

When Interpretation Becomes Erasure: CEDAW, Sex-Based Discrimination, and the Limits of Evolutive Interpretation

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Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations in 1979, is a landmark international treaty that promotes and protects the rights of all women worldwide. Often described as an international bill of rights for women, CEDAW provides a comprehensive framework for eliminating discrimination against women and advancing equality between men and women (incorrectly referred to as *gender equality*,²) in political, social, economic, and cultural spheres. Its importance lies in its commitment to ensuring that all women in all our diversity enjoy the equal but not identical rights and opportunities as men, while encouraging governments to address barriers such as unequal access to education, employment, healthcare, leisure and participation in public and cultural life.

By establishing international standards and holding states accountable for their implementation, CEDAW has played a crucial role in creating at the local level, an environment conducive to the empowerment of women and advancing justice for women across the globe. It has been able to do so because it has been almost universally ratified—all but a handful of States have legally committed to implementing its provisions.³ International law is traditionally based on the principle that states are bound only by rules to which they have consented. This means that if courts and other interpreters continually change the meaning of this treaty's provisions, States may end up complying less with these provisions arguing that they are not bound by rules that they never accepted. The fact that almost all states have accepted its obligations makes it harder for governments to dismiss its norms as merely regional or ideological preferences.

We should remember that State consent is not just a procedural formality; it is the foundation of a human rights treaty's legitimacy and effectiveness. Human rights treaties do not enforce themselves. Their authority depends largely on states voluntarily accepting legal obligations and then complying with them. When many states consent to a treaty and consistently

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² I say it is incorrect because gender equality is a broader concept than equality between men and women which is the goal and reason for eliminating discrimination against women.

³ It may surprise many women that two of those countries are the United States and Iran. The other four are Tonga, Palau, Sudan and Niue.

follow its provisions, the treaty acquires greater legitimacy because it reflects a broad international consensus rather than the preferences of a few countries. Widespread compliance signals that the treaty's norms are accepted as standards of appropriate state behavior. Conversely, if only a small number of states ratify or comply with a treaty, its ability to influence conduct, shape expectations, and protect rights is significantly weakened.

We must also remember that CEDAW was not adopted in a vacuum. At the time of its adoption in 1979, international human rights law already contained comprehensive general or universal guarantees of equality and non-discrimination, notably in the Universal Declaration of Human Rights and subsequently in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These instruments protect all individuals and prohibit discrimination on various grounds, including sex. However, despite these general guarantees, discrimination against women persisted—and persists—in a widespread and systemic manner.

CEDAW was therefore created not to duplicate universal guarantees of equality and non-discrimination, but to address a specific failure: the inability of general international human rights law to adequately confront the structural and historical subordination of women. Its purpose is thus group-specific and corrective. It seeks to eliminate discrimination against women as human beings of the female sex.

In other words, CEDAW was not adopted as a general human rights treaty prohibiting *gender discrimination* against all persons, it was adopted to protect all women against discrimination on the basis of sex. Its object and purpose are expressly defined in Article 1, which limits the Convention's scope to the elimination of discrimination against women. Rather than advocating for a new treaty specifically designed to address *gender discrimination* affecting all individuals, or even only some individuals-- such as those who identify as non-binary or trans--transgender rights advocates have sought to reinterpret CEDAW through an expanded reading of Articles 1 and 5. They argue that Article 5's focus on socially constructed sex roles effectively introduces the broader concept of *gender discrimination* and that such discrimination may be experienced by persons other than women. However, this approach overlooks the fact that Articles 1 and 5 must be read together. Article 1⁴ establishes the Convention's subject matter and defines the discrimination that the treaty seeks to eliminate, while Article 5 addresses one of the mechanisms through which discrimination against women is perpetuated, namely stereotypes and customary practices based on prescribed roles for the sexes. Although the term "gender" does not appear in Article 5, the provision concerns the social and cultural dimensions of relations between the sexes. It does not alter the Convention's fundamental purpose as a treaty dedicated to the elimination of discrimination against women.⁵

Article 31 of the Vienna Convention on the Law of Treaties⁶ states that treaties must be interpreted in good faith “in accordance with the ordinary meaning to be given to the terms of the treaty in

⁴ The text of art. 1 is below.

⁵ The text of art. 5 is also below.

⁶ **The Vienna Convention on the Law of Treaties (1969)** establishes the basic rules governing international treaties, including their negotiation, entry into force, interpretation, and legal effect on states. **Under Article 18 of the Vienna Convention on the Law of Treaties (1969), a state that has signed but not ratified a treaty is obliged to refrain**

their context and in the light of its object and purpose.” This interpretive framework allows treaties, especially human rights treaties, to adapt to new circumstances. In fact, this type of interpretation is known as **evolutive interpretation of a treaty** (also called **evolutionary interpretation**) which is a method of treaty interpretation whereby the terms of a treaty are understood in light of present-day conditions, developments, and prevailing legal or social circumstances, rather than being limited strictly to the meaning they had when the treaty was concluded. This approach recognizes that some treaty provisions are intended to remain effective over time and may therefore require a dynamic interpretation to fulfill the treaty's object and purpose.

This doctrine has been applied by international courts and tribunals, particularly in the field of human rights law, where treaties are often regarded as "living instruments" whose terms must be interpreted in light of present-day conditions. However, it also imposes limits. Interpretation cannot be used to alter the object and purpose of a treaty, both of which are fundamental to any treaty, but especially to those protecting specific discriminated groups.

I would argue that when CEDAW defines discrimination against women by reference to "sex", any interpretation of this convention must consider that when it was adopted in 1979 sex was understood as a binary understanding of women and men, as most people still do. Moreover, CEDAW's preamble consistently presents its objective as achieving equality between women and men. To reinterpret "sex" as *gender* or worse still as *gender identity* or to detach the category of "women" from biological sex does not constitute an evolutionary understanding of an existing treaty term. Rather, it alters the very subject matter of the Convention and therefore amounts to a de facto amendment of the treaty which only States that are party to the treaty can do.

In the following paragraphs I argue that while the CEDAW Committee can legitimately interpret the convention through the above method of interpretation of international conventions (evolutive interpretation) by recognizing new forms and mechanisms of discrimination against women, it cannot interpret the convention in a way that dissolves or replaces the category of women as the protected group of this treaty. Interpreting CEDAW as a general prohibition of *gender discrimination*, detached from discrimination against women, does not constitute an evolutive interpretation. It constitutes a substitution of the treaty's object and purpose, rendering its existence redundant within the broader architecture of international human rights law.

I. The Object and Purpose of CEDAW

CEDAW was conceived to center attention on a specific and persistent form of inequality: discrimination against women. The Convention itself recognizes that "extensive discrimination against women continues to exist" despite previous instruments. Its function is therefore not universal in the abstract, but concrete and corrective: to address the specific ways in which women, as a collective, have been subordinated in social, political, economic, and cultural life.

This specificity is not accidental. International human rights law is not composed of interchangeable instruments. Rather, it is structured through a series of complementary treaties,

from acts that would defeat the treaty's object and purpose, although it is not fully bound by the treaty's substantive obligations.

each addressing particular forms of harm affecting specific groups. CEDAW occupies a unique place within this system by placing “the female half of humanity at the center of human rights concerns.” If CEDAW is interpreted in a manner that detaches it from this group-specific focus, its distinctive normative function disappears. It becomes indistinguishable from already existing general human rights guarantees, and therefore redundant.

II. Article 1: Sex-Based Discrimination Against Women

The text of CEDAW is unequivocal in identifying both the grounds of discrimination and the protected group. Article 1 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.

This definition contains two essential elements:

1. **The ground:** discrimination “made on the basis of sex”;
2. **The protected subject:** the impairment the exercise of rights "by women."

The Convention does not define nor deal with a general category of "gender discrimination," nor does it establish a universal prohibition applicable to all individuals regardless of group membership. It deals specifically with discrimination against women. The structure of Article 1 makes clear that "sex" is the foundation that enables the identification of discrimination against a specific group: all women of the female sex.

Reinterpreting this convention as a general prohibition of gender discrimination, uncoupled from women as a group, entails altering both elements simultaneously. It substitutes a defined ground (“sex”) with a broader and indeterminate concept and removes the defined protected subject (“woman”) from the definition. Such a shift cannot be reconciled with the ordinary meaning of the text.

III. Article 5: Gender Stereotypes Within a Women-Specific Framework

A recurring argument posits that a broader interpretation of CEDAW is necessary to address gender roles, stereotypes, and social constructs. However, the Convention itself explicitly addresses these issues in Article 5.

Article 5 obligates States Parties to:

modify the social and cultural patterns of conduct of men and women [...] based on stereotyped roles.

This provision demonstrates that CEDAW was never restricted to a purely biological conception of discrimination on the basis of sex. It recognizes that this particular form of discrimination

operates through social expectations, cultural norms, and institutional practices—what was previously understood by feminist as *gender* but that now, at least in the English-speaking states is understood as *gender identity*.

Crucially, however, Article 5 does not introduce the term “gender” at all and much less as an autonomous ground of discrimination. It addresses “gender structures” without naming them “gender” as **mechanisms through which discrimination against women is produced and sustained**. The role of “gender” within CEDAW is therefore internal and instrumental. It explains how discrimination operates; it does not redefine who the treaty protects. Interpreting CEDAW as a general prohibition of gender discrimination ignores this structure. It converts what is an internal mechanism of a sex-based logic into an autonomous category detached from that framework.

IV. The Limits of Evolutive Interpretation

International human rights law accepts that treaties may be interpreted dynamically. However, such evolution is subject to the rules of treaty interpretation. Article 31 of the Vienna Convention requires that interpretation remain anchored in the ordinary meaning of the text and in the object and purpose of the treaty.

Evolutive interpretation, therefore, operates within limits. It permits:

- Recognizing new forms of discrimination against women; (as the Committee did in General Recommendation 19 which established that violence against women was a form of discrimination against women and therefore covered by CEDAW.)
- Understanding how discrimination manifests under changing social conditions;
- Expanding remedies to address indirect or structural inequalities.

But it does not permit:

- Replacing a defined protected group (females) with an open or indeterminate category, (any person who identifies as a woman or as non-binary);
- Substituting the object of the treaty with a different normative goal; (transgender-rights advocates interpret CEDAW's objective as the elimination of discrimination based on gender broadly construed, including discrimination affecting transgender women and other “gender-diverse” persons. This interpretation draws on evolving guidance of the CEDAW Committee, although it remains contested by scholars and activists who maintain that the Convention's primary normative purpose is the protection of women as a sex-based category;
- Transforming a group-specific instrument into a general instrument. (A group-specific human rights treaty derives its normative force from recognizing that a particular group faces distinctive forms of disadvantage requiring targeted protection.)

When a treaty such as CEDAW is interpreted as a general human rights instrument applicable to all persons, its focus will shift from remedying the specific inequalities experienced by the protected group (women as a sex class) to balancing the interests of a broader population. While this can extend protections to additional groups, as a feminist human rights lawyer, I argue that this risks diluting the treaty's original purpose, weakening its capacity to address the particular forms of discrimination that justified its creation, and obscuring the legal and political rationale for group-specific rights.

When interpretation ceases to preserve the function of the treaty and instead replaces it, it is no longer interpretation, but revision or modification by other means. (only State Parties have the faculty to modify the terms of the convention).

V. Redundancy and the Architecture of International Human Rights Law

An additional difficulty arises if CEDAW is interpreted as a general prohibition of gender discrimination applicable to all persons. Such an interpretation renders the Convention largely redundant. The International Covenants already guarantee equality and prohibit discrimination on multiple grounds. They apply universally to all humans and form part of the so-called "International Bill of Human Rights." If CEDAW is interpreted as encompassing every form of gender-related discrimination against any person, its scope overlaps with that of those general instruments. Its distinctive function—addressing the specific and systemic discrimination against women—disappears.

This redundancy not only weakens CEDAW but the entire international human rights legal system. International human rights law requires both universal protections and group-specific protections precisely because general norms have historically proved insufficient to address certain inequalities faced only or mainly by specific groups. If one of the several group-specific treaties that exists is allowed to expand its group-protection to include humans which were not included in the original treaty, the entire existence of these specific treaties could be at risk. For example, if the Convention on the Rights of People with Disabilities were considered to be leaving out people without disabilities and was therefore interpreted to include them, the purpose and object of this treaty would become redundant.

In the same manner, when feminist insist that individuals who do not belong to the female sex are not protected by CEDAW, this does not mean that individuals who are not female are left totally unprotected. Claims of discrimination that do not constitute discrimination against women may be included within the general guarantees of equality in universal instruments or other relevant legal frameworks. CEDAW's specificity is therefore complementary, not exclusionary of males.

And what is more important is that including humans who are not female in this convention not only makes CEDAW redundant but actually will also make it be less effective in protecting anyone against discrimination, including all those who identify as women without being of the female sex.

Conclusion

CEDAW is a treaty designed to address a specific problem: discrimination against women as a collective. Its text, structure, and purpose reflect this specificity. Although the Convention can evolve to capture new manifestations of inequality, such evolution must remain faithful to its defining characteristics.

As shown above, Article 1 anchors the prohibition of discrimination in sex and directs it toward the protection of women. Article 5 demonstrates that the Convention already addresses gender structures, but as mechanisms of discrimination against women, not as autonomous categories of protection. Taken together, these provisions establish a coherent framework that integrates biological and social dimensions without dissolving the identity of the protected group.

An interpretation that detaches the sex discrimination women have historically endured during millennia from what is being called now *gender discrimination* does not deepen the treaty's protection. It transforms it into something else. In doing so, it risks rendering CEDAW irrelevant within a system that already contains general guarantees of equality.

The question, therefore, is not whether international human rights law should protect individuals from various forms of discrimination. Clearly, it must. The question is whether CEDAW, as a treaty specifically intended to eliminate discrimination against women, can be interpreted so broadly that its protected group becomes undefined. Under the rules of treaty interpretation, the answer should be negative.

CEDAW can evolve to better address the realities of women's lives. But it cannot evolve by erasing the very category it was created to protect.

Final Personal Reflection

It seems to me that attempts to expand the scope of CEDAW to include forms of discrimination suffered by persons who are not female—without equivalently promoting the modification of other specialized treaties to incorporate subjects other than those for whom they were created—reveal an inconsistency that is difficult to explain solely by a commitment to the elimination of all discrimination. From this perspective, I would argue that such a stance reflects a resistance to recognizing the specificity of historical and structural discrimination against women rather than a genuine anti-discriminatory universalism.

It should not be forgotten that CEDAW itself stems from the recognition that "extensive discrimination against women continues to exist" and that an enduring historical inequality between men and women justified the adoption of a specific international instrument. Thus, if the redefinition of other treaties aimed at protecting specific groups facing discrimination is not demanded with equal intensity, the exclusive targeting of CEDAW can be interpreted as a tendency to dilute or relativize the singular legal protection granted to women—a tendency that some would consider a manifestation of misogyny rather than a coherent effort to eradicate all forms of gender discrimination.

From the perspective of CEDAW itself let us recall that the Convention was not conceived as a general treaty on all forms of gender discrimination, but as a specific instrument to address a form

of inequality that the international community deemed insufficiently protected by general human rights treaties: *discrimination against women*. The preamble expressly notes that, despite existing instruments, "*extensive discrimination against women continues to exist*," which justifies the creation of a specialized convention.

Furthermore, as mentioned above, CEDAW defines its object specifically: the elimination of discrimination against women in relation to men. Article 1 describes this discrimination as any distinction, exclusion, or restriction based on sex that impairs the enjoyment of rights by women on a basis of equality with men.

For this reason, those of us who defend a women-centered interpretation maintain that the existence of gender discrimination suffered by other groups does not constitute an argument for altering the purpose of CEDAW—just as the existence of other forms of discrimination does not eliminate the need for specialized treaties on racial discrimination, the rights of persons with disabilities, or the rights of the child, etc. From this viewpoint, the specialization of a treaty such as CEDAW corresponds to the recognition of a concrete historical inequality between men and women, not an attempt to hierarchize some forms of discrimination over others.

On the other hand, those who propose broader interpretations of CEDAW often argue that the protection of women can coexist with the recognition of other individuals affected by gender-based discrimination. That argument is invalid in this context, although true in the sense that there are other forms of gender discrimination which affect nonfemales such as gay and bisexual males who identify as male men. If CEDAW were interpreted to include all forms of gender discrimination, even heterosexual men would have to be included in CEDAW's protection in spite of the fact that the original text of the Convention and its historical justification are clearly focused on the situation of women as a specific target group.

And finally, I would like to end this essay reminding us that a commitment to protecting women's rights does not diminish the rights or dignity of other groups who may also experience gender-related discrimination. Rather, international human rights law recognizes that different groups can face distinct forms of disadvantage that may warrant specific legal protections. Just as instruments addressing racial discrimination, disability rights, or children's rights coexist within a broader human rights framework, the protection of women's rights under CEDAW can coexist with measures safeguarding transgender persons and other gender-diverse individuals. Protecting one group's rights need not come at the expense of another's; the challenge is to ensure that all persons enjoy equal dignity and protection while preserving the specific legal mechanisms designed to address the particular forms of discrimination faced by each group.