

How sexual and reproductive health and rights have been advanced through the legal stream within the United Nations

A content analysis of the concluding observations issued by the Committee on the Elimination of Discrimination against Women from 2000 to 2019

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Abstract

This thesis examines how norms and standards around sexual and reproductive health and rights (SRHR) develop within international human rights law. To do so, I use the concluding observations (COs) issued by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) from 2000 to 2019 that focus on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), adolescent SRHR (ASRHR), comprehensive sexuality education (CSE), and abortion. I use the theoretical model by Gruskin et al. that addresses the three-way interaction among the legal, technical, and political streams through which SRHR is promoted and protected within the United Nations (UN).

This research is informed by 458 documents. I demonstrate how SOGIESC, ASRHR, CSE, and abortion have been advanced within the CEDAW Committee over the past 20 years, most evident since 2015 with a particularly visible growth in 2018.

This study advances the literature on norm gains related to SRHR by exploring the development of the important treaty body in which SRHR has been discussed. On a societal level, my research identifies gaps and priorities for effective SRHR advocacy that can ultimately advance women's rights and gender equality.

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List of Abbreviations

ABC: Abstinence, Be Faithful, Use a Condom
ASRHR: adolescent sexual and reproductive health and rights
BPfA: Beijing Declaration and Platform for Action
CEDAW: Committee on the Elimination of Discrimination against Women
CEFM: child, early and forced marriage
CO: concluding observations
CRC: Committee on Rights of the Child
CSE: comprehensive sexuality education
DAWG: Discrimination against women and girls
FGM: female genital mutilation
FWCW: Fourth World Conference on Women
GA: General Assembly
HIV/AIDS: human immunodeficiency virus/acquired immunodeficiency syndrome
HRC: Human Rights Council
HRCtee: Human Rights Committee
ICPD: International Conference on Population and Development
ILGA: International Lesbian, Gay, Bisexual, Trans and Intersex Association
IPPF: International Planned Parenthood Federation
LBT: lesbian, bisexual, and transgender
LGBT: lesbian, gay, bisexual, and transgender
NGO: non-governmental organization
OHCHR: Office of the High Commissioner for Human Rights
PoA: Programme of Action
RR: reproductive rights
SC: sex characteristics
SO: sexual orientation
SOGIE: sexual orientation and gender identity
SOGIESC: sexual orientation, gender identity, gender expression, and sex characteristics
SR: sexual rights
SRH: sexual and reproductive health
SRHR: sexual and reproductive health and rights
SRI: Sexual Rights Initiative
STI: sexually transmitted infection
UN: United Nations
UNESCO: United Nations Educational, Scientific, and Cultural Organization
UNFPA: United Nations Population Fund
UPR: Universal Periodic Review
VAW: violence against women
VDPA: Vienna Declaration and Programme of Action
WAS: World Association for Sexual Health
WCHR: World Conference on Human Rights
WHO: World Health Organization

Chapter 1: Introduction

Each year in developing countries, 31 million women do not give birth in a health facility, 50 million have inadequate or no antenatal care, and approximately 218 million women want to avoid pregnancy, but are not using modern contraception (1). Worldwide, 25 million unsafe abortions take place each year, at least 350 million men and women need treatment for one of the four curable sexually transmitted infections (STIs), and nearly 2 million people become newly infected with human immunodeficiency virus (HIV) (2). Ultimately, nearly 4.3 billion people of reproductive age will have inadequate sexual and reproductive health (SRH) services throughout their lives.

Historically, international human rights law has been criticized for not being effectively conceptualized or applied to address violations of women's human rights (3). It was not until after the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) (4) adopted in December 1979 by the United Nations (UN) General Assembly (GA), that women's human rights were finally recognized as worth including in international human rights law. Described as the international bill of rights for women, the Convention entered into force as an international treaty in September 1981 after the twentieth State had ratified it (5). Being the only human rights treaty affirming the necessity of respecting women's sexual and reproductive health and human rights (SRHR) to ensure a non-discriminatory society, the CEDAW Convention became a platform for women's rights concerning sexuality and family planning (6).

Maintaining gender equality and SRHR on the international and national agenda has always been an enormous challenge, and although States parties have obligations to respect, protect, and fulfill rights related to SRHR, a growing backlash against SRHR has emerged in subsequent years, both on national, regional, and international level. Ideologies on the rights of girls, women, and lesbian, gay, bisexual, and transgender (LGBT) persons are more and more polarized (7), and there exists a persistent denial of young people's SRHR needs, realities, and rights (8). In Poland, there have been attempts to criminalize abortion and to undermine access to sexuality education, as well as cases of discrimination against LGBT persons, through the passing of resolutions declaring certain regions, counties, or municipalities free from so-called 'LGBT ideology', for example (9). Most recently, on June 15, 2021, Hungary passed a law banning the portrayal or promotion of homosexuality among under-18s (10). On the international level, a strong anti-SRHR mobilization is growing, led by a coalition of certain post-Soviet, Catholic, and Islamic states; the US; the Vatican; and

conservative non-governmental organizations (NGOs) (11). For SRHR, they specifically target abortion and comprehensive sexuality education (CSE), but anything on gender and even basic SRH is attacked in multilateral decision-making.

Despite an increasingly hostile political climate, Aylward et al. (12) have shown how the inter-related legal, technical, and political streams through which human rights are advanced within the UN, as originally formulated by Gruskin et al. (13), have made advances for SRHR possible. The present study examines the legal stream in which SRHR advances have been facilitated over time. Specifically, it examines the recommendations in the concluding observations (COs) issued by the treaty body that monitors implementation of the CEDAW Convention, the Committee on the Elimination of Discrimination of Women (CEDAW Committee).

Traditionally, NGOs have been the main civil society actors engaging with the human rights treaty bodies, particularly during the State review process, where States are obliged to provide periodic reports to the treaty bodies on how the rights in the treaties that are parties to them, are being implemented. During the review, the treaty body welcomes country-specific information from NGOs, in the form of ‘shadow reports’ (14). By submitting these reports, as well as advocating with treaty body members, NGOs can influence the State review and the subsequent COs published by the treaty body, which consist of positive remarks, problematic areas, and recommendations to the State party.

When NGOs that want to ensure advancement on norms and standards around SRHR engage in advocacy with the CEDAW Committee, they try to provide arguments and proof for progressive interpretations of CEDAW Convention articles (15). At a minimum, they try to maintain existing progressive SRHR language and reject regressive SRHR language. If they succeed, they can use those interpretations in follow-up advocacy for multiple purposes on both international and national level, since key to engaging with the CEDAW Committee is not the review itself but advocating for change in one’s country. This means that the State needs to feel the urge to change its laws and practices.

On the international level, COs can be used as a leveraging tool for advocacy before other UN human rights institutions and mechanisms, such as the Universal Periodic Review (UPR) and Special Procedures on the Human Rights Council (HRC). Governments that refuse to address or ignore COs might be encouraged through other human rights institutions and mechanisms to advance in their implementation. In other words, cross-referencing across UN human rights recommendations can be an effective means to push States to take effective action (16). On the national level, COs can help to bring organizations and individuals with

an aligned goal and interest in SRHR to discuss important aspects of States parties' action, emphasize collaborative work in expanding ideas and activism around SRHR, create greater media awareness, and ensure that state interventions are being monitored and assessed for effectiveness. NGOs can also publicize COs to a wider national audience, where States parties may avoid doing so, or they can use COs to initiate litigation or to support their arguments before courts, and to carry out advocacy for the amendment or implementation of legislation (17).

Research objective

The aim of this study is to assess the development in norms and standards around SRHR in the COs issued by the CEDAW Committee from 2000 to 2019. The expectation is that the Committee, by virtue of being one of the three streams within the UN, has advanced SRHR norms and standards over time.

Research question

The proposed study will attempt to answer the following research question:

Which advances in sexual and reproductive health and rights norms and standards, if any, has the Committee on the Elimination of Discrimination of Women made in its concluding observations from 2000 to 2019?

The question can be further specified into the following sub-questions:

1. What is SRHR and how has it been advanced within the UN?
2. What is the CEDAW Committee and concluding observations, and why are these important for SRHR?
3. What is UN language on SRHR and how can language progression be tracked?
4. What level of attention did the CEDAW Committee pay to different SRHR issues in its concluding observations from 2000 to 2019?

Scientific and societal relevance

Of the limited empirical data on treaty bodies, most research focuses on the effectiveness of human rights treaties and the treaty body system in producing certain desired outcomes (18). A few studies have explored the language and content of COs (19). No previous research on the development of SRHR language within the CEDAW Committee has been done. This study will therefore advance the literature on norm gains related to SRHR.

On a practical level, the study will help advocates on SRHR understand how to use

the CEDAW Committee review and in what further direction they can advocate. This understanding can make a social impact on the lives of women who have been excluded from progress on SRHR. Say, for example, that the study finds recommendations on discrimination against lesbian, bisexual, and transgender (LBT) women, to mainly cover discrimination in employment and education. This information can help turn NGOs' attention to seek recommendations concerning parenting and partnership, for example, thereby enhancing the rights for LBT couples and parents. It could also be that the Committee consistently refers to LBT women in general, rather than to particular groups. In that case, if NGOs see the need for stand-alone recommendations on LBT women, it would be advisable to make sure that their submissions to the CEDAW Committee clearly explain why and how the situation of the particular group is unique. Ideally, NGOs would travel to Geneva to engage in advocacy with the Committee. With a lack of attention to problems, the CEDAW Committee may affect no commitments to change. This study will be beneficial to the development of society, as it will identify gaps and priorities for effective SRHR advocacy that can ultimately advance women's rights and gender equality.

Reading guide

Chapter 2 will answer sub-questions 1, 2 and 3, to describe the theoretical framework for the analysis. Chapter 3 will describe the material and methods used to analyze the data. Chapter 4 will answer sub-question 4, to report the results of the study, split into four sub-analyses of every SRHR issue. Chapter 5 will discuss the results, including the limitations of the study, and end with a conclusion.

Chapter 2: Theoretical framework

Trajectory of advocacy and debate on SRHR

At first, SRHR was introduced as a concern related to population growth rather than a human rights issue. The UN brought the issue onto the international agenda by assembling the World Population Conference in 1954 in Rome (20) and again in 1965 in Belgrade (21). The purpose of these conferences was to discuss the topic in general terms, and the participants were invited in their own independent capacities as demographers or population experts. By the time of the Belgrade conference, family planning, often referred to earlier as birth control, came to be seen by many as the solution to reduce the rate of population growth, or even to save the world from a ‘population explosion’ (22). Later, during the 1980s, people in the field also began to use the term ‘reproductive health’ in the context of healthcare. The term ‘reproductive rights’ was rarely used until the late 1980 (23).

A turning point in the paradigm shift from ‘population control’ to ‘human rights’ happened during a series of world conferences and intergovernmental negotiations in the mid-1990s. The Vienna Declaration and Programme of Action (VDPA) adopted by the World Conference on Human Rights (WCHR) in 1993 (24) marked one such shift in recognizing that violence against women was a human rights violation. In 1994, the 20-year Cairo Programme of Action (PoA) of the International Conference on Population and Development (ICPD) (25) broke new ground in clearly recognizing gender equality and SRHR as fundamental to sustainable development. Family planning was no longer merely aimed at decreasing population growth but was seen as a means to empower women and to promote rights and choices concerning reproduction. In 1995, the Beijing Declaration and Platform for Action (BPfA) from the Fourth World Conference on Women (FWCW) (26) built further on the agreed language from the PoA, by emphasizing “women’s rights to control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence.” However, the term ‘sexual rights’ (SR), which includes rights to sexuality that are not necessarily hinged on or derivable from reproductive health concerns, was not defined and codified within both the PoA and the BPfA.

To date, an explicit definition of SR has never been reached in an international, consensus-based, negotiated text within the UN (27). The most comprehensive examination of SR was done in 2004 by Paul Hunt, former UN Special Rapporteur on the Right to Health, who concluded that “the correct understanding of human rights principles, as well as existing

human rights norms, leads ineluctably to the recognition of SR as human rights. SR include the right of all persons to express their sexual orientation (SO), with due regards for their well-being and rights of others, without the fear of persecution, denial of liberty or social interference.” (28). In 2010, the World Health Organization (WHO) issued a working definition of SR, which embraced several human rights already recognized in international laws and international human rights documents, such as the right to equality and non-discrimination; the right to be free from torture or to cruel, inhumane or degrading treatment or punishment; and the right to privacy (29). Around the same time, other international agencies, such as the International Planned Parenthood Federation (IPPF) (30) and the World Association for Sexual Health (WAS) (31) gave a similar definition. In all cases, SR are meant to comprise all rights related to sexuality, whether civil, political, economic, or cultural, and include rights related to reproduction (32). For the purposes of this study, I reference the broad definition of SRHR developed in the Guttmacher-Lancet Commission in 2018 (33).

SRHR advances since the ICPD

Since the 1994 ICPD, several global events and UN developments have generated significant normative advances in conceptualizing and affirming SRHR. For example, regional outcome documents, such as the 2003 Maputo Protocol (34), the 2013 Montevideo Consensus (35), and the 2013 Addis Ababa Declaration (36) have called upon States parties to revise restrictive laws on abortion. Article 14 2 (c) of the Maputo Protocol states: “Protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother of the fetus.” (37).

In the context of the HRC, the Council has experienced a significant increase in affirmations of SRHR across several issues. On the issue of sexual orientation, gender identity, and gender expression, (SOGIE), for example, three resolutions have been adopted in 2011 (38), 2014 (39), and 2016 (40). The latter resolution established the mandate of Independent Expert on Protection against violence and discrimination on sexual orientation and gender identity (41), which is the first ever dedicated UN mechanism regarding SOGIE. This is noteworthy since SOGIE-related rights have been subject to intense debates at the UN and, perhaps, is the most contentious issue in contemporary international human rights (42). The mandate was renewed with a resolution in 2019 (43).

In 2015, the resolution on violence against women (VAW) was the first-ever HRC

resolution to incorporate the term ‘comprehensive sexuality education’ (CSE), with a footnote on the United Nations Educational, Scientific and Cultural Organization (UNESCO)’s guidelines (44) to specify that the terminology goes beyond health education (45). This is notable since sexuality education also has been among the most controversial issues of SRHR. While sexuality education is referenced in the PoA and the BPfA, these documents do not offer definitions of sexuality education. However, to date, CSE has not appeared in any resolution directly focused on children.

Also, in the 2015 HRC session, a substantial advance was achieved on girls’ access to SRHR, as the resolution on child, early and forced marriage (CEFM) was the first-ever HRC resolution to recognize that girls have the right to “control over and decide freely on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.” (46). This strong language is significant since girls’ rights to decide on matters regarding their own sexuality and SRH has been another highly contested component of SRHR negotiations (47). Adolescent girls have substantial unmet needs for SRH as they face multiple barriers to access SRH information and services, such as third-party consent of their parents, guardian, spouse, or doctor, which makes them reluctant to access needed services due to the fear of rejection, stigmatization or even violence (48).

More recently, during the 38th HRC session in 2018, the most advanced language on abortion in a UN outcome document was obtained through the resolution on discrimination against women and girls (DAWG). This resolution calls for “the enforcement of policies, good practices, and legal framework that respect ... safe abortion in accordance with international human rights law and where not against national law.” (49). While the PoA and the BPfA only call on countries to ensure access to safe abortion when abortion is not “against the law”, this resolution specifies *national* law, thereby making advocacy possible in countries where sub-national laws restrict abortion access, such as Mexico (50).

Furthermore, this was the first-ever HRC resolution to reference a “right to bodily autonomy” (51). Bodily autonomy is linked to self-determination over bodies, as well as lives, and is composed of the right of everyone to make decisions over their own bodies and lives without discrimination (52). Opposition to this concept has been one of the major points at issue to States’ opposition to the term ‘sexual rights’ over the past three decades (53).

Why SRHR advances in the HRC matter

Despite the non-binding nature of HRC resolutions, SRHR advances are significant and can legitimize and reinforce SRH concerns as rights-based issues in other state-constituted

forums, as well as in other HRC resolutions. For example, following the 2015 CEFM resolution, the lead sponsors of that resolution, Canada and Zambia, sought to include this language within their resolution in the GA. Even though the negotiated text that resulted was weaker than the HRC resolution, and only affirmed the rights of girls “who have been subjected to child, early, and forced marriage to control their own sexuality” (54), this reference may not have been possible at the GA had it not been for the “dialogue between GA Third Committee resolutions and HRC resolutions, where one has built on the other and vice versa” (55). This is an example of cross-referencing in UN human rights institutions and mechanisms that was mentioned earlier. Furthermore, outcomes of HRC resolutions can be used to feed back into and further strengthen national human rights advocacy, by informing public opinion, advocating for legislative change, building momentum for individual accountability, or framing policy objectives (56). Finally, HRC resolutions can help to encourage more progressive programs in UN specialized agencies. The question then becomes, what has contributed to making all these SRHR advances possible?

Theorizing SRHR advances within the UN

Gruskin et al. (57) describe three interacting streams in the international system through which SRHR has been shaped: the political, technical, and legal. The political stream includes governmental processes on the international, regional, or national level, with particular emphasis on international conferences and the articulations of States as these play out on the global level. The HRC and UPR belong to this stream. The technical stream covers approaches and materials developed by the specialized agencies like the WHO or the United Nations Population Fund (UNFPA). Within the legal stream fall the formal parts of the human rights system, including the Office of the High Commissioner for Human Rights (OHCHR), treaty bodies, and Special Rapporteurs, as well as international, regional, and national court decisions.

These three streams are distinct in orientation, practices, and priorities. While the legal stream typically focuses on the respect, protection, and fulfillment of specifically articulated human rights, the technical stream tends to bring human rights and law into UN agencies’ work on sexual health because human rights law matters for health outcomes. Hence, the focus is not on rights per se but because the promotion of, or impediment to, SR have an impact on health outcomes. The political stream often relies on evidence framed by the technical stream, by, for example, grounding SRHR within a health framework. This can confuse the political articulation of SRHR, thereby slowing down advance. Despite their

differences, these three streams have a significant influence on one another, which, according to the authors, should be considered in any systematic attention to SRHR. For the purposes of this study, I apply Gruskin et al.'s streams model to examine the legal stream in which SRHR advances have been facilitated. Specifically, I examine the CEDAW Committee COs made during the treaty body sessions.

Committee on the Elimination of Discrimination against Women

The fulfillment of States' obligations and duties under the CEDAW Convention is monitored by the CEDAW Committee. The CEDAW Committee is a group of 23 independent human rights experts from around the world, reflecting an equitable geographic distribution of member states and representing a diversity of legal systems, societies, and marginalized groups. They are recognized as experts "of high moral standing and competence" in the Convention's focus areas (58). Each expert serves in their personal capacity and not as representative of any State or institution for a term of four years. The threefold mandate of the Committee is to (I) review national reports submitted by each State party on measures undertaken to implement the Convention at least once every four years, (II) issue general interpretive statements on the Convention, known as General Recommendations, and (III) review and consider complaints from individuals or groups within its jurisdiction, as recognized by those States that have ratified the Optional Protocol to the Convention. It is the State review process that this study focuses on.

State review process and concluding observations

After a State has submitted its report to the CEDAW Committee, it engages in a 'constructive dialogue' with the Committee, which is the practice whereby country delegates are invited to the review session at which their report will be considered in order to enable them to respond to the Committee members' questions and provide additional information on their efforts to implement the provisions of the CEDAW Convention. Furthermore, NGOs have the opportunity to provide information to the Committee on the situation of women's rights in countries under review via shadow reports and to advocate with the Committee members to address issues of particular importance with the State party. Following the completion of the review, the Committee issues 'concluding observations' to the reporting State party to deliver "an authoritative overview of the state of human rights in a country and for the delivery of forms of advice which can stimulate systemic improvements" (59). The States parties are then required to implement the recommendations given by the Committee. The COs outline positive remarks, problematic areas, and the Committee's recommendations on how to

address challenges faced by the State, to better meet its treaty obligations. The Committee may call on States parties to make specific changes to laws, processes, and conditions within the state that continue to inhibit women's rights. Although treaty bodies do not have judicial powers, thereby making COs non-binding in nature, COs have shown to have been given great value by States parties and constitute important guidelines in the efforts to ensure the implementation of the human rights conventions (60).

SRHR and CEDAW

While all treaty bodies have addressed and provided interpretations of SRHR, the CEDAW Committee, with its focus on gender equality and women's rights, is the important treaty body in which SRHR has been discussed. Most related to SRHR is article 12, paragraph 1 of the CEDAW Convention, stating: "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning" and paragraph 2, stating: "Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation" (61). Furthermore, article 16 guarantees the rights of women to decide "freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights" (62), while article 10 states that women's right to education includes "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" (63). Taken together, these articles form the basis of a comprehensive state obligation to ensure that women's SRHR are respected, protected, and fulfilled (64).

When considering the international human rights jurisdiction on SRHR issues, it becomes evident that CEDAW Committee COs add to this. An example is the issue on abortion. In 2007, the COs addressed to Peru mentioned the need to legalize abortion in case of rape and sexual assault (65). This need was reiterated in the Committee's first decision on abortion issued in the 2011 case, *LC v Peru* (66), where the Committee held that Peru was in breach of its obligations under CEDAW when hospital authorities denied a 13-year-old rape victim an abortion and that Peru must amend its law to allow abortion in cases of rape and sexual assault. The ruling and COs addressed to Peru and a number of other COs on the issue of abortion are sourced in OHCHR's factsheet on abortion as the 'current human rights

standard' (67). It is perhaps for this reason that Ulstein (68) has described the COs of the treaty bodies as "law-making in a wider sense".

UN language on SRHR

UN language advocacy is all about the wording. However, UN language has a special language of its own, where terms that might seem reasonable or progressive in everyday language can be considered conservative or even regressive in intergovernmental negotiations at UN level. For example, the language "decide freely and responsibly on matters related to their [young people] sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence" is considered weak because it tries to police young people's sexuality. But if one instead removes the 'and responsibly', this language would be considered rather progressive as it promotes and respects young people's rights to make choices around their sexuality without negative repercussions (69).

Furthermore, UN language has so-called 'qualifiers', which is a language that 'qualifies' a statement; it adds a condition that weakens the text by, for example, excluding certain rights-holders or by invoking national sovereignty. A common qualifier is "in accordance with the Programme of Action of the ICPD", which means that a statement should only be read in accordance with the original PoA from 1994. An example is Sustainable Development Goal (SDG) Target 5.6 of the 2030 Agenda, which qualifies SRH and reproductive rights (RR) by referring back to the ICPD (70). Such a qualification limits States parties' obligations because Chapter 2 of the PoA stipulates that each State party retains sovereign rights when implementing the PoA and that this should be done with full respect for different religions and cultures (71). Also, such a qualification will fail to acknowledge the advances that have been made since the adoption of the ICPD. Consequently, such a qualifier is counterproductive because the new development framework will be forward-looking whereas the qualifier is backward-looking. Context is however everything, and sometimes a qualifier can strengthen the text. In 2015, for example, when CSE was included in a first-time HRC resolution, the footnote on the 2009 UNESCO definition increased the scope of States parties' obligations, as this language was more comprehensive than the previously agreed language.

Operationalizing language progression

While SRHR covers a wide range of issues, the previous section on SRHR advances shows that certain issues have been particularly contested in international human rights. Consensual same-sex activity is criminalized by law in at least 69 countries (72) whereas the practice of

female genital mutilation (FGM) is criminalized in 26 of the 29 countries, where FGM is traditionally practiced (73). Hence, SRHR issues carry different levels of ‘progressiveness’. The development of the more sensitive SRHR issues is what this study is looking for. These include: SOGIE, adolescent SRHR (ASRHR), CSE, and abortion. The issue of sex work was avoided for the analysis, as it is a very complex one, with countries and SRHR/women’s rights NGOs on one side who believe sex work should be regarded as a ‘right’ and feminist groups who believe sex work is a form of ‘violence and discrimination’ on the other side (74). As the CEDAW Committee makes recommendations on intersex persons, ‘SOGIESC’ will be used in the analysis instead of SOGIE, in which the ‘SC’ stands for ‘sex characteristics’ (SC).

To help track language progression on the four SRHR issues, three different language guides will serve as sources, the first which is NGO framed while the two others are developed in cooperation with States and UN institutions:

1. The advocate’s guide to UN language (75), developed by CHOICE for Youth & Sexuality. The guide contains selected examples of progressive and regressive SRHR language, as well as key SRHR terms and phrases.
2. UN Advocacy Tool (76), developed by the Sexual Rights Initiative (SRI) and International Planned Parenthood Federation Western Hemisphere Region (IPPFWHR). The tool is a digital database that provides access to UN intergovernmental resolutions, expert guidance, and technical information on SRHR, as well as a curated list of key SRHR issues with selected examples of agreed language and additional guidance, definitions, and resources.
3. Women’s Human Rights app (77), developed by the Swiss Government and the Swiss Centre of Expertise in Human Rights at the University of Bern. The app is a digital database and application that provides access to UN agreed language from a wide variety of sources through a list of keywords related to human rights of women.

Chapter 3: Material and Methods

This study is a quantitative and qualitative content analysis of publicly available COs published by the CEDAW Committee between 2000 and 2019. All COs between 2000 and 2019 were included. This period was selected to be as long a period as possible, which is desirable to allow and track progression. The study did not include 2020 in the analysis due to the COVID-19 pandemic which meant that very few States were reviewed in that year and instead postponed to 2021 or 2022). The COs were sourced from the OHCHR's website at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en, where a document text can be searched by State, geographic region, Committee, document type, and date, making for a straightforward search. In total, 458 documents were analyzed. On average, the Committee issued 23 COs each year, except for 2006 and 2007, where it issued 31 and 38 COs, respectively. In the years between 2000 and 2005, the COs were presented in the same document, whereafter they were presented separately. Over time, the COs tend to increase in length and complexity, sometimes exceeding 15 pages.

The COs usually follow a standard format under the following headings: the 'Introduction' indicates whether the report complies with the Committee's reporting guidelines and notes the level of the delegation and the quality of the dialogue. A section on 'Positive aspects' refers to new laws, policies or institutions for the advancement of women, as well as the ratification of international human rights treaties since the consideration of the previous report of the State party. In the last section, on 'Principal areas of concern and recommendations', the Committee formulates concrete recommendations for measures or activities to be taken by the State party in response to the concerns identified by the Committee. Then follows a paragraph on 'Beijing Declaration and Platform for Action', where the Committee encourages the State party to fully utilize the BPfA in its efforts to implement the provisions of the Convention, followed by a paragraph on 'Millennium Development Goals', whereby the Committee emphasizes the necessity of full implementation of the Convention to achieve the Goals. Lastly, in a paragraph on 'Ratification of other treaties', the Committee encourages the State party to ratify those of the nine major international human rights treaties that it has yet not ratified. All COs include a recommendation relating to dissemination and a paragraph requesting that information be submitted on the steps taken to implement two to four priority recommendations identified at the end of the COs, within two years, known as the 'follow-up to concluding observations'. The COs also set out the date when the State party's next periodic report is due.

The recommendations in the COs are the focus of this study. Recommendations are usually part of the section on ‘Principal areas of concern and recommendations’, but occasionally, the section does not include recommendations. Likewise, the COs sometimes include self-standing recommendations that do not derive from a specific expression of concern. As a result of limits in time, a contextual understanding of the recommendations was outside the scope of this study. Therefore, it excluded an examination of the correlation between expressions of concern and recommendations. Furthermore, it excluded an examination of the correlation between the information provided by States parties and NGOs and the CEDAW Committee, i.e., whether the Committee responds actively to country-specific information.

The content analysis was conducted based on (I) the frequency of the SRHR issues, including key themes or components within each issue, and (II) the quality of the recommendations, in terms of the level of specificity. While the frequency search showed the number of times an SRHR issue was highlighted as a concern by the Committee and, crucially, which issues tended to be less of concern, the qualitative examination showed its degree of concern and the strength of recommendations, thereby also indicating the sentiment behind these. Throughout the process, the Senior Advocacy Advisor for SRHR at Rutgers, Evi van den Dungen, provided guidance and feedback on the results.

Chapter 4: Results

SOGIESC

SOGIESC stands for sexual orientation, gender identity and expression, and sex characteristics, and is an umbrella term for all people whose sexual orientations, gender identities, gender expressions and/or sex characteristics place them outside culturally mainstream categories.

- **Sexual orientation** refers to each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender
- **Gender identity** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, it freely chosen, modification of bodily appearance or function) and other expressions of gender, including dress, speech, and mannerisms
- **Gender expression** refers to each person's presentation of their gender through physical appearance, including dress, hairstyles, accessories, cosmetics, mannerisms, speech, behavioral patterns, names, and personal references
- **Sex characteristics** refers to each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty (78).

SOGIESC can be replaced by the acronym LGBTI, which stands for lesbian, gay, bisexual, transgender, and intersex persons. Due to the CEDAW Committee's focus on women's rights, the 'G' in the acronym was removed for the analysis. While lesbian, bisexual, and transgender could be referred to collectively under the acronym 'LBT women', intersex persons had to be referred to separately, as they do not fit the boxes of 'female' or 'male'. With few exceptions, this distinction was also made by the Committee. Only relevant for this analysis was the section on frequency split into two parts: the first one provides a general overview of the Committee's attention to SOGIESC, whereas the second one addresses three specific aspects of SOGIESC regarding (I) criminalization, (II) SO and GIE, and (III) SC, thereby following the reporting of SOGIESC references in the annual Treaty Bodies reports produced by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) (79).

Frequency

General information

In total, 90 COs included recommendations on SOGIESC, of which the first was given to Germany in 2009 that was recommended to “enter into dialogue with non-governmental organizations of intersexual and transsexual people in order to better understand their claims and to take effective action to protect their human rights.” (80). Out of the total 458 COs that were issued by the CEDAW Committee between 2000 and 2019, this number translates into an engagement with one-fifth of the COs. Over time, there was an increase in recommendations on SOGIESC, both in absolute numbers and as a share of the total COs per year. From 2016, the inclusion was 50 percent. A particular growth is visible in 2018, where almost 70 percent of the COs included recommendations on SOGIESC.

LBT women and intersex persons are addressed in either separate paragraphs (‘SOGIESC-specific’) in the COs or conjunction with other groups of women (‘SOGIESC-inclusive’). SOGIESC-specific recommendations usually occur under the sub-heading ‘Lesbian, bisexual and transgender women and intersex persons’, first introduced in 2015 and frequently used thereafter. These sections cover a wide range of themes relevant to SRHR, such as barriers in obtaining legal gender recognition and criminalization of consensual same-sex relations between adults. In addition, SOGIESC-specific recommendations are often addressed in the section of the COs that deals with the health of women, usually about barriers in access to healthcare, including SRH services.

SOGIESC-inclusive recommendations, on the other hand, usually appear in a list of disadvantaged or vulnerable women who need special protection from intersecting forms of discrimination. These typically include rural, ethnic, indigenous, older, and disabled women. The COs on Suriname in 2018 provide a typical example:

11 (b). The Committee calls on the State party to amend article 8 (2) of the Constitution to recognize intersecting forms of discrimination against rural women, Maroon women and indigenous women, women with disabilities, lesbian, bisexual and transgender women and intersex persons. (81)

Secondly, SOGIESC-inclusive recommendations are often addressed in the section of the COs that deals with violence against women. The COs on Colombia in 2019 are an example of this:

26 (a). The Committee calls on the State party to strengthen its efforts, as a matter of priority and within a specific time frame, to implement the national plan for the prevention of gender-based violence against women and girls, including violence in institutions, in particular targeting indigenous women, Colombian women of African descent, rural women, women with disabilities and lesbian, bisexual and transgender women. (82)

While the above COs apply to women or persons in adulthood, in 2018, the CEDAW Committee also referred to ‘LBTI adolescents’ or ‘LBTI students’ in three COs. This trend did not persist into 2019, however.

What appears critical in determining the Committee’s level of attention to SOGIESC is the distinction between SOGIESC-*specific* and SOGIESC-*inclusive* recommendations: while recommendations that specifically address LBT women and intersex persons express an explicit concern for SOGIESC, the picture is less clear as far as recommendations addressing these in conjunction with other groups of women are concerned. This is especially the case when the list of ‘disadvantaged women’ covers very large groups of women. The COs on Canada in 2016 are a good example of this:

21 (b). The Committee recommends that the State party develop a comprehensive national gender strategy, policy and action plan addressing the structural factors that cause persistent inequalities with respect to women and girls, including intersecting forms of discrimination, with a special focus on disadvantaged groups such as women and girls with disabilities, those who are single parents, indigenous, Afro-Canadian, migrant, refugee, asylum-seeking, lesbian and bisexual women and girls, and transsexual and intersex persons. (83)

Notwithstanding the possible positive effects that actions aimed at eliminating intersecting forms of discrimination against disadvantaged women in general might have on LBT women and intersex persons, this type of phrasing risks taking on the character of being ‘obiter dictum’, which is a Latin phrase that means “that which is said in passing”. Specifically, it refers to a passage in a judicial opinion that is not necessary for the decision of the case before the court (84). This phenomenon is even more evident in cases, where LBT women and intersex persons as referred to as merely *examples* of women who face intersecting forms of discrimination. The COs on Nepal in 2018 provide a good example of this:

10 (b). The Committee recommends that the State party [...] provide targeted financial support and legal aid in commonly spoken languages for women facing intersecting and multiple forms of discrimination, such as Dalit women, indigenous women, including Madhesi and Tharu women, women belonging to religious minority groups, women with disabilities, women living in remote areas, lesbian, bisexual and transgender women, intersex persons and displaced and migrant women. (85)

On the issue of gender-based violence, one might argue that, based on the example of Colombia, the Committee is concerned with gender-based violence per se, rather than taking a broad equality approach. Consequently, the attention devoted to discrimination against LBT women and intersex persons depends on the Committee's overall determination to combat violence against women.

Themes

The theme most frequently addressed by the CEDAW Committee was discrimination against LBT women and intersex persons, including intersecting and multiple forms of discrimination. In approximately 10 percent of the COs on discrimination, social stigma was also mentioned, up to half the COs in 2018. To address the problem of discrimination, the Committee recommended States parties to take the following actions, in descending order:

- Adopt comprehensive anti-discrimination legislation or amend national legislation
- Provide appropriate training to law enforcement officials
- Organize awareness-raising activities aimed at the general public
- Remove barriers to healthcare, employment, and education
- Develop action plans, strategies or programs aimed at eliminating discrimination
- Decriminalize same-sex relations
- Promote or improve tolerance and respect for diversity

Another theme that attracted much attention from the Committee was violence against LBT women and intersex persons. While discrimination quickly became an integral part of the recommendations, violence did not gain momentum before 2015. Often, violence was mentioned in conjunction with discrimination, but in those cases where it was referred to separately, the Committee called on States parties to take the following actions:

- Ensure access to justice, including the investigation, prosecution, and punishment of hate crimes and compensation to victims
- Adopt hate crime legislation

Themes that gained attention in less than 5 percent of the COs included, among others: obstacles faced by LGBTI activists in their enjoyment of the rights to freedom of expression, assembly, and association; access to shelter and assistance for victims of violence; and recognition of paternity in cases of medically assisted reproduction.

Criminalization

Only six countries were recommended to decriminalize consensual same-sex relations between adults throughout the period, which corresponds to a little over 5 percent of the COs. Each of the recommendations was given in different years, over almost a whole decade, between 2010 and 2019. Given the extent of criminalization of same-sex relations worldwide, neither pattern nor progress is visible for this issue.

Sexual orientation and gender identity and expression

The Committee did relatively little to reflect the specific situations for each of the groups under the SOGIESC acronym. No stand-alone recommendations on bisexuals were provided and only four COs addressed lesbians separately, between 2015 and 2018. Each of these covered unique themes, such as the removal of criminal laws on homosexuality and ending of arbitrary detention (86). In the case of transgender women, however, some progress is visible, as the Committee made 11 specific transgender recommendations between 2014 and 2019, corresponding to around 10 percent of the COs. The theme most frequently addressed was barriers to gender recognition, including medical treatment in the list of requirements for gender recognition and legislation prohibiting change of sex marker in the official documentation. As was the case with decriminalization of consensual same-sex relations between adults, the recommendations were evenly distributed in time, making conclusions difficult to draw from these numbers. Notwithstanding, transgender recommendations were given to three countries in 2019, which could be an indication of positive development, or as a minimum, integration of the group into the COs.

Finally, a lack of a nuanced understanding on the part of the CEDAW Committee was observed, in that the Committee used the terms transgender and transsexual interchangeably throughout the period. However, these terms do not refer to the same person. A transsexual person identifies entirely with the gender role opposite to the sex assigned to at birth. This is

often followed by a strong rejection of one's sex characteristics and a wish to align the body with the preferred gender. For this reason, transsexuals might undergo sex-reassignment treatment. The term transgender is, therefore, more inclusive than transsexual (87). A similar observation has been made on the part of the Human Rights Committee (HRCtee) (88), which is the treaty body that monitors the implementation of the International Covenant on Civil and Political Rights.

Sex characteristics

Since 2016, intersex people were given stand-alone recommendations five times in total. Out of these, four concerned intersex children, of which two were given in 2018. The Committee encouraged States parties to adopt legislation prohibiting non-consensual sex-reassignment surgery on intersex children, with Germany being given exceptionally extensive and targeted recommendations in 2017:

24 (d). The Committee recommends that the State party adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children until they reach an age at which they can provide their free, prior and informed consent; provide the families of intersex children with adequate counselling and support; and ensure that the German Medical Association provides information to medical professionals on the legal prohibition of unnecessary surgical or other medical interventions for intersex children.

24 (e). The Committee recommends that the State party ensure the effective access to justice, including by amending the statute of limitations, of intersex persons who have undergone unnecessary surgical or other medical treatment without their free, prior and informed consent; and consider the proposal of the German Ethics Council to establish a State compensation fund. (89)

Recalling the recommendations on intersex people to Germany in 2009, this suggests that active efforts by NGOs involved in advancing the rights of intersex people have been in place. Despite the rather small attention given to intersex persons separately in total, the number of SOGIESC-inclusive recommendations exceeded the number of SOGIE-inclusive recommendations by 2016, and as such, the full acronym had been embedded in the normative framework by this time.

Specificity

This question was partly answered in the previous section on specific versus inclusive SOGIESC recommendations. Over time, the number of SOGIESC-specific recommendations increased, and by 2013, they made up most of the SOGIESC recommendations. Again, a specific growth is visible in 2018, with the largest share of 80 percent. Over time, however, the distinction between ‘specific’ and ‘inclusive’ became less clear. Until 2015, a set of COs typically contained either an inclusive or specific SOGIESC recommendation, but in subsequent years, SOGIESC increasingly received attention across themes within the same set of COs. An example of this is the COs on Colombia in 2019, where SOGIESC recommendations were addressed under the sub-headings of ‘Legislative and policy framework’, ‘Access to justice’, ‘National machinery for the advancement of women’, ‘Gender-based violence against women’, and ‘Lesbian, bisexual and transgender women’, respectively (90). Consequently, SOGIESC recommendations became more extensive. Additionally, recommendations tended to become divided into paragraphs (a) under sub-headings (1), rather than listed all together under the same sub-heading.

With these changes the Committee may be showing increased attention to SOGIESC, as it explicitly recognizes and draws attention to the multiple areas in which LGBTI persons are discriminated. But it could also just be that the Committee generally increased the number of sub-headings and sub-paragraphs in its COs, leading to a division of all its recommendations, including those on SOGIESC. Furthermore, there was a great variation of sub-headings across COs. Care should therefore be taken in interpretation.

In terms of the specificity of the actions recommended by the Committee, most of these were broadly formulated and rarely tailored to the situation of the particular State party, as was the case of the COs on Germany in 2017. Instead, they tended to be subject to formal recitation. Especially two formulations on discrimination and violence became standard language until the years up to 2016. The COs on Zimbabwe in 2012 and Haiti in 2016 are typical examples of this:

24 (f). The Committee urges the State party to provide effective protection against violence and discrimination against all groups of women, including lesbian, bisexual and transgender women, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination and through

the launching of a sensitization campaign aimed at the general public, as well as providing appropriate training to law enforcement officials. (91)

48. The Committee recommends the State party effectively protect lesbian, bisexual and transgender persons from violence and discrimination and ensure their access to justice, through the appropriate handling of their complaints, punishment of perpetrators and awarding of compensation. (92)

In the time hereafter, recommendations became more specific and measurable, thereby also more easily subject to accountability. The COs on Mexico in 2018 are a good example:

11 (d). [...] The Committee recommends that the State party adopt a road map that includes adequate resources, a timeline and measurable targets requiring authorities at the federal, state and local levels to implement relevant laws to prevent and eliminate all forms of de facto discrimination against women, in particular indigenous women, Mexican women of African descent, migrant women, women with disabilities, lesbian, bisexual and transgender women and intersex persons. (93)

In addition to specifying the content and scope of the road map, the Committee mentions the need to implement the laws that are in place, which is another trend that started to appear in the language in 2017 and peaked in 2018. By doing this, the Committee invokes the accountability of States parties so they cannot use the excuse that law is already in place (as it would be the easy way out). Furthermore, recommendations based on human rights norms that encourage actions rooted in a human rights-based approach also started to appear in 2018. The COs on Chile in 2018 are an example of this:

25 (e). [...] The Committee recommends that the State party address the lack of protective measures to ensure the dignity and integrity of lesbian, bisexual and transgender women, including by raising public awareness of their rights, in cooperation with civil society [...]. (94)

Another example is the COs on Bosnia & Herzegovina in 2019:

44 (e). The Committee recommends that the State party ensure respect for the human rights of lesbian, bisexual and transgender women and that national

action plans on gender equality address stigma and discrimination against them in all spheres of life. (95)

In 2019, empowerment of LBT women was introduced to the language. The COs on Antigua and Barbuda provide a good example:

12 (b). The Committee recommends that the State party intensify efforts to enhance awareness among women, including migrant women, older women, women with disabilities and lesbian, bisexual and transgender women, of their rights under the Convention and the remedies available to them to claim violations of those rights and ensure that information on the Convention, the Optional Protocol thereto and the Committee's general recommendations is provided to all women. (96)

2019 was also the year where most specific laws and provisions were evoked.

Summary

SOGIESC first gained attention from the CEDAW Committee in 2009, which increased over the years. Particular attention was devoted to the protection of LBT women and intersex persons from discrimination and violence, by which the Committee most often recommended the adoption of anti-discrimination legislation, organization of awareness-raising activities, and provision of training to law enforcement officials. Over time, recommendations became more extensive and specific. Likewise, recommendations became inclusive of all groups under the SOGIESC acronym, albeit rarely reflecting the specific situations of these. A particular development is visible in 2018.

ASRHR

ASRHR is the SRHR of adolescents, covering a wide range of issues, including maternal mortality and access to contraceptives, as well as menstrual cycles and forced marriages (97). Access to SRH information will be addressed in the section on CSE.

There are several terms that overlap with adolescence, including ‘children’, ‘youth’, and ‘young people’. The CEDAW Committee typically employed the term ‘adolescent girls’, but sometimes also ‘girls’, ‘girls and boys’, ‘teenagers’, ‘young adults’, and ‘young women’. Sometimes, these were used in combinations with each other that were not logical. For this reason and based on the previous observations about the Committee’s lack of a nuanced understanding regarding SOGIESC terms, a distinction between the terms was not made (98).

Frequency

2002 was the first year in which ‘girl’ appeared in relation to SRHR. Until 2015, adolescent girls were primarily mentioned in conjunction with women (‘ASRHR-inclusive’), including marginalized groups of women. The COs on Colombia in 2007 are a typical example:

23. [...] It requests the State party to strengthen measures aimed at the prevention of unwanted pregnancies, including by [...] increasing knowledge and awareness about, as well as access to, a range of contraceptives, family planning services for women and girls. (99)

The number of ASRHR-inclusive recommendations increased over time, but as these do not address the particular barriers to SRHR faced by adolescent girls, they were excluded from the analysis. An exception was made on the case for the COs on Cambodia in 2019, where adolescent girls were specifically mentioned as a target group of interest.

2002 was also the first year in which the Committee made a stand-alone recommendation on ASRHR. In total, 31 COs included recommendations on ASRHR. This translates into an engagement with nearly 7 percent of the COs. From 2015, the number of COs per year developed from mostly one or two to mostly four, except for 2018, where the Committee made recommendations on ASRHR in seven COs. ASRHR was primarily raised under the sub-heading ‘Health’.

Themes

Most recommendations were about access to SRH services, of which half were accompanied by specific components of SRH services, primarily modern contraceptives and counseling. These recommendations increased after 2015. Secondly, the Committee made

recommendations on discrimination based on SOGIESC. In total, seven COs included recommendations on this issue, of which five were made in 2018. The third and least addressed theme was third-party authorization requirements for access to SRH services.

Specificity

The pattern for the specificity of recommendations is somewhat patchy. On the one hand, recommendations became more specific over time, in that they included specific SRH services, rather than just calling on countries to ensure access to SRH services. As mentioned, these were limited to modern contraceptives and counseling. Only the COs on Colombia in 2019 included services in addition to these:

39 (a). The Committee recommends that the State party ensure that sexual and reproductive health-care services and information, including voluntary and confidential counselling, testing and treatment for HIV and sexually transmitted infections, as well as safe abortion and post-abortion services, are available and accessible to all women and girls, particularly adolescent girls.
(100)

This recommendation represents the most advanced language on ASRHR given by the CEDAW Committee. Nevertheless, as adolescents are not addressed in a separate recommendation, the accountability mechanism becomes weaker.

On the other hand, in the early years, between 2007 and 2010, the Committee made four recommendations on the provision of “comprehensive, youth-friendly sexual reproductive health services”, which is quite a progressive language for its time. When searching for this language in UN documents on SRHR, the only one that appears is Operative Paragraph 4.3.1 of the Maputo Plan of Action from 2007, which states: “Youth-friendly SRHR services positioned as key strategy for youth empowerment, development and wellbeing. Service delivery: Assess and establish/strengthen youth-friendly services at SDPs.” (101). This language, however, disappeared in the years that followed. Interestingly, all four countries that received these recommendations belong to the Polynesian subregion of Oceania in the Pacific Ocean, and not the African Region, as one would suppose, given that the Maputo Protocol is legally binding for the African States parties. This suggests that it was standard language adopted during this period, rather than a response to specific issues on CSE. As for the question of why exactly these countries were called on by the Committee to ensure these services remains unanswered.

Following the exit of these terms, ‘confidential’ and ‘affordable’ or ‘free’ access to SRH services entered the recommendations instead, albeit not very consistently. All terms cover relevant concepts of ASRHR, as each one facilitates access to SRH services. In fact, when gathering them, they resemble the Committee on Rights of the Child (CRC) General Comment No. 20 (2016), which states: “All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education [...]”. (102). Because of these opposite trends and the small dataset, it becomes difficult to trace the progress in this area. Most obvious are the recommendations relating to SOGIESC which both grow in number and were the most specific ones. The COs on Malaysia in 2018 provide an example:

35 (e). [...] the Committee recommends that the State party Adopt anti-bullying policies based on alternative strategies, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for lesbian, bisexual, transgender and intersex students. (103)

As is evident from the trend on SOGIESC, the CEDAW Committee devoted particular attention to this issue in 2018. As such, one might argue that the Committee is concerned with SOGIESC per se, rather than taking an adolescent approach.

Summary

ASRHR first received attention from the CEDAW Committee in 2002, which, in total, provided 31 COs with recommendations on ASRHR. Over time, these grew in number and became more specific, most evident in the case of LGBTI children and adolescents. A particular development is visible in 2018.

CSE

CSE covers a broad range of issues relating to physical and biological aspects of sexuality, as well as the emotional and social aspects, which are regarded as important means to inform young people about their SRHR, as well as improve public health outcomes and contribute to sustainable development (104). However, different organizations have different standards for the provision of CSE. According to the 2009 UNESCO technical guidance for CSE, which was also mentioned earlier in the section on progress within the HRC, CSE is:

[An] age-appropriate, culturally relevant approach to teaching about sexuality and relationships by providing scientifically accurate, realistic, non-judgmental information. (105)

A different definition is offered by the 2014 UNFPA operational guidance for CSE:

[A] rights-based and gender-focused approach to sexuality education for young people. (106)

These conceptualizations differ significantly from each other, one highlighting sexuality, relationships, and cultural relevance, while the other emphasizes rights and gender.

Furthermore, the definition of CSE has been updated over time, so that the most recent technical guidance for CSE from 2018, which is jointly published by UN partners, including UNFPA, offers the following one:

[CSE is a] curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality. It aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to: realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and, understand and ensure the protection of their rights throughout their lives. CSE is education delivered in formal and non-formal settings that is scientifically accurate, incremental, age- and developmentally-appropriate, curriculum based, comprehensive, and based on a human rights approach. (107)

In the new framing, there is a greater focus on expected learning outcomes.

Frequency

CSE first received attention from the CEDAW Committee in 2000, where four countries were recommended to provide ‘sex education’ as part of school curricula. In total, 252 COs included recommendations on CSE, corresponding to 55 percent of the COs. The share increased steadily over the years and peaked in 2015, where all 27 COs included a recommendation on the issue. Hereafter the number was 80 percent. CSE was primarily raised under the sub-heading ‘Education’.

Components

Five different components of CSE were identified in the Committee’s recommendations. The most frequently addressed one was sexual and reproductive health and behavior, which occurred in two thirds of the recommendations. The specific SRH-related concerns were early pregnancy, STIs, including HIV/AIDS, and ‘responsible sexual behavior’. The COs on Turkmenistan in 2012 and Greece in 2013 provide typical examples:

35 (b). The Committee recommends the State party to widely promote education on sexual and reproductive health and rights, targeting adolescent girls and boys and paying special attention to early pregnancy and control of sexually transmitted infections, including HIV/AIDS. (108)

31 (d). The Committee urges the State party to promote education on sexual and reproductive health and rights, especially targeting adolescent girls and boys, in order to foster responsible sexual behaviour, prevention of early pregnancies and of sexually transmitted infections, including HIV-AIDS. (109)

Sometimes, ‘paying special attention to’ or ‘in order to’ were replaced by ‘with the aim of’. This kind of language is what in UN terms are considered qualifying language. That is, CSE is only there to teach the harms and consequences of sex and prevent illness and unintended pregnancies. These recommendations dominated the COs until 2014, after which where they were replaced by ‘comprehensive’ CSE that should ‘cover’ the prevention of early pregnancies, STIs, and responsible sexual behavior. The COs on Eswatini in 2014 provide a typical example:

31 (e). The Committee recommends that the State party integrate age-appropriate education on sexual and reproductive health and rights into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviour. (110)

However, as recommendations usually did not mention additional components of CSE, it could be argued that the Committee's understanding of CSE had remained unchanged, consequently making the use of 'comprehensive' ring hollow. In addition, the Committee does not elaborate upon what it means by 'responsible sexual behavior'. But, considering that it only mentions contraception in six COs in total, between 2001 and 2019, it could be argued that abstinence is what is being referred to. As a result, it resembles the so-called Abstinence-plus, also known as the ABC Approach, which stands for Abstinence, Be Faithful, Use a Condom (111). This type of education promotes abstinence but also encourages the use of condoms and safe-sex practices, whereby it appears as 'comprehensive'. The difference between ABC and CSE is that ABC sees contraception as a last resort while in CSE there may be more openness (112). Moreover, it lacks CSE's attention to gender and power relations. Throughout the period, 'responsible sexual behavior' continued to be used by the Committee in its recommendations without any decrease over time, even also after 'comprehensive' got added to the language. Later, however, the Committee paid increasing attention to gender and power relations. As such, the CSE standard could be characterized as a hybrid between ABC and CSE.

The remaining four CSE components were mentioned in less than 10 percent of the COs, sometimes 5 percent. The first of these was gender equality and power relations, which appeared for the first time in 2013. Gender-based and sexual violence and consent entered the language a bit later, in 2016 and 2017, respectively. The second component was empowerment, centering on choice, sometimes 'sexual choice', which first appeared in 2014, after which it disappeared after 2016. The terms violence and consent continued into 2019, though these were contained in the same set of COs on Qatar:

35 (e). [...] the Committee recommends that the State party ensure that mandatory, age-appropriate education on sexual and reproductive health and rights, including on responsible sexual behaviour, the concept of consent in sexual relations and the criminal nature of sexual violence and harassment, are incorporated as a mandatory subject into all school curricula. (113)

This trend is similar to the one that was observed in relation to ASRHR, where terms entered and exited the language, making it difficult to track progress on the area. Next, the Committee addressed gender stereotypes and discriminatory norms, which appeared in the language in 2017 and peaked in 2018, where it occurred in four recommendations.

Finally, the least addressed CSE component by the Committee was positive

sexualities and respectful relationships, as it only appeared twice. While one of the recommendations concerns barriers in access to healthcare based on SOGIESC, the other one just mentions the word ‘respect’:

33 (d). The Committee recommends that the State party ensure that the three yearly hours of age-appropriate and gender-sensitive education on sexuality and the human rights of women planned in the school curricula are actually respected by all schools and provided by trained personnel, addressing not only the biology of reproduction, contraception and prevention of HIV/AIDS, but also gender equality, respect and combating sexist and sexual violence.
(114)

This recommendation belongs to the COs on France in 2016 and is the most comprehensive standard on CSE provided by the Committee, even though it does not contain the word comprehensive. Not only does it include the most CSE components, it also expresses explicitly that these must go beyond SRH-related concerns and practices. This leads to the next section, on the specificity of the recommendations.

Specificity

First, an outline of the term used by the Committee to refer to CSE deserves some attention, as this became more ‘comprehensive’ over time. Up to the years of 2011, the term ‘sex education’ and sometimes also ‘family planning and reproductive health education’ was used, after which it was replaced by “education on sexual and reproductive health and rights”. The very term ‘comprehensive sexuality education’ entered the language in 2017 and was used eight times in total. Half of these instances occurred in 2018. Since there are many indications of a special development on SRHR in 2018, a larger dataset is needed to confirm the embedding of the term in the normative framework.

In terms of the specificity, or ‘comprehensiveness’, of the scope of CSE, the Committee primarily held that CSE should be ‘age-appropriate’ and a ‘mandatory part of the curricula’ until 2009, where it should also be ‘comprehensive’. However, it was first in 2014 that the latter was used regularly in the recommendations, peaking in 2018, and as described above, became linked to ‘sexuality education’ in 2017. In 2012, the scope of CSE was further expanded to be ‘provided by trained teachers’, ‘scientifically accurate’, ‘gender-sensitive’ as well as ‘human rights-based’. The latter term was added to the language in 2015, which might be explained by the fact that the rights-based and gender-focused approach was part of

2014 UNFPA definition. However, these additional features were not used altogether for the same recommendation, but often only in conjunction with one other, and sometimes with none. That is to say, the CSE standard was expanded in recent years, but at the same time it also became more inconsistent. A larger dataset is therefore needed to track development. In any case, the most important progress is the embedding of the term ‘comprehensive’ in the normative framework, despite its questionable implication.

Apart from that, there were very few recommendations that moved beyond broad terms and formal recitation. The COs on Mauritius in 2018 provide an example of a more specific recommendation:

24(e). The Committee recommends the State part to include in school curricula mandatory, age-appropriate, evidence-based and scientifically accurate education for girls and boys on sexual and reproductive health and rights that covers responsible sexual behaviour, that dismantles the social taboo of menstruation and that is free of discriminatory gender stereotypes.
(115)

The COs on Montenegro in 2017 are another example:

30 (b). Ensure the integration into the school curricula of mandatory, age-appropriate sex education, including education on sexual and reproductive health and rights, paying special attention to the prevention of both early pregnancies and sexually transmitted diseases, as well as to patriarchal attitudes and violence. (116)

Without specifying what the CEDAW Committee means by CSE, their recommendations leave significant discretion to the States parties to develop their own definition of CSE which may fall short of the Committee’s implicit understanding of CSE. Clarification could be provided by either specifying the content of CSE as in the examples above or by referring to international standards. In two instances, the Committee does refer to international standards, but without citing which ones, thereby making the mentioning of them ring hollow.

Summary

The CEDAW Committee showed a strong attention to CSE during the whole period, where it provided 252 COs with recommendations on CSE. Over time, the number of recommendations increased significantly, and the standard of CSE went from being age-appropriate and mandatory sex education to being comprehensive education on sexual and

reproductive health and rights. The learning outcome, however, remained fairly limited to SRH-related concerns and practices. Regarding the embedding of the term itself, a particular development is visible in 2018.

Abortion

Most countries in the world provide for certain instances when abortion is legal (117). While some countries have enacted laws that completely ban abortion, in most countries, there are six main grounds for allowing abortion:

1. Risk to life
2. Rape or sexual abuse
3. Serious fetal impairment
4. Risk to physical and sometimes mental health
5. Social and economic reasons
6. On request

No human rights body has gone so far as to call abortion to be permitted at the request of the woman, still many have called for abortion to be decriminalized (118). For many years, the international abortion rights movement has called for ‘safe and legal abortion’, hence calling for a legalization of abortion. Nonetheless, decriminalization abortion is not the same as legalizing abortion: legalizing abortion means keeping abortion in the law in some form by identifying the grounds on which it is allowed, whereas decriminalizing abortion means removing criminal sanctions against abortion altogether. This means, that even though an abortion law can be liberal in its form, this is not the same as taking abortion completely out of the law that delimits it (119). Despite this distinction, these two terms are often used interchangeably. This was also the case for the CEDAW Committee, where it recommended that abortion may be legalized or decriminalized on some or all grounds. For this reason, no attention was paid to the Committee’s use of these terms, although it can be argued that law reforms should be clear about what exactly is and is not intended.

Frequency

Abortion received attention from the CEDAW Committee throughout the whole period, where 172 COs included recommendations on CSE, corresponding to nearly 40 percent of the COs. The share increased steadily over the years and reached an average of 70 percent by 2015, except for 2018, where more than 80 percent of the COs included a recommendation on abortion. Abortion was primarily raised under the sub-heading ‘Health’.

Themes

Four themes were identified in the CEDAW Committee’s recommendations on abortion. The most frequently addressed one was legal access to abortion in certain circumstances, in which

almost all recommendations included sexual abuse (the Committee preferred the term ‘incest’) or rape as legal grounds for allowing abortion. Next came the risk to life and serious fetal impairment, which were included in one third of the recommendations, followed by the risk to physical health. The risk to mental health entered the language in 2014 and was only mentioned in seven COs in total. By 2015, all four grounds were integrated as part of the Committee’s normative framework.

The second theme that received attention from the Committee was safe abortion and post-abortion services, including in cases where abortion is illegal, which occurred in half of the recommendations. Following this was the issue of barriers to the provision of abortion, including mandatory waiting periods and counseling, third-party authorizations, and conscientious objection by healthcare personnel. This issue was not part of the framework before 2012, after which it gradually emerged, albeit never becoming an integral part of the Committee’s abortion framework. Finally, the least addressed topic was clear regulations for implementation of legislation and procedures for healthcare providers. This theme only appeared sporadically, except for 2018, where it was mentioned more often. In 2019, it did not appear once. Thus, this theme seemed to be lacking in the Committee’s attention.

Specificity

In the years up to 2015, most recommendations encouraged States parties to only ‘consider’ reforming their laws on abortion with the intent of legalization or decriminalization. The COs on Chile in 2006 provide a typical example:

20. [...]. The Committee recommend that the State party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion. (120)

Another variant of this language is exemplified by the COs on Rwanda in 2009:

36. [...]. The Committee recommends that the State party review its legislation relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion in accordance with the Committee’s general recommendation No. 24, on women and health, and the Beijing Platform for Action. (121)

Although both recommendations provide direction for the action to be taken by the State party, they are nevertheless voluntary and merely encourage the State to do something. Later,

the consideration concerned specific parts of legislation. The COs on Mauritania in 2014 are an example:

38 (d). The Committee recommend the State part to consider amending the Criminal Code, with a view to criminalizing marital rape and decriminalizing abortion in cases of rape, in line with the Committee's jurisprudence. (122)

On the one hand, this recommendation includes a specific action that can be reasonably completed within four years, when the State is reviewed again, but on the other hand it is only an optional (“consider to”) measure. This contradiction makes it difficult to determine the level of progress. Consider the COs on Bahamas two years prior to this recommendation, in 2012:

35 (f). The Committee recommends the State party to broaden the conditions under which abortion can be legally available, including in instances of rape and incest. (123)

It could be argued that the latter recommendation is more progressive than the former one, as it entails two legal grounds for abortion, rather than one. On the other hand, it does not invoke any specific law as the former recommendations does, thereby creating a weaker accountability mechanism. Both recommendations are therefore equally progressive in their own way, making it difficult to determine the overall progress on legal reform. One might argue, however that the first recommendations is the most progressive one, as it would prevent more situations that could lead to human rights violations, i.e., maternal mortality. If that is the case, regression was taking place.

Since 2015, however, the Committee increasingly employed the verbs ‘legalize’ and ‘decriminalize’, as well as ‘amend’ and ‘repeal’ in its recommendations, thereby giving them the character of commands rather than advices. This trend peaked in 2018. Furthermore, it increasingly called on actions of specific parts of legislation. Finally, the terms ‘quality’, ‘affordability’, and ‘confidentiality’ entered the language on abortion services in 2015, thereby qualifying them within a human rights-based approach. However, these additional features were rarely used altogether for the same recommendation, but often only in conjunction with one other, and sometimes with none, as was also the case with CSE. A larger dataset is therefore needed to track the development. An exception was the COs on Monaco in 2017 that included the most comprehensive recommendation made by the Committee:

42 (c). [...] The Committee recommends that the State party ensure that sufficient, safe, affordable, confidential and non-judgmental abortion services and post-abortion services are available to all women and girls in the State party, even if the abortion is not legal. (124)

This reaffirms the already described tendency to inconsistency among the COs, where formulations are either very broad or very specific, including also targeted actions, with the first approach by far being the preferred one. Nonetheless, it can be reasonably suggested that progress on abortion is visible from 2015. Finally, almost 60 percent of the recommendations on legal reform were qualified by General Recommendation No. 24 (1999) on women and health (125), sometimes also in conjunction with the BPfA, of which most occurred in the first half of the period. Such references were usually as postface to some formulation of standard language. The COs on Belize in 2007 are an example:

28. [...]. The Committee recommends that the State party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who have abortions and providing them with access to quality services for the management of complications arising from unsafe abortions, in accordance with the Committee's general recommendation 24 and the Beijing Declaration and Platform for Action, and to reducing the number of deaths resulting from induced abortions. (126).

The content of the recommendations, however, appeared unaffected in any substantive sense, making it difficult to get a sense of how the treaty was interpreted.

Summary

Abortion received a solid attention from the CEDAW Committee throughout the whole period, where it issued 172 COs on abortion, with increasingly more per year. A specific growth is visible in 2018. Most recommendations pertained to legal access to abortion in certain circumstances, as well as safe abortion and post-abortion services. By 2015, grounds for legal access consistently included rape or sexual abuse, serious fetal impairment, and the risk to life or physical health. In addition, there was an increase in recommendations that demand action of specific parts of legislation, as well as a change in tone of voice which transformed these into commands. Finally, the language on abortion-related services became gradually framed within a human rights-based context.

Chapter 5: Discussion and Conclusion

This study provides empirical evidence of the changing of the language on SRHR norms and standards in the CEDAW Committee COs from 2000 to 2019.

CSE received the most attention by the Committee whose standard on CSE developed over time by including increasingly more components of the international standards on CSE in its recommendations. This is most notably by the inclusion of the term ‘comprehensive’. Yet, the learning outcome remained fairly limited to SRH-related concerns and practices.

Abortion received a solid attention from the Committee whose recommendations mostly pertained to legal access to abortion in certain circumstances, as well as safe abortion and post-abortion services. Over time, the Committee extended the legal grounds for abortion to include rape or sexual abuse, serious fetal impairment, and the risk to life or physical health. Moreover, it increased the number of recommendations that demand action of specific parts of legislation while also giving them the character of commands rather than advices. Finally, the language on abortion-related services became increasingly framed within a human rights-based context.

SOGIESC was integrated as a genuine concern of the Committee whose recommendations mostly concerned the protection of LBT women and intersex persons from discrimination and violence, by which it most often called for the adoption of anti-discrimination legislation, organization of awareness-raising activities, and provision of training to law enforcement officials. Over time, the Committee’s recommendations became more extensive, specific, and inclusive of all groups under the SOGIESC acronym, although rarely reflecting the specific situations of these.

ASRHR gained sparse attention from the Committee who recommendations mostly involved access to modern contraceptives and counseling, albeit rarely considering the particular barriers faced by adolescent girls. Coupled with the Committee’s standard on CSE, this suggest a certain discomfort with the idea of young people being sexually active.

It is characteristic of all recommendations that they consist of standard formulations rather than context-specific and targeted suggestions. There appears to be no pattern indicating that the Committee amended its approach to SRHR or that it adopted given wording depending on the thematic sub-headings used. On some occasions, the same language appeared across different headings, and on others, different language appeared under the same heading during the same session. This is most evident in the case of SOGIESC. Of course, it cannot be rejected that this is due to differences in the country-

specific information received by the States parties, but it appears to be the available standard language that matters most, not necessarily the requirements of the specific provisions in question. In this context, the lack of references to the Committee's General Recommendations is notable. General Recommendations are intended to provide guidance on the interpretation of specific provisions, important principles, or the application of a human rights treaty to a given issue. Besides this, General Recommendations can be used by human rights defenders to monitor and advocate for full treaty implementation, thus strengthening the enjoyment of specific rights by rights holders. In the first half of the period, the Committee consistently made use of General Recommendation No. 24 (1999) on women and health in relation to its recommendations on abortion law reforms. As for the three other issues, such references were rarely made. In all cases, the references were a preface or postface to some formulation of standard language, and the COs appeared unaffected in any substantive sense. Consequently, we do not get a sense of how the treaty is being interpreted.

It is not unusual, however, for treaty bodies to develop formulaic COs (127). This might be necessary given their workload and the breadth of issues in front of them. In this connection, two points can be made on CEDAW. Firstly, out of the 193 UN Member States, 189 States have ratified the Convention (128), making it nearly universally accepted. Secondly, CEDAW covers a very broad range of gender issues and issues relevant to women. Together, these conditions result in a burdensome reporting process, involving a vast amount of documentation, both due to the amount of States parties reporting and due to what it is they are meant to include. This workload can affect the quality of the review and recommendations, which might explain why we see, although with exceptions, the repetition of formulaic COs, whatever the specific national dynamics at play.

Furthermore, although all 23 Committee members are experts on women's issues, it may not be expected that the Committee has consistent expertise on all topics related to this field, including SRHR. This might explain, for example, why we see the interchangeable use of the terms, transgender and transsexual. Moreover, as the State report is often late, sometimes taking several years to appear, there is little institutional memory, as Committee members are elected for a term of four years. So even if a member were to take issues with a certain State practice or piece of legislation, that member may have left by the time the next reporting process has begun. This issue could in part be remedied by a follow-up mechanism, whereby the Committee makes references to previous COs in subsequent proceedings.

By choosing from variations on standard formulations, there is, on one hand, the risk that recommendations cannot speak to the specific situations on the ground. They may result

in bland recommendations related to very specific problems, and using standard language necessarily means that identical recommendations are made for widely varying national contexts. But on the other hand, standard recommendations, if made consistently, can potentially solidify and/or develop norms over time, which may still have effects on the ground. In other words, recommendations may appear to be ineffective from one perspective, but they may also have an important normative effect from another.

This brings me to the research question that this study set out to answer. That is, whether the CEDAW Committee made advances on norms and standards around SRHR through its COs between 2000 and 2019. The short answer is yes. Even if some were more consistent than other, all advances listed above were most visible since 2015 and especially in 2018. This clearly corresponds to the SRHR advances obtained in the HRC that were described in chapter 2. While substantial advances were made on both CSE and ASRHR in 2015, the most advanced language on abortion was obtained in 2018. Besides the adoption of the resolution on DAWG by the HRC, the HRCtee adopted General Comment No. 36 on the Right to life (129) in 2018 that reinforces States obligations to decriminalize abortion, remove barriers to effective access to safe and legal abortion, and ensure that any restrictions on abortion do not jeopardize women's and girls' right to life, health, non-discrimination, privacy, and freedom from cruel, inhuman, or degrading treatment. In addition, the UN's independent human rights experts drew attention to abortion rights in thematic reports (130) and country visits in 2018 (131), and on International Safe Abortion Day September 28, several Special Procedures issued a joint statement calling on States to act now to decriminalize abortion, which was echoed by 223 civil society organizations from around the world that delivered a mass joint statement during the 39th session HRC session, calling on States to decriminalize abortion now (132). Finally, the SRI Geneva Office was established and opened in 2018, consisting of experienced advocacy advisors with diverse backgrounds who worked extensively with diplomats across the UN regions in 2018 to enhance their knowledge, coordination, and commitment to retaining and advancing critical SRHR language within HRC resolutions (133). Moreover, SRI scaled up its engagement with the Special Procedures and work with the treaty bodies sessions to include continuous review and analysis of COs, as well as its active participation in the development of new General Comments/Recommendations (134).

Hence, 2018 was in many ways a milestone year for SRHR, which is clearly reflected in the CEDAW Committee's COs across all four issues studies. As such, this study may be seen as a case example illustrating the three-way exchange of influence, through which

SRHR is advanced within the UN, as laid out by Gruskin et al.

An inherent limitation of the study is the very context-specific and political nature of COs, which makes it difficult, if not possible, to draw clear-cut trends from these. If we take the example of the particular growth in SOGIESC recommendations in 2018, several other contextual factors besides those listed above may have contributed to this. It could, for example, be that a certain combination of countries was up for review in that year with many NGOs advocating for LGBTI. Indeed, ILGA World specifically focused on LGBTI advocacy before the CEDAW Committee in 2018, and many local groups were able to engage with the Committee and to inform recommendations. Another explanation for the growth could also be related to the human rights situation in the countries that were under review in the previous or following years. This could, for example, be very limited civic space for human rights defenders who face reprisals if they speak out about LGBTI rights, or, specific human rights violations, following a recent change in government or policy, making countries and NGOs focus on other rights, such as abortion rights. Finally, the composition of Committee members may also have had an influence. Indeed, the two Committee members most friendly to SOGIESC issues, Patricia Schultz and Ruth Kaddari, left the Committee in 2019 (135).

Another limitation of the study is the absence of existing criteria, consequently making the research approach very inductive. The greatest weakness of this approach is that it is incomplete, meaning that false conclusions may be reached despite accurate observations. In this regard, the large sample size constitutes an important marker of the validity of the results. Notwithstanding the limitations, this study is the first that offers insight into overall trends, protections gaps, and advancements in SRHR standards by the CEDAW Committee over the past 20 years. These insights are valuable to SRHR advocates engaged with the CEDAW review, as they provide further directions for areas of advocacy.

Future studies could look more into *why* the framing of SRHR has taken place and the decision-making process resulting in the recommendations, to provide further direction for SRHR advocates. They could study which actors were successful in making the CEDAW Committee comply with their interests and with their interpretations of the SRHR issues. Not least the roles of the NGOs and Committee members could be analyzed.

To conclude this study, it suggests that the CEDAW Committee has advanced SRHR norms and standards through its COs from 2000 to 2019, in line with Gruskin et al.'s three-way model of exchange through which SRHR is promoted and protected within the UN.

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