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## **The UN, Human Rights, Women and Gender-Based Violence: From the Universal Declaration on Human Rights to the Present Day**

**Rosa Freedman**, Professor of Law, Conflict and Global development, University of Reading (United Kingdom)

Gender-based violence is violence perpetrated against someone based on their gender expression, gender identity or perceived gender. Gender-based violence predominantly is perpetrated by men against women as part of a manifestation of gendered power lives and societies. It includes any act of violence or abuse that can result in physical, sexual or psychological harm or suffering.

This violence occurs in every society and every social class, it takes place in public and in interpersonal relationships. Gender-based violence is disempowering. It is a force that erodes a person's dignity, health, and ability to participate in all areas of life. It is a barrier to gender equality, to sustainable development and to peace.

Gender-based violence against women is rooted in gender inequalities and is intensified by other forms of discrimination, including racism, colonialism, disability, homophobia, transphobia and poverty.

The causes and consequences of gender-based violence against women are increasingly well-known. But it is so pernicious and pervasive that the international community needs systematic and sustained efforts to address and tackle this violence. One key way in which that has, and continues, to take place is through international human rights laws and mechanisms.

And that is what we are here to focus on – gender-based violence against women and human rights.

In July of this year, the UN Committee on the Elimination of Discrimination against Women adopted General Recommendation 35 on gender-based violence against women.<sup>1</sup> It updates, but does not

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<sup>1</sup> Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19', 14 July 2017, UN Doc. CEDAW/C/GC/35

replace, General Recommendation 19,<sup>2</sup> from 1992, perhaps the best-known and influential General Recommendation or Comment of any human rights treaty body.

That historic document was path-breaking because it set out that violence against women is a form and manifestation of sex discrimination; and that such violence is used to subordinate and oppress women. This unequivocally brought violence outside of the private sphere and into the realm of human rights.

General Recommendation 35 is 'an update' in many ways, but it also breaks a few new paths by consolidating all the progress over the past 25 years that has been made by the Committee and other international human rights mechanisms.<sup>3</sup>

To understand why this is so important, and how human rights is used to address gender-based violence, we must go back a step and think about how human rights have been used to advance women's equality.

In this talk I will give an overview of how international human rights law and mechanisms have advanced over the past seven decades in relation to women's rights. I will talk specifically about the approach that human rights mechanisms have had to addressing gender-based violence.

After exploring how and why those advances have been made, I will briefly discuss a few of the main challenges that remain in terms of tackling gender-based violence

The fact that UN human rights mechanisms focus on gender-based violence as a human rights violation is, in many ways, a radical departure from the approach adopted at the birth of the modern era of international human rights law.

In 1945 the creators of the United Nations had to decide whether to mainstream women's rights or whether to create separate institutions focused on advancing women's equality and protecting and promoting their rights.

Initially the UN created the Commission on Human Rights to address all human rights issues. That way minority rights, women rights, or other rights relating to specific groups would not develop in a

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<sup>2</sup> Committee on the Elimination of Discrimination against Women 11<sup>th</sup> Session (1992), 'General Recommendation No 19 on violence against women Violence against Women as contained in Report of the Committee on the Elimination of Discrimination against Women' UN GAOR, 47<sup>th</sup> sess, Supp No 38, UN Doc A/47/38 (1993)

<sup>3</sup> For a first-person account of how and why GR35 was created, see C. Chinkin, 'CEDAW General Recommendation 35 on violence against women is a significant step forward', *LSE WPS Blogs*, 6 September 2017, available at: <http://blogs.lse.ac.uk/wps/2017/09/06/cedaw-general-recommendation-35-on-violence-against-women-is-a-significant-step-forward/>

different way to all other human rights. But the UN also created a Sub-Commission on the Status of Women that was subordinated to the Commission on Human Rights.<sup>4</sup>

Women's rights groups and advocates insisted that that women's rights should not wait upon the progress of a parent body. They successfully lobbied for a full Commission on the Status of Women. That decision created a forum and space for advocating women's rights. During its first 25 years the Commission met regularly, developed more treaties than the CHR and gathered women from around the world.

The delegates in the Commission on the Status of Women were so deeply and personally committed to the issues that it became one of the strongest, most effective, and independent bodies in the UN and in human rights. The women's rights agenda moved parallel to the human rights agenda, and occasionally came together with that general agenda.

The Commission on the Status of Women contributed language and ideas to the drafting of the Universal Declaration of Human Rights. Eleanor Roosevelt was the only woman drafter of that Declaration, as she was the only woman delegate sitting at the Commission on Human Rights.<sup>5</sup> Despite her lack of support and indeed resistance, CSW was successful in lobbying for gender-neutral and gender-sensitive language in the UDHR.

Ultimately, the UDHR tried to mainstream women's rights into human rights. This left significant and deeply problematic gaps in terms of women's rights. At that time, one third of UN member states did not grant political rights to women, and women remain subjugated in a myriad of ways often in the name of 'religion' or 'culture'.

CSW created treaties on issues such as consent and minimum age of marriage, employment opportunities, labour conditions, and education. It prepared and adopted treaties and other instruments on women's human rights while the CHR wobbled along with the Covenants.<sup>6</sup> In 1967 CSW took the ground-breaking step of adopting the Declaration on the Elimination of Discrimination against Women.<sup>7</sup> That Declaration brought together issues elaborated by CSW and by other

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<sup>4</sup> For an overview of women's rights at the UN, see F. Gaer, 'Women, international law and international institutions: The case of the United Nations', 32 *Women's Studies International Forum* 1, January–February 2009, 60-66 available at <http://www.sciencedirect.com/science/article/pii/S0277539509000077>

<sup>5</sup> On Roosevelt's role in drafting the UDHR, see S. Waltz, "Reclaiming and rebuilding the history of the Universal Declaration of Human Rights." 23 *Third World Quarterly* 3 (2002): 437-448

<sup>6</sup> Including: Convention on the Political Rights of Women (1953), Convention on the Nationality of Married Women (1957), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962),

<sup>7</sup> General Assembly 22<sup>nd</sup> Session, 'Declaration on the Elimination of Discrimination against Women', 7 November 1967, UN Doc. A/RES/22/2263

intergovernmental bodies, such as CHR in a single text. In 1979, the Convention on the Elimination of All Forms of Discrimination against Women<sup>8</sup> built upon and extended the Declaration into a treaty.

Crucially, when discussing gender-based violence, there is nothing in the treaty on violence apart from article 6 which refers to trafficking. This is the big gap and why General Recommendation 19 was so important: it defines gender-based violence against women as discrimination which was essential, given the gap. The big issue in the Convention is Article 2 which breaches the public/private divide, and extended the government's human rights responsibility into the private spheres of family and community life.

Additionally, CEDAW provided for accountability mechanisms through a treaty-monitoring body to review and implement the Convention in States parties to the Convention.

The use of human rights as a method for advancing women's equality has continued throughout the past seven decades. Although there is strong understanding of the need to foreground the role of women in development and socio-economic and political processes, human rights provides a system with normative, monitoring and accountability mechanisms that are not found in other parts of the international system.

The advancement of women's rights had further ground-breaking moments in the 1990s, after the end of the Cold War. First, at the 1993 World Conference on Human Rights,<sup>9</sup> the women's movement ensured that strong attention was paid to women's rights, including in the resulting Vienna Declaration and Programme of Action.<sup>10</sup> That was followed by the Fourth World Conference on Women in Beijing in 1995, which marked a significant turning point for the global agenda for gender equality not least by cementing that women's rights are human rights. Soon thereafter, the Optional Protocol to CEDAW<sup>11</sup> enabled the treaty-monitoring body to receive and decide upon complaints from individuals, thus opening up new avenues for advancing and protecting women's rights.

It might sound like all was well and rosy in the fight for women's rights, but that was far from the case – and particularly so with regards to gender-based violence. Until the 1990s, much of the focus when championing women's rights was on ending discrimination and advancing women's equality.

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<sup>8</sup> General Assembly, 'Convention on the Elimination of All Forms of Discrimination Against Women', 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>9</sup> The World Conference on Human Rights was held by the United Nations in Vienna, Austria, on 14 to 25 June 1993. It was the first human rights conference held since the end of the Cold War. The main result of the conference was the Vienna Declaration and Programme of Action.

<sup>10</sup> UN General Assembly, 'Vienna Declaration and Programme of Action', 12 July 1993, UN Doc. A/CONF.157/23

<sup>11</sup> UN General Assembly, 'Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women', 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83

Despite the worldwide incidence of gender-based violence, it was largely ignored in international law until the 1990s, including in international human rights law. That was where the Committee was crucial: it recognised the issue early on, and in 1992 adopted General Recommendation 19.

Human rights guarantees in UN Covenants such as those to the right of life, to bodily integrity, and to be free from torture, cruel, and degrading treatment, had not been interpreted to include such acts as domestic violence, rape, abortion of female foetuses, female infanticide, female genital mutilation, forced sterilisation, forced childbirth, and the numerous other forms in which violence against women and girls is manifested. Interestingly, where ICCPR was concerned, Elizabeth Evatt, who had been the drafter of General Recommendation 19 while on CEDAW, became with Cecilia Medina the champions of these issues in the work of the Human Rights Committee

Violence against women was simply not seen as a human-rights issue by most governments, by international organisations, nor NGOs. Human-rights law developed out of a particular political experience and accordingly responded to the issues which were recognized in that context. There was some limited work on women in the League of Nations and ILO, but this was not what the CHR was concerned with not least because CSW was handling those concerns. Human rights often were drafted and applied to guarantee men protection against those harms they fear will be directed against them, without taking into account women's experiences or those acts that are directed at women because they are women.

Gender-based violence often remains unreported, whether because of women's economic and social dependence on the men who perpetrate that violence, or because of the lack of structures for reporting or accountability. Traditional, cultural and religious assumptions about gender roles also play a significant role. Law also provides big problems in addressing gender-based violence, through its rules on evidence, procedures, and defences, amongst others. And international human rights law has traditionally taken a backseat where it comes to private life – instead focusing on the state and its role in the public sphere.

The turning point for gender-based violence and human rights came in 1992 it when CEDAW adopted General Recommendation 19.

From 1989 CEDAW had recommended that states include information on violence and on measures to address it as part of their reports to the treaty-monitoring body.

In 1991, with the Vienna Conference on the horizon, CEDAW in 1991, discussed violence towards women, and the sexual harassment and exploitation of women.

Given that states did not adequately understand the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms, CEDAW produced General Recommendation 19 on gender-based violence.

General Recommendation 19 took CEDAW's focus on gender-based violence many strides further. It emphasises that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. This is the big thing: it fills the gap and also speaks to due diligence and State responsibility for the acts and omissions of private actors.

General Recommendation 19 analyses the Women's Convention from the perspective of how violence impairs women's physical and mental health, and thus undermines implementation of the Convention's requirements. The Recommendation contains a number of specific pointers for states, for example, that they should provide protective and support services for women, and introduce gender-awareness training for public officials. CEDAW also indicated that it would require states to provide information on the steps they had taken to achieve these objectives.

At a similar time, other recognition of and advances on gender-based violence were being made within international human rights law. The Vienna Declaration and Programme of Action stressed 'the importance of working towards the elimination of violence against women in public and private life.'

The 1993 Declaration on the Elimination of Violence against Women was the first General Assembly statement on the unacceptability of violence against women, although there had been ECOSOC resolutions on this issue.

Article 1 defines violence as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.

The Declaration explicitly includes violence occurring within 'public or private life', and within the family. Another advance for women in the Declaration is the clarification that states should not invoke custom, tradition or religion to justify their failure to eliminate violence against women.

The creation of a UN Special Rapporteur on violence against women, and the inclusion of gender-based violence in many human rights discussions and instruments, demonstrates the commitment to tackling this problem over the past 25 years.

General Recommendation 35, then, is a welcomed step in consolidating and moving forwards the many advances over recent decades. The General Recommendation reflected the fact that the CEDAW optional protocol cases had been concerned with violence against women or stereotypes, and many of the inquiries were also focused on gender-based violence against women. The main ways in which GR35 consolidates changes since GR19 and elaborates upon its work are as follows:

- It recognizes that the prohibition of gender-based violence has become a norm of international customary law;
- It expands the understanding of violence to include violations of sexual and reproductive health rights;
- It stresses the need to change social norms and stereotypes that support violence. In particular, it is concerned with the resurgence of narratives threatening the concept of gender equality in the name of culture, tradition or religion;
- It clearly defines different levels of liability of the State for acts and omissions, including failures to prevent violence at the hands of private individuals and companies and to ensure access to remedies for survivors;
- It unequivocally calls for the repeal of all laws and policies that directly and indirectly excuse, condone and facilitate violence; and
- It emphasizes the need for approaches that promote and respect women's autonomy and decision-making in all spheres of life.

But just because we have got to this stage, does not mean that the battle is anywhere near being won. Looking globally, there are many areas that require significant and sustained efforts. I will talk briefly about three of the most pernicious and pervasive areas.

Domestic violence is widespread, and occurs in every society, in every class, and in every culture and religion. It violates a woman's right to life, liberty and security, equal protection, and freedom from torture and discrimination. And it is ineffectively tackled by many governments who view it as a private matter.

For governments to meet their human rights obligations they must have effective legislation and practices that promote victim safety and offender accountability.

This means ensuring that domestic violence is criminalised and prosecuted by the government. Laws too often force the victim to be a witness to the domestic violence she has suffered, which frequently is untenable.

Another major problem is dual arrests, in which victims are arrested alongside their abusers. Dual arrests happen for several reasons. Some arrest both parties even if the victim only quarrelled while the offender physically beat her. Others will arrest a woman who has defended herself from violence. But we know that when a victim is arrested when she calls for help, she will never call the police for help again.

It is crucial that states view protecting women from domestic violence as part of their human rights obligations. And from there create good laws, which are the foundation of victim protection and offender accountability. Implementation and monitoring is key, as is states ensuring adequate funding and support for victims.

A second area of significant concern is violence against Sexual Orientation and Gender Identity Minorities. LGBTQIA persons face significant gender-based violence across the world. More than 70 countries criminalise those persons, with many of those countries sponsoring or condoning violence against those individuals.

In the private sphere, corrective rape, beatings, torture, enforced disappearances, murder, are perpetrated with impunity against LGBTQIA persons in many countries. State actors frequently perpetrate violence against those individuals. Tackling this form of gender-based violence is central to protecting and advancing their basic human rights.

But we have seen that a sizeable minority of states actively opposes human rights law and mechanisms being used to protect those persons from state-sponsored or condoned violence and discrimination. The resistance to tackling this problem all-but kept it off the UN Human Rights Council agenda for that body's first decade. The creation of an Independent Expert on Violence and Discrimination against SOGI minorities in 2016 was one of the most polarised and politicised debates in the Council. And that resistance has continued in the General Assembly and other UN bodies.

Sustained attention and action is required to shine the spotlight on how state laws perpetrate or condone this form of gender-based violence. And there needs to be concerted efforts not to allow the erosion of universalism through claims that such laws are based on culture, tradition or religion.

The third area that requires significant attention is women's autonomy over their own bodies, particularly with regard to reproductive health, access to abortion, sexual autonomy, forced sterilisation, and female genital mutilation.

This area is one that has been long-understood and there have been significant attention and efforts to address these issues. But globally we see that gender-based violence continues to be perpetrated in this way, in both the private and public spheres.



All-too-often these forms of gender-based violence are claimed to be part of culture, tradition or religion. Or are perpetrated as a form of intersectional discrimination.

There are of course many other battles and sites of deep concern in terms of tackling gender-based violence. But what is crucial to understand is that human rights mechanisms are one of our strongest ways of tackling these problems. Through their ability to create and define norms, information-sharing, monitoring and reviews, capacity-building, and accountability activities, these systems are a key way that we can continue to address these problems worldwide.