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# Gender Equality in a Global Perspective

Edited by  
Anders Örténblad, Raili Marling  
and Snježana Vasiljević



# Gender Equality in a Global Perspective

*Gender Equality in a Global Perspective* looks to discuss whether gender equality can be adopted as it has been defined in international documents anywhere, or whether it needs to be adapted in a more local context; discuss which factors and perspectives need to be taken into account when adapting gender equality to specific contexts; suggest research approaches for studies on whether a universal (Western) concept of gender equality fits in certain specific contexts; and finally suggests challenges to the existing interpretation of gender equality (e.g., theory of intersectionality) and the development of legal and policy framework.

This book is situated within the tradition of comparative gender studies. While most other such books take up and compare various ways of implementing (or not implementing) gender equality, this book studies and compares whether or not (and to what extent) a specific definition of gender equality (GE) could be adopted by various nations. Thus, all chapter contributors will engage with the same definition of GE, which will be presented within the book, and discuss the possibilities and constraints related to applying such a definition in their particular national context.

Readers will learn about the problems of applying a universal concept of gender equality and the possible reasons for and modes of adapting gender equality to different contexts. *Gender Equality in a Global Perspective* looks to maintain a critical and reflexive stance towards the issues raised and will seek to present multiple perspectives and open-ended answers. As such it hopes to contribute to the international discussion of human rights more broadly and gender equality specifically.

The intended audience is not limited only to but will include policy makers, scholars and students with an interest in gender issues, organizational theory, political science, human development, policy analysis, globalization and other management sub-disciplines.

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# Preface

Another long journey has come to an end as we hand in the finalized manuscript for this edited book. It has been a very stimulating project, but sometimes also exhausting. Anders took the initiative in starting the book project a couple of years ago, and invited Raili and Snježana, both with much more professional experience in the area of gender equality than Anders had. Thereafter we have met quite often, mainly in emails but sometimes also via Skype. So far we have not met AFK (away from keyboard) but hope to do so as soon as possible, and celebrate that our project has been finalized.

Nor have we met many of the contributors to the book AFK, but we very much hope to meet you too in the near future. We believe that intercultural meetings are one way of making the world a better place, and hopefully the content of the book will also help in that ambition. Our authors are not just from all over the world, but they are also men and women. This, we hope, in a small way shows that gender equality can be achieved when men and women together undertake the difficult process of change.

We would like to first and foremost thank the authors who contributed to the book. We are grateful to you for your support and patience in the often stressful editing process, especially in the finalization stage. We also thank colleagues who helped us with finding contributors from such a wide range of countries.

We are also deeply indebted to the support of our editors at Routledge, especially Brianna Ascher and David Varley, without whom we would not have been able to finish the work as efficiently.

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**Part I**

# **Background and Introduction**





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# 1 Introduction

## Different Dimensions of Gender Equality in a Comparative Perspective

*Snježana Vasiljević, Raili Marling  
and Anders Örtengren*

### Introduction

This comparative book gathers ten case studies from different cultures to interrogate whether a universal (Western) concept of gender equality (GE), such as expressed in different international documents (in our case specifically in the UN Convention on the Elimination of all Forms of Discrimination Against Women [CEDAW]), can be applied in different specific contexts according to the same broad legal definition or whether local adaptations are needed. Primarily, we highlight the need to discuss factors and perspectives that need to be taken into account in such location-specific adaptations, especially in the application of laws and international norms. International norms may be added to national legislations but they need not be enforceable in exactly the same way. Slogans of universal human rights, including GE, need to be supplemented with localized discussions of adaptation and application. The book will also highlight challenges to the existing interpretation of GE in the context of intersectionality. We hope that the results of this comparative research can be used as a basis for further recommendations in the development of legal and policy frameworks in different countries and international organizations. The articles included in the volume also suggest avenues for further research.

To create a sound basis for the following volume, the present introduction will try to detect and critically assess crucial changes in concepts of equality on the doctrinal as well as the institutional, pragmatic level. The introduction will first describe the conceptual difficulties related to the notion of GE in different waves of feminist thought. Special attention is given to the concept of intersectionality and transnational feminist challenges to the previous universalist language of Western feminism. The introduction provides an overview of feminist legal theory and an in-depth look at the CEDAW definition of gender equality and the EU gender equality framework that have both had an immense role in shaping international GE discourses. Finally, we outline the starting point for the discussion in the subsequent chapters and explain the choice of countries analyzed.

## Gender Equality

The feminist and legal questions of gender equality cannot be separated from broader social developments in the 20th century, such as changing patterns of labor force participation, technological innovations, changes in social ideologies, including gender ideologies. It is these changes that frequently guide interpretations of the concept of equality and equal rights. Gender is in this study treated as a social construct, the social meanings given to biological sexual difference. It is gender that defines the roles, rights, responsibilities and obligations of women and men. The role of women and men has always been interpreted in terms of social expectations about behaviors that are considered appropriate for both genders. The norms are not biologically but socially determined. In other words, one becomes a man or a woman fitting their society's expectations in the process of socialization. As famously posited by the French feminist philosopher Simone de Beauvoir (1972, p. 267), "one is not born but becomes a woman." According to Mikkola (2011, p. 68), "females become women through a process whereby they acquire feminine traits and learn feminine behaviour." The same applies to men as well. In other words, women and men are the "intended or unintended product[s] of a social practice" (Haslanger, 1995, p. 97). There are scholars who argue that biological difference is also socially constructed (e.g., Butler, 1990; Laqueur, 1990).

Men and women, however, are not just socialized into different roles, but their roles have a different social status, as noted already by de Beauvoir. Gender difference is also a hierarchy in which practices and behaviors associated with men have historically been valued higher than those linked to women, resulting in women's disadvantaged status in all spheres of society. Feminist authors have called attention to this for centuries, but most emphatically in the 20th century when different strands of feminist politics and philosophy have offered different explanations of gender imbalance and equally different visions for correcting it.

Feminism has been on the legal agenda for over a century already, and has gone through several phases, focusing first on sameness, then differences and finally diversity. The first and second phases are characterized by the discussion on differences between men and women, and the third phase by focusing on differences between women, multiple identities and multiple oppression. It seems that feminism has come to its fourth phase, which is characterized by thinking about goals, subjects and feminist strategies. The core question of today's debate in feminism is whether women are still the only object of feminism, whether the goal of feminism is achieving substantive equality for women and how to achieve it. In other words, feminists grapple with the question of whether the focus of feminism is the elimination of all forms of discrimination against women (like it is legally described in the CEDAW, the document we use extensively in the book) in order to avoid gender imperialism and the false universalism which produces distortion

and marginalization of female experience in cases of minority women and strengthens the binary understanding of gender identities.<sup>1</sup>

Feminist legal theorists have produced numerous criticisms of existing laws but there is no one single interpretation of what the transformation of law and legal standards should look like. Therefore, it is not surprising that different countries in the world have different understandings of gender equality as well as different interpretations of national law and policy measures adopted within the general international gender equality framework (e.g., defined by the CEDAW). In general, in feminist theory, there is also no joint standpoint on how the internationally adopted policy measures should be interpreted and implemented. Different approaches have been offered by liberal, cultural, radical, postmodern and intersectional feminists.

The focus of liberal feminism was the removal of discriminatory practices in everyday life as well as from legal documents. Despite the fact that in the 1960s and 1970s, liberal feminists created some positive changes in the position of women, certain obstacles in achieving substantive equality also became obvious. Liberal feminism, also known as equality feminism, believes that men and women are born equal and thus deserve equal treatment without any hindrance. This is the type of feminism that has been most vocally associated with GE in the public sphere, from suffrage struggle to the fight against gender discrimination in the workplace. Liberal feminism does not seek to challenge the current social structures and practices, but to open them to women. As the Australian ecofeminist Val Plumwood (1993, p. 27) has suggested, this position “attempted to fit women uncritically into a masculine pattern of life and masculine model of humanity and culture which is presented as gender neutral.” An additional challenge was the lack of attention to differences between women, especially race and sexuality, as critical race theorists, postcolonial and lesbian feminists pointed out. The mainstream liberal feminists were frequently blind to their own privilege (see e.g., Lorde, 1984).

While the liberal feminist strategy was very successful in questioning discriminatory laws and irrational classifications, that strategy was unsuccessful in challenging laws that provided justification for a different treatment of men and women on the grounds of biologically determined differences. For example, the principle of equal treatment is hardly applicable in a situation when there is no man as a point of comparison, such as in cases of pregnancy. To put it more plainly, liberal feminists insisted on gender neutrality. However, if the law mirrors mainly male experiences, women will not benefit from gender-neutral laws. In other words, equal treatment in such cases does not lead to a substantive equality; actually in most cases it results in more inequalities.

Legal concepts are imperfect, mostly subjective and partial. Feminist legal scholars believe that the subjectivity and partiality of legal concepts mirror male dominance. In other words, gender-neutral rules are created to maintain male dominance over women (MacKinnon, 1989, p. 114).<sup>2</sup> Sameness

does not mean equality but male dominance and female subordination (MacKinnon, 1989, p. 33). The legal system that pretends to be gender-neutral does not necessarily serve the needs of both sexes equally well. This is reflected in women's distrust in the justice system and, for example, their reluctance to report sexual violence. Carol Smart (1989, p. 69) also claims that women should be careful in the application of law since it is not gender-neutral and advantages men. Therefore, she insists on feminism as a new form of knowledge which will offer a new reality for women, without the legal methods created by men.

Cultural feminism appeared in the late 1970s as a reaction to the failure of liberal feminism to achieve substantive equality. The idea of cultural feminism was not to assimilate women into a male-dominated society and adjust them to the male-oriented norms. Instead, the goal was to strengthen the institutional structures to support women's needs. However, cultural feminism was criticized because emphasizing differences as valuable sometimes may lead to discrimination (e.g., part-time work agreements or genuine occupational requirements justified by the protection of women's supposedly sensitive nature indirectly discriminate against women and perpetuate women's subordinate position).

For many contemporary feminists, even the definition of the concept of the woman is problematic. Although the concept of woman is a central point of departure for all feminists, different schools of feminist thought interpret it differently. Starting from the 1970s, there has been increasing discomfort with the universal definition of the woman and the "overdetermination of male supremacy" (Alcoff, 1988, p. 405).

A new approach is offered by postmodern feminists who do not place women in the center of feminist theory or political action. Postmodern feminism, as a reaction to previous feminisms, does not represent a single theory and does not believe that there is a unique solution for the oppression of women. Instead, postmodernists believe that individuals consist of multiple identities which "overlap, intersect and even contradict each other" (Bartlett, 1994, p. 14). "Postmodern feminism made its entry into the law by way of the critical legal studies movement (CLS), a loose coalition of left-leaning academic scholars who, beginning in the 1970s argued that law is intermediate, non-objective, hierarchical, self-legitimizing, overly-individualistic and morally impoverished. . . . Feminist scholars have incorporated ideas of CLS and tried to transform them into the core of a constructive feminist practice" (Bartlett, 1994, p. 13). However, they also criticized the CLS movement for its failure to develop a positive program that could survive its own critique.

Intersectionality offers an alternative challenge to the universalist approaches to gender and thus invites us to look critically also at GE and whether and how its definition is adaptable to local contexts not just *de jure* but also *de facto*. This is extremely important from the standpoint of different experiences and different identities (e.g., black women, gay people of

different ethnic origins, women with disabilities, etc.) who face multiple discrimination and whose position needs to be analyzed intersectionally (Crenshaw, 1991). In her work in critical legal theory and critical race theory, Crenshaw (1989, p. 149) argued that “because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.” Crenshaw’s (1994, p. 1244) utilization of intersectionality “highlights the need to account for multiple grounds of identity when considering how the social world is constructed.” Courts are usually using the so-called single-axis approach, which makes the hierarchy of equality visible and actually shows that some groups enjoy preferential treatment while others remain marginalized or even invisible. Black feminists criticized existing feminist theory and critical legal studies for race essentialism in feminist theories and lack of gender awareness in critical race theories (Crenshaw, 1989; Harris, 1990). Black women have traditionally worked outside the home and their number had significantly exceeded the share of white women in the working class. The fact that black women must work is in conflict with the norms that women should not work, which often created personal and emotional relationship problems. Minority women who fail to adapt to “appropriate” gender roles and who do not fit social stereotypes are described as a threat to mainstream society’s system of values. This is only one aspect of intersectionality which cannot be understood by analyzing the traditional patriarchal patterns rooted in the white experience.

The theory of intersectionality mostly criticized existing feminist theory for being founded on white women’s experience. However, white women also have multiple intersecting identities and feminist theory recognized only the part of women’s identity common to the majority of the female population. Previous feminist thought did not recognize the experiences of disabled, lesbian, ethnic or immigrant women. For example, focusing on two dimensions of male violence against women—battering and rape—proves intersectional discrimination on grounds of sex, race or ethnicity.<sup>3</sup> If we focus on the European context, the examples can be found in recent European history of Balkan wars (1991–1995). Frequent ethnic rape was proof of “superiority” of the army, which dominated over someone else’s territory (Vasiljević, 2009, p. 175). Such rapes are never shown from the multidimensional experience of women’s oppression, but only as sexual violence.

As can be seen from above, the meanings given to gender difference vary greatly even in feminist theories and the theories approach the fact of gender inequality differently. However, what hinders the political and legal attempts at securing GE is frequently the wide misinterpretation of the word “equality” itself. Many of the problems arise from the application of the principle borrowed from Aristotle according to which “justice consists in treating like cases alike and different cases differently” (Jaggar, 1990, p. 239). In the case of men and women the question of similarity and difference has been

anything but solved, as can be seen from the brief introduction to divergent feminist views above. Gender difference exists, yet it can be equally perilous to overemphasize it or ignore it (Minow, 1990, p. 49).

The question is not an innocent academic disagreement but also plays an important role in politics. As Joan Scott (1990, p. 144) has argued:

Placing equality and difference in an antithetical relationship has, then, a double effect. It denies the way in which difference has long figured in political notions of equality and it suggests that sameness is the only ground on which equality can be claimed. It thus puts feminists in an impossible position, for as long as we argue within terms of discourse set up by this opposition we grant the current conservative premise that since women cannot be identical to men in all respects, they cannot expect to be equal to them.

This has derailed many national efforts at creating gender equality legislation (e.g., famously in the case of the US Equal Rights Amendment). The only way we can overcome this bind is to deny the false opposition of equality and difference, and to remind the public that the antonym of equality is inequality.

Two (interrelated) conceptions of equality have been important in the legal context: one in which equality is defined in terms of equal formal rights to men and women; and the other in which equality has been related to equal access to welfare and equal opportunities. The first conception is formal and legal, the second mainly material and social. Other authors have differentiated between the equality of outcome and equality of opportunity. In the first it is assumed that women and men should have equal political representation and equal salaries; the second that they should be guaranteed equal opportunities to compete for political positions or jobs that would give them equal salaries. While GE policies initially sought to address the former, they have increasingly started to stress the latter (Kantola, 2010, p. 6). Johanna Kantola (2010, p. 6) also perceives a shift “from theories of distributive justice to theories of recognition as fundamental to equality.” In other words, while the initial GE policies sought to ensure the just distribution of social resources between men and women, they have increasingly moved towards identity politics. Fraser (2010) suggests that both redistribution and recognition were crucial in addressing inequality. However, in her recent work, she believes that the change of emphasis towards recognition has left economic questions under-analyzed in today’s feminism (see Fraser, 2013). Contemporary feminist theories believe that law cannot be interpreted as a scholarly field deprived of moral or political context, independent of social reality (Shukla et al., 2015, p. 45).

Today the universalist language of earlier feminist theorizing has been challenged by transnational feminism and by intersectional feminism. As postcolonial theorists have shown, many well-meaning feminist texts have

been inherently Western-centered, that is, presenting West and its social norms as normative for all cultures. This has been critiqued famously by Chandra Talpade Mohanty (1984) who, in her analysis of feminist texts of the period, demonstrated the representation of non-Western women as monolithically traditional and victimized, as a convenient Other against which Western feminism can define its own superiority. This work often depends on “sanctioned ignorance” from the West (Spivak, 1988, p. 287) and helps to perpetuate the power difference between West and non-West. Perhaps even more crucially, the non-Western women are made into silent objects of Western feminist observation and knowledge-creation. Non-Western women are not allowed to speak for themselves, but are being interpreted by Westerners. This critique of unequal access to knowledge creation continues to be an important argument in transnational feminism today (see e.g., Suchland, 2011, p. 854). Our book is aware of this criticism and it is for this reason that we have sought out authors from different cultural locations to offer their perspective on their cultures, instead of imposing a uniform Western analytical framework on everybody. We want to escape the typical transhistorical Western approach that locks non-Western societies into an eternal process of catching up—but because they are trying to catch up to the Western model that need not fit them, they will always remain secondary to the West (Koobak & Marling, 2014; Sarkar, 2004).

Legal systems have thus been facing a great challenge in dealing with GE. Equal formal rights are based on the philosophical supposition that men and women are born equal. Equality in this sense is a fundamental condition: as a result, men and women should be equal before the law. Although this position has a long tradition, it was not totally taken for granted before the re-activation of feminist movements in the Western countries in the 1960s. Feminist legal theory has provided the most consistent work on how this is to be achieved.

The above discussion shows, however, that the understanding of GE has not been uniform within feminist theory and feminist legal theory and that past two decades have seen the vocal critique of both a simplified view of male-female difference and also of the possibility of devising universal legal remedies that would not perpetuate the power differential between the West and the rest. Different authors also caution about excessive optimism about the mere formal granting of rights that need not effect meaningful change (Smart, 1989, p. 144). Mitchell (1987, p. 26) also concurs, suggesting that “equal rights are an important tip of an iceberg that goes far deeper.”

## **GE in International Law**

GE has been defined as a central developmental goal by the United Nations (UN), World Bank, Organization for Economic Co-operation and Development (OECD), International Labor Organization (ILO) and many other international organizations. Usually, the term GE means women having



the same opportunities in life as men. However, equal opportunities do not necessarily lead to equality of outcomes. Gender inequalities exist because of both outright discrimination in society and persistent gender stereotypes, difficulties with regulating the private sphere, the segregation of the labor market, etc. Primarily, gender inequalities start in families and spread through the institutional structures and in most cases they dominate in the labor market (e.g., because of the difficulty of balancing work and family life, which continues to be seen as the woman's responsibility in most countries). But inequalities do not stop at this point; they reach all aspects of education, practices and stereotypes, which leads to the disempowerment of women. Thus, equal rights are an important concept that needs to be established in international legal practice.

The international organization that first tackled GE as an international issue was the UN. According to the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), "equality is the cornerstone of every democratic society that aspires to social justice and human rights." To this day, the most universally accepted instrument for realizing GE and influencing cultural and traditional definition of gender roles and family relations is the CEDAW. CEDAW was adopted in 1979 by the UN General Assembly. CEDAW represents an international bill of rights for women. It introduced a duty for states to implement substantive equality for women. The critics argued that the existing UN human rights agreements were deficient regarding the protection and promotion of women's human rights and this resulted in the adoption of the Declaration on the Elimination of Discrimination against Women in 1967. However, the Commission on the Status of Women considered it necessary to adopt a legally binding instrument which would give a normative effect to the provisions of the Declaration. Therefore, CEDAW is a product of the growing need to deal with discrimination against women in a comprehensive way (UN Women, n.d.).

CEDAW consists of a preamble and 30 articles, and defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. CEDAW defines discrimination against women as "... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (*Convention to Eliminate All Forms of Discrimination Against Women*). 187 countries (out of 194) have ratified the treaty. Six countries have not ratified CEDAW, including the United States, Iran, Somalia, Sudan and two small Pacific Island nations (Palau and Tonga).

CEDAW continues to be a major tool in international GE campaigns. However, when we look at legal literature, we see quite a number of challenges to the effectiveness of CEDAW as a tool of promoting equality of women and men de facto. There is a clash between the normative framework

and social practice. Therefore, many feminists have criticized international law in general and CEDAW in particular, arguing that international law is blind to female experience (Charlesworth et al., 1991, p. 644). Mostly, criticisms are directed against the disinterest of international law in substantive equality issues, its normative structure and problem that some states are reluctant to ratify treaties or usually make reservations on them. This is highly problematic in terms of enforcement of human rights. Moreover, international law is focused on the public sphere in the area of political and social rights rather than the private sphere (Brooks, 2002, p. 345). This proves to be very problematic in the context of gender since women's roles in the domestic sphere frequently hinder their participation in the public sphere.

The central feminist argument in criticizing CEDAW is that it is assimilationist and it is framed according to the male model as the dominant norm (Brooks, 2002, p. 347). According to CEDAW, there is no need to change anything except stereotypes and formal barriers to access (Brooks, 2002, p. 351). Another argument comes from the theory of intersectionality, which criticizes feminism which cannot be adequately applied to women of different ethnicities, cultural or class identities (Crenshaw, 1989, p. 154). CEDAW observes and treats women as a homogenous group (Otto, 2010, p. 357). Essentially, CEDAW offers only *de jure* equality, and the implementation of equality is not assured. However, despite the criticisms it is also important to stress that "CEDAW provides a strong normative basis for overcoming the ideological barrier of traditionalist culture and religion to women's equality in all these contexts, predicating a hierarchy of values in which women's right to equality prevails over discriminatory traditionalist rules or practices" (Raday, 2012, p. 520).

CEDAW has not been the only international attempt to establish universal rules about GE. In Europe where the clash between traditions, societal trends and recently established legal concepts has meant that GE was sometimes implemented, sometimes not, there was a need to establish a clear GE concept. The general principle of equal treatment between men and women was established in the Treaty of Rome of 1957 (Article 119 of the 1957 European Economic Community (EEC) Treaty) and now this principle is prescribed in Article 157 of the Treaty on the Functioning of the European Union (TFEU), which is recognized as a fundamental norm of EU law (Treaty on the Functioning of the European Union, 2007). The principle of GE is prescribed by Article 23 EU Charter of Fundamental Rights, which establishes that the equality between men and women must be ensured in all areas, including employment, work and pay (Charter of Fundamental Rights of the European Union, 2000). The EU Charter of Fundamental Rights represents a comprehensive catalogue of fundamental rights and is legally binding since 2009. For four decades, EU actions in this field of discrimination were limited to sex discrimination in the workplace. With the entry into force of the Amsterdam Treaty, the EU obtained a clear legal basis

for combating discrimination, which is currently enshrined in Article 19 of the TFEU on a number of grounds other than sex. The principle of non-discrimination is also established in Article 21 of the EU Charter of Fundamental Rights on the grounds of sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The general principle of equality between men and women was the legal basis for the adoption of numerous GE directives and case law of the Court of Justice of the European Union.

However, despite the EU's comprehensive equality framework, women are still discriminated against on the basis of their sex and underrepresented in decision-making. By comparing the international human rights law standards with EU law, it might be concluded that EU law does not offer the same level of protection as either the European Convention or UN standards (Vasiljević, 2015a, p. 61). Another issue is that in the EU there is the normative deficiency of anti-discrimination law. It is limited to the market mentality and does not go beyond the EU competences. "It is committed to a normative vision of market equality and unwittingly reflective of patterns of market exclusion by lumping disengaged individuals together in groups, which are in fact merely sets" (Somek, 2011, p. 157). Furthermore, the EU equality concept is founded on the prerequisite that a society is cleansed of prejudice and exclusion. There is a fear that "anti-discrimination law can become a very blunt tool of social protection in the hands of a business-friendly judiciary" (Somek, 2011, p. 158). Also, some scholars note that EU legislation may prove to be ineffective because it does not provide comprehensive legal protection based on a combination of multiple experiences (Vasiljević, 2015b, p. 186).

CEDAW, which is the source of international law, is the framework for mainstreaming women's rights in all structures of daily life. The CEDAW framework defines two critical principles: the principle of non-discrimination and the principle of equality. CEDAW provides the equality of opportunity and the equality of results. The equality of opportunity is a formal equality which requires all laws to have provisions on GE. But this formal equality is not enough for the achievement of equality in practice. States should provide conditions that actually enable women to exercise and enjoy their rights to equal opportunities.

Enforcement mechanisms provided by CEDAW are outlined in Article 29 and Article 18. The first mechanism is the interstate procedure, which outlines that all conflicts dealing with the interpretation of CEDAW have to be arbitrated. If the conflict cannot be resolved during arbitration, it is sent to the International Court of Justice, the decisions of which are binding for states. The problem is that usually a state is reluctant to bring a claim against another state. Another strong deterrent is a fear of retaliation acts. Furthermore, state parties can use a reservation to avoid having to answer to interstate claims.

The second mechanism is state reporting (Article 18). States who sign CEDAW are obliged to submit an initial report within the first year of ratifying CEDAW and must submit further reports every four years. The purpose of the reporting mechanism is to monitor what progress the government has made in implementing CEDAW into domestic law. State reports are reviewed by the Committee for the Elimination of All Forms of Discrimination against Women, which was established under Article 17. The Committee consists of 23 independent experts who are nominated and elected to CEDAW by states. The Committee issues general recommendations, but they do not have the authority to issue sanctions.

The relationship between international law and domestic law depends on the principles of dualism and monism. In a case of conflict between domestic and international law, in national legal orders that recognize the dualist approach, the domestic courts would apply international law. In contrast, monism invokes the supremacy of international law within the national legal system and describes the individual as a subject of international law.

In Europe there are two separate supranational levels of human rights protection. The first is the European Convention of Human Rights (ECHR), operating under the auspices of the Council of Europe (CoE), and with the European Court of Human Rights (ECtHR) as the final judicial body to hear and settle alleged violations of the Convention by the CoE's 47 member states. The second is the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union (EU Charter) that was promulgated by the 2009 Lisbon Treaty. However, the legal order of the EU, interpreted by the Court of Justice of the European Union (CJEU), creates a new arena for the further development of fundamental rights protection.

Given that all EU member states are also members of the Council of Europe, it would appear that there is no need for two sources of European human rights law enforced by two separate legal institutions. Both European courts represent enforcement mechanisms for the implementation of European non-discrimination and equal opportunities standards. Like CEDAW, the ECHR as a basic legal foundation for the ECtHR judgments is a source of international law, and its applicability in national legal orders differs from state to state. State parties of the ECHR are obliged to enforce ECtHR judgments of a financial nature. The ECtHR also examines domestic law and policies. For this reason, some consider the European Court of Human Rights to perform the function of a constitutional court for Europe. In the EU it is very important to emphasize the supreme character of EU law. This means that you cannot depart from the EU law by a subsequent national law. The CJEU has also been clear that EU law takes precedence over all other claims of international law and the decisions of other international tribunals. Due to this supreme character, EU law can be directly applicable. The principle of direct effect of EU law enables an individual of a member state to rely on, for example, the treaties before national tribunals

and national courts. A European norm can have a direct effect when it meets three requirements: namely, the text has to be sufficiently clear, unconditional and not requiring other legal actions.

The Court of Justice has jurisdiction over cases brought by a member state against another member state for treaty infringement, by a European Community institution against a state and by individual citizens or organizations against European Community institutions. The Court of Justice does not have jurisdiction over the appeals of national court decisions. EU member states are obliged to enforce and implement CJEU judgments. The CJEU has developed a general principle of state responsibility for non-compliance with EU law. State liability derives from the fact that EU member states are responsible for the creation and above all for the implementation and enforcement of EU law.

Issues deriving from different definitions of GE, interpretations of international law, intersectionality and cultural differences will be observed through research analysis of GE in different countries included in this book. Feminist jurisprudence is deficient because it has not devoted enough attention to real-life experiences of women who do not speak along the lines of the “dominant discourse.” According to Patricia Cain (1988, p. 165), “most female legal theorists, focusing on sameness and difference, have fallen into the assimilationist trap (all women are equal to men/all women are equal) or the essentialist trap (all women are different from men in an essential way/all women are different, but what is important is their common essence)”. The core difference between these two views lies in the fact that the former neglects the reality of differences, while the latter considers that differences are not important. These two ideas overlap in that they understand women as a group that consists of essentially equal individuals. While it is necessary to determine similarities among women, it is important not to ignore differences. A normative principle that respects only what we have in common does not respect women’s individuality, ignores differences (experiences of women of color, migrant women, lesbians, women with disabilities, etc.), and sends out the message that the differences among women are not relevant. It does not suffice to identify the differences in race, class and sexuality. The differences need to be interpreted.

The readers will learn about the problems of applying a universal concept of GE and the possible reasons for and modes of adapting gender equality to different contexts. The book will maintain a critical and reflexive stance towards the issues raised and will seek to present multiple perspectives and open-ended answers. As such it hopes to contribute to the international discussion of human rights more broadly and GE specifically.

## **Aims of the Book**

Our desire to provide case studies from within different societies dictates the choice of comparative methods for the research. As Inderpal Grewal

and Caren Kaplan (1994, p. 17) suggest, meaningful transnational interventions require “comparative work rather than the relativistic linking of ‘differences’.” The chapters tackle different political and legal systems and their changes over time, historical transformations that the countries under discussion have undergone, and cultural factors and traditions that hinder or promote the adoption of GE. The development of GE requires good governments and political frameworks that give men and women equal voices in the gender debate on defining the relationship in the hierarchy of power.

The starting point for all chapters is the CEDAW definition of GE:

According to the Universal Declaration of Human Rights all humans are born free and equal, and the Convention on the Elimination of All Forms of Discrimination against Women refers to this declaration in its second paragraph. CEDAW represents the most powerful international mechanism for promoting the “same rights” and the “same opportunities” which must be available to all men and women in various fields of human activity, including but not limited to education, marital legislation, and labour. In its preamble CEDAW is repeating the terms “equal rights of men and women” and “equality of rights of men and women” as well as reaching the “full equality of men and women” in the final opening paragraphs before Article 1. Therefore, the concept of gender equality may be taken to primarily refer to the full equality of men and women to enjoy the comprehensive list of political, economic, civil, social and cultural rights, with no one being denied access to these rights, or deprived of them, because of their sex.

All authors were asked to analyze, given the above definition:

- To what degree is there GE already in the country you study? What has the legal development been?
- Is GE only formally guaranteed in legislation or also embraced in everyday social life (implementation of international standards/European legislation, issues that have arisen in implementation, difficulties of interpreting (at the institutional and judicial level) and/or adapting international/European standards to the local context)?
- Would it be possible to fully (everywhere, always) adopt GE in practice in your country? How has the historical/traditional/political background of the country influenced the adoption and popular perception of GE?
- Which parts of GE would be impossible to adopt in practice? Why?
- What would need to be done (and how) to enable for GE to be fully adopted in practice?

The chapters illustrate their answers to the above questions with evidence derived from empirical data or literature reviews on different aspects of

social life: political participation and access to political power, labor force participation, education, health. Authors were asked to be attentive to intersectional dimensions in addition to gender (race, ethnicity, class, sexuality, age, ability, etc.). We sought nuanced discussion and in-depth analysis of GE in the particular country, based on local knowledge that may be inaccessible to international observers.

The selection of countries covered in the volume includes states that are frequently considered having achieved a high degree of GE (Australia, the US, although we will show continued problems in both) as well as a range of countries where the application of GE has been facing challenges: post-socialist Central and Eastern Europe, Africa, Latin America and China. Our volume does not include analyses of the Nordic countries because there is already ample literature about their gender policies. For the same reason, we have tried to de-emphasize Western Europe and instead have zoomed in on Central and Eastern Europe (CEE), where post-socialist transition has created different obstacles to the acceptance of GE. Our three case studies from the region show how countries of CEE that are frequently lumped together as a single region have distinctive trajectories, depending on the history and religious composition of the countries. For the same reason, we also chose two case studies from the Americas and Africa. All chapters prove that challenges to the adoption of international gender equality norms are rooted in local histories and cultural traditions that should not be overlooked in policy making, international law or international development.

Our study is truly global in reach as we have covered all continents and countries with very different levels of development. The chapters are organized regionally, so that a reader who is interested in, for example, Africa, can find the chapters from that continent one after another. We have chosen to organize our chapters so as to break the traditional Western and Eurocentric thinking. Thus we start from the countries from Africa, to draw attention to the complexities related to the application of GE there. Our volume features a chapter from Nigeria by Funmi Josephine Para-Mallam and a chapter from Egypt by Mohamed Arafa and Ahmed El-Ashry. We then move on towards the East, to China (chapter written by Yan Zhao), a major global player but one under-discussed in GE literature. Australia is ranked high in international gender equality indices, but as Archana Preeti Voola, Kara Beavis and Anuradha Mundkur note in their contribution, the country faces a number of challenges. In the context of the Americas, we also move from South to North: Alma Espino analyzes GE in Uruguay, Sonia M. Frías in Mexico, and Colleen Arendt and Patrice M. Buzzanell in the US. In the case of Europe, we have opted to cover three Central and Eastern European countries to provide a more detailed analysis of the challenges of post-socialist transition. Suzana Ignjatovic and Aleksandar Boskovic discuss the situation in Serbia, Snježana Vasiljević in Croatia and Raili Marling in Estonia.

Our overall aim is twofold. First, we seek to show that GE, despite being a universal value touted internationally, remains just an abstract value if we do not analyze the interpretation and application of international GE laws and standards in different cultural and political locations. We call for local analyses written not by international observers often on the basis of English-language international reports, but by scholars and activists on the ground in different cultural locations. Second, we hope to encourage more comparative scholarly work on gender equality that could be used as a basis for substantive legal and political changes.

## Notes

- 1 Both gender imperialism and false universalism are covered by the term essentialism (Bartlett, 1994, p. 1).
- 2 MacKinnon is responsible for making sexual harassment recognized as a legal category.
- 3 Unambiguous focus on rape as a manifestation of male power over women's sexuality blurs the use of rape as a weapon of racial terror. The white man's power was strengthened by the judicial system in which the successful conviction of white men of raping black women was virtually unthinkable.

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## **A Fair Go in the Lucky Country? Gender Equality and the Australian Case**

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