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Rethinking gender equality and gender mainstreaming as concepts 'in the mainstream' anno 2024

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Fleur van Leeuwen

1 TAKING UP THE CAUSE OF GENDER EQUALITY

'My wife never does the dishes.' He looks at us, a room full of professionals working on gender issues in a variety of sectors, with pride. The man is not a gender expert, he is the founder and general manager of a marketing company. He is also a member of *Yanındayız*,¹ which translates as 'We are beside you', a well-funded NGO that aims to promote gender equality in Turkey. *Yanındayız* receives MATRA funding from the Dutch state, which is why I find myself, like many of my colleagues, here today at the Dutch Consulate General in Istanbul, listening to a white privileged man explaining gender equality. The Consulate is celebrating the launch of the Netherlands' 'Feminist Foreign Policy' and we had been invited for a roundtable to discuss impediments to gender equality on the work floor. The three male members of *Yanındayız* did not participate in the round table. They flew in afterwards to take centre stage, explain gender equality, and then quickly leave the premises again. 'Are you not ashamed to stand here in front of us experts, and explain gender equality without even asking for our opinion or advice?', one of the roundtable participants asks. He does not understand her. Was he not just trying to help women? After the three *Yanındayız* men had left a discussion ensued. Many of us were disgruntled, but some argued that it was great that men took up the cause of gender equality; should we not support this?

2 APPROPRIATION AND EROSION OF CAREFULLY CRAFTED CONCEPTS

Although I support anyone who genuinely wants to improve gender equality on the ground, I believe we should also speak out against an appropriation and erosion of concepts that have been researched, carefully crafted, and (re)interpreted by feminist scholars like Professor Titia Loenen for many

1 <https://www.yanindayiz.org/>.

decades.² Sex/gender equality and the related strategy of gender mainstreaming have become household names ‘in the mainstream’, but as I argue here this is not necessarily something to rejoice. Few that claim to apply these concepts in practice are familiar with its theoretic grounding. Research highlights a lack of engagement with literature and points to disjunctures between academia and practice.³ In its daily usage these concepts have become hollow terms and with that comes a risk that its usance may do more harm than good.

This also holds true for the application of these concepts in international human rights practice. Both gender equality and gender mainstreaming feature prominently in this realm, with, as Loenen observes, the concept of equality, including sex/gender equality, underlying the current system for human rights promotion and protection.⁴ International human rights law stipulates that all persons have a right to equal treatment before the law, without discrimination on the basis of, for instance, sex and that all human beings are born free, equal in dignity and rights. Loenen has observed that the way equality is conceptualized is, because of this central position, crucial to the functioning of any legal system.⁵ But, unfortunately, this conceptualisation in international human rights practice leaves much to be desired. Already in 1994, Loenen observes that the way international (quasi) judicial bodies deal with sex/gender equality and non-discrimination on the basis of sex is gendered and in need of change.⁶ Anno 2024 the situation is not much better. Commentators have highlighted how human rights monitoring bodies employ a limited understanding of the concepts of equality and non-discrimination and fail to conduct,

2 For example: T. Loenen, *Gelijkheid als juridisch beginsel. Een conceptuele analyse van de norm van gelijke behandeling en non-discriminatie*, Den Haag: Boom Juridische uitgevers 2009; T. Loenen, ‘Indirect discrimination as a vehicle for change’, *Australian journal of human rights* 2000, vol. 6(2), p. 77-100; T. Loenen, ‘The impact of Anti-Discrimination Law in the Netherlands: A Case Study of Discrimination on Grounds of Religion in Employment’, in: B. Havelková & M. Möschel (Eds.), *Anti-Discrimination Law in Civil Law Jurisdictions*, Oxford: Oxford University Press, p. 233-243; T. Loenen, ‘Gelijke benoembaarheid in de top van het openbaar bestuur: voorkeursbehandeling als uitzondering of als regel?’, *NJCM-Bulletin: Nederlands tijdschrift voor de mensenrechten* 2012, p. 3-5.; M. van den Brink, S. Burri, J.E. Goldschmidt & T. Loenen, ‘European equality law or: losing sight of the wood for the trees’, in: F. Pennings, Y. Konijn & A. Veldman (Eds.), *Social responsibility in labour relations. European and Comparative Perspectives*, Wolters Kluwer 2008, p. 353-371; M.L.P. Loenen, ‘Het gelijkheidsbeginsel en andere grondrechten in de multiculturele samenleving: ontwikkelingen sinds 1983’, *NJCM-Bulletin: Nederlands tijdschrift voor de mensenrechten* 2003, p. 259-275; T. Loenen, ‘Rethinking Sex Equality as a Human Right’, *Netherlands Quarterly for Human Rights* 1994, vol. 12 (3), p. 253.

3 K. Caywood & G.L. Darmstadt, ‘Gender mainstreaming at 25 years: Toward an inclusive, collaborative, and structured research agenda’, *Journal of Global Health* 2024, vol. 14, p. 1-14.

4 T. Loenen, ‘Rethinking Sex Equality as a Human Right’, *Netherlands Quarterly for Human Rights* 1994, vol. 12 (3), p. 253-270.

5 Idem, p. 254.

6 Ibidem.

for example, a systematic analysis of harmful gender stereotypes.⁷ Such a reductive interpretation of gender equality and non-discrimination is cause for concern. As Goldschmidt notes this is problematic 'because equal treatment in and of itself cannot remove the invisible underlying male standard of the norm that is applied, and a 'blind' equality might only reaffirm the dominant male standard.'⁸

3 SUPERFICIAL APPLICATION OF THE STRATEGY OF GENDER MAINSTREAMING

The concept of gender mainstreaming does not fare much better. Initially heralded in the 1990s as a panacea to address gender bias in international human rights practice (including the gendered application of the concepts of sex/gender equality and non-discrimination that Loenen referred to), hopes quickly turned sour when it became apparent that this approach did not lead to systemic change.⁹ Rather than prompting a structural re-appraisal of human rights practice, it led to a superficial 'add and stir' of perceived 'women's concerns',¹⁰ which was precisely what feminist legal scholars had warned about.¹¹ Charlesworth observes in 2005 that the strategy of gender mainstreaming has deployed the idea of gender in a very limited way and has allowed the mainstream to tame and deradicalize claims to equality. She finds that the use of gender mainstreaming as a reform strategy has effectively drowned out the project of gender equality.¹² Echoing these sentiments, Otto finds that the institutional reception and management of feminist ideas has

7 See for example S. Fredman, 'Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights', *Human Rights Law Review* 2016, vol. 16, at p. 273; N. Alkaviadou and A. Manoli, 'The European Court of Human Rights through the Looking Glass of Gender: An Evaluation', *Goettingen Journal of International Law* 2021, vol. 11, at p. 191; I. Radacic, 'Gender Equality Jurisprudence of the European Court of Human Rights', *European Journal of International Law* 2008, vol. 19, p. 841.

8 J.E. Goldschmidt, 'New Perspectives on Equality: Towards Transformative Justice through the Disability Convention?', *Nordic Journal of Human Rights* 2017, vol. 35 (1), p. 1-14, at p. 3.

9 F. van Leeuwen, 'Women's rights at the UN: from formal equality to gender mainstreaming', in I. Westendorp (ed.), *The Women's Convention Turned 40*, Cambridge: Intersentia 2024 (Forthcoming).

10 F. van Leeuwen, *Women's Rights Are Human Rights: The Practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights*, Cambridge: Intersentia 2009.

11 For example: C. Bunch, 'Transforming Human Rights from a Feminist Perspective', in: J. Peters & A. Wolper (eds.), *Women's Rights, Human Rights – International Feminist Perspectives*, London: Routledge 1995, p. 11-17; A. Gallagher, 'Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System', *Human Rights Quarterly* 1997, vol. 19 (2), p. 283-333; U.A. O'Hare, 'Realising Human Rights for Women', *Human Rights Quarterly* 1999, vol. 21 (2), p. 364-402.

12 H. Charlesworth, 'Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations', *Harvard Human Rights Journal* 2005, vol. 18, p. 2.

divested them of their emancipatory content. She depicts the result as ‘cooption’.¹³ Anno 2024, there is (still) a tenacity of protective representations of women. A review of the latest general comments of UN human rights treaty monitoring bodies highlights that the male standard is still the status quo.¹⁴ As Otto remarks ‘women are not yet constructed as fully human by international human rights law’.¹⁵

Gender mainstreaming, although officially (still) listed as a strategy of the human rights programs of the United Nations and the Council of Europe,¹⁶ appears to occur only haphazardly in human rights practice. Since the early 2000s gender mainstreaming has not moved forward. We find it today in rather a comatose status. The concept is ‘out there’ but the practice of the bodies does not structurally bear witness to a deeper understanding of the ways in which human rights violations are embedded in systemic, intersecting inequalities. Otto observes that there is a diversity in thinking on how to achieve gender mainstreaming and any attempt to address systemic inequalities on the ground seems to be incidental rather than structural.¹⁷ Despite the official strategy in place, the topic no longer features on the agenda of the meetings of chairpersons of the human rights treaty monitoring bodies and no workshops or expert group meetings on ‘integrating a gender perspective into the human rights system,’ like those held enthusiastically in the 1990s, have taken place for some time.

4 A RENEWED COMMITMENT TO ‘GENDER MAINSTREAMING’

On the eve of Professor Loenen’s retirement from academia, I would therefore like to call for a renewed commitment to ‘gender mainstreaming’ and the promotion of gender equality in human rights practice. A commitment that takes the work of feminist legal scholars as its starting point and that, *inter alia*, ensures a direct exchange between academics and practitioners; pays attention to other forms of discrimination that intersect with or compound

13 D. Otto, ‘The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade’, *Melbourne Journal of International Law* 2009, p. 10.

14 F. van Leeuwen, ‘Women’s rights at the UN: from formal equality to gender mainstreaming’, in: I. Westendorp (ed.), *The Women’s Convention Turned 40*, Cambridge: Intersentia 2024 (Forthcoming); D. Otto, ‘Women’s Rights’, in: D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, Oxford: OUP 2018, p. 309-325, at p. 324-325.

15 D. Otto, ‘Women’s Rights’, in: D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, Oxford: OUP 2018, p. 309-325.

16 UNOHCHR, *Gender Integration*, <https://www.ohchr.org/en/women/gender-integration>; UN Women, *Gender Mainstreaming*, <https://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming>; Council of Europe, *Gender Equality*, <https://www.coe.int/en/web/genderequality/what-is-gender-mainstreaming>.

17 D. Otto, ‘Women’s Rights’, in: D. Moeckli, S. Shah & S. Sivakumaran (eds.), *International Human Rights Law*, Oxford: OUP 2018, p. 324-325.

discrimination against women; fully embraces gender as a social construct that includes a whole spectrum of gender identities; that acknowledges and represents the voices and lived experiences of marginalized groups; and that addresses systemic discrimination, including gender stereotypes, and prevents its reproduction in legal narratives. Perhaps we should not call this gender mainstreaming, as it surpasses the confines of integrating gender into existing practice. But I leave that discussion for later. For now, I propose to focus on a structural revision of human rights practice and do justice to the legacy of Professor Loenen and other feminist legal scholars. After all, I don't mind doing the dishes, as long as it is not expected of me because of my gender and others in less privileged positions are not confined to doing them either.