

such progress is being restrained artificially by the lack of accompanying developments in implementation procedures.

Although the family serves as the basic unit of society, international human rights law fails to enforce the rights of family members because its procedural focus is on the rights of individuals. Many of the obstacles to women's and children's equality within the family are structural. Civil and political rights, and economic, social, and cultural rights must be integrated, as a number of human rights instruments (including the Children's Convention, the Convention on the Elimination of All Forms of Discrimination Against Women, and the African Children's Charter) have done to better achieve equality for women and children. Clarence Dias correctly observes that civil and political rights have become justiciable and the focus of international human rights advocacy, while economic, social, and cultural rights remain mostly in the sphere of international development assistance. However, there is nothing inherent in these rights that necessitates this false dichotomy. A report on the implementation of economic, social, and cultural rights might reveal an underlying disparity of access that is based on gender or religious grounds, thus transforming an apparently economic, social, or cultural issue into a civil rights issue.

The real problem, as the prohibition on female circumcision demonstrates, is not the terminology, but rather the artificial distinctions in implementation. Prohibiting female circumcision through the drafting and adoption of national legislation requires minimal resources. Thus, it is difficult to defend the approach of international human rights law that States Parties have only a progressive (as opposed to an immediate) duty to prohibit female circumcision. The only resource demands would be for educational programmes that would accompany the implementation of such legislation. As long as protection from exploitation, be it sexual or economic, is classified as an economic or social right, the remedy for the victim is very indirect. In general, only violations of civil and political rights give rise to individual causes of action. Perhaps the reason for the division is fear: fear of opening perceived floodgates (if domestic violence, why not inadequate supplies of life support machinery?). However, the floodgates argument does not justify resisting reform. On the contrary, it justifies providing sufficient resources so that effective human rights machinery can function efficiently. Hence, the international human rights system should do more than simply 'mobilising shame', which is the objective of the reporting procedures. Even treaties that enshrine resource limitation clauses, such as 'to the maximum extent of their available resources, refer to resources that are unconstrained by concepts such as finances and economics. As James Himes notes, resources also include human resources, although this ought not justify placing a greater burden on the heads of households, frequently women.<sup>174</sup>

Although the international human rights legal system's reliance on the State nexus as the basis for responsibility has been criticised because it reflects men's subjugative experiences, the experiences of women and children are not necessarily excluded. The Committee on the Rights of the Child and the Commission on the Status of Women have attempted to integrate children's and women's rights into the mainstream. However, attention also should be focused on improving the implementation mechanisms for children's and women's rights.

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174 The 'UN Convention on the Rights of the Child: More Than a New Utopia?' in James Himes (ed), *Three Essays on the Challenge of Implementation* (1993).

Neither the Children's Convention nor the Women's Convention incorporates a petition system, either Inter-State or individual. However, the Vienna Declaration and Programme of Action has mandated that the Commission on the Status of Women draft an optional protocol for complaints under the Women's Convention. In relation to children, the right to petition has already proven effective under the European Convention. During the drafting of the Children's Convention, the possibility of an individual petition system was raised informally by Amnesty International, but the idea was rejected. Many participants in the drafting process believed that an individual petition system would transform an implementation mechanism based on co-operation into one fraught with confrontation. This has not proven to be the case within the Council of Europe where States Parties generally abide by the judgments of the European Court.

Those critics who oppose incorporating an individual petition system into the Children's Convention argue that it is only appropriate for civil and political rights, and not suited to a treaty that also protects economic, social, and cultural rights. However, the incorporation of a right of individual petition into the African Children's Charter is evidence that it might be in the best interests of the child if such assumptions were challenged. Hence, it would be possible to have reporting, technical advice, and assistance, together with an optional petition system. For such a right to be included in the Children's Convention, either the Convention itself must be amended or an additional optional protocol must be attached. The latter is a more realistic option, although States Parties to the Children's Convention would not become automatic parties to the optional protocol. At present, a draft protocol has been drafted by the Committee on the Rights of the Child, but it focuses only on armed conflict. Extending the right of petition would be both egalitarian and evolutionary. However, under the existing regional and international petition mechanisms, it is only individual family members who may claim interferences with their family or family life. Although this does not prevent more than one family member from submitting a petition, as in *Johnston v Ireland*,<sup>175</sup> an individual family member may not petition on behalf of the entire family unit claiming that the State breached its obligations to protect the family as a group unit. Although class actions exist in a number of national jurisdictions, international law has not developed a similar procedure. The underlying purpose of a class action is to bind all parties represented and, in effect, implement rights that are of public concern. At first sight, the creation of an international legal class action appears to be unnecessary. A judgment from a regional human rights body, for example, occasionally prompts a State Party to amend its legislation, and thus, removes the necessity for future action. However, an international legal class action would have particular implications for the enforcement of a family's economic, social, and cultural rights.

Many of the concerns of children and women are in the economic, social, and cultural areas, and the lack of an international legal class action has had a significant negative impact on the protection of economic, social, and cultural rights. One of the reasons underlying the mistaken assumption that economic, social, and cultural rights are not justiciable is that they raise complex economic, social, and cultural questions that human rights fora have demonstrated a reluctance to consider within the confines of one case. As a result, the argument becomes circular. There is not a suitable implementation mechanism for

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175 112 Eur Ct HR (Ser A) (1987).

economic, social, and cultural rights and, therefore, they are not justiciable. The creation of an international legal class action would assist states in reassessing the potential justiciability of these rights.

*Conclusion*

All reforms depend upon resources, which are not a matter of international law, but of international political will. Political will can be increased if the successes of human rights strategies are highlighted. This occurs too infrequently, and one cannot be surprised at the scepticism over the potential of international human rights law if international human rights lawyers themselves too often focus on failures rather than successes. International human rights law is standing at a crossroads. One route leads to the traditional private/public distinction; the other stretches over the horizon to effective protection for all family members. Although protecting family members was not the specific goal of the States that drafted the Children's Convention, Melton is correct when he notes that, if the Children's Convention were ever fully implemented, it 'would transform the social order, not only politically but even at the level of social relationships. The same is true of the Women's Convention. The challenge for international law in the 21st century will be to achieve this transformation.<sup>176</sup>

**WOMEN, FEMINISM AND INTERNATIONAL HUMAN RIGHTS LAW – METHODOLOGICAL MYOPIA, FUNDAMENTAL FLAWS OR MEANINGFUL MARGINALISATION?<sup>177</sup>**

*Some Current Issues*

**Andrew Byrnes<sup>178</sup>**

*A. Introduction*

*Criticism of the 'Mainstream'*

The last two decades have seen the emergence of a vast body of writing about women and the international system from a great variety of perspectives. Not surprisingly, this has included a proliferation of writing about women, women's rights and human rights in an international context. Much of that literature, fuelled by the energy that led to and was subsequently generated by the activities of the United Nations Decade for Women,<sup>179</sup> focused on the new norms, institutions and programmes established during this period which addressed in a focused way the concerns of women.

A number of writers also turned a critical eye on the response of the international system for the protection of human rights to the concerns of women and found it deficient in major respects. Two salient criticisms were made: issues of central concern to women found little place on the 'mainstream' agenda and the institutions and procedures concerned with 'women's issues' were the poor cousins of the 'real' human rights organs and procedures. These critics charged that the 'mainstream' 'human rights' community largely ignored or neglected blatant violations of women's human dignity, refusing to perceive them as gross violations of fundamental human rights. Such issues were left to be taken up, if

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176 *International Protection of Family Members' Rights*, pp 762–65.

177 (1992) 12 *Australian Yearbook of International Law* 205. (Article abridged and footnotes edited.)

178 University of Hong Kong.

179 See generally, A Fraser, *The UN Decade for Women: Documents and Dialogue* (1987); H Pietila and J Vickers, *Making Women Matter: The Role of the United Nations* (1990).

at all, as social and humanitarian issues in marginalised, procedurally weak fora dealing with women's issues.<sup>180</sup> These perceptions gave rise to demands not only that the women's institutions be strengthened but also that greater attention be given to issues affecting women in the mainstream organs.

Implicit in these critiques was the assumption that it is both possible and desirable to deal with many of these violations of women's human dignity within the established human rights framework, in particular the civil and political rights framework. However, apart from some fairly general explanations of the reasons for the alleged exclusion of women's experiences from the dominant practice, these critiques did not explore the conceptual, doctrinal and institutional hurdles which need to be overcome if this goal is to be achieved.

#### *B. A Resurgence of Interest*

The concern to ensure a greater prominence for violations of 'women's rights' in the human rights 'mainstream' appears to have gathered momentum in the last couple of years (particularly in North America, but elsewhere as well).<sup>181</sup> The slogan 'women's rights are human rights' has been invoked frequently and there have been a number of conferences and seminars exploring the relationship between 'women's rights' and 'human rights'. This interest has come not only from women's groups; increasingly feminists or those sensitive to feminist issues in 'mainstream' organisations or who are working within a more traditional framework have begun to address the issue in earnest. Under pressure from such groups governmental bodies have also begun to address the issue.

Despite this interest, there has so far been relatively little exploration of the implications from an international human rights law perspective of attempting to give greater prominence to gender in the mainstream discourse. Much still needs to be done to define the terms used in the discussion, to document in detail the inclusion or exclusion of violations of women's human rights within the dominant discourse, to ascertain the reasons for this, and to develop strategies to ensure that greater account is taken of these issues in the mainstream. This paper is intended to contribute to that process. Much of it is tentative, suggesting areas for further research and action, rather than stating definitive conclusions. ...

#### *Looking at the 'Mainstream': Definition and Justification*

This paper focuses on the so-called 'mainstream' of international human rights practice and seeks to place issues of the violation of women's human rights in that context. The concept of 'the mainstream' requires definition and the decision to focus on it justification.

The 'mainstream' has institutional, substantive and geographical dimensions. I use the term 'mainstream' to refer to those institutions entrusted with responsibility for 'general' human rights matters – within the United Nations system, primarily the Geneva-based political and expert bodies; within the regional systems, the organs charged with responsibility for the administration and enforcement of human rights such as the Strasbourg organs and the Inter-American Commission of Human Rights and the Inter-American Court. They

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180 See eg L Reanda, 'Human Rights and Women's Rights: The United Nations Approach' (1981) 3 *Human Rights Quarterly* 11; Fran Hosken, 'Introduction', *ibid* 1; M Galey, 'International Enforcement of Women's Rights' (1984) 6 *Human Rights Quarterly* 463.

181 For a recent restatement and development of a number of the criticisms, see C Bunch, 'Women's Rights as Human Rights: Toward a Re-vision of Human Rights' (1990) 12 *Human Rights Quarterly* 486.

may be contrasted with those bodies which have a 'specialist' jurisdiction in relation to 'women's issues', such as the Commission on the Status of Women and the Inter-American Commission of Women.

Substantively, the term is used to refer to human rights guarantees contained in the 'general' human rights instruments, in particular the two International Covenants and the European Convention (as well as the American Convention and the African Charter).

However, it is also clear that within the human rights 'mainstream' as defined above traditional civil and political rights have enjoyed and continue to enjoy a particularly privileged position – much of the attention, resources and activities of those involved in the mainstream is devoted to these issues. They accordingly receive prominence (as always) in this paper.

Focusing on the 'mainstream' in contrast to the 'women's rights' bodies has its problems. For instance, talking about the mainstream and recognising its dominant role reinforces its conception of itself as the centre and the marginalisation of those that it defines as on the margins. Nonetheless, the practice relating to the major civil and political rights catalogues is in many respects a privileged and powerful discourse, reinforced by a considerable allocation of institutional resources and the reality is that these institutions have the prestige, resources and perhaps the power to bring about change.

The existence of a privileged dominant practice and a 'specialised' marginal one presents a strategic dilemma in this area, as in many areas where the goal is to bring about the advancement of women: how does one ensure that feminist perspectives are incorporated within the dominant discourse while maintaining the separate focus which is apparently necessary to ensure that these issues are not submerged or overwhelmed. In strategic terms any attempt to increase the attention given by the 'mainstream' to gender issues in human rights must therefore also be accompanied by steps to strengthen the existing 'women's rights' institutions and to lessen their marginalisation.

*The Importance of Method*

*A feminist approach or method? 'Asking the Woman Question'*<sup>182</sup>

A characteristic feature of feminist enquiry has been the insistence that women's experiences be the starting point for analysis:

One of the methodological devices feminists have introduced into the study of human societies and of political and social theory has been to keep at the forefront questions such as: What about the women? What are women's lives like in such a society? How is their work assessed and valued? What are the prevailing attitudes about women? What notions are there of 'women's nature'?<sup>183</sup>

One distinctive feature of feminist research is that it generates its problems from the perspective of women's experiences. It also uses these experiences as a significant indicator of the 'reality' against which hypotheses are tested.<sup>184</sup>

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182 For a description of the 'woman question' and its origins, see K Bartlett, 'Feminist Legal Methods' (1990) 103 *Harvard Law Review* 829, 837. (Extracted in Chapter 4.)

183 See eg E Spelman, *Inessential Woman* (1989), p 47; H Wishik, 'To Question Everything: the Enquiries of Feminist Jurisprudence' (1985) 1 *Berkeley Women's Law Journal* 64; E Minnich Karmarch, *Transforming Knowledge* (1990).

184 S Harding, 'Introduction: Is There a Feminist Method?' in S Harding (ed), *Feminism and Methodology* (1987), pp 1, 7.

This method of enquiry – asking where women are in the dominant account of the way things are and whether dominant standards and models reflect the reality of women’s perspectives – has had a major impact on many disciplines, in some cases transforming basic concepts and undermining established truths. In a number of areas feminist scholarship has moved ‘from simply adding women into existing schemes of knowledge into more fundamental reconstructions of the concepts, methods and theories of the disciplines’.

*The Importance of Method in Relation to Women and Human Rights Violations*

A failure to be aware of the relevance of gender can result in a distorted picture of patterns of human rights abuses, and can lead to an androcentric definition of substantive norms. Furthermore, an awareness of the role that gender may play in a given context may alert one to the need to adopt a particular response tailored to that context.

A failure to realise that women may have suffered violations whose form has been influenced by the fact that they are women and to enquire specifically about such violations may mean that certain types of human rights violations which have a gender-specific cause or form are not detected. For example, in the area of refugee law,<sup>185</sup> women refugees are frequently subjected to various forms of sexual abuse which may form part of the persecution from which they have fled or which they may have experienced while travelling or while living in refugee camps. The failure to be aware of the possibility of such violations and the fact that women will often be reluctant to talk about them, particularly to the interviewers, can mean that not only may a woman’s claim to refugee status never be uncovered but the need for appropriately formulated medical or other programmes to address the results of gender-specific violations may not be perceived.

Similarly, if women prisoners or detainees are being subjected to regular sexual abuse in special women’s prisons, this is more likely to be uncovered if issues of gender are specifically considered by those enquiring into the existence of torture in a country rather than as the result of general enquiries about the maltreatment of detainees in prisons.<sup>186</sup>

Another important aspect of sensitivity to gender is that it can have an impact on the content of substantive norms by leading to their reinterpretation in a way which reflects women’s perspectives. The question here might be, for example, whether particular forms of conduct amount to degrading treatment and violate various guarantees. It is well accepted that some of the answers to that question may vary according to the cultural context; they may also vary according to sex within that cultural context. Similarly, with refugees, an awareness of the particular forms of persecution from which women are fleeing may lead to the reinterpretation of the grounds of persecution to include those forms of persecution.<sup>187</sup>

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185 See generally A Johnson, ‘The International Protection of Women Refugees: A Summary of Principal Problems and Issues’ (1989) 1 *International Journal of Refugee Law* 221.

186 A Bynes, ‘The Committee Against Torture’, in P Alston (ed), *The Human Rights Organs of the United Nations* (1992).

187 See generally J Greatbatch, ‘The Gender Difference: Feminist Critiques of Refugee Discourse’ (1989) 1 *Int J of Refugee Law* 518; DE Neal, ‘Women as a Social Group: Recognising Sex-Based Persecution as Grounds for Asylum’ (1988) 20 *Columbia Human Rights LR* 203.

Thus, by being aware of gender issues, one is more likely to uncover the full range of violations in a particular context, as a result of which one may need to reinterpret previously accepted substantive interpretations of rights guarantees in order to reflect adequately the experiences of women, as well as to devise different strategies for addressing problems.

Quite simply, if you are not looking for something (or at least aware that it might exist), then your chances of finding it are significantly reduced. The importance of being aware that sex and gender may be significant, asking what the position of women is and whether that is reflected in universal norms and taken into account in designing responses to social problems has been demonstrated time and time again. However, in the area of human rights abuses it appears that too often this dimension of a situation may not be explored thoroughly, and such examination as there may be is limited to the relatively formalistic invocation of androcentric standards of non-discrimination.

*The Accusations of Neglect and the Extent of the Inclusion of Women's Human Rights Issues in the Mainstream*

### *1 Nature of the critique*

The major human rights instruments all grandly proclaim that women are entitled to enjoy the rights guaranteed on a basis of equality with men. The charges laid at the door of the mainstream human rights community by feminist critics vary in the extent of their denunciation of the system for its failure to promote the realisation of this entitlement. The more sweeping ones argue that these guarantees of equal enjoyment of rights are little more than empty rhetoric and that women are neglected entirely within the mainstream practice, while more moderate critics argue that there is a low level of awareness of these issues and that the attention paid to them is insufficient.

Some of the important criticisms that have been voiced are allegations that:

- even those violations suffered by women that appear indistinguishable from those suffered by men are not adequately taken cognisance of within the 'mainstream';
- the failure to be aware that sex and gender are important determinants of human rights violations means that gender-specific variants of violations may be missed or not adequately responded to;
- standard interpretations of particular rights and of the entitlement to equal enjoyment of those are androcentrally biased;
- the public/private distinction that underpins the traditional civil and political rights framework has the effect of rendering gross violations of women's rights at the hands of private individuals largely invisible;
- the prevailing preoccupation with civil and political rights at the expense of economic and social rights diverts resources away from areas in which they could more effectively be used to promote the advancement of women;
- gender is also largely neglected in the interpretation of economic, social and cultural rights, despite the fact that considerable effort is now being devoted to exploring the detailed substantive content of those rights.

These charges appear to have a large measure of truth in them. Many issues of importance to women have been consigned to marginalised and less powerful institutions within the United Nations human rights system. The violations suffered by women are a relatively minor concern of the mainstream human rights community, unless they happen to fall into a small number of narrowly

defined categories. Otherwise, there is considerable evidence of sex/gender blindness or myopia within that system.

Nevertheless, both the terms of the charges themselves and their accuracy need to be examined in greater detail if the indictment is to be made to stick and a convincing case made for change. In general terms the following are the questions which need to be addressed:

- a. To what extent have women's experiences been included within the purview of mainstream human rights practice at the international level and why have the particular violations that have been addressed been taken up in preference to others?
- b. What are the reasons for the limited extent to which women's experiences have been included within that discourse?
- c. Is it possible for that neglect to be remedied within the established conceptual framework? What changes would be needed and what limits are there?

#### 2 'Violations' of 'women's rights' or 'women's human rights'

In order to assess the accuracy of the charges of neglect and bias made against the 'mainstream' it is necessary to examine in more detail the terms of the debate. Reference is made to 'violations' of 'women's rights', 'women's human rights', 'gender-specific human rights violations', and 'human rights violations against women'. It is important initially to define some of these terms and to delineate the nature of the experiences and perspectives which, it is argued, are not adequately taken into account in the dominant institutions.

The term 'violation(s)' (of 'women's rights' or of 'women's human rights') is not used by the critics in a merely technical international law sense, but refers to serious infringements of human dignity suffered by women, whether or not they would constitute a violation of human rights guarantees under accepted interpretations. These 'violations' include violations that fall within the classical categories of civil and political rights violations (such as torture and maltreatment in detention) with or without a gender-specific element; violations suffered at the hands of the State or its officials, or at the hands of private individuals acting in a private capacity; denials of access to social and economic benefits on a discriminatory basis; and a disproportionate denial of access to social benefits and opportunities because of the use of models or definitions derived from the experience and life patterns.

Women suffer violations of their human dignity for many different reasons and in many different ways.<sup>188</sup> In some cases the reason for the violation and the form it takes may appear indistinguishable from those leading to violations against men in similar circumstances. In other cases their sex or gender may be the occasion for or determine the form which the violation takes. In many other cases there may be a complex interaction between sex, gender, race, class, political activities or some other factor in explaining the origin and form of human rights violations from which women suffer.

The types of violations which have been frequently referred to as of particular significance to women or which are determined to a significant extent by gender include:<sup>189</sup>

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188 See J Neuwirth, 'Towards a Gender-Based Approach to Human Rights Violations' (1987) 9 *Whittier LR* 399 and F Gaer, 'Introduction in International League for Human Rights, Human Rights Abuses Against Women' (1990).

189 See generally Amnesty International, *Women in the Front Line: Human Rights Violations Against Women* (1991) and F Gaer, *supra*.

- rape by State officials or by private individuals
- dowry deaths
- family and domestic violence
- forced prostitution and trafficking in women
- denial of equal rights to participate in political life (including denial of the right to vote)
- harassment of politically active women
- denial of inheritance and property rights
- sexual surgery/female circumcision
- denial of reproductive rights
- discriminatory provisions in nationality law both as to the acquisition and transmission of nationality
- unequal access to health care and unequal enjoyment of the right to life and right to adequate food
- discrimination against women refugees
- persecution of women because of their family relationships
- denial of access to land and economic opportunities.

The terms 'violations of *women's rights*' and 'violations of *women's human rights*' frequently appear in the discussion. However, there is some lack of clarity as to the scope of each of those terms. The first term is apparently intended to refer to 'gender-specific' violations, that is, violations which may be suffered only or predominantly by women or which appear to be based on sex or gender (for example, rape, female circumcision, forced prostitution, trafficking in women, discrimination in nationality laws). The second term is broader in its coverage, encompassing human rights violations where women 'just happen to be the victims', that is, the violations are not gender-specific and men are or could equally well be victims of essentially similar violations (for example, persecution of politically active women, discrimination against members of an ethnic minority, forced evictions).

It is easy to see that it may be difficult to assign particular violations unambiguously to one of these categories, a fact which reflects the inter-play of sex, race, class and other factors in the form a human rights violation may take. Even in cases in which the reason for the persecution of a woman is her political activities, the form the violation takes may be influenced by her sex and gender.

However, the institutional allocation of responsibility for 'human rights issues' and 'women's issues' within a system such as the UN human rights system may make it important to ask whether every human rights violation suffered by a woman is 'violation of women's rights' or whether the fact that race, class or political opinion are the determinative factors in many human rights violations against women, perhaps to the exclusion of sex and gender, means that women 'just happen to be the victims' of them and gender plays no significant role and, if so, which ones they are.

Criticism of the 'mainstream' practice is that it fails to take adequate account of 'human rights violations against women', as well as 'violations of women's rights'. More prominence has been given to the latter in the debate, but both categories require investigation. The point is that in both cases there is a danger that the gender dimension of a human rights abuse may not be perceived if one is not looking for it – the failing is one of method, but one which affects questions of substance.

An evaluation of the criticisms made of the 'mainstream' thus requires an examination of how human rights violations against women in all their forms are dealt with, not just clear cases of gender-related violations but also cases of violations in which 'women just happen to be the victims'.

*Silences/Omissions/Myopia: Is Gender on the Agenda?*

It is not difficult to point to instances in which gender appears to have been neglected when its inclusion is of considerable importance. The practice of the Human Rights Committee, widely regarded as the leading human rights treaty body within the UN system, provides a number of examples. The Committee, in addition to its function of considering individual complaints under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), has adopted the practice of issuing general comments dealing with the articles of the Covenant. These are intended to be an authoritative exegesis of the content of the rights guaranteed by the ICCPR and they identify what the Committee considers to be the most important dimensions of those rights.

In these interpretative comments there is virtually no recognition that sex or gender can be a significant dimension in defining the substantive content of individual rights or that it can affect the choice of methods that must be adopted by states to ensure that all individuals within their jurisdiction enjoy those rights equally.

In its general comment on the right to privacy, for example, there is not even a passing reference to the importance that this right has assumed in the struggle of women in many countries for control over their reproductive lives; traditional concepts such as the inviolability of the home and restrictions on the use of sensitive personal information by governments and others are the major preoccupations of the Committee. Similarly, the Committee's view of the scope of the right of a person to fair and non-discriminatory treatment by the legal system is expounded without any suggestion that the relationship of women to the criminal justice system as victims of crime and as defendants raises important issues of fairness that differ in many ways from those that arise in relation to men.

Similarly, the Committee's general comments on the right to bodily integrity and the right to life give not the faintest intimation that women face major, different threats to their enjoyment of these rights than do men or that this fact may have important implications for the obligations assumed by governments under the Covenant to ensure equality in the enjoyment of these rights. In many parts of the world women are at a considerably higher risk of death from avoidable causes than are men.<sup>190</sup> The reasons for this include horrifyingly high levels of maternal mortality, preferential treatment of men and boys in providing access to food and health care, and the perpetuation of traditional practices such as genital mutilation of young girls. The differences in the nature and level of threats to the enjoyment of their rights to life and to bodily integrity that women and men face justify the conclusion that women and men do not enjoy these rights on an equal basis, which is the promise held out to women by the major human rights instruments.

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190 R Cook, 'Human Rights and Infant Survival: A Case for Priorities' (1986-87) 18 *Columbia Hum Rts LR* 22-24; R Cook, 'Reducing Maternal Mortality' in S McLean (ed), *Legal Issues in Human Reproduction* (1989), p 185; A Sen, 'More than 100 Million Women are Missing', *New York Review of Books*, 10 December 1990, p 61.

The Human Rights Committee is not atypical in the lack of importance it gives to gender as a component of the definition of human rights; this pattern appears regularly in the work of publicists, activists and other bodies concerned with the implementation of the major civil and political rights catalogues. For example, a collection of essays which is the major work on the ICCPR in English and which is authored exclusively by males ignores the relevance of gender in its elaboration of the normative content of the Covenant, except in cases where the subject of women is forced upon it by the specific language of the Covenant.<sup>191</sup>

Similarly, a recent major treatise on torture and international law runs to several hundred pages without any discussion of the way in which sexual violence against women is a major component of the practice of torture. Nor does it even address the question of the inadequacies of the international law definition of torture which, by restricting its scope to acts committed by or at the instigation of State officials, excludes from the purview of international law major areas in which women suffer similar treatment at the hands of non-State officials. United Nations Rapporteurs preparing studies of particular human rights, thematic reports on human rights violations or reports on individual countries where one would expect some discussion of well-known violations of the rights of women, often compile reports which make no reference to the fact that women suffer not only many of the same violations as men but different ones as well. And many traditional NGOs are simply not interested in exploring the gender dimensions of human rights violations, although there have been some encouraging developments in recent years.

*Nature of the Inclusion*

Yet the more extravagant critiques of the 'mainstream', that women are completely ignored, go too far. Firstly, despite the apparently pervasive disregard of gender, a number of gender-specific issues are addressed within the mainstream. Secondly, it is clear that attention is given to women who are victims of classical human rights violations (where the victims 'just happen to be women'). For example, issues of discrimination on the basis of sex, torture or arbitrary imprisonment of women, and practices of particular importance for women (such as trafficking in women, forced prostitution and female genital mutilation) have a place on the agenda of 'mainstream' bodies. There have been some indications in recent years that some of the human rights bodies are becoming more aware of the issue of gender and are attempting to respond to it, though how wide-ranging these responses will be remains to be seen. For example, the Committee on Economic, Social and Cultural Rights in its General Comment No 4 (1991) on the right to adequate housing contained in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights noted:<sup>192</sup>

6. The right to adequate housing applies to everyone. While the reference to 'himself and his family' reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of 'family' must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age,

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191 See L Henkin (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press, 1981).

192 UN Doc E/C.12/1991/4, Annex III, para 6.