The New Gender Perspective: The Dawn of Intersectional Autonomy in Women’s Rights
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Abstract

International human rights jurisprudence has increasingly mandated state action which integrates a gender perspective, taking into consideration the discriminatory norms, harmful social practices, stereotypes, and violence that women have and still suffer. A range of supranational bodies have issued case decisions promoting the adoption of gender-sensitive legislation, policies, programs, and the establishment of administration of justice systems well-trained and equipped to address women’s rights violations.

This article discusses how the conception of this gender perspective has evolved over time and is now centered on the pursuit of autonomy for women. Autonomy is presented as a key ingredient to ensure due respect for women’s self-direction, agency, and dignity. This evolving approach is a move towards intersectional autonomy, which advances the notion that women should be the sole architects of their life plans, based on their identities and different experiences, and meaningfully participate in their societies. Creating the conditions for free and informed choices underpins current women’s rights jurisprudence. This is a break from historical notions of human rights protection solely focused on women as victims, as members of a homogenous group, and a limited binary perspective to their rights. This article discusses illustrative decisions of this tendency from the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, the United Nations Committee on the Elimination of Discrimination against Women, and the United Nations Human Rights Committee, among other bodies.

This article further proposes that intersectional autonomy is treated and interpreted in the future in international jurisprudence as a right, with independent content, offering guidance to states on needed laws, policies, programs, and services at the local and national levels. This human

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rights development is presented as essential for international law standards concerning women to be impactful and truly transformative at the national level. This article analyzes the main elements of the right of women to intersectional autonomy, and states’ negative and positive obligations in its fulfillment.

The author is currently pursuing a line of research exploring contemporary understandings of the international human rights of women, and how existing legal standards should evolve based on modern scenarios and realities. This article represents a contribution to this line of scholarship. It aims to increase understanding of the connection of the concepts of intersectional discrimination and autonomy, how they can be analyzed by global and regional human rights jurisprudence, and their promise to enhance effectiveness in international law concerning women.
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I. INTRODUCTION

On November 28, 2012, the Inter-American Court of Human Rights—the leading Court of its kind in the Americas—issued its judgment in the high-profile case of Artavia Murillo v. Costa Rica, which examined closely the prohibition of In-Vitro Fertilization (hereinafter “IVF”) in Costa Rica.¹ This ban had come to fruition by means of a ruling of the Constitutional Chamber of the Supreme Court of Justice, which justified this measure on the need to protect the right to life of the embryos under Article 4(1) of the American Convention on Human Rights (hereinafter “American Convention.”)² The petitioners—a number of couples directly impacted by this prohibition—claimed that their rights to privacy, to form a family, and to non-discrimination were violated by this prohibition, and that they could only conceive through IVF.³ Ruling against the state, the Inter-American Court in Artavia Murillo introduced a far-reaching notion of reproductive autonomy, grounded on personal liberty and the possibility of all human beings to self-determine their life choices.⁴ This includes the decision to become a parent in a genetic or biological sense and the number and spacing of children, and access to the means to do so.⁵ The Court in Artavia Murillo also applied an intersectional approach to its analysis considering different features of the couples affected—their situation of disability, gender, and financial situation—and how they accentuated the discriminatory impact of the IVF prohibition.⁶ The Inter-American Court further ruled that embryos do not have the status of persons under the right to life protection codified in Article 4.1 of the American Convention on Human Rights.⁷

In essence, the legal foundation of the analysis advanced by the Inter-American Court in Artavia Murillo was based on a fused understanding of two concepts—autonomy and intersectional discrimination—and how they are often at stake in sexual and reproductive rights restrictions. The Court provided in this decision the hints of a modern international legal framework to understand women’s rights issues, focused on their autonomy to make critical decisions over all aspects of their lives, considering their different and intersectional experiences and identities. The framework advanced by the Inter-American Court was

² See id. ¶¶ 71–77.
³ See id. ¶¶ 85–125.
⁴ See id. ¶¶ 142–43.
⁵ See id. ¶ 143.
⁶ See id. ¶ 284.
⁷ See id. ¶¶ 222–23, 253.
ultimately successful, leading to the signature of an Executive Decree in Costa Rica reinstating IVF in 2015.8

In full contrast to the Inter-American Court of Human Rights, the Alabama Supreme Court in the United States decided on February 16, 2024 that frozen embryos created through IVF procedures have the same legal rights as born children.9 The Alabama Court held concretely that the Wrongful Death of a Minor Act applies to all unborn children “without limitation.”10 In the aftermath of this decision, several IVF clinics in Alabama have put their services on hold.11 The decision is devoid of any analysis of the legal implications of this ruling on the practice of IVF procedures in the future and those who seek to access this procedure due to infertility and other causes, who are largely women.12 It has also been extensively criticized for further impairing the exercise of women’s rights in health care in the U.S., right after the overturning of Roe v. Wade.13 This extreme decision illustrates the importance of international law and human rights jurisprudence in developing a coherent and solid framework advancing women’s intersectional autonomy that can guide state action, the content of which is discussed in this article.

The human rights of women have become a fixture of international law, reflected in a diversity of legal instruments which mandate prompt and exhaustive efforts to prevent and respond to critical problems such as discrimination and violence against women.14 Even though international law historically was devoid

11 See Aria Bendix, Three Alabama clinics pause IVF services after court rules that embryos are children, NBC NEWS (Feb. 21, 2024), https://perma.cc/E8XV-G6GJ.
13 For more discussion, see Molly Hennesey-Fiske & Tim Craig, IVF court ruling further upends women’s health care in Alabama, THE WASHINGTON POST (Feb. 24, 2024), https://perma.cc/PL8Y-6BNX.
of any gender considerations, the situation of women is constantly referred to in the text and interpretation of a number of classical treaties and in new treaties.\textsuperscript{15} 

The coverage includes adult women and girls under 18 years old.\textsuperscript{16} 

Women are also increasingly participating in the development of international law and legal standards concerning human rights and gender equality.\textsuperscript{17} Even though there is still a significant gap between the theory and practice in the international human rights of women, there is a cognizable body of global and regional legal standards at this stage.\textsuperscript{18}


Supranational human rights bodies, Commissions, and Courts have decided a number of cases mandating the prevention, investigation, sanction, and the grant of reparations for all human rights violations perpetrated against women and girls. Many have been framed in a state’s duty to act with due diligence, guarantee an adequate and effective access to justice when women’s rights violations take place, and an overarching obligation to prevent foreseeable harm to the rights to life, personal integrity, and others. Noteworthy caselaw has also extended protections to the realms of economic, social, and cultural rights and sexual and reproductive rights. The rights of lesbian, gay, bisexual, transgender, intersex,

For recent case examples, see Moraru and Marin v. Romania, Apps. Nos. 53282/18 and 31428/20, Eur. Ct. H.R. ¶¶ 6–21, 107–24, https://perma.cc/GV8U-CHU5 (Dec. 20, 2022) (in which the European Court of Human Rights found several human rights violations when the female applicants were forced to retire earlier than their male counterparts and their requests to continue to work were denied); Brítez Arce et al. v. Argentina, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series C, No. 474, ¶¶ 1, 27–29, 56–86 (Nov. 16, 2022) (in which the Inter-American Court of Human Rights found several human rights violations when the victim received negligent medical care which resulted in her death; care which the Court referred to as dehumanizing and amounted to obstetrics violence); APDF and IHRDA v. Republic of Mali, App. No. 046/2116, Afr. Ct. H.R., ¶¶ 71–95 (May 11, 2018) (in which the Court found several human rights violations when Mali’s Family Code set the marriage age lower for women than that of men and for the practice of forced marriages).


See, e.g., CEDAW Comm., Cecilia Kell v. Canada, Communication 19/2008, U.N. Doc. CEDAW/C/51/D/19/2008 ¶¶ 10.1–10.7 (Apr. 27, 2012) (in which the CEDAW Committee found that an aboriginal woman had been discriminated against in the realm of housing, when her property rights were curtailed by her partner in collaboration with a public authority); Fireworks Factory of Santo Antônio de Jesus v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., (ser. C.), No. 407, ¶¶ 148–203 (July 15, 2020) (in which the Inter-American Court of Human Rights found several violations when the state failed to properly supervise a private factory with unsafe working conditions, which eventually resulted in an explosion killing 60 people, including 19 girls); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R. ¶¶ 5–51; 94–112 (Oct. 30, 2012), https://perma.cc/HHB8-NFZT (in which the European Court found the state failed to
and queer (hereinafter “LGBTIQ+”) individuals and communities have also become dominant in caselaw, calling for protections to their rights to non-discrimination and privacy in the family and public realms. As will be discussed later in this article, women who self-identify or are perceived as lesbian, transgender, bisexual, and queer face dire and daily forms of violence and discrimination.

In this context, a variety of global and regional entities have increasingly called for a gender perspective which should guide all state action to advance the rights of women. This gender perspective mandates states to consider the historical discrimination that women have and still face socially. It demands contemplating

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23 For examples of the application of a gender perspective in cases, see, e.g., Inter-Am. Ct. H.R., González et. al. (“Cotton Field”) v. Mex., supra note 20, at ¶ 531–43 (ordering the state to offer training programs to its public officials with a gender perspective, addressing harmful stereotypes and forms of discrimination against women and girls); Eur. Ct. H.R., Carvalho Pinto de Sousa Moura v. Portugal, App. No. 17484/15, supra note 18, ¶¶ 46, 48–56 (July 25, 2017) (identifying gender equality as a critical goal of Council of Europe Member States and the presence of gender-based discriminatory stereotypes in justice processes as contrary to this objective); Eur. Ct. H.R., Opuz v. Turkey, supra note 20, ¶¶ 128–53 (identifying state failures to act with due diligence to protect the life of the applicant and deceased mother from domestic violence, considering the contours of this problem); CEDAW Comm., Karen Tayag Vertido, Communication 19/2008, CEDAW/C/46/D/18/2008, ¶¶ 8.1–8.10 (Sept. 22, 2010) (holding the state responsible for the application of gender-based myths and stereotypes by domestic courts in a rape case).

See also CEDAW Comm., General Recommendation 39 on Indigenous Women and Girls, supra note 17, ¶¶ 7, 9, 36, 51 (calling for a gender perspective in all state action concerning Indigenous women and girls, including taking into consideration discriminatory norms, harmful social practices, stereotypes, and inferior treatment that have and still affect them in the present); CEDAW Comm., General Recommendation 35 on Gender-Based Violence against Women, CEDAW/C/GC/35 ¶¶ 9, 21–26 (July 26, 2017) (employing the term “gender-based violence against women” to make explicit the gender impacts of the violence and calling states to adopt gender-sensitive legislation, judicial provisions, and the assignment of budgetary resources); Comm. on Econ., Soc., and Cultural Rights, General Comment 22 On the Right to Sexual and Reproductive Health, supra note 15, ¶¶ 10, 25, and 34 (promoting that states eradicate gender inequality and discrimination against women in laws, policies, and practices concerning sexual and reproductive health, as part of a gender perspective).

For more discussion, see Rosa Celorio, Several Steps Forward, One Backward: Climate Change, Latin America, and Human Rights Resilience, 34 Md. J. Int’l L. 96, 134 (2019).
the social drivers of inferior treatment, which include stereotypes and general tolerance of disadvantaged treatment.25 A third component is understanding the connection between gender-based violence and discrimination.26 A fourth one is considering how state failures and a culture of silence promote gender-based violence.27

The origins of this gender perspective were based on an assessment of women as the primary victims of gender-based violence and discrimination.28 The main assumption was that women needed state protection and public interventions to prevent and respond to these problems.29 This entails the adoption of gender-sensitive legislation, policies, programs, and services at the national level, and a fully-trained administration of justice system to adequately process cases affecting women.30

Caselaw at times has directly referred to this gender perspective explicitly, and in other occasions, the perspective has been there implicitly.31 This gender-sensitive approach to violence and discrimination is still necessary, due to the

25 See id.
26 See id.
27 See id.
28 The World Health Organization has reported that 1 in 3 women globally have experienced physical and/or sexual intimate partner violence or non-partner violence in their lifetimes. See World Health Organization, Violence against Women: Key Facts, WORLD HEALTH ORGANIZATION (last verified Dec. 19, 2023), https://perma.cc/2DK4-WXNU; U.N. Women and the U. N. Economic and Social Council have also documented that 1 in 5 women and girls aged 15–49, reported experiencing physical and/or sexual violence by an intimate partner within a 12-month period. See Facts and Figures, U.N. WOMEN (last verified Dec. 19, 2023), https://perma.cc/2VXD-3DV3.
29 See, e.g., Istanbul Convention, supra note 14, Preamble, Article 6 (recognizing the gravity and structural nature of gender-based violence against women and the need for a gender perspective in the implementation of all Convention provisions); U.N. Sec. Council Res. 1325, S/RES/1325 (Oct. 31, 2000), Preamble, ¶ 5 (recognizing the important role of women in the prevention and resolution of conflicts, and the need to incorporate a gender perspective into peacekeeping operations).
30 See, e.g., Angulo Losada v. Bolivia, Preliminary Objections, Merits and Reparations, Inter-Am. Ct. H.R., Series (ser. C), No. 475, ¶¶ 105, 118, 120–24, 202–08 (Nov. 18, 2022), ¶ 105, 118, 120–24 (highlighting delays, mistreatment, and stereotypes which negatively affected the criminal processing of an incest case concerning a girl, and mandating the state to incorporate a gender perspective in future cases, including the implementation of training programs and protocols with a gender and children rights’ perspective).
31 The Inter-American Court of Human Rights has explicitly called for states to apply a “gender perspective” in their investigation of violence cases concerning women and girls. For examples of this approach, see Inter-Am. Ct. H.R., González et. al. (“Cotton Field”) v. Mex., supra note 20, ¶¶ 531–43; Inter-Am. Ct. H.R., Angulo Losada, supra note 30, ¶ 105, 118, 120–24.

The European Court of Human Rights has referred to the need for a gender-sensitive approach to law enforcement and judicial investigations in cases of discrimination and violence against women, without referring explicitly to a “gender perspective.” For examples, see Eur. Ct. H.R., Carvalho Pinto de Sousa Mourais v. Portugal, supra note 18, ¶¶ 46, 48–56; Eur. Ct. H.R., Opuz v. Turkey, supra note 20, ¶¶ 128–53.
alarming levels of these problems and the ongoing need for protection measures for both women and girls.32

This article contends that this call for a gender perspective has evolved over time and is now focusing on the pursuit for women’s autonomy. Autonomy is seen as a key ingredient to the respect of women’s identities and differences, a life with dignity, and agency and influence in society.33 For autonomy to be realized, states must create the conditions for women to exercise their rights in the realms of the family, education, employment, health, and the social and economic development of their countries. However, for these interventions to be fully effective, states also must take into account the confluence of factors that increase the exposure of women to discrimination and violence. An intersectional approach considers that women can experience many barriers on the basis of their sex, but also their sexual orientation and gender identity, age, race, ethnicity, socio-economic status, disabilities, and other motives.34 Accordingly, current supranational jurisprudence related to women’s rights is underscoring the need for women’s autonomy with an intersectional perspective, taking into account the intricate nature of their discrimination experience and the obstacles that need to be addressed.

32 For an overview of current levels of violence against women associated with the family, climate change, technology, pandemics, trafficking, and the problem of feminicide, see Facts and Figures: Ending Violence against Women, U.N. WOMEN (last verified Nov. 27, 2023), https://perma.cc/F854-M5BR.


34 See, e.g., Gonzales Lluy et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. ¶¶ 290–91 (Sept. 1, 2015) (underscore the forms of discrimination suffered by a 3-year old infected with HIV/AIDS due to a negligent blood transfusion, as a child, a female, affected by poverty, living with HIV/AIDS); Eur. Ct. H.R., Carvalho Pinto de Sousa Morais v. Portugal, supra note 18, ¶¶ 6, 11, 53 (highlighting the forms of discrimination the applicant faced by domestic courts based on stereotypes concerning her age and sex); CEDAW Comm., Alyne Da Silva Pimentel Teixeira v. Brazil, supra note 18, ¶¶ 7.1–7.7 (in which a woman of African descent faced intersectional discrimination in receiving low-quality services in a private hospital, leading to her death).
This article refers to this evolving approach in international jurisprudence as a move towards *intersectional autonomy*. The exercise of intersectional autonomy is critical for women to live a life with dignity, in which they have unhindered access to the conditions and opportunities to secure economic resources and employment, education, health services, and food security, among other determinants of rights protection. This is also critical for women to have an effective, real, and meaningful participation in their societies.

This emphasis on intersectional autonomy is a break from historical human rights protection that solely focused on women as victims, as members of a homogenous group, and a limited binary perspective. Women are not only daily victims of human rights violations, but also face impaired social conditions to affirmatively exercise their human rights. Many of these challenges have resulted in a second-class status for women, with limited participation in critical areas of social incidence, such as politics, the workplace, education, and economics. Therefore, international caselaw also needs to address the legal and practical barriers that women face to fully exercise their civil, political, economic, social, and cultural rights. A legal approach centered on an intersectional autonomy lens, promoting decision-making, self-direction, dignity, and effective participation is a true precondition to see the full realization and exercise of the rights of women. The increasing self-direction of women, leading to the carving of their own plans, and the corresponding social participation and decision-making, are key to build societies free from all forms of discrimination and violence.

Moreover, this article proposes the conceptualization of *intersectional autonomy* as a right of independent content. Treating intersectional autonomy as a right in international jurisprudence would provide the opportunity to offer concrete guidelines to states on legislation, policies, programs, services, and other interventions with strong impact on human rights protection at the national level. It would open a space for international caselaw to provide benchmarks of action,

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35 For more discussion on the historical forms of violence and discrimination women have faced and the need to move beyond “male defined norms” and to consider women’s multi-faced experiences in addressing all their human rights concerns, see Charlotte Bunch, *Women’s Rights as Human Rights: Towards a Revision of Human Rights*, HUM. RIGHTS Q., Nov. 1990, at 486–98, 492–98.

36 See U.N. Economic and Social Council, Commission on the Status of Women, Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls, Agreed Conclusions, E/CN.6/2023/L.3 ¶¶ 46–56 (March 20, 2023) (underscoring a number of social problems that still hinder women’s ability to exercise rights offline and online, including a gender-based uneven distribution of power in decision-making, sexual harassment and forms of violence when they do participate in society, and obstacles to use and develop digital technologies).

37 For an overview of critical challenges women still face, including their underrepresentation in politics; the gender gap in the employment setting; disparities in pay; barriers to access needed education; their absence in leadership-building towards peaceful and inclusive societies; and high levels of violence against women, see *Gender Equality: Women’s Rights in Review 25 Years After Beijing*, U.N. Women (2020), at 6–15.
to ensure that states are well-prepared to prevent and respond to problems such as discrimination and violence against women, among others.

This article discusses case examples from supranational entities which provide hints of the new legal approach based on intersectional autonomy and its contours. Decisions are analyzed from a variety of courts and bodies including the European Court of Human Rights, the Inter-American Commission and Court of Human Rights (hereinafter “Inter-American Court” and “Inter-American Commission”), the United Nations Committee on the Elimination of Discrimination against Women (hereinafter “CEDAW Committee”), and the United Nations Human Rights Committee (hereinafter “Human Rights Committee”). This article also describes the main dimensions and components of a right to intersectional autonomy and this new gender perspective to rights, and state obligations that international case law could identify and give content to.

In its analysis, this article will refer to the work of many global and regional bodies in ruling individual cases concerning women’s rights. The phrase **global human rights system** in this article refers to the work of the United Nations Charter and Treaty-Based Organs. **Regional human rights systems** include regional institutions, Commissions, and Courts that have been established in Africa, the Americas, and Europe and other regions, which are processing cases related to human rights violations affecting women and girls. In its analysis, this article will refer to the work of many global bodies in the respect, protection, and fulfillment of women’s rights. The analysis will also cover extensively the work of Regional Commissions and Courts, which have developed a noteworthy body of work related to women’s rights, calling states to incorporate a gender perspective in all areas of state action and to act with due diligence to prevent and respond to all forms of violence and discrimination against women and girls.

The author is currently pursuing a line of research exploring contemporary understandings of the international human rights of women and how existing legal standards should evolve based on modern scenarios, realities, and problems affecting women. This article represents a contribution to this line of scholarship. This article aims to increase understanding of the linkages between intersectional discrimination and autonomy, how they can be addressed by global and regional human rights jurisprudence, and their potential to enhance effectiveness in international law concerning women and girls.

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38 Due to space limitations, this article will mostly focus on the work of the European Court of Human Rights within the Council of Europe. However, it is important to recognize the work of the European Court of Justice and the European Union in the form of case decisions and Directives furthering different dimensions of women’s rights. For more reading, see **Key EU Directives in Gender Equality and Non-Discrimination**, EUROPEAN EQUALITY LAW NETWORK (last verified Feb. 29, 2024), https://perma.cc/MW6Z-M5AW; **The Court of Justice and Equal Treatment**, COURT OF JUSTICE OF THE EUROPEAN UNION (last verified Feb. 29, 2024), https://perma.cc/KL7U-WNLB.
II. A GENDER PERSPECTIVE: ITS ORIGINS AND EVOLUTION

A gender perspective was largely absent in the development of international human rights law. International human rights law was the product of a tired world, in which much human suffering and loss had occurred in two consecutive World Wars, including genocide, war crimes, crimes against humanity, and mass atrocities. The onset of international human rights was driven by the need to restrain government authority and to reestablish the rule of law and civil and political rights. Therefore, a focus on women and their needs was not a priority in the post-World War II world. Few women participated in the process of carving international human rights law standards, with some exceptions.

It is noteworthy though that discrimination based on sex was included in the Bill of Rights and the international human rights law foundational instruments. A concern for different treatment on the basis of sex is reflected in the Universal Declaration of Human Rights, and the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights.

It was not really until CEDAW that a true conceptualization of women’s rights as human rights began, even though CEDAW is mostly focused on forms of discrimination. The recognition of the dire problem of gender-based violence took place much later in the 1990’s, with the adoption of the UN Declaration on Violence against Women, General Recommendation 19 of the CEDAW Committee, and the creation of the UN Rapporteur on Violence Against

41 See Celorio, Women and International Human Rights in Modern Times, supra note 15 at 1–3 (discussing the initial emphasis of international human rights on civil and political rights and how this focus proved insufficient to improve the situation of women).
44 See id.
45 See generally, CEDAW, supra note 14, at arts. 1–16.
Women. Even though a treaty codifying a prohibition of gender-based violence remains absent at the global level, a noteworthy development has been the adoption of three regional treaties addressing different elements of gender-based violence, including two that speak to the states’ obligation to act with due diligence to prevent, investigate, sanction, and grant reparations when these acts occur against women and girls.

Aside from treaty-based developments, there has been a surge in the last thirty years of key international litigation in the area of women’s rights, leading to a significant body of case rulings advancing their human rights. Regional human rights Courts and Commissions have ruled a wide range of decisions, including the European Court of Human Rights, the Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights, as will be discussed later. UN-Treaty Based Organs such as the CEDAW Committee and the Human Rights Committee have also made their mark in this area.

First line of cases: Violence, discrimination, due diligence, and access to justice

When this body of women’s rights decisions is examined as a whole, there is a first wave that focuses on four areas. Firstly, a significant group of rulings

46 For reference, see CEDAW, supra note 14, at arts. 1–16; UN Commission Office of the High Commissioner on Human Rights, Res. 1994/45, Points 6–7 (March 4, 1994) (providing for the creation of a UN Special Rapporteur on Violence against Women).

47 See Convention of Belém do Pará, supra note 14, at arts. 1–9 (prohibiting violence against women and highlighting the states’ due diligence obligation to address this problem); Maputo Protocol, supra note 14, at arts. 2–5 (mandating the eradication of discrimination, violence, and harmful practices against women); Istanbul Convention, supra note 14, at arts. 2–5 and 12–28 (in which states commit to refrain from any acts of violence and discrimination against women and to address them with due diligence and a gender perspective, including prevention and protection measures).


addresses the problem of domestic violence as a public issue and the need for state measures to address this dire problem.\textsuperscript{51} Many judgments establish a connection between violence and discrimination against women, and mandate states to address stereotypes in the law and in the justice system’s investigation and processing of cases.\textsuperscript{52} The second is the use of due diligence as the leading standard and benchmark for states to follow when addressing the problem of violence, requiring the prevention, investigation, sanction, and reparation of gender-based violence acts.\textsuperscript{53} The third group of cases highlights the need for justice and the problem of impunity, reflected in state failures to promptly and exhaustively investigate cases of violence.\textsuperscript{54} Several cases shed light on the revictimization of survivors and family members by justice systems.\textsuperscript{55} Fourth,
regional human rights entities ruled noteworthy cases addressing sexual violence against women as torture when perpetrated by public officials.\textsuperscript{56}

This first era of cases focuses on women primarily as victims of violence, in need of increased state protection measures, and an adequate access to justice when these acts occur. Many of these cases call on states to treat violence against women as a public priority—and not just a private matter—which demands prompt interventions. This is understandable, as gender-based violence and discrimination are still alarming and hidden problems in most societies, frequently underreported and left in impunity. These case decisions largely focus on women as a homogenous group, with no identification of diversity in terms of their needs and discrimination experiences. For example, the racial, ethnic, or gender features of the victims are rarely discussed in this first era of cases.\textsuperscript{57}

This first line of cases identified an important set of state obligations of a negative and positive nature to address violence against women and discrimination. These include the need to consider the connection between gender-based violence and discrimination and the mandate to diligently prevent, investigate, judge, and sanction all acts of violence.\textsuperscript{58} States are called to establish justice mechanisms which are adequate, effective, and prompt when these acts take place.\textsuperscript{59} States are also obligated to prevent and eradicate the use of sexual violence as torture when perpetrated by public officials\textsuperscript{60} and to address all forms of discrimination in the law.\textsuperscript{61} Another noteworthy aspect is that many of these

\textsuperscript{56} See, e.g., Aydin v. Turkey, App. No. 57/1996/676/866, Eur. Ct. H.R., ¶¶ 80–88 (Sept. 25, 1997), https://perma.cc/BPU6-U2R2 (holding the state responsible for torture when a seventeen-year-old girl was raped and received ill-treatment during her detention); Raquel Martín de Mejia v. Perú, Case 10.970, Inter-Am. Comm’n H.R., Report No. 5/96, OEA/Ser.L/V/II.91 Doc. 7 at 157, Section V: General Considerations, Section B: Considerations on the Substance of the Case, Section on Articles 5 and 11 of the American Convention (March 1, 1996) (finding torture under the American Convention when a woman was raped in her home by security forces when labeled as subversive, along with her husband).

\textsuperscript{57} One important exception was the judgments of Inés Fernández Ortega and Valentina Rosendo Cantú ruled by the Inter-American Court of Human Rights in 2010. In these cases, the Court found the state of Mexico responsible for the detention and rape of two Indigenous women and confirmed the inadequacy of the military justice system to process these cases. See Rosendo Cantú et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., Series (ser. C), No. 216, ¶¶ 70–79; 174–85 (Aug. 31, 2010); Fernández Ortega et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., (ser. C), No. 215, ¶¶ 78–132 (Aug. 30, 2010).


\textsuperscript{61} See, e.g., Inter-Am. Comm’n H.R., Maria Eugenia Morales de Sierra v. Guatemala, supra note 54, at ¶¶ 28–54.
cases enter the home and the family as areas of needed state surveillance and protection, due to the high incidence of discrimination and violence against women in this setting.62

Second line of cases: Intersectionality, Autonomy, Participation, and Dignity at the Forefront

A second wave of later cases begins treating women as a heterogeneous group, with different factors which shape their experience of discrimination and violence, in a diversity of settings beyond the family.63 Some commonalities can be identified in this second wave of cases. First, there are a group of decisions which recognize how age, race, ethnicity, economic position, sexual orientation and gender identity, and other factors can impact the discrimination experience for women.64 Some of these rulings explicitly categorize the discrimination as intersectional and others just discuss how several factors can affect the discrimination experience.65 This phase includes many decisions considering the specific situation of girls, Indigenous women, women of African-descent, and women from LGBTIQ+ communities.66


63 See, e.g., Gonzales Lluy et al. v. Ecuador, supra note 34, ¶ 1, 64–155; Eur. Ct. H.R.; Carvalho Pinto de Sousa Morais v. Portugal, supra note 18, ¶ 1, 6, 11, 53.

64 See, e.g., Inter-Am. Ct. H.R., Gonzales Lluy et al. v. Ecuador, supra note 34, ¶ 290–91 (in which the Court recognizes the forms of discrimination which affected a three year old infected with HIV/AIDS resulting from a mistaken blood transfusion, based on factors such as her age, sex, living with poverty, and the effects of HIV/AIDS); Eur. Ct. H.R., Carvalho Pinto de Sousa Morais v. Portugal, supra note 18, ¶ 6, 11, 53 (in which the Court concluded domestic courts discriminated against the applicant when they applied stereotypes on the basis of her age and sex); CEDAW Comm., Alyne Da Silva Pimentel Teixeira v. Brazil, supra note 18, ¶ 7.1–7.7 (in which the CEDAW Committee recognized the intersectional discrimination suffered by an Afro-descendent woman who died after receiving low quality of care in a private health center); U.N. H.R.C., Sharon McIvor and Jacob Grismer, Views on Communication 2020/2010, CCPR/C/124/D/2020/2010, ¶ 7.1–7.11 (Nov. 20, 2019) (in which the Human Rights Committee acknowledged the historical and present discrimination Indigenous women face, including differential treatment in the Indian Act).

65 For example, in its judgment in Gonzales Lluy et al. v. Ecuador, the Inter-American Court explicitly referred to intersectional discrimination and highlighted that the survivor was a child, a female, living in poverty, and with HIV/AIDS. See Inter-Am. Ct. H.R., Gonzalez Lluy et al. v. Ecuador, supra note 34, at ¶¶ 290–91. Instead in Carvalho Pinto de Sousa Morais v. Portugal, the European Court of Human Rights only discussed the age and sex of the woman affected, without using the term “intersectional.” See Eur. Ct. H.R., Carvalho Pinto de Sousa Morais v. Portugal, supra note 18, ¶ 53. In Sharon McIvor and Jacob Grismer v. Canada, the Human Rights Committee alluded to the historical discrimination faced by Indigenous women but did not employ the term “intersectional.” See U.N. H.R.C., Sharon McIvor and Jacob Grismer v. Canada, supra note 64, ¶¶ 7.1–7.11.

66 See, e.g., Inter-Am. Ct. H.R., Angulo Losada v. Bolivia, supra note 30, at ¶ 95, 166 (in which the Court held the state responsible for not adopting appropriate measures to protect a child survivor of incest taking into consideration her age and sex, and how these factors increased her risk to discrimination in judicial processes); Inter-Am. Ct. H.R., Vicky Hernández v. Honduras, supra note...
Secondly, this later wave includes a group of decisions focusing on legal and practical barriers for women to exercise their autonomy in making decisions concerning their health, sexuality, and life plans. These cases delve into human rights violations in the areas of sexual and reproductive rights and sexual orientation and gender identity. They address issues such as access to abortion, informed consent for medical procedures, sex education, gender expression, and women’s dress.


67 See, e.g., Karen Atala v. Chile, Merits, Reparations and Costs, Inter-Am. Ct. H. R., Series C, No. 239, supra note 22, at ¶ 133–36 (Feb. 24, 2012) (in which the Inter-American Court confirmed that the right to live free from discrimination based on sexual orientation includes the ability to develop life plans based on that sexual orientation).

68 See Inter-Am. Ct. H.R., Artavia Murillo v. Costa Rica, supra note 1, at ¶¶ 141–50, 158–228 (advancing the concept of reproductive autonomy and impediments to its exercise in the realm of in-vitro fertilization techniques); Eur. Ct. H.R., P. and S. v. Poland, supra note 21, at ¶ 111 (in which the Court ruled that access to reliable information on lawful abortions and the relevant procedures is linked to the exercise of personal autonomy and the protection of the right to private life under Article 8 of the European Convention on Human Rights); CEDAW Comm., M.D.C.P. v. Spain, Communication No. 154/2020, CEDAW/C/84/D/154/2020, ¶ 7.6 (Mar. 9, 2023) (establishing that a woman’s right to informed consent over medical procedures is key to protect her autonomy and dignity); Y.Y. v. Turkey, App. No. 14793/08, Eur. Ct. H.R., ¶ 57 (Mar. 10, 2015) https://perma.cc/4WAR-M6G4 (in a case related to access to gender reassignment surgery by a transgender person, the Court recognized that personal autonomy is an important principle underlying the interpretation of Article 8 guarantees under the European Convention on Human Rights).


70 See, e.g., Inter-Am. Ct. H.R., I.V. v. Bolivia, supra note 33, at ¶¶ 149–53, 157 (establishing that informed consent is essential in decisions concerning sexual and reproductive health, as part of the spheres of private life and autonomy of a woman).

71 See ACRWC, Decision in matter of Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania, supra note 33, at ¶¶ 75–88 (highlighting the importance of sex education in schools for girls to exercise their rights, including information on family planning, contraception, and safe abortion).

72 See Eur. Ct. H.R., Christine Goodwin v. United Kingdom, supra note 22, at ¶ 71, 90 (In a case related to lack of legal recognition of the gender re-assignment of the applicant, the Court linked the right to establish an identity with the notion of personal autonomy under the European Convention on Human Rights).

73 See UN H.R.C. Comm., Matter of Sonia Yaker, Communication No. 2747/2016, CCPR/C/123/D/2747/2016 ¶¶ 8.15–8.17 (Dec. 7, 2018) (acknowledging that wearing a veil for women may be a choice grounded on religious beliefs, and therefore, blanket, and unjustified criminal bans constitute a form of intersectional discrimination based on gender and religion).
Third, several case decisions emphasize the importance of economic, social, and cultural rights to ensure a life with dignity.⁷⁴ Fourth, case decisions in this second era call for women to have an effective, real, and meaningful participation in all social areas, which entails the guarantee of safe conditions for activities such as human rights defense and journalism.⁷⁵ Fifth, a group of decisions sheds light on terms to describe different forms and patterns of discrimination which still affect women, including vulnerability and stereotypes.⁷⁶

Several cross-cutting themes are evident in the newer decisions. One is that violence against women is understood broadly, encompassing an approach that reaches beyond classical notions of physical, psychological, and sexual violence. New cases have identified obstetrics violence,⁷⁷ sexual slavery,⁷⁸ and sexual torture.⁷⁹ Important soft law statements have documented other forms—
spiritual,80 environmental,81 political,82 and digital violence against women.83 New treaties have also recognized economic violence and its connection to domestic violence.84 Second, due diligence now has levels and can be reinforced in the case of human rights defenders, journalists, and LGBTIQ+ communities.85 Third, girls are prominent in many of the recent judgments, revealing their dire need for human rights protection and calling for an approach in which they have more participation and their voices are heard.86 Fourth, LGBTIQ+ is one of the areas of most development, with many case decisions identifying forms of extreme discrimination and violence on the basis of sexual orientation and gender expression.87

These newer decisions are gradually advancing the notion that women should be active participants, leaders, agents of social change, and shapers of culture. The legal approach focuses on women’s autonomy and the intersectional


81 See CEDAW Comm., General Recommendation 39 On Indigenous Women and Girls, supra note 17, ¶ 37 (defining environmental violence as the harmful effects of environmental degradation and pollution, and state failures to prevent foreseeable harm connected to climate change).


83 See Dubravka Šimonović (Special Rapporteur), Rep. of the Special Rapporteur on Violence against Women, its Causes and Consequences, Online Violence against Women and Girls from a Human Rights Perspective, A/HRC/38/47 ¶¶ 12–42 (June 18, 2018) (defining different forms of violence women face in digital contexts, such as the internet and social media, including online violence against women, sexual harassment, online stalking, trolling, sextortion, and revenge porn among others).

84 See, e.g., Istanbul Convention, supra note 14, art. 3(a) (defining violence against women as that which also causes economic harm).

85 See, e.g., Inter-Am. Ct. H.R., Vicky Hernández v. Honduras, supra note 22, ¶ 98 (clarifying that states have a reinforced due diligence obligation in the investigation of cases of violence against trans women and human rights defenders); Inter-Am. Ct. H.R., Bedoya Lima v. Colombia, supra note 75, ¶¶ 90–91 (requiring states to act with due diligence to protect journalists from human rights violations, taking into account the historical violence and discrimination which has affected them due to their work).

86 See, e.g., Inter-Am. Ct. H.R., Angulo Losada v. Bolivia, supra note 30, ¶¶ 103–04 (underscoring the importance of girls’ participation in criminal processes concerning incest and sexual violence); Eur. Ct. H.R., P. and S. v. Poland, supra note 21, ¶ 111 (in which the Court held that set procedures should be available for girls to voice their views and wishes concerning access to lawful abortions).

experience of discrimination and violence, hindering dignity and agency in making free choices. This is a break from historical cases highlighting women more as victims, as members of a homogenous group, and a binary perspective. These case decisions are leading the way by advancing a new lens for women, that recognizes their diversity, autonomy, dignity, and agency. This is a modern and needed gender perspective to human rights issues, grounded on intersectional autonomy.

The next section discusses how international women’s rights case decisions are setting the building blocks for a gender perspective guided by intersectional autonomy.

III. TOWARDS INTERSECTIONAL AUTONOMY: THE BUILDING BLOCKS IN SUPRANATIONAL JURISPRUDENCE

This article proposes a legal approach centered on intersectional autonomy as critical to the respect and fulfillment of women’s rights. This is part of a modern and evolving gender perspective for women, promoting their decision-making, agency, and leadership in society. Building blocks to this new approach are cognizable in current cases related to the rights of women and gender equality concerns, as will be discussed in this section.

Autonomy and intersectionality have become guiding principles in international human rights law caselaw concerning women’s rights. This is a valuable legal tendency, but more integration and coherence between these terms is needed to have a gender perspective with potential for effectiveness and substantive transformations at the national level.

Autonomy is presented in recent global and regional caselaw as the possibility of women to express their identities, carve their life plans, and exercise their self-determination, free from unjustified government interferences. Autonomy requires having access to information and education to exercise human rights, and privacy and confidentiality when needed. It also entails agency in the ability to make free and independent choices based on this information.


For cases highlighting the intersection of factors which can impact the discrimination experiences of women and girls, see Inter-Am. Ct. H.R., Gonzales Lluy et al. v. Ecuador, supra note 34, ¶¶ 290–91; Eur. Ct. H.R., Carvalho Pinto de Sousa Morais v. Portugal, supra note 34, ¶¶ 6, 11, 53; CEDAW Comm., Alyne Da Silva Pimentel Teixeira v. Brazil, supra note 18, ¶¶ 7.1–7.7.


The concept of autonomy has been developed in decisions concerning sexual and reproductive rights, including those connected to assisted reproduction techniques, access to abortion services, informed consent, and sex education, as well as the element of non-consent in sexual violence laws, as will be discussed shortly. \(^92\) It has also been embraced in decisions concerning LGBTIQ+ communities, interconnected often with the exercise of gender identity and expression and the rights to live free from violence and discrimination. \(^93\)

The author calls this needed approach *intersectional autonomy* because its lens is not homogenous, and its exercise is deeply shaped by age, race, ethnicity, sexual orientation, gender identity and expression, disabilities, refugee, and migrant status, as well as other factors. An intersectional approach is central to recognize the multilayered nature of women’s experiences and many recent rulings acknowledge this as critical. \(^94\) This includes identity facets which mold the discrimination experience for women who are girls, Indigenous, Afro-descendent, and who belong to LGBTIQ+ groups, among others. \(^95\) Factors such as age, race, ethnicity, gender identity and expression, and others not only aggravate a women’s experience, but also shape its manifestations, since these are core parts of their identity. \(^96\) These motives can also determine the extent to which women can exercise their autonomy in decision-making concerning all areas of their lives.

A legal approach guided by intersectional autonomy also calls for living a life with dignity as a goal and a minimum. \(^97\) The pursuit of dignity is an emerging and cross-cutting theme across civil and political rights \(^98\) and economic, social, and cultural rights. \(^99\) It entails women having access to critical economic resources to exercise their free choices and to live free from all forms of violence and discrimination.


\(^95\) See, e.g., CEDAW Comm., Alyne Da Silva Pimentel Teixeira v. Brazil, supra note 18, ¶¶ 7.1–7.7.


discrimination. This is all intimately connected to women’s capacity to effectively and meaningfully participate in affairs at the local, national, regional, and international levels, and in the finding of solutions to our social problems.

The following sections discuss legal developments concerning the concept of autonomy in international caselaw related to the rights of women. The sections delve into five areas in particular, reproductive autonomy; information and education; autonomy and consent in sexual violence cases; sexual orientation, gender identity, and expression; and violence and stereotypes as a hinder to participation. The weaving of an intersectional perspective or lens into these five areas will also be discussed.

A. The Pursuit of Autonomy

A cognizable tendency in the work of global and regional human rights Courts, Commissions, and Bodies is to ground their decisions in the pursuit of autonomy. Autonomy is treated as a cross-cutting principle, value, and goal. The author considers autonomy the possibility of women to self-direct, by making decisions over their life plans, bodies, health, and social roles. Full autonomy can only be achieved in conditions free from unjustified interferences from states and forms of discrimination and violence.

Scholars have defined individual autonomy as the possibility of women’s self-definition, self-direction, and self-governance. This capacity for independent decision-making can be in the family, economic, social, political, and economic context. It can involve freedom in the pursuit of goals and in having

100 For a discussion on the importance of women’s economic autonomy to the protection of their human rights, see Celorio, Economic, Social, and Cultural Rights of Women, in WOMEN AND INTERNATIONAL HUMAN RIGHTS IN MODERN TIMES, Chapter 9: Economic, Social, and Cultural Rights of Women, supra note 15, at 217–18 (defining economic autonomy as the ability to secure decent employment, and quality education to make free and informed decisions on life plans).


103 See Marilyn Friedman, Relational Autonomy and Independence, in AUTONOMY, OPPRESSION, AND GENDER, supra note 102, 56–60 (arguing that independence in decision-making can be part of autonomy).
access to the conditions and opportunities necessary to implement these goals. Autonomy is not only individual, but also relational or collective in nature, shaped by social determinants such as race, class, gender, and ethnicity.

Autonomy is greatly conditioned on the freedom to make decisions and opportunities to make them. Various scholars have emphasized social barriers which impede the full exercise of women’s autonomy, including the social inequality context and gender differences that hinder the exercise of their rights. The exercise of masculine power, violence as a form of control, and stereotypes have all been discussed as aspects which can limit women’s autonomy. The curtailment of autonomy can be particularly critical in the exercise of decisions concerning polarizing areas such as sexual and reproductive rights. Another important barrier are the demands on women for care—of their families, children, the elderly, and the sick—which impair their time and representation in social sectors.

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104 See Diana T. Meyers, *Personal Autonomy and the Paradox of Feminine Socialization*, 84 J. Phil. 619, 624–28 (arguing that autonomy involves the capacity to adopt projects autonomously, exercising control over one’s life).


107 See Marina Oshana, *A Commitment to Autonomy is a Commitment to Feminism*, in *Autonomy, Oppression, and Gender*, supra note 102, 141–60 (discussing how exploitative labor conditions, cultural and religious practices, and forms of violence and slavery can curtail a woman’s autonomy).


109 For a discussion on the need to protect women’s medical autonomy in the context of childbirth, which is often ignored during labor with coercive medical interventions, see Jessica Flanigan, *Obstetric Autonomy and Informed Consent*, 19 Ethical Theory and Moral Practice 225, 231–34 (2016).

110 See Laura Pautassi, *El Ciudadano como Cuestión Social desde un Enfoque de Derechos* [Care as a Social Issue from a Human Rights Perspective], CEPAL, *Comisión Económica para América Latina y el Caribe*, Serie Mujeres y Desarrollo, Num. 87, 5–19, https://perma.cc/VR7A-CBND (discussing how duties of care and family responsibilities have conditioned women’s use of their time historically and curtailed their life plans, resulting in a sexual division of labor and in a limited participation in the workplace and social affairs).
It is also noteworthy that autonomy has been identified by psychology scholars as an innate need, which can lead to well-being, happiness, and a sense of accomplishment in all human beings. This has been part of scholarship devoted to self-determination theory, which focuses on the social-contextual conditions which shape processes of self-motivation and psychological health.

The author has identified several tendencies in the use of personal autonomy as a concept in international human rights law decisions. Many of these emulate the conceptions of autonomy presented in scholarship. One is the emphasis on reproductive autonomy in the exercise of decisions concerning the number and spacing of children, the use of assisted reproduction techniques, informed consent over medical decisions, and limitations in access to abortion services. Secondly, international cases have underscored the need to receive the information and education necessary to make autonomous health decisions critical to women and girls. Third, there has been a growing emphasis on non-consent as the guiding principle in the crafting of laws concerning rape and sexual violence. Fourth, autonomy has been a key element in jurisprudence advancing the rights of individuals with non-conforming sexual orientations and gender identities and expressions. Fifth, cases have alluded to stereotypes and forms of violence which curtail women’s autonomy to fully participate in society in roles they choose, such as human rights defense and journalism. Stereotypes can also be a critical barrier to the effective processing of cases by justice systems, even when women autonomously choose to report acts of violence and discrimination. The author discusses each of these tendencies in the following sections.

1. The contours of reproductive autonomy.

One of the areas in which women’s rights are most threatened is sexual and reproductive rights. Case litigation has occurred in parallel with ongoing obstacles and restrictions in this area. Global and regional human rights bodies have
increasingly received case petitions alleging a range of human rights violations, including barriers to access assisted reproductive technologies, obstacles to access abortion services, informed consent, and the problem of obstetrics violence. The need to respect women’s personal autonomy has been a central focus in sexual and reproductive cases.

The Inter-American Court of Human Rights has taken the lead in adding layers to the concept of autonomy in sexual and reproductive health. It has embraced reproductive autonomy and asserted its importance in cases alluding to obstacles in access to needed assisted reproductive technologies and informed consent in medical procedures.

One prominent example already mentioned is the case of Artavia Murillo v. Costa Rica, in which the Inter-American Court of Human Rights declared that the prohibition of IVF in Costa Rica was contrary to the American Convention on Human Rights. The Court treated reproductive autonomy not only as a notion, but also as a right, grounded on Article 16 (e) of CEDAW—including the capacity of women to control their fertility and to have the education and means to do so. Personal autonomy was interpreted as broad reaching, having an integral connection with privacy, family, and dignity. The Inter-American Court overall held that the absolute prohibition on In-Vitro Fertilization interfered with the couples’ autonomy to select the types of treatments they wished to conceive.

The Court also clarified that the words “in general” in Article 4(1) and its...
protection of the right to life were not absolute, but gradual and incremental, allowing exceptions to the general rule.\textsuperscript{123} The full exercise of autonomy in this setting requires states to also ensure access to the technology and scientific progress necessary to exercise the rights of couples in this predicament.\textsuperscript{124} This is one of the first cases to fuse an autonomy analysis with an intersectional approach, considering the gender, financial situation, and disability of the couples affected.\textsuperscript{125}

In its later case of \textit{I.V. v. Bolivia}, the Inter-American Court of Human Rights continued adding dimensions to the concept of reproductive autonomy.\textsuperscript{126} This case addressed the sterilization of a woman without her consent at a public hospital.\textsuperscript{127} The petitioner contended before the domestic courts that she never assented to a bilateral tubal ligation, despite doctors’ reports to the contrary.\textsuperscript{128} The procedure resulted in anguish, frustration, and mental health issues on I.V., as well as the dissolution of her marriage.\textsuperscript{129}

In ruling the \textit{I.V. v. Bolivia} case, the Inter-American Court included key analysis on the concept of reproductive autonomy, underscoring that women should be able to exercise their self-determination and medical choices, free from unjustified state interferences.\textsuperscript{130} Autonomy has special connotations in the realm of women’s health due to the inherent imbalance of power between the doctor and the patient.\textsuperscript{131} The Court also connected autonomy to dignity and liberty, emphasizing the need to ensure that women have the capacity to organize their individual and social life, according to their beliefs and the law.\textsuperscript{132} Access to information is presented as a critical ingredient for women to develop their life paths and make decisions related to their health and human rights.\textsuperscript{133} The information imparted should be comprehensive, reliable, opportune, and complete.\textsuperscript{134} The Court also linked the right to make autonomous decisions in the realm of sexual and reproductive health to freedom from violence and coercion.\textsuperscript{135}

Therefore, for the Inter-American Court, and as stated in the case of \textit{I.V. v. Bolivia}, informed consent is intimately connected to the autonomy and private life
of women, who should be able to freely choose their life projects, including the decision to have or not to have children and their spacing.\textsuperscript{136} This means that consent needs to be given before any medical interventions, in a full, informed, free, voluntary, and autonomous manner.\textsuperscript{137} The elimination of gender-specific stereotypes is critical in this realm, as they can hinder women’s access to information and the way their consent is obtained before a medical procedure.\textsuperscript{138} In this case, I.V.’s consent was obtained in the middle of a medical procedure, when she was stressed and tired, which is contrary to international standards in this area.\textsuperscript{139} The Court also established how the sterilization procedure annulled I.V.’s capacity to exercise her autonomy, in a discriminatory manner, depriving her of the opportunity to make a free and informed decision.\textsuperscript{140} The Court also connected its analysis on autonomy to intersectional discrimination in this case, referring to the victim’s national origin, status as a refugee, and socioeconomic situation, as factors which exacerbated her risk to non-consented sterilizations.\textsuperscript{141}

The European Court of Human Rights has also delved into the issue of sterilizations without consent, establishing how women’s autonomy is curtailed in these cases. For example, in the matter of \textit{V.C. vs. Slovakia}, the applicant, a woman of Roma ethnic origin, was sterilized without her consent in a public teaching hospital, after the delivery of her second child.\textsuperscript{142} The applicant was informed during labor that conceiving again would lead to her death; therefore, she signed a form requesting a sterilization, without really understanding what this term meant.\textsuperscript{143} The European Court found a number of state failures amounting to a violation of Article 3 of the European Convention on Human Rights, including the lack of appropriate provision to the applicant of accurate information and alternatives regarding the sterilization, which was particularly important for her to properly offer consent in this context.\textsuperscript{144} The Court also discussed the principle of a patient’s autonomy in health matters, which requires avoiding paternalistic decisions, in respect of their integrity and privacy.\textsuperscript{145} The Court referred to a right of autonomy and choice as a patient, which was grossly disregarded in this case.\textsuperscript{146}

\textsuperscript{136} See Inter-Am. Ct. H.R., I.V. v. Bolivia, supra note 33, ¶ 162.
\textsuperscript{137} See id. ¶¶ 181–96.
\textsuperscript{138} See id. ¶ 187.
\textsuperscript{139} See id. ¶¶ 231–35.
\textsuperscript{140} See id. ¶ 246.
\textsuperscript{141} See id. ¶¶ 247–48.
\textsuperscript{143} See id. ¶ 15.
\textsuperscript{144} See id. ¶¶ 112.
\textsuperscript{145} See id. ¶¶ 113–15.
\textsuperscript{146} See id. ¶ 119.
The concept of reproductive autonomy is also flourishing in cases concerning abortion. The trend in international case decisions is to find near-total abortion bans as contrary to human rights treaties and an encroachment of the reproductive autonomy of the women and girls affected.

For example, the Human Rights Committee recently decided two emblematic complaints challenging the strict ban on abortion that Ireland had in place at the time, in which both claimants argued this restriction curbed their reproductive autonomy, resulting in intense physical and psychological suffering. In the case of *Mellet v. Ireland*, the claimant sustained that she was informed during her twenty-first week of pregnancy that her fetus had congenital heart defects and would likely die, and that abortions were not available in her jurisdiction in Ireland. Her doctor referred to overseas travel as an option, but did not recommend an adequate abortion provider in the UK. She eventually had an abortion in Liverpool and traveled back to Dublin only twelve hours after the procedure, since she could not afford to stay longer in the UK. She received no state financial assistance to terminate her pregnancy abroad or any bereavement counseling to cope with the loss of her pregnancy. The claimant alleged before the Human Rights Committee that Ireland’s abortion law subjected her to cruel, inhuman, and degrading treatment, and infringed on her rights to dignity and mental integrity by denying her reproductive health care and bereavement support she needed; forcing her to terminate her pregnancy abroad; and subjecting her to stigma. The claimant sustained she had to choose between letting the state make the intimate reproductive decision to continue a non-viable pregnancy.

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147 Even though it is not a tribunal, the Human Rights Committee has the faculty to process individual complaints (also known as communications) filed by a person or group of persons alleging to have suffered human rights violations by a State party under the International Covenant on Civil and Political Rights. The State party must have recognized the Committee's competence by having ratified the Optional Protocol. For the purposes of this article, the complaints ruled upon by the Human Rights Committee will be referred to first identifying the complainant and secondly the state party involved. For example, see the discussion on the Human Rights Committee case decisions of *Mellet v. Ireland* and *Whealan v. Ireland* in this section. The same format will be used for the complaints decided by the CEDAW Committee. For more information on the process followed by the Human Rights Committee and other UN Treaty-Based Organs to process individual complaints or communications, see Guidance Note for Submitting an Individual Communication to the UN Treaty Bodies.


150 *See* id. ¶ 2.1.

151 *See* id. ¶ 2.4.

152 *See* id. ¶¶ 2.4–2.5.

153 *See* id. ¶ 3.1.
pregnancy or having to travel abroad for a termination. She argued that by denying her the only option that would have respected fully her integrity—to terminate a pregnancy in Ireland—the state encroached in her reproductive autonomy and decision-making.

The Human Rights Committee in *Mellet v. Ireland* sided with the claimant, finding that the criminalization of abortion in Ireland rose to the level of cruel, inhuman, and degrading treatment, further aggravated by the obstacles in receiving information about medical options. The Committee also referred to the right to privacy under the ICCPR and reaffirmed its jurisprudence protecting a woman’s decision to request termination of a pregnancy as an issue falling within the scope of this right. The Human Rights Committee also found that the state arbitrarily interfered with the claimant’s right to privacy, underscoring that her intense suffering could have been avoided by allowing her to terminate her pregnancy in Ireland. The Committee made a finding of discrimination under Article 26 of the ICCPR, by stating that women who chose to terminate a viable pregnancy in Ireland had to do so with their own financial resources, entirely outside the scope of the public health system. The Committee called this self-financing regime in particular “differential treatment” in relation to other similarly situated women by failing to consider medical needs and socioeconomic circumstances, which did not meet the requirements of reasonableness, objectivity, and a legitimate purpose. It is important to note that the Committee did not refer explicitly to the term “intersectional” to categorize the discrimination, but alluded to several factors which aggravated the differential treatment, such as the claimant’s socioeconomic circumstances and pregnancy. Therefore, it can be concluded that the Committee implicitly applied an “intersectional” approach in this decision to make its findings of violations under the ICCPR. Among its recommendations, the Human Rights Committee instructed Ireland to amend its law on voluntary termination of pregnancy, including its Constitution; to establish effective, timely, and accessible procedures for pregnancy termination; and to ensure that healthcare providers supply full information on safe abortion services without criminal sanctions.

154 *See id. ¶ 3.5; U.N. H.R.C. Amanda Jane Mellet, supra note 69.*

155 *See U.N. H.R.C. Amanda Jane Mellet, supra note 69, ¶ 3.5.*

156 *See id. ¶¶ 7.4–7.5.*


158 *U.N. H.R.C. Amanda Jane Mellet, supra note 69, ¶ 7.8.*

159 *See id. ¶ 7.10.*

160 *See id. ¶ 7.11.*

161 *See id. ¶ 9.*
The Human Rights Committee ruled similarly in the later case of *Whelan v. Ireland*. The claimant in this matter was informed by public medical professionals during the twentieth week of her pregnancy that her fetus had a fatal condition and would likely die shortly. The claimant and her husband traveled to England to terminate her pregnancy and left their twenty-month-old son with relatives, as well as took leave from work and farm relief. The claimant gave birth to a stillborn son at twenty-one weeks and five days and was forced to leave the baby’s remains in the Liverpool hospital, which left her heartbroken and was costly. The claimant argued in this case that the prohibition of abortion breached her right to privacy, compromising her reproductive autonomy and integrity, by denying her family support in a moment of crisis and trauma. The Committee found similar violations of the ICCPR as in *Mellet* and underscored that the claimant was in a “highly vulnerable position” after learning her pregnancy was not viable, feeling abandoned by the Irish health care system, and having to gather information on medical options alone. The Committee therefore found the state responsible for a violation of the prohibition against cruel, inhuman, and degrading treatment under Article 7 of the ICCPR. The Committee also reaffirmed that preventing the claimant from terminating her pregnancy in Ireland caused her mental anguish which represented an intrusive interference with decisions over her pregnancy, violating her right to privacy. It is important to note that abortion has been legalized in Ireland since these case decisions were issued, even though women and girls still face significant obstacles to access these services.

The Human Rights Committee in its General Comment 36, solidified the principles advanced in the *Mellet* and *Whelan* cases, confirming that restrictions on the ability of women and girls seeking abortions must not jeopardize their lives and subject them to physical or mental pain or suffering, in violation of Article 7 of the ICCPR. Accordingly, the Human Rights Committee mandated states to

163 See id. ¶ 2.1–2.2.
164 See id. ¶ 2.4.
165 See id. ¶ 2.5.
166 See id. ¶ 3.4.
167 See id. ¶¶ 7.5–7.6.
168 See U.N. H.R.C., Siobhán Whelan supra note 69, ¶ 7.7.
169 See id. ¶ 7.9.
provide “safe, legal, and effective” access to abortion where the life and health of
the pregnant women is at risk and when carrying pregnancies to term would cause
intense suffering.\footnote{Provide footnote.}

Regional human rights courts have also tackled cases concerning abortion
recently. For example, the European Court of Human Rights declared in its ruling
in \textit{M.L. v. Poland} that a near-total ban on abortion in Poland was contrary to the
European Convention on Human Rights.\footnote{Provide footnote.} The case alluded concretely to
abortion restrictions on the grounds of fetal abnormalities—introduced by a
Constitutional Court’s judgment of October 22, 2020—which impeded the
appellant from performing an abortion when she carried a fetus with a genetic
disorder.\footnote{Provide footnote.} She traveled to the Netherlands to terminate her pregnancy, incurring
substantial fees.\footnote{Provide footnote.} The Court ruled in favor of the applicant, finding a violation
of her right to private life, reaffirming that a right to personal autonomy is within
the scope of Article 8 of the Convention.\footnote{Provide footnote.} The Court acknowledged the work of
the Human Rights Committee in this area, including its case decisions in the \textit{Mellet}
and \textit{Whelan} matters and General Comment 36,\footnote{Provide footnote.} but fell short of finding that the
mental suffering in this case rose to the level of inhuman and degrading treatment
under Article 3 of the European Convention.\footnote{Provide footnote.} The Inter-American Court is also
currently reviewing the highly anticipated case of \textit{Beatriz vs. El Salvador}, in which it
will examine the human rights implications of the absolute ban on abortion in El
Salvador.\footnote{Provide footnote.} The petitioner in this case confronted numerous barriers in El
Salvador to terminate her pregnancy while carrying an anencephalic fetus.\footnote{Provide footnote.} The
Inter-American Commission has argued before the Inter-American Court that the
pain and suffering Beatriz endured amounted to cruel, inhuman, and degrading
treatment.\footnote{Provide footnote.}

Issues concerning personal autonomy have also loomed large in cases
connected to obstetrics violence before global and regional bodies. For example,
in \textit{M.D.C.P. v. Spain}, a complaint examined by the CEDAW Committee, the

\begin{footnotes}
\item[172] See id. ¶ 8.
\item[174] See id. ¶¶ 1, 5–22.
\item[175] See id. ¶¶ 23–24.
\item[176] See id. ¶¶ 91, 154, 160–76.
\item[177] See id. ¶¶ 48–51.
\item[178] See id. ¶¶ 82–85.
\item[179] For more information on the \textit{Beatriz} case and the allegations presented by the Inter-American
Commission before the Inter-American Court, see Inter-American Commission on Human Rights
Press Release, \textit{IACHR Takes Case Involving El Salvador’s Absolute Ban on Abortion to the Inter-
American Court of Human Rights} (Jan. 11, 2022), https://perma.cc/9UBK-NZZH.
\item[180] See id.
\item[181] See id.
\end{footnotes}
claimant alleged that she was mistreated during labor at a public hospital in Seville.\textsuperscript{182} She alleged that she was denied the opportunity to make choices concerning her dilation position, punctures, and pain medication.\textsuperscript{183} The claimant also argued that she received a low quality of care due to gender stereotypes and a paternalistic model of the doctor-patient relationship.\textsuperscript{184} The CEDAW Committee concluded that acts of obstetrics violence had indeed taken place, citing as concrete examples undertaking a caesarean section without the applicant’s consent and the use of inexperienced medical staff to carry out gynecological examinations.\textsuperscript{185} The CEDAW Committee did consider that her autonomy had been infringed by the medical professionals’ failure in recognizing her as a subject capable of looking after her health and that of her daughter, resulting in a loss of dignity.\textsuperscript{186} The Committee overall emphasized the need for women to receive full information on recommended treatments in order to make well-considered decisions.\textsuperscript{187}

The push for reproductive autonomy has also been reflected in the work of U.N. treaty-based organs in the areas of General Comments and Recommendations. For example, the Committee on Economic, Social, and Cultural Rights in its General Comment 22 established that the right to sexual and reproductive health is intimately connected to a woman’s autonomy.\textsuperscript{188} It underscored how states have obligations to guarantee that services in this area are available, accessible, affordable, acceptable, and of quality.\textsuperscript{189} According to the Committee, autonomy must be respected not only for adult women, but also for girls, mandating that states implement measures to eradicate prejudices and stereotypes concerning areas such as menstruation, pregnancy, and fertility.\textsuperscript{190}

The cases discussed in this section overall call on states to eradicate the legal and practical barriers that women face to make decisions concerning areas critical to their sexual and reproductive rights. Autonomy in general is referred to as a precondition for the full enjoyment of the rights of women, including those connected to life, integrity, dignity, privacy, liberty, non-discrimination, and to be free from inhuman, cruel, and degrading treatment. The rulings underscore how autonomy should be enjoyed both inside the family and outside of the same,\

\begin{flushleft}
\textsuperscript{182} See CEDAW Comm., \textit{M.D.C.P. v. Spain}, supra note 68, ¶¶ 2.1–2.13. \\
\textsuperscript{183} See id. ¶¶ 2.1–2.13. \\
\textsuperscript{184} See id. ¶ 3.4. \\
\textsuperscript{185} See id. ¶ 7.8. \\
\textsuperscript{186} See id., ¶¶ 7.6, 7.12. \\
\textsuperscript{187} See id. ¶ 7.8. \\
\textsuperscript{188} See Comm. on Econ., Soc., and Cultural Rights, General Comment 22 On the Right to Sexual and Reproductive Health, supra note 15, ¶¶ 10–21, 55. \\
\textsuperscript{189} See id. ¶¶ 10–21, 25. \\
\textsuperscript{190} See id. ¶ 48. \\
\end{flushleft}
including in health institutions. The problems of violence and stereotypes are also presented as severe hindrances to the exercise of women’s reproductive autonomy in general.

As noted in this section, the cases of *I.V. v. Bolivia*, *V.C. v. Slovakia*, *Mellet v. Ireland*, *Whelan v. Ireland*, and *M.C.D.P. v. Spain* all allude to the importance of information and education to act with autonomy. The information and education should be comprehensive, accurate, evidence-based, and easily accessible. In the following section, the author discusses some cases that have highlighted the key nature of sex education to exercise rights, which is critical in the case of girls.

*a) Information and education as key ingredients to exercise autonomy*

In recent cases, sex education and information concerning sexual and reproductive health have been identified as paramount for the exercise of women's rights. The author notes the emblematic nature of these cases and how many of them are related to girls under eighteen years old. It is noteworthy that some decisions do refer to autonomy explicitly while others do so implicitly.

The Maputo Protocol in the African System of Human Rights has the unique distinction of being the only binding regional human rights treaty that codifies explicitly obligations related to sexual and reproductive health. Among these, it mandates states to provide education and information on health and reproductive rights to women. Therefore, the African Commission on Human and Peoples’ Rights and other African system mechanisms have begun advancing important legal interpretations of the reach of state obligations in the areas of sexual and reproductive rights based on different regional treaties.

One noteworthy example was the case decision issued by the African Committee of Experts on the Rights and Welfare of the Child (the “ACERWC”) emphasizing how sex education can provide critical information for girls to exercise their autonomy in schools. In the matter of *Legal and Human Rights Center and Centre for Reproductive Rights v. Tanzania*, the ACERWC declared that mandatory pregnancy testing in schools was contrary to the African Charter on the Rights and Welfare of the Child (the “African Charter on the Rights of the


192 See Maputo Protocol, supra note 14, art. 14(2)(a).

The complainants alleged that forced pregnancy testing was conducted in public schools in Tanzania and that girls who were found pregnant were consistently expelled. School officials justified the expulsions as being based on offenses against morality, allowed under the Education Regulations in Tanzania. School personnel reported the offenses as criminal incidents, leading to the detention and harassment of girls in harsh conditions until they identified the person who impregnated them. This all occurred in a context in which there was a lack of comprehensive sexuality education in schools. The complainants alleged that this void in sexual and reproductive health education promoted unwanted pregnancies and increased the number of unsafe abortions among adolescent girls.

The ACERWC ruled in favor of the complainants, finding several human rights violations under the African Charter on the Rights of the Child. These included a ruling that forced mandatory pregnancy testing of girls in schools rises to the level of cruel, inhumane, and degrading treatment under Article 16 of the African Charter on the Rights of the Child. The ACERWC recognized the psychological harm and physical pain experienced by the girls forced to undergo pregnancy tests, and the stigmatization faced when they were expelled from schools. The ACERWC also underscored the rights of girls to live free from all forms of violence and cruel, inhuman, and degrading treatment in the realm of education; rights infringed by mandatory pregnancy testing and by the girls’ arbitrary detention.

The ACERWC also highlighted the critical nature of the right of adolescent girls to receive comprehensive sexuality education in schools, which includes information on family planning, contraception, and safe abortion. Information is presented as important for girls to make informed decisions related to their health and bodies, free from unjustified government interference. Lastly, it is key to note that the ACERWC connects all of this analysis to intersectional rights violations.

195 See id. ¶¶ 2–8.
196 See id. ¶ 4.
197 See id. ¶ 7.
198 See id. ¶ 8.
199 See id.
201 See id. ¶ 33.
202 See id. ¶¶ 38–49, 60–66.
203 See id. ¶¶ 75–88.
204 See id. ¶¶ 80, 83.
discrimination on the basis of gender, age, and health status, and the dignity of the survivors.205

The priority nature of sex education to make autonomous decisions was also echoed in the case of Guzmán Albarracín et al. v. Ecuador ruled by the Inter-American Court of Human Rights.206 This case concerned a girl who suffered a pattern of sexual abuse by the vice-principal at her public school.207 She was between fourteen and sixteen years old at the time of the events.208 The Principal of the school knew that the Vice-Principal was having sexual relations with Paola; events which eventually led to her suicide.209 Her family also encountered a number of barriers to obtain justice at the national level.210

The Inter-American Court found in the case of Albarracín et al. that the state failed in its duty to prevent sexual violence, which is critical in the context of education and to protect schoolgirls. The Court considered what occurred to Paola to amount to rape, due to the unequal power relations between her and her aggressor, and the fact that consent cannot be inferred in the case of girls.211 The Court also noted that these events took place in a context of sexual harassment and abuse in schools.212 The Court referred in particular to the lack of sex education in Paola’s school, which did not include information relevant to the exercise of her rights to autonomy, informed consent, her right to live free from violence, or sexual and reproductive rights in general.213 The violence she suffered was also construed as a form of intersectional discrimination, on the basis of her gender and age.214 The Court found that the state failed in its due diligence obligation to protect Paola’s right to a life with dignity, by failing to ensure prompt medical care to respond to her suicide attempt, in contravention of the right to life in the American Convention.215

The European Court of Human Rights has also delved into the importance of information for women and girls to properly access sexual and reproductive health services at the national level. In the case of P. and S. v. Poland, the applicants sought access to a lawful abortion in different locations in Poland, but faced
different obstacles in doing so.\textsuperscript{216} Among the challenges reported, they received contradictory information from a public hospital in Lublin on how to access a lawful abortion; they were informed in a Warsaw hospital that they had to wait three days to perform the abortion, which was inaccurate; and never received any objective medical counseling which took into account their views.\textsuperscript{217} They were both girls at the time.\textsuperscript{218} The Court went as far as saying that when there is an adult parent involved, the girl affected needs to be offered the opportunity to exercise autonomy in decision-making, and mechanisms should be in place to resolve conflicting views, taking into consideration the best interests of the minor involved.\textsuperscript{219} The Court emphasized that effective access to information on the relevant procedures to be followed to access a lawful abortion is key for the exercise of personal autonomy.\textsuperscript{220}

As the cases presented illustrate, access to information and sex education are considered key in facilitating the enjoyment of women’s rights, particularly in relation to the autonomy of girls. The cases weave the concept of autonomy with other important elements, such as the intersection of forms of discrimination that girls often face due to their sex, gender, and age; threats to living with dignity; and their personal integrity and life. Girls are also frequently victims of rape, and several cases have been decided underscoring the need for the element of non-consent to guide the processing of these crimes by justice systems, as will be discussed in the following section.

\textit{b) Autonomy and non-consent in the realm of violence}

An interesting line of cases has been issued by several global and regional bodies emphasizing the importance of an analysis driven by non-consent in cases of rape. These rulings reject the notion that survivors need to use force or physical resistance for the crime of rape to be proven. Therefore, they are reinforcing the right of women to make autonomous decisions concerning their sexual life, free from all forms of coercion, violence, and discrimination. Several seminal cases in this area are related to girls, which illustrates the dire levels of violence, rape, and incest against them.\textsuperscript{221}

For example, in \textit{M.C. v. Bulgaria}, the European Court of Human Rights confirmed that non-consent should be the guiding element in the investigation of rape cases. In this case, the applicant alleged that she was raped by two men when

\begin{small}
\textsuperscript{216} See Eur. Ct. H.R., P. and S. v. Poland, \textit{supra} note 21, \textendash 5–41.
\textsuperscript{217} See id. \textendash 102–03, 108.
\textsuperscript{218} See id. \textendash 5.
\textsuperscript{219} See id. \textendash 109.
\textsuperscript{220} See id. \textendash 111.
\textsuperscript{221} For background on the rates of violence against girls in different contexts, see \textit{A Statistical Snapshot of Violence Against Adolescent Girls}, UNICEF, 1–16 (2014).
\end{small}
she was fourteen years old.\footnote{See M.C. v. Bulgaria, 2003-XII Eur. Ct. H.R., ¶¶ 10, 11–43.} Her case was dismissed when the authorities failed to find that she had resisted the act of rape.\footnote{See id. ¶¶ 44–68.} The European Court found several violations of the European Convention, including her rights to private life (Article 8) and her right to an official investigation (Article 3).\footnote{See id. ¶¶ 148–87.} The Court referred in particular to the trends in Europe and internationally in no longer requiring proof of force and resistance in cases of rape.\footnote{See id. ¶¶ 156–63 (the Court referred as examples to Belgium, Ireland, the United Kingdom, and the United States of America).} The Court noted how this trend recognized social respect for the goals of equality and sexual autonomy.\footnote{See id. ¶ 165.} The prosecution of non-consented sexual acts should be the focus of laws instead.\footnote{See id. ¶ 166.} Therefore, the Court found that the domestic courts’ approach in this case was flawed and based on deficient legislation.\footnote{See \textit{M.C. v. Bulgaria}, 2003-XII Eur. Ct. H.R., ¶¶ 169–87.}

Another example of this tendency was the judgment of the Inter-American Court in the case of \textit{Brisa Angulo Losada v. Bolivia}.\footnote{See, e.g., \textit{Angulo Losada v. Bolivia, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶ 1 (Nov. 18, 2022).}} Brisa was the victim of incest and sexual violence perpetrated by her cousin, incidents which began after she was sixteen.\footnote{See id. ¶¶ 33–37.} Her cousin was twenty-six at the time.\footnote{See id.} She and her family reported these incidents before the authorities and more than twenty years have passed and the perpetrators are still unpunished.\footnote{See id. ¶ 81–82.} She was also severely revictimized in her process of seeking justice.\footnote{For more background on Brisa de Angulo Losada’s advocacy work, see CNN Heroes, \textit{At 17, this sexual abuse survivor set out to fix a broken system} (April 20, 2018), https://perma.cc/K295-LC67.} Brisa is now a well-known activist, has created her own foundation, and has devoted her life’s work to ensure that no other girl becomes a victim of incest.\footnote{See \textit{Angulo Losada v. Bolivia, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶¶ 92–124 (Nov. 18, 2022).}

In the judgment of \textit{Brisa Angulo Losada}, the Court reviewed the American Convention and the Convention of Belém do Pará and ruled that states have a reinforced due diligence obligation to conduct justice proceedings in cases of incest with a gender and child-rights perspective, which was not met in this case.\footnote{See id. ¶ 33–37.} This means that states must adopt special measures of protection to ensure that
girls and their family members can adequately navigate the administration of justice system, and be treated humanely in the process.\textsuperscript{236} The Court clarified that the due diligence standard is higher in cases of violence against girls, including a duty to investigate promptly and exhaustively, granting weight to the survivor’s words, as well as ensuring that trained personnel is involved in the management of these cases.\textsuperscript{237} The Court, moreover, underscored the need for children and adolescents to participate in criminal processes, which entails ensuring their access to vital information to enforce their rights and access to legal aid when needed.\textsuperscript{238} The investigation and legal process should also have taken into consideration that Brisa was a woman and a child, which increased her exposure to acts of sexual violence and forms of revictimization.\textsuperscript{239}

The Inter-American Court of Human Rights in \textit{Brisa Angulo Losada} also advanced a detailed analysis on how consent should be the central focus of laws related to rape and incest, and not the use of physical force to resist these incidents.\textsuperscript{240} Consent cannot be inferred in cases of girls under 18 years old involving adults, due to the unequal power dynamics inherent in those relationships.\textsuperscript{241} The Court lastly called on the state of Bolivia to reform its laws related to sexual violence, including the incorporation of consent as the central element to prove these crimes; the elimination of rape provisions which are not in conformity with current international law standards; and the need to criminalize rape in the context of incest.\textsuperscript{242}

As the cases presented illustrate, global and regional caselaw is clarifying for states that non-consent should be the guiding element in cases of rape. This is critical to ensure that women and girls can make free and autonomous choices concerning their sexual life. There should be a legal remedy available when there are interferences with these choices, through violence, coercion, and harassment. This is key in the case of girls, due to their increased exposure to forms of violence and incest. Recognizing girls’ ability to make autonomous choices is also part of treating them humanely and with dignity in legal processes concerning their rights, which did not occur in the cases discussed.

Another area in which humane treatment and dignity are constantly in jeopardy is related to LGBTIQ+ individuals and communities. This is an area of growing legal developments and interpretations and the pursuit of personal

\textsuperscript{236} See id.
\textsuperscript{237} See id., ¶¶ 95–102.
\textsuperscript{238} See id., ¶¶ 103–04.
\textsuperscript{239} See id., ¶ 105.
\textsuperscript{240} See id., ¶¶ 134–56.
\textsuperscript{241} See id., ¶¶ 152–54.
\textsuperscript{242} See id., ¶¶ 196–201.
autonomy is at the heart of many cases, as will be discussed in the following section.

c) Sexual orientation, gender identity, and expression

Personal autonomy has been at the center of the emerging caselaw protecting the rights of LGBTIQ+ individuals and communities. The possibility of exercising agency and developing life plans based on an individual’s sexual orientation and gender identity has been a focus of many recent cases, which will be discussed in this section. These rulings underscore the need for states to protect the right of members of LGBTIQ+ communities to make free choices based on their identity, free from all forms of state interferences and discrimination, stereotypes, and violence. Some of the women most victimized today are those self-identified and perceived as lesbian, bisexual, transgender, and queer, among others with non-conforming sexual orientations and gender identities, impacted by violence, harmful stereotypes, stigmatization, and social rejection. Therefore, it is a positive development to see the growing recognition by a range of global and regional human rights bodies of the gravity, severity, and frequency of violence and discrimination against individuals motivated by their sexual orientation, gender identity and expression, and sex characteristics.

The case of Azul Rojas Marín and others v. Peru recently issued by the Inter-American Court of Human Rights is illustrative of this tendency. The matter addressed the detention and torture of a gay man, who identified as a woman and went by the name Azul. Azul was arbitrarily detained by the police and then submitted to appalling acts of physical and psychological violence during her detention. The Inter-American Court of Human Rights took advantage of this opportunity to underscore its concern over the discrimination, stigmatization, and violence faced by members of LGBTIQ+ communities.

The analysis advanced by the Inter-American Court in Azul Rojas Marin and others on the right to privacy contained in Article 11 of the American Convention was particularly noteworthy, which according to the Court extends to the sexual life and sexuality of individuals. In this setting, sexual violence negatively impacts the values and private life of individuals, interfering with their ability and freedom to make choices concerning their sexual life and losing control over their

243 For more discussion of the evolution of gender equality and legal developments concerning LGBTIQ+ individuals, see CELORIO, Chapter 4: Sexual Orientation and Gender Identity, supra note 15, at 87–113.


245 See id. ¶¶ 52–54.

246 See id. ¶ 90–93, 158–67.

247 See id. ¶ 176.
most intimate and personal decisions. 248 The Court also noted the negative influence of stereotypes regarding sexual orientation in the investigation of these incidents, in particular the questions that were posed to her regarding her sexual life during her detention. 249 Therefore, the Court concluded that the domestic tribunals did not do enough to investigate the sexual torture suffered by Azul with due diligence. 250 Violations were found to her rights to personal integrity and liberty; private life; torture; and judicial protection and guarantees. 251

The Inter-American Court also reaffirmed the autonomous right of all individuals to choose and exercise their sexual orientations and gender identities in its judgment in the case of Vicky Hernández and others vs. Honduras. 252 In this case, the Inter-American Court of Human Rights examined the killing of a trans woman and human rights defender during a state-imposed curfew in the context of the 2009 coup d’état. 253 The petitioners claimed that at the time of these events law enforcement authorities committed many acts of discrimination and violence against LGBTIQ+ persons in Honduras. 254

In ruling in favor of the petitioners, the Inter-American Court in Vicky Hernández and others referred to the use of violence by public forces in Honduras as a way to punish trans women, with the symbolic goal of sending a message of exclusion or subordination. 255 The Court concluded there was state involvement in her death, leading to a violation of the right to life under the American Convention (article 4.1); a death it considered gender-based and motivated by her gender identity. 256 The Inter-American Court also established that the autonomous right of individuals to exercise their sexual orientation and gender identity is also connected to their freedom of expression. 257 The investigation of this incident was also devoid of any sort of analysis concerning harmful stereotypes on the basis of gender identity that motivated this killing. 258 The Court also referred to the fact that Vicky Hernández could not reflect her preferred gender identity in her identity card, perpetuating her situation of discrimination.

248 See id. ¶ 141.
249 See id. ¶¶ 198–204.
250 See id. ¶ 205.
251 See id. ¶ 117.
253 See id. ¶ 1, 40–47.
254 See id. ¶ 1, 28–39.
255 See id. ¶¶ 69–70.
256 See id. ¶¶ 100, 112.
257 See id. ¶ 117.
258 See id. ¶ 121.
The Court applied a standard of reinforced or strict due diligence under Article 7 of the Convention of Belém do Pará to violence perpetrated against trans women. 259 The European Court of Human Rights has also issued a significant line of rulings examining issues concerning LGBTIQ+ persons. 260 Some of the recent cases explore how state failures impact their autonomy to make life choices based on their gender identity and expression. In the leading judgment of Christine Goodwin vs. the United Kingdom, the European Court of Human Rights examined the case of an applicant who underwent gender reassignment surgery and therefore lived as a woman. 262 The surgery was performed by the National Health Service. However, the law still did not recognize her gender change, leading to forms of discrimination and harassment. 264

The European Court of Human Rights in Christine Goodwin vs. the United Kingdom found a violation to her private life under Article 8 of the European Convention by failing to recognize legally the gender re-assignment of the applicant. 265 In particular, the Court noted how the lack of legal recognition promoted discrimination against the applicant, in areas such as pensions and retirement. 266 The Court confirmed that domestic law should not be in conflict with central aspects of a person’s identity; otherwise, there will be feelings of humiliation, anxiety, and vulnerability. 267 The Court emphasized in particular that the very essence of the European Convention of Human Rights is respect for human dignity and freedom, including a notion of personal autonomy and the right to establish an identity as an individual human being. 268 Therefore, the Court applied a very narrow margin of appreciation in this case and ruled in favor of the applicant. 269

259 See id. ¶¶ 122, 124.
260 See id. ¶¶ 126–36.
263 See id. ¶ 13.
264 See id. ¶¶ 15–19.
265 See id. ¶ 93.
266 See id. ¶ 76.
267 See id. ¶ 77.
268 See id. ¶ 90.
269 See id. ¶ 93.
The European Court of Human Rights also confirmed recently in the case of Y.Y. v. Turkey—related to the gender reassignment surgery of a transgender person—that personal autonomy is a key principle underlying the interpretation of Article 8 guarantees under the European Convention on Human Rights. The case was related to a Turkish applicant—Y.Y.—who had requested gender reassignment surgery but the courts had denied his request. In its analysis in favor the applicant, the Court emphasized how the right to private life under Article 8 of the European Convention includes the possibility of personal development and to develop relations with other human beings and the outside world, and therefore, serious interferences may arise when domestic law interferes with a person’s gender identity, which took place in this case. It is noteworthy that the Government in this case argued that the European Court of Human Rights had never considered Article 8 to include a right of self-determination for transgender persons. In ruling in favor of the applicant, the Court highlighted the close connection between a person’s freedom to define their gender identity as an essential component of their self-determination. The Court also emphasized the dynamic approach that should be applied to the interpretation of European Convention provisions, the trend in European countries to allow gender-reassignment surgery, and the elimination of requirements such as sterility to grant this access.

The European Court of Human Rights has also examined cases in which women from LGBTIQ+ communities have reported acts of violence before the authorities and received an inadequate response. Even though these cases do not refer to autonomy per se, they do address voids in safe conditions to report human rights-related crimes when women autonomously chose to do so. For example, in the case of Sabalić v. Croatia, the European Court of Human Rights examined claims that domestic authorities failed to act diligently in the face of reports of a homophobic attack against a lesbian woman at a nightclub by a private individual. The applicant alleged that she was attacked after she revealed her sexual orientation and sustained physical injuries. Even though she reported these acts before the authorities, the police failed to open a criminal investigation into this incident, only instituting minor offense proceedings which did not

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271 See id. ¶ 1–3.
272 See id. ¶¶ 57–58, 66.
273 See id. ¶ 92.
274 See id. ¶ 102.
275 See id. ¶¶ 103, 105, 111, 116.
277 See id. ¶¶ 5–10, 67.
consider the hate crime elements.\textsuperscript{278} The Court found that the domestic authorities in this case failed to conduct an appropriate and diligent investigation, considering the discriminatory attitudes which led to this homophobic attack.\textsuperscript{279}

As the cases presented illustrate, personal autonomy has become a central goal in jurisprudence related to LGBTIQ+ individuals. The state authorities can severely curtail a person’s autonomy in exercising their sexual orientation and gender identity by employing their punitive power through detention, violence, coercion, and killings. Exclusion and subordination are the results, with a chilling effect on freedom of expression and dignity. It is noteworthy that the cases shed light on outdated laws and arbitrary policies as potential hindrances to the full exercise of an individual’s gender expression and the choices associated with it.

The administration of justice system can also be the center of many challenges that limit an individual’s autonomy. As will be discussed in the following section, the problems of violence, stereotypes, and impunity can serve as insurmountable obstacles to the exercise of autonomous choices for women, including those individual and those collective.

d) Violence and stereotypes as hindrances to autonomous participation

The author notes that recent global and regional cases are not only advancing an individual conception of personal autonomy. They are also developing a concept of autonomy that is much larger, highlighting barriers for women to participate in society in different capacities, such as in journalism and human rights defense. Tribunals have highlighted the state obligation to build contexts which are safe for human rights defense and journalism, but also to mobilize in the pursuit of equality and non-discrimination, as the cases discussed below exemplify.

The Inter-American Court of Human Rights has ruled several emblematic cases recently advancing a conception of autonomy that is more relational in nature, oriented towards the protection of spaces for women to have incidence in different facets of society. For example, in the case of Yarce and Others vs. Colombia, the Inter-American Court reviewed a case involving the killing, arbitrary detention, persecution, and forced displacement of several women human rights defenders in the Comuna 13 in Colombia.\textsuperscript{280} The Comuna 13 was a zone known by the state to be affected by armed conflict clashes between different groups with limited police presence, with frequent attacks on women human rights defenders.\textsuperscript{281} The women leaders in Comuna 13 refused to submit to the mandates of illegal armed actors, facing reprisals and threats to their organizational

\textsuperscript{278} See id. ¶¶ 16, 108.
\textsuperscript{279} See id. ¶¶ 93–116.
\textsuperscript{281} See id. ¶¶ 75–99.
autonomy.\textsuperscript{282} The Inter-American Court in \textit{Yarce and Others} heavily underscored the state’s duty to protect the life and personal integrity of women human rights defenders working in known contexts of risk.\textsuperscript{283} The Court also highlighted how their right to association was severely affected by forced displacement and how the state failed to create safe conditions for these defenders to continue their human rights defense work.\textsuperscript{284}

In the later ruling of \textit{Bedoya Lima v. Colombia}, the Inter-American Court of Human Rights called on states to apply a differentiated approach to protect the life and integrity of women journalists, considering their gender and history of violence.\textsuperscript{285} This case is related to the kidnapping, torture, and rape of well-known journalist Jineth Bedoya Lima, and the state failure to adequately prevent and respond to these events.\textsuperscript{286} These incidents took place in a known context of armed conflict and attacks against journalists, including sexual violence.\textsuperscript{287} At the time of her kidnapping, Jineth Bedoya was a well-known human rights defender and journalist in Colombia, and had faced numerous threats due to her work to end gender-based violence.\textsuperscript{288}

In the \textit{Bedoya Lima} case, the Inter-American Court of Human Rights referred to a duty of “enhanced due diligence” when it comes to women journalists, which requires taking into consideration the particular risks they face in the exercise of their profession.\textsuperscript{289} The Inter-American Court highlighted in particular the known context of threats and violence at the time for women journalists in Colombia and the state failure to act diligently to protect Jineth Bedoya from harm, even alluding to state participation in the kidnapping.\textsuperscript{290} The Inter-American Court also underscored the intense acts of physical violence and rape that Jineth Bedoya experienced during her 10-hour kidnapping, which were intended to punish her for her work as a journalist.\textsuperscript{291}

The author also considers noteworthy decisions issued addressing the negative influence of stereotypes in judicial processes, in particular when women did autonomously decide to present complaints before administration of justice systems. An important example is the CEDAW Committee case of \textit{Karen Tayag Vertido}, in which the claimant argued that a number of stereotypes resulted in the

\textsuperscript{282} See id. ¶¶ 96–97.
\textsuperscript{283} See id. ¶¶ 181–96.
\textsuperscript{284} See id. ¶¶ 274–75.
\textsuperscript{286} See id. ¶ 1, 55–64, 79–80.
\textsuperscript{287} See id. ¶¶ 39–51.
\textsuperscript{288} See id. ¶¶ 52–53.
\textsuperscript{289} See id. ¶ 91.
\textsuperscript{290} See id. ¶¶ 93–97.
\textsuperscript{291} See id. ¶¶ 100–03.
dismissal of her rape case in the Philippines.\textsuperscript{292} She alleged in particular that she served as Executive Director of the Davao City Chamber of Commerce and Industry and the former President raped her.\textsuperscript{293} She filed a complaint before the authorities.\textsuperscript{294} The Regional Court of Davao City ruled against the claimant due to presumed voids in her testimony.\textsuperscript{295} The CEDAW Committee found that a number of gender-based myths and misconceptions led to the acquittal of the perpetrator in the Karen Tayag Vertido case.\textsuperscript{296} These included the myth that women need to have physically resisted the act of rape; the weight given to the fact that the accused and the victim knew each other; and that the aggressor was too old to commit an act of rape.\textsuperscript{297}

Various global and regional human rights bodies in the cases presented identified several positive and negative obligations that states must protect women who autonomously decide to engage in public activities in society in general. The state firstly has a negative obligation to not interfere with their work, including the prevention of harassment and violence against them and their families, and the eradication of all forms of criminalization and discrediting. The state secondly needs to act proactively to build contexts which are safe for women and their activities, in which they can organize to advocate for the implementation of their rights and those of others. The author contends that this is particularly critical for women who are working as journalists, human rights defenders, and in politics, among other areas of increasing public exposure.

Women should also be protected in a similar fashion when they autonomously decide to present cases before justice entities. Case processing by justice systems should be completely free from stereotypes, harassment, violence, and all forms of discrimination. Impunity for these cases just promotes their repetition and has a chilling effect in the reporting of these cases before legal entities.

e) Conclusions

In sum, the above-referenced cases offer a different lens to the rights of women and girls, aiming to secure their autonomy and self-direction in critical areas of their lives. These include sexual and reproductive health, sexuality, education, gender identity, and the justice system. The pursuit of autonomy—

\begin{footnotesize}
\textsuperscript{293} See id. \textsuperscript{¶} 2.1, 2.2.
\textsuperscript{294} See id. \textsuperscript{¶} 2.4.
\textsuperscript{295} See id. \textsuperscript{¶} 2.5–2.9.
\textsuperscript{296} See id. \textsuperscript{¶} 8.1–8.10.
\textsuperscript{297} See id. \textsuperscript{¶} 8.5–8.7.
\end{footnotesize}
both individual and collective—is a priority for all adult women and girls, from different races, ethnicity, social classes, and conditions.

The analysis concerning personal autonomy is often linked to intersectional discrimination and state failures which affect women’s dignity and participation in society. The following section discusses the intersectional lens to women’s rights in more detail.

2. An intersectional lens.

An approach which is intersectional, attempting to capture fully the integral experience of discrimination women face, has been prominent in contemporary developments related to women’s rights.\(^{298}\) It considers the different dimensions, factors, and contextual elements which drive the discrimination experience for women.\(^{299}\) An array of motives can either produce, aggravate, or drive the discrimination experiences of women and girls.\(^{300}\)

The term was initially conceptualized by Professor Kimberlé Crenshaw, as a way to understand how sex, gender, and race connect to worsen disadvantage, marginalization, and an inferior position for women.\(^{301}\) It is noteworthy that this is a term widely used now by the CEDAW Committee, as well as key bodies such

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\(^{300}\) See Convention of Belém do Pará, supra note 14, Article 9 (recognizing the need for states parties to take into account the risks women face due to their race or ethnic background; status as migrants; refugee or displacement status; disability; age; socio-economic disadvantage; the impact of armed conflicts; and their deprivation of liberty).

\(^{301}\) See Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal F. 139, 139–40, 150–67 (discussing how treating race and gender as mutually exclusive categories of experience and analysis contributes to the marginalization of Black women and proposing to embrace the intersection of these dimensions instead).
as the Inter-American Court of Human Rights.\textsuperscript{302} Even though the European Court of Human Rights does not employ the term per se, it has ruled a number of recent decisions exemplifying how different factors converge to accentuate the discrimination experience of many women.\textsuperscript{303}

This pivot has been critical in women’s rights as not all women experience discrimination in the same way. This also means that legislation, policies, and programs with a homogenous perspective have notable failures in their enforcement and lack credibility and buy-in among intended beneficiaries.\textsuperscript{304} The trend now is to recognize the diversity in experiences and how acute state voids can be associated with the failure to recognize these differences.\textsuperscript{305}

One of the leading regional human rights systems in the world in the realm of intersectionality is the Inter-American System of Human Rights. The Inter-American Court of Human Rights has incorporated an intersectionality perspective in many of its recent judgments in the area of women’s rights, and in particular in cases related to girls.\textsuperscript{306} The structure of the Inter-American Commission on Human Rights has been built around Rapporteurships, which

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{302} See, e.g., General Recommendation No. 39 On Indigenous Women and Girls, \textit{ supra} note 17, ¶¶ 3–4 (calling states to adopt an intersectional perspective in addressing discrimination against Indigenous women, considering the multitude of factors which combine to increase unequal and arbitrary treatment on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic position; and HIV/AIDS status, among other factors); CEDAW Committee General Recommendations 30, 32, 34, and 36 (addressing forms of intersectional discrimination against women in conflict situations, while experiencing a refugee or asylum status, as rural women, and the rights of girls); Gonzales Lluy et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 298, ¶¶ 290–91 (underscoring the intersectional discrimination suffered by a three year old infected with HIV/AIDS due to a negligent blood transfusion, as a child, a female, affected by poverty, living with HIV/AIDS).
\item\textsuperscript{303} See, e.g., Carvalho Pinto de Sousa Mourais v. Portugal, App. No. 17484/15, ¶ 53 (July 25, 2017) (in which the European Court found a different treatment on the basis of age and gender when stereotypes about the sexuality of older woman negatively impacted a damages award); B.S. v. Spain, App. No. 47159/08, Eur. Ct. H.R. ¶ 62 (2012) (highlighting the vulnerability of woman of African descent performing sex work).
\item\textsuperscript{304} See Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28 ¶ 18 (Dec. 16, 2010) (recognizing intersectionality as critical to the scope of states parties’ general obligations under Article 2 of CEDAW, mandating them to adopt policies and programs to address discrimination considering this approach).
\item\textsuperscript{305} See \textbf{INTERNATIONAL INDIGENOUS WOMEN’S FORUM (FIMI), GLOBAL STUDY ON THE SITUATION OF INDIGENOUS WOMEN AND GIRLS} 35–64 (2020), https://perma.cc/Y6S2-EAEC (discussing critical challenges faced by Indigenous women and girls globally).
\end{itemize}
\end{footnotesize}
target the specific needs of various groups in a situation of risk, including women, children, Indigenous peoples, and LGBTIQ+ populations.307

One noteworthy example is the case of Gonzalez Lluy et. al. v. Ecuador, in which the Inter-American Court addressed the situation of a three-year-old girl, named Talia, who became infected with HIV as a result of a blood transfusion at the Azuay Red Cross Bank.308 The petitioners claimed that the state failed to appropriately supervise the activities of this private health provider; a failure that the state did not properly investigate with due diligence.309 Talia also faced discrimination and stigma in different settings for living with HIV.310

The Inter-American Court of Human Rights in Gonzalez Lluy et. al. found a number of violations connected to the state’s failure to properly regulate and supervise the provision of services by this private health provider, endangering the life, health, and integrity of the community involved.311 Foremost, the Court noted the intersectional discrimination Talia suffered living in poverty, as a minor, female, and as a person living with HIV, in particular in the school system.312 For the Court, this all demanded greater state support that she never received.313 Therefore, the Court found violations to the right to education under Article 13 of the Protocol of San Salvador, in relation to Article 19 and 1(1) of the American Convention.314

The Inter-American Court also employed an intersectional approach in the case of Cuscul Pivaral v. Guatemala, related to persons infected with HIV/AIDS in Guatemala.315 The petitioners alleged that the state government failed to provide needed medical services and medications to forty-nine individuals living with HIV/AIDS, including a number of women.316 The Court made special mention of the women affected as especially vulnerable and exposed to intersectional

309 See id. ¶¶ 158–60.
310 See id. ¶ 231.
311 See id. ¶¶ 178, 184, 189.
312 See id. ¶ 290.
313 See id. ¶¶ 290–91.
314 See id. ¶ 291.
316 See id. ¶¶ 63, 114–27.
discrimination, especially those who were pregnant and living in extreme poverty.\footnote{317}{See id. ¶¶ 131–39.}

Even though the European Court of Human Rights has not used the term intersectionality in its judgments, it has begun recognizing in recent cases how a confluence of factors can impact the experience of discrimination for women. Therefore, the author considers that an intersectional approach has been employed “implicitly” by the European Court of Human Rights in recent years.\footnote{318}{For more discussion of the intersectionality focus on the jurisprudence of the European Court of Human Rights, see Celorio, supra note 306, at 814–18.}

For example, in the case of \textit{Carvalho Pinto de Sousa Mourais v. Portugal} ruled by the European Court of Human Rights, the applicant underwent a gynecological procedure that led to the loss of sense in her reproductive organs, inability to conduct sexual relations, and enhanced pain.\footnote{319}{See \textit{Carvalho Pinto de Sousa Mourais v. Portugal}, App. No. 17484/15, ¶ 6–11 (July 25, 2017).} She also suffered depression, suicidal thoughts, and isolation.\footnote{320}{See id. ¶¶ 12–19.} The applicant sought damages from Portugal’s domestic courts, but the amount awarded for non-pecuniary damage was reduced based on stereotypes related to the sexuality of older women.\footnote{321}{See id. ¶¶ 12–19.} She presented a number of claims before the European Court of Human Rights, including a violation of the prohibition of discrimination under Article 14 of the European Convention of Human Rights, in connection with the right to private and family life under Article 8.\footnote{322}{See id. ¶¶ 3, 16, 30, 40.}

The European Court in \textit{Carvalho Pinto de Sousa Mourais} found that a number of prejudices abounded in the judiciary in Portugal, including the mistaken assumption that sexuality for women over fifty is not as important as for younger women.\footnote{323}{See id. ¶ 52.} The Court noted that the age and sex of the applicant were decisive factors in the final decision, which the Court considered a difference in treatment based on prohibited grounds under the European Convention on Human Rights.\footnote{324}{See id. ¶ 53.} Therefore, the Court labeled these notions \textit{stereotyping}, which revealed prevailing social attitudes which were insufficient to support a difference in treatment on the ground of sex.\footnote{325}{See id. ¶ 46.} Therefore, the Court found a violation of the prohibition of discrimination contained in Article 14, taken in conjunction with Article 8 of the Convention.\footnote{326}{See id. ¶¶ 48–56.}
The European Court of Human Rights also applied this implicit intersectional approach in the case of B.S. v. Spain.\(^{327}\) In this case, an afro-descendant woman claimed before the European Court of Human Rights that while working as a sex worker, she suffered discriminatory abuse at the hands of the police.\(^{328}\) She alleged that the police targeted her due to racial motives, perpetrating acts of physical and psychological violence against her.\(^{329}\) She claimed that the judicial investigation into these acts had been inadequate.\(^{330}\) The applicant also argued that her vulnerability as a woman sex worker of afro-descent increasingly exposed her to discriminatory attacks.\(^{331}\)

The European Court established in B.S. v. Spain that when state authorities investigate acts of violence, they have an additional obligation to adopt reasonable measures to identify whether there were racist motives involved, and to assess whether ethnic hatred could have played a role in the events.\(^{332}\) The domestic courts in this case failed to investigate whether racial attitudes were linked to the police violence against the applicant, in particular her vulnerability as a woman of afro-descent engaged in sex work.\(^{333}\) The European Court of Human Rights therefore found a violation of the prohibition of discrimination in Article 14 of the European Convention on Human Rights, taken in conjunction with Article 3.\(^{334}\) The Court also found that Spanish authorities failed to carry out an effective investigation into these incidents considering this implicit intersectional approach.\(^{335}\)

The CEDAW Committee has also adopted an intersectional approach in its well-known General Recommendations. It has called for states to consider the cross of factors which can deeply shape the discrimination experience of a woman in the adoption of legislation, policies, and programs at the national level to enforce the treaty.\(^{336}\) This applies to all state interventions in the areas of

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328 See id. ¶ 7–29.
329 See id. ¶ 48.
330 See id. ¶ 29, 36–37.
331 See id. ¶ 52.
332 See id. ¶ 58.
333 See id. ¶¶ 60–62.
334 See id. ¶ 63.
335 See id. ¶¶ 39–47, 59.
discrimination and violence.\textsuperscript{337} In its latest General Recommendation 39, CEDAW emphasized the importance of an intersectional perspective in all state actions concerning Indigenous women and girls, calling for a consideration of the confluence of elements that combine to increase or exacerbate their exposure to unequal treatment on the basis of their sex.\textsuperscript{338} The Committee named the following motives in particular that can be used to discriminate, including sex; gender; Indigenous origin, status, or identity; race; ethnicity; disability, age; language; socioeconomic status; and HIV/AIDS status.\textsuperscript{339} For the Committee, an intersectional approach entails taking into account the “interdependence and interconnectedness” of these factors in their enactment of laws, policies, national budgets, and actions related to Indigenous women and girls.\textsuperscript{340}

The CEDAW Committee has also employed an intersectional approach in the issuance of case-related views. A prominent example is the case of \textit{Alyne da Silva} which took place in Brazil.\textsuperscript{341} The case was presented by Alyne’s mother, resulting from her daughter’s untimely death due to complications related to low-quality care in a private hospital.\textsuperscript{342} Alyne sought care for severe nausea and abdominal care when she was six months pregnant from a health center.\textsuperscript{343} Her medical ailments progressively worsened during her hospital stay, resulting in a digestive hemorrhage from the delivery of a stillborn fetus.\textsuperscript{344} The claimant argued that the state violated Alyne’s rights to life and health under Articles 2 and 12 of CEDAW.\textsuperscript{345} She also argued that under CEDAW states are obligated to enforce this treaty in the area of healthcare, and to grant an effective judicial remedy when state failures occur.\textsuperscript{346} States are also responsible for paying special attention to women and girls from vulnerable and disadvantaged groups in the field of health care.\textsuperscript{347}

\textsuperscript{337} See CEDAW Comm., General Recommendation 35 on Gender-Based Violence against Women, updating General Recommendation 19, CEDAW/C/GC/35 ¶ 12 (July 26, 2017) (acknowledging that gender-based violence may be impacted by intersectional discrimination, which demands effective legal and policy responses from states).
\textsuperscript{338} See General Recommendation 39 On Indigenous Women and Girls, supra note 17, ¶ 5.
\textsuperscript{339} See id. ¶ 5.
\textsuperscript{340} See id. ¶ 4.
\textsuperscript{342} See id. ¶¶ 3.1–3.17; 7.1–7.9.
\textsuperscript{343} See id. ¶¶ 2.2–2.3.
\textsuperscript{344} See id. ¶ 2.12.
\textsuperscript{345} See id. ¶¶ 1, 2.1–2.14.
\textsuperscript{346} See id. ¶ 3.2.
The CEDAW Committee in *Alyne da Silva* found the state responsible for violating a number of CEDAW provisions, including her rights to life and health under the treaty.\(^{348}\) The Committee categorized her death as “maternal” and established a duty for states to ensure women’s rights to safe motherhood and emergency obstetrics services, including an appropriate allocation of services.\(^{349}\) The Committee also confirmed that the state was directly responsible for the actions of private institutions when they outsourced their medical services, including a duty to regulate and monitor their quality.\(^{350}\)

The CEDAW Committee in *Alyne Da Silva* also underscored the layers of discrimination suffered by Alyne, as a result of her racial and socioeconomic background.\(^{351}\) The Committee referred in particular to “regional, economic and social disparities” and to “women from the most vulnerable sectors of society.”\(^{352}\) Therefore, the Committee concluded that Alyne was discriminated against on the basis of her sex, her status as a woman of African descent, and her socioeconomic background.\(^{353}\) The Committee recommended several state measures to ensure the right to safe motherhood, including the training of public health officials; compliance measures with sexual and reproductive international health standards; and the adequate guarantee of effective remedies to address sexual and reproductive rights violations.\(^{354}\)

As a current fixture of women’s rights, an intersectional approach needs to guide any analysis concerning women’s autonomy in future case decisions issued by global and regional human rights bodies. Factors such as age, race, ethnicity, sexual orientation, gender identity, and disabilities, among others, are integral parts of women and their self-direction, in all areas of family, social, political, and economic life.

A weaving of intersectional discrimination and personal autonomy is already evident in global and regional cases, as discussed previously, and the author surely hopes to see more of this integration and coherence in the future. The following section will discuss the different layers and dimensions that a right to intersectional autonomy can have in future international jurisprudence concerning women’s rights.

\(^{348}\) *See id.* ¶ 7.2.

\(^{349}\) *See id.* ¶¶ 7.2–7.3.

\(^{350}\) *See id.* ¶ 7.5.

\(^{351}\) *See id.* ¶ 7.7.

\(^{352}\) See id.

\(^{353}\) See id.

\(^{354}\) *See id.* ¶ 8.
IV. A RIGHT TO INTERSECTIONAL AUTONOMY: KEY DIMENSIONS

The author contends in this article that intersectional discrimination and the pursuit of personal autonomy are guiding the development of supranational jurisprudence concerning the rights of women. This article has discussed case examples illustrating these two approaches in global and regional human rights case decisions. This section proposes the fusion of these two approaches in future international cases concerning women’s rights. Intersectional autonomy should be treated as a right with independent content that can guide the protection of the rights of women and girls in general.

Caselaw can provide a useful setting to develop the contours of this new right. For example, turning the eradication of violence against women into a human right, instead of just an aspiration, has proven essential to specify for states the actions needed to prevent, investigate, sanction, and grant reparations for acts which affect women. Therefore, considering intersectional autonomy as a right can provide an important space to clarify measures that states should adopt to ensure and respect this right, including those related to legislation, policies, programs, and the workings of their executive, legislative, and judicial branches.

It is important to note that regional courts are already treating autonomy as a right in the realm of sexual and reproductive health. For example, the Inter-American Court of Human Rights discussed reproductive autonomy as a right in its judgment in the case of Artavia Murillo. The Inter-American Court of Human Rights referred in particular to Article 16(e) of CEDAW and its mandate to protect the right of women to decide freely on the number and spacing of children and to have access to the information, education, and means to do so. This right can be violated when the means to exercise it—such as access to needed in vitro


356 For examples of the detailed work of the CEDAW Committee in issuing state recommendations to prevent and eradicate discrimination against women, see CEDAW Comm., General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, supra note 304, ¶¶ 37–40; CEDAW Comm., General Recommendation 35 on Gender-Based Violence against Women, updating General Recommendation 19, supra note 23, ¶¶ 27–35.


358 See CEDAW, art. 16(e).
fertilization—are restricted. The author notes that the right to private life has also already been interpreted by both the European and Inter-American Courts as including a notion of personal autonomy. The International Covenant on Civil and Political Rights also includes a protection of the right to self-determination that could be useful in defining the contours of intersectional autonomy as a right of independent content.

These case decisions and statements provide important building blocks for the development of a legal framework promoting women’s intersectional autonomy and its respect at the national level. Intersectional autonomy can be interpreted as a unifying right of two pillars for women’s rights—privacy and non-discrimination. The right to privacy requires states to refrain from any abusive or arbitrary interferences with women’s decision-making in critical areas of their lives. This privacy analysis can be connected to the duty of states to also ensure that women live free from all forms of discrimination based on their sex and gender, but also age, race, ethnicity, sexual orientation and gender expression, economic position, and other factors. Many of the most extreme restrictions to women’s rights precisely threaten their ability to make decisions pertaining to the most intimate aspects of their lives and have a disproportionate and discriminatory impact on women and girls of different races, ethnicities, sexual orientations, gender identities, and economic positions. A focus on intersectional autonomy would open a space to connect these dots in the jurisprudence. Case decisions can also include guidelines and criteria for states on how to reflect this new legal framework in legislation, policies, programs, and the activities of the justice system.

Case judgments can bring to life the concept of state obligations when it comes to human rights protection. These are authorized interpretations of specific rights and their application to individuals and collectivities who have been harmed. Strategic litigation can bring justice to survivors of human rights

359 See id.
361 See ICCPR, supra note 43, art.1 (sec. 1). The CEDAW Committee offered a very wide interpretation of the right to self-determination in its General Recommendation 39, indicating that:

“The Committee has a broad understanding of the right of Indigenous women and girls to self-determination, including their ability to make autonomous, free and informed decisions concerning their life plans and health.”

violations, accountability for state failures, and needed changes in institutions, legislation, and policies. The process of litigating a case can also facilitate the leadership, empowerment, and reparations for individuals who survive human rights violations and their family members.

Treating intersectional autonomy as a right of independent content would provide a useful space in international litigation to develop legal standards which could be conducive to effective implementation at the national level. A human rights standard issued by the global and regional human rights protection systems can offer states key guidelines on how to implement at the domestic level individual rights adequately and effectively.

There is already a cognizable line of case decisions, judgments, and views addressing human rights concerns which deeply affect women. These cases have addressed different forms of gender-based violence; discrimination; torture; the dire situation of lesbian and trans women; sexual and reproductive rights; and human rights challenges in the realms of education and employment. They include reparations and recommendations for states on how to shape their policies, laws, programs, and services to fully respect and protect the rights of women. Treating intersectional autonomy as a right of independent content, would open a space to bring to life state obligations related to women and key

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363 See, e.g., U.N. High Comm’r for Hum. Rts., Report of Workshop on Strategic Litigation for Gender-Based Violence: Experiences in Latin America, 7–23 (May 20, 2021) (analyzing the use of strategic litigation to address gender-based violence in Latin America, including good practices and challenges).

364 For a discussion of case litigation to empower marginalized individuals and communities, see Jérémie Gilbert, Indigenous Peoples and Litigation: Strategies for Legal Empowerment, 12 J. HUM. RTS. PRAC. 2, 315–17 (July 2020).


367 See, e.g., Angulo Losada v. Bolivia, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶¶ 192–18 (Nov. 18, 2022) (mandating states to adopt a wide range of reparations measures to prevent incest affecting girls, including the reform of existing legislation; the adoption of training programs for government officials; the issuance of a protocol to govern the investigation of criminal cases involving sexual violence against girls; the establishment of sex education programs; and the collection of statistics on sexual violence).
areas of their human rights. The wide range of caselaw discussed in this article can serve as a foundation to develop the content of this right.368

The right to intersectional autonomy has five dimensions. One is the possibility of women to exercise self-direction and self-determination in all aspects of their lives, free from all unjustified interferences from states and other private actors. Second, the differences in identities and experiences of all women should be considered, including factors which often shape the discrimination experience, including age, race, ethnicity, sexual orientation and gender identity, disabilities, and others. A third aspect is that women and girls need to have access to the education and information necessary to make free choices concerning areas related to their human rights. This education and information should be of quality, evidence-based, promptly accessible, and free of cost. The fourth component is that emphasis should be placed on the right of all women and girls to live with dignity in all contexts, including the means to have economic autonomy. Women and girls should have unhindered access to decent and quality employment, water, food, housing, social security, and health services. Lastly, women should be active participants in all social sectors, including a real, meaningful, and effective influence in decision-making. Women should not only be seated at the table, but should hold leadership positions, in safe conditions in which their lives and personal integrity are guaranteed, and free from all forms of violence, stereotypes, harassment, and reprisals.

The author discusses these five dimensions of the right to intersectional autonomy that global and regional human rights bodies can develop further in their jurisprudence. The analysis concludes with a series of proposals on how different supranational bodies can develop the content of the right to intersectional autonomy in the future.

A. Autonomy, Self-Direction, and Self-Determination

The right to intersectional autonomy has individual and collective dimensions. Individually, it is the right of every woman and girl to make key decisions concerning critical aspects of their lives, including their sexual orientation and gender identity, as well as their sexual and reproductive health.369


The liberty to make decisions free from unjustified interferences extends to all areas of their civil, political, economic, social, and cultural rights. This includes decisions inside the home, but also outside of the home and in the broader society. This all means that women should have the possibility of self-direction and self-government in the identification of goals and in the availability of conditions and opportunities to implement their plans based on personal decisions.

Therefore, states and other actors need to work proactively to eliminate important barriers which have impeded and still hinder women’s autonomy, including social inequality, gender-based inferior treatment and violence, forms of control and domination, and stereotypes. The burden of care and family responsibilities have greatly hindered women’s agency historically, placing limits on their ability to work outside the home and on how to use their time. This means that states should also enhance the availability of public-funded care for children, the elderly, and the sick.


See Abrams, supra note 102, at 824–39.


See also Marina Oshana, A Commitment to Autonomy is a Commitment to Feminism, in AUTONOMY, OPPRESSION, AND GENDER, ¶¶ 141–60 (Oxford University Press 2014, Andrea Veltman and Mark Piper eds.).

See Pautassi, supra note 110, at 5–19.
An intercultural perspective is key here, considering the diversity of cultures, languages, beliefs, and values that women can have. This is paramount in the case of Indigenous women, for example. The process of carving a life path should be free from all forms of discrimination, stereotypes, violence, racism, and colonialism. This also entails the eradication of all forms of structural discrimination reflected in constitutions, laws, policies, and state-driven policies and services.

There is also a collective component to the right to intersectional autonomy, including the decision of women to participate in society and in which capacity to do so. Women should be able to make decisions to enter or not enter into a family, to determine what kind of union to enter into, and to choose the number and spacing of children. The collective component of this right can also include work in different settings, both public and private, or the decision not to work. Collective action can be critical to address inequality and the barriers that currently limit women’s autonomy.

Women should be free in their choice to enter human rights defense work, to join associations, and to participate in other advocacy and political processes. Women can opt to have social participation and leadership positions which impact

375 See Comm. on the Elimination of Discrimination Against Women, General Recommendation 39 On Indigenous Women and Girls, supra note 17, ¶ 5 (calling for an intercultural perspective in the adoption of laws, policies, and programs related to Indigenous peoples, considering their cultures, languages, beliefs, and values, and the social appreciation of this diversity).


378 See Yael Braudo-Bahat, Towards a Relational Conceptualization of the Right to Personal Autonomy, 35 AM. U. J. OF GENDER, SOC. POL’Y & L. 111–54, ¶¶ 129–32 (2017) (highlighting the relational nature of individuals and how their identity and autonomy can be developed through their social connections and relations with others); Abrams, supra note 102, at 835–37 (discussing how the exercise of autonomy can lead women to join groups and associations to accomplish a social goal and address forms of inequality).


380 See Andrea Veltman, Autonomy and Oppression at Work in AUTONOMY, OPPRESSION, AND GENDER, supra note 102, at 280–300 (discussing the impact of work on personal autonomy, as a context that can support or stifle personal autonomy).

local and national communities. Women should also be able to participate and influence discourse not only in person, but in all virtual platforms, and should enjoy human rights protection from all forms of violence and harassment. Women should be active participants in the identification of measures to prevent and respond to dire problems such as discrimination and violence, which enhances the buy-in and future effectiveness of these policies at the local and national levels.

Global and regional bodies also can interpret the content of the right to intersectional autonomy as intimately connected to other critical rights, such as life, personal integrity, liberty, dignity, private life, and family. The Inter-American Court of Human Rights has already been drawing these important connections in its cases on reproductive autonomy, and this analysis can be extended to other areas of women’s rights issues. For example, jurisprudence can draw further linkages between intersectional autonomy and the rights to freedom of expression, access to information, and access to justice. The cases currently pending resolution before supranational bodies on climate change provide a critical opportunity to connect intersectional autonomy to these three areas of rights. Other areas that could be discussed further in which women’s autonomy is frequently curtailed include education, employment, politics, and digital spaces.

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383 For more discussion of violence against women and girls which takes place in digital contexts, such as the internet and social media, see Simonović, supra note 83, ¶¶ 12–42.

384 See Comm. On the Elimination of Discrimination Against Women, supra note 16, ¶¶ 28, 31 (recommending that state parties adopt measures to promote the agency and autonomy of women and girls in the realm of gender-based violence, including facilitating their participation in the design of measures to prevent and respond to this problem).


386 See Celorio, supra note 362, at 181–85 (discussing how a climate change case currently before the Grand Chamber of the European Court of Human Rights—Klima Seniorinnen Schweiz v. Switzerland—offers a critical opportunity to define the contours of a gender perspective in mitigation and adaptation efforts in the areas of heat waves and their effects on older women); see also Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland, Eur. Ct. H. Rts. [Grand Chamber], Application No. 53600/20 ¶¶ 410, 509–10, 528–31, 538–55 (Apr. 9, 2024) (acknowledging the damaging effects of climate change on the most vulnerable groups of society, including older women, and the overarching duty of states to act with due diligence to protect individuals from this harm).
B. The Intersectional Experience of Discrimination

The right to intersectional autonomy entails the understanding that the experiences of discrimination of all women are not the same. The discrimination experience is deeply shaped by age, race, ethnicity, economic position, disabilities, sexual orientation and gender identity, and migration and refugee status, among other motives. 387 Girls, Indigenous women, and afro-descendent women, for example, do not experience discrimination in the same way. 388 This also impacts the conditions and barriers to exercise their autonomy. A diversity of women experiences unique obstacles to make autonomous, free, and informed decisions concerning their life plans, health, education, employment, families, and participation in general in society.

In terms of obligations, the states should first eradicate all barriers—both legal and practical—to make sure that all women and girls exercise their rights free from all forms of discrimination. 389 Barriers to citizenship and other de jure obstacles need to be eliminated. 390 One key component is to eradicate stereotypes and other harmful social notions which can hinder the exercise of human rights. 391 A number of key international decisions have already been issued mandating states to reform existing laws which are discriminatory and to adopt laws ensuring equality when needed. 392 The eradication of discrimination extends to laws, policies, and justice-sector decisions which can discriminate against women based on a confluence of factors. 393

387 See Crenshaw, supra note 301, at 139–40, 150–67; Sosa, supra note 299, at 61–120.


However, state obligations in this area are also positive, to build societies which understand these differences among women and girls, and which are truly free from all forms of discrimination and violence. This includes the adoption of laws and policies, training, local community initiatives including women and girls, education in schools, and campaigns promoting complaints are presented before administration of justice systems. The collection of data in this area is also critical, to understand how intersectional discrimination impacts the exercise of rights at the national level. Intersectional autonomy also requires state entities to create the conditions and opportunities for women to exercise their agency and self-direction, considering their identities, backgrounds, preferences, beliefs, cultures, and views of the world.

Another critical aspect to weave an intersectional approach with autonomy in rights protection is to make sure that women have an opportunity in participate in decision-making at the national level. For example, the CEDAW Committee just made a powerful statement on how conditions need to be in place for Indigenous women to participate in decision-making in their communities, ancestral territories, and consultation processes over economic activities carried out by state and private actors. This is particularly acute in armed conflict contexts and in peace negotiation processes.


395 See General Recommendation 39 On Indigenous Women and Girls, supra note 17, ¶ 10 (calling states to engage in data collection efforts on discrimination against Indigenous women and girls).

396 See Inter-Am. Ct. H.R., Advisory Opinion OC-24/17, supra note 369, ¶¶ 86–88 (underscoring the right of all individuals to autonomously choose options and circumstances on the basis of their values, beliefs, convictions, and interests); Inter-Am. Ct. H.R., Atala Riffo v. Chile, OC-12/502, ¶¶ 135–40 (Feb. 24, 2012) (establishing the right of individuals to choose to form families and pursue life plans on the basis of their sexual orientation); Eur. Ct. H.R., Pretty v. United Kingdom, App. No. 2346/02, ¶ 61 (Apr. 29, 2002) (confirming that the notion of personal autonomy is key to the interpretation of European Convention on Human Rights guarantees and the protection of private life in Article 8; which includes matters related to gender identification, sexual orientation, and sexual life).

397 See General Recommendation 39 on Indigenous Women and Girls, supra note 17, ¶ 43.

398 See generally UN Secretary General Report, Women, Peace, and Security, S/2023/725 ¶¶ 1, 7–19 (Sept. 28, 2023) (calling for the increased participation and representation of women in peace negotiation and political processes); UN. Sec. Council Res. 1325, supra note 29, ¶¶ 1–8 (urging member states and all actors to ensure the increased representation of women in decision-making concerning the prevention, management, and resolution of conflicts, as a part of a gender perspective).
Girls need to be able to have the conditions to participate not only in human rights defense, but also in legal processes which concern them. The CEDAW Committee just stated how States’ parties should adopt measures to immediately protect the rights to life, liberty, security, and self-determination of Indigenous women and girls’ human rights defenders, and ensure safe conditions and an enabling environment for their work.

Lastly, for intersectional autonomy to be truly respected, spaces need to be created at the national level, for women to meaningfully participate in all social affairs. This includes women of all ages, races, ethnicities, sexual orientations, gender identities, and disabilities. Women and girls should be able to have their views considered in the adoption of legislation, policies, programs, and the work of the administration of justice system. They should also be able to shape legal developments in international human rights law, as they are the intended beneficiaries.

C. Information and Education as Facilitators

The right to information is an important facilitator to make the right to intersectional autonomy a reality. This entails a state obligation to make evidence-based and accurate information available for women to make free choices concerning all aspects of their lives. This is paramount in sexual and reproductive rights, including ensuring the accessibility of information and services free from discrimination and obstacles.

Women and girls have the right to evidence-based information related to contraceptives, family planning, sexually transmitted infections, HIV prevention, maternal health, abortion and post-abortion care, and other types of health conditions. This information should be imparted with an intersectional


401 See Comm. on the Elimination of Discrimination Against Women, M.D.C.P. v. Spain, U.N. Doc. CEDAW/C/64/D/154/2020 ¶ 7.7 (Mar. 9, 2023) (underscoring the right of women to be fully informed by properly trained personnel of medical options for treatments and procedures, including their likely benefits and potential negative effects).


403 See id., ¶¶ 15, 19.
approach, considering the age, sex, gender, race, ethnicity, and other conditions of the women or girl involved, and respecting their privacy and confidentiality.404

In regards to access to information, the state has to ensure that women do not face unjustified legal and practical barriers or hurdles to obtain the information that they need to make free decisions.405 It is important to highlight the key nature of sex education, which involves information on family-planning methods, contraception, abortion, and the problem of sexual violence and non-consent.406 Sex education should be imparted in schools and other social settings, and be easily accessible to all women and girls.

Regional courts have already advanced criteria to examine in order to determine the legality of restrictions in the area of access to information, which are also applicable to women’s rights.407 A diversity of legal standards related to informed consent have also been developed in the area, pointing to a participatory process in which women receive information related to decision-making concerning their health and bodies, free from stereotypes and paternalistic attitudes.408 The information should be prompt, complete, comprehensive, and reliable.409 The author hopes that these standards are further developed in the

404 See id. ¶¶ 18, 19; Eur. Ct. H.R., P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R. ¶ 111 (Oct. 30, 2012) (mandating states to ensure girls’ access to reliable information on how to access a lawful abortion and the procedures to be followed, as relevant to the exercise of personal autonomy).

405 See ACERWC, Decision in Matter of Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania, supra note 33, ¶¶ 80, 83 (highlighting the key nature of sex education for girls in schools to enable the enjoyment of their rights and make informed decisions over their health and bodies free from unjustified government interferences).

406 See Inter-Am., Guzman Albarracín et al. v. Ecuador, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 405 ¶¶ 138–40 (June 24, 2020) (holding the state responsible for failing to provide sex education which would have allowed the victim to understand that she was subjected to sexual violence and how to report it).

407 See, e.g., Claude Reyes et al. v. Chile, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151 ¶¶ 89–91 (Sept. 19, 2006) (underscoring that the right to access information codified in Article 13 of the American Convention admits restrictions, but these have to be established by law, justified by a legitimate goal, and must be proven necessary in a democratic society).

408 See I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 32, ¶¶ 165–96 (Nov. 30, 2016) (underscoring the international state obligation to seek informed consent before performing any medical procedures based on the autonomy and dignity of all individuals, as well as their right to personal liberty); V.C. v. Slovakia, supra note 50, ¶¶ 113–19 (highlighting that the denial of informed consent for a patient breached her right to autonomy and choice in health care).

409 See Comm. on the Elimination of Discrimination Against Women, A.S. v. Hungary, CEDAW/C/36/D/4/2004 ¶¶ 11.1–11.6 (Aug. 29, 2006) (finding that the state violated CEDAW when a Roma woman was sterilized without being offered detailed information on the risks involved, the consequences of the surgery, alternative procedures, and other contraceptive methods); I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 32, ¶ 166 (Nov. 30, 2016) (establishing that consent should be the result of a process to ensure it is offered in a prior, free, full, and informed capacity).
future and applied by global and regional courts to priority issues such as armed
conflicts; climate change; digital spaces; political participation; areas related to
economic, social, and cultural rights; and times of emergency.

D. Autonomy and Agency as Dignity

Dignity is a core component of the right to intersectional autonomy. The
ability to self-direct and to make plans on the basis of one’s priorities, identities,
differences is key to a life with dignity.410 The possibility of all human beings
of self-direction entails choosing freely the circumstances and options which
inform their existence, according to their own beliefs and convictions, as a critical
part of dignity.411 Dignity is intimately connected with liberty, and the freedom of
all persons to organize their individual and social life, including their aspirations,
identity, and personal relations.412

Dignity is often presented as a goal in cases addressing forms of
discrimination and barriers to personal autonomy for women and girls.413 It has
important linkages to the right to life and negative and positive obligations of
states concerning this right.414 States are not only obligated to prevent arbitrary
deprivations of life, but also to take affirmative steps to ensure the full enjoyment
of the right to life by all individuals.415 “The right to life is not just about life or
death, but also living a life with dignity and with adequate means of subsistence
to do so.”416 The concept of a life with dignity has been historically connected with

410 See Yamin, supra note 97, at 28–32 (discussing how in a modern human rights framework, dignity
is reflected in the human capacity to make and take responsibility for individual life choices).
411 See I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 32, ¶ 150 (Nov. 30, 2016) (establishing that a key aspect in the recognition of dignity is the
possibility of all individuals to choose their circumstances based on their beliefs).
412 See Inter-Am. Ct. H.R., Advisory Opinion OC-24/17, supra note 369, ¶¶ 86–88 (connecting the
right to dignity with personal liberty and autonomy, which constitutes the right of everyone to
organize their individual and social life according to their own choices and convictions, according
to the law).
CEDAW for obstetrics violence and gender stereotypes which hindered the author’s ability to make
decisions concerning medical procedures, curtail[ing] her dignity and autonomy).
414 See Thomas M. Antkowiak, A “Dignified Life” and the Resurgence of Social Rights, 18 NW. J. HUM. RTS. 1, 28–50 (2020) (applying a supra positive, consensual, and institutional approach to the right to
live with dignity and its content).
415 For more discussion, see UNHRC, General Comment 36 On the Right to Life, supra note 98, ¶ 12, 18.
416 For more discussion, see UNHRC, General Comment 36 On the Right to Life, supra note 98, ¶ 26
(establishing the state’s obligation to adopt measures to address general social conditions which
may prevent individuals to enjoy a life with dignity).
economic, social, and cultural rights, and the availability of adequate means of subsistence.  

This obligation to protect the right to live with dignity extends to times of peace and armed conflict, and in the face of problems such as climate change, life-threatening pandemics and diseases, extreme poverty, and the deprivation of lands and territories of Indigenous peoples. Dignity can only be accomplished in the realm of sexual and reproductive health when there is adequate and prompt access to information and education, in conditions respecting autonomy and privacy.

The Inter-American Court of Human Rights has led the wave of decisions recognizing a life with dignity. It has protected this right in the case of children, health, the environment, both in times of peace and armed conflicts. The African Commission on Human Rights has also embraced this expanded interpretation of the right to life.

The Inter-American Court of Human Rights has recently extended the right to live with dignity to women and girls. An important example is the case of *Britez Arce v. Argentina*, in which the Inter-American Court addressed the case of a woman, who was nine months pregnant, and tragically died while seeking hospital

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417 See Comm. on Econ., Soc., and Cultural Rights, General Comment 14 On the Right to the Highest Attainable Standard of Health (Art. 12), supra note 99, ¶ 1 (reaffirming that every human being is entitled to the highest attainable standard of health as part of a life with dignity).


health services.426 She died the same day she sought medical services due to a non-traumatic cardiopulmonary arrest.427 The parties argued that the victim did not receive the needed and appropriate health services during a high-risk pregnancy.428

In its finding of a number of violations under the American Convention, the Inter-American Court in Brítez Arce reinforced the integral connection between adequate health services, living with dignity, and personal autonomy.429 This duty is particularly acute during pregnancy, childbirth, and the post-partum period, and for women from vulnerable populations and marginalized groups.430 This neglect in the provision of health services can also amount to obstetrics violence, in contravention of both the American Convention and the Convention of Belém do Pará.431 The Court even called the treatment the victim received while seeking health services “dehumanizing.”432

In the case of Manuela v. El Salvador, the Inter-American Court of Human Rights also had the opportunity to establish important linkages between the right to health in the context of abortion and living with dignity. In this case, a woman was reported to the authorities for a presumed abortion when she sought emergency obstetrics services, and then was denied needed health services during her imprisonment, leading to her tragic death.433 The medical care received by Manuela was inadequate in both the hospital and while imprisoned.434 She was also handcuffed at the hospital, as a woman suspected of conducting an abortion.435

The Inter-American Court in Manuela established that prompt access to essential health services is paramount to see the full enjoyment of the rights to health and to live with dignity.436 The Court also underscored how sexual and reproductive health is connected to the freedom and autonomy to make decisions free from all forms of coercion and violence.437 Overall, the Court considered that Manuela was the victim of discrimination, as a woman with scarce economic

427 See id. ¶ 29.
428 See id. ¶¶ 53–56.
429 See id. ¶¶ 60–61, 63.
430 See id. ¶¶ 61–63.
431 See id. ¶¶ 75–77, 81.
432 See id. ¶¶ 82–85.
434 See id. ¶¶ 195–96.
435 See id. ¶¶ 197, 232–46.
436 See id. ¶¶ 183–85.
437 See id. ¶ 192.
means and living in a rural area.\textsuperscript{438} Therefore, the Court noted that her autonomy was severely curtailed due to harmful stereotypes, which impeded her from receiving dignified and respectful health services and subjected her to forms of violence.\textsuperscript{439}

For women to fully exercise their right to intersectional autonomy, certain facilitating conditions need to be present which are intimately connected to their dignity, as illustrated in recent case decisions. Access to economic resources is critical, in terms of decent, quality, and safe employment.\textsuperscript{440} Economic autonomy can be a key facilitator of all women’s rights. Access to basic means of subsistence such as food, water, and housing is also paramount.\textsuperscript{441} For Indigenous women in particular, unhindered access to their lands, territories, and natural resources can be vital for their identity and culture.\textsuperscript{442} An education free from violence and discrimination is also important, as a facilitator for the exercise of all human rights of women.\textsuperscript{443}

In many ways, dignity is defined by having the opportunity to make free choices, which entails access to the information, education, and resources to do so. Having the opportunity to participate and meaningfully contribute to crucial social sectors and institutions is also critical, when women choose to do so. Living a life free from violence, stereotypes, exclusion, and subordination is the goal to see a real fulfillment of the right to intersectional autonomy with dignity.

\textsuperscript{438} See id. ¶ 253.

\textsuperscript{439} See id. ¶¶ 253, 257–59.

\textsuperscript{440} See Fireworks Factory of Santo Antônio de Jesus v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 407, ¶¶ 148–203 (July 15, 2020) (underscoring the importance of safety, hygiene, and health in the working conditions of women and girls; a failure which can have particularly harmful effects on women of African-descent living in poverty).


\textsuperscript{442} See General Recommendation 39 On Indigenous Women and Girls, supra note 17, ¶ 56 (affirming that lands and territories are an intricate part of the identity, views, livelihood, culture, and spirit of Indigenous women and are vital for their survival).

\textsuperscript{443} See Guzman Albarracín et al. v. Ecuador, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 405, ¶¶ 122–40, 143-44 (June 24, 2020) (highlighting the importance of states to act with due diligence to prevent sexual violence in schools).
E. The Active Participation of Women as Critical

The right to intersectional autonomy also includes women as active participants in decision-making. This means their ability to make free and informed decisions as individuals, but also within collectives such as their families, the employment, education, and health sectors.\(^{444}\) Women should be able to make decisions free from all forms of violence, discrimination, and stereotypes.

Women are still grossly underrepresented in many areas of public life, including politics and the corporate sector.\(^{445}\) Women in leadership positions still experience forms of discrimination, harassment, threats, and killings.\(^{446}\) The work of human rights defenders and journalists is extremely dangerous for women at the global, regional, and national levels, in particular those working to eradicate forms of gender-based violence, address sexual and reproductive rights restrictions, and protect the environment from harm.\(^{447}\)

This is particularly critical in a world affected by armed conflicts in which women still suffer an alarming number of war crimes due to their sex and gender, including sexual violence and all of its appalling forms.\(^{448}\) As called for by different United Nations agencies historically, women should be active participants in the prevention of conflict and have meaningful participation in any processes


\(^{445}\) See UN WOMEN, WOMEN IN POLITICS: 2023, (Jan. 1, 2023), https://perma.cc/LJZ4-AV3N (confirming women are still under-represented in all areas of political life).

\(^{446}\) The author notes that due to the gravity of these issues, the CEDAW Committee is currently working on a new General Recommendation on equal and inclusive participation of women in decision-making systems. See generally, Comm. on the Elimination of Discrimination Against Women, Concept Note, General Recommendation 40 on the Equal and Inclusive Representation of Women in Decision-Making Systems and Draft of General Recommendation 40, ¶¶ 45–47.


concerning its resolution. The participation of women is also key in contexts of transitional justice and in institution building.

Women’s participation in the present is not just in-person. Every day women and girls are expressing their voices in the digital realm, including in the internet and social media. The digital setting has become an important space for women and girls to express their views, influence, and shape discourse and culture, but many obstacles abound. The digital realm has become a scenario of critical human rights violations such as online violence, harassment, hate speech, bullying, sextortion, and revenge porn, among others with particular effects for women and girls. Any discussion of women and girls’ participation in the future must include the digital context, and the need to promptly prevent and respond to forms of violence and discrimination in this realm.

F. From Theory to Practice: Concrete Proposals to Make Intersectional Autonomy a Reality for Women

There are practical implications to the right to intersectional autonomy. The author suggests that supranational bodies interpret this right as one that should be implemented at the national, local, and community levels, and that emerging jurisprudence includes state guidelines on how to do so. This means that all state

450 See Women’s Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace, UN WOMEN (March 2022) (discussing how the participation of women in transitional justice contexts challenges discriminatory power structures, can enhance how their needs are addressed, lead to inclusion, and contribute to better social outcomes).
451 For more discussion on the gender digital divide and how it affects women and girls, see CELORIO, supra note 17, at 326–47.
452 For more background, see The Digital Space Must Undergo a Feminist Revolution, UN Office of the High Comm’r for Human Rights (Mar. 8, 2023), https://www.ohchr.org/en/get-involved/stories/the-digital-space-must-undergo-feminist-revolution (recognizing the work of women and girl activists in using digital spaces to advance human rights, and identifying important challenges in this context such as sexual harassment, hate speech, threats to their sexual and reproductive health, and digital violence against women); OECD, BRIDGING THE DIGITAL DIVIDE: INCLUDE, UPSKILL, AND INNOVATE ¶ 22–24 (2018) (discussing the root causes of the gender digital divide, including hurdles to access needed technology, lack of education, and time spent on unpaid care and domestic work).
453 See Šimonović, supra note 83, ¶ 12–42 (underscoring the alarming problem of violence against women and girls on the internet and social media, and identifying major forms such as sexual harassment, online stalking, trolling, sextortion, and revenge porn); Council of Europe, GREVIO General Recommendation No. 1 on the digital dimension of violence against women, ¶ 12, 22–32 (Oct. 20, 2021) (highlighting the prevalence and forms of violence against women on the online and digital spheres, and a need for a victim-centered approach in this area).
454 For more discussion, see UNFPA News, Five Reasons Why Women and Girls Must Have Equal Rights in our Digital World (Mar. 8, 2023), https://perma.cc/AX5Z-WFTD.
and private actors need to respect the dignity, liberty, privacy, and integrity of women and girls in the adoption of decisions concerning all areas of their lives. Their actions need to be free from all forms of stereotypes, discrimination, and coercion. States must respect the informed and free decisions and choices made by women and girls, even when these are unpopular, and guarantee access to the relevant information to facilitate these choices. This includes polarizing areas such as sexual and reproductive rights and sexual orientation and gender identity.

Therefore, key state interventions to safeguard the right to intersectional autonomy are the prevention and lifting of laws and court judgments which criminalize or unduly restrict women’s and girls’ autonomous choices; the training of public officials on stereotypes, prejudices, and other practices which can hinder intersectional autonomy; the adoption of awareness raising campaigns for the general public on this key component on the rights of women and girls; and the issuance of protocols on how to investigate cases in which intersectional autonomy has been impaired by discrimination, coercion, and violence. The law should be a facilitator of women’s intersectional autonomy; never a hinder.

A critical set of state actions is also paramount to ensure that women exercise their intersectional autonomy in the family and all social settings. First, participation and the ability to make decisions in all contexts is key to the full exercise of the right to intersectional autonomy. For this to become a reality, states need to ensure adequate, decent, and quality education and employment; and access to economic resources and funding when needed. This also requires increasing the possibility of publicly funded options for women who need to care for children, the elderly, and the sick. Access to technology is also paramount, in low-income and rural areas.

Second, states also need to create safe contexts for women and girls to participate in activities which can be polarizing, such as political office, human rights defense, and journalism. This means adopting multi-layered measures to ensure safety and prevent threats to life and personal integrity. Third, states must ensure the availability of adequate and effective avenues in which to report forms of discrimination and violence women and girls face when they try to participate in any sector. Accountability mechanisms need to be in place when forms of discrimination and violence against women occur when they aim to participate. The states’ due diligence obligation applies in these cases as well, mandating prompt and exhaustive measures to prevent, investigate, sanction, and grant reparations for all these acts.

Harrowing details have emerged of the continued use of sexual violence and other alarming crimes against women and girls in recent conflicts and acts of
terrorism. Justice should be a priority for crimes committed against women in contexts of war and unrest, and impunity is still a lingering challenge. Efforts to bring perpetrators to justice should be guided by an intersectional autonomy approach, considering the history and present of discrimination which fuels these acts and their severe encroachment on women’s and girls’ lives, integrity, dignity, participation, and leadership.

Fourth, states need to act proactively to legitimize the participation of women, incentivizing, supporting, giving credibility, and avoiding the criminalization of any of their work. States need to adopt interventions to eradicate gender stereotypes and raise awareness that women can be leaders and meaningfully participate in all social spheres. This involves proactive work with a range of non-state actors who have a history of discriminating and committing acts of violence against women. States should be promoting that women hold leadership positions in businesses, in politics, and in religious institutions, and that they shape culture and social discourse.

Fifth, it is critical that women and girls have spaces to meaningfully contribute to the finding of solutions to priority problems such as climate change, armed conflicts, and pandemics. It is key to create national spaces for participation, not only to hold public office, but to give feedback to laws, policies, and programs, and ensure that women and girls are adequately represented in these spaces.

Sixth, it is important for states and non-state actors to promptly address with due diligence all forms of violence, harassment, and discrimination that women are facing while using technology, the internet, and social media, as this has become another context in which dire human rights violations are taking place impeding the exercise of full agency. The CEDAW Committee has a unique opportunity in its upcoming General Recommendation 40 to delve into these aspects and provide critical guidelines on how to best ensure and promote the participation and representation of women in all social aspects, thereby advancing their intersectional autonomy.

We are in a critical moment to incorporate the voices of women from different ages, races, ethnicities, income levels, and social conditions in the development of legislation, policies, programs, and local measures to advance

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their human rights. This is paramount to advance their leadership, autonomy, and dignity. It is also a key ingredient for the effectiveness of any international law and national measures to advance women’s rights and intersectional autonomy.

V. Conclusion

This article has discussed a wide array of caselaw issued by supranational bodies advancing different facets of the rights of women. The jurisprudence has set important legal standards mandating states to act with due diligence to prevent and respond to the alarming problems of violence and discrimination, to guarantee an access to justice when these acts occur, and the overarching duty to protect a range of civil, political, economic, social, and cultural rights. This foundational jurisprudence has been critical to solidify the conception that women’s rights are indeed human rights, and that violence and discrimination are public problems which need prompt and exhaustive state measures. Women and girls still suffer daily appalling forms of violence and discrimination, which evidences the value of the body of international legal standards already set concerning women’s rights.

However, the turn that we are seeing in jurisprudence to obstacles in the exercise of personal autonomy for women is paramount. In the end, women and girls should be able to freely make choices in all societies, and have the education, information, and conditions to do so. Without autonomy, there can be no real fulfillment of women’s rights. Solely addressing human rights concerns when violations have already occurred is only a parcel of what women’s rights should be in practice. A focus on intersectional autonomy advances the goal of ensuring that women and girls exercise their agency, self-direction, and self-government in critical areas of their lives. Women and girls should be free to carve life plans based on free choices in areas such as the family, education, employment, health, sexual orientation and gender identity, religion, culture, economics, and politics. These choices extend to individual areas, as well as relational ones, which can involve joining groups and associations, and mobilizing to protect human rights.

Caselaw can be an important strategy in guiding states on the content of their negative and positive obligations to ensure the full respect of women’s intersectional autonomy. States should refrain from all forms of unjustified interferences with women’s choices, including the Executive, Legislative, and Judicial Branches, in areas such as sexual and reproductive rights and sexual

457 For more discussion, see ROSA CELORIO, The Challenging Road to Equality and the Pursuit of Non-Discrimination, in WOMEN AND INTERNATIONAL HUMAN RIGHTS IN MODERN TIMES 182–83 (2022).
458 See id.
459 See id.
orientation and gender identity. The power of the state should be used to legitimate and support, not to punish, creating safe conditions for women’s decision-making. Women’s rights should be interpreted expansively, and states should exercise good faith in enforcing them. States should also be mindful at all times of women’s diversity of experiences and how factors such as age, race, ethnicity, sexual orientation and gender identity, and disabilities can impact the barriers to fully exercise a woman’s personal autonomy.

Creating spaces for women’s and girls’ participation in all social areas is also paramount for them to exercise their personal autonomy. Their voices, views, and preferences should be meaningfully reflected in legislation, policies, programs, and services, particularly those pertaining to priority social problems. Immediate concerns such as armed conflicts, climate change, pandemics, violence in the digital realm, and racism can all benefit from women’s decision-making.

It is time for women and girls to be leaders, shapers, and decision-makers in our societies, molding discourse, culture, religion, politics, and other areas. This is critical to transform our societies into ones that truly respect the enjoyment of women’s rights and the autonomy, dignity, and diversity of women and girls. This call can be echoed in international case law, bringing to life rights and obligations to advance the rights of women and girls. An emphasis on the right to intersectional autonomy can be a catalyst for needed legal developments in this area.