

The Intersectionality of the Committee on the Elimination of Discrimination against
Women

Capstone Seminar in Global Studies

November 8, 2019

Abstract

This article examines the conditions under which the Committee on the Elimination of Discrimination Against Women (the Committee) evaluates an individual case brought against a state using an intersectional lens. It also analyzes the extent to which the Committee's understanding of a state's culture affects its evaluation of a case from an intersectional lens. As the global understanding of women's rights begins to encompass a broader range of cultural perspectives and intersecting identities, understanding the jurisprudence of the Committee, which is responsible for interpreting the main international women's rights treaty known as CEDAW, necessitates consideration for the extent to which the Committee incorporates this broader intersectional analysis into its legal reasoning. Utilizing concepts from literature on intersectionality and culture, the article analyzes the Committee's legal reasoning in seven cases, comparing them by topic, by state, and by the Committee's understanding of a state's culture. It suggests the Committee is more likely to interpret the Convention using an intersectional framework when it identifies a state's culture as a contributing factor to systemic discrimination against an individual's intersecting identities, which it is more likely to do in cases involving non-Western states. This article will contribute to existing scholarship on the jurisprudence of CEDAW by integrating literature on intersectionality and culture to examine the Committee's legal reasoning in individual decisions. It will also articulate the conditions under which individual women obtain justice for gender-based discrimination under CEDAW, shifting the focus of existing human rights literature from abstract theory to women's lived experiences.

Following its adoption by the United Nations General Assembly in 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has acted as the principle international human rights treaty on the promotion and protection of women's rights. Central to these intents are a signatory state's obligations to ensure its laws avoid discriminating against women and protect women from discrimination; advance the *de facto* position of women; and address the persistence of gender stereotypes and predominant gender relations within the particular state (Cusack and Pusey 2013, 57). At the time the General Assembly adopted CEDAW, the international legal landscape did not sufficiently address the systemic discrimination women faced throughout the world (Cusack and Pusey 2013, 58). In fact, the global state of women's rights drove the adoption of CEDAW. Crucially, the Convention's focus on discrimination against women diverged from the dominant concept of anti-discrimination that governed existing human rights instruments, the idea that these instruments should protect both women and men against gender-based discrimination. Rather, among the international human rights landscape, CEDAW introduced a consideration for discrimination specific to women. The body responsible for interpreting the rights delineated in the Convention is the Committee on the Elimination of Discrimination Against Women (the Committee) (Cusack and Pusey 2013, 59). This paper will analyze several decisions from the Committee using an intersectional framework. Focusing on the legal reasoning behind each decision, I will examine not only discrimination specific to women but also that which involves multiple axes of oppression, including gender-based discrimination.

As the understanding of women's rights among the international human rights community continues to evolve from a monolithic category to a fluid, multifaceted concept, a need exists to study the Committee's interpretation of the Convention with this evolution in

mind. A crucial theoretical framework by which to analyze this progression of women's rights is through the concept of intersectionality. Coined in 1989 by legal scholar Kimberlé Crenshaw, intersectionality conceives of discrimination by examining not only multiple forms of oppression but also the ways in which they coact upon each other. Crenshaw famously presented the example of traffic at a four-way intersection, flowing in all directions. In the same way traffic flows through an intersection, Crenshaw analogizes, discrimination may flow in multiple directions. If an accident happens, an injury could result from cars travelling from any number of directions. Similarly, discrimination can result from the intersection of multiple forms of oppression rather than the mere existence of multiple forms of oppression (Crenshaw 1989, 149).

In the context of international human rights, analyzing women's rights from an intersectional perspective is vital to examining the conditions under which women experience violations of their rights, especially when evaluating the principle international women's rights treaty: CEDAW. In particular, examining the Committee's legal reasoning in specific communications from an intersectional framework can serve to identify the conditions under which women facing intersectional discrimination can obtain a just remedy under CEDAW. If only certain conditions yield an interpretation of the CEDAW Convention in favor of the applicant, only certain conditions will bring justice to a woman who may have faced a violation of her rights based on intersectional discrimination. Therefore, understanding the conditions under which the Committee interprets the Convention using an intersectional framework will highlight the ways in which the Committee conceives of women's rights as enshrined in CEDAW and the extent to which such a conception affects the individual women who bring cases before it.

When examining gender discrimination as part of a larger system of oppression, the Committee may evaluate a state's specific cultural context and the extent to which it is connected to systemic oppression. The concept of culture is abstract and fluid, often relying on vague interpretations of religion, language, ethnicity, and other ways of thinking about belonging (Dale 2018, 38). However, the way in which a treaty body committee, such as the Committee, interprets a state's culture can impact its interpretation of its corresponding treaty. This interpretation, in turn, can have a profound impact on the life of the individual who brought a complaint under the Committee. Like gender-based discrimination, the notion of culture in the context of human rights has evolved from a singular understanding of human rights across all cultures to a consideration for a state's unique cultural understanding of human rights (Xanthaki 2019, 702). However, this idea also risks connecting human rights violations with a particular state's culture, thereby privileging certain cultures as morally superior over others (Dale 2019, 38-40; Merry 2006, 60-63; Xanthaki 2019, 707-708). Under this backdrop of evolving ideas around international human rights, this paper will explore the relationship between the Committee's understanding of a state's culture and the extent to which it applies an intersectional framework to its legal reasoning in individual complaints brought against a state.

To evaluate the Committee's legal reasoning, this paper will first examine cases involving intersectional forms of discrimination. Then, it will turn to cases pertaining to a particular state's cultural context and the extent to which the Committee considers it. Finally, the paper will evaluate a case in which the Committee employs an intersectional framework and considers a state's cultural context. Importantly, the cases selected at each stage of analysis will build upon the last. That is, the cases involving a state's particular culture will draw upon the previous section's discussion of cases involving intersectionality. Then, the case studies will

culminate in a case that builds upon, and ultimately unites, each theoretical framework. Through the application of this theoretical cluster to the Committee's legal reasoning, the paper aims to illuminate the conditions under which the Committee interprets the Convention using an intersectional framework when evaluating complaints in which it weighs a state's cultural context against its Convention obligations. Considering this question, the paper arrives at two hypotheses: The Committee is more likely to interpret the Convention using an intersectional framework in cases in which it identifies a state's culture as a contributing factor to systemic discrimination against an individual applicant's intersecting identities; and the Committee is more likely to identify the state's culture as a contributing factor to systemic discrimination in the case of non-Western states.

Literature Review

Applying an intersectional framework to the Committee's interpretation of culture necessitates a discussion of the literature relevant to each theoretical component of this project's subsequent analysis. To begin this discussion, I provided an overview of intersectionality and a tool through which to examine intersectional discrimination. Next, I turned to a body of literature that evaluates various facets of CEDAW and the Committee using an intersectional framework. I then addressed the debate surrounding universalism and cultural relativism within international women's rights discourse. Finally, I connected intersectionality with the universalist/cultural relativist dichotomy in the context of the Committee's interpretation of its corresponding Convention.

In a groundbreaking essay, legal scholar Kimberlé Crenshaw pioneered the term intersectionality, which challenges models of discrimination that rely on a single axis of oppression, such as race or gender, in favor of an analysis that considers the unique ways in

which Black women face discrimination (1989, 149). This approach marked a departure from a multiple discrimination framework, which conceptualizes discrimination as a result of various identities in different settings of life, and compounded discrimination, which refers to discrimination as a result of various identities in the same setting (Chow 2016, 467-468). Instead, intersectionality understands discrimination based on various identities as unique from that which is based across singular social categories (Crenshaw 1989, 148). Mari Matsuda presented a useful heuristic tool for evaluating the interconnection of seemingly disparate axes of oppression, which she called “ask[ing] the other question” (1991, 1188). That is, when evaluating discrimination based on one axis of oppression, Matsuda challenged scholars writing in the anti-discrimination context to ask themselves whether another axis of oppression influences a given scenario (1991, 1188).

Several bodies of scholarship have applied the principles of intersectionality to the international human rights legal context. One such group of works has broadly evaluated the extent to which CEDAW employs an intersectional framework in various situations. Writing in the context of individual claims under CEDAW, Megan Campbell contends that CEDAW has expressed concerns about the intersectional discrimination women may face in theory; however, it has not consistently applied general recommendations in practice that reflect this concern (2015, 496). Regarding the presence or absence of intersectionality in CEDAW’s legal framework, Athena Nguyen and Aisha Nicole Davis criticize CEDAW for failing to sufficiently recognize the intersectional discrimination evident in various claims it has heard (Davis 2015, 221; Nguyen 2014, 7). Davis, however, primarily limits her analysis to the Convention itself rather than the Committee’s subsequent interpretations of the Convention when evaluating individual complaints (2015, 211). Neither Campbell nor Davis evaluate the Committee’s

application of the Convention in specific complaints brought under CEDAW, an analysis around which I will center this research project. While Davis and Nguyen examine intersectional discrimination in the context of CEDAW, both authors seem to conflate intersectional discrimination with multiple discrimination. Conversely, this research project will focus solely on intersectional discrimination in conjunction with CEDAW.

Another body of scholarship has examined the relationship between the type of claim an individual brings under CEDAW and the outcome of their case. Analyzing the category of rights the Committee has considered in separate works, Pok Yin Chow, Simone Cusack and Lisa Pusey, Athena Nguyen, and Andrew Byrnes and Eleanor Bath have all concluded that the most successful claims under CEDAW have pertained to reproductive rights and healthcare (Byrnes and Bath 2008, 528-531; Chow 2016, 468-469; Cusack and Pusey 2013, 69-70; Nguyen 2014, 5). Along with Nguyen, Andrew Byrnes and Eleanor Bath's work has found that successful CEDAW communications are also more likely in cases involving family and intimate partner violence (Byrnes and Bath 2008, 518-528; Nguyen 2015, 2-3). Conversely, Chow and Nguyen also point to CEDAW's lack of consideration for religious freedom by citing a Committee comment involving a headscarf ban (Chow 2016, 475; Nguyen 2014, 7). Here, examining the type of claim can illuminate the different attributes of cases that may or may not lead to the Committee's examination of each case from an intersectional lens.

In addition to examining the category of rights the Committee has considered, several authors have evaluated the scope of the rights in question. Examining a maternal healthcare case, Chow contends that the Committee has evolved its understanding of discrimination from event-oriented to system-oriented. That is, rather than construing a complaint as an individual act of discrimination, it has evaluated the complaint in the context of

structural barriers to equality (2016, 470-471). However, evaluating multiple cases, Nguyen as well as Cusack and Pusey criticize the Committee for struggling to identify systemic discrimination in favor of individual discrimination oriented around a single event (Cusack and Pusey 2013, 56-57; Nguyen 2014, 8-9). While not all of these authors explicitly mention intersectionality in their analyses of the category and scope of rights, understanding the ways in which these authors have classified these rights is important for mapping the existing literature that examines the Committee's application of the Convention to specific cases.

Out of the authors who analyze the category or scope of the right in question, Chow, Cusack and Pusey, and Nguyen reference intersectionality in their analyses. Nguyen separates intersectional discrimination as its own category of claim by which to analyze outcomes under CEDAW apart from other women's rights issues (2014, 2). Cusack and Pusey's work cites Matsuda, challenging CEDAW to ask "the other question" when evaluating all types of individual complaints (2013, 91). However, only Chow explicitly connects the type of claim to the extent to which CEDAW has incorporated an intersectional framework into its interpretation of the Convention (2016, 470-479). In Nguyen as well as Cusack and Pusey, these elements occasionally appear disparate. However, the section of Chow's work in which they connect both topics does not seem to extend beyond Chow's discussion of event-oriented and systemic discrimination (2016, 470-479). I will explicitly connect an intersectional framework to CEDAW's legal reasoning when evaluating individual complaints using a greater variety of considerations than event-oriented and systemic discrimination. In particular, I will analyze the circumstances under which CEDAW evaluates a state's culture in conjunction with the existing scholarly discussion of CEDAW's intersectional framework. My analysis will include various categories and scopes of claims that these authors have mentioned.

Intersectionality is not the only concept that has entered international human rights discourse in the context of evaluating women's rights beyond a single axis of oppression. Another conceptual area of note within this discussion is the debate over universalism and cultural relativism. Universalism refers to the movement towards a shared set of global human rights norms that transcends cultural differences (Choudhury 2015, 239). According to Alexandra Xanthaki, universalism coincided with the dominance of liberal views on human rights discourse until the 1990s, during which critiques of this approach emerged in full force (2019, 702). In particular, the universalist notion of global commonality among women's rights norms has faced criticism from scholars such as Annie Bunting and, more recently, Joanna Bond and Jane Freedman, for ignoring the differences between the experiences of women based on areas such as race and class (Bond 2004, 900; Bunting 1993, 9; Freedman 2007, 31). Freedman further criticizes what she refers to as 'false universalism,' the assumption that Western model of rights are universal, thereby perpetuating the myth of Western superiority (2007, 32). Writing in the context of indigenous women's rights, Alexandra Xanthaki also criticizes the conflation of Western values with universal human rights. However, she further contends that the Westernization of 'universal' human rights discourse does not unite international human rights norms; rather, this deepens the artificial chasm between 'us'—Western societies, who respect notions of gender equality—and 'they': non-Western societies whose cultural practices are at odds with women's rights norms (2019, 707). Writing separately, Bond, Xanthaki, and Bunting do not advocate for completely discarding universalism. Instead, they each recommend reforming the approach by including more diverse, non-Western standpoints when attempting to arrive at a globally united set of women's rights norms (Bond 2004, 901-902; Bunting 1993, 18; Xanthaki 2019, 703).

A response to the flaws in universalism has led some scholars, such as Bunting, to favor cultural relativism to consider the specific cultural context under which a given phenomenon is operating (1993, 7). Cultural relativism considers human rights norms as relative to a given society, rejecting the judgment of non-Western cultures based on their adherence to these norms (Bunting 1993, 8). However, in each of their separate works, Xanthaki, Sally Engle Merry, and Amanda Dale warn that connecting certain human rights violations with a state's culture may perpetuate the myth that Western women face individual instances of discrimination, whereas non-Western women face systemic discrimination, only the latter of which an international body evaluating human rights violations can trace back to the culture of the state against which the individual has lodged their complaint (Dale 2019, 38-40; Merry 2006, 60-63; Xanthaki 2019, 707-708). Specifically, Joanna Bond criticizes cultural relativism on the grounds that, like universalism, it obscures differences among women that are crucial to analyzing specific instances of human rights violations (2004, 901). Largely echoing Bond's criticism, Xanthaki argues that privileging Western notions of culture prevents non-Western women from accessing justice through the sensationalization of their cultural practices; yet, the same idea of Western superiority harms Western women by obstructing an analysis of the systemic human rights violations present in Western cultures (2019, 702). These criticisms of cultural relativism have remained largely confined to discourse among scholars or, in Dale's work, the manifestation of cultural relativism in the language of human rights treaty bodies, such as CEDAW (Dale 2019, 28-40). However, while identifying pointed critiques of the paradigm, these works do not apply cultural relativism to these treaty bodies' interpretations of their corresponding treaties. This research project will attempt to address this omission by evaluating the extent to which a

particular treaty body Committee, CEDAW, employs a cultural relativist approach when evaluating an individual complaint.

Responding to the limitations of each human rights framework, other authors have advocated for a shift beyond the debate over universalism and cultural relativism, which they construe as a false dichotomy that erases the intersecting forms of oppression women face. Freedman proposes a discussion beyond the clash between the two human rights paradigms that examines the specific context in which a state violates human rights. Such an evaluation, Freedman argues, must include participation from the individuals whom human rights treaties aim to protect (2007, 43). Xanthaki agrees that international human rights legal discourse must prioritize the women to whom human rights principles pertain, yet Xanthaki's critique of the universalist/culturalist dichotomy leaves space for the possibility of combining both approaches as these women see fit (2019, 702). Xanthaki and Freedman have mainly applied their criticisms of the universalist/cultural relativist dichotomy to a discussion among international human rights scholars. Writing separately, Dale and Merry have evaluated the language of CEDAW and a small number of individual applications of the Convention to specific complaints and recommendations (Dale 2019, 43-45; Merry 2006, 58-65). However, neither author explicitly connects the legal reasoning behind these applications to a universalist or cultural relativist framework. Such a gap in analysis contradicts the idea of considering the specific context in which a state may have committed a human rights violation that Freedman and Xanthaki, in particular, so strongly emphasized. In contrast, this research project will explore the application of CEDAW to specific complaints in the context of balancing a state's cultural considerations with its Convention obligations.

Several authors have evaluated CEDAW from an intersectional lens; however, there are multiple gaps in the existing literature. Many authors do not examine individual complaints brought under the Convention, thereby neglecting consideration for the women who bring the complaints. In response, this research project will focus on individual complaints brought under the Convention in order to add a human face to the people whom these theoretical debates surrounding the treaty will actually affect. Although there is a body of scholarship that evaluates specific cases brought under CEDAW through an intersectional lens, it has largely focused on the outcome of these cases rather than the specific processes through which CEDAW had arrived at these outcomes. In response to this gap, this research project will evaluate the conditions under which CEDAW employs an intersectional analysis in the process of applying the Convention to the case. Analyzing these processes will improve the field's understanding of the circumstances under which CEDAW employs an intersectional lens by examining the specific ways in which CEDAW ties particular facts of the case to the language of the Convention.

This project will also integrate the framework of universalism and cultural relativism in its evaluation of the conditions under which CEDAW analyzes the Convention using an intersectional framework. While some works mention CEDAW, the current body of scholarship on the universalism/cultural relativism dichotomy does not connect this framework to the Committee's legal reasoning in specific complaints. This paper will analyze individual cases in which the Committee must balance a state's cultural context with its Convention obligations. Such an analysis will contribute to the field by examining the application of this theoretical debate to the international treaties that can dramatically affect the lives of the people who use them for redress.

This current landscape of literature does not include a sufficient analysis of CEDAW's legal reasoning that unites an intersectional framework with the universalism/cultural relativism dichotomy. In the international women's rights context, both bodies of scholarship have analyzed the predominance of Western norms surrounding both women's rights and notions of culture, including cultural practices. Works in both areas point to privileged groups of women and privileged cultural contexts as those around which scholars and practitioners of international women's rights have constructed the dominant single-axis understandings of gender-based discrimination. Integrating both frameworks into an analysis of individual cases brought under CEDAW will illuminate the relationship between the way in which CEDAW conceives of a state's culture and the extent to which it evaluates multiple axes of oppression in a given case.

Multiple authors have examined the outcomes of individual complaints under CEDAW by analyzing the type of claim and the scope of the right allegedly in violation (Byrnes and Bath 2008, 528-531; Chow 2016, 468-469; Cusack and Pusey 2013, 69-70; Nguyen 2014, 5). Other works have used an intersectional framework to evaluate the language of the Convention and the recommendations and redress-based conclusions of the Committee (Campbell 2015, 496; Davis 2015, 221; Nguyen 2014, 7). While not focusing on intersectionality specifically, other authors have similarly analyzed ideas around gender discrimination confined to a single axis of oppression through universalism/cultural relativism debate (Bond 2004, 900; Bunting 1993, 9; Dale 2019, 38-40; Freedman 2007, 31; Merry 2006, 60-63; Xanthaki 2019, 707-708). All of these authors have critiqued universalism and cultural relativism for privileging Western women's perspectives in different ways; some have offered an alternative means by which to conceptualize women's rights in the international context (Bond 2004, 901-902; Bunting 1993, 18; Freedman 2007, 43; Xanthaki 2019, 703). Despite the different theoretical standpoints from

which they operate, the literatures on intersectionality and the universalism/cultural relativism dichotomy both serve to expand narrowly construed ideas around international women's rights norms. Considering the potential conclusions that connecting these works would uncover, this project will examine cases in which the Committee balances a state's culture with its Convention obligations to determine the circumstances in which it employs an intersectional framework in its legal reasoning.

Methodology

A discussion of gender discrimination necessitates defining gender in the context of this paper, as well as differentiating gender from sex. I will refer to discrimination against women as gender discrimination to more broadly encompass the discrimination women face based on the social expectations that gender prescribes rather than the characteristics that medical professionals use to determine one's sex. Furthermore, I will use the term "woman" to refer to a category of gender with a particular combination of social expectations that proscribe particular behaviors, as well as one's feeling of being a woman. This distinction is important to understanding the evidence I present in my case discussion because many of the cases involve societal gender discrimination rather than that which is based on primary or secondary sex characteristics.

Defining culture is an equally nebulous yet equally important consideration for this paper. Various methods of defining culture carry different implications. Defining culture as fluid rather than fixed is a crucial attribute for fully encapsulating the power dynamics that often influence the conception and manifestation of culture in a given context. Limiting the definition of culture to tradition or national identity also risks assuming that the peoples whom many Western scholars formerly labelled as "backwards" are the sole bearers of culture (Merry 2006,

65). Responding to these various understandings of culture, I will speak of “culture” in this paper to refer to a shared notion of experiences, perceptions, and consciousness that is fluid and partly derives from and can be altered by underlying power structures. Furthermore, I will incorporate universalism and cultural relativism into my examination of the Committee’s legal reasoning in cases involving a state’s culture and a finding of systemic discrimination based on multiple axes of oppression. As I noted in the literature review, like intersectionality, the universalism/cultural relativism debate extends the conversation around women’s rights standards beyond a single axis of oppression or a single cultural standpoint, which is crucial for fully examining the Committee’s decisions from an intersectional framework. I will incorporate universalism and cultural relativism into my examination of the Committee’s legal reasoning in cases involving a state’s culture and a finding of systemic discrimination based on multiple axes of oppression.

Case Selection

First, I examine cases involving intersectional discrimination, the definition of which I briefly outlined in my introduction, to analyze the conditions under which the Committee asks “the other question,” which I explained in my literature review, and identifies discrimination as intersectional. I determine whether intersectional discrimination is present in a case by applying the core principle of intersectionality, meaning an analysis of the ways in which multiple axes of oppression coact upon each other, and Matsuda’s “other question” technique to the facts of each case. I then examine whether the Committee found intersectional discrimination by evaluating the reasoning sections of each case.

The cases I analyze are *Goekce v. Austria* (2007) and *A.S. v. Hungary* (2006). I primarily examine the facts of each case, the outcome, the country under which the applicant filed the

complaint, and the way in which the Committee applied these features to its legal discussion of each case. In examining these conditions, I sought to evaluate those which were more or less likely to result in the evaluation of a case from an intersectional perspective. I chose to compare these cases due to their clear distinctions from one another as they pertain to these conditions. The ability to distinguish these conditions in each case is a prerequisite for comparing these conditions, which is why these cases' clearly articulable distinctions can serve to more logically test my hypotheses compared to cases with attributes that are less easily distinguishable.

After examining cases that pertain to intersectional discrimination, I turn to cases brought under the Committee that involve considerations for a state's culture, including the pervasiveness of discrimination against women in a state's particular cultural context as determined by the Committee. The cases I evaluate are *Goekce* and *X. v. Timor-Leste* (2018), which comprise Group 1, and *Muñoz Vargas y Sainz de Vicuña v. Spain* (2007) and *E.S.& S.C. v. Tanzania* (2015), which comprise Group 2. I compare these cases in three ways: by topic, by country, and by the Committee's consideration for a state's culture in its legal reasoning. I selected these cases because they contain topical similarities that have allowed me to make logical comparisons between them. Among each topical comparison, I chose one case from a Western country and one from a non-Western country in order to test whether the origin of the complaint affects the Committee's identification of systemic discrimination in the context of a state's culture.

Finally, I turn to *Alyne da Silva Pimentel Teixeira v. Brazil* (2011) and *Kell v. Canada* (2012), which concern both intersectional discrimination and consideration for a state's culture as it relates to systemic discrimination. By systemic discrimination, I am referring to that which transcends one instance of discrimination to encompass a totality of widespread, structural, and continuous discrimination, as I explained when discussing of Pok Yin Chow's work in my

literature review (2016, 470-471). I distinguish *Alyne* and *Kell* from the other cases because they contain attributes I explain in my case presentation through which I can combine my discussion of intersectionality and culture as they pertains to the Committee's legal reasoning.

I have chosen to group my cases in the order that most clearly allows for the cases to build upon one another to test my hypotheses. First, I plan to articulate the circumstances that have led the Committee to find intersectional discrimination in a case. Only then can I properly turn to the Committee's understanding of a state's culture as part of a potential Convention violation. I conclude my case presentation and analysis section with *Alyne* and *Kell* because their attributes most clearly build upon the previous sections. This paper must evaluate cases that concerns both intersectional discrimination and culture to understand the conditions under which the Committee employs an intersectional framework in cases in which it examines a state's culture in conjunction with the Convention.

This paper will test two hypotheses, beginning with Hypothesis 1: The Committee is more likely to interpret the Convention using an intersectional framework in cases in which it identifies a state's culture as a contributing factor to systemic discrimination against an individual applicant's intersecting identities. The independent variable is the Committee's identification of a state's culture as a contributing factor to systemic discrimination based on intersectional axes of oppression. The dependent variable is the extent to which the Committee applies an intersectional framework in its legal reasoning. In my literature review, I noted that Chow ties cases brought under the Committee to the concept of event-oriented vs. system-oriented discrimination (2016, 470-471). Nguyen as well as Cusack and Pusey have concluded that the Committee struggles to identify systemic discrimination in favor of individual discriminatory events (Cusack and Pusey 2013, 56-57; Nguyen 2014, 8-9). Here, I will employ

the literature on the presence or absence of an intersectional framework and systemic discrimination in CEDAW cases more extensively here compared to my theoretical framework on the subject of culture. This hypothesis is logical due to the common focus on systems present in culture and intersectionality as theoretical concepts. As Dale has argued, systemic power structures underlie conceptions of culture, and discrimination can constitute one part of a particular cultural context (Dale 2019, 39). Similarly, as Crenshaw explained in her essay introducing the term, intersectionality is rooted in the idea that systems of oppression coact upon one another (1989, 148). This hypothesis's focus on systems is grounded in the corresponding emphasis on systems that is present in theories of intersectionality and culture, both of which the paper will use to evaluate the Committee's legal reasoning and test its hypothesis.

This discussion of culture leads me to Hypothesis 2: The Committee is more likely to identify the state's culture as a contributing factor to systemic discrimination in the case of non-Western states. The independent variable is the region, Western or non-Western, of the state against which an individual complains. The dependent variable is whether the Committee identifies a state's culture as a contributing factor to systemic discrimination. I will test this hypothesis using the literature that examines the Committee from an intersectional framework and that which discusses universalism and cultural relativism in the context of women's rights and/or CEDAW. However, I will focus more extensively on the latter group of literature because it more directly pertains to culture. As I noted in the literature review, several authors have challenged Western cultural norms in the women's rights context for privileging Western cultures over non-Western cultures (Bond 2004, 900; Bunting 1993, 9; Dale 2019, 38-40; Freedman 2007, 31; Merry 2006, 60-63; Xanthaki 2019, 707-708). In particular, Dale and Merry's work has made my hypothesis logical by evaluating CEDAW's consideration for a

state's culture in the language of complaints and recommendations (Dale 2019, 43-45; Merry 2006, 58-65). This hypothesis builds upon previous works that have identified the tendency of frameworks within the universalism/cultural relativism dichotomy to falsely assert the superiority of Western cultures over non-Western cultures, especially in the context of international human rights (Bond 2004, 900; Bunting 1993, 9; Dale 2019, 38-40; Freedman 2007, 31; Merry 2006, 60-63; Xanthaki 2019, 707-708). The feasibility of this hypothesis lies in the previous literature demonstrating a relationship between the evaluation of culture in the context of women's rights and the theoretical region—Western vs. non-Western—in which a culture is based. Building upon my discussion of intersectional discrimination, this section will evaluate the Committee's ideas around culture from an intersectional lens in order to test my hypothesis.

Case Presentation: Intersectional Discrimination

Before I introduce my cases, I will provide an overview of the Committee that contextualizes the legal terminology and framework I use in my discussion of individual claims brought under the Committee. The Committee's ability to respond to individual complaints stems from the Optional Protocol to CEDAW (CEDAW-OP), which the General Assembly adopted in 1999, twenty years after it adopted the Convention. (Byrnes and Bath 2008, 517). If the Committee considers a complaint to be admissible, it will consider the merits of the complaint. Admissibility is contingent upon several factors, including the exhaustion of domestic remedies and the time frame of the alleged violation, namely, that it occurred or continued after the CEDAW-OP came into force. In evaluating the merits of a case, if the Committee finds that the state has violated the CEDAW-OP, it will recommend actions that the state can take to provide remedies appropriate for the particular case (Nguyen 2014, 2).

I will begin this section with *Goekce v. Austria* (2007). Şahide Goekce, an Austrian national of Turkish origin, experienced several incidents of abuse from her husband, ultimately leading to her death. After each incident—the first of which Mrs. Goekce reported with the help of the Youth Welfare Office—the police issued expulsion and prohibition orders against Mr. Goekce, none of which he followed. After two separate incidents, the police requested Mr. Goekce’s detention, which the public prosecutor denied on both occasions. A few weeks before Mrs. Goekce’s death, her father and brother in-law informed the police that her husband had frequently phoned them and threatened to kill her; however, the police did not file a report taking her father’s statement. On December 5, 2002, the public prosecutor stopped Mr. Goekce’s prosecution for causing bodily harm and making a dangerous threat on the grounds of insufficient evidence. Two days later, after an argument, Şahide Goekce’s husband shot and killed her in their apartment in front of their two young daughters. The Committee found the complaint to be admissible because domestic remedies were insufficient to address the domestic violence Goekce faced. On the merits, the Committee found that Austria violated the Convention by failing to exercise due diligence to protect her (*Goekce v. Austria* (2007), 22).

In *A.S. v. Hungary*, a pregnant Hungarian Roma woman was taken to the hospital, where a doctor informed her that her embryo had died in the womb and that she required a cesarean section. At this point, she was in poor health; she was dizzy, in shock, and losing a substantial amount of blood. While on the operating table, she was asked to sign a form consenting to a blood transfusion, anesthesia, the cesarean section, as well as a barely legible, handwritten doctor’s note at the bottom of the form asking for her consent to be sterilized. The physician used the Latin word for sterilization in the note, which Ms. A.S. signed. Only upon asking a doctor when she could try to have another child did she learn of her sterilization (*A.S. v. Hungary*

(2006), 3). She claimed she would never had agreed to sterilization because her Catholic beliefs would not allow it, and she and her partner followed the Roma custom in which having children is a central element of Roma families' value system (2006, 4). The Committee found the claim admissible because Ms. A.S. had exhausted the domestic remedies available to her and had proven that her procedure was effectively irreversible (2006, 13-14). Considering the merits, the Committee found that Hungary violated Article 10(h) of the Convention by failing to provide access to information and advice on family planning, Article 12 by failing to give informed consent for a family planning procedure, and Article 16 by denying Ms. A.S. the right to decide the number and spacing of her children (2006, 18).

Discussion of Cases Involving Intersectional Discrimination

The Committee did not find intersectional discrimination in *Goekce* or *A.S.* In *Goekce*, the presence of intersectional discrimination lies in a detail that the Committee mentions once in the facts section and never again: Şahide Goekce was “an Austrian national of Turkish origin” (*Goekce v. Austria* (2007), 3). Little is known about the length of time Goekce had resided in Austria, her citizenship status, or her fluency in German. However, even if she has resided in Austria for years and spoke fluent German, she still faced discrimination on the basis of her “Turkish origin” due to the pervasive discrimination against people of Turkish descent in Germany.¹ The facts of the case that suggest the presence of intersectional discrimination include the repeated lack of action by the police and the public prosecutor to act on Mrs. Goekce’s behalf despite their knowledge of the risk to her life. In fact, in its submission on admissibility, the State

¹ RAXEN Focal Point for Austria, “Migrants, Minorities and Employment in Austria,” (Vienna: European Monitoring Center on Racism and Xenophobia, 2003), 27, https://fra.europa.eu/sites/default/files/fra_uploads/226-at.pdf; Martina Böse, Regina Haberfellner, and Koldas Ayhan, “Mapping Minorities and Their Media: The National Context – Austria,” *Diasporic Minorities and Their Media in the EU: A Mapping*, (Vienna: London School of Economics, 2003), 9-10, <http://www.lse.ac.uk/media@lse/research/EMTEL/minorities/reports.html>.

even argued that, by attempting to “play down” the abuse she endured, “she contributed to the fact that [Mr. Goekce] could not be convicted” (2007, 8).

This victim-blaming attitude toward Mrs. Goekce’s behavior, combined with the lack of legal remedies Austria provided her, suggest discrimination against Mrs. Goekce based on her being a woman domestic violence victim of Turkish origin. However, while the Committee dismissed the idea that Goekce did not indirectly contribute to her own death, it did not mention her Turkish origin in its legal reasoning. Similarly, in *A.S.*, the Committee only mentioned that A.S. is Roma in the facts section and once in its overview of her initial submission to the Committee, despite the fact that A.S. was represented by the European Roma Rights Center and the Legal Defence Bureau for National and Ethnic Minorities (*A.S. v. Hungary* (2006), 1). This is especially troubling due to the widespread practice throughout Central and Eastern Europe of sterilizing Roma women who miscarry without their consent.² Therefore, Ms. A.S. experienced a manifestation of the multiple axes oppression that affects her uniquely from white women or Roma men. Despite the presence of intersectional discrimination in both *Goekce* and *A.S.*, the Committee did not analyze either case from an intersectional framework by failing to consider the multiple axes of oppression affecting each woman into its legal reasoning.

Moreover, the Committee did not identify intersectional discrimination because it did not fully engage with the systemic factors hindering either claimant from accessing justice in their respective domestic contexts. By not considering Goekce’s Turkish origin or A.S.’s Roma

² European Monitoring Centre on Racism and Xenophobia, “Breaking the Barriers – Romani Women and Access to Public Health Care,” (Luxembourg: Office for Official Publications of the European Communities, 2003), 53, https://fra.europa.eu/sites/default/files/fra_uploads/180-roma-hc-en.pdf; European Roma Rights Center, “Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe,” (Budapest: European Roma Rights Center, 2006), 47-48, http://www.errc.org/uploads/upload_en/file/01/E6/m000001E6.pdf.

descent, the Committee did not connect any applicant’s intersecting identities to broader systems of intersectional discrimination. Furthermore, the Committee neglected to identify either applicant’s intersecting axes of oppression as forms of systemic discrimination within their respective states’ cultures. Evaluating the Committee’s legal reasoning in all four cases suggests the validity of H1: namely, that the Committee’s consideration for systemic discrimination beyond a single axis of oppression—specifically, its lack thereof—constitutes one condition under which the Committee interprets the Convention through an intersectional lens.

Case Presentation: On the Subject of Culture

Domestic Violence Cases

Like *Goekce v. Austria* (2007), *X. v. Timor-Leste* (2018) concerns domestic violence. Ms. X., the applicant in this case, suffered years of physical, emotional, and sexual abuse from her partner, who was a man. She had reported abuse to authorities including the village chief and the Defense Force, the latter of which her partner was a member. However, they did not take action to prevent further incidents. On November 25, 2011, Ms. X.’s partner beat her until she lost consciousness. Upon regaining consciousness, she saw that he had begun to approach her again. Fearing for her life, Ms. X. fatally stabbed her partner as he went towards her. After contacting police about the incident, she was detained for seven days without being informed of her right to remain silent or to adequate legal representation. Police refused to grant her medical or psychological treatment despite the injuries and psychological trauma she had sustained (*X. v. Timor-Leste* (2018), 3-4). Five months later, she was sentenced to fifteen years in prison for aggravated homicide, during which a judge told her: “as a wife, you must protect your husband” (2018, 5). Throughout the proceedings, she received inadequate legal representation. She was represented by four different public defenders, yet there was no communication between them.

She met her public defender for the first time on the morning of her first hearing. This first public defender did not seek to lead evidence about Ms. X's partner's history of domestic violence. Ms. X filed a complaint under the Committee, which declared her claim admissible (2018, 6-7). Considering the merits, the Committee found that Timor-Leste had violated the Convention by failing to address ongoing domestic violence or provide sufficient medical, psychological, and legal services (2018, 10).

A comparison of *Goekce* and *X*. points to a key difference in the scope of the Convention violation that the Committee attributes to each state. In *Goekce*, the Committee noted that Austria had established a comprehensive plan for addressing domestic violence. However, it also noted that, in order for women domestic violence victims to access the state's resources, the state actors must support the aforementioned plan. In its legal reasoning, the Committee concluded that the police and the public prosecutor failed to exercise due diligence to protect Mrs. Goekce based on their record of Mr. Goekce's abuse and their failure to treat Mrs. Goekce's prior reports seriously (*Goekce v. Austria* (2007), 21). While the Committee also underscored the failure of state actors to exercise due diligence in *X*., it further cited gender discrimination and "gender stereotyping" in state institutions (*X. v. Timor-Leste* (2018), 8). Furthermore, it attributed a judge's discriminatory comment to "a pattern of deeply-held violence" that suggested "procedural deficiencies" (2018, 8). The Committee's connection between the judge's comments and "gender stereotypes and bias" demonstrates its extension of state actors' behavior beyond event-oriented discrimination to more broadly encompass social attitudes about gender (2018, 8). Conversely, while the Committee also cited the failure of state actors to exercise due diligence in *Goekce*, it did not tie their behavior to broader gender stereotyping or even gender bias. This discrepancy begins to suggest the validity of H2 in that the Committee is more likely to find

systemic discrimination on the basis of a larger culture of societal bias in cases brought against non-Western states. By citing gender stereotyping within state institutions, the Committee more extensively attributed the behavior of state actors to systemic discrimination in *X*. Conversely, in *Goekce*, the Committee placed greater onus on the individual actor as a state agent rather than addressing concerns for institutional or systemic problems.

Further support for H2 arises in the articles of the Convention that the Committee analyzes in both *Goekce* and *X*. The applicants in *Goekce* alleged that—among other articles of the Convention—Austria violated article 5, the most relevant part of which puts forth that states must take appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (UNOHCHR, CEDAW 1979, 3). In its legal reasoning, the Committee noted the connection between domestic violence and notions of women’s perceived subordination to men. However, immediately after this comment, it concluded that the applicant and state’s submissions “do not warrant further findings” on the matter; thus, it did not find an article 5 violation (*Goekce v Austria* (2007), 22). The immediate proximity of these two statements suggests that the Committee did not believe Austria violated its obligation to modify social and cultural patterns to eliminate the idea of women’s subordination, despite its suggestion that this idea influenced Goekce’s fate through its connection of the idea to domestic violence. Conversely, Ms. X. did not allege an article 5 violation in her complaint, yet the Committee discussed article 5 in its legal reasoning section. In both cases, the applicants allege violations of article 2(f), which the Committee found in both cases. Article 2 obligates states to modify “laws, regulations, customs and practices which

constitute discrimination against women” (UNOHCHR, CEDAW 1979, 2). However, in *X.*, the Committee considers article 2 in conjunction with article 5, holding that states must adopt measures to amend or abolish both discriminatory laws and (*X. v. Timor-Leste* (2018), 9). Based on this obligation, the Committee found an article 2 violation; however, its discussion of article 5 is also important for analyzing the Committee’s reasoning. After explaining the obligation under articles 2 and 5, the Committee explained that stereotypes affect women’s rights to impartial judicial proceedings and that the judiciary should not operate under “preconceived notions about what constitutes domestic violence” (*X. v. Timor-Leste* (2018), 9). It then applied its explanation to state authorities’ treatment of the author and her sentencing decision (2018, 9-10). While Mrs. Goekce was never sentenced for a crime, the Committee found a Convention violation based on similar facts, namely the police treatment she received and the public prosecutor’s continuous refusal to prosecute Mr. Goekce (*Goekce v. Austria* (2007), 22). However, the Committee’s dismissal of the applicants’ article 5 violation allegation points to its lack of consideration for the broader cultural attitudes that biased these state actors against Mrs. Goekce. Conversely, in *X.*, the Committee raised the article 5 issue of “customs and practices that constitute discrimination against women” without the author even mentioning article 5 in her complaint (*X. v. Timor-Leste* 2018, 9). Here, the Committee more explicitly tied the mistreatment of Ms. X. to broader customs and practices, whereas it did not make this connection to the same degree in *Goekce*. The Committee’s application of article 5 to both cases suggests that more explicitly tied gender discrimination to a state’s customs and practices, both of which culture encompasses, to the non-western state—despite the broad factual similarities of each case. This comparison offers support for the validity of H2 by demonstrating the relationship between whether the state is non-

Western or Western and the Committee's identification of an aspect of the state's culture as a contributing factor to systemic discrimination.

Inheritance Cases

While *Muñoz Vargas y Sainz de Vicuña v. Spain* (2007) concerns nobility titles and *E.S. & S.C. v. Tanzania* (2015) concerns property rights, a comparison of these cases is still logical due to the joint issue of women's claims to inheritance based on their relationship with a deceased man. In the former case, Cristina Muñoz-Vargas y Sainz de Vicuña challenged a Spanish primogeniture nobility title law. The law states that the first-born child of a nobility member inherits the title, but a woman may only inherit the title if she does not have any younger brothers. Muñoz was the eldest daughter of a count. When he died, a royal decree granted the count's title to Muñoz's younger brother in accordance with the nobility title law (*Muñoz Vargas y Sainz de Vicuña v. Spain* (2007), 2). After her appeals in domestic courts all failed, Muñoz brought the case to the Committee, arguing that the law's primacy of sons in the order of succession to nobility titles was discriminatory (2007, 3-4). The Committee declared her case inadmissible because the royal decree granting the title to her brother took place before Spain entered the CEDAW-OP into force (2007, 8-9).

E.S. & S.C. v. Tanzania (2015) was a case involving the property inheritance rights of Mrs. E.S. and Mrs. S.C., both of whom were widows. After both applicants' husbands died, their husbands' relatives ordered them to vacate their homes, which formed part of the deceased's estate in both cases. State officials informed Mrs. E.S. that, under Sukuma customary law, she could not inherit her husband's estate. This happened despite the fact that Mrs. E.S. had jointly acquired her house with her husband. In the case of Mrs. S.C., her husband's family sold a car that she had jointly purchased with him (*E.S. and S.C. v. Tanzania* (2015), 4). They also forced

her to vacate the house that her husband had built before their marriage on the grounds that she did not contribute to the cost of construction. Neither woman received any support from her late husband's family, which limited their housing options. The women's forced eviction was legal under Tanzanian customary inheritance law, which stated that widows had no share of the inheritance if the deceased left relatives and established a system in which daughters were last in line for any inheritance claims (2015, 3). Mrs. E.S. and Mrs. S.C. brought a complaint under CEDAW, which the Committee declared admissible (2015, 5). On the merits, the Committee found that Tanzania had violated the Convention by failing to adopt legislation to eliminate discriminatory acts against widows, thereby restricting the applicants' economic autonomy (2015, 11-12).

The Committee considered the alleged discrimination in *Muñoz* as event-oriented, whereas it treated the alleged discrimination under *E.S.* as systems-oriented. When considering the admissibility of *Muñoz*, the Committee found that the relevant "point in time" by which to analyze the case was the royal decree vesting the title succession to the applicant's brother. It considered this event to be "the basis of the author's claim," concluding that her claim "was not of a continuous nature" (*Muñoz Vargas y Sainz de Vicuña v. Spain* (2007), 8). In its finding of inadmissibility based on the royal decree, the Committee did not tie the nobility title law itself to systemic discrimination, despite the law's potential to induce a pattern of gender-based discrimination in the future. That is, if the nobility title law leads to numerous royal decrees granting nobility titles to the younger brothers of eldest daughters, it would constitute widespread discrimination ingrained into Spain's legal institutions. Therefore, the far-reaching and institutional implications of the law amount to systemic discrimination against women. Furthermore, the Committee's legal reasoning failed to interrogate the ways in which the

primogeniture law reflects Spanish culture attitudes about the position of women society. Not only did the Committee's event-oriented analysis of Muñoz's case neglect to examine the law's potential to perpetuate gender-based discrimination in the future; it also ignored the deeper cultural beliefs that led to the enactment and continued practice of law the privileges first-born sons over eldest daughters. By centering its analysis of the case on the royal decree that granted Muñoz's brother the nobility title, the Committee overlooked the systemic discrimination evident in the nobility title law in favor of event-oriented discrimination.

Conversely, in *E.S.*, the Committee considered the applicants' evictions and lack of family in-law support after their husbands' deaths to directly relate to customary law's privileging of men over women regarding inheritance claims. Citing article 5, it noted that states must adopt appropriate measures to amend both existing laws and "customs and practices that constitute discrimination against women," including when states have legal systems that treat people differently based on their identity (*E.S. and S.C. v. Tanzania* (2015), 10). Here, the Committee's specification of legal systems involving identity-based distinctions immediately after discussing discriminatory customs and practices directly connects legal institutions to customs. Unlike its reasoning in Muñoz, the Committee considered the relevant law in *E.S.* as a manifestation of systemic gender discrimination rather than construing the law as causing one isolated instance of gender discrimination. In fact, the Committee's legal reasoning in *E.S.* explicitly stated that the inheritance law treating widows and widowers differently "is discriminatory" (*E.S. and S.C. v. Tanzania* (2015), 10). This conclusion creates an even more explicit connection between the law and systemic discrimination. Moreover, the Committee recognized that Tanzania subjected the authors to Sukuma customary law on the basis of their ethnicity, even including a footnote with the phrase "intersectional discrimination" (2015, 11).

The Committee also noted that the application of “discriminatory customs” in *E.S.* contributed to gender stereotyping, thereby hindering gender equality in the family and in society more broadly (2015, 11). Unlike in *Muñoz*, the Committee recognized in *E.S.* that the law is a manifestation of discriminatory customs, which constitutes a system of discrimination that extends beyond a single event. Here, the Committee has analyzed the relevant laws differently despite the fact that both cases illustrate their respective countries’ cultural attitudes as they manifest through legal inheritance issues.

Through its analysis of *E.S.*, the Committee employed a universalist approach by judging Tanzania on the extent to which it follows a women’s rights norm the Committee universally applies to all signatory states, as evidenced by article 5 of the Convention (CEDAW 1979, 3). Conversely, in *Muñoz*, the Committee did not conceive of Muñoz’s inheritance claim as part of a universal human rights norm, even though the applicant alleged an article 5(a) violation. Instead, the Committee considered her case in the particular context of Spain, noting the state’s submission that nobility titles “do not entail any type of privilege,” despite the law’s continuous privileging of sons over eldest daughters in succession of nobility titles (*Muñoz Vargas y Sainz de Vicuña v. Spain* (2007), 8). Rather than judging Spain based on its obligation to abolish laws and customs that perpetuate gender discrimination, the Committee exempted Spain of this obligation by failing to examine the relationship between the state’s title inheritance law and the cultural biases against women that the laws exhibits. As a result, by neglecting to tie Spain’s culture to the *de jure* discrimination evident in the law, the Committee holds Spain’s particular cultural context in higher regard compared to Tanzania. The difference in legal reasoning between *E.S.* and *Muñoz* can begin to find support for H2 in that it suggests that the Committee

is more likely to find systemic discrimination connected to broader cultural attitudes in the case of non-Western states, such as Tanzania, compared to Western states, such as Spain.

Case Presentation and Discussion: Intersectionality and Culture

Alyne da Silva Pimentel Teixeira v. Brazil (2011)

Alyne da Silva Pimentel Teixeira v. Brazil (2011) concerned a pregnant Afro-Brazilian woman who went to a health center after experiencing severe nausea and abdominal pain. There, doctors informed her that her fetus was stillborn and that she required medication to induce labor. Following the induced delivery, she became disoriented. Fourteen hours after the delivery, she underwent surgery to remove parts of the placenta, after which her condition further deteriorated (*Alyne da Silva Pimentel Teixeira v. Brazil (2011)*, 3). Her mother and husband did not visit the center because the doctors told them she was well. The doctors at the health center decided to transfer her to a hospital that could provide a higher level of care. However, the only hospital with available space refused to use its ambulance to transport her at the requested time, despite her poor condition. Because her mother and husband could not secure a private ambulance, she waited in critical condition for eight hours for another ambulance, during which time she showed symptoms of a coma. Upon arriving at the hospital, her blood pressure dropped to zero, and she had to be resuscitated. Because there were no available beds, the hospital placed her in the emergency room hallway, where she stayed for 21 hours. The medical attendants did not bring her medical records to the hospital from the health center, instead sending Ms. da Silva Pimentel Teixeira's mother to retrieve them. At the health center, the staff questioned her as to why she wanted them and made her wait. That same day, Ms. da Silva Pimentel Teixeira died from a digestive hemorrhage that, according to doctors, resulted from her delivery of the stillborn fetus (2011, 4). Ms. da Silva Pimentel Teixeira's mother filed a complaint under CEDAW, which

the Committee deemed admissible. On the merits, the Committee found that Brazil violated the Convention by discriminating against Ms. da Silva Pimentel Teixeira “not only on the basis of her sex, but also on the basis of her status as a woman of African descent and her socio-economic background” (2011, 21).

In its legal reasoning, the Committee analyzed the case from an intersectional framework and attributed the discrimination Ms. de Silva Pimentel Teixeira faced to Brazil’s systemic, societal prejudice against Afro-Brazilian women of low socio-economic status. While the Committee concluded that Ms. de Silva Pimentel Teixeira suffered from “multiple discrimination,” the citation of its general comment no. 28 on intersectional discrimination suggests that it evaluated her case using the intersectional framework it established in a previous document (*Alyne da Silva Pimentel Teixeira v. Brazil* (2011), 28). Based on Brazil’s acknowledgement that it failed to provide Ms. de Silva Pimentel Teixeira with necessary emergency care after delivering a fetus, the Committee held that she faced discrimination based on “her status as a woman of African descent and her socio-economic background” (2011, 29). This conclusion constitutes an acknowledgement of the ways in which the intersection of multiple axes of oppression manifested in the medical treatment and death of Ms. de Silva Pimentel Teixeira.

The Committee did not cease its analysis there. When evaluating the case from an intersectional framework, it cited its 2007 concluding observations on Brazil in which it noted the existence of *de facto* discrimination against women, particularly women of African descent (*Alyne da Silva Pimentel Teixeira v. Brazil* (2011), 20). This marks a contrast from *Goekce* and *A.S.* in that the Committee did not note Austrian society’s pervasive discrimination against Turkish people or that of Hungarian society against the Roma. Instead, the Committee directly

linked its intersectional evaluation to its concern for systemic discrimination, rather than event-oriented discrimination, against women of African descent in Brazil. Furthermore, the Committee connected Ms. de Silva Pimentel Teixeira's poor treatment to a "systematic problem in Brazil" regarding the "lack of access to quality medical care during delivery" (*Alyne da Silva Pimentel Teixeira v. Brazil* (2011), 20). Elaborating on this connection, it concluded that the lack of appropriate maternal health services available to Ms. de Silva Pimentel Teixeira violated her right to life under the Convention, arguing that such a lack of services "has a differential impact on the right to life of women" (2011, 20). Here, the Committee attributed the inadequate health services she received to a wider systemic gap in maternal health services, a system it directly attributed to gender discrimination. In this case, the Committee established the universality of the women's rights norm of quality maternal health care by applying it to Brazil without a consideration for any way in which the state's cultural context may lead to a different conception of this norm. At the same time, the Committee considered the shortcomings of Brazil in regard to this right with a special consideration for the systemic discrimination against women of African descent in Brazil. The Committee's legal reasoning in this case finds support for H1 and H2. Regarding H1, the Committee evaluated the case from an intersectional perspective when it connected Ms. de Silva Pimentel Teixeira's medical treatment to systemic discrimination that extended beyond the single event of her death, instead noting that Brazil's wider material healthcare problems discriminated against women. Regarding H2, the Committee found systemic discrimination when it expressed concern for *de facto* discrimination against Afro-Brazilian women in Brazilian society. This suggests a relationship between a non-Western state and the Committee's finding of systemic discrimination rooted in a state's particular cultural context as opposed to its *de jure* legal context.

Kell v. Canada (2012)

At its core, *Kell v. Canada* was a property rights case involving a Canadian indigenous woman belonging to the Rae-Edzo community, Cecilia Kell. Ms. Kell learned of housing reserved for the Rae-Edzo indigenous community by the local housing authority and told her partner that she wished to apply for a house. Her partner, a non-indigenous man, secretly applied for a unit in his name only but was turned down because he was not an indigenous community member and had applied as a single man. Ms. Kell's partner then told her she was turned down for a house. Ms. Kell did not ask her partner why she was apparently denied housing because her partner was violent and abusive toward her, and she did not want to provoke him. Following the advice of the housing authority, Ms. Kell successfully applied for housing with her partner as a family. The Northwest Territories Housing Corporation ("the Corporation") issued an agreement to Kell and her partner as co-owners of the house (*Kell v. Canada* (2012), 3).

Later, at her partner's request and without Kell's knowledge, the housing authority—of which her partner was a board member—wrote to the Corporation stating that he wanted Kell's name removed from the co-ownership agreement. The Corporation completed this request. Then, after Ms. Kell obtained employment without her partner's consent, he changed the locks on the home and presented a letter from a lawyer requesting that she vacate the house. Later, after Ms. Kell had left her home, her partner became ill with cancer and died. While Kell was attempting to legally regain possession of the home, her partner's estate sold the house to third-party purchasers. In response, Kell initiated a new legal action dealing with her interest in and right to the leasehold title and possession of the property. However, the Supreme Court of Northwest Territories dismissed Kell's action because she could not pay the court-ordered payments it ordered within sixty days. Throughout this legal action, Ms. Kell had to represent herself because

her previous lawyers did not comply with her instructions and, as a single mother, she could not afford a private lawyer (*Kell v. Canada* (2012), 4). Kell filed a complaint against Canada under CEDAW. The Committee found her claim admissible, concluding that Canada's domestic remedies were unlikely to bring her effective relief. On the merits, the Committee explicitly stated that Kell faced "an act of intersectional discrimination" because she was an indigenous woman domestic violence victim, which hindered the exercise of her property rights (2012, 16).

In *Kell*, the Committee correctly evaluated Ms. Kell's case from an intersectional perspective. In asking Matsuda's other question, examining the gender discrimination Kell faced also leads to a finding of discrimination against indigenous women. Canada's state actors revoked Kell's name from the co-ownership document, despite the fact that her partner only received co-ownership due to Kell's indigenous status. These circumstances, therefore, constitute discrimination based on intersecting axes of oppression. In its legal reasoning, the Committee considered the fact that Kell was an indigenous woman domestic violence victim to be a "distinction" of her case (*Kell v. Canada* (2012), 16). Here, the use of "distinction" suggests an acknowledgement of the unique discrimination Kell faced due to the intersection of her being a woman, indigenous, and a domestic violence victim. The Committee also cited its general recommendation no. 28 in this section, stating that intersectionality is fundamental to understanding the scope of states' Convention obligations (UNOHCHR, CEDAW 2010, 4). Furthermore, the Committee asserted that states must legally recognize and prohibit intersectional discrimination. The Committee also explicitly tied Kell's partner's abuse and her lawyer's failure to challenge the validity of her partner's evacuation request to a broader system of intersectional discrimination that Canada committed against her.

The Committee also connected Kell's case to the widespread discrimination against indigenous people and domestic violence victims within Canadian society. In its legal reasoning, the Committee noted that, under the Convention, states must ensure that public authorities and institutions refrain from any act or practice of discrimination against women. This includes the obligation of states to abolish laws contributing to gender discrimination—whether direct or indirect. Immediately after explaining this obligation, the Committee concluded that, because Kell is an indigenous woman in a “vulnerable position,” Canada must ensure the “effective elimination of intersectional discrimination” (*Kell v. Canada* (2012), 16). Here, the Committee connected its intersectional analysis of the case to the shortcomings of Canadian institutions rather than solely faulting individual state actors. Importantly, in explicitly stating that Kell faced intersectional discrimination based on her being an indigenous woman domestic violence victim, the Committee has suggested that Canada has a substantial element of societal discrimination against this group. In fact, the Committee concluded that the author has sufficiently proven that she faced intersectional discrimination based on her submission to the Committee, which included the argument that the Canadian legal system did not consider the spiritual connection Kell had with the land as an indigenous woman, nor did Canadian legal or judicial actors consider the indigenous way of solving disputes, instead excluding her from settlement negotiations (2012, 7, 16). Here, the Committee's acknowledgement that Kell's arguments prove intersectional discrimination also acknowledges a broader issue within Canada's legal systems that discriminate against indigenous people. Furthermore, because these Canadian state actors have been socialized in Canadian society to at least some degree, the Committee's finding that they contributed to the state's intersectional discrimination against Kell provides support for H1. Namely, it suggests a relationship between the Committee's intersectional framework in this case

and its consideration of a state's socio-cultural context as a contributing factor to intersectional discrimination. Although the Committee's intersectional framework in one case cannot constitute a broad analysis of all cases involving intersectional discrimination, this case can begin to suggest that the Committee has employed an intersectional framework in cases in which it identifies systemic discrimination on the basis of an applicant's intersecting identities.

Where *Kell v. Canada* deviates from *Alyne da Silva Pimentel Teixeira v. Brazil* (2011) and the four cases discussed in the context of culture is through H2. The Committee attributed Canada's broader cultural context to systemic discrimination by acknowledging that state actors socialized in the Canadian cultural context did not consider Kell's connection to the land from which she was evicted as an indigenous woman. This attribution occurred in a complaint against Canada—a Western state. H2 expresses that the Committee is more likely to, rather than always will, attribute a non-Western state's culture to systemic discrimination compared to a Western state. However, even though *Kell* does not disprove H2, a discussion of the conditions that differentiate *Kell* from the other cases I have explored may be a productive avenue for evaluating the Committee's legal reasoning based on these conditions. Although the Committee identified systemic discrimination in *Kell*, it tied the particular manifestation of systemic discrimination to particular events. For example, the Committee found that the combination of specific events, such as the annulment of Kell's property rights, her inability to enter her home, and her issues in obtaining quality legal representation all contributed to discrimination against Kell that violated the Convention by denying her the right to property (*Kell v. Canada* (2012), 16). It also found that Kell's partner's abusive restriction of her ability to be financially independent, in combination with other relevant facts, violated Kell's right to equal spousal ownership and administration of property (2012, 16-17). Similarly, the Committee also found a denial of

property rights to the applicants in *E.S.*, including the forced eviction from their homes, which Kell also faced. However, the Committee connected Tanzania's obstruction of the applicants' rights to administer property after their husbands' deaths to the importance of women's financial independence to eliminate discrimination in "all areas of economic and social life" (*E.S. and S.C. v. Tanzania* (2015),11). In *Kell*, the analysis of Canada's deprivation of Kell's property rights did not extend to a broader discussion of women's economic freedoms. Therefore, while the Committee tied systemic discrimination to Canada's broader culture of discrimination against indigenous people in *Kell*, it did not extend this consideration for systemic discrimination to the same broad degree that it does in the case of *E.S.* This discrepancy could begin to provide one explanation for why the Committee tied the systemic discrimination it found in *Kell* to Canada's cultural context even though Canada is a Western state. However, *Kell* does not necessarily disprove H2, which states that the Committee is more likely, but not always inclined, to attribute its finding of systemic discrimination to a state's culture in the case of non-Western rather than Western states.

Conclusion

Through this research project, I sought to examine the conditions under which the CEDAW Committee applied an intersectional framework when evaluating cases alleging Convention violations in which it also examined a state's cultural context regarding its Convention obligations. Through my research, I tested my hypotheses using the theoretical frameworks that have arisen from intersectionality and culture. My study may begin to contribute to the existing literature on CEDAW's consideration for a state's culture and its intersectional framework in regard to the outcomes of cases by providing an analysis of the Committee's legal reasoning. This may illuminate the legal framework through which the Committee evaluates a

case from an intersectional lens, which may provide clarity on the conditions under which women who face intersectional discrimination can access justice under the Convention, provided that they are a national of a state which has signed it. Furthermore, adding a human face to broad legal and theoretical principles may contribute to a shifting of the existing literature's perspective from abstract theory to the individual women whom these theories and legal standards most affect. The shift from abstract theory to women's lived experiences may contribute to a further centering of individual women in discussions concerning women's rights, which has implications for women's equitable access to justice under these judicial bodies.

In testing my hypotheses, I did not seek to produce recommendations to the Committee to more uniformly interpret the Convention in its legal reasoning when evaluating individual complaints. However, this could be a potential means by which to build upon my research. In particular, one productive avenue for further research could center around testing the presence or absence of a discrepancy in the success or failure of an individual complaint against a state depending on whether the state is Western or non-Western. This hypothetical research project could consider my focus on the Committee's consideration of a state's culture in Western vs. non-Western states in seeking to understand the project's findings. Furthermore, the project could produce recommendations to the Committee for interpreting the Convention more uniformly regardless of the state against which the applicant filed the complaint.

One implication for my project is the broader function of the Committee as an instrument for legal redress. If a state does not heed the recommendations of the Committee that arise from individual complaints, or if the Committee receives reliable information that indicates a state is committing "grave or systematic violations" of the Convention as outlined in Article 8 of CEDAW-OP, it may be subject to a formal inquiry by the Committee (UNOHCHR, CEDAW

1999, 5). Other than conducting an inquiry, the Committee is limited in its ability to impose monetary consequences or intervene in a state's domestic political institutions if a state does not follow its recommendations. However, if a state does not adhere to these recommendations or commits other acts in violation of the Convention, the international community may respond more forcefully. For example, if a state or organization that provides funding to a particular state learns that the state has continued to practice grave or systemic violations of the Convention, it may threaten to limit the funding it provides to the state. While this may seem like a check on states who violate the Convention, it may only serve as an incentive to comply with the Convention in the case of states who depend on funding from international organizations or foreign countries. This may create a disparity between wealthy states and poorer states by potentially diminishing the severity of the consequences for wealthy states who do not implement the Committee's recommendations following an individual complaint.

A major limitation of my work lies in the fact that many of my selected cases consider gender-based discrimination as part of a dynamic between women and men. In a portion of my cases, the privileging of men leads to a finding of discrimination against women. However, this limits my study of gender discrimination to the false gender binary of woman/man. Therefore, scholars cannot expand my study to encompass discrimination based on gender identity, namely against those who identify outside of the gender binary. While the Committee has only heard cases from women or applicants filing a complaint on a women's behalf, a study that explores the application of gender-based laws to discrimination based on non-binary gender identity would provide an informative extension of my research's discussion of legal redress for gender discrimination. In particular, a discussion of maternal healthcare in cases other than those involving cisgender women would be a meaningful expansion of my research.

References

- Alyne da Silva Pimentel Teixeira v. Brazil. 2011. Communication No. 17/2008. Committee on the Elimination of Discrimination Against Women. 49th Sess.
- A.S. v. Hungary. 2006. Communication No. 4/2004. Committee on the Elimination of Discrimination Against Women. 36th Sess.
- Bond, Johanna E. 2004. "Intersecting Identities and Human Rights: The Example of Romani Women's Reproductive Rights." *Georgetown Journal of Gender and the Law* 5 (3): 897–916. https://librarysearch.temple.edu/articles/gale_legal131703400.
- Byrnes, Andrew, and Eleanor Bath. 2008. "Violence against Women, the Obligation of Due Diligence, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women—Recent Developments." *Human Rights Law Review* 8 (3): 517-533. https://heinonline-org.libproxy.temple.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/hrlr8&men_hide=false&men_tab=toc&kind=&page=517.
- Campbell, Meghan. 2015. "Cedaw and Women's Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination." *Revista Direito GV* 11 (2): 479–504. <https://doi.org/10.1590/1808-2432201521>.
- Choudhury, Cyra Akila. 2015. "Beyond Culture: Human Rights Universalisms Versus Religious and Cultural Relativism in the Activism for Gender Justice." *Berkeley Journal of Gender, Law & Justice* 30 (2): 226–167. <http://search.ebscohost.com/login.aspx?direct=true&db=lgh&AN=109194631&site=ehost-live&scope=site>.
- Chow, Pok Yin S. 2016. "Has Intersectionality Reached Its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence." *Human Rights Law Review* 16 (3): 453–81. <https://doi.org/10.1093/hrlr/ngw016>.
- 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* 1989 (1): 139-167. <https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8/>.
- Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain. 2007. Communication No. 7/2005. Committee on the Elimination of Discrimination Against Women. 39th Sess.
- Cusack, Simone, and Lisa Pusey. 2013. "CEDAW and the Rights to Non-Discrimination and Equality." *Melbourne Journal of International Law* 14 (1): 54–92. <http://search.ebscohost.com.libproxy.temple.edu/login.aspx?direct=true&db=a9h&AN=91682752&site=ehost-live&scope=site>.

- Dale, Amanda. 2019. "International Women's Human Rights and the Hope for Feminist Law: Intersectionality as Legal Framework." *Canadian Woman Studies* 33 (1) (18): 37-50. https://librarysearch.temple.edu/articles/gale_ofa581366499.
- E.S. and S.C. v. Tanzania. 2015. Communication No. 48/2013. Committee on the Elimination of Discrimination Against Women. 60th Sess.
- Freedman, Jane. 2007. "Women, Islam and Rights in Europe: Beyond a Universalist/Culturalist Dichotomy." *Review of International Studies* 33 (1): 29–44. <https://doi.org/10.1017/S0260210507007280>.
- Goekce v. Austria. 2007. Communication No. 5/2005. Committee on the Elimination of Discrimination Against Women. 39th Sess.
- Kell v. Canada. 2012. Communication No. 19/2008. Committee on the Elimination of Discrimination Against Women. 51st Sess.
- Matsuda, Mari J. 1991. "Beside My Sister, Facing the Enemy: Legal Theory out of Coalition." *Stanford Law Review* 43 (6): 1183-1192. <https://doi.org/10.2307/1229035>.
- Merry, Sally Engle. 2006. "Human Rights and Transnational Culture: Regulating Gender Violence through Global Law." *Osgoode Hall Law Journal* 44 (1): 53–75. <http://search.ebscohost.com.libproxy.temple.edu/login.aspx?direct=true&db=lgs&AN=502643956&site=ehost-live&scope=site>.
- Nguyen, Athena. 2014. "Through the Eyes of Women? the Jurisprudence of the CEDAW Committee." *Outskirts* 30 (05): 1-9. <http://libproxy.temple.edu/login?url=https://search-proquest-com.libproxy.temple.edu/docview/1537167821?accountid=14270>.
- United Nations Committee on the Elimination of Discrimination Against Women. 1979. "Convention on the Elimination of All Forms of Discrimination Against Women." UNOHCHR, CEDAW/GC/34/180. <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.
- United Nations Committee on the Elimination of Discrimination Against Women. 2010. "General Recommendation No. 28: On the State's Core Obligations." UNOHCHR, 47th Sess., CEDAW/GC/C/28. <https://www.refworld.org/docid/4d467ea72.html>.
- United Nations Committee on the Elimination of Discrimination Against Women. 1999. "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women." UNOCHR, 54th Sess., CEDAW/GC/54/4. <https://www.refworld.org/docid/3ae6b3a7c.html>.
- X. v. Timor-Leste. 2018. Communication No. 88/2015. Committee on the Elimination of Discrimination Against Women. 69th Sess.