

IDENTITY APPROACH IN WOMEN AND MINORITY RIGHTS: THE ECONOMIC IMPLICATION*

Abstract

The identity approach focuses on the definition of male and female and whether these are natural, biological, or psychological or social, also whether discrimination against transgender persons discrimination is because of sex. The approach also addresses masculinity and what attention it demands from women and the interrelationship of a person's multiple identities in other words whether characteristics such as race, ethnicity, age, disability, or sexual orientation interact with gender in ways that make discrimination more difficult to recognize than when only one characteristic is at issue. Thus, the approach focused on who speaks for women's interest, and to what extent claims on behalf of a group marginalize some of its members and differences among women. It focused on the special cases of transgender and intersex, masculinities, the primacy of gender, the challenges in implementation of the identity approach and the solution to these challenges. These culminated to the aim of this article which was to examine identity approach in women and minority rights with its economic implications. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was found that despite some reforms, barriers to women's economic empowerment remain. Thus, while recognizing that the nature of legal reform is very specific to an individual country context, examples of best practices from different states could serve as a useful roadmap for states looking to enhance women's economic empowerment through law reform. It was recommended that the government should develop a policy that should be treated based on one's individual capacity and not putting different characteristics in issue and that legal reform to remove barriers to women's economic empowerment can be used as a very powerful instrument to promote women's economic participation and help countries achieve higher growth and a range of other macroeconomic benefits.

Key Words: *Approach, Economic, Identity, Implication, Minority, Rights, Women*

1. Introduction

The topic examines a series of issues relating to identity and gender. The first such as race, ethnicity, age, disability or sexual orientation interact with gender in ways that make discrimination more difficult to recognize than when only one it? What implications does the interaction of these characteristics have for law and policy? A second issue addresses fundamental issues involving the definition of male and female. Are these natural, biological (or essential) categories? Psychological? Social? Should a transgender female be able to marry a male? A female? Is discrimination against transgender person's discrimination "because of sex"? This topic also address masculine most of the theories in focused on the interests of women, but gender also constrains opportunities for men. What is masculinity and what attention does it demand from women? Finally, who speaks for "women's interest"? To what extent do claims on behalf of a group marginalize some of its members? Do feminists presuppose as the

* **Professor Chudi Charles Nwabachili**, LL.B, B.L, LL.M, Ph.D, Dean, Faculty of Law, Department of Private and Public Law, Chukwuemeka Odumegwu Ojukwu University Igbariam Anambra State Nigeria, Mobile: +2348033404185, Email: cc.nwabachili@coou.edu.ng; **Chinwe Patricia Iloka**, LL.B, B.L, LL.M, Ph.D, Lecturer, Faculty of Law, Department of Private and Public Law, Chukwuemeka Odumegwu Ojukwu University Igbariam Anambra State Nigeria Mobile: +2348035696281, Email: cp.iloka@coou.edu.ng and chypat4@gmail.com; **Morrison Onyeka Ossai**, Lecturer, Faculty of Law, Department of Jurisprudence and International Law, Delta State University, Abraka, Nigeria. Mobile: +2348032278692, Email: moossai@delsu.edu.ng

background norm a white, middle-class, heterosexual woman? When western feminists criticize cultural practices of other nations or religions that contribute to sexual inequality, are they being arrogant or even imperialist? Other theories tend to take for granted various identity assumptions-what a woman is, what sex is and what it means that a law or practice (or is not) in women's interests. The identity issues challenges some of these assumptions. In an important sense, much of the material in this topic could be viewed as an application of insights of theories about gender to those theories themselves. These analyses are in other words, a form of self-critique. Do they go too far? Far enough? In this paper, we will be looking at differences among women, what is a woman? The special cases of transgender and intersex, masculinities, the primacy of gender, the challenges in implementation of the identity approach and the solution to these challenges.

2. The Concept of Identity Approach in Women and Minority Rights

2.1 Differences among Women

The term "women" is used freely throughout the theories. To what extent do differences among women complicate the use of this term? This section examines two problems related to diversity among women. First the combination of a person's gender and other characteristics such as race, class or ethnicity may mask the existence of discrimination based on any single characteristic or the way those characteristics work together to create a different discriminatory dynamic second speaking of the women as if they were all the same tends to essentialize women, or reduce them to a set of common denominations - usually white, middle-class, heterosexual and able bodied. Both of these problems are cases of unrecognized discrimination-the former unrecognized by employers or courts, and the latter unrecognized by those, including feminists, seeking reform of the laws. As you consider each of these problems, consider whether or how they can be avoided. From a legal perspective, should each disadvantaging characteristics and every combination thereof be a separate category of analysis? From a political perspective to what extent does acknowledging differences between women. Undercut group- based arguments on their behalf?

2.2 What is a Woman? The Special Cases of Transgender and Intersex

Throughout the theories, male and female are assumed (for the most part) to be clear easily ascertainable categories. This section examines the challenges that transgender individuals and people with an intersex condition make to this assumption and to the law generally. The section includes two cases that take diametrically opposed positions on the law and policy implications of transgender. The San Francisco Human Rights Commission defines "Transgender" as an umbrella term that includes male and female cross-dressers, transvestites, female and male impersonators, preoperative and post-operative transsexual and transsexuals who choose not to have genital reconstruction and all persons whose perceived gender and anatomic sex may conflict with gender expression, such as masculine-appearing women and feminine- appearing men. All other terms cross-dresser, transvestite, transsexual are subsets of the umbrella term transgender. The term "intersex" is used to describe "anyone with a congenital condition whose sex chromosomes, gonads, or internal or external sexual anatomy do not fit clearly into the binary male/female normally. Transgender individuals and people with an intersex condition challenges designation is permanent most legal cases involves transgender arise with respect to marital status and employment rights.

2.3 Masculinities

The emphasis on these theories is on women but there is little doubt that understanding of masculinity are important, in their own right as well as because of their impact on women's

interest. The questions are what is its relationship to femininity? Do the theories explored understate the distinctive burdens faced by men in a gendered society? Masculinities work can be used to understand more clearly how male privilege and dominance are constructed. It can make us see harms suffered by boys and men that we have largely ignored. It may also reinforce and strengthen the commitment to anti-essentialism in feminist theory. Exposing the complexities and multiplicity of masculinities leads towards understanding intersection and multiple forms of discrimination more clearly. Masculinities analysis may also remind us to be attentive to different patterns of inequality and to our interpretation of those patterns where one sex is sole or dominance should be something that triggers scrutiny. This should matter both when the dominant sex benefits or is harmed. We should question not only why one sex fills or dominates the pattern, but also the gendered meaning of both who is present and who is absent. When one sex is dominant, sometimes gender issues are rendered invisible. Examples of this are male predominance in the juvenile and adult criminal justice systems and women's predominance in the welfare system. Invisibility is fostered gendered - neutral language that covers the predominance of gender patterns but also by the acceptance of the pattern as usual, normal, and taken for granted. On the other hand, where both sexes are present, one or both may claim bias. We tend to frame competing claims of bias as requiring prioritization or hierarchy rather than seeing how they interconnect. We tend to argue over who has the more important issues to address or the most pressing "crisis". Resisting this "either/or" approach of a hierarchy of inequalities is critical for example, in education there are inequality issues for girls and boys, women and men. Rather than exclusively focusing on the issues of one sex to the exclusion of the other, as if only one can claim our focus or deserve our attention, we should see and insist on addressing both. Inequalities often interlock .A battle of the sexes, moreover, may only divert attention from more serious issues of race and class. Examining subordination in isolation undermines our understanding and our attack upon the interacting dynamic, even if gender-specific problem solving is needed. Raising issues about men when so many issues about women remain generates resistance and distrust. Masculinities analysis needs to continually challenge itself to challenge the hegemony of men and male power. The project of imagining positive, affirming, egalitarian masculinities is ongoing, but it is absolute essential. The following are the reasons of highlighting masculinities:

1. Men are not universal or undifferentiated.
2. Men pay a price for privilege
3. Intersections of manhood, particularly with race, class and sexual orientation are critical to the interplay of privilege and disadvantage to hierarchies among men, and factors that may entirely trump male gender privilege.
4. Masculinity is a social construction and not a biological given
5. Hegemonic masculinity norm dominates multiple masculinities
6. The patriarchal dividend is the benefit that all men have from the dominance of men in the overall gender order
7. The two most common piece defining masculinity are, at all costs, to not be like a woman and not be gay.
8. Masculinity is as much about relation to other men as it is about relation to women.
9. Men, although powerful, feel powerless
10. Masculinities study exposes how structures and cultures are gendered male
11. The spaces and places that men and women daily inhabit and work within are remarkably different
12. The role of men in achieving feminist goals is uncertain and unclear

13. The asymmetry of masculinities scholarship and feminist theory reflects the differences in the general position of men and women

2.4 The Primacy of Gender

The questions are: Do the theoretical approaches examined in these theories unreasonably elevate women's interests above those of their subordinate groups? Are feminists too quick to judge the practices of other culture on the basis of their own cultural assumption? In *Bah v Mukasey*¹ Petitioner Salimatou Bah, a native and citizen of Guinea entered the United States without valid travel documents in June 2003, and in January 2005 was placed in removal proceedings by service of a Notice to Appear (NTA), she applied for asylum, withholding of removal' and relief under the CAT, alleging, inter alia, that as a young girl, she suffered the barbarous act of female genital mutilation and the event still has direct consequences on her adult life. In a statement accompanying her application, Salimatou explained that she belongs to the Fulani ethnic group, which strongly support the practice of genital mutilation as the best way to prevent the Fulani girls from having premarital sex and to force the Fulani girls to keep their virginity until the marriage. She claimed that at the age of eleven, her mother and aunt took her to a small area fenced with wood and stuffed with coconut leave, she was taken into a tent where five old ladies :with knives and other tools undressed her and had her lie on the ground, Salimatou scared and shaking, tried to escape, but the women restrained her she was then down by two of the women while two others opened her legs so that a fifth could make a deep cut on her private part without any anaesthetic or sanitary precaution. Salimatou screamed throughout the mutilation, and experience pain all over her body. She began bleeding heavily and feeling dizzy to the point where she was unable to stand on her won. After she was given traditional medicines, she convalesced for weeks during which time she was treated traditionally with dried leaves and some other local portions. Salimatou further stated that she later had problems with her menstrual period as well as complications during the deliveries of her children. She also stated that she can barely feel any pleasure during sexual intercourse with her husband. She sought asylum in order to live free from that barbarous act still in practice in Guinea. Pursuant to 8 united States Congress 1231 (b) (3) (A), an alien may not be removed to a country if the aliens life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group or political opinion. Evidence before the court showed that Guinean and for Fulani women are routinely subjected to various forms of persecution and harm beyond genital mutilation and as such the court granted the petitioner asylum since it is clear that her live or freedom will be threatened.

3. The Challenges in the implementation of the Identity Approach

(a) Difficulty in Treating Transgender and Intersex Cases There is a great deal of difficulty in treating transgender and intersex cases in implementation of the identity Approach. There is always a problem on how to deal with transgender and intersex cases in respect of how to place them.

(b) Regarding Women as if they were all the Same This is one of the challenges in implementation of the identity approach. Taking women to be the same in respect of dealing with them creates challenges than men and will not augur well when they are regarded as weaker sex.

(c) Putting different characteristics in place makes discrimination more difficult to recognize Identity Approach involves interrelationship of a person's multiple identities. Identity Approach involves different characteristics such as race, ethnicity, age, disability or sex

¹ 529 F.3d.99 (2d cir. 2008).

orientation which interact with gender in ways that make discrimination more difficult to recognize that when only one characteristic is at issue.

(d) Identity Approach Amplify the Experience of Inequality The implementation of the identity approach involves different characteristics which have the probability of amplifying the experience of inequality than when only one characteristic is at issue.

4. Legal Response to Identity Approach of Gender and Sex

It is worth noting that the human rights of women and other minority identity groups have been recognised and guaranteed in all international human rights instruments that Nigeria has ratified and domesticated through its constitution and the Violence Against Persons (Prohibition) Act. These instruments include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and other international and regional conventions and covenants relating to the rights of women. The central theme in these legal documents is the prohibition of discrimination against women based on their gender and the penalties stipulated for acts of violence against women. The African Charter on Human Rights (Ratification and Enforcement Act) which is a nationally domesticated legislation, embodies articulations of African unity, equality, dignity and democratic rule as it is envisioned across the African continent. The African Charter in Article 61, calls for drawing inspiration from African practices compliant with human rights in the interpretation of equality, dignity and democratic rule. In Nigeria, it is important that this administration recognises that the Nigerian state and its political and democratic culture are yet to arrive at their full potential in terms of protecting, promoting and fulfilling the rights of women and minority groups. We are at the point, again, in Nigeria's history where the average Nigerian is either on the run or desperate to acquire enough means to be on the run. We are at the point, again, in Nigeria's history where we still record high rates of state and non-state party-enabled violence such as the 561 persons recorded to have violated the 2022 Human Rights Report published by The Initiative for Human Rights and other Nigerian-based human rights organisations. Nigeria, for instance, still at the point in Nigeria's history where political, faith and cultural leaders exploit their offices to recruit bullies among their loyalists and flocks to perpetuate violence against women and minority groups both online and in person. It is crucial that the current administration recognises that competent leadership does not only reside in able-bodied men but also across a vast range of several other bodies and identities of Nigerians that reside, dream and work hard both at home and abroad. It is crucial that this cognisance guides the selection and appointment of leaders of this administration towards a balanced nuanced representation as well as the social, political, historical and cultural references and groundings on which their policies and implementations are based. Unfortunately, Nigeria has performed poorly in representing women and minority identity groups in both elected and appointed cabinet positions, despite being blessed with competent women and minority identity groups who possess the leadership qualities required to effectively govern the various organs of the country. It was only a few months ago that Nigerian women lobbied for several bills among which was to assign 35 per cent of legislative seats to women and reserve 35 per cent of political party leadership positions for women. However, both the Senate and the House of Representatives rejected these bills. With the advent of a new government in Nigeria, there is hope that elected officials, from the presidency to the various states, will strive for a balanced approach in subsequent appointments and ensure non-discrimination but rather the inclusion of women in key positions of government. By actively including women in key decision-making

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positions, elected officials would be taking a stand to actualise equality for women's rights. This stance would send a powerful message of inclusivity and recognition of women's valuable contributions to the development of Nigeria. Women's perspectives and expertise are vital in crafting policies and programs that address the diverse needs of the nation. Furthermore, appointing capable women to positions of authority would serve as a positive example and inspire other women to actively participate in the political sphere. This would foster a culture of gender equality and empower women to contribute their skills, ideas, and talents towards the progress of Nigeria. As Nigeria embarks on this new chapter of governance under the new dispensation, there is an earnest hope that the country's leaders will prioritize and champion the inclusive appointments of women, aiming for a 50/50 representation in the cabinet. Such a commitment would demonstrate a dedication to fostering a fair and representative government that harnesses the immense potential of all Nigerian citizens to strengthen the democratic polity and promote a just and inclusive society. By application, political appointments made by the new government of Nigeria are commendable. However, it is crucial to emphasize the urgent need for the inclusion of women in subsequent appointments at both the national and state levels. Nigeria has a wealth of competent women who are capable of effectively leading the country. By embracing gender equality in political appointments, Nigeria can send a powerful message of inclusivity and recognition of women's valuable contributions. This would not only inspire other women to actively participate in politics but also foster a fair and representative government that harnesses the potential of all its citizens, ultimately promoting a just and inclusive society.

5. The Role of IMF in addressing the Economic Implication of Identity Approach in Women and Minority Rights Law

The Fund's mandate is focused on macroeconomic and financial stability. In turn, narrowing gender gaps and promoting women's economic empowerment can have significant implications for countries' macroeconomic and financial performance. These gender-related outcomes, therefore, are directly relevant to the Fund's exercise of its core functions. A growing body of literature including analytical work by IMF staff has shown that improving women's access to opportunities and to decision-making roles can raise economic growth, lower inequality and enhance macroeconomic and financial stability. From this perspective, the IMF assists its members in addressing gender issues through its three key functions: surveillance, financial assistance, and capacity development. The IMF has already made efforts to integrate and operationalize gender-related issues more systematically in its work program and has also recently encouraged its members to implement legal reforms to close gender gaps and reduce gender inequality.² The following summarizes the ways in which IMF's operations can assist its members in connection with tackling legal impediments to women's economic empowerment.

5.1 Surveillance

Under Article IV(1)(i) of the IMF's Articles of Agreement, each member country shall "endeavor to direct its economic and financial policies toward the objective of fostering orderly **economic growth** with reasonable **price stability**" and "seek to promote stability by fostering orderly underlying economic and financial conditions." When conducting bilateral surveillance, the IMF focuses mainly on those economic policies of members that can significantly influence present or prospective balance of payments and domestic stability. Exchange rate, monetary, fiscal, and financial sector policies of the member are always subject to bilateral surveillance,

² For instance, the IMF has recently made recommendations on gender-responsive policies and budgeting to help mitigate the impacts of the Covid-19 crisis. IMF, UNDP, UN Women (2021).

including where related to gender (e.g., fiscal or financial sector policies focused on addressing gender gaps). Other economic policies, including those related to women's economic empowerment, are to be examined if they significantly influence a country's present or prospective balance of payments or domestic stability.³ Gender issues fall under this purview, for example, when they are relevant for achieving and maintaining members' economic growth and stability.⁴ Policies, including on gender, that fall outside the scope of bilateral surveillance may still be discussed in the context of bilateral surveillance with the consent of the member concerned. Accordingly, the IMF has for the last few years integrated gender analysis in surveillance in a number of countries, for example, by providing advice related to the potential growth impact of increasing women's participation in the economy.⁵ For instance, in the 2019 Article IV Consultation for Japan, IMF staff found that women were underrepresented in managerial and policy-making positions and that the gender wage gap was large, both across all Japanese prefectures and also relative to other OECD countries.⁶ At the same time, a funding gap for public social security, particularly pensions, was projected, affecting pension sustainability and intergenerational equity. Thus, the policy advice was tailored to help address these concerns. In particular, the IMF recommended that social security and tax reforms be removed to disincentive to full-time and regular work, such as the spousal tax deduction.

5.2 Financial Assistance to Members

In accordance with Article 1(v) of the Articles of Agreement, the IMF makes its general resources temporarily available to member countries to help them address their balance of payment problems under adequate safeguards to Fund resources. In addition to providing this financing to its members under its General Resources Account (GRA), the Fund has also established the Poverty Reduction and Growth Trust (PRGT) under the authority of Article V, Section 2(b) of the Articles of Agreement to support low-income members through concessional financing. Fund financing in the GRA and the PRGT is normally approved through Fund arrangements to support members' economic adjustment programs. Under the Fund's legal framework, program conditionality is included in those arrangements where measures that are within the country's direct or indirect control are considered of critical importance for achieving the goals of the member's program or for monitoring implementation of the program.⁷ Specific policies to address gender gaps and women's economic empowerment can thus be included in the conditionality under a member's Fund-supported program where these requirements are met. As with all conditionality, the particular measures included as conditions must also be tailored to the member's specific needs and particular circumstances. For example, this was done in the 2019 IMF-supported program for Pakistan, where conditions were included to enhance the financial inclusion of women and narrow the educational gender gap. This Fund-supported program included a condition requiring the authorities to launch the "one woman one account" initiative to ensure financial and digital inclusion of around 6 million women by end-October 2019. Further, the Fund-supported program also included a condition requiring the authorities to boost girls' educational enrollment by augmenting a social program with "a girl bonus" of

³ Decision on Bilateral and Multilateral Surveillance, IMF Decision No. 15203-(12/72), July 18, 2012; took effect on January 18, 2013.

⁴ IMF (2015a), at para. 75; IMF (2018), at para. 10.

⁵ IMF (2018), para. 3.

⁶ IMF, Japan: 2019 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for Japan, at p. 51.

⁷ Guidelines on Conditionality (IMF), Decision No. 12864-(02/102), September 25, 2002, as amended.

250 Pakistani rupee to be regularly provided on a quarterly basis by end-December 2019.⁸ These measures were implemented by the time IMF staff conducted a first review of the program's progress in December 2019.⁹ Annex IV to this paper provides more examples of countries in which the IMF has assisted member countries in addressing gender issues through program design and conditionality.

5.3 Capacity Development

Article V, Section 2(b) of the Articles of Agreement authorizes the IMF to provide technical services, upon request, as long as these services are consistent with the Fund's purposes. In light of this provision, the Fund engages in capacity development (which encompasses both technical assistance and training), by providing expertise to member countries to help strengthen institutional capacity to design and implement effective macroeconomic, financial, and structural policies. In this context, the IMF has provided capacity development to members aimed at improving gender outcomes.

6. Recommendations and Conclusion

The government should develop a policy that should be treated based on one's individual capacity and not putting different characteristics in issue. Also, special procedures should be adopted in treating special cases like transgender and intersex. Legal reform to remove barriers to women's economic empowerment can be used as a very powerful instrument to promote women's economic participation and help countries achieve higher growth and a range of other macroeconomic benefits.¹⁰ In addition, legal reforms should be adopted that incentivize overall women's economic participation, even after legal impediments have already been removed via law reform. Legal reforms can entail a broad range of measures across different categories of laws, including repealing laws which discriminate against women, providing parental leave for women and men, making gender pay gaps illegal, implementing regulations that require appropriate facilities and infrastructure to allow women to benefit fully from participating in the economy, including subsidizing childcare, ensuring laws do not penalize secondary earners, providing incentives for training and hiring women in traditionally male dominated fields, as well as facilitating women's capacity to exercise all their rights including through reforms on access to justice. States that have high levels of female labor force participation have made extensive changes to their legal frameworks to facilitate this. However, the pace and nature of legal reform varies from country to country and is very specific to a country's historical, cultural and beliefs systems. In some cases, legal reform was brought about as a result of strong women's rights movements or after key historical events (e.g., in the aftermath of civil wars, political change, or economic turmoil). In other cases, legal reform has been more gradual and piecemeal. Furthermore, despite such reforms, barriers to women's economic empowerment remain. Thus, while recognizing that the nature of legal reform is very specific to an individual country context, examples of best practices from different states could serve as a useful roadmap for states looking to enhance women's economic empowerment through law reform. Some of these examples are part of best practices. International bodies like International Monetary Funds (IMF) can assist Nigeria in addressing gender gaps in accordance with its mandate, including

⁸ IMF, Pakistan: Request for an Extended Arrangement Under the Extended Fund Facility – Press Release; Staff Report; and Statement by the Executive Director for Pakistan, 2019, pp. 13–14.

⁹ IMF, Pakistan: First Review under the Extended Arrangement Under the Extended Fund Facility and Request for Modification of Performance Criteria – Press Release; Staff Report; and Statement by the Executive Director for Pakistan, 2019.

¹⁰ K M Puh and others, *Tackling Legal Impediments to Women's Economic Empowerment* (IMF eLibrary 2022) ISBN 9798400203640.

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by advising on key legal reforms aimed at removing barriers to women's economic empowerment. This support can be provided to Nigeria through the IMF's key functions (surveillance, financial assistance of members and capacity development). In the context of surveillance, this can be done particularly when relevant gender-related reforms are considered macro-critical because they have the potential to significantly influence present or prospective balance of payments and domestic stability. While the IMF has already focused on a number of aspects of gender-related reforms that are macro-critical, there is scope to expand this work further including addressing legal barriers to women's economic empowerment more systematically. Focusing on countries where these reforms are most macro-critical, advising members on these areas in accordance with its mandate and collaborating closely with other relevant international organization and institutions that are also involved in these issues would be key for the IMF in moving to the next stage of engagement on gender issues with its member countries. The IMF is already preparing for this by developing a strategy to mainstream gender work at the Fund¹¹ in accordance with its mandate.

¹¹ This is consistent with the IMF's commitment to support the UN's Sustainable Development Goals by weaving lessons from policy-oriented research on a number of issues into its operational work. Specifically, the Fund committed to tackling income and gender inequality and promoting economic and financial inclusion by promoting job creation, enhancing the redistributive role of fiscal policy in an efficient manner, and boosting access to financial services while preserving financial stability. Available at <<https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/46/Sustainable-Development-Goals>> accessed 10 September 2024.

