



Time for a

change

The Need for a Binding International Treaty
on Violence Against Women

GLOBAL RIGHTS
for WOMEN Justice for
Victims of Violence

Time for a change

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Treaty on Violence Against Women



Acknowledgments

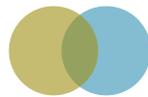
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Author's Note

This paper is the first of two articles on the need for a new international treaty on violence against women. This paper focuses on strengths and weaknesses of existing frameworks and why they are inadequate to effectively address the global problem of violence against women and girls. The second paper, which is forthcoming, will focus on advocacy for and the path to a new treaty, as well as outlining strong, specific content based on best practices.

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Introduction

Although multiple international and regional legal instruments promise women their full human rights, violence is the greatest obstacle to achieving those rights. More than one billion women around the world lack legal protection from domestic violence, and violence against women continues at pandemic levels around the world.¹ According to the World Health Organization, 35 percent of women worldwide have experienced physical violence, and 30 percent of women who have been in a relationship report that they have experienced some form of physical and/or sexual violence inflicted by their intimate partner.²

Current international efforts to combat violence against women are inadequate. At least part of the reason is that existing efforts lack a consistent framework. Instead, as the issue has gained attention and momentum in international human rights discourse, a multitude of instruments has evolved. As a result, references to violence against women and attempts to combat it through United Nations human rights treaties and charter-based mechanisms are disjointed. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is most prominent among the applicable treaties, and other conventions have been interpreted to address violence against women. Non-binding charter-based mechanisms also address violence against women, but despite strong language, they carry no enforcement mechanisms.

Critically, neither CEDAW nor any other international human rights treaty specifically identifies violence against women in its text. While charter-based mechanisms such as the Declaration on the Elimination of Violence Against Women (DEVAW) explicitly address

¹ Paula Tavares & Quen;exual Harassment," *The World Bank*, revised March 2018, 8. <http://pubdocs.worldbank.org/en/679221517425064052/EndingViolenceAgainstWomenandGirls-GBVLaws-Feb2018.pdf>.

² "Violence Against Women: Key Facts," *World Health Organization*, November 29, 2017. <http://www.who.int/news-room/fact-sheets/detail/violence-against-women>

and condemn violence against women, they are “soft law,”³ and are therefore non-binding.

Unlike at the international level, binding treaties aimed specifically at violence against women have been adopted at the regional level. These regional treaties consist of agreed-upon standards for addressing violence against women, prescribe their implementation, and monitor government compliance with those standards. By their nature, however, these regional tools do not reflect a global consensus.

This paper examines the current international and regional binding and non-binding legal instruments and their effectiveness in combating violence against women by discussing the context, strengths, and weaknesses of each of these mechanisms. While existing instruments have laid important groundwork and pioneered promising standards and practices, we ultimately conclude that the current fragmented efforts are inadequate. The result is a failure to effectively address this pervasive global issue with a unified global effort. It is time to seek new solutions. A binding international treaty on violence against women is needed to truly end the scourge that devastates the lives of so many women around the world.

Violence Against Women

For the purposes of this paper, the phrase “violence against women” refers to all those who identify as women, including girls.

³Soft law, in this context, is defined as human rights standards contained in a document that lacks binding legal force. See Dinah Shelton, ed, *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Oxford: Oxford University Press, 2000), 292.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is critical to women's human rights but is insufficient to effectively combat violence against women.

CEDAW is the only legally binding international treaty that directly addresses women's human rights. Yet it does not even contain the word "violence." It addresses violence against women only through the General Recommendations (GRs) that have been adopted subsequently to the treaty without ratification by States parties. A number of other conventions such as the International Covenant on Civil and Political Rights and the Convention against Torture have also been interpreted to address violence against women.

General Recommendations (GRs)

General Recommendations - interpretation of treaty provisions adopted by the CEDAW Committee without ratification by States parties.

However, because of CEDAW's fundamental importance to women's human rights, this paper focuses on its development, its multiple procedures, its contributions, and ultimately its inadequacy in responding to violence against women.

Although CEDAW has been in effect since 1981 and

CEDAW's broad scope means that violence against women is only one among many forms of discrimination addressed in reporting and vying for the Committee's attention and resources.

the GRs specifically addressing violence against women were first adopted in 1989, violence against women continues at pandemic levels throughout the world. As a result, many observers, activists, and academics have concluded that CEDAW is not the appropriate mechanism to end violence against women. CEDAW's broad scope means that violence against women is only one among many forms of discrimination addressed in reporting and vying for the Committee's attention and resources. Further,

conflating violence against women with discrimination results in an inadequate and incomplete description of the concept of violence against women as its own human rights violation.⁴

Because CEDAW defines the problem of achieving women's human rights as discrimination, its agenda for national action⁵ is based on that broad perspective. This agenda is aimed at ensuring women's equal access to opportunities in arenas in which discrimination occurs, such as political and public life, education, health, and employment. Thus, while the concept of discrimination may overlap with a thorough understanding of violence against women, it does not prioritize it. Even more important, the concept of discrimination is insufficient to describe violence as an essential violation of women's human rights. As one commenter noted, because "CEDAW does not mention the words 'rape,' 'assault,' or even 'violence,' [it] therefore provides an inadequate legal framework

to protect, defend, and guarantee women and girls the right to a life free from gender-based violence."⁶

Moreover, the CEDAW Committee's reliance on GRs to incorporate a ban on violence against women into the treaty is a source of ongoing disagreement about whether general recommendations are legally binding on States parties.⁷

Some experts and States parties say a GR is not binding because it is not in the body of the treaty that States specifically ratified.⁸ Even the CEDAW Committee has stated only that GRs constitute authoritative interpretation of the convention,⁹ falling short of explicitly stating that they are binding.

"CEDAW does not mention the words 'rape,' 'assault,' or even 'violence,' [it] therefore provides an inadequate legal framework to protect, defend, and guarantee women and girls the right to a life free from gender-based violence."

Although CEDAW has been an insufficient mechanism to end violence against women, it has been instrumental in raising awareness and understanding of the issue. In some cases, it has led to real improvement in the human rights of women and

⁴ Anna Saber & Francisco Rivera Juaristi, "Written submission prepared by the International Human Rights Clinic at Santa Clara University School of Law in response to the call for submissions issued by the UN Special Rapporteur on Violence Against Women," *Santa Clara Law*, October 1, 2016. http://1x937u16qcra1vnejt2hj4jl.wpengine.netdna-cdn.com/wp-content/uploads/161001_VAW-Questionnaire_SantaClaraHRC.pdf

⁵ "Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979," United Nations Treaty Series, vol. 1249, p. 13, available from https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf. (Original Document);

For a more reader-friendly version, please see: "CEDAW: Full text of the Convention in English," UN Women, last modified 2003. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

⁶ Saber & Rivera Juaristi, "Written submission," 2016.

⁷ Christine Chinkin, "Addressing Violence Against Women In The Commonwealth Within States' Obligations Under International Law," *Commonwealth Law Bulletin* 40, no. 3 (2014): 471-501. doi:10.1080/03050718.2014.931011.; Nora Abdul Hak, "The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW): With Reference To Violence Against Women And Trafficking In Women," *Journal Of Applied Sciences Research* 7, no. 13 (2011): 2326-2333. <http://www.aensiweb.com/old/jasr/jasr/2011/2326-2333.pdf>.

⁸ Marsha Freeman, Senior Fellow at the University of Minnesota Human Rights Center, interviewed by Alexandra Sevett, April 6, 2017, transcript.

⁹ Dubravka Šimonović, "Global And Regional Standards On Violence Against Women: The Evolution And Synergy Of The CEDAW And Istanbul Conventions," *Human Rights Quarterly* 36, no. 3 (2014): 590-606, doi:10.1353/hrq.2014.0040.

girls to live lives free from violence. The following discussion of CEDAW's language, procedures, and impact reveal the convention's strengths and weaknesses. It identifies the successes of CEDAW as a launchpad for a new treaty focused solely on violence against women, while demonstrating the limitations of a broad-based treaty.

Reservations

Unilateral statements by a party to a treaty to exclude or modify the legal effect of the treaty.

States parties to CEDAW agree to take measures to ensure that women can enjoy their human rights and fundamental freedoms by putting its provisions into practice (unless they have formally registered reservations to specific provisions). Countries that have ratified the Convention are required to submit periodic reports on actions they have taken to comply with treaty obligations. Today, 189 States have ratified CEDAW (only the United States, Iran, the Holy See, Somalia, Sudan, Tonga, and Palau have not).¹⁰

The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee or Committee) is the body of independent experts that monitors implementation of the Treaty.¹¹

While CEDAW does not contain a prohibition against violence against women, the language of the treaty has been interpreted as prohibiting violence against women as a form of discrimination. In its preamble, CEDAW cites "the dignity and worth of the human person and in the equal rights of men and women,"¹² a concept underlying women's right to be free from violence. Critical to addressing the issue of violence against women, CEDAW Article 2 requires States parties to take "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."¹³ However, although the convention includes language addressing some specific forms of violence against women, such as child marriage and forced marriage,¹⁴ it does not address the most common forms of violence against women, domestic violence and sexual violence. As discussed below, the CEDAW Committee has attempted to address this lack of an explicit prohibition of violence against women through GRs.

Prevalence of reservations is a basic weakness of CEDAW. Reservations by States parties diminish the treaty's effectiveness in general and in preventing and combating violence against women specifically.

¹⁰ "Status of Treaties: 8. Convention on the Elimination of All Forms of Discrimination against Women." United Nations Treaty Collection. 2018. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

¹¹ "Committee on the Elimination of Discrimination against Women." United Nations Human Rights Office of the High Commissioner. 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>.

¹² "CEDAW: Full text of the Convention in English. Preamble," UN Women, last modified 2003. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹³ "CEDAW: Full text of the Convention in English," UN Women, last modified 2003, art. 2. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹⁴ CEDAW, Art. 16(1)(a) and (b) states:

"States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent." Article 16 also provides that child marriage shall have no legal effect, and States are required to legislate a specific minimum age for marriage and require registration of marriages in an official registry. Article 16 also addresses reproductive decision-making. That article obligates States parties to eliminate discrimination relating to childbearing, including forced sterilization. It requires that women have the "rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights." ("CEDAW: Full text of the Convention in English," UN Women, last modified 2003, art. 16. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.)

CEDAW allows ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the convention.¹⁵ The CEDAW Committee has indicated that Articles 2 and 16 are clearly fundamental to the object and purpose of the treaty.¹⁶

Article 2 requires States parties to “embody the principle of equality of men and women” in their respective national constitutions or other appropriate legislation.¹⁷ Article 16 provides for equality in the family. The Committee has stated that it requires that all States parties gradually progress to a stage where each country will withdraw its reservations.¹⁸ Nonetheless, ratifying nations have cited reservations to essential provisions of CEDAW. Sixteen nations have entered reservations to all or part of Article 2, and 22 have entered reservations to Article 16.¹⁹ These reservations pose significant challenges to full implementation of CEDAW’s priorities.

A substantial number of reservations to CEDAW are based on contradictions between cultural or religious beliefs and practices and convention language. Some reservations are based on practical concerns.

India, for example, in trying to justify its reservation to Article 16, argues that though “it fully supports the principle of compulsory registration of marriage, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.”²⁰ Monaco maintains a reservation to Article 16, paragraph 1 (e), “to the extent that the latter can be interpreted as forcing the legalization of abortion or sterilization,”²¹ presumably a nod to its official State religion of Roman Catholicism. Some Islamic nations cite contradictions with Sharia law as the reason for reservations to Articles 9, 15 and 16.²² For example, Pakistan explicitly argues that CEDAW is in direct conflict with Sharia law²³ because of the role of women and their obligations under Sharia law. Even when gender roles in States parties are no longer dictated by religion, lingering cultural norms may hinder the acceptance of CEDAW language. For example, Confucian beliefs that once explicitly prevailed in China support the dominance of the man and his socioeconomic control over a woman and may still affect gender roles today.²⁴

Reservations are a serious issue within the CEDAW treaty system because they indicate a State’s decision

15 Vienna Convention On The Law Of Treaties,” United Nations Treaty Collection, 1969. <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

16 “Marsha A. Freeman, “Reservations To CEDAW: An Analysis For UNICEF,” *Policy and Practice*, December 2009. https://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf

17 Ibid.

18 Please see General recommendation No. 21 -- thirteenth session, 1994 equality in marriage and family relations,” subsections 44 and 48(a). (“Committee on the Elimination of Discrimination Against Women: General Recommendations,” OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>)

19 “Status of Treaties: 8. Convention on the Elimination of All Forms of Discrimination against Women,” United Nations Treaty Collection, 2018. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg_no=IV-8&chapter=4&lang=en.

20 Ibid.

21 Ibid.

22 Ibid.

23 Anita M. Weiss, “Interpreting Islam And Women’s Rights,” *International Sociology* 18, no. 3 (2003): 581-601, doi:10.1177/02685809030183007.

24 Marianne Hester, “Future Trends And Developments,” *Violence Against Women* 10, no. 12 (2004): 1431-1448, doi:10.1177/1077801204270559.

to comply with only parts of the treaty. In some cases, reservations suggest that a States party is not yet able to implement provisions in the treaty or that, even though the State is not unequivocally committed to all the norms articulated in the treaty, it wants to remain a part of the conversation.²⁵ Reservations to Articles 2 and 16 strike at fundamental purposes of CEDAW such as legal capacity and equality in the family. These reservations clearly impact the effectiveness of the treaty by reflecting the limits on measures a State is willing to take to address serious issues of discrimination against women, and specifically violence against women.

A new treaty cannot escape the undesirable impact of reservations.²⁶ However, the fresh energy that will accompany its adoption may provide a new opportunity to discourage States parties from using this mechanism to avoid obligations under the treaty.

The implementation mechanisms for CEDAW have significant shortcomings.

CEDAW is implemented and enforced through three mechanisms: (1) interpretation of its terms through GRs; (2) a reporting procedure for States parties to engage in a dialogue with CEDAW committee members regarding their compliance with the treaty;

and (3) an Optional Protocol by which the Committee adjudicates alleged violations of the treaty. While these mechanisms strengthen the effectiveness of the treaty generally, they have significant shortcomings in responding to violence against women.

General Recommendations 12, 19, and 35 address violence against women²⁷ but lack power and specificity.

As previously noted, the word violence does not appear in the text of CEDAW. This failure can be attributed to both the understanding of the issue of violence at the time of drafting and the somewhat late entry of the issue into the international agenda.²⁸ At the time that CEDAW was being drafted, comprehensive discussions about violence against women were not a part of human rights discourse. Domestic violence, the most common form of violence against women, was considered a “private” issue and not the responsibility of States.

During the drafting of Article 6, which requires States parties to suppress trafficking and prostitution of women, the delegation from Belgium proposed including the words “attacks on the physical integrity of women.” The Belgium delegation observed that, while in most countries such acts are legally disavowed and punished, they nevertheless continue

²⁵Freeman, “Reservations to CEDAW,” 2009.

²⁶As required by the 1969 Vienna Convention on the Law of Treaties. (“Vienna Convention On The Law Of Treaties,” United Nations Treaty Collection, 1969.)

²⁷The CEDAW Committee also adopted GR 30 in 2013, “on women in conflict prevention, conflict and post-conflict situations.” (“Committee on the Elimination of Discrimination Against Women: General Recommendations,” OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

²⁸Marsha A Freeman, C. M. Chinkin, and Beate Rudolf, *The UN Convention On The Elimination Of All Forms Of Discrimination Against Women: A Commentary*, (Oxford: Oxford University Press, 2012).

to form part of customs and tradition.²⁹ The proposal, which was apparently the only attempt to include any direct reference to violence against women in the convention, was rejected.³⁰

Over time, violence against women began to be accepted as a human rights issue that should be included in the broader international human rights framework. In 1989, recognizing CEDAW's gap regarding the issue of violence, the CEDAW Committee adopted GR 12.³¹ According to GR 12, States parties are required "to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life."³²

GR 12 clearly had an impact. Prior to its adoption, 14 States parties had provided information on violence against women in their reports or their presentations

GR
19 explicitly states
that "gender-based violence,
which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination."

to the CEDAW Committee. Following adoption of GR 12, an additional 24 States parties reported on violence against women, 51 percent of all States parties at the time. This rapid increase in reporting on violence against women suggests that many States parties did not consider violence to be covered by CEDAW before it was explicitly recognized

in GR 12.³³

In 1992, the Committee adopted a second and more comprehensive recommendation, GR 19, explicitly stating that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination."³⁴ GR 19 further defines discrimination as including gender-based violence,

29 "Summary Record of the 638th Meeting," UN Doc. E/CN.6/SR.638, (UN Economic and Social Council - Commission on the Status of Women, 26th Session, Geneva, September 17, 1976). http://uvalisc.s3.amazonaws.com/travaux/s3fs-public/E-CN_6-SR_638.pdf?null.

30 Freeman, Chinkin, & Rudolf, *The UN Convention On...*, 2012

31 "CEDAW: Full text of the Convention in English," UN Women, last modified 2003, art. 2. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

32 Please see "General recommendation No. 12 -- eighth session, 1989 violence against women." ("Committee on the Elimination of Discrimination Against Women: General Recommendations," OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

33 "Consideration of Proposals Concerning a New Instrument or Instruments of International Law to Eliminate Discrimination Against Women: Working Paper by the Secretary-General," UN Doc. E/CN.6/573, (UN Economic and Social Council - Commission on the Status of Women, 25th Session, New York, November 6, 1973). http://uvalisc.s3.amazonaws.com/travaux/s3fs-public/E-CN_6-573.pdf?null;

Lars Adam Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of all Forms of Discrimination against Women* (Dordrecht; Boston: M. Nijhoff Publishers, 1993), 338.

34 GR 19 states that gender-based violence impairs or nullifies women's enjoyment of the following rights and freedoms:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;

which is “violence that is directed against a woman because she is a woman or that affects women disproportionately.” Such violence “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”³⁵

A 2006 report by the UN Secretary General reflected on the importance of GR 19, stating “this analysis added the issue of violence against women to the terms of the Convention and the international legal norm of non-discrimination based on sex and, thus, directly into the language, institutions and processes of human rights.”³⁶ GR

19 also directed States parties to include in reports to the Committee statistical data on violence against women, legislative and other measures taken to protect women from violence, and information on provision of services for victims.³⁷ GR 19 clarified that CEDAW applies to both public and private actors,

thus making it clear that States are responsible for violence traditionally seen as occurring within the private life of citizens.³⁸

On July 14, 2017, the Committee updated GR 19 by adopting GR 35. Like in GR 19, the CEDAW Committee confirmed that violence against women constitutes a violation of the convention as a form of discrimination. The CEDAW Committee states in GR 35 that it was marking the 25th anniversary of the adoption of GR 19 by providing States parties with further guidance aimed at accelerating the elimination of gender-based violence against women.

The Committee acknowledged that despite advances, gender-based violence against women, whether committed by States, intergovernmental organizations

Yet for all of the improvements of GR 35 as compared to GR 19, it nevertheless lacks the specificity necessary to give States parties notice and specific guidance in eliminating violence against women.

(g) The right to the highest standard attainable of physical and mental health;
(h) The right to just and favorable conditions of work.

Please see “General recommendation No. 19 -- eleventh session, 1992 violence against women.” (“Committee on the Elimination of Discrimination Against Women: General Recommendations,” OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.);

See also “General recommendation No. 28 -- forty-seventh session, 2010 - The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.” (“Committee on the Elimination of Discrimination Against Women: General Recommendations,” OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

35 Please see “General recommendation No. 19 -- eleventh session, 1992 violence against women.” (“Committee on the Elimination of Discrimination Against Women: General Recommendations,” OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

36 “In-depth study on all forms of violence against women: Report of the Secretary-General,” UN Doc. A/61/122/Add.1, (UN General Assembly, 61st Session, New York, July 6, 2006), 14 par. 31.

37 Please see “General recommendation No. 19 -- eleventh session, 1992 violence against women.” (“Committee on the Elimination of Discrimination Against Women: General Recommendations,” OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

38 Martha Nussbaum, “Women’s Progress and Women’s Human Rights,” *Human Rights Quarterly* 38, no. 3 (August 2016): 589–622. <https://muse.jhu.edu/article/627628>

or non-State actors, including private persons and armed groups, remains pervasive in all countries of the world, with high levels of impunity. It manifests in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and in the contemporary globalized world it transcends national boundaries.³⁹

One noted improvement in GR 35 is the CEDAW Committee's use of stronger language in defining the obligation of States to combat violence against women. GR 35 refers to "State party obligations,"⁴⁰ whereas GR 19 used the less emphatic phrase, "specific recommendations." In GR 19, specific recommendations for States parties' actions started with the word "should." For example, paragraph 24 (c) states that States "should encourage the compilation of statistics and research...."⁴¹ In GR 35, this similar duty is stated directly: "Establish a system to regularly collect, analyze and publish statistical data...."⁴² GR 35 explicitly states that States parties have an "obligation of due diligence" to take all appropriate measures to eliminate violence against women by any "person, organization or enterprise."⁴³ It emphasizes that this obligation applies to acts by both State and non-State actors; States will be held responsible if they fail to take appropriate measures to prevent, investigate, prosecute, and provide

reparations for acts or omissions which result in violence against women.

Yet for all of the improvements of GR 35 as compared to GR 19, it nevertheless lacks the specificity necessary to give States parties notice and specific guidance in eliminating violence against women. Importantly, although it suggests that States parties strengthen civil remedies,⁴⁴ it does not specifically address how to strengthen civil protection orders, such as specifying the terms of such orders or criminalizing violations. Further, GR 35 does not identify violence as an intersectional form of oppression, failing to recognize differing experiences of women by race, socioeconomic status, geographic region, parental status, and other bases for oppression. While stating that the convention requires the harmonization of existing religious, customary, indigenous, community system, and any other norms with the convention standards⁴⁵, it provides no concrete guidance in how to carry out this difficult task.

Numerous factors impede adequate reporting on violence against women to the CEDAW Committee.

CEDAW's monitoring mechanism requires States parties to submit compliance reports every four years.

³⁹Please see "General recommendation No. 35 -- sixty-seventh session on gender-based violence against women, updating general recommendation No. 19." ("Committee on the Elimination of Discrimination Against Women: General Recommendations," OHCHR, last modified 2018, 3. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

⁴⁰Ibid., 8.

⁴¹"Report of the Committee on the Elimination of Discrimination against Women: Eleventh session," UN Doc. A/47/38, (UN General Assembly,

⁴²Please see "General recommendation No. 35 -- sixty-seventh session on gender-based violence against women, updating general recommendation No. 19." ("Committee on the Elimination of Discrimination Against Women: General Recommendations," OHCHR, last modified 2018, 18. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.)

⁴³Ibid., 9.

⁴⁴Ibid., 11.

⁴⁵Ibid., 10.

GR 19 made it clear that the CEDAW Committee expects States parties to include in their reports information on the prevalence of violence against women and the measures they are taking to combat the problem. While reporting has come to include information on violence against women, the CEDAW Committee's treatment of the issue is inconsistent. The Committee simply cannot give the issue the attention it requires because of the extensive scope of issues covered in reporting.

States parties must report on rates and types of violence against women, the measures taken to address the issue through legislation, prevention, service provision, and access to justice for victims.⁴⁶ In 2014, the CEDAW Committee offered a simplified reporting procedure, requesting States parties to respond to a list of issues (LOI) that are transmitted to each State to guide reporting.⁴⁷

In addition to responding to the LOI, many States also respond to the CEDAW Committee's previous Concluding Observations issued to that State.

Based on 26 State reports⁴⁸ reviewed for this analysis, the Committee is including violence-related issues in its LOIs. violence against women was addressed at

least once in each of the 26 reports, with most States discussing the topic in several places. The types of violence most reported on were sexual violence and domestic violence. Often the discussions of violence against women were direct responses to previous Concluding Observations⁴⁹ or the LOIs issued by the Committee. Upon reviewing LOIs and Concluding Observations, it is clear that the CEDAW Committee

expects to have a productive exchange with States parties on the issue of violence against women.



The CEDAW Committee responds to State reports in its Concluding Observations. Its recommendations range from broad suggestions, such as establishing a national plan to combat violence against women or allocating resources in State

budgets, to more specific recommendations such as "eliminating the requirement of a medical certificate to initiate criminal proceedings for rape."⁵⁰ The

Concluding Observations

The report issued by the CEDAW Committee after consideration of a State party's report and other information relevant to the LOI.

46 Please see "General recommendation No. 12 -- eighth session, 1989 violence against women" and "General recommendation No. 19 -- eleventh session, 1992 violence against women." ("Committee on the Elimination of Discrimination Against Women: General Recommendations," OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>)

47 "Committee on the Elimination of Discrimination Against Women: Simplified Reporting Procedure," OHCHR, last modified 2018. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/ReportingProcedures.aspx>.

48 Please see Appendix B.

49 Please see Appendix C.

50 "Concluding observations on the combined fifth and sixth periodic reports of Burundi," UN Doc. CEDAW/C/BDI/CO/5-6, (UN Committee on the Elimination of Discrimination against Women, November 25, 2016. <http://undocs.org/en/CEDAW/C/BDI/CO/5-6>).

degree of specificity in Concluding Observations is inconsistent, however, and they remain uneven in length, detail, and strength.⁵¹

On a superficial level, States parties appear to be making progress in addressing violence against women in their reporting to the Committee.

The regular inclusion of recommendations on the subject in the Committee's Concluding Observations demonstrate that it considers violence against women to be a priority within the larger "constructive dialogue"⁵² between States and the CEDAW Committee. Both the Committee and many States seem to accept that violence against women is a violation of CEDAW and a form of discrimination against women.

Nevertheless, issues of structure, resources, expertise, and time constraints continue to hinder the Committee from exploring all facets of violence against women in its monitoring function.⁵³ States do not report on violence against women in a uniform way. Shadow reports by NGOs indicate that official reports lack complete information on the status of violence against women.⁵⁴ Also, because the function of the Committee is to engage in a dialogue and

encourage States to change laws and practices involving gender discrimination generally, Concluding Observations do not address the issue of violence against women in-depth.⁵⁵ This lack of consistent focus hinders the Committee's ability to significantly impact the global problem of violence against women.

The Optional Protocol's complaint and inquiry procedure has limited effectiveness.

The CEDAW Optional Protocol (OP) is a complaint and inquiry procedure that is a treaty in its own right, requiring separate ratification for States to be bound by its requirements. The OP allows the CEDAW Committee to move beyond official State reporting in addressing discrimination against women. The OP has two procedures. First, it allows the Committee to receive complaints from individuals and groups after all local and national legal options have been exhausted. Second, the Committee may initiate its own inquiries of grave and systemic violations of CEDAW.⁵⁶ The OP covers all aspects of the treaty, not only violence against women.

States that have ratified the OP recognize that the

51 M.R. Bustelo, "The Committee On The Elimination Of Discrimination Against Women At The Crossroads," in *The Future Of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford, 1st ed. (Cambridge: Cambridge University Press, 2000), 79–111.

52 "CEDAW: Reservations to CEDAW," *UN Women*, last modified 2009. <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>.

53 Ronagh J.A. McQuigg, "The Responses Of States To The Comments Of The CEDAW Committee On Domestic Violence," *The International Journal Of Human Rights* 11, no. 4 (2007): 473, doi:10.1080/13642980701659989.

54 See for example, "Juárez and Chihuahua War on Drugs and CEDAW Recommendations: Shadow Report to CEDAW 52ND Session – Review on Mexico," *Center for Women's Human Rights, Justice for our Daughters, Mukira A.C.* 2012. http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CEDEHM-JPNH-MUKIRA_ForTheSession_E.pdf;

"South African Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women," Centre for the Study of Violence and Reconciliation, People Opposing Women Abuse, & Western Cape Network on Violence Against Women, 2011. http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Joint_NGO_Report_for_the_session_SouthAfrica.pdf.

55 Christine Chinkin, "Addressing Violence Against Women In The Commonwealth Within States' Obligations Under International Law," *Commonwealth Law Bulletin* 40, no. 3 (2014): 471–501, doi:10.1080/03050718.2014.931011.

56 *Ibid.*

Committee is the “competent monitoring body” for CEDAW, with additional authority to act as a quasi-judicial body.⁵⁷ Unlike most OPs,⁵⁸ CEDAW’s includes an “opt-out” clause that allows States to agree to the complaint process but not the inquiry process.⁵⁹ As of 2018, 80 States have ratified the OP, with five nations (Bangladesh, Belize, Colombia, Cuba, and Tajikistan) opting out of the inquiry process.⁶⁰

At the time that CEDAW was drafted, some delegates suggested that it include a complaint mechanism. Other delegates objected, claiming that complaints procedures were only for “‘serious international crimes’ such as apartheid and racial discrimination, rather than discrimination against women.”⁶¹ It took more than 20 years before the General Assembly adopted the CEDAW OP in 1999. It is possible that the adoption of GR 19 contributed to the conclusion that violations of CEDAW are serious enough to warrant a complaint mechanism.

As of 2018, the CEDAW Committee has considered 72 cases under the complaint procedure and has made four inquiries under the inquiry procedure. Of the 72 individual communications, the Committee has

At the time that CEDAW was drafted, some delegates suggested that it include a complaint mechanism. Other delegates objected, claiming that complaints procedures were only for ‘serious international crimes’ such as apartheid and racial discrimination, rather than discrimination against women.

accepted 33 cases (46 percent of those submitted) for consideration on the merits. Of the 39 communications that were rejected for consideration, 27 involved violence against women.⁶² These denials suggest that the hurdles to obtaining consideration may be excessively high. Not all Committee members agreed about the inadmissibility of these cases, with some writing dissenting opinions. Unfortunately, these

57 “Optional Protocol To The Convention On The Elimination Of All Forms Of Discrimination Against Women,” *UN Women*, December 22, 2000. <http://www.un.org/womenwatch/daw/cedaw/protocol>.

58 For examples of OPs without opt-outs, please see:

“Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, OHCHR, last updated 2018. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>.

“Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,” UN Doc A/RES/54/263, OHCHR, last updated 2018. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACRC.aspx>.

“Optional Protocol to the International Covenant on Civil and Political Rights,” OHCHR, last updated 2018, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>.

59 “Optional Protocol To The Convention On The Elimination Of All Forms Of Discrimination Against Women,” *UN Women*, December 22, 2000. <http://www.un.org/womenwatch/daw/cedaw/protocol>.

60 “Status of Treaties: 8. b Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.” *United Nations Treaty Collection*. 2018. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en.

61 “Convention on the Elimination of All Forms of Discrimination Against Women: History of the Optional Protocol,” *UN Women*, December 1, 2003. <http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm>.

62 “Treaty Body Database,” *OHCHR*, Last modified 2018. https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/TBSearch.aspx?Lang=en&DocTypeID=17&DocTypeCategoryID=6.

dissents offer little comfort to victims.

In some instances, the CEDAW Committee's inadmissibility decisions seem incomprehensible in light of the physical and psychological trauma victims have endured and national governments' failure to take action. In *Zhen Zhen Zheng v. The Netherlands*, an asylum case, the CEDAW Committee rejected the communication of a woman who alleged trafficking, rape, and slavery. After multiple rounds of filings and appeals within the Netherlands, Ms. Zheng invoked the OP procedure in her effort to claim asylum. Despite evidence of trafficking and abuse, the Netherlands chose to focus on immigration issues to question the legitimacy of her case. The CEDAW Committee agreed that the case was inadmissible.⁶³

In another asylum case, *S.F.A. v. Denmark*, the complainant left her home of Somalia after being subjected to FGM, promised to a much older man, and forced to get an abortion to conceal a private relationship. She eventually received death threats from her father and brothers. Officials in Denmark questioned the legitimacy of the woman's statements and also ignored the death threats. The CEDAW Committee agreed with Denmark and rejected the case.⁶⁴ These cases and others demonstrate the inadequacy of the OP as an international forum

to address violence against women. In addition to the difficulty in obtaining consideration by the CEDAW Committee, the OP has other strengths and weaknesses for addressing violence against women.

Two cases from Hungary demonstrate both willingness and refusal by a State to accept the recommendations of the CEDAW Committee. The Committee's first case addressing domestic violence was *A.T. v. Hungary* in 2005.⁶⁵ A.T.'s husband abused her for four years. She was unable to obtain a protection order because such orders did not exist in Hungary and she was unable to secure refuge at a shelter. The CEDAW Committee determined that Hungary failed in its duty to protect A.T. from serious risk to her physical integrity, physical and mental health, and her life from her former partner. Hungary first refused to comply with the Committee's recommendation to provide compensation to A.T. However, the State eventually responded that it had adopted new legislation prohibiting discrimination and creating restraining orders.⁶⁶ It also provided the Committee information on shelters, training, and implementation of a national plan of action.⁶⁷

At the same time the CEDAW Committee was completing its follow-up on A.T., it issued its decision in *A.S. v. Hungary*. The Committee found that Hungary

63 "Zhen Zhen Zhang v. The Netherlands," CEDAW Comm. No. 15/2007, UN Doc. CEDAW/C/42/D/15/2007, (October 27, 2008). http://www2.ohchr.org/english/law/docs/CEDAW.C.42.D.15.2007_en.pdf.

64 "S.F.A. v. Denmark," CEDAW Comm No. 85/2015, UN Doc. CEDAW/C/69/D/85/2015, (February 26, 2018). <http://undocs.org/CE-DAW/C/69/D/85/2015>.

65 Jane Connors, "Development of CEDAW Jurisprudence under the Optional Protocol," (Speech delivered at CEDAW: 30 Years of Working for Women's Rights, Istanbul, November 1-3, 2012). Available online at http://www2.ohchr.org/english/bodies/cedaw/docs/Statements/JaneConnors_StatementIstanbul.pdf.

66 Ibid.

67 Ibid.

violated CEDAW when a doctor at a public hospital sterilized A.S. without her consent.⁶⁸ In that case, Hungary rejected the Committee's recommendations and initially refused to provide compensation to A.S.⁶⁹ Not fully ignoring the Committee's recommendations, however, Hungary reported that it had provided psychiatric support to A.S. Later, Hungary reported that it had compensated her for the harm. Notably, the Committee did not press the issue of compensation in A.T., which involved private actors, as it did in A.S., which involved State actors.

In contrast to *A.S. v. Hungary*, CEDAW's individual complaint mechanism appears to have been more effective in addressing violence against women in two complaints brought against Austria.⁷⁰ *Goekce v. Austria* and *Yildirim v. Austria*⁷¹ were 2004 cases that involved the murders of two women by their husbands. The

CEDAW Committee recommended that Austria take measures to strengthen its implementation and monitoring of criminal laws. Austria responded quickly by amending laws and providing victims with services and expanded rights.⁷² Notably, in its response to the Committee's recommendations, Austria emphasized that it "[does] not regard protection against domestic violence as the individual victim's problem, but as a concern of public security."⁷³

CEDAW's OP has provided relief to victims in some cases of violence against women and has influenced some government practices. Yet, other governments have felt free to ignore the CEDAW Committee's recommendations. This spotty record and the difficulty in obtaining consideration by the Committee indicate the inadequacy of this CEDAW mechanism as a response to violence against women.

68 "A.S. v. Hungary," *CEDAW Comm. No. 4/2004*, UN Doc. CEDAW/C/36/D/4/2004, ¶ 11.5 (August 14, 2006). http://www2.ohchr.org/english/law/docs/Case4_2004.pdf.

69 "Hungary: Follow-up Jurisprudence Action by Treaty Bodies," Annex XII Report of the Committee under the Optional Protocol on follow-up to views of the Committee on individual communications, UN Doc. CEDAW, A/64/38, 2009. Available at http://www.bayefsky.com/html/hungary_cedaw_follow_juris.php.

Hungary noted that the Public Foundation for the Rights of Patients Welfare Recipients and Children was tasked with advising on the appropriate amount of compensation to be provided. Later Hungary informed the Committee that the issue of compensation was outside of the Public Foundation's scope of work because the case had already gone through the court system.

70 "Goekce v. Austria," *CEDAW Comm. No. 5/2005*, UN Doc. CEDAW/C/39/D/5/2005, (Aug. 6, 2007). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/495/43/PDF/N0749543.pdf?OpenElement>

71 "Yildirim v. Austria," *CEDAW Comm. No. 6/2005*, UN Doc. CEDAW/C/39/D/6/2005, (Oct. 1, 2007). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement>

72 "Austria: Follow-up Jurisprudence Action by Treaty Bodies," Annex XII: Report of the Committee under the Optional Protocol on follow-up to Views of the Committee on Individual Communications, UN Doc. CEDAW, A/64/38, 2009. Available at http://www.bayefsky.com/html/austria_cedaw_follow_juris.php.

In Austria's response to the Committee's decisions, it reported on the following statutory changes:

- Providing free support from psycho-social and legal experts throughout criminal proceedings;
- Changes to interrogation procedures to minimize the distress caused;
- Imposing pre-trial detention if the offender ignores pledge to refrain from pre-trial contact with victim or family apartment;
- Informing victims of pre-sentence release of perpetrator;
- Elimination of victim authorization for criminal prosecution in cases of dangerous threats, with victim right to lodge a claim for the investigation procedure to be continued if it is dropped by the public prosecutor;
- Requirement to speed up criminal proceedings;
- Training special prosecutors in domestic violence;
- Initiating round tables to bring together representatives of regional courts and public prosecutor offices with local victim protection entities;
- Establishing a "working party on domestic violence."

The response also noted an increase in the financial resources allocated to intervention centers from 3.3 million euros in 2006 to 5.6 million euros in 2008.

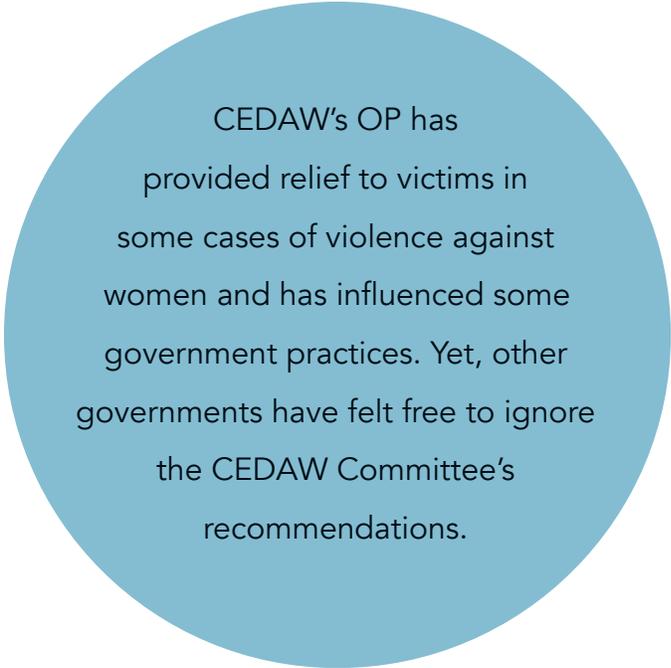
73 "Comments by the Republic of Austria on the Recommendations made by the CEDAW Committee on August 6, 2007 concerning the Communications Sahide Goekce, No. 5/2005 and Fatma Yildirim, No. 6/2005," Republic of Austria Federal Ministry of Health and Women's Affairs, 2008. Available at https://www.bmgf.gv.at/cms/home/attachments/1/1/4/CH1554/CMS1466510561255/cedaw_com_op5_6_26062.pdf.

The effectiveness of CEDAW implementation has been mixed.

CEDAW has been inconsistently implemented at the national level.

The most meaningful way to implement international law is through national legislation, local legislation, courts, and administrative agencies.⁷⁴ Measuring effective implementation of CEDAW standards can be difficult, and measuring efforts to combat violence against women is even more challenging.

As a treaty that has been ratified by most nations in the world, CEDAW can be cited by courts, particularly when combined with additional mechanisms, UN special procedures, or pressure from domestic groups.⁷⁵ Key court decisions can set a precedent that expands or contracts the implementation of human rights norms in domestic settings.⁷⁶ However, national courts have enforced the provisions of international human rights law in only a few cases that involve the rights of women. In these cases, domestic courts have used the convention to uphold plaintiffs' claims. *Vishaka v. State of Rajasthan*, a 1997 case, is an example of how CEDAW has been successfully used in a national court to address violence against women. In *Vishaka*, women's groups and NGOs in India brought a



CEDAW's OP has provided relief to victims in some cases of violence against women and has influenced some government practices. Yet, other governments have felt free to ignore the CEDAW Committee's recommendations.

petition on sexual harassment in the workplace before the Supreme Court.⁷⁷ After a social worker was raped, the women argued that they were unsafe and unprotected from harassment in the workplace because both the employer and the legal system failed to address the problem. The petitioners cited CEDAW, arguing that India had ratified the convention and therefore, India was obligated to uphold the rights of women in the workplace.⁷⁸ The Court accepted the argument and noted that, in the absence of domestic law, the contents of international conventions and norms can be applied to formulate effective measures to combat sexual harassment in the workplace.⁷⁹

⁷⁴David S. Weissbrodt & Frank Newman, *International Human Rights: Law Policy, and Process*, 1st ed., (Cincinnati, OH: Anderson Publishing, 1990).

⁷⁵Ibid.

⁷⁶Weissbrodt & Newman, *International Human Rights*, 1990.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹Ibid.

NGOs strengthen the effectiveness of CEDAW in combating violence against women.

NGOs constitute a powerful force for effectively implementing CEDAW. As many human rights experts point out, NGO shadow reporting to the CEDAW Committee provides an opportunity to present a full picture of the condition of women's rights in individual member States.⁸⁰ Often, governments' reports of their own efforts to comply with CEDAW are incomplete and tend to minimize problems and maximize accomplishments.⁸¹

NGO reports, in contrast, usually adopt a more critical approach and often provide a more accurate and informative assessment of the situation of women in a State. The Committee invites direct NGO input, in the form of shadow reports and oral presentations, with the goal of bringing women's real concerns to national and international attention.⁸² The term "shadow report" reflects the idea that they "shadow" or supplement the States party reports, providing

information to fill in gaps and correcting inaccurate statements, as well as indicating priorities that may differ from those of the government.⁸³

The CEDAW Committee also asks governments to involve NGOs in the reporting process. For example, the Committee has asked Switzerland to work with NGOs to "analyse the link between the uncontrolled possession of arms by men in the State party"⁸⁴ and its impact on women and girls. It has similarly called on Turkey to cooperate with NGOs in finalizing their "national action plan for the implementation of Security Council resolution 1325."⁸⁵ The Committee has also lauded the Netherlands' endeavors to collaborate with NGOs, and has expressed concern over reports that Estonia excluded NGOs⁸⁶ from its consultation plan for rural development.⁸⁷

In addition to providing information to the CEDAW Committee, NGOs also invoke CEDAW obligations through their domestic advocacy by using the language of the treaty and the Committee's Concluding Observations.⁸⁸ They galvanize their national governments to comply with treaty

80 McQuigg, "The Responses of States...", 2007.;

Marsha A. Freeman, "The Committee On The Elimination Of Discrimination Against Women And The Role Of Civil Society In Implementing International Women's Human Rights Norms," *New England Journal Of International And Comparative Law* 16 (2010): 25-48.

81 "Producing Shadow Reports to the CEDAW Committee: A Procedural Guide," *International Women's Rights Action Watch*, 2008. <http://hrlibrary.umn.edu/iwraw/proceduralguide-08.html>.

82 Ibid.

83 Freeman, "The Committee On...", 2010.

84 "Concluding observations on the combined fourth and fifth periodic reports of Switzerland," UN Doc. CEDAW/C/CHE/CO/4-5, *Committee on the Elimination of Discrimination against Women*, November 25, 2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/99/PDF/N1640299.pdf?OpenElement>.

85 "Concluding observations on the seventh periodic report of Turkey," UN Doc. CEDAW/C/TUR/CO/7, *Committee on the Elimination of Discrimination against Women*, July 25, 2016. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUR%2fCO%2f7&Lang=en.

86 "Concluding observations on the sixth periodic report of the Netherlands," UN Doc. CEDAW/C/NLD/CO/6, *Committee on the Elimination of Discrimination against Women*, November 24, 2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/93/PDF/N1640293.pdf?OpenElement>.

87 "Concluding observations on the combined fifth and sixth periodic reports of Estonia," UN Doc. CEDAW/C/EST/CO/5-6, *Committee on the Elimination of Discrimination against Women*, November 18, 2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/80/PDF/N1640280.pdf?OpenElement>.

88 Ibid.

obligations in national law, policies, and their implementation. NGOs also publicize the State's obligations under CEDAW and its failure to comply. This combination of domestic and international pressure can influence States to fulfill their obligations.

National implementation of CEDAW varies based on a number of factors.

A 2013 study on the effect of CEDAW on national and international law found that CEDAW implementation varies according to a member country's legal, political, economic, social, and cultural contexts.⁸⁹ The following factors appear to impact the effectiveness of CEDAW integration into national legislative and judicial decisions: 1) the availability of other international and legal mechanisms; 2) the degree of democracy; 3) the nature of the legal system and dominant legal culture; 4) the State's motivations for ratification and the democratic elements in the process of ratification and monitoring; 5) the levels of legal education of duty bearers and rights holders; and 6) the strength of civil society and its national, regional, and international networks.⁹⁰

Countries with strong regional mechanisms and laws

tend to rely more heavily on their regional systems. In Europe, for example, there is significant reliance on the Council of Europe, the European Union, and the European Court of Human Rights; in the Americas, governments are more likely to rely on the Inter-American system rather than CEDAW.⁹¹

Countries with no regional treaties available to them, such as countries in South Asia, may rely more heavily on CEDAW language in national legislation and court interpretations, though not without challenges. For example, State and non-State actors in Australia used CEDAW as a vehicle for passing the Sex Discrimination Act (SDA) of 1984.⁹² Some experts believe that the SDA was a direct result of Australia's ratification of CEDAW one year earlier.⁹³

In another example, Pakistan ratified CEDAW in 1996, at the urging of a strong civil society and some governmental factions.⁹⁴ Although tensions remain between the formal law and governmental policy on the one hand, and religious practice and beliefs on the other,⁹⁵ ratification allowed the issue of women's rights to advance at the national level through the creation of the National Commission on the Status of Women and the Women Minister Forum.⁹⁶ CEDAW became a

89 Anne Hellum & Henriette Sinding Aasen, eds. *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge: Cambridge University Press, 2013).

90 Beth A Simmons, *Mobilizing for Human Rights*, 1st ed. (Cambridge, New York: Cambridge University Press, 2009).;

Hellum and Sinding Aasen, *Women's Human Rights*, 2013.

91 Hellum and Sinding Aasen, *Women's Human Rights*, 2013.

92 Andrew Byrnes, "The Implementation of the CEDAW in Australia: success, trials, tribulations and continuing struggle," in *Women's Human Rights: CEDAW in International, Regional and National Law*, eds. Anne Hellum & Henriette Sinding Aasen (Cambridge: Cambridge University Press, 2013), 323-357.

93 Ibid.

94 Shaheen Sardar Ali, "From ratification to implementation: 'domesticating' the CEDAW in State, government and society. A case study of Pakistan," in *Women's Human Rights: CEDAW in International, Regional and National Law*, eds. Anne Hellum & Henriette Sinding Aasen (Cambridge: Cambridge University Press, 2013), 430-453.

95 Ibid.

96 Ibid.

part of training programs run by governmental bodies and NGOs.⁹⁷ So far, however, no steps have been taken to incorporate CEDAW into national legislation in Pakistan, even though it is required to do so by CEDAW and the Pakistan Constitution.⁹⁸

Conclusion: CEDAW is not an effective tool for combating violence against women.

CEDAW's effectiveness as a tool to combat violence against women is tied to its strengths and weaknesses as a mechanism to monitor and implement all women's human rights standards. It is generally agreed that CEDAW and other international conventions are important, not only for their direct legal value, but also because they provide a framework for people to network across national boundaries and develop a sense of common purpose, a common set of standards, and a way to measure progress.⁹⁹ At the international level, CEDAW has increased attention to gender issues within the UN human rights framework¹⁰⁰ and has specifically called attention to structural issues that must be addressed.¹⁰¹

One major criticism of CEDAW is the vague language of some of the standards¹⁰² – a particularly apt criticism regarding violence against women. To remedy this, the CEDAW Committee has adopted GRs to interpret the text of the convention and link the vague language to concrete duties¹⁰³. In addition, while CEDAW Committee decisions and recommendations are often directed towards a particular State, they also inform all States parties on how the Committee understands obligations under the convention and what constitutes a violation of those obligations.¹⁰⁴

Academic experts have argued that the real strength of CEDAW is that the CEDAW Committee is an enforcement mechanism for the treaty.¹⁰⁵ While it is self-evident that the Committee exists to give teeth to the treaty, it is a less than robust enforcement mechanism for a number of reasons. The amount of time allocated by the Committee for the consideration of reports is generally seen as inadequate and has led to delays in the reporting system.¹⁰⁶ In addition, many States have failed to submit reports or do so only after a long delay. Likewise, the Optional Protocol is only as strong as the resources available to implement it

97 Ibid.

98 Ibid.

99 Nussbaum, "Women's Progress...", 2016.

100 Susanne Zwingel, "From Intergovernmental Negotiations To (Sub)National Change," *International Feminist Journal Of Politics* 7, no. 3 (2005): 400-424, doi:10.1080/1461674050016118.;

Helen Jones and Kas Wachala, "Watching Over The Rights Of Women," *Social Policy And Society* 5, no. 1 (2006): 127, doi:10.1017/s1474746405002800.

101 Marsha A. Freeman "The Human Rights of Women under the CEDAW Convention: Complexities and Opportunities of Compliance," *Proceedings of the American Society of International Law Annual Meeting 91*, (1997): 378-383.

102 McQuigg, "The Responses of States...", 2007.

103 McQuigg, "The Responses of States...", 2007.;

Nussbaum, "Women's Progress...", 2016.

104 Chinkin, "Addressing Violence Against Women," 2014.

105 Nussbaum, "Women's Progress...", 2016.

106 McQuigg, "The Responses of States...", 2007.

and States parties' willingness to carry out the CEDAW Committee's recommendations. In almost 20 years, the Committee has issued only 25 decisions in cases involving violence against women, with mixed success.

The inescapable conclusion is that despite the Committee's best efforts, the fundamental nature of CEDAW makes it unable to effectively address violence against women. Although it is an important foundational legal framework, its limitations require that a new international treaty be adopted to effectively guarantee the essential human right of women and girls around the world to live free from violence.



Despite the Committee's best efforts, the fundamental nature of CEDAW makes it unable to effectively address violence against women.

Charter-based mechanisms are important for identifying standards and practices to address violence against women but lack binding authority.

The United Nations' charter-based mechanisms provide another important source of international law on violence against women. Unlike human rights treaties, these mechanisms are non-binding "soft law." Although the resolutions, special procedures, and action plans of the charter-based mechanisms are not enforceable like treaties, their consequences are based on persuasive or moral authority, and may be considered compelling in the interpretation of treaties.¹⁰⁷

Charter-based mechanisms

Actions such as declarations and special procedures by human rights bodies including the Human Rights Council and bodies created by international human rights treaties.

The mid-1990s saw a proliferation of soft law addressing violence against women. At the 1995

Fourth World Conference on Women in Beijing, women's rights converged with the broader human rights discourse and the two became firmly entwined. Women's advocates at the conference identified violence against women as a key human rights priority.¹⁰⁸

Soft law

As used in this paper, soft law is human rights standards contained in a document that lacks binding legal force.

The soft law mechanisms that explicitly address violence against women include the Declaration on the Elimination of Violence Against Women (DEVAW), the mandate and reports of the Special Rapporteur on Violence Against Women, its causes and consequences (SRVAW), the Beijing Declaration

¹⁰⁷ See for example, Andrew T. Guzman & Timothy L. Meyer, "International Soft Law," *Journal of Legal Analysis* 2, no. 1 (2010): 175. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1694&context=facpubs>;

Dinah L. Shelton, "Soft Law," in *Routledge Handbook of International Law*, ed. David Armstrong (London & New York: Routledge Press, 2008): 68-80. https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2048&context=faculty_publications

¹⁰⁸ "Beijing Declaration and Platform for Action," in *Report of the Fourth World Conference on Women*, UN Doc. A/CONF.177/20, (UN Fourth World Conference on Women, 16th plenary meeting, Beijing, October 17, 1995). <http://undocs.org/A/CONF.177/20>.

and Platform for Action, and the Agreed Conclusions of the 57th session of the Commission on the Status of Women (CSW57). In addition, various resolutions of the UN General Assembly, the Human Rights Council, and other UN bodies address violence against women.

The consistent language of these documents informs State obligations to combat violence against women. In conjunction with the work of expert bodies such as the CEDAW Committee, this body of soft law provides a blueprint of recommended action and strategies for national governments, intergovernmental organizations, and NGOs in their work to eliminate violence against women.¹⁰⁹ Because they do not carry the weight of treaties and have no enforcement mechanisms, however, governments are free to disregard charter-based mechanisms. Still, it is useful to examine these instruments for their potential contribution to a new, binding treaty.

Although the Declaration on the Elimination of Violence against Women (DEVAW) is non-binding it offers practical steps for combating violence against women.

DEVAW was the first international consensus

document on the issue of violence against women. It is the first UN declaration to explicitly equate gender-based violence with human rights, and it creates that custom, tradition, and religious considerations are not excuses for States to avoid their obligations to the declaration.¹¹⁰ Developed at the World Conference on Human Rights held in Vienna, Austria in 1993, the Declaration was a pivotal moment, recognizing the rights of women and girls as “human rights.”¹¹¹ Building on momentum from CEDAW’s recently published GR 19, DEVAW declared that gender-based violence is a central human rights issue.¹¹² Through the Vienna Declaration and Programme of Action, States parties encouraged the adoption of DEVAW.¹¹³ The UN General Assembly formally adopted DEVAW in 1993.¹¹⁴

One of the greatest achievements of DEVAW is its recognition of violence against women as “a manifestation of historically unequal power relations between men and women.”¹¹⁵ This theoretical underpinning is critical to all future efforts to address violence against women, including a new treaty.

The Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty,

¹⁰⁹Chinkin, “Addressing Violence Against Women,” 2014.; Freeman, Chinkin, & Rudolf, *The UN Convention On...*, 2012.

¹¹⁰“Declaration on the Elimination of Violence against Women,” UN Doc. A/RES/48/104 (UN General Assembly, 85th plenary meeting, New York, December 20, 1993). <http://www.un.org/documents/ga/res/48/a48r104.htm>.

¹¹¹“Vienna Declaration and Programme of Action: Adopted by the World Conference on Human Rights in Vienna on 25 June 1993,” OHCHR, last modified 2018. Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

¹¹²Ibid.

¹¹³Ibid.

¹¹⁴“Declaration on the Elimination of Violence against Women,” UN Doc. A/RES/48/104 (UN General Assembly, 85th plenary meeting, New York, December 20, 1993). <http://www.un.org/documents/ga/res/48/a48r104.htm>.

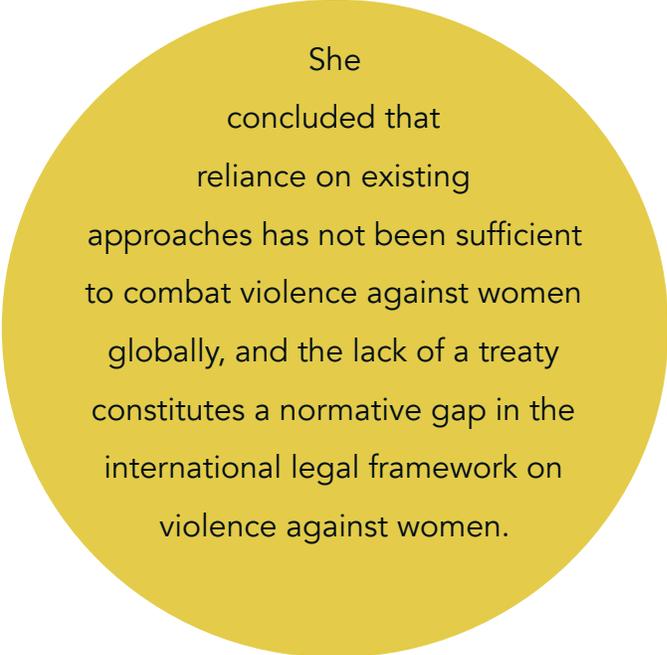
¹¹⁵Ibid., Preamble.

whether occurring in public or private life.”¹¹⁶ DEVAW outlines practical steps for States parties and the UN to combat violence against women, including ratifying CEDAW or withdrawing reservations, engaging in prevention efforts, investigations, and prosecutions according to national legislation.¹¹⁷

DEVAW also encourages translating international norms into domestic penal, civil, labor, and administrative sanctions to punish perpetrators of violence.¹¹⁸ Women subjected to violence have a right to access justice systems and have effective remedies for the harms they have suffered provided for by national legislation.¹¹⁹ As a declaration, DEVAW is non-binding, but it provides an action plan for States to undertake. Pressuring States to implement these action plans requires continual mobilization from UN bodies and from civil society, because there is no established, ongoing monitoring mechanism.

The Special Rapporteur on Violence Against Women, its causes and consequences (SRVAW) plays a leadership role in addressing violence against women.

The UN Commission on Human Rights created the mandate of the SRVAW in a resolution adopted on March 4, 1994. The Rapporteur is a leading expert on



She concluded that reliance on existing approaches has not been sufficient to combat violence against women globally, and the lack of a treaty constitutes a normative gap in the international legal framework on violence against women.

all issues relating to violence against women. She writes thematic reports, conducts missions to different countries, hosts events, and can call for responses on particular issues. The SRVAW’s reports are an important addition to the body of soft law on violence against women.

Both the current Special Rapporteur, Dr. Dubravka Šimonović, as well as her most recent predecessor, Prof. Rashida Manjoo, have led discussions and published reports on the need for and feasibility of an international treaty on violence against women. During her tenure, Prof. Manjoo organized consultations with 196 countries to solicit views on the normative gap.¹²⁰ She concluded that reliance on existing approaches has not been sufficient to combat violence against women globally, and the lack of a treaty constitutes

¹¹⁶ Ibid., art. 1, emphasis added.

¹¹⁷ Ibid., art. 4.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ “Addendum to the Human Right Council Thematic report of the Special Rapporteur on Violence, its Causes and Consequences,” UN Doc. A/ HRC/29/27/Add.5, (UN General Assembly Human Rights Council, 29th Session, June 12, 2015). <https://reliefweb.int/sites/reliefweb.int/files/re->

a normative gap in the international legal framework on violence against women.¹²¹ She found that though current human rights mechanisms include reporting on violence against women, time constraints in reviewing States' reports lead to insufficient discussion of the topic.¹²² She emphasized that the non-binding nature of the reporting requirements on violence against women makes them a challenge to enforce.¹²³

Before her appointment as Special Rapporteur, Dr. Šimonović asserted in a 2014 article that even though CEDAW does not explicitly mention violence against women, it does provide a gender-specific framework to combat discrimination that encompasses violence against women.¹²⁴ Further, she argued, the CEDAW Committee can interpret violence against women as a form of discrimination and utilize this framework in its reporting.¹²⁵ She also pointed out that the Istanbul Convention explicitly defines violence against women and domestic violence as human rights violations and forms of discrimination.¹²⁶

Since accepting her mandate, Dr. Simonovic has continued the work of her predecessor and has solicited stakeholders' views on the adequacy of the existing international legal framework for addressing

violence against women.¹²⁷ Only a small percentage of submissions have been made public, but the authors of this paper have analyzed the submissions that are available. According to that analysis, more than 70 percent of respondents agreed that a new treaty is desperately needed. By contrast, current global and regional treaty bodies generally opposed to a new treaty, primarily citing a lack of resources.¹²⁸ The full results of this analysis are discussed in this paper's forthcoming companion report.

The Beijing Declaration and Platform for Action contributed to the recognition of violence against women as a global human rights issue.

The 1995 Fourth World Conference on Women in Beijing was remarkable for calling global attention to the idea that "women's rights are human rights," including the right to be free from violence.¹²⁹

The Beijing Platform for Action is a wide-ranging document, addressing women and poverty, health, armed conflict, and economic development, among other issues.¹³⁰ It calls on governments to enact and

sources/A_HRC_29_27_Add_5_ENG.pdf.

121 Rashida Manjoo, "Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo," UN Doc. A/HRC/29/27, (UN General Assembly Human Rights Council, 29th Session, June 10, 2015). http://www.wluml.org/sites/wluml.org/files/A%20HRC%2029%2027_AEV.pdf.

122 Ibid.

123 Ibid.

124 Šimonović, "Global And Regional Standards," 2014.

125 Ibid.

126 Ibid.

127 "Adequacy of the international legal framework on violence against women," OHCHR, 2015. <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AdequacyInternationalLegalFramework.aspx>.

128 "Ibid., 38 of the 291 submissions have been posted on the SRVAW website with an additional 6 found online by the authors.

129 Dr. Mary Curtin (Diplomat-In-Residence and Professor at the University of Minnesota Humphrey School of Public Affairs) in discussion with the authors, April 12, 2017.

130 "Beijing Declaration and Platform for Action," 1995.

enforce domestic penal, civil, and labor legislation to punish perpetrators and offer redress to victims. Notably, it calls on member States to adopt, implement, and review legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders.¹³¹ As with DEVAW two years earlier, the Beijing Platform's merging of human rights with women's rights was a substantial contribution and shows progress in international human rights discourse. Advocates can use the Platform as a tool to demonstrate international consensus to their national governments and to lobby for women's rights through improved legislation.¹³²

UN Women and the Commission on the Status of Women make important contributions but they are not a substitute for a binding treaty on violence against women.

The current conversation in the United Nations about violence against women occurs mostly within UN Women, including the Commission on the Status of Women (CSW). UN Women was created in 2011

through the merger of four UN entities, and now administers the CSW.¹³³

The 57th meeting of the CSW (CSW57) in 2013 brought the issue of elimination and prevention of all forms of violence against women to the top of the commission's agenda.¹³⁴ As a lead up to CSW57, UN Women launched a COMMIT campaign in 2012 for countries to make new and concrete commitments about their efforts to combat violence against women.¹³⁵ The commitments range from passing and amending laws to creating shelters and emergency hotlines.¹³⁶ Several countries responded by referencing national action plans like those recommended by DEVAW and recommitted to improving and implementing them in their COMMIT Campaign promises.¹³⁷ Since garnering the commitment of 63 countries in 2013 and 2014,¹³⁸ no new relevant information about the campaign has been made public.¹³⁹

In the report following CSW57, the commission adopted agreed conclusions covering all forms

National Action Plans

Comprehensive, multisectoral and sustained blueprints for ending violence against women, enabling all relevant sectors to coordinate and systematize their activity.

¹³¹ Ibid., Strategic Objective D.1., Art. 124.

¹³² Ibid.

¹³³ "A Brief History of the CSW," *UN Women*, last modified 2018. <http://www.unwomen.org/en/csw/brief-history>.

¹³⁴ "Report on the fifty-seventh session (4-15 March 2013)," UN Doc. E/2013/27 - E/CN.6/2013/11, (UN Economic and Social Council Supplement No. 7, Commission on the Status of Women, 57th Session, New York, April 2, 2013). <http://undocs.org/E/2013/27>.

¹³⁵ "COMMIT Initiative," *UN Women*, last modified 2018. <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit>.

¹³⁶ "Government Commitments," *UN Women*, last modified 2018. <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>.

¹³⁷ Ibid.

¹³⁸ "COMMIT Initiative," *UN Women*, last modified 2018. <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit>.

¹³⁹ "Jordan joins COMMIT initiative, also signs MoU with UN Women," *UN Women*, February 20, 2014. <http://www.unwomen.org/en/news/stories/2014/2/jordan-joins-commit-initiative>.

of violence against women, in all contexts and settings. The report outlines progress and remaining challenges.¹⁴⁰ It calls on all governments to strengthen legal and policy frameworks and to end impunity. It also encourages prevention efforts through combating structural causes of violence, like social norms and gender stereotypes.¹⁴¹ The report further calls on governments to provide essential services, programs, and responses. It addresses the role of the police and justice sector, legal aid, health care, and medical services. Lastly, it calls for actions to improve research and analysis, data collection, and dissemination of information.¹⁴²

Although not well known, the CSW also offers a communications procedure that encompasses complaints, appeals, and petitions.¹⁴³ Because the Commission has no authority to take action on these communications, they primarily provide it with insight into issues that affect the status of women, including violence.¹⁴⁴

Conclusion: Charter-based frameworks play an important but incomplete role in combating violence against women.

Soft law contributes to the development of standards and has assisted in bringing attention to important issues regarding violence against women. The ongoing reporting of the SRVAW interprets and applies non-binding declarations like DEVAW and the Beijing Platform. These standards and interpretations may also be applied in the reporting procedure under CEDAW. Nevertheless, the fact that that States are not held responsible for violations of these instruments is an immutable deficiency. They can never create accountability for effectively addressing violence against women.¹⁴⁵

Because full-time experts are not monitoring State progress and compliance, the effectiveness of soft law norms requires an active and engaged civil society. Non-binding frameworks require the political will of States to adhere to such standards, and just as importantly, the ongoing commitment to fund and support implementation. Because implementation of these standards requires substantial commitment of

140 Please see Chapter 1.A, "Agreed conclusions on the elimination and prevention of all forms of violence against women and girls," in "Report on the fifty-seventh session (4-15 March 2013)," UN Doc. E/2013/27 - E/CN.6/2013/11, (UN Economic and Social Council Supplement No. 7, Commission on the Status of Women, 57th Session, New York, April 2, 2013). <http://undocs.org/E/2013/27>.

141 Ibid.

142 Ibid.

143 "Communications Procedure," *UN Women*, last modified 2018. <http://www.unwomen.org/en/csw/communications-procedure>.

144 Ibid.

145 Rashida Manjoo, "Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo," UN Doc. A/HRC/26/38, (UN General Assembly Human Rights Council, 26th Session, May 28, 2014). <http://undocs.org/en/A/HRC/26/38>.

resources, their effectiveness is far from assured. These mechanisms provide an additional layer of guidance for States seeking to improve efforts to end violence against women, but they cannot be relied on to effectively address this serious global problem. Thus, their greatest contribution may be in informing the development of a binding treaty on violence against women.



These mechanisms provide an additional layer of guidance for States seeking to improve efforts to end violence against women, but they cannot be relied on to effectively address this serious global problem.

Regional legal frameworks are instrumental in combating violence against women.

Regional legal frameworks offer an additional contribution to the ongoing development of an effective international response to violence against women. Like the international mechanisms, they contain strengths and weaknesses. Yet regardless of their strengths, the fact that they are regional means that they cannot protect every woman everywhere.

The Organization of American States and the Council of Europe have developed the strongest regional treaties with active enforcement mechanisms devoted specifically to combating violence against women. Their reporting mechanisms guide States parties' actions through concrete recommendations on the implementation of standards, and capacity building to achieve the goals of the treaties. Other regional bodies have protocols and declarations on the issue but have less effective implementation and reporting mechanisms.

The Organization of American States' Convention of Belém do Pará is a binding, specific, and effective treaty but is only accessible within the Americas.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) was adopted by the Organization of American States (OAS) in 1994.¹⁴⁶ It is the first binding treaty to specifically address the issue of violence against women. All OAS members are party to the convention, except Canada and the United States.

The treaty establishes that women have the right to be free from violence in public and private spheres.¹⁴⁷ It defines violence against women as "any act or

¹⁴⁶ "What is MESECVI?," *Organization of American States*, last modified 2018. <http://www.oas.org/en/mesecvi/about.asp>.

¹⁴⁷ "Regional Tools To Fight Violence Against Women: The Belém do Pará and Istanbul Conventions," *Organization of American States & Council of Europe*, February 2014. <http://www.oas.org/en/mesecvi/docs/MESECVI-CoE-CSWPub-EN.pdf>.

conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere.”¹⁴⁸

In comparison to CEDAW, which characterizes violence as a form of discrimination, the Convention of Belém do Pará defines the right to be free from violence as including the right to be free from all forms of discrimination. The right to be free from violence incorporates the right to be valued and educated free of stereotyped patterns of behavior; and free from social and cultural practices based on concepts of inferiority and subordination.¹⁴⁹

States parties must not only refrain from violence themselves but prevent violence, investigate, and impose penalties for such violence. They must update domestic laws to prevent and punish violence against women.¹⁵⁰ This obligation, which anticipates the concept of due diligence, means that a State can be found liable for an act, even when the act was not perpetrated by the State, if it fails to prevent the violation and respond appropriately.¹⁵¹

The Convention of Belém do Pará includes two

monitoring mechanisms. First, States parties are required to file reports with the Inter-American Commission of Women.¹⁵² Second, individuals, groups, and NGOs of the OAS can petition the Inter-American Commission on Human Rights (Commission or IACHR) with complaints of violations of the convention by States parties.¹⁵³ The Commission decisions are not binding on States parties, but the Commission can refer certain cases to the Inter-American Court, which can issue binding decisions.

In 2004, the OAS established the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) to strengthen the convention.¹⁵⁴ The two purposes of the MESECVI mechanism are (1) to promote the implementation of the convention, and (2) to establish a system of technical cooperation.¹⁵⁵ The creation of MESECVI is an important testimony to States parties’ commitment to accountability, including building expertise and capacity among themselves.

MESECVI publishes hemispheric reports which highlight the challenges that the committee faces in obtaining reliable data to determine the

148 “Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará),” *Organization of American States*, June 9, 1994, art. 1. <http://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>.

149 *Ibid.*, art. 6.

150 *Ibid.*, art. 7.

151 Rashida Manjoo, “Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo,” UN Doc. A/HRC/23/49, (UN General Assembly Human Rights Council, 23rd Session, May 14, 2013). http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_49_English.pdf.

152 “Convention of Belém do Pará,” art. 10. These reports include information on measures States parties have adopted in accordance with the Convention, difficulties they have had, and factors that contribute to violence against women.

153 “Convention of Belém do Pará,” art. 12.

154 Please see Article 1 of the “Statute of the Mechanism to Follow up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, “Convention of Belém do Pará (MESECVI)” in “Conference of States Parties to the Follow up Mechanism, Convention of Belém do Pará: Report of the Rapporteur,” *Organization of American States*, Washington, D.C., October 26, 2004. Available under the subheading “First Conference of States Party: Final Report (CIM/MESECVI-II/doc.9/04)” at <http://www.oas.org/en/mesecvi/conferenceofStatesparty.asp>.

The activities of the mechanism are financed by a specific fund for that purpose. It is created from contributions from States parties, non-States parties, and permanent observer States, among others. (“Statute of the Mechanism...,” art. 11.)

155 “Statute of the Mechanism...,” art. 1.

effectiveness of the Convention. The 2012 Second Hemispheric Report offers some estimates of the rates and forms of violence against women in the Americas,¹⁵⁶ but these estimates are of limited value because the majority of States parties failed to provide requested data. Even less information is available on women's knowledge of their rights and of availability of government services. Because the rates of violence are often provided by government offices, violence may be underreported due to gender stereotypes and a lack of trust in the justice system.¹⁵⁷ It is also challenging to determine whether progress has resulted from the treaty or from other changes occurring in society at the same time. The Third Hemispheric Report, published in 2017, indicated some improvement since the second report.¹⁵⁸ The Hemispheric Reports indicate that while the Belém do Pará Convention and MESECVI are steps in the right direction, additional progress is needed for them to be truly effective.

Hemispheric Reports indicate that while the Belém do Pará Convention and MESECVI are steps in the right direction, additional progress is needed for them to be truly effective.

Cases brought under the convention are another indication of its impact and potential effectiveness. *Maria da Penha v. Brazil* is a significant case under the Convention of Belém do Pará before the Inter-American Commission on Human Rights (IACHR).¹⁵⁹ *Maria da Penha Maia Fernandes* and two NGOs brought the case, alleging that Ms. Fernandes had been the victim of her husband's extreme domestic violence, which included shooting her and leaving her paralyzed. The perpetrator's trial lasted more than 19 years and resulted in a prison sentence of only two years. In 2001 the IACHR found that Brazil's failure to adequately punish a violent perpetrator violated Ms. Fernandes' right to live free from violence¹⁶⁰ under the convention.¹⁶¹ The IACHR also found that by failing to punish the perpetrator, Brazil violated its obligation to provide the petitioner with a fair trial¹⁶² and judicial protection¹⁶³ under the American Convention on

156 "Second Hemispheric Report on the Implementation of the Belém do Pará Convention," OAS: *Follow-up Mechanism to the Belém do Pará Convention (MESECVI)*, April 2012. <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf>.

157 *Ibid.*

158 "Third Hemispheric Report on the Implementation of the Belém do Pará Convention," OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.242/17, OAS: *Follow-up Mechanism to the Belém do Pará Convention (MESECVI)*, 2017, 71. http://www.oas.org/en/mesecvi/docs/TercerInformeHemisferico-EN.pdf?utm_source=Organizaciones+de+mujeres+dentro+de+USA&utm_campaign=82d677f4e4-EMAIL_CAMPAIGN_2018_03_14&utm_medium=email&utm_term=0_6190de4aec-82d677f4e4-132157905.

159 "*Maria da Penha Maia Fernandes v. Brazil*," OAS: Inter-American Commission on Human Rights, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, April 16, 2001. <http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Brazil12.051.htm>.

160 "Convention of Belém do Pará," art. 7.

161 "*Maria da Penha Maia Fernandes v. Brazil*," 2001.

162 "*Maria da Penha Maia Fernandes v. Brazil*," 2001.;

See also "American Convention on Human Rights," (*Inter-American Specialized Conference on Human Rights*, San José, Costa Rica, November 22, 1969), art. 8.

163 "*Maria da Penha Maia Fernandes v. Brazil*," 2001.;

See also "American Convention on Human Rights," (*Inter-American Specialized Conference on Human Rights*, San José, Costa Rica, November 22, 1969), art. 25.

Human Rights. The Commission recommended both systemic changes and individual remedies.¹⁶⁴

Although Brazil did not initially respond to the IACHR's recommendations,¹⁶⁵ it enacted Law 11.340/06 (unofficially referred to as the Maria da Penha law) in 2006.¹⁶⁶ The law emphasizes prevention, assistance, and protection for women and their dependents who are facing violence, and establishes mechanisms for punishing and rehabilitating perpetrators. Significantly, it also establishes a system of courts dedicated to domestic and family violence against women.¹⁶⁷ Although passage of the law was a positive development, several challenges remain in its implementation. In 2011, Brazil presented the IACHR with systemic reforms it was undertaking through the implementation of the Maria da Penha law.¹⁶⁸

The Istanbul Convention is concrete and practical but is not a substitute for an international treaty.

The Council of Europe Convention on preventing and combating violence against women and domestic

violence (Istanbul Convention) entered into force in August 2014. It is concrete and practical, benefitting from best practices developed over forty years of experience in responding to violence against women. It stresses the need for systems actors to coordinate in combating violence against women, including the judiciary, the police, service providers, NGOs, as well as national, regional, and local parliaments and authorities.¹⁶⁹

The Istanbul Convention states that “‘violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”¹⁷⁰ It builds on the precedents of the European and Inter-American Courts of Human Rights, and includes the due diligence obligation.¹⁷¹

The Istanbul Convention's specificity establishes a blueprint for laws and policies to end violence against women and domestic violence. It is a call to action for countries to sign and ratify, for parliaments to review

¹⁶⁴In paragraph 61 of its report, it recommended that Brazil continue and expand its reform process to “end the condoning by the State of domestic violence against women in Brazil and discrimination in the handling thereof.” The Commission also noted in paragraph 55 that because the entire system condoned domestic violence, this perpetuated the “psychological, social and historical roots and factors that sustain and encourage violence against women.” (“*Maria da Penha Maia Fernandes v. Brazil*,” 2001.)

¹⁶⁵“Annual Report of the IACHR 2007, Chapter III – The Petition and Case System: Status of compliance with the recommendations of the IACHR,” IACHR, 2007, par. 100.

¹⁶⁶“Maria da Penha Law: Law No. 11.340,” *Special Secretariat for Women's Policies, Presidency of the Republic, Brazil*, August 7, 2006. <http://www.compromissoeatitude.org.br/wp-content/uploads/2012/08/SPMLawmariapenha2006.pdf>.

¹⁶⁷*Ibid.*, art. 14.

¹⁶⁸“Annual Report of the Inter-American Commission on Human Rights 2011: Chapter III.D, Status of compliance with the recommendations of the IACHR,” IACHR, 2011, 131-134. <http://www.refworld.org/pdfid/50bc7fbf2.pdf>.

¹⁶⁹“Regional Tools,” 2014.

¹⁷⁰“Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention),” Council of Europe, April 12, 2011, art. 3. <https://rm.coe.int/168046031c>.

¹⁷¹“Regional Tools,” 2014.

The Istanbul Convention provides the strongest current model for an international treaty on violence against women.

and adopt legislation and monitor its effectiveness, for governments to create and implement policies required by the convention, and for local authorities and civil society to participate in ending violence against women.¹⁷² As of August 2018, 33 countries had ratified the convention. Although a treaty of the Council of Europe, the Istanbul Convention is open to accession by any country in the world.¹⁷³ To date, however, no non-European countries have signed or ratified the convention.

Like the Convention of Belém do Pará, the Istanbul Convention has an established monitoring mechanism: the Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO).¹⁷⁴ States parties submit their responses to a questionnaire about their legislative progress.¹⁷⁵ This process provides information from data and analysis, and a forum to coordinate efforts to combat violence against women.¹⁷⁶

Monitoring of the Istanbul Convention officially began in March 2016 and according to the timetable, it will take 17 months for GREVIO to complete the process of evaluating each member State. GREVIO published its first reports, on Monaco and Austria, in September 2017. Implementation of the Istanbul Convention is still new, making its effectiveness difficult to evaluate. Nonetheless, the strong language of the treaty and its monitoring mechanism make it a prime model for an international convention on violence against women.

The African Commission on Human and Peoples' Rights' Maputo Protocol has been adopted but enforcement has been weak.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was adopted in 2003, affirming a commitment to end discrimination against women. The protocol states that explicit efforts to end violence against women are aligned with a woman's right to dignity and security.¹⁷⁷ It also specifically references protection from violence for women in armed conflict, elderly women, and women with disabilities.¹⁷⁸ In their reporting to the African Union, States must identify legislative and other measures taken to implement the rights afforded women under this Protocol.¹⁷⁹

172 Ibid.

173 Ibid.

174 Ibid.

175 Ibid.

176 Ibid.

177 "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)," *African Commission on Human and Peoples' Rights*, 2003, art. 3, par. 4. http://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf;

"Protocol to the African Charter," art. 4.

178 "Protocol to the African Charter," art. 11, 22, 23.

179 "Protocol to the African Charter," art. 26.

The African Commission's enforcement of the Protocol has been weak. Of the 54 States party to the African Charter, only 36 have ratified the Maputo Protocol.¹⁸⁰ At least six states ratified with reservations to crucial aspects of the protocol (concerning abortion and LGBT rights).¹⁸¹ While some States have made strides in integrating components of the protocol into domestic legislation,¹⁸² others have done little.¹⁸³

Similarly, adherence to the reporting system is inconsistent, with some states regularly submitting timely reports, and others submitting no reports or submitting them as much as two decades late.¹⁸⁴ Additionally, few African-based women's rights NGOs submit reports to the Commission.¹⁸⁵ The Protocol's complaint procedure has not been widely used to address violence against women, either. Very few submissions have been made to the African Commission involving women's issues,¹⁸⁶ possibly because the Maputo Protocol does not definitively establish whether individual complaints under the protocol are within the mandate of the African Commission.¹⁸⁷

Despite its weaknesses, both the African Commission and the Economic Community of West African States (ECOWAS) have invoked the Maputo Protocol. In *Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt*, the Commission issued recommendations in which it found that Egypt failed to protect four women journalists from violence during a protest.¹⁸⁸

The Commission relied on numerous human rights documents including the African Charter on Human and Peoples' Rights, the Maputo Protocol (even though Egypt has not signed or ratified it),¹⁸⁹ CEDAW, the European Convention of Human Rights and others.¹⁹⁰ The Commission requested that Egypt amend its laws to bring them in line with the African Charter and to compensate the victims. It urged the State to investigate the violations and bring the perpetrators to justice, to ratify the Maputo Protocol, and to report on steps it has taken to implement the Commission's decision.¹⁹¹ It is unclear what changes, if any, Egypt made in response to the Commission's decision.¹⁹² However, since the Commission's decision,

180 "Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa," *African Commission on Human and Peoples' Rights*, last updated 2018. <http://www.achpr.org/instruments/women-protocol/ratification/>.

181 *Ibid.*, 2-3.

182 Lucy Asuagbor, "Status of Implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa," Special Rapporteur on the Rights of Women in Africa (*African Commission on Human and Peoples' Rights*, CSW60, New York, March 18, 2016), 3. <http://www.peaceau.org/uploads/special-rapporteur-on-rights-of-women-in-africa-presentation-for-csw-implementation.pdf>.

183 *Ibid.*

184 Please see *individual State information* in "Ratification Table," 2018.

185 Rashida Manjoo, "Report of the Special Rapporteur," 2015, 9.

186 Frans Viljoen, "An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa," *Washington and Lee Journal of Civil Rights and Social Justice* 11 (2009), 40. <http://law2.wlu.edu/deptimages/Journal%20of%20Civil%20Rights%20and%20Social%20Justice/Frans%20Viljoen.pdf>.

187 *Ibid.*, 40.

188 "Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt," *African Commission on Human and Peoples' Rights*, Comm. No. 323/06, par. 238, 256, 274-75 (Oct. 12, 2013). http://www.achpr.org/files/sessions/10th-ecocommunications/323.06/achpreos10_232_06_eng.pdf.

189 "Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa," *African Commission on Human and Peoples' Rights*, 2018. <http://www.achpr.org/instruments/women-protocol/ratification/>.

190 "Egyptian Initiative for Personal Rights," 2013.

See also "Egypt held to account for failing to protect women demonstrators from sexual assault," *Egyptian Initiative for Personal Rights*, March 14, 2013. <http://eipr.org/en/pressrelease/2013/03/14/1657>.

191 "Egyptian Initiative for Personal Rights," 2013, par. 275.

192 Egypt also does not appear to have submitted its periodic reports to the Commission since December 2004. ("Concluding Observations and

Egypt has amended its anti-demonstration laws in ways that could be viewed as contrary to the Commission's recommendations.¹⁹³

In October 2017, the ECOWAS court relied on the Maputo Protocol in *Dorothy Njemanze & 3 Others v. The Federal Republic of Nigeria*. The plaintiffs were abducted, verbally abused, sexually assaulted, and physically and unlawfully detained by government actors who accused them of being prostitutes simply because they were out at night. The court ruled in favor of the plaintiffs, finding multiple violations of the Maputo Protocol and CEDAW, among other treaties. Three of the four plaintiffs were awarded damages for violations of their rights to freedom of liberty and freedom from verbal abuse; cruel, inhuman, or degrading treatment; and gender-based discrimination.¹⁹⁴

The many weaknesses of the Maputo Protocol and its implementation indicate the need for greater protection from violence for women in Africa, a need that could be addressed by a binding international treaty on violence against women.

The ASEAN Regional Plan of Action on the Elimination of Violence Against Women is an insufficient tool for addressing violence against women in Asia.

No binding convention on violence against women exists in Asia. The Association of Southeast Asian Nations (ASEAN)¹⁹⁵ adopted the ASEAN Regional Plan of Action on the Elimination of Violence Against Women (RPA) in 2016,¹⁹⁶ building upon the 2013 Declaration of the Elimination of Violence Against Women and Violence Against Children in ASEAN (Declaration). The RPA recognizes that there had been little improvement in the elimination and rate of violence against women and stresses that the ASEAN Member States (AMS) need to prioritize the elimination of violence against women and implement the declaration. The RPA also asserts that by adopting the declaration, the AMS committed to take all appropriate measures to prevent and respond to all forms of violence against women. Overall, the RPA expresses a commitment to implementing the declaration and contains plans to end all forms of violence against women from 2016 to 2025.

Recommendations on the Seventh and Eighth Periodic Report of the Arab Republic of Egypt," *African Commission on Human and People's Rights*, 2005.

http://www.achpr.org/files/sessions/37th/conc-obs/7th-and-8th/achpr37_conc_Staterep78_egypt_2005_eng.pdf)

193 The amendments provide even greater authority to the police in what actions they may take in dispersing protests, including using live ammunition. (New anti-demonstration law in Egypt must be amended, urges UN rights chief, UN News, Nov. 26, 2013. <https://news.un.org/en/story/2013/11/456342-new-anti-demonstration-law-egypt-must-be-amended-urges-un-rights-chief>.)

194 "ECOWAS Court Makes First Pronouncement On Maputo Protocol: Rules In Favour Of Plaintiffs In Case Of Dorothy Njemanze & 3 Ors V Federal Republic Of Nigeria," *Institute for Human Rights and Development in Africa*, October 12, 2017. <http://www.ihrda.org/2017/10/ecowas-court-makes-first-pronouncement-on-maputo-protocol-rules-in-favour-of-plaintiffs-in-case-of-dorothy-njemanze-3-ors-v-federal-republic-of-nigeria/>.

195 ASEAN is a loosely held community of States, pursuing joint political-security, economic, and socio-cultural goals. ASEAN members are Thailand, Viet Nam, Indonesia, Singapore, Philippines, Malaysia, Myanmar, Cambodia, Laos, and Brunei. ("About ASEAN," Association of Southeast Asian States, last modified 2018. <http://asean.org/asean/about-asean/>.)

196 "ASEAN Regional Plan Of Action On The Elimination Of Violence Against Women (ASEAN RPA On EVAW)," (Jakarta: The ASEAN Secretariat, 2016). <http://www.asean.org/storage/2012/05/Final-ASEAN-RPA-on-EVAW-IJP-11.02.2016-as-input-ASEC.pdf>.

While the RPA is not a binding regional treaty, some stakeholders in the ASEAN region give this document great consideration. In the responses from the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on Women (ACW) to SRVAW Šimonović's call for submissions on the adequacy of the existing international legal frameworks on VAW, these regional bodies cite the RPA as a strong instrument through which they plan to work towards the elimination of violence against women and as evidence that a new global treaty on the issue is not needed.¹⁹⁷

MENA

The following countries are typically included in MENA: Algeria, Bahrain, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Malta, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, West Bank and Gaza, and Yemen. Ethiopia and Sudan are sometimes included.

The RPA is not a strong instrument and enforcement mechanism, however. It does not contain a robust monitoring and reporting mechanism, and it expires after ten years. In addition, the document does not include all the nations considered to be part of Asia. Overall, this regional plan, while a step in the right direction, lacks the mechanisms and detail that would

make it a strong tool for the elimination of violence against women in Asia.

Arab Countries' Efforts to Combat Violence Against Women have been limited.

The Middle East and North Africa (MENA) region is a challenging area for combating violence against women, even though, with the exception of Sudan, all MENA countries and the State of Palestine have ratified CEDAW.¹⁹⁸ Recent regional actions show progress on this issue, however. In November 2015, the Coalition of Women MPs from Arab Countries (including Egypt, Lebanon, Jordan, Tunisia, Morocco, Palestine, Iraq, Djibouti, Sudan, Bahrain, and Algeria) engaged in a seminar where they discussed combating violence against women in their respective countries.¹⁹⁹ These efforts led them to hold a conference in which the parliamentarians identified country-specific penal codes protecting perpetrators of violence for cancellation and abolition.²⁰⁰ The actions of the coalition, combined with those of grassroots activists, led to the repeal of laws in Morocco, Jordan, Tunisia, and Lebanon that allowed rapists to escape punishment if they married their victims.²⁰¹

¹⁹⁷ "Inputs and Comments of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to the Questions of the Special Rapporteur on Violence Against Women, its Causes and Consequence," ACWC, June 13, 2016. <http://www.ohchr.org/Documents/Issues/Women/SR/Framework/ACWC.pdf>.

¹⁹⁸ "Status of Treaties: 8. Convention on the Elimination of All Forms of Discrimination against Women," *United Nations Treaty Collection*, 2018.

¹⁹⁹ "Coalition of Women Arab MPs combat violence against women," *Westminster Foundation for Democracy*, November 8, 2015. <http://www.wfd.org/coalition-of-women-arab-mps-combat-violence-against-women/>.

Please see also <http://cvaw-arabcoalition.org/en/>.

²⁰⁰ "Coalition of Women Arab MPs," 2015.

²⁰¹ Rothna Begum, "Middle East on a roll to repeal 'marry the rapist' laws," *Al Jazeera*, August 24, 2017. <https://www.aljazeera.com/indepth/opinion/2017/08/middle-east-roll-repeal-marry-rape-laws-170822095605552.html>;

"The Regional Conference (Towards Cancelling the Articles that Discharge the Rapist from Penalty in Penal Codes in the Arab Countries," *The Coalition of Women MPs From Arab Countries to Combat Violence Against Women*, December 11, 2016. <http://cvaw-arabcoalition.org/en>

In February 2017, the coalition formally submitted its draft of a “Convention to Combat Violence Against Women” to the Arab League,²⁰² and in November 2017, it adopted “a Tunis Declaration with legislative recommendations to help combat violence against women in the region.”²⁰³ Collaborating with male colleagues and the Arab Inter-parliamentary Union (AIPU), the coalition has adopted a broad, inclusive approach.²⁰⁴ In March 2018, the coalition and its collaborator, the Westminster Foundation for Democracy, organized a workshop “aimed at improving the implementation of laws against gender-based violence,”²⁰⁵ which was attended by a variety of regional government officials.

Conclusion: Regional frameworks have had mixed success in combating violence against women.

Regional efforts to combat violence against women include some of the most innovative efforts to address the issue to date. The Convention of Belém do Pará was the first to create an ongoing monitoring and follow-up mechanism to combat violence against women. The Istanbul Convention builds upon this precedent and outlines concrete actions for States to prevent, protect, prosecute, and pursue policies that combat violence. The Istanbul Convention’s GREVIO Committee believes their efforts complement CEDAW reporting by devoting additional time and expertise to the issue of violence.²⁰⁶

Other regions lack access to a strong treaty that specifically addresses violence against women. Although a regional court has recently invoked the Maputo Protocol, Africa lacks a strong treaty, and Asia and the Middle East have no treaties on violence against women. The need remains for all countries in the world to have access to a binding treaty with an enforcement mechanism, implementation guidelines and capacity building expertise specifically on violence against women.

202 “Democracy can help us end gender violence in the Arab world,” *Westminster Foundation for Democracy*, June 30, 2017. <http://www.wfd.org/democracy-can-help-us-end-gender-violence-in-the-arab-world/>.

203 “Women MPs from Arab Countries review efforts to end gender violence,” *Westminster Foundation for Democracy*, November 30, 2017. <http://www.wfd.org/ending-violence-against-women-and-girls-in-mena/>.

204 “Democracy can help us,” 2017.

205 Samia Smadion, “Improving the effective implementation of Gender Based Violence Legislation in the Arab Region,” *Coalition of Women MPs from Arab Countries*, March 15, 2018. <http://cvaw-arabcoalition.org/en>

206 “UN Special Rapporteur on violence against women, its causes and consequences - Stakeholder consultation on the adequacy of the international legal framework on violence against women: Replies submitted by the Council of Europe Group of action against violence against women and domestic violence (GREVIO),” *GREVIO*, n.d.

Much of the discussion about applying lessons learned through the adoption and implementation of regional treaties has centered on Belém do Pará and, more recently, the Istanbul Convention, because of its detailed, comprehensive nature. Some human rights experts view the Istanbul Convention as a global call to action, as it is open to accession by any country in the world.²⁰⁷ While its many strengths have led some to consider it the “gold standard” for combating violence against women,²⁰⁸ it is important to recognize that it was drafted by delegates from European countries for the European community. As such, it does not reflect the expressed concerns of non-European women. While the Istanbul Convention is an important contribution to the growing legal frameworks to combat violence, it is not a substitute for a global treaty.

regional treaties on their own do not fill normative framework gaps at the global level.²⁰⁹ While regional treaties are more specific than CEDAW, they do not share a consensus definition of violence against women and, as such, cannot provide clear, universal guidance for an effective response to this abuse.²¹⁰

Despite their strengths, regional treaties’ lack of universal accessibility means that they are not a satisfactory alternative to a binding international treaty on violence against women. Like the current international treaties and soft law instruments, they contribute to the existing response to violence against women and lay the groundwork for a new international treaty, but even in the aggregate they are not the solution. Former SRVAW Manjoo makes the case that

207 “Regional Tools,” 2014.

208 Bonita C. Meyersfeld, “Introductory Note To The Council Of Europe Convention On Prevention And Combating Violence Against Women And Domestic Violence,” *International Legal Materials* 51, no. 1 (2012): 106, doi:10.5305/intelegamate.51.1.0106.

209 Rashida Manjoo, “Report of the Special Rapporteur,” 2014.

210 Ibid.



The World Needs a New Binding Treaty on Violence Against Women.

The current international and regional legal frameworks to protect women and girls against violence have evolved along with prevailing perceptions of the importance of the issue. Much important work has been done. Even so, close examination of these frameworks reveals immense gaps which can only be effectively addressed by a consistent framework with clear standards and strong enforcement mechanisms.

CEDAW does not articulate detailed standards for addressing violence against women or require reporting at the necessary level of specificity. Its Optional Protocol applies to all forms of discrimination and does not offer accessible redress for victims of violence. Charter-based mechanisms express strong aspirations but, by their nature, are unenforceable. Regional treaties, while innovative, do not provide a globally accessible framework. While drafters of a new treaty should look to the achievements of these legal frameworks and build upon their efforts, they have not and cannot effectively protect women and girls from violence on a global scale. The time therefore has come to establish a new binding international treaty to end violence against women everywhere.

Appendix A: Acronyms

ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AMS	ASEAN Member States
ASEAN	The Association of Southeast Asian Nations
AWC	ASEAN Committee on Women
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSW	Commission on the Status of Women
CSW57	The 57th Meeting of the Commission on the Status of Women
DEVAW	Declaration on the Elimination of Violence against Women
ECOWAS	Economic Community of West African States
GR(s)	General Recommendation(s)
GREVIO	Group of Experts on Action Against Violence Against Women and Domestic Violence
IACHR	Inter-American Commission on Human Rights
LOI	List of issues
MENA	The Middle East and North Africa Region
MESECVI	The Follow-up Mechanism to the Belém do Pará Convention
MP(s)	Member(s) of Parliament
NGO	Non-governmental Organization
OAS	Organization of American States
OP	Optional Protocol
RPA	Regional Plan of Action
SRVAW	Special Rapporteur on Violence against Women
UN	United Nations

Appendix B: CEDAW reporting on violence against women: State Reports

List of States Reports to the CEDAW Committee analyzed for this paper:	Publication Date (Oct 2015 – April 2017)
Congo	April 2017
Nepal	April 2017
Bahamas	April 2017
Cyprus	April 2017
Austria	April 2017
Mexico	December 2016
Australia	December 2016
Suriname	September 2016
Montenegro	July 2016
New Zealand	July 2016
Fiji	July 2016
Burkina Faso	June 2016
Kenya	June 2016
Norway	June 2016
Oman	June 2016
Paraguay	January 2016
Kuwait	January 2016
Guatemala	January 2016
Italy	January 2016
Micronesia	December 2015
Germany	October 2015
Republic of Korea	October 2015
Rwanda	October 2015
Ukraine	October 2015
Costa Rica	October 2015
Barbados	October 2015
Total: 26	

Source: Committee on the Elimination of Discrimination against Women, State Party Reports

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=29.

Appendix C: CEDAW reporting on violence against women:
list of issues and concluding observations

List of Issues and Concluding Observations also analyzed for this paper:	Publication Date (Oct 2015 – April 2017)	
	List of Issues	Concluding Observations
Democratic People's Republic of Korea	March 2017	
Singapore	March 2017	
Norway	March 2017	
Guatemala	March 2017	
Kenya	March 2017	
Monaco	March 2017	
Kuwait	March 2017	
Oman	March 2017	
Paraguay	March 2017	
Burkina Faso	November 2016	
Barbados	November 2016	
Costa Rica	November 2016	
Italy	November 2016	
Montenegro	November 2016	
Niger	November 2016	
Nigeria	November 2016	
Thailand	August 2016	
Sri Lanka	August 2016	
Rwanda	August 2016	
El Salvador	August 2016	
Ukraine	August 2016	
Germany	August 2016	March 2017
Jordan	March 2016	
Argentina	March 2016	
Armenia	March 2016	November 2016

List of Issues and Concluding Observations also analyzed for this paper:	Publication Date (Oct 2015 – April 2017)	
	List of Issues	Concluding Observations
Burundi	March 2016	November 2016
Canada	March 2016	November 2016
Honduras	March 2016	November 2016
Switzerland	March 2016	November 2016
Netherlands	March 2016	November 2016
Estonia	March 2016	November 2016
Bangladesh	March 2016	November 2016
Bhutan	November 2016	November 2016
Albania	November 2016	November 2016
France	November 2016	July 2016
Mali	November 2016	July 2016
Myanmar	November 2016	July 2016
Philippines	November 2016	July 2016
Trinidad and Tobago	November 2016	July 2016
Turkey	November 2016	July 2016
Uruguay	October 2016	July 2016
Czech Republic	October 2016	July 2016 March 2016

Total: 42

Source: Committee on the Elimination of Discrimination against Women, List of Issues (LOIs)

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18

Committee on the Elimination of Discrimination against Women, Concluding Observations (COs)

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5



Global Rights for Women works with leaders around the world to advance women and girls' human right to live free from violence through legal reform and institutional and social change.

globalrightsforwomen.org

