

Feminist Influences on the United Nations Human Rights Treaty Bodies

*Rachael Lorna Johnstone**

ABSTRACT

More than ten years ago, feminist legal theorists drew attention to some of the pervasive gender biases within the systems of international law. This paper will investigate whether anything has changed in the day to day activities of the human rights treaty bodies that might be interpreted as a response to the feminist critiques. This paper will argue that although much work still needs to be done, the gender mainstreaming efforts of the treaty bodies are having a relevant and positive impact that can be seen in the dialogues with state parties.

I. INTRODUCTION

In the early 1990s, feminists turned their attention to international law and were dismayed by the explicit and implicit gender bias they uncovered.¹ Over a decade has now passed, and UN institutions have repeatedly

* *Rachael Lorna Johnstone* is Assistant Professor of Law at the Faculty of Social Sciences and Law, University of Akureyri, Iceland. She received her LL.B. (Hons) from the University of Glasgow (1999), her LL.M. from the European Academy of Legal Theory, Brussels (2000) and her S.J.D. from the University of Toronto (2004).

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1. For the leading early article on this issue, see Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 A.J.I.L. 613 (1991). For a brief summary of the developments of international human rights law in response to these criticisms and the challenges ahead, see Hilary Charlesworth, *General Introduction*, in 1 *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW*, at xix–xxiii (Kelly D. Askin & Doreen M. Koenig eds., 1999) [hereinafter 1 *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW*]; Christine Chinkin, *Feminist Interventions into International Law*, 19 *ADELAIDE L. REV.* 13 (1997).

promised to be more sensitive to female concerns, particularly within the field of human rights. In this article the author will consider the work of the UN human rights treaty bodies to examine to what extent gender mainstreaming has been successfully implemented. Gender mainstreaming is a method of approaching any analysis from both female and male perspectives. The female actor is considered to be the norm, the starting point for assessment, just as much as the male actor.²

The principal critiques of international human rights law will be briefly outlined in Part II. General developments are then summarized in Part III. This is followed by Part IV, the main section of this article, which provides an analysis of the work of five human rights treaty bodies with regard to their dialogue with state parties.³ Finally, Part V contains some reflections about the extent to which the work of these treaty bodies responds to the main feminist critiques.

II. EARLY FEMINIST CRITIQUES OF INTERNATIONAL HUMAN RIGHTS LAW

The criticisms levied at international human rights law have been directed from a number of angles.⁴ They are interrelated, but for brevity, they are grouped into seven main areas.

A. Content and Definition of International Human Rights

First, international human rights law has been attacked for the content of the preferred rights. The focus on civil and political rights at the expense of

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2. See *infra* text § II, for the United Nations definition of gender mainstreaming and a brief explanation of what it means in practice.
 3. The Committee for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is excluded, as it has not had time since coming into force to engage in extensive dialogue with state parties. International Convention on the Rights of All Migrant Workers and Members of their Families, G.A. Res. 45/158, U.N. GAOR, 45th Sess., Supp. No. 49A at 262, U.N. Doc. A/45/49 (1990)(*entered into force* 1 July 2003) [hereinafter MWC]. The Committee for the Convention on the Elimination of All Forms of Discrimination Against Women is also not considered as it has always had a “gender-focus” and a substantial representation of women amongst its committee members. Convention on the Elimination of All Forms of Discrimination against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1980) (*entered into force* 3 Sept. 1981), 1249 U.N.T.S. 13, *reprinted in* 19 I.L.M. 33 (1980) [hereinafter CEDAW].
 4. For a brief overview with specific reference to the work of the Treaty Bodies, see Anne Gallagher, *Contemporary Forms of Female Slavery*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 487, 516–19 (Kelly D. Askin & Dorean M. Koenig eds., 2000) [hereinafter 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW].

economic, social, and cultural rights suggests both a male and a Western liberal bias that relegated the immediate needs of anyone who was not Western, white, adult, and male.⁵ The definition of torture, by focusing only on purposeful torture by public officials, excluded the most common severe violence experienced by women—that in their own homes.⁶ Where women's rights were accepted, they were separate and special. Hence, men's rights were human or universal rights and women's rights were an add-on.⁷

Although the two covenants were issued at the same time and together formed the legal implementation of the Universal Declaration of Human Rights (the Universal Declaration), the International Covenant on Economic, Social and Cultural Rights (ICESCR) was always considered something of a little sister to the International Covenant on Civil and Political Rights (ICCPR).⁸ While state parties are obliged immediately to guarantee the rights of the ICCPR, they are asked only to "progressively realize" those of the ICESCR.⁹ Some have understood this to mean that the ICESCR provides only goals, rather than defensible rights.¹⁰ The Committee for Economic, Social and Cultural Rights (CESCR) also has no equivalent of the Human Rights Committee's

5. Dianne Otto, *Rethinking the "Universality" of Human Rights Law* 29 COLUM. HUM. RTS. L. REV. 1, 5–6 (1997–1998); Charlotte Bunch et al., *Making the Global Local: International Networking for Women's Human Rights*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 1, at 91–92.

6. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* 10 Dec. 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/46 (1984) art. 1(1) (*entered into force* 26 June 1987), *reprinted* in 23 I.L.M. 1027 (1984), *substantive changes noted* in 24 I.L.M. 535 (1985) [hereinafter *Torture Convention*]; *see also infra* text § IV; Catharine A. MacKinnon, *On Torture: A Feminist Perspective on Human Rights*, in HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE (Kathleen E. Mahoney & Paul Mahoney eds., 1993).

7. Dianne Otto, *Holding Up Half the Sky, But for Whose Benefit?: A Critical Analysis of the Fourth World Conference on Women*, 6 AUSTR. FEMINIST L. J. 7, 11–15 (1996).

8. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 71, U.N. Doc. A/810 (1948), *reprinted* in 43 AM. J. INT'L L. 127 (Supp. 1949) [hereinafter *UDHR*]; International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976) [hereinafter *ICESCR*]; International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) [hereinafter *ICCPR*]. *See* Barbara Stark, *The International Covenant on Economic, Social and Cultural Rights as a Resource for Women*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 4, at 209, 230.

9. ICCPR, *supra* note 8, art. 2(1); ICESCR, *supra* note 8, art. 2(1).

10. The assertion that economic, social and cultural rights are only standards for progressive implementation, as opposed to the immediately binding and enforceable character of civil and political rights existed from the origins of the drafting of the two International Covenants, ICCPR and ICESCR. *See Annotations on the Text of the Draft International Covenants on Human Rights, Report by the Secretary-General*, U.N. GAOR, 10th Sess., Annex 50, ¶ 9, U.N. Doc. A/2929 (1955).

(HRC) communications procedure. Yet, the ICESCR reflects the responsibilities of daily existence for many women, such as to provide food and shelter.¹¹

B. Marginalization of Women's Rights

Women's human rights are the subject of a treaty of their own: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹² As such, they were considered by the Committee established under that treaty. However, women's human rights were absent from discussion by the other treaty bodies. This reinforced the idea that men's rights are universal and women's rights an afterthought. The Committee on the Elimination of Racial Discrimination did not address issues of intersectional discrimination; the Committee Against Torture did not consider rape as a weapon of war.

The CEDAW Committee was also geographically and structurally isolated; it was located in Vienna under the auspices of the Division for the Advancement of Women, while the other committees were in Geneva under the Office for the High Commissioner for Human Rights.¹³

The human rights of women, both in CEDAW and in the other human rights treaties, appeared to be taken less seriously. Reservations to CEDAW were, and remain, extensive and substantive, by contrast to its prototype, the Convention for the Elimination of Racial Discrimination. The requirements on state parties are tougher in the Race Convention than in its offspring.¹⁴ In practice, gender discrimination is tolerated by the international community in ways that simply would not be accepted if the distinctions were made on grounds of race. Apartheid South Africa faced international condemnation and sanctions; yet long before Kuwait permitted women to vote, it was considered a democratic country.¹⁵

11. Stark, *supra* note 8, at 211.

12. CEDAW, *supra* note 3.

13. The CEDAW Committee (and the Division for the Advancement of Women) moved to New York in 1993.

14. Ved P. Nanda & Dawn M. McKnight, *The International Convention on the Elimination of All Forms of Racial Discrimination*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 4, 283, 285–86.

15. Rosa Ehrenreich Brooks, *Feminism and International Law: An Opportunity for Transformation*, 14 YALE J.L. & FEMINISM 345, 350 (2002).

C. De Facto Exclusion of Women

Since its foundation in 1948, women have held few positions of power and influence in the UN system.¹⁶ Women were not appointed to the most important positions. The exclusion of women had implications for the agenda of the United Nations and may have been a reason, although not an excuse, for the pervasive gender bias within the content and definition of human rights law.

D. The Public and Private Divide

The dichotomy between public and private spheres, enshrined in the structures of international law, impacts women at the international and domestic level. At the international level, the division of public and private renders only the state responsible in international law. Nonstate actors are not directly accountable for violations of human rights; yet it is at the hands of nonstate actors that women are more likely to suffer abuse. At the domestic level, the dichotomy of public and private may justify the state's failure to intervene in private relationships, a smokescreen behind which systematic violations of women's human rights have been rendered invisible. Law finds itself in the public realm, but if one cannot enter the public sphere, law and legal rights have nothing to offer.

On one level, the classification of particular activities as public or private has been erroneous, because the classification depends on the gender of the actor, rather than the nature of the activity. On another level, the dichotomy itself is questionable, because all activities have both public and private natures. At both levels, political decisions to allocate certain activities to the private sphere have been used to justify the states' abdication of responsibility for that activity.¹⁷

E. Rights Critique

Emerging from the Critical Legal Studies Movement of the late 1970s and 1980s, the critique of rights as meaningful tools of change was also engaged in by feminists, including in their reflections on international law. Arguments for human welfare, equality, and social justice may not translate well into the language of rights. Moreover, it may be neither appropriate nor

16. *Id.* at 345–47; Charlesworth et al., *supra* note 1, at 622.

17. See Charlesworth et al., *supra* note 1, at 625–30; see also, Christine Chinkin, *A Critique of the Public/Private Dimension*, 10 EUR. J. INT'L. L. 387 (1999).

helpful to try to do so, especially where the dominant agendas of “Western” individual rights are viewed with suspicion.¹⁸

Insisting that everyone enjoys human rights may even backfire by individualizing responsibility. If everyone possesses *equal rights*, at least formally, then everyone might appear to have had a fair chance. If one endures an exploited or impoverished position, then the failure is personal. As such, it ceases to be the responsibility of society as a whole.

F. Rights Used to Reduce the Status of Women

Related to the scepticism regarding the efficacy of rights-speak as a tool for improving the circumstances of women are concerns that instead the language of human rights has been used to reduce the freedom of women. The content of preferred rights, especially the revered civil and political rights, is such that they could be used to *deny* women self-determination, such as the invocation of culture, religion, and private family life at the expense of women’s human rights to education, healthcare, employment, and freedom to marry.¹⁹

G. Empirical Limitations

The final broad thrust of the feminist critiques of human rights focused more on a reflection of continued global suffering, particularly of women. The Universal Declaration was launched in 1948, promising rights for everybody, regardless of sex.²⁰ The ICCPR and the ICESCR, in 1976, guaranteed that rights would be enjoyed equally by men and women.²¹ The Women’s Convention in 1979 further promised an elimination of discrimination against women. Yet inequality remains the norm and little seems to have changed. These human rights “laws,” like the bulk of international law, have limited enforcement mechanisms. Has international human rights law actually offered any advancement to women?²²

18. Brooks, *supra* note 15, at 353.

19. Berta Esperanza Hernández-Truyol, *Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 1, at 3, 37; Radhika Coomaraswamy, *Broken Glass: Women, Violence and the Rule of Law*, RULE OF LAW LECTURE SERIES, 10–12 (Centre for Comparative Constitutional Studies, University of Melbourne, 3 Oct. 2001).

20. UDHR, *supra* note 8, art. 2.

21. ICESCR, *supra* note 8, art. 3; ICCPR, *supra* note 8, art. 3.

22. See Andrew Byrnes, *Using International Human Rights Law and Procedures to Advance Women’s Human Rights*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 4, at 79, 108–09.

Some of these critiques suggest that international human rights law is by its nature unable to deliver improvements in the status of women. Others instead believe that the *current* status of international human rights law has little to offer women. In neither case need the deficiencies prove fatal. Only by raising awareness does one create the possibility for reform. The author intends to demonstrate that some progress has been made in response to these critiques. The system remains far from perfect but, nevertheless, improvements have taken place.

III. GENERAL DEVELOPMENTS

There is a danger, when faced with such comprehensive criticisms, that we raise our hands in despair and admit that human rights law has nothing to offer women, but such a response is counter to feminist scholarship. Instead, by raising awareness of these problems, the human rights institutions and professionals have an opportunity to develop the practice of human rights in a more gender sensitive manner. There remains a question of to what extent this transformation is possible, and, more practically, to what extent the institutions and professionals in the field are willing to make the effort.

At the Fourth World Conference on Women in Beijing in 1995, these critiques were heard. States and UN institutions made commitments to improve the enjoyment of women's human rights. They promised to guarantee the equal enjoyment of human rights for women and men and to place female specific concerns at the heart of their work, rather than marginalizing them as separate and special. The conference placed a strong emphasis on economic barriers to gender equality, such as the feminization of poverty, healthcare for women, and access to education and employment. It recognized *de facto* as well as *de jure* barriers to the enjoyment of human rights, moving beyond liberal ideas of equality.²³ Human rights were understood as rights to outcomes, not just formally equal opportunities. UN bodies have since formally committed themselves to gender mainstreaming.²⁴

At the same time, a tripartite understanding of state responsibility emerged and began to find acceptance throughout the human rights community. The three degrees of state responsibility were outlined by

23. See, e.g., *Report of the Fourth World Conference on Women*, Annex I (Beijing Declaration); Annex II (Platform for Action), U.N. Doc. A/CONF.177/20 (1995); a brief summary of the critical areas of concern can be found at ¶ 44.

24. See *Report of the Economic and Social Council for 1997, Mainstreaming the gender perspective into all policies and programmes in the United Nations System*, U.N. GAOR, 52nd Sess., Supp. No. 3, IVA, U.N. Doc. A/52/3 (1997) [hereinafter *ECOSOC Mainstreaming*].

Byrnes and Connors as: (1) the failure to respect human rights; (2) the failure to protect human rights; and (3) the failure to assist and fulfill human rights.²⁵

The first of these, failure to respect human rights, is of the classical form where a state official takes, or has taken, a positive step that directly breaches a citizen's human rights. Some obvious examples would be torture by a state official, detention without trial, and seizure of property without due process of law. These examples illustrate situations in which a state actor does something that she, or the state vicariously, should and could *not have done*.

The second form, failure to protect human rights, covers instances where the state failed to take action to prevent or punish the denial of a human right. For example, in the *Velasquez Rodriguez* case, the state was held responsible for failing to enforce domestic laws against kidnapping, probable torture and murder, and for failing to take action to discern the whereabouts of the disappeared. In this case, the Court found that the state was directly responsible, that is, that the kidnappers were state actors. However, it was clarified that even if the kidnapping had been instigated by private actors, with no assistance or encouragement from the state, the failure to investigate constituted liability by omission.²⁶ The failure of a state to make all human rights violations by nonstate actors criminal and to investigate and to punish such violations renders the state complicit in their commission. Responsibility for failure to protect human rights might also be more subtle. The abuse may be recognized in the criminal code. For instance, there may be a formal program to eliminate the abuse, but its prevalence is so broad that the inefficacy of the state's actions renders it complicit. Domestic violence is one example.

The third form of state liability, failure to fulfill human rights, imparts a positive duty on states to ensure the human rights of its citizens. It goes much further than taking measures to prevent private violations of human rights, but requires the state to ensure the achievement of minimum standards of human well-being for all citizens, regardless of any identifiable violator. For example, the rights to adequate food or shelter²⁷ are in most cases neither denied by the state, nor by another person, but result from the accumulation of causes. The state may not be even indirectly responsible

25. Andrew Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?*, 21 *BROOK. J. INT'L L.* 679, 711–12 (1996). This tertiary understanding is also advocated by Patrick Macklem & Craig Scott, *Constitutional Ropes of Sand or Justiciable Guarantees? Social Rights in a New South African Constitution*, 141 *U. PA. L. REV.* 1, 72–84 (1992).

26. *Velasquez Rodriguez*, Case 4, Inter-Am. C.H.R. (Ser. C.), No. 4, ¶¶ 171–77 (1988).

27. ICESCR, *supra* note 8, art. 11(1).

for the poverty of its inhabitants, yet this understanding renders the state responsible whenever its citizens fail to enjoy their human rights, regardless of the reasons for that failure.

At this third level, rights cease to be liberal freedoms-from and become substantive minimum standards. They require a focus on the enjoyment of rights, not merely a restraint from intervention. Quite the reverse, they may demand intervention, well inside of the private sphere, to ensure that minimum standards of human welfare, *qua* human rights, are guaranteed.

Another response to the dialogue of Beijing has been that UN institutions have formally announced their commitments to gender mainstreaming. Gender mainstreaming is defined as:

[T]he process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.²⁸

This is not merely a *plus women* approach, but rather requires that women and men are considered equally as the general rights-bearer in human rights law. The gender question lies at the heart of any investigation. The reasonable man standard is replaced with a genuine reasonable person standard, which responds to both male and female experiences. Particular attention is required to intersectional issues, such as race and gender, disability and gender, and age and gender, which have historically fallen through the gaps. The female person with a disability, the girl child, and the female ethnic minority actor are as central as their male equivalents.

The intentions appear to be sincere and monitoring of gender mainstreaming is now a regular part of UN business.²⁹

IV. THE UNITED NATIONS HUMAN RIGHTS TREATY BODIES

The main focus of this article is the work of the human rights treaty bodies. To what extent have these committees taken on board the feminist critiques in their daily work? There are seven committees, but two will not be assessed. The five treaty bodies, and the treaties they monitor, under consideration are: (1) Committee on Economic, Social and Cultural Rights:

28. See ECOSOC Mainstreaming, *supra* note 24.

29. See UNITED NATIONS OFFICE OF THE SPECIAL ADVISER ON GENDER ISSUES, GENDER MAINSTREAMING: AN OVERVIEW (2002).

ICESCR;³⁰ (2) Human Rights Committee: ICCPR;³¹ (3) Committee on the Rights of the Child: Convention on the Rights of the Child;³² (4) Committee on the Elimination of Racial Discrimination: Convention on the Elimination of Racial Discrimination;³³ and (5) Committee Against Torture: Convention Against Torture.³⁴

The work of the CEDAW Committee³⁵ will not be considered as it has always been focused on the situation of women. Additionally, the committee established under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) came into force in July 2003.³⁶ Because of its recent establishment, there is not enough history of the committee for meaningful analysis.

The treaty bodies are only one set of a number of human rights institutions at the United Nations.³⁷ It is, of course, necessary that gender mainstreaming take place throughout the UN system. This study of the treaty bodies examines only a small part of that process.

By signing treaties, states undertake legally binding obligations. It is the role of the treaty bodies to confirm to what extent states are meeting the treaty obligations and, where states are failing, to encourage them to comply. These committees also have the responsibility of developing vague treaty obligations into precise and concrete standards.³⁸ The bulk of this work takes place in discourse with states parties, through reports from and discussions with individual state delegations, and through general comments and recommendations. Treaties with a mechanism to consider individual communications also have a forum in which to develop jurisprudence.

The broad elements of gender mainstreaming for the treaty bodies are: (1) to give equal consideration to women's human rights and to treat them as central issues; (2) to interpret treaties in gender sensitive manner; (3) to ask gender sensitive questions of state parties; and (4) to consider the equal enjoyment of rights.

While the disadvantages women face will not disappear overnight by

30. ICESCR, *supra* note 8.

31. ICCPR, *supra* note 8.

32. Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989) [hereinafter *Children's Convention*].

33. International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, 660 U.N.T.S. 195 (*entered into force* 4 Jan. 1969), *reprinted in* 5 I.L.M. 352 (1966) [hereinafter *Race Convention*].

34. Torture Convention, *supra* note 6.

35. CEDAW, *supra* note 3.

36. MWC, *supra* note 3.

37. Most notably excepted from this analysis are the Human Rights Commission and the Office of the High Commissioner for Human Rights.

38. See Stark, *supra* note 8, at 241.

providing rights or by promising to think about women a bit more, it is at least helpful to arm the treaty bodies with the right questions to ask. Better informed committees can raise awareness amongst state institutions themselves, who may in fact have been ignorantly, rather than deliberately, complicit, and amongst grass roots organizations and nongovernmental organizations. The work of the treaty bodies provides activists with the basis for a discourse in the language of rights which, although not always sufficient alone, at least opens the door to a discourse in a language that the state may be willing to hear.³⁹

Neuwirth warns that, "[t]oo often, international condemnation of a human rights violation is considered a success, without recognition that it is only a first step which by itself might have little or no impact in stopping the violation or bringing relief to those suffering from the violation."⁴⁰ Having treaty bodies merely declare the rights of women and outline the states' responsibilities for ensuring their enjoyment is not enough in itself. The real achievement will occur when the treaty bodies stop declaring violations altogether, that is, when human rights are fully enjoyed. The treaty bodies cannot alone guarantee the rights of women and men, but they can provide further fuel to speed up the process.

Rights are not enforced by the committees. Instead committees create a forum for discussion and understanding of what rights may entail in practice. They produce material from which rights-based arguments can be framed for those who seek to demand greater enjoyment of human rights for women and men.⁴¹

The discourse is initiated by a committee in the form of state report requirements addressed generally to all state parties and the lists of issues prepared individually for each state party. Notes of the discussions between the state parties and the committees are issued as summary records. These are not full transcripts, but describe the conversation and the main questions and answers.

While the aforementioned material is made publicly available, it is not widely read. More important in raising domestic and international awareness are the concluding observations or concluding comments. These are made by the committees after the discussion of the state reports. The concluding observations are included in the annual reports of the committees and for that reason they are more likely to be read by international and

39. This should by no means discourage activists from using non rights-based discourses where these may be more effective. The rights language is one, potentially powerful language, but it is not exclusive. See *infra* text § IV.

40. Jessica Neuwirth, *The Role of Activism in the Enforcement of International Human Rights Law*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 4, at 471–72.

41. See Byrnes, *supra* note 22, at 105, 116; see also Stark, *supra* note 8, at 240.

domestic organizations. They are also distributed by email free of charge to anyone who requests them.⁴²

To complement the dialogue with the state parties, the committees also issue general comments and recommendations that are addressed to all state parties. The committees often use this opportunity to clarify interpretations of individual treaty articles, such as a general comment on the right to health⁴³ or the right to privacy.⁴⁴ They issue comments and recommendations on matters frequently arising in dialogue with the individual state parties, for instance, children affected by HIV and AIDS.⁴⁵ Comments and recommendations may also be related to guaranteeing rights for vulnerable or overlooked classes of persons, such as a recommendation on Roma people⁴⁶ or on persons with disabilities.⁴⁷

The Torture Convention incorporates an inquiry procedure,⁴⁸ which functions as a fast track investigation procedure for credible allegations of systematic torture. The procedure has the potential to bring international attention to pressing issues. The Committee on the Elimination of Racial Discrimination (CERD) also undertakes emergency inquiries according to its "early warning procedure."⁴⁹

Some treaties also contain the possibility for state parties to permit individual communications.⁵⁰ Consideration of gender mainstreaming with

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42. *Review of Recent Developments Relating to the Work of Treaty Bodies*, Fifteenth Meeting of the Human Rights Treaty, 23–27 June 2003, ¶ 46, U.N. Doc. HRI/MC/2003/2 (2003).
 43. *The Right to the Highest Attainable Standard of Health*, General Comment No. 14, U.N. ESCOR, Comm. On Econ., Soc. & Cult. Rts., 22nd Sess., Agenda Item 3, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter General Comment No. 14], *reprinted in Compilation Of General Comments And General Recommendations Adopted By Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 (2003) [hereinafter *Compilation of General Comments 2003*]; *Women and Health*, General Recommendation No. 24, U.N. ESCOR, Comm. Elimination of Discrimination Against Women, 23d Sess. (1988) *reprinted in Compilation of General Comments 2003*, *id.* at 271.
 44. General Comment No. 16 (1988) U.N. Hum. Rts. Comm., 23d Sess., *reprinted in Compilation Of General Comments And General Recommendations Adopted By Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994) [hereinafter *Compilation of General Comments 1994*].
 45. *HIV/AIDS and the Right of the Child*, General Comment No. 3, Comm. on the Rts. of the Child, 32d Sess, U.N. Doc. CRC/GC/2003/3 (2003) [hereinafter General Comment No. 3].
 46. *Discrimination against Roma*, General Recommendation No. XXVII, Comm. on the Elimination of Racial Discrimination, 57th Sess., Annex V, 154, U.N. Doc. A/55/18 (2000), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 216.
 47. *Persons with Disabilities*, General Comment No. 5, Comm. on Econ., Soc. & Cult. Rts., 11th Sess., 19, U.N. Doc. E/1995/22 (1995), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 24.
 48. Torture Convention, *supra* note 6, art. 20; *See infra* text § IV.
 49. *Id.*
 50. Currently, the ICCPR, the Torture Convention, the Race Convention and CEDAW have such arrangements. These are, respectively: Optional Protocol to the International

regard to investigation and discussion of communications will not be included in this analysis, but must await another occasion.

A. Gender Mainstreaming in the UN Human Rights Treaty Bodies

1. *Committee on Economic, Social and Cultural Rights (CESCR)*

The ICESCR explicitly states in Article 2 that all rights within it are to apply irrespective of *inter alia* sex. Further, Article 3 states that “the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”⁵¹

The ICESCR obligates state parties to ensure that men and women equally enjoy their rights. This indicates an obligation on states to guarantee human rights at the third level—that is, the obligation to fulfill human rights. The principle of non-discrimination based on sex is further elaborated upon in Article 7 (guaranteeing equal enjoyment of employment rights), Article 10 (ensuring both parties consent to marriage and providing protection for mothers in paid employment), and Article 12 (concerning the reduction in stillbirth and infant mortality rates).

The CESCR would benefit from greater female participation on the committee. Currently, of eighteen committee members, only four are female.⁵² However, despite the poor direct representation of women, a gender mainstreamed perspective has been rather successfully pursued.

In recent years, the CESCR has given a central place in its work to the enjoyment of human rights for women. The committee was the first of the treaty committees to respond to the early feminist critiques. They amended

Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976), *reprinted in* 6 I.L.M. 383 (1967); Torture Convention, *supra* note 6, art. 22; Race Convention, *supra* note 33, art. 14; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 4, U.N. GAOR, 54th Sess., Supp. No. 49, at 5, U.N. Doc. A/54/49 (2000). There is also some debate about creating a procedure for the CESCR. The overwhelming majority of complaints go to the Human Rights Committee. Steiner and Alston suggest that this is because the ICCPR overlaps with many of the provisions of the Torture and Race Conventions and that it is more widely understood. See HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 777 (2d ed. 2000). The CEDAW Committee’s communications mechanism came into force in 2000 and that Committee is only beginning to hear communications.

51. ICESCR, *supra* note 8.

52. Office for the High Commission for Human Rights, *Treaty Body Database: Committee Members* (25 June 2004), *available at* www.unhchr.ch/tbs/doc.nsf/Committeefrset?OpenFrameSet [hereinafter Committee Members].

the reporting guidelines in 1990⁵³ and from that point sought disaggregated data from state parties. In addition, they also sought specific information regarding women in employment and equal pay, social security and maternity provisions, rights to and in marriage, women's access to food, women's health, and women's and girls' education.

The CESCR routinely addresses a number of issues pertinent to the question of women's enjoyment of their economic, social, and cultural rights. Recurring themes include: inequality in employment (including unequal pay, maternity leave, abuse of domestic workers, sexual harassment and social security provisions),⁵⁴ prostitution and sexual exploitation (especially of children);⁵⁵ trafficking;⁵⁶ domestic violence;⁵⁷ discrimination

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53. The Secretary-General, *Compilation of Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties*, Ch. II, U.N. Doc. HRI/GEN/2/Rev.1 (9 May 2001) [hereinafter Report Guidelines].
 54. See, e.g., *Committee on Economic, Social and Cultural Rights: Report on the Sixteenth and Seventeenth Sessions*, U.N. ESCOR, Comm. on Econ., Soc. & Cultural Rts., 54th Sess., Supp. No. 2, ¶ 214 (Dominican Republic), U.N. Doc. E/1998/22 (1998) [hereinafter *Report on the Sixteenth and Seventeenth Sessions*]; *Committee on Economic, Social and Cultural Rights: Report on the Eighteenth and Nineteenth Sessions*, U.N. ESCOR, Comm. on Econ., Soc. & Cultural Rts., 55th Sess., Supp. No. 2, ¶ 152 (Poland), U.N. Doc. E/1999/22 (1999) [hereinafter *Report on the Eighteenth and Nineteenth Sessions*]; *Committee on Economic, Social and Cultural Rights: Report on the Twentieth and Twenty-First Sessions*, U.N. ESCOR, Comm. on Econ., Soc. & Cultural Rts., 56th Sess., Supp. No. 2, ¶ 79 (Iceland), U.N. Doc. E/2000/22 (2000) [hereinafter *Report on the Twentieth and Twenty-First Sessions*]; *Committee on Economic, Social and Cultural Rights, Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, U.N. ESCOR, Comm. on Econ., Soc. & Cultural Rts., 57th Sess., Supp. No. 2, ¶ 383 (Australia), U.N. Doc. E/2001/22 (2001) [hereinafter *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*]; *Committee on Economic, Social and Cultural Rights, Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, U.N. ESCOR, Comm. on Econ., Soc. and Cultural Rts., 58th Sess., Supp. No. 2, ¶ 117f (China: Hong Kong Special Administrative Region), ¶ 288 (Bolivia), ¶¶ 335, 342 (Senegal) U.N. Doc. E/2002/22 (2002) [hereinafter *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*].
 55. *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 103 (Russia); *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 76 (Sri Lanka), ¶ 183 (Netherlands), ¶ 293 (Cyprus); *Report on the Twenty-Fifth, Twenty-Sixth, and Twenty-Seventh Sessions*, *supra* note 54, ¶ 89 (Venezuela), ¶ 587 (Japan).
 56. *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 145 (Poland), ¶ 319 (Germany), ¶ 475 (Belgium); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54 ¶ 121 (Italy), ¶ 345 (Kyrgyzstan); *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶ 89 (Venezuela), ¶ 317 (Togo), ¶ 492 (Ukraine).
 57. *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 238 (Dominican Republic), ¶ 297 (United Kingdom); *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 145 (Poland), ¶ 287 (Cyprus); *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54, ¶ 330 (Cameroon); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶ 120 (Italy), ¶ 162 (Egypt); *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶ 595 (Japan).

against women belonging to minority groups;⁵⁸ poorer education of women and higher illiteracy;⁵⁹ women's health (particularly maternal mortality, family planning provision, early pregnancy, availability of safe abortion and prevalence of female circumcision);⁶⁰ inequality in family law and inheritance (particularly different divorce rights, property and the existence of polygamy);⁶¹ poverty among women (especially single parents);⁶² transmission of nationality;⁶³ housing problems and forced evictions which women more commonly endure;⁶⁴ and traditions, customs and attitudes, including boy preference.⁶⁵

In the list of issues, various states are asked to supply information on their efforts to tackle the pay gap between women and men.⁶⁶ Details on protection available for battered women are sought.⁶⁷ The Japanese government's response to the comfort women is also questioned, including the matter of reparation.⁶⁸

58. *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 141 (Peru).

59. *Report on the Sixteenth and Seventeenth Session*, *supra* note 54, ¶ 267 (Iraq); *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54, ¶ 169 (Tunisia), ¶ 206 (Solomon Islands); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶ 166 (Egypt).

60. *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 339 (Azerbaijan); *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 114 (Nigeria); *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54, ¶¶ 305–39 (Armenia); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶¶ 155–58 (Egypt); *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶ 278 (Bolivia).

61. *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 231 (Dominican Republic); *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 116 (Nigeria); ¶ 173 (Tunisia).

62. *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 79 (Sri Lanka); ¶ 350 (Switzerland).

63. *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 160 (Poland); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶ 159 (Egypt), ¶ 234 (Jordan).

64. *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54, ¶ 121 (Nigeria); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶ 444 (Finland), ¶ 476 (Belgium).

65. *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 73 (Zimbabwe); *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54, ¶ 199 (Solomon Islands); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶ 233 (Jordan), ¶ 520 (Morocco); *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶ 200, 226 (Korea).

66. See, e.g., Committee on Economic, Social and Cultural Rights, List of issues: Iceland, U.N. ESCOR, ¶ 4, U.N. Doc. E/C.12/Q/ICE/2 (2003); Committee on Economic, Social and Cultural Rights, List of Issues: United Kingdom of Great Britain and Northern Ireland, U.N. ESCOR, ¶ 13, U.N. Doc. E/C.12/Q/UK/2, (2001).

67. Committee on Economic, Social and Cultural Rights, List of issues: Trinidad and Tobago, U.N. ESCOR, ¶ 23, U.N. Doc. E/C.12/Q/T&T/1 (2001).

68. Implementation of the International Covenant on Economic, Cultural and Social Rights, List of issues: Japan, U.N. ESCOR, ¶ 27, U.N. Doc. E/C.12/Q/JAP/1 (2000).

The concerns of the committee reach well into the private sphere. The state is considered accountable for both private (i.e. nonstate) acts of discrimination and for failures to guarantee equal rights for men and women even in the absence of an identifiably blameworthy act or actor. For example, the committee expressed concern at the lack of child daycare in Germany as a barrier to equal participation of women and men in paid employment.⁶⁹ The committee was also concerned with "traditional and stereotypical attitudes towards the roles and responsibilities of women and men in Jordanian society" and recommended that Jordan take all appropriate measures to eliminate all forms of discrimination including "comprehensive public education campaigns, to prevent and combat discriminatory treatment and negative societal attitudes in this regard, particularly within the family."⁷⁰

The committee has incorporated a gender perspective in a number of its general comments since the mid 1990s. The General Comment on older persons reminds state parties to take particular care to protect women who have spent their working lives in unremunerated caring work and may find themselves ineligible for traditional pensions.⁷¹ The General Comment on forced evictions and the right to housing notes the particular vulnerability of women, amongst other groups, where evictions are enforced.⁷²

Recent general comments also reflect this approach. In the General Comment on healthcare, the right to control reproduction and have access to ante and post-natal care is recognized.⁷³ States are also asked to incorporate a gender perspective in their healthcare policies. States are reminded that they are responsible for preventing third parties from coercing women into harmful practices, such as female circumcision.⁷⁴ The interdependency of human rights is reflected in General Comment 13 on the right to education. It begins by recognizing that "[e]ducation has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth."⁷⁵

69. *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶ 668.

70. *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶¶ 223, 249.

71. *The Economic, Social, and Cultural Rights of Older Persons*, General Comment No. 6, Comm. on Econ., Soc. & Cult. Rts., 13th Sess., ¶ 20, U.N. Doc. E/1996/22 (1996), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 34.

72. *Forced Evictions, and the Right to Adequate Housing*, General Comment No. 7, Comm. on Econ., Soc. & Cult. Rts., 16th Sess., ¶ 10, Annex IV at 113, U.N. Doc. E/1998/22 (1997), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 45.

73. General Comment No. 14, *supra* note 43, ¶ 14,

74. *Id.* ¶ 35.

75. *The Right to Education*, General Comment No. 13, Comm. on Econ., Soc. & Cult. Rts., 21st Sess., ¶ 1, U.N. Doc. E/C.12/1999/10(1999), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 70.

Further, General Comment 13 reiterates that positive measures to promote *de facto* equality of enjoyment of the right to education are compatible with the Covenant.⁷⁶

The committee continues to work on a General Comment on Article 3 of the Covenant, which calls for equal enjoyment of rights for men and women; however, this is proving to be a laborious process. In 2002, the CESCR Committee met with members of the CEDAW Committee in order to produce a draft general comment. Although the joint draft never came to fruition, the CESCR continues to work on its own general comment.

In general, the CESCR is concentrating on the equal enjoyment of human rights for women and men. Thus, state liability does not depend upon the source or cause of any inequality; states are responsible for fulfilling human rights of all citizens.

2. Human Rights Committee (HRC)

The ICCPR contains nondiscrimination provisions similar to that of its sister, the ICESCR.⁷⁷ The recognition of women's human rights is further elaborated in Article 26 (guaranteeing equality before the law), Article 4 (ensuring non-discrimination during states of emergency), Article 6 (prohibiting a death penalty to be executed upon a pregnant woman), Article 23, (requiring consent of both parties to marriage), and Article 24 (the right for each child to have the protection of the state, a name, and a nationality).

The HRC, like the CESCR, suffers from a shortage of female members on the committee. Of the eighteen current members, only three are female.⁷⁸

The HRC amended its reporting guidelines in 1995 to require state parties to provide details of the "equal enjoyment" of civil and political rights for men and women in their state reports.⁷⁹ During the past few years, the HRC has considered gender dimensions with regard to a number of covenant rights. They have also ignored the traditional public-private distinction and required states to guarantee (that is, to fulfill) human rights for all citizens. At the first level, to respect human rights, the HRC has challenged states on laws that discriminate against women, such as the age for legal marriage, polygamy, marital property, discrimination in nationality law and inheritance law, discrimination against women seeking divorce, and marriage as a defense to rape.⁸⁰ Other state action that the HRC noted

76. *Id.* ¶ 30.

77. ICCPR, *supra* note 8, arts. 2, 3.

78. Committee Members, *supra* note 52.

79. Report Guidelines, *supra* note 53, Ch. III.

80. See, e.g., *Human Rights Committee, Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, U.N. GAOR, 53rd Sess. Supp. No. 40, ¶ 122 (Sudan), ¶ 189 (Cyprus),

as failing to respect human rights included the criminalization of abortion,⁸¹ as well as rape and sexual abuse in prisons.⁸² Relating to the second level, a failure to protect human rights from private violation, the committee has raised concerns about domestic violence and public support for victims,⁸³ free movement of women,⁸⁴ enforcement of dress codes,⁸⁵ trafficking of women,⁸⁶ murder and rape of women in armed conflict,⁸⁷ and sexual abuse of children, including child pornography.⁸⁸ Failures to fulfill human rights

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- ¶ 396 (Tanzania), U.N. Doc. A/53/40 (1998) [hereinafter *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*]; *Human Rights Committee, Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, U.N. GAOR, 54th Sess. Supp. No. 40, ¶ 212 (Chile), U.N. Doc. A/54/40 (1999) [hereinafter *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*]; *Human Rights Committee, Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, U.N. GAOR, 55th Sess. Supp. No. 40, ¶ 323 (Mongolia), ¶ 400 (Kyrgyzstan), U.N. Doc. A/55/40 (2000) [hereinafter *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*]; *Human Rights Committee, Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, U.N. GAOR, 56th Sess. Supp. No. 40 ¶ 73(15) (Denmark), U.N. Doc. A/56/40 (2001) [hereinafter *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*]; *Human Rights Committee, Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*, U.N. GAOR, 57th Sess. Supp. No. 40, ¶ 83(7) (Yemen), U.N. Doc. A/57/40 (2002) [hereinafter *Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*].
81. See, e.g., *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 61 (Senegal), ¶ 284 (Ecuador); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 211 (Chile), ¶ 280 (Costa Rica); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 100 (Morocco); *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80, ¶ 74(14) (Argentina), ¶ 76(20) (Peru).
 82. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 404 (Tanzania); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 161 (Japan).
 83. See, e.g., *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 80 (Jamaica), ¶ 168 (Lithuania); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 172 (Japan); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 365 (Guyana); *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80, ¶ 74(15) (Argentina); *Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*, *supra* note 80, ¶ 79(7) (Sweden).
 84. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 125 (Sudan).
 85. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 133 (Sudan).
 86. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 168 (Lithuania), ¶ 312 (Israel); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 171 (Japan), ¶ 308 (Cambodia); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 403 (Kyrgyzstan).
 87. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 354 (Algeria); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 271 (Congo).
 88. *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 93 (Belgium), ¶ 287 (Costa Rica), ¶ 327 (Mexico); *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80, ¶ 77(24) (Venezuela).

that were recognized by the committee included violations of women's human rights to health (particularly maternal mortality, forced sterilizations, access to contraception and information on family planning, sex-selective abortion, and female circumcision),⁸⁹ inequality in employment (including the gender pay gap, sexual harassment, and mandatory pregnancy testing),⁹⁰ inequality in education,⁹¹ inequality in public appointments,⁹² and poverty amongst women, especially single mothers.⁹³ In many cases, gender concerns precede the more traditional areas of civil and political concern.⁹⁴

The HRC is interested in results, not just formal equality. While they note the lack of universal suffrage in Kuwait as a failure to respect women's human rights to vote, they are also concerned with underrepresentation of women in countries where women and men have formally equal rights to vote and stand for election. They include recommendations for positive action to improve the representation of women in public life.⁹⁵ No-fault

89. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 121 (Sudan); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 323 (Mongolia).

90. *See, e.g., Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 263 (Finland); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 62 (Iceland), ¶ 110 (Armenia), ¶ 329 (Mexico); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 249 (Hong Kong); *Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*, *supra* note 80, ¶ 76(9) (Switzerland). From these examples, it becomes apparent that the distinction between the second and third level of human rights is not a clear one. Sexual harassment is a secondary level violation of human rights—i.e., it is a direct assault on human rights from a private citizen. It may even be of the primary level, if the violator is a state employee. Yet, it also has repercussions at the third level: women do not enjoy their rights to equal pay in employment. A proportion of the pay gap is attributable to direct discrimination and harassment, however a large part is a social result of a number of compounding factors, for which no single person can be held “blameworthy.”

91. *See, e.g., Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 380 (Macedonia); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 99 (Morocco), ¶ 249 (Hong Kong).

92. *See, e.g., Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 132 (Sudan); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 110 (Armenia); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 363 (Guyana); *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80, ¶ 77(21) (Venezuela), ¶ 80(21) (Croatia), ¶ 83(12) (Czech Republic); *Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*, *supra* note 80, ¶ 75(15) (United Kingdom).

93. *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 242 (Canada); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 401 (Kyrgyzstan).

94. *See, e.g., Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶¶ 203–33 (Zimbabwe).

95. *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶¶ 460–61 (Kuwait); *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80, ¶ 83(12) (Czech Republic).

inequalities, such as the gender pay gap in Nordic countries⁹⁶ and the density of poverty amongst single mothers, are also addressed by the committees.⁹⁷ The private sphere offers no smokescreen to domestic violence.⁹⁸

In 2000, the HRC issued a general comment on Article 3, the obligation to ensure equal enjoyment of civil and political rights for men and women.⁹⁹ This comment superseded an earlier version from 1981. The committee used this comment to expand upon their individual discussions with the state parties by illustrating the content of particular covenant rights, including examples of how the covenants might be violated. For instance, high maternal mortality was suggested as an example of a violation of the right to life;¹⁰⁰ rape and domestic violence as violations of the right to be free from torture or cruel, inhuman, and degrading treatment;¹⁰¹ trafficking as a violation of the provision against slavery;¹⁰² paternal and marital control as a breach of freedom of movement;¹⁰³ and laws regarding the weight of evidence given by women and men in the context of the right of access to justice.¹⁰⁴ The need for positive measures to ensure *de facto* equality was reiterated in the comment.¹⁰⁵

Similarly, other recent general comments have also been gender sensitive. In General Comment 27 on Freedom of Movement, the committee acknowledged the responsibility of state parties to ensure that freedom of movement is not restricted by private interference.¹⁰⁶ In the comment, the committee referred to considerations of state reports where it had found requirements for consent of a male relative or male escort to have violated the right of freedom of movement.¹⁰⁷

96. *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 263 (Finland); *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 62 (Iceland).

97. *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80, ¶ 242 (Canada).

98. See generally, *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80; *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80; *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80; *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80; *Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*, *supra* note 80.

99. HRC General Comment No. 28, *reprinted in Compilation of General Comments 2003* General Comments, *supra* note 43.

100. *Id.* ¶ 10.

101. *Id.* ¶ 11.

102. *Id.* ¶ 12.

103. *Id.* ¶ 16.

104. *Id.* ¶ 18.

105. *Id.* ¶ 3.

106. HRC General Comment No. 27, *reprinted in Compilation of General Comments 2003*, *supra* note 43, ¶ 6.

107. *Id.* ¶ 18.

Like the CESCR, the HRC concentrates on equal enjoyment of rights for women and men. Neither the location of inequality, be it public or private, nor the cause, whether state, private actor or social circumstances, is relevant. The state is asked to guarantee enjoyment of civil and political rights to all people.

3. *Committee on the Rights of the Child (CRC)*

The Convention on the Rights of the Child¹⁰⁸ is a relatively recent treaty. A commitment to the equal enjoyment of rights for boys and girls is present throughout, but explicitly guaranteed in Article 2(1). The Convention consistently incorporates gender inclusive language. The common responsibility of mothers and fathers for the upbringing of their children is explicitly recognized.¹⁰⁹ The Convention also notes the importance of including children within the discussion of women's human rights. For instance, states are required to ensure adequate ante and post-natal healthcare for mothers, to promote education regarding breast feeding, and to make available family planning education and facilities.¹¹⁰

The committee has nine male and nine female members.¹¹¹ State report requirements include requests for all information to be disaggregated by sex. In addition, the requirements call for information on efforts to prevent discrimination both in law and in practice, particularly discrimination against girls,¹¹² as well as reports regarding maternal healthcare.

In discourse with the state parties, the CRC routinely goes beyond the traditional division of public and private, asking states about violations of children's rights such as female circumcision,¹¹³ forced and early marriage,¹¹⁴ early pregnancy,¹¹⁵ sexual abuse and other violence inside of the

108. Children's Convention, *supra* note 32.

109. *Id.* art. 18.

110. *Id.* art. 24.

111. Committee Members, *supra* note 52.

112. Report Guidelines, *supra* note 53, Chapter VII.

113. See, e.g., *Committee on the Rights of the Child, Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, U.N. GAOR, Comm. on the Rights of the Child, 53d Sess., Supp. No. 41, ¶ 298 (Nigeria), ¶ 739 (Ghana), U.N. Doc. A/53/41 (1998) [hereinafter *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*]; *Committee on the Rights of the Child, Report on the Thirty-First Session*, U.N. Comm. on the Rights of the Child, 31st Sess., ¶ 266 (Sudan), U.N. Doc. CRC/C/121 (2002) [hereinafter *Report on the Thirty-First Session*]; *Committee on the Rights of the Child, Report on the Thirty-Third Session*, U.N. Comm. on the Rights of the Child, 33d Sess., ¶ 27 (Eritrea), U.N. Doc. CRC/C/132 (2003) [hereinafter *Report on the Thirty-Third Session*].

114. See, e.g., *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113, ¶ 72 (Zimbabwe), ¶ 238 (Cyprus); *Report on the Thirty-First Session*, *supra* note 113, ¶ 243 (Sudan).

115. See, e.g., *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113, ¶ 339 (Uruguay), ¶ 467 (Bulgaria), ¶ 539

family,¹¹⁶ and trafficking and prostitution of children.¹¹⁷ Discriminatory attitudes towards girls are a subject of concern and a focus for state action.¹¹⁸ *De facto* access to education for boys and girls is required.¹¹⁹

Further, children's rights are to be fulfilled; accordingly, the committee holds states responsible for abuses that are caused neither by the state nor by some identifiable individual. For example, Nordic countries are asked to address the prevalence of eating disorders among children to guarantee the right to enjoyment of health.¹²⁰

The CRC plays a role within the broader UN human rights treaty framework by making references where appropriate to the other Conventions and to the work of their respective committees.¹²¹

The general comments of the CRC reflect a gender mainstreamed approach. For example, the first recommendation on education asks states to ensure that the school curriculum is gender sensitive and that children are safe and welcome in schools.¹²² The third comment on children, in the shadow of HIV and AIDS, recognizes particular difficulties for girls emanating from cultural attitudes towards girls and sexuality. Such attitudes limit access to education and tools to prevent HIV and stigmatize infected girls more severely.¹²³

(Panama); *Committee on the Rights of the Child, Report on the Thirtieth Session*, U.N. Comm. on the Rights of the Child, 30th Sess., ¶ 148 (Niger), U.N. Doc. CRC/C/118 (2002) [hereinafter *Report on the Thirtieth Session*].

116. See, e.g., *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113, ¶ 50 (Lebanon), ¶ 172 (Nepal), ¶ 439 (Slovenia), ¶ 657 (New Zealand); *Report on the Thirty-Third Session*, *supra* note 113, ¶ 496 (Morocco).

117. See, e.g., *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113, ¶ 116 (China), ¶ 421 (Mauritius), ¶ 541 (Panama), ¶ 585 (Myanmar); *Committee on the Rights of the Child, Report on the Thirty-Second Session*, U.N. Comm. on the Rights of the Child, 32d Sess., ¶ 452 (Haiti), U.N. Doc. CRC/C/124 (2003) [hereinafter *Report on the Thirty-Second Session*].

118. See, e.g., *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113, ¶ 267 (Morocco), ¶ 622 (Syria), ¶ 782 (Bangladesh), ¶ 881 (Algeria).

119. See, e.g., *id.* ¶ 150 (Nepal), ¶ 301 (Nigeria), ¶ 503 (Egypt), ¶ 740 (Ghana); *Report on the Thirty-Third Session*, *supra* note 113, ¶ 207 (Zambia).

120. *Committee on the Rights of the Child, Report on the Twenty-Fourth Session*, U.N. Comm. on the Rights of the Child, 24th Sess., ¶ 68, U.N. Doc. CRC/C/108 (2001) [hereinafter *Report on the Twenty-Fourth Session*].

121. See, e.g., the Committee refers to the work of CEDAW in the context of child and maternal poverty: *Committee on the Rights of the Child, Report on the Thirty-Fourth Session*, U.N. Comm. on the Rights of the Child, 34th Sess., ¶¶ 91, 93 (Canada), U.N. Doc. CRC/C/133 (2004) [hereinafter *Report on the Thirty-Fourth Session*]. The Committee refers to the work of the HRC and the CESCR in the context of the problem of domestic violence. *Id.* ¶ 556.

122. *The Aims of Education*, General Comment No. 1, U.N. Comm. on the Rights of the Child, ¶ 10, U.N. Doc. CRC/GC/2001/1 (2001).

123. General Comment No. 3, *supra* note 45, ¶ 6.

The CRC has also recently developed and issued two optional protocols. Each came into force in 2002, the first on “the sale of children, child prostitution, and child pornography”¹²⁴ and the other on “the involvement of children in armed conflict.”¹²⁵

Trafficking was chosen as a subject for a legally binding treaty obligation, targeting the vulnerable position of girls, which is specifically recognized in the preamble. This protocol is relevant for boys and girls trafficked for sexual exploitation as well as other forms of abuse, such as child labor, trafficking of children’s organs, or improper adoption.

The body of the Child Soldiers Protocol is mainly concerned with the recruitment of children to combat positions. However, the risk of child civilians in times of conflict is recognized in the preamble. Many of the articles are also relevant to child recruitment to noncombatant positions, such as domestic service or sexual exploitation within the armed forces.

The child trafficking, prostitution, and pornography protocol recognizes a pernicious and pervasive abuse of children’s rights, which predominantly victimizes girls. By making this the object of an international human rights treaty, girls’ rights are formulated as legal guarantees at the heart of international human rights law.

4. Committee on the Elimination of Racial Discrimination (CERD)

The text of the CERD¹²⁶ does not specifically refer to gender equality in its application. Nonetheless, as a human rights—rather than a men’s rights—treaty it can be assumed to apply to all humans. Gender perspectives on racial discrimination must be taken into account by the committee if discrimination on the grounds of race against women and men is to be achieved.

Intersectional discrimination was one of the key themes at the World Conference Against Racism in South Africa in 2001. Gender differences in experiences of discrimination, such as racially motivated sexual violence, trafficking, participation in public life, and domestic violence, were major

124. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *adopted* 25 May 2000, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Supp. No. 49 at 6, Annex II, U.N. Doc. A/54/49, Vol. III (2000) (*entered into force* 18 Jan. 2002).

125. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, *adopted* 23 May 2000, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Supp. No. 49 at 7, Annex I, U.N. Doc. A/54/49, Vol. III (2000) (*entered into force* 12 Feb. 2002).

126. Race Convention, *supra* note 33.

concerns of the conference.¹²⁷ States are asked to integrate a gender perspective within their efforts to eliminate racism and racial discrimination.¹²⁸

CERD, like the HRC and the CESCRC boasts something of a shortage of female committee members; of eighteen members, only two are women.¹²⁹

CERD has historically failed to pay a great amount of attention to racial discrimination against women, preferring instead to leave these experiences to the CEDAW Committee. As such, they were perceived as women's problems, not racial minority problems. However, the committee's work has suggested a noticeable change in its approach since 1999. At the fifty-fifth session, CERD amended its reporting guidelines for state reports, including a request for all data to be disaggregated by sex and for descriptions of the particular factors that might make it difficult to guarantee the equal rights of women and men to live free from racial discrimination.¹³⁰ This information, the committee recognized, was essential for the committee to fully appreciate relevant differences in the impact and form of racial discrimination. This change represented an acceptance among the committee members of their responsibility to ensure that human rights are enjoyed by women to the same extent as men.

Prior to this change, CERD had been less than sensitive to intersectional discrimination or forms of discrimination particularly pertinent to women's experiences. In 1996, the committee issued a general recommendation on refugees and displaced persons and in 1997, a recommendation on the rights of indigenous peoples. In neither of these recommendations were the specific gender dimensions of these problems acknowledged.¹³¹ In consideration of the Yugoslavian State Reports in 1998, the representatives were not asked about the systematic rape and torture of women civilians, something that was, by then, well documented and the subject of war crimes prosecutions.¹³²

The committee also employs an "early warning procedure." The

127. *Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, U.N. Doc. A/CONF.189/12 (2002) [hereinafter *World Conference on Racism*]. With particular attention to Ch. I, at 26–66, ¶ 18 (domestic violence against indigenous women), ¶ 31 (women migrant workers), ¶ 53 (empowerment of women and full participation in public and private life), ¶ 54 (sexual violence), ¶ 63 (trafficking).

128. See *id.* Ch. I, at 26–66 (¶¶ 50, 59, 97).

129. Committee Members, *supra* note 52.

130. Report Guidelines, *supra* note 53, Ch. IV.

131. General Recommendation No. 22, *Refugees and Displaced Persons*, Comm. on the Elimination of Racial Discrimination, 49th Sess., annex VIII, 126, U.N. Doc. A/51/18 (1996), reprinted in *Compilation of General Comments 2003*, *supra* note 43, at 211.

132. *Committee on the Elimination of Racial Discrimination, Summary Record of the 1260th Meeting*, 52nd Sess., Agenda Item 7, U.N. Doc. CERD/C/SR.1260 (1998).

committee undertakes immediate investigations where there is suspected gross violations of the convention norms. The committee may issue a preliminary decision stating that it will investigate, usually because the relevant state reports have not been received. After an investigation, it issues decisions, which are usually statements of discontent, indicating concern that the convention has been breached and seeking a guarantee from the state party concerned that any violations will immediately cease. Decisions of the committee do not so far illustrate a gender mainstreamed approach. Despite the allegations of systematic rape during the conflicts in Rwanda and Yugoslavia, these issues were not addressed by the committee.¹³³ The investigation into the Sudan, with regard to allegations of slavery, did note the particular dangers to women and children.¹³⁴

To aid transparency, CERD has a list of conditions that may lead it to apply the early warning procedure.¹³⁵ These factors may apply to some cases of sexually motivated racial discrimination. Nonetheless, the committee would be well advised to reassess the early warning criteria in response to its own General Recommendation XXV by gender mainstreaming.¹³⁶

Gender issues were introduced into the dialogues with state parties

133. *Report of the Committee on the Elimination of Racial Discrimination*, 54th & 55th Sess., U.N. GAOR, Comm. on the Elimination of Racial Discrimination, 54th Sess., Supp. No. 18, U.N. Doc. A/54/18 (1999).

134. *Id.* Ch. II A 5(54) (Decision on the Sudan).

135. *Committee on the Elimination of Racial Discrimination, Report on the Sixtieth and Sixty-First Sessions*, U.N. GAOR, 57th Sess., Supp. No. 18, ¶¶ 15–19, U.N. Doc. A/57/18 (2002) [hereinafter *Report on the Sixtieth and Sixty-First Sessions*].

(a) Early-warning measures: these would be aimed at addressing existing problems so as to prevent them from escalating into conflicts and would also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred. In that connection, criteria for early warning could include some of the following concerns: the lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention; inadequate implementation of enforcement mechanisms, including the lack of recourse procedures; the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials; a significant pattern of racial discrimination evidenced in social and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities;

(b) Urgent procedures: these would aim at responding to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Possible criteria for initiating an urgent procedure could include the presence of a serious, massive or persistent pattern of racial discrimination; or that the situation is serious and there is a risk of further racial discrimination.

Id. ¶ 17.

136. General Recommendation No. XXV., Gender Related Dimensions of Racial Discrimination, 2000, Committee on the Elimination of Racial Discrimination, 56th Sess., U.N. Doc. A/55/18, annex V at 152 (2000), *reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI.6 at 214 (2003).

from 1999, for example, by examining conditions for and discrimination against female minorities.¹³⁷ Concerns were also expressed at allegations of forced sterilization of native women in Peru.¹³⁸

In 2000, CERD devoted a recommendation to intersectional discrimination, recognizing the distinct shapes of disadvantage that occur when race and sex collide:

The Committee notes that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgment of the different life experiences of women and men, in areas of both public and private life.¹³⁹

In this recommendation, they also expressed concern about racially-motivated sexual violence, coercive sterilization of indigenous women, and abuse of domestic workers.¹⁴⁰ Some gender specific *results* of racially motivated violence that were recognized in the recommendation were pregnancy, ostracism of rape victims, and lack of access to justice owing to sex discrimination within the legal system.¹⁴¹ These concerns cross the boundaries of public and private, addressing both state and nonstate action. The committee also promised to be more sensitive to “gender factors or issues” where these coincide to complicate or alter the nature of race discrimination, and to use gender inclusive language.¹⁴² States are now required to provide in their reports data disaggregated by sex for consideration.¹⁴³ CERD specifies that its methodology will in the future be sensitive to the “gender-related dimensions of racial discrimination” by addressing *inter alia*: (1) the form and manifestation of racial discrimination; (2) the circumstances in which racial discrimination occurs; (3) the consequences of racial discrimination; and (4) the availability and accessibility of remedies and complaint mechanisms for racial discrimination.¹⁴⁴

Following this recommendation, the committee’s practice has changed

137. *Report of the Committee on the Elimination of Racial Discrimination*, *supra* note 133, ¶¶ 424, 468.

138. *Id.* ¶ 155.

139. General Recommendation No. XXV, *Gender Related Dimensions of Racial Discrimination*, Comm. on the Elimination of Racial Discrimination, 56th Sess., annex V, 152, U.N. Doc. A/55/18 (2000), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 214.

140. *Id.* ¶ 2.

141. *Id.* ¶ 2.

142. *Id.* ¶ 4.

143. *Id.* ¶ 6.

144. *Id.* ¶ 5.

and it is now more sensitive to gender issues in dialogue with state parties. For example, the committee has questioned state representatives about forced sterilization of minority women,¹⁴⁵ gender discrimination in laws governing nationality,¹⁴⁶ trafficking of women,¹⁴⁷ education,¹⁴⁸ and healthcare of minority women.¹⁴⁹ Again, these themes address both state and nonstate actions. The General Recommendation on Discrimination against Roma also attends to the particular problems for Roma women and girls, especially in education and health.¹⁵⁰ However, gender mainstreaming has been far from fully implemented, and references to forms of racial discrimination against women remain sporadic. This, unfortunately, does not reflect a low propensity of racial discrimination against women in practice.

CERD also addresses the failure to ensure the human rights of minorities, irrespective of whether a person or institution can be found to blame. CERD recognizes the duties of state parties to fulfill human rights as they regard, for example, equal access to healthcare, housing, and education.¹⁵¹

The general recommendation on gender-related dimensions of racial discrimination¹⁵² is a positive development for CERD. It is a recommendation, however, from which the committee has almost as much to learn as do the state parties to whom it is addressed. CERD should fully integrate the concerns raised and the methodology proposed into every aspect of its work.

5. Committee Against Torture (CAT)

As already mentioned, CAT must base its agenda upon a Convention that contains an unfortunate gender-blindness in its very definitions. Torture is defined as:

145. *Committee on the Elimination of Racial Discrimination, Report on the Fifty-Eighth and Fifty-Ninth Sessions*, U.N. GAOR, 56th Sess., Supp. No. 18, ¶ 417 (Vietnam), U.N. Doc. A/56/18 (2001) [hereinafter *Report on the Fifty-Eighth and Fifty-Ninth Sessions*].

146. *Id.* ¶ 288 (Egypt).

147. *Id.* ¶ 75 (Bangladesh), ¶ 250 (China).

148. *Report of the Committee on the Elimination of Racial Discrimination*, *supra* note 133, ¶ 298.

149. *Committee on the Elimination of Racial Discrimination, Report on the Fifty-Sixth and Fifty-Seventh Sessions*, U.N. GAOR, 55th Sess., Supp. No. 18, ¶ 265 (Sweden), U.N. Doc. A/55/18 (2000) [hereinafter *Report on the Fifty-Sixth and Fifty-Seventh Sessions*].

150. CERD General Recommendation XXVII, *reprinted in Compilation of General Comments 2003*, *supra* note 43.

151. See, e.g., *Report on the Fifty-Sixth and Fifty-Seventh Sessions*, *supra* note 149, ¶ 265 (Slovakia); *Report on the Fifty-Eighth and Fifty-Ninth Sessions*, *supra* note 14, ¶ 398 (United States); *Report on the Sixtieth and Sixty-First Sessions*, *supra* note 135, ¶ 97 (Croatia), ¶ 422 (New Zealand).

152. General Recommendation No. 25, CERD, *supra* note 138.

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁵³

This definition, therefore, takes a narrow view of torture as only those acts in which the state is involved, usually directly, and indirectly only if a public official has, at a minimum, acquiesced. Private violence, particularly that within the family, which habitually victimizes women, is excluded from this definition.¹⁵⁴

Nonetheless, although the states' obligations to prohibit and prevent torture are the most stringent, there are also obligations assumed in the Convention to prevent other forms of ill treatment, including at the hands of private individuals: the state party "shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture."¹⁵⁵ The Convention includes an obligation to ensure speedy investigations into torture or other ill treatment.¹⁵⁶

The committee, like most of its sisters, consists of a heavily male dominated membership, with only one female committee member of ten members.¹⁵⁷

CAT has been the most conservative of all of the treaty committees when it comes to guaranteeing that convention rights apply equally to women and men. There has been no formal request for disaggregated data in the state report requirements,¹⁵⁸ although the committee did begin to ask states about this during consideration of the reports from 2000 onwards.¹⁵⁹

A perusal of the lists of issues, summary records, and concluding comments suggests that the committee's work has largely focused on

153. Torture Convention, *supra* note 6, art. 1(1) (emphasis added).

154. See, e.g. Kathleen Mahoney, *Theoretical Perspectives on Women's Human Rights and Strategies for their Implementation*, 21 BROOK J. INT'L L. 799, 847 (1996); Chinkin, *A Critique of the Public/Private Dimension*, *supra* note 17, at 389.

155. Torture Convention, *supra* note 6, art. 16; see also Andrew Byrnes, *The Convention Against Torture*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 4, at 187.

156. Torture Convention, *supra* note 6, arts. 12, 13.

157. Committee Members, *supra* note 52.

158. Report Guidelines, *supra* note 53, Ch. VI.

159. *Report of the Committee Against Torture (Twenty-Third and Twenty-Fourth Sessions)*, U.N. GAOR, 55th Sess., Supp. No. 44, ¶¶ 117, 130 (China), ¶ 118(d) (Netherlands), ¶ 39(l) (Armenia), ¶ 88(f) (Greece), U.N. Doc. A/55/44 (2000) [hereinafter *Report on the Twenty-Third and Twenty-Fourth Sessions*].

traditional state torture, although this focus has not been exclusive. The committee has expressed concern about inter-prisoner violence,¹⁶⁰ about racism and xenophobia in society,¹⁶¹ and about a "deep-rooted culture of violence" in Guatemala.¹⁶² These are private issues in the sense of not being directly attributable to acts of the state and state actors. Notable by its absence, however, is any discussion of violence against women in the overwhelming majority of concluding comments. This has only very recently changed.

Threats of and actual sexual violence against women as a means to punish male relatives or to extract information from them has been a concern of CAT with reference to Tunisia and Egypt.¹⁶³ However, while these actions are acknowledged as violations of women's human rights to be free from torture and cruel, inhuman, or degrading treatment, the recommendation to Egypt does not suggest a full appreciation of the problem: "[CAT] also recommends that effective steps be taken to protect women from threats of sexual abuse by police and officers of the State Security Intelligence as a means of obtaining information from them."¹⁶⁴ The wording is such that it appears CAT is concerned that sexual abuse is used to extract information. CAT should go much further and recognize that sexual abuse constitutes cruel, inhuman, and degrading treatment *per se* and is therefore a violation of the convention, whatever its purpose.

CAT had recognized that rape was a form of torture in the summary record; however, this did not reach the concluding comments, nor did it, therefore, reach the annual report.¹⁶⁵

In consideration of the Yugoslavian State Report in 1999, allegations submitted by nongovernmental organizations were put to the delegation, but these did not include questions or comments about the systematic detention and rape of women.¹⁶⁶

160. *Id.* ¶ 179 (United States), ¶ 187 (Netherlands).

161. *Concluding Observations of the Committee Against Torture (Twenty-Fifth and Twenty-Sixth Sessions)*, U.N. GAOR, 56th Sess., Supp. No. 44, ¶ 113(a) (Czech Republic), U.N. Doc. A/56/44 (2001) [hereinafter *Report on the Twenty-Fifth and Twenty-Sixth Sessions*].

162. *Concluding Observations of the Committee Against Torture: Guatemala (Twentieth Session)*, U.N. GAOR, 53d Sess., Supp. No. 44, ¶ 163–64, U.N. Doc. A/53/44 (1998).

163. *Concluding Observations of the Committee Against Torture: Egypt, (Twenty-Second Session)*, U.N. GAOR, 54th Sess., Supp. No. 44, ¶¶ 209, 212, U.N. Doc. A/54/44 (1999); *Concluding Observations of the Committee against Torture: Tunisia (Twenty-First Session)*, U.N. GAOR, 54th Sess., Supp. No. 44, ¶¶ 99–100, U.N. Doc. A/54/44 (1998).

164. *Concluding Observations of the Committee Against Torture: Egypt (Twenty-Second Session)*, *supra* note 163, ¶ 212.

165. *Summary Record of the First Part of the 382nd Meeting: Egypt*, Committee Against Torture, 15 Nov. 1999, 22d Sess., Agenda Item 5, ¶ 19, U.N. Doc. CAT/C/SR.382 (1999).

166. *Summary Record of the First Part (Public) of the 349th Meeting: Yugoslavia*, Committee Against Torture, 10 June 1999, 21st Session, U.N. Doc. CAT/C/SR.349 (1998).

While the committee members discussed domestic violence and the high proportion of girl orphans in China, this concern again appeared only in the summary record and did not make the concluding comments or annual report.¹⁶⁷ "Concern" was expressed with regard to the implementation of China's family planning policy, but no specific recommendation was made.¹⁶⁸

The Torture Convention has a built in emergency inquiry procedure, which enables CAT committee members to make on-site visits to investigate "systematic" reports of torture in a state party.¹⁶⁹ No inquiries have been conducted in response to allegations of systematic violations of women's human rights, for example, in the former Yugoslavia. Those inquiries that have been conducted have not been sensitive to the particular vulnerabilities of women. The 2001 inquiry into allegations of torture in Peru included a prison visit and, although it is noted that the prison held both male and female prisoners, no comments regarding the situation of the female prisoners were made.¹⁷⁰ The 2002 Sri Lankan inquiry addressed only allegations of torture against men.¹⁷¹ The 2003 investigation in Mexico focused on the actions of the police and army. While there was a reference to an alleged rape¹⁷² and to a woman forced to watch her husband being tortured,¹⁷³ the bulk of the inquiry concerned male victims of torture. In all cases, only alleged torture by a state official was considered.

A more gender friendly perspective appears intermittently from 2002, although it remains far from systematic. Data disaggregated by sex is sought as a matter of course. Zambia was challenged about the degree of domestic violence against women;¹⁷⁴ Russia was confronted with allegations of violence against female prisoners;¹⁷⁵ and the Ukraine was asked about human trafficking.¹⁷⁶ More importantly, in all these cases, the committee recommended state action to address these problems. For example, on

167. Committee Against Torture, Summary Record of the 416th Meeting, 24th Session, Agenda Item 7, ¶ 11, U.N. Doc. CAT/C/SR.416 (2000).

168. *Report on the Twenty-Third and Twenty-Fourth Sessions*, *supra* note 159, ¶ 122.

169. Torture Convention, *supra* note 6, art. 20.

170. *Report on the Twenty-Fifth and Twenty-Sixth Sessions*, *supra* note 161, ¶¶ 144–93, in particular ¶ 180.

171. Report of the Committee Against Torture (Twenty-Seventh & Twenty-Eighth Sess.), U.N. GAOR, 57th Sess., Supp. No. 44, ¶¶ 123–95, U.N. Doc. A/57/44 (2002) [hereinafter *Report on the Twenty-Seventh and Twenty-Eighth Sessions*].

172. *Report on Mexico Produced by the Committee Under Article 20 of the Convention, and a Reply from the Government of Mexico*, Comm. Against Torture, 30th Sess., ¶ 90, U.N. Doc. CAT/C/75 (2003).

173. *Id.* ¶ 25.

174. *Report on the Twenty-Seventh and Twenty-Eight Sessions*, *supra* note 171, ¶¶ 65(c), 66(h).

175. *Id.* ¶¶ 92(e), 94(f).

176. *Id.* ¶ 58(m).

trafficking, the committee recommended that the Ukraine “[t]ake effective measures to prevent and punish trafficking of women and other forms of violence against women.”¹⁷⁷

This is significant for two main reasons. First, there is a recognition that trafficking of women is a form of violence. Second, the discussion of this in the context of the Torture Convention labels trafficking as an instance of cruel, inhuman, and degrading treatment.

CAT may hear communications from individuals where they allege a violation of the Convention by a state party which has agreed to give them this authority.¹⁷⁸ The majority of communications concern asylum seekers challenging deportation or extradition to states where they claim they will face torture. CAT has issued a general comment on this matter which specifies that they will only hear communications arising from circumstances where the torture threatened will be conducted by a public official. The “criterion of ‘a consistent pattern or gross, flagrant or mass violations of human rights’ refers only to violations by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.”¹⁷⁹ This unfortunately appears to exclude from their consideration any communications from those facing a genuine risk of private violence, including gender based violence, such as female circumcision or honor killing.

Until recently, CAT has restricted its discussions with state parties to their obligations to respect human rights within the public sphere. However, change is slowly beginning to show. For example, by addressing trafficking, CAT acknowledges states’ responsibilities to protect human rights from private interference. The subject matter of the Torture Convention is such that violations can only conceivably be deliberate, meaning that someone will always be to blame, whether they are a state actor or a private actor. For that reason, violations will always be at the first and second levels, either a failure of the state to respect human rights or a failure to protect human rights.

The Committee Against Torture has more work to do, but it is slowly catching up. CAT should consider a specific focus on gender issues in relation to torture and cruel and inhuman treatment, along the line of CERD’s General Recommendation on intersectional discrimination, for instance, a general recommendation on torture, cruel, inhuman and degrading treatment against women. It is especially relevant to consider

177. *Id.*

178. Torture Convention, *supra* note 6, art. 22.

179. *Report of the Committee Against Torture*, U.N. GAOR, Comm. Against Torture, 53d Sess., Supp. No. 44, ¶ 3, annex IX at 52, U.N. Doc. A/53/44 (1998), *reprinted in Compilation of General Comments 2003*, *supra* note 43, at 279.

rape as a weapon of war, but also to highlight and challenge pervasive state tolerance for domestic violence against women in the private sphere.

B. General Progress and Developments

To varying degrees among the treaty bodies, there have been some developments in efforts to gender mainstream. Most notably, the committees have cut through the public-private divide to address violations of women's human rights wherever they occur. Also, by focusing on the failure to fulfill human rights as a cause for concern and state action, *de facto* equality takes on a central role. Women, constituting the majority of the world's poor, are more likely to be in a position where they cannot enjoy their rights, yet have not been deliberately denied them.

The amendments in the report guidelines, reflected also in recent lists of issues, provide the committees with the information they require in order to make meaningful recommendations to ensure women's human rights. While data disaggregated by sex is important, it is equally important that issues relating to women's experiences, which have no men's equivalent, are also at the forefront of the discourse. The committees and their state parties need to discuss reproductive healthcare in the context of rights to health and family. Where women are threatened with forced sterilization, they should consider the right to be free from cruel, inhuman, and degrading treatment. Violence within the family must be addressed in order to guarantee the right to life, the right to be free of cruel, inhuman, and degrading treatment, and freedom of movement.

Taking the problem of violence against women as an example, we can see that the treaty bodies have all made progress in their analyses, although to differing degrees. The Human Rights Committee, the Committee on the Rights of the Child, and the Committee for Economic, Social and Cultural Rights are all concerned with female circumcision and domestic violence.¹⁸⁰ The latter committee challenges pervasive sexual harassment as a

180. See *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54; *Report on the Eighteenth and Nineteenth Sessions*, *supra* note 54; *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54; *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54; *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54. See also *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80; *Report on the Sixty-Fourth, Sixty-Fifth and Sixty-Sixth Sessions*, *supra* note 80; *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80; *Report on the Seventieth, Seventy-First and Seventy-Second Sessions*, *supra* note 80; *Report on the Seventy-Third, Seventy-Fourth and Seventy-Fifth Sessions*, *supra* note 80; *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113; *Report on the Thirty-Third Session*, *supra* note 113.

barrier to the right to employment.¹⁸¹ The Committee for the Elimination of Racial Discrimination has addressed forced sterilizations of minority women.¹⁸² The Committee Against Torture was concerned only with state violence until very recently; however, it has recently included domestic violence and trafficking as subjects of concern.¹⁸³

V. HOW HAVE THEY RESPONDED TO THE FEMINIST CRITIQUES?

This article concludes with a review of the feminist critiques outlined at the beginning to understand to what extent they have influenced the work of the treaty bodies.

A. Content and Definition of International Human Rights

The original treaties have not been amended. However, the interpretations of these treaties, at the hands of the treaty bodies, are becoming more sensitive to the reality of women's lives. The newer treaties, including the Convention on the Rights of the Child and the Convention for Migrant Workers and Their Families, have used gender inclusive language. The subject matters, too, are becoming more comprehensive; for instance, the new treaty is for the protection of "migrant workers and members of their families," which reflects the vulnerable position of non-earners. The protocols to the CRC also show an appreciation of gender specific issues, such as the sexual exploitation of girls.

The content of international human rights law is beginning to better reflect both men's and women's experiences.

181. *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54, ¶¶ 332, 348 (Cameroon); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶¶ 270, 281 (Mongolia); *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶¶ 491, 500 (Ukraine), ¶¶ 896, 908 (Croatia); *Committee on Economic, Social and Cultural Rights, Report on the Twenty-Eighth and Twenty-Ninth Sessions*, U.N. ESCOR, Comm. on Econ., Soc., & Cultural Rts., 59th Sess., Supp. No. 2, ¶¶ 359, 381 (Poland), U.N. Doc. E/2003/22 (2003).

182. *See Report of the Committee on the Elimination of Racial Discrimination*, *supra* note 133, ¶¶ 424, 468.

183. *See Report on the Twenty-Seventh and Twenty-Eighth Sessions*, *supra* note 171, ¶¶ 65(c), 66(h) 92(e), 94(f), 58(m).

B. Marginalization of Women's Rights

It remains true that there are a number of substantive reservations to the Women's Convention that are widely tolerated, in contrast to the Convention on the Elimination of Racial Discrimination. However, the general treaty bodies, most influentially the Human Rights Committee, are challenging states about violations of the rights of women, as general issues. While the CEDAW Committee has an important role in bringing attention to gender issues, it is also preferable that women's rights are human rights—that is, women's issues are not relegated only to the CEDAW Committee but are addressed throughout.¹⁸⁴

C. De Facto Exclusion of Women

The representation of women on the committees remains dreadful. Apparently sincere efforts are being made to improve the participation of women at the highest levels of the United Nations but it is a slow process.¹⁸⁵ There must be a continued push for a more equal representation. In the meantime, current committee members should be encouraged to continue with the gender mainstreaming agenda.

D. The Public and Private Divide

The public/private divide is breaking down. The emergence of tripartite state responsibility—that is, the duties to respect, protect, and fulfill human rights—renders states accountable wherever abuse occurs, according to the duty to protect. Even the Committee Against Torture is beginning to recognize this, despite the apparent handicap of the torture definition. States are also being held accountable whenever rights are not enjoyed, regardless of the reasons, according to the duty to fulfill.

From the summaries of the treaty body work above, we can see the

184. There is, of course, some irony in excluding consideration of the CEDAW Committee's work from this analysis: the Women's Committee is again "sidelined." On the other hand, an analysis of "gender mainstreaming" in the Women's Committee is superfluous. A suitable topic of further research would be the extent to which the CEDAW Committee addresses the requirements of state parties to respect, protect and fulfill human rights and to what degree they challenge the "public/private" dichotomy.

185. Report of the Secretary General, *Improvements in the Status of Women in the United Nations System*, U.N. GAOR 58th Sess., U.N. Doc. A/58/374 (17 Sept. 2003). For example, the U.N. has introduced "flexible working" in an attempt to make the environment for top level staff more attractive to women. *Id.* at 14.

committees routinely challenging state parties to address so-called private violations of human rights as much as state sanctioned actions.¹⁸⁶

E. Rights Critique

This has not been directly addressed by the committees nor, for the same reasons, in Part III of this paper. As human rights bodies, the committees have only the treaties at their disposal to fight for human justice. They do not have the authority to engage states about, nor make recommendations on, matters which do not fall within one of the specified rights which the state parties have undertaken to guarantee. The committees are perhaps limited in that they can only use a language of human rights. They are complemented, however, by other UN agencies that can focus on development, health, refugees, and literacy, among other issues.

When it comes to efforts to improve the situation of the most vulnerable, human rights lawyers and activists have to be sensitive. Human rights are not the only vocabulary and indeed may be particularly weak in states suspicious of liberal or Western rights. We should not ignore other strategies for achieving equality and development, nor should we assume that human rights law cannot be further improved to fully represent all people. Nonetheless, we should still employ the human rights paradigm whenever it is a useful tool.¹⁸⁷

Arguments centered on rights rather than justice are not the only valid arguments, nor even the best arguments in every circumstance.¹⁸⁸ Rights-based claims may not be the appropriate strategy for seeking change in societies with greater reverence for the collective or general scepticism about the Western and alien natures of rights *per se*.¹⁸⁹

It is clear that the disadvantages facing women do not disappear by giving women rights. However, by addressing women's human rights within the treaty bodies and by insisting that their needs are human rights, we can

186. See *infra* text § IV.

187. Christine Chinkin, *Gender Inequality and International Human Rights Law*, in *INEQUALITY, GLOBALIZATION AND WORLD POLITICS* 95, 121 (Andrew Hurrell & Ngaire Woods eds., 1999); Andrew Byrnes, *Using International Human Rights Law and Procedures to Advance Women's Human Rights*, in 2 *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 4, at 83.

188. For a useful summary of the critiques of rights as well as a defense of their use as a feminist tool, see Elizabeth Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986).

189. See, e.g., Radhika Coomaraswamy, *To Bellow Like a Cow: Women, Ethnicity and the Discourse of Rights*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, 37, 39 (Rebecca Cook ed., 1994).

raise awareness both amongst state parties themselves, who may in fact have been ignorant, and amongst grass roots organizations and non-governmental organizations. In the latter case, we also provide a legal basis for their aims.

The work of the human rights treaty bodies is the foundation for discourse in the language of rights. It is not the only discourse, but it can be a very powerful one in the right circumstances. If feminists refuse to engage with this language, we can be assured that those opposed to our claims will.¹⁹⁰

F. Rights Used to Reduce the Status of Women

The committees have not shied away from criticizing violations of women's rights which can be seen as emanating from culture, whether that be female circumcision in Africa or eating disorders in Scandinavia.¹⁹¹

Rights have been and will continue to be asserted by the powerful against the weak.¹⁹² If human rights law does have real authority, then there continues to be a real risk that this discourse will be applied in attempts by others to reduce the quality of life of vulnerable people. The Pitcairn Islanders accused of rape and sexual abuse of young girls agreed that, yes, they had engaged in sexual relations with pre-pubescent girls and yes, such sex was available to them on demand. Their defense was that sex between adult men and young girls was an intrinsic and special part of the Pitcairn

190. See, e.g., Richard Allen Epstein, *Property, Speech and the Politics of Distrust*, 59 U. CHI. L. REV. 41 (1992) on the need for individual property rights to be given strong Constitutional protection in the United States against competing claims of collective interest. See also John O. McGinnis, *Replies: A New Agenda for International Human Rights: Economic Freedom*, 48 CATH. U. L. REV. 1029 (1999) on the need for internationally protected rights to property and to economic rights such as freedom of contract. The agenda in both cases is to reduce Government intervention which would redistribute power and resources away from the wealthiest members of society.

191. See *Report on the Sixteenth and Seventeenth Sessions*, *supra* note 54, ¶ 339 (Azerbaijan), ¶ 114 (Nigeria); *Report on the Twentieth and Twenty-First Sessions*, *supra* note 54, ¶¶ 305–39 (Armenia); *Report on the Twenty-Second, Twenty-Third Sessions and Twenty-Fourth Sessions*, *supra* note 54, ¶¶ 155–58 (Egypt); *Report on the Twenty-Fifth, Twenty-Sixth and Twenty-Seventh Sessions*, *supra* note 54, ¶ 278 (Bolivia); *Report on the Sixty-First, Sixty-Second and Sixty-Third Sessions*, *supra* note 80, ¶ 121 (Sudan); *Report on the Sixty-Seventh, Sixty-Eighth and Sixty-Ninth Sessions*, *supra* note 80, ¶ 323 (Mongolia); *Reports on the Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Sessions*, *supra* note 113; *Report on the Thirty-First Session*, *supra* note 113; *Report on the Thirty-Third Session*, *supra* note 113.

192. See AILEEN MCCOLGAN, *WOMEN UNDER THE LAW: THE FALSE PROMISE OF HUMAN RIGHTS* 6 (2000).

culture and that nobody on the Island considered it to be wrong, including the girls themselves.¹⁹³

Arguments of culture are another way of (re)constructing the private sphere to shield an activity from criticism. But such claims should not be taken at face value and the role of the state in creating the private space for such culture to continue, or be created, should be questioned. Indeed, even the existence of the alleged culture itself might need to be questioned.¹⁹⁴ In the Pitcairn Islands, the accused argued that the British had no jurisdiction over their personal and private relations, though one assumes that the common law on property and theft was happily imported. Having no island law against sexual abuse of minors, the men could not be convicted of any existing offence.¹⁹⁵ The state to which the Pitcairn Islanders claim allegiance denies the right of girls to bodily integrity.

The Committees do not accept culture or religion as excuses for violations of women's rights any more than they have allowed the private sphere to serve as a protective bubble against investigation.

G. Empirical Limitations

The apparent failure (or at least, slow progress) of international human rights law in improving the situation of women is perhaps the hardest critique to address. There is undoubtedly still a huge amount of suffering in the world.

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193. David Fickling, *Six Found Guilty in Pitcairn Sex Offences Trial*, GUARDIAN, 26 Oct. 2004. The culture argument was rejected by the Court; *Pitcairn Man Says Sex was Consensual*, GUARDIAN, 9 Oct. 2004.
 194. See Kamala Visweswaran, *Gendered States: Rethinking Culture as a Site of South Asian Human Rights Work*, 26 HUM. RTS. Q. 483 (2004). Visweswaran notes that it is easy to blame culture as the reason women do not enjoy their rights, especially when dealing with distant environments, where these meet and reinforce "Western" prejudices about primitive or undeveloped cultures. *Id.* at 498, 502, 505. States are often much more calculatingly complicit than just "tolerating" abuse, having their own interests in creating strong control over personal relations for minority groups to quiet their claims for more radical reform. See Lisa Hajjar, *Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis*, 29 LAW & SOC. INQUIRY 1, at 6 (2004). This trading is not a feature only for Muslim societies; one can only imagine the bones that will be thrown to fundamentalist America following the 2004 election: gay marriage and safe abortion are likely to top the list. On the role of international human rights law in protecting dogmatic and contested interpretations of religion from scrutiny, see Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399 (2003). On the alleged sex culture in the Pitcairn Islands and an argument that this was fabricated for the benefit of the trial, see Emily Fielden, *He Knew it was Wrong*, GUARDIAN, 27 Oct. 2004, available at www.guardian.co.uk/parents/story/0,,1336783,00.html.
 195. On the matter of jurisdiction, the appeal is pending to the Privy Council. In the interim, those found guilty are free. Matt Barnard, *Pitcairn Men Can Challenge British Rule*, GUARDIAN, 12 Oct. 2004, available at www.guardian.co.uk/international/story/0,,1325605,00.html.

While underrepresented in the United Nations and other human rights agencies, women remain overrepresented in the pool of those who do not enjoy their rights. It is almost impossible to judge whether the world has become a better place for women or men in the last fifty years and absolutely impossible to attribute any change for the better or worse to any single cause.

Human rights will not provide instant solutions to violence and poverty. It is not suggested here that the committee members ever believed that they would. On the contrary, the committees work within their rights mandate and rely on other agencies, both United Nations and independent, to employ alternative strategies.

VI. CONCLUSION

It is perhaps unfashionable in these times to be an optimistic feminist, but it does appear that the work of feminist scholars in the last fifteen years has made an impact at the United Nations and there is no reason to suspect that this cannot continue. The system remains far from perfect and considerable improvements are still required if women and men are to have their human rights taken equally seriously. The gender mainstreaming project must be further entrenched into the working practices of all of the committees. More feminist analysis will be essential to highlight where the committees continue to go wrong and to guide them into how they can put it right. A faster rate of change would be welcome. Nonetheless, the improvements should be recognized for what they are.

International human rights law is far from perfect. Like all legal systems, it is based upon a model with a male norm at the core. We can either give up or we can harness it and reform it from within. If we do not grab it, we can be sure that there will be others waiting to use it against us.