

DISCRIMINATORY NEUTRALITY: “COERCIVE INCLUSION” AND OTHER EVOLUTIVE TRENDS OF SEX-BASED VIOLENCE IN INTERNATIONAL LAW

Anna ORIOLO¹

Abstract: This article examines the new frontiers of violence against women and girls that continue to undermine their dignity. It begins by analysing the various manifestations of sex-based discrimination that give rise to such violence. It then turns to the evolving phenomena that blur or erase sex-specific considerations, particularly through the adoption of so-called “neutral” language. The article concludes with observations aimed at strengthening States’ capacity to identify, assess, and eliminate these forms of sex-based violence.

Key words: coercive inclusion, discrimination, human dignity, femi-genocide, neutral language, sex-based violence

1. Introduction

Across the world and throughout history, violence against females – women and girls – remains a global emergency, with sex-based offences and crimes continuing to rise. These forms of violence reflect the more traditional and well-known manifestations of discrimination rooted both in “sex”, denoting biological and reproductive characteristics, and in “gender”, referring to the social meanings attached to biological differences – such as stereotyped roles, beliefs, biases, social expectations, and cultural norms – that perpetuate the subordination of women to men. In recent years, however, women and girls have faced evolving expressions of this “historical” discrimination, alongside new and emerging forms of sex-based violence (HRC, 2025).

Building on an analysis of the legal framework for achieving “gender” equality through the prohibition of “sex” discrimination (Section 2), this article then examines the emerging forms of sex-based violence, critically exploring the consequences of erasing sex-specific considerations, with particular attention to the so-called “neutral” language that has contributed to the conceptual disappearance of the female category, undermining the protection of women and girls (Section 3). It further examines how

¹ University of Salerno (Italy), aoriolo@unisa.it

established forms of sex-based violence – including reproductive violence and the female segregation – have taken on a new dimension, particularly in relation to the “femi-genocide” allegedly perpetrated by the Taliban regime in Afghanistan and by Israel during the recent conflict in Gaza, reportedly characterised by a *mens rea* to physically and biologically destroy the targeted female population (Section 4). Finally, the article offers concluding observations aimed at ensuring the correct interpretation and application of the existing legal framework on sex-based offences against women and girls, as well as strengthening States’ capacity to identify, assess, and eradicate such violence (Section 5).

2. The International Legal Framework for Achieving “Gender” Equality Through the Prohibition of “Sex”-Based Discrimination

Women and girls play a crucial role in all aspects of society – from economics to politics, from family to community – and the continued prevalence of violence and discrimination against them remains a major impediment to achieving Goal 5 of the Sustainable Development Goals (SDG): gender equality (Skjerven and Fordham, 2023) and the empowerment of all women and girls as a necessary foundation for a peaceful, prosperous, and sustainable world. SDG 5 includes several specific targets, such as ending all forms of discrimination against women and girls everywhere, in both the public and private spheres; giving females equal rights to economic resources and access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws; strengthening women’s participation in decision-making processes at all levels; and – returning to the heart of this analysis – eliminating all forms of violence against women and girls, including harmful practices such as child marriage, female genital mutilation, and other forms of exploitation.

International legal instruments at both the universal and regional levels establish a clear framework for ensuring equal civil, political, economic, social, and cultural rights for women and girls, including, *inter alia*, the right to life, health, education, and freedom from violence. This framework is grounded in the 1948 Universal Declaration of Human Rights and further developed through a series of key treaties, including the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1989 Convention on the Rights of the Child, the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, the 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

These instruments are fundamental to advancing both gender and sex equality for two main reasons. First, they affirm that women and girls must not be predestined to a life of subordination because of their sex. Second, they contribute to emphasising the importance of recognising “biological sex” – in addition to and distinct from “gender” – when addressing the specific forms of oppression faced by women and girls.

CEDAW defines discrimination against women as any act or measure that distinguishes, excludes, or restricts individuals "on the basis of sex", where such actions have the purpose or effect of undermining women's equal recognition and enjoyment of human rights and fundamental freedoms, whether in political, economic, social, cultural, civil, or other domains, regardless of marital status (Art. 1). Similarly, the ICCPR requires States to prevent sex-based harassment and violence to ensure the protection of privacy, freedom of expression, political participation, and equality before the law (Arts. 17, 19, 25, 26). The Convention on the Rights of the Child affirms that all children must enjoy all rights without discrimination of any kind, including sex discrimination (Art. 2).

Building on these instruments, the 1998 Rome Statute of the International Criminal Court was a landmark treaty that recognised a wide range of sex-based offences as war crimes and crimes against humanity. The Statute also reflects a broader trend of conflating the terms "gender" and "sex", categorising crimes involving sexual, reproductive, and other gender-based violence as "gender-based crimes" (Barbara & Hall-Martinez, 1999; SáCouto and Cleary, 2009) rather than "sex-based crimes". Nevertheless, it was the first treaty to explicitly define acts such as rape, sexual slavery, enforced prostitution, forced pregnancy, and forced sterilisation as distinct war crimes (Art. 8(2)(b)(xxii)). It also includes "persecution on the basis of gender" as a crime against humanity (Art. 7(1)(h)), while the ICC *Elements of Crimes* include "sexual violence" among acts constituting genocide (Art. 6 (c)).

It is important to clarify here that the confusion between the terms "gender" and "sex" in the Rome Statute is primarily terminological. Substantively, both terms refer to the distinction between male and female (ICC Statute, Art. 7 (3)). Consequently, this "binary" interpretation has not impeded the effective investigation and prosecution of crimes against the dignity of women. In contrast, other international instruments have drawn a deliberate and sometimes oppositional distinction between (biological) sex and gender (identity), thereby limiting the effective protection of women as such.

These considerations, along with the importance of prohibiting sex-based discrimination as a means to achieve gender equality and safeguarding women's dignity, are further underscored by the findings of the *Report of the Special Rapporteur on Violence against Women and Girls, Its Causes and Consequences*, Reem Alsalem, submitted to the United Nations Human Rights Council in June 2025 (HRC, 2025), as discussed in the following sections.

3. The "International Push" to Erase Sex-Specific Considerations as a Root Cause of New Forms of Attack on Female Dignity

The 2025 UN *Report on Violence Against Women and Girls* identifies new forms of sex-based violence against females, highlighting that discrimination and attacks on female dignity stem, *inter alia*, from a recent "concerted international push" to eliminate sex-specific considerations (*ibid.*, para. 13). While sex is one of the fundamental elements of an individual's legal identity, alongside name, place, and date of birth (E/CN.3/2020/15, para. 4), many States and international institutions have in recent years adopted an

overly rigid policy of so-called “neutrality”. This coercive form of inclusion, ostensibly intended to protect women and girls from discrimination, has instead produced the opposite effect: it erases their recognition as a distinct category in law and society.

A prime example of this discriminatory neutrality is the removal of sex-specific language (see UN Women, 1987; European Parliament, 2008), which diminishes women’s visibility in both law and policy. In many cases, sex-specific terms have been replaced with seemingly neutral language (Mossman, 1995), or redefined to refer to gender identity rather than sex (HRC, 2025, para. 14). Consequently, the legal and social category of biological females is becoming obscured, making sex-based oppression more difficult to identify and address.

In recent years, international institutions, including the United Nations (UNODC, 2022), have increasingly preferred to collect data based on “gender” rather than “sex”, or have used the two terms interchangeably to promote the self-identification of gender identity (O’Halloran, 2020). This trend is based on the (mistaken) assumption that terms such as “sex-based violence” exclude transgender, non-binary, and gender-diverse (TGDNB) individuals from protection.

In reality, collecting sex-based data facilitates the tracking of outcomes for distinct groups, the elimination of unfair disparities, and the provision of targeted support. It neither reduces individuals to biological categories nor denies that TGDNB persons may also experience discrimination and violence on the basis of sex. On the contrary, the absence of data disaggregated by biological sex hinders the ability to gather the information necessary to end violence against women and girls.

Furthermore, violence against women is inherently gender-based and rooted in sexual stereotypes that have historically subordinated women to men (Istanbul Convention, Preamble) and reduced them to objects. However, when seeking to combat such stereotypes, States often conflate measures relating to personal identification with those addressing personal stereotypes. This risks reinforcing the very stereotypes it seeks to dismantle, rendering the specific vulnerabilities faced by women – including those who do not identify as such – invisible, and obstructing the development of a genuinely intersectional approach.

The language and terminology used to describe females directly influence how violence is understood, reported, and perceived within society. Neutral approaches to sex and gender contribute to victim-blaming, minimise abuse, reinforce male privilege, and impair the capacity of States and other actors to identify and define violence against females as primarily male violence, thereby making it more difficult to combat (HRC, 2025, para. 25).

The aforementioned trend towards “neutral approaches” to sex and gender has, above all, undermined the development of effective State policies promoting equality. In several countries, the shift from “equality between women and men” or “sex equality” to “gender equality” in national policies and objectives has led to the reduction or elimination of funding initiatives specifically supporting women or particular groups of women, including organisations assisting victims of male violence (*ibid.*, para. 27).

Secondly, the erasure of sex-specific considerations has resulted in the denial of sex-specific needs, such as access to single-sex services and spaces, measures that are vital in contexts where women and girls are particularly vulnerable or require privacy from men (ibid., para. 30). These vulnerabilities and corresponding risks are evident in prisons, for example, where male prisoners who identify as women may be transferred to female facilities despite exhibiting a male pattern of criminality, including violent offences against women and children.

Similar concerns arise in healthcare settings that fail to differentiate patient accommodation by sex, as well as in refugee centres where women and girls, seeking to avoid the risk of rape or sexual assault, may refrain from using mixed-sex facilities, often at the expense of their health, dignity, and well-being.

4. The New Dimensions of the Offences to Female Dignity

4.1. Technology-facilitated violence against women and girls

Among the evolving forms of sex-based crimes, violence against women and girls perpetrated through digital technologies has become a pressing concern. The 2024 *Report of the UN Secretary-General on Violence Against Women and Girls* (UN General Assembly, 2024) identifies three interconnected challenges driving this phenomenon: the increasing pushback against women's rights; the acceleration of artificial intelligence (AI); the rapid advancement of a digital ecosystem of misogynistic content that is progressively permeating mainstream culture, shaping societal perceptions of women, and inciting hostility and violence.

This emerging form of abuse, referred to as "technology-facilitated violence" (Marganski and Melander, 2021) against women and girls, includes any act that is enabled, intensified, or amplified through information and communication technologies or other digital means, and that causes, or is likely to cause, physical, sexual, psychological, social, political, or economic harm, or otherwise violates women's rights and freedoms.

While such offences often originate in the online sphere, they have real-world, offline consequences. In this sense, the concept of "technology-facilitated violence" is both distinct from and broader than that of "digital" or "online" violence, as it more accurately reflects the ways technology enables, extends, and intensifies harm across both virtual and physical realms.

Crimes encompassed by this concept include pre-existing forms of gender-based violence exacerbated by technological means, such as stalking and the non-consensual dissemination of intimate images (revenge porn), as well as new manifestations enabled by emerging technologies. For instance, smart home devices and mobile applications can be exploited to track women's locations, addresses, and daily routines, thereby facilitating domestic abuse and coercive control. Another example is the creation of deepfakes: AI-generated manipulated images depicting sexual acts or abuse (HRC, 2025, para. 56).

4.2. Genocidal reproductive violence against women and girls, “gender apartheid”, and “femi-genocide” in international crises

In addition to forced pregnancy, forced abortion, forced sterilisation, and forced contraception, new forms of reproductive violence affecting women and girls have recently emerged in international conflicts and humanitarian crises, including in Gaza, Myanmar, and Sudan (Anderson, 2025). These acts involve the *systematic* use of reproductive violence against women and girls with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, reflecting a genocidal purpose aimed at preventing births within the group or forcibly altering its demographics (HRC, 2025, para. 48).

Reproductive violence as a genocidal tool appears to have been used against Palestinian women in Gaza, for example. Since 2023, Israel has reportedly implemented “measures intended to prevent births within the group,” which fall within the scope of Article 2 of the 1948 Genocide Convention. These measures allegedly include, *inter alia*, the destruction of healthcare facilities, such as the only fertility clinic in the occupied territories, and the imposition of living conditions that lead to malnutrition and dehydration, undermining the ability of pregnant and lactating women to produce milk (Oriolo, 2025). In response to the “plausible” risk of genocide against the Palestinian population, the International Court of Justice (ICJ) adopted urgent *interim* measures to mitigate the risk of further harm (ICJ, 2024, paras. 54, 66, 74).

Similarly, Article 2 of the Genocide Convention has been invoked by Gambia in its ICJ application against Myanmar for failing to prevent and punish genocide against the Rohingya people (ICJ, 2019, para. 2). In particular, the systematic restrictions on the Rohingya’s ability to marry and bear children are considered genocidal, as they are intended to destroy this group in whole or in part.

According to UN experts, genocidal intent is evident in the reproductive crimes systematically perpetrated by the Rapid Support Forces against non-Arab ethnic groups since the outbreak of civil war in Sudan in 2023. These crimes, including rape, gang rape, sexual slavery, and deliberate genital mutilation, have reportedly been carried out to maximise trauma and social stigma for female victims. The attacks appear intended to prevent births within the targeted groups through the infliction of severe physical and psychological harm, constituting genocidal acts against women under Article 2(b)–(d) of the 1948 Genocide Convention (OHCHR, 2024).

Beyond reproductive violence aimed at destroying a protected group either wholly or in part, new expressions of genocidal violence against women as a distinct group within a nation or people have also emerged. This is exemplified by the systematic and extensive restrictions imposed on Afghan women by the Taliban regime since 2021. These measures have so severely curtailed women’s rights and freedoms, including the right to work, access to education, freedom of movement, and freedom of expression, that scholars and experts have coined terms such as “gender apartheid” and even “femi-genocide” to describe the situation (HRC, 2025, paras. 40-43; Hefti, 2023). In this context, Afghan women, and, in light of more recent events in Gaza, Palestinian women, could be considered a “national group” protected under the 1948 Genocide Convention, with the offences committed against them falling within the scope of Article 2(b)–(d).

This interpretation aligns with the broad understanding of "protected groups" reflected in the Convention's *Travaux Préparatoires* (Abtahi & Webb, 2008). Moreover, this framing underscores the gravity of the crimes, revealing a deliberate intent to destroy the physical and psychological integrity of the targeted women.

5. Concluding Remarks

States have a duty to eliminate sex-based violence and discrimination by taking coordinated legal, social, and cultural action. This entails adopting and enforcing laws that criminalise practices such as forced marriage and domestic abuse, promoting changes to social and cultural norms that perpetuate bias, and ensuring gender-sensitive judicial procedures and victim support mechanisms, including access to shelters and counselling (CEDAW, 2017).

While recognising the growing international emphasis on gender identity, this paper underscores that acknowledging the reality of biological sex remains essential to addressing specific violations of female dignity. In particular, the effective elimination of discrimination against women and girls requires their clear recognition as a distinct legal and social category. Failing to do so risks adopting policies of "coercive neutrality" that could weaken States' capacity to prevent, address, and eliminate male violence against women and girls (HRC, 2025, paras. 13-24). "Coercive neutrality", together with other emerging forms of sex-based violence, warrants the adoption of specific legal provisions aimed at their prevention and repression. Pending the development of such norms, we believe that a more flexible interpretation of the existing legal framework could nonetheless advance the protection of female dignity and the fight against discrimination.

This approach would entail not only interpreting the relevant treaties "in good faith, in accordance with the ordinary meaning to be given to the terms in of the treaty, in their context and in the light of its object and purpose", as required by the 1969 Vienna Convention on the Law of Treaties (Art. 31), but also in a manner that ensures their maximum effectiveness, consistent with the principle of "*effet utile*" (*ut res magis valeat quam pereat*) (Fitzmaurice, Elias and Merkouris, 2010), so as to ensure the fullest possible application of international norms protecting women and girls.

Acknowledgements

The Author is deeply grateful to the staff of the International & European Criminal Law Observatory (IECLO) and the Jean Monnet Module EU-GLOBACT, and in particular to Stefano Busillo, for their invaluable editorial and research support in finalising this paper.

References

Abtahi, H., & Webb, P. (2008). *The Genocide Convention: The Travaux Préparatoires*, 2008. Leiden: Martinus Nijhoff Brill.
Anderson, S., & Sviatschi M. (2025). *Gender and Armed Conflict*. Oxford: OUP.

Bailey, J., Flynn, A., & Henry, N. (Eds.) (2021). *The Emerald International Handbook of Technology-Facilitated Violence and Abuse*. Leeds: Emerald Publishing.

Barbara, B., & Hall-Martinez, K. (1999). Ending Impunity for Gender Crimes Under the International Criminal Court. *Brown Journal of World Affairs*, 65(6), 65-85.

Committee on the Elimination of Discrimination against Women. (26 July, 2017). *General recommendation No. 35 updating General Recommendation No. 19 (1992)*, CEDAW/C/GC/35.

European Parliament (2008). *Gender-Neutral Language in the European Parliament*.

Fitzmaurice, M., Elias, O., & Merkouris, P. (Eds.) (2010). *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On*. Leiden: Martinus Nijhoff Brill.

Hefti, A. (2023). *Conceptualizing Femicide as a Human Rights Violation: State Responsibility Under International Law*. Cheltenham-Northampton: Edward Elgar Publishing.

HRC (2025, 16 June). *Sex-based Violence Against Women and Girls: New Frontiers and Emerging Issues*, A/HRC/59/47.

ICJ (2019, 11 November). *Gambia v. Myanmar*, Application.

ICJ (2024, 26 January). *South Africa v. Israel*, Order.

Marganski, A. J., & Melander, L. A. (2021). Technology-Facilitated Violence Against Women and Girls in Public and Private Spheres: Moving from Enemy to Ally. In J. Bailey, A. Flynn, & N. Henry (Eds.), *The Emerald International Handbook of Technology-Facilitated Violence and Abuse* (pp. 623-641). Leeds: Emerald Publishing.

Mossman, M. J. (1995). Use of Non-Discriminatory Language in Law. *International Legal Practitioner*, 20(1), 8-14.

OHCHR (2024, 5 November). *Sudan: UN Experts Condemn Campaign of Violence Against Civilians amid Rising Displacement*.

Oriolo, A. (2025). Right to Food, Crime and Justice: The Deliberate Starvation of Palestinian People and the International Courts as the "Conscience of Humanity". *QuaderniSIDI* (11), 267-291

Skjerven, A., & Fordham, M. (2023). *Gender and the Sustainable Development Goals*. London: Routledge.

SáCouto, S., & Cleary, K. (2009). Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court. *American University Journal of Gender, Social Policy & the Law*, 17(2), 339-359.

UN Economic and Social Council. (2020). *Introduction of the UN Legal Identity Agenda E/CN.3/2020/15*. 18 December

UN General Assembly (2024, 8 October), *Intensification of efforts to eliminate all forms of violence against women and girls: technology-facilitated violence against women and girls*, A/79/500.

UN Women (1987). *UN Guidelines on Gender-Neutral Language*.

UNODC (2022). *Statistical framework for measuring the gender-related killing of women and girls (also referred to as "femicide/feminicide")*.