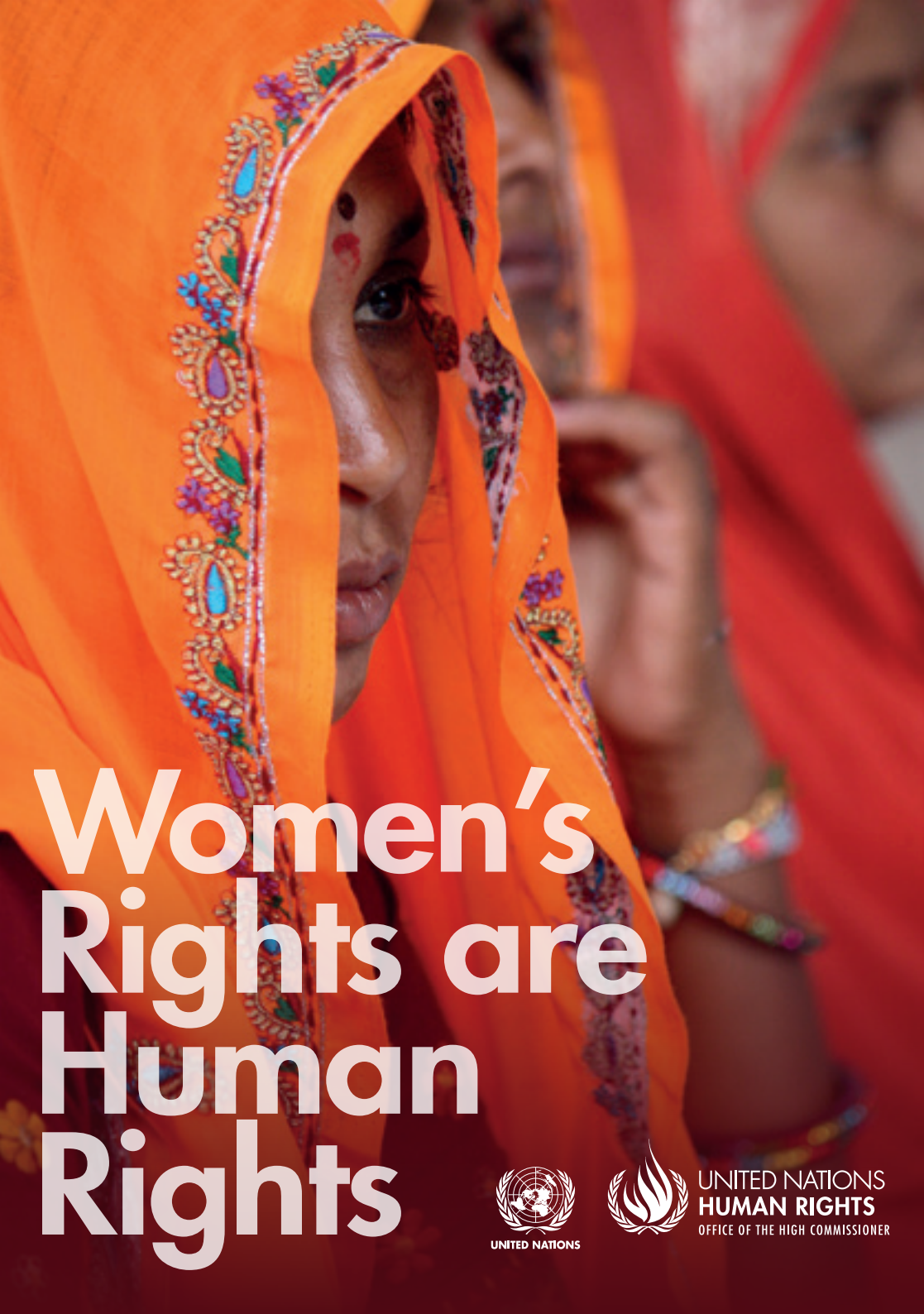




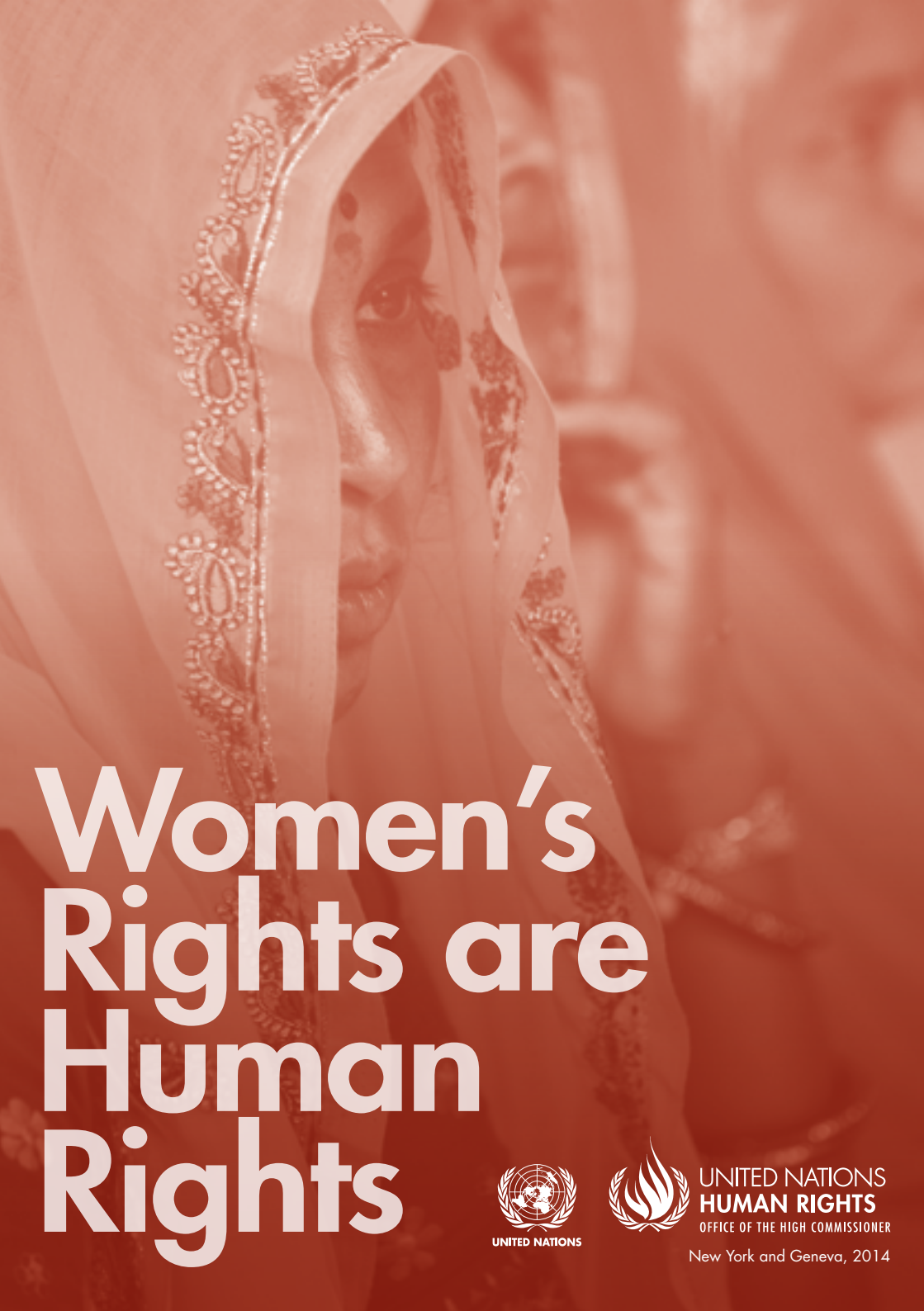
# Women's Rights are Human Rights



UNITED NATIONS



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



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New York and Geneva, 2014

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## INTRODUCTION

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights and United Nations values. Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women's human rights has not always been a priority. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination.

The United Nations has a long history of addressing women's human rights and much progress has been made in securing women's rights across the world in recent decades. However, important gaps remain and women's realities are constantly changing, with new manifestations of discrimination against them regularly emerging. Some groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socioeconomic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women.

This publication provides an introduction to women's human rights, beginning with the main provisions in international human rights law and going on to explain particularly relevant concepts for fully understanding women's human rights. Finally, selected areas of women's human rights are examined together with information on the main work of United Nations human rights mechanisms and others pertaining to these topics. The aim of the publication is to offer a basic understanding of the human rights of women as a whole, but because of the wide variety of issues relevant to women's human rights, it should not be considered exhaustive.



# I.

## Protection of the human rights of women under international law

Since the founding of the United Nations, equality between men and women has been among the most fundamental guarantees of human rights. Adopted in 1945, the Charter of the United Nations sets out as one of its goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women”. Furthermore, Article 1 of the Charter stipulates that one of the purposes of the United Nations is to promote respect for human rights and fundamental freedoms “without distinction as to race, sex, language or religion”. This prohibition of discrimination based on sex is repeated in its Articles 13 (mandate of the General Assembly) and 55 (promotion of universal human rights).

In 1948, the Universal Declaration of Human Rights was adopted. It, too, proclaimed the equal entitlements of women and men to the rights contained in it, “without distinction of any kind, such as ... sex, ....” In drafting the Declaration, there was considerable discussion about the use

of the term “all men” rather than a gender-neutral term.<sup>1</sup> The Declaration was eventually adopted using the terms “all human beings” and “everyone” in order to leave no doubt that the Universal Declaration was intended for everyone, men and women alike.

## A. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

After the adoption of the Universal Declaration, the Commission on Human Rights began drafting two human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together with the Universal Declaration, these make up the International Bill of Human Rights. The provisions of the two Covenants, as well as other human rights treaties, are legally binding on the States that ratify or accede to them. States that ratify these treaties periodically report to bodies of experts, which issue recommendations on the steps required to meet the obligations laid out in the treaties. These treaty-monitoring bodies also provide authoritative interpretations of the treaties and, if States have agreed, they also consider individual complaints of alleged violations.<sup>2</sup>

Both Covenants use the same wording to prohibit discrimination based on, inter alia, sex (art. 2), as well as to ensure the equal right of men and women to the enjoyment of all rights contained in them (art. 3). The International Covenant on Civil and Political Rights guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups’ rights to their culture, religion and language. The International Covenant on Economic,

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<sup>1</sup> Johannes Morsink, “Women’s rights in the Universal Declaration”, *Human Rights Quarterly*, vol. 13, No. 2 (May 1991).

<sup>2</sup> For more information on the human rights treaty system, see OHCHR, *Fact Sheet No. 30: The United Nations Human Rights Treaty System* and OHCHR, *Fact Sheet No. 7: Individual Complaint Procedures under the United Nations Human Rights Treaties*.

Social and Cultural Rights guarantees, for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.

In 1967, United Nations Member States adopted the Declaration on the Elimination of Discrimination against Women, which states that discrimination against women is an offence against human dignity and calls on States to “abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women”. Less than a year later a proposal for a legally binding treaty on women’s rights was made. The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights with men.

The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality. As with all human rights treaties, only States incur obligations through ratification. However, the Convention articulates State obligations to address not only discriminatory laws, but also practices and customs, and discrimination against women by private actors.

With these general principles as an overarching framework, the specific obligations of States to eliminate discrimination against women in political, social, economic and cultural fields are laid out in 16 substantive articles. The Convention covers both civil and political rights (rights to vote, to participate in public life, to acquire, change or retain one’s nationality, equality before the law and freedom of movement) and economic, social and cultural rights (rights to education, work, health and financial credit). The Convention also pays specific attention to particular phenomena such as trafficking, to certain groups of women, for instance rural women, and to specific matters where there are special risks to women’s full enjoyment of their human rights, for example marriage and the family.

The Convention defines discrimination in its article 1 as "... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Such discrimination encompasses any difference in treatment on the grounds of sex which:

- Intentionally or unintentionally disadvantages women;
- Prevents society as a whole from recognizing women's rights in both the private and the public spheres;
- Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.

The Convention also specifies the different ways in which State parties are to eliminate discrimination, such as through appropriate legislation prohibiting discrimination, ensuring the legal protection of women's rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions. The Convention foresees that achieving equality may require positive action on the part of the State to improve the status of women. To accelerate women's actual equality in all spheres of life, States are permitted to use temporary special measures for as long as inequalities continue to exist. The Convention thus reaches beyond the narrow concept of formal equality and aims for equality of opportunity and equality of outcome. Temporary special measures are both lawful and necessary to achieve these goals. In principle, these measures should be removed once equal status has been achieved.

Importantly, the Convention adds new, substantive provisions to the other instruments which also deal with equality and non-discrimination. Article 5 establishes that in addition to recognizing women's legal equality and promoting their de facto equality, States should also strive to eliminate the

social, cultural and traditional patterns that perpetuate harmful gender stereotypes and to create an overall framework in society that promotes the realization of women's full rights.

The Convention on the Rights of the Child (art. 2) and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 7) also prohibit discrimination based on sex. The Convention on the Rights of Persons with Disabilities (art. 6) recognizes the multiple discrimination that women with disabilities are subjected to, and requires State parties to address this by taking "all appropriate measures to ensure the full development, advancement and empowerment of women" in the enjoyment of their human rights. In its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee on the Elimination of Racial Discrimination, which oversees compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, also recognized the gender dimensions of racial discrimination and said it would "endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination." The Committee against Torture, which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also regularly addresses issues of violence against women and girls.

## B. REGIONAL INSTRUMENTS

In addition to international human rights standards, regional human rights treaties, too, include crucial provisions aimed at promoting and protecting women's human rights.<sup>3</sup>

<sup>3</sup> Regional human rights treaties also have oversight mechanisms to assess compliance with their provisions by the States that have ratified them. These include the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the Council of Europe and the European Court of Human Rights. Some of their work is highlighted in this publication.

The African (Banjul) Charter on Human and Peoples' Rights was adopted in 1981 by the Organization of African Unity. Its article 2 prohibits discrimination on any grounds, including sex, in the enjoyment of the rights guaranteed by the Charter. Article 18 specifically mentions the obligation of African States to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions". The Charter's Protocol on the Rights of Women in Africa (Maputo Protocol) was adopted in 2003.

The Charter of the Organization of American States includes a non-discrimination provision in its chapter II, article 3 (I), and the American Convention on Human Rights in its article 1. Moreover, in 1994 the Organization adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention).

The European Convention on Human Rights and Fundamental Freedoms prohibits discrimination on any grounds, including sex, in the enjoyment of rights contained in the Convention (art. 14). Since 1998 individuals can bring complaints to the European Court of Human Rights based on allegations of violations of the Convention. In 2011 the Council of Europe adopted a new Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Regional political organizations, including the Association of Southeast Asian Nations, the South Asian Association for Regional Cooperation, the Economic Community of West African States and the Southern African Development Community, have also adopted protocols and resolutions and issued declarations pertaining to women's human rights.





# II.

## Global commitments

Women's rights have been at the heart of a series of international conferences that have produced significant political commitments to women's human rights and equality. Starting in 1975, which was also International Women's Year, Mexico City hosted the World Conference on the International Women's Year, which resulted in the World Plan of Action and the designation of 1975–1985 as the United Nations Decade for Women. In 1980, another international conference on women was held in Copenhagen and the Convention on the Elimination of All Forms of Discrimination against Women was opened for signature. The third World Conference on Women was held in Nairobi, with the Committee on the Elimination of Discrimination against Women having begun its work in 1982. These three world conferences witnessed extraordinary activism on the part of women from around the world and laid the groundwork for the world conferences in the 1990s to address women's rights, including the Fourth World Conference on Women held in Beijing in 1995 (see below). In addition, the rights of women belonging to particular groups, such as older women, ethnic minority women or women with disabilities,

have been also addressed in various other international policy documents such as the International Plans of Action on Ageing (Vienna, 1982 and Madrid, 2002), the Durban Declaration and Programme of Action (2001) and the World Programme of Action concerning Disabled Persons (1982).

### **A. VIENNA DECLARATION AND PROGRAMME OF ACTION<sup>4</sup>**

In 1993, the World Conference on Human Rights was held in Vienna. It sought to review the status of the human rights machinery in place at the time. Women's rights activists mobilized to ensure that women's human rights were fully on the agenda of the international community under the rallying cry "Women's Rights are Human Rights." Particularly around the issue of violence against women, civil society activists organized tribunals to put the spotlight on violations of women's rights, previously unaddressed because they were considered part of the private sphere, taboo or simply accepted as an inevitable part of women's lives. The Conference was successful in adopting the Vienna Declaration and Programme of Action, which stated that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" (para. 18) and placed particularly heavy emphasis on eliminating all forms of gender-based violence. Importantly, the Programme of Action also called for "the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism" (para. 38).

### **B. INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT**

The International Conference on Population and Development, which was held in 1994, represented a milestone for women's rights. While the Conference was focused on population issues, the delegates meeting in Cairo agreed that population was not only about demographics but, more

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<sup>4</sup> A/CONF.157/24 (Part I), chap. III.

importantly, about people. The issues taken up in its Programme of Action<sup>5</sup> are fundamentally related to women's human rights, including gender equality, the family, reproductive health, birth control and family planning, women's health, as well as immigration and education of women. Importantly, the Programme of Action is explicitly grounded in human rights and proclaims that "advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes." The Conference was also important for its clear statement of reproductive rights, explaining that these "rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents."

The Programme of Action sets specific targets for: the provision of universal education; the reduction of infant, child and maternal mortality; and ensuring universal access to reproductive health care, including family planning, assisted childbirth and prevention of sexually transmitted infections, including HIV/AIDS, by 2015. Follow-up conferences have been organized to assess progress towards these goals, and inequality and lack of accountability constitute ongoing challenges to their achievement.

### C. BEIJING DECLARATION AND PLATFORM FOR ACTION<sup>6</sup>

Adopted during the Fourth World Conference on Women in September 1995, the Beijing Declaration and Platform for Action focused on 12 areas concerning the implementation of women's human rights and

<sup>5</sup> *Report of the International Conference on Population and Development, Cairo, 5–13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

<sup>6</sup> *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

set out an agenda for women's empowerment. It builds on the results of the previous three world conferences on women, but is considered a significant achievement in explicitly articulating women's rights as human rights. The Platform for Action includes a series of strategic objectives to eliminate discrimination against women and achieve equality between women and men. It involves political and legal strategies on a global scale based on a human rights framework. The Platform for Action is the most comprehensive expression of States' commitments to the human rights of women.

Subsequent reviews of the implementation of the Beijing Declaration and Platform for Action have revealed that although significant progress has been made in some areas of women's human rights, "discriminatory legislation as well as harmful traditional and customary practices and negative stereotyping of women and men still persist" particularly in family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations.<sup>7</sup> Both the 2005 and the 2010 reviews of the Platform concluded that *de jure* and *de facto* equality had not been achieved in any country in the world and the 2010 review recognized that even where legal reforms had taken place, they were often ineffectively enforced.<sup>8</sup>

## **D. MILLENNIUM DEVELOPMENT GOALS**

In 2000, the international community agreed to eight time-bound development goals to be achieved by 2015, including a goal on gender equality and the empowerment of women, as well as one on the reduction of maternal mortality. Seven of the Goals have specific targets to measure progress. Although they have shortcomings from a human rights perspective, the Millennium Development Goals are an important political commitment which has galvanized international support for some of the world's most daunting problems.

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<sup>7</sup> General Assembly resolution S-23/3, annex, para. 27.

<sup>8</sup> E/2010/4–E/CN.6/2010/02, paras. 307–310.

With respect to women's rights, Millennium Development Goal 3 is to promote gender equality and empower women. However, its corresponding target relates only to eliminating gender disparities in education by 2015. While girls' access to education is imperative for achieving gender equality, this narrow target is insufficient for measuring progress on achieving gender equality and empowering women. Goal 3 also includes indicators on the share of women in wage employment in the non-agricultural sector and in national parliaments, but these do not have benchmarks or deadlines. Critical issues such as violence against women and discriminatory laws are not addressed.

Millennium Development Goal 5 aims to reduce the maternal mortality ratio by three quarters, between 1990 and 2015. Unfortunately, at the 2010 High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, it was revealed to be the most off track of all of the Goals, despite the fact that the knowledge and the tools are available to make pregnancy and childbirth a safe experience for women. In 2010, the Secretary-General launched the Global Strategy for Women's and Children's Health, setting out key actions to improve the health of women and children worldwide.

Integrating human rights and gender equality throughout the Millennium Development Goals and in the post-2015 development agenda are key to achieving meaningful progress.

## **E. UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT**

The United Nations Conference on Sustainable Development ("Rio+20") brought Heads of State and Government to Brazil in 2012, to appraise progress in the implementation of agreements struck since the landmark 1992 United Nations Conference on the Environment and Development in Rio de Janeiro. At "Rio+20", countries renewed their political commitment to sustainable development, agreed to establish a set of sustainable development goals and established a high-level political forum on sustainable development. Importantly, the outcome document, entitled "The

future we want”,<sup>9</sup> also reaffirms the commitments of States to “women’s equal rights, access and opportunities for participation and leadership in the economy, society and political decision-making” and includes explicit references to accelerating the implementation of commitments in the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Platform for Action and the Millennium Declaration. The outcome document also states that “gender equality and the effective participation of women are important for effective action on all aspects of sustainable development” and calls for the repeal of discriminatory laws and for ensuring women’s equal access to justice.

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<sup>9</sup> General Assembly resolution 66/288, annex.





# III.

## United Nations bodies

### A. THE HUMAN RIGHTS COUNCIL AND ITS MECHANISMS

The Human Rights Council is the main intergovernmental body of the United Nations to promote and protect human rights. With 47 States elected by the General Assembly, the Human Rights Council has regularly held special panels on women's rights and the integration of a gender perspective since its creation in 2006. There are also many resolutions by the Council and its predecessor, the Commission on Human Rights, that call on States to implement their obligations relating to women's rights. These discussions and resolutions are important to keep women's rights on the international agenda.

The Human Rights Council also has the power to call special sessions to address human rights violations and emergencies. These special sessions have, in some cases, presented opportunities for examining violations of women's rights. For instance, the special session on Darfur, Sudan, led to a report of the High-level Mission on the situation of human rights there in which specific concerns were raised about rape and sexual violence,

and the lack of access to justice for these crimes (A/HRC/4/80, para. 39). The special session on the Democratic Republic of the Congo also led to reports on the situation there which expressed particular concern about sexual violence and gender inequality (A/HRC/10/59, paras. 35–42, and A/HRC/13/63, paras. 26–34). Furthermore, the Human Rights Council recently established Commissions of Inquiry for Libya and for the Syrian Arab Republic, to investigate the violations of international humanitarian law and human rights law by all parties to the conflict that have taken place there during civil strife starting in both countries in 2011. Many commissions of inquiry involve an expert on sexual and gender-based violence, and their reports include findings on gender-based violence and recommendations on gender aspects of accountability and transitional justice (A/HRC/19/68 and A/HRC/19/69).

The universal periodic review (UPR), a procedure established at the creation of the Council, also presents important opportunities for assessing States' compliance with their international obligations related to the human rights of women. Under this mechanism, the human rights situation in all United Nations Member States is reviewed every four and a half years. Women's rights are among the most frequently raised issues in the UPR recommendations.

Special procedures mandate holders are appointed by the Human Rights Council to examine particular thematic issues or the human rights situation in a certain country.<sup>10</sup> They undertake thematic research, conduct country missions, engage in dialogue with Governments about individual cases or broader structural concerns, engage in advocacy and contribute to the development of international human rights law. Certain special procedures mandates are specifically concerned with women's rights, such as the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on trafficking in persons, especially women and children, and the Working Group on the issue of discrimination against women in law and in practice. Other mandates

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<sup>10</sup> More information about special procedures is available from [www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx) (accessed 29 November 2013).

have devoted attention to women's rights and gender in their work, particularly in undertaking thematic research on women and specific human rights, ensuring attention to women's rights in their country visits, and communicating with Governments on specific cases of alleged violations of women's human rights.

The work of special procedures mandate holders helps to improve understanding of international human rights law, reflecting evolving interpretations to better take account of women's experience and denials of their human rights. Various examples of these contributions are highlighted below.

## **B. THE SECURITY COUNCIL**

The United Nations Security Council has adopted a series of resolutions specifically relating to women, peace and security. In 2000, the Security Council unanimously adopted resolution 1325, calling for increased participation of women in all aspects of conflict prevention and resolution and a gender perspective in all United Nations peace and security efforts, as well as in the negotiation and implementation of peace agreements. Resolution 1325 (2000) and subsequent Security Council resolutions and United Nations Secretary-General reports on the same topic also call on all parties to conflicts to take special measures to protect women and girls from gender-based violence in the context of armed conflict, while at the same time recognizing women's important role in peace processes as agents of change.<sup>11</sup>

## **C. THE COMMISSION ON THE STATUS OF WOMEN**

The Commission on the Status of Women was established by United Nations Economic and Social Council resolution 2/11 in 1946 "to prepare recommendations and reports to the [Council] on promoting women's rights in political, economic, civil, social, and educational fields". The Commission is also mandated to make recommendations to

<sup>11</sup> This topic is dealt with extensively in chap. V, sect. F, below.

the Council on “urgent problems requiring immediate attention in the field of women’s rights”. The Commission meets once a year and issues agreed conclusions on priority themes set for each year. The agreed conclusions include an assessment of progress, gaps and challenges, as well as concrete recommendations addressed to Governments, international organizations, civil society and other stakeholders. The Commission also adopts resolutions on a variety of women’s rights-related issues. Throughout its history, the Commission has played a key role in promoting women’s rights, actively contributing to landmark international legal and policy instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women and the Beijing Declaration and Platform for Action.





# IV.

## Key concepts

In the past, human rights had been conceptualized in a way that did not take account of women's lives and the fact that women routinely faced violence, discrimination and oppression. Consequently, women's experiences were until relatively recently not adequately addressed by the human rights framework. The work of activists, human rights mechanisms and States has been critical in ensuring that the human rights framework has grown and adjusted to encapsulate the gender-specific dimensions of human rights violations in order to better protect women. Effectively ensuring women's human rights requires a comprehensive understanding of the underlying societal structures and power relations that define and influence women's ability to enjoy their human rights. These power structures have an impact on all aspects of life, from law and politics, to economic and social policy, family and community life.

The following sections examine some of the key concepts that are critical to the protection and promotion of women's human rights.

## A. THE PUBLIC-PRIVATE DIVIDE

Human rights law requires State agents to respect, protect and fulfil human rights standards and rules established at the international, regional and national levels.

Historically, this set of rules and the concomitant scrutiny have focused on actions directly attributable to State agents, based on their commission or acquiescence, such as killings, torture and arbitrary detention. The obligation of States to respect human rights, including women's rights, referred to the obligation to refrain from doing anything that could violate those rights. Any wrong committed within the private sphere, without any direct intervention by State agents, was not considered a human rights violation. However, since the 1980s and 1990s, the women's rights movement has increasingly criticized this interpretation of human rights as perpetuating violations of women's human rights and stemming from male bias.<sup>12</sup>

It is now recognized that the obligations of States to protect and fulfil human rights clearly encompass the duty to protect women from violations committed by third parties, including in the private sphere, and to take positive steps to fulfil their human rights. The Convention on the Elimination of All Forms of Discrimination against Women covers both public and private acts. Its article 2 (e) specifically addresses the obligation of States to address discrimination against women perpetrated by *any* person, organization or enterprise, and its article 2 (f) concerns the modification and abolition not only of discriminatory laws and regulations, but also of customs and practices. Its article 5 (a) requires States "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

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<sup>12</sup> Sheila Dauer, "Indivisible or invisible: women's human rights in the public and private sphere", in *Women, Gender, and Human Rights: A Global Perspective*, Marjorie Agosin, ed. (Rutgers University Press, 2001).

The Committee on the Elimination of Discrimination against Women as well as other United Nations human rights bodies and mechanisms have observed that States have obligations to address acts committed by private actors. In particular, the Committee on the Elimination of Discrimination against Women's general recommendation No. 19 (1992) on violence against women spells out that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights ...." Similarly, the Human Rights Committee confirmed, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, that States have both negative and positive obligations—to refrain from violating human rights and to protect as well as fulfil human rights, including by protecting rights holders against acts committed by private persons or entities. Under human rights law, the due diligence standard serves to determine whether the State has taken effective steps to comply with its human rights obligations, in particular the obligation to protect.

## **B. UNIVERSALITY OF HUMAN RIGHTS**

Since the adoption of the Universal Declaration, States have repeatedly emphasized the universality and indivisibility of human rights. At the World Conference in Vienna they specifically recognized that women's human rights are part of universal human rights and they have subsequently reaffirmed this, including at the Fourth World Conference on Women. As mentioned above, the Vienna Programme of Action also explicitly stressed the importance of eradicating "any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism."

Despite these commitments by States, the question of universality has often been raised when States have tried to justify violations of women's rights in the name of culture. The Special Rapporteur on violence against women in her report on cultural practices within the family that are violent towards women (E/CN.4/2002/83) highlights female genital mutilation, so-called honour killings of women, son preference and witch hunting

as examples of customs that have been defended under the pretext of being part of a given culture. Stereotypes and cultural norms which dictate prescriptive roles for women in society also have a negative impact on women's enjoyment of their human rights. For instance, girls' lack of access to education has sometimes been justified on the presumption that, as mothers and wives, they will not enter the workforce and thus do not require education.

The universality of human rights and their validity in a given local context have often been contested through relativist discourses that brand them as foreign ideas incompatible with local culture.<sup>13</sup> However, the Special Rapporteur in the field of cultural rights has warned against discourses that disregard the fact that culture is not static and changes over time. She also points to women's lack of influence in decision-making processes which define the culture of any given community (A/67/287).

As mentioned earlier, the Convention on the Elimination of All Forms of Discrimination against Women requires States to "take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". The Committee, in its general recommendation No. 19 (1992), comments on articles 2 (f), 5 and 10 (c) that attitudes and practices according to which women are subordinate to men uphold the subjugation of women in society, and thus undermine women's human rights, gender equality and non-discrimination, mentioning the practices of family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. It also comments on article 12 on the right to health, stating that certain traditional practices perpetuated by culture and tradition are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

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<sup>13</sup> See "Intersections between culture and violence against women" (A/HRC/4/34).

The Special Rapporteur on violence against women, in her report on intersections between culture and violence against women, argues that it is possible to negotiate human rights with culture, challenging discriminatory and oppressive aspects of culture while retaining its positive aspects. She concludes that “compromising women’s rights is not an option. Therefore, the challenge that confronts us today is to respect and prize our diverse cultures while developing common strategies to resist oppressive practices in the name of culture, and to promote and uphold universal human rights while rejecting encroachments grounded in ethnocentric thinking” (A/HRC/4/34, para. 71).<sup>14</sup>

The Special Rapporteur in the field of cultural rights has also discussed the interaction of the principle of universality of human rights, recognition and implementation of cultural rights and the need to respect cultural diversity (A/HRC/14/36). The Special Rapporteur views the universal promotion and protection of human rights, including cultural rights, and respect for cultural diversity as mutually supportive. She recalls the Vienna Declaration and Programme of Action, the Universal Declaration on Cultural Diversity and Human Rights Council resolution 10/23 to affirm that respect for cultural rights or cultural diversity may not undermine the universality of human rights.

### C. NON-DISCRIMINATION AND EQUALITY BETWEEN WOMEN AND MEN

Non-discrimination and equality between women and men are central principles of human rights law. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on the basis of sex and guarantee women and men equality in the enjoyment of the rights covered by the Covenants. Article 26 of the International Covenant on Civil and Political Rights also provides for equality before the law and equal protection of the law.

<sup>14</sup> See also OHCHR, *Fact Sheet No. 23: Harmful Traditional Practices Affecting the Health of Women and Children*, and Committee on the Elimination of Discrimination against Women, general recommendation No. 14 (1990) on female circumcision.

The definition of discrimination in the Convention on the Elimination of All Forms of Discrimination against Women encompasses a variety of possible discriminatory actions (any distinction, exclusion or restriction) having either the express purpose or the actual effect of discriminating against women. The Convention goes further than other human rights treaties in also describing in detail the State obligations and actions to be taken to achieve gender equality in practice. It not only requires equality between women and men, but also prohibits practices that can perpetuate women's inequality. Substantive gender equality and formal gender equality, as well as de facto discrimination and de jure discrimination, are central concepts in the Convention's equality framework.

Discrimination and inequality can occur in different ways. Discrimination can occur through de jure or direct discriminatory provisions, such as when a law or policy restricts, prefers or distinguishes between certain groups, for instance, prohibiting women from driving, owning land or inheriting property. Ensuring formal equality requires eliminating all instances of de jure discrimination. While much progress has been made to eliminate discriminatory laws, many persist and reforming them should be a matter of the utmost priority for States to comply with their human rights obligations.<sup>15</sup>

Laws, policies or programmes can also have detrimental effects on women even though they appear to be gender-neutral. This is known as de facto discrimination. For instance, aid programmes which distribute benefits to the "head of household" may not benefit women equally since men are often considered the head of a household. Similarly, given women's disproportionate representation among those living in poverty, a government lending scheme to buy land may be inaccessible to women due to its cost—even if the scheme is open to both men and women.

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<sup>15</sup> Globally, laws that discriminate against women remain a significant problem, and even when there are laws in place that guarantee gender equality they are not yet being put into practice. See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Progress of the World's Women 2011–2012: In Pursuit of Justice* (2011), and "Report of the Office of the United Nations High Commissioner for Human Rights on good practices in efforts aimed at preventing violence against women" (A/HRC/17/23). See also Working Group on the issue of discrimination against women in law and in practice, available from [www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx](http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx) (accessed 6 November 2013).

Achieving substantive equality requires taking both historical inequalities and the present conditions of women in a certain context into account. Substantive equality may consequently require positive action by the State to address the specific disadvantages and needs of women.<sup>16</sup> The Convention on the Elimination of All Forms of Discrimination against Women encompasses substantive equality, recognizing that gender-neutral laws can have discriminatory effects and that formal equality is not enough to address them. Its article 4 on temporary special measures, the Committee's general comment No. 25 (2004) on the same topic, as well as article 5 on modifying the social and cultural patterns of conduct of men and women, emphasize a commitment to substantive equality.<sup>17</sup>

### Equality of results and substantive equality

The Committee on the Elimination of Discrimination against Women has explained that, to achieve actual equality, the underlying causes of women's inequality must be addressed; it is not enough to guarantee identical treatment with men. In the Committee's view, the Convention requires that women should be given an equal start and also that the State should create an enabling environment for the empowerment of women in order to achieve **equality of results** (also referred to as equality of outcome). Equality of results is the logical consequence of de facto or **substantive equality**, according to the Committee. Through special measures, historical wrongs and inequalities are corrected by temporarily giving advantages to women, and giving them access to opportunities that traditionally have been out of their reach. Achieving substantive equality requires a change in attitudes, in gender roles and stereotyping; a fundamental societal change which will lead to a change in women's lived realities.

Source: Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures.

<sup>16</sup> See Leilani Farha, "Committee on the Elimination of Discrimination against Women", in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Malcolm Langford, ed. (Cambridge University Press, 2008), pp. 560–561.

<sup>17</sup> Ibid., p. 562.

The Human Rights Committee, in its general comment No. 18 (1989) on non-discrimination, and the Committee on Economic, Social and Cultural Rights, in its general comments Nos. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights and 20 (2009) on non-discrimination in economic, social and cultural rights, have also adopted the same principle of substantive equality when guaranteeing non-discrimination and equal enjoyment by men and women of civil and political, as well as economic, social and cultural rights.

The Committee on Economic, Social and Cultural Rights explained in its general comment No. 16 (2005) that States parties to the Covenant are obliged to eliminate both direct and indirect discrimination. They must refrain from engaging in discriminatory practices, ensure that third parties do not discriminate in a forbidden manner and take positive action to guarantee women's equality. The Committee further outlines how the obligation to ensure equality relates to the different provisions of the Covenant. Its general comment No. 20 (2009) also notes the importance of addressing both direct and indirect discrimination in laws, policies and practices, and multiple discrimination, an issue which particularly affects women.

### **Direct and indirect discrimination**

**Direct discrimination** occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women which cannot be justified objectively.

**Indirect discrimination** occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. ... a gender-neutral law may leave the existing inequality in place, or exacerbate it.

Source: Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005).

In its general comment No. 28 (2000) on the equality of rights between men and women, the Human Rights Committee explains that States parties must not only remove obstacles to equality, but that they also have obligations to adopt positive measures to ensure equality. It further specifies that “States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights”. It then outlines specific obligations to ensure women’s equal rights in relation to the various articles of the Covenant.

#### D. EQUALITY AND EQUITY

The Convention on the Elimination of All Forms of Discrimination against Women requires that women be accorded rights equal to those of men and that women be able to enjoy all their rights in practice. While international human rights treaties refer to “equality”, in other sectors the term “equity” is often used.

The term “gender equity” has sometimes been used in a way that perpetuates stereotypes about women’s role in society, suggesting that women should be treated “fairly” in accordance with the roles that they carry out.<sup>18</sup> This understanding risks perpetuating unequal gender relations and solidifying gender stereotypes that are detrimental to women. The Committee on the Elimination of Discrimination against Women has emphasized in its general recommendations and concluding observations on different countries, e.g., in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, that “States

<sup>18</sup> In development parlance, “equity” is a term commonly used to speak about inequalities on a variety of grounds, not only on sex. The word “equity” has sometimes been understood as more accessible to a broader public and suggests a need for redistribution. However, some have suggested that the term should be used with caution to ensure it is not masking a reluctance to speak more openly about discrimination and inequality. See, e.g., Joint Monitoring Programme for Water Supply and Sanitation of the World Health Organization (WHO) and the United Nations Children’s Fund (UNICEF), Equity and Non-Discrimination Working Group, especially its “Background note on MDGs, non-discrimination and indicators in water and sanitation”, available from [www.wssinfo.org/post-2015-monitoring/working-groups/equity-and-non-discrimination/](http://www.wssinfo.org/post-2015-monitoring/working-groups/equity-and-non-discrimination/) (accessed 19 May 2014).

parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention.” As the legal term used in the Convention, gender equality cannot be replaced by equity, which is a concept conditioned by subjective criteria.<sup>19</sup>

Some stakeholders have also favoured the language of equity on the misunderstanding that gender equality means the same or identical treatment of men and women, rather than taking into account the actual circumstances of men and women. As explained above, substantive equality, which is the standard to be met under human rights law, requires measures to achieve equality of results. This may mean that women and men are not always treated in exactly the same manner, in order to redress historical discrimination and/or take account of women’s biological differences.

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<sup>19</sup> “Building on achievements: women’s human rights five years after Beijing”, May 2000, paras. 9–22. Available from [www.ohchr.org](http://www.ohchr.org).

### **Equality, equity and gender equity**

"Inherent to the principle of **equality between men and women, or gender equality**, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices."<sup>a</sup> The concept of equality between men and women includes both formal and substantive equality.

"**Equity** is the moral imperative to dismantle unjust differences based on principles of fairness and justice. It requires a focus on the most disadvantaged and the poorest. Many [development organizations] have made equity a central part of their agenda. However, from a human rights perspective, relying on equity has certain risks because its definition is a malleable concept that is not legally binding. While equity may denote justice, it may dilute rights claims if considered separately from equality and non-discrimination and risks being defined arbitrarily according to political and ideological expedience."<sup>b</sup>

**Gender equity** "is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities."<sup>a</sup>

<sup>a</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 22.

<sup>b</sup> Catarina de Albuquerque, "The Future is Now: Eliminating inequalities in sanitation, water and hygiene", October 2012. Available from [www.ohchr.org](http://www.ohchr.org).

## **E. GENDER**

Gender refers to socially constructed identities, attributes and roles for women and men. The term gender is not interchangeable with women. Society's social and cultural meaning for these biological differences results in hierarchical relationships between women and men, and in

the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors, and can be changed by culture, society and community.

Gender constructions are dynamic and fluid; they change over time and can be different in different cultures. As an example of socially learned differences, women's role in most societies has traditionally been to take care of the household and the children, whereas the role of men has been to provide for the family by working outside the home. In most societies, these traditional perceptions of women's and men's roles have changed and are constantly evolving.

Analysing international law and international human rights law from a gender perspective is important, because gender analysis helps us understand how women and men experience human rights violations differently as well as the influence of differences such as age, class, religion, culture and location. It highlights and explores hierarchical and unequal relations and roles between and among males and females, the unequal value given to women's work, and women's unequal access to power and decision-making as well as property and resources. Gender mainstreaming or integration helps assess the impact of different laws, policies and programmes on groups of men and women, as explained in the box below.

### Gender mainstreaming

Gender mainstreaming (or integration) is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve equality between men and women. Gender integration as a strategy and methodology does not in theory mean an emphasis on women's experiences. However, given the socially constructed differences and relations between males and females in most of the world's societies, in practice it often results in a specific focus on women because they are mostly adversely affected by existing gender inequalities.

Gender is also an important term to understand in the context of gender identity.<sup>20</sup> Gender identity reflects a deeply felt and experienced sense of one's own gender, which may or may not conform with the biological sex one is assigned at birth. Gender identity is separate from sexual orientation, which refers to which sex one is attracted to; for instance, many transgender persons are heterosexual.

## F. INTERSECTIONALITY AND MULTIPLE FORMS OF DISCRIMINATION

Multi-level and intersecting forms of discrimination have always existed, although they have been more broadly acknowledged only in recent decades. Age, socioeconomic status, racial or ethnic background, religion, national origin, citizenship, status, health, particularly HIV/AIDS and disability, as well as poverty and sexual orientation, are examples

<sup>20</sup> See also OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (HR/PUB/12/06).

of factors that can exacerbate or otherwise influence the nature of discrimination faced by women.<sup>21</sup>

At the Fourth World Conference on Women, States recognized that “many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socioeconomic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees.” In the Durban Declaration, States declared that they were “convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights.” They further recognized “the need to integrate a gender perspective into relevant policies, strategies and programmes of action against racism, racial discrimination, xenophobia and related intolerance in order to address multiple forms of discrimination.”

The Committee on the Elimination of Racial Discrimination also addressed this in its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, in which it noted 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 acknowledgement of the different life experiences of women and men, in areas of both public and private life.”

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<sup>21</sup> See OHCHR, “Women facing multiple forms of discrimination”, April 2009, available from [www.un.org/en/durbanreview2009/pdf/InfoNote\\_07\\_Women\\_and\\_Discrimination\\_En.pdf](http://www.un.org/en/durbanreview2009/pdf/InfoNote_07_Women_and_Discrimination_En.pdf); and Colleen Sheppard, “Multiple discrimination in the world of work”, Working Paper No. 66 (Geneva, International Labour Organization, September 2010), available from [www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-declaration/documents/newsitem/wcms\\_170018.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/newsitem/wcms_170018.pdf).

The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 25 (2004), also emphasized that State parties should address multiple discrimination against women by adopting temporary special measures. The Convention on the Rights of Persons with Disabilities is the first binding human rights treaty to explicitly address multiple discrimination against women and girls, requiring State parties to take measures to ensure the equal enjoyment of all human rights and fundamental freedoms for women and girls with disabilities.

The Special Rapporteur on violence against women has recognized the need to apply an intersectional analysis when researching gender-based violence to demonstrate different categories of discrimination against women.<sup>22</sup> In a recent report on multiple and intersecting forms of violence against women (A/HRC/17/26), the Special Rapporteur argues that the elimination of violence requires holistic measures that address both inter-gender and intra-gender inequality and discrimination. This means that the analysis of gender-based violence should take into account factors that increase women's and girls' vulnerability, such as geographic location, level of education, employment situation, household size, marital relationships, access to political and civic participation, race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation.

<sup>22</sup> See "15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994–2009): a critical review". Available from <http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf> (accessed 6 November 2013).



# V.

## The human rights framework in practice

Since women constitute half the world's population and are entitled to all human rights on an equal basis with men, this publication does not aim to cover every human rights issue which touches women's lives. The focus here is on: public and political life, sexual and reproductive health and rights, the right to an adequate standard of living, violence against women, migration, conflict and crisis, and access to justice. Across all of these, education and the family context are particularly pertinent and are addressed throughout.

The right to education is recognized in the International Covenant on Economic, Social and Cultural Rights (art. 13), the Convention on the Rights of the Child (art. 28), the Convention on the Elimination of All Forms of Discrimination against Women (art. 10) and the Convention on the Rights of Persons with Disabilities (art. 24). Besides calling for non-discrimination in the enjoyment of the right to education and free universal primary education, human rights law also requires States to address the particular obstacles that girls and women face in accessing education, such as early marriages, pregnancies, child labour and violence. The needs of girls suffering from

multiple forms of discrimination—e.g., with disabilities, from poor or rural areas and belonging to minority communities—should also be considered. Ensuring equality in education requires financial resources as well as continued awareness-raising about the importance of girls' education.

The right to equality between men and women in marriage and family life is also recognized in various human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Nationality of Married Women, and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Women nevertheless lag behind men in the enjoyment of rights related to the private sphere. In many countries, women are forced to enter marriage, they do not enjoy the same rights with regard to guardianship and adoption, they are not allowed to transfer their nationality to their children and husbands, and they do not have equal legal capacity. The Convention on the Elimination of All Forms of Discrimination against Women requires State parties to take "all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations" (art. 16). This includes ensuring the same right to enter into marriage with free and full consent and to freely choose a spouse, the same rights and responsibilities during marriage and its dissolution and with respect to their children, and the same personal rights as husband and wife, such as the right to choose a family name, a profession and an occupation. Rights related to access to property and sexual and reproductive health, which will be examined separately in this chapter, are also covered by this provision. In its general recommendation No. 21 (1994) on equality in marriage and family relations, the Committee on the Elimination of Discrimination against Women called on States to resolutely discourage any notions of inequality of women and men in the private sphere which are affirmed by law, religion or custom. The Committee also noted that States should prohibit polygamous marriages as they contravene a woman's right to equality with men and can have serious emotional and financial consequences for her and her dependants.

## A. WOMEN'S RIGHTS IN PUBLIC AND POLITICAL LIFE

Historically, women have been excluded from political life and decision-making processes. Women's campaigns for participation in the public and political arena date back to the nineteenth and twentieth centuries and continue today.

At the time of the First World War, few parliamentary democracies recognized women's right to vote. In 1945, when the United Nations was established, more than half of the 51 nations that ratified the Charter still did not allow women to vote or gave them only restricted voting rights.<sup>23</sup>

According to the Universal Declaration of Human Rights, everyone has the right to take part in the government of his or her country. One of the first tasks of the Commission on the Status of Women was to write the 1952 Convention on the Political Rights of Women.<sup>24</sup> The Convention on the Elimination of All Forms of Discrimination against Women builds on previous conventions and its article 7 concerns women's access to decision-making in political and public life. Article 7 guarantees the right of women to vote in all elections and public referendums and to be eligible for election to all publicly elected bodies, the right to participate in the formulation of government policy and its implementation, to hold public office and perform all public functions at all levels of government, and the right to participate in non-governmental organizations (NGOs) or associations concerned with the public and political life of the country. Article 8 requires State parties to "take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations."

Although women's right to vote has been secured in nearly every country of the world, in practice, the right to vote can sometimes be meaningless

<sup>23</sup> Françoise Gaspard, "Unfinished battles: political and public life", in *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women*, Hanna Beate Schöpp-Schilling and Cees Flinterman, eds. (New York, Feminist Press at the City University of New York, 2007), pp. 145–153.

<sup>24</sup> *Ibid.*, p. 148.

when other conditions make it virtually impossible or very difficult for both men and women to vote, such as the absence of free and fair elections, violations of freedom of expression, or lack of security, which tends to affect women disproportionately. In some countries, women cannot register to vote because they are missing a birth certificate or identity papers that are issued only to men. Other obstacles such as stereotyping and traditional perceptions of men's and women's roles in society, as well as lack of access to relevant information and resources, also inhibit women's possibilities or willingness to exercise their right to vote fully.<sup>25</sup> Traditional working patterns of many political parties and government structures continue to be barriers to women's participation in public life, and women may be discouraged from seeking political office because of their double burden of work and the high cost of seeking and holding public office, in addition to discriminatory attitudes and practices.<sup>26</sup> Among the countries that have ratified the Convention on the Elimination of All Forms of Discrimination against Women few have a legal bar to the eligibility of women, yet women remain seriously underrepresented at all levels of government.

The Beijing Declaration and Platform for Action deals extensively with the issue of women in power and decision-making. Through the Declaration and Platform for Action, States are committed to taking concrete measures to ensure women's equal access to and full participation in power structures and decision-making, and to increase women's capacity to participate in decision-making and leadership, in accordance with its detailed recommendations.

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<sup>25</sup> Ibid.

<sup>26</sup> *Report of the Fourth World Conference on Women*, chap. I, resolution 1, annex II, paras. 181–186 and 190.

### Progress still needed to increase women's political participation

The Beijing Platform for Action sets the objective of achieving a balance between women and men in national decision-making positions. However, the goal of equality still eludes many countries. According to the Inter-Parliamentary Union (IPU), women represent on average 21.4 per cent of all parliamentarians in 187 countries as of 2013. A survey by IPU shows that since the Beijing Conference attitudes and awareness have improved, but this has yet to lead to significant changes in practice for women's equal access to public and political life.

|                                                                   | Sub-Saharan Africa | Americas | Asia | Europe | Middle East and North Africa | Pacific |
|-------------------------------------------------------------------|--------------------|----------|------|--------|------------------------------|---------|
| Percentage of women parliamentarians as of July 2000              | 12.4               | 15.3     | 14.5 | 16.2   | 3.8                          | 11.9    |
| Percentage of women parliamentarians as of July 2013 <sup>a</sup> | 21.3               | 24.8     | 18.8 | 24.4   | 15.7                         | 12.8    |

<sup>a</sup> Data available at [www.ipu.org](http://www.ipu.org).

The United Nations Millennium Development Goals, and especially Goal 3 on gender equality and women's empowerment, entail a commitment by States to promote mechanisms that give women a voice in politics and governance institutions. Reviews of the progress achieved on the Goals show that women are slowly gaining political power, mainly thanks to quotas and special measures. Regional variations remain, however.<sup>27</sup>

<sup>27</sup> See United Nations Department of Public Information, "Goal 3: promote gender equality and empower women", Fact Sheet (DPI/2650 C), September 2010. Available from [www.un.org/millenniumgoals/pdf/MDG\\_FS\\_3\\_EN.pdf](http://www.un.org/millenniumgoals/pdf/MDG_FS_3_EN.pdf).

The Committee on the Elimination of Discrimination against Women's general recommendation No. 25 (2004) clarifies that the term "special measures" can encompass a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes, allocation and/or reallocation of resources, preferential treatment, targeted recruitment, hiring and promotion, numerical goals connected with time frames, and quota systems. They should be adopted with a view to achieving substantive gender equality, which is required by the Convention.

States have adopted different forms of quota systems. The most common are political party quotas, legislative quotas and reserved seats. Political party quotas are usually voluntary, party-specific and put in place to increase the number of women party candidates or elected representatives, through setting a percentage of women. Legislative quotas are binding national policies that are enforced through legislation, requiring all political parties to include a certain number of women in their lists of candidates for elections. Another method is to reserve seats for women in parliament through a national policy, which ensures a certain number of female legislators.<sup>28</sup> Since the Beijing World Conference, States have increasingly adopted quotas to boost women's participation, counter discrimination and accelerate the slow pace at which the number of women in politics is rising. These measures are meant to correct some of the obstacles, especially institutional and systemic barriers, that still prevent women's equal access to politics.

However, if adopted in isolation, these measures are usually not enough to ensure equality. Moreover, they require adaptation to the local context. Quotas for women have often been criticized for various reasons, e.g., if the women are chosen by political parties or leaders to serve political interests which may be contrary to ensuring equality or because quotas put too little emphasis on actual merits.<sup>29</sup> Quotas for women need to be

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<sup>28</sup> Homa Hoodfar and Mona Tajali, *Electoral Politics: Making Quotas Work for Women* (London, Women Living under Muslim Laws, 2011), pp. 42–49.

<sup>29</sup> *Ibid.*, pp. 43–45 and 50–57.

coupled with other measures to create an enabling environment for women to participate. Particularly, the positive impact of increasing women's representation in public and political life will not be felt if the women who gain access are not also empowered to actively participate in the discussions and exercise influence in decision-making.<sup>30</sup>

Participation in public life is, however, much broader than elections or being elected to public office. The Committee on the Elimination of Discrimination against Women has explained that the Convention's article 7 extends to all areas of public and political life and is thus not limited to those specified in the article itself. According to the Committee, the political and public life of a country is a broad concept, and can refer to the exercise of political power, in particular legislative, judicial, executive and administrative powers, all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. Women's right to participation also includes participating in civil society, public boards, local councils and the activities of political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life. The Committee's general recommendation No. 23 (1997) on women in political and public life emphasizes States' responsibility to appoint women to senior leadership positions, at all levels (local, national, international) of government, all government bodies, the judiciary, and to encourage political parties to do the same. States should ensure women's access to information and take measures to overcome barriers such as illiteracy, language, poverty and barriers to women's freedom of movement.

Women's participation specifically in peacebuilding and peacemaking processes is particularly important if post-conflict societies are to be rebuilt based on respect for human rights and democratic values. United Nations Security Council resolution 1325 (2000) and its follow-up resolutions and

<sup>30</sup> Farzana Bari, "Women's political participation: issues and challenges", draft, United Nations Division for the Advancement of Women (EGM/WPD-EE/2005/EP.12), 3 November 2005, p. 6.

reports on women, peace and security, recognize women's important contribution to peace and call for increased representation of women at all levels of decision-making, in all mechanisms for the prevention, management and resolution of conflicts. This topic is dealt with more in depth in section F below.

### *Women human rights defenders*

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the Declaration on Human Rights Defenders, recognizes the important role of human rights defenders, including that of women defenders, and outlines the rights of all human rights defenders and the obligations of States.

The Special Rapporteur on the situation of human rights defenders has drawn attention to the specific challenges facing women human rights defenders and those working on women's rights or on gender issues (A/HRC/16/44). Women human rights defenders are subject to the same types of risks as other human rights defenders, but as women they are also targeted for or exposed to gender-specific threats and gender-specific violence.<sup>31</sup> The reasons for this are multifaceted and complex, and depend on the specific context in which the individual woman is working. Often, the work of women human rights defenders is seen as challenging traditional notions of family and gender roles in society, which can lead to hostility by the general population and the authorities. They are therefore stigmatized and ostracized by community leaders, faith-based groups, families and communities that consider them to be threatening religion, honour or culture through their work.

In addition, the work itself or what they are striving to achieve (for instance, the realization of women's rights or any gender-related rights) also makes them targets for attack. Their families also become targets for threats

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<sup>31</sup> Inmaculada Barcia, "Urgent responses for women human rights defenders at risk, mapping and preliminary assessment" (Association for Women's Rights in Development, June 2011), p. iii.

and violence, aiming to discourage women human rights defenders from pursuing their work. The Special Rapporteur on the situation of human rights defenders has acknowledged that women defenders are more at risk of being subjected to certain forms of violence and other violations, prejudice, exclusion and repudiation than their male counterparts. It is therefore important to strengthen protection mechanisms and other—local and international—responses to their specific concerns.

The Special Rapporteur has recommended that States should ensure that protection programmes for human rights defenders integrate a gender perspective and address the specific needs of women human rights defenders. This must include prompt investigation of intimidation, threats, violence and other abuses against women human rights defenders whether committed by State or non-State actors. In practice, however, women human rights defenders are often without effective protection mechanisms.

Although the State has the primary responsibility to protect defenders when they are threatened or attacked, the international community as well as the United Nations presences on the ground also have a responsibility to support and protect them, bearing in mind the basic principles of confidentiality, do no harm and the informed consent of the person.

### *The right to a nationality*

Women's ability to participate in public and political life is integrally related to their ability to claim citizenship and nationality-related rights. The Convention on the Elimination of All Forms of Discrimination against Women calls on States to "grant women equal rights with men to acquire, change or retain their nationality" and to "ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband" (art. 9). It also requires State parties to "grant women equal rights with men with respect to the nationality of their children". The Committee has explained that nationality is critical to full participation in society and that not having one has a serious impact on the enjoyment of other rights such as the right to

vote, stand for public office, access public benefits and choose a residence. Article 15 requires State parties to “accord to women equality with men before the law” as well as identical legal capacity in civil matters. The Committee has further explained that any restriction in this field seriously limits the woman’s ability to provide for herself and her dependants. The Committee has also noted with concern the high number of reservations to articles 9, 15 and 16, and called on States to withdraw them and to enact and enforce legislation in accordance with these articles.

## **B. SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS**

Reproductive health is defined in the Programme of Action of the International Conference on Population and Development as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.” In 2004, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health defined sexual health as a state of physical, emotional, mental and social well-being related to sexuality, not merely the absence of disease, dysfunction or infirmity (E/CN.4/2004/49). This definition is based on the recognition in the Programme of Action that the purpose of sexual health “is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.”

Women’s sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have both clearly indicated that women’s right to health includes their sexual and reproductive health. This means that States have obligations to respect, protect and fulfil rights related to women’s sexual and reproductive health. The Special Rapporteur on the right to health maintains that women are entitled to reproductive health-care services, goods and facilities that

are: (a) available in adequate numbers; (b) accessible physically and economically; (c) accessible without discrimination; and (d) of good quality (A/61/338).

Despite these obligations, violations of women's sexual and reproductive health rights are frequent. These take many forms, such as denying access to services that only women require, providing poor-quality services, subjecting access to third-party authorization or performing procedures without the woman's consent, including forced sterilization, forced virginity examinations and forced abortion. Women's sexual and reproductive health rights are also at risk when they are subjected to female genital mutilation and early marriage.

Violations of women's sexual and reproductive health rights are often deeply ingrained in societal values pertaining to women's sexuality. Patriarchal concepts of women's roles within the family mean that women are often valued according to their ability to reproduce. Early marriage and pregnancy or repeated pregnancies spaced too closely together, often as the result of efforts to produce male offspring because of the preference for sons, have a devastating impact on women's health with sometimes fatal consequences. Women are also often blamed for infertility, and ostracized and subjected to various human rights violations as a result.

The Convention on the Elimination of All Forms of Discrimination against Women guarantees women equal rights in deciding "freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (art. 16). It also specifies that women's right to education includes "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" (art. 10). Furthermore, sexual and reproductive health is considered to be a vital element of the right to the highest attainable standard of physical and mental health. Women's childbearing role can also have an impact on their enjoyment of other rights such as the rights to education and to work.

The Beijing Platform for Action states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.” The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 24 (1999) on women and health, recommends that States should prioritize the “prevention of unwanted pregnancy through family planning and sex education.” In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights explained that the provision of maternal health services is comparable to a core obligation which cannot be derogated from under any circumstances, and State parties have the immediate obligation to take deliberate, concrete and targeted steps towards fulfilling the right to health in the context of pregnancy and childbirth.

### *Access to information about sexual and reproductive health*

Women’s right to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to exercise this right requires attention to their access to information on modern methods of contraception and comprehensive sex education.

#### **Women’s access to modern methods of contraception**

According to the United Nations Population Fund, there were 1.4 billion women of reproductive age (between 15 and 49) in 2008, of whom 818 million, or more than half, wanted to avoid a pregnancy. Of those, 603 million were using modern contraceptive methods and 215 million were not. Unintended pregnancies are overwhelmingly attributable to the unmet need for modern contraception. Of the women who became pregnant unintentionally, 66 per cent were not using any method of contraception and 16 per cent relied on traditional methods, such as periodic abstinence and withdrawal, which have higher rates of failure than modern methods. Women’s and girls’ susceptibility to contracting HIV and other sexually transmitted diseases is another serious consequence of not using modern contraception.

Women's lack of information on contraception has a direct impact on their right to decide on the number and spacing of their children, as well as on their right to health. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 21 (1994), explained that "in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention." Such information should be scientifically accurate and free from discrimination. While practitioners have a right to conscientious objection, the protection of that right must not infringe on women's right to accurate and objective information on contraception. The European Court of Human Rights, for instance, has held that pharmacists may not refuse to sell contraceptives based on their personal religious beliefs.<sup>32</sup> The Committee on the Rights of the Child, in its general comment No. 4 (2003) on adolescent health and development, specified that "States parties should ensure that [adolescents] have access to appropriate information [on sexual and reproductive issues, including family planning, contraception and the prevention of sexually transmitted diseases], regardless of their marital status and whether their parents or guardians consent."

### *Access to services and medicines*

Ensuring that women have access to services which are required only by women is a key aspect of eliminating discrimination against women. Guaranteeing the availability, accessibility, quality and acceptability of these services and medicines is central to ensuring women's sexual and reproductive health rights. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 24 (1999), further specified that "it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women", highlighting that "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures" are barriers to women's access to health care.

<sup>32</sup> *Pichon and Sajous v. France*, application No. 49853/99, decision of 2 October 2001.

It is estimated that 287,000 women died in childbirth in 2010. In addition, every year an estimated 10 million women suffer a pregnancy-related injury, infection, disease or in some cases long-term disability. Ensuring universal access to skilled attendance at childbirth, emergency obstetric care, post-partum care, preventing unsafe abortion and widening contraceptive choices are some of the interventions that have been shown to reduce maternal mortality and morbidity.

In the case of *Alyne da Silva Pimentel Teixeira (deceased) v. Brazil*,<sup>33</sup> the victim, a woman of African descent, died after a stillbirth and serious postnatal complications. Failures in diagnosing the complications suffered by the victim, delays in treating those complications, delays in referring her to a hospital with superior facilities and failures in the transmission of her records between health facilities, followed by lack of adequate response and redress for these failures, resulted in a finding of violations of the Convention.

The Committee found that the State party had violated its obligations under article 12 (in relation to access to health), article 2 (c) (in relation to access to justice) and article 2 (e) (in relation to the State party's due diligence obligation to regulate the activities of private health service providers), in conjunction with article 1, of the Convention. The Committee underlined in its decision that the State is directly responsible for the actions of its private medical institutions when it outsources its medical services, and that it maintains a duty to regulate and monitor private health-care institutions in line with its due diligence obligations. The Committee further noted that the State must ensure that its maternal health services meet the specific needs of women, that policies on maternal health are implemented in practice, and that adequate judicial remedies and effective protection are provided without discrimination.

Ensuring access to safe and affordable sexual and reproductive health services includes the need to ensure access to safe and affordable abortion. Although access to modern contraceptive methods and family

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<sup>33</sup> Committee on the Elimination of Discrimination against Women, communication No. 17/2008, Views of 25 July 2011.

planning reduce the risk of an unplanned pregnancy, no contraceptive method is 100 per cent effective. The work of human rights mechanisms indicates that States should ensure access to abortion at least where there is a threat to the woman's life or health, or where the pregnancy is the result of rape or incest.<sup>34</sup> In its general recommendation No. 24 (1999), the Committee on the Elimination of Discrimination against Women also stated that "when possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion." Decriminalization of abortion services was also emphasized in the Beijing Platform for Action, which recommended that States should consider reviewing laws containing punitive measures against women who have undergone illegal abortions.<sup>35</sup> In all circumstances, access to post-abortion health services must be accessible, safe and affordable. Unsafe abortion is a leading cause of maternal mortality and morbidity, and ensuring that abortion services are accessible and safe is thus also an important part of the State's obligation to ensure that women are enabled to survive pregnancy.

<sup>34</sup> See, e.g., Human Rights Committee, general recommendation No. 28 (2000) on the equality of rights between men and women, para. 11, and its 2012 concluding observations on Guatemala (CCPR/C/GTM/CO/3, para. 20) and the Dominican Republic (CCPR/C/DOM/CO/5, para. 15).

<sup>35</sup> *Report of the Fourth World Conference on Women*, chap. I, resolution 1, annex II, para. 106 (k). The Special Rapporteur on the right to health presented a report in 2011 to the General Assembly (A/66/254) on criminalization and other legal restrictions on reproductive health services, including abortion. He concluded that "States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality" and called on States to "decriminalize abortion" and to "consider, as an interim measure, the formulation of policies and protocols by responsible authorities imposing a moratorium on the application of criminal laws concerning abortion". In addition, post-abortion medical services, regardless of the legality of abortion, must always be available, safe and accessible.

### **Treaty body jurisprudence on abortion**

#### ***L.M.R. v. Argentina* (Human Rights Committee, communication No. 1608/2007, Views adopted on 29 March 2011)**

L.M.R. was a minor girl with an intellectual disability, who had become pregnant as a result of rape by her uncle. She was denied a legal abortion. The Committee found a violation of article 7 of the Covenant (torture or other inhuman or degrading treatment), since the State's failure to guarantee her right to a termination (which in this case would have been in accordance with Argentine law) had "caused L.M.R. physical and mental suffering constituting a violation of article 7 of the Covenant that was made especially serious by the victim's status as a young girl with a disability." The Committee called on the State party to provide the victim with redress, including adequate compensation.

#### ***K.L. v. Peru* (Human Rights Committee, communication No. 1153/2003, Views adopted on 24 October 2005)**

K.L. was a 17-year-old girl whose foetus was determined to have a condition which would prevent its survival for more than a few days following birth. She requested an abortion, but the service was denied since abortion was legal only to save the mother's life but not in cases of foetal impairment. K.L. had to carry the pregnancy to term and was then made to breastfeed the baby, who died four days after birth. In finding a violation of article 7, the Human Rights Committee found that the depression and emotional distress of the 17-year-old girl were foreseeable consequences of the State's failure to enable her to undergo a therapeutic abortion. (Note the State party did not cooperate in the proceedings.)

***L.C. v. Peru (Committee on the Elimination of Discrimination against Women, communication No. 22/2009, Views adopted on 17 October 2011)***

L.C. was a minor girl, victim of sexual abuse, who had attempted suicide when she had found out that she had become pregnant as a result of the abuse. She survived but sustained serious injuries, including to her spine, that required urgent surgery. She and her mother requested a legal abortion so that the operation could proceed. This was denied by a hospital, claiming that the victim's life was not in danger. Finally, after 3.5 months and having miscarried, she had the surgery but she is currently paralysed from the neck down, having regained only partial movement in the hands. The Committee found a violation of her right to health, since the decision on the abortion had not taken sufficiently into account the damage of the decision on her mental and physical health. Her health would have required access to both the surgery and the therapeutic abortion, especially given the circumstances (her age, the suicide attempt and sexual abuse).

Regarding access to medicines, WHO has included modern methods of contraception, including emergency contraception, in its Model List of Essential Medicines. Recognizing that access to medicines to ensure sexual and reproductive health can sometimes be restricted on political, cultural or legal rather than medical grounds, the Special Rapporteur on the right to health has called on States to "ensure that access to essential medicines for treating ... sexual and reproductive health ... is based purely on health needs and evidence and not restricted on account of extraneous non-health considerations" (A/HRC/23/42, para. 73 (b)).

***Consent***

Ensuring women's sexual and reproductive health rights means that women's capacity to make decisions regarding their bodies must be respected. Requirements of third-party consent for access to certain services have been consistently criticized by human rights mechanisms as

contrary to women's rights.<sup>36</sup> For instance, the Human Rights Committee, in its general comment No. 28 (2000), deemed legal provisions requiring the husband's consent for a woman to undergo sterilization a violation of the woman's right to privacy.

According to the Committee on the Elimination of Discrimination against Women, in its general recommendation No. 19 (1992), compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes their right to decide on the number and spacing of their children. In *A.S. v. Hungary*,<sup>37</sup> a doctor in a public hospital performed a forced sterilization procedure on a patient without providing adequate information to gain the patient's consent. The Committee found a violation of the petitioner's right to equality in education, especially regarding information pertaining to family planning, the right to equality in accessing health care and the right to equality in the family, especially regarding the right to decide the number, spacing and timing of children.

Persons with disabilities face particular risks of being subjected to involuntary medical procedures pertaining to their sexual and reproductive health. Article 23 of the Convention on the Rights of Persons with Disabilities reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others. Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity. Article 25 clearly articulates that free and

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<sup>36</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on women and health, and its comments on State party reports, for instance on Indonesia (CEDAW/C/IDN/CO/5, para. 16) and on Turkey (A/52/38/Rev.1, para. 196); and Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health. The latter has commented that the need for parental consent for abortion has increased the number of illegal abortions among adolescents (see its concluding observations on Kyrgyzstan (CRC/C/15/Add.127, para. 45)) and has in several cases recommended that States should provide adolescents with youth-friendly rehabilitation and counselling services.

<sup>37</sup> Committee on the Elimination of Discrimination against Women, communication No. 4/2004, Views adopted on 14 August 2006.

informed consent should be the basis for providing health care to persons with disabilities. The Committee on the Rights of Persons with Disabilities recommended “the abolition of surgery and treatment without the full and informed consent of the patient” in one of its first concluding observations to a State party.<sup>38</sup>

### **Torture and cruel, inhuman and degrading treatment in health-care settings**

In his 2013 report to the Human Rights Council, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment analysed human rights abuses in health-care settings which are tantamount to torture or cruel, inhuman or degrading treatment or punishment, and existing protection gaps in this regard. He devoted specific attention to violations of reproductive rights. He explains that “forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.” He called on States to “safeguard free and informed consent on an equal basis for all individuals without any exception, through legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses.”

In the same report, he also recalls the Committee against Torture’s concern about absolute bans on abortion as violating the prohibition of torture and other forms of cruel, inhuman and degrading treatment. He recommended that States “ensure that women have access to emergency medical care, including post-abortion care, without fear of criminal penalties or reprisals.”

*Source:* A/HRC/22/53.

<sup>38</sup> Concluding observations: Tunisia (CRPD/C/TUN/CO/1, para. 29). See also “Thematic study on the issue of violence against women and girls and disability” (A/HRC/20/5).

### *The right to a safe and healthy pregnancy*

Complications during pregnancy and childbirth are a leading cause of death and disability among women of reproductive age in developing countries. There is no single cause of death and disability for men between the ages of 15 and 44 that is close to the magnitude of maternal mortality.<sup>39</sup> The World Health Organization defines maternal death as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes. Maternal morbidity is a condition outside of normal pregnancy, labour and childbirth that affects a woman's health during those times.<sup>40</sup>

States are obliged under international human rights law to respect, protect and fulfil human rights in relation to maternal health, pregnancy and childbirth. When women die in childbirth due to preventable causes, many human rights obligations of the State come into play. For instance, to protect women's right to life, States need to ensure that available resources are used and that the necessary measures are taken to ensure the availability, accessibility, acceptability and good quality of sexual and reproductive health services, including their affordability. Preventable maternal deaths can also entail violations of the right to the highest attainable standard of physical and mental health, including sexual and reproductive health, the rights to equality and non-discrimination, the rights to information and education and to enjoy the benefits of scientific progress.

Applying a human rights-based approach to maternal mortality and morbidity entails inter alia looking at preventable maternal mortality and morbidity from an equality and non-discrimination perspective, analysing State obligations under human rights law as well as gaps in protection,

<sup>39</sup> See D. Maine and A.E. Yamin, "Maternal mortality as a human rights issue: measuring compliance with international treaty obligations", *Human Rights Quarterly*, vol. 21, No. 3 (August 1999).

<sup>40</sup> Susan A. Orshan, *Maternity, Newborn and Women's Health Nursing: Comprehensive Care across the Life Span* (Philadelphia, Wolters Kluwer/Lippincott Williams and Wilkins, 2008), p. 15.

participation and accountability. The human rights-based approach facilitates reaching specific groups of women who are excluded from access to essential health services.

### **A human rights-based approach to maternal mortality**

The Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights to prepare a series of reports on maternal mortality and morbidity as a human rights issue. In the first report in 2010 (A/HRC/14/39), the High Commissioner outlined seven important principles of a human rights-based approach: non-discrimination, accountability, participation, transparency, empowerment, sustainability, and international cooperation. In 2011, a compilation of good practices (A/HRC/18/27) was presented, in which the High Commissioner observed five common features of good practices to reduce maternal mortality and morbidity in line with human rights obligations: enhancing the status of women by removing barriers to an effective human rights-based approach to eliminate maternal mortality and morbidity, ensuring sexual and reproductive health rights, strengthening health systems to increase access to and use of skilled care, addressing unsafe abortion, and improving monitoring and evaluation.

In 2012, the High Commissioner prepared technical guidance on the application of a human rights-based approach to policies and programmes to reduce preventable maternal mortality and morbidity (A/HRC/21/22). The guidance is aimed principally at policymakers seeking to design maternal health policies in accordance with human rights requirements. It follows the policy cycle of planning, budgeting, implementation, monitoring and accountability, including details of the required steps from a human rights perspective at each stage.

### C. WOMEN'S RIGHT TO AN ADEQUATE STANDARD OF LIVING

The International Covenant on Economic, Social and Cultural Rights mentions the right to adequate food, clothing and housing, and the continuous improvement of living conditions as part of the right to an adequate standard of living for oneself and one's family (art. 11). Women's rights to land, property, food, water and sanitation, as well as work and social security, are intrinsically linked to the right to attain an adequate standard of living. All these rights are guaranteed under international human rights law, including the right to enjoy these rights on an equal basis with men, without discrimination. Women's access to services, to education and to productive resources is paramount to the realization of the above-mentioned rights.

#### *Land, property, housing*

Rights to land, housing and property are essential to women's equality and well-being. Women's rights in, access to and control over land, housing and property are a determining factor in their living conditions especially in rural economies, essential to women and their children's daily survival, economic security and physical safety. Despite the importance of these rights for women and female-headed households, women still disproportionately lack security of tenure.<sup>41</sup> This is often because property is registered in a man's name; the father, husband or brother. In the event of separation, divorce or widowhood, the man or his family often retains rights to the property or the land whereas the woman becomes homeless or will have to share the property with her in-laws without gaining control or rights over it.

Access to land and housing is governed through land tenure systems. Land tenure is the relationship, whether legally or customarily defined, among people, individuals and groups, with respect to land. According to general comment No. 4 (1991) on the right to adequate housing of

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<sup>41</sup> United Nations Centre for Human Settlements, *Women's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview*, Land Management Series No. 9 (Nairobi, 1999), p. 12.

the Committee on Economic, Social and Cultural Rights, tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Regardless of the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Discriminatory legislation on and lack of control over property, land and housing also mean that women are excluded from community decision-making processes that are led by men who normally are the landowners. In rural communities, ownership of land determines both social status and the way in which control is exercised over a household's resources and income. Women's disadvantaged economic position in this regard creates a structural dependence on men for access to resources, which in turn can subject women to insecurity and violence.

Cultural and religious practices, as well as customary practices, can also have an impact on women's rights related to land, property and housing. These practices often exist in parallel with statutory laws.<sup>42</sup> They may discriminate against women regarding property, land and housing, and sometimes trump national laws (these practices are never codified but can in practice supersede laws, for instance when implemented locally or when used as interpretation of statutory laws). This happens in particular in rural areas, where customs and practices still shape and influence family matters and determine the position of women. Most often, these customs or practices make women's access to or control over land, property and housing dependent on a man—the husband, father or brother. In practice, the interpretation of statutory laws is influenced by customary laws or practices to the detriment of women's rights. Customary forums for decision-making are normally dominated by men. Women can rarely participate in decision-making with respect to land,

<sup>42</sup> *Women and the Right to Adequate Housing* (United Nations publication, Sales No. E.11.XIV.4). See also UN-Women and OHCHR, *Realizing Women's Rights to Land and Other Productive Resources* (2013).

property and housing even though these issues affect them directly and seriously. Gender bias within the official administration also leads to the exclusion of women from decision-making on policies and programmes on housing and land.<sup>43</sup>

Women suffering from multiple forms of discrimination—e.g., older women, women with disabilities, women living with HIV/AIDS or women belonging to minority communities or indigenous groups—face additional obstacles in accessing land and property. For instance, in some places widows, often older women, are blamed for killing their husbands by infecting them with HIV and in-laws use this as a justification to dispossess them and evict them. Women then lose access to productive resources which they badly need to pay for their medical care.

The Universal Declaration of Human Rights establishes the right of everyone to own property regardless of sex (art. 17.1 and 2), the right to an adequate standard of living including housing and to security in the event of a lack of livelihood (art. 25), and states that everyone should have equal rights as to marriage, during marriage and at its dissolution (art. 16). The International Covenant on Civil and Political Rights, in its broad non-discrimination provision (art. 26), guarantees equality before the law and prohibits discrimination on the basis of sex. This applies equally to legislation and policies on property, housing and land rights. The International Covenant on Economic, Social and Cultural Rights also guarantees the right to adequate housing (art. 11). Furthermore, the Convention on the Elimination of All Forms of Discrimination against Women specifically requests States to undertake all appropriate measures to eliminate discrimination against rural women, and to guarantee their enjoyment of adequate living conditions, including housing (art. 14.2). It also stipulates that State parties should undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular to ensure the same

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<sup>43</sup> *Women and the Right to Adequate Housing*, chap. II, sects. C and F.

rights for spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property (art. 16.1).<sup>44</sup>

In the Beijing Platform for Action, States committed to “undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology.” The 1996 United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey, and its Istanbul Declaration and Habitat Agenda provide a plan of action on rights, including the rights of women in human settlements development. It commits States to providing legal security of tenure and equal access to land for all, including women and people living in poverty.

Women are disproportionately affected by forced evictions, protection against which is a key element of security of tenure and the right to adequate housing. Eviction can take place only under certain very exceptional circumstances and under strict criteria imposed by international law. States have to take certain measures to comply with international standards, such as adopt and implement special measures to protect women from evictions, for instance by conferring titles to land and housing to women. States have to assess the differentiated impact of evictions on women so that the specific impact on them is addressed appropriately. Women have equal rights to all

<sup>44</sup> According to the Committee on the Elimination of Discrimination against Women, under the Convention women should be accorded a legal capacity identical to that of men, so that a woman can enter into contracts, own property and have access to financial credit without a husband's or male family member's guarantee or concurrence. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and is also in many countries critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and her children. With regard to marital property, even if the law gives women the right to own an equal share of the property during marriage or when the marriage ends, in practice there are many obstacles such as discriminatory laws or customs that hinder women's exercise of those rights and States should address these. The same applies to inheritance laws and practice, and the Committee urges States to abolish legal provisions on inheritance that do not reflect the principles of equal ownership of property acquired during marriage (general recommendation No. 21 (1994)). See also Leilani Farha, “Women and housing”, in *Women and International Human Rights Law*, Kelly D. Askin and Doreen M. Koenig, eds., vol. 1 (Ardsley, New York, Transnational Publishers, 1999), pp. 510–513.

relevant information, full consultation and participation throughout the entire process of eviction. In the event of eviction, remedies and compensation should be equally available to women and States should ensure that women are not subjected to discrimination or to sexual or gender-based violence. Women must be co-beneficiaries of any compensation packages, and widows or single women are entitled to their own compensation.

### **Violence against women and their right to housing**

Research has demonstrated the links between domestic violence and women's right to adequate housing and this has been highlighted throughout the work of the Special Rapporteurs on violence against women and on the right to adequate housing. If women's right to adequate housing is not sufficiently protected, women become more vulnerable to violence. Domestic violence has been found to be a leading cause of women's (and often their children's) homelessness, and many women try to avoid homelessness by staying in abusive relationships. Women who are property owners or landowners experience less domestic violence, which points to the importance of guaranteeing women's security of tenure.

Assumptions that a woman has to "leave" an abusive home instead of removing the abusive husband and the lack of support for removing the abusive partner by local authorities, community and/or family laws and regulations, greatly undermine women's right to adequate housing as well as their right to live a life free of violence. Overcrowding, poverty and unemployment also have an impact on the above-mentioned rights and directly affect the level of violence and sexual abuse in homes and communities. In addition, insufficient protection for victims of domestic violence, including insufficient shelter homes, legal aid and information to women about their rights, has an impact on the level of domestic violence and women's homelessness. Consequently, States should address all these issues as issues of women's rights to property, land, housing, life, personal security, gender equality and being free from violence and discrimination.

***A.T. v. Hungary (Committee on the Elimination of Discrimination against Women, communication No. 2/2003, Views adopted on 26 January 2005)***

In *A.T. v. Hungary*, a case on domestic violence, the Committee ruled that shelter homes should always be available to provide effective protection to victims of domestic violence. Furthermore, the State party was called upon to take immediate and effective measures to guarantee the physical and mental integrity of A.T. and her family and ensure that she is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights.

***Food, water and sanitation***

The rights to food, water and sanitation are equally crucial for women's well-being, dignity and enjoyment of other human rights. Poor female nutrition early in life reduces learning potential and productivity, and increases reproductive and maternal health risks. This undermines attempts to eliminate gender inequalities throughout a woman's lifespan, having an effect on issues such as women's access to resources. Investing in women's nutrition improves the overall development capacity of a country, considering the role women have in the household with regard to food production, food preparation and childcare.<sup>45</sup> Women's and girls' disadvantaged health status and their traditional role in water collection and sanitation management in many societies have a negative impact on them, and it has been recognized that a lack of water and sanitation also disproportionately affects them. Women and girls have greater need for privacy when using toilets and when bathing, especially when menstruating, and in addition not having easy access to toilets and bathrooms makes them more vulnerable to rape and other forms of gender-based violence.

<sup>45</sup> *Women and the Right to Food: International Law and State Practice*, Right to Food Studies (Rome, Food and Agriculture Organization of the United Nations, 2008), p. 8.

The International Covenant on Economic, Social and Cultural Rights recognizes the right to food, and acknowledges that more immediate and urgent steps may be needed to ensure everyone's fundamental right to freedom from hunger and malnutrition (art. 11). The Committee on Economic, Social and Cultural Rights specified, in its general comment No. 12 (1999) on the right to adequate food, that this right entails that food has to be physically and economically accessible to all. According to the Committee, the State obligation is to take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food. This requires the development of a national strategy on food security, which has to specifically address the need to prevent discrimination in access to food or resources for food, including guaranteeing full equal access for women to economic resources, "including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families."

According to the Special Rapporteur on the right to food, closing the gender gap in agriculture is essential for achieving Millennium Development Goal 1. For this purpose, the Special Rapporteur recommends measures such as "eliminating discriminatory laws and cultural practices; supporting the development of women's cooperatives; employing more women in the extension services sector; titling schemes combined with broader agricultural support; issuing titles in the name of both the husband and wife; and encouraging more diverse farming practices such as diverse crop plantings and combining cash crops with subsistence crops".<sup>46</sup> The Special Rapporteur notes that women are a huge interest group and a major actor in realizing the right to food, but are rarely heard since they are underrepresented legally, economically and politically. While women make up 80 per cent of the world's agricultural labour force, they own

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<sup>46</sup> [www.srfood.org/en/gender](http://www.srfood.org/en/gender) (accessed 8 November 2013).

less than 1 per cent of land and account for less than 1 per cent of credit offered to farmers globally.<sup>47</sup>

In 2010 the United Nations General Assembly recognized the right to clean water and sanitation as a human right, through its resolution 64/292. This right is intrinsically linked to the right of everyone to a decent standard of living (International Covenant on Economic, Social and Cultural Rights, art. 11.1) and the right to the highest attainable standard of physical and mental health (*ibid.*, art. 12.1), according to the Committee on Economic, Social and Cultural Rights. Water is a prerequisite for living a life in dignity and the enjoyment of several other human rights depends on the accessibility of water. The Convention on the Elimination of All Forms of Discrimination against Women stipulates that State parties should ensure women's adequate living conditions, *inter alia* in relation to water supply (art. 14.2). The Committee on Economic, Social and Cultural Rights underscores, in its general comment No. 15 (2002) on the right to water, that they should give particular attention to ensuring marginalized farmers, including women farmers, have equitable access to water and water management systems. Water has to be available, of sufficiently good quality, and accessible both economically and physically, without discrimination.

State parties have immediate obligations in relation to the right to water, including certain core obligations that represent a minimum level to which the obligations laid down in the Covenant have to be fulfilled at all times. Ensuring the right to access water and water facilities and services on a non-discriminatory basis, especially for marginalized or disadvantaged groups, is part of these core obligations. In relation to women's right to water, general comment No. 15 (2002) specifies that States should take steps to ensure that women are not excluded from decision-making processes concerning water resources and entitlements, and that the disproportionate burden on women to collect water is alleviated.

<sup>47</sup> *Ibid.* See also gender resources on the website of the Food and Agriculture Organization of the United Nations: [www.fao.org/gender/gender-home/gender-resources/en/](http://www.fao.org/gender/gender-home/gender-resources/en/) (accessed 8 November 2013).

The Special Rapporteur on the human right to safe drinking water and sanitation explained in her report on stigma and the realization of the human rights to water and sanitation (A/HRC/21/42) how the intersection of different attributes can compound the discrimination faced by certain groups or persons, such as being a woman and a sex worker, a woman infected with HIV, or being a woman and belonging to a certain marginalized group. The stigma these groups of women face greatly affects their access to water and sanitation. Menstruating women also suffer stigma and menstruation remains a taboo in many countries. Women often lack the appropriate facilities and the needed privacy to change or wash during menstruation, and cultural perceptions that menstruating women are “contaminated” or “impure” lead to their reduced mobility or even seclusion, as well as to dietary restrictions and restricted access to water resources and food during menstruation. The taboos and deeply rooted practices surrounding menstruation also have a negative impact on girls’ right to education, since girls may be absent from school during menstruation, either because there are no appropriate facilities at school or because they are isolated by their family owing to cultural practices. To combat silence and stigma, States should make sure that there is sufficient access to information on menstruation and hygiene, including comprehensive sexual education in schools on menstruation, targeting both girls and boys. The provision of adequate hygiene facilities must be ensured as well.

### *The right to decent work and to social security*

In addition to other rights, the right to work and to social security is closely linked to the right to an adequate standard of living and the continuous improvement of living conditions for oneself and one’s family. According to the International Labour Organization (ILO), women experience systemic barriers in almost every aspect of work, ranging from whether they have paid work at all, to the type of work they obtain or are excluded from, the availability of support such as childcare, the level of their pay, their working conditions, their access to higher paying “male” occupations, the insecurity of their jobs, the absence of pension entitlements or benefits,

and the lack of time, resources or information necessary to enforce their rights.<sup>48</sup> Women make up the majority of the poor in both developed and developing nations, and they face multiple barriers to accessing social security too, owing to their roles as mothers, carers, informal workers, migrants, and precarious and part-time workers.

The general right to work is set out in the International Covenant on Economic, Social and Cultural Rights (art. 6). The Covenant further recognizes everyone's right to enjoy just and favourable conditions of work, in particular the right to safe working conditions (art. 7). It also addresses collective rights related to the right to work, such as the right to form trade unions and the right to join a trade union of one's choice (art. 8). As the Committee explains in its general comment No. 18 (2005) on article 6 of the Covenant, the work has to be decent, that is to say, respect the fundamental rights of the individual as well as those of the worker to safe working conditions and remuneration. States should therefore take measures to reduce to the extent possible the number of workers outside the formal economy (predominantly women) who thus lack any protection by the State. Work must be available, accessible without discrimination on any grounds, and acceptable to the individual worker. Again, the State has an immediate obligation to guarantee that the right to work will be enjoyed without discrimination, and to take deliberate, concrete, targeted steps towards the realization of the right to work and full employment.

The Committee further underlines the need for "a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value. In particular, pregnancies should not constitute an obstacle to employment and should not constitute justification for loss of employment."

The main ILO convention relevant to gender equality with respect to work is the Discrimination (Employment and Occupation) Convention No. 111 (1958), which stipulates that States are to declare and pursue a national

<sup>48</sup> See [www.ilo.org/public/english/support/lib/resource/subject/gender.htm](http://www.ilo.org/public/english/support/lib/resource/subject/gender.htm) (accessed 8 November 2013).

policy to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination, which would include discrimination based on sex. Other notable conventions are the Equal Remuneration Convention No. 100 (1951), which specifically addresses equal remuneration for work of equal value, the Workers with Family Responsibilities Convention No. 156 (1981) and the Maternity Protection Convention No. 183 (2000). Numerous other ILO conventions are relevant from a gender perspective including conventions on employment promotion, working conditions, as well as on specific categories, such as persons with HIV/AIDS, indigenous and tribal people, migrant workers, and domestic workers.<sup>49</sup>

The right to social security, including social insurance, is also provided for in the International Covenant on Economic, Social and Cultural Rights (art. 9). According to the Committee's general comment No. 19 (2007) on the right to social security, social security is of central importance in guaranteeing human dignity for all persons, when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights. The right to social security encompasses the right to access and maintain benefits without discrimination in order to secure protection, inter alia, from lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member, unaffordable health care or insufficient family support, particularly for children and adult dependants.

The right to social security has to be enjoyed equally by men and women (International Covenant on Economic, Social and Cultural Rights, arts. 2.2 and 3). In its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee notes that the implementation of article 3 in conjunction with article 9 requires, for instance, equalizing the compulsory retirement age for both men and women, ensuring that women receive the equal benefit

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<sup>49</sup> ILO, *Gender Equality and Decent Work: Selected ILO Conventions and Recommendations that Promote Gender Equality as of 2012*, 3rd rev. ed. (Geneva, 2012). Available from [www.ilo.int/global/standards/information-resources-and-publications/publications/WCMS\\_088023/lang-en/index.htm](http://www.ilo.int/global/standards/information-resources-and-publications/publications/WCMS_088023/lang-en/index.htm).

of public and private pension schemes, and guaranteeing maternity leave for women, paternity leave for men and parental leave for both men and women. In its general comment No. 19 (2007) on the right to social security, the Committee explains that State parties should take steps to eliminate factors that prevent women from contributing equally to social security schemes that link benefits to contributions. Differences in the average life expectancy of men and women need to be taken into account in the design of schemes, since they can lead to de facto discrimination, and non-contributory schemes also have to take into account that women more often than men live in poverty and often have the sole responsibility for the care of their children. Contributory pension schemes can accentuate inequalities, with older women more likely to receive lower pensions and other contributory benefits.<sup>50</sup> General recommendation No. 27 (2010) on older women and protection of their human rights further discusses the different types of discrimination older women face. Women are less present in the formal sectors of employment and tend to be paid less for the same work or work of equal value. According to the Committee, such gender-based discrimination throughout women's lives has a cumulative effect in old age, leading to disproportionately low incomes and low pensions or even no pension.

## D. VIOLENCE AGAINST WOMEN

The Declaration on the Elimination of Violence against Women defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

Since the beginning of the 1990s, violence against women has gained much attention in the human rights discourse. However, it took a long and persistent struggle by the women's rights movement to persuade the international community to discuss violence against women as a human

<sup>50</sup> See also the report of the United Nations High Commissioner for Human Rights on the human rights situation of older persons (E/2012/51), para. 51.

rights concern and recognize that gender-based violence is a serious violation of human rights of global importance which poses a threat to human development as well as international peace and security.

The agenda for the 1993 World Conference on Human Rights held in Vienna did not originally mention women or any gender aspects of human rights. It was the women's rights movement that brought attention to the issue of violence against women during the Conference, leading inter alia to the recognition, in the Vienna Declaration, of the elimination of violence against women in public and private life as a human rights obligation.<sup>51</sup> Subsequently, the General Assembly adopted the Declaration on the Elimination of Violence against Women in December 1993. This was the first international instrument to specifically address this issue. It recognizes that violence against women constitutes a violation of the rights and fundamental freedoms of women and a manifestation of historically unequal power relations between men and women. The Declaration calls on States to condemn violence against women and work towards its eradication. The Commission on Human Rights appointed a Special Rapporteur on violence against women, its causes and consequences in 1994. The creation of this mandate has enabled a dynamic development of human rights standards to respond to contemporary challenges and emerging issues with respect to violence against women. The Special Rapporteur has, through her research, significantly developed concepts and legal frameworks pertaining to women's human rights and

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<sup>51</sup> Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights* (Center for Women's Global Leadership, 1994), pp. 2–8. The issues raised in Vienna by the Global Campaign, a coalition of women's rights organizations, stemmed from concerns put forward by the women's rights movement that had emerged over the previous decade, with its roots in global women's rights movements during the United Nations Decade for Women (1976–85), challenging the traditional approach to human rights purporting that human rights would be limited to violations committed by State agents, in the public sphere, and against (mostly male) dissidents or political opponents, as well as the predominance of civil and political rights over other human rights. Through organizing the Global Tribunal on Women's Human Rights during the Vienna Conference, with women from all over the world speaking out about their experiences of violence, the Global Campaign managed to draw the attention of the international community to the seriousness of occurring violations of women's human rights. As a result, the Vienna Declaration and Programme of Action contained an extensive section on women's human rights and declared that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights".

violence against women.<sup>52</sup> The Fourth World Conference on Women reaffirmed the conclusions of the Vienna World Conference, listing violence against women as one of 12 critical areas of concern.<sup>53</sup>

The Convention on the Elimination of All Forms of Discrimination against Women does not explicitly mention violence against women, but the Committee, in its general recommendation No. 19 (1992) on violence against women, asserted that violence against women is “violence directed against a woman because she is a woman or affects women disproportionately”. This violence seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men. The adoption of this general recommendation was a critical precursor to the recognition of this issue at the Vienna World Conference.

Women in all countries, irrespective of status, class, age, caste or religion, experience violence in virtually all spheres of life, whether in the home, at work, on the street, in government institutions, or in times of conflict or crisis. Violence is also present throughout the lifetime of a woman, affecting girls and older women too. Specific groups of women suffering from various forms of discrimination, such as women with disabilities or migrant women, lesbian, bisexual and transgender women, are particularly vulnerable to violence. Understanding that violence against women is a manifestation of historically unequal power relations between men and women, a human rights analysis posits that the specific causes of such violence and the factors that increase the risk of its occurrence are grounded in the broader context of systemic gender-based discrimination against women and other forms of subordination. Vulnerability to violence is understood as a condition created by the absence or denial of rights.<sup>54</sup>

<sup>52</sup> See “15 years of the United Nations Special Rapporteur on violence against women”, pp. 10 and 24–28.

<sup>53</sup> Arvonne Fraser, “Becoming human: the origins and development of women’s human rights”, in *Women’s Rights: A Human Rights Quarterly Reader*, Bert B. Lockwood, ed. (Johns Hopkins University Press, 2006), p. 53. See also “Beijing and its follow-up”, available from [www.un.org/womenwatch/daw/beijing/](http://www.un.org/womenwatch/daw/beijing/) (accessed 8 November 2013), and Sally Engle Merry, *Human Rights and Gender Violence, Translating International Law into Local Justice* (University of Chicago Press, 2006), p. 21. In the earlier global 1975 and 1980 world conferences on women, gender violence was not treated as a major issue.

<sup>54</sup> “In-depth study on all forms of violence against women” (A/61/122/Add.1), para. 65.

Violence against women in the family can take the form of domestic violence or harmful or degrading practices that are violent to and/or subordinate women. Country visits by the Special Rapporteur on violence against women have shown that domestic violence remains widespread and affects women of all social strata (A/66/215). Harmful and degrading practices, such as dowry-related violence or so-called honour crimes, also continue, without systematic monitoring, punishment or redress, despite advances in legislation prohibiting them. Other examples of violence in the family are domestic assault (physical, psychological, emotional, financial or sexual violence), marital rape, femicide or gender-motivated killings (domestic murder, ritual killings or killings of women accused of witchcraft, lynching, as well as gender identity- and sexual orientation-related or ethnic or indigenous identity-related killings), child marriage, female genital mutilation and sex-selective abortion.<sup>55</sup>

Other forms of violence against women occur in the community. Examples of such violence can be rape/sexual assault, sexual harassment, violence within institutions, violence against women migrant workers, witchcraft- or sorcery-related violence or killings (A/66/215 and A/HRC/11/2). Although in the majority of cases younger women are at higher risk of witchcraft-related violence, in some parts of Africa older women are more vulnerable to sorcery-related femicide owing to their economic dependence on others or the property rights that they hold (A/HRC/20/16).

Violence against women is also perpetrated or condoned by the State. This type of violence can include gender-based violence during conflict, disappearance or extrajudicial killings, custodial violence, violence against refugees and internally displaced women, or women from indigenous or minority groups (A/66/215). As will be explained below, State responsibility can also be invoked for private acts, i.e., when State officials are not the direct perpetrators of the violence.

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<sup>55</sup> Radhika Coomaraswamy and Lisa M. Kois, "Violence against women", in *Women and International Human Rights Law*, vol. 1, pp. 184–186. See also the Special Rapporteur on violence against women's report on gender-related killings of women (A/HRC/20/16), para. 16.

**Committee on the Elimination of Discrimination against Women: jurisprudence**

In *Şahide Goekce (deceased) v. Austria*, communication No. 5/2005, the complainants claimed that the State had failed to guarantee the right to life and personal security of Ms. Goekce, who was killed by her husband after continued domestic violence that had been reported to the police. The police had been aware that her husband had a handgun and had threatened to kill her on several occasions.

In *Fatma Yildirim (deceased) v. Austria*, communication No. 6/2005, the victim had also been killed by her husband after several death threats, which had been reported to the police. The complainants claimed that the State had failed to take appropriate positive measures to protect the victim's right to life and personal security.

In both cases the Committee recommended that the State party strengthen its implementation and monitoring of national laws on domestic violence, by "acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so." The Committee found that there had been a violation of the rights of the deceased to life and physical and mental integrity under article 2 (a) and (c)–(f), and article 3 of the Convention read in conjunction with article 1 and its general recommendation No. 19 (1992). It considered that, given the combination of factors, the police knew or should have known that the victims were in serious danger, and therefore considered that the police were accountable for failing to exercise due diligence to protect the victims.

The Committee clarifies in its general recommendation No. 19 (1992) that State parties may be held responsible for private acts of violence, if they "fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." This due diligence obligation of States is also repeated in the United Nations Declaration on the Elimination of Violence against Women. The Special

Rapporteur on violence against women has referred to the due diligence standard in terms of the State's obligation to prevent, prosecute, punish and compensate for acts of violence against women (E/CN.4/2006/61).<sup>56</sup> In her 2011 report to the General Assembly (A/66/215), the Special Rapporteur outlined evolving practices on the due diligence standard, jurisprudence and remaining challenges. According to the Special Rapporteur, the State's due diligence obligation under international human rights law consists of *preventing, investigating, punishing* acts of violence against women, *protecting* women from violence, and *providing an effective remedy and reparation* to victims of violence.

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<sup>56</sup> In various areas of law, the due diligence standard is used to assess whether a State is meeting its obligations. For human rights law, the standard serves as a tool for rights holders to hold duty bearers accountable by providing an assessment framework for ascertaining what constitutes *effective fulfilment* of the obligation, and for analysing the actions or omissions of the duty bearer. This is especially important if the potential infringement comes through a duty bearer's *failure to act*, as it can be difficult for rights holders to assess if an omission constituted a violation of their right without some normative basis for the appraisal.

### **Inter-American Court of Human Rights: jurisprudence**

*González et al. ("Cotton Field") v. Mexico* (Judgement of 16 November 2009), concerning the abduction, sexual violence and killing of two children and a woman by non-State actors, was one of hundreds of similar cases of disappearance, rape and murder of predominantly migrant women and girls that had occurred in Ciudad Juárez, Mexico. The Court considered for the first time States' affirmative obligations to respond to violence against women by private actors; it looked at the cases in the context of mass violence against women and structural discrimination, and found that the violence against women constituted a form of discrimination. The Inter-American Court of Human Rights interpreted broadly the due diligence obligations of the State to prevent, investigate and impose penalties for violence against women. Using the concept of gender-sensitive reparations with a transformative approach, striving not only for restitution but for rectification, the Court declared that the reparations should be "designed to identify and eliminate the factors that cause discrimination" and in doing so should aim at transforming the underlying gender inequalities that gave rise to the violence. In addition, the Court ordered Mexico to comply with a broad set of remedial measures, including building a national memorial, conducting renewed investigations and providing reparations of over \$200,000 each to the families in the suit.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has also addressed killings committed by private actors, such as murders by gangs, vigilante justice, "honour killings" or domestic violence killings. According to the mandate, an isolated private killing is a domestic crime and does not give rise to State responsibility. However, where there is a pattern of killings and the State's response (with respect to either prevention or accountability) is inadequate, the responsibility of the State is engaged. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to ensure the right

to life, and must meet its due diligence obligations to take appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators (A/HRC/14/24).

With regard to gender-related killings of women, the Special Rapporteur on violence against women reported in 2012 that their prevalence is increasing and a lack of accountability for such crimes is the norm (A/HRC/20/16). The Special Rapporteur explained that these incidents are not isolated but represent the ultimate act experienced in a continuum of violence by women living under conditions of gender-based discrimination. The Special Rapporteur added that a holistic approach to preventing gender-related killings must be emphasized in all the measures taken by States to investigate and sanction violence, in particular in designing, implementing and evaluating legislation and policies.

The Human Rights Committee, in its general comment No. 28 (2000), underlined that all the Covenant's civil and political rights should be ensured on a basis of equality between men and women and, in its general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, that it is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against torture or cruel, inhuman or degrading treatment or punishment, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. In addition, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment argues for the torture protection framework to be applied in a gender-inclusive manner with a view to strengthening the protection of women from torture. According to the Special Rapporteur, State obligations under the Convention against Torture clearly extend to the private sphere as well, in addition to violations committed by public officials (A/HRC/7/3).

The Committee against Torture, in its general comment No. 2 (2008) on the implementation of article 2 by States parties, also further clarified that the requirement under the Convention against Torture's article 1 of "consent or acquiescence" by the State is equivalent to a due diligence obligation for

the State to prevent, investigate, prosecute and punish torture by non-State officials or private actors consistently with the Convention. The Committee has applied this principle to State parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.

The Special Rapporteur on torture mentions rape and other forms of sexual violence such as threats of rape, touching, "virginity testing", being stripped naked, invasive body searches, insults and humiliations of a sexual nature, as well as forced abortion and denial of access to safe abortion to women who have become pregnant as a result of rape, as forms of violence that could constitute gender-based torture. According to the Special Rapporteur, the powerlessness of the victim and the purpose of the act are the most decisive elements to determine whether an act amounts to torture, or other cruel, inhuman or degrading treatment. The Special Rapporteur has further pointed out that, given the particular vulnerability of women with disabilities, forced abortions and sterilizations of these women if they are the result of a lawful process by which decisions are made by their "legal guardians" against their will, may also constitute torture or ill-treatment. Violence in the name of honour, sexual violence and harassment, as well as slavery-like practices often of a sexual nature, domestic violence (in the form of intimate partner violence), female genital mutilation and human trafficking can also constitute gender-based torture, or other cruel, inhuman or degrading treatment, according to the Special Rapporteur (A/HRC/7/3).

The Working Group on Enforced or Involuntary Disappearances has also recognized the gender-specific aspects of disappearances, whether women are themselves victims of disappearances or family members of disappeared persons. In this regard, it has emphasized the State obligations to prevent and respond to all instances of gender-based violence, including enforced disappearances, securing women's participation in truth-seeking processes, and protecting women's right to a remedy, among other requirements (A/HRC/WGEID/98/2).

In general, both a broader understanding of violence against women and a more gender-sensitive interpretation of human rights law are developing and, globally, there is more awareness of the severity of the problem of violence against women. Many countries have made significant progress by adopting new legislation on violence against women, but application of the law, proper training of law enforcement officials, as well as adequate and accessible protection, prevention and reintegration measures remain a challenge.<sup>57</sup>

### **European Court of Human Rights: jurisprudence**

In *Opuz v. Turkey*, application No. 33401/02, the applicant alleged that the Turkish authorities had failed to protect the right to life of her mother and had been negligent in the face of the repeated violence, death threats and injury to which she herself had been subjected.

The Court found that:

- There had been a violation of article 2 (right to life) of the European Convention on Human Rights in respect of the applicant's mother, who was killed by the applicant's ex-husband despite the fact that the authorities had been repeatedly alerted about his violent behaviour;
- There had been a violation of article 3 (prohibition of torture and of inhuman and degrading treatment) on account of the authorities' failure to protect the applicant against her ex-husband's violent and abusive behaviour; and
- There had been a violation of article 14 (prohibition of discrimination) read in conjunction with articles 2 and 3 on account of the violence suffered by the applicant and her mother having been gender-based, which amounted to a form of discrimination against women, especially bearing in mind that, in cases of domestic violence in Turkey, the general passivity of the judicial system and impunity enjoyed by aggressors mainly affected women.

<sup>57</sup> A/61/122/Add.1; *Progress of the World's Women 2011–2012*; "Advancement of women" (A/66/215), chap. III; and A/HRC/17/23, chap. III.

### ***Vulnerability to trafficking related to discrimination and violence against women***

Discrimination can be linked to trafficking in a number of ways. It is no coincidence that those most likely to be trafficked (irregular migrants, stateless persons, non-citizens and asylum seekers, members of minority groups) are especially susceptible to discrimination and intolerance, based on their gender, race, ethnicity, religion and other distinguishing factors. In addition to increasing the risk of trafficking, discriminatory attitudes, perceptions and practices contribute to shaping and fuelling the demand for trafficking.

According to the Palermo Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, trafficking in persons means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (art. 3 (a)).

Racial and gender-based discrimination in the denial of economic and social rights is a critical factor in rendering certain persons more susceptible to trafficking than others. In both cases, the impact of discrimination results in fewer and poorer life choices. This lack of genuine choice can, in turn, make women and girls more vulnerable to trafficking than men, particularly in certain circumstances and for women and girls of certain nationalities and ethnicities. For example, minority women and girls, women and girls living in poverty, or women and girls living in conflict or post-conflict settings may face increased risks of being trafficked.

Although trafficking can also affect men, it is a form of violence particularly experienced by women. Violence directed against or primarily affecting

women can be a factor making them more vulnerable to trafficking. For example, women may accept dangerous migration arrangements in order to escape the consequences of entrenched discrimination including family violence and lack of protection against such violence. Women may also be more vulnerable than men to coercion and force at the recruitment stage, increasing their susceptibility to being trafficked in the first place. States, particularly countries of origin, can address increases in vulnerability to trafficking-related discrimination and violence against women through a range of practical measures, such as providing safe shelter with medical, psychological and legal facilities for women experiencing violence. Longer-term measures that seek to address the social, cultural and structural causes of violence are also important. These may include: reforming legislation that either discriminates against women or fails to address violence against women; ensuring the prompt investigation and prosecution of complaints related to violence against women; providing access to effective remedies for gender-based violence; and implementing initiatives aimed at educating the public and relevant officials about violence against women.

The Special Rapporteur on trafficking in persons, especially women and children, has reported on a number of issues related to the protection of victims of trafficking, and her work represents useful guidance for States on adopting a human rights-based approach to trafficking.<sup>58</sup> In addition, OHCHR has issued *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, providing further guidance on the matter. The human rights of trafficked persons should be at the centre of all efforts by States to prevent and combat trafficking, and States have a due diligence obligation to investigate, prosecute and punish traffickers and provide assistance to trafficking victims.<sup>59</sup>

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<sup>58</sup> See [www.ohchr.org/EN/Issues/Trafficking/Pages/Annual.aspx](http://www.ohchr.org/EN/Issues/Trafficking/Pages/Annual.aspx) (accessed 8 November 2013).

<sup>59</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary* (United Nations publication, Sales No. E.10.XIV.1).

### **OHCHR Recommended Guidelines on Human Rights and Human Trafficking**

1. Promoting and protecting the human rights of trafficked persons, migrants, asylum seekers, refugees and internally displaced persons should be at the centre of all anti-trafficking measures.
2. Identifying traffickers and trafficked persons is the responsibility of States, in order to ensure victims' rights and bring traffickers to justice.
3. Effective anti-trafficking measures must be based on current and accurate information, experience and analysis.
4. Ensure an adequate national legal framework that implements and corresponds to international standards, including adequate protection of victims of trafficking and witnesses.
5. Ensure an adequate law enforcement response. Investigation and punishment of any law enforcement involvement in trafficking are paramount, as are awareness training for law enforcement officials and training in the investigation and prosecution of trafficking.
6. Ensure protection and support for trafficked persons, without discrimination. Safe and adequate shelter, health and counselling services should be made available.
7. Prevent trafficking through strategies taking into account its root causes, including demand, and for instance awareness campaigns, based on accurate information.
8. Special measures for child victims of trafficking are necessary given their vulnerability and the physical and psychosocial harm they suffer.
9. Ensure access to remedies. Trafficked persons have an international legal right to adequate remedies and reparation, and they should be given legal assistance to exercise that right.
10. The obligations of peacekeepers, civilian police, humanitarian and diplomatic personnel include ensuring that they do not become involved in trafficking, and that any such involvement is thoroughly investigated and punished.
11. Cooperation and coordination between States and regions are crucial, since trafficking is a cross-border, global phenomenon that requires effective international, multilateral and bilateral cooperation to eradicate.

## E. IMPACT OF MIGRATION AND DISPLACEMENT ON THE ENJOYMENT OF WOMEN'S RIGHTS

The principle of universality in international human rights law implies that States of origin, transit and destination are responsible for protecting the rights of migrants within their territories. Although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil the human rights of all individuals under their jurisdiction, regardless of their nationality, origin, gender or age and regardless of their immigration status.<sup>60</sup>

Every country is affected by the phenomenon of migration, as country of origin, transit or destination, or a combination of these. More than 200 million people now live outside their home countries, for reasons ranging from seeking better economic opportunities to escaping persecution. Female migrants form half the world's migrant population and outnumber male migrants in developed countries.<sup>61</sup> Migrants contribute greatly to the economies of their countries of origin through remittances, and to their host countries through their work while also bringing cultural and demographic diversity to that society.

Traditionally, immigration has been looked at mainly from an economic perspective, as a by-product of globalization or a solution to unemployment and poverty. This has to some extent led to immigrants being treated as commodities instead of individuals with rights. A purely economic analysis of immigration fails to take into account the human value of the individual immigrant and the inherent human right to a life in dignity.<sup>62</sup>

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<sup>60</sup> See, e.g., Human Rights Committee, general comment No. 31 (2004), para. 10; Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non-citizens, para. 7; and Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 30.

<sup>61</sup> See [www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx](http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx) (accessed 8 November 2013); and Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights* (2008), p. 1.

<sup>62</sup> Global Migration Group, *International Migration and Human Rights*, p. 5.

Female migration has both positive and negative repercussions. It has great potential and can advance gender equality by empowering migrant women, since many migrate independently nowadays and become the main breadwinners for their families. However, migration can also increase vulnerabilities and put migrant women at risk of discrimination and violence. Women and children who migrate also become more vulnerable to other forms of exploitation. Those in an irregular situation are particularly vulnerable. Women migrants are often found in segregated and unregulated sectors of the economy, such as domestic work, typically unprotected by local labour laws and organizations.<sup>63</sup>

Irregular migrants often end up in administrative detention. The Special Rapporteur on the human rights of migrants noted in his 2012 report to the Human Rights Council (A/HRC/20/24) that migrant women who are detained may be vulnerable to sexual violence committed by male detainees or guards. The Special Rapporteur encouraged States to give particular attention to the situation of migrant women in detention. While women migrants who are travelling with their families and are detained should be kept together in accordance with the principle of family unity, other women migrant detainees should be separated from men, and attended and supervised only by women officers, in order to protect them against sexual violence. The Special Rapporteur also recommended that pregnant women and breastfeeding mothers should not be detained.

An important milestone was the adoption by the General Assembly in 1990 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention reiterates the rights already contained in the major human rights treaties accorded to all persons, regardless of their migration status.

The Convention protects the rights of all migrant workers and their family members, in both regular and irregular situations, during the entire migration process. It covers all aspects of the life of migrants and their families, and entails obligations for States to promote sound, equitable, humane and legal

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<sup>63</sup> See *ibid.*, pp. 1–2, 19 and 45.

conditions of migration. Under the Convention, States must take measures to ensure that the situation of migrants in an irregular situation does not persist (art. 69). The duty of States to provide information to migrants and their family members on their rights under the Convention (art. 33) is especially important for women migrants, who often have limited access to reliable information regarding legal migration channels.<sup>64</sup>

The rights of migrants have been addressed at international conferences such as the International Conference on Population and Development in Cairo in 1994, which pointed out the need to address the root causes of migration, especially those related to poverty, and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, in 2001, which stressed that policies on migration should not be based on racism, racial discrimination, xenophobia or related intolerance. Additionally, the Programme of Action of the International Conference on Population and Development, the Beijing Declaration and Platform for Action and General Assembly resolution 58/143 on violence against women migrant workers urged States to better protect the rights of migrant women. The Beijing Platform for Action calls on States to:

Ensure the full realization of the human rights of all women migrants, including women migrant workers, and their protection against violence and exploitation; introduce measures for the empowerment of documented women migrants, including women migrant workers; facilitate the productive employment of documented migrant women through greater recognition of their skills, foreign education and credentials, and facilitate their full integration into the labour force.

The Convention on the Elimination of All Forms of Discrimination against Women protects all women, including migrant women, against all forms of discrimination and requires State parties to ensure that all women can enjoy their human rights, *de jure* and *de facto*, on an equal basis with men in all fields. In some countries of origin, women face a range of

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<sup>64</sup> Ibid., p. 18.

discriminatory restrictions or bans on their migration, which leads many to migrate through irregular or informal channels, leaving them outside the protection of the law and vulnerable to abuse by agents, smugglers and traffickers. Women often have limited access to reliable information and education, which can further exacerbate their vulnerability. In transit countries, women risk different types of abuse, such as sexual and physical abuse by the escort or agent. Migrant women frequently end up in gender-insensitive work environments in the country of employment, where notions of what type of work is appropriate for women limit their options to domestic work and certain forms of entertainment. In many countries, these fields of work are not regulated and thus the women are excluded from any protection of the law.

Women migrants may also face multiple and intersecting forms of discrimination, such as xenophobia or racism, in addition to discrimination based on sex. Older migrant women may face additional challenges. Generally, they find it harder to learn the local language, find employment and access the health services they need. Older women staying in the country of origin are also particularly affected by migration, as very often they have to take care of the children left behind by migrant parents. Owing to discrimination, women migrant workers often receive lower wages and suffer deplorable working conditions, and lack access to appropriate health services, including reproductive health services. Domestic workers in particular are vulnerable to physical, sexual and other types of abuse by their employers. Access to justice in countries of destination is also limited for many migrant women. Migrant women in an irregular situation are particularly vulnerable to abuse, isolation and limited access to health services or to the justice system.

The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 26 (2008) on women migrant workers, addresses the discrimination and violence that some categories of women migrants face. In particular, it addresses the situation of women migrants who “are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship, unlike

professional migrant workers in the country of employment” and addresses violations of women’s human rights that occur before departure in the country of origin, in the country of transit, and in the country of destination. According to the Committee, female migration and the impact of migration on women has to be understood through a gendered analysis, taking into account gender inequality, traditional roles of women, a gendered labour market, the global prevalence of gender-based violence, feminization of poverty and labour migration. The Committee recommends that States should take a number of measures aimed at improving the legal protection of female migrants and ensuring access to remedies and to services.

The Special Rapporteur on the human rights of migrants highlighted, in her 2004 report to the Commission on Human Rights (E/CN.4/2004/76), that a number of factors make migrant domestic workers a particularly vulnerable group. For instance, she had received several reports of abuse of domestic migrant workers, who are mainly female, suffering discrimination, physical or sexual abuse by the host family and often related depression. In some cases the women work in slavery-like conditions and their employers frequently take away their passports. They lack access to services or protection mechanisms and do not report abuse for fear of being deported.

In its general comment No. 1 (2011) on the right of migrant domestic workers, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families also identified several gaps in the protection of these workers, including their legal protection, as many national laws exclude domestic work and workers, thereby contributing to exploitative labour practices and limiting legal avenues of redress. In many countries, domestic workers are not recognized as “workers” entitled to protection by labour laws. Strict immigration laws lead to many migrant domestic workers being in an irregular situation, outside the protection of the law, or dependent on the employer, since their immigrant status depends on the employer’s continued sponsorship. Contract law and social security laws also often do not apply to domestic workers. Even if some countries have legislation protecting domestic workers, in practice protection gaps remain. Factors such as the nature of the work, language barriers, isolation and dependence contribute to this.

The Special Rapporteur on contemporary forms of slavery, including its causes and consequences has noted that combating domestic servitude and protecting domestic workers' rights are two sides of the same coin (A/HRC/15/20). The Special Rapporteur called on States to adopt specific provisions to criminalize servitude in all its forms and manifestations, and punish perpetrators with due diligence, as well as extend the equal protection of their labour laws to domestic workers, including migrant domestic workers, and end any discriminatory denial of entitlements regarding working hours, rest days, vacation, health care, maternity leave and protection from unfair dismissal.<sup>65</sup>

Women refugees and internally displaced women have specific protection needs, including because of their increased vulnerability to sexual and gender-based violence. Factors such as displacement amplify the discrimination women and girls already endure in "normal conditions" or during peacetime. Women and girl refugees or internally displaced women and girls are exposed to specific protection problems related to their gender, cultural and socioeconomic position as well as their legal status. They have limited access to basic rights such as the rights to food, health care, housing, documentation and a nationality compared to men and boys.<sup>66</sup>

<sup>65</sup> On 16 June 2011, the ILO Convention concerning decent work for domestic workers (No. 189) was adopted to address gaps in the protection of domestic workers. It stipulates that domestic workers around the world who care for families and households must have the same basic labour rights as other workers, including rights to reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on payment in kind, clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining. At the same time the General Conference of ILO issued its Recommendation concerning decent work for domestic workers (No. 201), as further guidance to States for implementing the Domestic Workers Convention, which came into force on 5 September 2013.

<sup>66</sup> See Office of the United Nations High Commissioner for Refugees (UNHCR), *UNHCR Handbook for the Protection of Women and Girls* (January 2008); UNHCR, *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response* (May 2003); and UNHCR, "Guidance note on refugee claims related to female genital mutilation", May 2009.

## F. WOMEN'S HUMAN RIGHTS IN CONFLICTS AND CRISES

### *Sexual and gender-based violence in conflict and post-conflict settings*

In armed conflict or political strife, violence against women takes severe forms. During the past decade, much international attention has been paid to the link between gender-based violence and conflicts. Conflict has far-reaching effects on women's enjoyment of their human rights, whether civil and political or economic and social.<sup>67</sup>

Despite increased global efforts to combat gender-based violence in conflict and post-conflict settings, women continue to be subjected to gender-based violence such as rape, sexual slavery, kidnapping or trafficking, forced impregnation or miscarriages, and sexual abuse such as forced nudity, strip searches and other publicly humiliating and violating acts in conflict and post-conflict.<sup>68</sup> Studies have shown that while men and boys are also victims of gender-based violence, women account for the vast majority of those affected.<sup>69</sup> The Committee on the Elimination of Discrimination against Women recognized, in its general recommendation No. 19 (1992),

<sup>67</sup> There is vast international jurisprudence and literature affirming the complementary application of international humanitarian law and international human rights law in times of armed conflict, international or internal, notwithstanding the possibility to derogate from certain civil and political rights, subject to strict requirements, in emergency situations. The application of both bodies of law in armed conflict has been addressed and confirmed, e.g., through State practice and by human rights mechanisms, as well as by the International Court of Justice in its Advisory Opinions on the Legality of the Threat or Use of Nuclear Weapons of 1996 and the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 2004. The Convention on the Elimination of All Forms of Discrimination against Women contains provisions covering both women's civil and political rights and their economic, social and cultural rights, and is applicable at all times. See Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, paras. 2 and 19–24.

<sup>68</sup> Rashida Manjoo and Calleigh McRaith, "Gender-based violence and justice in conflict and post-conflict areas", *Cornell International Law Journal*, vol. 44, No. 11 (2011), pp. 11–12; and "Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)" (E/CN.4/2001/73).

<sup>69</sup> E/CN.4/2001/73; and Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building*, Progress of the World's Women 2002, vol. 1 (United Nations Development Fund for Women, 2002).

that “wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.” Both State and non-State actors commit this violence. With the intent of intimidating and humiliating the adversary, rape and sexual violence are also routinely used by all parties to conflicts as a tactic of war.<sup>70</sup> Moreover, during conflict, domestic violence and sexual abuse also increase dramatically.<sup>71</sup>

Violence against women both during conflict and post-conflict can be seen as a continuum of the discrimination women experience in peacetime. Conflict exacerbates pre-existing patterns of discrimination based on sex and put women and girls at heightened risk of sexual, physical and psychological violence. The underlying causes of violence both in peace and in conflict are the same: historically unequal power relations between men and women, systemic or structural causes such as gender-based discrimination and a patriarchal value system. In addition, conflict causes an acceptance of higher levels of violence, and in the post-conflict phase deeply rooted inequalities that existed before the conflict are aggravated.<sup>72</sup> Thus, the end of conflict does not translate into an end to the violence that women and girls endure. Women continue to suffer from the medical, physical, psychological and socioeconomic consequences of the violence suffered during conflict long after it has ended. The stigma associated with sexual violence is ever-present, in conflicts and in their aftermath. Violence against women and girls also spikes in post-conflict societies, owing to the general breakdown of the rule of law, the availability of small arms, the breakdown of social and family structures and the “normalization” of sexual violence as an additional element of pre-existing discrimination.

<sup>70</sup> Manjoo and McRaith, “Gender-based violence and justice in conflict and post-conflict areas”, p. 12. See also United Nations Security Council resolution 1820 (2008) (and subsequent resolutions 1888 (2009) and 1960 (2010)) recognizing sexual violence as a tactic of war.

<sup>71</sup> Rehn and Sirleaf, *Women, War, Peace*, p. 11.

<sup>72</sup> Niamh Reilly, *Women’s Human Rights* (Polity Press, 2009), p. 98.

Until the 1990s, wartime sexual violence was not prosecuted as an international crime, despite being prohibited under international humanitarian law.<sup>73</sup> Sexual violence was viewed more as an attack against the honour of a woman or against morality than as a separate serious crime, e.g., the Fourth Geneva Convention expresses the need for the special protection of women “against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault” (art. 27).<sup>74</sup> Since the 1990s, international criminal jurisprudence has contributed enormously to clarifying the legal norms applicable to gender-based crimes during conflict. Both the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have stated in different landmark decisions that wartime rape and sexual violence can be considered as war crimes, crimes against humanity, acts of torture or constituent acts of genocide, as long as all the relevant elements of the crime are present.

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<sup>73</sup> Patricia Viseur Sellers, “The prosecution of sexual violence in conflict: the importance of human rights as means of interpretation”, pp. 6–9. Available from [http://www2.ohchr.org/english/issues/women/docs/Paper\\_Prosecution\\_of\\_Sexual\\_Violence.pdf](http://www2.ohchr.org/english/issues/women/docs/Paper_Prosecution_of_Sexual_Violence.pdf) (accessed 25 November 2013).

<sup>74</sup> Common article 3 of the Geneva Conventions, which applies in both international and non-international armed conflict as customary law, prohibits violence to life and person, torture, the taking of hostages, outrages against personal dignity, in particular humiliating and degrading treatment, but does not explicitly mention rape and sexual violence. The list of “serious breaches” of the Geneva Conventions also does not specifically mention rape or sexual violence. The Additional Protocols of 1977 do specifically prohibit rape. See Reilly, *Women’s Human Rights*, p. 101.

### **International Criminal Tribunal for Rwanda**

*Prosecutor v. Akayesu*, case No. ICTR-96-4-T, 2 September 1998: reconceptualization and broad definition of rape

The International Criminal Tribunal for Rwanda made a significant contribution to the evolving jurisprudence on rape as a war crime by articulating a broad definition that squarely places rape on an equal footing with other crimes against humanity. Its definition reconceptualizes rape as an attack on an individual woman's security of person, not on the abstract notion of virtue and not as a taint on an entire family's or village's honour. According to the Tribunal, "rape is a form of aggression and ... the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts." The Tribunal defined rape as a "physical invasion of a sexual nature, committed on a person under circumstances which are coercive." In addition, it defined sexual violence to include forced nudity, firmly establishing that acts of sexual violence are not limited to those involving penetration or even sexual contact.

The *Akayesu* decision also recognized for the first time that acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign. Jean-Paul Akayesu, the former mayor of Taba, was convicted of genocide for knowing, instigating, aiding and abetting the rapes and sexual violence in the community, specifically targeting Tutsi women, as part of a genocidal campaign that intended to destroy the Tutsi group as a whole.

### International Criminal Tribunal for the former Yugoslavia

*Prosecutor v. Dragoljub Kunarac, Rodomir Kovač and Zoran Vuković*, case No. IT-96-23/T and IT-96-23/1-T, Judgement of 22 February 2001: elements of rape

The International Criminal Tribunal for the former Yugoslavia also found that rape was a constituent offence of crimes against humanity in the *Kunarac* case in 2001. This case concerned a campaign in the municipality of Foca which aimed to rid the area of Muslims, especially through targeting Muslim women. Muslim women were held at various detention centres and subjected to systematic rape.

The case was significant in offering the following definition of the elements of rape: "the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim" (para. 460).

This approach of the Trial Chamber was affirmed on appeal.

The Rome Statute of the International Criminal Court builds on this jurisprudence, defining a wide range of gender-based crimes as war crimes and crimes against humanity.<sup>75</sup> It also includes gender-sensitive provisions such as the establishment of a victim and witness protection unit

<sup>75</sup> Its article 7 (1) (g) lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity; its article 8 (2) (b) (xxii) lists rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization or any other form of sexual violence as a grave breach of the Geneva Conventions; and its article 8 (e) (vi) lists rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization or any other form of sexual violence as a serious violation of article 3 common to the four Geneva Conventions. See Viseur Sellers, "The prosecution of sexual violence in conflict", for further analysis.

within the Court, the provision of counselling and other necessary services to victims of gender-based violence, and the appointment of legal advisers with gender expertise and of female judges and personnel.

The adoption by the Security Council of resolution 1325 (2000) on women, peace and security also represents a landmark in recognizing and addressing conflict-related gender-based violence. The resolution recognizes the devastating impact of conflict on women and girls, and reaffirms the need to implement fully existing international humanitarian and human rights law obligations protecting the rights of women and girls during conflict. It focuses on four main areas: prevention, participation, protection, and relief and recovery. It also urges States to take special measures to protect women and girls from gender-based violence during conflict, and end impunity by prosecuting those responsible for crimes during conflict, including gender-based crimes. Furthermore, the resolution calls for increased representation of women at all levels of decision-making, and in all mechanisms for the prevention, management and resolution of conflicts, and for gender mainstreaming in peacekeeping operations.

In follow-up resolution 1820 (2008), the Security Council recognizes that sexual violence may impede the restoration of international peace and security and is often used as a tactic of war. It stresses that sexual violence should be excluded from any amnesty provisions in a peace process and that equal access to justice should be ensured for victims of sexual violence. The subsequent follow-up resolutions have focused on preventing and responding to conflict-related sexual violence, and called for, *inter alia*, the appointment of a special representative on sexual violence in conflict, a team of experts and women protection advisers to advise Governments and peacekeeping missions in dealing with sexual violence. Global indicators to track the implementation of resolution 1325 (2000) have been developed, as well as new monitoring and reporting mechanisms for conflict-related sexual violence.

### *Women's participation in peace processes and their role as agents of change*

Despite the challenges that the post-conflict vacuum poses for the enjoyment of women's human rights, it can also be viewed as an opportunity for transformation—to change the societal structures and norms in place before the conflict which contributed to the violence against women in the first place. To ensure this transformation, it is imperative to take into account women's various roles and diverse experiences of conflict, not only as victims but as combatants, as part of organized civil society and as human rights defenders, as members of resistance movements, and as active agents in both formal and informal peace processes.<sup>76</sup>

The Security Council, in its resolution 1325 (2000) and subsequent resolutions, and the Secretary-General, in his reports on women, peace and security, and sexual violence in conflict, recognize women's role in peacebuilding efforts. Resolution 1325 (2000) referred to the disproportionate impact of armed conflict on women and children, while at the same time acknowledging that women are not mere victims of conflict, but also active agents with an important role to play in conflict prevention, peacekeeping initiatives, conflict resolution and peacebuilding efforts.<sup>77</sup> This was an important departure from references to women as victims or vulnerable groups. United Nations Security Council resolution 1889 (2009) reiterates the key role of women in preventing conflict and in

<sup>76</sup> Reilly, *Women's Human Rights*, pp. 93–98; and Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (2013), paras. 36 and 42. Gender-sensitive transitional justice mechanisms and reparations can play an important role in post-conflict transition, as can the inclusion of women at all stages of the peace process/negotiations and all levels of political decision-making post-conflict, taking into account their different roles and experiences.

<sup>77</sup> Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013) and 2122 (2013); and the reports of the Secretary-General on women, peace and security (S/2002/1154, S/2004/814, S/2005/636, S/2006/770, S/2007/567, S/2008/622, S/2009/465, S/2010/498, S/2011/598, S/2012/732, S/2013/525), on women's participation in peacebuilding (A/65/354–S/2010/466, A/67/499–S/2012/746), on sexual violence in conflict and implementation of the relevant resolutions (S/2009/362, S/2010/173, A/65/592–S/2010/604, A/66/657–S/2012/33, A/67/792–S/2013/149, S/2014/181). Note that Security Council resolutions are legally binding on United Nations Member States, which makes resolution 1325 (2000) and follow-up resolutions powerful advocacy tools.

peacebuilding, and urges the participation of women in all phases of the peace process, including in conflict resolution and post-conflict planning. It emphasizes the development of strategies that address the needs of women and girls in post-conflict situations, including access to education, health services and justice, and gender equality. The resolution also urges Member States to ensure gender mainstreaming in all aspects of post-conflict peacebuilding and recovery.

Some positive effect of implementing resolution 1325 (2000) can already be seen on the ground. By June 2012, 37 States had adopted national action plans on women, peace and security, and a number of others were developing such plans.<sup>78</sup> Importantly, the Committee on the Elimination of Discrimination against Women has requested States to include compliance with Security Council resolutions on women, peace and security in their reports to it, adding to the monitoring of their implementation, since all areas of concern expressed in the resolutions reflect binding provisions of the Convention.<sup>79</sup>

Despite these advances and reform already in place, considerable challenges with implementing these standards remain. The Secretary-General's 2012 report on conflict-related sexual violence (A/66/657-S/2012/33) illustrates these very well. Gender-based violence in those settings remains rampant, and women's access to justice, decision-making and services remains limited. The Secretary-General's previous reports also underlined the remaining challenges and obstacles to women's meaningful participation in peace processes, and came up with comprehensive recommendations and action plans for United Nations agencies in cooperation with other stakeholders to be able to address these challenges more effectively (A/65/354-S/2010/466). Recent civil society reports have also pointed out that women's experiences of conflict and post-conflict continue to reveal exclusion, marginalization and

<sup>78</sup> Report of the Secretary-General on women and peace and security (S/2012/732).

<sup>79</sup> Reilly, *Women's Human Rights*, p. 113; and Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (2013), paras. 25–28. See also its general recommendation No. 23 (1997) on women in political and public life.

limited decision-making power.<sup>80</sup> However, the global indicators set up by Security Council resolution 1899 (2009) as well as the Security Council's request to the Secretary-General to ensure that relevant United Nations bodies, in cooperation with Member States and civil society, collect gender-disaggregated data were designed to promote a more effective implementation of resolution 1325 (2000). In addition, resolution 1960 (2010) establishes a mechanism that allows the Secretary-General to list parties "that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict" on the Security Council's agenda. It also requests parties to armed conflict to make specific, time-bound commitments to combat sexual violence, and the Secretary-General to track and monitor the implementation of these commitments. Finally, it requests the Secretary-General to establish monitoring, analysis and reporting arrangements on conflict-related sexual violence.

These remaining challenges highlight the need for a comprehensive approach. The interrelatedness and interdependence of human rights require attention to be paid to all human rights of women and girls in conflict and post-conflict, both civil and political rights, as well as social, economic and cultural rights. The same applies to transitional justice reforms: securing all human rights of women and girls is important for full post-conflict transformation. For example, the fulfilment of rights such as economic and social rights is imperative for the eradication of gender-based violence and for women to be able to take on more active roles in peacebuilding. Extreme poverty and unequal access to land, property, education and services have been mentioned as some of the reasons for women's low participation in peace processes and in politics, and structural inequalities including socioeconomic ones are often raised as root causes for gender-based violence. Thus, treaties such as the Convention

<sup>80</sup> Kavitha Suthanthiraraj and Cristina Ayo, *Promoting Women's Participation in Conflict and Post Conflict Societies: How Women Worldwide are Making and Building Peace* (Global Action to Prevent War, NGO Working Group on Women, Peace and Security, and Women's International League for Peace and Freedom), pp. 82–94; Global Network of Women Peacebuilders, "Women count: Security Council resolution 1325 – civil society monitoring report" (October 2010).

on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights have an important role to play in ensuring women's rights both during conflict and during post-conflict transitions.

| United Nations Security Council resolutions on women, peace and security: key provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <ul style="list-style-type: none"> <li>• Calls on all parties to armed conflict to respect international law applicable to the rights and <b>protection of women and girls</b> (para. 9) and to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict (para. 10). It also calls on all parties to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design (para. 12).</li> </ul> | <ul style="list-style-type: none"> <li>• Recognizes sexual violence as a <b>tactic of war</b> (para. 1) and affirms that sexual violence can constitute a <b>war crime, a crime against humanity or a constitutive act of genocide</b> (para. 4).</li> <li>• Seeks to <b>strengthen the protection of women</b> from sexual violence, by demanding that all parties to armed conflict immediately and completely cease all acts of sexual violence against civilians (para. 2). It also demands that all parties take appropriate measures such as: enforcing military disciplinary measures and upholding the principle of command responsibility, training troops on the prohibition of all forms of sexual violence, debunking myths that fuel sexual</li> </ul> | <ul style="list-style-type: none"> <li>• Calls for the <b>establishment of several mechanisms</b> within the United Nations system, including the appointment of a <i>special representative</i> to provide leadership and coordinate efforts with Governments, as well as with all parties to armed conflict and civil society to address, at both headquarters and country level, sexual violence in armed conflict (para. 4). It calls on the Secretary-General to identify and deploy a <i>team of experts</i> to situations of particular concern with respect to sexual violence in armed conflict. This team, with the consent of the host Government, will assist national authorities to prevent and address sexual violence (para. 8).</li> </ul> | <ul style="list-style-type: none"> <li>• Urges Member States, international and regional organizations to take further measures to <b>improve women's participation during all stages of peace processes</b>, particularly in conflict resolution, post-conflict planning and peacebuilding (para. 1). It also calls on the Secretary-General to develop a strategy to increase the number of women appointed as special representatives and special envoys, and to increase women's participation in United Nations political, peacebuilding and peacekeeping missions (para. 4).</li> </ul> | <ul style="list-style-type: none"> <li>• Establishes a <b>mechanism</b> that allows the Secretary-General to <b>list parties</b> that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict. It also expresses its intention to use this list as a basis for more focused United Nations engagement with those parties, including measures in accordance with the procedures of the relevant sanctions committees (para. 3).</li> <li>• Requests <b>parties to armed conflict to make specific, time-bound commitments</b> to combat sexual violence, and the Secretary-General to track and monitor implementation of these commitments (paras. 5 and 6).</li> </ul> |

| United Nations Security Council resolutions on women, peace and security: key provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <ul style="list-style-type: none"><li>• Calls for increased <b>representation and participation of women in decision-making institutions</b> and mechanisms for the prevention, management and resolution of conflict (paras. 1 and 2); urges the Secretary-General to appoint more women as special representatives and envoys (para. 3), and expresses the Security Council's willingness to consult local and international women's groups (para. 15).</li><li>• Seeks to <b>expand the role and contribution of women in United Nations field-based operations</b>, especially among military observers, civilian police, human rights and humanitarian personnel (para. 4); and incorporate a gender perspective into peacekeeping operations and, where appropriate, include a gender component (para. 5).</li></ul> | <p>violence, vetting armed and security forces to take into account past rape and other forms of sexual violence, and evacuating women and children at risk to safety (para. 3). It also requests the Secretary-General and United Nations agencies to develop effective mechanisms for protecting United Nations-managed refugee and internally displaced persons camps (para. 10).</p> <ul style="list-style-type: none"><li>• Urges the <b>inclusion of sexual violence issues in peace negotiation</b> agendas and peace processes (para. 17). It also urges the Secretary-General, Member States and the heads of regional organizations to take measures to increase the representation of women in mediation processes and decision-making processes with regard to conflict resolution and peacebuilding (para. 16).</li></ul> | <p>It also requests that <i>women's protection advisers</i> be identified among existing gender advisers and human rights protection units within United Nations peacekeeping operations for the protection of women and children from rape and other sexual violence (para. 12).</p> <ul style="list-style-type: none"><li>• Urges the <b>inclusion of sexual violence issues in peace negotiation</b> agendas and peace processes (para. 17). It also urges the Secretary-General, Member States and the heads of regional organizations to take measures to increase the representation of women in mediation processes and decision-making processes with regard to conflict resolution and peacebuilding (para. 16).</li></ul> | <ul style="list-style-type: none"><li>• Urges Member States to ensure <b>gender mainstreaming</b> in all post-conflict peacebuilding and recovery processes (para. 8) and to ensure that women's empowerment is taken into account during post-conflict needs assessments and planning, and factored into funding disbursements and programme activities (para. 9).</li></ul> | <ul style="list-style-type: none"><li>• Requests the Secretary-General to establish <b>monitoring, analysis and reporting arrangements</b> on sexual violence in conflict. It also encourages the Secretary-General to engage with United Nations actors, national institutions, civil society organizations, health-care service providers and women's groups to enhance data collection and analysis of incidents, trends, and patterns of rape and other forms of sexual violence to assist the Council's consideration of appropriate actions (para. 8).</li></ul> |

| United Nations Security Council resolutions on women, peace and security: key provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <ul style="list-style-type: none"> <li>• Calls on all actors involved to adopt a <b>gender perspective</b>, including taking into account the special needs of women and <b>girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction</b> (para. 8 (a)), as well as the different needs of female ex-combatants and their dependants (para. 13). All actors involved should also adopt measures that support local women's peace initiatives and indigenous processes for conflict resolution, and involve women in all implementation mechanisms of peace agreements (para. 8 (b)).</li> </ul> | <ul style="list-style-type: none"> <li>• Calls for <b>greater accountability</b> by stressing the need for the exclusion of sexual violence crimes from amnesty provisions in conflict resolution processes and calls on Member States to prosecute persons responsible for such acts and to ensure access to justice for victims of sexual violence, particularly women and girls (para. 4). It also affirms its intention to consider enacting Security Council measures such as State sanctions against parties to armed conflict that commit sexual violence (para. 5).</li> </ul> | <ul style="list-style-type: none"> <li>• Requests the Secretary-General to ensure more <b>systematic reporting</b> on incidents of trends, emerging patterns of attack and early warning indicators of the use of sexual violence in armed conflict (para. 24).</li> <li>• Requests the Secretary-General to <b>submit annual reports</b> on the implementation of resolution 1820 (2008), including information on parties to armed conflict that are credibly suspected of committing patterns of rape or other forms of sexual violence (para. 27).</li> </ul> | <ul style="list-style-type: none"> <li>• Encourages Member States, in consultation with civil society, to design concrete <b>strategies to address women's and girls' needs and priorities</b>, including support for physical security and better socioeconomic conditions, through education, income-generating activities, access to basic services, in particular health services, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels (para. 10).</li> <li>• Encourages the Peacebuilding Commission and Peacebuilding Support Office to ensure the <b>mobilization of resources</b> for advancing gender equality and women's empowerment as an integral part of post-conflict peacebuilding (para. 14).</li> </ul> | <ul style="list-style-type: none"> <li>• Intends, when adopting or renewing targeted sanctions in situations of armed conflict, to consider including <b>designation criteria pertaining to acts of rape and other forms of sexual violence</b> (para. 7).</li> <li>• Welcomes the work of gender advisers and the appointment of more women protection advisers to peacekeeping missions, and notes their potential contribution in the framework of the monitoring, analysis and reporting arrangements (para. 10).</li> </ul> |

| United Nations Security Council resolutions on women, peace and security: key provisions                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <ul style="list-style-type: none"> <li>• Calls for the <b>political participation of women in post-conflict reconstruction efforts</b>, including through increased representation of women in the institutions and mechanisms of conflict resolution at the national level (para. 1) and the adoption of measures for the protection of and respect for the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary (para. 8 (c)).</li> </ul> | <ul style="list-style-type: none"> <li>• Requests the Secretary-General to develop effective guidelines and strategies to enhance United Nations peacekeeping operations to protect civilians, including women and girls, from all forms of sexual violence (para. 9). It also calls for <b>training programmes for peacekeeping and humanitarian staff</b> to help them prevent, recognize and respond to sexual violence (para. 6).</li> <li>• <b>Stresses preventive action</b> by strengthening efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations (para. 7).</li> </ul> | <ul style="list-style-type: none"> <li>• Encourages States <b>to increase assistance to victims of sexual violence</b>, including health care, psychosocial support, legal assistance and socioeconomic reintegration services (para. 13). It also encourages national and local leaders, including traditional and religious leaders, to play a more active role in sensitizing communities on sexual violence to avoid marginalization and stigmatization of victims, to assist with their social reintegration and to combat a culture of impunity for these crimes (para. 15).</li> </ul> | <ul style="list-style-type: none"> <li>• Concerning <b>monitoring and reporting</b>, requests the Secretary-General to submit a set of global indicators to monitor implementation of resolution 1325 (2000) (para. 17) and include in an annual report progress in the implementation of this resolution (para. 18). Additionally, it requests the Secretary-General to ensure that relevant United Nations bodies, in cooperation with Member States and civil society, collect gender-disaggregated data (para. 6). It also asks the Secretary-General to present a report on addressing women's participation and inclusion in peacebuilding and planning in the aftermath of conflict (para. 19).</li> </ul> |

| United Nations Security Council resolutions on women, peace and security: key provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
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| <ul style="list-style-type: none"><li>• Emphasizes the <b>responsibility of all States to end impunity and to prosecute those responsible</b> for genocide, crimes against humanity and war crimes, including those relating to sexual and other violence against women and girls (para. 11).</li><li>• Requests the Secretary-General to <b>provide Member States with training</b> guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures (para. 6) and urges Member States to increase their financial and other resources for gender-sensitive training efforts (para. 7).</li></ul> | <ul style="list-style-type: none"><li>• Urges all parties, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks to provide <b>sustainable assistance to victims</b> of sexual violence in armed conflict and post-conflict situations (para. 13).</li><li>• Seeks to <b>increase women’s representation in peace operations</b> by deploying a higher percentage of women peacekeepers or police (para. 8). It also urges the Secretary-General and his special envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding (para. 12).</li></ul> |  |  |

### *Women's economic, social and cultural rights and conflict*

Women's particular vulnerability to social and economic deprivation worsens in conflict and post-conflict situations, as conflict exacerbates gender-based discrimination and is accompanied by the loss of livelihoods and the destruction of family and community structures.<sup>81</sup> Former women combatants may experience discrimination, since in some cases disarmament, demobilization and reintegration programmes or other assistance to former combatants exclude women. Women who have been combatants also experience more difficulties reintegrating and getting back to civilian life than male ex-combatants, since they defied traditional gender roles by becoming combatants, which is not easily accepted by their families and communities. Discriminatory laws might prevent women and women-headed households from owning, inheriting, occupying or accessing land or other forms of property, or prevent them from obtaining credit or loans without a male guarantor. Other serious challenges are the lack of appropriate institutional responses to gender-based violence, such as health care, counselling or shelters, as well as inadequate access to education or employment opportunities.

Special attention should be paid to the judicial enforcement of economic, social and cultural rights in transitional contexts, especially women's economic, social and cultural rights given their increased vulnerability in conflict and post-conflict. Rule-of-law reforms such as the review of key legislation and constitution writing, peace agreements, transitional justice mechanisms and reparations programmes or other post-conflict reform should take into account violations of women's economic, social and cultural rights and civil and political rights equally, also because these rights are intrinsically linked. This will secure a comprehensive and lasting post-conflict transformation, and an environment where women fully enjoy their fundamental rights.

<sup>81</sup> See the Montréal Principles on Women's Economic, Social and Cultural Rights; and the Centre on Housing Rights and Evictions (COHRE), the International Network for Economic, Social and Cultural Rights (ESCR.net) and International Women's Rights Action Watch IWRRAW Asia-Pacific, "A primer on women's economic, social, and cultural rights". Available from [www.escr-net.org/usr\\_doc/Primer\\_WESCR\\_English\\_rev1.pdf](http://www.escr-net.org/usr_doc/Primer_WESCR_English_rev1.pdf) (accessed 27 November 2013). Today, women represent 70 per cent of the 1.2 billion people living in poverty worldwide.

Women and children also make up the majority of the world's refugees and persons internally displaced by conflict, who are particularly exposed to gender-based violence and threats to their personal security and also face discrimination in accessing food, water, housing, education, adequate medical care and sanitation.<sup>82</sup> In addition, women's right to adequate housing is particularly threatened during conflict, mass displacement or forced relocation when forced evictions tend to happen and affect women disproportionately.<sup>83</sup>

During conflict women often become *de facto* heads of households and thus responsible for everything, from taking care of the children, their education, access to food, water and basic services, to generating an income. A positive aspect of this is that these responsibilities provide women with an opportunity to make decisions regarding the running of the household and the cultivation of land which they would not normally have. However, studies show a reduction in women's participation in public life and decision-making post-conflict, suggesting that women are often forced back into their traditional domestic roles. Women and women-headed households experience several obstacles in realizing their rights in transition.<sup>84</sup>

The Committee on Economic, Social and Cultural Rights has underscored, in its general comments Nos. 15 (2002) on the right to water and 14 (2000) on the right to the highest attainable standard of health, that certain core obligations of the State are non-derogable and thus apply in all situations including conflict, internal strife or emergencies. According to the Committee, States have a core obligation to ensure safe access without discrimination at all times to the minimum essential amount of water. Other non-derogable, core obligations include ensuring, without any discrimination and especially for vulnerable or marginalized groups, access to health facilities, goods and services, to minimum essential food,

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<sup>82</sup> See E/CN.4/1996/52, para. 46.

<sup>83</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions; and "Women and adequate housing" (E/CN.4/2003/55).

<sup>84</sup> E/CN.4/2003/55.

basic shelter, housing and sanitation, to essential drugs, and reproductive, maternal (prenatal as well as postnatal) and child health care. Its general comment No. 18 (2005) on the right to work explains that access to employment, especially for marginalized groups, as well as the obligation to avoid any measure that results in discrimination or unequal treatment in the private or public sectors of disadvantaged individuals or groups, are core (non-derogable) obligations of the State.

Importantly, the Convention on the Elimination of All Forms of Discrimination against Women also guarantees women's access to health care and services (art. 12), training and education (art. 10), and employment opportunities (art. 11). The Convention also grants special protection to those who have been displaced or rendered stateless or have become refugees or asylum seekers by providing for women's right to a nationality, movement and choice of domicile (arts. 9 and 15.4).

## G. WOMEN'S ACCESS TO JUSTICE

Ensuring women's access to justice requires that women enjoy their right to equality before the law, that procedures are in place to guarantee non-discriminatory access to justice and that women have effective access to remedies when their rights have been violated. These rights are provided for under international human rights law, including articles 2.3 (right to a remedy) and 26 (equality before the law) of the International Covenant on Civil and Political Rights. The right to an effective remedy is relevant for the realization of all human rights, and is to be enjoyed on the basis of equality, without discrimination of any form such as on the basis of sex or gender. The Human Rights Committee, in its general comment No. 31 (2004), explained that for the right to an effective remedy to be fulfilled, reparation has to be provided to the victim of a human rights violation. The Convention on the Elimination of All Forms of Discrimination against Women requires State parties to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination (art. 2 (c)).

Significant progress has been made globally with regard to revising laws that discriminate against women and drafting constitutions that incorporate guarantees of equality and non-discrimination. A legal and constitutional framework which guarantees women's rights at the national level is fundamental for women to access justice. However, discriminatory laws remain an issue in several countries and the implementation of laws even more so.<sup>85</sup> Laws that are seemingly gender-neutral can have discriminatory effects in practice, and laws that guarantee equality between women and men or women's rights may not be applied, which means they do little for the advancement of women. In addition, women who suffer violence or who work in the informal sector are in many cases not protected by the law. Extending the protection of the law to include, for instance, sexual and gender-based violence, work in the informal sector and migrant women is essential.<sup>86</sup> The obligation of States to ensure that laws are applied and have an actual impact on women's lives is also important to emphasize.

Justice systems reflect society's power imbalances, including those that disadvantage women. Both social and institutional barriers inhibit women's access to justice. Social barriers include the lack of knowledge of their rights, illiteracy, lack of information and dependence on male relatives for assistance and resources. Institutional barriers such as geographical distance, suitable facilities, infrastructure and language have to be taken into account to ensure access to justice for rural, minority or indigenous women or women with disabilities.<sup>87</sup>

In addition to these barriers, women face indifference or gender bias and stereotyping by State authorities such as the police and the judiciary when it comes to investigating crimes committed against them.

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<sup>85</sup> "Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul" (A/HRC/17/30), paras. 27–36; and *Progress of the World's Women 2011–2012*, pp. 28–31.

<sup>86</sup> *Progress of the World's Women 2011–2012*, pp. 32–37.

<sup>87</sup> *Ibid.*, pp. 52–55.

**Stereotyping by the judiciary**

*Vertido v. Philippines* (Committee on the Elimination of Discrimination against Women, communication No. 18/2008, Views adopted on 16 July 2010)

The Committee considered gender stereotypes in a case of rape, emphasizing “that stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.” According to the Committee, it was clear from the judgement that the assessment of the credibility of the complainant’s version of events was influenced by a number of stereotypes, the complainant in this situation not having followed what was expected from a rational and “ideal victim” or what the judge considered to be the rational and ideal response of a woman in a rape situation. In addition to ordering the State party to pay adequate compensation, the Committee ordered the State to “ensure that all legal procedures in cases involving crimes of rape and other sexual offences are impartial and fair, and not affected by prejudices or stereotypical gender notions.” To achieve this, a wide range of measures were ordered by the Committee, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women.

The Special Rapporteur on the independence of judges and lawyers has expressed concern that women’s poverty and the entrenched economic inequality between men and women continue to seriously hamper women’s access to justice. The traditional denial of women’s autonomy to make decisions about their lives, their lack of access to education and information about rights, their minimal participation in decision-making and lack of access to property, land and equal work opportunities, are all factors contributing to the so-called feminization of poverty and,

consequently, to women's lack of access to justice.<sup>88</sup> An essential aspect of the State obligation to ensure the right to access to justice for women is to train judges and lawyers in women's rights and gender sensitivity, to raise awareness or organize training to inform women and communities of their legal rights and to ensure that the provision of legal aid and the availability of effective protection mechanisms such as shelters and counselling for victims are accessible to all women without discrimination. Ensuring adequate representation of women in the judiciary is also important. The Human Rights Committee specified in its general comment No. 28 (2000) that State parties should provide information on "whether measures are taken to ensure women equal access to legal aid, in particular in family matters."

### **Right to legal assistance**

*Airey v. Ireland* (European Court of Human Rights, application No. 6289/73, Judgement of 9 October 1979)

The claimant sought a judicially ordered separation from her physically abusive husband, as she was unable to conclude a separation agreement with him. However, she was unable to obtain such an order since she could not afford a solicitor and legal aid was not available. The European Court of Human Rights held that this was a violation of her right to access a court for the determination of her civil rights and obligations (art. 6). Citing international law and the European Convention's intention, the Court stated that remedies must be effective not illusory, noting that many civil and political rights had social and economic implications involving positive obligations. Accordingly, there is a right to legal assistance if legal assistance is indispensable to have effective access to the courts.

<sup>88</sup> A/HRC/17/30, paras. 20–26.

The Committee on the Elimination of Discrimination against Women explained, in its general recommendation No. 28 (2010), that “States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate.” Furthermore, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law call for “proper assistance to victims seeking access to justice” including legal aid and ensuring adequate, effective and prompt remedies for victims of serious or gross violations (General Assembly resolution 60/147). In addition, the due diligence obligation of States to prosecute, punish and compensate for human rights violations committed by non-State actors has also become a well-recognized international norm. States should ensure that women victims of human rights violations have access to immediate means of redress and reparation, that perpetrators are prosecuted and punished, and that mechanisms for this are accessible to women. The obligation to provide adequate reparations includes ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence.

The Special Rapporteur on violence against women puts forward the idea of “transformative reparations” in her 2010 report on reparations for women subjected to violence (A/HRC/14/22). Given the disparate and differentiated impact violence has on women and different groups of women, there is a need for specific measures of redress to meet their specific needs and priorities. According to the Special Rapporteur, the focus of reparations should be on fairness towards the victims of human rights violations and on “repairing” the damage done, not only on returning the women to the circumstances they were in before they suffered the violence. Since the violence women experience is a continuum of structural and systemic discrimination women face in peacetime, during conflict and post-conflict, its structural and systemic causes need to be addressed by reparations aiming to transform these conditions. She outlines what such

reparations should entail: restitution and compensation, rehabilitation and reintegration, symbolic recognition, guarantees of non-repetition. Complex reparations schemes, such as those providing a variety of benefits, can better address the needs of female beneficiaries and have transformative potential, both in practical, material terms and in terms of boosting their self-confidence and esteem. It is paramount that the women themselves should have a meaningful part in all stages of developing a reparation programme.

### **Due diligence obligations of the State**

*Jessica Lenahan (Gonzales) v. United States of America* (Inter-American Commission on Human Rights, decision of 21 July 2011)

In 1999, Jessica Lenahan's daughters were abducted by her former husband and killed after the police repeatedly refused to enforce her domestic violence restraining order against him. Ms. Lenahan brought a constitutional claim against the police to the United States Supreme Court, which found that the police had no constitutional duty to enforce her restraining order, thereby leaving her without a remedy.

The Inter-American Commission reiterated the right of women victims of violence to access judicial protection. Finding that the investigations into the deaths of the three children were inadequate, the Commission also emphasized the victim's right to access information and her right to truth. The Commission underlined that investigations have to be serious, prompt, thorough and impartial, and must be conducted in accordance with international standards. Furthermore, the Commission addressed the meaning of the State obligation to act with due diligence to prevent, investigate, sanction and offer remedies for violations of women's human rights by private actors, including the duty of the State to organize the structure of the State, including the laws, public policy and the judicial system, so that it is capable of adequately and effectively preventing and responding to violations of women's rights such as sexual and gender-based violence, including by effectively implementing restraining orders.

In some countries, issues related to women's rights have been given little importance and have always been resolved informally, by alternative or local mechanisms. There may be parallel legal orders that are not sanctioned by the State or formally recognized State legal orders that are plural, i.e., combining informal (e.g., traditional, religious or customary) and formal mechanisms of justice.<sup>89</sup> This means that different legal orders may coexist and even overlap.

The Special Rapporteur on the independence of judges and lawyers has drawn attention to the problems of informal justice systems in relation to women's rights to access to justice and to an effective remedy. For instance, she has highlighted cases of gender-based violence in which staff of the public prosecution service pressured victims into dropping their charges and resolving the situation through conciliation or mediation (A/HRC/17/30/Add.3).

The Special Rapporteur on violence against women has also commented on informal justice mechanisms or alternative dispute mechanisms in her country mission reports. Her country visits have revealed that in many countries where the formal justice system exists in parallel with traditional or customary systems for dispute resolution, as well as with religious systems in some cases, the formal justice system is weak and often inaccessible to women. In Somalia for instance, there is a complex interrelationship between customary, religious and formal dispute settlement. Clan interests often take precedence over the interests of individual victims and families choose to reconcile through the customary system instead of seeking redress for victims. This leads to women victims of rape being forced to marry the rapist, following the ruling of male village elders applying customary practices (A/HRC/20/16/Add.3). In Ghana, traditional authorities, such as tribal chiefs in many rural areas, rule over issues and disputes regarding land and property rights, as well as matters involving "supernatural interference", including allegations of witchcraft. Women who are accused of practising witchcraft are ostracized by their communities and displaced as a result of these allegations, often violently

<sup>89</sup> *Progress of the World's Women 2011–2012*, pp. 67–68.

driven away, physically assaulted or even murdered (A/HRC/7/6/Add.3). In Afghanistan, sharia law, customary law, the formal, secular legal system and international law exist in parallel. The Special Rapporteur found that sharia law and tribal customs often get mixed up, and practices that would violate Islamic teachings are applied at local level, such as child marriage, *bad*, denial of the rights of widows and inheritance rights of women. Local councils (*shura* or *jirga*), composed of locally influential men, mediate cases including those related to women's rights and violence against women. Their decisions are binding and arguably "inherently discriminatory against women" (E/CN.4/2006/61/Add.5).

It is the responsibility of States to ensure that, if informal systems or mechanisms of justice like reconciliation are used, these comply with international human rights standards. In practice, however, research has shown that informal justice mechanisms often discriminate against women, and that women are excluded from the decision-making processes when their cases are being reconciled and decided upon. Marriage, divorce, access to land, property and violence against women are all examples of cases affecting women's rights that are often handled through reconciliation or other informal justice mechanisms.<sup>90</sup> Furthermore, research has demonstrated that, in cases of intrafamily violence, reconciliation is inadvisable. The parties to the process do not have equal bargaining positions and, according to the Inter-American Commission on Human Rights, in a number of countries it is clear that the agreements reached in the framework of mediation compound the physical and emotional risks for women. Generally, the assailant does not honour the agreement and the agreement itself does not address the causes and consequences of the violence.<sup>91</sup>

The Special Rapporteur on the independence of judges and lawyers recommended that international human rights law should be the starting point, taking traditional justice systems into account, but regarding them as having validity only insofar as their principles and practices conform to international standards (A/HRC/4/25).

<sup>90</sup> Ibid., pp. 68–78.

<sup>91</sup> Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* (OEA/Ser.L/V/II. Doc. 63), para. 269.

Some good practices that have increased women's access to justice have been so-called one-stop shops. They integrate services and offer women victims everything from health care and counselling to legal aid and collection of evidence in one place, reducing barriers and cost. Specialized and mobile courts are another successful example of how women's access to justice can be improved in practice. These courts can bring justice closer to victims, especially women living in remote areas, to address issues such as gender-based violence effectively.<sup>92</sup>

Increased representation of women within the police and the judicial system as well as mainstreaming gender within the judiciary can also improve their responsiveness to gender issues and make it easier for women to seek assistance or report their cases.

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<sup>92</sup> See *Progress of the World's Women 2011–2012*, pp. 56–59.



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