



International Lesbian, Gay, Bisexual, Trans and Intersex Association

Input to a thematic report: Gender, sexual orientation and gender identity

Submission to the Independent Expert on protection against violence
and discrimination based on sexual orientation and gender identity

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Introduction

This submission has been prepared by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) as a response to the [call](#) published by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

Overall, the present submission focuses on the necessity of reflecting upon existing widely-used understandings of gender, identifying their inherent limitations, acknowledging the diversity of genders, and the importance of an intersectional approach to human rights, as well as intersectional feminist – especially black and indigenous feminist – movement-building work, when seeking a holistic, comprehensive and broad-based understanding of the complex realities of gender.

The present submission begins with a discussion of the concept of gender as understood in international law, and in the United Nations system in particular. This discussion then leads to an elucidation of the vital importance of understanding ‘gender’ as a spectrum, thereby acknowledging and taking stock of its tremendous diversity. The second section of the submission is devoted to a discussion of ‘intersectionality’ as a method of human rights law. After providing an overview of approaches to intersectionality, particularly ‘group-centred’ and ‘dynamic-centred’ approaches, we turn to the analysis of how the two approaches have been and could be applied to the intersections of gender, sexual orientation, gender identity and gender expression¹ within the United Nations human rights system. The third section of the submission focuses on the vital importance of intersectional feminist movement-building, in taking stock of gender and priorities of gender justice. Finally, we provide several concluding remarks and recommendations.

Generally, we consider it crucial to address gender struggles when working on human rights of LGBT persons, and *vice versa*. As was noted by Marija Antić and a member of the Working Group on discrimination against women, Ivana Radačić, “[b]oth of these discourses [on gender equality and on sexual orientation and gender identity] operate with a concept of gender and both are opposed by the anti-gender movements fighting ‘gender ideology’.”²

¹ **Sexual orientation** is understood as “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender”. **Gender identity** is understood as “to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms”. **Gender expression** refers to “each person’s presentation of the person’s gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person’s gender identity”. See: The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, available at: <http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf> accessed 16 November 2020; The Yogyakarta Principles plus 10 (YP+10): Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, available at <http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf> accessed 16 November 2020.

² Antić, Marija, and Radačić, Ivana. The evolving understanding of gender in international law and ‘gender ideology’ pushback 25 years since the Beijing conference on women. 2020. *Women’s Studies International Forum*, 83, 1-7. (p. 1).

Dianne Otto, Professor of Law and one of the leading scholars in the field of feminist legal studies and queer approaches to international law, wrote in a similar vein that “[u]nderstanding sex/gender/gender identity as performative brings the coalitional project into focus, as a struggle against the same restrictions on the performance of gender, within a hegemonic heterosexual matrix, that requires stable, dualistic and disciplined sexed bodies.”³ As LGBT and gender struggles are interconnected and intrinsically interlinked, and they both are attacked by the same forces and groups, intersectional solutions become vital. This is true for civil society coalition building and activist projects, but also for more formal discourses created within the United Nations human rights system.

1. Understanding gender

1.1. The concept of gender in international law

Discourse around gender has existed at the United Nations from the very moment of its creation. Initially, it focuses on the equality between [cis]women and [cis]men, as well as non-discrimination based on sex – thus providing a quite narrow understanding of issues pertaining to sex and gender (with the term gender not being established until the late 80s/early 90s).

Since 1990s, however, together with multiple advancement in feminist social movements, intellectual developments and academic studies, the discourse formed at United Nations started to shift to a more explicit and nuanced understanding of gender, gender equality and gender mainstreaming.⁴

A significant role in this shift was played by international conferences and documents adopted there, notably the Vienna Declaration and Programme of Action (1993)⁵ and the Beijing Declaration and Programme of Action (1995)⁶. Yet, at that time while the usage of term ‘gender’ and related terms (see footnotes 4 and 5) became more common, all the attempts to define the concept of gender remained unfruitful, not the least because of the opposition from conservative states and other actors.⁷ As a result, for some time the international law discourse around gender existed in the circumstances of what Marija Antić and Ivana Radačić called the “decades-long ‘non-definition’ approach in multilateral documents”.⁸

One of the first legal definitions of gender was included into the Rome Statute, adopted in 1998. It defines gender as referring to “the two sexes, male and female, within the context of society.” This definition has been widely criticized for its ambiguity and the attempt to combine two diametrically opposite approaches: essentialist and conservative understanding

³ Otto, Dianne. Queering gender [identity] in international law. 2015. *Nordic Journal of Human Rights*, 33:4, 299-318. (p. 318).

⁴ See, for example, Antić, Marija, and Radačić, Ivana. *Op. cit.*; Otto, Dianne. Queering gender [identity] in international law. 2015. *Nordic Journal of Human Rights*, 33:4, 299-318.

⁵ Refers to “gender-based violence”, “gender bias”, “gender-specific data” and “gender-specific abuses”.

⁶ Contains multiple references to “gender equality”, “gender balance”, “gender-sensitive training”, “gender perspective”, “gender roles”, “gender analysis”, etc.

⁷ Antić, Marija, and Radačić, Ivana. *Op. cit.* (p. 2).

⁸ *Ibid.* (p. 6).

of gender as biologically determined, in contrast with constructivist approaches understanding gender as socially created.⁹

A radically different approach – the clear definition of gender as socially constructed – was established on a regional level by the Istanbul Convention adopted by the Council of Europe in 2011. According to the Convention, gender refers to the “socially construed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.”¹⁰

The nine core United Nations human rights treaties do not have a definition of gender. The majority of these treaties, being adopted in 1960s to 1990s, reflect the earlier approach thus mentioning only the need for equality between [cis]women and [cis]men¹¹ and establishing the prohibition of discrimination based on sex¹². The later conventions, however, refer to gender explicitly. The Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICED), both adopted in 2006, contain references to gender¹³ even though they still do not define it.

The definition of gender, however, has been developed in following practice and interpretation of the human rights treaties by treaty monitoring bodies.

In 2009, the Committee on Economic, Social and Cultural Rights explained that

The Covenant guarantees the equal right of men and women to the enjoyment of economic, social and cultural rights. Since the adoption of the Covenant, the notion of the prohibited ground “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights.¹⁴

In its General recommendation No. 28 (2010), the CEDAW Committee drew a very clear distinction between the notion of sex (as based on biology) and gender (socially constructed):

The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by

⁹ See, for example, see Antić, Marija, and Radačić, Ivana. *Op. cit.* (p. 3); Oosterveld, Valerie. Constructive Ambiguity and the Meaning of “Gender” for the International Criminal Court. 2014. *International Feminist Journal of Politics*, 16:4, 563-580.

¹⁰ Article 3(c).

¹¹ The International Covenant on Civil and Political Rights, 1966 (ICCPR), art. 3; The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), art. 3; Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW).

¹² International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD), Preamble; ICCPR, arts. 2(1), 4(1), 24(1) and 26; ICESCR, art. 2(2); CEDAW, art. 1; Convention on the Rights of the Child, 1989 (CRC), Preamble and art. 2(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), arts. 1(1) and 7.

¹³ CRPD mentions “gender-sensitive assistance”, “gender-specific needs”, “gender representation” (arts. 16, 25, 34). ICED refers to “gender representation” in art. 26.

¹⁴ General Comment No. 20 (2009) on article 2 of the ICESCR (Non-discrimination), E/C.12/GC/20, para. 20.

*political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.*¹⁵

Similarly, the Committee on the Rights of Persons with Disabilities explained that “‘sex’ refers to biological differences and ‘gender’ refers to the characteristics that a society or culture views as masculine or feminine.”¹⁶

Over the last decade, the practice of the United Nations special procedures has also demonstrated the understanding of gender as a social construct. A number of special procedures mandate holders referred to gender as a social construct in their thematic reports.¹⁷

Yet, even the definition of gender as a social construct was mainly based both on a western and binary understanding of men/women and masculine/feminine, and hence fails to grasp the diverse concepts of gendered representations of different cultures, societies and persons.

1.2. Gender as a Broad-Based Spectrum

The inherent limitations of understanding gender from a ‘binary’ perspective have been widely documented.¹⁸ Ways in which ‘gender’ is understood changes from one socio-cultural context to another. Cycles of western colonization over the last few centuries witnessed a strong perpetuation of the Abrahamic understandings of the [cis]male and [cis] female gender binary in many parts of the world. There is a broad range of evidence, from indigenous communities in Turtle Island¹⁹ to the Pacific islands, that such unifying missions had an adverse impact on the rich and diverse traditions and understandings of gender/s in many societies. Indeed, the most inclusive approach to the understanding of ‘gender’ is as a spectrum, with a strong sense of continuum. Gender identities and expressions change from one sociocultural context to another. When seeking to gain an inclusive, in-depth and holistic understanding of ‘gender’, it is absolutely crucial to acknowledge, and take stock of these diversities. Many pioneering scholars and activists have highlighted the futility of society’s tendency to ‘police’ gender and exert violence and discrimination towards people who do not conform to gender norms [especially the gender binary].²⁰ In indigenous communities

¹⁵ General recommendation No. 28 on the core obligations of States parties under article 2 of the CEDAW, CEDAW/C/GC/28 (2010), para. 5.

¹⁶ General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, para. 4(b).

¹⁷ See, for example, Special Rapporteur on the right to housing, report on women and their right to adequate housing, A/HRC/19/53 (2011), para. 4; Special Rapporteur on the situation of human rights defenders, report on women human rights defenders, A/HRC/40/60 (2019), paras. 12 and 29; Special Rapporteur on the right to privacy, report on recommendations for protecting against gender-based privacy infringements, A/HRC/43/52 (2020), fn. 1 and para. 20(d); Working Group on discrimination against women, report on reasserting equality and countering rollbacks, A/HRC/38/46 (2018), para. 25.

¹⁸ For a comprehensive and detailed, yet lucid and highly accessible account of the limitations of restrictive, binary-focused understandings of ‘gender’, see ‘Understanding Gender’, a publication of Gender Spectrum: <https://genderspectrum.org/articles/understanding-gender>

¹⁹ ‘Turtle Island’ is a term that refers to the continent of North America. According to the Canadian Encyclopedia, it is the name that many Algonquian- and Iroquoian-speaking peoples (mainly in the northeastern part of North America) use to refer to the continent. Today, the term ‘Turtle Island’ is widely used by indigenous and settler people alike in Canada and in the USA to refer to the continent, as a means of acknowledging the indigenous heritage of the continent, as well as the diverse and rich cultures and knowledge systems of first peoples. For more information, see the entry for Turtle Island in the Canadian Encyclopedia: <https://www.thecanadianencyclopedia.ca/en/article/turtle-island>

²⁰ One of the strongest cases against gender policing has been developed by Professor Judith Butler. See, for example, <https://www.youtube.com/watch?v=Bo7o2LYATDc>

worldwide, gender diversities that largely surpass and transcend the gender binary have long been the norm. From Hijra and Khwaja sira in the Indian Subcontinent and Waria in Indonesia to Fa'afafine and fa'afatama in the island of Samoa,²¹ gender diversities have historically been integral components of local sociocultural heritage.

The predominance of the gender binary as the status quo in many societies is also linked to oppressive histories of colonialism. In the northerly territories of Turtle Island, a key objective of the system of 'residential schools' introduced by British settlers was to eradicate indigenous knowledge systems, support networks, family structures, languages and gender pluralities. Residential schools were strictly gender-segregated along Victorian notions of strict enforcement of the gender binary. Destroying traditions of gender plurality that did not fall comfortably within the [cis] male and [cis] female binary was a core element of this venture. In the Indian Subcontinent, British colonial efforts to eradicate gender-diversities indigenous to the land have been widely documented.²² As opposed to popular narratives, gender diversity that transcends the 'binary' has been a long-standing phenomenon. Indigenous traditions of gender pluralities, as well as documented histories of trans people's lived experiences,²³ provide substantive evidence to this effect.

As we have outlined so far, achieving gender equality and equality for and of LGBT people are linked with each other. In fact, here we want to argue that gender equality and equality of LGBT people are different representations of the same core issue: a biologically determined (essentialist) cis-heterosexual understanding of sex and gender; or, in other words, discrimination and violence against women as well as LGBT people are a consequence of the widespread understanding that:

- sex has only two eligible (though yet not equal) categories: male and female which are determined by a person's body – namely their sex characteristics.
- gender is determined by a person's sex and hence is binary; and
- finally, gender gives rise to societal expectations towards the individual in terms of behavior, preferences, sexualities and roles in society.

Derivations of this pattern have been labeled, both historically and until this day, as pathological, immoral, criminal and threatening the "natural" – and therefore pre-discursive – social order.

In this framework, women are treated less favorably in society because the roles and behaviors expected from them are less independent, have less agency for decision making over themselves and others, including over their own bodies, have less access to power, jobs, payment and financial resources. Lesbian, gay and bisexual persons are discriminated and treated less favorably because they transgress the sexual expectations based on their sex and gender. Being trans is defined as a pathology (which again legitimizes discrimination, violence

²¹ See *Beyond Gender: Indigenous Perspectives, Fa'afafine and Fa'afatama*. Natural History Museum LA: <https://nhm.org/stories/beyond-gender-indigenous-perspectives-faafafine-and-faafatama> and McMullen, D. T. and Kihara, Y. 2018. *Samoan Queer Lives*. Tāmaki Makarau: Little Island Press.

²² See, for example, Soutik Biswas, 'How Britain tried to 'erase' India's third gender. BBC News, 31 May 2019: <https://www.bbc.com/news/world-asia-india-48442934> and Sophie Hunter, Hijras and the legacy of British colonial rule in India, LSE Blogs, London School of Economics: <https://blogs.lse.ac.uk/gender/2019/06/17/hijras-and-the-legacy-of-british-colonial-rule-in-india/>

²³ On the long-standing histories of trans people's lived realities, see notably, Snorton, C. Reily. 2017. *Black on Both Sides: A Racial History of Trans Identity*. Minneapolis, MN: University of Minnesota Press, and Jill-Peterson, J. 2018. *Histories of the Transgender Child*. Minneapolis, MN: University of Minnesota Press.

and less favorable treatment) due to the fact that they put in question the determinism of their own gender, gender role and gender identity, based on their sex.

In this light, equality between women and men, gender equality and indeed equality on grounds of sexual orientation, gender identity, gender expression is in essence the same and require a collective approach to shared struggle.

2. Intersectionality as a method of human rights law

The concept of intersectionality has its roots in social justice movements and, particularly, feminist activism, including the activist work of black women, Chicanas, Asian-American women and Native women in the United States or Dalit feminism in India.²⁴

In her well-known talk delivered at Harvard University in February 1982, Audre Lorde stated that “[t]here is no such thing as a single-issue struggle because we do not live single-issue lives”.²⁵ A few years later, Kimberlé Crenshaw introduced the theory of intersectionality into the legal discourse by applying the concept of “multidimensionality of Black women’s experience” to the analysis of antidiscrimination law and its application in the United States.²⁶ Since then, the theory of intersectionality has crossed the borders of countries and disciplines and found its place in international law scholarship, as a methodological approach, as well as in legal practice, including when it comes to the activities of international human rights bodies.²⁷

While there is no universal understanding of intersectionality and intersectional method, the existing approaches can be classified on “group-centred” (focusing on marginal groups located at the intersection of two or more axes of inequality, as well as their unique

²⁴ See, for example, Hill Collins, Patricia, and Bilge, Sirma (2020). *Intersectionality: Key Concepts*. Polity Press, pp. 65-87; Hancock, Ange-Marie (2016). *Intersectionality: An Intellectual History*. Oxford University Press, pp. 37-71; Atrey, Shreya (2019). *Intersectional Discrimination*. Oxford University Press, pp. 65-76.

²⁵ A. Lorde, ‘Learning from the 1960s’ in *Your Silence Will Not Protect You* (Silver Press 2017) 124.

²⁶ K. Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139; K. Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1991) 43 *Stanford Law Review* 1241.

²⁷ See e.g. S. Atrey, ‘Fifty Years On: The Curious Case of Intersectional Discrimination in the ICCPR’ (2017) 35 *Nordic Journal of Human Rights* 220; S. Atrey, *Intersectional Discrimination* (Oxford University Press 2019); J. E. Bond, ‘International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations’ (2003) 52 *Emory Law Journal* 71; M. Campbell, ‘CEDAW and Women’s Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination’ (2015) 11 *Revista Direito GV* 479; P. Y. S. Chow, ‘Has Intersectionality Reached its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence’ (2016) 16 *Human Rights Law Review* 453; L. A. Crooms, ‘Indivisible Rights and Intersectional Identities or, What Do Women’s Human Rights Have to Do with the Race Convention’ (1997) 40 *Howard Law Journal* 619; A. Dale, *Intersectional Human Rights at CEDAW: Promises, Transmissions and Impacts: PhD dissertation*. (Osgoode Hall Law School, York University 2018); A.N. Davis, ‘Intersectionality and International Law: Recognizing Complex Identities on the Global Stage’ (2015) 28 *Harvard Human Rights Journal* 205; G. de Beco, ‘Intersectionality and disability in international human rights law’ (2020) 24 *The International Journal of Human Rights* 593; N. Ghanea, ‘Intersectionality and the Spectrum of Racist Hate Speech: Proposals to the UN Committee on the Elimination of Racial Discrimination’ (2013) 35 *Human Rights Quarterly* 935; L. Hodson, ‘Women’s Rights and the Periphery: CEDAW’s Optional Protocol’ (2014) 25 *The European Journal of International Law* 561; L. Sosa, *Intersectionality in the Human Rights Legal Framework on Violence against Women: At the Centre or the Margins?* (Cambridge University Press 2017); I. Truscan and J. Bourke Martignoni, ‘International Human Rights Law and Intersectional Discrimination’ (2016) 16 *The Equal Rights Review* 103.

experiences) and “dynamic-centred” (focusing not on the individual but on the categories of distinction and systems of inequality, and analysing dynamic aspects of subordination and inequality).²⁸

Both aforementioned approaches can provide important insights, including when it comes to practical aspects of policymaking, legislative activities or remedies in cases of violations. It is important to apply these approaches to the intersections of gender with sexual orientation, gender identity and gender expression.

2.1. Identities and groups

First, in order to address intersections of gender with sexual orientation, gender identity and gender expression, the group-centred exercise can be performed. This would imply the analysis of how gender influences experiences of LGBT individuals.

First, as was noted in section 1.1, the definition of gender as a social construct in international human rights law was mainly based on binary concepts (men/women, masculine/feminine).

Comparing the situations of women and men does make sense. It is without a doubt that women in every country in the world still face discrimination and oppression. This transgresses as well into LGBT communities, meaning that there are also at times significant disparities and differences between LGBT women and men.

A number of research studies revealed differences between the situations of cisgender gay men and lesbian women (**intersections of gender and sexual orientation**). For example, in the Soviet Union, gay men were subjected to criminal prosecution, while lesbian women were targeted through psychiatric interventions and “conversion therapies”.²⁹ Lesbian women and couples are at higher risk of poverty and generally earn less than gay men and couples.³⁰ There are different health risks for cisgender lesbians and gay men – for example, the risks are higher in relation to HIV for gay men, and the risks of certain types of cancer is a problem for lesbian women.³¹ Cisgender lesbian women and gay men have different needs when it comes to access to assisted reproductive technologies, as well as legal regulation of them. Some studies also found some differences between lesbian women’s and gay men’s attitudes towards relationship, sexual relations and parenting.³²

Such intersectional analysis can be further enriched by gender expression dimension. For instance, there are multiple forms of identities and expressions within lesbian communities

²⁸ Sosa, Lorena (2017). *Intersectionality in the Human Rights Legal Framework on Violence against Women: At the Centre or the Margins?* Cambridge University Press, pp. 20-32.

²⁹ See, for example, Gessen, Masha (1994). *The rights of lesbians and gay men in the Russian Federation: an International Gay and Lesbian Human Rights Commission report = Права гомосексуалов и лесбиянок в Российской Федерации : отчет Международной Комиссии по правам человека для гомосексуалов и лесбиянок.* (IGLHRC).

³⁰ See, for example, Schneebaum, Alyssa, and Lee Badgett, M. V. Poverty in US Lesbian and Gay Couple Households. 2019. *Feminist Economics*, 25:1, 1-30.

³¹ See, for example, UNAIDS. Gay Men and Other Men Who Have Sex with Men: The Gap Report 2014, available at:

https://www.unaids.org/sites/default/files/media_asset/07_Gaymenandothermenwhohavesexwithmen.pdf;

Jessica P. Brown, & J. Kathleen Tracy (2008), Lesbians and Cancer: An Overlooked Health Disparity, *Cancer Causes Control* 19, pp. 1009-1020.

³² See, for example, Kurdek, L. A. Differences between gay and lesbian cohabiting couples. 2003. *Journal of Social and Personal Relationships*, 20:4, 411-436; Matsick, J. L. et al. Gender Similarities and Differences in Casual Sex Acceptance Among Lesbian Women and Gay Men. 2021. *Archives of Sexual Behavior*, in press.

around the world; masculine lesbian women can identify themselves as, for example, “butch” or “masculine of center”; while masculine lesbian women are at higher risk of physical violence, more feminine lesbians are more likely to experience sexual harassment and violence (**intersections of gender, sexual orientation and gender expression**). In addition the 2014 LGBT survey of the EU Fundamental Rights agency found that the risk of experiencing violence and discrimination is significantly higher in LGBT persons whose gender expression does not conform with social expectations towards their gender.³³ One of the most important cases on employment discrimination in the United States, *Price Waterhouse v. Hopkins* (1989) concerned gender expression as the basis for discrimination of a woman whose sexual orientation was never discussed or revealed in the court. The applicant was denied promotion while being advised to walk and talk more femininely and to wear make-up, there were also instances when she received negative comments such as “being macho” (**intersection of gender and gender expression**).

The situations of trans women and men (**intersections of gender and gender identity**) can also vary considerably. In the USA, for instance, trans women of colour, especially black trans women, face disproportionate levels of violence, including a very high murder rate.³⁴ Throughout the world, trans people continue to face major challenges when it comes to accessing healthcare solutions. In countries such as the United Kingdom, where gender-affirming healthcare is technically covered by the National Health Service [NHS], trans people still face the hurdle of extremely long waiting lists, which in some cases lead to no outcome. To trans migrants in the UK and other global North countries, accessing gender-affirming healthcare implies many administrative and entitlement-related hurdles.³⁵ In most cases, quality gender-affirming care provided by reputed clinics is only accessible to trans people with considerable financial means.³⁶ The lived experiences and realities of trans people vary tremendously as a consequence of the multiple intersections of their existences. In the Indian context, for instance, an upper caste, wealthy, educated and English-speaking trans woman’s lived experience would contrast drastically with that of an indigenous Hijra woman from a socioeconomically less privileged background and from the lower echelons of the country’s rigid structure of caste. Trans people’s existences are therefore not a monolith. When it comes to career opportunities, trans people are faced with major disparities. While such challenges are particularly excruciating for trans people from under-privileged backgrounds in global South countries, they also continue to persist in global north spaces as well.³⁷

³³ EU LGBT survey: European Union lesbian, gay, bisexual and transgender survey (2014), page 105: “For example, those whose gender expression does not ‘match’ their sex assigned at birth (10 %) are twice as likely as those with ‘matching’ sex assigned at birth and gender expression (5 %) to have experienced violence or the threat of violence in the last 12 months because of being LGBT.”

³⁴ See, for example, ‘Addressing anti-Transgender Violence: Exploring Realities, Challenges and Solutions for Policymakers and Community Advocates’, Human Rights Campaign: <http://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf>; ‘Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate and Intimate Partner Violence in 2017’, National Coalition of Anti-Violence Programs: <https://avp.org/2017-hv-ipv-report/>.

³⁵ On the excruciating nature of challenges faced by trans migrants and asylum seekers, see, for example, ‘Welcome to Stay: Building Trans Communities Inclusive of Trans Asylum Seekers and Refugees in Europe. Berlin: Transgender Europe: https://tgeu.org/wp-content/uploads/2017/09/TGEU_TransAsylumBrochure_LR.pdf

³⁶ This is the case, for instance, in all highly-reputed trans health clinics worldwide, from New York to Bangkok.

³⁷ On the specific challenges faced by trans people seeking employment in the academic sphere, see, for example, Alex Hanna, Being transgender on the job market. Insider Higher Ed, 15 July 2016:

In some cases, there can be considerable discrepancies in the experiences of trans women and trans men, based on discriminatory attitudes that are based on the masculine/feminine binary. In the academic sphere of many western countries, for example, the majority of trans people in permanent posts tend to be trans men. As a consequence of gender-based systemic discrimination, trans women face particular hurdles in this sector. On the other hand, it has also been observed that in the USA, the spotlight on trans issues has mostly been focused on trans women, with lesser attention accorded to trans men.³⁸ When it comes to issues such as reproductive rights of trans people, it could be more challenging to develop a dialogue around the reproductive rights of trans women. The tendency of cis-heteronormative institutions [especially in the sector of reproductive healthcare] to perceive trans people through a 'cis-normative' lens [i.e., to see trans men as 'cis-woman-lite' and trans women as 'cis-man-lite'], also result in considerable differences in the ways in which trans men and trans women are treated.

Therefore, there is still a need to analyse differences between women and men, collect statistics and make targeted efforts in order to improve the living realities of different groups within LGBT communities. However, this approach would still leave many people invisible.

Even though women suffer from patriarchy particularly, gender should not be understood as a synonym for women and a wider understanding of gender is crucial for more comprehensive analysis of intersectional LGBT identities.

Some concrete examples of a more nuanced approach to the definition of gender can be found in reports by United Nations human rights bodies. This may include a broad definition of women or gender:

References to women in the report also include girls and gender non-conforming persons affected by social constructions of women who promote and protect all types of rights.³⁹

All references to 'Gender' in this document should be read to mean inclusive of cis-normativity, sexual orientation, gender identity, gender expression and sex characteristics and the social norms attributed to biological characteristics.⁴⁰

Similarly, the CEDAW Committee in its country periodic reviews addressed the situations of not only trans women but also transgender persons more generally.⁴¹

The Special Rapporteur on the right to privacy, in addition, provided a definition of gender:

A robust international 'privacy and gender' framework was identified as comprising: (...) A contemporary understanding of 'gender' based on recognition that:

<https://www.insidehighered.com/advice/2016/07/15/challenge-being-transgender-academic-job-market-essay>. In this essay, Hanna highlights how disparities exist between trans men and trans women in the academy, where trans men represent the majority of trans academics in secure positions.

³⁸ Charlotte Alter, Cultural sexism in the world is very real when you've lived on both sides of the coin. Time Magazine: <https://time.com/transgender-men-sexism/>

³⁹ Special Rapporteur on the situation of human rights defenders, report focusing on situation of women human rights defenders, A/HRC/40/60 (2019), para. 12.

⁴⁰ Special Rapporteur on the right to privacy, report focusing on recommendations for protecting against gender-based privacy infringements, A/HRC/43/52 (2020), fn. 1.

⁴¹ See, for example, Argentina, CEDAW/C/ARG/CO/7 (2016), paras. 20-21; Costa Rica, CEDAW/C/CRI/CO/7 (2017), para. 20(a); Germany, CEDAW/C/DEU/CO/7-8 (2017), paras. 21 and 46(b); Montenegro, CEDAW/C/MNE/CO/2 (2017), para. 46; Republic of Korea, CEDAW/C/KOR/CO/8 (2018), paras. 40-41.

(i) *cis-normativity; biological sex; sexual orientation and expression gender identity and expression, and sex characteristics, and societal norms are elements of gender.*

(ii) *gender, for some individuals, can change throughout their life.*

(iii) *gender identity is integral to personality and important to self-determination, dignity and freedom.*

(iv) *gender intersects with ethnicity, indigeneity, age, disability, health, migration, marital or family status amongst other factors, to heighten the importance of human rights to dignity and quality of life.” (report focusing on recommendations for protecting against gender-based privacy infringements).*⁴²

Another example of a broader approach to gender is referring to “all genders” instead of “men and women” or “two genders”.⁴³

2.2. Institutions and systems of oppression

The group-based approach to intersectionality has its limitations that could be overcome by addressing intersectionality through institutional factors and, further, systems of oppressions. For example, Marija Antić and Ivana Radačić, instead of narrow understanding of gender in terms of identities or groups of persons (women, gay, transgender), suggested a “more radical meaning: gender as a system of stratification and othering”.⁴⁴

Such system of stratification can be supported by institutions, including education, law enforcement or culture. Consequently, in order to ensure that LGBT persons can live free and equal, these institutions should be targeted and transformed in an intersectional way.

One good example of such an “institutional” approach to intersectionality can be found in a recent decision by CEDAW Committee concerning violence against a lesbian couple and the lack of effective investigation from part of law enforcement officials.⁴⁵ The Committee’s decision provides several insights into intersectional approach to gender-based violence, including the following four observations:

- The nature and meaning of intersectionality:

*...discrimination against women is inextricably linked to other factors that affect their lives, including being lesbian women. Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect women to different degrees or in different ways, meaning that appropriate legal and policy responses are needed.*⁴⁶

- Stereotypes as a cause and consequence of discrimination and their perpetuation by institutions:

...the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. Gender stereotypes are

⁴² A/HRC/43/52 (2020), para. 20(d).

⁴³ See, for example, A/HRC/40/60 (2019), paras. 12 and 110; A/HRC/43/52 (2020), paras. 33(e), 37(a) and 54(a)(i).

⁴⁴ Antić, Marija, and Radačić, Ivana. *Op. cit.* (p. 7).

⁴⁵ *O.N. and D.P. v. Russian Federation*, Communication No. 119/2017, views of 24 February 2020, U.N. Doc. CEDAW/C/75/D/119/2017.

⁴⁶ *Ibid.*, para. 7.4.

*perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of Government and by private actors.*⁴⁷

- The conclusion of the Committee highlighting the intersectional systemic nature of the violation:

*...the present case shows a failure by the State party in its duty to uphold women's rights, particularly in the context of violence and discrimination against women on the basis of their sexual orientation and to eliminate the barriers that the authors faced in seeking justice in their case, in particular negative stereotypes against lesbian women, and to ensure that law enforcement officials strictly apply the legislation prohibiting gender-based discrimination against women.*⁴⁸

- General measures, including those aimed at bringing intersectional changes to the law enforcement:

*Ensure timely gender-sensitive training for police and investigative authorities on the Convention, the Optional Protocol thereto and the Committee's general recommendations (...) in order that crimes with homophobic undertones committed against lesbian women be understood as gender-based violence or hate crimes requiring active State intervention.*⁴⁹

The dynamic-centred approach to intersectionality focuses on the categories of distinction and systems of inequality and analysing dynamic aspects of subordination and inequality. The analysis of intersections of gender with sexual orientation, gender identity and gender expression thus imply addressing patriarchy and cisheteronormativity.

While the concept of gender has been gradually introduced into the international human rights practice, addressing patriarchy is still a new approach even for the bodies focusing on women.⁵⁰ Yet, critically engaging with patriarchy and cis-heteronormativity, as interconnected systems of power, would allow a true intersectional analysis of gender, gender identity, gender expression and sexual orientation. As noted by Marija Antić and Ivana Radačić, gender is “an instrumental word in describing patriarchy as a heteronormative binary system which structurally oppresses women and excludes all non-conforming existences,”⁵¹ and “...sexism, normative heterosexuality and dichotomous understanding of gender are all-interrelated, as they are all expressions of patriarchal structures.”⁵² Dianne Otto wrote that “sex/gender/gender identity are all given substance by the same matrix of gendered social relations.”⁵³

Some examples of addressing power structures could be found in thematic reports of special procedures. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment highlighted the need to address “the impact of entrenched

⁴⁷ *Ibid.*, para. 7.2.

⁴⁸ *Ibid.*, para. 7.10.

⁴⁹ *Ibid.*, para. 9(b)(i).

⁵⁰ See, for example, Cassandra Mudgway, Smashing the patriarchy: why international law should be doing more, available at: <https://blogs.lse.ac.uk/wps/2019/10/07/smashing-the-patriarchy/>.

⁵¹ Antić, Marija, and Radačić, Ivana. *Op. cit.* (p. 7).

⁵² *Ibid.* (p. 4).

⁵³ Otto, Dianne. Queering gender [identity] in international law. 2015. *Nordic Journal of Human Rights*, 33:4, 299-318. (p. 309).

discrimination, patriarchal, heteronormative and discriminatory power structures and socialized gender stereotypes.”⁵⁴

The Special Rapporteur on the situation of human rights defenders provided more detailed explanation:

*Social constructions of gender are shaped by patriarchy and heteronormativity. Patriarchy – the privileging of men in social relations – often results in the disempowerment of women and their exclusion from decision-making processes. Patriarchal ideas circumscribe how and when women exercise voice and agency in the private and the public spheres. Similarly, heteronormativity – the privileging of heterosexuality and the rigid definition of gender identities, sexualities, and gender relations – reinforces clear distinctions between men and women. Heteronormative ideas render gender non-conforming persons invisible and reproduce expectations about how women and men should express their sexuality and gender; those who do not conform are cast as ‘deviant’, ‘abnormal’ or ‘wicked’. Human rights defenders whose actions are perceived as challenging patriarchal and heteronormative systems tend to face threats and attacks, as they question understandings of women’s identity and their place and role that are taken for granted and disrupt gendered power relations.*⁵⁵

3. Gender and Intersectional Movement-Building

3.1. Intersectional Feminisms and Movement-Building for Gender Justice

As highlighted in the previous section, the term ‘intersectionality’ is a Black feminist concept, developed in the Black feminist tradition of Turtle Island. While Professor Kimberlé Williams Crenshaw is credited for coining the term ‘intersectionality’ in 1989,⁵⁶ the concept of intersectionality has been a core principle of Black feminist thought for many decades.⁵⁷ To revisit the black feminist reading of intersectionality, it is a concept that facilitates the task of highlighting and acknowledging the diversity of realities encompassed in black women’s lived experiences in a society stratified along racial and gender-based lines. Throughout the years, this ‘intersectional’ understanding of feminist mobilisation has been a key vector that has facilitated movement-building in black feminism.

The key principle of such movement-building is indeed the understanding that intersectional solidarity/ies transcend differences and divergences of lived experiences and realities among black women. In this sense, an intersectionally-informed approach to feminist mobilisation enables women from a diverse range of lived experiences to find common ground, develop solidarities, support networks and engage in collaborative movement-building. This is the fundamental principle reiterated in some of the key documents of black feminist history, such as the Combahee River Collective Statement [CRCS] of 1977. Authored by a collective of black cis lesbian women, the CRCS reiterates its commitment to the struggle against

⁵⁴ Report focusing on applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls, and LGBTI persons, A/HRC/31/57 (2016), para. 5.

⁵⁵ Report focusing on situation of women human rights defenders, A/HRC/40/60 (2019), para. 29.

⁵⁶ See Crenshaw, Kimberlé. 1989. Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, 1:1, 139-167.

⁵⁷ For an incisive discussion on historical antecedents of the use of the principle of intersectionality in black feminist work before Professor Crenshaw coined the term, see Hill Collins, Patricia and Bilge, Sirma, 2016. *Intersectionality*. New York: Polity Press.

*racial, sexual, heterosexual, and class oppression, and see as our particular task the development of integrated analysis and practice based upon the fact that the major systems of oppression are interlocking. The synthesis of these oppressions creates the conditions of our lives. As Black women we see Black feminism as the logical political movement to combat the manifold and simultaneous oppressions that all women of color face ... We believe that sexual politics under patriarchy is as pervasive in Black women's lives as are the politics of class and race. We also often find it difficult to separate race from class from sex oppression because in our lives they are most often experienced simultaneously.*⁵⁸

The work of the late Audre Lorde [1934-1992], a pioneering black feminist thinker, has been pivotal in developing and propagating this discourse of inclusive movement-building. In one of her best-known works, Lorde highlights:

*Black women are not one great vat of homogenized chocolate milk. We have many different faces, and we do not have to become each other in order to work together ... It is not easy for me to speak here with you as a Black Lesbian feminist, recognizing that some of the ways in which I identify myself make it difficult for you to hear me. But meeting across difference always requires mutual stretching, and until you can hear me as a Black Lesbian feminist, our strengths will not be truly available to each other as Black women ... it is urgent that we not waste each other's resources, that we recognize each sister on her own terms so that we may better work together toward our mutual survival, I speak here about heterosexism and homophobia, two grave barriers to organizing among Black women ... I do not want you to ignore my identity, nor do I want you to make it an insurmountable barrier between our sharing of strengths.*⁵⁹

As it has been reiterated in black feminist writing in later years, this approach to finding common cause across differences continues to be a fundamental principle of present-day black feminist thought. Over the years, this discourse of constructive feminist movement-building has been developed substantively, with major innovations in epistemology and activist praxes. In exemplifying such theoretical and activist advancements, one black feminist activist – a cis woman – from the generation that succeeded that of CRCS authors and Lorde, notes:

*Finally, in 1989 Audre Lorde wrote, "My political obligations? I am a Black woman in a world that defines human as white and male for starters. Everything I do including survival is political. I'm going to expand upon Audre Lorde's prophetic quote and say, "My political obligations? I am a Black woman. I am a trans woman. I am a trans man. I am an Asian woman. I am an Arab woman. I am a Native American woman. I am an Aboriginal woman. I am a Latina. I am a Pacific Islander woman. I am a Palestinian woman. I am a Roma woman. I am a Central/Southwest Asian woman in a world that defines human as white and male for starters. Everything We Do Including Survival Is Political."*⁶⁰

This sentiment of building solidarity, support systems and movements across heterogeneity, differences in lived experiences and lived realities, is at the heart of the long tradition of the highly inclusive approach of black feminism towards non-heteronormative and non-cisnormative women.

⁵⁸ Full text of the Combahee River Collective Statement:

https://americanstudies.yale.edu/sites/default/files/files/Keyword%20Coalition_Readings.pdf

⁵⁹ Lorde, Audre. 1985. *I Am Your Sister: Black Women Organizing across Sexualities*. New York: Kitchen Table, Women of Colour Press, pp. 3-4.

⁶⁰ Simmons, Aishah Shahidah. Excerpts from Silence...Broken: Audre Lorde's Indelible Imprint on My Life. *Feminist Studies*, 40:1, 190-198. (pp. 197-198).

The work of black feminists against the prison-industrial complex, the disproportionately high levels of incarceration of black people, and police brutality faced by black people, have always systematically included a focus on trans people, especially black trans women. The work of Dr Angela Davis, one of the most comprehensive bodies of work on the prison-industrial complex and the white supremacist politics that underpin it, has consistently involved a key focus on the specific systemic challenges faced by black trans people.⁶¹ Highlighting the importance of trans and gender-diverse people to her work on prison abolition, Davis notes:

...So if we want to develop an intersectional perspective, the trans community is showing us the way. And we can't only point to, and we need to point, to cases such as the murder of Tony McDade, for example. But we need to go beyond that and recognize that we support the trans community precisely because this community has taught us how to challenge that which is totally accepted as normal. And I don't think we would be where we are today—encouraging ever larger numbers of people to think within an abolitionist frame—had not the trans community taught us that it is possible to effectively challenge that which is considered the very foundation of our sense of normalcy. So if it is possible to challenge the gender binary, then we can certainly, effectively, resist prisons, and jails, and police.⁶²

This mobilisation by cis black women, and cis women of colour, for the rights of trans people [especially trans women], has a long history in Black feminist work. A contemporary manifestation of such inclusive movement-building can be glimpsed in the work of Robyn Maynard, author of a key work on policing violence faced by black people in Canada. Maynard's work involves a particular focus on police violence faced by black trans women in Canada.⁶³ In a similar vein, the pioneering work of black trans women has also consistently been shaped with an inclusive focus, of advocating not only for trans women of colour, but also for all trans people as well as cis queer people who face multiple forms of systemic discrimination. This is a reality that transpires in the work of the late Marsha P Johnson.⁶⁴

Indeed, trans feminist discourses and activism – especially trans feminist discourses and activist praxes developed by women of colour – are heavily influenced by the above-mentioned legacy of black feminism.⁶⁵ Today, trans feminist-of-colour mobilisation involves regular and consistent collaborations between cis and trans women of colour, non-binary people, and gender-diverse indigenous peoples. In this sense, what some analysts describe as 'trans feminism/s-of-colour' can be described as a discourse of intersectional feminism that has been profoundly influenced by black feminist thought.⁶⁶ It is an intersectionally sharp

⁶¹ Davis, Angela. 2013. "Feminism and Abolition: Theories and Practices for the 21st Century." CSRPC University of Chicago, May 10. <https://www.youtube.com/watch?v=k0ieCAUWGnM> and <https://www.youtube.com/watch?v=Fj1Qt7mgmH8>.

⁶² <http://libcom.org/library/dr-angela-davis-role-trans-non-binary-communities-fight-feminist-abolition-she-advocates> For a video recording of this statement, see <https://twitter.com/nkate96/status/1272242894536138764>

⁶³ Maynard, Robyn. 2017. *Policing Black Lives: State Violence in Canada from Slavery to the Present*. Black Point, NS: Fernwood. See also, <https://www.youtube.com/watch?v=1-JpQjhVvIM>.

⁶⁴ For a discussion of the inclusive approach to activism that Johnson developed, see Weerawardhana, Chamindra, 2020. Erasure at the tipping point: Transfeminist politics and challenges for representation, from Turtle Island to the global South/s. in Fiona MacDonald and Alexandra Dobrowolsky [eds], *Turbulent Times, Transformational Possibilities? Gender and Politics Today and Tomorrow*. Toronto: University of Toronto Press, 304-325, pp. 311-312.

⁶⁵ For a detailed discussion on trans feminisms-of-colour, i.e., trans feminist discourses developed by [cis and trans] women of colour as an activist praxis and scholarly focus, see Weerawardhana 2020 [footnote 62 above].

space of feminist advocacy that accords pride of place to solidarity-building across cisgender and transgender womanhood, non-binary identities, and indigenous realities of gender/s. This is evident in the work of many women-of-colour feminist activists of today.⁶⁷

In some feminist discourses, the inclusion and a primary position of trans women in feminist work is perceived as a relatively new, if not somewhat controversial phenomenon.⁶⁸ As noted above, the legacy of black feminism in Turtle Island provides a different and more inclusive picture, of women working in solidarity in the face of multiple forms of oppression finding common ground irrespective of their differences. The historical legacy of this approach to inclusive movement-building has been evidenced in recent artistic productions. In the documentary film entitled *Major*, on the life and legacy of Miss Major Griffin-Gracy, a pioneering black trans community leader and elder, Dr Angela Davis notes “she is our leader! She is showing us how to do this work, so thank you so much Miss Major!”, reiterating the vital importance of Miss Major’s movement-building work a model of inclusive advocacy for trans and queer liberation.⁶⁹

Indigenous feminist discourses in many parts of the world also provide glimpses into cases of inclusive movement-building, with cis and trans women working in unison, and with the shared common goals of inclusive gender justice. The Tīwhanawhana Trust [TT], based in Te-Whanganui-a-Tara, Aotearoa, is a Takatāpui⁷⁰ community group that welcomes people of diverse sexualities and gender identity.⁷¹ Over the years, TT has developed some of the most advanced discourses and activist praxes on gender and social justice in Aotearoa, with non-cisgender peoples at the centre. This activist framework is exemplary of people from different realities of SOGIESC coming together, finding support and solidarity, and working together for the advancement of their rights and affirmation of their agency.⁷² In her maiden speech as a member of parliament on 10th February 2021, TT’s co-founder Dr Elizabeth Kerekere MP, emphasised the importance of acknowledging the fact that the totality of LGBTQ+ MPs in what is considered as one of the most inclusive parliaments in the world, are in fact cisgender. Reminiscing the name of Georgina Bayer, the first trans woman to be elected MP in the world, Dr Kerekere, a cisgender Takatāpui woman, reiterated the vital importance of working to strengthen the participation of trans citizens at all levels of public life.⁷³ In a similar vein, there

⁶⁷ For a discussion on such feminist solidarities between cis and trans women, intended at challenging transmisogynist, if not trans-exclusionary views, see Weerawardhana 2020 [footnote 13 above] 314-216.

⁶⁸ For a discussion on the narrowly construed nature of such perspectives, see, for example, Halberstam, Jack. 2018. Towards a Trans* Feminism. January 18, *Boston Review*. <http://bostonreview.net/gender-sexuality/jack-halberstam-towards-trans-feminism>

⁶⁹ The film is available at: <https://vimeo.com/ondemand/major?autoplay=1>. See also <https://www.missmajorfilm.com>

⁷⁰ According to the Tīwhanawhana Trust, Takatāpui, in modern terminology, is a Māori individual that identifies as Queer, Gay, Lesbian, Bisexual, Trans. [source: <http://www.tiwhanawhana.com>, see also, <https://takatapui.nz/resources-1>].

⁷¹ <http://www.tiwhanawhana.com>

⁷² On the inclusive ethos behind Takatāpui-centred movement-building, see Kerekere, Elizabeth. Takatāpui: Part of the Whānau. A publication of the TīWhanawhana Trust: <http://cdn2.webninja.com/mentalhealthnz/product-download/001709.pdf?v=2e4ec0ede149d7901430b231fac615b66b069b89>

⁷³ Maiden speech by Dr Elizabeth Kerekere, available on Dr Kerekere’s verified official social media: <https://www.facebook.com/Greens.ElizabethKerekere/videos/439418004040168>

exists a long legacy of cis and trans Pasifika women working together, acknowledging their differences and finding common ground in the shared struggle for liberation.⁷⁴

Across the global South/s, feminist discourses have long been considerably cis-normative, and focused near-exclusively on cisgender, able-bodied women. As a consequence of colonial legacies in systems of education, in South Asia, for instance, such cis-normative feminist discourses have long been the forte of cis women from upper and upper-middle class, mostly English-speaking backgrounds. In such contexts, the influence of western white feminist discourses – which are inherently exclusionary and exclusivist in nature – have had a predominant influence. However, the last few years have witnessed a considerable transformation in South Asian feminist circles, where a newly-emerging younger generation of intersectional feminist activists and thinkers have taken the floor, developing strong discourses of intersectional feminisms, specific to their respective local contexts as well as of comparative relevance to other places. The knowledge dissemination work carried out by Dr Trinetra Halder Gummaraju, an Indian woman of trans experience, a medical doctor and social media influencer, strongly centres trans and cis women, non-binary people, indigenous gender-diverse peoples, and trans men.⁷⁵ Dr Gummaraju's highly incisive, critical and oftentimes counter-intuitive commentaries on different aspects of gender and social justice provide testimony to a rapidly transforming new wave of intersectional feminist work that fundamentally 'centres' cis and trans women, as well as people of all other gender identities faced with systemic discrimination. This brand of feminist advocacy is increasingly popular in the South Asian region, with activists constantly calling for progressive change and transformation, effectively turning the page from older forms of cis-normative feminist work.⁷⁶

Overall, intersectionality is a highly 'transferable' concept. This is a key point that transpires in the international advocacy work done by black feminists, from Audre Lorde to Angela Davis and Gina Dent.⁷⁷ Intersectional feminism, in this sense, is a global feminist discourse in constant expansion, following the black feminist principle of understanding the work at hand as a 'process', and never an end in itself. Inclusive and intersectionally-rich feminist discourses are indeed essential components in developing comprehensive and holistic understandings of gender/s. Black feminism teaches us a crucial lesson – that of understanding feminist

⁷⁴ For a 'positive' example of such movement-building in practice, see, for example, a speech made by Phylesha Brown-Acton MNZM, upon accepting a Pasifika Futures Community Leadership Award: <https://www.youtube.com/watch?v=Wyh1Y5o5X1o> For a detailed discussion on the epistemic dimensions of indigenous feminist movement-building that profoundly involve cis women, trans women and gender-diverse Pasifika peoples, see Moura-Kocoglu, Michaela. 2017. Decolonising gender roles in Pacific women's writing: Indigenous feminist theories and the reconceptualization of women's authority. *Contemporary Women's Writing*, 11:2, 239-258 [https://doi.org/10.1093/cww/vpx015].

⁷⁵ In line with the dynamics of gen-z, Dr Gummaraju's feminist activism primarily takes place on her extremely popular social media platform [<https://www.instagram.com/ind0ctrination/?hl=en>].

⁷⁶ On some of the challenges on the path to such feminist advocacy in the Sri Lankan context, see Chamindra Weerawardhana, Fascist Pretences and Progressive Slumber. *Colombo Telegraph*, 7 March 2021: <https://www.colombotelegraph.com/index.php/fascist-pretences-progressive-slumber/>

⁷⁷ Lorde's work in intersectional feminist advocacy, for instance, spread way beyond her native USA. She was a pioneer in helping develop black women's mobilisation in Germany. On Lorde's transnational work, see, Audre Lorde: The Berlin Years, a documentary produced by Dr Dagmar Schultz: <https://vimeo.com/ondemand/audrelorde?autoplay=1>. On Dr Gina Dent's transnational intersectional feminist advocacy, see notably, Gina Dent, 2019. Celebrating Black Feminism (lecture delivered at the University of Cambridge, 24 April 2019: <https://www.youtube.com/watch?v=4aawM1Dbpss>

advocacy as an exercise in movement-building, encompassing and incorporating women from a diverse range of backgrounds and lived experiences. It is a discourse that provides a seat at the table for women from very different, and oftentimes contrasting lived realities. Most importantly, black feminists show us the way in carrying out this body of transformative work along a quintessentially ‘intersectional’ approach. This is especially relevant to us as rights advocates working in a context marked by a growing backlash to gender justice advocacy, coming especially from restrictive perspectives intended at polarizing cis and trans women. The legacy and continuing work of black feminism provides us with a template for solidarity and movement-building, acknowledging and celebrating differences, and standing robustly for each other’s rights. When applied to a broader body of gender justice work, such an approach to movement-building facilitates the task of working to ensure the rights and agency of people of different gender identities and gender expressions, and for that matter, sex characteristics, around the world. The above discussion of black feminist work, indigenous feminist movement-building, and new intersectional feminist movements emerging in South Asia, are of crucial importance in working towards a holistic, inclusive, intersectionally-sound and broad-ranging understanding of ‘gender’.

Conclusion

By way of conclusion, it is crucial to reiterate a number of key points that were explained in the present submission.

Firstly, gender, or, preferably, gender/s, is best understood as a **social construct**, and a **spectrum** that encompasses a tremendous level of diversity – including but not limited to women and men (feminine and masculine). The general tendency in supranational bodies and organization including the United Nations, as well as national governments, has been to conceptualise ‘gender’ as revolving near-exclusively around [cisgender and heterosexual] women and [cisgender and heterosexual] men, and conventional understandings that narrow gender-related knowledge to the realms of [cishetero] masculine and [cishetero] feminine.

However, and as the present submission has clearly emphasised, the term ‘gender’ involves a much broader level of diversity and complexity. The concept of intersectionality provides us with a ‘transferable’ and versatile analytical tool in understanding the complex realities of gender. It is particularly useful in helping us to understand how gender intersects with sexual orientation, gender identity and gender expression, but also how patriarchy interconnects and intercepts with, and in fact roots in cisheteronormativity and broader realities of socioeconomic, political and many other challenges. From this perspective, international human rights law should finally recognize, acknowledge and protect the **intersectional subject** – people with diverse genders, sexual orientations, gender identities and gender expressions, – but also to challenge the **systems of oppression** that create and support asymmetric power dynamics and practices of exclusion, criminalization, stigmatization and discrimination and therefore address gender and LGBT equality simultaneously as one.

Intersectional feminism, in this sense, can indeed be considered as what many feminists, particularly black feminists, have long intended their work to be: an inclusive social justice movement. A comprehensive understanding and acknowledgement of the immense diversity of ‘gender’ is essential to the successful execution of gender equality and justice policies.

In a similar vein, the central underlying reality of the ongoing backlash against acknowledging the diversity of ‘gender’, i.e., to limit ‘sex and gender’ to a binary, narrowly-

construed and simplistic reading – is motivated by an inclination to maintain current patriarchal power relations.

Recommendations:

1. To understand gender as a social construct implying vast range of diversity that is not limited exclusively to [cis] men and [cis] women.
2. To apply this broad understanding of gender to all gender equality policies, strategies, laws and programs, as well as gender statistics, including recommendations, policies and other measures by United Nations bodies and agencies.
3. To ensure intersectional approaches to gender equality policies, strategies, laws and programs, taking into account interconnections between gender and sexual orientation, gender identity and gender expression, as well as between patriarchy and cis-heteronormativity.
4. To support intersectionally-sharp projects and activities implemented by civil society, particularly by feminist and LGBT groups and organizations together.