

persons deemed → women, but also those deemed men and all persons seeking more fluid gender assignments (Global Health Justice Partnership [2016]). As noted in a 2021 report on ‘gender’ to the → United Nations General Assembly (UNGA):

Gender theory, gender-based approaches and intersectionality provide a framework for addressing multiple asymmetries of power (deriving from how sex is constructed and operates in societies), including those that feed violence and discrimination against women; and they are also a sharp lens for analysing the root causes of violence and discrimination based on sexual orientation and gender identity and expression.

(HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021] para 7)

[3] The question of how gender norms affect all rights, from political rights, expectations of child care and family roles, educational opportunities, → housing, → health, employment and other rights is now squarely on the agenda of human rights. The development of doctrine and practice of gender analysis is both now established within UN human rights system and amongst many scholars and advocates, but it is also inconsistently applied. Notably, gender analysis is currently facing new attacks at national and international levels (HRC, *Report of the Independent Expert on SOGI: Exclusion* [2021]; Working Group on the Discrimination against Women and Girls [2020]; Antić and Radačić [2020]).

[4] Gender analysis *tout court*, seeks to make the links visible between enjoyment of rights (for example, conditions that give rise to risk, specific experiences of rights and abuses, the structure of remedies) and ideas of appropriate roles, rights and duties assigned to persons based on ideas of masculinity and femininity. Thus, its work in human rights is deeply dynamic and relational – any change between roles assigned across gender, for example regarding childcare, necessitates a change in the roles of other differently gendered persons. Thus, using gender as a tool in human rights, while remaining critically important to end the subordination of women vis-à-vis men, is also a tool for re-visioning the roles of men and making room for different gender expressions more broadly (Miller [2011]; Rosenblum [2011]).

II. Gender’s evolution as a conceptual tool

[5] The concept of gender first appeared in feminist writings in the 1970s to challenge the then dominant position of biological determinism, which had

Gender

I. Introduction

[1] Use of the concept of ‘gender’ as an analytic tool essential to human rights has developed rapidly over the last half century, as has its incorporation into human rights law and practice in both international and domestic law. Initially deployed in international human rights law in the 1990s as a term emerging from feminism, it was conceived at the time within a binary understanding of male/female roles and focused on women’s experience and barriers to equal rights with men. At its inception it played a key role in regard to equality for women conventionally defined (Otto [2013] at 199–204). However, over the last decade, both the concept and the deployment of gender in human rights have expanded (along with challenges to a fixed binary of male/female) to integrate analysis of how ideas of masculine and feminine roles apply across all bodies.

[2] In conjunction with analysis of other axes of power such as age, race and place, gender analysis today seeks to make the relational aspect of how enjoyment of rights is differently parcelled out across persons according to gender norms, stereotypes and expectations, which affect not just

naturalized women's inequality as arising from the biological difference between women and men (Millet [1970]; Oakley [1972] as cited in Antić and Radačić [2020]). It pointed to the social construction of gender inequality and the relational aspect of the meaning of femininity and masculinity. The dominant approach defined gender as referring to social norms, roles and expectations for women and men, as distinct from sex, which referred to the biological differences (as understood) between them (Connell [1985] as cited in Antić and Radačić [2020]). In the 1990s, the → intersectionality perspective gained ground, emphasizing how the gender experience is influenced by other social identities and calling for analysis of multiple interlocking dimensions of oppression, such as sex, gender, class, race, sexuality, ethnicity and disability (Crenshaw [1989] as cited in Antić and Radačić [2020]).

[6] In feminist theorizing, the concept of gender (in)equality has been used to refer to social structures which produce unequal position of women (as a group), in queer theory to point to fluidity of social identities and sometimes to give visibility to gendered harms imposed on sexually non-conforming persons, primarily gay men, in transgender theories to emphasize the deeply felt internal experience of gender in the context of social conditions which enable or restrict its formation and expression (Antić and Radačić [2020]; Working Group on the Discrimination against Women and Girls [2020]; Stryker and Currah [2014]). However, an identity-based understanding of gender, whereby the term is used to refer to a particular group (women, gay, transgender), have obscured the more radical meaning of gender (Miller [2011]). As argued by Gita Sen, gender is neither substituting the term women nor it is the term which flags gay (men) or transpersons; rather, it refers to (a) social system(s) that operate(s) at different levels to create vulnerabilities and privileges for all gendered people (see interview with Gita Sen as cited in Miller [2011]). Gender system is a hierarchical system which structurally oppresses women and excludes all non-conforming existences and it is in this context that people's gender identities are (per)formed (Antić and Radačić [2020]). Or as the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE on SOGI) noted, 'gender and sex do not substitute each other, and gender identity and gender expression are inextricably linked to them as practices of concern in anti-discrimination analy-

sis' (HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021] para 13).

III. International human rights and gender today: concept to practice

1. Use and definition of the term in international documents

[7] Although equality between the sexes was one of the goals of the UN system from the beginning, gender was not used, even as it developed at national level in the 1970s, until the beginning of the 1990s to address inequality between women and men (conventionally ascribed). Perspectives of gender applied across differently gendered bodies – such as both gender fluid and transgender persons and, more recently, also persons with differences of sex characteristics – appeared and were added, although not always synthesized, in the early 2000s and mid-2010s respectively (Yogyakarta Principles [2007]; Yogyakarta+10 [2017]; HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021]). Mapping makes clear that although everyone is 'gendered', the use of the term for rights advocacy, as well as its utility to shift power relations at all levels to guarantee equality is still fractured (Miller [2011]). Still, it has displayed sufficient power to engender a powerful counter-force to the attacks through scripts on 'gender ideology' which regressive governments and → non-state actors seek to use to roll back advances in women's rights, SOGI rights and a wide range of → sexual and → reproductive rights for everyone, including young people generally (Correa [2017]; Antić and Radačić [2020]).

[8] Gender as a term first formally appeared in the → Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee's General Recommendation No 19 on violence against women in 1993. A year later, the → Vienna Declaration and Programme of Action included concepts such as 'gender bias', 'gender-specific data' or 'gender-based violence'. The term 'gender' was then referred to more than a hundred times in the International Conference on Population and Development (ICPD) Programme of Action, but was left undefined. The 1995 Beijing Declaration and Platform for Action firmly established the concept of gender (equality) and gender mainstreaming. Due to opposition, it was stated that it was intended to be interpreted and understood as it was in its 'ordinary, generally accepted usage' (Statement by the President [1995] para 3). Notably, a wide range of UN programmatic documents defined gender and gender relations quite

expansively, such as by the UNGA (1999): ‘gender is defined as the social meanings given to biological sex differences. It is an ideological and cultural construct but is also reproduced within the realm of material practices’ (para 16) – although apparently under the radar of governmental negotiations, and therefore used as a geopolitical football.

[9] The Beijing Platform for Action non-definitional approach was followed in other multilateral documents (such as the Outcome Document of the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban). Similarly, the footnote purporting to provide guidance on a definition of ‘gender’ as an element of crimes against humanity in Article 7 of the 1998 Rome Statute of the → International Criminal Court (ICC) is circular, and open to interpretation, including efforts to ensure a broad reach (Davis and Bradley [2021]). This lack of clarity continued until the adoption of the definition in the → Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (2011). There, gender was defined in line with the dominant feminist social constructionist approach as referring to the ‘socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men’ (Art 3). Although this understanding of ‘gender’ was not new (it was, for example, accepted by the CEDAW Committee in 2010), its definition, together with the explicit prohibition of discrimination on the basis of → gender identity, was one of the major points of contestations of the Convention by the anti-gender movements contesting the so-called gender ideology.

[10] The explicit codification of the prohibition of discrimination on the basis of gender identity was the result of the success that the movement for sexual orientation and gender identity rights (SOGI) had in international human rights fora since the early 2000s, which culminated with the appointment of the IE on SOGI in 2016 at the → UN Human Rights Council, despite the ongoing contestations over the inclusion of SOGI in rights work (Ali *et al* [2016]). Indeed, the Istanbul Convention was attacked primarily with scripts drawn from the fight against so-called ‘gender ideology’ which has been described as a set of narratives which have as their aim the reinforcement of patriarchal ideology based on stereotypical ideas about a set of fixed roles for women and men, which work through fear mongering around gender fluidity and challenges to masculinity, mobilizing

spectres of trans women as if they were ‘males’ in female toilets, or as if comprehensive sexuality education was co-terminus with a coercive dismantling of traditional families and, generally, through negative association of changing social norms around marriage, including but not limited to same sex marriage and → abortion (Corrêa, Patternotte and Kuhar [2018]). Notably, this description of a ‘conspiratorial’ alignment of gender coalitions proceeds as if in all places the coalitions are cohesive: in practice, however, these groups are still developing links and finding their common positions in their advocacy (Joint Public Statement [2021]).

2. *Gender analysis as a tool to better protect human rights*

[11] In human rights’ evolution, especially the push to expand human rights to attend to violations of women’ rights and to the related, sometimes overlapping and equally invisible range of harms to gender-non-conforming persons, gender-linked analytic tools have played a powerful role (Bunch [1990]; Narayan [1997]). Gender analysis has done this work in making visible the gender norms, structures and ideologies that put people at risk of rights violations; as well as documenting the gender- and sex-specific forms of violations and experiences of violation; and constructing and calling on the specific forms of response that are needed both to redress the harms as experienced by a wide range of differently gendered persons (Sullivan [1999]; Radačić [2008]).

[12] Gender analysis has played this role across all human rights, but here we flag a few issues to demonstrate the range of work across mechanisms, the scope of the analysis and the range of institutions which must be called into play, including international and regional treaty bodies, the independent experts of the UN and various regional intergovernmental organizations (see → International Organizations). Hence, although we explore only three issues – gender-based violence, sexual and reproductive rights and the potential usefulness of a ‘gender-stereotype’ informed lens – each exemplifies approaches and concerns which can be seen in a wide range of human rights issues where gender analysis has played a key role: housing, education, workers’ rights, → refugee and → migrant rights, as well as public participation, association (→ Freedom of Association) and expression (→ Freedom of Opinion and Expression) rights, especially in regard to discrimination found directly in the law (or in its silences).

[13] Moreover, the UN's commitment to 'gender mainstreaming' – while often uneven, including conceptually, diverging as it does between 'attention to women' and attention to gender across differently embodied persons (Action Canada *et al* [2021]) – nonetheless offers a regular and well-used pathway for many different groups to advocate for changes in regard to state relations to patriarchal power and the privileges accorded some masculinities, often on the basis of race, age, national status and (dis)ability (Otto [2013]; Bridges [2019]).

[14] Reactions to the global COVID-19 pandemic have produced both direct and indirect gender discriminations that are both more visible in the impact of the pandemic (on women caring for sick and dying family members and as the dominant group in health responses as well as among precarious workers and survivors of gender-based violence) and in crafting inclusive responses (HRC, *Panel Discussion* [2021]; OHCHR, *Statement by the UN Working Group on Discrimination against Women and Girls* [2020]). At the same time, SOGI issues have risen, whether through human rights organizations documenting pre-textual closing down of LGBTIQ+ spaces – under guise of enforcing social distancing policies (Ghoshal [2020]) – or with a positive claim to attention, which seek to make states accountable both for gender-diverse data collection and gender-diverse equality protections (HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021] paras 56-7; OHCHR, *ASPIRE Guidelines* [2021]).

3. Gender lens as applied: Gender-based violence

[15] Gender-based violence was first considered in the context of violence against women (→ Domestic Violence), defined as violence 'that is directed against a woman because she is a woman or that affects women disproportionately' (CEDAW Committee, *GR No 19: Violence against Women* [1992] para 6). Since its formal appearance on the human rights agenda at the 1993 Vienna Conference, in tandem with developments in international criminal law, a number of international and regional documents have been adopted that prohibit different types of violence against women and prescribe a wide range of state obligations, including the UN Declaration on the Elimination of Violence Against Women, CEDAW Committee's General Recommendation No 35 (2017), the → Inter-American Convention on the Prevention, Punishment and Eradication of Violence

Against Women, the → Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Istanbul Convention. More recently, gender-based violence as inclusive of violence against men and boys and/or against persons of diverse gender expression, has been recognized in international settings, both in peacetime and conflict related, in part driven by the gender-neutral sexual assault terms of the Rome Statute (Davis [2021]) and the inclusion of the language addressing men and boys as targets of sexual violence as well in the UN Security Council (SC) resolutions since 2019 (see UNSC, *Res 2647* [2019]).

[16] The foundational work of the early norms was to conceptualize gender-based violence as a form of *gender-based discrimination* which violates, impairs or nullifies a number of human rights and freedoms including the → right to life, freedom from → torture, the → right to liberty and → security, the → right to respect for private life, the right to non-discrimination (→ Discrimination, Prohibition of), equality and equal protection under the law, the right to the highest attainable standards of → health, the → right to education, the → right to just and favourable conditions of work and the → right to an effective domestic remedy. Gender-based violence against women is framed to include acts of physical, psychological, sexual and economic violence, deprivation of liberty and threats of such acts and according to the setting it is characterized as violence in the family (including battering, sexual abuse of female → children in the household, dowry-related violence, marital rape, → female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation), violence in the general community (including rape, sexual abuse, → sexual harassment and intimidation at work in educational institutions and elsewhere, → trafficking in women) and violence perpetrated or condoned by the state, wherever it occurs (Declaration on the Elimination of Violence Against Women [1993]; Beijing Platform for Action [1995]; CEDAW Committee, *GR No 35: Gender-Based Violence* [2017]).

[17] Gender as an analytical tool has increasingly been used to assess the systematic violence and discrimination against individuals on the basis of their → sexual orientation, gender identity and expression (HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021]). Use of a gender-based violence lens to make violence against LGBTIQ+ populations and men more visible has recently arisen in humanitarian/rights

documentation, although not without contestation (Dolan [2014]; Ward [2016]). More documentation of sexual abuse of men and boys and non-binary gender identities is also appearing in the human rights sphere (HRW [2020]; All Survivors Project) and a greater doctrinal attention to the nature of state obligations in regard to violence against LGBTIQ+ individuals is being articulated, including under the treaty bodies and independent mechanisms of the UN with reference to the gendered nature of the harm. For example, in *Vicky Hernández v Honduras* (2021), the → Inter-American Court on Human Rights (IACtHR) found that the victim's death had occurred in a context of discrimination based on prejudice which included police violence against LGBTIQ+ persons, especially trans women sex workers. In the case of *Sabalić v Croatia* (2021), the → European Court of Human Rights (ECtHR) found violations of Articles 3 and 14 on account of inefficient responses to violent acts based on sexual orientation, holding that the minor-offence proceedings failed to address the hate-crime element of the offence, proceedings which moreover only produced a tiny ('derisory') monetary fine. These cases on gender-based violence against gender non-conforming persons use common tropes and doctrinal arguments (such as → State Responsibility for non-state actors) and the importance of addressing violence as a cause and consequence of discrimination akin to arguments in cis-gender women specific cases (ECtHR, *X and Y v Netherlands* [1985]; ECtHR, *M.C. v Bulgaria* [2003]; ECtHR, *Opuz v Turkey* [2009]).

[18] These instruments on violence against women, and the advocacy around gender-based violence, increasingly use note specific vulnerabilities of certain groups, on the basis of age, disabilities, migrant and refugee status or membership of minoritized groups and → indigenous persons. Sexual orientation and gender expression are increasingly included as inter-connected axes of power and vulnerability in gender-based violence norms. These new norms also call on a wide range of prevention and redress measures, including more effective laws and policies, protective, rehabilitative and preventative measures across not only criminal law but also social, economic and educational policies (OHCHR, *ASPIRE Guidelines* [2021]).

4. Gender lens as applied: Sexual and reproductive rights

[19] Gender analysis – indeed the recognition that a failure to protect sexual and reproductive rights, or

interference with these rights, can be a form of gender discrimination – has played a large role in the recognition of these rights – the rights of individuals to make decisions about sexuality and reproduction free from any form of coercion, violence or discrimination and the rights to a whole range of reproductive and sexual health services, facilities, goods and information.

[20] Although they are implicit in a number of civil and political and social and economic rights – such as the right to life, freedom from torture, the right to liberty, the right to private life, the right to health, the right to education, the right to work – sexual and reproductive rights were first explicitly articulated in 1994 in the ICPD Programme of Action, as 'resting on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health' (para 7.3.). The ICPD signalled the shift from seeing women's reproductive capacity as a means of population control to empowering women and linking health, rights and gender equality. Issues avoided by compromises within negotiations for sexual and reproductive rights in the ICPD Programme of Action, including through a presumption of heterosexual relations, neglect of adolescent sexuality and silence on HIV/AIDS (Sen, Kismödi and Knutsson [2019]) were taken up in other settings during this time, in the context of developing rights-based responses to HIV/AIDS in particular. Questions of gender stereotypes and discrimination on the basis of sexuality and gender non-conformity began to be addressed in agencies and programming, as in WHO's program on AIDS and, most clearly, in 1994 as UNAIDS took up a rights based approach to preventing and responding to HIV among men who had sex with men and transwomen in particular (UN AIDS, *Human Rights*) (→ Infectious Diseases).

[21] CEDAW, whose Article 16(1)(e) guarantees the right to decide on the number and spacing of children, and which obliges state parties 'to take all appropriate measures to eliminate discrimination against women in the field of health care' (Article 12), has been a key site of reproductive rights development as an element of gender equality. At the regional level, the 2003 Maputo Protocol contains a broad protection of reproductive rights, implicitly framed as an element of equality, including by guaranteeing the right to control fertility; the right to decide whether to have children, the number of children and the spacing of children;

the right to choose any method of protection; the right to have family planning education; as well as the right to abortion in certain circumstances. Sexual and reproductive rights have been further elaborated by other human rights bodies, such as by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No 22 (2016). This document recognizes the importance of underlying determinants of health – such as access to → water, adequate sanitation, → food and nutrition, housing, safe and healthy working conditions and environment, health-related education and information, effective protection from all forms of violence and discrimination as well as social determinants, such as → poverty, income inequality, systemic discrimination and marginalization.

[22] In relation to abortion, which both the CEDAW Committee and CESCR frame as a matter of equality for women, many of the human rights courts and bodies have recognized that abortion needs to be legally available and practically accessible and that the failures to ensure access often constitutes a failure to address gender stereotypes. The Working Group on the Discrimination against Women and Girls (WGDAWG) specifically recommends that states provide for legal abortion on request in the first trimester of pregnancy. There is a consensus that women should never be penalized (HRC, *Report of the Working Group* [2021]). In cases addressing forced sterilization, especially of ethnic → Roma women, violations of privacy and cruel and inhuman treatment arose in the context of intersecting discriminations on the basis of gender and ethnicity, although the ECtHR did not explicitly recognize this (*V.C. v Slovakia* [2009]). Requirements of sterilization as a condition for transitioning legal gender identity has also been condemned as a rights violation (ECtHR, *Garçon, Nicote and A.P. v France* [2017]).

[23] Sexual and reproductive rights, including in the context of health and bodily autonomy, are framed as freedom from interference, torture and non-consensual medical treatment and are of particular relevance for LGBTIQ+ persons, considering the range of medical interventions performed to ‘correct’ sex and gender non-conforming bodies and expressions, such as conversion therapy, ‘corrective rape’ on lesbian women, coercive bodily examinations and the insistence on surgeries as a precondition for gender recognition of transgender individuals (CESCR, *GC No 14: Health* [2000]). Notably, sexual and reproductive rights also encompass the positive obligation to provide safe and quality medical care, which is essential to

ensure bodily autonomy, both physical and mental (HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021]). More recently, there is also greater acknowledgment of the health rights of intersex persons, the stigma and discrimination they face on account of sex and gender norms, which leads to intersex individuals being forcibly subjected to harmful and medically unnecessary surgeries to modify their body and physical appearance to align with sex and gender stereotypes around female or male bodies (ibid.).

5. Gender stereotype as an inclusive lens for challenging gender relationships in society

[24] The topic of gender stereotype has become a very rich site of analysis and potentially offers a domain where the often disparate streams of women’s rights and transgender, gender identity and expression and sexual orientation rights can be in synergy and not conflict in ensuring equality, liberty and dignity for all. Gender stereotype was initially encoded in Article 5 of CEDAW which obligates states to:

take all appropriate measures [. . .] to modify the social and cultural patterns of conduct [. . .] with a view to achieving the elimination of prejudices and customary [. . .] practices [. . .] based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

(see also OHCHR, *Gender Stereotyping*; Cook and Cusack [2011]; Farrior [2009])

[25] ‘Gender stereotyping’ offers one of the strongest analytic tools to identify the pathways through which ideas about sex and gender produce discriminatory action and policy, gaining increasing attention as a key tool in rights work. Conceptually, a gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, men and women (Cook and Cusack [2011]) or alternatively conceptualized as roles, forms of expression and behaviours that are considered entitlements or burdens based on the sex assigned at birth (HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021]). These stereotypes come in varied and overlapping forms, including those based on ideas about sexuality and sex roles or physiological aspects of persons and are compounded by views on other characteristics, such as race, ethnicity, age or [dis]ability (HRC, *Report of the UNHCHR* [2020]). Moreover, gender stereotypes affirm the binary view of sex and gender, which

affects particularly the non-binary, gender diverse, intersex and trans individuals (HRC, *Report of the Independent Expert on SOGI: Inclusion* [2021] para 32).

[26] Harmful gender stereotyping constitutes and facilitates discrimination and impairs enjoyment of other human rights, such as right to participate in public and political life, right to the highest attainable standards of health, the right to physical integrity, right to private life, right to work, right to adequate standard of living, the right to education (OHCHR, *Gender Stereotyping*) and result in vulnerability to discrimination, violence and criminalization (HRC, *Report of the Working Group* [2015]).

[27] States are required under international human rights law to address (gender) stereotypes and stereotyping. Two international human rights treaties contain express obligations concerning stereotypes and stereotyping, namely CEDAW and the → Convention on the Rights of Persons with Disabilities (CRPD). In its General Recommendation No 25 (2004), the CEDAW Committee identified the obligation to ‘address prevailing gender relations and the persistence of gender-based stereotypes’ as one of three categories of obligations central to the achievement of substantive equality (para 7). The CESCR too has noted that the prohibited ground of ‘sex’ covers physiological characteristics and the social construction of gender stereotypes (CESCR, *GC No 20: Non-Discrimination* [2009] para 20).

[28] The Istanbul Convention also contains the state obligation to ‘promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men’ in Article 12(1), which has been one of the main points of the contestations by the anti-gender movements.

[29] Many international and regional human rights bodies have interpreted the rights to non-discrimination and equality to include forms of discrimination and inequality that are rooted in stereotypes, recognizing an implied obligation in the rights to non-discrimination and equality to address stereotypes and stereotyping. Examples are found in the recent jurisprudence of the ECtHR on discrimination, for instance in *Konstantin Markin v Russia* (2012) (gender), *Carvalho Pinto v Portugal* (2017) (gender and age) and *Bayev v Russia* (2017) (sexual orientation). The WGDAGW strongly links stereotypes and discrimination, as exemplified in the focus it gives the topic in its work, including in its annual and country reports.

[30] Moreover, the CEDAW Committee has addressed stereotypes in many of its cases. For example, the *R.P.B. v The Philippines* (2014), it considered how sexual stereotypes had contributed to the decision of the trial judge to acquit a defendant who raped the applicant, while in *V.K. v Bulgaria* (2011), it held that the ‘preconceived notions of what constitutes domestic or gender-based violence’ impacted the judicial proceedings in cases of domestic violence, the problem rooted in ideas of women subordinate role, also recognized in *A.T. v Hungary* (2005). The CEDAW Committee has also addressed stereotypes in the area of employment (*R.K.B. v Turkey* [2012]) and reproductive rights (*L.C. v Peru* [2011]).

[31] Other treaty bodies have also acknowledged that there are implied obligations to address stereotypes and stereotyping in a range of other human rights and fundamental freedoms, for example the freedom from arbitrary interference in private life (see HRCtee, *GC No 28: Equality of Rights between Men and Women* [2000]), freedom from torture (CAT Committee, *GC No 2: Art 2* [2008]), the right to the highest attainable standard of health (CESCR, *GC No 16: Equal Right* [2005]; CESCR, *GC No 25: Science and ESCR* [2020]).

[32] However, gender stereotype is not consistently used as a tool: a 2013 OHCHR report identified the following challenges that appear to be hampering the efforts of human rights bodies: lack of understanding of key concepts, limited understanding of the states’ obligations, lack of awareness of good practices in addressing gender stereotyping, missed opportunities to address gender stereotypes/stereotyping and lack of clarity about how to address stereotyped practices while respecting rights of expression and other rights. As stereotyping often lies at the root of the gender-based human rights violations, there is a need to consistently identify and challenge stereotypes in human rights jurisprudence and clarify the existence, content and scope of states’ obligations.

IV. Challenges and trends

[33] Despite a wide recognition of the usefulness of gender analysis in articulating the gaps between the promise of human rights and lived experience, the very frame of gender analysis is under strong threat at national and global level. As the WGDAGW has articulated in 2016, a politicization and instrumentalization of women’s bodies – and in a coordinated way, of any bodies that challenge conventional organization of masculinity and femininity – lies at the roots of the current attacks

and numerous legal, procedural, practical and social barriers to full enjoyment of rights (HRC, *Report of the Working Group* [2016]).

[34] Many of these instrumentalizations derive from ideologies holding that women have an ordained role as mothers, but this strict gender role requires a fealty to what some advocates call ‘mandatory motherhood’ which in turn negates conscious and conscience based decision-making by persons in general to determine their life course, regardless of gender norms (Petchesky and Judd [1998]). But, under these gender-restrictive banners, maternal death is still high, access to contraception restricted and unsafe abortions leading to death still arise for tens of thousands of women a year, primarily in developing countries and among members of socioeconomically disadvantaged and marginalized populations. Millions of women and girls are denied the ability to manage their monthly menstrual cycle safely and with dignity and millions of teenagers don’t have access to sexuality education (HRC, *Report of the Working Group* [2021]). Under similarly-rooted gender norms, trans and gender non-conforming people face unacceptably high rates of HIV/AIDS as well as lethal and non-lethal violence, at the hands of both state and non-state actors. Disturbingly, the research is strong in some places and very weak in others, suggesting that even as gender-non-conformance renders people at risk, too few advocates attend to these rights violations (UN Development Programme [2013]).

[35] Attacks on Women’s Human Rights Defenders as well as LGBTIQ+ defenders who call attention to these issues (and often comprising an overlapping population) continue at high levels: sometimes through violence by state actors, sometimes by non-state actors tolerated by the state, under-financed and under-represented in national and international bodies (Women Human Rights Defenders; HRC, *Report of the Working Group* [2018]).

[36] Moreover, we are witnessing further curtailing of rights through the attacks by anti-gender movements (HRC, *Report of the Working Group* [2018]; Working Group on the Discrimination against Women and Girls [2020]; HRC, *Report of the Independent Expert on SOGI: Exclusion* [2021]; Antić and Radačić [2020]). These attacks are arising to directly contest the liberalization of gender norms and the adoption of more effective and comprehensive laws governing discrimination. There are many recent successes of gender rights at the national level, such as Uruguay passing an act for trans rights in 2018 and Portugal prohibiting

genital surgeries on intersex children. In 2019, laws criminalizing same-sex relations were repealed in Botswana and Angola and, in 2020, Argentina’s congress legalized abortion (Association for Women’s Rights in Development [2021]).

[37] Restrictive attacks at the national level include curtailing abortion through current (proposed) laws in the US states of Texas and Missouri, restriction of abortion by a constitutional court decision in Poland as well as abuse of conscientious provisions and restrictions on medically assisted reproduction (Antić and Radačić [2020]). In many cases, the claims for restricting gender rights are done in the name of ‘protecting children’, including banning gender affirming therapies; denying access to transgender girls to competing in girls and women’s sports competitions; and promoting conversion therapies (Sadjadi [2020]). These attacks are not merely attacks on the question of ‘gender rights’ in the international human rights legal framework, posing a threat ‘to the rights of women (including lesbian, bisexual and trans women) and for efforts to combat violence and discrimination based on sexual orientation and gender identity’ but they are connected to ‘efforts to undermine multilateralism’ (HRC, *Report of the Independent Expert on SOGI: Exclusion* [2021] para 6). At the national level, these threats have also been identified as threatening democratic spaces (Corrêa, Patternotte and Kuhar [2018]).

[38] There are also notable moves within some feminist and rights advocacy circles to ‘suggest an exclusionary approach, almost invariably leading to the denial of legal recognition of the gender identity of trans and gender-diverse persons’ (HRC, *Report of the Independent Expert on SOGI: Exclusion* [2021] para 2(a)), an approach which would accept diversity of sexuality but deny diversity of gender expression. Self-termed ‘gender critical feminists’ are in some cases joining with conservative religious and other groups to portion out ‘gender rights’ across bodies (Hands Across the Aisle).

V. Conclusion

[39] Gender as a key analytic lens to prevent and effectively respond to human rights abuses is firmly established in the international system, even as certain elements are under attack from distinct but now linked opponents. It is worth flagging the specific nature of the attacks: from within feminisms, condemnation arises as to method, and the scope of who is included within its boundaries; from anti-rights conservative groups, the attack is

on the very concept. Both the distinct aspects and the newness of the attacks needs greater attention from all human rights practitioners, as it is a distinct shift from the forms of resistance in the past, and as noted by key scholars and advocates, is deployed as part of attacks on democratic spaces and multilateral institutions that are essential to the legitimacy of human rights for all.

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