<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>Women, gender and international human rights: An overview</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Author(s)</strong></td>
<td>Reilly, Niamh</td>
</tr>
<tr>
<td><strong>Publication Date</strong></td>
<td>2019-06-26</td>
</tr>
<tr>
<td><strong>Publisher</strong></td>
<td>Springer</td>
</tr>
<tr>
<td><strong>Link to publisher's version</strong></td>
<td><a href="https://doi.org/10.1007/978-981-10-4550-9_23-1">https://doi.org/10.1007/978-981-10-4550-9_23-1</a></td>
</tr>
<tr>
<td><strong>Item record</strong></td>
<td><a href="http://hdl.handle.net/10379/15626">http://hdl.handle.net/10379/15626</a></td>
</tr>
<tr>
<td><strong>DOI</strong></td>
<td><a href="http://dx.doi.org/10.1007/978-981-10-4550-9_23-1">http://dx.doi.org/10.1007/978-981-10-4550-9_23-1</a></td>
</tr>
</tbody>
</table>

Some rights reserved. For more information, please see the item record link above.
Introduction

Advocacy for the human rights of women has been a feature of the United Nations (UN) since its foundation in 1945. The UN Decade for Women (1976–1985) and the post-Cold War revival of interest in more comprehensive visions of human rights provided added impetus to these efforts. In the 1990s, momentum gathered as growing numbers of feminist activists, networks, and nongovernmental organizations (NGOs) engaged with the different institutions of the UN involved in defining global agendas (Reilly 2009). Effective campaigns targeted the Second World Conference on Human Rights (Vienna 1993), the Fourth World Conference on Women (Beijing 1995), and a series of other UN world conferences over the same decade, addressing policy challenges relating to the environment, population and development, sustainable development, and anti-racism, as well as the establishment of the International Criminal Court in 1999.

There have been tremendous achievements over the last 25 years expressed in the proliferation of laws, norms, and mechanisms to advance the human rights of women and LGBTQI people. At the same time, it is essential to continue to develop and apply critical, intersectional gender analyses to contemporary human rights thinking and practice. The latter is not a straightforward undertaking. The gains secured through various campaigns in recent decades continue to meet with political resistance (Bunch and Reilly 2019). Arguments are still frequently made that UN norms vis-à-vis gender equality and human rights reflect the imposition of “Western” values, are individualistic, anti-family, and/or contrary to religious or cultural values of communities, or a threat to national sovereignty. Further, the “war on terror” and a string of devastating conflicts and related migrant crises have eroded the credibility of international human rights and humanitarian paradigms in the early twenty-first century. These developments, especially under conditions of persistent global inequalities, the seemingly cynical use or flouting of international law by dominant powers, and democratic deficits throughout the UN, can make it difficult for progressive voices to defend and promote the emancipatory potential of international human rights. Against this, it can be argued that highly visible failures in human rights protection and implementation only serve to underline the imperative of retaining and re-energizing global political commitment to upholding the principle of “all human rights for all” and of the international community providing the necessary resources to back that commitment.

Since the inception of current human rights systems, it has been necessary to challenge the various established ways of defining and doing human rights that have thwarted recognition and realization of the human rights of women. The unfolding story of the achievement of such recognition, therefore, is a story of multiple contestations over definition and meaning and struggles to secure the political will and resources necessary to translate rhetorical recognition into meaningful change.

on the ground. This chapter discusses the main themes and arenas of contestation evident in recent scholarship on efforts to advance the human rights of women and to combat gender-based violations of human rights more generally.

- The public–private divide and gender-based violence
- Indivisibility of rights – a gender issue
- Universality, culture, and context
- Difference, intersectionality, and vulnerability
- Law, implementation, and root causes

**The Public–Private Divide and Gender-Based Violence**

The role of the liberal public–private divide in perpetuating gender inequalities and thwarting the human rights of women has been widely discussed. In defining the “private sphere” as beyond public accountability, abuses of human rights in private life often go unrecognized and perpetrators are not held accountable for their actions. Moreover, the usual invisibility of gender-specific abuses in the private sphere is accentuated by a bias in traditional human rights discourse that focuses primarily on state-sponsored violations. As Susan Okin notes:

> The Universal Declaration of Human Rights ... is frequently referred to as being addressed exclusively to governments as potential violators of human rights, and not at all to individual persons.... [But] the Declaration by no means [has as] its sole intent to warn governments against their own potential for violation. To the contrary, besides hardly mentioning governments at all, it suggests strongly that at least some of the obligations correlative to the rights it pronounces fall on individuals as well as on states. (Okin 1981, p. 239)

The global campaign for women’s human rights mobilized around the Second World Conference on Human Rights (WCHR) (Vienna 1993). It successfully challenged the invisibility of abuses in private contexts of family and intimate relationships, and the failure of the international human rights community to recognize different forms of gender-based violence (GBV) as violations of human rights (Bunch 1990; Bunch and Reilly 1994). As documented by Sheila Dauer (2019), this spurred the adoption of many new global human rights norms aimed at combating or ending impunity for GBV. A UN special rapporteur on violence against women was established; an optional protocol to CEDAW was adopted (UNGA 1999), which enabled individual cases of violence against women to be brought to the committee; and a commitment to mainstreaming gender in the work of all treaty bodies included a broader understanding of GBV (ibid.). There have also been important developments at the regional level including groundbreaking decisions at the Inter-American Commission and Court of Human Rights and the adoption of the Inter-American Convention of Belém do Pará on Violence against Women (for a detailed discussion, see O’Connell 2019). In Africa, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) has added very significantly to the repertoire of global standards for women’s rights (for a detailed discussion, see...

Notwithstanding the recognition of GBV as a human rights issue evident in the array of norms, mechanisms, and decisions noted above, gender-based violence in myriad forms continues to be prevalent. Recent UN data (UNSD 2015) estimate that one in three women worldwide have “experienced physical/sexual violence at some point in their lives” while less than 10% sought help from the police and less than 40% sought help from anyone. Further, two of three victims of intimate partner/family-related homicide are women (ibid.). While aggregate statistics are helpful in pointing to persistent underlying patterns of unequal gender power relations, it is also essential to deepen understanding of how different groups experience GBV in different ways. For example, writing about the role of national courts in recognizing the sexual and reproductive health and rights of adolescents in Africa, Durojaye (2019) notes “high incidences of sexual violence among adolescents especially in South Africa, where it is almost becoming an epidemic”. Harpur and Douglas (2019) discuss how “people with disabilities experience domestic and family violence both more often and differently to those who do not have a disability”. For example, survivors of domestic and family violence “who rely upon mobility aids, medication, or medical technologies are extremely vulnerable to [abusive] partners who restrict access to such items” (ibid.).

While recognition of violence against women in private contexts by private actors as a human rights issue was a pivotal achievement of 1990s campaigns for women’s human rights, it also served to highlight different forms of GBV as abuses of human rights and to challenge the adequacy of other branches of international law in addressing them. For example, in relation to sex trafficking, Smith-Cannoy (2019) comments: “modern slaves – be they Albanian women sold into prostitution in Italy, children working in the agricultural industry as bonded laborers in India, or Burmese women working in Thai brothels – are all subject to brutality and violence, forced to work, and paid little to nothing for their servitude”. Gardam (2019) observes that, in 1993, the new focus on GBV as a human rights issue, “led to consideration of these activities in armed conflict as so much of the violence against women occurs during such times.” Ramji-Nogales and DerOhanessian (2019) outline the many gendered harms experienced by forced female migrants in situations of violent conflict, which fall outside the protection of international criminal law. Vojdik (2019) addresses another dimension of the nexus of GBV and conflict situations. She discusses how for decades “military and civilian peacekeepers across the globe have engaged in rape, sexual assault, forced prostitution, trafficking, and sexual exploitation of women and children” and provides a comprehensive critique of the inadequacy of existing “mechanisms for policing and punishing peacekeeper [sexual exploitation and abuse] ... creating a culture of impunity”. Staying with this theme, Rhys-Gaffney...
(2019) notes how GBV in conflict situations drives child marriage. Finally, Bunch underlines the problem of “internet violence where the amount of harassment of women, bullying and sexual violence is shocking” (Bunch and Reilly 2019).

Indivisibility of Rights: A Gender Issue

Traditionally in western human rights discourse, civil and political rights have trumped economic, social, and cultural rights. Feminist human rights scholars have argued that this hierarchy of rights is gendered because it defines human rights priorities according to the criterion of “what men fear will happen to them” in their relationship with the state, society, and other men (Charlesworth 1994, p. 71). Of course, it remains vitally important to challenge all state-sponsored abuses of civil and political rights such as denials of freedom of expression and association, or arbitrary detention or torture by state authorities. A problem of structural gender bias arises, however, when a negative understanding of civil and political rights (i.e., non-interference of the state, which protects the interests of the privileged) is systematically prioritized over positive economic, social, and cultural rights that are essential to transforming the inequalities and social exclusion affecting the less privileged.

In addition to recognizing “women’s rights as human rights” and GBV as a violation of human rights, the Vienna WCHR is historically significant for formally establishing the indivisibility of all human rights. Goonesekere (2019) argues persuasively this was a pivotal turning point in generating a more robust approach to holding both state and non-state actors accountable for ensuring the conditions of enjoyment of economic and social rights. Goonesekere traces how the notion of the indivisibility and interdependence of rights has developed since 1993, through the work of the UN treaty body system, as well as in national litigation and regional human rights cases. In doing so, she demonstrates the possibility of transformative understandings of substantive equality in which the imperative of providing the structural conditions necessary to enable realization of economic and social rights is recognized, e.g., access to education, housing, healthcare, and livelihoods. For Goonesekere, this transformative potential derives from growing acceptance of the three-part obligation on states parties to respect rights (i.e., to refrain from violating rights directly); protect rights (i.e., to hold third parties accountable when they violate human rights); and fulfill rights (i.e., to provide the resources necessary to meet core obligations in the domain of social and economic rights).

Diane Elson (2019) expands upon the third part of states’ obligations to fulfill their human rights commitments, specifically in the formulation of economic policy. Drawing on the Women’s Convention (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and outputs of their respective committees, Elson delineates a comprehensive framework for monitoring compliance with human rights in different branches of policy (e.g., public expenditure, taxation, overseas development, government borrowing, and monetary policy). The main parameters of the framework she presents are non-discrimination and equality, progressive realization of social and economic rights, use of maximum
available resources, avoidance of retrogression, satisfaction of minimum essential levels of rights, and participation, transparency, and accountability. Taking a global view on indivisibility, Bawa (2019) underlines the “intricate interconnection of global policies and women’s rights”. She observes that neoliberalism has generated “extreme poverty and powerlessness for women in low income countries” and this requires comprehensive “empowerment mechanisms” to address both “global economic inequities” and “local patriarchal traditions” (ibid.). According to Bawa, however, too often there is a failure to address indivisibility on this global, structural level and instead to focus narrowly on contesting “local cultural traditions that privilege men”.

Writing on evolving interpretations of Article 14 (equality guarantee) of the European Convention on Human Rights, Sandra Fredman (2019) further theorizes substantive equality as comprising four interdependent dimensions. These are redistribution to redress material disadvantage; amelioration of harms caused by stigma, stereotyping, and violence to enact recognition and dignity; facilitation of participation to ensure decision makers hear and heed the voices of excluded groups, including the least vocal within those groups; and accommodation and celebration of difference through the transformation of social structures and institutions to ensure social inclusion. Very significantly, all three accounts of substantive equality elaborated by Goonesekere (2019), Elson (2019), and Fredman (2019) view the practical implementation of indivisible rights as a prerequisite for the realization of the human rights of women and, expressly in Fredman’s chapter, the human rights of LGBTQI people.

Since the International Conference on Population and Development (Cairo 1994), efforts to achieve reproductive and sexual rights have become a major part of global advocacy for the human rights of women and LGBTQI people. Challenges in this area illustrate particularly well the indivisibility and interdependence of the full spectrum of human rights. Bunch notes the significant progress made in relation to maternal mortality in this regard “which brings together the civil and political right to life with the socio-economic right to healthcare ... incorporated into the UN’s ... Sustainable Development Goals (SDGs)” (Bunch and Reilly 2019). Analyzing national court decisions that uphold the reproductive and sexual rights of adolescents in Africa, Durojaye (2019) demonstrates the impossibility of respecting the civil and political rights of young adolescent women to bodily integrity and autonomy without also affirming rights to access affordable healthcare and contraception. Fried and Espinoza-Kim (2019) build on similar themes. They posit a three-part framework for advancing sexual rights, including drawing on public health evidence to challenge criminalization and support sexuality-related rights, affirming rights related to bodily autonomy, and promoting positive sexuality, particularly through access to information and the power it gives to make decisions. Like Durojaye, Fried and Espinoza-Kim foreground the interdependence of negative and positive rights – such as the right not to be criminalized because of your gender or sexual identity and the right to make “free and informed choices about sexuality regardless of sex characteristics, physical or other challenges, sexual orientation, gender identity, procreative intention, etc.” (ibid.).
Although the civil and political rights of women have received less attention in global campaigns in recent decades, many forms of direct and indirect discrimination persist in this domain. As McGing notes, while the overall trajectory is in a positive direction, currently women comprise only about one quarter of members of parliaments worldwide (McGing 2019). One impediment to progress is a pervasive failure to fully appreciate the interdependence of all human rights. Exercising political rights, such as running for election, is deeply reliant on a range of structural social, economic, and cultural conditions that, typically, are more available to privileged men than to women or marginalized groups, including in better-off, democratic societies. Conversely, denials of political and civil rights, inexorably, have adverse implications for economic, social, and cultural rights. On the issue of gender discrimination in nationality laws, Van Waas, Albarazi, and Brennan (2019) report that more than 50 countries continue to deny female citizens the same rights as their male counterparts to confer nationality to non-national spouses, which “impacts women’s rights, engenders statelessness [of family members] and affects children”. Further, underlining the indivisibility of rights, the authors stress, “[g]iven the role that nationality plays in unlocking access to socio-economic rights and services, addressing problematic nationality policies is critical to the achievement of many of the development Goals and Targets” (ibid.). Moreover, there are also worrying intersectional aspects to this matter. Van Waas, Albarazi, and Brennan flag that gender discrimination in nationality laws is not only an expression of formal patriarchy – increasingly, such laws are instrumentalized in states’ management of migration to control the “the confessional balance of the country” (ibid.).

McGing provides an overview of the factors that inhibit and support greater participation of women in politics worldwide. The former includes the necessity to navigate successfully male-dominated political space and culture, as well as a still pervasive gendered division of labor, wherein women continue to carry more responsibility for caring and family responsibilities than do their male peers. Amie Lajoie (2019) finds similar constraints facing women human rights defenders, both in relation to family life and in pervasive perceptions among human rights activists that women defenders are “more vulnerable” than male defenders because of their gender. Regarding supporting factors, McGing draws on global comparative data to show that “electoral gender quotas have significantly advanced women’s access to parliamentary politics” (McGing 2019). Moreover, the legitimation of quotas as a sanctioned human rights strategy of CEDAW – i.e., temporary special measures – has contributed significantly to their success and to countering some of the widespread opposition to the use of quotas. Furthermore, McGing confirms that increased numbers of women representatives are associated with a higher priority given to policies relating to education, health, and social welfare. Hence, it can be said, more women exercising their political rights fosters conditions more conducive to realizing visions of substantive equality and indivisible rights more generally.

**Universality, Culture, and Context**
Questions about the meaning of the universality of human rights and whether human rights simply express “western hegemony” and, therefore, are fundamentally at odds with respect for cultural diversity – are a major part of contemporary human rights discourse, especially as it relates to women and gender. Typically, strong culturally relativist positions are deemed incompatible with achieving the human rights of women and LGBTQI people. At the same time, any defense of the universality of human rights that endorses forms of top-down or imposed universalism and which construes cultural difference as inherently inimical to human rights (e.g., Muslim women’s head covering) stands open to criticism on the basis of the very human rights standards it purports to uphold. The work of Abdullahi A. An-Na’im is a well-regarded example of moderate cultural relativism. He holds that an “insufficiency of cultural legitimacy of human rights standards” is a primary cause of violations of human rights around the world (An-Na’im 1992, p. 19). An-Na’im unequivocally affirms existing international human rights standards, but argues the need to enhance their cultural legitimacy in the context in which human rights advocates wish to see them take hold through internal dialogue aimed at developing interpretations of human rights in light of local norms and values. On the face of it, An-Na’im’s “cultural legitimacy thesis” (CLT) has much appeal as a dialogic framework that eschews both traditionalist cultural relativism and rejects the external imposition of the human rights agendas of dominant powers. However, it also poses threats to the human rights of women and non-conforming members of wider groups based on cultural-religious identity. The cross-cultural dialogue element of AnNa’im’s account, for example, relies on a scenario wherein the understanding of what is or is not a human rights concern in a given context, is brokered by the elites in that culture. In summary, the human rights of certain individuals or subgroups within a community may not be respected and protected in a communitarian dialogue that is dominated by privileged, usually male, elites. This is especially a concern for women, who invariably constitute the primary locus of enforcement of cultural mores and identity, especially with regard to sexuality, marriage, and reproduction (Yuval-Davis 1997).

At the other end of the spectrum, Jack Donnelly’s work best captures a mainstream universalist stance on human rights. He rejects strong cultural relativism, which holds that “culture is the sole source of the validity of a moral right,” and strong universalism on the other side, which asserts that “culture is irrelevant to the validity of moral rights” (Donnelly 1989, pp. 110–112). However, like most mainstream proponents of universalism, Donnelly gives too little space to local agency and context in determining the meaning and content of human rights. This flows primarily from an analytical framework that is embedded in an uncritical modernization narrative. Most notably, Donnelly explicitly equates what he sees as a growing de facto acceptance of human rights standards around the world with a linear process of western modernization. This narrative relies on notions of a dynamic West, holding the key to transcendent truth and justice, while the “backward” developing world is mired down in the particularities of culture and tradition, until globalization whittles away the distinctions to create a homogenized, westernized “global culture.” As Arati Rao notes, this construal of events is deeply flawed because it fails to recognize that the “concept of human rights itself is a historically circumscribed and context-bound phenomenon” (Rao 1995, p. 168).
This failure, Rao argues, generates an “overly simple notion of the relationship between culture and human rights in our world of differences ... with universalists falling on one side and relativists on the other” (p. 168). Silvia Gagliardi (2019) presents a new, comprehensive survey of “universality vs. relativity” debates with a focus on the human rights of indigenous and minority women. Her review traverses literatures on feminist international law, Islam and women’s human rights, and postcolonial and gender critiques of human, women’s, and minority group rights. She recognizes the importance of group rights in struggles against threats of “extinction, assimilation [and] exclusion” of minority groups. However, echoing Yuval-Davis, Gagliardi cautions against processes in the name of human rights that could in practice serve to dilute, co-opt, or subvert agency, and against an exclusive reliance on appeals to group rights that obscure the “relations and structures of power [that traverse] minority and indigenous groups themselves”.

Bawa (2019) also offers a fresh reappraisal of these debates that decenters culture in a chapter on women and the human rights paradigm in Africa. Bawa argues, “the highly privileged position of culture (as static) in discourses of women’s rights in Africa and other non-Western settings, is rather moot”. Citing the current wave of global social media “hash-tag” campaigns against sexism, like Arati Rao, Bawa rebuts the “oversimplified idea that the West is a homogenous society where women’s individual rights [are fully observed]” and pervasive misrepresentations of the West as “a-cultural” and “a shining example of a human rights habitus”. Bawa succinctly observes, “culture does play a role in women’s rights concerns everywhere ... [but] highlighting it as a particular culprit in the case of African countries/ societies only serves the purpose of othering African societies as unprogressively different” (Bawa 2019). In an examination of the social and cultural implications of “honor-based violence,” Gill (2019) further develops a nuanced discussion of the role played by “culture” in representing and responding to certain violations of human rights affecting women who belong to minority or migrant families or communities in contemporary Britain. Gill recounts the case of the “honor killing” in 2003 of British teenager Shafilea Ahmed by her parents, after she refused to enter into an arranged marriage. Ultimately, Gill concludes: “The patriarchal gender system in which Shafilea was ensnared did not derive from the Ahmeds’ ‘backward’ rural roots in opposition to enlightened British culture. Instead Shafilea lived under the constraints imposed by both the British patriarchal values to which all British women are subject, and the patriarchal values of her parents’ rural Pakistani upbringing” (Gill 2019).

The entwinement of culture and religion in politics and state institutions is a recurring motif in discussions about obstacles to the human rights of women. Steiner (2019) examines this nexus in the context of legal pluralism in Malaysia, with a particular focus on efforts of the CEDAW committee to challenge religious influence in law and policy that is detrimental to women’s equality and rights. Steiner’s chapter reveals the complex and conflicted interrelation among actors of the different branches of government, religious leaders, and civil society, including the organization Sisters in Islam (SIS). Inspired by An-Na’im’s cultural legitimacy thesis, SIS has a long record of engagement with religious and state authorities to advance
constitutional, pro-democratic and pro-gender equality interpretations of Islamic law in public life and family policy (Reilly 2017). Her work provides a valuable window on the dynamics of an important interface of engagement between locally rooted, context-specific advocacy for the human rights of women and global monitoring of human rights implementation.

A common theme in scholarship that addresses questions of culture is that static, essentialist, or stereotyped conceptions of culture are both false and counterproductive in efforts to advance the human rights of women. As Bawa describes it: “culture is another way of referring to the social, political, economic and religious make up and dynamics of society ... [and] cultural excuses, legitimations and discourses in rights concerns ... are ultimately about prevailing power dynamics” (Bawa 2019). This is true everywhere and not only in so-called developing countries. It follows that a gendered, context-specific analysis of culture in this wider sense is essential to understanding the nature of human rights issues facing women in any given context and to devising the remedial actions required from the bottom up. This means dispensing with the artificial binary of universality versus culture and considering instead universality in context: what, according to the women affected, are the conditions that support realization of their human rights in relevant, context-specific ways?

**Difference, Intersectionality, and Vulnerability**

A transformative approach to achieving the human rights of women begins with the recognition of difference. Successive waves of feminist critique have established the message that any contemporary feminist project – whether activist or academic – cannot assume that women are a monolithic group with a “natural” common agenda. To the extent that feminist projects do have a common point of departure, it is that gender power relations remain dominant in most societies and operate with other dimensions of experience and identity – including class, “race,” ethnicity, sexuality, religion and ability to distribute power and resources in various, context-specific ways that confer advantage or disadvantage. Broadly speaking, this understanding is what most people mean by an intersectional approach – a perspective that recognizes that different women experience gender-based disadvantage or oppression differently. Within the human rights paradigm, recognition of the intersectionality of women’s locations, experiences, and identities (Crenshaw 1997, 2000; Collins 2000) calls attention to a complex reality of shifting forms of “multiple discrimination.” Regarding the challenges of addressing the interplay of gender, race, and ethnicity within a women’s human rights framework, intersectionality theorist Kimberle Crenshaw argues that:

> Ensuring that all women will be served by the expanded scope of gender-based human rights protections requires attention to the various ways that gender intersects with a range of other identities, and the way these intersections contribute to the unique vulnerability of different groups of women. Because the specific experiences of ethnically or racially defined women are often obscured within broader categories of race or gender, the
A commitment to an intersectional approach is increasingly evident in various domains of human rights practice, especially relating to gender and the human rights of women. For example, Harpur and Douglas (2019) note that the intersection of gender and disability has been recognized, “either expressly or implicitly as compounding vulnerability,” in most country reports submitted to the Committee on the Rights of People with Disabilities. A close analysis of the provisions of the Convention of Belém do Pará (OAS 1994) by O’Connell (2019) highlights how the Convention takes into account “the intersectional and compound nature of violence as it disproportionately impacts marginalized and disenfranchised communities”. Specifically, Article 9 requires States Parties to “take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons ...” (ibid., art 9). In Freeman’s comprehensive account of four ‘decades’ of the work of the UN CEDAW Committee, she observes that the committee “consistently notes the existence of intersectional discrimination – in which women’s ethnicity, class, or religion, for example, are also bases of discrimination” (Freeman 2019) in its monitoring of states’ compliance with the treaty.

As Bunch notes, however, there are difficulties in implementing an intersectional approach to the human rights of women. She elaborates:

Intersectionality is not just adding up boxes of different types of oppression and checking them off ... [it] requires understanding how these factors often shape each other and produce a gendered expression of racism or a classist version of sexism, for example. Policy makers and implementers need to be trained in the values and changes being sought, as well as in how to identify different factors at play. Seeking to combine basic principles with flexibility in understanding a situation is an ongoing challenge, but finding a way to implement an intersectional gendered approach is crucial to progress. (Bunch and Reilly 2019)

In addition to implementation challenges, there is a tendency in human rights circles, demonstrated by the examples noted above, to view intersectionality only as a lens to name and describe myriad forms of increased or exceptional vulnerability to human rights abuses and harms. While consideration of the relationship between intersectionality and vulnerability to violations of rights is necessary, there are dangers that the concepts of “intersectionality” and “vulnerability” will serve mainly to amplify narratives of victimization and helpless “vulnerable groups” in counterproductive ways. Goonesekeere (2019) is highly critical of the how “vulnerability” figures in contemporary human rights discourse to “encourage the exercise of state discretion in denying women’s rights as part of a ‘protectionist’ approach, when what women really need is protection of their human rights as human beings”. In contrast, a transformative approach to human rights pays attention to what is required to create conditions of empowerment, informed by awareness of
how intersectionality operates. Moreover, it focuses on creating environments that ameliorate different forms of vulnerability, rather than forms of protection that potentially diminish the agency and autonomy of the target “vulnerable groups,” which are also important resources in navigating vulnerability (Kohn 2014).

Dauer’s (2019) survey of human rights responses to violence against women highlights an important example of a more comprehensive account of intersectionality in a recent report by Special Rapporteur on extrajudicial, summary or arbitrary killings, Agnes Callamard (UNHRC 2017). The latter refers to intersectionality in four distinct ways. First, there is a broad definition of the term, to mean the “interaction between various forms and sources of systems of power and discrimination” (ibid., para 21). Second, the term is used to name “certain groups of women (for example, girl-children, women from ethnic, racial and minority groups and disabled women) as being at particular risk of violence owing to the multiple forms of discrimination they face” (ibid., para 54). Callamard also includes LGBTQI persons among such at-risk groups that states must recognize as such in their policymaking. Significantly, Callamard stresses discrimination as the source of vulnerability rather than intrinsic characteristics of groups. Third, Callamard expands established usage further by calling for “measures to prevent and respond to the multiple intersectional discriminations that perpetuate gender-based killings” as part of “due diligence requirements” and a “focus on prevention and on root causes” (ibid., para 64). The latter makes a clear link between the recognition of intersectional discriminations and the obligation on states to prevent them and address their “root causes.” This redirects the focus away from “vulnerable” individuals and groups to social structures and the structural changes necessary to prevent intersectional forms of discrimination. Finally, Callamard underlines the links between intersectionality and the indivisibility of rights. “A gender-based intersectional analysis” she insists “calls for a greater conceptual and policy based integration between the protection of the right to life and the realization of economic, social and cultural rights” (ibid., para 79). Taken together, the four dimensions of Callamard’s use of the concept of intersectionality (and vulnerability) are indicative of a transformative approach to intersectionality in the implementation of the human rights of women.

**Law, Implementation, and Root Causes**

Much recent scholarship on the human rights of women tells a decidedly positive story of new laws and norms since the Second World Conference on Human Rights (Vienna 1993), aimed at advancing the human rights of women. In addition to the raft of UN and regional treaty instruments targeting violence against women noted earlier, this includes many new CEDAW general recommendations, e.g., on the rights of migrant and refugee women or access to justice (Freeman 2019; Dauer 2019). It also encompasses numerous UN Security Council resolutions and national action plans on women, peace, and security (Beoku-Betts 2019; Gardam 2019), new policies to combat sexual exploitation and abuse (SEA) by peacekeepers (Vojdik 2019), and unprecedented enforcement of customary and treaty norms in the Law of Armed Conflict (LOAC), especially regarding conflict-related sexual violence.
In addition, the last two decades have seen transformative developments in International Criminal Law, including recognition of many forms of gender-based violence as crimes against humanity and war crimes, and the inclusion of progressive gender-sensitive provisions in the statute of the International Criminal Court (Gardam 2019; Ramji-Ngoles and DerOhanessian 2019). The adoption in 2000 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women, prompted a wave of national action plans and new national legislation in “virtually every corner of the globe” (Smith Cannoy 2019). In recent years, the UN General Assembly has also passed multiple resolutions on the prevention and elimination of “child, early and forced marriage” (Gaffney-Rhys 2019). There have also been significant developments in regional human rights standards and mechanisms in Africa (Bawa, Dauer), the Americas (O’Connell, Dauer), Asia (Pisanò), and Europe (Fredman).

While most writers welcome the many new laws and norms they critique, all express major concerns about implementation gaps of different types. Harpur and Douglas, for example, recognize the vital role played by the Committee on the Rights of People with Disabilities (CRPD) in raising awareness of disability domestic and family violence, but they are doubtful of the CRPD’s capacity to ensure that states meet their obligations to provide and enforce adequate legislative responses (Harpur and Douglas 2019). Regarding the elimination of child marriage, Gaffney-Rhys identifies failures to establish proper systems for registering births and marriages, and to set appropriate minimum age limits for marriage, as chronic implementation gaps that must be resolved to address this urgent human rights issue (Rhys-Gaffney 2019). On the shortcomings of the Inter-American Human Rights System, O’Connell (2019) criticizes, in particular, the failure to apply to women’s cases the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador). O’Connell argues “only when women’s rights violations are investigated using such a multifaceted lens will it be possible to ... dissect and challenge” underlying gender power imbalances and practices of subordination that target women (O’Connell 2019).

In relation to conflict-affected situations, Gardam commends the “quite radical reinterpretations of existing provisions of LOAC in the statutes and jurisprudence of international criminal tribunals so as to more accurately reflect the ways in which women experience conflict” (Gardam 2019). However, she insists that much more has yet to be done to incorporate into International Humanitarian Law and practice a human rights–based understanding of the effects of indirect gender discrimination in conflicts. Staying with conflict-related gender issues, Beoku-Betts notes that implementation of UN Security Council resolution 1325 often unhelpfully takes the form of “technocratic and institutional solutions” that limit “the extent to which local concerns and initiatives can effectively shape implementation of ...1325 NAPs” (Beoku-Betts 2019). Moreover, she argues “structural inequalities of poverty ... and a persistent culture of patriarchy and patronage ... fuel violence against women and militate against the capacity of women’s organizations to confront the state to effectively address their ... interests” (ibid.). In a similar vein, on the challenges of
tackling peacekeeper sexual exploitation and abuse, Vojdik calls on the international community to “prioritize and fund programs to eliminate the social, economic, legal, and political inequalities, [thereby] empowering women to overcome ... the disadvantages caused by conflict” (Vojdik 2019). Other scholars problematize particular laws on a more fundamental level and question whether or not they are appropriate or adequate to address the human rights and needs of women. Ramj-Nogales and DerOhannesian, for example, conclude that the ICC “is an inappropriate mechanism to account for violence against forced migrant women that is private, opportunistic, committed by non-state actors, and/or perpetrated outside a conflict setting” (Ramj-Nogales and DerOhannesian 2019). Smith-Cannoy also raises questions about the criminal justice approach to sex trafficking; she observes “there are often moments during the criminal prosecution of traffickers that necessitate that victims’ rights be trampled in the name of securing a conviction” (Smith-Cannoy 2019).

Overall, a strong recurring theme in recent literature in the field is the urgency of attending to root causes of violations of human rights. The transformation of entrenched forms of structural inequality and disadvantage – along lines of gender, “race,” ethnicity, class, ability, legal status, and other configurations of unequal power relations must be at the center of efforts to translate human rights laws and norms into concrete positive change on the ground. The creation of international laws and norms that take the human rights of women seriously is an indispensable step, but is not an end in itself. In order for human rights laws and norms to be transformative, they must be linked to comprehensive initiatives that tackle the root causes of the violations they address, from the bottom up.

Conclusion

The Second World Conference on Human Rights (Vienna 1993) was a historic turning point. The resulting Vienna Declaration and Programme of Action recognized for the first time that women’s rights are “an integral and indivisible part of universal human rights” (rather than a lesser category of rights) and that violence against women is a violation of human rights. This hard-fought recognition propelled waves of reform aimed at including women and gender issues, in one form or another, across the world’s human rights regimes, as well as in other domains of public international law – humanitarian, criminal, and refugee, among others. This chapter provides an overview of many of the main developments in relation to the human rights of women that have taken place since 1993.

First, this includes the major achievement of ending the invisibility of myriad forms of gender-based violence and expanding the contexts in which GBV is understood as a complex violation of human rights and, in some situations, a war crime and crime against humanity. Second, the tremendous efforts since 1993 to implement the new laws and norms relating to the human rights of women reveal that doing so is inextricable from putting into practice recognition of the indivisibility of human rights. These are not separate strands of the Vienna legacy: they are coterminous projects. Third, pitting the idea of universal human rights against “culture,” and

aligning this dichotomy with a notion of “the West versus the rest,” is a false and counterproductive construction. It denies the gender harms perpetuated by patriarchal cultures across “the West” (no less than other regions of the world) and the imperative for every project of human rights implementation to be context-specific and built from the bottom up, with the participation of those whose human rights are being violated or at risk of violation. Fourth, any twenty-first-century agenda for the human rights of women must proceed from a critical, intersectional perspective – one that recognizes that different women and LGBTQI people experience gender-based disadvantage or oppression differently. However, the concepts of intersectionality and vulnerability that are deployed must direct attention to the state and non-state actions required to ensure conditions that ameliorate vulnerability, and in which differently situated women can access and enjoy their human rights. Finally, as noted in the preceding section, implementation of commitments to the human rights of women must address root causes – that is, seek to transform the institutions and structural conditions that perpetuate the disadvantages and unequal power relations that foster vulnerability to abuses of human rights in the first place.

References


OAS (1994) Inter-American convention on the prevention, punishment and eradication of violence against women (Convention of Belem do Para). Available at: https://www.oas.org/juridico/english/treaties/a-61.html


