

# ‘Women’s rights are human rights!’: the practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights

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## 1 Introduction

‘Women’s rights are human rights!’ This famous slogan was used by the women’s rights movement at the 1993 World Conference on Human Rights in Vienna.<sup>1</sup> The notion may seem self-evident, as the international system for the promotion and the protection of human rights that was installed under the auspices of the United Nations (UN) builds on the idea of equality in dignity and rights of men and women.<sup>2</sup> Yet, as was convincingly shown by critics of this system, it is not. The women’s rights caucus present in Vienna in 1993 made it unequivocally clear to the participating states of the World Conference that much of what women experience as everyday abuse in their lives was largely kept outside the realm of *mainstream* international human rights.<sup>3</sup> This despite the fact that it was common knowledge that women were regularly subjected to battery and torture, humiliation, sexual harassment and exploitation,

<sup>1</sup> See for example K. Boyle, ‘Stock-taking on human rights: the World Conference on Human Rights, Vienna 1993’, *Political Studies* 43:4 (1995) 79–95 at 91.

<sup>2</sup> The notion that men and women should be able to enjoy their human rights on an equal basis is found in the wording of all important international human rights instruments. See Article 1(3) UN Charter; Article 2 UDHR; Article 2(1) and Article 3 ICCPR; Article 2(2) and Article 3 ICESCR; Article 2(1) CRC; and Article 1(1) International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families (CMW). See also on the matter M. Pentikäinen, *The Applicability of the Human Rights Model to Address Concerns and the Status of Women* (Helsinki: The Erik Castrén Institute of International Law and Human Rights Research Reports, Publications of the Faculty of Law University of Helsinki, 1999) at 17.

<sup>3</sup> *Mainstream* refers in this context to those human rights treaties that do not focus specifically on the enjoyment of human rights *by women*.

forced marriages and pregnancy – issues that clearly violate internationally recognised human rights norms.<sup>4</sup>

The states represented at the World Conference recognised this deficiency of the international human rights system and laid down in the Vienna Declaration and Programme of Action, the outcome document of the Conference, that human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. Human rights of women, they held, should be integrated into the mainstream of UN system-wide activity, and these issues have to be regularly and systematically addressed throughout relevant UN bodies and mechanisms.<sup>5</sup> In this respect, the World Conference made an important call to the monitoring bodies of the international human rights treaties: in the Vienna Declaration and Programme of Action, they are requested to include the status and human rights of women in their deliberations and findings.<sup>6</sup>

Since the World Conference of 1993, considerable work has been undertaken by various UN bodies to promote the integration of women's rights in the general international human rights framework. The UN General Assembly (GA), the Commission on the Status of Women (CSW), the former UN Commission on Human Rights (UNCHR) and the former UN Sub-Commission on the Promotion and Protection of Human Rights passed resolutions supporting and encouraging the integration of women's rights into the general human rights activities of the UN.<sup>7</sup> The human rights monitoring bodies themselves also showed

<sup>4</sup> C. Bunch, 'Strengthening human rights of women' in M. Nowak (ed.), *World Conference on Human Rights – The Contribution of NGOs Reports and Documents* (Vienna: Manzsche Verlags- und Universitätsbuchhandlung, 1994) 32–41 at 33. See also Boyle, 'Stock-taking on human rights, at 91–2; and E. Friedman, 'Gendering the agenda: the impact of the transnational women's rights movement at the UN conferences of the 1990s', *Women's Studies International Forum* 26:4 (2003) 313–31 at 313–14.

<sup>5</sup> Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23, part I, para. 18, and part II, para. 37. This call was a repetition of the statement made that same year by the former Commission on Human Rights. ECOSOC, Commission on Human Rights, *Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations*, 8 March 1993, UN Doc. E/CN.4/RES/1993/46.

<sup>6</sup> Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23, part II, para. 42.

<sup>7</sup> See for example UNGA, *Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, 9 February 1995, UN Doc. A/RES/49/161; ECOSOC, Commission on the Status of Women, *Report of its Thirty-seventh Session*, 9 July 1993, UN Doc. E/1993/27; ECOSOC, *Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations*; ECOSOC, Commission on Human Rights, *Question of Integrating the Human Rights of Women into the Human Rights Mechanisms of the United Nations*, 8 March 1995, UN Doc. E/CN.4/RES/1995/86; ECOSOC, Commission

a willingness to integrate the experiences of women into their work. In response to the appeal of the World Conference in Vienna to include the status and human rights of women in their deliberations and findings, the monitoring bodies addressed the implementation of women's human rights at their meetings of the chairpersons.<sup>8</sup> Moreover, the chairpersons of the human rights bodies showed their commitment to integrating the experiences of women in the work of their committees at their eighth meeting by inviting the UN Division for the Advancement of Women (DAW) to prepare a background paper analysing the measures that had been and should be taken by the human rights monitoring bodies in order to integrate gender perspectives into their work, and by participating in workshops on the integration of gender perspectives.<sup>9</sup>

What remained to be examined was whether the human rights bodies had responded to the request to include the status and human rights of women in their deliberations and findings in their practice. To that end, a study of the work of two mainstream human rights monitoring bodies, the Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (ICESCR Committee) was conducted. The research question posed was: does the work of the HRC and the ICESCR Committee regarding matters that affect women's physical integrity reflect compliance with the request of the 1993 World Conference on Human Rights, which calls upon these Committees to include the status and human rights of women in their deliberations and findings?

on Human Rights, *Question of Integrating the Human Rights of Women throughout the United Nations System*, 19 April 1996, UN Doc. E/CN.4/RES/1996/48.

<sup>8</sup> See for example UNGA, *Report of the Fifth Meeting of Persons Chairing the Human Rights Treaty Bodies, Effective Implementation of International Instruments on Human Rights, including Reporting Obligations under International Instruments on Human Rights*, 19 October 1994, UN Doc. A/49/537, para. 34; UNGA, *Report of the Seventh Meeting of Persons Chairing the Human Rights Treaty Bodies, Effective Implementation of International Instruments on Human Rights, including Reporting Obligations under International Instruments on Human Rights*, 11 October 1996, UN Doc. A/51/482, paras. 58–61.

<sup>9</sup> See UNGA, *Report of the Eighth Meeting of Persons Chairing the Human Rights Treaty Bodies, Effective Implementation of International Instruments on Human Rights, including Reporting Obligations under International Instruments on Human Rights*, 21 October 1997, UN Doc. A/52/507, para. 62. The UNGA endorsed the request for the study in resolution 52/118. UNGA, *Report of the Third Committee (Part II)*, 4 December 1997, UN Doc. A/52/644/Add.1; and the Commission on Human Rights in Resolution 1998/27. ECOSOC, Commission on Human Rights, *Effective Implementation of International Instruments on Human Rights, including Reporting Obligations under International Instruments on Human Rights*, 17 April 1998, UN doc. E/CN.4/RES/1998/27.

This chapter first provides a brief background to the UN and women's human rights and then explains the critique voiced concerning the international system in this respect. Subsequently, it briefly discusses how the study was conducted and then presents its most important findings. In the last section of this chapter some final remarks and ideas for future action are presented.<sup>10</sup>

## 2 The UN human rights system and women's rights

All human beings are born free and equal in dignity and rights.<sup>11</sup>

The Charter of the UN, which was adopted in 1945 by fifty-one states, provides the foundation of the international human rights system as we know it today.<sup>12</sup> The UN Charter and the Universal Declaration of Human Rights (UDHR) that was subsequently drawn up both recognise that *all* human beings have human rights for the simple reason of being human. The Declaration speaks purposefully of *all human beings*, when it holds in Article 1 that all human beings are born free and equal in dignity and rights. The reference to *all men* in the original draft of the document was heavily contested during the negotiations. All parties involved in the drafting process agreed that women were just as much entitled to the rights laid down in the Declaration as men, and some members of the drafting committee argued that the terminology of *all men* could be misleading. The Russian delegate, for example, held that the assumption that *all men* included *all persons* implied a historical reflection on the mastery of men over women. He wanted the wording to be changed so as to make clear that all human beings were included.<sup>13</sup> Agreement amongst the members was found on reference to *all human beings*.<sup>14</sup>

The notion that men and women should be able to enjoy their human rights on an equal basis is part of all the main international human rights instruments. Not only do the documents that compose the so-called Bill

<sup>10</sup> For a full account of this study, the background, the theoretical framework employed, the results and final outcome, see F. van Leeuwen, *Women's Rights are Human Rights – The Practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights* (Antwerp: Intersentia, 2009).

<sup>11</sup> Article 1 UDHR.

<sup>12</sup> The UN Charter was signed on 26 June 1945 in San Francisco, at the conclusion of the UN Conference on International Organization, and came into force on 24 October 1945.

<sup>13</sup> J. Morsink, 'Women's rights in the Universal Declaration', *Human Rights Quarterly* 13:2 (1991) 229–56 at 233.

<sup>14</sup> *Ibid.* at 233–6.

of Human Rights – the UDHR and the two Covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – refer explicitly to the principles of non-discrimination and equality, but also the more specialised human rights treaties hold that States Parties shall respect and ensure the rights as laid down therein without distinction of any kind.<sup>15</sup> These documents thus grant human rights to women on an equal basis with men.

In addition to this *symmetrical* approach to equality, the UN human rights system contains an instrument that focuses solely on the enjoyment of human rights by women: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>16</sup> The CEDAW focuses on the elimination of all forms of discrimination *against women*. Article 1 of the Convention lays down that discrimination is any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise *by women*, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. In its substantive articles the CEDAW addresses various issues that are characteristic of the lives of women and their enjoyment of human rights.

Consequently, the UN human rights system aims to promote and protect the enjoyment of human rights by women in two ways: through the principles of non-discrimination and equality in its *mainstream* human rights treaties and through these principles in a *women-specific* human rights treaty.

<sup>15</sup> See Article 2(1) and Article 3 ICCPR; and Article 2(2) and Article 3 ICESCR. With regard to the specialised treaties see for example Article 2(1) CRC and Article 1(1) CMW. See also on the matter Pentikäinen, *The Applicability of the Human Rights* at 17.

<sup>16</sup> The CEDAW was adopted on 18 December 1979 and entered into force on 3 September 1981; see UNGA, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, UN Doc. A/RES/34/46. Holtmaat, for example, notes that the CEDAW is asymmetrical in its object and purpose, as it is directed at the elimination of all forms of discrimination against women and not, as is standard in other texts, the elimination of discrimination on the basis of sex. As she observes, the latter all guarantee the right not to be discriminated against on the basis of the mere fact that one is a man or a woman. This means, she holds, that these norms are symmetrical and formal by nature. R. Holtmaat, *Towards Different Law and Public Policy: The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination* (The Hague: Dutch Ministry of Social Affairs and Employment, 2004) at 7.

### 3 The critique: human rights are men's rights

From its inception in 1945 until the World Conference on Human Rights in 1993, two different strategies can be identified by which the UN sought to address women's enjoyment of human rights: by focusing on the sameness of men and women, thereby employing a strategy of formal equality and, subsequently, by focusing on the (sexual) difference between men and women, thereby choosing a strategy of specialising women's concerns. These ways exemplify the different ideas that exist in terms of addressing women's rights. Parisi refers to this in terms of the *competing feminist agendas* of *non-discrimination* and *special protections*, which, she holds, had long-lasting effects in the women's human rights movement.<sup>17</sup> Eleanor Roosevelt, at that time Chairperson of the UNCHR, for example, pointed out in the 1940s that specialisation of certain issues or rights may lead to marginalisation and stigmatisation of women.<sup>18</sup> At the same time, proponents of the *special protection approach* have argued that addressing women's rights only in a mainstream human rights framework may result in these matters being completely ignored or overlooked.<sup>19</sup>

In the period shortly after the Second World War, when the UN Charter and subsequently the UDHR were adopted, the most important tenet for women's rights proponents was that men and women were the same in rational ability and capacity for autonomy and self-determination. At that

<sup>17</sup> For example, Parisi holds that there are a multitude of feminist perspectives that result in a variety of activist strategies with regard to women's human rights. She observes that the central liberal feminist tenet that spilled over to the post-Second World War period is that men and women are the same in rational ability and capacity for autonomy and self-determination and therefore should be afforded full citizenship and its attendant rights, protections and opportunities. Yet there were others who argued that women should be conceptualised as a group marked by sexual difference and that special protection was needed to 'level the playing field'; only in that way could women advance in individual self-determination and self-governance. L. Parisi, 'Feminist praxis and women's human rights', *Journal of Human Rights* 1:4 (2002) 571–85 at 571–2.

<sup>18</sup> *Ibid.* at 572–3. The comments were made in regard to the status of the CSW, which was to be either a sub-body to the UNCHR or a separate body. Roosevelt and a number of others felt that the singling out of a group for *special* rights could lead to stigmatisation, backlash and marginalisation. For them, the preferable alternative was to seek inclusion in the primary UN human rights body rather than trying to establish 'separate but equal' human rights institutional mechanisms for women and men. They therefore opposed the idea of the CSW as a separate body in the UN.

<sup>19</sup> See for example H. Charlesworth, 'Not waving but drowning: gender mainstreaming and human rights in the United Nations', *Harvard Human Rights Journal* 18:1 (2005) 1–18 at 1; and L. Reanda, 'Human rights and women's rights: the United Nations approach', *Human Rights Quarterly* 3:2 (1981) 11–31 at 12.

time, only thirty of the original fifty-one UN Member States had given women equal voting rights or permitted them to hold public office. The main goal of women's rights proponents was, therefore, to achieve equal legal status, and hence for women to be accorded the same rights as men.<sup>20</sup> Consequently, their position was focused on the concept of *sameness*, rather than on *difference*.<sup>21</sup> This idea of sameness is reflected in all human rights documents that were drawn up after the inception of the UN as they refer to the principles of non-discrimination and equality. These principles, in the formal sense, imply that men and women live similar lives and experience similar abuses and constraints.

This approach failed to ensure enjoyment of human rights by women, for men and women do not live similar lives. From the moment of birth, human beings are differentiated according to sex, being either a boy or a girl. Sex is the first factor that defines a human being in society, and it accordingly places the person in a maze of expectations, customs, practices and constraints that stipulate his or her life. Since the biological and gender-related aspects of men and women differ, so do their lives and their experiences. Consequently, in a system that is based on a concept of sameness that does not exist in practice, rights of men and women are not equally protected. Since the general picture of gender relations throughout the world still portrays an asymmetry of power between men and women, with women generally being subordinate to men, it is men's rights that dictate the international human rights system.<sup>22</sup> Bunch, amongst others, points out that degrading events commonly identified with the lives of men are addressed in the wording and interpretation of the provisions of the mainstream human rights instruments, but experiences common to the lives of many women are not covered by their protection.<sup>23</sup> Thus,

<sup>20</sup> Division for the Advancement of Women, *The Four Global Women's Conferences 1975–1995: Historical Perspective*, available at: [www.un.org/womenwatch/daw/followup/session/presskit/hist.htm](http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm) (last accessed 16 February 2012).

<sup>21</sup> Parisi, 'Feminist praxis and women's human rights' at 572.

<sup>22</sup> See for example C. Bunch, 'Transforming human rights from a feminist perspective' in J. Peter and A. Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* (London: Routledge, 1995) 11–17 at 13; UN, *The 1999 World Survey on the Role of Women in Development* (New York: UN, 1999) at ix; and J. Marshall, 'Feminist jurisprudence: keeping the subject alive', *Feminist Legal Studies* 14:1 (2006) 27–51 at 42.

<sup>23</sup> Bunch, 'Transforming human rights from a feminist perspective' at 13. See also, for example, U. O'Hare, 'Realizing human rights for women', *Human Rights Quarterly* 21:2 (1999) 364–402 at 368–71; R. Copelon, 'Intimate terror: understanding domestic violence as torture' in R. J. Cook (ed.), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994) 116–53 at 116–17.

the insertion of the principles of non-discrimination and equality into mainstream international human rights instruments did not necessarily guarantee that human rights of both men *and* women were promoted and protected by the system. In reality, human rights were men's rights: the *male* experience was accepted as the norm, or, as Parisi notes, as the *human* experience.<sup>24</sup> Abuses, exclusions and constraints that are more typical of women's lives were neither recognised nor protected by the human rights instruments.

The adoption of the CEDAW in 1979 was meant to overcome this deficit, but in practice failed to do so. Critics showed that the establishment of mechanisms dealing exclusively with the enjoyment of the human rights of women, including the CEDAW, led to the marginalisation of women's rights.<sup>25</sup> Although the adoption of the CEDAW did mean that women's rights were expressly placed in the ambit of international human rights, critics pointed out that the rights of women were still ignored by the mainstream human rights mechanisms. Mainstream monitoring bodies did not address blatant violations of women's dignity as gross violations of human rights and left these issues up to the specialised CEDAW Committee to deal with.<sup>26</sup> As Charlesworth notes, the existence of special women's institutions such as the CEDAW Committee and the CSW had allowed comparable but male-dominated forums such as the UNCHR and the HRC to claim a general mandate that carried greater prestige and power. The effect of this was that women's interests were ghettoised: the creation of *women's institutions* meant that mainstream human rights bodies and institutions tended to downplay the application of human

<sup>24</sup> Parisi, 'Feminist praxis and women's human rights' at 577; See also, for example, S. Peterson and L. Parisi, 'Are women human? It's not an academic question' in T. Evans (ed.), *Human Rights Fifty Years On: A Reappraisal* (Manchester University Press, 1998) 132–60 at 141.

<sup>25</sup> See for example A. Byrnes, 'Women, feminism and international human rights law – methodological myopia, fundamental flaws or meaningful marginalisation?: some current issues', *Australian Yearbook of International Law* 12 (1992) 205–40 at 205–6; A. Gallagher, 'Ending the marginalization: strategies for incorporating women into the United Nations human rights system', *Human Rights Quarterly* 19:2 (1997) 283–333 at 285; R. Johnstone, 'Feminist influences on the United Nations human rights treaty bodies', *Human Rights Quarterly* 28:1 (2006) 148–85 at 151; Charlesworth, 'Not waving but drowning' at 1; Reanda, 'Human rights and women's rights' at 12.

<sup>26</sup> Reanda speaks of a *ghettoisation* of questions relating to women; the concerns of women will be relegated to mechanisms with generally fewer resources and less power than the mainstream human rights mechanisms. Reanda, 'Human rights and women's rights' at 12.



rights norms to women on the implicit assumption that women's rights were beyond their concern.<sup>27</sup>

In 1993 at the World Conference on Human Rights, 171 states adopted the Vienna Declaration and Programme of Action by consensus, and in doing so acknowledged this criticism of the UN human rights system.

#### 4 The study: are women's rights human rights?

The concept of human rights, like all vibrant visions, is not static or the property of any group; rather, its meaning expands as people reconceive of their needs and hopes in relation to it. In this spirit, feminists redefine human rights abuses to include the degradation and violation of women. The specific experiences of women must be added to traditional approaches to human rights in order to make women more visible and to transform the concept and practice of human rights in our culture so that it takes better account of women's lives.<sup>28</sup>

This statement made by Bunch sums up the assignment given to the human rights monitoring bodies by the World Conference on Human Rights in Vienna in 1993.

In order to answer the question of whether the work of the HRC and the ICESCR Committee reflects compliance with the request of the 1993 World Conference on Human Rights to include the status and human rights of women in their deliberations and findings, it was pivotal to conduct a preliminary study so as to determine what was asked specifically of the human rights monitoring bodies in the Vienna Declaration and Programme of Action. To obtain a good understanding of this request and what it actually entails for the human rights monitoring bodies, a variety of documents was examined. The starting point was necessarily the Vienna Declaration and Programme of Action of 1993, as well as the Beijing Declaration and Platform for Action of 1995, the outcome document of the Fourth World Conference on Women. In addition, UN reports that follow up on the request of Vienna and its implications for

<sup>27</sup> H. Charlesworth, 'Transforming the United Nations men's club: feminist futures for the United Nations', *Transnational Law and Contemporary Problems* 4:2 (1994), 421–54 at 446. See also O'Hare, 'Realizing human rights for women' at 367–8; H. Charlesworth, 'What are "Women's International Human Rights"?' in R. J. Cook (ed.), *Human Rights of Women: National and International Perspectives* 58–84 at 59.

<sup>28</sup> C. Bunch, 'Women's rights as human rights: toward a re-vision of human rights', *Human Rights Quarterly* 12:4 (1990) 486–98 at 487.

the Committees were studied. These reports and writings contain input from women's rights experts and for that reason also reflect to some extent the criticism of the UN human rights system that was expressed at the 1993 World Conference as well as before. Three documents were of particular importance for the preliminary study: the 1995 report of the expert group meeting on the development of guidelines for the integration of gender perspectives into UN human rights activities and programmes, organised by the former UN Centre for Human Rights and the UN Development Fund for Women (UNIFEM); the 1998 report of the DAW on integrating the gender perspective into the work of UN human rights treaty bodies; and the 1999 report of the workshop on gender integration into the human rights system, organised by the Office of the High Commissioner for Human Rights, the DAW and UNIFEM. Moreover, documents, including many academic writings on women's rights, especially in the context of the UN human rights system, were used to further clarify the request of the 1993 World Conference.

On the basis of the aforementioned documents, four elements of the request of the 1993 World Conference were identified, each of which represents an assignment for the human rights monitoring bodies. In order for the work of the HRC and the ICESCR Committee to reflect compliance with the request from Vienna, it needs to show attention of the two Committees to issues that specifically affect women and their enjoyment of human rights (Element I); to display human rights obligations for States Parties that adequately address these gendered issues, that is, women-inclusive human rights obligations (Element II); to relate these gendered issues to discrimination against women where applicable (Element III); and to address these issues in an integrated manner (Element IV).

Consequently, the request of the World Conference does not only imply an 'add and stir' of women's human rights into mainstream human rights practice – the monitoring bodies are not only asked to pay attention to degrading issues that are common to the lives of women, but they are also requested to change their concept of human rights abuses and their approach to addressing these. In order to comply with the Vienna assignment, they have to move beyond stating mere violations and address their causes.

The four elements mentioned served as a framework for answering the main research question. In order to examine the work of the two Committees, the entire work volume of the HRC and the ICESCR Committee was studied from 1993 until 2010: their Concluding

Observations (COs), General Comments (GCs), Lists of Issues, Reporting Guidelines and Views. Where the statements of the Committees in their COs needed clarification, the Summary Records of the *constructive dialogues* with States Parties were consulted. The following section presents the findings of the study.

## 5 The findings

### 5.1 *Element I: issues that specifically affect women*

The HRC and the ICESCR Committee pay attention to a variety of issues that affect women's physical integrity. It is noteworthy that the Committees not only address issues that had already gained general international attention as human rights abuses at the 1993 World Conference on Human Rights, but also discuss issues that are not mentioned in the Vienna Declaration and Programme of Action and were not commonly linked to provisions of their respective mandates.<sup>29</sup> Attention should first of all be drawn to the extensive work of the Committees on manifestations of physical violence against women. In many of their COs, the HRC and the ICESCR Committee pay attention to rape, domestic violence, trafficking in women, sexual harassment and female genital mutilation (FGM).<sup>30</sup> Violence against women, including domestic and sexual violence, has been the focus of human rights forums in the last decades. In 1992 the CEDAW Committee, whose mandate makes no explicit reference to violence against women, adopted General Recommendation 19 on this topic.<sup>31</sup> The UN General Assembly adopted the Declaration on the Elimination of Violence against Women in 1993,<sup>32</sup> and in 1994 the UNCHR adopted Resolution 1994/45, in which it established the mandate

<sup>29</sup> Much attention was paid to violence against women at the 1993 World Conference on Human Rights. Parisi notes that ninety NGOs that were determined to make the slogan 'Women's right are human rights' a success at the World Conference started a campaign to work on making violence against women a special theme at the Conference. Parisi, 'Feminist praxis and women's human rights' at 581. See also for example Y. Ertürk, 'The Due Diligence Standard: what does it entail for women's rights' in C. Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (Leiden: Martinus Nijhoff Publishers, 2008) 27–46 at 30; Boyle, 'Stock-taking on human rights' at 91–2.

<sup>30</sup> Van Leeuwen, *Women's Rights are Human Rights* at 91–127 and 181–211.

<sup>31</sup> See also Ertürk, 'The Due Diligence Standard' at 29–30; M. van den Brink, 'Het Recht op Lichamelijke Integriteit en het Vrouwenverdrag', *NJCM-Bulletin* 18:6 (1993) 660–73.

<sup>32</sup> UNGA, Declaration on the Elimination of Violence against Women, 20 December 1993, UN doc. A/RES/48/104.

of a Special Rapporteur on violence against women, including its causes and consequences. Moreover, the last decade has seen growing attention to the phenomenon of violence against women from international human rights non-governmental organisations (NGOs) and UN bodies.<sup>33</sup> This international recognition of violence against women as a human rights issue is also reflected in the outcome of this study, which shows that both Committees pay considerable attention to various forms of physical violence against women.

The HRC and the ICESCR Committee also address issues that were in the past generally not considered to be part of the realm of human rights, or at least not of the respective mandates of the two Committees. The HRC pays attention to a variety of reproductive health-related services and programmes. This is remarkable, since the mandate of the HRC and the ICCPR does not make any reference to health or healthcare services.<sup>34</sup> Both the HRC and the ICESCR Committee use their concern about maternal mortality as a basis to address a number of reproductive facilities, services and policies. The HRC links maternal mortality to the right to life and thereby brings the topic of pregnancy within its mandate. The ICESCR Committee links maternal mortality to the right to health. In light of maternal death rates in States Parties, the two bodies address issues such as reproductive information and education, access to contraceptives and unsafe abortions. Their rationale is that States Parties have an obligation to prevent unwanted pregnancies through family planning programmes and services and through sex education, so that women do not have to resort to clandestine abortions, and fewer illegal abortions would reduce the high maternal death rates.<sup>35</sup>

<sup>33</sup> See for example the work of Amnesty International, Human Rights Watch and OMCT, the World Organisation Against Torture, on violence against women.

<sup>34</sup> Former Special Rapporteur on the Right to Health Hunt holds that in light of the right to health, states have an obligation to ensure reproductive health and maternal health-care services, including appropriate services for women in connection with pregnancy. ECOSOC, Commission on Human Rights, *Report of UN Special Rapporteur Paul Hunt on the Right to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, 16 February 2004, UN doc. E/CN.4/2004/49, para. 29.

<sup>35</sup> See for example HRC, *Concluding Observations: Mali*, 16 April 2003, UN Doc. CCPR/CO/77/MLI, para. 14; HRC, *Concluding Observations: Viet Nam*, 26 July 2002, UN Doc. CCPR/CO/75/VNM, para. 15; ICESCR Committee, *Concluding Observation: Nepal*, 21 May 2001, UN Doc. E/C.12/1/Add.59, para. 55; ICESCR Committee, *Concluding Observations: Mauritius*, 28 December 1995, UN Doc. E/C.12/1995/14, para. 15. See also F. van Leeuwen, 'A woman's right to decide? – the UN Human Rights Committee, human rights of women, and matters of human reproduction', *Netherlands Quarterly of Human*

Consequently, the two Committees also address the controversial topic of abortion. The Committees make clear that States Parties should prevent unsafe abortions as they lead to maternal mortality. For that reason, States Parties are requested to allow abortion when pregnancy is the result of rape or when it endangers the life of the pregnant woman. Abortion is not considered to be contrary to human rights per se, as claimed by opponents of the practice. Both the HRC and the ICESCR Committee recommend that States Parties review their *restrictive* abortion laws, for example, when States Parties have high maternal death rates, but never request States Parties to review existing *liberal* abortion laws. Even in States Parties where abortion is often used as a contraceptive method or where many female fetuses are aborted – situations that the Committees identify as human rights concerns – neither the HRC nor the ICESCR Committee challenge the laws on abortion of the States Parties concerned. Instead, they recommend family planning services and information.<sup>36</sup>

The work of the HRC and the ICESCR Committee shows that the two bodies address human rights abuses and constraints that especially affect women. In that regard, their work reflects their compliance with the request of the 1993 World Conference on Human Rights. But there is also room for improvement. As it is clear that maternal mortality is high on the agenda of both Committees and both consider this to be a matter that falls within the ambit of their mandate, it is remarkable that the HRC pays so little attention to the availability of maternal healthcare and abortion services in States Parties, for it is lack of maternal healthcare and unsafe abortions that are the most significant causes of maternal deaths.<sup>37</sup> In light of its reasoning that maternal mortality affects the right to life, the Committee should also address the lack of available or accessible maternal healthcare and abortion services.

The lack of attention from both Committees for so-called *Western beauty practices*, referred to by Special Rapporteurs on Violence against Women Coomaraswamy and Ertürk, for example, is also noteworthy.<sup>38</sup>

*Rights* 25:1 (2007) 97–116; and van Leeuwen, *Women's Rights are Human Rights* at 43–73 and 149–66.

<sup>36</sup> *Ibid.* <sup>37</sup> See H. Sinding Aasen, this volume, Chapter 10.

<sup>38</sup> ECOSOC, Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms Radhika Coomaraswamy, Cultural Practices in the Family that are Violent Towards Women*, 31 January 2002, UN Doc. E/CN.4/2002/83 at 27; ECOSOC, Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Yakin Ertürk, Intersections Between Culture and Violence Against Women*, 17 January 2007, UN Doc. A/HRC/4/34, paras. 47–48.

Both Rapporteurs refer to the *beauty myth* of a slim feminine figure that prompts women to undergo cosmetic surgery and develop eating disorders. The ICESCR Committee addresses eating disorders in only one of its COs and the HRC has never referred to any practices relating to the Western beauty myth.<sup>39</sup> Yet it is argued by a number of authors that the practices do fall within the ambit of international human rights law and deserve attention.<sup>40</sup> The statements of the ICESCR Committee on eating disorders in its COs on Norway in 2005 support that interpretation. Consequently, it could be argued that in order for the work of the HRC and the ICESCR Committee to fully reflect compliance with the request of the Vienna Declaration and Programme of Action, it should take into account these Western practices.

On the basis of the aforementioned issues, the conclusion to be drawn with regard to the main research question is that in terms of addressing issues that specifically affect women and their enjoyment of human rights (Element I), the work of the HRC and the ICESCR Committee reflects compliance with the request of the 1993 World Conference on Human Rights, but also leaves room for improvement.<sup>41</sup> It is important that specific experiences that characteristically affect women in their enjoyment of human rights are continuously brought to the attention of the HRC and the ICESCR Committee and that more research be conducted on the relation between these specific experiences and international human rights law. Since the social constructions of man and woman, and of masculinity and femininity, vary not only according to location and culture, but also over time, new situations may emerge that affect the enjoyment of human rights. This means that human rights necessarily have to be interpreted in a dynamic context and that addressing these specific experiences of women is an ongoing assignment that requires the human rights

<sup>39</sup> ICESCR Committee, *Concluding Observations: Norway*, 23 June 2005, UN Doc. E/C.12/1/Add.109, paras. 21 and 41.

<sup>40</sup> See for example B. Winter, D. Thompson and S. Jeffreys, 'The UN approach to harmful traditional practices', *International Feminist Journal of Politics* 4:1 (2002) 72–94 at 87; S. Jeffreys, *Beauty and Misogyny: Harmful Cultural Practices in the West* (London: Routledge, 2005) at 29–30; and R. Howard, 'Health costs of social degradation and female self-mutilation in North America' in K. Mahoney and P. Mahoney (eds.), *Human Rights in the Twenty-First Century: A Global Challenge* (Dordrecht: Martinus Nijhoff Publishers, 1993) 503–16.

<sup>41</sup> For more critical comments on the work of the HRC and the ICESCR Committee in light of their attention to human rights abuses and constraints that typically affect women, see van Leeuwen, *Women's Rights are Human Rights* at 236–9.

monitoring bodies to stay alert to situations that may affect women's human rights.

### 5.2 *Element II: women-inclusive human rights obligations*

Element II of the request of the Vienna Declaration and Programme of Action dictates that the work of the Committees should display human rights obligations for States Parties that adequately address the gendered issues referred to in Element I. This means that the obligations for States Parties should take into account and address the gender-specific constraints that women experience in exercising their rights.<sup>42</sup> To examine whether the work of the two bodies reflects compliance with this Element, the obligations as discussed in the deliberations and findings of the HRC and the ICESCR Committee were categorised in accordance with the tripartite division of obligations often employed in the human rights discourse: obligations to respect, to protect and to fulfil.<sup>43</sup> The HRC and the ICESCR Committee formulate recommendations and requirements that include obligations for States Parties in all three categories. In doing so, they address the gender-specific circumstances of the issues that affect the enjoyment of human rights by women. States are requested, for example, with respect to matters that affect women's physical integrity, to provide for family planning programmes and services, sex education, shelters for battered women, and telephone hotlines and counselling services for victims of violence. States Parties are also requested to criminalise manifestations of physical violence, such as rape, including marital rape, domestic violence, trafficking and FGM;

<sup>42</sup> Similarly, Fredman argues in this volume that if socio-economic rights are to have a real effect on achieving equality for women, a reformulation of rights is required that takes into account and addresses the gender-specific constraints that women experience in exercising these rights. See S. Fredman, Chapter 7 in this volume.

<sup>43</sup> This division between various types of human rights obligations is employed, for example, by Nowak and by Eide. See M. Nowak, *Introduction to the International Human Rights Regime* (Leiden: Martinus Nijhoff Publishers, 2003) at 49; and A. Eide, 'Economic, social, and cultural rights as human rights' in A. Eide (ed.), *Economic, Social, and Cultural Rights: A Textbook* (Dordrecht: Martinus Nijhoff Publishers, 2001) 9–28 at 23–4. Former Special Rapporteur on the Right to Health Hunt notes in his annual report of 2004 that the analytical framework of obligations to respect, protect and fulfil is very useful as a way of sharpening the legal analysis of, in this case, the right to health: ECOSOC, *Report of UN Special Rapporteur Paul Hunt* paras. 43–44. Moreover, reference to these different types of obligations is, for example, also made in the Montreal Principles on Women's Economic, Social and Cultural Rights. 'Montreal Principles on Women's Economic, Social, and Cultural Rights', *Human Rights Quarterly* 26:3 (2004) 760–80 at 770.

they are also asked to prosecute the perpetrators of these abuses and punish them in accordance with the severity of the crime. The attention that the HRC and the ICESCR Committee have given to the needs of women confronted with various forms of physical violence has been considerable. Also noteworthy are the recommendations of both Committees in which the issue of residence permits for victims of trafficking and FGM are addressed.<sup>44</sup> Although the few recommendations made to States Parties on this matter are still rather mild and States Parties are not required to grant residence permits, they do indicate that the Committees take into account the specific circumstances and consequences of these practices.<sup>45</sup>

Most obligations on physical violence against women as formulated by the Committees, however, focus on the criminalisation, prosecution and punishment of such acts. These obligations are therefore obligations to protect. The same cannot be said for the obligations of States Parties on pregnancy-related matters, which primarily reflect obligations to fulfil. States are requested to provide for various reproductive healthcare services, and under the ICESCR the requirement also includes maternal health-related services and programmes. Considering the fact that the availability of these services is a prerequisite for successfully addressing maternal mortality, it makes sense that the Committees address these issues. However, attention should also be drawn to the fact that the HRC and the ICESCR Committee scarcely formulate any recommendations on pregnancy-related matters that reflect obligations to protect. In general, the work of the two monitoring bodies hardly shows any recommendations that request that States Parties criminalise, prosecute and punish actions of individuals that cause or influence pregnancy-related human rights abuses and constraints. Examples of such abuses and constraints are

<sup>44</sup> See for example HRC, *Concluding Observations: The Netherlands*, 27 August 2001, UN Doc. CCPR/CO/72/NET, para. 11; HRC, *Concluding Observations: Norway*, 21 April 2006, UN Doc. CCPR/C/NOR/CO/5, para. 12; HRC, *Concluding Observations: Belgium*, 16 November 2010, UN Doc. CCPR/C/BEL/CO/5, para. 16; ICESCR Committee, *Concluding Observations: Greece*, 7 June 2004, UN Doc. E/C.12/1/Add.97. Furthermore, attention should be paid to the Views of the HRC in the case of *Diena Kaba v. Canada* of 21 May 2010, in which the HRC argued that deportation of Ms Kaba's daughter to Guinea, a country where she runs a real risk of being excised, would constitute a violation of Article 7 and Article 24(1) ICCPR. HRC, *Diena Kaba v. Canada*, Communication No. 1465/2006, 21 May 2010, UN Doc. CCPR/C/98/D/1465/2006, para. 10(1)–10(5).

<sup>45</sup> The ICESCR Committee refers in this respect to the double victimisation of victims of trafficking due to the risks and dangers awaiting them upon deportation to their home countries. ICESCR Committee, *Concluding Observations: Germany*, 24 September 2001, UN Doc. E/C.12/1/Add.68, paras. 25 and 43.



forced abortion and forced sterilisation.<sup>46</sup> Only when the gender-specific context of human rights abuses and constraints experienced by women is reflected in the obligations for States Parties can it be argued that the work of the HRC and the ICESCR Committee fully reflects compliance with the second Element of the request of the 1993 World Conference. Therefore, as far as pregnancy-related issues are concerned, more attention should be paid by the Committees to the infringement by other individuals of women's enjoyment of human rights. Recent statements of the HRC in one of its COs regarding the obligation of the State Party concerned to prosecute forced sterilisation indicates the Committee's awareness of the gender specifics of this situation.<sup>47</sup> This may prove to be an indication of future attention to the matter in its COs, which should also be taken up by the ICESCR Committee.

It should further be noted that as far as women's physical integrity is concerned, the obligations of States Parties as formulated by both Committees in regards to various human rights issues lack reference to certain gender-specific constraints that prevent women from exercising their rights. For example, they do not address the issue of the lack of available and accessible abortion and post-abortion services. Although both Committees indicate that States Parties should allow for abortion when a pregnancy is the result of rape or endangers the life of the pregnant woman, the HRC and the ICESCR Committee generally do not question whether these services are actually available, are accessible and are of good quality.<sup>48</sup> Hence, in general, the work of the two Committees does not reflect an obligation for States Parties to ensure that abortion and post-abortion services are actually available and accessible in situations where the abortion is legal.<sup>49</sup> The Committees, however, are aware of the

<sup>46</sup> The HRC requests States Parties in General Comment 28 to prevent forced sterilisation and forced abortion, but scarcely refers to forced sterilisation in its COs and does not address forced abortion at all in these documents. The ICESCR Committee mentions forced sterilisation only in one of its COs and has never addressed the practice of forced abortion. See COs of the ICESCR Committee on Brazil of 2003, paras. 27 and 62. See also van Leeuwen, *Women's Rights are Human Rights* at 165–6.

<sup>47</sup> HRC, *Concluding Observations: Czech Republic*, 9 August 2007, UN Doc. CCPR/C/CZE/CO/2, para. 10.

<sup>48</sup> On the framework of available, accessible and good quality services, see for example ECOSOC, *Report of UN Special Rapporteur Paul Hunt* paras. 41–2. Hunt notes that one framework that is especially useful in the context of policy-making is that healthcare services, goods and facilities, including the underlying determinants of health, shall be available, accessible, acceptable and of good quality.

<sup>49</sup> An exception can arguably be found in the COs of the HRC on Argentina of 2000, where it notes in paragraph 14 that restrictive abortion laws could deter medical professionals

consequences of the lack of these services, for they regularly express their concern about unsafe abortions and the resulting maternal mortality. In light of the request by the 1993 World Conference on Human Rights, which comprises an assignment to formulate obligations for States Parties that take into account the gender-specific forms of the human rights abuses and that especially concern experiences by women, the HRC and the ICESCR Committee should also respond to the above-mentioned issues in their work by formulating appropriate obligations for States Parties on abortion-related services. Steps taken by the ICESCR Committee in 2008 may indicate that the matter will be taken up on a more systematic basis in future reporting procedures.<sup>50</sup>

As noted, the work of the HRC and the ICESCR Committee on physical violence against women mostly reflects obligations to protect human rights. Although the Committees also pay attention to the needs of victims of several types of violence, they do not always take into account the full scope of the gender-specific constraints that women experience in regard to these abuses. This is illustrated by the approach of the Committees in addressing the issue of FGM. The main obligation for States Parties as formulated by the Committees with regard to this practice is to prohibit it in their criminal legislation.<sup>51</sup> Yet what the Committees apparently fail to

from performing the procedure in those cases where it was, in fact, legal. Although these COs could seem to suggest an obligation that States Parties have to ensure in these conditions that abortion facilities are available and accessible, it has never explicitly stated this. Similarly, in its COs on Mexico of 2006, the ICESCR Committee expresses its concern about the obstruction of access to a legal abortion when the pregnancy was the result of rape. However, the Committee did not hold that abortion facilities should be available and accessible when legal, but rather held that the State Party should ensure that *rape victims* be given access to legal abortion. It should be noted, however, that in 2008 the ICESCR Committee recommended that States Parties ensure access to safe abortion in two of its COs. These recommendations, however, focused on abortion services in particular and not on post-abortion care. The context in which the recommendation was made indicates that the ICESCR Committee did not refer to an obligation of States Parties to ensure access to safe abortion in general. See ICESCR Committee, *Concluding Observations: Kenya*, 1 December 2008, UN Doc. E/C.12/KEN/CO/1, para. 33; and ICESCR Committee, *Concluding Observations: UNMIK*, 1 December 2008, UN Doc. E/C.12/UNK/CO/1, paras. 24 and 30.

<sup>50</sup> *Ibid.*

<sup>51</sup> See for example HRC, *Concluding Observations: Sweden*, 24 April 2002, UN Doc. CCPR/CO/74/SWE, para. 8; HRC, *Concluding Observations: Yemen*, 26 July 2002, UN Doc. CCPR/CO/75/YEM, para. 6; HRC, *Concluding Observations: Benin*, 1 December 2004, UN Doc. CCPR/CO/82/BEN, para. 11; HRC, *Concluding Observations: Yemen*, 9 August 2005, UN Doc. CCPR/CO/84/YEM, para. 11; HRC, *Concluding Observations: Cameroon*, 4 August 2010, UN Doc. CCPR/C/CMR/CO/4, para. 10. See also ICESCR Committee, *Concluding Observations: Cameroon*, 8 December 1999, UN Doc. E/C.12/1/Add.40, para.

take into account is that FGM is usually performed for socio-cultural reasons by predominantly female private actors with the apparent consent of the one to be circumcised or her proxy.<sup>52</sup> This notion raises questions with regard to the prosecution of these acts as well as to the effectiveness of these recommendations in the actual elimination of the custom. Various international organisations that aim to fight FGM on the ground argue that criminalisation of FGM alone is not enough; other measures also need to be taken to combat this phenomenon in an effective manner.<sup>53</sup> The HRC and the ICESCR Committee generally do not consider other means of eliminating FGM and hardly ever formulate recommendations regarding this practice that would denote an obligation to fulfil. The only positive exception to this is found in one of the COs of the ICESCR Committee of 2008.<sup>54</sup>

The final conclusion to be drawn here, as regards the main research question, is that the work of the HRC and the ICESCR Committee in regard to women-inclusive obligations for States Parties (Element II) generally reflects compliance with the request of the 1993 World Conference on Human Rights, but that there is also still more that can be done in order to fully integrate women's rights. On various points, the obligations as formulated by the two Committees could and should be more far-reaching in order to reflect the gender-specific circumstances of the situations that affect women's physical integrity and thereby to effectively address these. Similar to what has been said previously, the characteristics

33; and ICESCR Committee, *Concluding Observations: Benin*, 5 June 2002, UN Doc. E/C.12/1/Add.78, para. 31. See also van Leeuwen, *Women's Rights are Human Rights* at 122–4 and 207–9.

<sup>52</sup> L. Obiora, 'Bridges and barricades: rethinking polemics and intransigence in the campaign against female circumcision', *Case Western Reserve Law Review* 47:2 (1997) 275–378 at 284.

<sup>53</sup> WHO, *Eliminating Female Genital Mutilation – An Interagency Statement* (Geneva: WHO, 2008) at 13–21; UNICEF, *Changing a Harmful Social Convention: Female Genital Mutilation/Cutting*, 2005 at 23–33, available at: [www.unicef-irc.org/publications/396](http://www.unicef-irc.org/publications/396) (last accessed 16 February 2012); UNFPA, *A Holistic Approach to the Abandonment of Female Genital Mutilation/Cutting*, 2007 at 10–12, available at: [www.unfpa.org/public/pid/407](http://www.unfpa.org/public/pid/407) (last accessed 12 February 2012); and G. Richardson, 'Ending female genital mutilation? Rights, medicalisation, and the state of ongoing struggles to eliminate the FGM in Kenya', *The Dominion* no. 26 (2005) at 12.

<sup>54</sup> The ICESCR Committee in its COs on Kenya of 2008 recommends the State Party to combat FGM amongst other means by continuing to promote alternative rite of passage ceremonies, to educate parents, especially mothers, children and community leaders on the harmful effects of FGM, and to combat traditional beliefs about the usefulness of FGM for the promotion of marriage prospects of girls. ICESCR Committee, *Concluding Observations: Kenya*, 1 December 2008, UN Doc. E/C.12/KEN/CO/1, para. 23.

of these human rights abuses need further clarification; the Committees need to be aware of these; and they should subsequently respond to them by formulating women-inclusive human rights obligations, for example with regard to FGM.

### 5.3 *Element III: discrimination against women*

Element III of the request of the 1993 World Conference on Human Rights contains an assignment for the human rights monitoring bodies to place the specific human rights issues of women in the context of discrimination against women. The work of the HRC and the ICESCR Committee mostly fails to reflect this point. Although the Committees address many human rights abuses and constraints that characteristically affect women in their respective GCs on equality of men and women, they generally do not label these as symptoms of (structural) discrimination. Reference to these issues in their GCs, as well as reference to Articles 3 of the ICCPR and the ICESCR in the work of the Committees, rather seems to reflect the Committees' awareness of the fact that, as far as the interpretation of human rights is concerned, women may face different hurdles than men in their enjoyment of human rights. Although this understanding is an important first step away from the idea of *sameness*: men and women are the same in rational ability and the capacity for autonomy and self-determination and are therefore entitled to the same rights, this does not mean that the HRC and the ICESCR Committee examine whether these *women-specific* human rights issues are the result of discrimination against women. Occasionally, situations are linked to discrimination, but overall situations such as de facto impunity of rape or sexual exploitation of women and girls are not related to women's unequal status in societies. The only apparent exceptions to this are the statements of both Committees on the abortion of female foetuses and the statements of the ICESCR Committee with regard to sexual harassment and honour crimes.<sup>55</sup>

<sup>55</sup> See HRC, General Comment No. 28, Equality of Rights Between Men and Women (Article 3), UN Doc. CCPR/C/21/Rev.1/Add.10, para. 5; HRC, *Concluding Observations: Republic of Korea*, 1 November 1999, UN Doc. CCPR/C/79/Add.114, para. 10; ICESCR Committee, *Concluding Observations: Republic of Korea*, 21 May 2001, UN Doc. E/C.12/1/Add.59, para. 16; ICESCR Committee, *Concluding Observations: India*, 8 August 2008, UN Doc. E/C.12/IND/CO/5, paras. 17 and 56; ICESCR Committee, *Concluding Observations: Mongolia*, 1 September 2000, UN Doc. E/C.12/1/Add.47, para. 23; ICESCR Committee, *Concluding Observations: Tunisia*, 14 May 1999, UN Doc. E/C.12/1/Add.36, para. 4; ICESCR Committee, *Concluding Observations: Syrian Arab Republic*, 24 September 2001, UN Doc. E/C.12/1/Add.63, para. 14.

The general approach of the HRC and the ICESCR Committee in dealing with various forms of physical violence against women is not to address its root cause, which is often the unequal status of women in society, but rather to call on States Parties to tackle violence against women through criminalisation and prosecution.<sup>56</sup> This means that the Committees request States Parties to address only the manifestations of human rights abuses and constraints and not, for example, the gender ideologies on which they are based.<sup>57</sup> Hence, the work of the HRC and the ICESCR Committee is first and foremost directed toward fighting symptoms, that is manifestations of physical violence against women, rather than the actual disease.<sup>58</sup>

In light of the aforementioned issues, with regard to Element III, the work of the HRC and the ICESCR Committee fails to reflect compliance with the request of the 1993 World Conference on Human Rights. The HRC and the ICESCR Committee need to pay attention to the relationship between the various gendered issues that affect women's enjoyment of human rights and discrimination against women as their possible cause. This attention needs to be reflected in their GCs and COs, both in terms of recognition as well as by way of recommendations that aim to address this.

<sup>56</sup> An exception to this general approach is found in the Concluding Observations from the HRC on Mexico of 2010, in which the Committee recommends the State Party to address violence against women, including by addressing the root causes of the problem, amongst other things, by changing the perception of women's role in society. HRC, *Concluding Observations: Mexico*, 17 May 2010, UN Doc. CCPR/C/MEX/CO/5, para. 8.

<sup>57</sup> It is interesting to refer to the comments of Ertürk, the former UN Special Rapporteur on Violence against Women. In her report of 2006 on due diligence standards with regard to violence against women, Ertürk observes: 'As a general rule, States have sought to discharge their due diligence obligations of prevention of violence against women through the adoption of specific legislation, the development of awareness-raising campaigns and the provision of training for specified professional groups. The forms of violence covered by these interventions include: domestic violence, sexual assault, trafficking, honour crimes and sexual harassment. These programmes tend to view violence against women as a stand-alone issue and there are relatively few examples of linkages being made between violence and other systems of oppression'. ECOSOC, Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Yakin Ertürk, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, 20 January 2006, UN Doc. E/CN.4/2006/61, para. 38.

<sup>58</sup> It is interesting to see that the HRC and the ICESCR Committee do refer to discrimination against women in their COs when it concerns the low representation of women in high-ranking positions.

#### 5.4 *Element IV: an integrated address*

For the work of the HRC and the ICESCR Committee to reflect compliance with Element IV, it is required that the Committees tackle the issues that affect women's physical integrity in an integrated manner. This means that the Committees should not address these issues separately, for example in a section that focuses specifically on issues that affect women, but rather that they pay attention to these issues in all relevant sections of their work. Thus, for example, pregnancy-related matters that impair the right to life are to be addressed together with other 'traditional' human rights issues that affect this right.

The work of the HRC and the ICESCR Committee reflects compliance with Element IV. The issues impairing women's physical integrity are often brought forward in light of the affected substantive provisions and/or with regard to common Article 3 of the Covenants. Thus, for example, pregnancy-related matters are generally addressed in light of Article 6 of the ICCPR and Article 10 of the ICESCR, and female genital mutilation and domestic violence in reference to Article 7 of the ICCPR and Article 10 of the ICESCR, with or without also mentioning common Article 3.<sup>59</sup> On other occasions, where no explicit reference is made to any of the provisions of the ICCPR and the ICESCR, the issues are addressed in different sections, for example in combination with other related human rights issues. For example, the HRC addresses rape during armed conflict together with other human rights abuses that occur under those circumstances, such as extrajudicial killings and disappearances.<sup>60</sup>

<sup>59</sup> See for example HRC, *Concluding Observations: Paraguay*, 24 April 2006, UN Doc. CCPR/C/PRY/CO/2, para. 10; HRC, *Concluding Observations: Senegal*, 19 November 1997, UN Doc. CCPR/C/79/Add.82, para. 12; HRC, *Concluding Observations: Sudan*, 19 November 1997, UN Doc. CCPR/C/79/Add. 85, para. 10; HRC, *Concluding Observations: Sweden*, 24 April 2002, UN Doc. CCPR/CO/74/SWE, para. 8; HRC, *Concluding Observations: Kenya*, 29 April 2005, UN Doc. CCPR/CO/83/KEN, para. 12; HRC, General Comment No. 28, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 11; ICESCR Committee, General Comment No. 14, UN Doc. E/C.12/2005/4, paras. 22, 36 and 51; ICESCR Committee, *Concluding Observations: Nigeria*, 13 May 1998, UN Doc. E/C.12/1/Add.23, para. 20.

<sup>60</sup> See for example HRC, *Concluding Observations: Algeria*, 18 August 1998, UN Doc. CCPR/C/79/Add.95, para. 6; HRC, *Concluding Observations: Russian Federation*, 6 November 2003, UN Doc. CCPR/CO/79/RUS, para. 13; HRC, *Concluding Observations: Democratic Republic of the Congo*, 26 April 2006, UN Doc. CCPR/C/COD/CO/3, para. 13.

Consequently, as the work of the Committees shows attention for issues that affect women's physical integrity in an integrated manner, it reflects compliance with the request of the 1993 World Conference on Human Rights.

### 5.5 Conclusion

Overall, the work of the HRC and the ICESCR Committee regarding matters that affect women's physical integrity reflects compliance with three of the four elements of the request to the human rights monitoring bodies made by the 1993 World Conference on Human Rights. The Committees make good use of the possibilities within their mandates to address issues that affect women's physical integrity; they generally formulate obligations for States Parties that take into account the gender-specific constraints of these human rights abuses; and, moreover, they address these matters in an integrated manner. Overall, however, the work of the HRC and the ICESCR Committee lacks compliance with Element III: the request to link these human rights abuses and constraints to the discrimination against women. Thus, the work of the HRC and the ICESCR Committee shows that both Committees are aware of abuses and constraints that characteristically affect women's physical integrity, but neither addresses the evil that causes them. This deficit must be overcome in order for the Committees to comply with the request of the 1993 World Conference.

## 6 Final remarks

This study did not look into the actual reasons for the Committees to address human rights concerns and constraints that are characteristic of the lives of women. Yet it appears that the Committees address gender-specific issues only when they have received information on them from States Parties or NGOs, or when a topic has already garnered a lot of international attention. On those occasions where the Committees paid attention to the gender-specific constraints women experience in exercising their rights, they usually received their information from the State Party itself or from NGOs.<sup>61</sup> Similarly, when certain issues

<sup>61</sup> For example, the ICESCR Committee holds in its COs on the Republic of Moldova that the State Party should combat trafficking by improving job possibilities and assistance for women living in poverty. ICESCR Committee, *Concluding Observations: Republic of Moldova*, 12 December 2003, UN Doc. E/C.12/1/Add.91, para. 41 and ICESCR Committee, *Summary Records: Republic of Moldova*, 17 November 2003, UN Doc.

or gender-specific circumstances were systematically dealt with, they often concerned topics that had already received a lot of international attention.<sup>62</sup>

This strengthens the idea that the work of NGOs is very important in the process of making women and their human rights visible within the UN human rights system, for example by producing shadow reports, assisting victims in individual complaints procedures or by participating in general discussion days.<sup>63</sup> The aforementioned also points out the added value of the CEDAW Committee: a body that focuses exclusively on women's rights and, as such, has the capacity to function as a whistle-blower, alerting other monitoring bodies to issues that affect women's enjoyment of human rights and the gender-specific constraints and circumstances that need to be addressed. The findings of the study also expressly show the need for the CEDAW due to the lack of attention the HRC and the ICESCR Committee have shown for Element III of the Vienna request. The CEDAW Committee, with a mandate that explicitly covers an obligation for States Parties to take all appropriate measures to modify the social and cultural patterns of the behaviour of men and women, with a view to achieving the elimination of prejudices, customs and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women, has the experience and knowledge of how to address gendered human rights abuses as manifestations of deeply rooted discrimination against women.<sup>64</sup>

NGOs and the human rights monitoring bodies clearly have an important role to play in further realising an international human rights system that fully promotes and protects the human rights of both men and women. However, more research needs to be conducted into the content of human rights provisions from the perspective of gender. Although

E/C.12/2003/SR.32, para. 65. Also the ICESCR Committee makes recommendations to Kenya as regards addressing FGM in the State Party by means of continuing to promote alternative rite of passage ceremonies. ICESCR Committee, *Concluding Observations: Kenya*, 1 December 2008, UN Doc. E/C.12/KEN/CO/1, para. 23.

<sup>62</sup> Section 5.2 of this paper refers to the international attention for violence against women and a number of specific forms of it.

<sup>63</sup> On this matter, see also C. Chinkin, 'The role of non-governmental organisations in standard setting, monitoring, and implementation of human rights' in J. Norton *et al.* (eds.), *The Changing World of International Law in the Twenty-first Century: A Tribute to the Late Kenneth R. Simmonds* (The Hague: Kluwer Law International, 1998) 45–66 at 51–65; L. Theytaz-Bergman, 'State reporting and the role of non-governmental organizations' in A. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21st Century* (The Hague: Kluwer Law International, 2000) 45–56.

<sup>64</sup> Article 5(a) CEDAW.



literature exists in which provisions of mainstream human rights treaties are linked to issues that are of specific importance to women, the number of publications is still limited and is generally not based on an elaborate study of the content of the provision itself.<sup>65</sup> Studies generally start with looking at the abuses and constraints that are typical of women's lives and subsequently examine how the human rights system deals with, or could address, these matters. Yet if women's rights proponents want to work with the system as it stands now, it is essential that the subsequent step in transforming this system is to address the system itself and the provisions in which it guarantees human rights for all. This is the only way that the system can be changed into an instrument that also promotes and protects the human rights of women in a systematic manner, rather than on an ad hoc basis. Besides the work that has been conducted so far, as represented in publications as well as in the work of the human rights monitoring bodies, this will require further research. This task cannot be performed by the human rights monitoring bodies alone. It is important that human rights scholars, for example, in collaboration with NGOs that work at the grass-roots level, take this up as well.

The aforementioned should culminate in a reformulation of all GCs and reporting guidelines, so as to fully reflect the gender-inclusive content of the human rights provisions and related obligations for States Parties. This should lead to a more structured approach to fully address the promotion and the protection of human rights of women. The reconstructed content of human rights provisions, reflected in these new GCs and reporting guidelines, should allow a more systematic consideration of human rights abuses and constraints that are characteristic of the lives of women, and clarify the way States Parties should address them, taking into account the gender-specific circumstances of the experiences.

<sup>65</sup> Examples of writings in which women's human rights concerns are linked to provisions of the two Covenants include: R. Cook, 'International human rights and women's reproductive health' in J. Peters and A. Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* 256–75; C. Packer, 'Defining and delineating the right to reproductive choice', *Nordic Journal of International Law* 67:1 (1998) 77–95; R. Cook, 'Women's reproductive rights', *International Journal of Gynaecology and Obstetrics* 46:2 (1994) 215–20; R. Cook, 'International human rights and women's reproductive health', *Studies in Family Planning* 24:2 (1993) 73–86; R. Cook, 'Women's international human rights law: the way forward' in R. J. Cook (ed.), *Human Rights of Women* 12–15; Charlesworth, 'What are "Women's International Human Rights"?'; Copelon, 'Intimate Terror'.

Finally, this study did not only provide answers, it also raised new questions. An important question concerns the motivation of the Committees for addressing certain matters. Although there are strong indications that the work of NGOs in this respect is significant, one of the questions to be raised is, for example, whether the gender or nationality of individual Committee members plays a role in the attention that is paid by the human rights monitoring bodies to issues that affect women's physical integrity, and if so, to what extent. Further research on this matter is required so as to discover the hitches in the process of including the status and human rights of women in the work of the HRC and the ICESCR Committee and to address them effectively. The end of the process of integrating women into the human rights mainstream is not near. It is clear that the request of the 1993 World Conference on Human Rights is not a short-term assignment for the human rights monitoring bodies: it is *not* a matter of adding and stirring women's experiences into the big bowl of international human rights. Rather, it is a process that will be ongoing for as long as gender inequality exists. It is a process that requires the commitment of everyone involved in order to transform the international system so as to ensure that it fully accommodates and responds to human rights abuses and constraints that are typical of women's lives, now and in the future.