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40 YEARS OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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PART I: INTRODUCTION

The year 2020 is a significant year for women's human rights. It marks the 20th anniversary of UN Security Council Resolution 1325 on Women, Peace and Security and 25 years since the Beijing Declaration and Platform for Action. These anniversaries have led to significant mobilisation by women's movements around the globe to implement the rights set out therein and to advocate for the Sustainable Development Goals (SDGs) which are at their half way point. However, the anniversary marking 40 years of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – the UN's blueprint for the advancement of women's human rights - has passed, relatively speaking, under the radar. With this in mind, this briefing paper provides an overview of some of the CEDAW Committee's most recent work since the opening of the Convention for adoption by States in Copenhagen in 1980.

The purpose of the briefing paper is to alert readers to the significant work that the CEDAW Committee has undertaken in relation to three key areas: gender-based violence against women, the right to education and the gender-related dimensions of disaster-reduction and climate change. Through this work the Committee has kept the Convention responsive to contemporary challenges to women's rights and has provided substantive material for advocacy whether before judicial or policy decision-makers. It reinforces the message of a series of events held at the LSE Centre for Women, Peace and Security under the auspices of an Arts and Humanities Research Council funded project on a Feminist International Law of Peace and Security. These events considered the ways CEDAW can and should be used to remind states parties of their legal obligations to address structural gender inequalities that would in turn contribute to achievement of the SDGs, notably SDG 5: achieve gender equality and empower all women and girls. These objectives are also core to sustainable peace. In sum, these events sought to raise the profile of CEDAW and to consider the question of where women and girls today would be without CEDAW.



PART II: INTRODUCING THE CONVENTION

CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and came into force on 3 September 1981. In 2020 it has 189 states parties; it is a landmark international human rights treaty with legally binding obligations on state parties with respect to gender equality.¹ The Convention has been described as “the definitive international legal instrument requiring respect for and observance of the human rights of women.”² The purpose of CEDAW is to eliminate discrimination on the basis of sex and gender by any person, organisation or enterprise³, including discriminatory stereotypes.⁴ It thus seeks to eradicate inequality between women and men and to urge states to adopt measures which are emancipatory.⁵ The CEDAW Committee is a geographically diverse and expert UN treaty body responsible for overseeing the implementation of the Convention. It has variously been described as “the leading United Nations treaty body responsible for monitoring the implementation of women’s human rights”⁶ and “an international body specifically tasked with eliminating gender discrimination and advocating for transformative change and equality.”⁷ The CEDAW Committee, alongside the Working Group on Discrimination against Women, the Special Rapporteur on Violence against Women, its Causes and Consequences, the Commission on the Status of Women, and more recently, UN Women make up the UN’s gender architecture, an international umbrella of entities focusing on the advancement of women’s human rights in the international sphere.

On 6 October 1999, the Optional Protocol (OP) to the Convention was adopted by consensus by the UN General Assembly. The OP entered into force on the 22 December 2000 and provides individuals or groups from state parties to the OP with the opportunity to complain about violations of Convention rights by the state to the Committee.⁸ The OP thus enables the Committee to determine these claims and to make specific recommendations for redress to the individual complainant and more general ones directed at addressing wider societal issues. It further invests the Committee with the powers to conduct an inquiry into grave or systemic violations of human rights set out in the Convention.⁹ Inquiries have been made with respect to women’s access to health and reproductive services in Manila, Philippines; violence against women (femicide) in *Ciudad Juárez*, Mexico; access to abortion in Northern Ireland, UK; abduction of women and girls for marital purposes in Kyrgyzstan; and the rights of indigenous women in Canada. The importance and significance of the jurisprudence and inquiry reports should not be underestimated. In some cases, for instance *Ángela González Carreño v Spain*,¹⁰ the recommendations made by the CEDAW Committee for redress have led to important results: the Spanish Supreme Court in July 2018 held that the recommendations made by the Committee under the OP were binding on the domestic courts.¹¹



PART III: GENERAL RECOMMENDATIONS



Many of the global standards that we have on women's rights have been developed through the adoption of the CEDAW Committee's General Recommendations that form a core part of its work in clarifying, developing and interpreting the rights set out in the Convention.

Through its General Recommendations the CEDAW Committee provides authoritative guidance on state obligations under CEDAW¹² and elaborates and explains legal standards specifically in relation to women's equality, empowerment and justice. General Recommendations are important legal instruments since they also ensure that the Convention is a living, dynamic instrument.¹³ Especially significant in this regard is General Recommendation 28 that was adopted in 2010 and elaborates states' obligations under Article 2 of the Convention. It clarifies for instance that the Convention covers gender-based as well as sex-based discrimination and that it is applicable to girls as well as women "since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence." It also explains that the requirement that states pursue a policy of elimination of discrimination against women "without delay" means that it is an immediate obligation. It follows, according to the Committee, that delay cannot be justified "on any grounds, including political, social, cultural, religious, economic, resource or other considerations or constraints within the State."

Many of the global standards that we have on women's rights have been developed through the adoption of the CEDAW Committee's General Recommendations that form a core part of its work in clarifying, developing and interpreting the rights set out in the Convention.¹⁴ The General Recommendations are crafted by experts on gender equality for women (and largely by women) and often address topics that are underdeveloped by other treaty bodies. The three topics discussed in this paper are the subjects of the Committee's most recent General Recommendations.

A. GENDER-BASED VIOLENCE AGAINST WOMEN: GENERAL RECOMMENDATION NO. 35 (2017)

The international normative landscape on violence against women has evolved exponentially since the establishment of the CEDAW Committee in 1982 and its adoption of General Recommendation No. 19 in 1992.¹⁵ There is no provision in CEDAW directly on violence against women.¹⁶ General Recommendation No. 19 (GR 19) was significant in bringing violence against women into the Convention and taking it out of the private sphere, placing it within the context of structural inequalities predicated on gender relations. It established



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that gender-based violence against women¹⁷ is a form of discrimination against women falling within Article 1 of the Convention. It sets out that states have positive obligations to prevent, prosecute and punish this form of violence whether committed by state agents or non-state actors. States are responsible for the failure to comply with such obligations and must make reparation.

Given the continuing high levels of gender-based violence and gender-related killings against women and girls, some women’s rights groups and feminist activists, including the former Special Rapporteur on Violence against Women, its Causes and Consequences, have called for a binding international treaty on violence against women.¹⁸ There is, they argue, a normative gap¹⁹ which must be closed in order to tackle and eradicate violence against women and that a binding one-stop treaty would assist in bringing together the fragmented systems and obligations of states.²⁰ Perhaps as a response to these debates, the CEDAW Committee in 2017 updated its GR 19 in a further General Recommendation, No. 35 (GR 35).²¹ This update was adopted following a widespread consultation process, with more than a hundred contributions from civil society, women’s organisations and other stakeholders, including states.²² GR 35 is an important normative development that entrenches developments that have occurred in the last 25 years, while also looking forward in terms of current and emerging challenges and trends in this field. In lengthy and technical detail, it expands upon state obligations to prevent, prosecute and punish violence – the so-called due diligence obligations – which have formed the crux of the jurisprudence of the regional human rights bodies on violence against women,²³ as well as that of the CEDAW Committee. The Committee explains that states’ obligations include:

- Adoption of legislation prohibiting all forms of gender-based violence against women and girls, harmonising domestic law with the Convention.
- Adoption of and adequately budgeting for diverse institutional measures, including to design focused public policies, to develop and implement monitoring mechanisms and to establish and/or fund competent national tribunals.
- Requiring judicial bodies to refrain from any discrimination or gender-based violence against women.
- Applying criminal law strictly to punish this violence, ensuring the fairness and impartiality of legal procedures in cases involving allegations of gender-based violence against women.

“How to encapsulate 25 years of normative progress and experience, as well as craft a recommendation that continues the trajectory of furthering understanding of violence against women and determining appropriate measures of prevention, protection, punishment and transformative reparation, was a significant challenge to the Committee.”²⁴



Women and girls are entitled to a life free from violence. Additionally, states have a legal obligation to ensure that this right of freedom from violence is real rather than illusory or theoretical.

GR 35 comes at a time when there is, in the words of Sally Engle Merry, a “trend toward resistance, retrenchment, and a turn away from women’s rights concerns.”²⁵ As such, it is important guidance and an anchoring of the norms that have developed thus far. The Committee confirms that the prohibition of gender-based violence against women “has evolved into a principle of customary international law.”²⁶ In practice this means that it is binding on all states whether they have signed up to CEDAW or not.²⁷ The recognition of the evolution of this principle is supported by normative developments over the last 25 years in a number of international fora²⁸ that recognise that violence against women and girls (VAWG) is a form of discrimination against women “by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.”²⁹ Women and girls are entitled to a life free from violence.³⁰ Additionally, states have a legal obligation to ensure that this right of freedom from violence is real rather than illusory or theoretical.³¹



Seemingly there has been both a trend towards formal improvements in legislation and policy while also a backlash leading to the erosion of the frameworks developed to eliminate gender-based discrimination and continued violence in the name of tradition, culture, religion or fundamentalist ideologies, and significant reductions in public spending – austerity.

However, the Committee notes that legislation addressing gender-based violence against women remains “non-existent, inadequate and/or poorly implemented”.³² Seemingly there has been both a trend towards formal improvements in legislation and policy while also a backlash leading to the erosion of the frameworks developed to eliminate gender-based discrimination and continued violence in the name of tradition, culture, religion or fundamentalist ideologies, and significant reductions in public spending – austerity. The Committee draws attention to the fact that gender-based violence against women encompasses physical, sexual, psychological or economic harms.³³ It remains pervasive in all countries of the world, manifesting “in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology mediated settings and in the contemporary globalized world it transcends national boundaries.”³⁴ In other words, despite normative developments over the past 25 years at the international, regional and national level, the violence women and girls face in their daily lives remains real and deadly.



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The Committee considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.³⁵

The CEDAW Committee has also recognised that having laws and a legal system in place to address the problem is insufficient in and of itself; these must also be put into effect by state actors who understand and adhere to the obligation of due diligence.³⁶ The Committee has specifically found violations of human rights in cases where women have turned to the law for protection, but where the law has instead left them and their children vulnerable to lethal violence.³⁷ The Committee also seeks an end to gender stereotypes that are a root cause of gender-based violence against women, deny women access to justice, and contribute to secondary victimisation.³⁸

Significant contributions of GR 35 include:³⁹

- Giving voice to the structural causes of gender-based violence and the effects of prejudices and stereotyping including “the ideology of men’s entitlement and privilege over women” (para 19).
- Considerably expanding on the multiple and intersecting forms of violence women experience and the conditions and spaces in which they occur – including militarisation, displacement, globalisation of economic activities, foreign occupation, armed conflict, violent extremism, terrorism and environmental degradation (para 14). GR 35 finds that violence against women happens in “all spaces and spheres of human interaction” including in the Internet and digital spaces (para 20).

GR 35 is explicitly intersectional and recognises that “gender-based violence may affect some women to different degrees or in different ways”.⁴⁰ It also makes it clear that states must repeal laws that criminalise abortion, sex work, or being lesbian, bisexual or transgender. GR 35 thus illustrates and operationalises the CEDAW Committee’s inclusive approach to women. It provides that women “experience varying and intersecting forms of discrimination, which have an aggravating negative impact”.⁴¹ The Committee explains that these experiences and intersecting identities are also affected and exacerbated by cultural, economic, ideological, technological, political, religious, social, and environmental factors. The Committee reminds states that gender-based violence against women, including rape, domestic violence and harmful practices, may amount to torture and even international crimes depending on the context.⁴²

Significantly, GR 35 draws attention to globalisation, global supply chains, environmental destruction, and the degradation of natural resources as wider factors affecting women’s right to live a life free from gender-based violence. It specifically addresses the actions and omissions of the state and non-state actors operating extraterritorially, including extraterritorial military action. This mirrors the Committee’s increasing attention during



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the periodic review cycles to what corporations in the Global North are doing in the Global South. For example, the Committee's concluding observations on the eighth periodic report of Australia addresses rights violations by Australian companies which relate to the extractive industry.⁴³

The Committee makes very full and detailed recommendations (with examples) to assist states parties in relation to the measures to take to combat violence against women and girls.

For instance:

- Legislative reforms including: criminalisation of all forms of gender-based violence against women and ensuring criminal sanctions are commensurate with the severity of the offence; access to justice for survivors of gender-based violence against women and the protection of the law; repeal of laws that tolerate or condone forms of gender-based violence against women, discriminatory evidentiary rules or procedures, laws that inhibit the reporting of gender-based violence against women; ensure that laws characterise gender-based violence against women as a crime against a woman's right to personal security and physical, sexual and psychological integrity.
- Measures for the prevention of gender-based violence including: addressing its root causes; eradicating stereotypes, prejudices and customs that tolerate gender-based violence against women; promoting appropriate educational and awareness programmes and trainings; taking steps to ensure that public spaces are safe for women; encouraging media outlets to eradicate discrimination and stereotyping in their activities; training for the judiciary and other law enforcement personnel.
- Measures for the protection of women from gender-based violence including: measures for the protection of victims and witnesses of gender-based violence before, during and after legal proceedings; establishment and implementation of comprehensive and accessible multi-sectoral services with participation by and cooperation with women's NGOs; addressing factors that aggravate women's risk of exposure to gender-based violence such as firearms, high rates of criminality and impunity.
- Measures to ensure prosecution and punishment of perpetrators; reparations for victims and survivors; relevant and systematic research and data collection.

The Committee seeks cooperation between international special agencies, the international community and civil society in seeking support to meet international human rights obligations.

The updating of GR 19 means that the Committee has addressed contemporary issues such as violence on the internet and digital spaces, as well as continuing issues such as reproductive and obstetric violence. These issues have also formed part of the current UN Special Rapporteur's focus during her mandate.⁴⁴



“Violations of women’s sexual and reproductive health rights, such as forced sterilisations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture, or cruel, inhuman or degrading treatment.”⁴⁵

The adoption of GR 35 makes evident both the normative advancement since 1992 and the multiple manifestations of gender-based violence that continue. It is a valuable resource for combating violence against women and girls that should be read together with the CEDAW Committee’s concluding observations to states’ reports and the jurisprudence it has developed since the coming into force of the OP. Decisions on individuals’ complaints allow the Committee to apply its general principles to specific factual situations and thus to provide states with examples of what the duty of due diligence entails in practice and how intersecting factors (e.g. age, disability, minority status) impact on the incidence of violence and on what constitutes appropriate responses.

CEDAW GR 35 should also be read in conjunction with the Committee’s General Recommendations No. 30 on women in conflict prevention, conflict and post-conflict situations,⁴⁶ and No. 33 on women’s access to justice.⁴⁷ Taken together these three General Recommendations set out states’ obligations with respect to combating violence against women across the continuum from peacetime through conflict and its aftermath and ensuring that women and girls can access justice. They address the root causes of both the continuation of such violence and of what is too often the lack of any effective recourse to justice. They provide tools for the empowerment of women and thus align with the Sustainable Development Goals, (SDGs) notably SDG 5 on gender equality and empowering women and girls⁴⁸ and SDG 16 on the promotion of peaceful and inclusive societies.

The Committee also addresses and supervises state compliance with the United Nations Security Council’s agenda on Women, Peace and Security. Security Council Resolution 2467 (2019) urges states to strengthen access to justice for victims of sexual violence in conflict and post-conflict situations and offers some positive steps toward this end; CEDAW GR 33 fleshes out and strengthens these suggestions. The Security Council has incorporated GR 30 into its WPS resolutions⁴⁹ and in turn the CEDAW Committee reiterates that the WPS resolutions must be implemented in accordance with the requirements of the Convention and that states should include details of the measures they have taken to this end in their periodic reports to the Committee.⁵⁰

In sum GR 35 provides an important legal and policy blueprint for states and other actors (international institutions, non-governmental organisations, civil society etc) to follow in seeking the eradication of gender-based violence against women.

B. EDUCATION: GENERAL RECOMMENDATION NO. 36 ON THE RIGHT OF GIRLS AND WOMEN TO EDUCATION (2017)

The right to education and equality in education is an integral aspect of women’s human rights. The Special Rapporteur on the Right to Education has commented that “[t]he right to education for women and girls...is essential for putting an end to multiple forms of discrimination from which women and girls suffer.”⁵¹ It is thus a “gate-keeper” right. The right to education is a social right within the rubric of economic, social and cultural rights and is included in multiple instruments.⁵² It encompasses a number of other rights, including: the right to receive or have access to education; the right to choose a stream of education and



the right to equal education. In short, education must be available, accessible, affordable, appropriate and adaptable.

The right not to be discriminated against in education is a particularly significant entitlement.⁵³ Unlike gender-based violence against women or climate change and disaster reduction, which are not explicitly addressed within CEDAW but are framed by the Committee as falling within the scope of other Convention rights (right to non-discrimination;⁵⁴ right to health;⁵⁵ rights of rural women⁵⁶), the Convention specifically provides in article 10 that states take appropriate measures to eliminate discrimination between women and men, girls and boys, in the field of education.⁵⁷ Article 10 of the Convention is lengthy and detailed. It provides:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

In other words, the right to education is a central obligation under the Convention.⁵⁸ The main elements of the right to education in CEDAW include:

- Elimination of discrimination in access to educational facilities at all levels (and thus at all ages, taking a life cycle approach); this is especially important for women who may have had to leave schooling at an early age and wish to access educational facilities as adults.
- Removal of discrimination and stereotyping within educational establishments, curricula and material.
- Lessening the disparity between women and men in educational achievement.



- Importance of ensuring women receive vocational and technical training.
- Ensuring equal access to sports and physical training (see also CEDAW, article 13).⁵⁹

On 16 November 2017, the CEDAW Committee finalised and published its General Recommendation No. 36 (GR 36) on the right of girls and women to education.⁶⁰ GR 36 states from the outset that “[e]ducation plays a pivotal transformative and empowering role in promoting human rights values and is recognized as the pathway to gender equality and women’s empowerment.” Following statistical information in relation to the exclusion of girls from schooling and illiteracy rates, the Committee notes that, generally, girls and women are disproportionately discriminated against throughout schooling in access, retention, treatment, learning outcomes as well as in career choices. The Committee links its GR 36 to SDG 4 which seeks to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.”

The Committee organises General Recommendation No. 36 under a tripartite approach of:

- Access to education (involving participation and representation).
- Rights within education, which aims at promoting substantive gender equality in education. This concerns equality of treatment and opportunity.
- Rights through education, which looks at how education defines the ways in which schooling shapes rights such as gender equality outside of the educational sphere. GR 36 notes that even in instances where educational attainment of males is lower than of females, men occupy better positions.

The Committee explains that women’s and girls’ access to education is dependent upon the availability of adequate infrastructure to meet their needs. GR 36 notes that:

Where girls and women lack access to quality education they ultimately face major difficulties including lack of personal autonomy and choices including; control over their health and sexual and reproductive decisions; lower quality healthcare for themselves and for their children; intergenerational poverty; and, lack of power-sharing and participation on an equal basis with boys and men in both the private and public domains.⁶¹

Accessibility also means affordability and the CEDAW Committee finds that education should be free and compulsory from pre-school⁶² up to secondary schooling and progressively up to the tertiary level. GR 36 also draws attention to the hidden costs involved with education such as textbooks, lunches, school materials, and other fees which affect students from the poorest quintile and lead to their stigmatisation. The Committee notes that fees often result in poor parents having to choose which children to send to school and that in some contexts educating boys is preferred over educating girls.

An important development in GR 36 relates to the facilitation of education through information and communications technologies. GR 36 provides that these approaches have “distinct benefits for girls and women with limited access to conventional forms of educational training, including those who are excluded because of: distance from school in rural areas; domestic work and parental responsibilities, particularly in cases of child marriage and adolescent pregnancy; and, exclusion based on other social and cultural barriers.”⁶³ This is important in practice and links to the Committee’s work in relation to rural women and girls, as well as education provision for indigenous girls in remote regions.



The Committee makes numerous significant recommendations to state parties in relation to their obligations under Article 10 of the Convention. These include to:

- Integrate age appropriate education on women's human rights and the CEDAW Convention in school curricula at all levels.
- Undertake constitutional amendments or other legislative action to ensure that there is provision for the right to education and that this is enforceable. These provisions should also ensure that pregnant girls cannot be expelled and that there are no restrictions on their return to school following childbirth. The Recommendation also notes other gender specific issues which affect girls' access to schools including the onset of menarche and inadequate hygiene facilities, untrained or unsupportive staff, and school exclusion based on puberty and menstrual issues. To this end, the Committee recommends state parties *inter alia* ensure that there are sanitation facilities which are sex segregated, as well as access to safe and clean drinking water. It also recommends the state to institute policy initiatives including the provision of sanitary protection material to increase school attendance particularly in rural and remote areas.
- Eliminate gender stereotyping in education that perpetuates direct and indirect discrimination against girls and women, including by challenging and changing patriarchal ideologies and structures that restrict girls and women from fully exercising their human rights and freedom to enjoy their rights to, within, and through education. This means that the state should develop and implement policies and programmes on enhancing gender relations and gender equality at all levels of schooling.
- Encourage the media to project positive and non-sexualized images of women, including ethnic and minority girls and women, elderly women, and girls and women with disabilities.⁶⁴
- Address imbalances in budgetary allocations for disadvantaged and marginalised groups of girls and women based on socio-economic status, location, ethnicity, gender identity and religious persuasion.
- Ensure that mandatory dress codes and banning of specific clothing do not hamper access to inclusive education, particularly for those of migrant background.
- Provide universal, free and compulsory education from pre-school up to the secondary level, regardless of socio-economic status, for citizens of the state as well as for girls and women with migrant and refugee status.

The Committee emphasises the importance of taking into account the needs of differently situated women and girls. As with GR 35, GR 36 is intersectional throughout, drawing



The Committee recommends that States parties take all appropriate measures to ensure the right of all categories of disadvantaged and marginalised groups to education by eliminating stereotyping and discrimination and by removing barriers to access.



attention to how Article 10 of the Convention interrelates with Article 14 on rural women and girls. GR 36 has a specific section on disadvantaged groups of girls and women: ethnic minorities and indigenous women; refugees and asylum seekers; women with disabilities; and LGBTI women (paras 40-46). It also mainstreams the intersectionality of gender and disability throughout. The Committee recommends that States parties take all appropriate measures to ensure the right of all categories of disadvantaged and marginalised groups to education by eliminating stereotyping and discrimination and by removing barriers to access. GR 36 reiterates GR 35 on gender-based violence against women and girls, discussed above, that also importantly emphasises the integration of gender equality content into curricula at all levels of education from early childhood, targeting stereotyped gender roles and ensuring age-appropriate, evidence-based, and scientifically accurate and comprehensive sexuality education for girls and boys as measures for the prevention of violence against women and girls.⁶⁵ In turn GR 36 addresses gender-based violence against women and girls, noting that in relation to such violence in public spaces and the risk of violence that females face when traveling to schools availability and accessibility require educational institutions, particularly in rural areas, to be proximate and within their safe reach.

A significant aspect of GR 36 and the Committee's work relates to the emphasis that it places on states' obligation to provide comprehensive sexuality education. Thus age-appropriate, mandatory curricula should include education on sexual and reproductive health rights, responsible sexual behaviour and the prevention of sexually transmitted diseases and early pregnancies. GR 36 also notes that limited education and cultural taboos are among factors that prevent LGBTI students from achieving social mobility and increases their vulnerability to violence. In its Inquiry on restrictive access to abortion for women and girls in Northern Ireland, the Committee found that the UK had failed to prioritise the prevention of unplanned pregnancy through the provision of quality sexual education in violation of Article 10(h) of the Convention. The Committee affirmed that "The provision of age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education and information is critical to the realisation of women's rights to health."⁶⁶

As well as being a General Recommendation that aims to transform gender relations and to empower women, GR 36 is largely about reminding states of their obligations to provide educational environments which are supportive of girls and which allow them to participate confidently without fear, shame or risk. To this end it is important that the Committee rejects the position that economic and social rights are non-justiciable and non-enforceable in law. It points to relevant decisions in various jurisdictions and urges the use of legal challenge to uphold the right.⁶⁷

It is also important to flag that educational provision has been recommended as reparation for violations in a number of cases decided by the Inter-American Court of Human Rights including for indigenous women and girls, thereby enhancing the rights of other members in the community, not just those of the individual complainant(s).⁶⁸ For example, in the case of *Rosendo Cantú v Mexico*, which concerned sexual violence by the military against a member of the Mé'phaa indigenous community in the state of Guerrero, at the time of the events the complainant was 17 years old and living with her husband in an isolated mountainous area. The Court found violations of a number of Mrs Rosendo Cantú's rights and significantly found that the sexual violence by the military constituted rape as torture.⁶⁹ The Court ordered the state to provide a number of reparations including scholarships in Mexican public establishments to "Mrs Rosendo Cantú and her daughter... that covers all the costs of their education until the completion of their higher education, whether of technical or university studies."⁷⁰ In the case of *Lopez Soto v Venezuela*, the Court ordered the state to pay for Ms Lopez Soto's education and to cover the cost of university, including living allowance and support in whichever country she was admitted to continue with her



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studies. The Court also ordered the state to provide scholarships to Venezuelan public institutions for a number of her family members including her sister.⁷¹

Education is a fundamental lynchpin for the exercise of so many human rights for women and girls. It has also been one of the important parts of the feminist political project. When Angela Davis was asked about how feminism allows us to envision futures of living in a more just world she replied:

What often appear to be very basic wishes are so far out of reach – for example, the very ability to get a free education seems so bizarre today. I would want education to be free from kindergarten or child care all the way up to postgraduate and beyond. That would mean that the very process of education would have to be transformed too.⁷²

The CEDAW Committee embraces this understanding of the transformative nature of education for women, girls, and LGBTI youth. In other General Recommendations such as those on health, gender-based violence, access to justice and climate change the Committee reminds states of their obligations to ensure that women and girls have access to education that is holistic and includes cross-cutting Convention themes. It provides us also with an invitation to reimagine our world as more equitable and just and makes us question why such a basic right as free education is so far from realisation.

C. CLIMATE CHANGE AND DISASTER REDUCTION: GENERAL RECOMMENDATION NO. 37 (2018)

On the 7 February 2018, the CEDAW Committee adopted the first General Recommendation by any UN human rights treaty body on climate change and the gendered impact of disasters: General Recommendation No. 37 (GR 37) on the gender-related dimensions of disaster risk reduction in the context of climate change.⁷³ The adoption of GR 37 follows a number of programmes and statements which have called on states to mainstream gender into all areas and elements of climate action.⁷⁴ It also intersects with other policy frameworks such as the SDGs and the Sendai Framework for Disaster Risk Reduction.⁷⁵

As CEDAW Committee member Nahla Haidar has commented, the CEDAW Committee first issued a statement on natural disasters and climate change in 2009, 11 years ago.⁷⁶ GR 37 comes amidst growing recognition that the climate emergency affects women and girls differently and disproportionately. In 2018 the CEDAW Committee made recommendations with respect to the climate in its concluding observations to 75 per cent of the states reviewed.⁷⁷ For example, the Committee has expressed concern over the gendered consequences of extreme weather and natural disasters, emissions reductions, fossil fuels, deforestation, climate adaptation, and climate mitigation. Through its General Recommendations, including GR 37, the Committee has emphasised that climate change and natural disasters “have a deep impact on and broad consequences for the equal enjoyment and exercise by women of their fundamental rights.”⁷⁸ In GR 35 it had earlier explained that environmental factors, natural disasters and destruction or degradation of natural resources all impact upon and often exacerbate gender-based violence against women and girls.



The Committee has expressed concern over the gendered consequences of extreme weather and natural disasters, emissions reductions, fossil fuels, deforestation, climate adaptation, and climate mitigation.

GR 37 links the climate crisis to other root causes of women’s oppression, including but not limited to violence against women. It also confirms women and girls as leaders and vital participants in solutions to disaster relief and the climate crisis. This means that it is important to understand the climate crisis through an intersectional lens, which locates both women’s rights and the environment within interlocking systems of oppression and opportunity.

“Despite differences in terminologies, feminist research brings to the fore the interconnectedness of the social, political and economic realms with the environmental in its analysis of climate risks and hazards. This is done by paying attention to women’s lives, gendered structural constraints and opportunities, as well as the legitimating symbols that “naturalise” inequalities in the human environment.”⁷⁹

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GR 37 is shaped by three key general principles - equality and non-discrimination, participation and empowerment, and accountability and access to justice – as fundamental to ensuring that all interventions related to disaster risk reduction in the context of climate change are implemented in accordance with the Convention.⁸⁰ The objective of GR 37 is:

to underscore the urgency of mitigating climate change to highlight the steps that need to be taken to achieve gender equality as a factor that will reinforce the resilience of individuals and communities globally in the context of climate change and disasters. The general recommendation also seeks to contribute to coherence, accountability and the mutual reinforcement of different international agendas on disaster risk reduction and climate change adaptation by focusing on the impact of climate change and disasters on women’s human rights.⁸¹



It is important to understand the climate crisis through an intersectional lens, which locates both women’s rights and the environment within interlocking systems of oppression and opportunity.



The introduction to GR 37 explains the gendered impact of disasters on women and girls, stating that:

- Women, girls and boys are affected differently by climate change and disasters, with many women and girls experiencing greater risks, burdens and impacts.
- As a result of the limited control women have over decisions governing their lives, they are more likely to be exposed to disaster induced risks and losses related to their livelihoods and they are less able to adapt to changes in climatic conditions.
- Women and girls have higher levels of mortality and morbidity in situations of disaster. Gender-based economic inequalities mean that women, and female-headed households in particular, are at higher risk of poverty and more likely to live in inadequate housing in urban and rural areas of low land value that are vulnerable to the impact of climate related events such as floods, storms, avalanches, earthquakes, landslides and other hazards.
- Women and girls in conflict situations are particularly exposed to risks associated with disasters and climate change.
- The failure to engage in gender-responsive disaster planning and implementation means that protective facilities and infrastructures such as early warning mechanisms, shelters, and relief programmes have frequently neglected the specific accessibility needs of diverse groups of women, including women with disabilities, older women and indigenous women.
- Women and girls also face heightened risk of gender-based violence during and following disasters.
- The categorisation of women and girls as passive “vulnerable groups” in need of protection from the impact of disasters is a negative gender stereotype that fails to recognise the important contributions to disaster risk reduction, post disaster management and climate change mitigation and adaptation strategies that women are already making.

GR 37 provides an intersectional approach to disaster reduction. It states that situations of crisis exacerbate pre-existing gender inequalities and compound intersecting forms of discrimination. The Committee recommends that States parties should ensure that all policies, legislation, plans, programmes, budgets, and other activities are grounded in human rights based principles including equality and non-discrimination, “with priority being accorded to the most marginalized groups of women and girls.”⁸² This is evidenced throughout the text in key recommendations such as addressing discrimination in relation to the ownership, access, use, disposal and inheritance of property, land, and natural resources and other barriers impeding the exercise by women of their full legal capacity and autonomy in relation to freedom of movement and equal access to economic, social and cultural rights.

Significantly, GR 37 makes it clear that any measures to combat climate change, including limiting fossil fuel use and greenhouse gas emissions and the harmful environmental effects of extractive industries such as mining and fracking, must comply with human rights. In other words, “greenwashing” cannot be used to undermine fundamental human rights and climate mitigation should instead contribute to empowerment.⁸³ This speaks to the Committee’s pronouncement that gender equality is a pre-condition for the realisation of the SDGs.⁸⁴ This means, amongst other things, that gender equality cannot be sacrificed in the name of green capitalism.⁸⁵



The full and equal participation and leadership of women in decision-making, planning and implementation as regards climate action is essential to protecting women's rights and ensuring effective climate action.

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GR 37 cements the Committee's work on the right to a healthy environment, the need for states to take into account indigenous and traditional knowledge, and its previous guidance on rural women.⁸⁷ It emphasises states' extraterritorial obligations and builds on GR 35 and concluding observations which have drawn attention to the negative impacts of extractive industries. It is a vital and transformative instrument which recognises how climate change is exacerbating risks and disasters and has differential gender consequences, but which also recognises women as leaders in designing risk reduction strategies and climate change initiatives.

GR 37 lists a number of areas of specific concern including: the right to live free from gender-based violence against women and girls, rights to education and information, rights to work and social protection, right to health, right to an adequate standard of living and right to freedom of movement. The Committee has made a number of recommendations to States parties including:

- Participation and empowerment, through the adoption of effective processes and the allocation of necessary resources to ensure that diverse groups of women have opportunities to participate in every stage of policy development, implementation and monitoring at each level of government from the local to the national, regional and international levels.
- Accountability and access to justice, which require the provision of appropriate and accurate information and mechanisms to ensure that all women and girls whose rights have been directly and indirectly affected by disasters and climate change are provided with adequate and timely remedies.
- Create effective mechanisms to guarantee that the rights of women and girls are a primary consideration in devising measures on disaster risk reduction and climate change at the local, national, regional and international levels. Measures must be taken to ensure that quality infrastructure and critical services are available, accessible and culturally acceptable, for all women and girls on a basis of equality.
- Strengthen national gender and women's rights institutions, civil society and women's organizations and provide them with adequate resources, skills, and authority to lead, advise, monitor and carry out strategies to prevent and respond to disasters and mitigate the adverse effects of climate change.
- Engage in a comprehensive gender audit of policies and programmes across different sectors and areas including climate, trade and investment, environment and planning, water, food, agriculture, technology, social protection, education and employment, in order to identify inconsistencies with a view to reinforcing efforts aimed at disaster risk reduction and climate change.
- Undertake gender impact assessments during the design, implementation and monitoring phases of disaster risk reduction and climate change plans and policies.
- Take effective steps to equitably manage shared natural resources, particularly water, and limit carbon emissions, fossil fuel usage, deforestation, nearsurface



Gender-justice and climate-justice are interrelated. This intersection means that empowering women also requires taking a stand for environmental rights.

permafrost degradation, soil degradation and transboundary pollution, including dumping of toxic waste, and all other environmental, technological and biological hazards and risks that contribute to climate change and disasters which tend to have disproportionate effects on women and girls.

Importantly, GR 37 forms part of growing awareness on the need for bold and creative change. Those who are currently on the frontline trying to protect land, water, species and ecosystems are too often targeted and killed. As the report on the Office of the United Nations High Commissioner for Human Rights noted in May 2019: “Women defending these ecosystems often pay a high price”.⁸⁸ In other words, gender-justice and climate-justice are interrelated.⁸⁹ This intersection means that empowering women also requires taking a stand for environmental rights.⁹⁰

GR 37 is a good example of how the CEDAW Committee continues to listen to women from around the world. Climate insecurity and disasters have specific gendered repercussions, particularly in relation to the gendered roles and responsibilities that many women have around the world, such as rural women, in relation to livelihoods and food production. Many women have testified that pollution, environmental and ecological degradation has had disastrous effects on their lives, the lives of their children and on their communities.



PART IV: FUTURE DIRECTIONS FOR CEDAW

The CEDAW Committee is currently working on a General Recommendation on Article 6 of the Convention, specifically on trafficking of women and girls in the context of migration. This will be its 38th General Recommendation making it the most prolific of the UN human rights treaty bodies. Its case load under the OP has also expanded in recent years so that it has developed a detailed jurisprudence on gender-based violence against women and other Convention issues. Survivors, civil society and women’s organisations have made a huge contribution over the last 25 years to building the legal standards with respect to states’ obligations for combating violence against women in conflict and non-conflict situations, their access to justice and to understanding how these interact with other contemporary challenges, including climate change. As the CEDAW Committee has recognised “their activities have had a profound social and political impact”.⁹¹ However it is facing a difficult future with continued uncertainty about the future of the treaty bodies and budgetary cuts.

What is clear as CEDAW enters its fifth decade is that women need its protections as much – if not more – than ever. The pushback against women’s rights, especially their reproductive and sexual health rights, the targeting of women human rights defenders, and the use of “gender ideology” to deny women’s autonomy and choice are just some manifestations of the denial of women’s rights. The CEDAW Committee has demonstrated that the Convention can be interpreted to respond to these and other threats to women’s human rights. In turn, advocates, activists and academics must do their part in making CEDAW better known and in using it to challenge the actions of governments and others who would deny women their rights. CEDAW is an important tool that can be used for legal resistance to abuse of power.



The pushback against women’s rights, especially their reproductive and sexual health rights, the targeting of women human rights defenders, and the use of “gender ideology” to deny women’s autonomy and choice are just some manifestations of the denial of women’s rights.



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