

**UNMASKING THE INVISIBLE: A CRITICAL REVIEW OF SEX, GENDER
AND INTERNATIONAL HUMAN RIGHTS LAW: CONTESTING BINARIES
BY GIOVANNA GILLERI**

by

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Introduction: The Promise of Universalism and Its Shadowed Margins

International Human Rights Law (IHRL) has long been driven by a compelling Universalist mandate: to provide a complete protection against governmental overreach, arbitrary violence and structural injustice. But that cover frequently crumbles when confronted with the actual reality of transgender sex workers, who are located at the strong intersection of governmental violence, criminalization, economic precarity, and social ostracization. For people on the edges of gender identity and informal work, IHRL frequently acts less as an empowering tool of freedom and more as a reflected mirror of patriarchal, bourgeois, and binary institutional goals.

With considerable theoretical ambition, Giovanna Gilleri's monograph, *Sex, Gender and International Human Rights Law: Contesting Binaries*, explores this contentious territory. The book offers a profound structural criticism of the ways in which international legal systems replicate and reinforce inflexible conceptions of sex and gender. Throughout this study, sentences are flagged to underpin the doctrinal tools and academic literature under investigation.

The empirical dimensions of this vulnerability demand acknowledgment. According to UNAIDS, for transgender sex workers who are also from racial or ethnic minorities or

migrant communities, multiple intersecting forms of discrimination create compounding barriers to health services and heighten their exposure to violence and harassment. Research across sub-Saharan Africa found that the probability of living with HIV was seven times higher for a sex worker in a country that criminalises sex work compared to one where it has been decriminalised, demonstrating how punitive legal regimes convert structural invisibility into measurable harm.¹

Gilleri seeks to unpack the underlying dichotomous patterns seen in major human rights documents and in the jurisprudence of international treaty organizations.²

Gilleri's monograph offers a razor-sharp legal audit of gender essentialism within United Nations institutions, but exposes grave conceptual lacunae in the face of the concrete realities of transgender sex workers. By emphasizing abstract post-structuralist discourse and textual deconstruction above actual socio-economic and labor analysis, Gilleri's approach ultimately leaves the most vulnerable subjects of international law out in the cold.

The Theoretical Promise Deconstructing the Institutional Binary

At its heart Gilleri's monograph is an investigation of the architectural grammar of IHRL. The major premise is that, notwithstanding the growing use of progressive and inclusive terminology by international human rights treaty organizations in relation to sexual and gender diversity, their underlying analytical frameworks are still anchored in essentialist assumptions.

The author contends that international human rights legislation functions on the binary baseline of 'man' and 'woman', rendering non-binary, intersex, and transgender experiences legally invisible or pathologized.³

Through a close reading of papers from the UN Human Rights Committee and the Committee for the Elimination of Discrimination against Women (CEDAW), Gilleri reveals

¹ UNAIDS, 'To Protect Sex Workers' Health, Protect Their Human Rights' (UNAIDS Press Release, 2 June 2024) <https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2024/june/20240602_sex-workers> accessed 10 September 2026.

² Giovanna Gilleri, *Sex, Gender and International Human Rights Law: Contesting Binaries* (Routledge 2021) 12–15.

³ *ibid* 45.

how the interpretation of treaties systematically relies on biological essentialism.⁴

This critique extends the work of seminal queer legal research that questions IHRL's dependence on static, hetero-normative notions of protection.⁵

It also questions the practice of international bodies toward legal gender recognition, and shows how rights are frequently contingent upon medicalization or standards set by a state.⁶

Gilleri's methodological approach is based on textual analysis, examining how treaty bodies use terms such as "sex," "gender," "woman," and "vulnerability." She shows convincingly that even when UN bodies try to protect transgender persons, they tend to treat trans identity as a deviation from a natural binary norm, rather than dismantling the norm itself.

For researchers seeking a full audit of the treatment of gender diversity by international treaty organizations, Gilleri presents a useful diagnostic work. She lays bare the perennial difference between performative institutional progressivism and deep-seated ideological conservatism.

Deep Flaws: Structural Gaps in the Monograph

Gilleri's monograph is elegant in theory, but it is deeply flawed when viewed through the prism of transgender sex workers' rights. Rather than giving a full and meaningful legal criticism, the book falls into three major theoretical and practical gaps: a complete lack of a labor lens, over-intellectualization of the theory, and an institutional Western-centrism.

A. No economic and labor lens

The most evident weakness in *Sex, Gender and International Human Rights Law* is its almost complete neglect of informal labor, survival economies, and sex work. For millions of

⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW), 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention' (16 December 2010) CEDAW/C/GC/28.

⁵ Dianne Otto, 'Queering International Law: Introduction' in Dianne Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2018) 1–18.

⁶ Gilleri (n 1) 102–108.

transgender people around the world, especially trans women in big cities, sex work is not an abstract performative endeavour or an academic inquiry into identity. It is an urgent economic imperative fuelled by structural exclusion from housing, formal education, banking and jobs.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides an international legal foundation for non-discrimination that compels States to guaranty the right to work without discrimination on the basis of gender identity.⁷

Furthermore, the International Labor Organization (ILO) rules on discrimination and informal employment provide that nations are bound to provide fundamental labor safeguards to workers in non-traditional and informal industries.⁸

These abstract international obligations acquire particular urgency when examined through the lens of specific regional contexts. The United Nations Development Programme has documented how, in South Asia, transgender women face systematic exclusion from formal housing, banking, and employment, with many entering sex work as the primary means of economic survival. The same report identified patterns of routine police harassment, including threats of criminal prosecution under colonial-era provisions that have been widely condemned for their disproportionate use against gender minorities.⁹

In leaving sex work out of her critical framework, Gilleri misses a vital chance to put her argument to the test where legislation affects people most directly. She gives a comprehensive analysis of how IHRL defines "woman" or "transgender," but does not investigate how IHRL deals with trans persons when they participate in criminalized or stigmatized economic survival activities. Consequently, her perspective is disconnected from the practical realities of trans women who confront overlapping police violence, arbitrary incarceration and extortion under local laws that contravene international principles of human rights.

B. Conceptual Insularity and Theoretical Elitism

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 18: The Right to Work (Art 6)' (6 February 2006) E/C.12/GC/18, para 12.

⁸ International Labour Organization (ILO), 'Discrimination (Employment and Occupation) Convention' (Convention No 111, adopted 25 June 1958, entered into force 15 June 1960) 362 UNTS 31.

⁹ UNDP India, *Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion* (UNDP 2012) <<https://www.undp.org/india/publications/hijras/transgender-india-hiv-human-rights-and-social-exclusion>> accessed 10 September 2026.

Gilleri depends substantially on post-structuralist queer theory, particularly thinkers such as Judith Butler, Michel Foucault and Jacques Derrida. While theoretical framework is necessary for diligent study, Gilleri transforms theory into an insuperable barrier.

The text is quite complex, hyper-abstract, and very isolated. The monograph continually discusses the semiotic intricacies of "sex" vs. "gender" without turning these theoretical discoveries into effective legal remedies or strategic litigation strategies. Transgender sex workers are not only conceptually misrecognized in the findings of UN committees, they are also subjected to physical abuse, denial of emergency medical treatment, and state-sanctioned harassment. By focusing almost completely on textual meanings and institutional terminology to frame legal oppression, Gilleri produces an intellectual exercise that offers minimal use to human rights defenders, grassroots activists, or courtroom advocates.

C. Western-Centrism of Institutions and Regional Blind Spots

The limitations of this theoretical posture in the context of practical advocacy have been identified by prominent critical legal scholars. Wendy Brown and Janet Halley observe that legal rights discourse, however theoretically sophisticated, retains a certain formality that can be co-opted by political actors opposed to redistributive reform, rendering abstract legal theory an inadequate instrument for producing material change in the lives of those it purports to protect.¹⁰ Ratna Kapur, writing from a postcolonial feminist perspective rooted in Indian and South Asian experience, similarly cautions that international human rights frameworks frequently offer protection to subaltern subjects on terms that paradoxically reinforce the very essentialist assumptions about gender and agency that sustain their exclusion.¹¹

A third key problem is the limited geographical and institutional scope of the work. Gilleri's preoccupations are largely with UN treaty organizations in Geneva and Western legal notions of identity and rights.

While the Yogyakarta Principles and Yogyakarta Principles Plus 10 provided revolutionary worldwide benchmarks for sexual orientation and gender identity, Gilleri does not engage in

¹⁰ Wendy Brown and Janet Halley (eds), *Left Legalism/Left Critique* (Duke University Press 2002) 5.

¹¹ Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar 2018) 24–28.

a robust analysis of their implementation within worldwide South regional human rights frameworks.¹²

Regional courts, including the Inter-American Court of Human Rights, have established progressive jurisprudence on legal gender recognition and state protection that exceeds the UN treaty bodies' interpretations.¹³

Similarly, the African Commission on Human and Peoples' Rights has considered state commitments concerning non-discrimination and violence in the form of Resolution 275, a regional framework fitting the post-colonial legal context.¹⁴

By neglecting regional human rights systems and the jurisprudence of the Global South, Gilleri provides a flattened and unduly centralized picture of international law. Transgender sex workers in Latin America, Sub-Saharan Africa and South Asia negotiate complicated legal terrains formed by colonial anti-sodomy statutes, anti-vagrancy laws and indigenous gender understandings. Gilleri's Western, Geneva-centric, perspective ignores these multi-layered legal realities completely.

The costs of this omission are perhaps most visible in the South Asian context. The National Human Rights Commission of India found that approximately 96 per cent of transgender persons are denied employment opportunities, with large numbers pushed into sex work as a survival economy that operates almost entirely outside formal legal protection. This data underscores how regional legal systems produce forms of transgender vulnerability that far exceed anything captured by Gilleri's focus on the terminological choices of Geneva-based treaty bodies.¹⁵

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¹² 'The Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics' (10 November 2017) State Obligation 31.

¹³ *Gender Identity, and Equality and Non-Discrimination with Regard to Same-Sex Couples* (Advisory Opinion OC-24/17) Inter-American Court of Human Rights Series A No 24 (24 November 2017).

¹⁴ African Commission on Human and Peoples' Rights, 'Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity' (12 May 2014) ACHPR/Res.275(LV)2014.

¹⁵ Observer Research Foundation, 'Leaving No One Behind: Transgender Inclusion in India's Sustainable Development' (28 November 2023) <<https://www.orfonline.org/expert-speak/leaving-no-one-behind>> accessed 10 September 2026 (citing National Human Rights Commission of India, 'Survey on Right of Transgender Persons' (2018)).

Comparative Analytical Assessment

To situate Gilleri's contribution in relation to the pragmatic needs of human rights advocacy for transgender sex workers, the following comparative framework highlights the discrepancy between her theoretical approach and a materialist legal framework:

Analytical Dimension	Gilleri's Sex, Gender and IHRL	What a Trans Sex Worker Rights Framework Requires
Primary Focus	Conceptual definitions of sex/gender in UN text.	Decriminalization of survival economies & police accountability.
Methodology	Textual analysis of UN treaty body comments.	Intersectional socio-legal analysis & lived experience data.
Scope	Western/UN-centric international institutions.	Pluralistic, Global South regional & domestic legal mechanisms.
Target Audience	Academic legal theorists.	Strategic litigators, grassroots activists & human rights defenders.

Re-Thinking IHRL for Transgender Sex Workers

To successfully translate IHRL from an abstract academic writing into a useful tool of protection for transgender sex workers, international legal study has to overcome textual deconstruction and embrace an intersectional, materialist methodology.

Human rights jurisprudence should take on board the recommendations of the UN Special Rapporteur on the Right to Health, which call for the full decriminalization of sex work as a vital step toward the realization of fundamental health and safety rights.¹⁶

¹⁶ UN Human Rights Council, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover' (12 April 2010) A/HRC/14/20, paras 49–51.

Furthermore, international treaty organizations should acknowledge that state practices criminalizing sex work are the primary cause of state responsibility under international law for the facilitation of police brutality and systemic abuse.¹⁷

To be really revolutionary, a worldwide legal framework must encompass both gender-affirming legal recognition and complete economic rights. This is not enough to simply suggest that international law should incorporate non-binary or transgender identities in its reporting glossaries. International law must specifically safeguard the economic survival mechanisms of oppressed gender minorities. Until IHRL confronts the systemic connections between criminality, poverty, and state-sanctioned policing, its claims to universality will be inadequate.

Conclusion: An Incomplete Manifesto

In *Sex, Gender and International Human Rights Law: Contesting Binaries*, Giovanna Gilleri provides an academically crisp analysis of the conceptual limits contained within UN human rights processes. It is a useful diagnostic for revealing the ways in which international institutions discreetly reproduce gender essentialism under the garb of progressive protection.

However, the monograph falls short as a framework for furthering the rights of extremely disadvantaged people, like transgender sex workers. Gilleri provides a theoretical criticism, but it is disconnected from the vulnerabilities of the ground, because she does not account for sex work, economic survival, state enforcement, and Global South regional law. In the end, the book accurately exposes the language inadequacies of international law, but gives no solace to the transgender sex workers who urgently need its safeguards.

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