

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

¹ See *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series (ser. C) No. 257, ¶ 2 (Nov. 28, 2012).

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

⁸ For more reading, see The Tico Times, *Costa Rica’s Public Health System Welcomes first IVF Baby*, THE TICO TIMES (Apr. 19, 2020), <https://perma.cc/PV68-SBBC>.

⁹ See *LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591 (Ala. Feb. 16, 2024); *Read the Alabama Supreme Court’s Ruling*, N.Y. TIMES (Feb. 21, 2024), <https://perma.cc/VH27-C3UF>.

¹⁰ See *LePage*, 2024 WL 656591, at *7, *22.

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>.

¹² For more background and discussion, see Jamie Smith, *After Alabama’s ruling on IVF, what’s next for the rest of the U.S.?*, JOHN HOPKINS UNIVERSITY (Feb. 27, 2024), <https://perma.cc/9E6R-5TLD>; Heidi Collins Fantasia, *What is IVF? A Nurse Explains the Evolving Science and Legality of In Vitro Fertilization*, THE CONVERSATION (Feb. 29, 2024), <https://perma.cc/P82B-ETP5>.

¹³ For more discussion, see Molly Hennessey-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>.

¹⁴ See, e.g., Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981 [hereinafter CEDAW]; Inter-Am. Convention on the Prevention, Punishment, and Eradication of Violence Against Women, art. 6, June 9, 1994, 27 U.S.T. 3301, [hereinafter Convention of Belém do Pará], 1438 U.N.T.S. 63; Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 AFR. HUM. R. L.J. 40, entered into force Nov. 25, 2005; [hereinafter

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.¹⁵ The coverage includes adult women and girls under 18 years old.¹⁶

Women are also increasingly participating in the development of international law and legal standards concerning human rights and gender equality.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.¹⁸

Maputo Protocol]; Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 3(c), May 11, 2001, C.E.T.S. No. 210.210 [hereinafter Istanbul Convention].

¹⁵ For a discussion of the international human rights law regime and the eventual codification of the prohibition of discrimination against women in CEDAW, see *Introduction: Discrimination against Women through the Lens of International Human Rights Law*, in *WOMEN AND INTERNATIONAL HUMAN RIGHTS IN MODERN TIMES*, 1–3 (Edward Elgar ed. 2022). For references related to the rights of women in the interpretation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, see U.N. Human Rights Comm. [UNHRC], *General Comment 37 On the Right of Peaceful Assembly*, U.N. Doc. CCPR/C/GC/37 ¶ 90 (Sept. 17, 2020) (underscoring the state obligation to investigate promptly and exhaustively unlawful use of force claims by law enforcement officials involving sexual or gender-based violence in the context of assemblies); Comm. on Econ., Soc., and Cultural Rights, *General Comment 22 On the Right to Sexual and Reproductive Health*, U.N. Doc. E/C.12/GC/22 ¶¶ 1–21 (May 2, 2016) (discussing the content of the right to sexual and reproductive health for women and girls). For an example of a newer treaty addressing the rights of women, see Istanbul Convention, *supra* note 14, at Preamble, Articles 1–6.

¹⁶ See, e.g., CEDAW Comm., *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child* (2019) on *harmful practices*, U.N. Doc. CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1 ¶¶ 1–5, 17–30 (May 8, 2019) [CEDAW Committee, General Recommendation 31 on Harmful Practices] (drawing attention to traditional harmful practices which affect both adult women and girls, including female genital mutilation, forced marriages, polygamy, and honor crimes).

¹⁷ See, e.g., CEDAW Comm., *General Recommendation 39 On the Rights of Indigenous Women and Girls*, U.N. Doc. CEDAW/C/GC/39 ¶ 2 (Oct. 31, 2022) [hereinafter General Recommendation No. 39 on Indigenous Women and Girls]; Rosa Celorio, *The Rights of Indigenous Women and Girls, General Recommendation 39 of the CEDAW Committee*, ASIL Insights (Oct. 25, 2023), <https://perma.cc/UAN9-LSST> (discussing the participatory process which preceded the drafting of this General Recommendation, including consultations with Indigenous women and girls from around the world).

¹⁸ See generally CEDAW, Convention of Belém do Pará, Maputo Protocol, and Istanbul Convention, 1. For examples of recent women’s rights case decisions adopted by global and regional human rights bodies, see CEDAW Comm., *Alyne Da Silva Pimentel Teixeira v. Brazil*, Communication No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 ¶¶ 3.1–3.17; 7.1–7.9 (Aug. 10, 2011) (related to the tragic death of an afro-descendent woman due to inadequate health services in a private health center in Brazil); *Guzman Albarracín et al. v. Ecuador*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., Series (ser. C.), No. 405, ¶¶ 75–144; 167–207 (June 24, 2020) (a case in which an adolescent girl suffered a pattern of sexual violence by her vice-principal in her school, resulting in her suicide); *Carvalho Pinto de Sousa Mourais v. Portugal*, App. No. 17484/15, Eur. Ct. H.R. ¶¶ 5–19, 44–56, <https://perma.cc/79H5-K7UT> (July 25, 2017) (in which the European Court of Human

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.¹⁹ 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.²⁰ Noteworthy caselaw has also extended protections to the realms of economic, social, and cultural rights and sexual and reproductive rights.²¹ The rights of lesbian, gay, bisexual, transgender, intersex,

Rights found a number of human rights violations when domestic courts applied stereotypes concerning the sex life of older women, resulting in a reduction of damages for the applicant in a medical malpractice case).

- ¹⁹ 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).
- ²⁰ *See, e.g., Lenahan (Gonzales) v. U.S.*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L/V/II, ¶¶ 122–70 (2011) (holding the state accountable for its failure to diligently implement a restraining order, resulting in the death of the petitioner's three daughters from domestic violence perpetrated by her estranged husband); *González et al. ("Cotton Field") v. Mex.*, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., Series C, No. 205 ¶¶ 165–231; 249–86 (Nov. 19, 2009) (finding the state responsible for its failure to act with due diligence to prevent the gender-motivated killing of three women and properly investigate their disappearances and death); *Opuz v. Turkey*, App. No. 33401/02, 2009-III, Eur. Ct. H.R., ¶¶ 128–53 (2009), <https://perma.cc/2RSX-QJ79> (finding human rights violations for state failures to protect the applicant and her deceased mother with due diligence from a pattern of domestic violence acts perpetrated by her estranged husband); CEDAW Comm., X and Y, Communication No. 24/2009, U.N. Doc. CEDAW/C/61/D/24/2009 ¶¶ 2.1–2.9 (Aug. 25, 2015) (in which the CEDAW Committee noted several state failures to adopt appropriate legislation and protections for victims of domestic violence and sexual abuse in the family setting).
- ²¹ *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.²² 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.²³ This gender perspective mandates states to consider the historical discrimination that women have and still face socially.²⁴ It demands contemplating

protect the right to private life of a 14-year old victim of rape, when she encountered numerous obstacles to access a lawful abortion).

²² See, e.g., Vicky Hernández v. Honduras, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series(ser. C.), No. 422, ¶¶ 85–102; 126–36 (Mar. 26, 2021) (in which a trans woman was killed while working as a sex worker presumably by state law enforcement authorities); Karen Atala v. Chile, Merits, Reparations and Costs, Inter-Am. Ct. H. R., Series(ser. C), No. 239, ¶¶ 78–155 (Feb. 24, 2012) (involving a woman who lost custody of her three daughters based on stereotypes regarding her sexual orientation and for cohabiting with a same-sex partner); Azul Rojas Marín et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C), No. 402, ¶¶ 52–80; 86–95; 139–67 (March 12, 2020) (related to the arbitrary detention and torture of a man, who currently identifies as a woman, due to his perceived sexual orientation); Christine Goodwin v. United Kingdom [GC], App. No. 28957/95, Eur. Ct. H.R. ¶¶ 71–93 (July 11, 2002), <https://perma.cc/Y25Z-LCVH> (involving a case in which the state failed to legally recognize the gender change of the applicant, leading to stress, alienation, and forms of harassment).

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 Mourais 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).

²⁴ 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 femicide, see *Facts and Figures: Ending Violence against Women*, U.N. WOMEN (last verified Nov. 27, 2023), <https://perma.cc/F854-M5BR>.

³³ See, e.g., *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series C No. 257, ¶¶ 142–43, *supra* note 1 (advancing a far-reaching notion of autonomy in the areas of sexual and reproductive rights and assisted reproduction techniques); *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Series (ser. C.), No. 32, ¶¶ 149–51 (Nov. 30, 2016) (highlighting that women should be free to make autonomous and informed decisions concerning medical procedures); *Eur. Ct. H.R., P. and S. v. Poland*, *supra* note 21, ¶ 111 (Oct. 30, 2012) (underscoring the key nature of access to reliable information on sexual and reproductive health services like legal abortions to exercise personal autonomy); African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Communication No. 0012/Com/001/2019, Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v. United Republic of Tanzania, ¶¶ 75–88 (Apr. 1, 2022) [hereinafter ACERWC, Decision in matter of *Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania*] (underscoring the need for sex education for girls to make educated decisions concerning the exercise of their rights).

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) (underscoring 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.³⁵ Women are not only daily victims of human rights violations, but also face impaired social conditions to affirmatively exercise their human rights.³⁶ 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.³⁷ 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,

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 Europe³⁸ 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.

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.³⁹ 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.⁴⁰ 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.⁴¹ 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.⁴²

It is noteworthy though that discrimination based on sex was included in the Bill of Rights and the international human rights law foundational instruments.⁴³ 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.⁴⁴

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.⁴⁵ 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

³⁹ See Hilary Charlesworth, Christine Chinkin, & Shelley Wright, *Feminist Approaches to International Law*, THE AMERICAN J. OF INT'L L., Oct. 1991, 613, at 614–15 and 621–34) (discussing how international law historically lacked feminist analysis or a focus on issues impacting women).

⁴⁰ For a discussion on the origins of international human rights law and salient human rights issues today, see *Chapter 1: Introduction to International Human Rights*, in HURST HANNUM, DINAH SHELTON, S. JAMES ANAYA & ROSA CELORIO, INTERNATIONAL HUMAN RIGHTS; INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, LAW, POLICY, AND PRACTICE, 2–23 (Wolters Kluwer Publishers, 7th ed. 2023).

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).

⁴² For a discussion of women who participated in the drafting of the Universal Declaration of Human Rights, see *Women Who Shaped the Universal Declaration of Human Rights*, UNITED NATIONS (Dec. 19, 2023), <https://perma.cc/LVV4-NNS5>.

⁴³ See, e.g., G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) at arts. 2, 7; G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights [ICCPR], (Dec. 16, 1966) at arts. 2, 3; G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights [ICESCR], (Dec. 16, 1966) at arts. 2, 3.

⁴⁴ See *id.*

⁴⁵ See generally, CEDAW, *supra* note 14, at arts. 1–16.

Women.⁴⁶ 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.⁴⁷

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.⁴⁸ 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.⁴⁹ UN-Treaty Based Organs such as the CEDAW Committee and the Human Rights Committee have also made their mark in this area.⁵⁰

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). For a comparison of the Istanbul Convention, the Convention of Belém do Pará, and the Maputo Protocol, see Rosa Celorio, *The Istanbul Convention through the Lens of the Americas and Africa, in PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE* 34–49 (Edward Elgar Publishing, Sara de Vido and, & Micaella Frulli, eds.)

⁴⁸ For emblematic decisions on discrimination and violence against women issued by different global and human rights bodies, see CEDAW Comm., Karen Tayag Vertido, *supra* note 23, ¶¶ 8.1–8.10; Inter-Am. Ct. H.R., González et al. (“Cotton Field”) v. Mex., *supra* note 20, at ¶¶ 531–43; Eur. Ct. H.R., Opuz v. Turkey, *supra* note 20, ¶¶ 128–53; Afr. Ct. H.R., APDF and IHRDA v. Republic of Mali, *supra* note 19, ¶¶ 71–95.

⁴⁹ For examples, see Inter-Am. Ct. H.R., Gonzales Llyu et al. v. Ecuador, *supra* note 34, ¶¶ 290–91; Eur. Ct. H.R.; Carvalho Pinto de Sousa Morais v. Portugal, *supra* note 18, ¶¶ 6, 11, 53; Inter-Am. Comm'n H.R., Lenahan (Gonzales) v. U.S., *supra* note 20, ¶¶ 122–70.

⁵⁰ See, e.g., V.C. v. Slovakia, App. No. 18968/07, Eur. Ct. H.R., ¶¶ 106–20 (Nov. 8, 2011); Inter-Am. Ct. H.R.), <https://perma.cc/FBS9-5XMF>; Artavia Murillo v. Costa Rica, *supra* note 1, ¶¶ 141–284; ACERWC, Decision in matter of Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania, *supra* note 33, ¶¶ 30–104; 109; CEDAW Comm., Alyne Da Silva Pimentel Teixeira v. Brazil, *supra* note 18, ¶¶ 7.1–7.7; H.R.C. Comm., Karen Noelia Llantoy Huamán v. Peru, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 ¶¶ 6.1–9 (Nov. 3, 2005).

addresses the problem of domestic violence as a public issue and the need for state measures to address this dire problem.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.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.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.⁵⁴ Several cases shed light on the revictimization of survivors and family members by justice systems.⁵⁵ Fourth,

⁵¹ See, e.g., *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L./V/II.111, doc. 20 rev. ¶¶ 37–44 (2000) (related to a survivor of domestic violence whose case was before the administration of justice for more than seventeen years without an appropriate investigation and sanction of the perpetrator); Inter-Am. Comm'n H.R., *Lenahan (Gonzales) v. U.S.*, *supra* note 20, ¶¶ 122–70 (related to the tragic death of three girls due to the non-enforcement of a restraining order); Eur. Ct. H.R., *Kontrová v. Slovakia*, App. No. 7510/04, ¶¶ 46–66 (May 31, 2007), <https://perma.cc/5MCP-UJH5> (addressing state failures to protect a domestic violence victim and her deceased children when complaints had been filed before the public authorities); CEDAW Comm., *A.T. v. Hungary*, U.N. Doc. CEDAW/C/32/D/2/2003, Admissibility and Merits, ¶¶ 9.1–9.6 (Jan. 26, 2005) (underscoring state voids when a domestic violence victim lacked the possibility to apply for restraining orders and other protection measures).

⁵² See, e.g., *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm'n H.R., Report No. 04/01, OEA/Ser.L./V/II.111 Doc. 20 rev. ¶¶ 28–54 (Jan. 19, 2001) (related to provisions in the Guatemalan civil code assigning different roles to the spouses within a marriage, which the Commission found were discriminatory and conducive to violence against women); CEDAW Comm., *Karen Tayag Vertido vs. Philippines*, *supra* note 23, at ¶¶ 8.2–8.8 (linked to the application of harmful gender-based stereotypes to justice processes concerning rape).

⁵³ See, e.g., Inter-Am. Ct. H.R., *González et. al. ("Cotton Field") v. Mex.*, *supra* note 20, ¶¶ 165–231; 249–286 (Nov. 19, 2009) (discussing the due diligence obligation in the context of femicide and gender-based killings); Eur. Ct. H.R., *Opuz v. Turkey*, *supra* note 20, ¶¶ 128–53 (2009) (applying the due diligence standard in the context of domestic violence).

⁵⁴ See, e.g., *MC v. Bulgaria*, App. No. 39272/98, Eur. Ct. H.R., ¶¶ 154–82 (Dec. 4, 2003), <https://perma.cc/JHT7-Q8EN> (finding the state responsible for its failure to properly investigate a rape case concerning a fourteen year old, clarifying that the investigation should have been focused on the issue of non-consent); *Véliz Franco et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C), No. 277 ¶¶ 132–58; 233–42 (May 19, 2014) (finding the state responsible for its failure to promptly and exhaustively investigate the femicide of a fifteen-year-old girl and the mistreatment of her mother and other family members by the administration of justice).

⁵⁵ See, e.g., Inter-Am. Ct. H.R., *Véliz Franco et al. v. Guatemala*, *supra* note 54, ¶¶ 233–42 (holding the state responsible for the disrespect, harassment, and threats suffered by the mother of the victim during the judicial process).

regional human rights entities ruled noteworthy cases addressing sexual violence against women as torture when perpetrated by public officials.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.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.⁵⁸ States are called to establish justice mechanisms which are adequate, effective, and prompt when these acts take place.⁵⁹ States are also obligated to prevent and eradicate the use of sexual violence as torture when perpetrated by public officials⁶⁰ and to address all forms of discrimination in the law.⁶¹ Another noteworthy aspect is that many of these

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 Mejía 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).

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).

⁵⁸ See, e.g., Inter-Am. Ct. H.R., *González et. al. (“Cotton Field”) v. Mex.*, *supra* note 20, ¶¶ 165–231; 249–86 (Nov. 19, 2009).

⁵⁹ See, e.g., Eur. Ct. H.R., *Opuz v. Turkey*, *supra* note 20, ¶¶ 128–53 (2009).

⁶⁰ See, e.g., *Aydin v. Turkey*, App. No. 57/1996/676/866, Eur. Ct. H.R., ¶¶ 80–88 (Sept. 25, 1997), *supra* note 56.

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 heterogenous 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

⁶² See, e.g., *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L./V/II.111, doc. 20 rev., ¶¶ 37–44 (2000).

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, ¶¶ 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., *Gonzales Lluy et al. v. Ecuador*, *supra* note 34, at ¶¶ 290–91. Instead in *Carvalho Pinto de Sousa Mourais 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.⁶⁷ These cases delve into human rights violations in the areas of sexual and reproductive rights and sexual orientation and gender identity.⁶⁸ They address issues such as access to abortion,⁶⁹ informed consent for medical procedures,⁷⁰ sex education,⁷¹ gender expression,⁷² and women's dress.⁷³

22, at ¶¶ 85–102; 126–36 (in which the Court recognized the intersectional discrimination and violence a trans woman suffered based on her sex and gender identity, along with her engagement with human rights defense activities, her sex work, and for living with HIV/AIDS); *B.S. v. Spain*, App. No. 47159/08, Eur. Ct. H.R. ¶¶ 62 (July 24, 2012), <https://perma.cc/5RAF-7HVX> (acknowledging the vulnerability to discrimination of a woman of African descent undertaking sex work). *See also*, U.N. H.R.C., Sharon McIvor and Jacob Grismer, *supra* note 64, ¶¶ 7.1–7.11.

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).

⁶⁹ *See, e.g.*, U.N. H.R.C., *Siobhan Whelan*, Views on Communication 2425/2024, CCPR/C/119/D/2425/2014, ¶¶ 3.1–3.11; 7.1–7.12 (June 12, 2017); U.N. H.R.C., *Amanda Jane Mellet*, Views on Communication 2324/2013, CCPR/C/116/D/2324/2023, ¶¶ 3.1–3.20; 7.1–8 (June 9, 2016).

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* ACERWC, *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—

⁷⁴ See Inter-Am. Ct. H.R., *Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra* note 21, at ¶¶ 148–203 (underscoring the need for states to supervise the activities of private factories to prevent unsafe working conditions for women and girls); CEDAW Comm., *Cecilia Kell v. Canada*, *supra* note 21, at ¶¶ 10.1–10.7 (finding intersectional discrimination when an aboriginal woman suffered domestic violence at the hands of her partner, including the removal of her name from her housing lease without her consent).

⁷⁵ See *Bedoya Lima v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 431, ¶¶ 86–91 (Aug. 26, 2021) (calling on states to apply a differentiated approach to protect women journalists considering their gender and their history of violence); *Yarce et al. v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., Series C, No. 325 (Nov. 22, 2016) (finding state failures to protect the life and personal integrity of several women human rights defenders working in a zone affected by the armed conflict in Colombia).

⁷⁶ See, e.g., CEDAW Comm., *Karen Tayag Vertido*, *supra* note 23, at ¶¶ 8.1–8.10 (highlighting gender-based myths and stereotypes which can harm the investigation and processing of rape cases); Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33, ¶ 183 (underscoring that women can be in a situation of vulnerability during or immediately after giving birth, which impedes informed consent or the making of free decisions concerning their sexual and reproductive health).

⁷⁷ See, e.g., Inter-Am. Ct. H.R., *Brítez Arce et al. v. Argentina*, *supra* note 19, ¶¶ 77–81 (defining obstetrics violence as taking place during pregnancy, childbirth, and the post-partum period, in the form of dehumanized, disrespectful, abusive, or negligent treatment); CEDAW Comm., *S.F.M. v. Spain*, Communication No. 138/2018, CEDAW/C/75/D/138/2018, ¶¶ 3(3), 3(4) (Feb. 28, 2020) (finding discrimination and obstetrics violence when the author was submitted to medical interventions without an explanation or the opportunity to express an opinion).

⁷⁸ See *López Soto et al. v. Venezuela*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 362, ¶¶ 1, 172–82 (Sept. 26, 2018) (advancing the concept of “sexual slavery,” to allude to the total control of an aggressor over a victim’s autonomy and movements, repeated acts of sexual violence, humiliating acts, and threats).

⁷⁹ See *Women Victims of Sexual Torture in Atenco v. Mexico*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 371, ¶¶ 177–209 (Nov. 28, 2018) (referring for the first time to the concept of “sexual torture,” for forms of sexual violence perpetrated against women by law enforcement officials during their detention as a form of repressive social control during protests).

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

⁸⁰ See *Indigenous Women and their Human Rights in the Americas*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II, doc. 44/17 ¶ 80 (Apr. 17, 2017) (defining *spiritual violence* as acts which harm their communities and peoples, as well as them individually).

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).

⁸² See INTER-AMERICAN COMMISSION OF WOMEN, *Inter-American Model Law on the Prevention, Punishment, and Eradication of Violence against Women in Political Life*, in FOLLOW-UP MECHANISM TO THE CONVENTION OF BELEM DO PARA (MESECVI), arts. 3–6, 24–27 (2017), <https://perma.cc/J673-7WDF> (clarifying that violence against women in political life can include femicide, physical attacks, sexual violence, sexual harassment, threats, and acts of intimidation because of women's participation).

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).

⁸⁷ See, e.g., Inter-Am. Ct. H.R., Vicky Hernández v. Honduras, *supra* note 22, ¶¶ 85–102, 126–36; Inter-Am. Ct. H. R., Karen Atala v. Chile, *supra* note 22, ¶¶ 78–155; Inter-Am. Ct. H. R., Azul Rojas Marín et al. v. Peru, *supra* note 22, ¶¶ 52–80, 86–95, 139–67; Eur. Ct. H.R., Christine Goodwin v. United Kingdom [GC], *supra* note 22, ¶¶ 71–93.

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.⁸⁸ 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.⁸⁹ Autonomy requires having access to information and education to exercise human rights, and privacy and confidentiality when needed.⁹⁰ It also entails agency in the ability to make free and independent choices based on this information.⁹¹

⁸⁸ For examples of cases focusing on autonomy, see Inter-Am. Ct. H.R., *Artavia Murillo v. Costa Rica*, *supra* note 1, ¶¶ 141–50, 158–228; Eur. Ct. H.R., *P. and S. v. Poland*, *supra* note 21, ¶ 111; CEDAW Comm., *M.D.C.P. v. Spain*, Communication, *supra* note 77, ¶ 7.6; Eur. Ct. H.R., *Y.Y. v. Turkey*, *supra* note 68, ¶¶ 57–58.

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.

⁸⁹ See, e.g., Inter-Am. Ct. H.R., *Vicky Hernández v. Honduras*, *supra* note 22, ¶¶ 116–17, 124.

⁹⁰ See, e.g., Eur. Ct. H.R., *P. and S. v. Poland*, App., *supra* note 21, ¶ 100–12, 128–37.

⁹¹ See Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33, ¶¶ 155–60.

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 rights⁹⁸ 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

⁹² See, e.g., Inter-Am. Ct. H.R., *Artavia Murillo v. Costa Rica*, *supra* note 1, ¶¶ 141–50; U.N. H.R.C., *Siobhan Whelan*, *supra* note 69, ¶¶ 69, ¶¶ 3.1–3.11, 7.1–7.12; U.N. H.R.C., *Amanda Jane Mellet*, *supra* note 69, ¶¶ 3.1–3.20, 7.1–8; Eur. Ct. H.R., *P. and S. v. Poland*, *supra* note 21, ¶¶ 94–111; Eur. Ct. H.R., *V.C. v. Slovakia*, *supra* note 50, ¶¶ 106–20; CEDAW Comm., *S.F.M. v. Spain*, *supra* note 77, ¶¶ 3(3), 3(4).

⁹³ See, e.g., Eur. Ct. H.R., *Christine Goodwin v. United Kingdom [GC]*, *supra* note 22, ¶¶ 12–19, 90; Inter-Am. Ct. H.R., *Azul Rojas Marín et al. v. Peru*, *supra* note 22, ¶¶ 45, 49, 52, 141.

⁹⁴ See, e.g., Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33, ¶¶ 247–48.

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

⁹⁶ See, e.g., Inter-Am. Ct. H.R., *Vicky Hernández v. Honduras*, *supra* note 22, ¶ 129.

⁹⁷ See Alicia Ely Yamin, *Power, Suffering, And Their Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter*, 28–32 (2016) (for a discussion of dignity as a basis to all human rights).

⁹⁸ See, e.g., U.N. Human Rights Comm. [UNHRC], *General Comment 36 On the Right to Life*, U.N. Doc. CCPR/C/GC/36 at 3, 26 (Oct. 30, 2018) (interpreting the right to life broadly, including the right to live a life with dignity).

⁹⁹ See Comm. on Econ., Soc., and Cultural Rights, *General Comment 14 On the Right to the Highest Attainable Standard of Health (Art. 12)*, U.N. Doc. E/C.12/2000/4, ¶ 1 (Aug. 11, 2000) (establishing a connection between the enjoyment of the right to health and living a life with dignity).

discrimination.¹⁰⁰ 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.¹⁰¹

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.¹⁰² This capacity for independent decision-making can be in the family, economic, social, political, and economic context.¹⁰³ 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).

¹⁰¹ For a reflection on the importance of effective participation for women, alluding not only to the numeric nature of their inclusion, but also their capacity to impact decision-making and full citizenship, see Human Rights Council, *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, U.N. Doc. A/HRC/23/50, ¶¶ 37–44 (Apr. 19, 2013).

¹⁰² See Catriona McKenzie, *Three Dimensions of Autonomy: A Relational Analysis*, in *AUTONOMY, OPPRESSION, AND GENDER*, 15–41 (Andrea Veltman & Mark Piper eds., 2014) (arguing that autonomy includes three interdependent dimensions—self-determination, self-governance, and self-authorization—in which an individual can freely make decisions on the basis of values and motives); Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-Direction*, 40 *WM. & MARY L. REV.* 805, 824–39 (1999) (describing key aspects of women's autonomy, including self-definition of one's goals, values, and attributes, and self-direction in implementing plans and projects based on these).

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.¹⁰⁴ Autonomy is not only individual, but also relational or collective in nature, shaped by social determinants such as race, class, gender, and ethnicity.¹⁰⁵

Autonomy is greatly conditioned on the freedom to make decisions and opportunities to make them.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ The curtailment of autonomy can be particularly critical in the exercise of decisions concerning polarizing areas such as sexual and reproductive rights.¹⁰⁹ 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.¹¹⁰

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).

¹⁰⁵ See Jennifer Nedelsky, *A Relational Approach to Law and its Core Concepts*, in THE OXFORD HANDBOOK OF FEMINISM AND THE LAW IN THE UNITED STATES, 60–63 (Deborah Brake et. al. eds., 2022) (arguing for a relational approach to autonomy, considering that relationships are central to all human beings and can be structured to enhance autonomy); Catriona McKenzie & Natalie Stoljar, *Introduction: Autonomy Reconfigured*, in RELATIONAL AUTONOMY: FEMINIST PERSPECTIVES ON AUTONOMY, AGENCY, AND THE SOCIAL, 3–4 (2000) (advancing the notion of autonomy as critical in feminist theory to understand oppression, subjection, and agency, and describing its social dimensions).

¹⁰⁶ See Gerald Dworkin, *The Nature of Autonomy*, in THE THEORY AND PRACTICE OF AUTONOMY 3–20 (1988) (discussing how liberty, power, and control over one's life may be necessary conditions for a person to develop their own aims, interests, and lives); Jennifer Nedelsky, *My Relational Framework: Terms, Puzzles, and Purpose*, in LAW'S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND THE LAW, 41–50 (2012) (arguing that autonomy entails the possibility of creating one's self and the capacity for creativity).

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).

¹⁰⁸ For more discussion, see generally, Catherine A. McKinnon, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979); Catherine A. McKinnon, *FEMINISM UNMODIFIED; DISCOURSES ON LIFE AND LAW* (1988); Catherine A. McKinnon, *TOWARDS A FEMINIST THEORY OF THE STATE* (1992).

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 Cuidado 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.¹¹¹ 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.¹¹²

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.¹¹³ Global and regional human rights bodies have

¹¹¹ See Richard M. Ryan. & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being*, 55 AMERICAN PSYCHOLOGIST 68, 68 (2000) (identifying autonomy, competence, and relatedness as critical for growth and personal well-being).

¹¹² For more reading on self-determination theory and its goals, see *id.*; Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015).

¹¹³ For background on key barriers to exercise sexual and reproductive rights and legal strategies to counter these, see U.N. Press Release, *Sexual and Reproductive Rights Should be Respected, Particularly in Situations of Crisis, UN Experts Say* (Sept. 25, 2023), <https://www.ohchr.org/en/press-releases/2023/09/sexual-and-reproductive-rights-should-be-respected-particularly-situations>; SAMIRA DAWAVANDI, COERCION AND CONTROL: SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS, DECLINE OF DEMOCRACY, AND RISE OF AUTHORITARIANISM, 2-4 (2023); Alma Luz Beltrán y Puga, *The Long Quest for Reproductive Justice in Mexico: Feminist Legal Strategies and Challenges to Changing*

increasingly received case petitions alleging a range of human rights violations, including barriers to access assisted reproductive technologies,¹¹⁴ obstacles to access abortion services,¹¹⁵ informed consent,¹¹⁶ and the problem of obstetrics violence.¹¹⁷ 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.¹¹⁸

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.¹¹⁹ 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.¹²⁰ Personal autonomy was interpreted as broad reaching, having an integral connection with privacy, family, and dignity.¹²¹ 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.¹²² The Court also clarified that the words “in general” in Article 4(1) and its

Abortion Precedent in a Federal System, GEORGETOWN JOURNAL OF INTERNATIONAL AFFAIRS (Jan. 15, 2024), <https://perma.cc/GHA5-5EAG>.

See also Naomi Cahn and Sonia Suter, *Most state abortion bans have limited exceptions – but it’s hard to understand what they mean*, THE CONVERSATION (Jan. 26, 2024), perma.cc/4X93-QK4X (discussing current challenges and confusion related to state abortion laws in the United States after the overturning of the Supreme Court decision in *Roe v. Wade*); David S. Cohen, Greer Donley & Rachel Rebouche, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 8–22 (Jan. 28, 2023) (describing the new range of state abortion laws and access concerns after the overturning of *Roe v. Wade*); Maya Manlan, *Immigration Detention and Coerced Sterilization: History Tragically Repeats Itself*, AMERICAN CIVIL LIBERTIES UNION (Sept. 20, 2020), <https://perma.cc/4UHC-JH4S> (discussing the long history of coerced sterilizations of women from marginalized populations in the United States).

¹¹⁴ *See, e.g.*, Inter-Am. Ct. H.R., *Artavia Murillo v. Costa Rica*, *supra* note 1, ¶¶ 141–50, 158–228.

¹¹⁵ *See, e.g.*, U.N. H.R.C., Siobhan Whelan, *supra* note 69, ¶¶ 3.1–3.11, 7.1–7.12; U.N. H.R.C., Amanda Jane Mellet, *supra* note 69, ¶¶ 3.1–3.20, 7.1–8; Eur. Ct. H.R., *P. and S. v. Poland*, *supra* note 21, ¶¶ 94–112.

¹¹⁶ *See, e.g.*, Eur. Ct. H. R., *V.C. v. Slovakia*, *supra* note 50, ¶¶ 106–20.

¹¹⁷ *See, e.g.*, CEDAW Comm., *S.F.M. v. Spain*, *supra* note 77, ¶¶ 3(3), 3(4).

¹¹⁸ *See generally* Inter-Am. Ct. H.R., *Artavia Murillo v. Costa Rica*, *supra* note 1; Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33.

¹¹⁹ *See* Inter-Am. Ct. H.R., *Artavia Murillo v. Costa Rica*, *supra* note 1, ¶ 2.

¹²⁰ *See id.* ¶ 146.

¹²¹ *See id.* ¶¶ 142–43.

¹²² *See id.* ¶¶ 161, 281, 284.

protection of the right to life were not absolute, but gradual and incremental, allowing exceptions to the general rule.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.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.¹²⁵

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

In ruling the *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.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.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.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.¹³³ The information imparted should be comprehensive, reliable, opportune, and complete.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.¹³⁵

Therefore, for the Inter-American Court, and as stated in the case of *I.V. v. Bolivia*, informed consent is intimately connected to the autonomy and private life

¹²³ See *id.* ¶ 264.

¹²⁴ See *id.* ¶ 150.

¹²⁵ See *id.* ¶ 284.

¹²⁶ See, generally, Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33.

¹²⁷ See *id.* ¶ 1.

¹²⁸ See *id.* ¶¶ 68–69.

¹²⁹ See *id.* ¶ 115.

¹³⁰ See *id.* ¶ 150.

¹³¹ See Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33, ¶ 160.

¹³² See *id.* ¶¶ 149–51.

¹³³ See *id.* ¶ 155.

¹³⁴ See *id.*

¹³⁵ See *id.* ¶ 157.

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.¹³⁶ This means that consent needs to be given before any medical interventions, in a full, informed, free, voluntary, and autonomous manner.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.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.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.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.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 *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.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.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.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.¹⁴⁵ The Court referred to a right of autonomy and choice as a patient, which was grossly disregarded in this case.¹⁴⁶

¹³⁶ See Inter-Am. Ct. H.R., *I.V. v. Bolivia*, *supra* note 33, ¶ 162.

¹³⁷ See *id.* ¶¶ 181–96.

¹³⁸ See *id.* ¶ 187.

¹³⁹ See *id.* ¶¶ 231–35.

¹⁴⁰ See *id.* ¶ 246.

¹⁴¹ See *id.* ¶¶ 247–48.

¹⁴² See, e.g., Eur. Ct. H. R., *V.C. v. Slovakia*, *supra* note 50, ¶¶ 9–20.

¹⁴³ See *id.* ¶ 15.

¹⁴⁴ See *id.* ¶ 112.

¹⁴⁵ See *id.* ¶¶ 113–15.

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 Committee¹⁴⁷ 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.¹⁴⁸ 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.¹⁴⁹ Her doctor referred to overseas travel as an option, but did not recommend an adequate abortion provider in the UK.¹⁵⁰ 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.¹⁵¹ She received no state financial assistance to terminate her pregnancy abroad or any bereavement counseling to cope with the loss of her pregnancy.¹⁵² 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.¹⁵³ The claimant sustained she had to choose between letting the state make the intimate reproductive decision to continue a non-viable

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.

¹⁴⁸ See U.N. H.R.C., Siobhán Whelan, *supra* note 69, ¶¶ 3.1–3.11, 7.1–7.12; U.N. H.R.C., Amanda Jane Mellet, *supra* note 69, ¶¶ 3.1–3.20, 7.1–8.

¹⁴⁹ See U.N. H.R.C. Amanda Jane Mellet, *supra* note 69, ¶ 2.1.

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.¹⁵⁴ 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.¹⁵⁵

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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰ 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.¹⁶¹

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.

¹⁵⁷ See U.N. H.R.C. Amanda Jane Mellet, *supra* note 69, ¶ 7.7; U.N. Hum. Rts. Comm., Karen Noelia Llantoy Huamán, *Views on Communication 1153/2003*, CCPR/C/85/D/1153/2003, ¶ 6.4 (Nov. 22, 2005).

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*.¹⁶² 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.¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰

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.¹⁷¹ Accordingly, the Human Rights Committee mandated states to

¹⁶² See U.N. H.R.C., Siobhán Whelan *supra* note 69, ¶¶ 3.1–3.11; 7.1–7.12.

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.

¹⁷⁰ For more discussion of the legalization of abortion in Ireland, see Niamh Kennedy & Emily Blumenthal, *Five Years After Ireland's Historic Abortion Referendum, Access to Care Is Still 'Patchy'*, CNN (May 25, 2023), <https://perma.cc/K9DT-JWRY>; Henry McDonald et al., *Ireland Votes by Landslide to Legalise Abortion*, THE GUARDIAN (May 26, 2018), <https://perma.cc/D7S3-LB4Y>.

¹⁷¹ U.N. Hum. Rts. Comm., General Comment No. 36, on Article 6: Right to Life, ¶ 8, U.N. Doc. CCPR/C/GC/36, *supra* note 98.

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.¹⁷²

Regional human rights courts have also tackled cases concerning abortion recently. For example, the European Court of Human Rights declared in its ruling in *M.L. v. Poland* that a near-total ban on abortion in Poland was contrary to the European Convention on Human Rights.¹⁷³ 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 applicant from performing an abortion when she carried a fetus with a genetic disorder.¹⁷⁴ She traveled to the Netherlands to terminate her pregnancy, incurring substantial fees.¹⁷⁵ 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.¹⁷⁶ The Court acknowledged the work of the Human Rights Committee in this area, including its case decisions in the *Mellet* and *Whelan* matters and General Comment 36,¹⁷⁷ 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.¹⁷⁸ The Inter-American Court is also currently reviewing the highly anticipated case of *Beatriz vs. El Salvador*, in which it will examine the human rights implications of the absolute ban on abortion in El Salvador.¹⁷⁹ The petitioner in this case confronted numerous barriers in El Salvador to terminate her pregnancy while carrying an anencephalic fetus.¹⁸⁰ 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.¹⁸¹

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

¹⁷² See *id.* ¶ 8.

¹⁷³ See *M.L. v. Poland*, App. No. 40119/21, Eur. Ct. H.R. ¶¶ 1, 5–17, (Oct. 18, 2021).

¹⁷⁴ See *id.* ¶¶ 1, 5–22.

¹⁷⁵ See *id.* ¶¶ 23–24.

¹⁷⁶ See *id.* ¶¶ 91, 154, 160–76.

¹⁷⁷ See *id.* ¶¶ 48–51.

¹⁷⁸ See *id.* ¶¶ 82–85.

¹⁷⁹ For more information on the *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, 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>.

¹⁸⁰ See *id.*

¹⁸¹ See *id.*

claimant alleged that she was mistreated during labor at a public hospital in Seville.¹⁸² She alleged that she was denied the opportunity to make choices concerning her dilation position, punctures, and pain medication.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.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.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.¹⁸⁶ The Committee overall emphasized the need for women to receive full information on recommended treatments in order to make well-considered decisions.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.¹⁸⁸ It underscored how states have obligations to guarantee that services in this area are available, accessible, affordable, acceptable, and of quality.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.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,

¹⁸² See CEDAW Comm., *M.D.C.P. v. Spain*, *supra* note 68, ¶¶ 2.1–2.13.

¹⁸³ See *id.* ¶¶ 2.1–2.13.

¹⁸⁴ See *id.* ¶ 3.4.

¹⁸⁵ See *id.* ¶ 7.8.

¹⁸⁶ See *id.* ¶¶ 7.6, 7.12.

¹⁸⁷ See *id.* ¶ 7.8.

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.

¹⁸⁹ See *id.* ¶¶ 10–21, 25.

¹⁹⁰ See *id.* ¶ 48.

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.¹⁹¹ Among these, it mandates states to provide education and information on health and reproductive rights to women.¹⁹² 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.¹⁹³ 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

¹⁹¹ See Maputo Protocol, *supra* note 14, art. 14. As of February 2024, the Maputo Protocol has been ratified by forty-four states in the African Union. For more discussion on the Maputo Protocol and state implementation efforts in Africa, see *Maputo Protocol on the Rights of Women in Africa, Commemorating 20 Years*, AFR. UNION, <https://perma.cc/42B8-8N4X>, (last visited April 21, 2024); *9 Ways The Maputo Protocol Has Protected And Promoted The Rights Of Women And Girls Across Africa*, EQUALITY NOW (Mar. 24, 2021), <https://perma.cc/5J7Q-6Y5C>.

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

¹⁹³ For a general overview of this case and its main findings, see generally Rosa Celorio, Introductory Note to *Legal & H.R. Centre and Centre for Reproductive Rights (on Behalf of Tanzanian Girls) v. Tanz.* (Afr. Committee Of Experts On The Rts & Welfare Of The Child (ACERWC)), 62 INT'L LEGAL MATERIALS 899 (2023).

Child”).¹⁹⁴ The complainants alleged that forced pregnancy testing was conducted in public schools in Tanzania and that girls who were found pregnant were consistently expelled.¹⁹⁵ School officials justified the expulsions as being based on offenses against morality, allowed under the Education Regulations in Tanzania.¹⁹⁶ 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.¹⁹⁷ This all occurred in a context in which there was a lack of comprehensive sexuality education in schools.¹⁹⁸ 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.¹⁹⁹

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.²⁰⁰ 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.²⁰¹ 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.²⁰²

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.²⁰³ Information is presented as important for girls to make informed decisions related to their health and bodies, free from unjustified government interference.²⁰⁴ Lastly, it is key to note that the ACERWC connects all of this analysis to intersectional

¹⁹⁴ See ACERWC, Decision in matter of *Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania*, *supra* note 33, ¶¶ 30–104, 109.

¹⁹⁵ See *id.* ¶¶ 2–8.

¹⁹⁶ See *id.* ¶ 4.

¹⁹⁷ See *id.* ¶ 7.

¹⁹⁸ See *id.* ¶ 8.

¹⁹⁹ See *id.*

²⁰⁰ See ACERWC, Decision in Matter of *Legal and Human Rights Centre and Centre for Reproductive Rights v. Tanzania*, *supra* note 33, ¶¶ 30–37.

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

²⁰⁵ See *id.* ¶¶ 50–59.

²⁰⁶ See generally, *Guzmán Albarracín et al. v. Ecuador*, *supra* note 18.

²⁰⁷ See *id.* ¶¶ 1, 41–56.

²⁰⁸ See *id.*

²⁰⁹ See *id.* ¶ 51.

²¹⁰ See *id.* ¶¶ 1, 57–83.

²¹¹ See *Guzmán Albarracín et al.*, ¶¶ 122–27.

²¹² See *id.* ¶ 136.

²¹³ See *id.* ¶¶ 138–40.

²¹⁴ See *id.* ¶¶ 141–43.

²¹⁵ See *id.* ¶¶ 159–65.

different obstacles in doing so.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.²¹⁷ They were both girls at the time.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.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.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.

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.²²¹

For example, in *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

²¹⁶ See Eur. Ct. H.R., *P. and S. v. Poland*, *supra* note 21, ¶¶ 5–41.

²¹⁷ See *id.* ¶¶ 102–03, 108.

²¹⁸ See *id.* ¶ 5.

²¹⁹ See *id.* ¶ 109.

²²⁰ See *id.* ¶ 111.

²²¹ For background on the rates of violence against girls in different contexts, see A STATISTICAL SNAPSHOT OF VIOLENCE AGAINST ADOLESCENT GIRLS, UNICEF, 1–16 (2014).

she was fourteen years old.²²² Her case was dismissed when the authorities failed to find that she had resisted the act of rape.²²³ 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).²²⁴ 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.²²⁵ The Court noted how this trend recognized social respect for the goals of equality and sexual autonomy.²²⁶ The prosecution of non-consented sexual acts should be the focus of laws instead.²²⁷ Therefore, the Court found that the domestic courts' approach in this case was flawed and based on deficient legislation.²²⁸

Another example of this tendency was the judgment of the Inter-American Court in the case of *Brisa Angulo Losada v. Bolivia*.²²⁹ Brisa was the victim of incest and sexual violence perpetrated by her cousin, incidents which began after she was sixteen.²³⁰ Her cousin was twenty-six at the time.²³¹ She and her family reported these incidents before the authorities and more than twenty years have passed and the perpetrators are still unpunished.²³² She was also severely revictimized in her process of seeking justice.²³³ 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.²³⁴

In the judgment of *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.²³⁵ This means that states must adopt special measures of protection to ensure that

²²² See *M.C. v. Bulgaria*, 2003-XII Eur. Ct. H.R., ¶¶ 10, 11–43.

²²³ See *id.* ¶¶ 44–68.

²²⁴ See *id.* ¶¶ 148–87.

²²⁵ See *id.* ¶¶ 156–63 (the Court referred as examples to Belgium, Ireland, the United Kingdom, and the United States of America).

²²⁶ See *id.* ¶ 165.

²²⁷ See *id.* ¶ 166.

²²⁸ See *M.C. v. Bulgaria*, 2003-XII Eur. Ct. H.R., ¶¶ 169–87.

²²⁹ See, e.g., *Angulo Losada v. Bolivia*, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶ 1 (Nov. 18, 2022).

²³⁰ See *id.* ¶¶ 33–37.

²³¹ See *id.*

²³² See *id.* ¶¶ 46–75.

²³³ See *id.* ¶ 81–82.

²³⁴ For more background on Brisa de Angulo Losada's advocacy work, see CNN Heroes, *At 17, this sexual abuse survivor set out to fix a broken system* (April 20, 2018), <https://perma.cc/K295-LC67>.

²³⁵ See *Angulo Losada v. Bolivia*, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶¶ 92–124 (Nov. 18, 2022).

girls and their family members can adequately navigate the administration of justice system, and be treated humanely in the process.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.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.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.²³⁹

The Inter-American Court of Human Rights in *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.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.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.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

²³⁶ See *id.*

²³⁷ See *id.*, ¶¶ 95–102.

²³⁸ See *id.* ¶¶ 103–04.

²³⁹ See *id.* ¶ 105.

²⁴⁰ See *id.* ¶¶ 134–56.

²⁴¹ See *id.* ¶¶ 152–54.

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.²⁴³ 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.²⁴⁴ Azul was arbitrarily detained by the police and then submitted to appalling acts of physical and psychological violence during her detention.²⁴⁵ 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.²⁴⁶

The analysis advanced by the Inter-American Court in *Azul Rojas Marín 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.²⁴⁷ 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.

²⁴⁴ *See Azul Rojas Marín et al. v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H. R. (ser. C) No. 402, ¶¶ 45, 49, 52 (Mar. 12, 2020).

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.* ¶ 289.

²⁵² See *Vicky Hernández v. Honduras, Merits, Reparations, and Costs*, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶¶ 115–16 (Mar. 26, 2021).

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.

and stigmatization.²⁵⁹ 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.²⁶⁰

The European Court of Human Rights has also issued a significant line of rulings examining issues concerning LGBTIQ+ persons.²⁶¹ 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.²⁶³ 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.

²⁶¹ For emblematic cases, see generally, *Karner v. Austria*, App. No. 40016/98 Eur. Ct. H.R. (2003) (addressing discrimination on the basis of sexual orientation in a matter related to succession of a tenancy); *Salgueiro da Silva Mouta v. Portugal*, App. No. 33290/96 Eur. Ct. H.R. (1999) (related to discrimination on the basis of sexual orientation in custody proceedings); *Dudgeon v. United Kingdom*, App. No. 7525/76 Eur. Ct. H.R. (1981) (addressing laws criminalizing homosexual acts between consenting adults).

²⁶² See *Christine Goodwin v. United Kingdom* [GC], App. No. 28957/95 Eur. Ct. H.R. ¶¶ 12–19 (2002).

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.²⁷⁰ The case was related to a Turkish applicant—Y.Y.—who had requested gender reassignment surgery but the courts had denied his request.²⁷¹ In its analysis in favor of 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.²⁷² 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.²⁷³ 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.²⁷⁴ 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.²⁷⁵

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.²⁷⁶ The applicant alleged that she was attacked after she revealed her sexual orientation and sustained physical injuries.²⁷⁷ 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

²⁷⁰ See *Y.Y. v. Turkey*, App. No. 14793/08 Eur. Ct. H.R. ¶ 57 (2015).

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.

²⁷⁶ See *Sabalić v. Croatia*, App. No. 50231/13 Eur. Ct. H.R. ¶ 5 (2021).

²⁷⁷ See *id.* ¶¶ 5–10, 67.

consider the hate crime elements.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.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.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.²⁸¹ The women leaders in Comuna 13 refused to submit to the mandates of illegal armed actors, facing reprisals and threats to their organizational

²⁷⁸ See *id.* ¶¶ 16, 108.

²⁷⁹ See *id.* ¶¶ 93–116.

²⁸⁰ See *Yarce et al. v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 325, ¶¶ 100–24 (Nov. 22, 2016).

²⁸¹ See *id.* ¶¶ 75–99.

autonomy.²⁸² The Inter-American Court in *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.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.²⁸⁴

In the later ruling of *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.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.²⁸⁶ These incidents took place in a known context of armed conflict and attacks against journalists, including sexual violence.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.²⁸⁸

In the *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.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.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.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 *Karen Tayag Vertido*, in which the claimant argued that a number of stereotypes resulted in the

²⁸² See *id.* ¶¶ 96–97.

²⁸³ See *id.* ¶¶ 181–96.

²⁸⁴ See *id.* ¶¶ 274–75.

²⁸⁵ See *Bedoya Lima v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 431, ¶¶ 86–91 (Aug. 26, 2021).

²⁸⁶ See *id.* ¶¶ 1, 55–64, 79–80.

²⁸⁷ See *id.* ¶¶ 39–51.

²⁸⁸ See *id.* ¶¶ 52–53.

²⁸⁹ See *id.* ¶ 91.

²⁹⁰ See *id.* ¶¶ 93–97.

²⁹¹ See *id.* ¶¶ 100–03.

dismissal of her rape case in the Philippines.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.²⁹³ She filed a complaint before the authorities.²⁹⁴ The Regional Court of Davao City ruled against the claimant due to presumed voids in her testimony.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.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.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—

²⁹² See Karen Tayag Vertido v. The Philippines, Adoption of Views, Committee on the Elimination of all Forms of Discrimination against Women, U.N. Doc. CEDAW/C/46/D/18/2008, ¶¶ 2.1–2.9 (July 16, 2010).

²⁹³ See *id.* ¶¶ 2.1, 2.2.

²⁹⁴ See *id.* ¶¶ 2.4.

²⁹⁵ See *id.* ¶¶ 2.5–2.9.

²⁹⁶ See *id.* ¶¶ 8.1–8.10.

²⁹⁷ See *id.* ¶¶ 8.5–8.7.

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

²⁹⁸ See CELORIO, *Chapter 3: Intersectionality and the Interconnectedness of Discrimination: The Case of Indigenous Women*, in WOMEN AND INTERNATIONAL HUMAN RIGHTS IN MODERN TIMES, *supra* note 15, at 69–71 (discussing the use of the concept of intersectional discrimination in current international human rights law developments concerning women).

²⁹⁹ See LORENA SOSA, INTERSECTIONALITY IN THE HUMAN RIGHTS LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN 61–120 (2017) (reflecting on the growing intersectional approach to violence by the UN CEDAW Committee, UN General Assembly Resolutions, and the work of the UN Special Rapporteur on Violence against Women).

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.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.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.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.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.³⁰⁶ The structure of the Inter-American Commission on Human Rights has been built around Rapporteurships, which

³⁰² See, e.g., General Recommendation No. 39 On Indigenous Women and Girls, *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).

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).

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).

³⁰⁵ See 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).

³⁰⁶ For more discussion of the work of the Inter-American Court of Human Rights and other regional courts in intersectional discrimination, see Rosa Celorio, *Discrimination and the Regional Human Rights Protection Systems: The Enigma of Effectiveness*, 40 U. PA. J. INT'L L. 781, 814–18 (2019).

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 *González 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 *González 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

³⁰⁷ See Inter-American Commission on Human Rights, Strategic Plan 2023-2027, 29–42 <https://perma.cc/8H98-52HB> (describing the work of the Inter-American Commission Rapporteurships, addressing the needs of a diversity of populations and marginalized groups in the Americas).

³⁰⁸ See *Gonzales Lluy et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 298, ¶¶ 1, 64–155.

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.

³¹⁵ See *Cuscul Pivaral et al. v. Guatemala*, Preliminary Objection, Merits, Inter-Am. Ct. H.R. (ser. Series C) No. 359 ¶¶ 1, 55–62 (Aug. 23, 2018).

³¹⁶ See *id.* ¶¶ 63, 114–27.

discrimination, especially those who were pregnant and living in extreme poverty.³¹⁷

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.³¹⁸

For example, in the case of *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.³¹⁹ She also suffered depression, suicidal thoughts, and isolation.³²⁰ 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.³²¹ 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 8.³²²

The European Court in *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.³²³ 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.³²⁴ Therefore, the Court labeled these notions *stereotyping*, which revealed prevailing social attitudes which were insufficient to support a difference in treatment on the ground of sex.³²⁵ Therefore, the Court found a violation of the prohibition of discrimination contained in Article 14, taken in conjunction with Article 8 of the Convention.³²⁶

³¹⁷ See *id.* ¶¶ 131–39.

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.

³¹⁹ See *Carvalho Pinto de Sousa Mourais v. Portugal*, App. No. 17484/15, ¶ 6–11 (July 25, 2017).

³²⁰ See *id.*

³²¹ See *id.* ¶¶ 12–19.

³²² See *id.* ¶¶ 3, 16, 30, 40.

³²³ See *id.* ¶ 52.

³²⁴ See *id.* ¶ 53.

³²⁵ See *id.* ¶ 46.

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-descendent 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

³²⁷ See *B.S. v. Spain*, App. No. 47159/08, Eur. Ct. H.R. (July 24, 2012).

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.

³³⁶ 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, CEDAW/C/GC/28 ¶ 18 (Dec. 16, 2010).

discrimination and violence.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.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.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.³⁴⁰

The CEDAW Committee has also employed an intersectional approach in the issuance of case-related views. A prominent example is the case of *Alyne da Silva* which took place in Brazil.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.³⁴² Alyne sought care for severe nausea and abdominal care when she was six months pregnant from a health center.³⁴³ Her medical ailments progressively worsened during her hospital stay, resulting in a digestive hemorrhage from the delivery of a stillborn fetus.³⁴⁴ The claimant argued that the state violated Alyne’s rights to life and health under Articles 2 and 12 of CEDAW.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.³⁴⁶ States are also responsible for paying special attention to women and girls from vulnerable and disadvantaged groups in the field of health care.³⁴⁷

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).

³³⁸ See General Recommendation 39 On Indigenous Women and Girls, *supra* note 17, ¶ 5.

³³⁹ See *id.* ¶ 5.

³⁴⁰ See *id.* ¶ 4.

³⁴¹ See generally *Alyne Da Silva Pimentel Teixeira v. Brazil*, CEDAW/C/49/D/17/2008 (Aug. 10, 2011).

³⁴² See *id.* ¶¶ 3.1–3.17; 7.1–7.9.

³⁴³ See *id.* ¶¶ 2.2–2.3.

³⁴⁴ See *id.* ¶ 2.12.

³⁴⁵ See *id.* ¶¶ 1, 2.1–2.14.

³⁴⁶ See *id.* ¶ 3.2.

³⁴⁷ See CEDAW Comm., *Alyne Da Silva Pimentel Teixeira v. Brazil*, CEDAW/C/49/D/17/2008 ¶¶ 3.2. (Aug. 10, 2011).

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.³⁵⁵ 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.³⁵⁶

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*.³⁵⁷ 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.³⁵⁸ This right can be violated when the means to exercise it—such as access to needed in vitro

³⁵⁵ For a description of the wide array of state obligations to prevent and respond to violence against women, *see, e.g.*, González et. al. (“Cotton Field”) v. Mex., Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 165–231; 249–86; Opuz v. Turkey, 2009-III Eur. Ct. H.R., ¶¶ 128–53; X and Y, CEDAW/C/61/D/24/2009, ¶¶ 2.1–2.9 (Aug. 25, 2015). For regional treaties codifying state obligations to address the right to live free from violence against women, *see* Convention of Belém do Pará, *supra* note 14, arts. 1, 19; Maputo Protocol, *supra* note 14, arts. 2–5; Istanbul Convention, *supra* note 14, arts. 1, 5–6, 12–28.

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.

³⁵⁷ *See* Artavia Murillo et al. v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 146 (Nov. 28, 2012).

³⁵⁸ *See* CEDAW, art. 16(e).

fertilization—are restricted.³⁵⁹ 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.³⁶⁰ 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.³⁶¹

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.³⁶² 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.*

³⁶⁰ See, e.g., *Y.Y. v. Turkey*, App. No. 14793/08, Eur. Ct. H.R., ¶ 57 (Mar. 10, 2015); *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 32, ¶¶ 235, 236 (Nov. 30, 2016).

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.”

See CEDAW Comm., General Recommendation 39 On Indigenous Women and Girls, *supra* note 17, ¶ 11.

³⁶² For more discussion, see Rosa Celorio, *The Kaleidoscope of Climate Change and Human Rights: The Promise of International Litigation for Women, Indigenous Peoples, and Children*, 13 *ARIZ. J. ENV'T L. & POL'Y* 155, 181–85 (2023).

violations, accountability for state failures, and needed changes in institutions, legislation, and policies.³⁶³ 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.³⁶⁴

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.³⁶⁵

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.³⁶⁶ 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.³⁶⁷ Treating intersectional autonomy as a right of independent content, would open a space to bring to life state obligations related to women and key

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).

³⁶⁵ See Celorio, *Discrimination and the Regional Human Rights Protection Systems: The Enigma of Effectiveness*, *supra* note 306, at 793–94 (discussing how a legal standard issued by a human rights court constitutes a legal obligation for the state involved and sheds light on its content).

³⁶⁶ For emblematic cases, see generally, González et. al. (“Cotton Field”) v. Mex., Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 19, 2009); Eur. Ct. H.R., *Opuz v. Turkey*, App. No. 33401/02 (2009); CEDAW Comm., *Cecilia Kell v. Canada*, Communication No. 19/2008, U.N. Doc. CEDAW/C/51/D/19/2009 (Apr. 27, 2012); *M.C. v. Bulgaria*, 2003-XII Eur. Ct. H.R.; *Christine Goodwin v. United Kingdom* [GC], 2002-VI Eur. Ct. H.R. (2002); Inter-Am. Ct. H.R., *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012); Inter-Am. Guzman Albarracín et al. v. Ecuador, Merits, Reparations, and Costs, Inter-Am. Ct. H.R., (ser. C) No. 405 (June 24, 2020); *Fireworks Factory of Santo Antônio de Jesus v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 407 (July 15, 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

³⁶⁸ For cases already fusing the concept of autonomy with an intersectional perspective, see *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 257 ¶¶ 142–43, 284 (Nov. 28, 2012); *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 32, ¶¶ 150–60; 247–48 (Nov. 30, 2016); *V.C. v. Slovakia*, 2011-V, Eur. Ct. H.R., ¶¶ 9–20; 113–19.

³⁶⁹ See *Catriona McKenzie, Three Dimensions of Autonomy: A Relational Analysis*, in *AUTONOMY, OPPRESSION, AND GENDER*, *supra* note 105, ¶¶ 15–41; Inter-Am. Ct. H.R., Gender identity, and equality and non-discrimination of same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples

The liberty to make decisions free from unjustified interferences extends to all areas of their civil, political, economic, social, and cultural rights.³⁷⁰ This includes decisions inside the home, but also outside of the home and in the broader society.³⁷¹ 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.³⁷²

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.³⁷³ 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.³⁷⁴ This means that states should also enhance the availability of public-funded care for children, the elderly, and the sick.

(interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights), Advisory Opinion OC-24/17, Series A No. 24 ¶¶ 86–88 (Nov. 24, 2017) (presenting a broad notion of autonomy, involving self-determination and the freedom to pursue options and circumstances on the basis of values, beliefs, convictions, and interests); *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 257 ¶¶ 142–43, 284 (Nov. 28, 2012).

³⁷⁰ See *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 32, ¶¶ 150–60; 247–48 (Nov. 30, 2016); *V.C. v. Slovakia*, 2011-V, Eur. Ct. H.R. ¶¶ 9–20; 113–19.

³⁷¹ See Comm. on the Elimination of Discrimination Against Women, *M.D.C.P. v. Spain* ¶ 7.6, U.N. Doc. CEDAW/C/84/D/154/2020 (Mar. 9, 2023).

³⁷² See *Abrams*, *supra* note 102, at 824–39.

³⁷³ For cases exemplifying barriers to the exercise of autonomy, such as forms of violence, stereotypes, outdated laws, and obstacles to access needed health services, see *Inter-Am. Ct. H.R., Vicky Hernández v. Honduras*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 422 ¶¶ 69–70 (Mar. 26, 2021) *Honduras*, (discussing the use of police violence to punish trans women for expressing their gender identity); Comm. on the Elimination of Discrimination Against Women, *Karen Tayag Vertido*, U.N. Doc. CEDAW/C/46/D/18/2008 ¶¶ 2.1–2.9 (highlighting gender-based myths that can harm the investigation of rape cases when they are reported by survivors); *Angulo Losada v. Bolivia*, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶¶ 134–56 (Nov. 18, 2022) (mandating the state to reform its laws to reflect non-consent as the central focus of sexual violence laws); Eur. Ct. H.R., *Y.Y. v. Turkey*, App. No. 14793/08, Eur. Ct. H.R. ¶¶ 102, 103, 105, 111, 116 (March 10, 2015) (underscoring the expression of gender identity as critical to an individual's self-determination, which entails eliminating obstacles to access gender reassignment surgery).

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.).

³⁷⁴ 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.³⁷⁵ 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.³⁷⁶ This also entails the eradication of all forms of structural discrimination reflected in constitutions, laws, policies, and state-driven policies and services.³⁷⁷

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.³⁷⁸ 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.³⁷⁹ The collective component of this right can also include work in different settings, both public and private, or the decision not to work.³⁸⁰ 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.³⁸¹ 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).

³⁷⁶ See Rosendo Cantú et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (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. 216 ¶¶ 78–132 (Aug. 30, 2010).

³⁷⁷ See U.N. Human Rights Comm., Sharon McIvor and Jacob Grismer v. Canada, U.N. Doc. CCPR/C/124/D/2020/2010, ¶¶ 7.1–7.11 (Nov. 20, 2019); Comm. On the Elimination of Discrimination Against Women, Cecilia Kell v. Canada, Communication No. 19/2008, U.N. Doc. CEDAW/C/51/D/19/2009 ¶¶ 10.1–10.7. (Apr. 27, 2012).

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).

³⁷⁹ See, e.g. Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 257) ¶¶ 142–43, 284 (Nov. 28, 2012); I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 32, ¶¶ 150–60; 247–48 (Nov. 30, 2016).

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).

³⁸¹ See Yarce et al. v. Colombia, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 325, ¶¶ 100–24 (Nov. 22, 2016).

local and national communities.³⁸² 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.³⁸³ 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.³⁸⁴

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.³⁸⁵ 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.³⁸⁶ Other areas that could be discussed further in which women's autonomy is frequently curtailed include education, employment, politics, and digital spaces.

³⁸² For more reading on the important work of women human rights defenders, see Office of the High Commissioner for Human Rights, International Day for Women Human Rights Defenders, Statement by United Nations High Commissioner for Human Rights, Volter Turk (Nov. 29, 2022).

³⁸³ For more discussion of violence against women and girls which takes place in digital contexts, such as the internet and social media, see Šimonović, *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).

³⁸⁵ See, e.g., *Artavia Murillo v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶¶ 142–44, 284 (Nov. 28, 2012) (linking personal autonomy to the rights to private and family life, and physical and mental integrity); *H.R., I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R., (ser. C) No. 32, ¶¶ 150–55, 247–48 (Nov. 30, 2016) (establishing connections between personal autonomy, liberty, dignity, private life, and family).

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.

³⁸⁸ See, e.g., Alyne Da Silva Pimentel Teixeira v. Brazil, CEDAW/C/49/D/17/2008 ¶¶ 3.1–3.17; 7.1–7.9 (Aug. 10, 2011); Gonzales Lluy et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 298 ¶¶ 1, 64–155 (Sept. 1, 2015); Cecilia Kell v. Canada, Communication No. 19/2008, U.N. Doc. CEDAW/C/51/D/19/2009 ¶¶ 10.1–10.7. (Apr. 27, 2012).

³⁸⁹ 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).

³⁹⁰ See U.N. Human Rights Comm., Sharon McIvor and Jacob Grismer v. Canada, U.N. Doc. CCPR/C/124/D/2020/2010, ¶¶ 7.1–7.11 (Nov. 20, 2019).

³⁹¹ See Comm. on the Elimination of Discrimination Against Women, M.D.C.P. v. Spain ¶ 7.6, U.N. Doc. CEDAW/C/84/D/154/2020 (Mar. 9, 2023); V.C. v. Slovakia, 2011-V, Eur. Ct. H. R. ¶¶ 113–119.

³⁹² See, e.g., Angulo Losada v. Bolivia, Preliminary Objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 475, ¶¶ 134–56 (Nov. 18, 2022); U.N. Human Rights Comm., Sharon McIvor and Jacob Grismer v. Canada, U.N. Doc. CCPR/C/124/D/2020/2010, ¶¶ 7.1–7.11 (Nov. 20, 2019); *Maria Eugenia Morales de Sierra v. Guatemala*, Inter-Am. Comm’n H.R., Report No. 04/01, OEA/Ser.L/V/11.111 doc. 20 rev 704 ¶¶ 28–54 (Jan. 19, 2001).

³⁹³ See Carvalho Pinto de Sousa Mourais v. Portugal, App. No. 17484/15, ¶¶ 5–19, 44–56 (July 25, 2017); Eur. Ct. H.R., Christine Goodwin v. United Kingdom [GC], 2002-VI Eur. Ct. H.R. ¶¶ 71–93 (2002); Comm. on the Elimination of Discrimination Against Women, Karen Tayag Vertido, U.N. Doc., CEDAW/C/46/D/18/2008 ¶¶ 8.1–8.10 (Sept. 22, 2010).

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.³⁹⁴ The collection of data in this area is also critical, to understand how intersectional discrimination impacts the exercise of rights at the national level.³⁹⁵ 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.³⁹⁶

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.³⁹⁷ This is particularly acute in armed conflict contexts and in peace negotiation processes.³⁹⁸

³⁹⁴ See *Guzman Albarracín et al. v. Ecuador, Merits, Reparations, and Costs*, Inter-Am. Ct. H.R., (ser. C) No. 405 ¶¶ 215–46 (June 24, 2020); *Gonzales Lluy et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, Inter-Am. Ct. H.R. (ser. C) No. 298 ¶¶ 378–95 (Sept. 1, 2015).

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.³⁹⁹ 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.⁴⁰⁰

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.⁴⁰¹ This is paramount in sexual and reproductive rights, including ensuring the accessibility of information and services free from discrimination and obstacles.⁴⁰²

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.⁴⁰³ This information should be imparted with an intersectional

³⁹⁹ See Comm. Rts. Child, *General Comment 26 on Children's Rights and the Environment, with a Special Focus on Climate Change*, CRC/C/GC/26 ¶¶ 4, 30 (Aug. 22, 2023) (urging states to recognize the contributions of children human rights defenders and to protect their rights to freedom of expression, peaceful assembly, and association); Inter-Am. Ct. H.R., *Atala Riffo v. Chile*, *supra* note 396, ¶¶ 196–208 (Feb. 24, 2012) (confirming that girls have a right to be heard in custody proceedings which concern them); Comm. Rts. Child., *General Comment 12 on the Right of the Child to be Heard*, U.N. Doc. CRC/C/GC/12, ¶¶ 2, 32–34 (July 20, 2009) (underscoring the right of all children to be heard as a main pillar of the U.N. Convention on the Rts. of the Child).

⁴⁰⁰ See Comm. on the Elimination of Discrimination Against Women, General Recommendation 39 on Indigenous Women and Girls, *supra* note 17, ¶ 45.

⁴⁰¹ See Comm. on the Elimination of Discrimination Against Women, *M.D.C.P. v. Spain*, U.N. Doc. CEDAW/C/84/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).

⁴⁰² See Comm. on Econ., Soc., and Cultural Rights, General Comment 22 On the Right to Sexual and Reproductive Health, *supra* note 15, ¶¶ 15.

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, and 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).

⁴¹³ See, e.g., Comm. on the Elimination of Discrimination Against Women, *M.D.C.P. v. Spain*, U.N. Doc. CEDAW/C/84/D/154/2020 ¶¶ 7.6–7.13 (Mar. 9, 2023) (holding the state responsible under CEDAW for obstetrics violence and gender stereotypes which hindered the author's ability to make decisions concerning medical procedures, curtailing 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.⁴¹⁷

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.⁴¹⁸ 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.⁴¹⁹

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,⁴²⁰ Indigenous peoples,⁴²¹ health,⁴²² the environment,⁴²³ both in times of peace and armed conflicts.⁴²⁴ The African Commission on Human Rights has also embraced this expanded interpretation of the right to life.⁴²⁵

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

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).

⁴¹⁸ UNHRC, *General Comment 36 On the Right to Life*, *supra* note 98, ¶¶ 26, 64; Comm. Rts. Child, General Comment 26 on Children's Rights and the Environment, with a Special Focus on Climate Change, *supra* note 400, ¶ 20.

⁴¹⁹ See General Recommendation 39 On Indigenous Women and Girls, *supra* note 17, ¶ 51.

⁴²⁰ See "Street Children" (Villagrán Morales et al.) v. Guatemala, Merits, Inter-Am. Ct. (ser. C) No. 63, ¶ 191 (Nov. 19, 1999).

⁴²¹ See *Yakye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 162–64 (June 17, 2005).

⁴²² See, e.g., *Gonzales Lluy et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 298, ¶¶ 216, 290 (Sept. 1, 2015); *Cuscul Pivaral et al. v. Guatemala*, Preliminary Objection, Merits, Inter-Am. Ct. H.R. (ser. C) No. 359, ¶¶ 101–27, 131–39 (Aug. 23, 2018).

⁴²³ See *Case of La Oroya Population v. Peru*. Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 220–23 (Nov. 27, 2023) (finding a violation of the right to live with dignity of 80 individuals due to the negative impact of environmental pollution on their lifestyles and health, including pregnant women and girls); *The Environment and Human Rights* (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. C) No. 23, ¶¶ 47, 109.

⁴²⁴ See, e.g., *Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Inter-Am. Ct. H.R., (ser. C) No. 134 ¶¶ 62, 186 (Sept. 15, 2005).

⁴²⁵ See, e.g., African Commission on Human and Peoples Rights, 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, ¶¶ 217; African Comm'n on Hum. and Peoples' Rts. [ACHPR], *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, ¶ 3 (Nov. 18, 2015).

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

⁴²⁶ See Inter-Am. Ct. H.R., *Brítez Arce et al. v. Argentina*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 473, ¶ 29 (Nov. 16, 2022).

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.

⁴³³ See *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶¶ 47–88 (Nov. 2, 2021).

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.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.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.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.⁴⁴¹ For Indigenous women in particular, unhindered access to their lands, territories, and natural resources can be vital for their identity and culture.⁴⁴² An education free from violence and discrimination is also important, as a facilitator for the exercise of all human rights of women.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.

⁴³⁸ See *id.* ¶ 253.

⁴³⁹ See *id.* ¶¶ 253, 257–59.

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).

⁴⁴¹ See, e.g., Comm. on the Elimination of Discrimination Against Women, *Cecilia Kell v. Canada*, Communication 19/2008, U.N. Doc. CEDAW/C/51/D/19/2008, ¶¶ 10.1–10.7 (Apr. 27, 2012) (reaffirming the right of women to live free from discrimination in the realm of housing); Oliver De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food*, A/HRC/22/50 ¶¶ 4–7 (Dec. 24, 2012) (underscoring forms of discrimination and marginalization that hinder women's access to food); African Commission on Human and Peoples' Rights, *Guidelines on the Right to Water in Africa*, adopted during the 26th Extra-Ordinary Session ¶¶ 2.2–22.3 (July 16–30, 2019) (confirming the state obligation to ensure access to water, including for those most vulnerable and marginalized).

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).

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

⁴⁴⁴ See U.N. Working Group on Discrimination against Women, Report on the Issue of Discrimination against Women in Law and in Practice, ¶¶ 37–49, U.N. Doc. A/HRC/23/50 (Apr. 19, 2019) (highlighting the importance of women’s participation in public and political life, including through autonomous movements built at the local, national, and global levels).

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.

⁴⁴⁷ For examples of forms of discrimination and violence faced by women journalists and human rights defenders, see *Bedoya Lima v. Colombia*, Merits, Reparations, and Costs, Judgment, *supra* note 75, ¶¶ 86–91; *Inter-Am. Ct. H.R. (ser. C) No. 431*, ¶¶ 86–91 (Aug. 26, 2021); *Yarce et al. v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, *Inter-Am. Ct. H.R. (ser. C) No. 325*, ¶¶ 91–99; 101–124 (Nov. 22, 2016).

For a discussion of risks faced by human rights defenders who are girls and adolescents, see U.N. Working Group on Discrimination against Women, *Report on Girls’ and Young Women’s Activism*, ¶¶ 27–50, U.N. Doc. A/HRC/50/25 (May 20, 2022).

⁴⁴⁸ For analysis on the ongoing gravity of sexual violence against women during armed conflicts, see *The Guardian View on Sexual Violence in Conflict: An Unending Crime that Can Be Tackled*, THE GUARDIAN (Dec. 10, 2023), <https://perma.cc/3ATZ-NBP3>; *Justice Critical to Fighting Sexual Violence in Conflict*, UN NEWS (Apr. 13, 2022), <https://perma.cc/7GJZ-6HXM>.

concerning its resolution.⁴⁴⁹ The participation of women is also key in contexts of transitional justice and in institution building.⁴⁵⁰

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.⁴⁵¹ 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.⁴⁵² 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.⁴⁵³ 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.⁴⁵⁴

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

⁴⁴⁹ See generally, UN Secretary General Report, Women, Peace, and Security, *supra* note 398, ¶¶ 1, 719 (Sept. 28, 2023); S.C. Res. 1325, U.N. Doc. S/RES/1325, *supra* note 29, ¶¶ 1–8.

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/hc-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.⁴⁵⁵ 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.⁴⁵⁶

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

⁴⁵⁵ For more discussion, see Rep. of UN Independent International Commission of Inquiry on Ukraine, A/77/53, October 18, 2022, ¶¶ 88–98; Jeffrey Gettleman et al., *Screams without Words: How Hamas Weaponized Sexual Violence on Oct. 7th*, N.Y. TIMES, (Jan. 25, 2024), <https://perma.cc/NZA9-QVVE>.

⁴⁵⁶ 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*, *supra* note 446.

their human rights.⁴⁵⁷ This is paramount to advance their leadership, autonomy, and dignity.⁴⁵⁸ It is also a key ingredient for the effectiveness of any international law and national measures to advance women's rights and intersectional autonomy.⁴⁵⁹

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 legitimize 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.