

## **Intersectionality and the international frameworks on gender equality and the empowerment of women**

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This short intervention aims to look closely on international human rights treaties and mechanisms and their responsiveness to gender and intersectionality as an analytical framework for addressing gender inequalities. I present key developments in the international human rights law both in terms of normative framework and in terms of processes. Particularly, I will highlight how international human rights mechanisms have developed to capture violations against different identities and acknowledging gender and intersectionality. I will also bring to the discussion how these developments were featured in some of the Arab region engagement with international mechanism mainly how to operationalise normative frameworks.

One of the initial premises for this discussion is that the international human rights system is not static. Certainly, while the system provides a universal understanding of human rights that is, it does evolve as challenges to human rights in the world evolves. The International Covenants on civil, political, economic, social and cultural rights in 1966 created binding articles detailing rights enshrined in the Universal Declaration for Human Rights to hold countries accountable. Both covenants include an article on prohibited grounds for discrimination mainly: race or colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, where “other status”, by definition, would allow room to capture all of the identities that were not explicitly noted.

However, the international community have continuously adopted conventions that respond to emerging challenges in advancing human rights of particular groups (Convention on the Elimination of All forms of Discrimination against women, the convention on child rights, a convention on the rights of persons with disability and the convention on the protection of the rights of all migrant workers and members of their family) or respond to particular violations (torture, racial discrimination, enforced disappearance).

Articles in each convention expand further the opportunities to examine various intersecting identities. I will use the CEDAW convention as in example, where it provides in article 14 particular attention to rural women and their particular needs. Article 5 of the same convention requests states in paragraph (a) “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

Even when the convention fails to mention groups that requires further protection in the text itself, CEDAW Committee expands these rights in its general recommendations, which according to article 21 of the convention “shall be included in the report of the Committee together with comments, if any, from States Parties”. The general recommendation no. 18 on women with disabilities “who suffer from a double discrimination linked to their special living conditions, no. 24 on health, which provides a paragraph that emphasise the need to pay special attention to health rights of women who belong to marginalised or disadvantage groups, and no. 25 on special temporary positive measures, which addresses concerns of women with

“multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors.”<sup>1</sup>

In addition to the above, the optional protocol to the convention, which recognises the competence of the CEDAW Committee in receiving communication from individuals or groups of individuals who claim to be victims of violations according to the CEDAW conventions and some researchers documented how the committee has addressed intersectional discrimination in its jurisprudence (only three cases have been cited by researchers). In the Arab world, only Libya and Tunisia are party to the optional protocol.

Finally, the space provided to the committee to address issues of intersectionality is ample through the concluding observations made following the interactive discussion with State party. In fact, a quick review of concluding observations made by the committee shows that in addition to articles 5 and 14, the Committee has recently started to introduce a “Disadvantaged groups of women” sub-heading in its concluding observations to also consider discrimination against specific groups of women.

I would like to give some examples from the Arab countries. In its concluding observation to Qatar initial report in 2014, the committee raised concerns on “prevalence of prejudices and negative stereotypical attitudes towards migrant domestic workers, including women, and the multiple forms of discrimination that they experience based on their nationality and other grounds.”<sup>2</sup> During the periodic review of Iraq, also in 2014, the committee raises concern over the impact of increased sectarian and religious tensions on the lives of women belonging to religious and ethnic groups and their enjoyment of their rights.

More recently, in reviewing Kuwait fifth periodic report in 2017, the Committee explicitly refers to intersectionality where it “notes with concern the persistence of intersecting forms of discrimination against disadvantaged groups of women and girls, including refugee, migrant, Stateless bidun, Shia, Baha’i and other non-Muslim women and girls, Kuwaiti women married to non-Kuwaiti men and women and girls with disabilities. It notes that such discrimination is often based on multiple grounds, including gender, nationality, migration status, age, religion, disability, race and ethnicity or marriage status. It is further concerned about the exclusion of disadvantaged groups of women and girls from basic social services, access to justice, decent work, citizenship and access to birth and marriage certificates and identity documents, and their heightened exposure to risks of violence, abuse and exploitation, including sexual exploitation, forced labour and trafficking in persons.”<sup>3</sup>

Using CEDAW as an example, the above discussion is covered briefly the normative aspects of treaties. However, progress in addressing intersecting identities could be also detected from the way treaties engage with individuals and civil society organisations. In principle, civil society organisations communicating with treaty bodies must have a United Nations Economic and Social Council (ECOSOC) status. However, we have seen that treaty bodies are more open to receiving contributions and communications from various actors regardless of their ECOSOC status. We have also seen that CEDAW committee is reaching out to civil society and other concerned parties when developing its general recommendations. A trend that started

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<sup>1</sup> Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 18, 24 and 25

<sup>2</sup> Comm. On the Elimination of Discrimination Against Women, Initial Report Concluding Observations: Qatar (2014) CEDAW/C/QAT/CO/1

<sup>3</sup> Comm. On the Elimination of Discrimination Against Women, Fifth Report Concluding Observations: Kuwait (2017) CEDAW/C/KWT/CO/5

in 2012 whereby the committee calls on stakeholders to submit their views on the issues of concern. These inclusive approaches would allow hearing the voices of various groups and provide evidence for the committee to incorporate emerging concerns in its normative outputs.

Other human rights mechanisms are also an avenue to address intersecting identities. With 44 thematic mandates that are paying attention to particular subgroups through reports, country visits and direct communications with victims of violations, special procedures constitute a wealth of normative frameworks that examine combined discrimination against particular groups. Some of these include the independent expert on the enjoyment of all human rights by older persons; the special rapporteur on the rights of indigenous peoples, the special rapporteur on minority issues and others.

Some have argued that there is limited recognition of intersectional identities in international human rights law. This may be relevant when examining the legal application of human rights whereby human rights mechanisms looks into group categories (women, children, race,...) that allow for producing legal definitions<sup>4</sup>. However, the universality of human rights does not obscure the recognition of different identities. In fact, international human rights normative frameworks were established to protect the individual human rights and to protect them from human rights violations. The earlier discussion on CEDAW in this intervention also showed that the normative framework within the international human rights law adapts and evolves in response to emerging concerns and human rights violations. Hence, the CEDAW committee as well as other human rights treaties and mechanisms have been actively seeking to understand the various experiences lived by women to better address their protection needs.

If intersectionality is defined as “a form of resistant knowledge developed to unsettle conventional mindsets, challenge oppressive power, think through the full architecture of structural inequalities and asymmetrical life opportunities, and seek a more just world”<sup>5</sup> as explained by Virginia May in 2015, then it fits naturally with the international human rights mechanisms that are established to uphold the principles of equality and non-discrimination.

Intersectionality is therefore a very important analytical framework that allows human rights mechanisms to better understand the multi-dimensions and compound nature of human rights violations and hence to expand protection for all.

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<sup>4</sup> See Beco, G. “Protecting the Invisible: An Intersectional Approach to International Human Rights Law”, *Human Rights Law Review*, 2017, 633-663

<sup>5</sup> May V.M., *Pursuing Intersectionality, Unsettling Dominant Imaginaries*, Routledge, 2015, p.xi found in Truscan, I. and Bourke-Martignoni, J “International Human Rights Law and Intersectional Discrimination”, *The Equal Rights Review*, Vol. Sixteen, 2016, 103-131, p.108