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# Women's Rights and the Periphery: CEDAW's Optional Protocol

Loveday Hodson\*

## Abstract

*This article places the UN Women's Committee at its centre in order to consider the normative implications of having a space within the realm of international law that is headed by women decision-makers, whose remit is specifically gendered and whose task is to uphold the rights of women. It suggests that the Committee's importance has largely been overlooked, which is a considerable oversight. The Committee is uniquely positioned to contribute to the transformation of human rights norms, occupying, as it arguably does, positions simultaneously at the centre and at the periphery of international law. In particular, this article examines the jurisprudence that has emerged under the individual complaints procedure of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and questions how far the Committee has been able to develop women's rights in recent years into a body of law that departs from the normative and structural limitations of international human rights laws.*

## 1 Introduction

The Committee on the Elimination of All Forms of Discrimination against Women (the Committee or Women's Committee) is a unique and fascinating institution; composed almost entirely of women, it dramatically inverts the typical gender 'balance' of international institutions. In light of concerns expressed by feminists about the silencing of women's voices in international law, one might well expect the jurisprudence and working methods of the Women's Committee to be of interest to a number and range of international legal scholars; in practice, however, its work has failed to generate a great deal of excitement or debate. This omission is more than unfortunate. Chinkin, Wright, and Charlesworth have argued that for women's human rights to be fully realized 'requires challenging the structural inequalities and power imbalances that make continued violations inevitable'.<sup>1</sup> Feminist reflection offers the tantalizing

\* Senior Lecturer in Law, School of Law, University of Leicester. Email: [lch8@le.ac.uk](mailto:lch8@le.ac.uk).

<sup>1</sup> Chinkin, Wright, and Charlesworth, 'Feminist Approaches to International Law: Reflections from Another Century', in D. Buss and A. Manji (eds), *International Law: Modern Feminist Approaches* (2005), at 17, 26.

suggestion of the radical transformative possibility of women's rights, transcending the normative limitations of traditional international law. The Committee seems uniquely positioned to contribute to the transformation of human rights norms, occupying, as it arguably does, positions both at the centre and at the periphery of international law. This article represents an effort to place the Committee at the centre of our thoughts in order to consider what (if anything) it means for international law to have a space within its realm that is headed by women decision-makers, whose remit is specifically gendered and whose task is to uphold the rights of women.

In particular, this article outlines the changes to the procedures of the UN's Women's Committee introduced under the 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and provides an overview of the first individual communications considered under mechanisms introduced by that Protocol. It sets out the principles relied upon by the Women's Committee in its early decisions and the scope of the recommendations made by the Committee so far. The underlying question of this article is the extent to which the Women's Committee has been able to make a unique contribution to the development of international human rights law's principles and procedures through its individual communications procedure. In particular, it examines how far the Committee has been able to develop women's rights into a body of law that departs from the normative and structural limitations of international human rights laws.

## 2 Background to the Optional Protocol

CEDAW, which focuses solely on the specific disadvantage and suffering faced by women, has been described as the 'definitive international legal instrument requiring respect for and observance of the human rights of women'.<sup>2</sup> Approved by the General Assembly in December 1979,<sup>3</sup> it entered into force on 3 September 1981 and currently has 187 states parties. Its ambitious aims are to eliminate discrimination and establish gender equality through challenging structural gendered power relations. But if its aspirations are lofty, in relation to enforcement its wings were initially severely clipped.

Prior to the introduction of the Optional Protocol there was no mechanism through which individuals could complain to the Committee about the violation of their rights under CEDAW, leading Theodor Meron to describe it as a second-class instrument.<sup>4</sup> It seems that during the drafting of CEDAW there was simply little thought given to the matter of establishing an individual complaints mechanism, a standard feature of most human rights treaties.<sup>5</sup> Instead, a reporting procedure and an inter-state

<sup>2</sup> Cook, 'Reservations to the Convention on the Elimination of all Forms of Discrimination against Women', 30 *Virginia J Int'l L* (1990) 643, at 643.

<sup>3</sup> GA Res. 34/180 of 18 Dec. 1979.

<sup>4</sup> Meron, 'Enhancing the Effectiveness of the Prohibition of Discrimination Against Women', 84 *AJIL* (1990) 213. See also Connors, 'Optional Protocol', in M. Freeman, C. Chinkin, and B. Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2012), at 607, 609.

<sup>5</sup> Byrnes and Connor, 'Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?', 21 *Brooklyn J Int'l L* (1996) 679, at 684.

complaints mechanism were relied upon to secure states' compliance with their treaty obligations. The flaws and weaknesses of such enforcement systems are now well known.<sup>6</sup> In common with other UN human rights treaties, CEDAW's inter-state complaints mechanism has never been used. As for the reporting procedure, this is generally accepted as a means of reviewing national implementation rather than an enforcement mechanism: Chinkin has argued that its nature 'constrains the Committee from exploring issues in depth'.<sup>7</sup> Poor compliance by states with reporting obligations is notorious under all international human rights treaties, and CEDAW has been no exception.<sup>8</sup> The Committee initially met for only a two-week period each year – a uniquely short allocation of time – and consequently experienced a huge backlog in dealing with reports. Although authorized now to meet three times a year,<sup>9</sup> workload problems persist. Furthermore, CEDAW is encumbered with the honour of being the most heavily reserved international human rights treaty,<sup>10</sup> indicating weak adherence to its normative principles.

While this lack of serious enforcement was enough to justify the enhancement of CEDAW's procedures, arguably, the most significant casualty of CEDAW's relative weakness has been a silencing of women's voices in shaping international law. It goes without saying that international tribunals dealing with 'hard hitting' areas of law are dominated by men – but even human rights treaty bodies are mostly composed of men. CEDAW is alone in being made up almost entirely of women (currently there is one man only in a Committee of 23. By way of contrast, the 18-strong Human Rights Committee and Committee on Economic, Social, and Cultural Rights currently have four women each). It therefore stands poised as a tribunal that has an alternative perspective to bear on the development of human rights norms and principles. Although described as a 'dynamic instrument',<sup>11</sup> the lack of individual complaints mechanism under CEDAW greatly curtailed the Committee's capacity to shape international law, notwithstanding the occasional yet important contributions made in this respect by its General Recommendations.<sup>12</sup>

The Secretary General to the Commission on the Status of Women (CSW) raised the idea of strengthening CEDAW's mechanisms in 1991, an idea that was taken up at the

<sup>6</sup> For a first-hand account of the difficulties faced by the Women's Committee in enforcing the Convention in its early years see Evatt, 'Finding a Voice for Women's Rights: The Early Days of CEDAW', 34 *George Washington Int'l L Rev* (2002) 515.

<sup>7</sup> Chinkin, 'Violence Against Women', in Freeman, Chinkin, and Rudolf, *supra* note 4, at 443, 473.

<sup>8</sup> Byrnes, 'The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of All Forms of Discrimination Against Women', 14 *Yale J Int'l L* (1989) 1.

<sup>9</sup> See GA Res. A/C.3/62/L.20/Rev.1, adopted on 27 Nov. 2007.

<sup>10</sup> Cook, *supra* note 2, at 644.

<sup>11</sup> General Recommendation 28 on the Core Obligations of States Parties under Article 2 of CEDAW, at para. 2 (CEDAW/C/GC/28, 16 Dec. 2010).

<sup>12</sup> E.g., General Recommendation 19 on Violence Against Women (11th Session, 1992). For a discussion see Chinkin and Freeman, 'Introduction', in Freeman, Chinkin, and Rudolf, *supra* note 4, at 1; Cartwright, 'Personal Reflection: Interpreting the Convention', in H.B. Schöpp-Schilling (ed.), *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women* (2007), at 30.

1993 Vienna World Conference on Human Rights and included in the Declaration and Plan of Action.<sup>13</sup> By July 1995, sufficient momentum had been generated for the adoption of Resolution 1995/29, in which ECOSOC requested the CSW to establish an Open-Ended Working Group for the elaboration of an Optional Protocol to CEDAW. Support for an optional protocol was voiced at the 4th World Conference on Women (Beijing) in September 1995, with a request that any draft should include a right for individuals to petition the Women’s Committee.<sup>14</sup> The Optional Protocol was finally adopted by the General Assembly on 6 October 1999 and entered into force on 22 December 2000.

The Optional Protocol that emerged ‘is the result of delicate negotiation’.<sup>15</sup> Parties agree to recognize the competence of the Committee to consider complaints alleging violations of the Convention’s rights. Article 2 of the Optional Protocol allows Communications to be ‘submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received’. This proved to be one of the most controversial provisions during the drafting process.<sup>16</sup> While NGOs called (unsuccessfully) for standing in their own right,<sup>17</sup> states were anxious about any expanded role for NGOs. Divisions over this issue almost derailed the drafting process;<sup>18</sup> while relatively relaxed rules of standing were ultimately included, Article 2 has attracted a number of interpretive statements.

The inclusion of an inquiry procedure – a relative innovation modelled on Article 20 of the Convention Against Torture – was a further subject of controversy. The Committee is empowered to inquire into and report on ‘reliable information indicating grave or systematic violations by a State Party’ of the Convention. While states may opt out of this obligation, only four have done so.<sup>19</sup> Compromises reached during the drafting process also resulted in states not being bound to remedy violations, but rather to give ‘due consideration’ to the Committee’s views and recommendations. However, this was ameliorated somewhat by Article 7(5), which authorizes CEDAW to adopt follow-up procedures in respect of communications. Further, Article 5 empowers the Committee to adopt interim measures to prevent ‘irreparable damage’ to a victim.

The Optional Protocol, therefore, was a compromised but nonetheless welcome development, providing an enhanced opportunity for the Women’s Committee to discover its voice. Reilly argues that human rights ‘must be understood as continually contested and (re)constituted through concrete, bottom-up struggles in local-global nexuses where the universal and the particular meet’.<sup>20</sup> CEDAW’s individual

<sup>13</sup> GA Res. 121, UN GAOR, 48th Sess., Supp. No. 49, UN Doc. A/121 (1994), at para. 40.

<sup>14</sup> Beijing Declaration and Platform for Action, UN Doc. No. A/CONF.177/20, 17 Oct. 1997, at 97, para. 230(k).

<sup>15</sup> Isa, ‘The Optional Protocol for the Convention on the Elimination of All Forms of Discrimination against Women: Strengthening the Protection Mechanisms of Women’s Human Rights’, 20 *Arizona J Int’l & Comp L* (2003) 291, at 309.

<sup>16</sup> *Ibid.*, at 310.

<sup>17</sup> Connors, *supra* note 4, at 621.

<sup>18</sup> Isa, *supra* note 15, at 312.

<sup>19</sup> The states concerned are Bangladesh, Belize, Colombia, and Cuba.

<sup>20</sup> N. Reilly, *Women’s Human Rights: Seeking Gender Justice in a Globalizing Age* (2009), at 37–38.

complaints procedure locates it ideally in a space that vacillates between the particular and the universal, the global and the local, the periphery and the centre. This, I suggest, opens up a potentially exciting and creative space for the re-imagining of women's rights.

### 3 CEDAW: Between Centre and Periphery

For some commentators, conventions such as CEDAW's Optional Protocol are designed to forge a path to the centre of international human rights law power. Hoq, for example, argues that the Optional Protocol is empowering because it enhances the enforcement of the Convention's rights.<sup>21</sup> Similarly, Sokhi-Bulley argues that 'the primary purpose of the Optional Protocol is to attain improved enforcement of women's rights'.<sup>22</sup> The struggle for women's rights has thus been presented by some as a struggle to be integrated within the present core of international rights norms. In short, the Convention and its Optional Protocol are seen to provide women with a bridge to the longed-for human rights centre, the alternative to which is for women to be consigned to a peripheral existence marked by exclusion and persistent inequality.

Charlesworth and Chinkin, in turn, have worried that the notion that CEDAW can offer a bridge sufficiently sturdy to give women access to the centre of human rights power may be illusory; rather, for those authors, the very idea and institutionalization of women's human rights contributes to the creation of a women's ghetto marginalized from the mainstream.<sup>23</sup> Their concerns are shared by a number of feminists who have, quite understandably, questioned law's capacity to engage with those on the periphery.<sup>24</sup> Yet, I suggest here that CEDAW's marginalization is perhaps not as absolute as some critics imply. I concur with Nicola Lacey's suggestion that CEDAW occupies an ambiguous position that adopts both the standard universalizing framework of human rights alongside a specifically political women-centred focus.<sup>25</sup>

By the standard human rights framework I refer to the state-centred nature of all human rights treaties, embedded as they are in the structures of International Law. CEDAW was forged through formal legal processes. Its creators were not terribly ambitious for it and it is clearly a constricted instrument. CEDAW adopts a minimalist liberal agenda, focussing, its name suggests, primarily on the equality of men and women. It therefore seems to be stating the obvious to say that CEDAW has a place at the centre of human rights power.

<sup>21</sup> Hoq, 'The Women's Convention and its Optional Protocol: Empowering Women to Claim their Internationally Protected Rights', 32 *Columbia Hmn Rts L Rev* (2001) 677. See also Afsharipour, 'Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention', 99 *Columbia L Rev* (1999) 129.

<sup>22</sup> Sokhi-Bulley, 'The Optional Protocol to CEDAW: First Steps', 6 *Hmn Rts L Rev* (2006) 143, at 143.

<sup>23</sup> H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (2000), at 218.

<sup>24</sup> For a discussion see, e.g., Binion, 'Human Rights: A Feminist Perspective', 17 *Hmn Rts Q* (1995) 509.

<sup>25</sup> Lacey, 'Feminist Legal Theory and the Rights of Women', in K. Knop (ed.), *Gender and Human Rights* (2004), at 13, 22.

On the other hand, CEDAW also encapsulates counter-hegemonic values that potentially present a challenge to the standard human rights framework: it acknowledges diversity (for example, in its reference to rural women); it locates human rights and discrimination within a cultural context; it adopts an expansive approach to rights that recognizes the equal importance of economic, social, and cultural rights and development rights; and it further recognizes that the empowerment of women necessitates structural reform. To adopt Reilly's description of CEDAW's transformative potential, 'it specifies the conditions for achieving substantive, gender-based equality in all spheres of life in ways that other human rights treaties do not', and thus 'has the potential to play a very significant role in addressing widening global inequalities and the gender-specific impacts of unchallenged neo-liberal globalization'.<sup>26</sup> Much of this potential, I suggest, stems from CEDAW's partial positioning at the periphery, where space for radically re-shaping rights is more plentiful.

CEDAW is certainly at the periphery of international human rights in a number of respects, and the charge that it is a second-class treaty is in many ways irresistible. It is hampered in its work by a number of factors. Not least of these factors is the ambiguous language in which CEDAW's guarantees are expressed. Article 2, for example, enjoins states parties to 'to pursue by all appropriate means and without delay a policy of eliminating discrimination against women'. This fails to match the clarity and precision in which other human rights instruments are expressed. As I have detailed above, it was initially saddled with relatively weak enforcement mechanisms. CEDAW's peripheral position is also indicated by poor compliance with those enforcement mechanisms that exist. As one of the most heavily reserved against of the UN's core human rights treaties, CEDAW's normative impact is greatly reduced: States have seemed to take for granted the 'pick and mix' nature of its substantive content. And in case there was any danger of the point being missed, the Committee's isolation from the mainstream was dramatically underlined by the decision, not reversed until 2008, to locate it in New York, away from the UN's human rights nerve-centre in Geneva, where it was cut off from other 'human rights bodies in physical as well as conceptual terms'.<sup>27</sup>

The description of CEDAW as a peripheral instrument clearly has some merit. Yet, this is not to suggest that it can be dismissed as an unimportant instrument; rather, concerted efforts to keep CEDAW in a peripheral position are more likely to be a fearful response to its radical potential. Roth touches on something important when he writes that CEDAW strives for something other than the core of mainstream human rights:

It represents a quest for 'positive liberty' that calls on the State to undertake a project of social transformation informed by a 'public truth' about gender relations, a project in tension with main-current liberal commitments to the priority of negative liberty and to the pursuit of a distributive justice that is 'neutral' with respect to diverse conceptions of how life ought to be lived. Viewed in this way, the CEDAW is a more genuinely collectivist – and therefore more provocative – document than many observers appreciate.<sup>28</sup>

Reilly credits CEDAW's far-reaching provisions and radical potential with generating the mass of state resistance to its normative values and its effective

<sup>26</sup> Reilly, *supra* note 20, at 45.

<sup>27</sup> Chinkin and Freeman, *supra* note 12, at 25.

<sup>28</sup> Roth, 'The CEDAW as a Collective Approach to Women's Rights', 24 *Michigan J Int'l L* (2002) 187, at 189–190.



implementation.<sup>29</sup> Yet it is clearly stretching a point to suggest that CEDAW is permanently located on the radical fringe of human rights or even women's rights. Rather, the instrument has a particularly potent transformative potential, I suggest, because it is capable of shifting fluidly between the human rights centre and the periphery.

While one function of the Optional Protocol is certainly to place CEDAW on a par with other treaties in terms of enforcement, this is clearly not its sole purpose. My interest lies in the possibility of feminist transformation of rights, which minimizes my attentiveness to the improved enforcement of rights as they currently exist. As a first step, 'realizing rights' requires the articulation of a demand. As Roth has noted, 'It may well turn out that measures genuinely necessary to the liberation of women entail costs to other interests and values favored by the international human rights system.'<sup>30</sup> The primary question for many feminist scholars is thus whether normative reconstruction of rights can be achieved from CEDAW's position of inherent ambiguity. Is the centre-periphery dynamic inevitably oppressive, or might CEDAW be a channel for transformation of the centre through its engagement with peripheral concerns? Power moves between the two positions, perhaps sometimes violently, but the periphery is certainly at its most potent when it lays bare the centre's structural biases. Most feminists agree with Reilly's view that 'building bottom-up transformative approaches to human rights – especially from a gender perspective – requires the deconstruction and redefinition of several entrenched modes of thinking and practice that perpetuate the exclusions of mainstream human rights discourse'.<sup>31</sup> CEDAW's occupation of a liminal space, neither fixed at the centre nor wholly peripheral, while leading to considerable criticism and doubts about its efficacy from those who are anxious about its unstable positioning, might prove to be its very strength.

## 4 The Case Law of the Women's Committee

According to its most recent statistics, the Women's Committee has now adopted decisions on 31 individual communications, 16 of which it declared admissible. These are remarkably low numbers, particularly as 104 states have now ratified the Optional Protocol. Nonetheless, clear principles have begun to emerge in the Committee's jurisprudence, and in this section I present a brief discussion of its case law, organized thematically. Given the Committee's unique composition, the question posed is whether it is possible to identify in the Committee's first few pronouncements on individual cases a distinct perspective on women's rights.

### A Spousal/Partner Violence

Intimate partner violence has been a principal theme in communications to the Committee. *A.T. v. Hungary*, the first admissible communication heard by the

<sup>29</sup> Reilly, *supra* note 20, at 44.

<sup>30</sup> Roth, *supra* note 28, at 194.

<sup>31</sup> Reilly, *supra* note 20, at 29–30.

Committee, concerned an especially troubling series of events.<sup>32</sup> The author experienced serious and sustained violence at the hands of her partner over a number of years, but she could not be accommodated in a shelter for abused women because she had a severely disabled child. Furthermore, Hungarian law did not offer the possibility of issuing a protection or restraining order against her abuser (indeed, national courts confirmed his rights over jointly-owned property). The author was consequently left vulnerable to continued violence at the hands of her former partner, in spite of the authorities' awareness of the seriousness of her situation. The Committee, drawing on principles established in its General Recommendation 19 on violence against women, confirmed domestic violence's place within CEDAW's framework and found that Hungary had violated Articles 2, 5, and 16 of CEDAW in failing to meet its due diligence obligations.<sup>33</sup> The Committee also asserted the important principle that '[w]omen's human right to life and to physical and mental integrity cannot be superseded by other rights'.<sup>34</sup> Referring to its previous concluding observations, the Committee painted a picture of A.T.'s experience that drew not only from the specific facts of her case but also from its general knowledge and understanding of the vulnerability of victims of domestic violence in Hungary, concluding, 'the facts of the communication reveal aspects of the relationships between the sexes and attitudes towards women that the Committee recognized vis-à-vis the country as a whole'.<sup>35</sup>

Two years later the Committee was faced with two cases against Austria, *Goekce*<sup>36</sup> and *Yildirim*,<sup>37</sup> which concerned violence of even greater extremity.<sup>38</sup> The communications, brought on behalf of the victims' families by the Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice, concerned two women killed by violent husbands against whom they had made numerous complaints to the police. In both cases the men had been convicted of killing their spouses, but the NGOs pursued the cases in order to engender structural reforms. Again adopting a gendered approach towards state responsibility, the Committee found systematic failings in the way domestic violence cases were handled that fell well short of its due diligence obligations under CEDAW. Indeed, the Committee set a relatively high standard that took into account the individual women's particular vulnerability.<sup>39</sup> Echoing its decision in *A.T.*, the Committee asserted in both *Goekce* and *Yildirim* that 'women's human rights to life and to human and mental integrity' cannot be trumped by the rights of perpetrators.<sup>40</sup>

<sup>32</sup> *A.T. v. Hungary*, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (26 Jan. 2005).

<sup>33</sup> *Ibid.*, at para. 9.3.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, at para. 9.4.

<sup>36</sup> Communication No. 5/2005, UN Doc. CEDAW/C/39/D/5/2005 (6 Aug. 2007).

<sup>37</sup> Communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005 (1 Oct. 2007).

<sup>38</sup> For a detailed discussion of these cases see Byrnes and Bath, 'Violence against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Recent Developments', 8 *Hmn Rts L Rev* (2008) 517.

<sup>39</sup> *Supra* notes 36 and 37, at para. 12.1.4 in both decisions.

<sup>40</sup> *Ibid.*, at para. 12.1.5 in both decisions.



In each of these three cases the Committee adopted comprehensive Recommendations that combined the particular and the general. In *A.T.* it asked the state to ensure the author's safety, to provide her with housing and financial support, reparation, and legal assistance; it further called for general measures to protect victims of domestic violence, including the introduction of specific laws, the provision of safe shelters and exclusion orders, as well as the introduction of rehabilitation programmes for offenders. In *Goekce* and *Yildirim*, it called upon Austria to strengthen implementation of domestic violence laws, to prosecute offenders diligently, to enhance the co-ordination of agencies and to co-operate with relevant NGOs. All three decisions also called for strengthened training and education on CEDAW among relevant professionals and officials.

## B Sexual Violence

*Vertido v. Philippines*<sup>41</sup> concerned the author's rape by the President of the Chamber of Commerce. The criminal case brought against her assailant floundered for eight years and was ultimately unsuccessful, with the trial judge finding that Ms Vertido's version of events was unconvincing. The Committee in turn found that the trial judge had in her reasoning applied a number of unsupportable stereotypes concerning the behaviour of rape victims and male sexuality.<sup>42</sup> Consequently, the Philippines failed in its obligation to ensure that victims of sexual assault are adequately protected by officials (including the judiciary). So here again the Committee is seen engaging with the notion of 'stereotyping', both shaping it into a prohibited form of sex discrimination and using it as a methodology for labelling and challenging engrained social and legal attitudes that discriminate against women. Accordingly, its Recommendations ranged from the personal to the general. It called for the state to: compensate Ms Vertido; to ensure court proceedings are pursued without undue delay; to ensure rape trials are fair and not affected by prejudices and stereotypes; to review the definition of rape in domestic law; and to provide adequate training on CEDAW.

## C Reproductive Health

The Committee's engagement with the physical integrity of women has continued in cases addressing reproductive health. *A.S. v. Hungary*<sup>43</sup> concerned the coerced sterilization of a Roma woman. Although the author had ostensibly signed a form consenting to the operation, this was done during the heat of a medical crisis and just minutes before she underwent an emergency caesarean to remove a dead foetus. In her communication she was represented by two NGOs, the Legal Defence Bureau for National and Ethnic Minorities and the European Roma Rights Centre; an *amicus curiae* brief was also submitted by the Center for Reproductive Rights on the nature of informed consent in international law, which was extensively referred to by the Committee.

<sup>41</sup> Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008 (22 Sept. 2010).

<sup>42</sup> *Ibid.*, at para. 8.5.

<sup>43</sup> Communication No. 4/2004, UN Doc. CEDAW/C/36/D/4/2004 (29 Aug. 2006).

Finding a number of violations of the Convention, the Committee called for extensive training on CEDAW and a review of domestic legislation. Thus, here again the Committee focussed both on the specific violation before it *and* its systemic nature.

The Committee did not directly address the author's ethnicity in A.S., leaving Ravnbøl to conclude that the human rights of women framework 'does not fully include the ethnic dimension necessary to redress sufficiently many other concerns of minority women'.<sup>44</sup> Five years later, the Committee seized an opportunity to address multiple discrimination. *Alyne da Silva Pimentel Teixeira (deceased) v. Brazil*<sup>45</sup> was submitted by the Center for Reproductive Rights and *Advocacia Cidadã pelos Direitos Humanos* on behalf of an Afro-descendant Brazilian woman who had died in the late stages of pregnancy.<sup>46</sup> She had presented herself at a health centre when six months pregnant suffering from severe nausea and abdominal pain; her symptoms were misdiagnosed and, following complications arising from the medically-induced delivery of her stillborn foetus, the provision of the necessary emergency hospital care was fatally delayed. An *amicus curiae* brief submitted to the Committee by the Latin-American and Caribbean Committee for the Defense of Women's Rights argued that Ms Pimentel's case exemplified the appalling lack of maternal care received by economically disadvantaged women in Brazil, a category encompassing a disproportionate number of Afro-descendant women.<sup>47</sup>

The Committee concluded, 'it is the duty of States parties to ensure women's right to safe motherhood and emergency obstetric services, and to allocate to these services the maximum extent of available resources'.<sup>48</sup> It held the state directly responsible for the failings in this case even though the treatment had been outsourced to a private institution, identifying a continuing due diligence obligation to monitor and regulate private healthcare provision.<sup>49</sup> While defining the extent of states' obligations in relation to healthcare rights is notoriously problematic, the Committee's focus on discrimination equipped it with a useful analytical tool in approaching this task.<sup>50</sup> Although Brazil had in place a National Pact for the Reduction of Maternal and Neonatal Mortality Policies, the Committee held that policies need to be result- and action-orientated. Brazil's lack of appropriate maternal health services represented a clear violation of Articles 2, 12(1), and 12(2) of CEDAW. Drawing on its General Recommendation 28, the Committee also found that Brazil had discriminated against the author on the basis of 'her status as a woman of African descent and her socio-economic background'.<sup>51</sup> Together with recommending reparations to the author's

<sup>44</sup> Ravnbøl, 'The Human Rights of Minority Women: Romani Women's Rights from a Perspective on International Human Rights Law and Politics', 17 *Int'l J on Minority and Group Rts* (2010) 1, at 26.

<sup>45</sup> Communication No. 17/2008, UN Doc. CEDAW/C/49/D/17/2008 (27 Sept. 2011).

<sup>46</sup> For a detailed discussion of this case see Cook and Dickens, 'Upholding Pregnant Women's Right to Life', 117 *Int'l J Gynecology and Obstetrics* (2012) 90.

<sup>47</sup> Latin-American and Caribbean Committee for the Defense of Women's Rights, *amicus curiae* brief submitted in the *Alyne da Silva Pimentel* case, at 7. Available at: <http://opedaw.files.wordpress.com/2012/01/alyne-da-silva-v-brazil-cladem-amicus-curiae-brief.pdf> (accessed 16 Mar. 2014).

<sup>48</sup> *Supra* note 45, at para. 7.3.

<sup>49</sup> *Ibid.*, at para. 7.5.

<sup>50</sup> *Ibid.*, at para. 7.6.

<sup>51</sup> *Ibid.*, at para. 7.7.

mother, the Committee enjoined Brazil to: ensure access to affordable and adequate obstetric care; provide appropriate training for health workers; have in place adequate remedies and sanctions where health care rights are not met; monitor the provision of private health care; implement the National Pact for the Reduction of Maternal Mortality.

#### D *State Gender-based Violence*

While communications to the Women's Committee have mostly focused on violence by private actors, *Abramova v. Belarus*<sup>52</sup> directly addressed ill-treatment by state actors. The author had been found guilty of minor hooliganism resulting from her peaceful acts of political protest and consequently held under administrative arrest. She complained to the Committee that she was held in a facility designed for men, was supervised by male guards only, and was subjected to humiliating and degrading treatment, including threats of a sexual and physical nature. The Committee asserted that sexual harassment is a form of gender-based violence, and found that Belarus' treatment of Ms Abramova constituted discrimination and sexual harassment in violation of Articles 2(a)–2(b), 2(e)–2(f), 3, and 5(a) of CEDAW. The Committee recommended appropriate reparation, as well as the implementation of a number of measures to safeguard female detainees.

#### E *Employment and Other Economic Rights*

If the Women's Committee has blazed a trail in communications alleging gender-based violence and interferences with women's physical autonomy, it has been far less sure-footed in other areas of discrimination. The first communication the Committee delivered views on was *B.J. v. Germany*,<sup>53</sup> in which the author complained of gender-based discrimination under the statutory regulations governing the legal consequences of divorce and in the reallocation of pension entitlements and maintenance payments. Having tried unsuccessfully to resolve her complaints over a number of years before domestic courts, she further argued that the 'risks and stresses' of divorce proceedings are unilaterally carried by women. While the communication was held by the majority to be inadmissible for failure to demonstrate exhaustion of domestic remedies, two dissenting members considered that judicial proceedings had been unreasonably prolonged, recognizing that the author continued to live 'without a regular, reliable income, even five years after the divorce that took place against her will'.<sup>54</sup> Certainly some commentators have expressed disappointment in the majority's failure to adopt a more gendered approach to admissibility.<sup>55</sup>

<sup>52</sup> Communication No. 23/2009, UN Doc. CEDAW/C/49/23/2009 (27 Sept. 2011).

<sup>53</sup> Communication No. 1/2003, UN Doc. CEDAW/C/36/D/1/2003 (14 July 2004).

<sup>54</sup> Dissenting opinion by Krisztina Morvai and Meriem Belmihoub-Zerdani.

<sup>55</sup> Connors, *supra* note 4, at 639. See also A. Facio, *The Optional Protocol as a Mechanism for Implementing Women's Human Rights: An Analysis of the First Five Cases Under the Communications Procedure of OP-CEDAW*, IWRAW Asia Pacific Occasional Papers Series No. 12 (2008).

The author in *Nguyen v. The Netherlands*<sup>56</sup> complained under Article 11(2)(b) that the level of maternity leave payment awarded to women who are both self-employed and also in part-time salaried employment was discriminatory. In determining that there was no violation of the Convention (the only admissible case in which it has so far done so), the Committee resorted to a tool forged by other human rights tribunals to minimize states parties' obligations: 'the Convention leaves to States parties a certain margin of discretion to devise a system of maternity leave benefits to fulfil Convention requirements'.<sup>57</sup> Three dissenting members argued that the complaint potentially revealed a form of indirect discrimination; but in the absence of data demonstrating that women are more likely than men to have a mixed income base, the Committee felt helpless to act.

In *Kayhan v. Turkey*,<sup>58</sup> the author was dismissed from her teaching position because she wore a headscarf. It would have been fascinating to hear the Committee's views on the merits of this communication, given the approach taken by the European Court of Human Rights in its *Leyla Sahin v. Turkey*<sup>59</sup> judgment addressing similar facts. However, in perhaps what is one of the Committee's most disappointing decisions to date, it declared the communication inadmissible because the author had not raised the issue of sex discrimination in relation to her dismissal before national courts. Facio has argued that it was 'quite disconcerting' for the Committee to base its admissibility decision on an argument not even raised by the state party.<sup>60</sup>

While the above cases add little, if anything, to our understanding of the economic rights of women, a more recent decision indicates that the Committee may be gaining greater confidence in this area. In *T.P.F v. Turkey*,<sup>61</sup> the author claimed that she was dismissed from her job on spurious grounds, ostensibly for 'inappropriate conduct'. While her legal claim before domestic tribunals was largely successful, it had not been found that she was the subject of sexual discrimination in spite of the explicit gender dimension to her claim. In finding that Turkey had violated a number of Articles of the Convention and in calling upon it to improve implementation of its labour laws, the Committee reminded states parties of their obligation to 'modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women'.<sup>62</sup>

## F *Asylum and Refugee Cases*

The Committee has also so far been unable to establish much of a voice on the asylum claims of vulnerable women. The author in *Zheng v. Netherlands*<sup>63</sup> was a Chinese

<sup>56</sup> Communication No. 3/2004, UN Doc. CEDAW/C/36/D/3/2004 (29 Aug. 2006).

<sup>57</sup> *Ibid.*, at para. 10.2.

<sup>58</sup> Communication No. 8/2005, UN Doc. CEDAW/C/34/D/8/2005 (2006).

<sup>59</sup> App. No. 44774/98, *Leyla Sahin v. Turkey*, Judgment of 10 Nov. 2005 (2007) 44 EHRR 5 (Grand Chamber).

<sup>60</sup> Facio, *supra* note 55, at 40.

<sup>61</sup> Communication No. 28/2010, UN Doc. CEDAW/C/51/D/28/2010 (13 Apr. 2012).

<sup>62</sup> *Ibid.*, at para. 8.8.

<sup>63</sup> Communication No. 15/2007, UN Doc. CEDAW/C/42/D/15/2007 (26 Oct. 2009).

woman trafficked for prostitution to the Netherlands. Despite her ordeal, the vulnerability of her position, and her pregnancy, the author was refused asylum. She claimed that that refusal amounted to a violation of Article 6 of CEDAW. While the majority held the communication to be inadmissible for non-exhaustion of domestic remedies, three Committee members disagreed, calling for a more gender-sensitive approach to due diligence in the case of trafficked women that demands recognition of their victimhood and particular vulnerability.

In *N.S.E. v. UK*, the author, a woman of Pakistani origin, claimed that the refusal to grant her asylum was a violation of the Convention as she would be at real risk from her violent husband were she returned. The communication was held to be inadmissible because the issue of sex discrimination had not been raised before a domestic tribunal. This echoed an earlier decision of the European Court of Human Rights, to which the author had previously submitted an application.<sup>64</sup> Two further cases were brought by Mexican asylum-seekers who alleged that a return to their state of origin from Canada would expose them to a real risk of spousal violence.<sup>65</sup> The Committee held that Guadalupe Herrera Rivera's communication was inadmissible due to non-exhaustion of domestic remedies; the case of *M.P.M.*, who appeared to have voluntarily returned to Mexico, it found to be manifestly ill-founded.

## G Identity Cases

The significant number of cases addressing identity rights suggests that it is an area of considerable importance to women that has largely been overlooked. Perhaps because it is an under-theorized area, the Committee's contribution to it has been limited.

In *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*,<sup>66</sup> the author sought the abolition of laws establishing male primacy in the order of succession to titles of nobility, claiming that they violated Article 2(c) and (f) of CEDAW. While the majority held the communication to be inadmissible *ratione temporis*, eight Committee members held that it was inadmissible *ratione materiae*, as the author's complaint did not disclose a violation of any rights protected under CEDAW. It seems surprising that a name – even one given as an honorary title – was not recognized by so many Committee members as comprising an important part of a woman's identity. A subsequent case against the UK concerning a British author's son, born in 1954 in Colombia to a Colombian father, to whom she could not pass on her British nationality was also held to be inadmissible, in this case for non-exhaustion of domestic remedies.<sup>67</sup>

The significance of identity issues was brought home in two cases which concerned laws that insisted individuals retain their father's family name, even where that father had been absent from their lives. The cases were brought both by mothers on behalf

<sup>64</sup> Communication No. 10/2005, UN Doc. CEDAW/C/38/D/10/2005 (12 June 2007), at para. 2.13.

<sup>65</sup> *Guadalupe Herrera Rivera v. Canada*, Communication No. 26/2010, UN Doc. CEDAW/C/50/D/26/2010 (30 Nov. 2011), *M.P.M. v. Canada*, Communication No. 25/2010, UN Doc. CEDAW/C/51/D/25/2010 (13 Apr. 2012).

<sup>66</sup> Communication No. 7/2005, UN Doc. CEDAW/C/39/D/7/2005 (9 Aug. 2007).

<sup>67</sup> *Salgado v. UK*, Communication No. 11/2006, UN Doc. CEDAW/C/37/D/11/2006 (22 Jan. 2007).

of their children and by adults seeking to change their own family names. In *G.D. and S.E. v. France*,<sup>68</sup> a majority of the Committee found the communications brought by childless single women wishing to change their own names to be inadmissible *ratio materiae*, holding that Article 16(1)(g) applies only to married women, women living in *de facto* unions, and mothers.<sup>69</sup> The majority further dismissed all Article 2 complaints, holding that all authors would have been given their fathers' names regardless of their own sex. The reasoning was applied also in *Dayras et al. v. France*,<sup>70</sup> although the Committee additionally held that complaints brought on behalf of the authors' adult children were inadmissible *ratione temporis* and that a complaint made on behalf of a minor was inadmissible for non-exhaustion of domestic remedies.

## 5 A Unique Contribution?

Early assessment of the Committee's practice under the Optional Protocol has been muted. Flinterman describes the Optional Protocol as a 'strong framework'<sup>71</sup> that has, at least in respect of admissibility, been used 'cautiously'.<sup>72</sup> He enjoins the Committee to be more 'creative and assertive' if it wishes to realize its potential.<sup>73</sup> In a recent provocative article Murdoch concludes that the Committee's approach to admissibility is 'erratic' and 'potentially unsatisfactory', dismisses the hope that the Committee may develop new standards in discrimination law as merely a 'theoretical possibility', detects no signs of any 'add-on' value, and doubts whether CEDAW is anyway the most appropriate mechanism for achieving 'authoritative determinations' tackling issues of sex equality.<sup>74</sup> While CEDAW has clearly not demonstrated consistency in its case law, I would respectfully disagree that this signals its failure. CEDAW neither consistently occupies the radical edge nor is it stuck, behemoth-like, at the centre of human rights power: rather, it shifts between the centre and periphery. There is great potential in this flux, but it is a potential that must be consciously harnessed if women's rights are to be advanced. The greatest losses occur where positions are shifted between without awareness and without the potential for transformation in mind. As Lacey states, for CEDAW's more radical leanings to have effect requires not only focus, but active resistance: '[t]he critical dialogue potentially set up by CEDAW is, inevitably, distorted at every turn by the realities of political, cultural and economic power'.<sup>75</sup>

It is right to be startled by the fact that nearly all Communications outlined concerned Council of Europe states, but that position is gradually changing. While it is

<sup>68</sup> Communication No. 12/2007, UN Doc. CEDAW/C/44/D/12/2007 (4 Aug. 2009).

<sup>69</sup> *Ibid.*, at para. 11.10.

<sup>70</sup> Communication No. 13/2007, UN Doc. CEDAW/C/44/D/13/2007 (4 Aug. 2009).

<sup>71</sup> Flinterman, 'Strengthening Women's Human Rights Through Individual Complaints', in Schöpp-Schilling, *supra* note 12, at 286, 290.

<sup>72</sup> *Ibid.*, at 292.

<sup>73</sup> *Ibid.*, at 297.

<sup>74</sup> Murdoch, 'Unfulfilled expectations: the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women', 1 *European Hmn Rts L Rev* (2010) 26.

<sup>75</sup> Lacey, *supra* note 25, at 54.



also troubling that a number of powerful countries, including the US and China, have not ratified the Optional Protocol, it is not fatal to CEDAW's activities. In fact, it may mean that a space has been created in which human rights norms can be developed in the absence of hegemonic players whose contribution to expansive interpretation of women's rights has often been limited.

CEDAW's continued low profile is certainly disappointing, especially given the publicity requirements contained in Article 13 of the Optional Protocol. However, there are signs that NGOs are recognizing the possibilities it offers. NGOs were formally involved as applicant, representative, or intervener in seven of the 23 individual cases brought before the Women's Committee at the time of writing. The Committee's openness to their involvement is certainly a nod to the periphery. Forging connections with grassroots communities is essential to CEDAW's success – by which I mean its capacity to articulate an alternative conception of women's rights.

One function of NGOs is to provide information about human rights violations. They can also draw attention to violations of treaties such as CEDAW and strive to mobilize shame and public pressure to improve the situation of women. Given the notoriously weak enforcement of human rights treaties, that is no small task. But perhaps their most significant role is to draw the Committee's attention back to the periphery and remind it of its radical potential. Reilly has suggested that the key role played by NGOs in the Committee case law underlines the Optional Protocol's 'potential not only as a redress route for particular individuals but also as a focus for wider mobilization around needed legal and policy reforms'.<sup>76</sup> While one would not wish to overstate the importance of this, it does go some way towards articulating a vision of a global law, distinct from the state-centrism of mainstream International Law, into which a multitude of perspectives are brought to bear. NGOs can provide a vital bridge to women on the periphery and introduce their concerns to the human rights centre. As much as the core can be transformed through its encounter with marginal actors, so women are transformed as they construct themselves as rights bearers. As Engle Merry has written, women's articulation of rights claims requires a shift to new subjectivity, and thus women's 'initial forays into the legal arena require experiences of support from participants in that arena as they struggle to redefine a self between the obligations of the good wife and the entitlements of the autonomous self'.<sup>77</sup> That the two victims of spousal violence died before their claims could be heard by the Committee suggests that this shift in subjectivity is an urgent challenge.

CEDAW's reported decisions give considerable space to the arguments of the parties, thus avoiding privileging the Committee as a final arbiter of law. The task of delivering opinions is treated as a co-operative one, in which a multitude of perspectives are brought to bear. It models an approach that is based on cooperation and a commitment to resolution-finding, echoing Gilligan's notion of a uniquely feminine ethic of care.<sup>78</sup> The Committee also uses a feminist methodology that focuses on impact rather

<sup>76</sup> Reilly, *supra* note 20, at 65.

<sup>77</sup> Engle Merry, 'Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence', 25 *Hmn Rts Q* (2003) 343, at 381.

<sup>78</sup> C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (1982; 1990 re-issue).

than intent. In short, its reasoning is rooted in the effect of states' (in)actions in the real world of concrete experiences. The purpose of the Committee's analysis is not, in the words of Binion, to find a 'malevolent offender'; rather it is solution-focussed and holistic.<sup>79</sup> These characteristics, I suggest, render it uniquely 'influential in the creation of a women's human rights jurisprudence'.<sup>80</sup>

Yet CEDAW remains embedded in a state-centric model of International Law. It is striking that in each of the three communications before it that had previously been declared inadmissible by the European Court of Human Rights (*N.S.F v. UK*,<sup>81</sup> *Mukhina v. Italy*,<sup>82</sup> *Dayras v. France*<sup>83</sup>), the Committee followed that tribunal's reasoning. The Committee's urgent task is to ensure that its inevitable association with the human rights centre does not become a permanent fixation that leaves it voiceless. Viewed from a periphery–centre dynamic, one question raised is whether the periphery simply serves to legitimize and entrench core power dynamics within human rights law. In short, does the very existence of CEDAW simply serve, as Otto has suggested, to 'strengthen the props that produce protecting, defending, civilising and rescuing forms of masculinity as the universal'?<sup>84</sup> Certainly, CEDAW, when understood solely as a peripheral instrument, performs the marginalization of women's rights. The 'women's ghetto' imagined by Chinkin and Charlesworth is condemned to be a place of frustration, where women yearn for, yet are excluded from, human rights' centre of power. Yet I have suggested here that its marginalization is far from complete.

A Committee member has argued that the Committee 'has long forced the limits of its mandate to allow an ever-expanding range of women's human rights to find their way into the Convention'.<sup>85</sup> While that reflection may be somewhat complacent, there is certainly much that can be achieved in the future if CEDAW keeps its eye to the periphery and its ears open to the voices that address it from there. For example, many individual cases before the Committee have concerned violence meted out by private actors, suggesting that it is well positioned to challenge the public–private divide that remains entrenched in mainstream International Law. Similarly, the Committee is well positioned to articulate the nature and extent of states' positive obligations under human rights treaties. While its performance in the area of economic rights has so far been underwhelming, the Committee has a real opportunity to position itself to assert the interdependence of rights and address economic issues of vital importance to women. It could be argued that in *T.P.F. v. Turkey*,<sup>86</sup> the Committee signposted its willingness to take on this role. Thus, CEDAW's individual communications point to

<sup>79</sup> Binion, *supra* note 24, at 525.

<sup>80</sup> Connors, *supra* note 4, at 618.

<sup>81</sup> Communication No. 10/2005, UN Doc. CEDAW/C/38/D/10/2005 (12 June 2007), at para. 2.13.

<sup>82</sup> Communication No. 27/2010, UN Doc. CEDAW/C/50/D/27/2010 (30 Nov. 2011), at para. 2.3.

<sup>83</sup> Communication No. 13/2007, UN Doc. CEDAW/C/44/D/13/2007 (4 Aug. 2009), at para. 3.4.

<sup>84</sup> Otto, 'Disconcerting "Masculinities": Reinventing the Gendered Subject(s) of International Human Rights Law', in Buss and Manji, *supra* note 1, at 105, 124.

<sup>85</sup> Acar, 'Personal Reflections: Thoughts on the Committee's Past, Hopes for its Future', in Schöpp-Schilling, *supra* note 12, at 340, 342.

<sup>86</sup> Communication No. 28/2010, UN Doc. CEDAW/C/51/D/28/2010 (13 Apr. 2012).

the possibility of challenging the liberal values that prioritize the protection of narrowly-defined civil and political rights.

CEDAW is also beginning to respond to the challenge of ensuring equality for differently-situated subjects. CEDAW's case law certainly has the potential to broaden our understanding of discrimination and equality, particularly in the realm of indirect discrimination and *de facto* equality. Charlesworth and Chinkin have suggested that the approach of other tribunals to discrimination, exemplified by the Human Rights Committee's decision in *Hendrika S. Vos v. Netherlands*,<sup>87</sup> is too narrowly focussed on direct discrimination,<sup>88</sup> leaving the Women's Committee with a significant role in expanding our understanding of the indirect discrimination faced by women.

A number of rights critics have suggested that rights themselves are too narrow; yet, as I have argued, looking at the communications before the Committee tends to confirm Patricia Williams' view that it is not with rights themselves that the problem lies; rather it lies with the fact that rights discourse exists within a 'constricted referential universe'.<sup>89</sup> As Upendra Baxi has suggested, an expanded referential universe might serve to connect the concept of human rights with an understanding of human suffering: 'the statist human rights discourse in its enunciations of human rights does not relate to languages of human pain and social suffering'.<sup>90</sup> Thus, the task for the Committee, I suggest, is to use its voyages to the periphery in order to expand its frame of reference. It is only through such an undertaking that women's rights law may be appropriately connected to a wider understanding of women's rights, not only as legal expectations but as expressions of empathy with and compassion for the suffering of the powerless.

The Committee has addressed a wide range of issues of central importance to European women in the 21st century that have been largely overlooked by other international human rights tribunals: violence against women; human trafficking; reproductive rights; women's economic vulnerability. In short, its views adopted under the Optional Protocol 'have been influential in the creation of a woman's human rights jurisprudence'.<sup>91</sup> Although rights as commonly understood are masculinist, feminists have been reluctant to reject them. The Committee's insistence that women's rights cannot be subordinated to those of men or trivialized certainly points to the possibility of an alternative multi-dimensional conception of human rights in which masculine concerns are not prioritized. As Charlotte Bunch has argued, if CEDAW's articulation of a human rights agenda for women were to be taken seriously, this would mark an 'enormous step forward'.<sup>92</sup>

While I have suggested that human rights might be disrupted through taking the Women's Committee seriously, is the same true of womanhood? In short, can the

<sup>87</sup> Communication No. 218/1986, UN Doc. Supp. No. 40 (A/44/40) at 232 (1989).

<sup>88</sup> Charlesworth and Chinkin, *supra* note 23, at 215.

<sup>89</sup> P.J. Williams, *The Alchemy of Race and Rights* (1993), at 159.

<sup>90</sup> U. Baxi, *The Future of Human Rights* (2002), at 17.

<sup>91</sup> Connors, *supra* note 4, at 618.

<sup>92</sup> Bunch, 'Women's Rights as Human Rights: Towards a Re-Vision of Human Rights', 12 *Hmn Rts Q* (1990) 486, at 496.

category ‘woman’ be disrupted through a rights-based approach, or is this an example of a project that falls into the ultimately anti-feminist trap of reproducing ‘discursive structures that require there to be women, and the feminine and femininity’?<sup>93</sup> In *A.S. v. Hungary*, the Committee failed to address the intersectional implications of the coerced sterilization of a Roma woman. This was unhelpful, given the obvious connection between her ethnicity and her treatment. However, in *Kell v. Canada*, the Committee held that, ‘[a]s the author is an aboriginal woman who is in a vulnerable position, the State party is obliged to ensure the effective elimination of intersectional discrimination’.<sup>94</sup> This shift seems to stem from the Committee’s growing confidence in condemning dominant stereotypes of womanhood.

## 6 Conclusion

CEDAW has the potential to assert itself as a major voice contributing to the re-shaping of women’s rights. At present, I suggest the particular contribution that CEDAW is likely to make appears to be in the following areas: non-state actors’ participation in norm creation; articulating states’ positive obligations under human rights treaties; addressing systemic violations of women’s rights; addressing intersectional discrimination; condemning gender stereotypes. To these areas I would argue that the Committee could have much to add in the coming years. But the possibilities are effectively limitless. I would concur with Reilly’s view of its disruptive potential:

While the overall trajectory of international human rights discourse since the inception of the UN ... has been deeply shaped by hegemonic Western, neo-liberal, male biases, the account of feminist intervention presented here demonstrates the potential to disrupt this trajectory and create spaces where usually marginalized actors can achieve meaningful shifts in the exercise of power.<sup>95</sup>

Yet I have suggested here that in order for CEDAW to play its part in this process of re-imagining women’s rights requires it self-consciously to travel to the periphery of rights and empathically engage with marginal actors. CEDAW is not confined to the centre of human rights power, although, importantly, it has a place there. What CEDAW must avoid, if it is to voice women’s agenda for rights, is being too respectful of, and ambitious for, the centre of human rights power. Engaging more actively with the periphery would open CEDAW to the rich possibilities offered by women’s rights and enable it to become a lioness with a roar that resonates.

<sup>93</sup> Halley, ‘Take a Break from Feminism?’, in Knop, *supra* note 25, at 67.

<sup>94</sup> Communication No. 19/2008, UN Doc. CEDAW/C/51/D/19/2008 (26 Apr. 2012), at para. 10.3.

<sup>95</sup> Reilly, *supra* note 20, at 66.