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Gender and Economic, Social, and Cultural Rights

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1. Introduction: Human Rights, Sex, and Gender

At the time of adoption of the International Covenant of Economic, Social and Cultural Rights (ICESCR) in 1966, the concept of gender had not entered the international arena. Relations between women and men in the allocation and enjoyment of rights were addressed through the concept of non-discrimination, *inter alia* on the basis of sex.¹ The term ‘gender’ began to enter the international agenda in the 1980s, first through the global conferences on women.² The World Conference on Human Rights at Vienna in 1993 continued this trend, referring to gender-based violence, gender bias, and gender-disaggregated statistics. It also called for ‘the human rights of women [to] be integrated into the mainstream of United Nations system-wide activity’.³ Two years later, the Fourth World Conference on Women made a commitment to gender equality, as well as to non-discrimination on the basis of sex.⁴ Following the Beijing Conference, ‘gender mainstreaming’ rapidly became the dominant international institutional strategy and tool to respond to women’s inequality.⁵ ‘Gender mainstreaming’ was defined by the United Nations (UN) Economic and Social Council in 1997:

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an

¹ ICESCR, art. 2(2), echoing the 1948 Universal Declaration on Human Rights, art. 2.

² The Third World Conference on Women referred to ‘gender-based discrimination’ and sought changed attitudes towards gender roles; *Forward-Looking Strategies for the Advancement of Women*, UN Doc. A/CONF.116/12, Nairobi, 1985, especially paras. 6, 121, 138, 167, 257, and 347.

³ Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23, 12 July 1993, II, para. 37.

⁴ Fourth World Conference on Women, Declaration, UN Doc. A/CONF/177/20, Beijing, 15 September 1995, para. 24.

⁵ For a critique of gender mainstreaming see H. Charlesworth, ‘Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations’, 18 *Harvard Human Rights Journal* (2005), 1–18.

integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁶

A number of comments can be made about these developments. First, 'gender' per se was not defined. Second, as components of the UN 'system-wide activity' with respect to human rights, it was evident that the human rights treaty bodies should adopt the tool of gender mainstreaming to progress equality between women and men. Third, although the statements referred to 'women and men', there was a slippage between 'gender' and 'women'; that is, an assumption that gender analysis is only relevant to address issues relating to women, rather than to appraise relations between women and men.

The UN human rights treaty bodies have used their general recommendations and comments to develop an understanding of gender.⁷ While such documents have no formal legal status and are not binding, they constitute important interpretations of the relevant treaty by the bodies designated by states to monitor their application. The authority of such statements is enhanced by their apparent acceptance by state parties. In 2004, the Committee on the Elimination of Discrimination against Women (CEDAW Committee)⁸ led the way by noting the following definition of gender:

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; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes.⁹

The following year the Committee on Economic, Social and Cultural Rights (CESCR) also recognized gender as socially constructed,¹⁰ as inhibiting equal enjoyment of rights, and as referring to 'cultural expectations and assumptions about the behaviour, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women'.¹¹ In 2009, it

⁶ UN, *Platform for Action, ECOSOC Agreed Conclusions* 1997/2 (1997), available at <<http://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>> (last accessed 20 October 2013).

⁷ The first definition of gender in an international treaty was that in the 1998 Rome Statute of the International Criminal Court, art. 7(3): 'the term "gender" refers to the two sexes, male and female, within the context of society'.

⁸ Established by the Convention on Elimination of All Forms of Discrimination against Women, 1979 (Women's Convention), art. 17.

⁹ 1999 World Survey on the Role of Women in Development (UN New York, 1999) ix, cited in CEDAW Committee General Recommendation No. 25, on temporary special measures, 2004, note 2.

¹⁰ Established by ECOSOC Res. 1985/17, 28 May 1985.

¹¹ CESCR, General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 11 August 2005, para. 14.

explained how ‘the notion of the prohibited ground “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfillment of economic, social and cultural rights’.¹²

The CESCR has considered the concept of gender primarily as a means for understanding relations between women and men, and has recognized how gender-based assumptions have served in many instances ‘to place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults’.¹³ In 2010, the CEDAW Committee confirmed that the Women’s Convention covers gender-based discrimination against women, as well as sex-based discrimination.¹⁴ It also emphasized that the construction that society imposes on biological difference between women and men results in a hierarchy that ‘in the distribution of power and rights favour[s] men and disadvantage[es] women’.¹⁵ While it is not denied that that men can also experience gender-based disadvantage (for example, in a refusal to grant paternity leave or unequal parental leave),¹⁶ much of the focus of the human rights bodies has been on the obstacles women face in seeking equality in enjoyment of their rights, which explains to some extent the slippage between ‘women’ and ‘gender’. A wider reading of gender encompasses sexual orientation and gender identity, including persons who are transgender, transsexual, or intersex.¹⁷ Such persons often face discrimination and serious human rights violations, including violence and harassment in public places, such as schools and the workplace, thereby impacting adversely on their enjoyment of economic and social rights.¹⁸ Nevertheless, while gender mainstreaming has become accepted policy within UN institutions as a tool to further women’s advancement, this broader understanding remains controversial.

¹² CESCR, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2), UN Doc. E/C.12/GC.20, 2 July 2009, para. 20.

¹³ CESCR, General Comment No. 16, *supra* note 11, para. 14.

¹⁴ CEDAW Committee 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, UN Doc. CEDAW/C/2010/47/GC, 19 October 2010, para. 5.

¹⁵ CEDAW Committee 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, UN Doc. CEDAW/C/2010/47/GC, 19 October 2010, para. 5.

¹⁶ CESCR, General Comment No. 16, *supra* note 11, at para. 26; *Konstantin Markin v Russia*, ECtHR GC, Appln. No. 30078/06, 22 March 2012, para. 151 (‘exclusion of servicemen from the entitlement to parental leave, while servicewomen are entitled to such leave, [...] amounted to discrimination on grounds of sex’).

¹⁷ CESCR, General Comment No. 20, *supra* note 12, at para. 32. See also ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’, UN Doc. A/64/211, 3 August 2009, para. 20; ‘Report of the United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity’, UN Doc. A/HRC/19/41, 17 November 2011 (examining discriminatory laws and practices with respect to employment, healthcare, and education).

¹⁸ CESCR, General Comment No. 20, *supra* note 12, at para. 32.

2. Legal Framework

'A notion of equality runs through the heart of the Covenant'.¹⁹ Article 2, paragraph 2 prohibits discrimination in the guarantee of Covenant rights and in the context of relations between women and men is supplemented by the positive obligation of equality spelled out in Article 3: states parties undertake to ensure 'the equal right of men and women' to the enjoyment of all Covenant rights. Despite possible overlap between the two provisions, Article 3 was included because of the many prejudices that prevent women's enjoyment of their rights and the need therefore to recognize expressly the same rights for women and men.²⁰ Article 2, paragraph 2, and Article 3 are replicated in the International Covenant on Civil and Political Rights and are 'integrally related and mutually reinforcing'.²¹ The mandatory obligation of non-discrimination is one of immediate effect, not subject to the constraint of progressive realization.²² The following substantive articles of the ICESCR require '[s]tate welfare institutions and social safety nets' as social mechanisms of redistribution.²³

Following the 1948 Universal Declaration on Human Rights (UDHR),²⁴ the ICESCR is mostly written in gender-neutral language, asserting the applicability of its substantive provisions to 'everyone' and specific goods to be 'accessible to all'.²⁵ Gender neutrality is, however, undermined by the use of the masculine pronoun throughout, which has the effect of 'directly gendering the universal subject as male'.²⁶ Formal commitment to universal application may be undermined by differences in women's and men's lived experiences. The apparent inclusiveness of gender-neutral language often renders women invisible and conceals the incidence of human rights abuses that occur to a man or a woman, because of their sex, or social constructions of gender roles.²⁷

¹⁹ M. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), 157.

²⁰ CESCR, General Comment No. 16, *supra* note 11, at para. 2.

²¹ CESCR, General Comment No. 16, *supra* note 11, at para. 3.

²² CESCR, General Comment No. 3, The nature of states parties obligations, 14 December 1990, para. 1; CESCR, General Comment No. 16, *supra* note 11, at para. 16.

²³ M. Craven, *supra* note 19, at 158.

²⁴ Women delegates to the UN Commission on Human Rights resisted the argument that 'all men' would be read generically to include all persons: A. Fraser, 'Becoming Human: The Origins and Development of Women's Human Rights', 21 *Human Rights Quarterly* (1999), 853–906, 888.

²⁵ ICESCR, art. 13(2)(c).

²⁶ D. Otto, "Gender Comment": Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?' 14 *Can J Women and Law* (2002) 1–33, 19. In the context of ICESCR, art. 11(1) the CESCR has commented that '[w]hile the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups'. CESCR, General Comment No. 4, The right to adequate housing, 13 December 1991, para. 6.

²⁷ E.g. the assumption of men as the family breadwinners; see *Vos v The Netherlands*, CCPR Communication No. 218/1986.

The need to take account of sex-based difference is to some extent provided for in the ICESCR where the context demands gender specificity. Thus, in an echo of Article 3, Article 7(a)(i) refers 'in particular' to women requiring that they be guaranteed working conditions 'not inferior to those of men, with equal pay for equal work'.²⁸ Article 10, paragraph 2 provides for 'special protection' for mothers before and after childbirth and for working mothers to be accorded either paid leave or adequate social security at that time.²⁹ Article 12, paragraph 2(a) is indirectly sex-specific in that it provides steps to be taken to reduce rates of stillbirths and infant mortality, measures which are also likely to lower maternal mortality.³⁰ However, such woman-specific language is solely in the situation of child-bearing and motherhood, thereby reducing women to their reproductive and caring roles and discounting other circumstances in which the denial of economic, social, and cultural rights occurs exclusively or disproportionately to women. Article 10, paragraph 2 casts maleness as the universal norm and women as weak in that they are in need of 'special' protection, presumably from male employers.³¹ This is reinforced by the reiteration of 'special measures of protection' in Article 10, paragraph 3 with respect to children, thereby associating women with children. In the case of women, however, the obligation does not extend to protection from 'economic and social exploitation'.

The ICESCR also explicitly includes the concept of 'equality of opportunity'.³² Nevertheless, despite the commitment to promotion of equality of rights of men and women in the two 1966 Covenants, the reality remained that 'extensive discrimination against women continues to exist'.³³ This motivated the adoption of the women-specific Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. The Convention recognizes that civil and political rights can only be secured in the economic, social, and cultural setting within which women find themselves. Inequality in the provision of economic and social resources impacts on women's personal development and economic independence as well as on their enjoyment of a range of human rights, including access to education, paid employment, political participation, family rights,³⁴ and equality before

²⁸ CESCR, General Comment No. 16, *supra*, note 11, at para. 24, spells out states parties' obligations under art. 7(a). See also ILO Convention 100, Equal Remuneration Convention, 1951.

²⁹ Some ILO Conventions are also gender-specific, e.g. ILO Convention 183, Maternity Protection Convention, 2000.

³⁰ CESCR, General Comment No. 14, The Right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000, para. 44, confirms as obligations of comparable priority: '(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care'.

³¹ Natalie Hevener identifies the 'protective' stance of many treaties directed specifically at women: 'International Law and the Status of Women: An Analysis of International Legal Instruments Related to the Treatment of Women', 1 *Harv. Women's LJ* (1978), 133–157.

³² ICESCR, art. 10(c) (in the context of employment). See also CEDAW, art. 4(1). The CEDAW Committee has explained that a formal legal programme to achieve equality is inadequate and that the CEDAW Committee requires women to be 'given an equal start and [...] be empowered by an enabling environment to achieve equality of results'. CEDAW, General Recommendation No. 25, *supra* note 9, at para. 8.

³³ CEDAW, 1979, preamble.

³⁴ The CEDAW Committee has noted how a complainant's illiteracy and illegal migrant status made her vulnerable to disadvantageous terms on divorce in order to obtain custody of her daughter;

the law. Accordingly, CEDAW departs from the separation of rights epitomized in the two UN Covenants by requiring states parties to take appropriate measures in all fields, 'in particular in the political, social, economic and cultural fields [...] to ensure the full development and advancement of women'.³⁵ In specific articles the Convention requires the elimination of discrimination in education (Article 10), employment (Article 11), access to healthcare (Article 12) and social security, credit, and bank loans, and sporting and cultural activities (Article 13).³⁶ Article 14 is directed at the problems faced by women in the rural sector and identifies a range of economic and social issues.

Giving effect to the legal obligation of equality in economic, social, and cultural rights requires 'promoting gender-inclusive interpretations of treaty norms, gender-sensitive implementation practices, and gender-responsive remedies'.³⁷ This involves understanding how the economic and social disempowerment faced by women impacts upon their experience of human rights. The UN human rights treaty bodies have played an important role in seeking an appreciation of economic, social, and cultural rights that takes account of women's as well as men's lives.³⁸ In particular, the CEDAW Committee has considered the application of economic, social, and cultural rights specifically to women,³⁹ while the CESCR has, over time, acted in accordance with the Vienna Conference's exhortation that the human rights of women be 'integrated into the mainstream of United Nations system-wide activity'. In addition to General Comments 16 and 20, the CESCR has included gender-specific analysis in other general comments on particular aspects of the Covenant and in its concluding observations on state party reports.⁴⁰ The Committee on the Rights

Jallow v Bulgaria, Communication No. 32/2011, UN Doc. CEDAW/C/52/D/32/2011, 28 August 2012, para. 8.2.

³⁵ CEDAW, art. 3. The CEDAW Committee has clarified that states parties are required to 'promote the equal rights of girls'. General Recommendation No. 28, *supra* note 14, at para. 21.

³⁶ Unlike the ICESCR, CEDAW, art. 1 defines discrimination. This definition has been read into the ICESCR by CESCR, General Comment No. 16, *supra* note 11, at para. 11; and General Comment No. 20, *supra* note 12, at para. 7.

³⁷ Otto, *supra* note 26, at 3.

³⁸ Thematic special rapporteurs mandated by the UN Human Rights Council have also contributed to a gendered understanding of economic, social, and cultural rights: e.g. 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context', UN Doc. A/HRC/7/16, 13 February 2008; 'Special Rapporteur on the right to education, Girls' right to education', UN Doc. E/CN.4/2006/45, 8 February 2006; 'Report submitted by the Special Rapporteur on the right to food, Women's rights and the right to food', UN Doc. A/HRC/22/50, 24 December 2012. The Special Rapporteur on violence against women has considered economic, social, and cultural rights on many occasions: see *15 years of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences (1994-2009): A Critical Review* (Geneva: UN, 2009).

³⁹ On the CEDAW Committee's application of economic, social, and cultural rights within the Women's Convention see M. Freeman, C. Chinkin, and B. Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford: Oxford University Press, 2012).

⁴⁰ 'In previous General Comments, the Committee has considered the application of the principle of non-discrimination to specific Covenant rights relating to housing, food, education, health, water, author's rights, work, and social security'. CESCR, General Comment No. 20, *supra* note 12, at para. 6.

of the Child has recognized a ‘gender component’ in its analysis of the applicability to girls of some of the economic, social, and cultural rights included in, or flowing from, the Convention on the Rights of the Child.⁴¹

3. Equal Enjoyment of Economic, Social, and Cultural Rights

A. The obligations to respect, protect, and fulfil

The European Committee on Social Rights has explained that indirect discrimination includes ‘failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all’.⁴² The last words are crucial—determining whether rights are ‘genuinely accessible by and to all’ requires identifying deeply embedded structural obstacles to their enjoyment that confront one sector of the population. While individuals’ situations differ according to such factors as location, class, ethnicity, disability, sexuality, and age, in many instances women face different and additional barriers to those faced by similarly placed men that stem from legal, social, cultural, and practical matters grounded in gender. For example, in its General Comment on the economic, social, and cultural rights of older persons, the CESCR explained that the ICESCR, Article 3 required it to consider the particular condition of many older women.⁴³ Family and caring responsibilities that fall most heavily on women mean that such women have not undertaken waged employment giving rise to adequate, or even any, pension entitlements, and may not receive even a widow’s pension. They are often in ‘critical situations’. Governments must take account of this reality and should ‘institute non-contributory old-age benefits or other assistance for all persons, regardless of their sex, who find themselves without resources on attaining an age specified in national legislation’.

The CESCR has developed a model of multilayered state obligations, the obligations to respect, protect, and fulfil rights,⁴⁴ to assist states in identifying circumstances of gender disparity and obstacles to the enjoyment of economic, social, and cultural rights by either women or men, in order to take them into account in setting policies, adopting legislation, and providing for remedies.⁴⁵ For example,

⁴¹ E.g. CROC, General Comment No. 4, adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4, 1 July 2003; General Comment No. 13, The right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13, 18 April 2011.

⁴² *Autisme-Europe v France*, Complaint No. 13/2002, 7 November 2003, para. 52.

⁴³ CESCR, General Comment No. 6, on the economic, social and cultural rights of older persons, 8 December 1995, paras. 20–21; cf., CEDAW Committee General Recommendation No. 27, on older women and their protection of human rights, UN Doc. CEDAW/C/GC/27, 16 December 2010.

⁴⁴ CESCR General Comment No. 16, *supra* note 11 para. 17. See also CEDAW Committee, General Recommendation No. 28, *supra* note 14, at para. 16.

⁴⁵ E.g. CESCR, Concluding Observations, Afghanistan, UN Doc. E/C.12/AG/CO/2-4, 7 June 2010, para. 18 (pervasive social, political, and economic discrimination against women, stereotypes, and customary practices that marginalize women, and ‘discrepancy between the legal framework and the inequality in practice in sectors such as work, public life, education and health’).

the goal of gender equality in education ‘implies that girls and boys have the same opportunities to go to school and receive education of a high quality [...] equality of outcomes [...] and, more broadly, equal job opportunities and earnings for similar qualifications and experience’.⁴⁶

The obligation to respect means that states must ensure that their policies do not have unseen or unintended adverse consequences for either sex.⁴⁷ This requires a gender audit to determine the differential impact of policies and practices on women and men, and steps to redress disparity through ensuring substantive and not merely formal equality. This may require examination of the impact of cultural or traditional practices, stereotypes or attitudes,⁴⁸ and attempts to counter them, for example, through public policy incentives, such as introducing parental and paternity leave, which seek to change gender stereotypes that operate within the family.⁴⁹ Continuing the example of the ‘right of everyone to education’,⁵⁰ increasing school fees or imposing the obligation upon pupils to buy textbooks or writing implements—apparently gender-neutral provisions—might result in fewer girls being able to attend schools where poor families select to direct their resources towards educating their sons, perceiving it as a waste of money to educate girls, especially where there is an assumption that a girl will move to her husband’s household on marriage.

The obligation to protect would require states to protect girls and women from being denied access to education by third parties, such as parents, community, or religious groups who deny girls freedom of movement in public places. It also necessitates ensuring a safe environment for girls in educational establishments,⁵¹ including sanitary protection, separate toilets, appropriate lighting, and security from harassment by other pupils, teaching staff, or support staff.

The obligation to fulfil requires structural change aimed at transforming gender relations at all levels of education involving such positive measures as ensuring the availability of schooling for girls, the design of curricula, and provision of textbooks that do not perpetuate gender stereotypes,⁵² public awareness campaigns to

⁴⁶ S. Pimentel, ‘Education and Legal Literacy’, in H. Schöpp-Schilling and C. Flinterman (eds.), *The Circle of Empowerment* (New York: The Feminist Press at CUNY, 2007), 90 and 93.

⁴⁷ ‘It is incumbent upon States parties to take into account the effect of apparently gender-neutral laws, policies and programmes and to consider whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality’. CESCR, General Comment No. 16, *supra* note 11, at para. 18.

⁴⁸ CEDAW, art. 5 requires states parties to take appropriate measures to modify social and cultural patterns of conduct with a view to eliminating prejudice and practices that are based on the inferiority of one sex. See R. Cook and S. Cusack, *Gender Stereotyping Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2010).

⁴⁹ E.g. CESCR, Concluding Observations, Republic of Korea, UN Doc. E/C.12/KOR/CO/3, 17 December 2009, para. 13(c); CESCR Concluding Observations, Mauritius, UN Doc. E/C.12/MUS/CO/4, 8 June 2010, para. 21; CESCR, Concluding Observations, United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies, and the Overseas Dependent Territories, UN Doc. E/C.12/GBR/CO/5, 12 June 2009, para. 19.

⁵⁰ ICESCR, art. 13(1).

⁵¹ E.g. CEDAW Committee, Concluding Observations, Burkino Faso, UN Doc. CEDAW/C/BFA/CO/6, 5 November 2010, para. 31.

⁵² E.g. CESCR, Concluding Observations, Kazakhstan, UN Doc. E/C.12/KAZ/CO/1, 7 June 2010, para. 15.

change attitudes towards gender roles, and available procedures and institutions for challenging discriminatory practices and remedies.⁵³ Accordingly, where boys face a disadvantage in education, this too must be identified and the root causes, including 'societal stereotypes about, and expectations from, boys and girls',⁵⁴ addressed.

As is evident from these examples, state obligations with respect to one right, such as equal rights in the field of education, cannot be looked at in isolation but must be understood in their wider social, economic, and cultural context. For example, early marriage or pregnancy may create a significant obstacle to girls continuing in education. This requires both legislative action with respect to the minimum age for marriage,⁵⁵ and action directed at changing attitudes with respect to women's and girls' position in the family and society.⁵⁶ It also necessitates joined-up thinking with respect to equal access to education and to healthcare services, including providing confidential and reliable sex education for girls and boys,⁵⁷ appropriate gender-sensitive training for healthcare personnel, and ensuring 'the removal of all barriers to women's access to health services, education, and information'.⁵⁸

The individual communication to the CEDAW Committee in the case of *AS v Hungary* illustrates these linkages and the importance of interpreting economic and social rights in a way that takes account of the realities of women's lives.⁵⁹ Ms AS, a Hungarian Roma woman and mother of three children, was subjected to coerced sterilization at a Hungarian hospital. This had a profound impact on her life, leaving her in need of medical treatment for depression. Hungary argued that Ms AS had consented to the intervention after receiving correct and appropriate information that she was able to understand. The CEDAW Committee concluded that Hungary had violated CEDAW Article 10(h), which provides a right

⁵³ E.g. CESCR, Concluding Observations, Bulgaria, UN Doc. E/C.12/BGR/CO/4-5, 11 December 2012, para. 8 (recommends that Bulgaria 'intensify its efforts to eliminate the societal gender role stereotypes and prejudices, including through awareness-raising campaigns'); CESCR, General Comment No. 16, *supra* note 11, at para. 15 (correction of discriminatory language and images in textbooks and the media).

⁵⁴ CESCR, Concluding Observations, The Kingdom of the Netherlands, UN Doc. E/C.12/NDL/CO/4-5, 19 November 2010, para. 23 (discrimination against boys in the former Netherlands Antilles, which affects their education).

⁵⁵ ICESCR, art. 10(1) (free consent to marriage); CEDAW, art. 16(b). See, e.g. CESCR Concluding Observations, Uruguay, UN Doc. E/C.12/URY/CO/3-4, 1 December 2010, para. 17 (concern that different minimum ages for marriage (12 years for girls and 14 years for boys) are discriminatory and inconsistent with the ICESCR, art. 10(1)); CESCR Concluding Observations, Sri Lanka, UN Doc. E/C.12/LKA/CO/2-4, 9 December 2010, para. 15.

⁵⁶ The CEDAW Committee has noted that 'family structures, gendered labour division within the family and family laws affect women's economic well-being no less than labour market structures and labour laws'. It has made a number of recommendations with respect to economic equality during and on the dissolution of marriage. CEDAW Committee, General Recommendation No. 29, Economic consequences of marriage, family relations and their dissolution, UN Doc. CEDAW/C/GC/29, 26 February 2013, para. 1.

⁵⁷ E.g. CESCR Concluding Observations, Uruguay, *supra* note 55, para. 24; CESCR Concluding Observations, Kazakhstan, *supra* note 52, at para. 33.

⁵⁸ CEDAW Committee, General Recommendation No. 24, Women and Health, 1999, para. 31(b).

⁵⁹ CEDAW Committee, Communication No. 4/2004, UN Doc. CEDAW/C/36/D/4/2004, 29 August 2006.

to specific educational information, including on family planning. The Committee took account of Ms AS's condition when she signed her consent to the operation. There were 17 minutes between her arrival at the hospital and her undergoing two medical procedures (the sterilization and a caesarean section to remove her foetus, which was known to be dead). She was distressed, bleeding, and in a state of shock. The Committee found it implausible that in such circumstances and so little time the hospital staff had given her sufficient counselling and relevant information for her to 'make a well-considered and voluntary decision to be sterilized'.⁶⁰ In accordance with its women-specific mandate, the CEDAW Committee's analysis centred on the violation of Ms AS's rights. A gendered approach would also have considered the impact of the forcible sterilization on her husband who, like Ms AS, 'live[d] in accordance with traditional Roma customs—where having children is said to be a central element of the value system of Roma families'.⁶¹

The case also highlights the vulnerabilities of some sections of society to deprivation of rights through multiple and intersecting discrimination: coercive sterilization was carried out on Ms AS because she was a woman and because she was a member of a marginalized group of society—the Roma. The Committee on the Elimination of Racial Discrimination has suggested a fourfold inquiry for understanding the intersection of race and gender discrimination.⁶² This requires identifying the form or nature of the violation, the circumstances or context of the violation, the consequences of violation, and the availability and accessibility of remedies. Applying this methodology to the case at hand, the nature and context of the violation was denial of adequate information within a hospital setting, which consequently had a profound impact on Ms AS's life and for which she was denied any remedy by the courts. Indeed, the consequences for her were largely discounted by the appellate court, which reasoned that she had suffered no lasting handicap as the process could be reversed, or she might seek artificial insemination. The CEDAW Committee made no mention of her position as a member of a minority group, although in 2002 the government representative had indicated that the Roma faced problems in Hungary,⁶³ and the Committee had asked for further information at the next reporting session.⁶⁴ Its recommendations were directed solely to the denial of rights

⁶⁰ CEDAW Committee, Communication No. 4/2004, UN Doc. CEDAW/C/36/D/4/2004, 29 August 2006, para. 11.3.

⁶¹ CEDAW Committee, Communication No. 4/2004, UN Doc. CEDAW/C/36/D/4/2004, 29 August 2006, para. 2.4.

⁶² CERD, General Recommendation No. 25, Gender related dimensions of racial discrimination, 20 March 2000.

⁶³ CEDAW Committee, Concluding Observations, Hungary, UN Doc. A/57/38 (Supp.) Exceptional Session 2002, paras. 307, 331, 332. On discrimination against Roma children in education see *Horváth and Kiss v Hungary*, ECtHR, Appln. No. 11146/11, 29 January 2013.

⁶⁴ In 2007, the CEDAW Committee noted that Roma women 'remain in a vulnerable and marginalized situation and subject to discrimination, including with regard to education, health, housing, employment and participation in political, public and economic life'. It recommended 'a holistic approach to eliminating the multiple and intersecting forms of discrimination that Roma women face'. CEDAW Committee, Concluding Observations, Hungary, UN Doc. CEDAW/C/HUN/CO/6, 10 August 2007, paras. 30 and 31; in 2013 the Committee again noted 'with concern' that prejudices significantly affected the enjoyment of Convention rights by Roma women; and that Roma women

as a woman, not as a woman member of a minority group. A holistic response would have addressed the intersection of policies directed towards controlling the reproduction of particular groups and targeting of the most vulnerable within the group, the women. Conversely, '[w]here systems of race, gender and class domination converge [...] intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles'.⁶⁵

B. Gender-based violence

A particular obstacle to women's enjoyment of economic, social, and cultural rights is gender-based violence. Neither the ICESCR nor CEDAW makes any explicit mention of violence, although the omission was rectified by the adoption by the CEDAW Committee of its General Recommendation No. 19.⁶⁶ Gender-based violence is a form of discrimination which impedes women's enjoyment of economic and social rights on a basis of equality,⁶⁷ including to education, employment, and cultural activities. It puts women's lives and their health at risk. In turn denial of economic and social rights creates dependency, vulnerability to violence, and to being trafficked. As clarified by the UN Special Rapporteur on violence against women:

Violence is not only a human rights violation but also a key factor in obstructing the realisation of women's and girls' rights to security, adequate housing, health, food, education, and participation. Millions of women find themselves locked in cycles of poverty and violence, cycles that fuel and perpetuate one another.⁶⁸

The Committee on Migrant Workers has noted that women make up the 'overwhelming majority' of migrant workers engaged in domestic work.⁶⁹ Migrant workers face multiple violations of their human rights relating to their conditions of work, access to social security protection, and adequate standards of living conditions. Women 'face additional risks related to their gender, including gender-based violence',⁷⁰ and perceptions of domestic work as 'tasks associated with unpaid work in the home performed by women and girls'.⁷¹

suffer 'multiple discrimination and exclusion'; CEDAW Committee, Concluding Observations, Hungary, UN Doc. CEDAW/C/HUN/CO/7-8, 26 March 2013, paras. 18, 19, 36, and 37.

⁶⁵ K. Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color', 43 *Stanford Law Review* (1991), 1241–1299.

⁶⁶ CEDAW Committee General Recommendation No. 19, Violence against women, 11th session, 1992.

⁶⁷ CESCR, General Comment No. 16, *supra* note 11, at para. 27.

⁶⁸ Report of the Special Rapporteur on violence against women, its causes and consequences: Political economy of women's human rights, UN Doc. A/HRC/11/6, 18 May 2009, para. 14 (citing Irene Khan, Amnesty International Executive Director, 25 November 2008).

⁶⁹ Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1 on migrant domestic workers, UN Doc. CMW/C/GC/1, 23 February 2011, para. 1.

⁷⁰ Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1 on migrant domestic workers, UN Doc. CMW/C/GC/1, 23 February 2011, at para. 7.

⁷¹ Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1 on migrant domestic workers, UN Doc. CMW/C/GC/1, 23

The obligation upon state parties to act with ‘due diligence to prevent, investigate, mediate, punish and redress acts of violence [...] by private actors’⁷² is important to secure economic, social, and cultural rights for women as well as men. The CESCR has explained that ICESCR, Article 3 requires states:

to provide victims of domestic violence [...] with access to safe housing, remedies and redress for physical, mental and emotional damage; to ensure that men and women have an equal right to choose if, whom and when to marry—in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion; and to ensure that women have equal rights to marital property and inheritance upon their husband’s death.⁷³

Legal provisions for equality between women and men (for example, with respect to age for marriage) must be supplemented by addressing the social and cultural practices that undermine formal equality. Article 20 of the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence requires states parties to take the necessary steps ‘to ensure that victims have access to services facilitating their recovery from violence’. Such services include basic economic and social rights, including healthcare services, housing, education, and training and assistance in finding employment.⁷⁴ Nevertheless, in formulating policies for addressing violence against women, governments rarely include socio-economic issues, focusing instead on juridical and legal structures.⁷⁵ During its review of states parties’ reports, the CESCR routinely expresses concern about widespread violence against women and seeks information from states about what they have done to address it. Alongside measures relating to access to justice, it recommends measures such as adequate shelter, medical care and counselling, and social support.⁷⁶ It does not, however, refer to the gender-specific social and economic needs of male victims of violence.⁷⁷

February 2011, at para. 19; cf. ILO Convention 189, Domestic Workers Convention, 2011, preamble: ‘Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls’. The Convention entered into force on 5 September 2013.

⁷² CESCR, General Comment No. 16, *supra* note 11, at para. 27.

⁷³ CESCR, General Comment No. 16, *supra* note 11, at para. 27. Feminist campaigns have long focused on women’s right to ownership of and access to property, to occupations and professions of their choice; D. Barak-Erez, ‘Social Rights as Women’s Rights’, in D. Barak-Erez and A. Gross (eds.), *Exploring Social Rights Between Theory and Practice* (Oxford: Hart, 2007), 397.

⁷⁴ CETS No. 210, signed at Istanbul, 11 May 2011.

⁷⁵ Report of the Special Rapporteur on violence against women, Political economy of women’s human rights, *supra* note 68, at paras. 38–39.

⁷⁶ E.g. CESCR, Concluding Observations, Republic of Moldova, UN Doc. E/C.12/MDA/CO/2, 20 May 2011, para. 14; CESCR, Concluding Observations, Madagascar, UN Doc. E/C.12/MDG/CO/2, 16 December 2009, para. 23.

⁷⁷ The Council of Europe Convention recognizes that although domestic violence affects women disproportionately, men may also be victims and art. 2 encourages states parties to apply the Convention to all such victims.

C. Gender and economic inequalities

The Beijing Platform for Action adopted by the Fourth World Conference on Women in 1995 pointed to the feminization of poverty as a critical area of concern.⁷⁸ Statistics continue to show that women are more likely to be poor than men and that this is directly caused by the 'systematic discrimination they face in education, healthcare, employment and control of assets'.⁷⁹ Low economic status reinforces women's subordination, constrains their enjoyment of rights,⁸⁰ reduces their choices, and creates vulnerability to exploitation and violence, including being trafficked.⁸¹ In order to attain an adequate standard of living for themselves and their families and to be free from hunger,⁸² women and girls may turn to prostitution.⁸³

In its General Comment No. 16, the CESCR highlights 'economic, social and cultural inequalities' but does not challenge the prevailing climate of neo-liberalism and economic globalization. In 2004, a group of non-state actors had adopted the Montreal Principles on Women's Economic, Social and Cultural Rights,⁸⁴ to guide the 'interpretation and implementation of guarantees of non-discrimination and equal exercise and enjoyment of economic, social, and cultural rights, in order to ensure that women can enjoy these rights fully and equally'. The Montreal Principles include 'the gender-differentiated effects of economic globalization' among the impediments it identifies to women's equal enjoyment of economic, social, and cultural rights.⁸⁵

The UN Special Rapporteur on violence against women has gone further in examining how the current international economic order has contributed to gender inequality in the enjoyment of these rights. She identifies three 'key structural elements highlighted by the political economy approach' that contribute to the unequal delivery of economic and social rights, and hence to violence against women: the sexual division of labour, the 'global, macroeconomic environment', and the gender dimensions of armed conflict.⁸⁶

⁷⁸ UN Doc. A/CONF.177/20, 15 September 1995, Critical Area of Concern A, Women and Poverty.

⁷⁹ UN Women, 'Women, Poverty & Economics', available at <http://www.unifem.org/gender_issues/women_poverty_economics> (last accessed 12 September 2013).

⁸⁰ Montréal Principles on Women's Economic, Social and Cultural Rights, 26 *Human Rights Quarterly* (2004), 760–780.

⁸¹ CEDAW Committee, Concluding Observations, Burkino Faso, UN Doc. CEDAW/C/BFA/CO/6, 5 November 2010, para. 28 (recommending measures to improve the economic situation of girls and women, access to land, and gainful employment to eliminate vulnerability to traffickers).

⁸² ICESCR, arts. 11(1) and (2).

⁸³ E.g. CEDAW Committee, Concluding Observations, Kenya, UN Doc. CEDAW/C/KEN/CO/7, 2 February 2011, para. 27 (also expressing concern that the law only criminalizes prostitutes without sanctioning demand).

⁸⁴ Montréal Principles on Women's Economic, Social and Cultural Rights, *supra* note 80, at para. 12.

⁸⁵ Montréal Principles on Women's Economic, Social and Cultural Rights, *supra* note 80, at para. 12.

⁸⁶ Report of the Special Rapporteur on violence against women, Political economy of women's human rights, *supra* note 68, at paras. 28–34.

The distinction between unpaid 'care' work in the home and waged work in the public sphere is gendered, with women performing the bulk of the former. Protective labour regulation and workplace structures all too often adopt the basic assumption of men as the primary wage earners.⁸⁷ Where women are in the paid labour market, the sexual division of labour fences many women into low-paid, unskilled, and undervalued work, often in the private sphere and with a high risk of abuse, including denial of employment and other rights. The CESCR has noted the high numbers of women working in part-time work⁸⁸ and the unregulated informal economy,⁸⁹ both of which impact negatively on eligibility for social security benefits.⁹⁰ It has also commented on how women's over-representation in the caring services sees them migrate for work as domestic servants, which often involves their enduring slavery-like conditions, for example, expressing its concern to Sri Lanka that the state had not 'studied the impact of such massive labour migration on Sri Lankan families, nor provided women with alternative employment opportunities'.⁹¹ It has noted the case of *Siliadin v France* before the European Court of Human Rights, which illustrates the nature of the situation in which women can find themselves trapped.⁹² A 15-year-old girl came to France from Togo to work in domestic service on the understanding that her employer would help her to attend school. In reality she became an unpaid housemaid. She was then 'lent' to another couple where she worked all week without a day off, except when she was exceptionally allowed to attend mass on Sundays. Her working day began at 7.30 a.m. and continued until she went to bed at about 10.30 p.m. Her tasks included preparing meals, looking after the children, housework, and doing the laundry. She slept on a mattress in the baby's room where she had to look after him if he woke. She lacked any employment or social rights and was denied freedom of movement, including access to education and healthcare.⁹³ The European Court of Human Rights found that the conditions she endured amounted to forced labour and servitude and that France was in violation of its positive obligations under Article 4 of the European Convention on Human Rights. Some violations of economic and social rights are suffered disproportionately by male migrant workers,⁹⁴ for instance working conditions in construction sites or mines—but the particular conditions suffered

⁸⁷ G. Mundlak, 'The Right to Work: The Value of Work', in D. Barak-Erez and A. Gross (eds.), *supra* notes 73, 341, and 351–352.

⁸⁸ E.g. CESCR, Concluding Observations, Switzerland, UN Doc. E/C.12/CHE/CO/2-3, 26 November 2010, para. 8.

⁸⁹ E.g. CESCR, Concluding Observations, Kazakhstan, *supra* note 52, para. 19; CESCR, Concluding Observations, Republic of Korea, *supra* note 49, at para. 13 (women's low rate of labour market participation 'despite high female enrolment in tertiary education').

⁹⁰ E.g. CEDAW Committee, Concluding Observations, Vietnam, UN Doc. CEDAW/C/VNM/CO/6, 2 February 2007, para. 22.

⁹¹ CESCR, Concluding Observations, Sri Lanka, *supra* note 55, at para. 21.

⁹² *Siliadin v France*, ECtHR, Appln. No. 73316/01, 26 July 2005; see also *C.N. v The United Kingdom*, ECtHR, Appln. No. 4239/08, 13 November 2012.

⁹³ Such conditions for women migrant workers in domestic work are described in CEDAW Committee, General Recommendation No. 26, on women migrant workers, UN Doc. CEDAW/C/2009/WP.1/R, 5 December 2008, para. 15; see also Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1, *supra* note 69.

⁹⁴ *Juridical Condition and Rights of the Undocumented Migrants* (Adv. Op.) OC-18/03, 17 September 2003, IACtHR (Ser. A), No. 18 (2003).

by Ms Siliadin were based on ‘gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration’.⁹⁵

The global, macro-economic environment, characterized by markets, movements of capital, and the desire to enhance conditions for foreign investment, have weakened the state’s effective decision- and policy-making power, notably in economic and labour policies. Consequences such as social exclusion, unemployment, or low-paid employment, and weakening of trade union organization all have gendered dimensions. In the words of the Special Rapporteur on violence against women: ‘Economic systems which value profits often do so at the expense of female labour’.⁹⁶ Women are seen, and hence favoured, as a passive, compliant, temporary workforce that will accept low wages without demanding labour and human rights. Privatization and structural adjustment programmes have impacted adversely upon the enjoyment of economic and social rights,⁹⁷ with gendered impact. Globalization may have dire consequences for human rights generally, and women’s human rights particularly, by eroding civil, political, economic, social, and cultural rights in the name of development and macro-level economic restructuring and stability. In the countries of the South, structural adjustment programmes have led to increased impoverishment—particularly among women—displacement and internal strife resulting from the political instabilities caused by devaluing national currencies, increasing debt, and dependence on foreign direct investment.⁹⁸

The CEDAW Committee has expressed concern about the unequal impact on women of structural adjustment programmes,⁹⁹ privatizations,¹⁰⁰ trade liberalization,¹⁰¹ and the unequal benefit of development programmes.¹⁰² The Montreal Principles call for states to be bound by the obligation to exercise due diligence ‘to assess, foresee, and prevent any adverse consequences of trade agreements, structural

⁹⁵ CEDAW Committee, General Recommendation No. 26, *supra* note 93, at para. 5.

⁹⁶ Special Rapporteur on violence against women, its causes and consequences, preliminary report, UN Doc. E/CN.4/1995/42, para. 55.

⁹⁷ Effects of structural adjustment policies on the full enjoyment of human rights, report by the independent expert, UN Doc. E/CN.4/1999/50, 24 February 1999.

⁹⁸ Special Rapporteur on violence against women, its causes and consequences, on trafficking in women, migration, and violence against women, UN Doc. E/CN.4/2000/68, 29 February 2000, para. 59.

⁹⁹ E.g. CEDAW Committee Concluding Observations, Trinidad and Tobago, A/57/38 (Supp), 26th session (2002), para. 156.

¹⁰⁰ E.g. CEDAW Committee, Concluding Observations, Albania, UN Doc. CEDAW/C/ALB/CO/3, 16 September 2010, para. 32 (concern about ‘the social insurance situation of a high number of women who were laid off following the economic reforms and privatizations undertaken during the transitional period in the 1990s’); CEDAW Committee, Concluding Observations, Hungary, UN Doc. CEDAW/C/HUN/CO/7-8, 26 March 2013, para. 9 (Hungary urged to ensure that ‘the policy of the privatization of health, education and other services does not deprive women of continuous access to good quality basic services in the field of economic, social and cultural rights’); see also CESCR, General Comment No. 16, *supra* note 11, at para. 20.

¹⁰¹ E.g. CEDAW Committee, Concluding Observations, the Philippines, UN Doc. CEDAW/C/PHI/CO/6, 25 August 2006, para. 25.

¹⁰² E.g. CEDAW Committee, Concluding Observations, China, UN Doc. CEDAW/C/CHN/CO/6 (2006), paras. 15 and 16 (states parties should ensure that all poverty alleviation programmes fully benefit women).

adjustment programs, development and humanitarian assistance, and other economic and social policies on women's economic, social, and cultural rights'.¹⁰³ The CEDAW Committee has been alert to the foreseeable consequences of global economic crisis on women's human rights, notably through rising unemployment, an increase in their responsibilities at work and at home, coupled with a decrease in income and a 'potential increase in societal and domestic violence'.¹⁰⁴ It has been suggested that such consequences may be more a result of pre-existing inequalities (including under-representation of women in economic decision-making and over-representation in informal, vulnerable, and casual employment) than of gender inequalities arising directly from the crisis.¹⁰⁵ However, consequences of crisis may be unpredictable and differ according to local factors. What follows is that in any such situation '[g]ender perspectives should be taken into account in relation to the impacts of the crisis on both a long- and short-term basis, including in relation to education, health, security and livelihoods'.¹⁰⁶

D. Economic, social, and cultural rights, and armed conflict

The Special Rapporteur on violence against women also identified the gendered dimensions of armed conflict and the political economy of conflict as contributing to unequal enjoyment of economic and social rights.¹⁰⁷ In conflict and military occupation the basic needs of civilian populations are protected by international humanitarian law¹⁰⁸ as well as human rights law.¹⁰⁹ Nevertheless during conflict and its aftermath, access to humanitarian aid, including food and medical provisions, may be restricted and internally displaced persons may lack basic shelter, access to sanitation, clean water, and livelihood opportunities.¹¹⁰ The former

¹⁰³ Montréal Principles on Women's Economic, Social and Cultural Rights, *supra* note 80, at para. 20.

¹⁰⁴ Decision 43/II, Statement by the CEDAW Committee on the international financial crisis and its consequences for the human rights of women and girls, UN Doc. A/64/38 (Supp.), 43rd session, 2009, Annex I.

¹⁰⁵ R. King and C. Sweetman, 'Gender Perspectives on the Global Economic Crisis', Oxfam International Discussion Paper (February 2010).

¹⁰⁶ Decision 43/II, *supra* note 104; see also CEDAW Committee Concluding Observations, Greece, UN Doc. CEDAW/C/GRC/CO/7, 1 March 2013, para. 6 ('even in times of fiscal constraints and economic crisis, special efforts must be made to respect human rights, sustain and expand social investment and social protection and to employ a gender sensitive approach, giving priority to women in vulnerable situations').

¹⁰⁷ On the relationship between ESC rights and international humanitarian law, see G. Giacca, ch. 11 in this book.

¹⁰⁸ Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (Geneva IV), art. 55; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 69.

¹⁰⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 ICJ Rep. 136, paras. 102–113.

¹¹⁰ CESCR, Concluding Observations, Sri Lanka, *supra* note 55, at paras. 28 and 29. The CEDAW Committee made explicit reference to the need for the state to provide 'adequate infrastructure for women IDPs and returnees especially housing and health facilities, water and sanitation' and more generally to include economic and social rights in post-conflict reconstruction'; CEDAW Committee Concluding Observations, Sri Lanka, UN Doc. CEDAW/C/LKA/CO/7, 4 February 2011, paras. 40 and 41.

High Commissioner for Human Rights has drawn attention to how the denial of economic and social rights during conflict may be an intentional war tactic. She details as an illustration the situation in Darfur where ‘the systematic burning of houses and villages, the forced displacement of the population, and the starvation caused by restrictions on delivery of humanitarian assistance, and the destruction of food crops are deliberately used alongside other gross human rights violations—such as murder and rape—as instruments of war’.¹¹¹ These violations have gendered dimensions. Conflict-related sexual violence is accompanied by the loss of livelihood and the destruction of social support structures.¹¹² Property devastation and spoiling of food sources impose burdens on women who, as the primary carers within their family and community, are responsible for finding food and shelter. Women’s security is put further at risk as they have to venture out to seek such essentials. The Special Rapporteur on Sexual Violence in Armed Conflict has highlighted the lack of emergency health services for women who are raped and the conditions of extreme poverty often endured by mothers of children who have been born following rape. The children, too, suffer psychological and socio-economic consequences.¹¹³ Without discounting the abuses suffered by men in conflict,¹¹⁴ the disadvantaged position of women in society make them especially vulnerable to gross violations of socio-economic rights when conflict erupts.¹¹⁵

This continues in the aftermath of conflict. The CESCR has expressed its alarm at the situation in the Democratic Republic of the Congo where men accused of rape may be accorded bail or otherwise released ‘while survivors of sexual violence end up rejected by their families, without healthcare, socio-economic reintegration, support and compensation being provided to them by the state party’.¹¹⁶ The CEDAW Committee has urged, for example in the context of communal violence in Gujarat in Western India where women were targeted by violence, the state to provide ‘a clean water supply, electricity, roads and sanitation facilities and [...] a plan [...] for guaranteeing the right to education, health and employment for women and children in all colonies’.¹¹⁷

Some 10 years after the end of the armed conflict in Bosnia–Herzegovina the CEDAW Committee expressed concern at the disadvantage experienced by female heads of household and internally displaced persons who had been victims

¹¹¹ L. Arbour, ‘Economic and Social Justice for Societies in Transition’, 40 *NYU J Int’l Law and Politics* (2007), 1–27, 9.

¹¹² Concept Note, General Discussion on the protection of women’s human rights in conflict and post-conflict contexts (CEDAW Committee, 18 July 2011), available at <<http://www2.ohchr.org/english/bodies/cedaw/discussion2011.htm>> (last accessed 12 September 2013).

¹¹³ Report of the Secretary General on Sexual Violence in Conflict, UN Doc. A/67/792–S/2013/149, 14 March 2013, para. 12.

¹¹⁴ Including sexual violence; S Sivakumaran, ‘Sexual Violence against Men in Armed Conflict’, 18 *EJIL* (2007), 253.

¹¹⁵ Concept Note, *supra* note 111.

¹¹⁶ CESCR, Concluding Observations, Democratic Republic of the Congo, UN Doc. E/C.12/COD/CO/4, 20 November 2009, para. 25.

¹¹⁷ CEDAW Committee, Concluding Observations, India, UN Doc. CEDAW/C/IND/CO/SP.1, 3 November 2010, para. 35.

of wartime sexual violence. Such persons are often not sufficiently recognized in post-conflict legal frameworks. The Committee urged the state to protect these women through legislation and allocation of financial resources for adequate social provision, including health insurance and housing, at a level comparable to that applicable to the (mostly male) military victims of war.¹¹⁸ Such services should be recognized as having been provided in accordance with the state's obligations under the ICESCR, and not as discretionary benefits that can be withdrawn when economically expedient to do so. The UN Fact Finding Mission to Gaza reported that:

the blockade and the military operations had aggravated poverty, which particularly affected women, who must find food and other essentials for their families. Women were often the sole breadwinners [...] but jobs were hard to come by. [...] [W]omen bore a greater social burden, having to deal with daily life made harsher by the crisis and, at the same time, provide security and care for injured family members and children, their own and others who have lost their parents.¹¹⁹

The simultaneous continuance of women's traditional tasks (as carers) and their shifting responsibilities (as sole breadwinners) point to the contingent nature of gender roles and the need for contextual determination.

There is growing institutional recognition of the importance of the guarantee of economic and social rights of women in conditions of conflict and post-conflict. The former High Commissioner for Human Rights has urged that the prevailing neglect of economic and social rights in transitional justice programmes be redressed.¹²⁰ Although the CEDAW Committee has asserted that the obligations contained in the Women's Convention continue to apply during armed conflict,¹²¹ it is currently in the process of elaborating a general recommendation on women in conflict and post-conflict situations. During discussion on the proposed general recommendation, Lakshmi Puri, from UN Women, suggested that the general recommendation engage the full range of human rights protections: civil, political, economic, and social rights.¹²² And the UN Security Council has affirmed that 'women's political, social and economic empowerment, gender equality [...] are central to long-term efforts to prevent sexual violence in armed conflict and post-conflict situations'. The Security Council also recognized the need to engage men and boys in this enterprise.¹²³ To this end, women's participation in decision-making and policy-making

¹¹⁸ CEDAW Committee, Concluding Observations, Bosnia-Herzegovina, UN Doc. CEDAW/C/BIH/CO/3 (2006), paras. 37–38; see also Issues and Questions, Mozambique, UN Doc. CEDAW/C/MOZ/Q/2 (2007), para. 13; and Concluding Observations, Guatemala, UN Doc. A/57/38 (Supp.) exceptional session (2002), para. 205.

¹¹⁹ 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict', UN Doc. A/HRC/12/48, 25 September 2009, paras. 1275–1279.

¹²⁰ L. Arbour, 'Economic and Social Justice for Societies in Transition', *supra* note 110.

¹²¹ CEDAW Committee, General Recommendation No. 28, *supra* note 14, para. 11; the Council of Europe Convention on preventing and combating violence against women, applies in peace and armed conflict; *supra* note 74, art. 2(3).

¹²² CEDAW Committee, Day of General Discussion, 'Women in conflict and post-conflict situations', New York, 18 July 2011.

¹²³ UN Security Council Res. 2106, 24 June 2013.

with respect to peace processes and institutions for post-conflict reconstruction, as envisaged by Security Council resolution 1325,¹²⁴ is critical; unfortunately, to-date, women remain largely excluded from such developments.¹²⁵

Other situations of crisis, such as natural disasters, have similar gendered impact. The CEDAW Committee has noted that following a natural disaster women's caring roles mean they incur greater responsibilities with respect, inter alia, to children, the elderly, and the injured. It has urged all those engaged in humanitarian relief to apply a gender perspective in their work, including 'diverse and innovative' food distribution strategies, to pay attention to women-headed households, and to make certain of security from the sexual violence that threatens in times of heightened stress.¹²⁶ The Montreal Principles also urge states to ensure that in such situations of scarcity 'the basic needs of women are satisfied, especially in regard to healthcare, access to potable water, sanitation services, housing, education, energy, and social protection'.¹²⁷ It is, however, important that women are not seen solely as victims in such situations: their resilience and strength should be supported as 'the role of women in early recovery is critical to effective implementation and long-term sustainability'¹²⁸ in societal reconstruction after disaster or conflict.¹²⁹

The first inquiry carried out by the CEDAW Committee under Article 8 of the CEDAW Optional Protocol, into the multiple deaths and disappearances of women in Ciudad Juárez, Mexico, illustrates the complex linkages between the three structural elements identified by the Special Rapporteur on violence against women.¹³⁰ The scale of the killings, and the torture and rapes endured by the victims before their deaths, make an analogy to a war zone appropriate. Ciudad Juárez in many ways represents a paradigm of labour conditions in a globalized economy. Industry has been located to the peripheries of the country, in the border area between Mexico and Texas. It is a place of transit for Mexican and foreign migrants where the 'maquila' industry (export-processing industry, manufacturing, and/or assembly plants) has flourished.¹³¹ The maquila was started up in 1965 and expanded as a consequence of the North American Free Trade Agreement in 1993.¹³²

¹²⁴ UN Security Council Res. 1325, women, peace, and security, 31 October 2000; UN Security Council Res. 1889, 5 October 2009

¹²⁵ C. Bell and C. O'Rourke, 'Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and their Agreements', 59 *Int'l & Comp. L. Q.* (2010), 941–980.

¹²⁶ Decision 45/III. 'Statement of the Committee on the Elimination of Discrimination against Women on the Situation on Haiti', UN Doc. A/65/38 (Supp.) 45th session, 2010, para. 4.

¹²⁷ Montreal Principles, *supra* note 79, at para. 21.

¹²⁸ Decision 45/III, *supra* note 125, at para. 8.

¹²⁹ UN Security Council Res. 1325; UN Security Council Res. 1889, *supra* note 123.

¹³⁰ Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, UN Doc. CEDAW/C/2005/OP8/Mexico, 27 January 2005 (CEDAW, Mexico Inquiry).

¹³¹ *González et al. ('Cotton Field') v Mexico*, Inter-American Court of Human Rights, 16 November 2009 (Preliminary Objection, Merits, Reparations, and Costs), para. 113.

¹³² The CESCR has expressed its desire to receive information on the impact of Free Trade Agreements on the fulfilment of Covenant rights, especially on vulnerable persons but without express reference to gender difference; e.g. CESCR, Concluding Observations, Dominican Republic, UN Doc. E/C.12/DOM/CO/3, 26 November 2010, para. 8.

Hiring policies in the maquilas give preference to women,¹³³ reflecting practice in other export-processing zones, which hire young migrant workers ‘to take advantage of their “cheap” and “more flexible” labour, constructed as such by prevailing gender, class and racial ideologies’.¹³⁴ Social inequalities and organized crime (including drug, arms, and human trafficking) have increased levels of insecurity and extreme violence for all in the area.

Women’s entry into paid employment (however lacking in basic labour rights) constituted a shift in gender relations within families as ‘traditional roles began to change, with women becoming the household provider’. But modified social roles did not denote any change in ‘traditionally patriarchal attitudes and mentalities’ or stereotypes of men’s and women’s social roles.¹³⁵ Although the reasons for the killings of women remain unknown, the CEDAW Committee noted that women in Ciudad Juárez are subject to ‘systematic violations of women’s rights, founded in a culture of violence and discrimination that is based on women’s alleged inferiority’.¹³⁶ They also lacked basic needs—work, education, healthcare, housing, sanitation infrastructure, and lighting—indicating a failure by the state in its obligation to protect economic, social, and cultural rights.¹³⁷ Among its many other recommendations, the CEDAW Committee sought compliance with CEDAW, which includes such rights.¹³⁸ The tragedy in Ciudad Juárez shows how gender impacts upon the consequences of denial of employment and other economic and social rights to create a situation of extreme vulnerability.

The CEDAW Committee and the Inter-American Court of Human Rights paid attention to the role played by gender in constructing an environment where women’s deaths became commonplace and committed with impunity. Such analysis should be routinely undertaken. For example, the case before the African Commission of Human Rights involving actions taken by the Nigerian government against the Ogoni people is an important landmark in the judicialization of economic, social, and cultural rights.¹³⁹ However, the Commission treated the Ogoni people as a homogenous group and drew no distinctions such as regarding age or gender, thereby assuming all its findings and recommendations to be equally applicable to women and men. It can be informative to consider the omissions of

¹³³ Another form of gender-based discrimination in employment is the demand by employers in the *maquiladora* for women to undergo pregnancy tests; CDESCR, Concluding Observations, Mexico, UN Doc. E/C.12/MEX/CO/4, 9 June 2006, para. 15; and CCPR, Concluding Observations, Mexico, UN Doc. CCPR/C/MEX/CO/5, 17 May 2010, para. 7.

¹³⁴ Report of the Special Rapporteur on violence against women, Political economy of women’s human rights, *supra* note 68, at para. 21.

¹³⁵ *Cotton Field*, *supra* note 130, para. 129.

¹³⁶ CEDAW Committee, Mexico Inquiry, para. 261. The Inter-American Court of Human Rights also noted the ‘culture of gender-based discrimination’; *Cotton Field*, *supra* note 130, para. 129.

¹³⁷ Mexico Inquiry, para. 289.

¹³⁸ Mexico Inquiry, at para. 290. In 2012 the CEDAW Committee again expressed its deep concern about femicide and forced disappearances of women in Ciudad Juárez and elsewhere in Mexico and recommended further measures; UN Doc. CEDAW/C/MEX/CO/7-8, 7 August 2012, paras. 11–12 and 15–16.

¹³⁹ *Social and Economic Rights Action Center for Economic and Social Rights v Nigeria*, African Commission on Human Rights Communication 155/96 (2001).

such a gender-blind approach and what information the Commission might have sought in order to take gender into account, in addition to the many other dimensions of the case.

The complaints were of environmental harm through contamination and disposal of toxic waste in the process of oil production that caused ill health and increased risk of cancers; repressive action by the state security forces that killed civilians and attacked and burned villages, houses, and animals; and the creation of malnutrition and hunger among Ogoni people caused by the destruction of farming land, rivers, crops, and animals. In finding violations of the complainants' rights under the African Charter on Human and Peoples' Rights,¹⁴⁰ the Commission adopted the typology of state obligations that requires the state to respect, protect, promote, and fulfil all human rights. In its examination of the state's actions it failed to consider the gendered dimensions of housing, health, and food. It recognized that destruction of shelter adversely affects family life and health. However it did not consider the disproportionate impact of homelessness on women; for example, how it heightens their vulnerability to violence and sexual abuse.¹⁴¹ The CEDAW Committee has expressed concern at the 'discriminatory practices with regard to land ownership, administration of property and inheritance [which] limit women's access to economic resources, as well as credit and loan facilities' in Nigeria.¹⁴² Such discrimination is likely to have further adverse consequences for women where there is widespread forced homelessness. The destruction of food sources by the Nigerian government and its failure to prevent private companies from doing the same impacts upon the health, education, work and political participation of all Ogoni people. However, food shortages have major implications for women where they overlap with gender discrimination, including higher rates of malnutrition¹⁴³ whenever there is unequal distribution of food, and the additional hardships on women responsible for preparation of food when food sources are destroyed. In the words of the FAO:

Considering the role women have in the household, with regard to food production, food preparation and child care, gender inequality in access to and control of resources may well result in misallocation of scarce resources, increased health care costs, lowered productivity, and poor human development trends.¹⁴⁴

¹⁴⁰ The Commission found violations of the rights to life (art. 4), to property (art. 14), to health (art. 16), to housing (read into art. 18(1) as a constituent of the duty to protect the family), and the right to food (read into arts. 4, 16, and 22).

¹⁴¹ CESCR, General Comment No. 7, The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, para. 10; Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/16/42, 20 December 2010, para. 16 (impact of displacement most acutely felt by those vulnerable to discrimination, including women).

¹⁴² CEDAW Committee, Concluding Observations, Nigeria, CEDAW/C/NGA/CO/6, 8 July 2008, para. 338.

¹⁴³ E.g. CESCR, Concluding Observations, Sri Lanka, *supra* note 55, para. 33 (concern that malnutrition affects nearly one-third of children and one-quarter of women).

¹⁴⁴ I. Rae, *Women and the Right to Food, International Law and State Practice* (Rome: Food and Agriculture Organization, 2008), 8, available at <http://www.actuar-acd.org/uploads/516/8/7/5687387/fao_women_and_the_rtf.pdf> (last accessed 12 September 2013).

Women's security is threatened when environmental contamination entails their having to seek water or fuel away from their accustomed areas of supply.¹⁴⁵ Health concerns include increased risks of cancers and reproductive problems, but there is no gender-disaggregated data with respect to the victims of cancer, or of the types of cancer suffered. Concern has been expressed by the CEDAW Committee at the high rate of maternal mortality in Nigeria (the second highest in the world)¹⁴⁶ and the 'precarious situation of women's health, the insufficient and inadequate health-care facilities'. It has urged greater spending on women-specific health-care services.¹⁴⁷ Gender analysis is required to identify who are the victims of any increased rates of cancer and the need for appropriate and affordable gender-specific healthcare (for women and men) as the need may arise.¹⁴⁸ Attention also needs to be paid to the potential for miscarriages and birth deformities arising from environmental degradation and pollution.

There is no gender breakdown of the consequences of the violence by the Nigerian forces, including through the use of sophisticated weapons. Were there killings and, if so, of whom? Was there harassment by security guards? What are the consequences for women whose male relatives were killed in a country where there are entrenched harmful traditional and cultural norms and practices, including widowhood rites and practices?¹⁴⁹ Did the violence include sexual violence? And did the displacement and terror impact upon rates of domestic violence?¹⁵⁰ Asking and seeking answers to these questions would have provided a richer understanding of the situation of all the Ogoni people. Recommendations for remedies could also have been worded to ensure their accessibility, acceptability, availability, and appropriateness for all sectors of the society.¹⁵¹

¹⁴⁵ CESCR, General Comment No. 15, The right to water, UN Doc. E/C.12/2002/11, 20 January 2003, para. 16(a) (States should ensure that 'the disproportionate burden women bear in the collection of water should be alleviated'); para. 37(d) asserts that a core obligation is to ensure that 'personal security is not threatened when having to physically access to water' but does not mention the gender elements of this.

¹⁴⁶ CEDAW Committee, Concluding Observations, Nigeria, UN Doc. CEDAW/C/NGA/CO/6, 8 July 2008, para. 336.

¹⁴⁷ CEDAW Committee, Concluding Observations, Nigeria, UN Doc. CEDAW/C/NGA/CO/5, 2004, para. 307.

¹⁴⁸ CEDAW Committee General Recommendation No. 24, *supra* note 58, at paras. 10 (States to report on hazardous conditions that impact on health in different ways between women and men) and 16 (provide trauma treatment and counselling for women in 'especially difficult circumstances').

¹⁴⁹ CEDAW Committee, Concluding Observations, Nigeria, UN Doc. CEDAW/C/NGA/CO/6, 8 July 2008, para. 322.

¹⁵⁰ The CEDAW Committee has expressed concern at the 'continuing prevalence of violence against women, including domestic violence'. CEDAW Committee, Concluding Observations, Nigeria, UN Doc. CEDAW/C/NGA/CO/6, 8 July 2008, para. 326; see also CEDAW, Concluding Observations, Nigeria, UN Doc. CEDAW/C/NGA/CO/5, 2004, para. 298.

¹⁵¹ For example, CESCR, General Comment No. 4, The Right to adequate housing, *supra* note 26. See also the Preliminary report of the Special Rapporteur on the right to education, UN Doc. E/CN.4/1999/49, 13 January 1999, and subsequent reports.

4. Temporary Special Measures

Gender analysis exposes inequalities in the effective enjoyment of economic, social, and cultural rights. States may determine affirmative action to accelerate the achievement of substantive equality. Temporary special measures are provided for under a number of international human rights treaties for the purpose of redressing historic disadvantage and subordination. For example, CEDAW, Article 4, allows for the adoption of temporary special measures that are ‘aimed at accelerating *de facto* equality between men and women’.¹⁵² In 1988, the CEDAW Committee had recommended that states ‘make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment’.¹⁵³ The Committee returned to temporary special measures in 2004, emphasizing the importance of continuous monitoring of laws, policies, and programmes to ensure their equal application to women and men, in terms of result.¹⁵⁴ The CEDAW Committee has noted that attention must be given to the difference between temporary special measures, designed to accelerate the achievement of women’s equality and general policies adopted to improve the situation of women. It draws specific attention to this distinction in the context of healthcare.¹⁵⁵

The CESCR has also turned to temporary special measures as a tool or strategy towards a concrete goal of achieving substantive equality between women and men in the guarantee of economic, social, and cultural rights. Although the ICESCR does not expressly provide for such measures, their adoption does not constitute discrimination. The CESCR has explained that:

The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only *de jure* or formal equality, but also *de facto* or substantive equality for men and women. However, the application of the principle of equality will sometimes require that states parties take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination. As long as these measures are necessary to redress *de facto* discrimination and are terminated when *de facto* equality is achieved, such differentiation is legitimate.¹⁵⁶

Temporary special measures are often considered in the context of political participation, but also in that of paid employment—for example to enhance women’s

¹⁵² See also the International Convention on the Elimination of Racial Discrimination, 1965, art. 1(4) and the Convention on the Rights of Persons with Disabilities, 2006, art. 5.

¹⁵³ CEDAW Committee General Recommendation No. 5 on temporary special measures, 1988. See also CEDAW General Recommendation No. 8, 1988 and CEDAW General Recommendation No. 23, political and public life, 1997, para. 15.

¹⁵⁴ CEDAW Committee, General Recommendation No. 25, on temporary special measures, *supra* note 9.

¹⁵⁵ CEDAW Committee, General Recommendation No. 25, on temporary special measures, *supra* note 9, para. 37.

¹⁵⁶ CESCR General Comment No 16, *supra* note 11, at para. 15.

decision-making,¹⁵⁷ redress occupational segregation, the unemployment gap, and unequal pay.¹⁵⁸ Education is another sector where temporary special measures may be needed. They may be adopted by government but may also be negotiated in the private employment sector, or be applied 'on a voluntary basis by public or private enterprises, organizations, institutions and political parties'.¹⁵⁹ Their content should be determined by reference to the particular context to determine what is most needed to remedy the particular problem identified. This may require adoption of temporary special measures targeted at specific categories of persons; for example, victims of sexual violence in the aftermath of conflict, or victims of trafficking. Needs may be immediate such as access to basic economic and social rights including adequate, accessible and appropriate shelter, social security, immediate and very specific healthcare needs, and food.¹⁶⁰ More long-term permanent legislative changes may be needed in other areas; for example, to enable access to property, to make changes to the law of inheritance, or to allow access to courts.

5. Implementation of Economic, Social, and Cultural Rights

In order to assist states to comply with their obligations to deliver economic, social, and cultural rights the CESCR has indicated that in all cases services must be made available, accessible, affordable, and appropriate. These standards should also be made subject to gender analysis. Using the right to education as an example, states might consider the following practical measures to deliver gender equality:

- A national gender plan;
- National plans for education at all levels;
- 'A gender perspective in schools including legal aspects, public policies, ministerial responsibilities, the functioning of educational centres, research and the role of parents';¹⁶¹
- Requiring enrolment in schools of a specific number of each sex;
- Requiring training and recruitment of women teachers, at all educational levels;
- Non-discrimination in expenditure on educational services for girls and boys and gender budgeting within relevant economic units;
- Non-discrimination in facilities for girls and boys, including access to and use of computers and other technical aids, and sporting facilities;

¹⁵⁷ CESCR Concluding Observations, Sri Lanka, *supra* note 55, at para. 18.

¹⁵⁸ CESCR, Concluding Observations Kazakhstan, *supra* note 52, at para. 19(c); CESCR, Concluding Observations Mauritius, *supra* note 49, at para. 17.

¹⁵⁹ CEDAW Committee, General Recommendation No. 25, *supra* note 9, at para. 32.

¹⁶⁰ C. Chinkin, 'The Protection of Economic, Social and Cultural Rights in Post- Conflict', available at <<http://www2.ohchr.org/english/issues/women>> (last accessed 12 September 2013).

¹⁶¹ Girls' right to education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, 8 February 2006 (citing a proposal from the Council of Europe).

- Non-discrimination in time spent in schools for girls and boys;
- Non-discrimination in time spent on girls and boys; for example in the classroom where it is currently estimated that girls have eight times less contact with teachers than boys;¹⁶²
- Non-discrimination in subjects made available to girls and boys; for example providing science and technology only to boys; cookery and domestic subjects only to girls; and non-discrimination in access to vocational training;
- Ensuring adequate security and transport, especially for girls when going to school, within school and returning home;
- Providing economic incentives to send girls to school;
- Adapting school hours to fit family seasonal schedules;
- Ensuring the curriculum does not reinforce stereotypes or traditional gender roles, including social expectations (and those of girls themselves) that girls' future lies in marriage and motherhood;
- Ensuring the curriculum depicts positive images of women and girls, as well as men and boys in non-traditional roles;
- Avoiding and sanctioning the use of sexist language in teaching and materials;
- Ensuring that girls receive as much encouragement and support as boys; for example publicizing prizes and other achievements won by girls, giving positive feedback to girls and boys;
- Revising texts and materials to ensure they do not reproduce stereotypes;
- Ensuring that it is made clear to all pupils and people within all educational establishments that harassment and bullying is unacceptable and sanctioning such behaviour;
- Providing appropriate sex education for girls and boys;
- Integrating gender sensitisation and human rights education at all levels of curricula, including teacher training; and
- Developing and applying qualitative and quantitative human rights indicators that facilitate identification of the causes of exclusion and discrimination.¹⁶³

6. Conclusion and the Way Forward

Women's equal enjoyment of economic, social, and cultural rights with men is core to their relationships with the state, their community, private employers, and within their family. It has been suggested that there are four different approaches

¹⁶² Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, 8 February 2006, para. 104.

¹⁶³ Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, 8 February 2006, paras. 104 and 135.

to a gender-sensitive analysis of human rights: a focus on non-discrimination and equality; a focus on human rights of particular importance to women [or men]; on human rights specific to women, such as protective rights relating to pregnancy; and on gender-sensitive interpretations and applications of human rights.¹⁶⁴ The CESCR as the monitoring body for the implementation of the ICESCR has adopted at least three of these. It has focused on equality and non-discrimination through its General Comments Nos. 16 and 20, to which it now routinely draws attention in its concluding observations to states parties, as well as indicating the potential of temporary special measures as a tool for accelerating such equality. It also seeks better information in the form of disaggregated data on a range of issues. It has recognized the particular importance to women of economic, social, and cultural rights, such as older women's need for social security rights, and the 'extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and [women's] particular vulnerability to acts of violence and sexual abuse when they are rendered homeless'.¹⁶⁵ The importance of gender-specific rights has also been recognized; for example, protection of maternity and the right to paternity leave.

However, where there has been less progress has been in integrating gender interpretation and application into all the work of the CESCR (as well as that of other human rights bodies), not just in those situations which obviously impact upon women, such as pregnancy and maternal mortality. Thus gender-specific concerns are frequently expressed in the contexts of employment, education, domestic violence, abortion, and maternal mortality, but this attention is not consistent in that reference may be made to such issues as the impact of single parenthood on enjoyment of economic, social, and cultural rights, or to the situation of prisoners, or those with HIV/AIDS, or domestic workers without any consideration of gender perspectives. A comprehensive approach to gender analysis is sought with a view to transformation of prevailing social structures—the workplace, the family, the global economy. It would also counter the tendency to equate women and gender. Some such analysis is undertaken and the need for modification of gender stereotypes and hierarchies emphasized but traditional stances remain in many instances largely intact. The adoption of the Optional Protocol to the ICESCR may offer the CESCR new opportunities for consideration of structural impediments to gender equality,¹⁶⁶ although the limited use made of the Optional Protocol to CEDAW since its coming into force suggests that these may not be widespread.¹⁶⁷ Much will depend on whether non-governmental organizations

¹⁶⁴ K. Frostell and M. Scheinin, 'Women', in A. Eide, C. Krause, and A. Rosas (eds.), *Economic, Social and Cultural Rights* 2nd rev. edn. (Leiden: Martinus Nijhoff, 2001), 331 and 332.

¹⁶⁵ CESCR, General Comment No. 7, *supra* note 140, at para. 10.

¹⁶⁶ Adopted by UN General Assembly Res. 63/117, 10 December 2008, in force 5 May 2013. ((official citation to be used))

¹⁶⁷ See Ministry of Justice, *The Optional Protocol to the United Nations Convention for the Elimination of all forms of Discrimination Against Women (CEDAW): The Experience of the United Kingdom*, October 2008, available at <<http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/publications/docs/un-optional-protocol-women.pdf>> (last accessed 12 September 2013).

develop strategies around appropriate cases to bring before the Committee. The possibility of seeking interim measures ‘as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim’ also allows for some innovative thinking with respect to economic and social rights.¹⁶⁸ Could, for example, interim measures be sought against the introduction of measures on the basis that they would have regressive impact on the equal delivery of economic, social, and cultural rights? In the United Kingdom, the Fawcett Society unsuccessfully attempted a legal challenge against the government’s budget on the basis that there had been no gender audit and that women would be the most adversely affected by the economic cuts.¹⁶⁹ Could the Optional Protocol be used in such a case and interim measures ordered to delay the adoption of the budget until such a gender audit is carried out? In seeking real change, the treaty bodies should also take account of the emerging programme of the recently established UN Entity for Gender Equality and the Empowerment of Women, (UN Women),¹⁷⁰ which was established in part as a response to the UN Secretary-General’s expressed concern that gender equality be better and more fully addressed by the United Nations.¹⁷¹

As Di Otto has observed, ‘achievement of women’s substantive equality is an ongoing and dynamic process [...] which requires continual monitoring by states parties as well as the direct participation of women in policy development and implementation design’.¹⁷² The process has begun, but remains far from complete.

¹⁶⁸ ICESCR, Optional Protocol, art. 5.

¹⁶⁹ L. Phillips, ‘Fawcett Society Loses Budget Discrimination Challenge,’ *Public Finance*, 7 December 2010, available at <<http://www.publicfinance.co.uk/news/2010/12/fawcett-society-loses-budget-discrimination-challenge>> (last accessed 12 September 2013).

¹⁷⁰ UN General Assembly Res. 64/289, 2 July 2010, ‘System-Wide Coherence’.

¹⁷¹ Kofi Annan included this as part of the mandate of the High-Level Panel on System-wide Coherence in the areas of development, humanitarian assistance and the environment. The Panels’ Report, ‘Delivering as One’ UN Doc. A/61/583, 9 November 2006 proposed reform of the UN’s gender architecture, as carried out through the creation of UN Women.

¹⁷² Otto, *supra* note 26, at 52.