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Human Rights of Women: Intersectionality and the CEDAW

Buthaina Mohammed Alkuwari

Teaching assistant (Lecturer) of Private Law, College of Law, Qatar

b.alkuwari@qu.edu.qa

Abstract

This research aims to track the record of the “Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)” since its entry into force in 1981, to review its texts and the cases brought to it, to know how it considered and dealt with intersectional discrimination against women. This paper evaluates if CEDAW has succeeded or failed to protect women from ‘intersectionality’. However, this discrimination describes compound discrimination against women based on sex, gender, identity, religion, belief, race, ethnicity, color, culture, socioeconomic status, age, class, and/ or origin... etc. The importance of this research is since despite a lot of cases of compound discrimination practiced against women around the world, the text of the Convention has not changed, and its committee, which is composed of experts in this field, did not adopt any ideas about the nature of discrimination.

To determine the role of intersectionality, the research first focused on the theory of intersectionality in terms of concept and practice. Secondly, it showed how it affects women’s lives with examples from India, Brazil, Canada, Hungary, and others. Finally, it traced the concept of intersectionality, and how the Convention or its committee dealt with it through its general recommendations. The research found that CEDAW has overlooked the concept of intersectionality in its texts, while its committee addressed it in one of its recommendations in 2010 - noting that such recommendations are limited in scope and efficacy - which adversely impacted women’s rights globally. Therefore, the research recommends that the concept of intersectionality should be fully integrated into the text of the Convention, which will be reflected on the state parties by taking special measures that concretely give advantage to women who have been subjected to a history of discrimination.

Keywords: CEDAW; The Committee; General recommendation; Intersectionality; Intersectional discrimination

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حقوق المرأة الإنسانية: التقاطعية واتفاقية القضاء على جميع أشكال التمييز ضد المرأة

بشينة محمد الكواري

مساعد تدريس (محاضر) في القانون الخاص، كلية القانون، جامعة قطر

b.alkuwari@qu.edu.qa

ملخص

يهدف البحث إلى تتبع سجل عمل اتفاقية القضاء على جميع أشكال التمييز ضد المرأة "سيداو" منذ دخولها حيز التنفيذ عام 1981، والاطلاع على نصوصها، والحالات التي رُفعت إليها؛ للتعرف إلى نظرتها وتعاملها مع التمييز المتقاطع ضد المرأة، وقيّم ما إذا كانت قد نجحت أو فشلت الاتفاقية في حماية النساء من هذا التمييز. ابتكرت كيمبرلي كرينشو في ورقتها عام 1989 مفهوم التقاطعية الذي يصف التمييز المضاعف والمركب ضد المرأة استناداً إلى الجنس، و/ أو النوع، الهوية، الدين، الاعتقاد، العرق، الإثنية، اللون، الثقافة، الوضع الاجتماعي-الاقتصادي، العمر، الطبقة، الأصل، اللجوء، النزوح، أو الهجرة... إلخ. تكمن أهمية البحث في أنه على الرغم من كثرة الدلائل على التمييز المركب والمتعدد الأبعاد الممارس ضد المرأة حول العالم، فإن نص الاتفاقية لم يتغير، ولم تتبنّ لجنّتها المنبثقة منها المكوّنة من خبراء في هذا المجال أي أفكار حول طبيعة التمييز.

ولتحديد دور التقاطع، تناول البحث أولاً نظرية التقاطعية من حيث المفهوم والممارسة، وبيّن ثانياً كيفية تأثيره في حياة النساء بأمثلة من الهند والبرازيل وكندا والمجر وغيرها، وأخيراً تتبع البحث مفهوم التقاطع وكيف تعاملت معه الاتفاقية أو لجنّتها من خلال توصياتها العامة. توصل البحث إلى أن سيداو أغفلت مفهوم التقاطعية في نصوصها، في حين أن لجنّتها تعرضت له في إحدى توصياتها عام 2010 - علمًا أن مثل هذه التوصيات محدودة من حيث النطاق والفعالية -، ما أثر سلباً في حماية حقوق المرأة الإنسانية. لذا، يوصي البحث بتضمين مفهوم التقاطع كاملاً في نص الاتفاقية؛ بما ينعكس على الدول الأطراف باتخاذها تدابير خاصة تفيد - بشكل ملموس - النساء اللاتي تعرضن لتاريخ من التمييز.

الكلمات المفتاحية: اتفاقية القضاء على جميع أشكال التمييز ضد المرأة "سيداو"، اللجنة، التوصية العامة، التقاطعية، التمييز المتقاطع أو المتعدد الأبعاد

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© 2022، الكواري، الجهة المرخص لها: دار نشر جامعة قطر. تم نشر هذه المقالة البحثية وفقاً لشروط Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0). تسمح هذه الرخصة بالاستخدام غير التجاري، وينبغي نسبة العمل إلى صاحبه، مع بيان أي تعديلات عليه. كما تتيح حرية نسخ، وتوزيع، ونقل العمل بأي شكل من الأشكال، أو بأية وسيلة، ومزجه وتحويله والبناء عليه، طالما يُنسب العمل الأصلي إلى المؤلف.

Introduction

On 18 December 1979, the General Assembly of the United Nations adopted the “Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW), and it entered into force two years later.¹ This convention was the first international treaty aimed explicitly at banning discrimination against women based on sex or gender.² To date, it has been ratified by 185 nations throughout the world.³ The CEDAW seeks to realize true factual and juridical equality for women, through the mechanisms of legal, social, cultural, economic and political change.⁴ Its ambitions are nothing short of revolutionary, seeking to completely recast the traditional discriminatory gender paradigm that has governed relations between men and women, instead of replacing it with a model predicated on full equality. Indeed, the Convention explicitly calls for “the practical realization of this principle,” placing a substantive obligation on State Parties to achieve results, rather than mere commitments.⁵

To ensure that the treaty is executed in good faith and that State Parties comply with its provisions, the CEDAW established an oversight body: the Committee on the Elimination of Discrimination against Women (“the Committee”).⁶ The Committee is made up of 23 experts of “high moral standing and competence in the field covered by the Convention,” elected by the States Parties, but serving in their individual, as opposed to national, capacities.⁷ Like other organizations and bodies of the United Nations, these parties are selected in considering “equitable geographical distribution and representation of different forms of civilization as well as the principal legal systems.” Terms are for four years and are renewable.⁸

While it was groundbreaking at the time of its adoption, it can be argued that the CEDAW has not evolved in lockstep with evolving ideas on the nature of discrimination. Whereas the world has changed, the text of the treaty, for the most part, has not.⁹ One area of particular evolution has been the concept of intersectionality, as well as its bearing on the question of discrimination. Intersectionality is a concept first pioneered by Professor Kimberlé Crenshaw in a 1989 article; eight years after the adoption of the CEDAW.¹⁰ Crenshaw looked at the particular challenges that black women faced in realizing their full political, legal, social, and economic equality, noting that these women were ‘multiply-burdened’.¹¹ The discrimination they faced was differentiated and, in some cases, cumulative.¹² In Crenshaw’s estimation, anti-discrimination law should in turn recognize the unique scope of these experiences.¹³ In making this argument, Crenshaw criticized the dominant narrative discourse and the framing of feminist thinking, which she considered to be disproportionately shaped and concerned with the interests of middle or

1 D. Šimonović, ‘Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979’ Audiovisual Library of International Law <<http://legal.un.org/avl/ha/cedaw/cedaw.html>> Accessed 2 April 2019.

2 Ibid.

3 Ibid.

4 4 CEDAW, ‘Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979’ [entered into force on 3 September 1981], 1249 UN Treaty Series <<https://bit.ly/3g8LcMW>> Accessed 2 April 2019.

5 Ibid., article 2 (a).

6 Ibid., article 17(1).

7 Ibid.

8 Ibid., article 17(5).

9 S. Atrey, ‘Women’s Human Rights: From Progress to Transformation, An Intersectional Response to Martha Nussbaum’ (2018) 40 Human Rights Quarterly 859.

10 K. Crenshaw, ‘Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics’ (1989) 57 Feminist Legal Theory.

11 Ibid. 140.

12 Ibid.

13 Ibid.

upper-middle-class women, who are predominantly white.¹⁴ For Crenshaw, intersectional feminism was a far broader vision, taking into account and valorizing the struggles of women of color, the poor, the differently-abled, and the elderly.¹⁵

Despite Crenshaw's pioneering ideas on intersectionality - and the work of other scholars, activists, and institutions since then¹⁶ - intersectionality has not moved definitively to the center of international human rights law or feminist discourse or practice.¹⁷ To date, the word has not appeared in the CEDAW or other international human rights treaties.¹⁸ As such, women who experience intersectional discrimination do not benefit from the same broad range of protections as those who are discriminated against based solely on their sex or gender.¹⁹ Accordingly, a type of incomplete protection has prevailed. Despite this reality, some progress has been made at an institutional level to better protect women from intersectional discrimination. Indeed, the Committee has articulated in its general recommendations, inquiries, and decisions the importance of intersectionality, despite severe impediments to its operation, limited resources, and an uneven and shifting focus.²⁰

This research then examines the track record of the CEDAW and its Committee in 'protecting or failing to protect women' from intersectional discrimination. It is divided into three sections. The first part focuses on the theory of intersectionality - as originally described some thirty years ago by Professor Crenshaw - and how this theory informs the lives of women. The second part focuses on intersectionality's practical implications, highlighting the disparate effects on women of discrimination on other grounds, in addition to sex or gender-based discrimination. The final part in turn relates these theoretical and practical elements on intersectionality to the CEDAW, considering practical recommendations that may be implemented within the text of the CEDAW or via its Committee to better address intersectional discrimination.

1. Intersectionality: Theory and Practice

For Crenshaw, intersectionality is an approach that acknowledges that not all women are disadvantaged equally, but that some - by virtue of their innate identities - bear greater burdens than others.²¹ In her groundbreaking article "Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics," Crenshaw elaborated on the unique experience of black women, particularly in the American context.²² She found "single-axis analysis" - or the idea that women are women and nothing more - as inherently limited and flawed.²³ Instead, she wrote about the "multidimensionality" of the black experience, criticizing the erasure of black women's narratives, stories, and particular perspectives from much mainstream feminist discourse and politics.²⁴ She noted that in racial discrimination cases, discrimination tends to be seen in terms of sex - or class-

14 Ibid.

15 Ibid.

16 Writings about intersectional discrimination have increased, and it has become an indicator to identify the level of discrimination practiced against women in different regions of the world. For more, see: A.I. Scheim and G. R. Bauer, 'The Intersectional Discrimination Index: Development and validation of measures of self-reported enacted and anticipated discrimination for intercategory analysis' (2019) 226 *Social Science & Medicine*. Also, see a major reference in intersectional discrimination: S. Atrey, *Intersectional Discrimination* (Oxford University Press 2019).

17 n [9].

18 Ibid.

19 Ibid.

20 M. Nussbaum, 'Women's Progress and Women's Human Rights' (2016) 38 *Human Rights Quarterly* 589.

21 n[10].

22 Ibid.

23 Ibid. 139.

24 Ibid.

privileged Blacks; in sex-based discrimination cases, race and class-privileged women are more focused as the most privileged group members.²⁵ Then this focus, in turn, led to the marginalization of those who are “multiply-burdened” and hid claims that cannot be understood as resulting from discrete sources of discrimination.²⁶

For Crenshaw, black women are “multiply marginalized”, first by virtue of their sex, then their race. For many, the burden of low socioeconomic status or social status is an additional multiplier. If the representations of feminism are typically upper-middle-class white women, what room is left for more complicated narratives of minority and lower-income women? Indeed, the CEDAW lays out an expansive definition of discrimination against women, however not so expansive as to account for intersectionality.²⁷ It states, in part, that discrimination is any sex-based distinction, restriction, or exclusion which has the impact or intent to impair women or nullify their recognition, enjoyment, or exercise, regardless of their marital status, of human rights and fundamental political, social, economic, civil, cultural, or any other freedoms.²⁸ This definition accounts for the effects of directed and intentional discrimination, as well as discrimination that may be inadvertent or incidental.²⁹ If a law or policy (or, in some cases, the lack of a law or policy) gives rise to a disparate impact, then it may be presumed that such action is discriminatory.³⁰ In this, the guarantees of the Convention are ample, in that they do not require an interrogation as to an actor’s motives, but only as to effects. The CEDAW adopts such a broad definition because, as expressed in its preamble, “despite these various instruments extensive discrimination against women continues to exist”.³¹ Consequently, the acknowledgment of this reality necessitates a concomitantly serious response.

If CEDAW addresses discrimination so comprehensively, then why has it failed to do so in terms of intersectionality? For Crenshaw, this failure of perspective reflects pesky and uncritical acceptance of dominant ways of thinking about discrimination.³² In this understanding, a discriminator treats all members of a specific class similarly on account of that class. However, the historical examples of the treatment of certain kinds of women based on their race, social status, or sex are innumerable. For example, in India, men may behave more radically towards a lower-class Dalit³³ woman than an upper-class woman; in the American South, race-based discrimination was endemic and a pillar of the established social order. In caricature and practice, black women are often stereotyped, alternatively being looked at as mothering figures or sexually objectified and abused in ways unthinkable if applied to white women. Indeed, the valorization of white women’s sexual purity, and the associated fears of sexually aggressive black men despoiling them, were recurrent themes in the social history of the American South and the primary drivers of lynching and race-based mob violence on the part of whites.

Translating the theory of intersectional discrimination into practice is best illustrated through specific cases. In the example above - of the experience of Dalit women in India - a case before the Indian Supreme Court shows the potential and limitations of CEDAW to address intersectional discrimination, if

25 Ibid. 140.

26 Ibid.

27 n[4], article 1.

28 Ibid.

29 D. Moeckli and S. Farrier, ‘Equality and Non-Discrimination’ in S. Farrier (ed.), *Equality and Non-Discrimination under International Law*, Vol. II (Routledge 2015).

30 Ibid.

31 n[4].

32 n[10], 150.

33 Dalit: A Hindu sect formerly called “untouchables” that lies outside the caste system in the Hindu hierarchy, with an estimated 250 million adherents. Although the Indian Constitution officially abolished the “untouchables” in 1950, discrimination against them is still today and is considered the most racist in the world, in addition to the increasing number of rape and murder of girls of this class.

broadly applied.³⁴ Bhanwari Devi is a Dalit woman and campaigner for women's rights, advocating against prevalent social practices in India like sex-selective abortion, feticide, forced marriages, dowries, sati,³⁵ or bride burning.³⁶ In 1992, Devi launched a special campaign on the issue of child marriage.³⁷ She was informed about the forced marriage of a nine-month old girl and reported it to the authorities, upsetting an influential upper-caste family.³⁸ In turn, five men from this class attacked Devi and her husband, beating them with sticks. Three of the assailants in turn raped Devi.³⁹

Devi reported this crime to the police, who were openly skeptical of her account and failed to investigate properly.⁴⁰ Three years later, a judge in Rajasthan acquitted all of the defendants, reasoning that upper-caste men would not have deigned to rape a lower-caste woman, something which is openly belied by quantitative and qualitative statistics, published accounts throughout India, and other criminal proceedings prosecuted in the country.⁴¹ This decision sparked a widespread protest movement throughout India, including a series of marches to the high court.⁴² Capitalizing on this attention to women's rights, the non-governmental organization Vishaka decided to file a petition to the Supreme Court of India, pleading for safer working conditions for women.⁴³

On 13 August 1997, the Supreme Court delivered its decision in the case of *Vishaka v. State of Rajasthan*,⁴⁴ which relied almost exclusively on international law (including the CEDAW) and generalized guarantees in the Indian Constitution in order to protect women from sexual harassment in the workplace.⁴⁵ In its opening, the Court stated "the immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject-matter of a separate criminal action and no further mention of it, by us, is necessary," before holding that: "The meaning and content of the fundamental rights guaranteed in the Constitution of India [under Articles 14, 15, 19 and 21] are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them".⁴⁶

In its decision, the court uncritically noted that the original basis of this petition was, at least in part, the criminal case of a gang rape committed against a Dalit woman. The court then summarily dismissed this rationale, noting that the defendants were acquitted. This act of erasure, given in the same judgement that would extend new workplace protections to women in India, was astonishingly tone-deaf and callous.

34 n[9].

35 Sati or suttee: The Indian custom of a wife immolating herself either on the funeral pyre of her dead husband or in some other fashion soon after his death. See: 'suttee' Encyclopedia Britannica <<https://bit.ly/3hw87CA>> Accessed 2 April 2019.

36 n[9].

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid.

43 Supreme Court of India, '*Vishaka and others V. State of Rajasthan*, (AIR 1997 Supreme Court 3011), by: J.S. Verma C.J.I., Mrs. Sujata V. Manohar and B.N. Kirpal. JJ' (1997) <<https://bit.ly/3svdZCi>> Accessed 2 April 2019.

44 In the wake of the Davy case, various women's groups led by Naina Kapur and her organization, Sakshi, filed Public Interest Litigation (PIL) against the State of Rajasthan and the Central Government of India in Indian Supreme Court in 1997, to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India.

45 n[9].

46 Ibid.

It demonstrated, wittingly or unwittingly, that a lesser standard of dignity may be afforded to a Dalit woman, even as the Supreme Court itself is advancing important protections for professional women in workplaces throughout the country. Presumably, many (if not most) of these women will be of a higher socioeconomic and caste status than Devi.

2. Intersectionality and Women's Lives

The formative concept of Crenshaw has contributed greatly to the development of a theory and dialectic of intersectionality. Other authors, like Nash, have interrogated Crenshaw's original premise of black women's intersectional identity, asking "what exactly is intersectionality?"⁴⁷ Is it something specific to certain types of women, such as those with 'multiply burdened' identities, or does it include others? For Nash, intersectionality then is focused on the 'multiple oppressions experienced by non-white and poor women,' but also considers their experiences of poverty, domestic violence, immigration status, disabled status, and other factors.⁴⁸

Overall, however, it is undisputed that intersectionality applies to a wide variety of women in a wide variety of ways. The hardships endured by a poor Dalit woman, like Bhanwari Devi, are distinct from the sex-based discrimination found in a workplace, or in turn, the discrimination confronted by indigenous or minority women in accessing adequate health services elsewhere.⁴⁹ Indeed, the practical implications of intersectionality in the lives of women can also be illustrated through a case reviewed by the Committee: *Matter of Teixeira*.⁵⁰ While the CEDAW text may not explicitly refer to intersectional discrimination, a limited amount of the Committee work has directly interrogated the nature of intersectional discrimination. In the eponymous case, Teixeira was an impoverished woman of Afro-Brazilian descent who visited a health center a few days before her due delivery date, complaining of severe abdominal pain and nausea.⁵¹ Complications arose during her treatment, and the health center contacted nearby public and private hospitals to transfer her.⁵² A private hospital refused to send its ambulance to transport her and, as a result, she waited eight hours for treatment.⁵³ Once she was transferred successfully to a hospital, she was left in a corridor for 21 hours without treatment.⁵⁴ During this time, she was completely unattended.⁵⁵ Her fetus was eventually stillborn, thereafter Teixeira herself died of a hemorrhage.⁵⁶ The patient's mother appealed to the Committee after failing to receive the desired recourse in Brazil itself.⁵⁷ The Committee determined, in its findings, that Teixeira, as an African woman, suffered from descent and socioeconomic-based discrimination.⁵⁸ Despite this, the Committee's findings did not use the term "intersectional," and did not interrogate fully the interdependent role of Teixeira's multiple identities and how it affected her treatment outcome.⁵⁹ Nonetheless, her case marked the first time that an international treaty body had

47 J. Nash, 'Re-thinking intersectionality' (2008) 89 *Feminist Review* 1.

48 *Ibid.* 10.

49 E. Snyder, 'Indigenous feminist legal theory' (2014) 26 *Canadian Journal of Women and the Law* 365.

50 *Matter of Teixeira*, CEDAW 17/2008.

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*

55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

58 *Ibid.*

59 M. Campbell, 'CEDAW and Women's intersecting identities: A pioneering new approach to Intersectional Discrimination' (2015) 11 *Revista Direito* 479.

held a government responsible for a preventable maternal death.⁶⁰

Indeed, as Rashida Manjoo, the former UNHCR Special Rapporteur on Violence against Women had noted, privileging political and civil rights over social and economic ones can be an exercise in futility.⁶¹ For women who are subject to intersectional discrimination, they may not compartmentalize or define their identity in ways traditional feminist discourse or practice would have them do so.⁶² This maxim can be seen in another case reviewed by the Committee, that of *A.S. v Hungary* (2004), which concerned the sterilization of a Hungarian Roma woman.⁶³ In this case, A.S. was medically sterilized without her knowledge or consent, and accordingly, she brought her case to the Committee, alleging violations of Article 10(h) “the right to health information,” Article 12 “the right to non-discrimination in the health sector,” and Article 16(1)(2) “the right to autonomy regarding the number, and spacing, of children a woman may have”.⁶⁴

In her pleadings, A.S. stressed her “extremely vulnerable situation [...] as a woman who would lose her child and as a member of a marginalized group of society: the Roma”.⁶⁵ She also noted that her strict practice of Catholicism prevented her from using contraception, and thus she never would have consented to sterilization.⁶⁶ In its decision, the Committee noted that A.S. has been subjected to discrimination on the basis of her pregnancy status, but only incidentally noted the intersectional discrimination that she faced, namely that she was a Roma and a practicing Catholic with conservative beliefs regarding reproduction and sexual morality.⁶⁷ The Committee did not explicitly state that the discrimination A.S. faced was related to her Romany status or her religious belief.⁶⁸ For some, like Truscan, this omission represented a missed opportunity on the part of the Committee to give form and substance to previous indicia on intersectional discrimination.⁶⁹ The Committee’s failure to overtly condemn discrimination based on her Romany status and religion is akin, in a lesser form, to the symbolic erasure of Devi by the Indian Supreme Court.⁷⁰

3. Intersectionality and the CEDAW

3.1. CEDAW vs. its Committee

When it comes to the matter of intersectionality, the CEDAW text remains silent. There are no explicit reference to the differentiated impacts of race and socioeconomic-based discrimination on women, or to the idea that discrimination - experienced in many ways and many contexts - which may have more serious implications for those who are “multiply-burdened”.⁷¹ However, while the CEDAW itself is textually silent as to intersectionality, through its general recommendations, decisions, and inquiries, the Committee has furthered the narrative and understanding of intersectional discrimination, if imperfectly.

60 Ibid.

61 R. Manjoo and D. Nadj, ‘Bridging the Divide: An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence Against Women’ in E. S Buzawa and C. G. Buzawa (eds.), *Global Responses to Domestic Violence* (Springer International Publishing 2017), 21.

62 P. Chow, ‘Has intersectionality reached its limits? Intersectionality in the UN human rights treaty body practice and the issue of ambivalence’ (2016) 16 Human Rights Law Review 453.

63 *A.S v Hungary* 4 CEDAW 2004.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

68 S. Curran, ‘Intersectionality and human rights law: An examination of the coercive sterilizations of Romani women’ (2016) 16 Equal Rights Review.

69 I. Truscan and J. Bourke-Martignoni, ‘International Human Rights Law and Intersectional Discrimination’ (2016) 16 Equal Rights Review.

70 Ibid.

71 n[10].

Unlike other treaty bodies of the United Nations, the CEDAW incorporates an explicit limitation on the number and duration of its annual meetings.⁷² This provision stipulates that only one session may take place annually, and the said session may not exceed two weeks.⁷³ The bulk of this time, of course, is absorbed in assessing the reports submitted by the State Parties, reducing the amount of time available for other important activities or work beyond the narrow scope otherwise prescribed.⁷⁴ In response to this limitation, the State Parties adopted an amendment that would have allowed for expanded meeting time.⁷⁵ However, this amendment never garnered the necessary two-thirds support from the State Parties, many of whom were disinclined to provide more time for a treaty body to interrogate their actions or inactions.⁷⁶ As an alternative, the United Nations General Assembly has authorized the Committee to meet for additional sessions, as well as voting to expand the permitted duration of each section.⁷⁷ This is a practical workaround to what was otherwise an intractable problem.

Indeed, it is through its Committee that the CEDAW has been most effective in terms of addressing intersectional discrimination. The Committee's primary function is to interrogate the progress of State Parties in realizing fully the political, social, legal, and economic equality for women.⁷⁸ It does this by examining measures taken by State Parties to convert the aspirations of the CEDAW into reality.⁷⁹ Each State Party was obligated to publish its first report within one year after the CEDAW's entry into force, then thereafter at least every four years.⁸⁰ Additionally, upon the Committee's request, a State Party may also be obligated to produce a supplemental report.⁸¹ In December 2000, an Optional Protocol to the CEDAW Convention came into effect, which to date claims 112 State Parties.⁸² This protocol empowers the Committee to accept complaints from individuals or groups, rather than just states, when domestic remedies have been exhausted.⁸³ It, therefore, provides a subsequent level of protection for individuals.

Under this Inquiry Procedure, the Committee interrogated the case of missing and murdered aboriginal women in Canada, stating that: "Aboriginal women face intersectional discrimination stemming from factors [...] which are inextricably intertwined".⁸⁴ Its findings noted the interplay of gender, socioeconomic status, and race for aboriginal women, stating that aboriginal women were more likely to hitchhike (a dangerous behavior associated with higher incidences of violent crime), live in substandard housing, lack education, and employment prospects.⁸⁵ In its formal recommendations, the Committee called on Canada to improve the socioeconomic conditions of aboriginal women, an issue long dormant in Canadian politics

72 n[4], article 20.

73 Ibid.

74 H. Shin, 'CEDAW and women's human rights: Achievements and Obstacles' (The Castan Center for Human Rights Law's Annual Conference Human rights, Monash University, 2004) <<https://bit.ly/3GcuG9n>> Accessed 2 April 2019.

75 Ibid.

76 Ibid.

77 Ibid.

78 n[6].

79 n[4], article 18.

80 Ibid.

81 Ibid.

82 C. O'Rourke, 'Bridging the Enforcement Gap-Evaluating the Inquiry Procedure of the CEDAW Optional Protocol' (2018) 27 American University Journal of Gender, Social Policy and the Law 1.

83 Ibid.

84 CEDAW, 'Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (2015) <<https://digitallibrary.un.org/record/836103>> Accessed 2 April 2019.

85 Ibid.

and, until recently, not the subject of any sustained government support or focus.⁸⁶

Additionally, the Committee called on Canada to provide expanded training for police and judicial officers in aboriginal culture and customs, expand legal aid funding for aboriginal women, and undertake a national inquiry into the causes and solutions to the problem of violence, inequality, and exclusion as they affect aboriginal women.⁸⁷ In response to these recommendations and domestic political considerations, the Liberal Party government of Prime Minister Justin Trudeau has unveiled an indigenous ‘action plan’ targeting these fundamental inequalities.⁸⁸ As part of this plan, a series of legislative proposals relative to Canada’s First Nations’ peoples have been proposed.⁸⁹ These include: A new funding formula for K-12 education, an indigenous child welfare bill, an abrogation of the country’s Indian Act, and a national public inquiry to the problem of missing aboriginal women and girls.⁹⁰ In Canada, aboriginal women and girls are severely underrepresented in comparison to men.⁹¹ Additionally, they have long experienced far higher rates of violent crime, including rape and murder, without receiving a concomitant degree of support from the police and judicial services throughout the country.⁹²

In addition to its inquiries and decisions, the Committee has put forward 37 general recommendations, which provide definitive guidance to State Parties on the interpretation of the CEDAW’s provisions.⁹³ Progressively over time, these general recommendations (and other policy guidance) became more specific and actionable, providing the Committee an important tool to advance protections for women outside the strict written framework of the Convention.⁹⁴ Beyond the work of the Committee itself, non-governmental organizations and other bodies routinely provide their own assessments to the Committee, both to influence and to inform their work.⁹⁵ However, in its formal dialogues with State Parties and relevant entities, the Committee acts through a process of dialogue, sending delegations to represent its findings and points of view directly to national governments (and others).⁹⁶ Much of this dialogue is conducted in closed sessions, shielding many deliberations from view.⁹⁷

3.2. Critique of CEDAW

As written, the CEDAW does not associate or refer to diverse aspects of women’s identities. The treaty does not consider discrimination based on religion, race, ethnicity, immigration status, gender identity, sexual orientation, disability, age, or socioeconomic condition.⁹⁸ The condition of women is thus homogenized and addressed as a single and undifferentiated whole. For these omissions, the treaty has been criticized for not adequately representing the totality and diversity of women’s lived experiences. Indeed, not until the adoption of general recommendation number 28 did the CEDAW Committee even

86 Ibid.

87 Ibid.

88 H. Exner Pirot, ‘Friend or faux? Trudeau, Indigenous issues and Canada’s brand’ (2018) 24 Canadian Foreign Policy Journal 165.

89 Ibid.

90 Ibid.

91 Ibid.

92 Ibid.

93 n[55].

94 Ibid.

95 Ibid.

96 N. Reilly, ‘Seeking gender justice in post-conflict transitions: Towards a transformative women’s human rights approach’ (2007) 3 International Journal of Law in Context 155.

97 Ibid.

98 n[55].

account officially for gender-based, as opposed to sex-based discrimination against women.⁹⁹ Gender, a more expansive concept, refers from one hand, to identities, roles, attributes that are constructed socially for women and men, and from another hand, how these biological differences reflected in a social culture as hierarchical relationships between women and men in the distribution of power and rights favoring men and disadvantaging women.¹⁰⁰ This recognition on the part of the Committee has also been echoed by other treaty bodies, including Convention on the Elimination of All Forms of Racial Discrimination (CERD). That body's own committee, in 2000, adopted its general recommendation number 25, specifically noting the gender-related aspects of racial discrimination.¹⁰¹

While the CEDAW does not enumerate all categories on which women are subject to discrimination, it does incorporate references - however implicit - to forms of socioeconomic and sociocultural discrimination experienced by women, particularly in terms of marital status.¹⁰² This demonstrates an appreciation for the impacts of gender-based norms surrounding marital, pregnancy, or motherhood status.¹⁰³ Protections are also incorporated regarding discrimination on account of national origin, and for rural women, acknowledging their particular challenges and concerns like rural development and access to healthcare, social security, sanitation, housing, communications, transportation, electricity, and water.¹⁰⁴

In 2010, the Committee issued a general recommendation on the effects of discrimination on older women, noting that both men and women are subject to discrimination on the basis of old age, but because of the gender inequality between men and women throughout their lifespan, based on persisted cultural and social norms, older women are subject to ageing differently. This discrimination is a result of unfair allocation of resources, maltreatment, and limited access to basic services.¹⁰⁵ Further, the Committee stated that this discrimination that older women are subject to is often multidimensional, with age discrimination, other forms of discrimination are exacerbating as based on sex, gender, ethnicity, disability, levels of poverty, sexual orientation and gender identity, migrant status, marital and family status, literacy, and other grounds. In addition to that, older women who are members of a minority, ethnic or aboriginal groups, or who are refugees or internally displaced often experience a disproportionate degree of discrimination.¹⁰⁶ In this context, the Committee expressed the idea of intersectionality without actually saying the word. However, in its very next general recommendation, Number 28, the Committee explicitly stated that: "Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked to other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures..."¹⁰⁷

99 CEDAW, 'General recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) <<https://bit.ly/3ral0bi>> Accessed 2 April 2019.

100 Ibid.

101 n[55].

102 Ibid.

103 Ibid.

104 Ibid.

105 CEDAW, 'General recommendation No. 27 on older women and protection of their human rights' (2010) <<https://bit.ly/33T3M9C>> Accessed 2 April 2019.

106 Ibid.

107 n[95].

3.3. Limitations of the Committee's General Recommendations

In terms of practical effect, the Committee's General Recommendations are limited in scope and efficacy. The CEDAW, however, unlike many other human rights treaties, makes explicit allowance for the adoption of "special measures" to advance women's equality, namely via positive discrimination (or affirmative action).¹⁰⁸ For many women, intersectional discrimination marginalizes them based on diverse aspects of their identity. If intersectionality were fully integrated into the CEDAW, governments may be encouraged to consider more systemically how to realize equality for women with multiple identities, including through the use of "special measures" that concretely give advantage to women who have been subjected to historical of disadvantage.

3.4. A model to better integrate intersectional protections in the CEDAW

Indeed, a possible model for better integrating intersectional protections against discrimination into the CEDAW may be found in general recommendation Number 19, adopted by the Committee in 1992.¹⁰⁹ This provision stipulated that State Parties possess a positive obligation to "exercise due diligence" in protecting women from violence.¹¹⁰ It also established that States Parties were responsible for investigating crimes against women, prosecuting the perpetrators of such violence, and, where applicable, providing compensation to women.¹¹¹ Its language has provided a model for the adoption of many statutory instruments throughout the world criminalizing gender-based violence, such as laws against 'femicide' in Argentina and elsewhere in Latin America.¹¹² A similar general recommendation, targeted specifically towards intersectional discrimination and providing sufficiently precise language (or, at least, principles), could then serve as a template for the enactment of laws at the domestic level. In this, the Committee could perform a pedagogic function, advancing intersectional discrimination to the core of its agenda and helping to build consensus around this issue at a time when women's rights are making, at best, uneven progress around the world.

4. Conclusion

Results:

In conclusion, this research argued that the CEDAW has, by omitting an explicit reference to the intersectionality of women's lives and experiences, failed to protect women's human rights in the broadest possible sense. While CEDAW codifies women's rights generally, it fails to take into account issues of race, class, and gender identity (amongst other classifications), thereby not fully accounting for the totality of women's lived experiences and all of the forms of personal, systematic and institutional discrimination they may face.¹¹³ This omission is not merely incidental, but instead has real consequences for women. By not codifying intersectionality within its text, it has proved difficult to integrate the concept of intersectionality into the domestic law of ratifying members, as well as in international human rights law at large.¹¹⁴ While the incorporation of intersectionality into CEDAW is not a panacea, it would represent a strong acknowledgement on the part of the international community of the differentiated, cumulative and compounding impacts of discrimination on women of "multiple minority" status or, as Crenshaw noted,

108 CEDAW, 'General recommendation No. 25, on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures' (2004) <<https://bit.ly/3g4dCrt>> Accessed 2 April 2019.

109 CEDAW, 'General Recommendation No. 19 on violence against women' (1992) <<https://bit.ly/3uafbMW>> Accessed 2 April 2019.

110 Ibid.

111 Ibid.

112 A. M. Fernández, 'Gender violence: Femicides in Argentina' (2012) 17 *Interdisciplinary Journal of Family Studies* 2.

113 n[9].

114 Ibid.

that those who are “multiply-burdened.”¹¹⁵

In practice, the CEDAW Committee’s evolution as regards intersectionality has been haphazard and stalled. While the Committee has introduced the concept of intersectionality, in its decisions, inquiries, and general recommendations, it has not done so consistently. In its decision in “R.P.B. v the Philippines,” the Committee made plain that it was aware the plaintiff was disabled but focused its inquiry on sex and gender discrimination rather than discrimination based on age and disability status.¹¹⁶

Recommendations:

To redress this situation, and better assure protection for women based on intersectional discrimination, the CEDAW should be amended to explicitly include language to this effect. This language should be drafted in the broadest possible sense, noting that women are subject to discrimination on a basis including and in addition to their sex. These factors should include, but not be limited to race, economic status, gender identity, disability status, immigration status, and sexual orientation. While the CEDAW in its practical work has called attention to these factors and cited them persuasively in a number of its published reports and general recommendations, these do not have the same force or value as the actual text of the treaty. Amending the CEDAW is a difficult proposition (as seen by attempts to increase the number and duration of authorized annual meetings of the CEDAW Committee). However, with concerted political will, a comprehensive amendment could be passed in the short to medium-term.¹¹⁷ Such an amendment would put the international community on the record as opposed to intersectional discrimination and could serve as a positive spur to the integration of protections against intersectional discrimination in domestic law. The ambition of international human rights law is the full recognition and protection of all people on the basis of our common humanity. As such, reconceptualizing our ideas on entitlement, discrimination, and privilege, and integrating them into the body of international law helps to realize the ambitions of the post-war architects of international human rights law and make real the CEDAW’s protections and guarantees for women’s full political, social, economic, and cultural participation throughout the world.

115 n[10].

116 CEDAW, ‘Communication No. 34/2011: Views adopted by the Committee at its fifty-seventh session, 10-28 February 2014’ <<https://bit.ly/3ptuZHf>> Accessed 2 April 2019.

117 L. Mullins, ‘CEDAW: The Challenges of Enshrining Women’s Equality in International Law’ (2018) 20 Public Integrity 257.

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