1. Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 because women were experiencing ‘extensive discrimination’, despite international prohibitions against sex discrimination. Unlike those prohibitions, which apply to both men and women, CEDAW acknowledges women’s experiences of discrimination as women, and requires States Parties to eliminate all forms of discrimination against women and achieve substantive gender equality. It further reinforces the applicability of all human rights to women, and protects rights specific to their particular experiences of discrimination and individual needs and circumstances.

CEDAW established a body of independent experts, known as the Committee on the Elimination of Discrimination against Women (Committee), to consider ‘the progress made in the implementation of the … Convention’. To enable it to perform this task, CEDAW authorizes the Committee to consider periodic reports from States Parties on the measures they have adopted to give effect to CEDAW, and issue Concluding Observations on their treaty compliance. CEDAW also empowers the Committee to issue General Recommendations (GR) to guide States Parties on the nature and scope of the obligations with which they must comply. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1999, expanded the Committee’s mandate, authorizing it to consider individual communications alleging violations of CEDAW, and to conduct inquiries into reliable allegations of grave or systematic violations of the same. Although not ‘enforcement’ mechanisms in the strict sense of being able to compel implementation of CEDAW by States Parties, these procedures are used to advance women’s human rights.

This chapter introduces CEDAW, its Committee and mechanisms to ‘enforce’, interpret and apply CEDAW. It explains how the Committee has sought to uphold women’s rights by interpreting and applying the rights to non-discrimination and equality guaranteed by CEDAW. It concludes by reflecting briefly on how the Committee might strengthen its impact through improving its methodologies for gender analysis and the identification of gender dimensions of substantive equality.

2. Rights to Non-Discrimination and Equality

The overarching object and purpose of CEDAW, as interpreted by the Committee, is ‘to eliminate all forms of discrimination against women with a view to achieving women’s de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms’. Article 1 of CEDAW defines ‘discrimination against women’ as
any distinction, exclusion or restriction made on the basis of sex which 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.

To establish a claim of discrimination under article 1 of CEDAW, it must first be shown that there is a distinction, exclusion or restriction; that is a difference in treatment.\textsuperscript{14} A distinction occurs when a State Party fails to treat a similar interest of men and women, like property rights, in the same way, or a significantly different interest between them, such as pregnancy, in a way that adequately respects that difference. Exclusion occurs when a State Party excludes women, for example from certain occupations, while including men. A restriction occurs when a limit or condition is imposed on women, but not men, like when women’s access to health care is contingent on the consent of a male guardian, or only women are burdened, as in the case of forced motherhood.

For a difference in treatment to constitute discrimination under article 1, it must be on the basis of sex, although other provisions\textsuperscript{15} and the Committee itself\textsuperscript{16} confirm it can also be on the basis of gender. The Committee explains that

the term ‘sex’ ... refers to the biological differences between men and women. The term ‘gender’ refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.\textsuperscript{17}

All women discriminated against on the basis of sex or gender are protected, irrespective of their marital status.\textsuperscript{18} Certain CEDAW provisions address women's different experiences of discrimination, including those of rural women,\textsuperscript{19} the girl child\textsuperscript{20} and pregnant women and mothers.\textsuperscript{21} CEDAW also covers the intersectional discrimination women experience when sex/gender link with other factors that comprise their complex beings, such as those related to identity (e.g., racial, sexual, national, caste or religious), bodily or physical status (e.g., health or disability) or other characteristics (e.g., migrant or refugee) status.\textsuperscript{22} The Committee’s evolving approach to intersectional discrimination can be seen in a recent inquiry, in which it analyzed how intersecting forms of discrimination contributed to high rates of violence against Aboriginal women/girls in Canada and heightened the consequences for them.\textsuperscript{23}

Differences in treatment on the basis of sex/gender may constitute discrimination under CEDAW, whether they are made directly (purpose) or indirectly (effect). Direct discrimination occurs when women are treated differently because of their sex/gender,\textsuperscript{24} as in the case of Svetlana Medvedeva who was discriminated against when she was denied employment at the helm of a boat because Russia bans women (but not men) from that occupation.\textsuperscript{25} Indirect discrimination occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.\textsuperscript{26} Sex-neutral measures permitting healthcare providers to conscientiously object to deliver lawful care may discriminate indirectly because providers generally object to the provision of health care that only women need. For example, providers often object to the provision of sexual and reproductive health care services to women and girls, such as emergency contraception, disproportionately prejudicing their access to lawful care.\textsuperscript{27}

To constitute discrimination, the difference in treatment must impair or nullify the recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The rights affected must be guaranteed by CEDAW, such as the equal right with men to education.\textsuperscript{28} They can also include forms of discrimination not explicitly recognized in CEDAW but which the Committee has
recognised under article 1, including gender-based violence and the criminalization, neglect and oversight of health care only women need. According to the Committee, CEDAW, as a gender-specific human rights instrument, also covers other rights not explicitly mentioned therein, 'but that have an impact on the achievement of equality'.

Article 1 specifies that the difference in treatment based directly or indirectly on sex/gender must impair or nullify women's rights on a basis of equality of men and women. In terms of formal equality, CEDAW requires that, as equals, women and men should be treated the same. Yet, it extends beyond a formal obligation of equal treatment to treating women and men according to their (actual, not perceived) differences to achieve women's de facto equality with men, which the Committee interprets as 'substantive equality'.

Sandra Fredman contends that substantive equality 'should be understood as a multidimensional concept, pursuing four complementary and interrelated objectives'. This framework of equality illuminates the Committee's normative work. The first dimension of the framework, redistribution, 'aims to redress disadvantage'. It focuses not simply on treating people in the same way, regardless of their gender, but on redressing women's specific disadvantage. This entails a recognition of the interlocking nature of women's disadvantage: how imbalances of power within the home and family radiate outwards into inequalities in the labour force and more generally in access to resources and public life.

Relatedly, the Committee requires women to 'be given an equal start and ... empowered by an enabling environment to achieve equality of results', and for States Parties to develop 'an effective strategy aimed at ... a redistribution of resources and power amongst men and women'.

The second dimension, recognition, aims to address 'stigma, stereotyping, prejudice and violence based on a protected characteristic'. Consistent with this, the Committee has explained that '[i]nherent to the principle of ... gender equality ... is the concept that all human beings, regardless of sex are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices'. States must 'address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts ... but also in law, and legal and societal structures and institutions'. The Committee also characterizes gender-based violence as discrimination and affirms that states must prevent, investigate, prosecute and punish it.

The third dimension, participation, promotes the voices and agency of marginalized groups. The Committee has said substantive equality 'calls for an effective strategy aimed at overcoming underrepresentation of women'. It has also said

it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfil the guarantee that the enjoyment of human rights is for all people regardless of gender. Women's full participation is essential ... for their empowerment ... [and] the advancement of society.

The final dimension, transformation, aims to accommodate difference, including through structural change. This dimension recognises

that equality is not necessarily about sameness. Different identities and characteristics should be respected and even celebrated. Difference should not, however, attract detriment, and nor should assimilation be required as a precondition for the right to equality. This in turn might require structures to be modified or transformed to accommodate difference.

Here the Committee has acknowledged that 'biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required ... to address such differences'. It has also recognised that women's position will not improve unless the underlying causes of
discrimination and inequality are addressed effectively.\textsuperscript{50} Hence, States Parties must adopt measures ‘towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns’.\textsuperscript{51}

3. State Obligations

Articles 1, 2–5 and 24 of CEDAW outline the general obligations of States Parties to eliminate all forms of discrimination against women and achieve substantive equality in the public and private sphere. They also form the interpretative framework for articles 6-16, which outline obligations regarding common forms of discrimination against women. The Committee explains that states, including their executive, legislative and judicial branches, must respect, protect and fulfill de jure and de facto equality.\textsuperscript{52} These obligations fall along a continuum of duties to eliminate direct and indirect discrimination in order to improve the actual position of women through concrete and effective policies and programs,\textsuperscript{53} including temporary special measures,\textsuperscript{54} and to address harmful gender relations, often grounded in degrading prejudices and stereotypes.\textsuperscript{55}

States are directly responsible or strictly liable for the actions of their own officials and of non-state actors that can be imputed to states, such as private doctors running a state health clinic. States are indirectly responsible for the actions of non-state actors through states’ failures to exercise ‘due diligence’ to prevent or to investigate and punish any violations by non-state actors of CEDAW rights. Whether dealing with direct or indirect discrimination, Andrew Byrnes explains that the ‘critical question here is what constitutes “appropriate measures” in a particular context.’\textsuperscript{56} Whether dealing with state or non-state actors, each state has to justify the appropriateness of its chosen means, including temporary measures.\textsuperscript{57} Ultimately, however, the Committee determines whether the chosen means comply with CEDAW.\textsuperscript{58}

States try to justify non-compliance with specific CEDAW articles, for example by claims to scarcity of resources, and appeals to cultural, including religious, traditions. While such justificatory attempts are reflected in state reports, communications and inquiry reports, they are particularly evident in the substantive reservations to CEDAW.\textsuperscript{59} The Committee is clear that delays in implementing a policy of discrimination cannot be justified on any grounds, including cultural and religious,\textsuperscript{60} and consistently calls on reserving states to provide information on how such reservations limit women’s rights, and to review the reservations with a view to withdrawing them as soon as possible.\textsuperscript{61} No state has used the dispute resolution mechanism under article 29(1) to challenge the permissibility of reservations under article 28(2).

4. Mechanisms for ‘Enforcing’ CEDAW

The Committee plays a critical role applying the rights to non-discrimination and equality to women’s individual and collective experiences and ‘enforcing’ states’ compliance with CEDAW. It does this though its examination of state reports, GRs, views on individual communications and findings in inquiry reports.

Reporting is mandatory: States Parties ‘undertake to submit … a report on the legislative, judicial, administrative or other measures’ they have adopted to comply with CEDAW, and the factors and difficulties affecting the degree of compliance, for Committee consideration within one year of entry into force for the state concerned and every four years thereafter, or whenever the Committee so requests.\textsuperscript{62} The harmonized reporting guidelines include a core document for all human rights treaties and treaty specific documents.\textsuperscript{63} The core document requires states to provide statistical data and budget information disaggregated by sex, explain the legal context for rights protection, including national human rights institutions, and detail the measures taken to eliminate all forms and grounds of discrimination and prejudices that undermine human rights.\textsuperscript{64} The CEDAW-specific document encourages states to provide any supplementary information, such as on ‘any distinctions, exclusions or restrictions made on the basis of sex and gender… imposed
by law, practice or tradition … on women’s enjoyment of each provision’ of CEDAW. It also requires states to provide legal texts, including judicial decisions applying CEDAW.

Initial reports establish the basic constitutional and legal framework. Subsequent reports focus on developments since the last report. The Committee appoints a task force from among its members to pre-examine the report and identify issues that serve as the basic agenda for the dialogue with the State Party. One member serves as the Country Rapporteur. The task force receives documentation, including the state’s report, findings on that country under other CEDAW mechanisms, relevant laws, Concluding Observations on the same country by other treaty bodies, relevant reports of the Human Rights Council and Special Rapporteurs, and shadow reports by civil society. Shadow reports address gaps and incomplete information in the state’s report, and may indicate the types of Concluding Observations that civil society would like the Committee to make. Based on this pre-examination, the Committee dialogues with the State Party delegation, and then issues its Concluding Observations on the report. These explain the positive developments in achieving women’s equality and the areas for improvement, and make recommendations addressing those areas.

The CEDAW reporting process encourages compliance and affords States Parties and civil society the opportunity to re-evaluate and re-invigorate their efforts to achieve substantive equality for women, and to develop a better understanding of the problems they face in doing so. Criteria for assessment of the reporting procedure vary, but include: the efficiency of the work (e.g., the degree of backlog), the legality of the work (e.g., the extent to which its Concluding Observations are derived from CEDAW’s guarantees), the quality of the examination (e.g., the Committee’s degree of knowledge of country situations), the effectiveness of the process (e.g., the number of recommendations implemented) and the visibility of the reporting procedure and outcome of the examination.

Regarding the quality of the examination, the Committee could learn from the approach under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) which values the recognition of women’s rights to culture, ‘alongside the opening up of possibilities to challenge and weed out negative norms and practices that are justified on culture.’ In addition to the Committee’s calls for immediate secular law prohibition of discriminatory practices, such as polygamy, it might include differentiated efforts under religious and plural law systems to discourage them.

Article 21 of CEDAW authorizes the Committee to issue GRs through which it shares its expert views about women’s long-standing and emerging experiences of discrimination and clarifies the legal and policy measures States Parties must take to ensure compliance. At the time of writing, 34 GRs had been adopted. They clarify reporting obligations, provide legal interpretation and fill gaps. GRs 25 and 28 are noteworthy examples of authoritative legal interpretation of the scope of the rights to non-discrimination and substantive equality and of CEDAW’s overarching object and purpose. GR 19 addresses the lack of an express provision in CEDAW enumerating the obligations of States Parties with respect to gender-based violence against women.

Although not legally binding, GRs are presumed to be legally correct, recognizing that such presumptions are rebuttable. GRs or the acquiescence of states to them can be considered as subsequent practice and authoritative interpretations, the authoritativeness being derived from multiple sources, including members’ expertise. Whatever the basis of their legal significance, key to their significance is that they are sufficiently persuasive to attract compliance. Those GRs exerting a greater compliance pull are considered more legitimate.

Legitimacy might be measured by a GR’s inputs, including its determinacy, coherence and adherence. A GR’s determinacy can be measured in part by its textual clarity in providing guidance to: states on their reporting and compliance tasks; domestic courts and regional and international treaty bodies on how to interpret and apply convention guarantees; and civil society on producing shadow reports. Clarity might be considered in terms of how clear a GR is between
mandatory and permissive obligations. A GR is more determinate when it distinguishes “between “minimum core” obligations (lex lata) to which a [CEDAW] right gives rise and a perceived aspirational penumbra (lex ferenda). Yet another possibility is that the distinction is used to indicate which parts of a General [Recommendation] summarize firm past interpretive practices and which parts are in abstracto interpretive statements.80

A GR’s coherence might be assessed by whether it relates in a principled fashion to the text of a CEDAW right or the Committee’s past interpretive practice in other enforcement mechanisms.81 Demonstrations of a GR’s coherence might be shown by its reliance on sources of international law and, for example, transparency in drafting.82 A GR’s normative legitimacy might also be shown by its outputs. For example, GR 19 has been referenced by national83 and regional84 courts, and laid a foundation for the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention),85 attesting to its normative legitimacy.

The Optional Protocol’s communication procedure authorizes the Committee to consider complaints submitted by or on behalf of individuals or groups of individuals claiming a State Party has violated CEDAW.86 The number of communications has grown steadily since the Optional Protocol entered into force, and presently is just over 100.87 Those published at the time of writing fall into three categories: reproductive rights; rights affected by gender-based violence; and civil, political or economic rights.88 Like under other international communication procedures, communications to the Committee must satisfy certain admissibility requirements, such as exhausting domestic remedies.89 If satisfied, the Committee considers whether the state complied with CEDAW and then publishes it ‘views’ and recommendations.90 Although not legally binding, states must give them due consideration and report to the Committee on the steps taken to implement them.91 The Committee may follow up on their progress in this regard.92

The Optional Protocol also authorizes the Committee to conduct inquiries where it receives ‘reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention’.93 While not a unique procedure in the international treaty system, the Committee is one of only a handful of treaty bodies empowered to conduct such inquiries. If the Committee does initiate an inquiry, it will determine whether the state violated CEDAW and detail its findings and recommendations in an inquiry report,94 to which the state has six months to respond.95 Although not legally enforceable, the Committee’s findings and recommendations are persuasive96 and, like with the communication procedure, the Committee can maintain pressure on states to implement its recommendations through the ‘follow-up’ procedure.97

Three inquiries have been completed so far, with the Committee finding multiple violations of CEDAW on each occasion. In the first inquiry, the Committee found that Mexico had violated several provisions of CEDAW by failing to protect women against widespread abduction, rape and murder in and around Ciudad Juárez.98 In the second inquiry, the Committee concluded that Canada had violated the rights of Aboriginal women and girl victims of violence, particularly those victims of murder and disappearance.99 In the most recent inquiry completed by the Committee, it found that a ban on artificial contraceptives in the Philippines’ city of Manila violated CEDAW.100 Several requests for inquiries are pending, including one from Northern Ireland submitted in 2010.101 The Committee twice refused to conduct inquiries, but failed to give reasons for their refusal.102

The legitimacy of the Committee’s work, especially its findings in communications and inquiries, can be determined by whether states consider that the procedure has been applied fairly, and ‘has involved the impartial and full consideration of the relevant evidence and law; whether the decision of the body is persuasively reasoned; whether the decision gives a clear indication of the nature of the violation and the steps that need to be taken to remedy it.’103 These criteria are often applied in commentaries on the Committee’s communication decisions.104 Moreover, ‘the coherency and persuasiveness of its interpretative reasoning and the consistency and rigour of its application of the Convention to women’s individual situations … affect the reputation and
perceived legitimacy of the Committee and, concomitantly, its ability to influence how states parties and other treaty and decision-making bodies address women’s human rights.\textsuperscript{105}

5. Strengthening CEDAW’s Impact

CEDAW’s impact can be determined in many ways, including State Party compliance with the Committee’s findings under various mechanisms, the degree to which it has provided policy guidance to states, and how has it has strengthened the normative meaning of the right of women to be free from all forms of discrimination and achieve substantive equality. More functionally, it might be asked how CEDAW has strengthened networks of women’s rights advocates, by connecting the local to the global and the global to the local, as they work toward a shared purpose of socializing and implementing norms of gender justice.

The Committee’s interpretive role, exercised through Concluding Observations, GRs, and findings in communications and inquiries, may far exceed its role as dispensing individual justice.\textsuperscript{106} This is not to diminish the value of the communication and inquiry procedures. As is evident from the successful communications and inquiries to date, for some women the Committee is often their only option to secure gender justice and it may be the only body, or one of only few international bodies, upholding their human rights and fundamental freedoms when national institutions fail to do so. That said, the Committee is subsidiary to national institutions in that those institutions must be afforded the opportunity to remedy alleged violations of CEDAW before the Committee considers the allegation. Moreover, the Committee has limited capacity to consider individual communications and conduct inquiries. As a result, its interpretive leadership in fulfilling its mandate to eliminate all forms of discrimination against women is critical to bolstering national norms.\textsuperscript{107}

A paradox of CEDAW, like other human rights treaty bodies, is that because it cannot impose sanctions on non-compliant states, it has to acculturate sex/gender equality norms into the social fabric to enable its implementation.\textsuperscript{108} The effectiveness and legitimacy of the Committee’s work is therefore paramount.\textsuperscript{109} Ensuring this is an ongoing process, one in which the Committee must develop its body of jurisprudence as it learns more about women’s lived experiences of discrimination and inequality and deepens its understanding of the rights to non-discrimination and substantive equality in response to normative and other developments (and often in the face of resourcing challenges).\textsuperscript{110} An area that requires constant vigilance is ensuring that it applies coherent methodologies for sex/gender analysis. The social construction of women is often so normalized that it can be difficult to see its oppressive nature, like the proverbial fish that does not understand the water in which it swims. Gender analysis helps to expose the normalized nature of gender subordination. The methodologies that the Committee could usefully develop include: determining when discrimination is based on sex/gender; asking three questions; and articulating the sex/gender dimensions of substantive equality.

**Determining when discrimination is made on the basis of sex or gender** includes identifying the:

- forms and manifestations of discrimination against women, including intersectional and emerging forms;
- circumstances in which they occur;
- gendered causes and consequences; and
- the availability and accessibility of gender-sensitive remedies.

This methodology builds on the guidance of the Committee on the Elimination of Racial Discrimination,\textsuperscript{111} and provides a more systematic approach to understanding discrimination against women.\textsuperscript{112} It departs from the more familiar article-by-article approach, and aims to uncover the structural dimensions of inequality, whether embedded in stereotypical thinking,\textsuperscript{113} religious\textsuperscript{114} or military\textsuperscript{115} institutions or, for example, in family structures, such as polygamy.\textsuperscript{116} Such an analysis
would inform the five-part determination of discrimination against women, discussed in section 2 above.

The identification of the forms and manifestations of discrimination against women, the circumstances in which they occur and their gendered causes and consequences helps to understand the nature of the ‘different harms that may ensue from the same violations’, including gendered harms. Crafting recommendations that address these identified harms requires ‘remedies that are gender specific as well as gender transformative’, that is transform the pre-existing situation.

Another methodology is to ask three questions: the ‘woman question’, the ‘man question’ and the ‘other question’. The woman question means examining how a law, policy or practice disadvantages women. This question would assist the Committee to expose how the different forms of subordination of women are deeply rooted in our individual, social and institutional modes of functioning. The ‘man question’ explores how the construction of men/masculinities enables the privileging of men and contributes to the social stratification of women. The ‘other question’ aims to identify the intra-gender differences among women, and uncover the interconnectedness of these differences that produce unique forms of oppression. For example, discrimination against women with various sexual and gender identities often produce distinct harms that need legal recognition. Notwithstanding that CEDAW and the Committee’s interpretation ‘belie the claims that CEDAW is assimilationist, homogenous or essentialist’, articulating States Parties’ obligations concerning intersectional discrimination and ensuring full compliance with them is an ongoing undertaking. Asking the ‘other question’ will help uncover particular forms of oppression that subgroups of women experience. More generally, the answers that these three questions yield will position the Committee to guide States Parties more systematically to identify and redress individual and structural discrimination.

Applying Fredman’s substantive equality framework, discussed in section 2, would help to explicate the sex/gender dimensions of substantive equality in a more coherent way. It requires, a gender sensitive interpretation of grounds of persecution, recognition of sex/gender as grounds for refugee status, non-discrimination during the asylum process and substantive gender equality under international refugee law. Elements of Fredman’s framework appear in the GR, including the first dimension, redistribution, in the attention given to the disadvantage compelling women to seek asylum and that they experience during the displacement cycle. The recognition dimension is evident, with States Parties called on, to: assess women’s claims to asylum without prejudice, stereotypes or preconceived notions of violence; and ensure women’s safety in immigration detention. The reluctance of some women to disclose the extent of their persecution due to shame, stigma or trauma is also acknowledged as factors that render internal flight unviable for some violence victim/survivors. The participative dimension is evident in the acceptance that women can be targeted because of their public roles. Lastly, the transformative dimension is present in the Committee’s call to accommodate the special situation or needs of women refugees and asylum-seekers, including those of pregnant women and nursing mothers.

This development of substantive equality is nevertheless limited to the extent that the Committee adopted a narrow approach to the transformative dimension. The recommendation prioritizes measures to accommodate the experiences of women refugees and asylum-seekers within existing laws, policies and systems. While necessary, the Committee could have enumerated the steps states must take to transform refugee laws, policies and systems so they are informed by, and reflect the experiences of, women and men, and broader, gendered societal structures that cause women to seek asylum. For example, it might have stressed the need for States Parties to amend laws and policies that assume internal relocation within a country is possible, particularly given that women are not always afforded the ability to travel freely or relocate without the support of male family members. The Committee could have further elaborated
substantive equality by addressing links between the recognition and participative dimensions, for example, by naming the stereotypes that contribute to the targeting of women because of their political opinions and/or public activities and detailing how these stereotypes undermine women’s asylum claims. This might have included explaining how women who fulfill roles stereotypically expected of them, such as wife, mother and nurturer, are more likely than other women, for instance women occupying prominent roles in public life and who do not conform to the ideal ‘good woman’, to have their asylum claims accepted.\textsuperscript{136} As only one of its recommendations, it is unfair to read the GR in isolation. Yet, as the authoritative statement on this issue, the omissions nevertheless are missed opportunities to articulate equality rights more fully; opportunities it is hoped the Committee will realize in subsequent GRs.

6. Conclusion

Through its concluding observations on reports of State Parties, its GR and its views and recommendations in the communications and inquiry procedures, the Committee has recognized the harms of sex and gender subordination as internationally wrongful forms of discrimination. In so doing it has strengthened the normative meaning of the right of women and girls to be free from all forms of discrimination, including the multiple forms of intersectional discrimination, and the meaning of substantive equality. The Committee has strengthened the networks of actors and social movements concerned with actual experiences of discrimination and enabled cross boundary mobilization in ways that have made the whole of the CEDAW enterprise greater than the sum of its parts.

The legitimacy of the Committee’s work could be a significantly enhanced by a more coherent application of sex/gender analysis and the elaboration of sex/gender dimensions of substantive equality throughout its work, including in its GRs, especially its harmonized and treaty-specific guidelines, concluding observations, findings under the communication and inquiry procedures. Sex/gender analysis is fundamental to understanding the forms and manifestations of discrimination against women, including intersectional and emerging forms, the circumstances in which they occur, their gendered causes and consequences; and the availability and accessibility of gender-sensitive remedies. A more coherent approach to the elaboration of sex/gender dimensions of equality will inform how substantive equality can be in fact achieved in different sectors of society.

2 CEDAW ibid, preamble.


4 Committee on the Elimination of Discrimination against Women (Committee), ‘General Recommendation No 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures’ (2004) UN Doc HRI/GEN/1/Rev.9 (vol II) (GR 25) [5].

5 ibid [4].

6 CEDAW (n 1) arts 1, 3.

7 ibid art 17(1).

8 ibid art 21(2); Committee, ‘Report of the Committee on the Elimination of Discrimination against Women’ (12 April 1994) UN Doc A/49/38 (supp no. 38) 812.

9 CEDAW (n 1) art 21.


11 ibid arts 1-2.

12 ibid art 8(1).

13 GR 25 (n 4) [4].


15 See, e.g., CEDAW (n 1) art 5(a) (requiring States Parties to, *inter alia*, address prejudices and stereotypes).


17 ibid.

18 CEDAW (n 1) art 1. The Committee acknowledges that CEDAW applies to diverse family forms, integrating social and legal developments related to registered partnerships and/or de facto unions. Committee, ‘General Recommendation No 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women’ (2013) UN Doc CEDAW/C/GC/29 [6], [16]-[31].

19 CEDAW (n 1) art 14; Committee, ‘General Recommendation No 34 on the Rights of Rural Women’ (2016) UN Doc CEDAW/C/GC/34 [GR 34].


21 CEDAW (n 1) arts 5(b), 10(h), 11(1)(f), 11(2), 12(2), 14(2)(b), 16(1)(d)-16(1)(f).

22 GR No 28 (n 16) [18]. See also GR 25 (n 4 [12]; Committee, ‘General Recommendation No 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women’ (2014) UN Doc CEDAW/C/GC/32 [GR No 32].


24 CEDAW (n 1) art 1; Committee, GR 28 (n 16) [16].


26 GR 28 (n 16) [16]. See also CEDAW (n 1) art 1; GR 25 (n 4) [8].


28 CEDAW (n 1) art 10.

29 Committee, ‘General Recommendation No 19: Violence against Women’ (1992) UN Doc HRI/GEN/1/Rev.9 (vol. II) [GR 19] 331–336, [1], [4], [6], [9].

30 GR 24 (n 27) [11], [14], [31(c)].

31 GR 28 (n 16) [7]; GR 32 (n 22) [5].

32 See, e.g., CEDAW (n 1) arts 7(a) (equal rights to vote), 9 (equal rights regarding nationality).

33 See, e.g., CEDAW (n 1) arts 3 and 24 (requiring steps to ensure the full development and advancement of women and the realisation of CEDAW rights, respectively).

34 GR 25 (n 4) [8].


38 GR 25 (n 4) [8].

39 ibid.

40 Fredman (n 35) 282.

41 GR 28 (n 16) [22].

42 GR 25 (n 4) [7] [citations omitted].

43 GR 19 (n 29) [6].

44 ibid paras 8-9; GR 28 (n 16) [19].

45 Fredman (n 35) 282-283.

46 GR 25 (n 4) [8].


48 Fredman (n 35) 283.

49 GR 25 (n 4) [8].

50 ibid [10].

51 ibid.

52 GR 28 (n 16) [16]-[21].

53 ibid [24].

54 GR 25 (n 4).

55 ibid [7]; GR 28 [5], [9], [31].

56 Andrew Byrnes, ‘Article 2’ in CEDAW Commentary (n 1), 71, 88.
57 CEDAW art 4(1); GR 25 (n 1); GR 28 (n 16) [20].

58 GR 28 (n 16) [23].


60 GR 25 (n 16) [20].

61 See, e.g., ibid [41]-[42]; GR 29 [54]-[55], GR 34 [96]. See Jane Connors, 'Article 28' in CEDAW Commentary (n 1) for a review of the work on the Committee on reservations 581-591, and of their removal and modifications 591-594.

62 CEDAW (n 1) art 18; Reports of States Parties and the Committee’s Concluding Observations, follow-up notifications, reporting guidelines and other documents regarding reporting obligations are at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx> accessed 20 July 2016.


64 ibid [26], [42], [43(b)], [43(h)], [50]-[58].

65 ibid D.3.

66 ibid D.4.


68 ibid 20-30.

69 ibid 41.


75 GR 19 (n 29). In 2015, the Committee established a working group to update this recommendation: Committee, ‘Report of the Committee on the Elimination of Discrimination against Women,’ 60th sess (2015) UN Doc CEDAW/C/2015/I/CRP, 4.


77 Helen Keller and Leena Grover, ‘General Comments of the Human Rights Committee and their Legitimacy’ in UN Human Rights Treaty Bodies (n 67) 116, 128-133 [citation omitted].

78 ibid 128-129.

79 ibid 141 [citation omitted].

80 ibid 145-6.
81 ibid 150.

82 ibid 159.

83 See, e.g., Vishaka v State of Rajasthan AIR 1997 SC 3011 (India Supreme Ct) 13; R v Ewanchuk [1999] 1 SCR 330 (Canadian Supreme Ct) [71]; Carmichele v Minister of Safety and Security and Another, 2001 (10) (1) BCLR 995 (South African Constitutional Ct) [62]; Yemshaw v. London Borough of Hounslow [2011] UKSC 3 (United Kingdom Supreme Ct) [20].

84 See, e.g., Gonzalez et al ('Cotton Field') v Mexico, IACHR, Series C No 205 (16 November 2009) [254], [395]; Espinoza Gonzáles v Peru, IACHR, Series C No 289 (20 November 2014) ¶221; Opuz v Turkey no 33401/02 (ECtHR, 2009) [74]-[75].


86 Optional Protocol (n 10) arts 1-7.


89 Optional Protocol (n 10) arts 2-4.

90 ibid art 7(3).

91 ibid art 7(4).

92 ibid art 7(5).

93 ibid art 8(1).

94 ibid art 8(3).

95 ibid art 8(4).


97 Optional Protocol (n 10) art 9.


Cusack and Pusey (n 88) 2.


See Cook and Cusack (n 14).


ibid, 1064.

ibid, 1064.


Rashida Manjoo, ‘Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on Multiple and Intersecting Forms of Discrimination and Violence against Women’ (2 May 2011) UN Doc A/HRC/17/26 [18].


GR 32 (n 22) [4]. This chapter only considers how the Committee addresses the application of non-discrimination and gender equality to international refugee law, but not nationality determination processes and statelessness.
127 ibid [4], [8], [10]-[13], [15]-[16], [24], [30], [36]-[38].
128 ibid [14], [16].
129 ibid [15], [22]-[23], [31], [34], [44].
130 ibid [25], [50(i)].
131 ibid [28].
132 ibid [31] [citations omitted].
133 ibid [16].
134 ibid [34], [49].
135 ibid [50].