

112 | special guest contribution: violence against women as a barrier to the realisation of human rights and the effective exercise of citizenship

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abstract

This article focuses on violence against women as a barrier to the realisation of women's civil, political, economic, social, cultural and developmental rights, as well as the consequences of this for the effective exercise of citizenship. The value of adopting a citizenship lens, identifying the nexus between violence against women and human rights, and adopting an approach that acknowledges the multiplicity, intersectionality and continuity of violence across the public and private spheres serves to assist in identifying and providing an analysis of the continuing challenges in the quest to eliminate violence against women. Owing to the scarcity of literature that explicitly highlights the link between human rights, citizenship and violence against women, the current analysis highlights some of the existing literature on a situated understanding of citizenship through a women's human rights lens, while the discussion on violence against women as a barrier to realising all human rights that enable the exercise of effective citizenship is largely underpinned by the work of the mandate of the Special Rapporteur on Violence against Women, its Causes and Consequences.

keywords

violence against women; intersectionality; human rights; citizenship

introduction

Violence against women impairs and nullifies women's realisation of all human rights; prevents women from participating in their community as full, equal citizens; reinforces male dominance and control; supports discriminatory gender norms; and also maintains systemic inequalities between women and men. These factors, among others, in turn preserve and perpetuate the conditions that facilitate the continuation of gender-based violence.

A recent study by the World Health Organization (WHO) (2013) indicates that violence against women affects one in three women globally and is a prominent cause of death and disability among women. Such violence is acknowledged as a pervasive and severe impairment of human rights, resulting in violations of women's civil, political, social, cultural, economic and development rights. An often overlooked impact of violence against women is the role it plays in impeding the realisation of a broad range of human rights that are essential to the exercise of full, inclusive and participatory citizenship. Participation, autonomy and agency constitute the core components of citizenship rights, emanating as they do from human rights, as the necessary conditions for human agency and dignity. Human rights are rooted in citizenship rights, including in their dynamic conception of political, economic, civil and social participation. Human dignity and the right to freedom and equality lie at the heart of the international human rights regime, thereby providing the necessary conditions for human agency for the exercise of citizenship rights. The fulfilment of one right often depends upon the fulfilment of others, as each cluster of rights provides the necessary conditions for the realisation of the other clusters. For example, social rights help to promote the effective exercise of civil and political rights, while civil and political rights in turn empower citizens to realise their economic, social and cultural rights.

Gendered violence violates numerous rights, including those to equality and non-discrimination on the basis of sex and gender, to liberty and security of the person, and not to be subjected to torture, cruel or inhuman or degrading treatment or punishment, among others. Such violence, whether in the private or public spheres, impedes women's right to equality within the family, the community and the workplace. Crucially, the experience or threat of violence can further deprive women of their right to participate in the political, economic, social and cultural life of the country within which they live. This, in turn, precludes women from exercising their right to vote, to hold public office, to work, to education, to the right to a secure livelihood, to access justice and to health, among others.

This article illustrates how violence against women impacts on the realisation of certain civil and political rights, economic and development rights, and social and cultural rights. The article commences by highlighting the evolving concepts and definitions of citizenship, from the traditional understanding of citizenship as the legal relationship between the State and its citizens to a more situated understanding of this phenomenon. In the following section, the nexus between violence against women and human rights is briefly examined, while highlighting the need to address notions of multiplicity and intersectionality. The article then illustrates how violence against women impacts on civil and political rights, economic and development rights, and social and cultural rights, respectively. The article concludes by highlighting the necessity of viewing violence against women as a barrier to the realisation of all human rights, resulting in negative implications for the exercise of citizenship, and also highlights the continuing and new challenges to the efforts to eliminate and prevent all forms of violence against women.

Traditionally, citizenship has been linked to the legal status of an individual and the relationship between that individual and the State, whereby specific rights and responsibilities are conferred through legal provisions and mechanisms (Nash, 2009). The academic literature often reflects Marshall's (1950) description that defines citizenship in terms of three sets of rights: civil, political and social rights. Civil rights include the right to own property, freedom of speech, thought and faith, liberty of the person, and justice. Political rights are institutionalised in the parliamentary political system and include the right to vote and participate in the exercise of political power. Social rights include the right to a certain level of economic welfare and security, as well as the right to share in the social heritage. Marshall's gender-neutral framing of rights is reinforced by the failure to acknowledge the specificities of women's life and reality, and thus his framing of citizenship ignores the need for a more situated articulation of civil, political and social rights. Pereira (2002) argues that the articulation of the rights discourse with the discourse on citizenship for women is, *per se*, worthy of greater research attention than that to which it has been subjected hitherto.

The role of the public/private structuring of social relations in excluding women's full access to citizenship rights has been highlighted by feminist theory (Lister, 1997). Feminist analyses of citizenship have included methodologies for detecting gender bias and the consequences in terms of limiting the choices open to women (Fraser, 1989). Such analyses have critiqued the traditional conceptions of citizenship that employ the private/public divide to draw a boundary around what can usefully be discussed in relation to claims to citizenship. Pereira (2002) notes that women may experience a denial of their citizenship and fundamental human rights in both the public and private spheres. Therefore, it is necessary to go beyond the public space when reference is made to women's citizenship and human rights, in order to address the interconnected, interlocking character of women's public and private lives. Molyneux (2007), in examining citizenship in the Latin America and Caribbean region from the perspective of women's social movements, highlights women's struggles for equal citizenship as reflected in three important articulations. These include, first, the alignment of demands for gender justice with the broader campaigns for human rights and democracy. Second, in reconceptualising the ideas of citizenship to something beyond a purely legal relationship that confers rights on passive subjects, the argument is that the State/citizen relationship must be underpinned by notions of participation and agency, as exercised by the individual. Lastly, citizenship is understood to be a process of overcoming multidimensional forms of marginalisation in the socio-economic and political spheres (Molyneux, 2007).

Tetreault argues that the citizenship rights of women and girls have been subject to limitations based on cultural and/or religious norms and practices that are often centred on the control of women's bodies and sexuality. She states that the failure to recognise women as full citizens is tied to the conception that to be sexually penetrated means to be subordinate. A female citizen was a subject in part, because it was expected that her body would, during the normal course of her life, be invaded by others, thereby signifying a 'natural' absence of physical autonomy (Tetreault, 1997). Goetz (2007) notes that the customary patriarchal norms derived from familial and class relationships constrain women's entitlements, by reinforcing stereotyped gender roles. Bunch (1997) argues that violence against women serves a deliberate social function by asserting control over women's lives and keeping them 'second-class citizens'. The feminist human rights advocates' focus on violence against women, and more specifically sexual violence, has been criticised by Miller (2004), who argues that this elevates women's victimhood and emphasises sexual harm, which has inadvertently worked to minimise women's citizenship by reducing

women to suffering bodies who are in need of protection by the law and State, rather than as bodies and minds in need not only of protection, but also participation and equality.

Miller's criticism notwithstanding, feminist and gender studies have emphasised the importance of a situated understanding of citizenship for women, and how crucial it is that any such analysis proceeds from an understanding of women's lived experiences (Pereira, 2002). Some feminist scholars have reconstructed the notion of citizenship. For example, acknowledging the relationship of the individual to the State, Yuval-Davis (1997) has analysed citizenship as plural and multilayered, embodying the recognition of multiple identities, and has linked new claims for distributing and redistributing the rights and practices associated with citizenship. Nyamu-Musembi (2007) challenges the narrow, linear definitions that interpret citizenship as simply the relationship between the State and the citizen. Relying on earlier feminist analysis, she argues for conceptions of citizenship that take into account the fact that one's experience of citizenship is mediated by other markers of belonging. Therefore, factors such as race, ethnicity, family connections or economic status should also be considered, in the interpretation and understanding of citizenship (see also Ndegwa, 1997). Bentley points out that the feminisation of poverty, economic inequality and endemic violence against women constitute symptoms of a deeper inequality. These issues are the driving factors that affect the right to be free from violence, to realise human rights and to exercise full citizenship (Bentley, 2004). For Bentley (2004), it is only when women have the power to access resources as equal citizens that their formal equality will have any substantive effect on their life.

The notion of social and cultural citizenship has also entered the academic debate because of the social and political changes globally. Such changes have challenged the traditional notions of citizenship that are based on national identity. Richardson (1998) notes that notions of social and cultural citizenship continue to evolve with regard to their definitions and conceptualisations. For example, she broadly describes cultural citizenship as the capacity to participate effectively, creatively and successfully within a national culture. A case study on South Africa revealed that black female respondents understood citizenship as being culturally defined by familial and communal attachments (McEwan, 2005). The women in the study understood their citizenship as being about their communal and familial roles and obligations, rather than simply their relationship with the State. The research also highlighted that, for many women, the idea of citizenship did not derive primarily from a localised sense of community but, rather, from communities of interest. As a result of their communal interests, these women could mobilise around key issues, including the right to be free of domestic violence, through public protests and/or by forming grassroots organisations and self-help groups (McEwan, 2005).

Despite the expanded conceptualisation of citizenship through a gendered and situated lens, as reflected above, a limited amount of academic literature explicitly discusses the link between violence against women, human rights and citizenship. Some of the literature generally refers to the failure to criminalise and prosecute marital rape or domestic violence as common examples of a biased legal system that fails to provide women equal protection before the law as full citizens (Goetz, 2007). However, the literature is unhelpful with regard to the necessity of linking violence against women, human rights and the exercise of effective citizenship rights. One reason for the paucity of the relevant literature may be the lack of linkage between women's public life or public power and private experiences. Goetz (2007) notes that the significant constraints to challenging the acceptance of female subordination in the private sphere have focused feminist efforts on exposing the contradictions in other institutional arenas such as the market or State.

She argues that these are easier to challenge because they contravene the basic standards of what is fair in the public sphere. Thus, an increase in the number of women in political leadership positions or girls enrolled in school, together with the performance of girls compared with boys, may imply the realisation of certain citizenship rights (Goetz, 2007). Goetz argues that it is the failure to render visible the clear link between the public and the private that gives rise to feminist scepticism with regard to the achievement of gender equality and women's empowerment. In tackling the question of invisibility, Pitanguy (1997) argues that, to understand why gender violence both was and remains invisible in many countries, we should consider how society views women in every sphere of social, political and economic life, rather than solely in relation to physical or sexual abuse. As such, Pitanguy proposes that gender violence and human rights should be analysed by taking the concept of citizenship as a starting point.

the violence against women/human rights nexus

It has been argued that women have always been seen as less human and lesser citizens from Ancient Greek times until today (Pitanguy, 1997). Fraser (1999) notes that tremendous progress has been made in defining, demanding and implementing women's human rights within the international arena. Increasingly, women have gained recognition outside of the private sphere of the home and family, claiming space in the public sphere as citizens and workers, and are now considered equal humans legally, if not socially or economically (Fraser, 1999). The explicit reframing of human rights, as also applicable to women, has led to the acknowledgement of the importance of redefining how citizenship is understood, interpreted and applied to women, although this has been largely implicit rather than explicit in international human rights discourses.

A number of human rights instruments have recognised that 'violence against women is an obstacle to the achievement of the objectives of equality, development and peace [where] in all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture'.¹ Extending from this, the low social and economic status of women is both a cause and a consequence of violence against women. The right to development adopts a holistic approach, particularly through its inclusion of women's participation in the spheres of culture, health, education and work, and consequently, all manifestations of violence negatively impact on the right to equality, development and peace. Under international law, States have an obligation to respect, protect and fulfil all human rights, and States are obligated to ensure citizenship rights for all members of their community.

The international community explicitly acknowledged violence against women as a human rights issue when it adopted the Vienna Declaration and Programme of Action at the World Conference on Human Rights in 1993. Other standard setting developments such as General Recommendation 19 of the UN Committee on the Elimination of all Forms of Discrimination against Women and the UN General Assembly's 1993 Declaration on the Elimination of Violence against Women,² further acknowledged violence against women as a form of discrimination that impedes or nullifies women's right to enjoy all other human rights on a basis of equality with men, and also addressed the obligations on States to prevent and respond to violence against women.

¹Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, Beijing, 4–15 September 1995, point 112.

²Declaration on the Elimination of Violence against Women (DEVAW) General Assembly (GA) res. 48/104, UN Doc A/RES/48/104 (1983).

These developments are underpinned by an understanding that the impact of gender-based violence on women's right to equality, bodily integrity and freedom from discrimination impacts on numerous human rights. Connecting the human rights lens with the international tools on violence against women explicitly rejects the understanding of human rights that centres on male power and female victimisation, focusing instead on women as agents who participate in the life of their communities to challenge and transform the patriarchal power dynamics that contribute to violence against women.

For a long time, traditional human rights advocacy viewed gender-based violence through a public/private binary, where States are responsible only for violence against women committed in the public sphere while ignoring the reality that violence crosses the public and private domains, ranging from intimate and interpersonal violence to structural, systematic and institutional forms of violence. In more recent times, there has been a greater acknowledgement that the violence occurring in cultural, social or family life impacts on the ability of women to exercise their full citizenship rights, and thus the State has a responsibility to respond to and prevent it. It is argued that women are full agents who are at once sexual, civil, political, economic, social and cultural beings, and that States must recognise women as such, to guarantee their full and equal citizenship rights. Thus, a more holistic examination of the root causes, including potential economic and social remedies for rights violations, becomes necessary (Miller, 2004).

Violence against women cannot be discussed in a way that focuses solely on interpersonal and structural inequalities between women and men, thereby excluding an analysis of intra-gender inequalities, and also multiple and intersecting forms of discrimination as experienced by, e.g., women with disabilities, women who are ethnic or cultural minorities, women who live in poverty, women who live in rural areas, women who lack citizenship status and older women, among others. The lack of a holistic analysis increases the risk that some women will experience targeted, compounded or structural discrimination, in addition to gender-based violence (Manjoo, 2011).

Women with disabilities experience an intersecting confluence of violence that reflects both gender-based and disability-based violence (Goetz, 2007). Many studies note a substantially higher risk of violence among women with disabilities than among the non-disabled population (Cepko, 1993; Human Rights Watch, 2011). For example, women with disabilities are particularly vulnerable to forced sterilisation and other coercive birth control methods. According to a recent report, almost 80 per cent of women with disabilities are victims of violence generally, and four times more likely than other women to experience sexual violence (Ferres *et al.*, 2013). Indigenous women are also especially susceptible to gender-based violence. The social, cultural, economic and political marginalisation of aboriginal and indigenous women globally, along with a negative legacy of colonialism, historic racist government policies and the consequences of economic policies, has driven an alarming number of these women into extremely vulnerable situations (Manjoo, 2012a). It has been noted that the increased militarisation of territories belonging to indigenous peoples in Asia has had an impact on the manifestation and prevalence of gender-based violence (Anaya, 2013).

Women who live in poverty are also exposed to greater violence than other women. It is noted that:

... living in poverty can further increase the likelihood that women will experience violence, as poverty is both a cause and a consequence of violence against women. Also, poverty and race are interconnected—as the majority of the world's poor are women who come from racial and ethnic minority communities. The options for escaping gender-based violence are considerably reduced when women do not have access to resources. (Ferres *et al.*, 2013)

In poor households, early and forced marriages, a form of violence against women and girls, are more common. Poor women may also agree to become a second or third informal wife in order to secure economic protection. Refugees and other non-citizens are often susceptible to violence, especially against women. Numerous international instruments acknowledge that organisational and societal factors, including unhealthy and unsafe housing, unemployment, poverty, restricted access to health care, higher education, participation in civil society and legal protection all contribute to the ill-health and vulnerability of migrants generally, and of women migrants in particular.³ Women in poor communities are often inadequately protected, which can make them more susceptible to violence and less likely to be in a position to participate adequately in society.

civil and political rights

The right to life is broadly recognised in international law.⁴ Despite this, the prevalence of violence against women resulting in death has grown to alarming proportions. Globally, up to 38 per cent of all murders of women are committed by their intimate partner (World Health Organization [WHO], 2013). Reports suggest that, in some countries, 40–70 per cent of all female homicide victims were killed by a former or current intimate partner (Heise and Garcia-Moreno, 2002). Another threat to women's life is found in the violence that occurs in the context of armed conflict, where women are sometimes killed as strategic targets for the purpose of terrorising civilian populations. Additionally, women's human rights defenders are often the symbolic targets of politically motivated killings during conflicts and transitions (Manjoo, 2012b).

Violence against women restricts women's freedom of movement in a number of significant ways.⁵ The fear of violence occurring in public spaces, including harassment and sexual assault, intimidates women into avoiding the public arena. Linked to this avoidance is the fear of violence in private spaces, if freedom of movement is exercised, without prior sanctioning, particularly in contexts where honour and morality are linked to women's freedom of movement. Violence against women violates their right to free association and expression in a variety of harmful ways,⁶ while restrictions on association and expression entrench the continued presence of violence. It has been argued that women's inability to freely exercise their association and expression rights, without fear of violence, severely undermines the realisation of all human rights (Hussein, 2001). The use of flogging and other forms of corporal punishment is usually linked to the control and limitation of freedom of association, expression and movement. This punishment usually has a collective dimension, and is public in character, in order to serve a social objective, namely, influencing the conduct of other women (Office of the High Commissioner for Human Rights [OHCHR], 2013). The rights to freedom of association and expression are integral to the right to political participation⁷ and restrictions on women's association and expression rights prevent women from fully exercising their participation rights. The UN Human Rights Council Working Group on discrimination against women in law

³Universal Declaration of Human Rights (UDHR) General Assembly (GA) res. 217A (III), UN Doc. A/810 at 71 (1948), articles 19 and 20; Convention on the Elimination of all forms of Discrimination against Women (CEDAW) GA res. 34/180, 34 UN General Assembly Official Records (GAOR) Supp. (No. 46) at 193, UN Doc. A/34/46, entered into force 3 September 1981, article 7; International Covenant on Civil and Political Rights (ICCPR) GA res. 2200A (XXI), UN Doc. A/6316 (1966), 999 United Nations Treaty Series (UNTS) 171, entered into force 23 March 1976, articles 19 and 21.

⁴UDHR article 3; ICCPR article 6.

⁵UDHR article 21; CEDAW articles 7 and 8; ICCPR article 25.

⁶UDHR articles 19 and 20; CEDAW article 7; ICCPR articles 19 and 21.

⁷UDHR article 21; CEDAW articles 7 and 8; ICCPR article 25.

and practice has noted that stigmatisation, harassment and outright attacks have frequently been used to silence and discredit women who are outspoken as leaders and politicians (Human Rights Council, 2013).

The prohibition on torture is a *jus cogens* (peremptory) norm, against a phenomenon that is widely recognised as a violation of core human rights.⁸ The international community has acknowledged that certain manifestations of violence against women are a form of torture. In 1986, the first Special Rapporteur on Torture listed rape as a form of this phenomenon, as it is often used as a means of control that meets all of the criteria for torture (Koojimans, 1986). In 2013, the UN Committee against Torture expressed concern over rape used as torture in its periodic reports on different countries.⁹ Additionally, the Human Rights Committee has recognised other manifestations of violence against women as constituting torture or cruel, inhuman or degrading treatment, including forced sterilisation,¹⁰ forced abortion¹¹ and female genital cutting.¹²

Violence against women often manifests in ways that violate women's right to the freedom of thought, conscience and religion.¹³ The use of the threat of violence that forces women from minority religious groups to convert to a different faith, directly undermines women's freedom of conscience and religion. Additionally, minority women in certain communities have been threatened with violence for openly expressing their religious beliefs. Furthermore, the targeted harassment of women wearing religious garments fosters an environment that threatens the right of women to practice their religion in freedom. Violence against women is also manifested in ways that violate women's right to voluntary and equal marriage.¹⁴ Forced marriages, whether coerced through kidnapping, physical and/or sexual violence, are a means of forcing women into unwanted and unequal marriages (Gill and Anitha, 2011). As the Special Rapporteur on contemporary forms of slavery has noted, physical and sexual violence against women is used to force females into servile marriages, where women are treated as commodities purchased from their family, over whom any or all the powers of ownership are attached (Shahinian, 2013).

International law affords every individual the right to privacy without arbitrary or unlawful interference.¹⁵ Women all too frequently experience violent intrusions on their privacy, including through practices such as virginity testing and forced sterilisation. These forms of violence against women represent grave violations

⁸UDHR article 5; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984); ICCPR article 7.

⁹Committee against Torture, Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6–31 May 2013), 20, UN Doc. CAT/C/JPN/CO/2 (28 June 2013). Committee against Torture, Concluding observations on the second periodic report of Kenya adopted by the Committee at its fiftieth session (6–31 May 2013), 7, UN Doc. CAT/C/KEN/CO/2 (19 June 2013). Committee against Torture, Concluding observations on the initial report of Mauritania adopted by the Committee at its fiftieth session (6–31 May 2013), 23, UN Doc. CAT/C/MRT/CO/2 (18 June 2013). Committee against Torture, Concluding observations on the fifth periodic report of Estonia adopted by the Committee at its fiftieth session (6–31 May 2013), 12, UN Doc. CAT/C/EST/CO/5 (17 June 2013).

¹⁰See, e.g., Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Slovakia 13, UN Doc. CCPR/C/SVK/CO/3 (20 April 2011) (recognising that the forced sterilisation of Roma women in Slovakia violates ICCPR article 7's prohibition of torture and cruel, inhuman and degrading treatment).

¹¹See Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), UN Doc. CCPR/C/21/Rev.1/Add.10 (2000) (explaining that the Committee requires information on measures to prevent forced abortion to ascertain whether States have complied with ICCPR article 7).

¹²See, e.g., Human Rights Committee (HRC), Consideration of Reports Submitted by States parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Chad, 15, UN Doc. CCPR/C/TCD/CO/1 (11 August 2009) (recognising that female genital mutilation of girls in Chad violates ICCPR article 7).

¹³UDHR article 18; ICCPR articles 18 and 27.

¹⁴UDHR article 16; ICCPR article 23; International Covenant on Economic, Social and Cultural Rights (ICESCR) article 10(1).

¹⁵UDHR article 12; ICCPR article 17.

of the right to privacy, reproductive freedom and women's bodily integrity rights, and such violations undermine women's ability to be recognised as full, equal citizens of their community.

Gender-based violence negatively affects the right to be free from slavery and servitude.¹⁶ The international community has recognised that trafficking 'serves forced and / or bonded labour, including within the sex trade, forced marriage and other slavery-like practices' (Ertürk, 2009). The trafficking of women is often accomplished through the threat or use of violence against women, resulting in severe forms of physical, sexual, psychological and economic violence being perpetrated against women.

Due process rights are recognised under international law¹⁷ but, in practice, often fail to be extended to female victims of gender-based violence. For example, in some countries, women are unjustly detained without due process rights as a means of protecting them against threatened violence. Additionally, women human rights defenders, including those who advocate for the elimination of violence against women, often form the target of arbitrary arrests and due process violations, while female detainees and prisoners are especially vulnerable to gender-based violence.

economic and development rights

International human rights instruments guarantee the right to development, 'by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized'.¹⁸ Furthermore, States have an obligation to undertake all necessary measures to fulfil the right to development, to ensure equality of opportunity for all in their access to resources, and to undertake effective measures to ensure that women have an active role in the development process. The Millennium Development Goals also link the achievement of social, economic and cultural rights to the right to development.

Violence against women fundamentally undermines the State's capacity to guarantee the right to development while also significantly limiting the capacity of women to participate meaningfully in the development of their communities. Gender-based violence is intrinsically linked to the achievement of development goals, which is impossible unless accompanied by the elimination of violence against women. For example, Millennium Development Goal 1 aims to eradicate extreme poverty and hunger—but the Beijing Platform for Action notes that the fear of gender-based violence is a major constraint on the mobility of women, limiting their access to resources and economic activity. The major causes of women's poverty are embodied in the unequal power relations between women and men, intertwined with the patterns of gender-based violence.

International human rights instruments require that State parties 'recognize the right of everyone to an adequate standard of living including adequate food, clothing, and housing, and to the continuous improvement of living conditions'.¹⁹ Violence against women frequently results in the violation of these rights. It has been noted that women living in situations of domestic violence inherently live in inadequate

¹⁶UDHR article 4; ICCPR article 8.

¹⁷UDHR articles 10 and 11; CEDAW article 15; ICCPR articles 14–16.

¹⁸UN General Assembly, Declaration on the Right to Development, article 1, UN Doc. A/RES/41/128 (4 December 1986).

¹⁹ICESCR article 11; UDHR article 25.

housing because of the violence they face within the home (Kothari, 2005). Violence against women *per se* creates the conditions that deny women their right to an adequate standard of living. Women may also find themselves confined to abusive situations because of an absence of shelter facilities, other forms of adequate housing, food and other resources that are necessary to realise their right to an adequate standard of living. It is the responsibility of the State to provide survivors of gender-based violence with specialised shelter or alternative housing options, as well as the relevant services necessary to realise their right to an adequate standard of living, thus preventing the women from being forced by perceived necessity to return to abusive situations (Rolnik, 2011).

Although the human right to own property has been recognised by international law,²⁰ many States continue systematically to deny women this right through enacting discriminatory laws on inheritance, land tenure and property ownership (Ferres *et al.*, 2013). Moreover, even where women are legally permitted to possess property, they are targeted and violence is often used as a mechanism to deprive them of such.

Women are guaranteed the right to work under international human rights law, which includes the right of everyone to earn their living by work that they freely choose and accept, to just and favourable conditions of work, to protection against unemployment, and to technical and vocational guidance and training programmes, policies and techniques.²¹ Many forms of gender-based violence prevent women from realising their right to work, and also to enjoy just and favourable conditions of work without discrimination, including safe and healthy working conditions, fair and equal remuneration, free choice of profession and employment, and non-discrimination on the grounds of marriage or maternity. Sexual harassment in the workplace violates the right to work, as it creates an unsafe, hostile work environment (Van Leeuwen, 2010). When women are trafficked for sex and labour, the conditions of work for victims of this form of gender-based violence deny women their essential rights, including the right to fair and just compensation, reasonable working hours and favourable working conditions.

Intimate partner violence outside the home also has a profound impact on the fulfilment of women's right to work. Domestic violence may also 'come' to work, where the workplace becomes a site of violence and associated behaviours. Partners seeking to coerce and control their female partner/ex-partner may stalk them at or around their workplaces, and also target them at work to increase their control over them, and to compromise these women's economic independence (McFerran, 2011). Such violence increases absenteeism and reduces productivity and employee morale. Evidence indicates that women with a history of intimate partner violence have a more disrupted work history, are consequently on lower personal incomes, are forced to change job more often and are employed in higher numbers in casual and part-time work than women with no experience of violence (Nash, 2009).

social and cultural rights

Gender-based violence impedes women's ability to realise their right to participate in cultural life. This includes the right to access, participate in and contribute to cultural life. As noted by the Special

²⁰UDHR article 17; CEDAW article 16; ICERD article 5.

²¹ICESCR articles 6(1) and (2); UDHR article 23; also see International Labour Organization (ILO) Convention No.122, article 1(2).

Rapporteur in the field of cultural rights, participation in cultural life entails meaningful decision making, and '[w]omen must enjoy the freedom to create new communities of shared cultural values around any markers of identity they want to privilege, new cultural meanings and practices without fear of punitive actions, including any form of violence' (Shaeed, 2011). Violence against women and the lack of adequate responses to it have also denied women the right to choose whether or not to identify with and participate in the cultural life of particular communities.²²

Violence against women also impairs and nullifies the right of females 'to the enjoyment of the highest attainable standard of physical and mental health'.²³ Gender-based violence such as intimate partner violence, sexual violence, female genital mutilation and/or other harmful traditional practices, forced and child marriage/cohabitation, gender-related killings, trafficking, infanticide and the deliberate neglect of girls have a severe impact on women and girls' physical, mental, sexual and reproductive health (World Health Organization [WHO], 2012). The Committee on the Elimination of all Forms of Discrimination against Women has stated that violence against women 'puts [women's] health and lives at risk'.²⁴ The Committee on Economic, Social and Cultural Rights notes that the right to health includes both freedoms and entitlements, including the right to control one's health and body, inclusive of sexual and reproductive freedom, and the right to be free from interference, including the right to be free from non-consensual medical treatment and experimentation.²⁵ Generally, 'preventing and combatting illness among women and girls leads to a healthier and more productive population', whereas 'ill-health diminishes people's personal capacity and ability to contribute to their households, resulting in lost incomes and lower productivity'.²⁶ Furthermore, 'investing in the [health] of the largest generation ever of young people, particularly adolescent girls means investing in the future and sustainable development' (Ertürk, 2009). Gender-based violence, however, impoverishes women and their families, saps public resources and lowers economic productivity (National Center for Injury Prevention and Control [NCIPC], 2003).

Violence against women may have serious negative consequences for women's right to special protection for a period before and after childbirth. Women who are subjected to domestic abuse during pregnancy may experience maternal and neo-natal health consequences, including increased risks of pre-term labour, miscarriage, unsafe abortions, excessive bleeding, maternal mortality and suicide following childbirth (World Health Organization [WHO], 2011). Preventable maternal mortality leads to additional negative development outcomes, as it fuels economic and social inequalities. Gender-based violence impedes Millennium Development Goal 5 on improving maternal health. When violence against women is manifested in the form of early/forced marriage and child bearing, women are likely to suffer from medical conditions such as 'haemorrhage, obstructed labour, sepsis and eclampsia, and unsafe abortions' (Garita and Andion, 2012, p. 66). Coupled with inadequate access to health services, these conditions lead to maternal death, thus depriving women of their development right to maternal health. Numerous manifestations of violence against women, including forced sterilisation; forced abortion; a lack of effective access to safe abortions; a lack of informed consent and choice with regard to contraception; harmful practices such as honour killings (Gill *et al.*, 2014), female genital mutilation, and early and

²²ICESCR article 15(1)(a); CEDAW article 13(c); UDHR article 27; ICESCR General Comment 21, 7, 15(a).

²³ICESCR article 12(1).

²⁴CEDAW Committee, General Recommendation 19.

²⁵ICESCR Committee, General Comment 14, UN Doc. E/C.12/2000/4 (2000) para 8.

²⁶ICESCR article 10(2); UDHR article 4; ICCPR article 8.

forced marriage; and sexual violence, contribute to a number of rights violations, including the right to participate and contribute to sustainable development.

Millennium Development Goal 6 commits governments to combating HIV/AIDS, but exposure to HIV is positively correlated with gender-based violence and poverty. For example, in Sub-Saharan Africa, women in the 19–24 age group are twice as likely to be infected as men because of sexual violence and their related inequality with regard to decision making and autonomy. Also, the rates of infection among girls have increased because of sexual assaults related to myths about curing and preventing HIV/AIDS (UNFPA, 2005).

Violence against women works against the achievement of development goals such as education, which is the focus of Millennium Development Goal 3. The right to education is impacted on by numerous manifestations of violence, including family violence and abuse, sexual violence at school, early and forced marriage, human trafficking and harmful traditional practices, which all prevent women and girls from realising their right to education.²⁷ Sexual harassment at school has negative physical and emotional effects and also results in decreased productivity, absenteeism from school, difficulty concentrating, declining academic performance or drop out of school, often after becoming pregnant (Hill and Kearn, 2011). The fact that 60 million girls worldwide are assaulted while travelling to and from school also prevents many females from completing their education (Management Systems International [MSI], 2008).

Many adolescent girls are also forced to withdraw from school because of child marriage and school-related violence, while sexual violence increases the drop out rates of girls and undermines educational achievement (Shahinian, 2012).²⁸ The Human Rights Council has recognised that child, early and forced marriage prevents individuals from living their lives free from all forms of violence and has adverse consequences on the enjoyment of human rights such as the right to education (Pinheiro, 2006). Girls who enter into early marriage often leave school to assume the responsibilities of caring for their spouse and home and to raise a family. This, in turn, limits young women's economic opportunities and independence, placing them at greater risk of domestic violence compared with married women, who are older and better educated.

conclusion

The intrinsic link between violence against women, human rights and the exercise of effective citizenship demands more effective prevention and protection responses so that States meet their obligations to eliminate gender-based violence. Unfortunately, pervasive levels of violence and a culture of impunity fundamentally jeopardise the realisation of women's right to a life free of violence and the right to participate fully in their community. Some of the challenges that continue to impede efforts to eliminate violence against women include: the responses of States that have moved towards gender-neutral responses; the persisting public/private dichotomy within these responses; the failure of States to act with due diligence to eliminate violence; the lack of transformative remedies that address the root causes, including the individual, institutional and structural aspects; the impact of the financial crisis and austerity measures regarding cuts in social service spending; the lack of a legally binding normative

²⁷ICESCR article 13; UDHR article 26; CEDAW article 10.

²⁸HRC, Resolution No. 24 UN Doc. A/HRC/24/L.34/Rev.1 (2013).

framework at the international level; and the shift in the understanding of gendered responses and a move towards a focus on males (Manjoo, 2014).

In 1994, the UN General Assembly recognised that '[v]iolence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men'.²⁹ Furthermore, the UN Declaration on the Elimination of Violence Against Women recalled the Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument explicitly to address the issue of violence against women. The Declaration expressed alarm that 'opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence'.³⁰

The 'soft law' developments in the UN over the last twenty years that recognise women's rights as human rights include the existence of resolutions, interpretative guidelines and monitoring by human rights treaty bodies as well as the Universal Periodic Review process. Nevertheless, it is clear that treaty bodies face the limitation of large and varied monitoring mandates, coupled with time constraints when examining State party reports, thus resulting in insufficient interrogation concerning the information relating to violence against women, its causes and consequences, and the insufficient assessment of the responses. Furthermore, the lack of specific, legally enforceable standards further impacts on any attempt to ensure appropriate responses and also accountability for acts of violence against women.

The concerns raised before the development and adoption of the UN Declaration on the Elimination of Violence Against Women, and subsequently reinforced by the work of the mandate of the Special Rapporteur on violence against women over the last twenty years, gives rise to the view that it is time for the international community to consider adopting a binding international convention or protocol on violence against women and girls, which should include a separate monitoring body. New instruments could include either an international Convention on the Elimination of Violence against Women and Girls, or an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). A new treaty would ensure that States are held accountable to standards that are legally binding; it would provide a clear normative framework for the protection of women and girls globally; and it would bring into existence a specific monitoring body that would substantively provide an in-depth analysis of both general and country-level developments. A legally binding international instrument would fulfil a protective, preventative as well as educative function. Recognition that women's rights are human rights and that violence against women constitutes a violation of such rights, in and of itself, demands this measure of commitment.

Although many States have acknowledged that violence against women is a widespread and systematic human rights violation, and are working towards eradicating it, to differing degrees at the national level, the normative gap within international law as regards violence against women constitutes a barrier to holding States accountable for their failure to respect, protect and fulfil the human rights of women. In

²⁹DEVAW, Preamble

³⁰*Ibid.*

the last two decades, a multitude of positive legislative developments have emerged to address violence against women and girls. Yet, there remains a long way to go towards addressing women's human rights holistically, including the elimination of violence against women, which forms a barrier to the effective exercise of all human rights. Owing to the systemic, widespread and pervasive nature of this human rights violation, which is experienced largely by women because they are women, a different set of normative and practical measures to respond to, prevent and ultimately eliminate this phenomenon is crucial. Transformative change requires the adoption of a holistic approach that simultaneously targets the accountability deficit that continues to exist; the empowerment of women; broad social transformation; and the provision of remedies that ultimately break the continuum of discrimination and violence that women experience.

Transformative change requires a shift in thinking as regards normativity, combined with commitment, courage and an ethic of care that supersedes vested interests, entrenched positions and also the challenging of the *status quo*, including the continued use of the arguments that were used twenty years ago to avoid addressing the normative gap under international human rights law as regards violence against women. Transformative change requires that the words and actions of States reflect an acknowledgement that violence against women constitutes a human rights violation, in and of itself, and, more importantly, a commitment by States to be bound by specific legal obligations in the quest to eliminate this pervasive, widespread human rights violation. Furthermore, recognition that full, inclusive and participatory citizenship requires that violence against women be regarded as a barrier to the realisation of all human rights, and consequently to the effective exercise of citizenship, is imperative.

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