are described as essential to achieving the 2030 Agenda, progress toward SDG 5 is slow and uneven, and challenges to gender inequality persist in nearly every area.... Violence against women and girls remains the most serious challenge, and more than half of reporting countries described measures and policies put in place to address these issues (UN Department of Economic and Social Affairs & DESA's Office of Intergovernmental Support and Coordination for Sustainable Development, 2020, p. 11).

The same report specified that the COVID-19 pandemic in 2020 negatively and disproportionately affected women, directly and indirectly, in relation to care responsibilities, domestic violence, restricted access to health service, etc. The Arctic region is not directly addressed; however, Finland refers to the Sami and explains that it lacks disaggregated statistics on Indigenous groups because it



considers it inappropriate to identify separate groups in statistics in an equal and democratic society. The Swedish national review submitted in 2017<sup>64</sup> explains that the Indigenous population (i.e., the Sámi People) risk being subjected to discrimination in everyday life.

The influence of Agenda 2030 can be identified in regional and national political agendas, such as the Nordic political agenda on gender equality for 2011–2014, preceding the adoption of Agenda 2030 (Nordic Council of Ministers, 2011). In 2019, Canada published its interim 2030 Agenda National Strategy for implementing Agenda 2030 domestically, including by setting out 30 concrete federal actions to advance progress on the Agenda 2030 framework and 30 national ambitions to achieve Agenda 2030 in Canada.<sup>65</sup> Though the interim strategy document does not have much substantive to say about measures to advance gender equity in Canada, it does explicitly recognise that realising the full suite of 17 SDGs, and not only SDG 5, "cannot be achieved if half of humanity continues to be left behind".<sup>66</sup> Moreover, it states that Agenda 2030 will be implemented in Canada with "full regard for the rights of Indigenous peoples by protecting and promoting these rights", a goal that may serve to further gender equality in the Arctic. Another example is Iceland's gender equality policy, which is explicitly linked to the SDG.<sup>67</sup>



Nenets women at a dancing ceremony, Pechora Delta, Nenets Autonomous Region, Russia. Peter Prokosch / GRID-Arendal

There are also examples of collaborations connected to the Beijing Declaration and Platform for Action that engage bodies at the regional and federal level. For example, the Council of Europe cooperates in a project, cofunded by the EU, around the implementation of the Russian Federation's National Action Strategy for Women 2017–2022.<sup>68</sup> It focuses on the exchange of best practices and experience in the areas of preventing and combating violence against women and increasing women's participation in public and political life.

What can be observed in many countries around the world, including the Arctic States, is that gender equality policies and legislation are challenged from conservative, nationalist, and fundamentalist views as well as from men's rights groups (Giritli Nygren et al., 2018; Köttig et al., 2017; Kováts, 2018; Lilja & Johansson, 2018). Some men's rights groups claim that gender equality is opposed to their rights and seek to undermine women's equality. The groups and individuals with a shared agenda of antifeminism and men's rights, in research referred to as the "manosphere" are global and takes place online (Holm, 2019).

In Russia, discrimination based on gender is unlawful, but challenges to gender stereotypes run into a conservative reaction from public institutions. There is active opposition to the formation of egalitarian ideas about the rights of women and men and a growing process of masculinisation in Russian society. Social and cultural norms often foster behaviour that perpetuates inequalities. Norms and a lack of power both have an impact on all forms of gender inequality, from violence against women to the glass ceiling. One example that confirms the gender glass ceiling concerns democratic participation: only 16.1% of seats in parliament were held by women in 2018.<sup>69</sup> Gender gaps persist in all spheres of people's lives and are seen in many areas of sociopolitical life, from women's lack of political representation to the experience of unprecedentedly high rates of domestic violence.

There are also strong patriarchal views of women's place in society and their role within families. These views are reinforced by the conservative ideology promoted by the state, with its traditional view of gender relations in which the family breadwinner is always assumed to be a male. This traditionalism



stifles the practical exercise of the rights provided for women by law. As a result, even though the equality of rights is supported and is not disputed in modern Russia in a legal sense, equality of opportunities for both sexes is disputable in practice.<sup>70</sup>

At the same time, gender equality is also questioned as homogenous, favouring White middle-class women (Crenshaw, 1989; hooks, 1984; Martinsson et al., 2016), and as imposing Western thoughts and conceptualisations onto an Indigenous context. Gender equality can be a controversial topic within some Indigenous groups, depending on their laws and traditions (Einarsson et al., 2004).

The discrepancy between the far-reaching ambitions and commitments on one side and the challenges gender equality regimes are exposed to on the other side calls for more engagement with gender equality and equal rights between men and women in global, regional, and national political and legal arenas. This invites a critique based on critical race feminism, postcolonial and queer theory, etc.

## State compliance with international law

In most states, including the Arctic States, becoming a party to a treaty through accession or ratification does not make that treaty automatically binding under domestic law. The obligations vis á vis other states under international law are considered to exist, but they cannot be directly litigated before domestic courts. However, states are nonetheless expected to ensure that their international obligations are upheld, and they often do this through implementation of the provisions in domestic law. This is particularly common with human rights treaties in the Nordic countries.

Paragraph 4 of Art. 15 of the Constitution of the Russian Federation states that the generally recognised principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system and that international treaties can take precedence over ordinary Russian laws. However, the Russian Constitution takes precedence, meaning that if the Constitution conflicts with an international obligation, the Constitution will prevail.



House of the Government of the Russian Federation (White House), Moscow, Russia. *Viacheslav Lopatin / Shutterstock*

The legal system of Russia includes individual provisions of international laws, but not the norms of international law as a whole. For such norms of international law to enter the Russian legal system, they must be capable of regulating relations between the subjects of national legal systems. However, all this cannot objectively happen even if all states express their will. In this regard, it is more accurate to not interpret literally clause 4 of Article 15 of the Constitution of the Russian Federation in terms of the inclusion of generally recognised principles and norms of international law into the national legal system of the Russian Federation.<sup>71</sup> Russia is committed to all the legally binding and non-binding international documents regarding gender equality and human rights, including the Beijing Platform for Action, CEDAW, and the Millennium Development Goals. Implementation, however, is some way behind.

In Canada, the power to make a treaty lies with the executive in exercise of the royal prerogative.<sup>72</sup> International treaties do not automatically become part of Canadian law but must be implemented.<sup>73</sup> In accordance with Canada's Constitution, the implementation of international human rights treaties is a shared responsibility between the federal and provincial governments. The territorial governments have legislative responsibilities similar to that of the provinces. As such, a treaty concluded by the Canadian federal government binds Canada internationally, but the legislative competence to give effect to those commitments domestically may lie with the provincial or territorial governments. This asymmetry of powers may lead to differences in how treaties are implemented across the country and create difficulties for the smooth implementation of international law in Canada internally, though there are situations in which these problems may be mitigated.<sup>74</sup> According to the Government of Canada (2019) the multi-governance system serves as a vehicle for partnership wherein all governments can

work cooperatively to address common challenges in accordance with their respective areas of jurisdiction. Canada's federal system, including the laws, policies and programs of its various governments, is a complex yet coordinated whole.

## Monitoring through human rights bodies

Several of the international conventions are monitored by treaty bodies or committees<sup>75</sup> that review the implementation of the instrument by States Parties.<sup>76</sup> The two most relevant here are the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Human Rights Committee (CCPR) and the Committee on the Elimination of Racial Discrimination (CERD Committee). In addition, there are special procedures with thematic mandates under the Human Rights Council. Of specific interest here are the Special Rapporteur on the Rights of Indigenous Peoples<sup>77</sup>, the Special Rapporteur on Violence Against Women, Its Causes, and Consequences<sup>78</sup> and the Working Group on Discrimination Against Women and Girls<sup>79</sup>. Some examples of the reviews are presented here.

The implementation of the CEDAW Convention is monitored by the CEDAW Committee, and each State Party is required to submit a national report to the Committee at least every 4 years outlining measures taken to fulfil the Convention's provisions.<sup>80</sup> Reports are not always submitted on time and two reports are sometimes joined and submitted at the same time.



Sámi woman in traditional clothes. Magerøya Island, Finnmark, Norway. O.C Ritz / Shutterstock

The CEDAW Committee reviews the state reports and provides recommendations on issues covered by CEDAW in its concluding observations<sup>81</sup>. The comments to different states vary and relate to the specific conditions in each state and recent steps, such as the initiative to translate the CEDAW text into North Sámi in Norway.<sup>82</sup> The Committee pays attention to shadow reports submitted by women's organisations and women's lobbies, in addition to official government reports. These so-called shadow reports have a significant impact on the CEDAW Committee's observations to states. A study of the Canadian experience with the CEDAW says that the women's movement has an important role as a driving force for the implementation of the Convention (Lamarche, 2013). The involvement of women's organisations is a key factor in social and political legitimacy and the effectiveness of the state reporting procedure at the national level. The CEDAW's state reporting procedure is a means of holding national governments accountable for their duty to respect, protect, and fulfil the human rights of women (Hellum & Aasen, 2013b).

Previous studies of the state report procedure indicate gaps in the protection and promotion of women's human rights and gender equality in the multilevel governance of the Arctic (Burman & Svensson, 2018; Lahey et al., 2014; Svensson, 2017). While comments from the treaty monitoring bodies do not always address the Arctic region specifically, it is possible to gauge their relevance for the Arctic region,

such as comments regarding Northern communities of each country generally or Indigenous Peoples specifically. The CEDAW Committee has expressed concerns about the lack of awareness of CEDAW in all Arctic States that have ratified the convention (all but the United States).<sup>83</sup>

The Committee states that some groups of women in the Arctic are vulnerable<sup>84</sup>, especially Indigenous and rural women, and Arctic States do not adequately uphold their rights, for example when it comes to exposure to violence, equal participation in governing bodies, and economic self-support.<sup>85</sup> The Committee has expressed concern about the low proportion of Sámi women in the Sámi Parliaments and in other political decision-making bodies in Finland, Norway, and Sweden. It has also identified lack of social services (also in Sámi languages) and the relatively high exposure to domestic violence that Sámi women suffer.<sup>86</sup> Similar concerns have been raised in Canada.



Two young Inuit throat singers perform at a vigil for missing and murdered Indigenous women. *Art Babych / Shutterstock*

The Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR by its States Parties. All States Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially 1 year after acceding to the Covenant and then whenever the Committee requests (usually every 4 years). In the 2014 concluding observations on the fourth periodic report of the U.S., the Committee raised concerns about domestic violence that continues to be prevalent in the U.S., and that ethnic minorities, immigrants, and American Indian and Alaska Native women are at particular risk. Victims of such violence face obstacles to obtaining remedies, and law enforcement authorities are not legally required to act with due diligence to protect victims of domestic violence and thus often inadequately respond to such cases. The Committee recommends fully and effectively implementing the Violence against Women Act and the Family Violence Prevention and Services Act and ensuring that cases of domestic violence are effectively investigated and perpetrators prosecuted and sanctioned. The Committee has also urged the State to ensure remedies for all victims of domestic violence and take steps to improve the provision of emergency shelter, housing, childcare, rehabilitative services, and legal representation for women who are victims of domestic violence. Measures are also called for to assist tribal authorities in their efforts to address domestic violence against Native American women.<sup>87</sup>

The CERD Committee reviews, like the other bodies, country reports and publishes concluding observations.<sup>88</sup> Concerns were raised, in Concluding Observations 2019 on Norway's 23rd and 24th periodic reports, that Sami women in Norway have been subjected to physical, mental, or sexual violence; that sexual violence crimes may be underreported; and that perpetrators of such crimes remain unknown.<sup>89</sup> The themes brought up in discussions with the countries are listed in a separate document. One of the themes in relation to the 21st to 23rd periodic reports of Canada was updated information on measures, including their impact, taken to end violence against Indigenous women and to prevent, investigate, prosecute, and convict perpetrators for the high number of cases involving the disappearance or murder of Indigenous women and girls.<sup>90</sup>

The Special Rapporteur on the Rights of Indigenous Peoples carries out country visits.<sup>91</sup> Since 2001, when the rapporteur was first appointed, all Arctic States except Iceland and Greenland have been visited. Iceland has no Indigenous population, and the planned visit to Greenland in 2020 was postponed.

The rapporteur has repeatedly raised serious concerns about the situation of Indigenous women and girls in Canada. Two reports (2005 and 2014<sup>92</sup>) mention that the Native Women's Association of Canada and other institutions have reported that a large number of Aboriginal women have been murdered or reported missing. As of 2014, over 660 women and girls across Canada had gone missing or been murdered in the past 20 years, many of which remained unresolved, although the exact number of unresolved cases remains to be determined. Since 1996, there have been at least 29 official inquiries and reports dealing with aspects of this issue, which have resulted in over 500 recommendations for action. Aboriginal women are five times more likely to experience a violent death than other Canadian women. Disproportionate numbers of Aboriginal women are held in federal prisons. Although they account for only 3% of the female population of Canada, in 2003 they comprised 29% of the women in federal prisons. They are singled out for segregation more often than other inmates and suffer higher rates of inmate abuse. Many of the reports signal discriminatory and gender bias in policing, as well as overrepresentation of Native women in the prison system. The rapporteur concluded that there appears to be a need for an Aboriginal programme strategy for women sentenced at federal level.

The Special Rapporteur on Violence Against Women, Its Causes, and Consequences<sup>93</sup> also pays country visits. Sweden was visited in 2006 when the rapporteur addressed the gap of knowledge regarding violence against Sámi women and suggested a commission through a joint initiative with the other countries with a Sámi population.<sup>94</sup>

The last example here is the Working Group on Discrimination Against Women and Girls<sup>95</sup> that was established in 2010 to intensify efforts to eliminate all forms of discrimination against women and girls throughout the world. This group also performs country visits; two of the Arctic States have been visited so far, Iceland and the U.S. The visit to the U.S. resulted in a series of recommendations, for example to ratify CEDAW and to adopt the Equal Rights Amendment.<sup>96</sup>

## State responses to monitoring bodies

States' responses to the monitoring committees' observations are considered of great importance to domestic gender equality regimes (Hellum & Aasen, 2013b; Lamarche, 2013). The observations are not technically binding and some states do not make sincere efforts to implement the recommendations. However, where states act in good faith, CEDAW, one of the most important conventions in this context, makes its mark on national law, policy making, and judicial decision making (Hellum & Aasen, 2013b). The state reporting procedure is essential as a means of holding national governments accountable. However, the impact on a national level depends on several factors. The involvement of women's organisations is a key factor in social and political legitimacy and the effectiveness of the state reporting procedure at the national level. The national legal system has a constituent effect on the government's commitment patterns, as do historical, political, and economic contexts. The impact of CEDAW is greater if it is used in combination with other international and regional mechanisms that provide protection against sex and gender discrimination (Hellum & Aasen, 2013b), including regional instruments and other UN human rights instruments, such as ICCPR, ICESCR, and CERD<sup>97</sup>.

In its ninth periodic report to the CEDAW Committee, submitted in 2019, the Russian Federation enumerates its legal provisions on gender equality and progress since the previous report. In accordance with the Constitution (Art. 19), the state guarantees equality of human and civil rights and freedoms, regardless of sex. However, restrictions of civil rights on the grounds of sex are not explicitly prohibited. Men and women have equal rights and freedoms and equal opportunities to exercise them. The wording is aimed at achieving the full enjoyment by women of their rights and freedoms and equality of outcome. The Constitution also guarantees the protection of maternity, paternity, and childhood. The principle of the equal rights of men and women is enshrined in family, labour, civil, and tax law. The provisions on discrimination incorporate both administrative liability (Code of Administrative Offences Art. 5.62) and criminal liability (Criminal Code Arts. 136 & 145).



As a tool and solution to the elimination of discrimination against women, the Russian Federation issued the 2017–2022 National Strategy for Women, which was adopted to advance women, guarantee their rights, and empower them. The strategy establishes the main areas of focus of state policy on women and is intended to give effect to the principle of equal rights and freedoms and to create equal opportunities for women's enjoyment of such rights and freedoms, in accordance with the Constitution, the generally recognised principles and standards of international law, and the international treaties to which the Russian Federation is a party.

When ratifying CEDAW, Finland started to work to reform legislation held to be contrary to CEDAW. The Act on Equality between Women and Men was the most visible legislative outcome following ratification. However, the Act adopted a symmetric and gender-neutral approach unlike the CEDAW, with an overall focus on discrimination in the labour market (Nousiainen & Pentikäinen, 2013). Finland is considered a very legalistic country, one that follows UN recommendations quite carefully.

For Denmark's 9th report to the CEDAW Committee, the Greenlandic government submitted a report on gender equality in Greenland. In this report, the Greenlandic government stated that this equality act should allegedly cover "gender equality in all areas"<sup>98</sup> However, the act does not in fact cover all areas. It is limited primarily to situations related to the workplace. This is seen in the initial proposal discussion<sup>99</sup> and in the wording of the legislation, as its aim and scope is limited to promoting equality "to the extent that similar or better rights do not result from a collective agreement".<sup>100</sup> The combined report on gender equality by the Danish Institute of Human Rights and Greenland Council on Human Rights confirms this.<sup>101</sup>



Yellowknife, capital city of Canada's Northwest Territories. *William Lee / Pixabay*

In Canada's most recent national report to the CEDAW Committee, submitted in 2015, the Canadian government did not address issues of gender equality in the Arctic to any great extent. However, it did include information on steps taken to advance equality in the Northwest Territories through emergency and long-term protection for victims of family violence and offering increased childcare spaces to allow mothers to return to work or school.<sup>102</sup> In 2011, non-governmental organisations initiated an inquiry under article 8 of the Optional Protocol to CEDAW, which resulted in the finding that Canada had committed a "grave violation" of the rights of Indigenous women by failing to promptly and thoroughly investigate the high levels of violence they suffer, including disappearances and murders.<sup>103</sup> Canada later implemented its own inquiry into missing and murdered Indigenous women and girls.<sup>104</sup> Canada was also subject to an individual complaint on discrimination against Canada under Article 2 of the Optional Protocol. The complaint involved an Indigenous woman from the Northwest Territories, Cecilia Kell, who was a victim of domestic violence and was displaced from her housing by the local housing authority.<sup>105</sup> The CEDAW Committee found that the federal government had engaged in intersectional discrimination against Kell, in violation of several articles of CEDAW.<sup>106</sup>

A general analysis of the Canadian experience with the CEDAW demonstrates that CEDAW contributes to the development of a domestic gender equality regime (Lamarche, 2013). According to Lamarche, CEDAW's importance seems to be as a normative foundation used by the women's movement that over time has influenced the development of the gender equality regime on the domestic level.



# Policy Relevant Highlights

## A gender equality policy for the Arctic Council

The Council and other collaborative bodies for governance of the Arctic are important promoters of gender equality (based on enlarged gender and equality concepts) in the region. Launching an overall gender equality policy or guidelines for the activities of the body and the ambitions for improving the situation in the region is an important step. The gendered nature of social institutions and structures in the governance of the Arctic should be addressed.

- Launch a gender equality policy for the Arctic Council.

## Gender equality in the Arctic States strategies for the Arctic

Several of the states are expected to launch new strategies in the near future. Collaboration around gender equality in the development of new strategies is recommended. Special attention should be paid to avoiding the tendency to scantily and vaguely address gender equality and diversity. Use the monitoring human rights bodies' reports when prioritising a focus on gender equality measures in the governance of the Arctic. Women's organisations, Indigenous organisations, and other NGOs must be involved in the implementation of gender equality in the Arctic region. The responsible subjects (states and state bodies) should guarantee the process for such work. Gender mainstreaming and gender budgeting are tools that should be used in the governance of the Arctic.

- Initiate a collaboration to mainstream gender in the Arctic States strategies for the region.

## An enlarged gender equality concept

The international political and legal obligations (e.g., SDG and CEDAW) are open to this, and there are theoretical frameworks offering tools that can be used to implement a deeper understanding of equality. Through sharing best practices of gender equality on various dimensions requiring both political and legal instruments, the ambitions and outcomes of gender equality may be improved within the Arctic region. Controversies occurring when something must be changed in order to achieve equality, such as transformation of existing male-oriented institutions and social structures, should be addressed in dialogue with various stakeholders. Controversies among the lines of individual-collective, rights-responsibilities, coercion-voluntary, and unequal power-different attitudes should also be addressed and contextualised.

- The public governing bodies of the Arctic should acknowledge and apply a more far-reaching gender equality concept.

## An intersectional gender equality approach

The main focus for gender equality policies and legislation is on women (e.g., SDG and CEDAW,) or on men and women (e.g., EU treaties and the gender equality policies of the Nordic countries). Most non-discrimination legislation protects gender identity outside the female and male binary. The governance of the Arctic should apply a reflective inclusive strategy securing protection from discrimination on any grounds related to sex, gender identity, sexual orientation, or the like. The Arctic States should address inequalities experienced by women and girls and by men and boys based on race, Indigeneity, disability, family, sexual and gender identity, and poverty, as those grounds intersect with sex/gender.

- The public governing bodies of the Arctic should acknowledge and apply an intersectional approach.

## Shared gender equality commitments

The discrepancies regarding the scope for non-discrimination and promotion of gender equality in the various Arctic jurisdictions should be identified in order to form a comprehensive gender-equal regime applicable in all spheres of life. SDG 5 aims at ending all forms of discrimination against all women and girls everywhere. CEDAW is applicable to all spheres of life. As stated in Art.3, States Parties shall take in all fields, in particular the political, social, economic, and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Most domestic legislation on gender equality or equal rights between men and women is limited to certain spheres of life.

The public governing bodies of the Arctic should identify discrepancies regarding the scope for non-discrimination and promotion of gender equality in the various Arctic jurisdictions, in order to form a comprehensive gender equal regime applicable in all spheres of life.

## Research initiatives

The political and legal obligations for public governance of the Arctic region concerning gender equality are far reaching, which is shown in the comprehensive, yet superficial, presentation in this chapter. The examples from cases, reports, and research show that much remains to be done before the goal is reached. The body of available knowledge is impressive, yet not always easy to find. In the UN system the Arctic is not a subject but is part of eight states. This means that a huge body of documents must be analysed in relation to the Arctic. Thus, what is acknowledged widely—that there is a lack of knowledge—is only partly correct. There are still gaps of knowledge regarding the everyday life of people living in the Arctic, but on a general level it is more a matter of how knowledge can be analysed in relation to the Arctic in order to elaborate how to address the challenges raised in the human rights body monitoring system or in research.

This report, referring to a rich body of documents of varying kind, demonstrates that the governance of the Arctic does not prioritise gender equality and, more generally, that the goal of gender equality is not fulfilled within the region. Only by wider dissemination of this knowledge is it possible to move towards implementation of gender equality in practice. At the same time, there are significant gaps in knowledge. For example, statistics limited to the Arctic region and empirical as well as desk studies of access to services and more generally of political processes in the Arctic are required. In addition, knowledge about and analysis of different processes used to negotiate and implement gender equality in different contexts are urgently needed.

- Compile available knowledge and identify areas of knowledge gaps
- Analyse how to use existing knowledge and further develop knowledge on processes for negotiating and implementing gender equality in the Arctic
- Identify and further analyse controversial concepts imposed on the region and its population, such as individual rights, power, culture, and tradition.

# Endnotes

1. Saami Council (2019, p. 22) contains a short section about the Sámi traditional governance system.
2. The world's jurisdictions are often categorised in families (or systems) based upon certain criteria regarding origin, sources, and adjudication—e.g., civil law, common law, customary law, religious law, and mixed systems.
3. <https://arctic-council.org/en/>, The Arctic Council will be studied closer in the section focusing on the Arctic policies.
4. <https://arctic-council.org/en/about/permanent-participants/>
5. There will also be an appendix where this material is presented in more detail.
6. The working definitions in policies and law are still to a great extent binary. Even though 'equal rights for all genders' would be more accurate, the working definitions are still primarily binary.
7. Universal Declaration of Human Rights, UNGA Res 217A (III) (1948) UN Doc. A/810.
8. However, Russia abstained and Finland was not a member of the UN at the time.
9. A/HRC/35/10, Impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia, and related intolerance on the full enjoyment of all human rights by women and girls, 2017.
10. A resolution of a more general nature. The Committee on the Elimination of Discrimination against Women refers to their general comments as 'general recommendations'.
11. General recommendation No. 34 on the rights of rural women. The other GRs are 24, 25, 26, and 28.
12. The rich variety of perceptions of the concepts and their meaning is disregarded here.
13. It was only recently, in July 2019, that UN Women hosted the first high-level event on gender diversity and non-binary identities at UN headquarters. The event gave space to trans and gender non-conforming individuals to speak on their experiences and call for the UN and the global community to take action to protect their human rights. <https://www.unwomen.org/en/news/stories/2019/7/news-event-gender-diversity-and-non-binary-identities>
14. <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>
15. <https://arctic-council.org/en/>
16. The wording 'taking gender equality seriously' refers to the title of a 2006 United Nations Development Programme document with the objective of helping nations build democratic governance and fulfil the Millennium Development Goals, especially the third: 'to promote gender equality and empower women'.
17. <https://arcticgenderequality.network/>
18. Available at the webpage of the Icelandic Arctic Cooperation Network, <https://www.arcticiceland.is/en/selected-material/arctic-policies>. Several states are updating their Arctic policies as of 2020.
19. Prioritised areas in the EU policy are climate change and the environment, sustainable economic development, and international cooperation.
20. What this implies is not elaborated upon. <https://www.rcaanc-cirnac.gc.ca/eng/1560523306861/1560523330587>
21. It is not obvious what is meant by 'diversity and equality' and 'all genders'. It might imply a reference to gender identity and the inclusion of transgender and non-binary people. When inequality is addressed, it is as 'income inequality' (not addressed in relation to gender).
22. Denmark, Greenland and the Faroe Islands: Kingdom of Denmark Strategy for the Arctic 2011–2020. A forthcoming strategy for 2021–2030 is expected to be launched in early 2021.
23. It is not elaborated what this implies, not family matter or why the experience sharing is with Nunavut, see the strategy p. 40.
24. <https://www.government.se/4aaec5/contentassets/85de9103bbe4373b55eddd7f71608da/swedens-strategy-for-the-arctic-region-2020.pdf>
25. What this meant was not clarified.
26. Such an initiative has been taken with active contribution from The Sámi Parliament in 2016.
27. Annex 1 on Building Knowledge in Sápmi.
28. The Sámi Parliament has, according to the Swedish strategy, initiated an exchange of experience with Finland, Norway, and Russia on gender equality, men's violence against women, sexual harassment, and abuse.
29. <https://secureservercdn.net/104.238.71.250/hh3.0e7.myftpupload.com/wp-content/uploads/Inuit-Arctic-Policy.pdf>
30. Equality of opportunity in this context refers to substantive equality or equality of outcome. In some contexts, equality of opportunity refers to formal equality.
31. Canada voted against the adoption of UNDRIP in 2007.
32. Canada's Arctic and Northern Policy Framework.
33. The EEA includes the EU member states plus Iceland, Norway, and Liechtenstein.
34. <https://www.law.cornell.edu/constitution/index.html>; <https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22equal%20rights%22%7D&searchResultViewType=expanded>
35. <https://www.equalrightsamendment.org/>
36. The Constitution of the State of Alaska contains a declaration of rights in Article 1. Para. 3 states that 'No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin'.
37. <http://www.constitution.ru/en/10003000-03.htm>
38. Trudovoi kodeks Rossiiskoi Federatsii [Labour Code of the Russian Federation], Federal Law No. 197-FZ, 2001, art. 320 and 327 [Labour Code] (Rus.); O trudovyh pensiyah v Rossiiskoi Fedratsii [On labour pensions in the Russian Federation], Dec.17, 2001 Rossiiskaya Gazeta, Dec. 20, 2001 [On labour pensions in the RF], art.28.1 (Rus.).

39. Withler v. Canada (Attorney General), 2011 SCC 12 (CanLII), [2011] 1 SCR 396 at para 39.
40. Canadian Bill of Rights, SC 1960, c 44, <http://canlii.ca/t/7vnh> (CBR). While the Constitution Act, 1982 (including the Charter) came into effect in 1982, the equality rights provision, s 15, was delayed until 1985.
41. See e.g., Bliss v. Attorney General of Canada, [1979] 1 SCR 183, <http://canlii.ca/t/1mm2s> (holding that discrimination based on pregnancy was not sex discrimination) and Attorney General of Canada v. Lavell, [1974] SCR 1349, <http://canlii.ca/t/1xv15> (holding that a distinction between Indian status for men and women based on marriage was not discriminatory). This issue later went to the Human Rights Committee under the Optional Protocol of the ICCPR and Canada's Indian Act was found to violate articles 3, 26, and 27 of the ICCPR. See Sandra Lovelace v. Canada, Communication No. 24/1977, <http://hrlibrary.umn.edu/undocs/session36/6-24.htm>; Mclvor v Canada, Communication No. 2020/2010, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR\\_C\\_124\\_D\\_2020\\_2010\\_28073\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/CCPR_C_124_D_2020_2010_28073_E.pdf)
42. Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, 2018 SCC. See also Centrale des syndicats du Québec v. Québec (Attorney General), 2018 SCC 18.
43. Fraser v Canada (Attorney General), 2020 SCC 28.
44. Section 1 of the Canadian Charter allows governments to place reasonable limits on Charter rights, including the right to equality.
45. See R. v. Kapp, [2008] 2 SCR 483, 2008 SCC 41, <http://canlii.ca/t/1z476>; CHRA, ss 15, 16; YHRA, s 13; NTHRA, s 67; NHRA, s 7(2); Alliance du personnel professionnel et technique de la santé et des services sociaux, supra at para 42.
46. General recommendation No. 25.
47. See the jurisprudence emanating from the United Nations Treaty Bodies, which receive and consider complaints from individuals, <https://juris.ohchr.org/>
48. Report of the Russian Federation on progress achieved and obstacles encountered in the implementation of the Beijing Declaration and Platform for Action and the outcomes of the Twenty-Third Special Session of the General Assembly, [https://unece.org/fileadmin/DAM/RCM/Website/Russian\\_Federation\\_\\_English\\_.pdf](https://unece.org/fileadmin/DAM/RCM/Website/Russian_Federation__English_.pdf)
49. See the table of national political and legal obligations.
50. Also of importance are general welfare measures and redistributive and equality-driven policies to promote equality between men and women. The connection between gender equality and welfare is often emphasised in the Nordic countries (extended Scandinavia; Bergqvist, 2015). This aspect is, however, left out of this chapter.
51. see <https://www.regeringen.se/contentassets/49618bcb4fd94b6081d9696f55bc7f8d/forslag-till-statens-budget-for-2016-finansplan-och-skattefragor-kapitel-1-12-och-bilagor-1-16.pdf>
52. see <https://www.government.is/topics/economic-affairs-and-public-finances/gender-budgeting/>
53. See Action Plan on Gender-based analysis (2016-2020), <https://cfc-swc.gc.ca/gba-ac/plan-action-2016-en.html> & What is GBA+, <https://cfc-swc.gc.ca/gba-ac/index-en.html>
54. CEDAW/C/NOR/CO/9 para. 12.
55. 22 November 2007 Concluding observation on the 9th periodic report of Norway, CEDAW/C/NOR/CO/9, para. 13(a) and 8 April 2008 Concluding observation on the 7th periodic review of Sweden, CEDAW/C/SWE/CO/7, para. 14.
56. With the Amendment Gender Pay Gap, 2017. The Act is complemented by the Gender Equality Administrative Act 151/2020. There are still no official translations of the Acts.
57. For a case recognising systemic sex discrimination against women in the employment context, see CN v. Canada (Canadian Human Rights Commission), [1987] 1 SCR 1114.
58. Janzen v. Platy Enterprises Ltd., [1989] 1 SCR 1252.
59. The Canadian Charter of Rights and Freedoms, s 15(1).
60. A/HRC/35/10, Impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia, and related intolerance on the full enjoyment of all human rights by women and girls, 2017.
61. General recommendation No. 34 on the rights of rural women. The other GRs are 24, 25, 26, and 28.
62. CEDAW Communication No. 19/2008 (27 April 2012) UN Doc CEDAW/C/51/D/19/2008, Annex 'Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-first session)'.
63. Voluntary National Reviews database: <https://sustainabledevelopment.un.org/vnrs/> See also Breu et al. (2021).
64. <https://sustainabledevelopment.un.org/content/documents/16033Sweden.pdf>
65. Government of Canada's Sustainable Development Goals Unit, 'Towards Canada's 2030 Agenda National Strategy', Annex I, <https://www.canada.ca/en/employment-social-development/programs/agenda-2030/national-strategy.html>
66. Ibid., 11.
67. <https://www.government.is/library/01-Ministries/Prime-Ministrers-Office/Gender%20Equality%20Action%20Programme%20for%20the%20period%20of%2020202023.pdf>
68. [https://unece.org/fileadmin/DAM/RCM/Website/Russian\\_Federation\\_\\_English\\_.pdf](https://unece.org/fileadmin/DAM/RCM/Website/Russian_Federation__English_.pdf)
69. The United Nations Report on Human Development for the Year 2019.
70. See: Russia\_ELA November Issue\_Gender Equality.pdf / [https://www.ela.law/Templates/media/files/Newsletter\\_Articles\\_Clients/2019%20Client%20Newsletter/November/EU/Russia\\_ELA%20November%20Issue\\_Gender%20Equality.pdf?fbclid=IwAR2CY5FYf4IQFaaxTO\\_n\\_sB4YMY9qLZi89DeE1peFkQllabR9bbpj88eLCJE](https://www.ela.law/Templates/media/files/Newsletter_Articles_Clients/2019%20Client%20Newsletter/November/EU/Russia_ELA%20November%20Issue_Gender%20Equality.pdf?fbclid=IwAR2CY5FYf4IQFaaxTO_n_sB4YMY9qLZi89DeE1peFkQllabR9bbpj88eLCJE)
71. In Russian, international organizations, international law, and national law. [https://nbpublish.com/library\\_get\\_pdf.php?id=24597&fbclid=IwAR3Fm6WPDIL8mnsRm4CFDvBdDg9sYUzxYa9Pn2emnUGmg4wJBdZ\\_MTK4qo](https://nbpublish.com/library_get_pdf.php?id=24597&fbclid=IwAR3Fm6WPDIL8mnsRm4CFDvBdDg9sYUzxYa9Pn2emnUGmg4wJBdZ_MTK4qo). <https://doi.org/10.7256/2226-6305.2013.2.7635>



72. Labour Conventions Case Attorney General for Canada v Attorney General for Ontario, [1936] SCR 461. See also Canada (Prime Minister) v Khadr, 2010 SCC 3 at paras 34-37.
73. Labour Conventions Case Attorney General for Canada v Attorney General for Ontario, [1937] AC 326. See also Quebec (Attorney General) v. 9147-0732 Québec inc., 2020 SCC 32.
74. See further H. M. Kindred, P. M. Saunders, and R. J. Currie (eds), *International Law Chiefly as Interpreted and Applied in Canada*, 8th ed. (Emond Montgomery Publications 2014), 176-180.
75. The treaties use the term 'committee' throughout, but the committees are widely known as 'treaty bodies' because they are created in accordance with the provisions of the treaty they oversee. The committee consists of experts independent of the United Nations system, although they receive support from the United Nations Secretariat and report to the General Assembly. They are also sometimes called a 'treaty-monitoring body'.
76. The UN Treaty Body Database provides the concluding observations, see [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5)
77. <https://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>
78. <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>
79. <https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>
80. CEDAW, article 18.
81. Concluding observations are the observations and recommendations issued by a treaty body after it has considered a State Party's report. They refer both to the positive aspects of a state's implementation of the treaty and to areas of concern, where the treaty body recommends that further action needs to be taken by the state.
82. CEDAW/C/NOR/CO/9
83. Why the US has not ratified CEDAW is in line with its general reluctance to ratify HT-instruments. According to Simmons (2009), governments in common-law settings are systematically more reluctant to ratify human rights treaties and tend to enter far more reservations than governments in civil-law jurisdictions, although this is not the case with Canada.
84. This statement could be criticised for imposing a certain view. Women in the Arctic are not inherently vulnerable; rather, they are made to be vulnerable through a series of unequal systems.
85. The table presenting the international political and legal obligations also includes—along with a list of important political and legal documents, signatures, and ratifications—recommendations from the Committee for Canada, the Russian Federation, Denmark, Finland, Iceland, Norway, and Sweden. Because the United States has signed but not ratified CEDAW, a comment from the Human Rights Committee with recommendations for the US is included.
86. CEDAW/C/FIN/CO/7; CEDAW/C/SWE/CO/8-9; CEDAW/C/NOR/CO/9
87. CCPR/C/US/CO/4
88. <https://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>
89. CERD/C/NOR/CO/23-24
90. CERD/C/CAN/Q/21-23, with reference to CERD/C/CAN/21-23, paras. 64-94 and CERD/C/CAN/CO/19-20, para. 17.
91. <https://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>
92. E/CN.4/2005/88/Add.3; A/HRC/27/52/Add.2
93. <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>
94. A/HRC/4/34/Add.3
95. <https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>
96. A/HRC/32/44/Add.2
97. And two conventions that are not addressed in this chapter otherwise, the Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities.
98. Denmark's Report to CEDAW for 9th periodic review (28th March 2019) Paragraph 2: Constitution and legislation.
99. Efterårssamling 2012, pkt. 112, Forelæggelsesnotat 1.beh. p.1-2.
100. Translation of the Danish words *kollektivt overenskomst*, which are mostly used in relation to employers and employee unions negotiating employment terms.
101. Danish Institute for Human Rights, "Ligebehandling – Status i Grønland 2019", p. 10.
102. Committee on the Elimination of Discrimination against Women (CEDW), 'Consideration of reports submitted by States parties under article 18 of the Convention eighth and ninth periodic reports of States parties due in 2014 Canada' (28 April 2015) UN Doc CEDAW/C/CAN/8-9.
103. CEDAW, "Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women" (30 March 2015) UN Doc. Cf. also the report by the Special Rapporteur on the Rights of Indigenous Peoples, A/HRC/27/52/Add.2. CEDAW/C/OP.8/CAN/1.
104. "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls" 2019, <<https://www.mmiwg-ffada.ca/final-report/>>
105. CEDAW Communication No. 19/2008 (27 April 2012) UN Doc CEDAW/C/51/D/19/2008, Annex "Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-first session)".
106. CEDAW, articles 2(d) and (e), and 16(1)(h).

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