

Esther Barbé
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Editors

**Violence against Women in
a Fragmenting
International Order**



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Chapter 3

Fragmentation in Human Rights Bodies Regarding Violence Against Women

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Abstract

The international response to Violence Against Women (VAW) reflects both significant advancements and persistent challenges. While frameworks like CEDAW have championed the recognition of women's rights and introduced a gender perspective into international law, the broader human rights system often falls short of addressing VAW comprehensively. This article delves into the fragmented nature of international human rights law and its consequences for combating gender-based violence. By examining key case law and committee recommendations, it highlights the disparities in how gender issues are addressed across various treaties and institutions. The research reveals a paradox: the specialization of VAW within CEDAW has enabled significant progress but has also isolated the issue, leaving other mechanisms largely untouched by gender mainstreaming. This uneven integration underscores the urgency of unifying efforts to ensure a consistent and effective global response. Ultimately, the study calls for rethinking strategies to overcome fragmentation and promote a truly inclusive approach to protecting women's rights against violence.

Keywords: violence against women, human rights, women's rights, CEDAW, human right bodies

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Introduction

Violence Against Women (VAW) remains a pervasive global issue, deeply rooted in societal inequalities and power imbalances. International human rights committees play a critical role in addressing and combatting this violence by setting legal frameworks, providing guidance, and holding governments accountable. However, these committees often face challenges in achieving a unified stance on gender-based violence due to differing cultural, political, and legal interpretations of human rights. Fragmentation within and between these committees can hinder their effectiveness, leading to inconsistent approaches and outcomes. This chapter explores the nature of such fragmentation and its implications for global efforts to combat gender-based violence. By analyzing case studies and reviewing committee reports, we aim to shed light on how divisions within these bodies impact policy formation, enforcement, and overall progress in protecting the rights of victims. Understanding these dynamics is crucial for enhancing the global response to one of the most urgent human rights challenges of our time. The scarcity of doctrinal studies that comprehensively interweave the opinions of these Committees has created a gap that this chapter aims to fill by employing a qualitative and inductive methodology. The aim is to examine both the general recommendations and the case law that emanates from them. And the starting premise is that in the current fragmenting legal framework on violence against women, the need for gender mainstreaming is of particular importance.

While the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) and its Committee are the focus of this research, we will explore the interrelationship between the CEDAW Committee and other human rights committees to discern how these bodies are responding to the concept of violence against women. This approach will not only shed light on the proper application of the gender perspective in the totality of human rights, but will also allow us to assess possible synergies and cross-fertilization in the treatment of gender and violence against women. Thus, this chapter will contribute to the understanding of how the various major human rights treaty bodies have interpreted violence against women within the framework of international human rights law (IHRL).

In order to do so, it will be essential to theoretically anchor the nature of human rights and, in particular, of the so-called “women’s human rights.” Thus, first, we will analyze the consequences that the fragmentation of IHRL has for the treatment of “violence against women. In second place, we will address the fragmentation nature in Human Rights bodies, taking into account

cultural and gender representation. In the following section, the objective will be to review all the general recommendations that have to do with violence against women issued by human rights committees other than CEDAW, in order to try to understand the degree of interdependence and coherence in their interpretative response to the concept of violence against women. Finally, the conceptualization and application of the prohibition of violence against women will be explored in depth through a table showing the most relevant cases in the jurisprudence of the different Committees (other than CEDAW). The chapter ends with some conclusions.

The Place of Violence against Women in a Fragmented International Human Rights Law

The development of general human rights has been conditioned, to a large extent, by the application of a *cispatriarchal* and colonial perspective. Throughout history, the universality of human rights has been interpreted and applied from a specific predominantly Western and male cultural framework, which has led to the underestimation of the particular experiences and needs of diverse groups, especially those marginalized by patriarchal systems and hegemonic Western visions.

From a legal perspective, recognizing this criticizable bias in turn entails the need to correct the deficiencies inherent in the general application of the concept of “violence against women” within a universal but fragmented system of human rights protection. In fact, the fragmentation of this sector, which has materialized in the adoption of a good number of regional treaties on the subject, has been very useful in rectifying historical omissions and biases, making it possible to address more effectively certain violations of rights that have been systematically ignored at the universal level. This friendly face of normative fragmentation not only seeks to ensure a more comprehensive and effective protection of human rights, but also to challenge and dismantle the power structures that have perpetuated limited and exclusionary visions in the interpretation and application of human rights. The sectorialization of human rights, therefore, stands as a fundamental positive legal response to build a more inclusive framework that is sensitive to diverse cultural and social realities.

For its part, the fragmentation of the international legal framework protecting against violence against women has not led to gender

mainstreaming but, on the contrary, has resulted in a tendency to relegate it to a very specific area, thus revealing the negative side of this fragmentation. Instead of addressing violence against women as a problem that cuts across all areas of human rights, there is a tendency to treat it as a separate issue, relegating it to a separate category. The establishment of a sort of international legal “ghetto” is the result of this fragmented response, as violence against women is not addressed comprehensively across all relevant areas of human rights, but is treated as an isolated issue, making it difficult to address it effectively and comprehensively.

The adoption of an increasing number of specialized or targeted legal instruments for the protection of certain rights or vulnerable groups has broadened the scope of the international human rights’ normative framework, but has also given rise to debates about the possible hierarchization of these rights and the lack of a holistic approach¹, which particularly affects the treatment of violence against women. The legal challenge lies in harmonizing these sectoral regulations with the general principles of the international human rights system from a gender perspective. Finally, fragmentation also raises questions about the effectiveness of mechanisms for implementing and monitoring these specific rights. The creation of specialized bodies and procedures can strengthen the protection of certain human groups, but could also generate challenges in terms of coordination and coherence in the interpretation and application of the norms².

From the feminist perspective of international law in which this chapter is situated, it is crucial to address the challenges arising from fragmentation in order to ensure effective and coherent implementation of each and every sectoral human rights case of women’s rights, while ensuring the integrity of the global system³. As far as violence against women is concerned, fragmentation has been perverse, as it has led to a strong tendency to treat women as a minority, and their human rights violations as exclusively sectoral, placing general human rights in a completely heteronormative and male-dominated space. Thus, women have been constructed as “outsiders” in IHRL,

¹ Hannum, H., et al., *International Human Rights: Problems of Law, Policy and Practice*, Aspen Publishing, Boston, 2023, p. 754.

² Cabrera Vélez, J. A., et al., “Los derechos humanos de primera y segunda generación y su realización por parte de los estados,” *Magazine de las Ciencias: Revista de Investigación e Innovación*, vol. 5, no. 7, 2020, pp. 116-124.

³ Essink, J., Quintavalla, A., and Temperman, J., “The Indivisibility of Human Rights: An Empirical Analysis,” *Human Rights Law Review*, vol. 23, 2023, pp. 1-18.

as the paradigm of the foreign subject and not as “the subject”⁴. For example, the praetorian construction of the concept of torture in IHRL, as it has been defined and understood by international tribunals over time, tends to focus on experiences suffered by white men, often as a result of defending their ideas or political acts in the public sphere⁵. This excludes such reliable cases of torture as sexual slavery or marital rape or other forms of violence against women. In fact, rape, sexual slavery or forced nudity only began to be criminalized as torture in the 1990s under international criminal law through pioneering but isolated judgments of ad hoc criminal tribunals.

This biased and patriarchal interpretation of the body of norms protecting violence against women has also been reproduced in relation to the notion and development of the concept of “jus cogens.” If this category grants extra protection and aggravated responsibility for violations of the “most essential” human rights, it is necessary to analyze what has been understood by “most essential”⁶ and why racial discrimination, for example, has this consideration and not gender discrimination⁷, when this affects more than half of the world’s population.

The non-inclusion of women’s human rights among the peremptory norms fits perfectly with the fact that a good number of universal human rights conventions lack any treatment of violence against women, let alone a gender perspective. Such is the case of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982) or the Convention on the Rights of the Child (1989). But these gaps are not limited to specific human rights conventions. As the feminist theorists of the third wave had already pointed out, women could not feel represented in the International Bill of Human Rights. Despite the sound theoretical construction that allows us to assert solidly that human rights are women’s human rights, in practice the effectiveness of human rights has ignored a myriad of violence against women, dismissing expansive interpretations of gender-based protection. As O’Hare points out, men have possessed the hegemony of the

⁴Romany, C., “State Responsibility goes private: A Feminist critique of the Public/Private Distinction in Human Rights Law,” in COOK R., (eds.), *Human Rights of Women, National and International Perspectives*, University of Pennsylvania Press, Philadelphia, 1994, pp. 85-115.

⁵In fact, Article 1 of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment defines torture as “suffering (...) inflicted by a public official or other person acting in an official capacity.”

⁶Bianchi, A., “Human Rights and the Magic of Jus Cogens,” *European Journal of International Law*, vol. 19, no. 3, 2008. pp. 491-508.

⁷Simma, B., and Alston, P., “The Sources of Human Rights Law: Custom, Jus Cogens & General Principles,” *Australian Yearbook of International Law*, vol. 12, no. 1, 1992, pp. 82-108.

public sphere through which human rights have been defined⁸, which has resulted in the denial of this space to women and, therefore, to the violence they suffer. Thus, the preamble of the Universal Declaration of Human Rights (UDHR) expressly recognizes “the equal rights of men and women,” despite the predominant use of the subject “man” throughout its wording. However, it also used the term “all members of the human family” as subjects of equal and inalienable rights. Apart from this express mention of women, there is only one other specific reference to marriage rights (Article 16)⁹. The only precept that contains an allusion to women does so in a matter strongly linked to their reproductive role within the institution of marriage. This limitation reflects a vision anchored in traditional gender perceptions, focusing on the domestic sphere and reproducing stereotypes rooted in society that open a gap in the comprehensive understanding of women’s rights in all dimensions of the UDHR.

The idea present in the UDHR that women should be protected specifically in their reproductive and domestic functions, leaving aside the gender perspective that would favor a less protective and broader protection against any form of violence, is reproduced in the International Covenants of 1966. Thus, in the International Covenant on Civil and Political Rights, there are few references to women. In addition to the references to marriage and the clause on non-discrimination on grounds of sex, it is necessary to add the obligation of the States parties to guarantee equality in the enjoyment of all civil and political rights (Article 3). As for the International Covenant on Economic, Social and Cultural Rights, there is a specific reference to labor rights (Article 7)¹⁰, but it is limited to working conditions and wages, without referring to the forms of violence against women that can occur in the workplace. The non-discrimination clauses should a priori be sufficient for the human rights contained in the International Bill of Human Rights to also include violence against women, but nevertheless, there are no references to such violence.

⁸ O’Hare, U., “Realizing Human Rights for Women,” *Human Rights Quarterly*, vol. 21, 1999, pp. 365-402.

⁹ This article states: “1. Men and women, from marriageable age, have the right, without any restriction on grounds of race, nationality or religion, to marry and to found a family, and shall enjoy equal rights as to marriage, during marriage and in case of dissolution of marriage.”

¹⁰ It reads as follows “(i) Fair and equal pay for work of equal value, without distinction of any kind; in particular, women should be assured conditions of work not inferior to those of men, with equal pay for equal work.”

The 1993 Vienna Declaration on Human Rights¹¹, which also served to enshrine the concept of “women’s human rights,” would have to wait for violence against women to be explicitly addressed in law. The two issues need to be considered together in an attempt to better understand the evolution of gender in IHRL.

Firstly, the concept of “women’s human rights” has two different meanings. On the one hand, as rights shared with men and, on the other, as equal opportunities in access to all human rights, which would even lead to a request to the UN General Assembly for the adoption of an express declaration on the subject, which would take the form of the Declaration on the Elimination of Violence against Women a few months later. Although it was a “soft law” instrument that emerged after two of the CEDAW Committee’s general recommendations, it finally conceptualized violence against women 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” (Article 1).

Second, the Vienna Declaration is equally emphatic in connecting human rights and the multiple forms that violence against women can take in “public and private life, to eliminate all forms of sexual harassment, exploitation and trafficking of women (...) gender bias in the administration of justice and to eradicate any conflicts that may arise between the rights of women and the harmful consequences of certain traditional practices or customs, cultural prejudices and religious extremism.” Finally, it also alludes to the fact that “the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights”¹².

Fragmentation inside Human Rights Bodies

The fragmentation within human rights committees, particularly the Human Rights Committee, is often exacerbated by the lack of cultural and gender sensitivities among its members. These bodies are composed of experts from various legal and cultural backgrounds, yet the representation of diverse perspectives, particularly from marginalized groups, remains insufficient. This limitation can lead to decisions and interpretations of human rights norms that do not fully consider the lived experiences of women and culturally

¹¹ United Nations: A/CONF.157/23, “Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights,” Vienna, 14-25 June 1993.

¹² *Ibid.*, para. 18.

distinct communities. As a result, the committee's work may overlook or inadequately address issues like gender-based discrimination or cultural specificities in human rights violations, weakening its overall effectiveness and universality.

The Human Rights Committee is composed of 18 independent experts who are elected by the States Parties to the International Covenant on Civil and Political Rights (ICCPR). These members are chosen based on their high moral standing and recognized competence in human rights. Although they are nominated by their respective countries, they serve in their personal capacity, ensuring independence and impartiality in their decision-making. The election process aims to promote geographic and legal system diversity among members, and each member serves a four-year term, with the possibility of re-election. Despite these efforts, the Committee continues to face challenges in achieving full gender and cultural representation.

There is room for improvement in terms of the broader cultural perspectives represented on these committees. While geographical regions are often fairly balanced (especially within CEDAW and the CESCR), there is often an underrepresentation of individuals from indigenous or more vulnerable cultural groups. The tendency to favor candidates from more politically influential or economically dominant regions can overshadow the inclusion of perspectives that are essential for a more holistic understanding of human rights issues, particularly concerning economic and social rights.

As of the most recent data in 2024, the gender and cultural composition of three key human rights committees within the UN system can be summarized as follows:

- Human Rights Committee (CCPR): This committee is composed of 18 members. Currently, 9 out of 18 members are women, making up 50% of the total membership. The members represent a wide range of legal, cultural, and regional backgrounds, though Western and Eastern Europe, Latin America, Africa, and Asia are all represented. However, the balance can sometimes reflect political alliances more than true cultural diversity, especially when considering underrepresented voices from indigenous or marginalized communities.
- Committee on Economic, Social and Cultural Rights (CESCR): The CESCR also consists of 18 experts, with women currently making up 44.4% (8 women). This committee sees broad representation from regions including Africa, Latin America, and Asia-Pacific, but

cultural diversity in terms of socioeconomic and gender perspectives is sometimes critiqued, with certain regions being overrepresented relative to others, like Western Europe.

- Committee on the Elimination of Discrimination Against Women (CEDAW): The CEDAW Committee, which focuses specifically on women's rights, has 23 members. Currently, the vast majority are women, with 96% of members being female¹³. This committee generally prioritizes cultural representation, though it is worth noting that representation from some regions, particularly the Middle East and underrepresented indigenous communities, could be more robust.

The fragmentation within human rights committees does not stem primarily from the balance of men and women in their composition, but rather from the absence of a truly feminist reading of human rights. While efforts have been made to ensure gender parity among members, these measures fall short of addressing the deeper need for a cohesive and transformative approach that embraces a feminist perspective across all human rights domains¹⁴. A feminist interpretation would not only recognize gender-based discrimination but also integrate an understanding of how patriarchal structures perpetuate violence against women in all spheres, including political, social, and economic life. This perspective is often met with resistance, particularly when addressing issues like domestic violence, reproductive rights, and economic inequality - areas where conventional human rights frameworks can sometimes fail to protect women effectively¹⁵.

Furthermore, achieving a consistent and unified human rights body requires embedding feminist principles into the normative structure itself. This means recognizing the indivisibility of all human rights and ensuring that women's rights are not seen as peripheral or secondary concerns. A feminist lens would enhance the coherence of the normative body by addressing gender-based violence and discrimination as central issues, without reducing them to mere subsets of civil and political rights. This holistic perspective would align with the goal of constructing a unified and comprehensive human rights framework that can robustly respond to the specific vulnerabilities

¹³ <https://www.ohchr.org/en/treaty-bodies/cedaw/membership>.

¹⁴ Radacid, I., "Feminism and Human Rights: The Inclusive Approach to Interpreting International Human Rights Law," *UCL Jurisprudence Review*, vol. 14, 2008.

¹⁵ Qureshi, S., "The Recognition of Violence against Women as a Violation of Human Rights in the United Nations System," *South Asian Studies*, vol. 28, no. 1, 2013.

women face, ensuring that all rights are protected without internal fragmentation or conceptual resistance.

This underscores the ongoing challenges the UN faces in ensuring that its committees reflect not just a gender balance but also diverse cultural and social perspectives that are critical for addressing global human rights concerns comprehensively.

As pointed out Minkowitz, lack of gender sensitivity in Human Rights Committee in its applications and interpretations is clear. She argues that the committee's draft comments often overlook the complexities of women's experiences, particularly regarding gender-based violence and discrimination¹⁶. It is evident that an intersectional approach, which acknowledges the unique challenges faced by marginalized women, is essential. This perspective calls for the integration of feminist viewpoints to enhance the effectiveness and inclusivity of human rights norms.

Significant progress has been made in the composition of human rights bodies, leading to more comprehensive recommendations and jurisprudence on violence against women. These developments reflect a growing recognition of gender-based violence as a human rights issue. However, despite these advances, international human rights law has yet to present itself as a fully unified and coherent system. Fragmentation persists in how various committees interpret and apply these standards, preventing a consistent, integrated framework that effectively addresses violence against women across the international legal landscape.

The inclusion of GR 12, GR 19 and GR 35 of the CEDAW Committee in the General Recommendations of the Other Committees

Over the past decades, various committees, such as the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Committee (HRC), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on Migrant Workers (CMW), the Committee against Torture (CAT) and the Committee on the Rights of Persons with Disabilities (CRPD),

¹⁶ Minkowitz, T., "Reparation for Psychiatric Violence: A Call to Justice," in Stein, M, A., Mahomed, F., Patel, V., And Sunkel, C. (eds.), *Mental Health, Legal Capacity, and Human Rights*, Cambridge University Press, 2021, pp. 44-55.

have issued crucial recommendations specifically addressing violence against women. This analysis proposes to explore them in detail, while also assessing their degree of response. From equal economic, social and cultural rights to non-discrimination and the promotion of sexual and reproductive health, these general comments provide an essential normative framework.

The impact of this set of general recommendations of the Committees on the development of IHRL is clear. If these bodies are mechanisms for monitoring their respective treaties, the general recommendations that they adopt serve as a standard of interpretation and development of the conventions despite their nature as recommendations. They are useful, in turn, for updating treaty provisions from more current perspectives, clarifying abstract or unclear concepts in the text, or addressing technical challenges in the application of the treaties. Analyzing the general recommendations of all the committees in relation to the concept of “violence against women” is a requirement that connects directly with the interdependence of human rights. In addition, this study explores the interconnectedness between the different areas of human rights and how their collective realization contributes to the promotion of gender equality.

The general recommendations address interdependent dimensions of rights, from equality in the economic and social sphere to non-discrimination and protection of sexual and reproductive health. However, this analysis will explore only the concept of “violence against women” established in CEDAW in the recommendations analyzed, recognizing that the full realization of one set of rights is inextricably linked to the effective enjoyment of others. With this objective in mind, the following table (see Table 1) offers a systematic overview of the general recommendations issued by various Committees, highlighting their observations in relation to women’s human rights and, especially, their reception of the concept of violence established by the CEDAW Committee. In order to provide a clear and concise reference tool, this table identifies the specific observations of each committee whenever violence against women is directly addressed.

The Committee on Economic, Social and Cultural Rights (CESCR) has addressed issues related to access to education, housing and work from a gender perspective, recognizing that economic and social inequalities are often rooted in entrenched gender norms. However, many of the issues referred to do not address violence against women, which is present in only two of its general recommendations, 16 and 22. In the first of these, on “the equal right of men and women to the enjoyment of economic, social and cultural rights,” three different concepts of violence are used. On the one hand, it emphasizes

the obligation of states parties to provide safe accommodation for victims of “domestic violence,” later clarifying that this type of violence occurs mainly against women. The same recommendation uses the term “gender-based violence” to refer to a form of discrimination that undermines the enjoyment of rights. Finally, the term “violence against men and women” is preferred as a reminder of states’ due diligence obligations. On the other hand, the CESC dedicates GR 22 to sexual and reproductive health, recognizing the freedom to make decisions and choices free of violence, within the scope of the right to sexual and reproductive health. This right would also include effective protection against all forms of violence, such as systematic rape, sexual slavery, forced pregnancy and high-risk forced sterilization. According to this recommendation, the full enjoyment of sexual and reproductive health requires the prevention and correction of harmful practices, including female genital mutilation, forced marriage and sexual violence.

Table 1. General recommendations issued by various committees, highlighting their observations in relation to women’s human rights

Committee	General Comment
CESCR	No. 16: Equal Rights of Men and Women to Enjoy ESC Rights (Art. 3)
CESCR	No. 20: Non-Discrimination and Economic, Social, and Cultural Rights
CESCR	No. 22 (2016): Right to Sexual and Reproductive Health (Art. 12)
CCPR	No. 4: Equal Rights of Men and Women in the Enjoyment of Civil and Political Rights (Art. 3)
CCPR	No. 18: Non-Discrimination
CCPR	No. 28: Equality of Rights between Men and Women (Art. 3)
CRC	Joint General Comment No. 18 of the Committee on the Rights of the Child and Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women on Harmful Practices
CRC	Revision of Joint General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices and General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women
CMW	No. 1: Migrant Domestic Workers
CRPD	No. 3: Article 6 - Women and Girls with Disabilities (Adopted August 26, 2016)
CRPD	No. 6: Article 5 - Equality and Non-Discrimination (Adopted March 9, 2018)

As for the Human Rights Committee (HRC), it only addresses violence against women directly in GR 28, and it does so in a very limited way in order to bring up the “vulnerability” of women in situations of armed conflict, coinciding with the launching of the MPS program in the UN Security Council. The recommendation urges states to take measures to protect women from rape, abduction or “other forms of gender-based violence,” in the terminology used by this body.

The Committee on the Rights of the Child (CRC) also has only one general recommendation directly addressing the issue, being also joint with the CEDAW Committee, which is also very late as it dates from 2019. Both committees highlight “the gender dimension of violence,” urging states to prosecute those who “commit acts of discrimination against women and girls, including gender-based violence.” The recommendation gives special consideration to “girls who flee to avoid female genital mutilation, forced marriage or so-called honor crimes, all of which are absent from CEDAW.

With regard to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), it should be noted that the monitoring body for this Convention entered into force in 2003, a date when the treaties began to include a certain gender perspective in their provisions. Of particular note is GR 1, which recognizes that migrant domestic workers face additional risks related to “gender-based violence,” calling on states to incorporate a gender perspective in addressing all problems associated with migrant women.

Despite not being a specific recommendation, it is noteworthy the Committee against Torture (CAT) GR 4 (2017), in which this body sets out a non-exhaustive list of examples of human rights situations that may constitute an indication of a risk of torture, including among them “violence against women, including rape.”

Finally, it should be noted that the International Convention on Persons with Disabilities (CRPD), being more contemporary, has also incorporated, to a certain extent, a gender perspective, so that, in this case, GR 3 delves deeper into the meaning and scope of such violence. In it, the Committee requests states to take measures in relation to “sexual and reproductive health and rights, as well as gender-based violence, including sexual violence.” It has great value in clarifying the concept of violence against women, striving to define what such acts would be in relation to women with disabilities¹⁷.

¹⁷ Examples of violence, exploitation and/or abuse against women with disabilities that violate Article 16 include: the acquisition of a disability as a result of violence or physical force;

It is noteworthy that in this set of general recommendations of all the human rights committees there is no consensus in the use of terms, with “violence against women” sometimes being used, “gender-based violence” being preferred, and “gender-based violence” being used in a minority. Also noteworthy is the small number of recommendations and the fact that two of the nine committees, the Committee on Enforced Disappearances and the Committee on the Elimination of Racial Discrimination, have not yet issued a specific recommendation on this issue. In the case of those that have, their considerations have focused on clarifying the link between their respective conventions and violence against women, highlighting some of their articles and providing examples of practices that constitute this form of violence. This approach, in our view, contributes significantly to the construction of a coherent concept of violence against women, while promoting the interdependence of human rights and the necessary gender mainstreaming.

Challenges of Recognition: Jurisprudence on Violence Against Women in Human Rights Committees

The jurisprudence of the human rights committees has undergone a continuous evolution in the treatment and approach to violence against women; underscoring the importance of integrating gender considerations into the interpretation and application of human rights. As stipulated in the Vienna Declaration, “the treaty monitoring bodies should include the issue of the status of women and the human rights of women in their deliberations and conclusions, using specific data disaggregated by sex”¹⁸.

economic coercion; trafficking and deception; misinformation; abandonment; lack of free and informed consent and legal coercion; neglect, including denial of access to or withholding of medication; removal or control of communication supports and denial of communication assistance; denial of personal mobility and accessibility, e.g., removal or destruction of accessibility features such as ramps, assistive devices such as white canes, or mobility devices such as wheelchairs; refusal by caregivers to provide assistance with activities of daily living, such as bathing, managing menstruation and/or sanitation, dressing and eating, which makes it difficult to exercise the right to live independently and to be free from degrading treatment; deprivation of food or water, or the threat to do so; fear through intimidation, verbal aggression and ridicule on the grounds of disability; harm or threat to harm, kill or take away pets or assistance dogs or destroy objects; psychological manipulation; and control, for example, by restricting face-to-face or virtual access to family, friends or others.

¹⁸ United Nations: A/CONF.157/23, *op. cit.*, para. 42.

The committees have recognized that men's and women's experiences of certain rights may differ and that human rights violations often have different gender dimensions. Several of them, such as the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee against Torture (CAT), have opted for the concept of "gender-based violence" in their deliberations and decisions. This approach involves considering how gender issues affect the application of fundamental rights in individual cases, and how government policies and practices may have a differential impact on men and women. However, it is also illustrative that this has not been the case in all committees.

Thus, finally the Committee against Torture (CAT) has had to examine cases of torture related to violence against women, recognizing the importance of addressing specific forms of torture and ill-treatment that specifically affect women and girls, including trafficking for sexual exploitation and other forms of gender-based violence.

At the level of the Human Rights Committee (HRC), there has been an increased awareness of the need to address gender issues in cases related to freedom of expression, privacy and non-discrimination, and torture. In the context of the HRC, there has been a growing recognition of gender issues affecting children. This includes the realization that violence against girls has not been reflected in a differentiated manner, as it should be, in the work of that body. As for the Committee on Persons with Disabilities (CRPD), the intersectionality between disability and gender has been emphasized. The committee has recognized that persons with disabilities, especially women and girls, may face specific forms of discrimination and violence. States have been urged to take specific measures to address these intersections and to ensure that policies and practices are inclusive and sensitive to gender and disability.

Table 2. Sample cases of violence against women

Committee	Case	Reference	Issue
CCPR	Karen Noelia v. Peru	1153/2003	Reproductive Rights
CAT	V.L. v. Switzerland	262/2005	Violation
CAT	E. K. W. v. Finland	490/2012	Violation
CCPR	Siobhán Whelan v. Ireland	2425/2014	Reproductive Rights
CAT	A.Y. v. Switzerland	887/2018	Gender Persecution
CRC	F.M.A and H.R.A. v. Denmark	140/2021	Female Genital Mutilation

On the other hand, it is true that there are not a large number of opinions that have specifically addressed violence against women outside the CEDAW Committee. However, we include here Table 2, which lists sample cases in which violence against women has been the main consideration.

In the first case (*Karen Noelia v. Peru*), the refusal to perform an abortion on an adolescent girl was qualified by the Human Rights Committee (HRC) as an act of violence, condemning Peru for the violation of several precepts of the Covenant (arts. 2, 7, 17 and 24¹⁹), based on GR 17, which urges states to reduce infant mortality. It is noteworthy in this case that the opinion overlooks the general recommendations of the CEDAW Committee on the issue of violence against women, which it uses to justify its arguments.

In the case of *V.L v. Switzerland*, the Committee against Torture (CAT) ended up considering the rape of the victim by public officials as torture²⁰, in a belated but necessary reading of this crime from a gender perspective, literally indicating that a form of “gender-based discrimination” was taking place. This was despite Swiss allegations that her testimony was not credible because she had filed the complaint late in the proceedings. Years later (*E.K.W. v. Finland*), the CAT again convicted another state of rape as torture on the grounds that the risk was inferred from a situation of widespread violence against women in the state where the woman was intended to be deported, which was the Democratic Republic of Congo. A third pronouncement, in the 2018 case of *A.Y. v. Switzerland*, once again reiterates the consideration of violence against women as acts of torture, taking into account the situation of the country to which the woman could be deported and relying on the final report of the CEDAW Committee on Eritrea. This demonstrates a clear follow-up and recourse to the CEDAW Committee’s background in relation to women’s human rights, producing a real cross-fertilization²¹. This case highlighted the risk of torture faced by women for not volunteering for compulsory military service, the consequences of which include multiple forms of abuse, including sexual violence, rape or threats of rape, and sexual harassment.

Reproductive rights have been studied by the Human Rights Committee (HRC) on two occasions. In the aforementioned case, *Karen Noelia v. Peru*, Article 24 was violated because a pregnant adolescent was forced to carry to term the pregnancy of a fetus with serious harm, putting her life at risk. In the

¹⁹ Human Rights Committee: 1153/2003, “*Karen Noelia v. Peru*,” 22 November 2005.

²⁰ Committee Against Torture: 262/2005, “*V.L. v. Switzerland*, Committee,” 20 November 2006.

²¹ Sveaass, N., and Gaer, F., “The Committee Against Torture Tackles Violence Against Women: A Conceptual and Political Journey,” *Torture Journal*, vol. 32, no. 1-2, pp. 177-192.

case of *Siobhán Whelan v. Ireland*, the submission of the communication was based on Article 7, concerning torture and other cruel, inhuman or degrading treatment or punishment. But it is interesting to note that this action was not initiated through the CAT but through the HRC, perhaps knowing the lack of gender perspective of the former. Ireland forced the appellant to continue the gestation of a fetus knowing that it was going to die, in violation of Article 7, as she had been inflicted with severe suffering and was forced to have an abortion abroad, although therapeutic abortion was provided for in her country. In this case, the HRC rejects the margin of appreciation doctrine in a constructive dialogue with the European Court of Human Rights, concluding that states cannot use any justification to violate Article 7²². What is relevant in relation to the concept of “violence against women” is that the opinion states that “the criminalization of abortion [...] subjected her to a gender stereotype that a woman’s primary function is reproductive and maternal,” which can be connected to a form of violence. This, moreover, is ratified by the condemnation of Ireland for violating Article 26, an anti-discrimination clause that includes the ground of sex. However, this assessment does not appear expressly in the opinion.

In the scenario of gender persecution of refugees, the case of *F.M.A. and H.R.A. v. Denmark*, before the Committee on the Rights of the Child (CRC), should also be highlighted. In this case, the possible expulsion of a girl to Somalia to be subjected to female genital mutilation was analyzed, and the CRC concluded that articles 3 and 19 of the Convention had been violated²³. For this, it argues that “female genital mutilation constitutes forms and manifestations of child-specific persecution, which may justify the granting of refugee status.” However, the CRC does not say that these are forms of persecution against women or gender-based persecution, despite urging States to take special account of “gender-based violence” against girls.

The above jurisprudence constitutes a broad sample of cases in which the different committees take into consideration some type of violence against women, but in which there is neither a single terminology nor a unanimous criterion to guide the work of the CEDAW Committee, which reveals the lack of coordination between the human rights treaty bodies.

²² Human Rights Committee: 2425/2014, “*Siobhán Whelan v. Ireland*,” 11 July 2017, para. 7.

²³ Committee on the Rights of the Child: 140/2021, “*F.M.A. and H.R.A. v. Denmark*,” 23 June 2023.

Conclusion

Reflections on the impact of the fragmentation of international human rights law on the subject under analysis highlight one reality: violence against women has suffered and benefited, in equal parts, from this fragmentation. On the one hand, the enshrinement of the concept of “women’s human rights” and its adoption by CEDAW have made it possible to endow this branch of international law with a gender perspective. On the other hand, this perspective is very unevenly present in the texts of the “core conventions,” leaving a real gender mainstreaming pending. This is why violence against women has been confined, almost entirely, to the scope of CEDAW, with the rest of the universal system for the protection of human rights remaining a markedly androcentric space.

Two instruments of the so-called soft law of international human rights law, the Vienna Declaration and the Declaration on the Elimination of Violence against Women, were responsible for transferring the concept of “violence against women” to the general framework, something that the CEDAW Committee has also done through its general recommendations. The three recommendations (12, 19 and 35) are an essential part of the normative framework on violence against women in the universal system of human rights protection, giving meaning and scope to such violence and confirming that its prohibition in the case of armed conflict may already be customary law. The challenge to CEDAW by way of reservations does not preclude its categorization as an “*erga omnes*” norm, demonstrating the strength of the normative framework over and above political and interpretative challenges.

The fragmentation among members of human rights bodies regarding the recognition of violence against women as a human rights violation reflects broader ideological and interpretative divides. While some members advocate for a holistic and inclusive interpretation of international human rights law, recognizing gender-based violence as inherently linked to systemic discrimination, others maintain a narrower view, focusing on traditional definitions of human rights violations. This divergence hampers the development of unified, comprehensive strategies, often leaving critical issues of gender-based violence under-addressed in international forums.

In our study, we have evaluated the reception of the CEDAW Committee’s recommendations in the other committees, noting the scant echo of its work in the total number of pronouncements of these bodies. There are few observations adopted with a special focus on violence against women, with a very different degree of assimilation of the concept and, above all, a

very low centrality in some of the recommendations studied. It is noteworthy how little relevance is given to violence against women in the Human Rights Committee or the Committee on the Rights of the Child, with isolated and solitary incorporations by the Committee against Torture and absolutely none by the Committee against Racial Discrimination and the Committee on Enforced Disappearances. Similarly, the lack of opinions addressing violence against women in some of the Committees, especially the Committee against Racial Discrimination or the Committee on Economic, Social and Cultural Rights, was relevant for the elaboration of the sample.

However, a change in trend should be noted in the most recent convention bodies, the Committee on the Protection of the Rights of Migrant Workers and the Committee on the Rights of Persons with Disabilities. Both the treaties and the general recommendations of the committees address violence against women as intersectional violence.

From the jurisprudence of the committees as a whole, it is worth noting the majority preference for the term “gender-based violence” and for not using any term when violence suffered by women because they are women, which implies an intermittent and hesitant incorporation of the gender perspective. Along the same lines, the scant jurisprudence found is in itself a relevant conclusion, both in terms of women’s perception of the best channel for enforcing the protection of their human rights, and of the “use of silence” by the human rights treaty bodies. This is a form of response by omission or inaction in recognizing violence against women. In general terms, there is room for improvement in the interdependence of the committees, as there is no evidence that a common treatment of violence against women has been integrated in an automated manner, nor that the general recommendations of the CEDAW Committee have been made the backbone of all pronouncements.

In sum, most of the cases related to violence against women are channeled through the CEDAW Committee, which invites us to reflect on the parameters for considering what constitutes a violation of human rights within each convention and, above all, raises questions regarding the extent to which violence against women is being considered by the “core conventions” bodies as a violation of general human rights.

