INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN

While gender has become a cornerstone of the current human rights framework on violence against women (VAW), a new theoretical concept has been gaining ground and becoming increasingly visible: intersectionality. In response, this book clarifies three main aspects of the incorporation of intersectionality: it identifies the theoretical and practical implications in relation to VAW; reveals to what extent intersectionality is incorporated in the current human rights framework on VAW; and it provides empirical evidence of the potential benefits and advantages for cases of VAW derived from the application of intersectionality. This book presents a comprehensive view of approaches within three jurisdictions – the United Nations, the Council of Europe and the Inter-American System – and will appeal to human rights scholars, lawyers and other practitioners, particularly those interested in VAW and diversity.

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INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN

AT THE CENTRE OR THE MARGINS?

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This book is a revised version of my Ph.D. thesis, defended in 2015 at Tilburg University, in the Netherlands. My research derives from the concern about the apparent exclusionary character of the human rights norms on violence against women and their seemingly exclusive focus on gender as main ground of discrimination and inequality affecting women. This was the main idea underlying my research proposal, and so I began my quest to find the most suitable theoretical approach to express such discomfort. I discovered intersectionality, and was immediately captivated by its capacity to capture the complexity of inequality. Soon after this, intersectionality made its first verbatim appearance in the human rights norms on violence against women. As a lawyer, but having read basically every article on intersectionality available, I was curious, and I confess, worried about the way that such a complex notion could be translated into legal terms. Can intersectionality, in all its theoretical richness, become legally normative? And also, can gender retain its importance for understanding discrimination and violence against women when other grounds are being emphasised? I still have no definitive answer to these questions.

It is clear to me, though, that the most interesting approaches within intersectionality are those which focus on the socio-structural nature of inequality. These are the ones that can truly address the roots and consequences of unequal positioning due to the always intersecting grounds of gender, race, class and so on. Moreover, the relevance of gender in understanding such positioning is confirmed by intersectional research. Now, human rights, particularly in relation to the paradigm of equality that it promotes, deals poorly with socio-structural inequality. Although some differences across human rights systems are found, they generally look at discrimination as based on identities, focusing on groups. This approach may, at the very best, reflect the earliest intersectional approach, which focused on groups at a particular intersection. For this reason,
this book should not be read as promoting the adoption of a group-based approach to intersectionality and an identity-based understanding of equality, which is already present in the law, nor as a challenge to gender as unavoidable explanatory notion for inequality based on sexual difference.

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ACRONYMS

ACHR American Convention on Human Rights. x, 147, 255

BDPoA Beijing Declaration and Platform of Action. x, 111, 252

Beijing Rules UN Standard Minimum Rules for the Administration of Juvenile Justice. x, 148

Belem do Para Convention Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. x, 3, 11, 43, 146, 149, 205, 209, 256

CEDAW Convention on the Elimination of All Forms of Discrimination against Women. x, 12, 44, 61, 137, 174, 205, 229

CEDAW Cee UN Committee on the Elimination of Discrimination Against Women. x, 3, 4, 44, 61, 62, 137, 229, 251

CEDAW-OP Optional Protocol to the CEDAW Convention. x, 44, 62

CERD International Convention on the Elimination of All Forms of Racial Discrimination. x

CoE Council of Europe. x, 11, 121, 169, 251

CRC Convention on the Rights of the Child. x, 148

CSW Commission on the Status of Women. x, 112

DARSIIWA Draft Articles on Responsibility of States for Internationally Wrongful Acts. x, 52

DEVAW Declaration on the Elimination of Violence against Women. x, 3, 44, 101, 149, 252

EBO Emergency Barring Orders. x, 88

ECHR European Convention on Human Rights and Fundamental Freedoms. x, 12, 121, 147, 255

ECTHR European Court of Human Rights. x, 122, 173, 255

EU European Union. x
ACRONYMS

FGM  Female Genital Mutilation. x, 63, 132, 133

GBV  Gender-based Violence. x

GR  General Recommendation. x, 253

GRs  General Recommendations. x, 62, 193, 252

IACHR  Inter-American Commission of Human Rights. x, 256

IACPPT  Inter-American Convention to Prevent and Punish Torture. x, 157

IACtHR  Inter-American Court of Human Rights. x, 147, 205, 215, 240

ICACW  Inter-American Commission of Women. x, 146

ICCPR  International Covenant on Civil and Political Rights. x

ICESCR  International Covenant on Economic, Social and Cultural Rights. x

ICJ  International Court of Justice. x, 44

ICPD  International Conference on Population and Development. x

IGOs  Intergovernmental Organisations. x

ILC  International Law Commission. x, 52

IPV  Intimate Partner Violence. x, 84, 170, 173, 205, 253

Istanbul Convention  Convention on Preventing and Combating Violence Against Women and Domestic Violence. x, 3, 11, 43, 133, 174, 255

NGO  Non-Governmental Organisation. x

NGOs  Non-Governmental Organisations. x, 132

OAS  Organization of American States. x, 3, 11, 121, 146, 251

Palermo Protocol I  Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. x, 107


RRW  Rapporteur on the Rights of Women. x, 146

UDHR  Universal Declaration of Human Rights. x, 122

UN  United Nations. x, 44, 61, 136, 251

UN DESIPA  United Nations Department for Economic and Social Information and Policy Analysis. x

UN SG  United Nations Secretary General. x, 9, 61, 113, 252
ACRONYMS

UN SRVAW United Nations Special Rapporteur on Violence Against Women. x, 9, 61, 113, 115, 136, 252
UNFPA United Nations Population Fund. x
UNGA United Nations General Assembly. x, 3, 9, 44, 61, 104, 253
VAW Violence against Women. x, 3, 43, 61, 121, 146, 205, 249
VDPoA Vienna Declaration and Programme of Action. x, 149
WHO World Health Organization. x