



International Human Rights Law (4th edn)

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p. 321 **16. Women's Rights**

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Abstract

This chapter examines women's rights and new developments related to gender identity. It describes the treatment of women in international law prior to the adoption of the UN Charter, in order to highlight the significance of the subsequent shift to the promotion of women's equality. It examines the non-discrimination approach favoured by the drafters of the founding human rights instruments, highlighting the importance of the approach as well as some of its limitations. The chapter goes on to examine the innovative approach taken in the Convention on the Elimination of All Forms of Discrimination Against Women, which promoted a strong version of women's substantive equality. The strategy of 'gender mainstreaming', adopted in the 1990s, sought to reinterpret mainstream human rights to be inclusive of women's experiences. The chapter concludes by highlighting some continuing obstacles presented by the law itself, which prevent women and other gender identities from successfully claiming and enjoying human rights.

Keywords: women's rights, equality, discrimination against women, Convention on the Elimination of All Forms of Discrimination Against Women, gender mainstreaming, gender identity, international human rights

Summary

International human rights law prohibits discrimination against women in their enjoyment of all human rights and fundamental freedoms. While non-discrimination is an essential component to the realization of women's rights, its comparative approach measures women's equality against men's enjoyment of rights, reinforcing gender dualism and the masculinity of the universal subject of human rights law whose rights are fully promoted and explicitly protected. To the extent that violations experienced exclusively or primarily by women are expressly recognized in the founding

human rights instruments, they are treated as a sub-category of the universal and often formulated as 'protective' measures rather than as human rights. There have been many efforts to address the resulting marginalization of women's rights, including the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women and the strategy of gender mainstreaming in the application of general human rights instruments. While these efforts have been successful in many respects, there are continuing conceptual and practical problems, including not only the limitations of anti-discrimination law and dualistic conceptions of gender, but the danger that specific recognition of women's rights violations may simply reproduce women's secondary status. Recent attention to discrimination based on 'gender identity' opens new, although contested, opportunities for further feminist change.

1 Introduction

In 1945, the UN Charter recognized the principle that human rights and fundamental freedoms should be enjoyed by everyone 'without distinction as to ... sex'.¹ Since then, international human rights instruments have repeatedly affirmed that women and men must equally enjoy the human rights they enumerate, without discrimination on the ground of sex.² The new era of universal human rights promised women, for the first time in international law, the full recognition of their humanity, marking a decisive break with the long-standing legal representation of women as lacking full legal and civil capacity. ↗ Significantly, the promise of equality also extended to the private realm of the family.³ Women were no longer to be treated as the dependants of men, or as the property of their fathers or husbands.

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Yet there has been widespread resistance to taking these obligations seriously, as evidenced by the many sweeping reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This convention was adopted in 1979 to draw specific attention to the entrenched nature of women's inequality and the need for significant affirmative measures to address it. Unashamedly, some of the reservations to CEDAW challenge the very idea of women's equality with men.⁴ Further, as UN women's human rights experts warned in 2017, in a Statement to the Human Rights Council on International Women's Day: 'Not only is the advancement of women taking a very long time and full equality far from a global reality, but today women's hard fought achievements face the risk of reversal ... by an alliance of conservative political ideologies and religious traditionalism'.⁵ Efforts to counter terrorism and, more recently, the COVID-19 pandemic have also rolled back many advances in women's rights.⁶

The grim reality is that women fare considerably worse than men on almost every indicator of social well-being, despite the assumption by all states of at least some international legal obligations to promote their equal enjoyment of human rights, and despite many good intentions. Everywhere, notwithstanding women's increasing participation in the workforce, their average wage is considerably less than that of men and they are concentrated in precarious work in the formal and informal sectors. Furthermore, many women do not receive any remuneration for work in family enterprises and have unequal access to social security assistance. Violence against women and girls continues to be pervasive and is taking new forms facilitated by

information and communications technology, particularly social media platforms, endangering women's lives in both public and private spheres.⁷ The World Health Organization estimates that about 295,000 women died of preventable complications related to pregnancy and childbirth during 2017.⁸ Women's inequality is still widely regarded as 'natural' and as prescribed by religious teachings and cultural traditions.

Yet, although lack of political will presents a significant barrier to the realization of women's rights and equality, it is not the only problem. International human rights law itself presents some obstacles. As Douzinas has observed, human rights 'construct humans', rather than the reverse, and it follows that '[a] human being is someone who can successfully claim rights'.⁹ This recognition presents a conundrum for women's human rights advocates because, in crafting laws that respond to the gendered realities of women's

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lives, there is the risk of reconstituting gender stereotypes through reproducing those realities, rather than challenging them. At the same time, 'special' measures designed to address women's specific injuries and disadvantage continue to affirm the maleness of the universal subject of human rights law, as men need no special enumeration of their gender-specific injuries.¹⁰ Charlesworth has called this the 'paradox of feminism'; whether women's rights are best protected through general norms that treat women the same as men, or through specific norms applicable only to women.¹¹ Ultimately, the paradox forces us to ask hard questions about how women's inclusion as full subjects of the universal regime of human rights law might be achieved. One such question is whether the recognition of gendered harms suffered by everyone because of their gender identity, including men, women, trans, and other genders, would help to shift the harmful dualistic gender stereotypes that continue to reside in the idea of the universal human being.

This chapter critically examines the many efforts to achieve women's full inclusion in international human rights law. Section 2 describes the treatment of women in international law prior to the adoption of the UN Charter, in order to highlight the significance of the subsequent shift to the promotion of women's equality. The importance of the non-discrimination approach favoured by the drafters of the founding human rights instruments is recognized, while some of its limitations are highlighted. Section 3 examines the innovative approach taken in CEDAW, which promotes a strong version of women's substantive equality. Yet while CEDAW fostered a better understanding of the measures that may be necessary to achieve women's equal enjoyment of human rights, it also reinforced the marginalization of women's rights practically and conceptually, and institutionalized the idea that gender is a duality that always works to women's disadvantage. The other human rights treaty bodies tacitly used the existence of the CEDAW Committee as an excuse to continue their neglect of women's rights. To tackle this marginalization, a new strategy of 'gender mainstreaming' was adopted during the 1990s, which sought to reinterpret mainstream human rights to be inclusive of women's experiences. This strategy is examined in Section 4. The chapter concludes, in Section 5, by drawing attention to some continuing obstacles presented by the law itself, which prevent women from successfully claiming and enjoying human rights, and suggests that addressing the gendered harms experienced by men and other gender identities has the potential to complement and strengthen efforts to realize women's equal enjoyment of human rights.

2 A New Era of Non-Discrimination on the Ground of Sex and Equality with Men

While the UN Charter was the first international treaty to promote women's equality with men, it was not the first time that women were constituted as a category in international law. This section will briefly describe how women appeared in earlier international legal texts before examining how women's rights were recognized by the foundational human rights instruments. While the idea of women's equality with men was a radical and visionary development, of great importance to women (and men), this approach failed to acknowledge the specificity of many human rights violations suffered exclusively or predominantly by women and therefore failed to construct them as fully human.

^{p. 324} **2.1 The Position Prior to 1945**

Before 1945, international law had taken a paternalistic or 'protective' approach to women, treating them as the property, extension, or dependants of men, as primarily mothers and wives, and as incapable of full autonomy and agency.¹² Women were valued for their pre-marital chastity, their prioritization of motherhood and domesticity, and their acceptance of the heterosexual family hierarchy and the paternal protection of the state and its laws. The laws of war, for example, required an occupying power to respect 'family honour and rights', treating women as part of (male) family property and reputation, to be protected by the law.¹³ Early international labour conventions prohibited women from certain types of work, such as night work and mining, on the basis that this interfered with their domestic and reproductive responsibilities.¹⁴ Anti-trafficking conventions made women's consent to working in the sex industry irrelevant, thereby treating all sex workers as victims, needing rescue and rehabilitation.¹⁵ None of these conventions constructed women as rights-bearers. Instead, women were granted 'protections', sometimes in the form of 'privileged' treatment, because of their socially ascribed secondary status.

2.2 The UDHR and the International Covenants

Following the Second World War, the shift from protectionism to universal human rights promised to recognize women as fully human, for the first time, by granting them the same human rights as men. The primary means for achieving women's equality, adopted by the drafters of the Universal Declaration of Human Rights (UDHR), was to prohibit discrimination based on sex in the enjoyment of universal rights and freedoms which, notably, does not single women out as the disadvantaged gender group.¹⁶ The decision not to recognize rights that were specific to women's experiences was deliberately made on the basis that this would compromise the idea of the 'universality' of rights and wrongly emphasize women's difference from men rather than their common humanity.¹⁷

In transforming the UDHR into legally binding instruments, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) followed suit, relying largely on the prohibition of sex discrimination in the enjoyment of the rights they enumerated to achieve  women's equality.¹⁸ As the Covenants did not define 'discrimination' or 'equality', many states parties interpreted their obligations narrowly, to require formal, but not substantive, equality.¹⁹

However, an additional provision was included as Article 3 common to both Covenants, which required states parties to ensure 'the equal right of men and women to the enjoyment of all ... [rights] set forth in the present Covenant', indicating that particular attention must be paid to achieving gender equality and, by the use of the term 'enjoyment', signifying that substantive equality was the goal, although states parties were slow to embrace this interpretation.

The obligation to ensure that women equally enjoy the same rights as men was a very significant step forward for women. States parties are required to treat women and men alike when they are in a comparable situation. Think, for example, of the importance to women of the universal franchise, the freedom to move and to express their opinions to the same extent as men, of equal pay, and access to education on the same basis as men. In addition, the unprecedented acknowledgement that women and men 'are entitled to equal rights as to marriage, during marriage and at its dissolution',²⁰ broke through the tradition in liberal legal thinking that exempted the private sphere from legal scrutiny.²¹ This provision opened the way for challenging the public–private dichotomy that has kept human rights violations experienced by women in the 'private' realm of the family hidden and delivered impunity to perpetrators. However, as would soon become apparent, this development was in tension with states' responsibilities to protect the institution of the family and the right to privacy as also set out in the UDHR and ICCPR.²² For Third World women in particular, the issue of private actors violating their rights is not only a concern within their extended family networks, but also an issue of the unregulated activities of global private actors, such as transnational corporations and banks.²³ Many global economic actors exploit local resources and labour, with highly gendered effects, compounding the difficulties that poor states have in complying with their human rights obligations. Yet the 'private' conduct of the marketplace is not directly regulated by human rights law. Instead, states assume the obligation to 'protect' the enjoyment of human rights, which requires that they regulate private actors accordingly.

Despite these shortcomings, the prohibition of sex discrimination left little doubt that the differences between women and men, which had previously been treated as immutable and used to justify women's inequality, were to be understood as socially constructed and therefore amenable to change. Thus, international human rights law had the potential to challenge the 'naturalness' of discriminatory beliefs and gendered practices, and to assist in the task of changing harmful stereotypes of both 'women' and 'men', as well as other gender identities.

While groundbreaking in many respects, the preferred method of realizing women's full legal subjecthood by promoting their equal and non-discriminatory enjoyment of human rights soon proved to be problematic, both conceptually and in practice. Conceptually, non-discrimination was interpreted as a formal (*de jure*) rather than substantive (*de facto*) obligation. Treating women in the same way as men works well when women's and men's experiences of human rights violations are directly comparable, as in the first communication concerning sex discrimination considered by the Human Rights Committee. The communication was brought by a group of Mauritian women, complaining that legislation discriminated against women because it granted automatic residency to the foreign wives of Mauritian men but denied automatic residency to the foreign husbands of Mauritian women.²⁴ On these facts, the Human Rights

Committee easily found that the legislation made an 'adverse distinction based on sex' because it negatively affected married women's enjoyment of ICCPR rights related to privacy and family life, as compared to married men.²⁵

However, a comparison with the rights that men enjoy does not help in situations where women's experiences are substantially different from men's, as in the case of work. Rights recognized by the ICESCR that protect the right to work assume a male model of formal employment, which makes women's unremunerated work in the family and their poorly remunerated work in the informal sector invisible.²⁶ This approach also fails to take account of women's often interrupted patterns of paid work, the problem of gender segregation in the workforce which makes comparisons difficult, and the need for maternity leave, childcare provision, and a radical change in the distribution of domestic and caring responsibilities. A further problem with the comparative approach of equality and non-discrimination is that when the Covenants do explicitly refer to women's different experience, international law's discursive heritage of treating women protectively tends to re-emerge, as in the requirement that states parties ensure 'special protection' (rather than rights) for mothers for a period before and after childbirth.²⁷ The result is that when women are included in the Covenants by reference to the gendered specificities of their lives, they are treated as needing 'special' treatment. This approach constructs women's experience as non-universal and has the effect of buttressing the masculinity of the universal subject. The ICESCR also describes the right of everyone to an adequate standard of living 'for himself [sic] and his family',²⁸ breathing life into the erroneous stereotype that all women are dependent on male breadwinners, although the Committee on Economic, Social and Cultural Rights has strongly repudiated this interpretation.²⁹

In practice, drawing formal comparisons between women and men proved to be a limited means of promoting women's substantive equality. The narrow focus of a comparison does not take account of the need to redress the institutionalized history of discrimination and disadvantage that often affects women's ability to exercise their rights in the same way as men, for example by ensuring that they have the information, autonomy, and freedom of movement to exercise their right to vote. A formal comparison also ignores the need to create enabling circumstances that will make women's equal enjoyment of rights possible, which may involve changing deeply embedded social and cultural attitudes that stigmatize or punish women for exercising their rights.

The limitations of relying on the prohibition of sex discrimination to do all the work of ensuring that women fully enjoy universal human rights and fundamental freedoms was soon apparent.³⁰ In addition to interpreting equality as a formal rather than substantive obligation, women's human rights violations were rarely addressed by human rights treaty bodies in the early years of their operation. This was because the comparative standard of non-discrimination did not force them to rethink their own gendered frameworks, and human rights NGOs were preoccupied with addressing Cold War violations experienced by men in the public sphere, such as the freedom of political expression and the release of political prisoners, which blinded them to what was happening to women, even where they, too, were political prisoners.

3 The Substantive Equality Approach of CEDAW

Growing dissatisfaction with women's marginalization within the general framework and implementation of international human rights law led to the adoption of CEDAW by the UN General Assembly in 1979. Although CEDAW takes the same general approach as the Covenants by promoting non-discrimination, it is concerned specifically with discrimination against *women* and advances a strong form of women's substantive equality as the international norm. This section discusses the positive features of the approach taken by CEDAW and then examines some of its limitations. It begins with a discussion of three strategies adopted by CEDAW to promote a robust understanding of women's equality: the adoption of a comprehensive definition of discrimination against women; the promotion of the use of temporary and permanent 'special measures'; and the requirement that states parties tackle the causes of women's inequality by promoting social change relating to both women and men in all spheres of life, including in families.

3.1 Towards a Robust Understanding of Equality

The first step towards advancing women's substantive equality is the provision of a comprehensive definition of 'discrimination against women' in Article 1 CEDAW:

[it] shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This definition covers a wide range of conduct and, importantly, prohibits discriminatory treatment (direct discrimination) as well as discriminatory outcome (indirect discrimination), and intended (purposive) discrimination as well as unintended discrimination (discrimination in effect). Both 'sex' and 'marital status' are specified as prohibited grounds of discrimination against women, and it should further be noted that other provisions in CEDAW (for example, Article 11(2) in the field of employment) also prohibit discrimination on the grounds of 'pregnancy' and 'maternity'.

The definition specifically promotes substantive equality by requiring that women must be able to 'enjoy' or 'exercise' their human rights and fundamental freedoms, and makes it clear that the prohibition of discrimination against women applies to all fields of life, not only the public sphere. Indeed, the application of CEDAW to private actors, including individuals and organizations, is made explicit in many instances in the text.³¹ The CEDAW Committee, which monitors its implementation, has emphasized that states parties have an obligation to protect, mentioned earlier, which requires them to regulate private actors ↗ to ensure their 'due diligence' compliance with the Convention.³² The Committee has also clarified many of the other obligations required by its substantive approach to women's equality in its interpretations of CEDAW, helping to constitute a more gender-inclusive subject of human rights law. For example, the Committee has urged states parties to adopt criteria in the determination of equal pay that facilitate the comparison of the value of

the work usually done by women with the *value* of those more highly paid jobs usually done by men,³³ and to implement health measures that address ‘the distinctive features and factors that differ for women in comparison with men’.³⁴

The second way that CEDAW promotes women’s substantive equality is by making it clear that non-identical treatment aimed at addressing women’s specific experiences of disadvantage may be necessary to achieve women’s equality. CEDAW distinguishes between temporary and permanent measures. Article 4(1) promotes the use of ‘special temporary measures’ (also known as ‘affirmative action’, ‘positive action’, or ‘reverse discrimination’), which are directed towards ‘accelerating de facto equality between women and men’ by remedying the effects of past or present discrimination against women and promoting the structural, social, and cultural changes necessary to support the realization of women’s substantive equality.³⁵ Such discriminatory measures are not prohibited, as long as they do not entail ‘the maintenance of unequal or separate standards’ for women and men and are discontinued when their objectives have been achieved. Thus, ‘temporary’ measures may be justified for a sustained period of time, until their objectives have been realized.³⁶ Some specific references to temporary special measures can be found in CEDAW’s substantive provisions, such as measures in the field of education that increase women’s functional literacy (Article 10(c)) and reduce the drop-out rates of female students (Article 10(f)). On many occasions, the CEDAW Committee has advocated special temporary measures, such as the adoption of quotas to promote gender balance in political bodies.³⁷

CEDAW also supports permanent ‘special measures’ to ensure that non-identical treatment of women, due to their biological differences from men, is not considered discriminatory and does not work to their disadvantage. Article 4(2) makes it clear that measures ‘aimed at protecting maternity’ are not discriminatory, and this point is reinforced by other more specific provisions including measures safeguarding women’s reproductive capacities in the field of employment (Article 11(1)(f)) and measures that provide women with ‘appropriate’ reproductive health services (Article 12(2)). Recognizing that these provisions have a ‘protective’ orientation, the CEDAW Committee has emphasized that the term ‘special’, when used in the context of CEDAW, breaks with the past paternalistic usage of the term to indicate that a group suffering discrimination is weak or vulnerable, and refers instead to measures designed to serve a specific human rights goal.³⁸ However, in practice, avoiding protective responses to women’s specificities (both biological and cultural) is a continuing challenge.

The third way that CEDAW promotes women’s substantive equality is by requiring that states parties address the underlying causes of women’s inequality. As mentioned, religious teachings and cultural practices have often been (mis)used to reinforce dominant beliefs about women’s secondary status, generating systemic discrimination against women, which may be perceived as ‘natural’. To tackle systemic discrimination, Article 5(a) requires states parties to work towards ‘the elimination of 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’. This obligation is echoed in other provisions, such as the requirement that gender stereotypes be removed from school programmes and textbooks (Article 10(c)) and the deeming of legal instruments to be null and void if they restrict the legal capacity of women (Article 15(3)). Article 5(b) builds further on states parties’ social change obligations by requiring that they promote change in sex-stereotyped attitudes and practices in families, including by ‘recognition of the common responsibility [of women and men] in the upbringing and development of their children’. Some specific aspects of this

obligation are also spelled out in other provisions, such as the requirement to establish a network of childcare services ‘to enable parents to combine family obligations with work responsibilities and participation in public life’ (Article 11(2)(c)), and access to ‘information and advice on family planning’ that will help to ensure the health and well-being of families (Article 10(h)). While CEDAW takes a consistently negative view of social, religious, and cultural traditions, it must be remembered that they can also lend valuable support to realizing women’s equality.³⁹

3.2 Limitations of the CEDAW Approach

The approach taken by CEDAW also has some limitations, four of which will be highlighted: its dualistic conception of gender and associated reliance on a comparison with men; the lack of reference to violence against women; its assumption of normative married (cis)heterosexuality;⁴⁰ and the very limited acknowledgement of multiple and intersectional forms of discrimination. The CEDAW Committee has ameliorated many of these problems by treating CEDAW as a dynamic instrument that must be read in the light of changing circumstances, and progressively interpreting its provisions in Concluding Observations to states parties’ periodic reports and in General Recommendations. However, it is difficult for these efforts to completely overcome the limitations in the CEDAW text without supporting interpretations from other human rights bodies and good faith implementation by states parties. Also, the Committee has been cautious in addressing lesbian issues⁴¹ and almost completely silent about transgendered discrimination,⁴² despite the obligation to modify gender stereotypes and fixed parental roles which should enable it to support everyone’s right to express their gender identity in the way they choose.⁴³

The first limitation is that CEDAW relies fundamentally on a comparison between women and men. This is problematic for at least two reasons. First, it does not allow women to claim rights that men do not enjoy, except as ‘special measures’. Consider the example of access to information, advice, and services related to family planning (Articles 10(h) and 12(1)) and the right to ‘decide freely and responsibly [sic] on the number and spacing of their children’ (Article 16(1)(e)), which are to be enjoyed ‘on a basis of equality of men and women’. This leaves little room, if any, for the recognition of women’s specific, stand-alone reproductive rights, including abortion rights, unless they qualify as ‘measures protecting maternity’ (Article 4(2)). By contrast, the 2003 Protocol on the Rights of Women in Africa (African Protocol) recognizes women’s autonomous right to sexual and reproductive health, including the right to control their own fertility, to decide on the number and spacing of children, to choose any method of contraception, and to have family planning education.⁴⁴

CEDAW’s primary reliance on comparing women with similarly situated men is also problematic because it does not recognize gender identities that do not conform to the duality of male/female and does not address discrimination between different groups of women.⁴⁵ For example, denying unmarried women access to reproductive technologies that are available to married women is prohibited by CEDAW only if unmarried men (the relevant comparator) are able to access the technology. The comparison does not adequately recognize women’s interests because men have very different needs for reproductive assistance, and it renders lesbians and transwomen invisible. Only if the comparator is a married woman, can unmarried

women (including single women and women in de facto lesbian relationships) claim discrimination on the basis of marital status. The reproductive rights of transwomen, transmen (especially if they are able to become pregnant), and other gender identities remains unclear, whether married or not.

A second limitation of CEDAW is its lack of reference to violence against women. This is a silence that can be explained by the reliance on a comparative model, because gendered violence does not affect men in the same way as women (which is not to deny that men may also experience gendered violence). The failure in CEDAW to make specific reference to rights associated with security of the person suggests that, at the time of drafting, the prevalence of violence against women, especially in the private sphere, was unknown or simply accepted as the norm. Much has changed since then. The General Assembly adopted the Declaration on the Elimination of Violence Against Women in 1993, recognizing that gendered violence is 'one of the crucial social mechanisms by which women are forced into a subordinate position compared with men'.⁴⁶ In 1994, the Commission on Human Rights (now the Human Rights Council) established the mandate of the Special Rapporteur on violence against women, its causes and consequences, which continues today.⁴⁷ In 1992, the CEDAW Committee pre-empted these developments by adopting General Recommendation 19, which interpreted gender-based violence as a form of 'discrimination against women' that is prohibited by CEDAW. Thus, violence 'directed against a woman because she is a woman or that affects women disproportionately' breaches CEDAW, even though it does not expressly make reference to violence.⁴⁸ This approach has been applied in the jurisprudence of the CEDAW Committee under its Optional Protocol procedure, which has found violations of states' obligations to eliminate discrimination against women in family relations (Article 16) where states parties have not acted with due diligence to protect complainants from domestic violence.⁴⁹

p. 331 The Committee continues to grapple with the issue of violence against women, and General Recommendation 19 has been updated by General Recommendation 35.⁵⁰

Addressing violence against women as a human rights violation has been further expounded in three regional human rights instruments. The first, the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Inter-American Convention) defines violence against women broadly as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere'.⁵¹ Importantly, this definition does not confine violence against women to a form of sex discrimination, but recognizes that it may constitute a human rights violation in itself, without the need for a male comparator. States parties must adopt a wide range of positive measures to eliminate such violence, including by applying 'due diligence' to 'prevent, investigate and impose penalties'.⁵² The African Protocol develops the definition of violence against women further by including acts which 'cause or could cause [women] physical, sexual, psychological, and economic harm', threats, and all such acts during armed conflict.⁵³ Violence against women is specifically recognized as a violation of the right to dignity,⁵⁴ the rights to life, integrity, and security of the person,⁵⁵ and the right to be protected from harmful practices.⁵⁶ The particular vulnerability of asylum-seeking and internally displaced women, and elderly and disabled women, is also acknowledged.⁵⁷ The third regional instrument is the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence 2011 (Istanbul Convention), which identifies women's empowerment and economic independence among its aims, reflecting a conscious effort to counter protective responses.⁵⁸ These regional developments update CEDAW obligations, overcoming some of their textual limitations, although the

Istanbul Convention has been controversial. Several states have refused to ratify and one has withdrawn its ratification because of, *inter alia*, the Convention's definition of gender as a social construct and its requirement that non-stereotyped gender roles be included in teaching materials.⁵⁹

A third limitation of CEDAW is that, like the Covenants, women's experience of 'family life' is assumed to be married and (*cis*)heterosexual (Article 16(1)) except when it comes to rights as a parent in matters relating to children, which are to be enjoyed regardless of marital status (Article 16(1)(d)). One result of the emphasis on 'marriage' and the equal rights of 'spouses' is that the diversity of family forms within which women live, including customary and de facto heterosexual and same-sex partnerships, is rendered invisible. Consequently, the text ignores human rights violations that take place within different family formations, like the unequal sharing of income and assets in a customary marriage or violence in a lesbian relationship, and fails to protect women's equal rights when a non-marital relationship breaks down. The CEDAW Committee has gone some way towards rectifying this problem by acknowledging that various forms of the family exist, by using the gender neutral terminology of 'spouse or partner',⁶⁰ and by insisting that women and men be treated equally in families, whatever form they take.⁶¹ However, the Committee p. 332 has never engaged proactively with issues of same-sex partnerships or families, and has only made reference to them on the rare occasions that states parties themselves have provided information about developments in their periodic reports.⁶² Another repercussion of CEDAW's normative focus on heterosexual marriage is that women's sexual freedom is limited to issues of procreation, with reference to family planning and the spacing of children. This means that CEDAW also fails to address the discrimination that many women face for expressing their sexuality outside marriage, whether in committed relationships, in pursuit of sexual pleasure, as lovers of other women, or as sex workers.

The fourth limitation is that CEDAW largely treats 'women' as a homogeneous group who share the same experience of discrimination. Yet sex discrimination can intersect with other forms of discrimination and create experiences of discrimination that are not fully comprehended by the concept of sex discrimination. This has been called 'compound' or 'intersectional' discrimination,⁶³ and its most extreme forms are experienced by the most disadvantaged groups of women. While the CEDAW text acknowledges some limited differences between women, on the basis of maternity for example, and age in respect of child marriage, there is only one significant exception to the general pattern of assumed homogeneity. Article 14 requires that states parties 'take into account the specific problems faced by rural women and the significant roles which rural women play in the economic survival of their families',⁶⁴ and many of the rights it goes on to enumerate do not rely on a comparison with men. The CEDAW Committee has interpreted 'rural' very broadly in many of its Concluding Observations in order to discuss intersectional forms of discrimination faced by women, on the basis of age, ethnicity, caste, and indigeneity.⁶⁵ The Committee has also drawn attention to 'multiple' or 'double' discrimination faced by specific groups of women in the context of Article 5(a), which requires modification of social and cultural attitudes and practices that are inconsistent with women's equality.⁶⁶ Further, a number of General Recommendations emphasize CEDAW's application to specific groups of women,⁶⁷ and others have stressed that special attention must be paid to the needs of women belonging to 'vulnerable' and 'disadvantaged' groups.⁶⁸

The most promising development has been the CEDAW Committee's utilization of the concept of intersectional discrimination in its jurisprudence under the Optional Protocol⁶⁹ and in a number of General Recommendations. As the Committee has said, the concept enables it to consider other factors that affect women 'such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity'.⁷⁰ However, it is perplexing that 'gender identity' is included in this list because surely the category 'woman' is a gender identity already inclusive of transgender women. The Committee's approach contradicts the definition of gender identity adopted by the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which makes it clear that *everyone* has a gender identity.⁷¹

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As with violence against women, the more recent regional women's rights instruments fill some of the gaps in CEDAW. The Inter-American Convention requires states parties to adopt measures that take 'special account' of women whose vulnerability to violence is compounded by such factors as their 'race or ethnic background', their 'status as migrants, refugees or displaced persons ... while pregnant or ... disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom'.⁷² The African Protocol has provisions that address the rights of asylum-seeking and internally displaced women, elderly women, and women with disabilities, and also recognizes specific rights that must be enjoyed by widows⁷³ and 'women in distress', which includes poor women, women heads of families, pregnant or nursing women, and women in detention.⁷⁴ Both instruments recognize women's diversity more fully than CEDAW, and draw attention to the need to address the compound effects of multiple forms of discrimination.

There is little doubt that the almost universal ratification of CEDAW, the work of the CEDAW Committee, and the efforts of many women's rights and human rights NGOs⁷⁵ have advanced the project of making international human rights law more gender inclusive. However, the adoption of a specialist women's rights treaty also, in many respects, reinforced women's marginalization. The high number of reservations to CEDAW, particularly those that defeat its object and purpose, undermines the idea that women's rights are universal, like 'men's'. Rather than prompting the other human rights treaty committees to take women's rights more seriously, the existence of CEDAW tended to have the opposite effect of reinforcing their marginalization.⁷⁶ While a specific convention focusing on women's equality was necessary to address women's marginalization in international human rights law, it was plainly not sufficient.

4 Mainstreaming Women's Human Rights

Another major effort to advance the prospects of women successfully claiming their human rights sought to refocus attention on the general human rights instruments by promoting 'gender mainstreaming'.⁷⁷ The strategy was adopted by the 1993 Vienna World Conference on Human Rights and reaffirmed by the 1995 Beijing World Conference on Women. These developments prompted the chairpersons of the human rights treaty bodies to commit to fully integrating gender perspectives into their working methods.⁷⁸ This led eventually to the adoption of General Comments by four treaty bodies, which aim to comprehensively incorporate women's experience of human rights violations into the coverage of their respective treaties. This section examines each of these General Comments, noting the diversity of thinking about how to

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achieve gender mainstreaming that emerges. It also highlights the tenacity of protective representations of women, especially in the context of addressing gendered violence, and concludes that women are not yet constructed as fully human by international human rights law.

4.1 Re-Imagining the Universal Subject: the Approach of the Human Rights Committee

The Human Rights Committee led the way in 2000 with the adoption of General Comment 28 on equality between men and women.⁷⁹ The General Comment works through each of the ICCPR rights, bringing women-specific violations into the mainstream by re-imagining the subject of the ICCPR as a woman. For example, it is recognized that the right to life (Article 6) may be violated if women have no option but to resort to backyard abortions or if they are living in extreme poverty,⁸⁰ and the right to be free from torture and other cruel, inhuman, and degrading treatment (Article 7) may be violated if a state party fails to protect women from domestic violence.⁸¹ The General Comment clearly promotes women's equality as a substantive concept and accepts that different treatment of women and men may be necessary to achieve equality. The result is an ambitious and creative 'feminization' of ICCPR rights.⁸²

However, some of the problems associated with seeking to include women by reference to their 'difference' are also evident. The extensive cataloguing of women's specific injuries and disadvantages, particularly the emphasis on violence, invites protective responses. Indeed, the frequent use of the language of 'protection' is disquieting.⁸³ It revives the historically conditioned tendency to slide into protective measures when thinking about women as 'victims' of gendered and sexual violence, working against legal responses that empower women as full legal subjects. This tendency is compounded by the failure of the General Comment to identify any gendered human rights abuses that may be specific to men, such as military conscription.

4.2 Analysing the Relationship Between Gender and Racial Discrimination: the Approach of the Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination, which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), was initially resistant to the idea of gender mainstreaming.⁸⁴ After intensive lobbying by women's groups, the Committee p. 335 changed its mind and General Recommendation XXV on the 'gender-related dimensions of racial discrimination' was adopted in 2000.⁸⁵ In contrast to the Human Rights Committee's approach, which identified the gender issues associated with each of the substantive ICCPR rights, the ICERD Committee elaborates a methodology for analysing the relationship between gender and racial discrimination, with the aim of developing 'a more systematic and consistent approach' in conjunction with states parties.⁸⁶ The method requires particular consideration of gender in: (1) the form and manifestation of racial discrimination; (2) the circumstances in which it occurs; (3) its consequences; and (4) the availability and accessibility of remedies.⁸⁷

This approach opens the way to a deeper understanding of the structural dimensions of the intersection of race and gender discrimination and how they work together to intensify women's inequality. The methodology is very flexible, allowing for diverse and shifting conceptions of race which, like gender, is

understood as socially constructed. However, similar to General Comment 28, the few examples of intersectional discrimination given are concerned with addressing violence against women,⁸⁸ which also runs the risk of eliciting protective responses. While General Recommendation XXV is notable for its use of the language of 'gender' rather than 'women', it is not at all clear that it is intended to recognize that men and other gender identities, as well as women, may suffer from discrimination in which race and gender intersect.

4.3 Addressing the Inequality of Both Women and Men: the Approach of the Committee on Economic, Social and Cultural Rights

A fuller conception of 'gender' mainstreaming is evident in General Comment 16, adopted in 2005 by the Committee on Economic, Social and Cultural Rights.⁸⁹ The approach taken is similar to General Comment 28 of the Human Rights Committee in the attention given to identifying the gender dimensions of each of the rights enumerated in the ICESCR and the emphasis on addressing gendered violence. However, its distinctiveness lies in its identification of men, as well as women, as potentially suffering sex discrimination and inequality in the enjoyment of ICESCR rights. For example, with respect to the right to social security, states parties are expected to guarantee 'adequate maternity leave for women, paternity leave for men, and parental leave for both men and women'.⁹⁰ General Comment 16 also recognizes that victims of domestic violence are 'primarily women', thereby acknowledging that men, too, may be victims.⁹¹ This position would be highly controversial if it were used as a means to deny the general reality of women's inequality vis-à-vis men. However, it has the potential to support a radical move towards recognizing men's gendered human rights abuses, as well as women's, which would help to eliminate protective approaches to women and underline the importance of changing the way 'men' are stereotyped in the process of realizing 'women's' equality.

4.4 Recognizing Gender as a Key Factor: the Approach of the Committee Against Torture

In 2008, the Committee against Torture adopted a General Comment on implementation obligations, which makes some important observations about the gender dimensions of the Convention Against Torture (UNCAT), conceiving gender mainstreaming even more inclusively.⁹² General Comment 2 emphasizes that special attention must be given to protecting marginalized groups or individuals who are 'especially at risk of torture', including those who may be at risk because of '[race,] gender, sexual orientation, transgender identity ... or any other status or adverse distinction'.⁹³ States parties are requested to provide additional information in their periodic reports about the implementation of UNCAT with respect to women, keeping in mind that 'gender is a key factor' that can intersect with other characteristics of a person to make them more vulnerable to torture or ill-treatment.⁹⁴ The Committee notes that women are particularly at risk in contexts that include 'deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes'.⁹⁵ The Committee observes that men, too, may be subject to gendered violations of UNCAT, 'such as rape or sexual violence and abuse', and, further, that men and boys, as well as women and girls, may be subject to violations 'on the basis of their actual or perceived non-conformity with socially determined gender roles'.⁹⁶ This approach opens the way for the Committee to

identify the specificity of human rights violations that are experienced solely or primarily by both women and men, as well as by the full range of gender non-conformists, although it falls short of explicitly challenging gender duality.

While all the General Comments aimed at gender mainstreaming promote women's equal enjoyment of human rights in a substantive sense, taking their lead from CEDAW, they also reinterpret mainstream human rights to be more inclusive of women's experience. These reinterpretations alleviate the need to compare women's experience with that of men's by reconstructing the universal standard to be more gender-inclusive. Yet only the Committee against Torture gets close to breaking with the tradition of gender duality. Such a break would create a foothold for more complex and dynamic understandings of the operation of gender hierarchies in human rights law and practice, which has the potential to strengthen the struggle for women's rights by more fully making them an issue of the mainstream.

5 Conclusion

The history of women's rights in international human rights law reveals a conundrum: how to insist on the recognition of women's specific human rights abuses without reproducing women's secondary status and encouraging protective responses. While every effort to more fully recognize women's rights in the development, interpretation, and implementation of international human rights law has met with some success, these efforts have also highlighted new challenges. While anti-discrimination law can be a very powerful means of promoting women's enjoyment of human rights, the comparative standard that it relies upon presents quandaries about how best to frame, measure, and realize women's substantive equality, which have yet to be resolved. While recognizing gendered violence as a violation of women's human rights has been a massive achievement, the historical pull towards embracing protective responses highlights the challenge of promoting, instead, a rights-based response that takes women's sexual injuries seriously while also respecting women's sexual agency. While the need to take account of intersectional forms of discrimination against women is increasingly acknowledged, there remain many conceptual and practical problems about how to make such discrimination legally cognizable. Finally, while gender mainstreaming has led to radical reinterpretations of mainstream human rights obligations, emphasizing the interdependence of ideas about 'men' and 'women' and the realization that women's equality depends on challenging accepted wisdom about dominant masculinities, it has also highlighted the dilemma of how fully to embrace 'gender' as a socially constructed category and include the whole range of gender identities in its coverage. We need new thinking about legal representations of gender that challenges the dualistic and naturalized gender stereotypes that underpin the panoply of gendered human rights abuses, before it will be possible for international human rights law to recognize women as fully human.

Further Reading

ANDERSON, 'Violence Against Women: State Responsibilities in International Human Rights Law to Address Harmful "Masculinities"' (2008) 26 *NQHR* 173.

BANDA, *Women, Law and Human Rights: An African Perspective* (Hart, 2005).

COOK and CUSACK, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2009).

DE VIDO, *Violence Against Women's Health in International Law* (Manchester University Press, 2020).

HELLUM and AASEN (eds), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press, 2013).

KAPUR, *Erotic Justice Law and the New Politics of Postcolonialism* (Glasshouse Press, 2005).

MERRY, *The Seductions of Quantification: Measuring Human Rights, Gender Violence and Sex Trafficking* (University of Chicago Press, 2016).

MILLER, 'Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection' (2004) 7 *Health and HR* 16.

OTTO (ed), *Gender Issues and Human Rights, Vols I-III* (Elgar, 2013).

VAN LEEUWEN, *Women's Rights are Human Rights—The Practice of the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights* (Intersentia, 2009).

Useful Websites

CEDAW materials (OHCHR): <<http://www2.ohchr.org/english/bodies/cedaw/index.htm>>

United Nations Entity for Gender Equality and the Empowerment of Women (UN Women): <<https://www.unwomen.org/en>>

International Women's Rights Action Watch Asia-Pacific (IWRAP-AP): <<https://www.iwraw-ap.org/>>

Women's Rights—Amnesty International: <<https://www.amnesty.org/en/what-we-do/discrimination/womens-rights/>>

Women's Rights—Human Rights Watch: <<https://www.hrw.org/topic/womens-rights>>

p. 338 Questions for Reflection

1. What steps might be necessary to ensure that temporary special measures, aimed at accelerating women's equal enjoyment of a particular human right, promote women's empowerment rather than reinforce their secondary status?
2. How should 'the family' be understood in international human rights law?

3. Is women's sexual freedom protected by international human rights law?
4. How has gender mainstreaming been taken up domestically, in your jurisdiction?
5. Do you think that CEDAW could or should be interpreted to cover all forms of gender (identity) discrimination rather than only discrimination against women?

Notes

¹ UN Charter, Art 1(4).

² See eg UDHR, Art 2; ICCPR, Arts 2(2) and 3; ICESCR, Arts 2(1) and 3.

³ UDHR, Art 16(1). See further ICCPR, Art 23(4).

⁴ Clark, 'The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women' (1991) 85 *AJIL* 281; Cook, 'Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women' (1990) 30 *Virginia JIL* 643. On reservations to human rights treaties generally, see Chapter 5.

⁵ International Women's Day Statement by United Nations Women's Human Rights Experts, 34th Session of the Human Rights Council, 7 March 2017; Report of the Working Group on the issue of discrimination against women in law and in practise: Reasserting equality, countering rollbacks, A/HRC/38/46 (14 May 2018).

⁶ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Part III, 'A gender perspective on countering terrorism', A/64/211 (3 August 2009) paras 18–53; Report of the Special Rapporteur on violence against women, its causes and consequences: COVID-19 and the increase of domestic violence against women, A/75/144 (24 July 2020).

⁷ Report of the Special Rapporteur on violence against women, its causes and consequences: Online violence against women, A/HRC/38/47 (18 June 2018).

⁸ World Health Organization, 'Maternal Mortality Fact Sheet' (updated November 2019).

⁹ Douzinas, 'The End(s) of Human Rights' (2002) 26 *Melbourne ULR* 445, 457.

¹⁰ Otto, 'Lost in Translation: Re-Scripting the Sexed Subject of International Human Rights Law' in Orford (ed), *International Law and Its Others* (CUP, 2006) 318.

¹¹ Charlesworth, 'Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations' (2005) 18 *HHRJ* 1.

¹² Hevener, 'International Law and the Status of Women: An Analysis of International Legal Instruments Related to the Treatment of Women' (1978) 1 *Harvard Women's LJ* 131, 133–40.

¹³ See Convention Respecting the Laws and Customs of War on Land 1899 (Hague Convention II), Art 46; and Convention Respecting the Laws and Customs of War on Land 1907 (Hague Convention IV), Art 46.

¹⁴ eg International Labour Organization, Maternity Protection Convention 1919 (Convention 3); International Labour Organization, Convention Concerning Night Work of Women Employed in Industry 1919 (Convention 4); International Labour Organization, Convention Concerning the Employment of Women on Underground Work in Mines of All Kinds 1935 (Convention 45).

¹⁵ International Agreement for the Suppression of the White Slave Traffic 1904; International Convention for the Suppression of White Slave Traffic 1910; International Convention for the Suppression of the Traffic in Women and Children 1921; Convention for the Suppression of the Traffic in Women of Full Age 1933. See further, Doezena, 'Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery in the Contemporary Discourses of Trafficking in Women' (2000) 18 *Gender Issues* 23, 24.

¹⁶ UDHR, Art 2. This type of non-discrimination provision is described as a 'subordinate norm' because it prohibits discrimination only with respect to the rights and freedoms set out in the instrument.

¹⁷ Morsink, 'Women's Rights in the Universal Declaration' (1991) 13 *HRQ* 229. For a critical analysis, see Bequaert Holmes, 'A Feminist Analysis of the Universal Declaration of Human Rights' in Gould (ed), *Beyond Dominance: New Perspectives on Women and Philosophy* (Rowman & Allanheld, 1983) 250.

¹⁸ ICESCR, Art 2(2); ICCPR, Art 2(1).

¹⁹ See Chapter 8.

²⁰ UDHR, Art 16(1); ICCPR, Art 23(4).

²¹ Romany, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in Cook (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994) 85.

²² UDHR, Arts 12 and 16(3); ICCPR, Arts 17(1) and 23(1).

²³ Oloka-Onyango and Tamale, "The Personal is Political" or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism' (1995) 17 *HRQ* 691, 702.

²⁴ *Aumeeruddy-Cziffra et al v Mauritius*, CCPR/C/12/D/35/1978 (9 April 1981).

²⁵ *Aumeeruddy-Cziffra*, paras 9.2(b)2(i)8 and 9.2(b)2(ii)4.

²⁶ ICESCR, Arts 6, 7, and 8. See further, Promoting Women's Enjoyment of their Economic and Social Rights: Expert Group Meeting, EGM/WESR/1997/Report (1–4 December 1997) paras 46–8.

²⁷ ICESCR, Art 10(2).

²⁸ ICESCR, Art 11(1).

²⁹ CESCR, General Comment 4, HRI/GEN/1/Rev.9 (Vol I) 11, para 6.

³⁰ Petersen, 'Whose Rights? A Critique of the "Givens" in Human Rights Discourse' (1990) 15 *Alternatives* 303.

³¹ eg CEDAW, Arts 2(e), 2(f), 3, 5, and 6.

³² CEDAW Committee, General Recommendation 19, HRI/GEN/1/Rev.9 (Vol II) 331, para 9.

³³ CEDAW Committee, General Recommendation 13, HRI/GEN/1/Rev.9 (Vol II) 325, para 2.

³⁴ CEDAW Committee, General Recommendation 24, HRI/GEN/1/Rev.9 (Vol II) 358, para 12.

³⁵ See further CEDAW Committee, General Recommendation 25, HRI/GEN/1/Rev.9 (Vol II) 365.

³⁶ CEDAW Committee, General Recommendation 25, para 20.

³⁷ CEDAW Committee, General Recommendation 23, HRI/GEN/1/Rev.9 (Vol II) 347, para 29.

³⁸ CEDAW Committee, General Recommendation 25, para 21.

³⁹ Nyamu-Musembi, 'Are Local Norms and Practices Fences or Pathways? The Example of Women's Property Rights' in An-Na'im (ed), *Cultural Transformation and Human Rights in Africa* (Zed Books, 2002) 126; Obiora, 'Feminism, Globalization, and Culture: After Beijing' (1997) 4 *Glob Legal Stud J* 355.

⁴⁰ The prefix (cis) refers to people who identify with the legal sex/gender that they were assigned at birth. Therefore (cis)heterosexuality refers to sexual attraction between a (cis)woman and a (cis)man.

⁴¹ Roseman and Miller, 'Normalizing Sex and its Discontents: Establishing Sexual Rights in International Law' (2011) 34 *Harvard JL & Gender* 313, 353; Otto, 'Between Pleasure and Danger: Lesbian Human Rights' [2014] *EHRLR* 618, 626.

⁴² Otto, 'Queering Gender [Identity] in International Law' (2015) 33 *NJHR* 299, 307.

⁴³ Holtmaat, 'The CEDAW: a Holistic Approach to Women's Equality and Freedom' in Hellum and Aasen (eds), *Women's Human Rights: CEDAW in International, Regional and National Law* (CUP, 2013) 95, 115–16.

⁴⁴ African Protocol, Art 14(1).

⁴⁵ An exception to this rule is CEDAW, Art 14 concerning 'rural women'.

⁴⁶ Declaration on the Elimination of Violence Against Women, GA Res 48/104 (20 December 1993).

⁴⁷ Commission on Human Rights Res 1994/45 (4 March 1994), ch XI, E/CN.4/1994/132. See further: <<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>>.

⁴⁸ CEDAW Committee, General Recommendation 19, paras 1 and 6.

⁴⁹ See eg *AT v Hungary*, A/60/38, Annex III (26 January 2005); *Goekce v Austria*, CEDAW/C/39/D/5/2005 (6 August 2007); *Yildirim v Austria*, CEDAW/C/39/D/6/2005 (1 October 2007); *VK v Bulgaria*, CEDAW/C/49/D/20/2008 (27 September 2011); *Jallow v Bulgaria*, CEDAW/C/52/D/32/2011 (28 August 2012).

⁵⁰ CEDAW/C/GC/35 (14 July 2017).

⁵¹ Inter-American Convention, Art 1.

⁵² Inter-American Convention, Art 7(b).

⁵³ African Protocol, Art 1(j) (emphases added).

⁵⁴ African Protocol, Art 3(4).

⁵⁵ African Protocol, Art 4.

⁵⁶ African Protocol, Art 5(d).

⁵⁷ African Protocol, Arts 11(3), 22(b), and 23(b).

⁵⁸ Istanbul Convention, Arts 6, 12(6), and 18(3).

⁵⁹ UNHCHR, News, 'UN women's rights committee urges Turkey to reconsider withdrawal from Istanbul Convention as decision takes effect', 1 July 2021.

⁶⁰ See eg CEDAW Committee, General Recommendation 21, HRI/GEN/1/Rev.9 (Vol II) 337, para 22.

⁶¹ CEDAW Committee, General Recommendation 21, paras 13, 18, 29, 33, and 39.

⁶² See eg Concluding Observations on Chile, CEDAW/C/CHL/CO/5-6 (12 November 2012) para 46, where it is 'noted' that 'a bill on de facto unions, which includes same-sex relationships, is before the Senate'.

⁶³ Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] *U Chi LF* 139.

⁶⁴ There is also a reference to 'rural women' in CEDAW, Art 10(a) about vocational guidance and access to studies.

⁶⁵ See eg India, A/54/38 (1 February 2000) paras 51–3; China, A/54/38 (3 February 1999) para 294.

⁶⁶ See eg Sweden, A/56/38 (31 July 2001) para 356.

⁶⁷ eg CEDAW Committee, General Recommendation 18, HRI/GEN/1/Rev.9 (Vol II) 330 (disabled women); General Recommendation 26, CEDAW/C/2009/WP.1/R (5 December 2008) (women migrant workers); General Recommendation 27, CEDAW/C/GC/27 (16 December 2010) (older women); and General Recommendation 34, CEDAW/C/GC/34 (7 March 2016) (rural women).

⁶⁸ CEDAW Committee, General Recommendation 24, HRI/GEN/1/Rev.9 (Vol II) 358, para 6 (health needs of refugee and internally displaced women, women with physical or mental disabilities, amongst others).

⁶⁹ See *Teixeira v Brazil*, CEDAW/C/49/D/17/2008 (27 September 2011) para 7.7 (African descent and socio-economic status); *Kell v Canada*, CEDAW/C/51/D/19/2008 (27 April 2012) para 10.2 (indigeneity); *ON and DP v Russian Federation*, CEDAW/C/75/D/119/2017 (24 February 2020) para 7.4 (lesbians).

⁷⁰ General Recommendation 28, CEDAW/C/GC/28 (16 December 2010) para 18 (core obligations).

⁷¹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007). See further Chapter 15.

⁷² Inter-American Convention, Art 9.

⁷³ African Protocol, Art 20.

⁷⁴ African Protocol, Art 24.

⁷⁵ Dairiam, 'From Global to Local: The Involvement of NGOs' in Schopp-Schilling (ed), *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women* (Feminist Press, 2007) 313.

⁷⁶ Byrnes, 'The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women' (1989) 14 *Yale JIL* 1; Reanda, 'Human Rights and Women's Wrongs: the United Nations Approach' (1981) 3 *HRQ* 11.

⁷⁷ Bunch, 'Women's Rights as Human Rights: Towards a Re-Vision of Human Rights' (1990) 12 *HRQ* 486; Kouvo, *Making Just Rights? Mainstreaming Women's Human Rights and a Gender Perspective* (Iustus Forlag, 2004).

⁷⁸ Report of the Sixth Meeting of Persons Chairing the Human Rights Treaty Bodies, A/50/505 (4 October 1995) para 34(a)–(f).

⁷⁹ HRC, General Comment 28, HRI/GEN/1/Rev.9 (Vol I) 228.

⁸⁰ HRC, General Comment 28, para 10.

⁸¹ HRC, General Comment 28, para 11.

⁸² See further, Otto, “‘Gender Comment’: Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?” (2002) 14 *Can J Women & L* 1.

⁸³ HRC, General Comment 28, paras 8, 10, 11, 12, 16, and 22.

⁸⁴ Crooms, ‘Indivisible Rights and Intersectional Identities or, “What Do Women’s Human Rights Have to Do with the Race Convention?”’ (1997) 40 *Howard LJ* 619; Gallagher, ‘Ending Marginalisation: Strategies for Incorporating Women into the UN Human Rights System’ (1997) 19 *HRQ* 283.

⁸⁵ CERD, General Recommendation XXV, HRI/GEN/1/Rev.9 (Vol II) 287.

⁸⁶ CERD, General Recommendation XXV, para 3.

⁸⁷ CERD, General Recommendation XXV, para 5.

⁸⁸ CERD, General Recommendation XXV, para 2.

⁸⁹ HRI/GEN/1/Rev.9 (Vol I) 113.

⁹⁰ CESCR, General Comment 16, para 26.

⁹¹ CESCR, General Comment 16, para 27.

⁹² CAT, General Comment 2, HRI/GEN/1/Rev.9 (Vol II) 376.

⁹³ CAT, General Comment 2, para 21.

⁹⁴ CAT, General Comment 2, para 22.

⁹⁵ CAT, General Comment 2, para 22.

⁹⁶ CAT, General Comment 2, para 22.

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