

# Gender Mainstreaming and Human Rights

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Gender mainstreaming is a strategy for achieving gender equality that emerged in the United Nations in the 1970s and consists of integrating gender equality issues into all public policies. In the 1990s, the same strategy began to be applied to human rights to draw attention to the fact that the enjoyment of human rights is different for men and women, and that some human rights violations specifically affect women. This is a reflection and a result of the patriarchal organization of society and men's position of dominance over women. The European and Inter-American Courts of Human Rights have begun to incorporate gender mainstreaming or a gender perspective in some judgments, especially in cases of violence against women.

*Keywords:* gender mainstreaming, gender perspective, gender equality, human rights

## Introduction

The expression “gender mainstreaming” (or mainstreaming a gender perspective) is employed in international and national institutions to refer to a strategy for combatting inequalities between men and women and discrimination against women. Gender mainstreaming is not an end in itself, but a technique to achieve gender equality.

Initially, the concept of “*de jure* equality” or “equal treatment” was employed to fight legal discrimination against women. Later, emphasis was placed on the concept of “*de facto* equality” or “equal opportunity” to refer to the adoption of measures that favored groups in a genuine situation of subordination or disadvantage, such as women in relation to men (positive actions). The purpose was to compensate for existing inequalities in order to achieve equal rights between the two sexes (Carmona Cuenca, 2012, pp. 467-474).

However, women are not a homogenous group; they constitute half of humanity. Therefore, actions to achieve their equality with men must form part of all public policies and should not consist solely of sectoral actions. Bearing this reality in mind, the term gender mainstreaming was coined in the 1970s to highlight the need for the struggle for equality between women and men to become a priority in all social areas: work, politics, the economy, health, education, family, culture, transport, etc.

Women's subordination and male domination have a very long history, and they form the basis of a way of organizing society called patriarchy. However, as has been demonstrated in feminist thought, this does not represent the “natural evolution” of society. Patriarchy originated in a specific historical moment, the Neolithic, and emerged as a result of the changes in human lifestyles that occurred in that particular period (De Barbieri, 1993, pp. 163-164). Subsequently, it evolved into distinct forms in different societies and eras, but has nevertheless survived to the present day.

The term “gender” was coined within feminist theory to refer to a social construct based on biological sex

whereby different stereotypic roles and behaviors are attributed to each of the sexes. Based on this concept, the term “gender systems” refers to the different types of relation that may exist between men and women, including patriarchy but also other possible systems such as societies of female dominance or egalitarian societies (De Barbieri, 1993, pp. 149-150).

Male domination takes very diverse forms in different societies and periods, but in many cases has resulted in the violation of women’s most basic human rights. Ultimately, it has been preserved by “gender violence”, which is the last bastion of inequality (Turégano Mansilla, 2011, pp. 14-20).

In the field of human rights, an analysis from the perspective of gender involves taking into account the differences between men and women in the enjoyment of rights. The aim is to draw attention to the fact that women’s rights may be violated in a way that is different to violations against men’s rights, and that certain violations specifically target women simply because they are female (Tramontana, 2011, p. 145). An analysis of the effective implementation of human rights from the perspective of gender would require a study of the gender relations existing between women and men and of the real situation of women in different societies. It would entail asking the extent to which these relations are “natural” and the extent to which they are social constructs that reflect the interests of one of the sexes. This is a complex exercise that has not yet been fully addressed (Charlesworth, 2005, pp. 13-14). It would also require a reflection on the existing male and female stereotypes that enable specific violations of women’s rights such as female infanticide, forced marriages, gender violence by public and private actors, the prohibition on women to perform certain activities, the imposition of certain behaviors and clothes and various violations of their sexual and reproductive rights (Charlesworth, Chinkin, & Wright, 1991, pp. 628-632).

Women’s subordination is superimposed on other unequal relations based on social class, race, religion, etc. Consequently, women are often subject to double (or multiple) discrimination (Rey Martínez, 2008; Serra Cristóbal, 2013).

The strategy of gender mainstreaming represents an attempt to combat this unjust situation that is widespread in almost all societies today. Here, I will try to show what gender mainstreaming consists of, how it applies to the field of human rights, and the problems that have arisen in implementing this strategy.

### **Origin of the Concept of Gender Mainstreaming in the United Nations**

A brief study of history reveals that the concept of gender mainstreaming first appeared in the international arena in the 1970s as a result of the Declaration of the United Nations Decade for Women, launched in Mexico in 1975, and emerged in response to concern about the effect that development aid policies had on women. Although such policies were apparently “neutral” from the point of view of gender, one of their effects might be to consolidate existing gender inequalities. The idea thus took hold that these policies should take into account the situation of women in aid recipient countries, as well as the prevailing power relations and existence of women’s subordination to men. The concept of gender mainstreaming was introduced as a mechanism to include women’s issues in the idea of development (Charlesworth, 2005, pp. 2-3).

Application of the notion of mainstreaming women’s issues was articulated in the document “Forward-Looking Strategies for the Advancement of Women”, adopted at the United Nations Third World Conference on Women, which was held in Nairobi in 1985. This document established that “the incorporation of women’s issues in all areas and sectors and at the local, national, regional, and international levels should be

institutionalized”.<sup>1</sup>

Ten years later, at the United Nations Fourth World Conference on Women, held in Beijing in 1995, it became clear that the concept of gender mainstreaming had acquired great popularity. It was used extensively in the Platform for Action adopted at this Conference as a strategy to remedy the unequal situation of women in 12 areas: poverty, education and training, health, violence against women, armed conflict, economy, power and decision-making, institutional mechanism for the advancement of women, human rights, media, environment, and the girl child.<sup>2</sup>

The Beijing Platform requires governments and other actors to implement gender mainstreaming in all policies and programs. Thus, before taking decisions, an analysis should be performed of the different effects that these proposals could exert on men and women (Lombardo, 2003).

The Beijing Platform’s commitment was subsequently adopted by the UN Commission on the Status of Women (CSW),<sup>3</sup> the UN Secretary General, and then by the UN Economic and Social Council (ECOSOC). This latter body adopted a complete definition of gender mainstreaming in the “Report of the Economic and Social Council for the Year 1997”.

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.<sup>4</sup>

The same report then lists the general principles for the implementation of gender mainstreaming in the bodies and activities of the United Nations. It states that this technique should be used throughout the system and at the highest levels of responsibility of the organization, and that its implementation must be constantly monitored. This entails making every effort to increase the presence of women in decision-making bodies. The adoption of gender mainstreaming does not imply abandoning policies and programs that specifically target women or positive actions to achieve gender equality. Similarly, organizations specifically created for this purpose (gender units or focal points) will continue to be necessary.<sup>5</sup>

The document also refers to the instruments required to properly apply gender mainstreaming to all United Nations bodies and programs: gender analysis, use of data disaggregated by sex and age, sector-specific gender surveys, and gender-sensitive studies.<sup>6</sup>

In the context of the United Nations, mention should also be made of the Millennium Development Goals, which are eight human development goals set by the 189 member States in 2000 to be achieved by 2015.<sup>7</sup> Goal 3 was to “promote gender equality and empower women” while goal 5 was to “improve maternal health”. A

<sup>1</sup> *The Nairobi Forward-Looking Strategies for the Advancement of Women* (1985), paragraph 114. See from <http://www.un-documents.net/nfl-2.htm#B>.

<sup>2</sup> See from <http://www.un.org/womenwatch/daw/beijing/platform/>.

<sup>3</sup> The principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women.

<sup>4</sup> *Report of the Economic and Social Council for the Year 1997*, Chapter IV-A-I-A. See from <http://www.un.org/documents/ga/docs/52/plenary/a52-3.htm>.

<sup>5</sup> *Report of the Economic and Social Council for the Year 1997*, Chapter IV-A-I-B. See from <http://www.un.org/documents/ga/docs/52/plenary/a52-3.htm>.

<sup>6</sup> *Report of the Economic and Social Council for the Year 1997*, Chapter IV-A-II.B. See from <http://www.un.org/documents/ga/docs/52/plenary/a52-3.htm>.

<sup>7</sup> See from <http://www.undp.org/content/undp/en/home/mdgoverview.html>.

series of indicators was established to assess the achievement of these goals, with a methodology based on gender mainstreaming. Specifically, the goal 3 indicators were: (1) the ratios of girls to boys in primary, secondary, and tertiary education; (2) the proportion of women in paid employment in the non-agricultural sector; and (3) the proportion of seats in national parliament held by women.

However, despite all these proposals, subsequent United Nations documents have acknowledged that only limited progress has been achieved in the implementation of gender mainstreaming in United Nations policies and programs.<sup>8</sup>

At the fifty-ninth session of the Commission on the Status of Women held in March 2015, a review was conducted of the implementation and accomplishment of the Beijing Platform for Action (Beijing+20). The results were considered unsatisfactory and to a large extent frustrating. No assessment has been conducted of achievement of the platform's aims, and the only progress to date has been ratification of its content. The policy statement was "pre-negotiated", and in reality, it has not sparked fruitful debate on the situation of women in today's world (Fernández Montes, 2015).

### Gender Mainstreaming in the Council of Europe

Other important actors at the international level who have adopted the concept of gender mainstreaming include the Council of Europe and the European Union.

The Council of Europe has fought hard in the struggle to achieve gender equality (Verloo, 1999; De Tomás Morales, 2010). In 1996, it established an Expert Group on gender mainstreaming. This group has drawn up several documents, including the report "Gender Mainstreaming. Conceptual framework, methodology and presentation of good practices. Final report of activities of the Group of Specialists on Mainstreaming (EG-S-MS)" (2004).<sup>9</sup>

The report highlights the difficulty posed by the term gender mainstreaming when attempting to translate it into other languages. In many languages, the concept is reduced to that of a "gender-based approach"; however, as outlined in the report, the concept means much more than this since it indicates the need to incorporate gender equality concepts into the main areas of society.

This document includes what has been considered the most complete and detailed definition of gender mainstreaming:

Gender mainstreaming is the (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making.<sup>10</sup>

It also lists the main difficulties that accompany implementation of this strategy:

First, gender mainstreaming may be understood as a new policy that replaces specific gender equality policies. It may even be used by governments as an excuse to suppress these policies. However, understood

<sup>8</sup> *Guía de Evaluación de Programas y Proyectos con Perspectiva de Género, Derechos Humanos e Interculturalidad* (2014), ONU MUJERES, México, p. 11. See from <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2014/Gu%C3%ADa%20de%20Evaluaci%C3%B3n%20de%20Programas%20ONU%20Mujeres%20-%20ESP%20pdf.pdf>.

<sup>9</sup> Directorate General of Human Rights, Strasbourg, 2004. See from [http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/EG\\_S\\_MS\\_98\\_2\\_rev\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/EG_S_MS_98_2_rev_en.pdf).

<sup>10</sup> Directorate General of Human Rights, Strasbourg, 2004. See from [http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/EG\\_S\\_MS\\_98\\_2\\_rev\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/EG_S_MS_98_2_rev_en.pdf), p. 12.

properly, gender mainstreaming requires the continuance of specific gender equality policies, if only to ensure that gender equality issues do not vanish from the political arena.

A second difficulty concerns the relationship between gender mainstreaming and the concept of gender equality. Gender mainstreaming entails fighting not only for “*de jure* equality” but also for “*de facto* equality”. The latter is not limited to equal and non-discriminatory treatment for women and men, but also requires a series of measures that favor genuinely disadvantaged people (positive actions), i.e., women.

Similarly, gender mainstreaming is not limited to the study of women’s issues. Instead, it requires an analysis of all the problems involved, including relations of domination/subordination between the sexes in the patriarchal model, in order to address women’s disadvantaged situation in all areas of social life.

Other difficulties posed by the application of gender mainstreaming concern the actors responsible for its implementation and will require the introduction of changes in the organizations responsible for formulating public policies and procedures. The actors traditionally responsible for gender equality policies have always been experts in this field; however, the aim is for general political agents to implement gender mainstreaming, and these may not sufficiently aware of gender equality concepts. As regards procedures, it will be necessary to employ new techniques such as, for example, sex-disaggregated statistics or gender impact assessment methods.

The report also describes the methodology necessary to implement gender mainstreaming and the prerequisites or conditions for this:

- (1) States must define gender equality as one of their objectives.
- (2) They should maintain specific gender equality policies, the importance of which has already been demonstrated.
- (3) They should use updated statistics on the situation of women and men in every social sphere, i.e., sex-disaggregated statistics.
- (4) Policy-makers must possess knowledge of gender relations and gender equality concepts. Experts in this field should form part of the bodies that carry out all policies.
- (5) It is absolutely necessary that the authorities responsible for applying gender mainstreaming have sufficient material means and human resources for this.
- (6) Women must play a leading role in the implementation of gender mainstreaming. This means that steps must be taken to ensure the equal presence of women in bodies responsible for decision-making, in order for these to take the values, interests and life experiences of women into account.
- (7) Education is probably the most important route to the successful application of gender mainstreaming. It is not sufficient to train experts in gender equality: it is also necessary to incorporate this perspective in programs at all educational levels and to train all members of society. This will involve encouraging studies, research, conferences, courses, seminars, manuals, etc. about gender equality.

### **Gender Mainstreaming in the European Union**

Although EU Treaties do not expressly mention the term gender mainstreaming, they do devote several articles to the recognition of equality between women and men (arts. 2 and 3.3 of the Treaty on European Union, and 153.1.i of the Treaty on the Functioning of the European Union). In close connection with gender mainstreaming, art. 23 of the Charter of Fundamental Rights of the European Union establishes that:

Equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favor of the under-represented sex.

Those that have expressly adopted the term gender mainstreaming are the various Community Action Programmes on Equal Opportunities, ever since the Third Programme (1991-1995). In addition, the Strategy for Equality between Women and Men (2010-2015) states that:

Gender mainstreaming will be implemented as an integral part of the Commission's policymaking, including via the impact assessment and evaluation processes. The Commission will increase the knowledge base on gender equality.<sup>11</sup>

However, despite this explicit reference to gender mainstreaming, its application in the political institutions and processes of Europe has been plagued by difficulties, and has been considered insufficient. The general position is that in many cases, these difficulties have been due to an incorrect understanding of the concept (Lombardo, 2003, pp. 10-11). Despite the recommendations of the Council of Europe Expert Group, gender mainstreaming has sometimes been understood as a substitute for specific gender equality policies, including positive action. Initially, attempts were even made to dismantle some of the structures that were intended to support gender policies in the European Union.

These experiences have demonstrated that the strategy of gender mainstreaming entails potential benefits, but also risks. Its most important advantage is that gender equality can be incorporated into the mainstream political agenda and thus extend to all policy areas. However, it is important to simultaneously maintain specific gender equality policies and gender equality structures as part of the strategy (Lombardo, 2003, p. 11). Similarly, the involvement of gender experts continues to be necessary, both in specific bodies and in the general organs of government. If they are not involved, there is a real danger that the goal of gender equality will be diluted among various public policies without any sincere attempts to implement it.

Sophie Jacquot (2010) has evaluated gender mainstreaming policies in the European Union and their impact on traditional gender equality policies. She found that the European gender equality policy has long been considered exceptional in comparison to other European social regulation public policies. However, since the mid-1990s, there has been a change in these policies, largely due to the introduction of gender mainstreaming. There has been a move away from specific regulatory policies on discrimination against women towards softer policies that are less strictly regulated and target various social groups subject to discrimination, not only women.

Thus the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>12</sup> is aimed at combatting discrimination on the grounds of religion or belief, disability, age, or sexual orientation. Even the Treaty on the Functioning of the European Union<sup>13</sup> devotes Part Two to "non-discrimination and citizenship of the Union" and establishes in article 19.1 that the bodies of the European Union "may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".

This does not mean that new policies based on gender mainstreaming have been ineffective or have had no

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<sup>11</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (Brussels, 21.9.2010 COM (2010) 491 final), p. 12. See from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0491&from=ES>.

<sup>12</sup> See from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0078&rid=1>.

<sup>13</sup> See from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

impact. Jacquot (2010, pp. 118-119) explains that this strategy is an instrument of “soft law” and is a typical example of the “New Modes of Governance” implemented in the European Union. These involve some weakening of authority and greater involvement of private actors in the identification of social problems and the formulation of solutions. Paradoxically, the strategy of gender mainstreaming has produced more changes in gender policies than in other EU policies, even though the main target was mainstream policies.

### **Gender Mainstreaming and Human Rights in the United Nations**

In recent years, the concept of gender mainstreaming has been applied to various areas of public life. It has also begun to permeate work on human rights at the United Nations. Two stages can be identified in this context (Tramontana, 2011, p. 143).

The first of these encompasses the 1970s and 1980s. Thanks to the contribution of feminist theory, there was a growing awareness from the mid-1970s onwards of the need for specific protection for women in international human rights law. Emphasis was placed on the idea that general human rights instruments were insufficient to protect women because in addition to suffering the same rights violations as men, women in all societies were the target of other, specific forms of rights violations due solely to their sex, to being women.<sup>14</sup> The reason was women’s subordinate position to men in virtually all countries, based on patriarchal models of society. Human rights declarations had been designed by and for men, and they did not reflect the specific problems faced by women. Various initiatives were implemented, culminating in the adoption in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>15</sup>

The second stage in this evolution of international human rights law commenced in the first half of the 1990s and continues today. The specific instruments for the protection of women’s rights, such as CEDAW, proved insufficient. The need became apparent to incorporate the recognition of gender differences into the interpretation and application of general human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), adopted by the National Assembly of the United Nations on December 19, 1966<sup>16</sup> (Tramontana, 2011, p. 144). The concept of gender mainstreaming, which had already been applied to the field of public policy, thus began to be applied in the field of human rights.

The idea behind gender mainstreaming is for gender equality issues to be taken seriously and incorporated into central, mainstream, “normal” institutional activities, rather than being relegated solely to the marginal activity of institutions specializing in women’s human rights. Although sorely needed, these latter institutions contributed to the construction of “women’s ghettos” with less power and priority and fewer resources than “general” human rights bodies (Charlesworth, 2005, p. 1).

The first step towards integrating gender mainstreaming into this area was taken at the World Conference on Human Rights, held in Vienna in 1993, where it was proclaimed that “the equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity”.<sup>17</sup>

Gender mainstreaming has affected UN human rights structures. Approaches to mainstreaming gender

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<sup>14</sup> The pioneering Convention on the Political Rights of Women, adopted by the UN in 1953, was an exception to this general panorama.

<sup>15</sup> See from <http://www.un.org/womenwatch/daw/cedaw/>. Although Macías Jara (2012, p. 1756) has claimed that CEDAW was the first regulatory instrument to apply a gender perspective, considering women’s situation in various areas: access to employment, education, political and public life, and violence against and exploitation of women.

<sup>16</sup> See from <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

<sup>17</sup> *Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, II, paragraph 37*. See from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

perspectives in the UN human rights system were developed in 1995 by a council of experts. These approaches included the production of “gender-disaggregated data”, took “gender-specific aspects of human rights violations” into account and employed “gender inclusive” language (Charlesworth, 2005, pp. 6-7).

On December 14, 2007, the UN Human Rights Council adopted Resolution 6/30 “Integrating the Human Rights of Women throughout the United Nations System”. This required all bodies within the UN human rights system to “regularly and systematically take a gender perspective into account in the implementation of their mandates”.<sup>18</sup> However, the response of the various UN agencies to this request has been uneven and almost always insufficient. To a large extent, this has been due to the lack of women participating in these bodies.

For example, according to data from 2015, women do not account for more than thirty percent of members on the UN Human Rights Committee,<sup>19</sup> the Committee on Economic, Social and Cultural Rights, or the Committee against Torture. Only one of the 10 members of the Committee on Enforced Disappearances is a woman and the Working Group on Arbitrary Detention has no female members at all.<sup>20</sup> The only committee that has a majority of women is the Committee on the Elimination of Discrimination against Women.<sup>21</sup>

In July 2010, the United Nations General Assembly created UN Women,<sup>22</sup> the UN Entity for Gender Equality and the Empowerment of Women, responsible for supporting all aspects of the work carried out by the Commission on the Status of Women (CSW). This body, which merges various parts of the UN system working towards gender equality, was created in order to have a greater impact on decisions regarding the rights of women.

The UN Human Rights Committee, responsible for monitoring the International Covenant on Civil and Political Rights (ICCPR), has adopted some General Comments on the articles of this convention that focus attention on the situation of women. In particular, it is worth noting that General Comment No. 28, concerning the equality of rights between men and women (article 3)<sup>23</sup>, examines each of the rights recognized in the convention from the perspective of the abuses suffered by women and, in general, discusses how this can affect women’s lives. It expressly states that:

Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of pre-natal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights.<sup>24</sup>

Further on, paragraph 10 of this document states that “States parties should provide data on birth rates and on pregnancy and childbirth-related deaths of women and gender-disaggregated data on infant mortality rates”.

<sup>18</sup> See paragraph 18 from [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_30.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_30.pdf).

<sup>19</sup> The body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

<sup>20</sup> I take this data from the Declaration: “Gqual. Campaña por la igualdad de género en la representación internacional” see from <http://www.gqualcampaign.org/home/>, also from: [https://www.facebook.com/permalink.php?id=158717790807549&story\\_fbid=1002785083067478](https://www.facebook.com/permalink.php?id=158717790807549&story_fbid=1002785083067478).

<sup>21</sup> *The body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. See from <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

<sup>22</sup> See from <http://www.unwomen.org/en>.

<sup>23</sup> Adopted by the Human Rights Committee at the Sixty-eighth Session, CCPR/C/21/Rev.1/Add.10, 29 March 2000. See from <http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/b%29GeneralCommentNo28Theequalityofrightsbetweenmenandwomen%28article3%29%282000%29.aspx>.

<sup>24</sup> See paragraph 5 from <http://www1.umn.edu/humanrts/gencomm/hrcom28.htm>.



Similarly, “States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions”. The Comment also mentions other behaviors that violate women’s right to life, such as female infanticide, the burning of widows and dowry killings, on which the States must also inform of the measures taken.

The methodology employed in this General Comment, which is to study the content of each of the rights of the ICCPR and analyses how these affect women and men differently, is a good technique. However, in practice, the attention paid to women’s issues and gender in the UN human rights system has been haphazard. At best, attention has been paid to the situation of women in particular contexts, particularly in statistical terms, but there have been no systematic attempts to understand how existing stereotypes about gender roles affect each of the human rights enshrined in the conventions (Charlesworth, 2005, pp. 10-11).

Despite the existence of documents referring to gender mainstreaming, in practice its application has constituted little more than a “box ticking exercise” with no serious commitment. Rather, compliance is left to the discretion of the people responsible in each case for applying the conventions and General Comments. For the technique of gender mainstreaming to really be effective, it would be necessary to assign responsibilities and establish mechanisms for monitoring (Chinkin, 2012, p. 7).

An added difficulty hindering increased use of gender mainstreaming at the United Nations stems from the need to translate the term into languages other than English. Translation is not always possible, and the obligatory use of the English term creates obstacles related not to gender, but to resistance from many countries to the fact that the international agenda is controlled by the English-speaking nations (Charlesworth, 2005, pp. 13-14).

### **Gender Mainstreaming and Human Rights in the European and Inter-American Human Rights Systems**

Although both the Council of Europe and the Organization of American States have adopted many documents on women’s rights, the courts responsible for monitoring implementation of regional conventions on human rights have only recently incorporated gender mainstreaming or a gender perspective, and in general have done so in a way that is neither sufficient nor refers explicitly to these expressions. Here, as in other areas, it is evident that there is a dialogue between the European and the Inter-American Courts of Human Rights (Santolaya Machetti & Diaz Ricci, 2012, pp. 294-298).

Council of Europe bodies has been highly active in the field of women’s rights since the 1980s. In contrast, it was not until 2000 that the European Court of Human Rights (ECourtHR) began to emit some judgments argued from the perspective of gender, i.e., considering the differences between women and men in the enjoyment of any of the rights recognized in the Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights (ECHR).<sup>25</sup>

The first sentences handed down by the ECourtHR referring to the specific problems of women concerned gender discrimination, applying art. 14 of the ECHR. The first of these was the case of Abdulaziz, Cabales and Balkandali v. the United Kingdom, of May 28, 1985. In this judgment, it was stated that under the convention, only very glaring cases could be considered a difference in treatment based on sex.

In other rulings, the ECourtHR has condemned member States for discriminating against women or men

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<sup>25</sup> Adopted in Rome, on November, 4, 1950, see from [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

on the basis of sex (curiously, there is a significant number of judgments in which it was considered that the discrimination affected men, perhaps because they file more cases than women). In some recent cases, the ECourtHR has argued that the change in roles occurring today in Europe has been conducive to establishing equality between men and women as regards childcare. Thus, in the case of *Konstantin Markin v. Russia*, of October 7, 2010, the court ruled that fathers should also be able to enjoy maternity/paternity leave (Carmona Cuenca, 2015).

Other issues that have recently caught the attention of the ECourtHR regarding women's rights have been those related to gender violence. The most interesting judgment on this matter was given in the case of *Opuz v. Turkey*, of June 9, 2009. Here, employing a gender perspective, the ECourtHR ruled that violence against women by a male partner constitutes gender discrimination, establishing the violation of art. 14 combined with articles 2 (right to life) and 3 (prohibition of torture) of the ECHR. However, this line of reasoning has not been followed in all subsequent cases. In other judgments, cases of violence against women have been treated as isolated instances, without considering the role that gender stereotypes play in the genesis of this violence (Queralt Jiménez, 2015).

In relation to sexual and reproductive rights, the application of a gender perspective is of particular importance due to the prominent role played by women in reproduction. However, there are few examples of judgments or decisions in which this interpretive stance has been adopted. In the ruling of September 5, 2002, on the case of *Boso v. Italy*, the ECourtHR stated that a would-be father's permission was not necessary for a woman to voluntarily interrupt her pregnancy, considering that the person fundamentally affected by pregnancy is the woman (Díaz Crego, 2015).

As regards the Inter-American Human Rights System, it is noteworthy that the first international conventions on women's rights were drawn up under the auspices of the Inter-American Commission of Women in 1948 and 1949,<sup>26</sup> and in subsequent documents. In turn, the Inter-American Court of Human Rights (IACHR) has taken a far more advanced stance in its implementation of the American Convention on Human Rights (ACHR), also known as the "Pact of San José, Costa Rica"<sup>27</sup>, than the ECourtHR as regards adopting a gender perspective in some of its decisions, especially those relating to violence against women (Giles Carnero, 2015).

For example, in the criminal case of *Miguel Castro Castro v. Peru*, of November 25, 2006, the court ruled that account must be taken of the fact "that women were affected by acts of violence differently than men, with some acts of violence being directed specifically at them while others affected them in greater proportion than men". Subsequently, in the case of *González and others v. Mexico* ("Cotton Field"), of November 16, 2009, concerning femicide in Ciudad Juárez, the Mexican government was held responsible for the widespread phenomenon of violence against women. The IACHR described femicide as the "killing of women because of gender" (Clérico & Novelli, 2015).

In general, the Inter-American System of Human Rights' application of a gender perspective in cases of violence against women is notable for its determination of the State's obligation to protect the rights of women and the establishment of specific remedial and preventive measures.

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<sup>26</sup> This is the Inter-American Convention on the Granting of Political Rights to Women, 1948, and the Inter-American on the Granting of Civil Rights to Women, 1949.

<sup>27</sup> Adopted in San José, Costa Rica, on November, 22, 1969. See from [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

As regards sexual and reproductive rights, in the case of *Artavia Murillo and others v. Costa Rica*, of November 28, 2012, the IACHR ruled that the prohibition on *in vitro* fertilization can have a more severe negative impact on women than men because infertile women are potential victims of stigmatization due to stereotypes and prejudices. Furthermore, women are particularly affected by the regulation of this technique because it is on their bodies that reproductive medical interventions are performed (Tramontana, 2015).

### Conclusion

Gender mainstreaming emerged in the 1970s at the United Nations in the field of development. The goal was to demonstrate that development policies affect men and women differently, and to highlight the need to consider these differences before adopting public policies. The purpose of gender mainstreaming is to achieve gender equality.

In public policy, gender mainstreaming entails the application of gender equality concepts to all social, political, cultural, and economic fields. Before designing and implementing a policy, social agents must ask themselves what its impact will be on existing gender inequalities, and if necessary, redesign the policy in order to achieve equal rights for women and men.

The great advantage of gender mainstreaming is that the goal of gender equality can be incorporated into the mainstream political agenda and thus extend to all social areas. However, it does not substitute specific gender equality policies; on the contrary, these remain necessary to achieve equality.

At the United Nations, the implementation of gender mainstreaming in the field of human rights began in the first half of the 1990s. The specific instruments for the protection of women's rights had proved inadequate and it became clear that there was a need to integrate the recognition of gender differences into general international human rights treaties. The goal was to draw attention to the differences between women and men in their enjoyment of rights and demonstrate that some rights violations specifically affect women. Some of these violations are inflicted on women by virtue of their sex (female infanticide, genital mutilation, forced marriages, gender violence, etc.), and reflect the patriarchal organization of society, in which men occupy a position of dominance over women. However, despite this recognition, the application of gender mainstreaming to international human rights law remains woefully inadequate today.

The European and Inter-American Human Rights Systems have adopted several documents on women's rights. Nevertheless, the incorporation of gender mainstreaming or the perspective of gender into the work of the courts responsible for monitoring the application of regional human rights conventions has only just begun. The ECtHR ruling of June 9, 2009, on *Opuz v. Turkey* and the ICHR ruling of November 16, 2009, on *Gonzalez and others v. Mexico* ("Cotton Field") are examples of the application of a gender perspective in cases of violence against women. The journey has barely begun, and there are many more miles still to go.

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