

# Prospects for a New Global Convention on the Elimination of Violence against Women

A study on the effectiveness of existing mechanisms and political feasibility of a new treaty



Maram Falk, Masters of Public Affairs, Candidate  
Alexandra Sevett, Masters of Public Policy, Candidate  
Lauren Walker Bloem, Masters of Public Policy, Candidate

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Humphrey School of Public Affairs  
University of Minnesota

Under the advisement of:  
Dr. Mary Curtin, Diplomat-In-Resident  
Humphrey School of Public Affairs, University of Minnesota  
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## Executive Summary

The World Health Organization (WHO) published a pioneering study in 2013 to measure global and regional estimates of violence against women, and found that 1 in 3 women has been a victim of physical and/or sexual violence because of her gender in her lifetime, with significant majority of these women falling victim to their intimate partner. For the purpose of this study, we use a broader definition: “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, whether occurring in public or in private life.” This paper will address the need and feasibility for a new international and legally binding treaty specifically on the elimination of all forms of violence against women. To conduct this study, we completed a review of current literature and extensive interviews with subject matter experts.

In the first section of this paper, we examine current mechanisms that exist to combat the issue of violence against women to determine if they are sufficient to meet the global problem. We directed our research towards established international and regional mechanisms that directly address violence against women as a violation of women’s human rights. These mechanisms include both binding law and non-binding instruments, and regional treaties. Based on our conclusions, we established five criteria with which to evaluate the effectiveness of current mechanisms: a globally inclusive definition, a robust reporting mechanism to ensure implementation of the treaty, a robust reporting mechanism to ensure capacity building for states, concrete implementation steps for all stakeholders, and buy-in from parties in the forms of political-will and resources. After applying each of these criteria to current mechanisms, we find none fulfills all five. We conclude there is potential for a new treaty on violence against women fulfill these criteria, if it is designed in a globally inclusive, implementation-focused way. This could bring increased global coherence, implementation, and energy to the issue.

Next we examine the current political climate and determine the possibility of creating such a treaty in our current times. We consider the historical precedent set by other recently adopted conventions, their process for drafting and adoption, and conclude four criteria are important in the development of a new treaty: a declaration on the issue, international engagement, NGO and non-state actors, and state actors. We conclude the issue of violence against women fulfills three of these criteria in current times, but lacks a strong state-level champion for the issue. In light of these findings, we recommend the following.

1. Support calls and current efforts for a new treaty on violence against women.
2. Begin informal discussion and search for a political champion within UN or government ranks.
3. Continue to support current implementation and capacity building efforts, and expand those efforts globally.

It is our intent that the content of this study directs both the greater global community, and specifically Global Rights for Women, in their efforts progressing women’s human rights and eliminating violence against women across the globe.

## Methodology

As the purpose of this paper is to examine the current need for and feasibility of a new legally binding, international convention on violence against women, our team decided to conduct both desk research as well as interviews with academic and practitioner experts. Our team first decided to complete a review of current literature on a variety of topics relating to this question. We created a list of search terms that stemmed from initial conversations about the topic and outline of our paper. We settled on the following topics: the Convention on the Elimination of All Forms of Discrimination against Women, other UN Conventions, violence against women, Special Rapporteurs, regional conventions on violence against women, and domestic violence against women laws. Within each category we listed additional terms to combine with each topic so as to product more targeted and comprehensive searches.

Each team member took on a few topics and its subsequent, more targeted terms. We conducted our search through the library system at the University of Minnesota and Google Scholar using Boolean searches to produce results more relevant to our topic (Ex: CEDAW AND Implementation, or CEDAW AND Gaps). As our team found articles relevant for our literature review in each topic, we created a list of articles with citations and abstracts as well as any limitations of the resource. It was then each team member's responsibility to review the literature on each topic and produce the written review included here in our report.

In addition to conducting searches of academic literature, we utilized the texts of CEDAW and other international conventions and treaties, General Recommendations and other writings from the Committee in the Elimination of Discrimination Against Women, UN agency reports, reports written by the Special Rapporteur on Violence Against Women, its causes and consequences, and writings on these and other topics by regional agencies, NGOs and other advocacy groups. Texts of conventions and other official UN documents were found on the website for the UN as well as through Google Scholar and Google searches. Documents produced by regional and NGO groups were found through group websites or again through Google Scholar and Google searches. Information from these documents were also used in the production of the literature review included in this report.

In addition to a review of academic literature as well as regional and NGO documents, our team conducted a qualitative study in order to gain insight from academics, advocates and other actors related to issues of violence against women. We identified individuals to participate in this study by using contacts obtained from Global Rights for Women through a number of their international projects, primarily work conducted in Eastern Europe and Northern Africa. In addition to these contacts, we also selected academic professionals identified through the University of Minnesota Humphrey School of Public Affairs and the University of Minnesota Law School based on their areas of expertise and research as it relates to global policy, gender issues (specifically women), and human rights. We then sent requests for interviews to individuals that also outlined the subject matter for discussion: gaining an understanding of the work or knowledge in their field sometimes with a special consideration towards international law as it relates to local law, challenges in their work, and the underlying question of whether or

not a new international convention specifically addressing violence against women would be needed.

With participants located across the world, the fifteen interviews were mostly conducted over telephone or through Skype. In cases where the participant was local, the interview was generally conducted in-person. The structure of the interview was provided by following an interview protocol, outlining key questions that were to be answered through discussion, given prompts and follow up questions where needed. This protocol was developed to obtain a broad range of answers that related to violence against women, stemming from the understanding of international policy processes, current conventions related to human rights and their strengths and weaknesses, and the role of NGOs in these issues. These areas were covered in subtopics under the more general questions aimed at gaining knowledge of the participant and their role, their understanding of and opinions on CEDAW, regional treaties, treaty processes (to observe the opinions about effectiveness of the UN process and the current political climate for women's issues) and implementation processes for understanding how international law translates to national law and the effectiveness of that translation. The interviews were approximately one-hour in length, with varied focuses within the areas specified above, depending on the field of the participant (academic, professional, NGO). See *Appendix A* for the interview protocol.

Our team transcribed interviews, created a code book based on both our literature review search terms and project outline, and then coded all interviews with the goal of highlighting central themes evident in both the literature and qualitative data. Coding in this manner allowed us to understand relationships between the literature and interviews so as to thoroughly analyze the available resources and current opinions on topics discussed above.

Both the literature review and qualitative study were limited by the time constraints of this project. The time frame for this project was one semester (approximately four months), which greatly limited our search of literature and the number of interviews we could conduct. The study was further limited by the regions of the world represented in the interview portion. The participants primarily represent perspectives of the US, Eastern Europe, one nation in South America, and two nations of Northern Africa and Central Asia, with no representation of Central or Southern Africa, the greater Arab region, Oceania, or Eastern and Southern Asia. Future work should include interview participation of all regions of the world and more time to expand on the thoroughness of the study.

## Introduction

Violence against women remains a persistent global issue, with as many as 1 in 3 women experiencing either physical or sexual violence in their lifetime.<sup>1 2</sup> In some regions, as many as 38% of women have experienced violence perpetrated by an intimate partner.<sup>3</sup> Globally, as many as 38% of all murders of women are committed by intimate partners.<sup>4</sup> In addition to violence being a clear violation of a woman's dignity and human rights, victims of violence face negative impacts to their physical, sexual, emotional, psychological, and social well-being.<sup>5</sup> Violence has been linked to a multitude of negative health outcomes, including physical injury, unwanted pregnancy, abortion, gynecological complications, sexually transmitted infections (including HIV/AIDS), post-traumatic stress disorder and depression.<sup>6</sup> For our analysis, the term "violence against women" is defined as a "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, whether occurring in public or in private life".<sup>7</sup>

Currently, there is no international, legally binding treaty specifically on violence against women. The first international treaty to specifically address women's human rights overall was The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979. This convention is currently ratified by 189 nations. CEDAW's Expert Committee General Recommendation 19 (1992) clarified that discrimination includes violence against women, or gender-based violence. As a next step, the UN adopted the Declaration on the Elimination of Violence against Women (DEVAW) in 1993, condemning violence in private and public. Finally, The Beijing Platform for Action (1995) was adopted at the Fourth World Conference of Women which unified women's rights as human rights, and included the voices of international NGOs. It also specifically outlined actions for 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. A revision to General Recommendation 19 will be published in 2017 to update the CEDAW Committee's current interpretation of how violence against women is addressed in the Convention.

It is generally accepted that international law sets standards and directs national laws to be implemented in local contexts.<sup>8</sup> Challenges remain in translating international and regional norms on violence against women into lived realities for millions of women and girls around the world, and our paper examines best next steps to bridge the gap from norm commitment to everyday compliance.<sup>9</sup> Preliminary findings show that regional treaties with active monitoring

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<sup>1</sup> *Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And*

<sup>2</sup> *Preventing intimate partner and sexual violence against women: taking action and generating evidence* (World Health Organization, 2010).

<sup>3</sup> *Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And Non-Partner Sexual Violence* (World Health Organization, 2013).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> UN General Assembly. 85th Plenary Meeting. (1993). 48/104. Declaration on the Elimination of Violence against Women, Article 1. Accessed online: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>8</sup> David S Weissbrodt, *International Human Rights*, 1st ed., n.d.

<sup>9</sup> Thomas Risse, Stephen C Ropp and Kathryn Sikkink, *The Persistent Power Of Human Rights*, 1st ed. (Cambridge: Cambridge



mechanisms specifically on violence against women, such as the Belém do Pará Convention of the Organization of American States (1994), and the Istanbul Convention of the Council of Europe (2012), show promise in assisting State Parties to implement the treaty's obligations.

The aim of this study is to examine the need, desirability, and feasibility of a new, legally binding international treaty to combat violence against women in the current climate.

This paper will address two main questions.

- (1) What is the state of the current international framework to combat violence against women, and is it sufficient?
- (2) Is a new, binding international treaty on violence against women is the best mechanism to combat the persistent problem of violence against women?

## **The current international framework to combat violence against women: global efforts**

Current efforts to combat violence against women are not contained within one international body or framework, but rather have evolved organically as the issue of violence against women arose in international human rights discourse. As a result, references to violence against women and efforts to combat it are disparate. The Convention on the Elimination of All Forms of Discrimination Against Women does not mention violence against women specifically in the text of the convention but does address it as the subject of a General Recommendation. There are a number of soft law instruments that address the issue, such as the Declaration on the Elimination of the Violence Against Women. However, these instruments have not been implemented on a global level due to their non-binding nature. Binding regional treaties exist and provide an example of how to implement standards and monitor the issue but these regional tools do not reflect a global consensus understanding. In this first section, we further examine the current international, regional, and soft law efforts to combat violence against women and conclude that current efforts are fragmented, thus this pervasive global issue is not addressed with a unified global effort.

### *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the only legally binding international treaty to deal specifically with women's human rights. The weight of this cannot be ignored and the formation of the convention was significant in that it brought together advocates from many nations to confer and produce a single statement of standards and goals that could be universally applied.<sup>10</sup> CEDAW consists of a preamble and 30 articles, defining what constitutes discrimination against women and provided the basis for

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University Press, 2013).

<sup>10</sup> Martha C. Nussbaum, "Women's Progress And Women's Human Rights", *Human Rights Quarterly* 38, no. 3 (2016): 589-622, doi:10.1353/hrq.2016.0043.

realizing equality between men and women by setting up an agenda for national action.<sup>11</sup> This agenda is meant to ensure women's equal access to and opportunities in political and public life, education, health, and employment. States party to the convention agree to take measures to ensure that women can enjoy their human rights and fundamental freedoms. Countries that have ratified the Convention are considered to be legally bound to put its provisions into practice. They also commit to submit national reports on measures taken to comply with treaty obligations. Despite its advancements, violence against women is not specifically mentioned in the text of the Convention.

In 1945, at the time of the adoption of the United Nations Charter, responsibility for the promotion of the status of women was placed within a special and separate women's CSW commission. At first, this body was a sub-commission of the Commission on Human Rights (the pre-cursor to the current Human Rights Council). In 1946 however, the Commission on the Status of Women (CSW) became its own body tasked with making recommendations to the United Nations Economic and Social Council (ECOSOC) on the promotion of women's rights.<sup>12</sup> Between 1952 and 1962, CSW took on the role of drafting three conventions considered "corrective" and seeking to address issues in which women suffered specific disadvantages.<sup>13</sup> In the drafting of these conventions, the CSW realized the shortcomings of equality and non-discrimination provisions in general human rights instruments.<sup>14</sup>

Women advocates began seeking an instrument that would identify and condemn the multiple discriminations faced by women globally and develop a norm of non-discrimination against women within the emerging human rights legal framework.<sup>15</sup> Although, in 1946 the President of an organization called the British Federation of Business and Professional Women suggested to the United Nations General Assembly (UNGA) that a convention on the discrimination of women should be drafted, the first substantive steps towards the establishment of the convention were not taken until 1963.<sup>16</sup> In this year, the General Assembly adopted a resolution that called for the CSW to draft a declaration on eliminating discrimination against women.<sup>17</sup> The resolution also invited member states and non-governmental organizations to submit comments and proposals on principles that might be included in the convention.<sup>18</sup> In 1967, the Commission adopted a draft of the declaration, then sent it to UNGA, where the Declaration on the

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<sup>11</sup> "Text Of The Convention On The Elimination Of All Forms Of Discrimination Against Women", *Un.Org*, 2017, <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

<sup>12</sup> Freeman, Marsha A., Beate Rudolf, and Christine Chinkin. *The UN convention on the elimination of all forms of discrimination against women: A commentary*. Oxford University Press, 2012.

<sup>13</sup> "The Convention On The Political Rights Of Women", *Treaties.Un.Org*, 1953, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVI-1&chapter=16&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-1&chapter=16&lang=en;).; "The Convention On The Nationality Of Married Women", 1957, [https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch\\_XVI\\_2p.pdf](https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch_XVI_2p.pdf).; and "The Convention On Consent To Marriage, Minimum Age For Marriage And Registration Of Marriages", *Treaties.Un.Org*, 1962, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVI-3&chapter=16&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVI-3&chapter=16&lang=en).

<sup>14</sup> Freeman, Rudolf, and Chinkin. *The UN convention on the elimination of all forms of discrimination against women: A commentary*.

<sup>15</sup> *Ibid.*

<sup>16</sup> Arvonne S. Fraser. "Becoming Human: The Origins and Development of Women's Human Rights." *Human Rights Quarterly* 21, no. 4 (1999): 853-906. <https://muse.jhu.edu/> (accessed March 28, 2017).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

Elimination of Discrimination against Women (DEDAW) was officially adopted in that same year.

As an UNGA resolution, DEDAW is not legally binding and therefore its language is aspirational. However, it did provide agreed upon principles on the elimination of discrimination against women and thus, facilitated the process of moving from non-binding instrument to the binding treaty.<sup>19</sup> Following the UN custom of moving from a declaration to a convention, the Polish delegate to CSW proposed an international convention on the elimination of discrimination of women less than a year the adoption of DEDAW.<sup>20</sup> In 1972, a CSW working group formed to consider a draft convention submitted by the Philippines and the USSR. In 1977, CSW completed its work on the draft and submitted it to UNGA. In 1979, the General Assembly officially adopted a draft of the Convention on the Elimination of All Forms of Discrimination against Women that was then formally presented at the second international women's conference in Copenhagen in 1980 where fifty-seven nations signed the document.

CEDAW, its initiation and ratification, followed conventional UNGA protocol; it was introduced in the General Assembly and then made available for signature and ratification by all member states. The resolution was not introduced to the UN Security Council (UNSC) as it was not deemed to be a matter of international conflict or security.<sup>21</sup> It is important to note that the UNSC did pass resolutions 1325 in 2000 (involving women in peacekeeping and security efforts including decision-making) and 1820 in 2008 (condemning the use of rape as a weapon of war), which are peripherally related to CEDAW's efforts but relate rather to the role of and harms against women during conflict. Regarding CEDAW, once member states signed the convention, it was then left to individual members to ratify it within their respective government bodies. A State signs a treaty and therefore becomes a "signatory," providing a preliminary endorsement of the instrument and indicates the State's intent to examine the treaty domestically and consider ratifying it. A State ratifies a treaty and therefore becomes a "State party," meaning that the State has expressed its consent to be bound by the provisions in a human rights treaty under international law.<sup>22</sup>

By December of 1981, the document acquired the twenty ratifications necessary to give the convention force as a treaty.<sup>23</sup> By 1989, almost 100 nations had ratified the treaty. In the process of obtaining consensus for ratification, preparatory regional meetings were held to discuss language and adoption of the Convention. Although not much information is available about the content of these regional meetings, it has been noted by many member states that these regional meetings were valuable in obtaining multinational agreement to CEDAW.<sup>24</sup> Today 189 states have ratified CEDAW (only the US, Iran, the Holy See, Somalia, Sudan, Tonga, and Palau have not) and in doing so, agree to be bound by its provisions.

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<sup>19</sup> Freeman, Marsha A., Beate Rudolf, and Christine Chinkin. *The UN convention on the elimination of all forms of discrimination against women: A commentary*. Oxford University Press, 2012.

<sup>20</sup> Fraser. *Becoming Human: The Origins and Development of Women's Human Rights*. 853-906.

<sup>21</sup> Charter, U. N. "Charter of the United Nations." June 26 (1945): 59.

<sup>22</sup> "OHCHR Dashboard", *Indicators.Ohchr.Org*, 2017, <http://indicators.ohchr.org>.

<sup>23</sup> Fraser. *Becoming Human: The Origins and Development of Women's Human Rights*. 853-906.

<sup>24</sup> Donna J. Sullivan, "Women's Human Rights And The 1993 World Conference On Human Rights", *The American Journal Of International Law* 88, no. 1 (1994): 152, doi:10.2307/2204032.

Academic experts on human rights law and the convention discuss both strengths and weaknesses of CEDAW as a convention and mechanism to monitor and implement women's human rights standards. Much of the academic literature on human rights conventions concludes that it is worthwhile that CEDAW and other international conventions exist, not merely for their direct legal value, but also for the fact that documents can help people to network across national boundaries and develop a sense of common purpose, a common set of standards, and a way to measure that progress is being made.<sup>25</sup> At the international level, CEDAW has increased attention to gender issues within the UN human rights framework<sup>26</sup> and is unique in that it draws attention specifically to structural issues that must be addressed.<sup>27</sup>

A criticism that emerges in writings by these experts in regard to the convention is that some of the language of the standards is vague. Although to remedy this, the Committee on the Elimination of Discrimination against Women focuses efforts on the production of General Recommendations that help to interpret the text of the convention and link the somewhat vague language to concrete duties.<sup>28</sup> In addition, while CEDAW Committee decisions and recommendations are often directed towards a particular state, they also provide details of how the Committee understands all states' general obligations under the Convention and what constitutes a violation of those obligations.<sup>29</sup>

Academic experts on human rights law often argue that the real strength of CEDAW is the establishment of the Committee on the Elimination of Discrimination against Women as an enforcement mechanism for the treaty.<sup>30</sup> This Committee receives reports from State parties in order to monitor compliance of treaty obligations.<sup>31</sup> Within this mechanism, State parties agree to create or change legislation that implements the goals of CEDAW and to report on State progress.<sup>32</sup> However, there are a number of issues that prevent the CEDAW Committee from acting as a true enforcement mechanism for the standards laid out in the convention. First, the amount of time allocated to the CEDAW committee to consider reports is generally seen as inadequate and has led to delays in the reporting system.<sup>33</sup> In addition, many states have failed to write reports or do so but after a long delay. This may impact the Convention and Committee's ability to ensure the elimination of all form of discrimination against women covered under the convention in all States party to a significant extent.

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<sup>25</sup> Nussbaum. Women's Progress and Women's Human Rights. 589-622.

<sup>26</sup> 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. 01 (2006): 127, doi:10.1017/s1474746405002800.

<sup>27</sup> Marsha A. Freeman "The Human Rights of Women under the CEDAW Convention: Complexities and Opportunities of Compliance." 91 *Am. Soc'y Int'l L. Proc.* 378, 382 (1997).

<sup>28</sup> 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): 461-479, doi:10.1080/13642980701659989.; Nussbaum. Women's Progress and Women's Human Rights. 589-622.

<sup>29</sup> 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.

<sup>30</sup> CEDAW, Article 17.

<sup>31</sup> CEDAW, Article 18.

<sup>32</sup> Nussbaum. Women's Progress and Women's Human Rights. 589-622.

<sup>33</sup> Ronagh JA 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): 461-479. Freeman (1997)

## *Reservations to the Convention*

Per the 1969 Vienna Convention on the Law of Treaties, CEDAW allows ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention.<sup>34</sup> Despite such guidelines, CEDAW was still signed by nations citing reservations against essential components of CEDAW, such as Article 2 that specifically requires State parties to “embody the principle of equality of men and women” in their respective national constitutions or other appropriate legislation.<sup>35</sup> More specifically, twenty-two nations have reserved all or part of Article 2. The Committee has indicated that Articles 2 and 16, which provides for equality in the family, are clearly fundamental to the object and purpose of the treaty and has stated that it requires that all States Party gradually progress to a stage where each country will withdraw its reservation.<sup>36</sup> The fact that States have reservations to Articles 2 and 16, specifically, pose challenges to full implementation of CEDAW’s priorities.

The CEDAW Committee has been concerned with reservations to the convention and engages with States on the subject and scope of such reservations. Since 1997, States party to the Convention have included a discussion of their reservations as well as the rationale for entering them in their periodic reports to the Committee.<sup>37</sup> In addition to statements made by the Committee regarding reservations, it also engages with states on these issues during review and when formulating concluding observations. In many cases, the Committee will again express its concern that certain reservations are contrary to the object and purpose of the treaty and ask for explanations of why they remain. Overall, it is clear that the Committee expects to have conversations with States party about the progress on specific issues reserved, and whether or when the reservations might be withdrawn.<sup>38</sup> In some cases, states have withdrawn reservations to certain articles of the convention, including the ones identified as at the heart of the object and purpose of the treaty, Articles 2 and 16.<sup>39</sup>

A substantial number of reservations to CEDAW identified contradictions with cultural or religious beliefs and convention language. Contradictions with Sharia law were cited as a reservation under Articles 9, 15 and 16 by a number of Islamic nations.<sup>40</sup> For example, Pakistan argues that CEDAW is in direct conflict to Sharia law, specifically because of the role of women and their obligations under Sharia law.<sup>41</sup> Evidence suggests that even when conditions in member-states are no longer based on a religious context, established gender roles from previous cultural norms may hinder the acceptance of CEDAW language. For example, Confucian belief which prevailed in China at one point in history supports the dominance of the man and his

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<sup>34</sup>“Vienna Convention On The Law Of Treaties”, *UNTC*, 1969,

<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

<sup>35</sup> Marsha A. Freeman, *Reservations To CEDAW: An Analysis For UNICEF.*, Policy And Practice, 2009.

<sup>36</sup> CEDAW Committee, General Recommendation 21.

<sup>37</sup> Freeman. Reservations to CEDAW.

<sup>38</sup> Freeman. Reservations to CEDAW.

<sup>39</sup> Anne Hellum and Henriette Sinding Aasen, *Women's Human Rights, CEDAW in international, regional and national law*. 1st ed. (Cambridge, United Kingdom: Cambridge University Press, 2015).

<sup>40</sup> Freeman. Reservations to CEDAW.

<sup>41</sup> Anita M. Weiss, "Interpreting Islam And Women's Rights", *International Sociology* 18, no. 3 (2003): 581-601, doi:10.1177/02685809030183007.

socioeconomic control over a woman which may still affect gender roles today.<sup>42</sup>

Reservations are a part of the treaty process and therefore will continue to exist. They are a serious issue within the CEDAW treaty system as they may indicate a state's decision to comply with only some parts of the treaty as opposed to others. In some cases, reservations simply suggest that a State party is not yet able to implement provisions in the treaty or that even though the States is not unequivocally committed to all the international norms articulated in the treaty, they want to remain a part of the conversation.<sup>43</sup> As mentioned, particularly problematic are the reservations to Articles 2 and 16, or the heart and purpose of fundamental issues in CEDAW such as legal capacity and equality in the family. These reservations may impact the implementation of the treaty and therefore gravely affect the measures taken within a state to address serious issues of discrimination against women, and specifically more nuanced issues such as violence against women.

### ***General Recommendations 12 and 19: Addressing Violence Against Women***

CEDAW does not mention violence against women specifically within the text of the convention as a form of discrimination against women. This failure can be attributed to both the understanding of the issues at the time and the issues somewhat late entry onto the international agenda.<sup>44</sup> In 1975 the Conference of the International Women's Year held in Mexico City adopted the World Plan of Action, which called for support of the elimination of gross violations of human rights of women involving acts against the moral and physical integrity of individuals, but did not mention violence against women specifically.<sup>45</sup> The Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace (the Mexico Declaration) in paragraph 28 acknowledged some forms of violence against women, including rape, prostitution, physical assault, mental cruelty, child marriage, forced marriage and marriage as a commercial transaction.<sup>46</sup>

During the process of drafting CEDAW in 1976, specifically during discussion on Article 6 which asks States party to take measures to suppress all forms of trafficking and the exploitation of prostitution of women, the delegation from Belgium proposed including the words 'attacks on the physical integrity of women' in the language of the article, acknowledging that while in most countries such acts are legally disavowed and punished, they nevertheless continue to form part of customs and tradition.<sup>47</sup> This language echoed the language in the Mexico Declaration. However, the proposal was not supported. This was apparently the limit of attempts to include

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<sup>42</sup> Marianne Hester, "Future Trends And Developments", *Violence Against Women* 10, no. 12 (2004): 1431-1448, doi:10.1177/1077801204270559.

<sup>43</sup> Freeman. Reservations to CEDAW.

<sup>44</sup> Marsha A Freeman, C. M Chinkin and Beate Rudolf, *The UN Convention On The Elimination Of All Forms Of Discrimination Against Women*, A commentary. 1st ed., n.d.

<sup>45</sup> *Report Of The World Conference Of The International Women 'S Year* (Mexico City: UN Doc E/CONF.66/34 para 51., 1975).

<sup>46</sup> Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace. Report of the World Conference of the International Women's Year. 1975. United Nations. New York. <http://www.un.org/womenwatch/daw/beijing/otherconferences/Mexico/Mexico%20conference%20report%20optimized.pdf> (Accessed in March 2017).

<sup>47</sup> E/CN.6/SR.638

any direct reference to violence against women in the Convention.<sup>48</sup>

At this time, comprehensive discussions on violence against women were not a part of women's rights discourse. In fact, intimate partner violence, the most common form of violence against women, was considered a "private" issue and not the responsibility of states. Most efforts to address women's issues were funneled through CEDAW, and therefore a "UN Women" prerogative. Over time, violence against women broke into the broader international human rights framework, eventually becoming a duty of the state to prevent and eliminate violence against women.

In 1985, the UN held the Third Conference on Women in Nairobi. During the NGO Forum in particular, the issue of violence against women was discussed at length at innumerable workshops and in many publications distributed to attendees at the conference. Crowds gathered daily to discuss the links between violence in the home, violence in society, and violence between nations and it was acknowledged that it was an issue that transcended race, class and cultures.<sup>49</sup> A collective shift was taking place in the recognition of the multiple forms of violence against women as a global pattern of behavior and acknowledge the need to bring violence against women into the framework of international human rights law requiring state responsibility to combat it.<sup>50</sup>

In 1989, recognizing the gap that existed regarding CEDAW and the issue of violence, the CEDAW committee adopted General Recommendation 12, as part of its ability to draft and make recommendations on any issue affecting women's rights.<sup>51</sup> General Recommendation 12 is meant to address how the Convention can apply to the issues of violence against women by asserting that States Party 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."<sup>52</sup> In 1992, the Committee adopted a second and more comprehensive recommendation, General Recommendation 19, which defines violence against women as "violence that is directed against a woman because she is a woman or that affects women disproportionately" and that it "includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".<sup>53</sup> Legal scholars point out that when GR19 states "gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a bases of equality with men," the text links it firmly to several Articles of the convention by stating that discrimination includes gender based violence.<sup>54</sup> This concludes that violence impairs women's physical and mental health and subsequently, undermines the implementation of the Convention. The Recommendation also further reiterated that all parties are to include in reports to the Committee statistical data on violence against women, the legislative and other measures taken

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<sup>48</sup>Freeman, Rudolf, and Chinkin. The UN convention on the elimination of all forms of discrimination against women: A commentary..

<sup>49</sup>Fraser. *Becoming Human: The Origins and Development of Women's Human Rights*. 853-906.

<sup>50</sup>Freeman, Rudolf, and Chinkin. The UN convention on the elimination of all forms of discrimination against women: A commentary..

<sup>51</sup>Text Of The Convention On The Elimination Of All Forms Of Discrimination Against Women

<sup>52</sup> CEDAW Committee, General Recommendation 12

<sup>53</sup> CEDAW Committee, General Recommendation 19

<sup>54</sup> CEDAW Committee, General Recommendation 19; Chinkin, *Addressing Violence Against Women*, 471-501.; Nussbaum. *Women's Progress and Women's Human Rights*. 589-622.

to protect women from violence, and the provision of services for victims<sup>55</sup> and clarified that CEDAW applies both to public and private actors, thus addressing issues traditionally seen as applying to the private life of citizens and not just state actions.<sup>56</sup>

Assessing CEDAW's ability to aid in the process of combating and eliminating violence against women, many academic experts in international law suggest that the convention has potential. However, it is widely acknowledged that while the convention requires states to ensure equality in areas where discrimination has been most evident and dangerous for women, it does not directly mention or contain a specific provision on violence against women. The committee, through General Recommendation 12 and 19, sought to rectify this situation by firmly placing violence against women in the context of Article 1 of the convention and thus, interpreting the definition of discrimination to include gender based violence.<sup>57</sup> While this is acknowledged as an important recognition of a serious gap in CEDAW, many academics and practitioners note that these general recommendations are not legally binding for states.<sup>58</sup> However, some experts, like a member of the CEDAW committee, argue that the recommendations are persuasive interpretations of CEDAW.<sup>59</sup> In addition, institutions such as the International Court of Justice have recognized that the opinions of a UN human rights treaty body should be given 'great weight'.<sup>61</sup> Indeed, according to the CEDAW Committee, "It is the Committee's view that the Convention has a living provision on gender-based violence against women in its present form".<sup>62</sup>

There is ongoing debate about the binding nature of General Recommendations. A 'purist' would say a GR is not binding because it is not in the body of the Treaty that was specifically ratified.<sup>63</sup> The United States also takes this position and does not recognize any Treaty interpretation by Committee experts to be binding.<sup>64</sup> That is the formal, legalistic perspective. On the other hand, a more pragmatic view is that GRs are simply explanations of what the Committee understands the Treaty to say on a particular subject, like violence against women. The Treaty is binding, and therefore the authoritative body's interpretation of the Treaty is also binding.

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<sup>55</sup> 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.

<sup>56</sup> Nussbaum. *Women's Progress and Women's Human Rights*. 589-622.

<sup>57</sup> Chinkin, *Addressing Violence Against Women*, 471-501.; McQuigg. *The Responses Of States To The Comments Of The CEDAW Committee On Domestic Violence*. 461-479.; Nussbaum. *Women's Progress and Women's Human Rights*. 589-622.

<sup>58</sup> Chinkin, *Addressing Violence Against Women*, 471-501.; 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.

<sup>59</sup> 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.

<sup>60</sup> Professor Ruth Halperin-Kaddari, Vice-Chair, Committee on the Elimination of Discrimination against Women, interviewed by Alexandra Sevet and Lauren Walker Bloem, March 7, 2017, transcript.

<sup>61</sup> Chinkin, *Addressing Violence Against Women*, 471-501.

<sup>62</sup> Yoko Hayashi, *Submission To The Special Rapporteur On Violence Against Women. Submission By The Committee On The Elimination Of Discrimination Against Women* (UN Human Rights Office of the High Commissioner, 2016).

<sup>63</sup> Marsha Freeman, Senior Fellow at the University of Minnesota Human Rights Center, interviewed by Alexandra Sevet, April 6, 2017, transcript.

<sup>64</sup> Sharon Kotok, Retired Officer in Charge of International Women's Programs, U.S. State Department, interviewed by Maram Falk, April 3, 2017, transcript.



In line with this second view, the CEDAW Committee points out that State parties have endorsed the Committee's interpretation outlined in GR19 since its inception.<sup>65</sup> Other international bodies written since GR19 have also reaffirmed that gender-based violence against women are a form of discrimination against women on the basis of sex and is a human rights violation.<sup>66</sup> More specifically, since the adoption of GR19, in the Committee's nearly six hundred Concluding Observations, most refer explicitly to gender-based violence against women.<sup>67</sup> Some argue that this engagement from States on the issue demonstrates that GR19 is as binding as the rest of the Treaty. Others say that it is still not enough, as states are not legally obligated to follow Recommendations.

The committee is currently in the process of updating General Recommendation 19. In July of 2016, at its sixty-fourth session, the CEDAW Committee invited all interested parties to submit comments on its process of updating the recommendation. While taking into account both the achievements and recognizing the challenges that persist in the area of violence against women globally, the Committee is seeking to "provide States parties with further and comprehensive guidance aimed at accelerating the elimination of gender based violence against women."<sup>68</sup> The Committee sees the document as a complement and update to General Recommendation 19 and as providing further clarification of States parties' obligations to all women within their territories. *See Supplemental Materials* for full draft of the updated language.

One noted improvement in the draft update is the Committee's use of stronger language in regards to the obligation of States on combating violence against women. The update supplies its notes on state actions under the header "General Obligations of States parties under the Convention,"<sup>69</sup> whereas in General Recommendation 19, the phrase "Specific Recommendations" is used to refer to state actions. The Committee, as in GR 19, makes clear that violence against women constitutes a violation of the Convention in that it is a form of discrimination under Article 1. Thus, as the draft update clarifies, States parties have an "obligation of due diligence" under Article 2 to take all appropriate measures to eliminate violence against women by any person, organization or enterprise. The draft update 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.

In GR 19, as the Committee offered specific recommendations for States parties, the phrases and actions started with 'should.' For example, paragraph 24 (c) states that States "should encourage the compilation of statistics and research on the extent of attitudes, customs and effects of violence, and on the effectiveness of measures to prevent and deal with violence."<sup>70</sup> In the draft update, this similar action is stated simply, "Establish a system to collect, analyze and publish

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<sup>65</sup> CEDAW/C/GC/19/Add.1

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> CEDAW/C/GC/19/Add.1

<sup>69</sup> *Ibid.*

<sup>70</sup> A/47/38.

statistical data...”<sup>71</sup> This change of tense conveys State’s obligations through stronger language.

The draft update also provides States with further guidance for States parties to aid in the elimination of gender based violence. Obligations for all branches of national government are laid out including at the legislative, executive, and judicial level. In addition, specific and more detailed recommendations are provided in the areas of prevention, protection and redress, data collection and monitoring, and international cooperation. The measures include more specific provisions. For example, in GR 19, paragraph 24 (d) states “Effective measures should be taken to ensure that the media respects and promote respect for women.” The draft update states, “Adopt and implement effective measures to encourage the media...to eliminate discrimination against women in their work, including negative and stereotyped portrayal of women and girls.”<sup>72</sup> It continues, “These measure should include the promotion of positive portrayals that challenge gender stereotypes relating to the roles of women and men, guidelines for the appropriate reporting of the media of cases of gender-based violence against women...” and so on. These recommendations provide guidance for States with the goal for States parties to strengthen the implementation of their obligation in relation to violence against women.

However, the debate about the binding nature of recommendations overall still applies to the draft update of General Recommendation 19 (or 19.2). The extent to which General Recommendation 19.2 changes state behavior or practice in terms of efforts to eliminate violence against women, will need to be evaluated in the future. No details are currently available as to when the draft will be adopted as an official General Recommendation.

### ***Reporting on Violence against Women with the CEDAW Committee***

General Recommendation 19 made it clear that the CEDAW Committee expected State parties to include in their reports information on the prevalence of violence against women and what measures they were taking to combat the issue. Therefore, states should be reporting on violence against women, the measures taken to address the issue through legislation, prevention, service provision, and access to justice for victims. In 2014, the Committee decided to offer a simplified reporting procedure, under which the Committee’s pre-session working group prepares a list of issues (LOI) that are transmitted to the State party prior to the submission of its report to guide state reporting.<sup>73</sup> In addition to responding to the LOI produced by the Committee, many states also respond to the Committee’s previous concluding observations issued to the state.

In all twenty-six States reports reviewed for this analysis, violence against women was addressed in some form in at least one place within the report, although most State reports included discussions of the topic in several places throughout. For the full list of reports reviewed, *see Appendix B*. The types of violence that were most reported on were sexual violence and domestic violence. While the sections of state reports are not uniform, one section where discussions of violence against women are placed is that containing direct responses to previous

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<sup>71</sup> CEDAW/C/GC/19/Add.1, p.12.

<sup>72</sup> A/47/38.

<sup>73</sup> "OHCHR | Simplified Reporting Procedure", *Ohchr.Org*, 2017, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/ReportingProcedures.aspx>.

concluding observations or requests for information in LIOs put forth by the Committee. It is clear after reviewing LOIs and concluding observation documents produced by the CEDAW Committee for states, that it expects to have a constructive dialogue on the issue of violence against women. For a list of issues and concluding observations reviewed, *see Appendix C*. Violence against women was mentioned in all LOIs and concluding observation document reviewed. Therefore, it seems the committee is driving the conversation on violence against women.

An additional place where information on measures taken to address violence against women can be found is within the discussion of progress made on the implementation of each article of CEDAW. Although, the article in which this information is discussed is not consistent between state reports. Within states who reported on progress on implementation of CEDAW obligations article by article, the majority of states reported on progress to combat violence against women within Article 2, focused on law and the role of legislation and legal institutions in ensuring that women are not subject to discrimination, and Article 5, which obligates States parties to eliminate all harmful practices based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Some states included their own section on violence against women specifically, but again this was not uniform throughout state reports. In addition, the quality and depth of reporting on these measures varies from state to state. This could be due to the degree to which states are progressing in their compliance with the treaty and implementation of treaty obligations. However, this still demonstrates that processes lack uniformity of reporting on violence against.

Within Concluding Observation documents, the Committee provides on average two to five recommendations for the State regarding violence against women. These recommendations range from more broad recommendation such as establishing a national plan to combat violence against women or allocating resources in state budgets, to more specific recommendations such as “remove obstacles faced by victims of gender based violence in gaining access to justice, including by eliminating the requirement of a medical certificate to initiate criminal proceedings for rape.”<sup>74</sup> Again, consistency in the specificity of recommendations was not found. Although some of the comments of the Committee are improving in quality, they remain uneven in length, detail and strength.<sup>75</sup>

Overall, it seems that the requirements set forth in General Recommendation 19 by the CEDAW Committee are being followed. States are reporting on the steps taken to address violence against women in their periodic reports to the Committee. The regular inclusion of recommendations on the subject in the concluding observations of the Committee also demonstrate that it considers violence against women to be a priority within the larger “constructive dialogue” between States and the Committee on the Convention. This demonstrates an acceptance of violence against women as a violation of the Convention and a form of discrimination against women.

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<sup>74</sup> Committee on the Elimination of Discrimination against Women. Concluding observations on the combined fifth and sixth periodic reports of Burundi. 18 November 2016. CEDAW/C/BDI/CO/5-6.

<sup>75</sup> M.R. Bustelo, "The Committee On The Elimination Of Discrimination Against Women At The Crossroads", in *The Future Of UN Human Rights Treaty Monitoring*, 1st ed. (Cambridge: Cambridge University Press, 2000), 79–111.

Nevertheless, issues due to the structure, resource and time constraints remain. This is a drawback and can constrain the Committee from exploring all facets of violence against women.<sup>76</sup> There does not seem to be a uniform way in which States are reporting on violence against women. There could be missing information on the status of violence against women in the state that is not making it into official reports. Also, the function of the Committee is to engage in a dialogue and encourage States to change laws and practices to align with their obligations under the Convention and therefore, the Committee does not go as in depth on one issue but rather focuses concluding observations on all the articles of the Convention.<sup>77</sup> The quality of recommendations specifically on violence against women remains a problem. In addition, this may be due to time and resource limitations as the amount of time allocated to the CEDAW Committee is considered to be inadequate.<sup>78</sup> It is unlikely that the Committee will always be able to understand the specific issues surrounding violence against women in each state to a sufficient degree to ensure that the quality of its concluding observations remains entirely consistent in terms of quality and depth.

### *Optional Protocol*

Discussions about how to implement CEDAW provisions started as early as the negotiations of the Commission of the Status of Women on the Convention from 1977-1979.<sup>79</sup> Sweden and the Netherlands both voiced support for a way for “private persons to lodge complaints concerning a State party’s implementation of the Convention”.<sup>80</sup> Final drafts considered by CSW did not include an individual complaints procedure. Then in 1979 Belgium proposed that as soon as the Convention entered into force, States parties examine if individuals could present themselves to the newly created Convention's monitoring body much like what exists in other human rights treaties. It considered the suggested reporting mechanism, including only state reports and committee reviews, to be ‘minimalist’.<sup>81</sup> This proposal for an individual complaints mechanism also did not pass. Some states felt a complaints procedure was not appropriate for CEDAW, distinguishing between conventions on ‘serious international crimes’ such as apartheid and this Convention dealing with discrimination against women.<sup>82</sup> This clearly exposes State’s early thinking on the issue of violence against women, defining it as a *not* serious crime. They emphasized States had already begun to cooperate that it would be inappropriate to establish a body which would act as a ‘court of judgement,’ though this remains a need for CEDAW implementation today.<sup>83</sup> This demonstrates that debate about how to implement and enforce changes in social issues like discrimination against women is nothing new.

The CEDAW Committee began working on a mechanism in the form of an optional protocol in

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<sup>76</sup> McQuigg. The Responses Of States To The Comments Of The CEDAW Committee On Domestic Violence. 461-479.

<sup>77</sup> Chinkin, Addressing Violence Against Women, 471-501.

<sup>78</sup> McQuigg. The Responses Of States To The Comments Of The CEDAW Committee On Domestic Violence. 461-479; Nussbaum. Women’s Progress and Women’s Human Rights. 589-622.

<sup>79</sup> Freeman, Rudolf, and Chinkin. The UN convention on the elimination of all forms of discrimination against women: A commentary.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

1982 centered on establishing a much desired reporting procedure.<sup>84</sup> The scope of an optional protocol expanded in 1991 when the Committee included a potential individual complaints procedure that it would propose at the Human Rights Conference in 1993.<sup>85</sup> Also in 1991, the Committee considered using this optional protocol to address violence against women and convened an expert group to evaluate this possibility, made up of CEDAW committee members, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and other experts in the human rights field.<sup>86</sup> The expert group delivered a recommendation, supported by CSW and the UN General Assembly, of adoption of a declaration, leading to the Declaration on the Elimination of Violence against Women (DEVAW) in 1993.<sup>87</sup> We discuss DEVAW more in-depth later in this paper.

The Committee, CSW, nor the UNGA made any further attempt to address violence against women specifically after this declaration. However, the Committee continued to pursue a reporting and complaints procedure for all of CEDAW through an optional protocol and began drafting this protocol in 1994, which became known as the Maastricht draft.<sup>88</sup> In January of 1995, the CEDAW Committee adopted “Suggestion 7,” highlighting the desirability of an optional protocol. The UN Secretary General followed by inviting IGOs, NGOs, CSW, and governments to provide their views on an optional protocol.<sup>89</sup> In September of 1995, at the 4<sup>th</sup> World Conference on Women in Beijing, the Conference called on Member States to further state support for the Optional Protocol. Between 1996 through 1999, an Open-ended Working Group, established by CSW, worked through various iterations of the draft Optional Protocol through informal meetings.<sup>90</sup>

The General Assembly adopted a 21- article Optional Protocol to the Convention in 1999 covering all aspects of the treaty, not only violence against women, with enforcement beginning in 2000. Under this Optional Protocol, signatory states recognize that the CEDAW Committee is the “competent monitoring body” for the CEDAW, granting the Committee additional authority to act as a quasi-judicial body.<sup>91</sup> Although the Optional Protocol does not mention violence, it offers two new features to the convention.<sup>92</sup> First, it allows for individual women or groups of women to raise their own claims of violations against the treaty to the CEDAW Committee but only once all local and national legal options are exhausted. Second, the Protocol empowers the Committee to carry out an investigation against the claims of violation of women’s rights. Both new features are only available to individuals or groups of individuals if the state is signatory to the CEDAW’s Optional Protocol.

This Optional Protocol is unique to the UN process as it carries an “opt-out” clause, in which

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<sup>84</sup> Marsha A Freeman, C. M Chinkin and Beate Rudolf, *The UN Convention On The Elimination Of All Forms Of Discrimination Against Women*, 1st ed., 2012.

<sup>85</sup> *Ibid.*

<sup>86</sup> "History Of An Optional Protocol", *Un.Org*, 2017, <http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm>.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> "Optional Protocol To The Convention On The Elimination Of All Forms Of Discrimination Against Women", *Un.Org*, accessed 9 April 2017, <http://www.un.org/womenwatch/daw/cedaw/protocol>.

<sup>92</sup> Freeman, Rudolf, and Chinkin. The UN convention on the elimination of all forms of discrimination against women: A commentary.

states can agree to only the first option and not the second, inquiry-specific, option outlined in Articles 8 and 9 in the Optional Protocol text.<sup>93</sup> A similar opt-out clause is made available in the Optional Protocol to the Convention on the Rights of the Child regarding its communication procedure.<sup>94</sup> Usually, optional protocols to UN treaties are all-inclusive in acceptance as they are not required for signature to the main treaty. As of December 2016, 80 states have signed the CEDAW's Optional Protocol with five nations (Bangladesh, Belize, Colombia, Cuba, and Tajikistan) opting out of Articles 8 and 9. As of May 2015, 45 claims have been made under the communications procedure (outlined in Articles 1 and 7 of the Optional Protocol) and 3 inquiries have been made under the inquiries procedure.<sup>95</sup> According to the CEDAW Committee at least 12 communications and 3 recommendations following inquiries condemn gender-based violence against women.<sup>96</sup>

### ***CEDAW Implementation***

The most meaningful way to implement international law is through national legislation, local legislation, courts, and administrative agencies.<sup>97</sup> Globally, 143 countries include language on equality between men and women in their constitutions, as required by Article 2 in CEDAW, and yet cultural and social norms of discrimination persist.<sup>98</sup> Only 6 countries<sup>99</sup> include language on equality that includes both a gender and violence component in their constitution, suggesting that CEDAW has not directly translated into constitutional language on violence against women.<sup>100</sup> The UN Women "Global Gender Equality Constitutional Database" is a repository of all gender equality provisions found in any of the 195 constitutions from around the world. A weakness of this search tool is that it does not include other laws on violence against women such as the United States Violence Against Women Act (2013). The repository therefore underestimates the legal provisions for gender equality available to women, but it does demonstrate that provisions on gender equality are more prevalent than gendered violence at the constitutional level. Effective implementation of the standards in CEDAW can be hard to measure on a global scale, and even more challenging is measuring efforts to combat violence against women.

In some cases, CEDAW has had a real, if limited, legal significance, when implemented in a local context.<sup>101</sup> CEDAW, as a document ratified by most of the nations in the world, can serve as language for use by courts, particularly when combined with an additional mechanism such as soft law, UN special procedures, or more likely pressure from domestic groups.<sup>102</sup> There are a

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<sup>93</sup> *Ibid.*

<sup>94</sup> G. de Beco, "The Optional Protocol To The Convention On The Rights Of The Child On A Communications Procedure: Good News?", *Human Rights Law Review* 13, no. 2 (2013): 367-387, doi:10.1093/hrlr/ngt015.

<sup>95</sup> Optional Protocol to CEDAW. <https://opcedaw.wordpress.com/> (accessed on April 12, 2017).

<sup>96</sup> *Ibid.*

<sup>97</sup> Weissbrodt. *International human rights: law, policy, and process.*

<sup>98</sup> "Sustainable Development Goal 5: Gender Equality", *UN Women*, accessed 10 March 2017, <http://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality#notes>.

<sup>99</sup> These six countries are Malawi, Afghanistan, Tunisia, Kyrgyzstan, Estonia, and Ecuador.

<sup>100</sup> "Global Gender Equality Constitutional Database.",

<http://constitutions.unwomen.org/en/search?keywords=violence&language=440842edf3e4463b83acea5d3878db5f&provisioncategory=b21e8a4f9df246429cf4e8746437e5ac>.

<sup>101</sup> Martha C. Nussbaum. "Women's Progress and Women's Human Rights." *Human Rights Quarterly* 38, no. 3 (2016): 589-622. <https://muse.jhu.edu/> (accessed March 28, 2017).

<sup>102</sup> *Ibid.*

few cases involving the rights of women in which national courts have enforced the provisions of international human rights law. These domestic courts used the convention to uphold plaintiffs' claims.

*Vishaka v. State of Rajasthan* is a 1997 case in which women's groups and NGOs in India brought a petition on sexual harassment in the workplace before the Supreme Court.<sup>103</sup> A social worker was raped in a village in Rajasthan and the women argued that they were unsafe and unprotected from harassment in the workplace because of failure on the part of both the employer and the legal system to address the problem. While arguing their case, the petitioners made repeated references to CEDAW, pointed out that India had ratified the convention and therefore, India was obligated to uphold the rights of women in the workplace.<sup>104</sup> The Court accepted the argument and noted that in the absence of domestic law, the contents of international Conventions and norms are significant for interpretation and formulation of effective measure to combat sexual harassment in the workplace.<sup>105</sup>

*Attorney General of Botswana v. Unity Dow* is a 1991 case in Botswana focused on nationality.<sup>106</sup> Unity Dow married a man in Botswana who held US citizenship. When the couple had children, the first was born before the marriage. According to the Botswana 1984 Citizenship Act, the nationality of children born outside of a marriage follows that of the mother. Therefore, the child was considered a citizen a Botswana. However, her other children, born after the marriage, were considered citizens on the United States, following the father's nationality. Ultimately this meant that both husband and children were vulnerable to expulsion if the father's residency permit could not be renewed or if the father left Botswana voluntarily, the children could stay only if granted residency permits.<sup>107</sup> Dow went to court to challenge the constitutionality of the law, citing equality provisions in Botswana's Constitution. The judge in the case argued the Citizenship Act was discriminatory and denied women fundamental rights and freedoms.<sup>108</sup> He further stated that therefore, it is null and void, given that the Constitution forbids discriminatory laws. Although Botswana did not ratify CEDAW until 1996, the judge cited the UN Declaration on the Elimination of Discrimination against Women as an interpretative tool in finding that Botswana did not intend to permit discrimination based on sex.<sup>109</sup>

These two cases demonstrate that the Convention can be used in national courts to change or interpret laws. Key case decisions in the courts can set a precedent that expands or contracts the implementation of human rights norms in domestic settings.<sup>110</sup>

A robust and developed civil society is also an important factor in the implementation of CEDAW. This is the case for two reasons. The first, as many human rights experts point out, is

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<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *The Attorney General of The Republic of Botswana vs Unity Dow* (1991).

<sup>107</sup> Nussbaum. *Women's Progress and Women's Human Rights*. 616.

<sup>108</sup> Nussbaum. *Women's Progress and Women's Human Rights*. 589-622.

<sup>109</sup> *Ibid.*

<sup>110</sup> Weissbrodt. *International human rights: law, policy, and process*.

the importance of NGO reporting to the CEDAW Committee to present full the picture of the situation of women's rights in individual member states.<sup>111</sup> Often, governments' assessments of their efforts to comply with CEDAW are incomplete and tend to minimize problems and maximize accomplishments.<sup>112</sup> NGO reports in contrast, tend to adopt a more critical approach and often can provide a more accurate and informative assessment of the situation of women living in the state in question. The CEDAW Committee, therefore, asks governments if they were involved in preparing the report. In addition, the Committee invites direct NGO input, in the form of either an independent or "shadow" reports or oral presentations with the goal of bringing women's real concerns to national and international attention.<sup>113</sup> The term "shadow report" reflects the idea that they "shadow" or supplement the State 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.<sup>114</sup>

As an expert on CEDAW states, NGO engagement in treaty monitoring is crucial in achieving the goals of the international human rights treaty system - holding governments accountable for the implementation of treaty obligations.<sup>115</sup> The examination of a State's report under a treaty can provide a chance for exerting international pressure, have a fuller picture of the status of women in a state, and express that a state has not carried out its obligations under the treaty.<sup>116</sup> In this way, domestic civil society plays a large role in the continuous monitoring of human rights implementation.

In addition to providing information to the CEDAW Committee through shadow reports, NGOs can also invoke CEDAW obligations as part of their domestic advocacy by utilizing the language of the treaty and the Committee's Concluding Observations to States.<sup>117</sup> NGOs can put pressure on the government to comply with its obligations and the implementation of the Convention in local cultures and contexts. NGO's can publicize that the state has obligations under CEDAW and if it is failing to comply. In combination with international pressure, States can be pressured or shamed into fulfilling its obligations. An example, Zimbabwe reported to the CEDAW Committee that it had passed a Legal Age of Majority Act giving women equality in the right to vote and property and inheritance rights.<sup>118</sup> However, a few weeks later, the parliament was set to repeal the legislation. A variety of NGOs in the country took action and successfully shamed the government into not following through on this repeal.<sup>119</sup> In other countries, CEDAW has

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<sup>111</sup> 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): 461-479, doi:10.1080/13642980701659989.; 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.

<sup>112</sup> "International Women's Rights Action Watch", *Hrlibrary.Umn.Edu*, 2003, <http://hrlibrary.umn.edu/iwraw/proceduralguide-08.html>.

<sup>113</sup> *Ibid.*

<sup>114</sup> 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.

<sup>115</sup> *Ibid.*

<sup>116</sup> McQuigg, "The Responses Of States To The Comments Of The CEDAW Committee On Domestic Violence." 461-479.

<sup>117</sup> Freeman, "The Committee On The Elimination Of Discrimination Against Women And The Role Of Civil Society In Implementing International Women's Human Rights Norms," 25-48.

<sup>118</sup> McQuigg, "The Responses Of States To The Comments Of The CEDAW Committee On Domestic Violence," 461-479.

<sup>119</sup> *Ibid.*



similarity provided a focal point for advocacy activities in the area of women's rights.

The recent publication "Women's Human Rights: CEDAW in International, Regional and National Law" edited by Anne Hellum and Henriette Sinding Aasen provides one of the most comprehensive overview studies of CEDAW implementation to date. Authors analyze CEDAW's impact in Northern Europe, Canada, South Asian and Southern African countries, in order to examine the relative implementation in various legal, political, economic, social and cultural contexts.<sup>120</sup> Each country is under various interacting international, regional and national obligations to respect, protect, and fulfill women's right to equality and non-discrimination.<sup>121</sup> So, each study examines the extent to which CEDAW and the Committee have provided additional avenues of intervention in comparison to or in addition to other national, regional and international treaties. Even in this comprehensive review, the authors only marginally assess whether changes in national law are having an impact at the local level. Rather, the legal and political focus of this analysis provides a look at changes taking place through legislation and judicial review, using legal textual analysis. The authors conclude that the following influential factors impact the effectiveness of CEDAW implementation into national legislative and judicial decisions: the availability of other international and legal mechanisms, the degree of democracy, the nature of the legal system and dominant legal culture, the state's motivations for ratification, and the democratic elements in the process of ratification and monitoring, the extent of legal education of duty bearers and rights holders, and the strength of civil society and its national, regional and international networks.<sup>122, 123</sup>

The authors further group the studies into two categories to show the main difference regarding CEDAW's effect on national laws and judicial review: (1) states that have acceded to regional mechanisms providing protection against gender discrimination and (2) states that have not acceded to regional treaties, or that have regional instruments with weak enforcement mechanisms.<sup>124</sup> For example, countries signed on *only* to the Maputo Protocol are placed in the second category due to the lack of ongoing reporting, as the African Commission tasked with monitoring the protocol has not developed its gender analysis of human rights violations, making its enforcement ineffectual.<sup>125</sup>

The authors' analysis finds that countries with strong regional mechanisms and law rely more heavily on the regional European Union and European Court of Human Rights law rather than CEDAW. The Northern European states included in this analysis are the Netherlands, France, the UK, Finland and Norway, which have all acceded to the European Convention on Human Rights (ECHR) and are EU members.<sup>126</sup> For example, The Netherlands ratified CEDAW in 1991 with a unique provision that the government periodically report to Parliament on the implementation of

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<sup>120</sup> Hellum and Sinding Aasen, eds. *Women's human right: CEDAW in international, regional and national law*.

<sup>121</sup> *Ibid.*

<sup>122</sup> With the exception of availability of regional mechanisms, most of these factors are addressed in Simmons, *Mobilizing for Human Rights*.

<sup>123</sup> Hellum and Sinding Aasen, eds. *Women's human right: CEDAW in international, regional and national law*.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

the Convention.<sup>127</sup> Despite the high degree of Parliament's involvement, women's organizations work and scholars, CEDAW is largely absent in political and legislative debates when compared to references to the Convention on the Rights of the Child and the European Court of Human Rights.<sup>128</sup> In addition, the UK signed CEDAW in 1981, and ratified it in 1986 with comprehensive reservations.<sup>129</sup> The Conservative and Labour governments have consistently refused to incorporate CEDAW into the Human Rights Act in spite of criticisms from the CEDAW Committee.<sup>130</sup> The UK relies heavily on EU law, and there is a lack of visibility for the Convention broadly.<sup>131</sup> Since the writing of the book, the Istanbul Convention of the Council of Europe has also come into effect and all states are either parties or signatories.

On the other hand, this volume finds countries which have no regional treaties available to them rely more heavily on CEDAW language in national legislation and court interpretations, though not without challenges. They include countries in South Asia, Southern Africa, and Canada. For example, the study in Australia demonstrates that state and non-state actors use CEDAW as a vehicle for legal change.<sup>132</sup> The Sex Discrimination Act (SDA) of 1984 prohibits discrimination against men and women on the grounds of sex and marital status.<sup>133</sup> The author posits that the SDA was a direct result of ratifying CEDAW one year prior, to address discrimination against women.<sup>134</sup> Another example, Pakistan ratified CEDAW in 1996, at the urging of a strong civil society and some governmental factions.<sup>135</sup> Tensions remain between the formal law and governmental policy on the one hand, and religious practice and beliefs on the other.<sup>136</sup> 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.<sup>137</sup> CEDAW became a part of training programmes run by governmental bodies and NGOs.<sup>138</sup> So far, however, no steps have been taken to incorporate CEDAW into national legislation, though this is required by CEDAW and their Constitution.<sup>139</sup> For a full summary of each country's analysis, see *Appendix E*.

Evidence from this country analysis suggests CEDAW has been most effective in relation to laws that provide protection against structural discrimination and discrimination on religious grounds.<sup>140</sup> In addition, whether changes in national law influence practice at the local level is an issue only marginally dealt with throughout Hellum's analysis.<sup>141</sup> Lastly, the analysis does not

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<sup>127</sup>Marjolein Van den Brink, "Chapter 17", in *Women's Human Rights: CEDAW In International, Regional And National Law. Vol. 3.*, 1st ed. (Cambridge University Press, 2013).

<sup>128</sup> *Ibid.*

<sup>129</sup>Sandra Fredman, "Chapter 18", in *Women's Human Rights: CEDAW In International, Regional And National Law. Vol. 3.*, 1st ed. (Cambridge University Press, 2013).

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> Byrnes, "Chapter 11", in *Women's Human Rights*.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> Shaheen Sardar Ali, "Chapter 15", in *Women's Human Rights: CEDAW In International, Regional And National Law. Vol. 3.*, 1st ed. (Cambridge University Press, 2013).

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup>Hellum and Sinding Aasen, eds. *Women's human right: CEDAW in international, regional and national law*.

<sup>141</sup> *Ibid.*

specifically address whether CEDAW influenced the prevalence of violence against women in these five countries.

For a closer look at local implementation of international norms, Dr. Celeste Montoya highlights a lack of local capacity building and resources to actually implement laws can be a major obstacle to fulfilling legal obligations, including regarding violence.<sup>142</sup> More study is needed at a very local, contextualized level to learn about the nuanced challenges facing public justice systems and society in implementing the provisions of CEDAW. We find inconclusive results, with some countries utilizing CEDAW to try to end discrimination against women through legislation and judicial decision, but little discussion of these laws implementation at a local level.

As global actors consider a separate binding treaty on violence against women, we conclude there is ample room for more efforts on a global level. We find mixed implementation of CEDAW to end discrimination against women, and even less evidence that CEDAW is truly impacting rates of violence against women globally. What we can learn from this analysis is that overlapping regional and international bodies create different realities for advocates on the ground. Drafters of a new treaty should keep the existing framework in mind, understanding that some countries already reporting on violence against women under a strong regional body may continue to do so. This should be viewed as complementary rather than conflicting with a new international treaty. If regional and CEDAW experts coordinate with a new expert body on violence against women, state reporting requirements could be aligned for efficient reporting. Once states have data collection institutions in place, reporting to various treaty bodies should not be an undue burden. In addition, a new expert body would bring increased focus, understanding and nuance to the issue of violence against women. The reality of overlapping regional and international bodies should be acceptable, as long as a new treaty does not weaken the language used in regional bodies, but rather complements existing efforts. The work of these existing bodies is important, but does not provide the in-depth reporting and attention required to eliminate the persistent problem of violence against women.

### *The Universal Periodic Review*

In addition to States referencing CEDAW's language in legislation and judicial review, the UN Human Rights Council's Universal Periodic Review provides a venue for states to comment on efforts to combat violence against women.

The Universal Periodic Review (UPR), a holistic review of a state's human rights situation, aims to promote a universal approach and equal treatment when reviewing each country's human rights situation.<sup>143</sup> This review process conducted by the Human Rights Council, seeks to foster a monitoring practice that is objective, transparent, non-selective, constructive, non-

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<sup>142</sup> Celeste Montoya, *From Global To Grassroots*, 1st ed. (Oxford [u.a.]: Oxford Univ. Press, 2015).

<sup>143</sup> Jane K. Cowan and Julie Billaud, "Between Learning And Schooling: The Politics Of Human Rights Monitoring At The Universal Periodic Review", *Third World Quarterly* 36, no. 6 (2015): 1175-1190, doi:10.1080/01436597.2015.1047202.; Elvira Dominguez-Rodondo, "The Universal Periodic Review — Is There Life Beyond Naming And Shaming In Human Rights Implementation?"" , *New Zealand Law Review* 4 (2012): 673-706.

confrontational, and non-politicized.<sup>144</sup> The UPR assesses the extent to which States respect their human rights obligations as set out in the UN Charter, the Universal Declaration of Human Rights (UDHR), human rights instruments to which the state is a party, and any voluntary pledges and commitments made by states.<sup>145</sup> The outcome of the review is a report consisting of a summary of the proceedings of the review process, conclusions and/or recommendations, and the voluntary commitments of the State concerned.<sup>146</sup>

For this analysis, the author reviewed the reports from the the 33<sup>rd</sup> session of the Universal Periodic Review.<sup>147</sup> (For a list of the reports reviewed for this analysis, see Appendix D). Major findings are that violence against women is routinely being discussed amongst member states within the UPR as a violation of women’s human rights. However, lacking is consistency on the depth and breadth of state reporting on the issue and in the specificity of recommendations provided by the working group conducting the review.

Violence against women was a topic of State’s self-reporting of measures taken within the country to address human rights and also recommendations and conclusions made by the working group. Most States presented detailed information on the measures taken to address violence against women in their state, although there was inconsistency in this self-reporting. There was variation in the term used (i.e. gender-based violence vs. violence against women vs. domestic violence), and also variation in the actions taken to address these issues. This demonstrates that states are able to present examples of actions needed for the implementation of measures to combat violence against women, but the process lacks a consistent definition of violence against women. Reviewing states did highlight concerns about violence against women to the party under review, demonstrating that reviewing states see violence against women as a human right violation and therefore, include it as part of the dialogue on human rights and state obligations.

The last section of all reports, the section containing conclusions and recommendations from the working group, contains recommendations on violence against women. However, the topic and specificity of these recommendations is not consistent. Sometimes the recommendations were broad, such as “continue efforts to enhance the rights of women in particular to eliminate all forms of violence against women.”<sup>148</sup> In other instances, the recommendations are more specific with suggestions of actions needed to be taken, such as “ensure access to adequate shelter, psychosocial, legal, and health-care services for survivors of domestic violence, including in rural areas.”<sup>149</sup>

Reporting on violence against women is present in UPR documents. States are self-reporting on measures taken and reviewing states are giving conclusions and recommendations on violence

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<sup>144</sup> Cowan and Billaud, *Between Learning and Schooling*. 1175-1190.

<sup>145</sup> "OHCHR | Basic Facts About The UPR", Ohchr.Org, 2017, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

<sup>146</sup> Thomas Buergenthal, Dinah Shelton and David P Stewart, *International Human Rights In A Nutshell*, 1st ed. (Johanneshov: MTM, 2013).

<sup>147</sup> The 33<sup>rd</sup> Session took place in July of 2016.

<sup>148</sup> Human Rights Council. *Report of the Working Group on the Universal Periodic Review: Suriname*. 1 July 2016.

A/HRC/33/4. Human Rights Council, *Report Of The Working Group On The Universal Periodic Review: Suriname.*, 2016.

<sup>149</sup> Human Rights Council, *Report Of The Working Group On The Universal Periodic Review: Papua New Guinea.*, 2016.

against women. Some of the States' recommendations to their peers relate to the prevention and prosecution of violence against women. States are using the Universal Periodic Review as a platform for discussing violence against women as a human rights violation and providing recommendations focused on this specific issue. However, issues remain. The mandate of the UPR is broad, it is responsible for addressing all rights as covered in the UDHR and subsequent human rights treaties. Self-reporting is not uniform; guidelines are not readily apparent for what topics within the issue of violence against women should be reported on, so information on the status of women may be missing from reports. Lastly, recommendations are not specific enough in all cases to assist states with implementation of obligations to combat violence against women. Therefore, while it is important that states are discussing violence against women in the context of a broad conversation on human rights, the UPR process does not produce a sufficient dialogue on the issue nor specific guidelines for implementation of measures to address it.

### *The current international framework to combat violence against women: soft law efforts*

The mid-1990s saw prolific soft law advancements on the specific issue of violence against women. Women's rights discourse converged with the broader human rights discourse. In 1995 at the Fourth World Conference on Women in Beijing the two issues became firmly cemented as interrelated. Women advocates at the Conference identified violence against women as a key human rights priority. Despite this effort, there is still no international, binding treaty on violence against women.

The 'soft law' instruments that address the issue of violence against women explicitly include the Declaration on the Elimination of Violence Against Women, the establishment and writings of the Special Rapporteur on Violence Against Women, the Beijing Declaration and Platform for Action, as well as various resolutions of the United Nations General Assembly, Human Rights Council, and Commission on the Status of Women. So, while there is no single convention explicitly on violence against women and the aforementioned resolutions are not necessarily binding, it is argued by some that there is consistent language in these instruments, and that this language along with the resolutions themselves can be given significant weight. 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 governments, international governmental organizations, and NGOs to work towards combating and eliminating violence against women.<sup>150</sup> On the other hand, although soft laws help in the development of norms and have assisted in bringing attention to an important issue, the fact that they are non-binding means that States are not held responsible for violations and as such, have not been sufficient in addressing both accountability and effective redress for women.<sup>151</sup> Despite both hard and soft law, there still exists a failure on behalf of member states to act with due diligence to eliminate violence against women.

### *The Declaration on the Elimination of Violence against Women (DEVAW)*

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<sup>150</sup> Chinkin, Addressing Violence Against Women, 471-501.; Freeman, Rudolf, and Chinkin. The UN convention on the elimination of all forms of discrimination against women.

<sup>151</sup> A/HRC/26/38

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 establishes that custom, tradition, or religious consideration are not an excuse for States to avoid their obligations to the declaration.<sup>152</sup>

A UN Secretary General report to the CSW raised the issue of strengthening women's rights procedures in 1991, highlighting that women's rights procedures were weaker than other human rights mechanisms.<sup>153</sup> In particular, there was no way for individuals to seek redress, and there was no way to study one particular situation in-depth.<sup>154</sup> The report suggested that CSW create a way for the CEDAW Committee to hear individual complaints. In fact, in November 1991 the UN convened experts specifically on the topic of an optional protocol on violence against women. The options considered were (1) an optional protocol on violence against women to make it legally binding within CEDAW, (2) an optional protocol on violence against women along with a complaints mechanisms, (3) a protocol to the Committee to hear complaints on all parts of the Convention, and (4) a declaration or convention on violence against women.<sup>155 156</sup> The expert group recommended option 4, the development of a declaration on violence against women, a decision supported by CSW and UNGA. It should be noted that UN declarations are often meant to lead into treaties. This was also the process used for CEDAW, setting the precedent.

Developed at the World Conference on Human Rights (1993), held in Vienna, Austria, the Declaration was a pivotal moment to recognize the rights of women and girls as 'human rights'.<sup>157</sup> Building on momentum from the recently published General Recommendation 19 to CEDAW, it recognized that gender-based violence is a central human rights issue.<sup>158</sup> Through the Vienna Declaration and Programme of Action, state parties encouraged the adoption of the Declaration on the Elimination of Violence against Women (DEVAW).<sup>159</sup>

The UN General Assembly formally adopted DEVAW in 1993.<sup>160</sup> The Declaration defines

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<sup>152</sup> UN General Assembly. 85th Plenary Meeting. (1993). 48/104. Declaration on the Elimination of Violence Against Women. Accessed online: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>153</sup> Report of the Secretary-General 'Monitoring the Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women: Examining Existing Mechanisms for Communications on the Status of Women' (1991) UN Doc E/CN.6/1991/10.

<sup>154</sup> Freeman, Rudolf, and Chinkin. The UN convention on the elimination of all forms of discrimination against women: A commentary.

<sup>155</sup> 'Report of the Expert Group Meeting on Violence against Women' (1991) UN Doc EGM/VAW/1991/1 paras 34–7; Report of the Secretary-General 'Violence against women in all its forms' (1991) UN Doc E/CN.6/1992/4; Working Paper presented by the Government of Canada, *Issues in the Development of an International Instrument on Violence against Women* (1991) UN Doc EGM/VAW/WP.1; Andrew Byrnes, "Chapter 11", in *Women's Human Rights: CEDAW In International, Regional And National Law. Vol. 3.*, 1st ed. (Cambridge University Press, 2013).

<sup>156</sup> Freeman, Marsha A., Beate Rudolf, and Christine Chinkin. The UN convention on the elimination of all forms of discrimination against women: A commentary. Oxford University Press, 2012.

<sup>157</sup> The United Nations Work on Violence Against Women, Information Note, Division for the Advancement of Women. Accessed online: <http://www.un.org/womenwatch/daw/news/unwvaw.html>

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> UN General Assembly. 85th Plenary Meeting. (1993). 48/104. Declaration on the Elimination of Violence Against Women. Accessed online: <http://www.un.org/documents/ga/res/48/a48r104.htm>

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, whether occurring in public or private life".<sup>161</sup> This is the first UN document to highlight violence occurring in all spheres of life as a violation of human rights.<sup>162</sup> It outlines practical steps for State 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.<sup>163</sup> It is likely that DEVAW never became a treaty because that requires a much higher level of buy-in from States.

DEVAW also encourages translating international norms into domestic penal, civil, labor and administrative sanctions to punish perpetrators of violence.<sup>164</sup> Women subjected to violence have a right to access justice mechanisms, and effective remedies for the harms they have suffered provided for by national legislation.<sup>165</sup> As a Declaration it is non-binding to States but does provide an action plan for states to undertake by themselves. Pressuring states to implement these action plans takes continual mobilization from UN bodies and from civil society, as there is no established, ongoing monitoring mechanism. UN Women launched a COMMIT campaign in 2012 for countries to make new and concrete commitments about their efforts to combat violence against women leading up to the 57th UN Commission on the Status of Women.<sup>166</sup> The commitments range from passing and amending laws, to creating aftercare shelters and emergency hotlines.<sup>167</sup> Several countries do reference a National Action Plan (NAP) like those recommended in DEVAW and recommit to improving and implementing them in their COMMIT Campaign promises.<sup>168</sup> Academic studies show that providing budgetary resources, capacity building, and administrative support likely lead to more successful implementation of national-level commitments.<sup>169</sup> These efforts are important and provide some basic steps for States to take. Given the continued and widespread reality of violence against women, much work remains to implement concrete plans in a way that benefits individual women and girls.

### *The Special Rapporteur on violence against women, its causes and consequences*

The Vienna Declaration and Programme of Action also mandated the appointment of a Special Rapporteur on violence against women, its causes and consequences, the first gender-specific human rights mechanism. The Special Rapporteur is a leading expert on all issues of violence against women and in this capacity writes thematic reports, hosts events, and is able to make a call for response on a particular issue. These reports are an important addition to the body of soft

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<sup>161</sup> UN General Assembly. 85th Plenary Meeting. (1993). 48/104. Declaration on the Elimination of Violence Against Women, Article 1. Accessed online: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>162</sup> UN General Assembly. 85th Plenary Meeting. (1993). 48/104. Declaration on the Elimination of Violence Against Women. Accessed online: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>163</sup> UN General Assembly. 85th Plenary Meeting. (1993). 48/104. Declaration on the Elimination of Violence Against Women, Article 4. Accessed online: <http://www.un.org/documents/ga/res/48/a48r104.htm>

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> "COMMIT Initiative", *UN Women*, 2017, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit>.

<sup>167</sup> "Government Commitments", *UN Women*, 2017, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>.

<sup>168</sup> *Ibid.*

<sup>169</sup> Montoya. *From global to grassroots*.

law that exists on VAW. They can influence the conversation on these issues and therefore, should be given great weight.

Both the current Special Rapporteur Dr. Dubravka Šimonović, as well as her predecessor, Rashida Manjoo, have published reports on the topic of our current paper, the need for and feasibility of a new, international treaty on violence against women. As the world experts on the issue of violence against women, it is remarkable that they come to nearly opposite conclusions.

Ms. Manjoo reports that reliance on soft law and normative approaches have not been sufficient to combat violence against women globally.<sup>170</sup> Though efforts to address violence against women are reported on via human rights mechanisms and the universal periodic review, time constraints in reviewing States reports lead to insufficient discussion on the topic.<sup>171</sup> She emphasizes that it is the non-binding nature of the reporting requirements on violence against women that makes it a challenge to enforce.<sup>172</sup>

On the other hand, Rapporteur Dr. Šimonović concludes in her report that while CEDAW does not explicitly mention violence against women, CEDAW provides a gender-specific framework to combat discrimination against women that encompasses violence against women.<sup>173</sup> Furthermore, the CEDAW Committee can interpret violence against women as a form of discrimination and utilize this framework in its reporting.<sup>174</sup> She also points out the Istanbul Convention explicitly defines violence against women and domestic violence as a human rights violation, and a form of discrimination.<sup>175</sup> She believes there is synergy between the two.

In response to a call for submissions by Dr. Šimonović made in 2015, some regional organizations as well as academics and NGOs submitted writings stating their thoughts on the need and feasibility for a new legally binding treaty on Violence Against Women. The call included a five-point questionnaire:

1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?
2. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?
3. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?
4. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?
5. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against

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<sup>170</sup> United Nations General Assembly and Rashida Manjoo, *Report Of The Special Rapporteur On Violence Against Women, Its Causes And Consequences* (United Nations, 2012).

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> 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.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*



women?<sup>176</sup>

Eight responses were published on the UN OHCHR Special Rapporteur website. Included as well are responses by five additional engaged and authoritative organizations on women's human rights. These five additional submissions were found through a search conducted outside of the website for the Special Rapporteur. This demonstrates that not all the submission that the Special Rapporteur received were then published on the UN website. This may also indicate that the following analysis may not include the total amount of submissions the Special Rapporteur received in response to her call on this issue. The submissions that were located were made by the CEDAW Committee, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the ASEAN Intergovernmental Commission on Human Rights (AICHR), Council of Europe Group of action against violence against women and domestic violence (GREVIO), Women Against Violence Europe (WAVE), Inter-American Court of Human Rights (IACHR), Follow-Up Mechanism to the Belém do Pará Convention (MESECVI), the Special Rapporteur on the rights of Women in Africa, OHCHR Working Group on discrimination against women in law and in practice, the International Human Rights Clinic at Santa Clara University School of Law, and School of Law Queen's University in Belfast.

The responses to the questionnaire varied. In response to the question on the need for a new treaty and monitoring body, four of the thirteen organizations and groups said they saw a need. They explained that legal language of existing international law does not explicitly state that "violence" falls within its scope, leaving the issue of violence against women to be inferred.<sup>177</sup> Furthermore, some respondents felt a new convention would draw further attention to this issue in which significant progress on a global scale has lacked.<sup>178</sup> The groups and organizations that responded that they did not see a need, cited that current instruments of international law, specifically CEDAW, General Recommendations 12 and 19 (in addition to the update of General Recommendation 19), and the CEDAW Optional Protocol, are effective bodies of international law for addressing violence against women.<sup>179</sup><sup>180</sup><sup>181</sup> In addition, some respondents felt that energies of the international community should be focused on strengthening existing international law and expanding on regional frameworks of implementation, rather than on a new treaty.

Regarding the second question on an incorporation gap, groups and organizations once again varied in their response, but with the majority of responses stating that there is an incorporation

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<sup>176</sup>"OHCHR | Call For Submissions On The Adequacy Of The International Legal Framework", *Ohchr.Org*, 2017, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/InternationalLegalFramework.aspx>.

<sup>177</sup> *Special Rapporteur On The Rights Of Women In Africa Submission To The Special Rapporteur On Violence Against Women* (OHCHR, 2016).

<sup>178</sup> Dr. Yassin Brunger and Eithne Dowds, *Call For Submissions On The Adequacy Of The International Legal Framework On Violence Against Women* (Belfast: SCHOOL OF LAW, QUEEN'S UNIVERSITY BELFAST, 2016).

<sup>179</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *The Committee on the Elimination of Discrimination Against Women*. 2016. Accessed (12 April 2017).

<sup>180</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *ASEAN Commission on the Promotion and Protection of the Rights of Women and Children*. 2016. Accessed (12 April 2017).

<sup>181</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *ASEAN Intergovernmental Commission on Human Rights*. 2016. Accessed (12 April 2017).

gap and that it would be bridged by either a new treaty or strengthening of regional law<sup>182</sup> AICHR and ACWC stated that there is a gap but argued that gap will be bridged with the implementation of the ASEAN Regional Plan of Action on Elimination of Violence against Women (RPA-EVAW). Even when answering that there is no gap, respondents did further explain potential discrepancies between international and regional norms and standards. For example, the Special Rapporteur on the Rights of Women in Africa explained how although there are no gaps, there is discrepancy due to the “cultural relativity response” in that the primary purpose of establishing regional human rights systems is to channel international norms through the region’s point of view and accounting for idiosyncrasies of the region, using the Maputo Protocol as an example.

Responding organizations and groups generally agree in their responses to the questions regarding a lack of implementation of international/regional legislation into domestic law, a fragmentation of policies and legislation, and measures needed to address the gap and accelerate prevention and elimination of violence against women. The explanations of their responses, however, varied greatly. All those that responded to question three stated that they believe there exists either a lack of implementation of international and regional laws into national law or that nations are challenged internally in implementing international and regional laws (with the exception of MESECVI as they explained that under their process, significant progress has been made and provided neither a “yes” or “no” answer to this question). AICHR explains that RPA-EVAW may address this challenge. Additionally, all those that responded to question four agree that there is fragmentation of policies and legislation to address gender-based violence. In the final question, responding groups and organizations varied in their view based on their response to first question. However, all responders reiterated the need for some sort of change in current dynamics, whether it was a new treaty,<sup>183184</sup> strengthening existing mechanisms,<sup>185</sup> and improving on implementation progress.<sup>186187</sup> Furthermore, all responding groups and organizations stated that the issue of violence against women needs attention and to be addressed by the international community.

### ***Beijing Declaration and Platform for Action***

Adopted at the Fourth World Conference on Women in Beijing in 1995, the Beijing Platform for Action is a wide-ranging document, addressing women and poverty, health, armed conflict, and

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<sup>182</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *ASEAN Commission on the Promotion and Protection of the Rights of Women and Children*. 2016. Accessed (12 April 2017).

<sup>183</sup> Brunger and Dowds, *Call For Submissions*.

<sup>184</sup> Anna Saber and Francisco Rivera Juaristi, *The Need For A Separate Legally Binding U.N. Treaty On Violence Against Women With Its Separate Monitoring Body* (Santa Clara, CA: International Human Rights Clinic at Santa Clara University School of Law, 2016).

<sup>185</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *The Committee on the Elimination of Discrimination Against Women*. 2016. Accessed (12 April 2017).

<sup>186</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI)*. 2016. Accessed (12 April 2017).

<sup>187</sup> UN Human Rights Office of the High Commissioner. *Submission to the Special Rapporteur on Violence Against Women*. Submission by *Council of Europe Group of action against violence against women and domestic violence (GREVIO)*. 2016. Accessed (12 April 2017).

economic development, among others.<sup>188</sup> It calls on Governments to enact and reinforce penal, civil, labor domestic 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.<sup>189</sup> While originally economically focused, global advocates raised the idea that “women’s rights are human rights” to the agenda for the Fourth World Conference, including the concept of violence against women.<sup>190</sup> This merging of human rights with women’s rights was a large contribution and marks forward progress in international human rights discourse.<sup>191</sup> Advocates used the Platform as a tool to show their home governments what is current international consensus, and lobby for women’s rights through improved legislation.<sup>192</sup>

The UN General Assembly convened the Five-year review of the implementation of the Beijing Platform for Action (Beijing+5) in 2000.<sup>193</sup> It focused on the implementation of recommendations into State’s laws and policies, and UNGA published its Political Declaration for further action.<sup>194</sup> At Beijing+5 UNGA commissioned additional follow-up at ten (2005) and fifteen-year (2010) sessions.<sup>195</sup>

### ***Commission on the Status of Women***

The current conversation about the issue of violence against women mostly lives within UN Women, specifically within the global intergovernmental body, the Commission on the Status of Women (CSW). At the 57th meeting of the CSW (CSW57) in 2013, the Economic and Social Council brought the issue of elimination and prevention of all forms of violence against women and girls to the top of the agenda.<sup>196</sup> Its “agreed conclusions” cover all forms of violence against women, in all contexts and settings, and outlines progress and remaining challenges.<sup>197</sup> It calls on all governments to strengthen legal and policy frameworks, to end impunity. It also encourages prevention efforts through combating structural causes of violence, like social norms and gender stereotypes.<sup>198</sup> The third section 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. At CSW57 members decided that at their 59th meeting in 2015, they would evaluate the implementation of the Beijing Platform for Action on its 20th anniversary.

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<sup>188</sup> Declaration, Beijing. "Platform for Action." In Fourth World Conference on Women, vol. 15, p. 2. 1995.

<sup>189</sup> Beijing Declaration. Strategic Objective D.I., Art. 124.

<sup>190</sup> 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.

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

<sup>193</sup> "Beijing +5 - Women 2000: Gender Equality, Development And Peace For The 21st Century twenty-Third Special Session Of The General Assembly, 5-9 June 2000", *Un.Org*, 2017, <http://www.un.org/womenwatch/daw/followup/beijing+5.htm>.

<sup>194</sup> A/RES/S-23/2

<sup>195</sup> A/RES/S-23/2

<sup>196</sup> Commission on the Status of Women (CSW). Report on the fifty-seventh session. (4-15 March 2013)., 2017.

<sup>197</sup> "Agreed Conclusions", *Unwomen.Org*, accessed 8 April 2017, <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?vs=700>.

<sup>198</sup> *Ibid.*

At its 59th session, the CSW focused on the implementation of the Beijing Platform for Action (CSW59/Beijing+20).<sup>199</sup> The commission undertook a review process and also included the outcomes of the 23rd special session of the General Assembly, the first five-year assessment conducted after the Beijing Platform. The regional commissions of the UN completed regional reviews. Both national and regional reviews fed into the global review.<sup>200</sup>

### ***Conclusions of Soft Law and its Effectiveness***

Both hard law and soft law form the basis for the current international framework to combat violence against women. The ongoing reporting of the Special Rapporteur on violence against women, as well as evaluations by CSW, provide some accountability for non-binding treaties like DEVAW and Beijing. Fully realizing soft law potential though requires an active and engaged civil society, since there are not full-time experts monitoring state progress. In addition, soft law requires the political will of states to sign on to such instruments, and even more importantly, the ongoing initiative to fund and support implementation. This is challenging because there is no clear motivation beyond good will to implement these changes, and they often require substantial resources and commitment. Overall, these soft law efforts provide an additional layer of guidelines and direction for states seeking to improve efforts to eliminate and prevent violence against women but have certainly not been implemented widely or effectively.

### ***The current international framework to combat violence against women: regional efforts***

Recognizing UN efforts to combat violence against women, and building upon the convergence of women's rights as human rights, both the Organization of American States and the Council of Europe developed regionally-based treaty bodies with active enforcement mechanisms. Early iterations of their reporting cycles show promise in guiding state's actions through concrete recommendations on the implementation of standards, and capacity building efforts. Other regional bodies have protocols and declarations on the issue but have less effective implementation and reporting mechanisms in these concrete areas.

### ***Belém do Pará***

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, a special organization of the Organization of American States (OAS), was adopted in Belém do Pará, Brazil, in 1994 and establishes violence against women as a violation of their human rights.<sup>201</sup> It is the first binding treaty body to specifically address the issue of violence against women.

It establishes that women have the right to be free from violence in the public and private

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<sup>199</sup> Commission on the Status of Women. 59th Session.

<sup>200</sup>"Political Declaration On The Occasion Of The Twentieth Anniversary Of The Fourth World Conference On Women", *Unwomen.Org*, 2017, <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/59/declaration-en.pdf?vs=4833>.

<sup>201</sup> Organization of American States, MESECVI Brochure. The Belém do Pará Convention and its Follow-up Mechanisms.

spheres.<sup>202</sup> Every woman has the right to be free from all forms of discrimination; 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.<sup>203</sup> Interesting to note, it was written around the same time as the Beijing Platform for Action, just as the international human rights discourse was merging with the women's rights discourse.<sup>204</sup>

All of the OAS members are Party to Belém do Pará, except Canada and the United States. In 1999, the Inter-American Commission of Women<sup>205</sup> conducted research that showed the Convention was not being implemented to desirable standards.<sup>206</sup> In 2009, in response to women advocates, the Conference of States Party to the Convention adopted the Statute of the Follow-Up Mechanism on the Belém do Pará Convention (MESECVI).<sup>207</sup> This represented the institutionalization of the political will of States to establish an independent system for evaluation of their progress in implementing the recommendations arising from the Treaty.<sup>208</sup> States Party believe there are two purposes to the MESECVI mechanism: (1) to promote the implementation of the Convention, and (2) to establish a system of technical cooperation.<sup>209</sup> It is important to note that States Party desired this accountability mechanisms themselves, and set out to build expertise and capacity building among themselves, an effort that is highly commended.

In the MESECVI evaluation process, the group of experts first sends an evaluation questionnaire to States Party. Then, Hemispheric Reports summarize information provided by individual country reports on their efforts to implement the Convention; two such reports have been published, in 2008 and 2012.<sup>210</sup> In the second phase, MESECVI analyzes the progress made on specific measures, and has published two Report on the Implementation of Recommendations (2010 and 2013).<sup>211</sup> Lastly MESECVI published Follow-up Reports on Implementation of Recommendations a year later (2011, 2014). States Party also provide information on technical assistance they may need. Through the two phases, and the follow-up implementation analysis, MESECVI promotes an exchange of ideas and lessons learned on the implementation of the Convention.<sup>212</sup> See *Appendix F* for an image of the MESECVI actors.

It is still too soon to measure the effectiveness of the Belém do Pará Convention on rates of violence against women. The 2012 Hemispheric Report offers some estimates of the rates and forms of violence against women in the Americas.<sup>213</sup> The countries did not produce comparable

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<sup>202</sup> *Regional Tools To Fight Violence Against Women: The Belém do Pará And Istanbul Conventions* (The Organization of American States, 2014).

<sup>203</sup> *Ibid.*

<sup>204</sup> Organization of American States, MESECVI Brochure. The Belém do Pará Convention and its Follow-up Mechanisms.

<sup>205</sup> The body tasked with implementation of the Treaty within the OAS

<sup>206</sup> "Violencia En Las Américas - Un Análisis Regional", *Inter-American Commission Of Women*, 2001, [http://www.oas.org/es/cim/docs/Violence\\_in\\_the\\_Americas-SP.pdf](http://www.oas.org/es/cim/docs/Violence_in_the_Americas-SP.pdf).

<sup>207</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanims to the Belém do Pará.

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*

<sup>210</sup> Organization of American States, MESECVI Brochure. The Belém do Pará Convention and its Follow-up Mechanisms.

<sup>211</sup> *Ibid.*

<sup>212</sup> *Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.*

<sup>213</sup> *Ibid.*

indicators, however, and therefore comparing directly across countries is not possible.<sup>214</sup> Of the 32 states party to the Belem do Para Conventions, over the last four years, only 14 of those states report attempting to measure rates of “violence against women”. It is therefore impossible to measure progress towards eliminating violence against women in the majority of states party to the convention. There is even less information available on women’s knowledge of their rights, and women’s knowledge on availability of government services. Only Ecuador reports the intention to measure these goals in a forthcoming survey, and Costa Rica reports measuring these goals once in 2008. In addition, the rates of violence are often provided by government offices which are underreported due to gender stereotypes and a lack of trust in the justice system.<sup>215</sup> In addition, it is challenging to single out the results that occur in a region as a result of reporting mechanisms, apart from other changes occurring in society at the same time.

The MESECVI 2012 Hemispheric Report issued recommendations grouped in six areas, legislation, national plans, access to justice, specialized services, budgets, information and statistics.<sup>216</sup> The 2008 Hemispheric Report had provided the baseline measure for these areas, and the 2012 Hemispheric Report shows the progress. MESECVI emphasizes the necessity of progress across all six sectors to achieve true progress in the fight against violence against women.<sup>217</sup> These themes provide concrete areas for improvement for State Parties to effectively implement the duties they hold under the Convention. This first round of a baseline plus an evaluation provides our study with a concrete example of a binding treaty working to end violence against women.<sup>218</sup>

We examine progress across these six pillars as of 2014, when MESECVI published the Second Follow-Up Report on the Recommendations of the Committee of Experts.

*Legislative* analysis included all 32 States Party to the Convention, even if they did not provide reports for the Second Follow-Up Round in 2013. Although the region is working to improve laws, 75% still lack comprehensive laws that would bring states into compliance with all aspects of the Convention. Only eight countries (Argentina, Bolivia, Colombia, El Salvador, Guatemala, Mexico, Nicaragua, and Venezuela) have comprehensive law on gender-based violence or violence against women.<sup>219</sup> Out of 32 countries, 17 criminalize violence only in the private sphere, 9 in both the private and public sphere, and 6 in no sphere.<sup>220</sup> Laws alone are necessary but insufficient to combat violence against women. MESECVI recommends, therefore, further steps for States to better implement legislation and provide needed services and redress for victims.

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<sup>214</sup> Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.

<sup>215</sup> *Ibid.*

<sup>216</sup>“Second Hemispheric Report On The Implementation Of The Belém do Pará Convention”, 2012, <http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf>.

<sup>217</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará.

<sup>218</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará.

<sup>219</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará. Table No. 4.

<sup>220</sup>MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará. Table No. 6.

MESECVI views a *National Plan of Action* as a measure of state's progress in implementing their commitments. They made recommendations along five guidelines: (1) to adopt intersectoral plans and (3) punish government officials that do not implement them, (3) to include plans to combat violence against women in other national plans like education and health plans, (4) to provide human resource training on women's rights for government officials, and (5) to encourage civil society participation in national plans. Of the 19 states that participated in the second evaluation round, all report some action in this area, either as an action line in a national development plan or national equality plan, or within specific national action plans to combat violence against women.<sup>221</sup> Another important step is to note available budgetary resources to implement the plans and projects, and all 19 states mention allocations for national plans, strategies or projects.<sup>222</sup> Bolivia, the Dominican Republic, and Colombia outline mechanisms for evaluating the implementation of national plans.<sup>223</sup> The MESECVI affirms States efforts in this area and can tell they understand the importance of implementation and follow-up.<sup>224</sup>

Measuring *access to justice* and *specialized services* includes an analysis of both the legal and practical possibility of accessing administrative and judicial complaint and protection mechanisms.<sup>225</sup> MESECVI views the State's obligations to be positive - as in, not just preventing access, but also organizing institutionally to ensure all have access to justice. This includes removing regulatory, social, or economic obstacles that could prevent access. MESECVI rests its analysis on the Inter-American Court of Human Rights (IACHR) establishment of due diligence for States, including "prevention, investigation, punishment and redress of any human rights violation, in order to prevent impunity".<sup>226</sup>

To measure access to justice and specialized services, MESECVI made eight recommendations: (1) increase the number of entities receiving complaints, especially in non-urban areas, and (2) taking diversity and vulnerability into account; (3) issue protection orders, and (4) ensuring they are effective; (5) have trained personnel and protocols for dealing with cases of violence against women; (6) study the use of Belém do Pará Convention in legal judgements, and (7) study the judgements or legal opinions containing gender stereotypes in cases of violence against women; (8) provide access to justice especially for indigenous women. To measure implementation, MESECVI requested information that would measure (a) the appropriate means, services, or institutions for satisfying the whole set of duties in Article 7 of the Belém do Pará Convention; and (b) refrain from negative obligation, "engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation".<sup>227</sup>

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<sup>221</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará. Table No. 6.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*

<sup>226</sup> *Ibid.*

<sup>227</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará.

All States reported they had entities for taking complaints located in police stations. Additionally, some States had locations for receiving complaints in the courts, justices of the peace, and prosecutors' offices. The Committee was overall troubled by the State's challenges in responding to the justice indicators. For example, MESECVI did not receive any information on accessibility in rural areas.<sup>228</sup>

The Committee emphasizes approving sufficient *budget* allocation to execute the public policies and plans outlined within this evaluation methodology.<sup>229</sup> The Committee requested data to demonstrate commitments, including the existence of national budget laws with a breakdown of expenditures, and specifically budget allocated to policies and programs addressing violence against women. The budget resources must cover the programs and remain available as long as they are needed. Of the 19 States that responded to the Progress Indicators, 13 provided information on whether their budgets include allocations for their response to violence against women.<sup>230</sup> The Committee notices positive trends overall, that countries are working to step up budgetary levels or provide them where previously lacking. This generally corresponds with legislation to combat violence, but even Ecuador and Grenada who lack legislation have demonstrated funding programs.

Lastly, MESECVI recommends that States pass laws requiring *information and statistics* to measure violence against women, and disseminate the findings to women. MESECVI recommends including research in national plans; conducting surveys; keeping records and courts and health centers, while protecting identities; collecting and publicizing disaggregated information on victims, prosecutions, and convictions; institute registries in the police stations and courts; and establish rules for proper coordination between national statistics agencies.<sup>231</sup> The Committee stresses how challenging it is to track outcomes indicators when basic statistics are so lacking.<sup>232</sup> Without this information, public policymakers will struggle to create realistic plans and goals. Three aspects are important moving forwards: legislation or specific rules for collection of data, interagency cooperation, and surveys and data.<sup>233</sup>

Belém do Pará is an example of a strong convention framework, with intensive reporting processes for both States Party and the MESECVI Committee of Experts. States currently struggle to provide the data required by MESECVI, though most are making best efforts to report the data they currently have. It is likely that future reports will be easier as States may set up data collection practices to contribute to this effort. The level of specificity of six overarching themes, and also many sub-set recommendations within those themes, demonstrates the necessary level of guidance for states to fully implement treaties on violence against women. Future treaty efforts and expert bodies can learn a lot from progress made at the regional level. Matching up a global treaty with MESECVI recommendations could help states utilize the same data for each

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<sup>228</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará.

<sup>229</sup> *Ibid.*

<sup>230</sup> MESECVI. (2014). Second Follow-Up Report on the Recommendations of the Committee of Experts of the MESECVI. Follow-up Mechanisms to the Belém do Pará.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*



report. While some may consider this duplicative, we consider it complementary, actually decreasing the burdens for states to gather synchronized measurements of data. The Belém do Pará Convention is an example for other regions to replicate to strengthen national efforts to combat violence against women.

### ***Protocol to the African Charter***

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa was adopted in 2003. It reaffirmed a commitment to end discrimination against women. Explicit efforts to end violence against women are aligned with a woman's right to dignity and security.<sup>234</sup> It also specifically references the protection of women in armed conflict, elderly women, and women with disabilities, from violence.<sup>235</sup> In their reporting to the African Union, states are to include legislative and other measures taken to implement the rights afforded women within this Protocol.<sup>236</sup>

The African Commission, which is tasked with the monitoring of the Protocol, has yet to develop its gender analysis of human rights violations, making its enforcement ineffectual.<sup>237</sup> In addition, the communications procedure has not been widely used when dealing with violence and women's rights and the role of national-level NGOs in the submission of shadow reports is underused in the African human rights system as few African-based women's rights NGOs submit reports to the Commission.<sup>238</sup> Due to this lack of enforcement, at least one country in the region relies on provisions within the Convention Against Torture, which aims to eliminate the practice of torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to combat egregious acts of violence against women in the public sphere.

### ***Istanbul Convention***

The Council of Europe Convention (2011) on preventing and combating violence against women and domestic violence (Istanbul Convention) is a third regionally-based Convention and is widely considered the new "gold standard" convention to combat violence against women.<sup>239</sup> It is incredibly concrete and practical. It stresses the need for many national service agencies and actors to be involved in combating violence against women, including the judiciary, the police, service providers, NGOs, as well as national, regional, and local parliaments and authorities.<sup>240</sup> We agree that the Istanbul Convention provides a global framework for action for those countries with the political will to implement it, and provides a tool for advocates to pressure governments without any current appetite for change.

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<sup>234</sup> *Protocol To The African Charter On Human And Peoples Rights On The Rights Of Women In Africa*, 2003. Art 3, para. 4.; Art. 4.

<sup>235</sup> Protocol to the African Charter. Art. 11, 22, 23.

<sup>236</sup> Protocol to the African Charter. Art. 26

<sup>237</sup> Hellum, Anne, and Henriette Sinding Aasen, eds. *Women's human rights: CEDAW in international, regional and national law*. Vol. 3. Cambridge University Press, 2013.

<sup>238</sup> A/HRC/29/27

<sup>239</sup> 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.

<sup>240</sup> Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.

The Istanbul Convention outlines specific actions for States including “Prevention” efforts to train professionals in close contact with victims; regularly run awareness-raising campaigns; take steps to include issues such as gender equality and non-violence in interpersonal relationships in teaching materials; set up treatment programs for perpetrators of domestic violence; work closely with NGOs; involve the media and the private sector in eradicating gender stereotypes and increasing mutual respect.<sup>241</sup> Efforts for “Protection” include set up accessible shelter for victims; make available 24/7 hotline call centers; and set up rape crisis referral centers.<sup>242</sup> The “Prosecution” section mandates states to add new criminal offenses where they might not exist for psychological and physical violence, sexual violence and rape, stalking, female genital mutilation, forced marriage, forced abortion and forced sterilization. Culture, tradition or so-called “honor” are not regarded as a justification for any of the above-listed crimes.<sup>243</sup> Lastly, “Integrated Policies” means that no single agency or institution can deal with violence against women and domestic violence alone.<sup>244</sup> State parties are to establish an official body to coordinate, implement, monitor and evaluate the policies and measures undertaken to combat all forms of violence covered by the Convention.<sup>245</sup> This body also coordinates data collection and disseminates results.<sup>246</sup>

It 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, bonitaor 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”.<sup>247</sup> It builds on the precedence of the European and Inter-American Courts of Human Rights, and establishes the “due diligence” standard defined as the obligation for states to “prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors”.<sup>248</sup> The Council of Europe member states’ experience and analysis of the problem provides its holistic approach.<sup>249</sup>

The Istanbul Convention established a Monitoring Mechanism: a Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) to monitor the implementation of this Convention.<sup>250</sup> Parties submit to the Secretary General of the Council of Europe their response to a questionnaire about their legislative progress.<sup>251</sup> This process will provide valuable information from data and analysis, and provide a forum to coordinate global efforts to combat violence against women.<sup>252</sup>

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<sup>241</sup> "Council Of Europe Convention On Preventing And Combating Violence Against Women And Domestic Violence", 2011

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

<sup>244</sup> "Council Of Europe Convention On Preventing And Combating Violence Against Women And Domestic Violence", 2011

<sup>245</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Article 10.

<sup>246</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Article 11.

<sup>247</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Article 3.

<sup>248</sup> Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.

<sup>249</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. 2011.

<sup>250</sup> *Ibid.*

<sup>251</sup> *Ibid.*

<sup>252</sup> Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.

The Convention has entered into force and is open to accession by any country in the world.<sup>253</sup> It is practical and detailed, and provides a global blueprint for laws and policies to end violence against women and domestic violence, even if states do not formally join. The Istanbul Convention is a global call to action for countries to sign and ratify, for governments to design and implement policies required by the Convention, for parliaments and parliamentarians to review legislation and monitor its effectiveness, and for local authorities and civil society to participate in ending violence against women.<sup>254</sup> In the CSW's recent COMMIT campaign, 19 countries explicitly mention ratifying or implementing the Council of Europe Convention (the Istanbul Convention), including Finland, France, Georgia, and Jamaica.<sup>255</sup>

At its 5th meeting in March 2016, GREVIO adopted its questionnaire on legislative and other measures for the baseline evaluation of states party to the Istanbul Convention.<sup>256</sup> Its main categories for evaluation are integrated policies and data collection; prevention; protection and support; substantive law; investigation, prosecution, procedural law, and protective measures; migration and asylum. The implementation of the monitoring of the Istanbul Convention officially began on March 22, 2016 with the evaluation procedure for Austria and Monaco.<sup>257</sup> According to the timetable, it will take 17 months for each country to complete the process and for GREVIO to publish its country report.

The Istanbul Convention positions itself clearly as the third regional mechanism to combat violence against women, as well as within the precedent set by regional courts (IACHR and ECHR) and the CEDAW Committee's General Recommendation 19. The drafters of the Istanbul Convention highlight it provides a global blueprint for countries to use at any time, and offers the possibility to join the evaluation process if they desire. Some human rights experts suggest making Istanbul truly global as-is, and raising awareness that it is open to accession from all nations. Another option is to create a more globally accessible treaty, and enter the Istanbul Convention language as-is through the UN process. Others suggest that is nearly neo-colonialism, as this is a Western document and focus on the issue. Lastly, the treaty could be held up as a model for a new international treaty on violence against women, though open up the conversation to non-Western nations to participate in its drafting. A globally-drafted treaty, however, may eventually have to enter the UN system to help create buy-in from governments. If not, some number of governments must be willing to pay for the implementation costs of reporting, translating and monitoring.

On the other side of this debate, in its response to the Special Rapporteur's call on a new global treaty, Istanbul's GREVIO Committee was clear: "More importantly, the state of affairs and the current perspective on violence against women are established and universally accepted through the standards set by CEDAW and its GR19. They are already routinely monitored by the

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<sup>253</sup> Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.

<sup>254</sup> *Ibid.*

<sup>255</sup> UN Women. COMMIT Campaign. <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>

<sup>256</sup> The Questionnaire is extensive, available here:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805c95b0>

<sup>257</sup> A full timetable for the first (baseline) evaluation procedure (2016-2020) is available here:

<http://www.coe.int/en/web/istanbul-convention/timetable>

CEDAW Committee. To create another global convention on violence against women would likely entail inconsistent or even conflicting standards in the area and the creation of an additional monitoring body would surely add to states parties' monitoring fatigue...GREVIO considers international efforts and resources should be on implementation of existing global and regional standards.”<sup>258</sup> Herein lies the question. We agree efforts should focus on implementation of global and regional standards into local realities, but we also believe it is possible a new treaty is the best mechanism to disseminate that information. We echo GREVIO’s comments, though, in the caveat that new standards must complement existing regional efforts. Regional experts must play an important role in the drafting of any new global treaty on violence against women.

### ***ASEAN Regional Action Plan on the Elimination of Violence Against Women (ASEAN RAP on EVAW)***

In 2015, the ASEAN Summit of Heads of States and Government adopted the ASEAN Regional Action Plan on the Elimination of Violence Against Women.<sup>259</sup> The Association of Southeast Asian Nations (ASEAN) includes Thailand, Viet Nam, Indonesia, Singapore, Philippines, Malaysia, Myanmar, Cambodia, Laos, and Brunei. It is a loosely held community of states, pursuing joint political-security, economic, and socio-cultural goals.<sup>260</sup> Through a joint effort, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)<sup>261</sup> and the ASEAN Committee on Women (ACW)<sup>262</sup> created the document building upon both the ASEAN Declaration of the Elimination of Violence Against Women and Violence Against Children (2013). The RAP recognizes that there has been little improvement in the elimination and rate of violence against women. It stresses the urgency for ASEAN Member States (AMS) to give priority to the elimination of VAW and to implement the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN. The plan claims that by adopting the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN, the AMS were committing to take all appropriate measures to prevent and respond to all forms of VAW. This RAP is a demonstration of that commitment to support the implementation of the provisions in the Declaration as the document contains plans for implementation from 2016 to 2025 to end all forms of violence against women.

While the RAP is not a binding regional treaty or convention, some stakeholders in the ASEAN region give this document great consideration. In the ACWC and AICHR responses to the Special Rapporteur’s call for submissions on the questions of a new treaty, these regional bodies

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<sup>258</sup> UN Human Rights Office of the High Commissioner. Submission to the Special Rapporteur on Violence Against Women. Submission by Council of Europe Group of action against violence against women and domestic violence (GREVIO). 2016. Accessed (12 April 2017).

<sup>259</sup> The Association of Southeast Asian Nations (ASEAN), *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>.

<sup>260</sup> About ASEAN. <http://asean.org/asean/about-asean/>

<sup>261</sup> The function and mandate of the ACWC is to promote and protect the human rights and fundamental freedoms of women and children in ASEAN, based principally on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which all ten AMS have ratified.

<sup>262</sup> The mandate of the AWC is to implement, coordinate and monitor the implementation of ASEAN’s key regional priorities and cooperation on women’s issues.

cite this document as a strong instrument through which they plan to work towards the elimination of violence against women in the region and as evidence that a new global treaty on the issues is not needed. The plan itself includes a definition of VAW, discusses the current international and national tools to combat VAW including CEDAW and the ASEAN Declaration mentioned above, provides guiding principles for the development and implementation of the plan. The principles are to focus on a human rights based approach, multi-sectoral and multi-disciplinary approach, evidence-based approach, as well as recognizing due diligence, and emphasizes collaboration and cooperation.<sup>263</sup> The plan also includes reports submitted by member states that highlight initiatives implemented to aid in the elimination of VAW<sup>264</sup> as well as a summary of national domestic violence legislation, national action plans, and studies on the prevalence of VAW in individual countries.<sup>265</sup>

However, it could be argued that the action plan is not a strong, long-term instrument and enforcement mechanism, as it applies for a time frame of only 10 years and does not contain a robust monitoring and reporting mechanism. Many of the indicators could be strengthened to provide for a more standardized measure of success for implementation of the plan and elimination of violence against women. In addition, the document does not include all of the nations considered to be part of the Asian region. Overall, this regional plan, while a step in the right direction, contains some room for improvement so as to be a strong tool for the elimination of violence against women in the ASEAN Region.

### ***The Coalition of Women MPs from Arab Countries to Combat Violence Against Women***

The Middle East and North Africa (MENA) region is often discussed as a potential challenge to progress on combating violence against women. However, recent regional actions share a story of growth on this issue. In November 2015, the Coalition of Women Arab members of parliaments (MPs) from the countries of Egypt, Lebanon, Jordan, Tunisia, Morocco, Palestine, Iraq, Djibouti, Sudan, Bahrain, and Algeria engaged in a seminar where they carried targeted discussion regarding combating violence against women in their respective countries.<sup>266</sup> With the exception of Sudan, all countries and the State of Palestine have ratified CEDAW as early as 1981 (Egypt) and as late as 2014 (Palestine).<sup>267</sup> Their efforts led to them establishing a conference in which the MPs identified country-specific penal codes that protected perpetrators of violence against for cancellation and abolishment. Lebanon, for instance, allowed a rapist to be exempt from punishment if he were to marry his victim under Article 522 of the Lebanese penal code. Through the collaborative efforts of the coalition and advocacy organizations like

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<sup>263</sup> See pages 11-14 of the ASEAN RAP on EVAW Report at <http://www.asean.org/storage/2012/05/Final-ASEAN-RPA-on-EVAW-IJP-11.02.2016-as-input-ASEC.pdf>

<sup>264</sup> See pages 35 - 49 of the ASEAN RAP on EVAW Report at <http://www.asean.org/storage/2012/05/Final-ASEAN-RPA-on-EVAW-IJP-11.02.2016-as-input-ASEC.pdf>

<sup>265</sup> See pages 51 - 60 of the ASEAN RAP on EVAW Report at <http://www.asean.org/storage/2012/05/Final-ASEAN-RPA-on-EVAW-IJP-11.02.2016-as-input-ASEC.pdf>

<sup>266</sup> "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. Website <http://cvaw-arabcoalition.org/> (Accessed on April 19, 2017).

<sup>267</sup> CEDAW, New York, 18 December 1979, available from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec). (Accessed on April 19, 2017)

ABAAD Resource Centre for Gender Equality (which launched the wide-reaching campaign entitled “A White Dress Doesn’t Cover Rape”<sup>268</sup>), the Lebanese parliament introduced legislation to cancel Article 522. The legislation passed and Article 522 was effectively abolished in February 2017. This grassroots-to-legislation effort continues as advocacy groups and government representatives, such as women MPs, target similar penal codes in other MENA countries like Morocco (which repealed its penal code in 2014).<sup>269</sup> Although the coalition has made mention of a potential draft of a regional convention that aims to combat violence against women,<sup>270</sup> we have found no published developments.

### ***Regional Tools: Conclusions***

Regional efforts to combat violence against women exemplify some of the most contextualized and innovative thinking about combating the issue to date. Belem do Para was the first to create an ongoing monitoring and follow-up mechanism on recommendations to combat violence against women. Istanbul builds upon this precedent and outlines concrete efforts for states to take to prevent, protect, prosecute, and pursue policies that combat violence. Istanbul’s GREVIO Committee of Experts believes these efforts complement CEDAW reporting and allow more time and expertise to be spent on the issue of violence. In addition, the language of Istanbul in particular is considered the “gold standard” for what “should” be in a convention on violence against women. Many regions including Asian, Middle Eastern, and African regions, however, have no access to a strong treaty on violence against women specifically. While advocates in these regions may desire their countries to ratify Istanbul, the likelihood is low, given its Western-centric reputation. The need remains for all countries in the world to have access to implementation guidelines and capacity building expertise specifically on violence against women. Current regional experts and their experience in reporting and implementing the treaty should be seen as an asset and relied upon in future treaty development. Future treaties can streamline efforts with current regional bodies by aligning data collection and reporting requirements to prevent undue burden on states. Future efforts can include a wider array of voices in the consolidation of regional efforts, to create a truly global consensus on the widespread issue of violence against women.

## **International Law Compliance: Treaty Theory**

When considering the introduction of a new international treaty, it is important to consider the effectiveness of international treaties in the establishment of state due diligence and as mechanisms for standard implementation. In this section we examine the theory behind why a country may move from ‘commitment’ (i.e. signing a treaty) to ‘compliance’ (i.e. fulfilling treaty

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<sup>268</sup> “Advocacy And Policy Development | Programmes | ABAAD”, *Abaadmena.Org*, accessed 19 April 2017, <http://www.abaadmena.org/programmes/advocacy-and-policy-development>.

<sup>269</sup> “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. Website <http://cvaw-arabcoalition.org/> (Accessed on April 19, 2017).

<sup>270</sup> “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. Website <http://cvaw-arabcoalition.org/> (Accessed on April 19, 2017).

obligations by implementing programs, policies, and funding).<sup>271</sup>

### *The Establishment of Due Diligence*

States' obligations to respect and protect a woman's right to be free from violence has been made more concrete through the duty and standard of due diligence, a widely accepted concept in international law. Thus, states have a responsibility, in accordance with their national laws, to prevent, investigate and punish acts of violence against women, whether they are perpetrated by the state or by private individuals.<sup>272</sup> Two key human rights cases helped to establish this concept of due diligence in regards to violence against women.<sup>273</sup> In *Opuz vs. Turkey*, The European Court of Human Rights ruled that states have an enforceable obligation to take steps to prevent individuals from domestic violence.<sup>274</sup> In *Gonzales et al. vs. United States*, the Court determined that the U.S. had systematically violated its international and regional obligations to protect individuals from domestic violence.<sup>275</sup> The concept of a state's responsibility to include accountability for acts of private individuals is an integral part of the definition of domestic violence as a human rights violation.<sup>276</sup> The current international framework rests upon the obligation of states to protect its citizens from all forms of gender-based violence, including domestic violence.

### *International Law Compliance: The Theory*

After our discussion of CEDAW and other international declarations, it is clear that implementation of these international norms has mixed results at best. Simply signing and ratifying an international treaty does not guarantee protection for individuals under its ideals, nor equal implementation. The implementation of international law is ultimately up to state parties at a domestic level. This process itself has been the focus of much debate and theory.

Building on the Boomerang Effect, the "Spiral Model" of human rights change examines the translation of international norms to domestic practice over time.<sup>277</sup> It starts with repression of certain rights, followed by denial if a transnational group succeeds in gathering sufficient information of human rights violations to initiate an advocacy process. Third, the rights-violating state uses (low cost) tactical concessions to get the international human rights community to back down. Fourth, states grant human rights norms prescriptive status by signing on or ratifying relevant international treaties and their optional protocols, changing related domestic law, setting up domestic human rights institutions, and referring to human rights norms in state administrative and bureaucratic discourse. Lastly, a state fully integrates the norms into daily

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<sup>271</sup> Risse, Ropp and Sikkink, *The Persistent Power Of Human Rights*.

<sup>272</sup> Chinkin, *Addressing Violence Against Women*, 471-501.

<sup>273</sup> Meyersfeld. *Introductory Note To The Council Of Europe Convention On Prevention And Combating Violence Against Women And Domestic Violence*.

<sup>274</sup> *Ibid.*

<sup>275</sup> Meyersfeld. *Introductory Note To The Council Of Europe Convention On Prevention And Combating Violence Against Women And Domestic Violence*.

<sup>276</sup> Rangita de Silva de Alwis, "Domestic Violence Lawmaking In Asia: Some Innovative Trends In Feminist Lawmaking", *UCLA Pac. Basin Law Journal* 29 (2011): 176.

<sup>277</sup> Thomas Risse, Stephen C Ropp and Kathryn Sikkink, *The Persistent Power Of Human Rights*, 1st ed. (Cambridge: Cambridge University Press, 2013).

societal operation. These theories help in thinking about the instruments necessary to improve protections for women against violence.

The theory to explain why a state would move from commitment to compliance is lacking.<sup>278</sup> The first goal of convincing government elites, UN officials, donors and journalists about the importance of human rights is the more modest goal of international human rights norms.<sup>279</sup> The second and more daunting task is turning that momentum to impact the actions of the millions of civil servants, police force, lawyers, judges and social workers that make up the real compliance of such political discourse.<sup>280</sup> For most countries with any political will to combat violence against women, efforts remain within this challenging leap to implement changes on practical, administrative, and budgetary levels.

The literature suggesting that ratification of international treaties has not necessarily led to compliance has grown over the past decade.<sup>281</sup> Simmons (2009) finds that three processes explain a country's movement from commitment to compliance: elite-initiated agenda, litigation, and political mobilization.<sup>282</sup> She argues that, for domestic politics of treaty compliance, the most powerful actors are individual citizens and local activist groups empowered by the strong signals and language supplied by human rights treaties.<sup>283</sup> In other words, local citizens must want the change in norms for themselves to make international treaties fully realized. On the other hand, the legal scholars have argued that the top-down, alongside bottom-up, advocacy efforts are important.<sup>284</sup> The authors Kathryn Sikkink and Thomas Risse argue that compliance is generally due either to coercion or changing incentives. Some examples of coercion are the use of force or legal enforcement, and examples of changing incentives are sanctions and rewards.<sup>285</sup> This suggests the regional treaty bodies with an aligned judicial institution could strengthen compliance efforts.<sup>286</sup> It also opens the possibility to linking foreign aid and development programs to human rights standard, though this relies on the political will of the donor country. In addition, it suggests that an international treaty body like CEDAW relies on engaged civil society and motivated political officials to implement the changes in practical ways, due to the limited use of the Optional Protocol as a judicial body.

### *International Law Compliance: The National and Local Level*

More specifically, the framing of violence against women as a human rights issue and as an issue relating to gender equality has become more common in international rhetoric, but changing

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<sup>278</sup> Risse, Ropp and Sikkink, *The Persistent Power Of Human Rights*.

<sup>279</sup> Emilie M. Hafner-Burton and James Ron, "Seeing Double", *World Politics* 61, no. 02 (2009): 360-401, doi: 10.1017/s0043887109000136.

<sup>280</sup> *Ibid.*

<sup>281</sup> Risse, Ropp and Sikkink, *The Persistent Power Of Human Rights*.

<sup>282</sup> Beth A Simmons, *Mobilizing For Human Rights*, 1st ed. (Cambridge; New York, N.Y.: Cambridge university press, 2009).

<sup>283</sup> *Ibid.*

<sup>284</sup> Alison Brysk, "From Above And Below", *Comparative Political Studies* 26, no. 3 (1993): 259-285, doi: 10.1177/0010414093026003001.

<sup>285</sup> Risse, Ropp and Sikkink, *The Persistent Power Of Human Rights*.

<sup>286</sup> Erik Voeten, "Competition And Complementarity Between Global And Regional Human Rights Institutions", *Global Policy* 8, no. 1 (2017): 119-123, doi: 10.1111/1758-5899.12395.



actual state and personal practices has been slow.<sup>287</sup> In her book, *From Global to Grassroots: The European Union, Transnational Advocacy, and Combating Violence Against Women (2013)*, Dr. Montoya provides in-depth analysis of various mechanisms that may be used to connect global policy rhetoric to local implementation.<sup>288</sup> She finds that in translating international rhetoric into local reality, legislation is often prioritized as a symbolic means of countering norms that support violence against women.<sup>289</sup> In addition to policy, it is important to consider enforcement mechanisms, comprehensiveness, resources, and capacity-building.<sup>290</sup> Practitioners often have three goals to more effectively combat violence against women: protection, prosecution, and prevention (the three P's).<sup>291 292</sup> With the addition of “policy”, the Istanbul Convention codifies these ‘good practices’ into a binding mechanism. The author’s analysis includes the type of policy instruments adopted, implementation indicators and programmatic practices, and public attitudes and norms. In conclusion, the author does not believe binding legislation to be the ideal solution to combat violence against women. She believes binding legislation without the necessary capacity-building efforts may be ineffective at best, and harmful at worst. Indeed, states struggle to report on the required metrics of current regional treaties, and any future monitoring body needs to view capacity-building as an integral part of their work. Belem do Para and Istanbul Conventions exemplify the concrete monitoring goals necessary to implement treaty language into local realities. Efforts can continue to implement those regional bodies, and efforts must be made to expand monitoring mechanisms to those regions currently lacking a binding treaty.

An international standard to measure violence against women could help track trends over time, and make cross-country comparisons a possibility. We know that despite the many declarations condemning violence against women, as listed above, it remains an endemic issue across the globe. Concrete capacity-building and implementation standards could help decrease the global prevalence rates of violence against women.

### *The current international framework to combat violence against women: Conclusions*

Our paper seeks to summarize current mechanisms to combat violence against women, and determine if they are sufficient. We find that despite the global and ongoing monitoring of violence against women by the CEDAW Committee and the Human Rights Council, and the complex monitoring bodies within the Americas and in Europe, while opportunities exist for countries to commit themselves to combat violence against women, the available mechanisms are disparate and unequal. In addition, monitoring countries’ efforts to combat violence is complex, slow, and cumbersome for many governments. Without sufficient political will, monitoring and implementation rarely occurs. Therefore, ample challenges remain for countries to implement the treaties to which they are already parties. We note that the African Charter

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<sup>287</sup> Montoya. From global to grassroots.

<sup>288</sup> *Ibid.*

<sup>289</sup> *Ibid.*

<sup>290</sup> *Ibid.*

<sup>291</sup> The development of the 3Ps can be traced back to the original U.S. Victims of Trafficking and Violence Protection Act of 2000 and is also clearly outlined in the UN Handbook for Legislation on Violence Against Women.

<sup>292</sup> Montoya. From global to grassroots.

lacks an ongoing, effective monitoring mechanism, making it practically ineffective; African leaders could look to the Belém do Pará and the Istanbul Convention for inspiration for a monitoring system. In addition, the broad Asian and MENA regions lacks a regional convention and this remains a gap in the international framework.

While implementation challenges persist within current mechanisms, we also determine that current mechanisms are insufficient. Current mechanisms do not provide a globally inclusive definition of violence against women accessible by states and NGOs to utilize in both the measurement of violence against women and to report uniformly on the topic within current reporting procedures. Assessment of CEDAW and UPR reporting mechanisms leads to the conclusion that these mechanisms both are insufficient to currently address violence against women, therefore not all states have access to a robust reporting mechanism that emphasizes both effective treaty implementation and state-level capacity building. Recent developments in regional treaty mechanisms show an increased desire for concrete implementation guidelines for all stakeholders, and show promise in reporting and tracking developments over time. Regional bodies, however, are not easily accessible for all countries. Even more could be done to emphasize a multi-sectoral implementation approach to combat violence against women. Lastly, the need remains to continually increase global buy-in for efforts to combat violence against women. This entails both garnering wider resources for the effort, and also building political will to end violence against women.

## **Political Feasibility**

In our conversations with experts in human rights law and NGOs in the field, we often asked whether or not the current political climate is appropriate and ready for a new treaty specifically to combat violence against women. In addition, we also asked whether or not it was feasible to introduce this issue in international law. One international NGO representative explained that the right moment and adequate political climate may never exist, thus suggesting the time is right to start.<sup>293</sup> She further explained that education and societal values for human rights issues can stem from law, as a message on what is deemed acceptable.<sup>294</sup> This suggests that even when the climate for action can seem challenging, establishing legal context can further progress for society.

Here, we explore the political feasibility of pursuing efforts to form a new treaty combating violence against women by comparing the current climate with historical context for other treaties: The Convention on the Rights of Persons with Disabilities, and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. While these treaties cover vastly different topics than our current focus, they provide examples and useful analysis for the process leading to two other recent treaties.

### *The Convention on the Rights of Persons with Disabilities*

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<sup>293</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, March 31, 2017, transcript

<sup>294</sup> Stephanie Willman Bordat, March 31, 2017.

The UN General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD) in December of 2006, opened it for signature in 2007, and the Convention came into force in May 2008.<sup>295</sup> 173 states have ratified this convention and are subject to monitoring and review of the Committee on the Rights of Persons with Disabilities.<sup>296</sup> This post-millennial history displays a quick-paced treaty process and widespread international buy-in, though it took two years for the twenty signatures necessary in order for the treaty to go into force.<sup>297</sup> However, the demonstrative story is that the UN began to focus attention on persons with disabilities and their dignity as it relates to human rights as early as the 1960s, with additional focus from the national and regional levels as well.<sup>298</sup> In 1971, the UN adopted the Declaration on the Rights of Mentally Retarded Person and then later the Declaration on the Rights of Disabled Persons in 1975.<sup>299</sup> The women's and civil rights movements are credited with drawing international attention to all issues of disadvantaged populations not specifically covered under previous human rights treaties.<sup>300</sup>

There are parallel histories with the CRPD and CEDAW. For one, the affected populations (persons with disabilities and women, respectively) had not been specifically addressed by previous treaties. Prior to the adoption of CRPD, the member states in the UN General Assembly debated on whether or not an additional, binding treaty specifically addressing the rights of persons with disabilities was even needed, referencing existing UN human rights treaties that guaranteed the rights of individuals regardless of their disability status.<sup>301</sup> This is a direct parallel to the current debate we aim to address in this paper and a reflection of the greater international debate on combating violence against women, on whether or not a new treaty for violence against women is warranted. As the debates around what eventually became the CRPD continued, the UN General Assembly reached consensus by adopting "Standard Rules on the Equalization of Opportunities for Persons with Disabilities" in 1993, a set of non-binding rules that served as an example for individual countries on dealing with disabilities legislations.<sup>302</sup> This experience of persons with disabilities legislation echoes similar early efforts which led to DEVAW, and later the UN Handbook for legislation on violence against women. Additionally, the UN appointed a Special Rapporteur on Human Rights and Disabilities in 1984, tasked with monitoring and reporting on incidents of violations of articles under the conventions. It later appointed the Special Rapporteur on Violence Against Women in 1994 tasked with a similar role.<sup>303</sup>

Despite the vehement debate surrounding the decision on whether or not to pursue a specific persons with disabilities convention, the appointment of a Special Rapporteur on this subject

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<sup>295</sup> "Convention On The Rights Of People With Disabilities", *UN Treaty Collection*, 2008, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en).

<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*

<sup>298</sup> Aart Hendriks, "UN Convention On The Rights Of Persons With Disabilities", *European Journal Of Health Law* 14, no. 3 (2007): 273-298, doi: 10.1163/092902707x240620.

<sup>299</sup> *Ibid.*

<sup>300</sup> Hendricks, UN Convention on the Rights of Persons with Disabilities. 274.

<sup>301</sup> Hendricks, UN Convention on the Rights of Persons with Disabilities. 275.

<sup>302</sup> *Ibid.*

<sup>303</sup> *Ibid.*

instigated the creation of the convention. According to Dr. Aart Hendriks, a Professor of Health Law at the University of Leiden in the Netherlands, the appointment of former Swedish Minister of Social Affairs Bengt Lindqvist as Special Rapporteur on Human Rights and Disabilities “was instrumental in reconsidering the need for the adoption of a legal binding document on the rights of people with disabilities.”<sup>304</sup> The spearheading drive by a Special Rapporteur may not be necessary, however, if the driving force for a new convention is carried forth by another state actor, as will be explained later in this section. The UN General Assembly then created an Ad-Hoc Committee to determine the feasibility and need of a new convention. The Member States that composed the Ad-Hoc Committee were divided on the need for a new convention, as the UN General Assembly was prior to the establishment of the Special Rapporteur. This led to the creation of the Working Group in 2003, tasked with drafting the text of a convention.<sup>305</sup> The Working Group isolated itself from the global debate and committed itself to the drafting process. Made up of motivated government officials and NGO representatives, their efforts led to a final draft of the convention by August 2006.<sup>306</sup>

This evolution of this process is demonstrative of the political will required within an intergovernmental organization to create cohesion and inspiration for a new convention. The manner in which CRPD came about parallels the early process of the international community’s attention to the issue of violence against women in that it formed a declaration, debated the issue for a new convention, and appointed a Special Rapporteur. The two issues differ in their international attention in that DEVAW has not yet lead to a new convention whereas the Declaration on the Rights of Disabled Persons influenced the development of the CRPD. Also, the current Special Rapporteur on violence against women, its causes and consequences has not yet been a supporter of a new treaty on the issue, though the previous Special Rapporteur was in favor of a new treaty.

### *The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention)*

Another past process examined to compare to the potential for a new treaty on violence against women is the The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention). The Ottawa Convention is an example of a contrasting approach to the previously discussed CRPD. It was a “bottom- up” approach in which frontline NGOs, health professionals, and civil society were the instigators of an international process, ultimately led by Canada, to create the Ottawa Convention to ban landmines.<sup>307</sup> In the 1970s, the NGO the International Committee of the Red Cross (ICRC) began to promote the need for the elimination of the use of landmines by displaying the destruction they caused to human life.<sup>308</sup> On a visit to Central America in the 1980s, US Senator

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<sup>304</sup> Hendricks, UN Convention on the Rights of Persons with Disabilities. 275.

<sup>305</sup> *Ibid.*

<sup>306</sup> *Ibid.*

<sup>307</sup> K Anderson, "The Ottawa Convention Banning Landmines, The Role Of International Non-Governmental Organizations And The Idea Of International Civil Society", *European Journal Of International Law* 11, no. 1 (2000): 91-120, doi: 10.1093/ejil/11.1.91.

<sup>308</sup> John English, "The Ottawa Convention On Anti-Personnel Landmines", *Oxfordhandbooks.Com*, 2017, <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199588862.001.0001/oxfordhb-9780199588862-e-45>.

Patrick Leahy of Vermont encountered a victim to a landmine and immediately took up the cause to ban the use of such weapons.<sup>309</sup> His support for this cause inspired the NGOs Vietnam Veterans of America Foundation (VVAFA) and Medico International (MI) to also act upon the issue. They partnered with Jody Williams, a Vermont citizen, to work on their behalf and to build a collaborative NGO network that would work on establishing a convention banning landmines.<sup>310</sup> Williams created the International Campaign to Ban Landmines (ICBL), a coalition of more than 100 NGOs that worked towards the drafting of the convention. Additionally, Williams established a partnership with Senator Leahy, who then pushed for US Congressional approval of a law to ban the export of the weapons.<sup>311</sup>

Despite the ICBL and Senator Leahy's efforts, the US did not support a landmine treaty. Canada progressed the cause by calling for a conference in Ottawa in 1996 to discuss drafting of a landmine treaty. Leading up to this conference, the cause acquired financial support from multiple governments.<sup>312</sup> At the conference, NGOs and government officials worked together but in friction, not yet used to co-existing in diplomatic spaces. The conference ended with the Minister of Foreign Affairs of Canada, Lloyd Axworthy calling for another conference for the following year (1997) where member states were to sign a final draft of the convention. This was a bold move, to call for the drafting of a treaty and building government support for the treaty in one year, and many people believed he would not succeed.

The 1997 Ottawa Conference was preceded by a series of preparatory meetings to ensure that the friction experienced in the 1996 Conference did not inhibit success. NGOs pursued building political will by working with states that supported their cause.<sup>313</sup> Also, notable figures, like then-Secretary General of the UN Kofi Annan and Princess Diana of the United Kingdom, promoted a cross-hemisphere support for this ban.<sup>314</sup> This publicity engaged the general public, especially those in Western countries who would otherwise not experience the ramifications of landmine victimhood, into supporting the eventual convention. The collaboration between NGOs and government officials moved this cause from initial proposal for a convention banning anti-personnel mines to a formal treaty with 122 signatories in just over a year.<sup>315</sup>

This collaborative exercise, which became known as the Ottawa Process, exemplifies the successes that are possible from using the "bottom-up" grassroots approach driven by passionate NGOs. While landmines may be considered easier to eradicate than violence against women, and less contentious, this process provides a blueprint for NGO and government collaboration to create a new treaty.

### *The Current Climate for A Convention to Combat Violence Against Women: Conclusions*

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<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*

<sup>311</sup> *Ibid.*

<sup>312</sup> *Ibid.*

<sup>313</sup> English. The Ottawa Convention On Anti-Personnel Landmines.

<sup>314</sup> *Ibid.*

<sup>315</sup> Lloyd Axworthy, "The Political Actors: President, Prime Minister, And Minister Of Foreign Affairs", accessed 21 April 2017, <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199588862.001.0001/oxfordhb-9780199588862-e-5>.

These two treaties demonstrate different approaches, with CPRD being more “top-down” and the Ottawa Process more “bottom-up”. Nevertheless, the two processes ended with the same result, a new binding international treaty. We highlight four key factors for comparison across these two treaties, and then apply those four criteria to the current context for a new treaty on violence against women. Our criteria for current climate potentially leading to a new treaty are (1) a UN declaration on the issue, (2) international engagement, (3) non-State/NGO actors, and (4) State actor(s).

See *Appendix G* for a visual representation of the comparisons between political climate for CRPD, the Ottawa Treaty, and a new treaty on violence against women.

In our analysis of historical context, first, the CRPD began with a UN Declaration, and the Ottawa Treaty did not. This is therefore a useful, but not necessary, requirement. Second, international engagement was a key factor in both treaties, with many actors talking about the issue at high levels of the government and UN, and in ongoing conferences. Third, NGO involvement is evident in both examples. NGOs held the role of promoting the effects that the lack of a treaty had on the key target groups, building consensus across multi-state actors and within different countries, aiding in the drafting of the text of the convention, and gaining widespread publicity for the cause. Fourth, the engagement of NGOs with state actors supported continued progress in the face of heavy debate on the need and feasibility for new conventions. A state official played a driving role for the international political community to be attentive to the NGO efforts and give credence to the importance of the issue. Essentially, the state officials (the Special Rapporteur of Human Rights and Disabilities and the US Senator and Canadian Foreign Minister in our examples) translated the needs and demand of NGOs into the political will of the international political community.

Next, we examine the current context for a new treaty on violence against women by applying these same four criteria. First, within the context of violence against women, DEVAW set the precedent within the UN system and provides a starting place for the issue. For CRPD a Declaration quickly moved into becoming a treaty, though this was not the case for DEVAW. Second, we see international engagement on the issue at multiple levels we have outlined above. This includes the Beijing Conference and CSW reports, as well as in CEDAW and UPR reporting. Third, we see an extensive effort by NGOs to create a convention to combat violence against women. Every Woman, Everywhere, an NGO coalition of over 400 organizations representing more than 100 countries across the world, is building support to demonstrate the need for a new convention.<sup>316</sup> The network also includes over 1000 individual women’s rights activists and scholars. Their movement is comparable to the Ottawa Process, with an international NGO desire and initiation leading to a new convention. The ongoing activity of this NGO coalition is an important development for our analysis. Fourth, the movement does not yet have a clear State actor champion for the issue of violence against women. The Ottawa Process leaned heavily on Foreign Minister Lloyd Axworthy to push NGO efforts into the UN system. Our research suggests this requirement is not yet fulfilled in order for the NGO initiative to be

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<sup>316</sup> [Interview 31] in discussion with the authors (April 18, 2017).

successful. Rather, we observe an environment of friction and debate on the issue at high, UN levels. While Special Rapporteur Šimonović has called for submissions on the issue, her intentions and purpose for this information are unclear. The majority of the submission responses published on the UN Special Rapporteur website do not feel that a new convention should be pursued.<sup>317 318</sup> Each responding organization did agree that the issue deserved attention and continued progress, and in addition, the published submissions on the website are not the complete list of submissions received for this call. Therefore we conclude there is not a clear State actor to champion the issue of violence against women at this time like there was in the Ottawa Process. This remains the largest need for the viability of a new treaty at the international level.

Though there are many challenges to the feasibility of a new treaty at this time, including the political climate in some countries, the experience of the Ottawa Treaty and CPRD demonstrate that the combination of NGO drive and the engagement of a state actor can create the energy necessary to overcome seemingly insurmountable resistance. The need remains for a strong link between the growing NGO effort and the international political community, and alignment of the drive and passion to pursue a new convention between these entities.

## **Arguments for and against a new treaty on violence against women**

### *Arguments against a new treaty*

Various stakeholders that we spoke with, and sources that we read, suggested a new treaty on violence against women would hinder current efforts and misuse scarce resources currently allocated to combat the issue. We outline their various lines of argument below, by highlighting five main points. They are that (1) CEDAW is a sufficient international treaty to combat violence against women, (2) regional treaties are strong and should be the focus of efforts and resources rather than a new international treaty, (3) soft law and guidelines already exist for states with the political will to pursue them, (4) cultural and social norms are the main cause of violence against women and a new international treaty does not change minds and hearts, and (5) implementation of current mechanisms is the main challenge and again, a new international treaty is not the right mechanism to solve this problem.

#### ***(1) CEDAW is sufficient***

The Optional Protocol under CEDAW expanded the Committee's mandate in that they can be considered a "quasi-judicial body".<sup>319</sup> As such, it can be said that the Committee offers an authoritative interpretation of State parties' obligations under the treaty. This suggests that the Committee's General Recommendations, for all practical purposes, are a part of the Committee's

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<sup>317</sup> "OHCHR | Call For Submissions On The Adequacy Of The International Legal Framework", *Ohchr.Org*, 2017, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/InternationalLegalFramework.aspx>.  
<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/InternationalLegalFramework.aspx>

<sup>318</sup> Authors' note: The submissions to the Special Rapporteur's call that are published on the UN OHCHR website do not reflect the total number of submissions made in response to the call. We have found additional submissions from NGOs through an extensive internet search. This presents a challenge in confirming the total amount of submissions made and which organizations and/or individuals submitted responses.

<sup>319</sup> Šimonović. Global and regional standards on violence against women. 590-606.

mandate and are considered as enforceable as the rest of the Treaty. This also indicates that the current international system already contains a global monitoring body to combat violence against women. General Recommendation 19 undoubtedly serves as the key to better understand the application of CEDAW on violence against women as a form of discrimination.<sup>320</sup> In addition to CEDAW, the UPR process, and other human rights treaties function as “living” human rights instruments that are continuously and systematically evolving through their application and interpretation by their respective treaty bodies.<sup>321</sup>

As an important part of its reporting process, the CEDAW Committee takes into consideration NGO shadow reports. These are reports on the state of discrimination against women compiled by non-government entities and practitioners, and they provide the CEDAW Committee with a fuller picture of reality than simply relying on official government reports. In the case of one Eastern European country, about “95% of what shadow reports submitted were in the final recommendations by the Committee”.<sup>322</sup> For NGO’s on the ground, “to have this body exist and point out strengths and weaknesses of a government is really helpful, like a barometer”.<sup>323</sup> However, the Committee cannot sanction a country, it stays on paper, and so it is not as strong as it could be.<sup>324</sup> A logical conclusion here is that, NGOs should be aware that the Committee is actively reporting on violence against women, and that states are accepting the validity of those recommendations. If NGOs supply information on these issues in shadow reports, the Committee will likely include them into recommendations for their country.<sup>325</sup>

The CEDAW Committee warns that states are already cutting budgets and programs to combat violence against women on the ground, and that a new treaty reporting mechanism may take resources from where they could be more effective.<sup>326</sup> Organizations that serve women and children affected by violence against women are strained in their resources and, in some countries, may be inherently at risk due to ideological differences with governments.<sup>327</sup> Diverting resources to support a new treaty then becomes counterproductive. This does assume a finite amount of resources for women’s human rights.

Even in the absence of a comprehensive treaty, state and institutional practice demonstrates the acceptance of international legal obligations with respect to the elimination of violence against women.<sup>328</sup> The CEDAW Committee believes a new treaty could, in fact, further fragment global efforts to combat violence against women, as well as burden states.<sup>329</sup> More specifically, since the adoption of GR19, in the Committee’s nearly six hundred concluding observations, most

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<sup>320</sup> *Ibid.*

<sup>321</sup> *Ibid.*

<sup>322</sup> Mary (Maro) Matosian, Executive Director of Women’s Support Center NGO -Armenia, interviewed by Maram Falk and Lauren Walker Bloem, March 21, 2017, transcript.

<sup>323</sup> *Ibid.*

<sup>324</sup> *Ibid.*

<sup>325</sup> The authors recommend looking for Dr. Cosette Cramer’s forthcoming article on CEDAW reporting and violence against women.

<sup>326</sup> CEDAW Committee. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)

<sup>327</sup> Anonymous (NGO serving European Region), in discussion with the authors, April, 11, 2017.

<sup>328</sup> Chinkin, Addressing Violence Against Women, 471-501.

<sup>329</sup> CEDAW Committee. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)



refer explicitly to gender-based violence against women.<sup>330</sup> In addition, there are courts in some states that have referred to CEDAW and other instruments in reaching their decisions on issues relating to violence against women.<sup>331</sup>

### ***(2) Regional treaties should be the current focus***

In addition to CEDAW's reporting mechanisms, regional bodies specifically dealing with violence against women have grown in number and in their detail for enforcement mechanism over the past two decades. In their response to the Special Rapporteur's call for submission on the issue of a new treaty, the ASEAN Intergovernmental Commission on Human Rights (AICHR), Women Against Violence Europe (WAVE), and MESECVI, all regional bodies, stated that they do not believe in the need for a new binding treaty, but do mention a new Optional Protocol on eliminating violence against women could be helpful as a supplementary instrument to reinforce and promote what is already established in CEDAW.<sup>332</sup> These regional bodies all desire a strengthening of regional efforts, and they see an Optional Protocol as a way to establish obligation on state parties to enact legislation on violence against women, without necessarily weakening those regional treaties.<sup>333</sup> Interestingly, some actors are for a new Optional Protocol to CEDAW, but against a new, separate treaty. Therefore, their arguments seem to focus on maintaining violence against women as an issue within CEDAW, and not creating a separate entity that would require new resources and reporting bodies. Academic experts specialized in human rights argue that an Optional Protocol demands nearly the same energies as a new treaty and should be viewed with the same concerns as to consensus, time, and resources as a new treaty.<sup>334</sup> The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) argues that a new treaty would compete for resources and burden governments on top of the overlapping treaty mechanisms already in place.<sup>335</sup> Both the ACWC and the ASEAN Intergovernmental Commission on Human Rights (AICHR) believe there is currently a gap in regional mechanisms available for monitoring violence against women; however, the ASEAN Regional Plan of Action on the Elimination of Violence Against Women (RPA-EVAW) will help to combat that gap.<sup>336</sup>

### ***(3) Soft law and guidelines exist for states with the political will to use them***

Most importantly, soft law and guidelines, alongside these existing regional tools, can be effective if political will exists in a given country. It is hard to determine if international laws prompt countries to write domestic legislation, or rather if countries with a willingness to write domestic legislation are the ones willing to ratify the treaty. The UN Handbook for Legislation

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<sup>330</sup> CEDAW Committee. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)

<sup>331</sup> Hellum and Sinding Aasen, eds. *Women's human right: CEDAW in international, regional and national law*.

<sup>332</sup> ASEAN Intergovernmental Commission on Human Rights (AICHR); WAVE; MESECVI. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)

<sup>333</sup> ASEAN Intergovernmental Commission on Human Rights MESECVI. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)

<sup>334</sup> Marsha Freeman, Senior Fellow at the University of Minnesota Human Rights Center, interviewed by Alexandra Sevett, April 6, 2017, transcript.

<sup>335</sup> ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)

<sup>336</sup> ACWC and AICHR. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. Accessed (12 April 2017)

on Violence Against Women, for example, provides extensive direction for states desiring new legislation on the issue.

For example, one Eastern European country is currently advocating for a domestic violence law that is in compliance with the Istanbul Convention, and the government wants their domestic legislation in order before ratifying Istanbul. In this particular case, pressure from the EU provided an incentive to their government to consider ratifying Istanbul.<sup>337</sup> Without that regional pressure, other countries may not feel pressure to ratify a new treaty. Another MENA-region advocate also agreed that without a quid pro quo agreement, like entry into the EU, it was unlikely her country would join the Istanbul Convention.<sup>338</sup> A country needs the political will to implement the treaty obligations for it to be useful; a new treaty does not necessarily create the political will to implement it.<sup>339</sup> For example, the review of the implementation of the Beijing Platform for Action (E/CN.6/2015/3, pars. 120-139) indicates that most States parties have improved their legal and policy measures to address diverse forms of gender-based violence against women, suggesting the soft law guidelines within Beijing have led to concrete reforms. It is important to note that many other factors, outside of the Beijing Platform, could also have caused this change in legislation.

A women's human rights activist in the MENA region also emphasized the importance of political will to change local laws. She said, "In an Arab country, if you touch women's rights, you touch the whole society. Secular or Islamic parties are alike. When activists touch patriarchal system, especially in the home, they do not want to make change. That is why there is no political will in violence".<sup>340</sup> This suggests a new treaty is not going to change government and society's mind, any more than current soft law efforts.

In summary, soft law and guidelines already exist to improve state's domestic legislation regardless of the existence of a new treaty. Grassroots efforts to better utilize existing soft laws and guidelines, and increase political will to implement those guidelines, may be a better use of resources.

#### ***(4) Cultural and social norms are the main cause of violence against women***

A former U.S. State Department representative to the CSW argued that while treaties do put issues on the national agenda, and they are important, it is possible a new treaty is not the most useful mechanism to fight violence against women.<sup>341</sup> She recommends instead a "how-to" book,<sup>342</sup> outlining steps a country can take to fight violence against women. A lot of this debate

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<sup>337</sup> Mary (Maro) Matosian, Executive Director of Women's Support Center NGO -Armenia, interviewed by Maram Falk and Lauren Walker Bloem, March 21, 2017, transcript.

<sup>338</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevet, and Maram Falk, March 31, 2017, transcript.

<sup>339</sup> Mary (Maro) Matosian, Executive Director of Women's Support Center NGO -Armenia, interviewed by Maram Falk and Lauren Walker Bloem, March 21, 2017, transcript.

<sup>340</sup> [Interview 29]. With Lauren Walker Bloem, April 20, 2017.

<sup>341</sup> Sharon Kotok, Retired Officer in Charge of International Women's Programs, U.S. State Department, interviewed by Maram Falk, April 3, 2017, transcript.

<sup>342</sup> There is a UN Handbook for legislation on violence against women that provides direction on establishing national laws and implementation of first response programs. However, the handbook refrains from providing best practices tools on how to train officials and first responders and does not address forms of violence that extend beyond physical and sexual violence.

centers on what is seen as the root cause of this widespread issue. For her, violence against women stems from women's status as a second class citizen, women's inequality before the law, and a lack of economic empowerment that leaves many women dependent on an abusive relationship for survival. Those issues, she argues, would not be directly tackled via the mechanism of a new treaty. Instead, she would require funding for new foreign assistance programs, trainings about women's equality, and working closely with religious leaders, political leaders, and NGOs. Another women's rights activist in the MENA region also proposes linking human rights with hard resources, like IMF and World Bank foreign aid.<sup>343</sup> She believes a new treaty is not the correct mechanism for change because important countries will not sign (like the U.S.), and also because the UN cannot do anything concrete, they are bureaucrats and not activists. They have to work with governments and so they are less willing and able to influence them.<sup>344</sup> Focusing on foreign aid might help countries to implement the laws if they were required to build shelters, train police, and more.<sup>345</sup> This activist and her staff have the debate whether to change hearts and minds, or not. They have decided, in the absence of much time or resource, to advocate to reallocate resources where it will impact the government, and by extension change laws. She does believe laws may eventually in turn change social norms and hearts.

The U.S., for example, has not ratified CEDAW under the stance that ratification is in direct opposition to national federalism, a reason often cited for not signing or ratifying other UN treaties. In addition, domestic politics often influence the viability of U.S. ratification of international treaties.<sup>346</sup> The U.S. argues that it ensures freedoms of women above and beyond those explicitly referenced in CEDAW, unlike member-states that have signed CEDAW and do not ensure such freedoms, like Saudi Arabia. The authors note that comparing practices in the U.S. to Saudi Arabia does not mean the U.S. has met an appropriate standard in effort and law. The U.S. passed the Violence Against Women Act (VAWA) of 1994 which provides critical funding for services and programs to help victims of violence.<sup>347</sup>

In summary, those advocating for cultural and social norms change believe this is the best avenue to address the issue of violence against women. While they think laws might also change hearts and minds, they emphasize the need for cultural readiness for laws to make a real difference.

#### ***(5) Implementation of current mechanisms is the main challenge***

In the absence of a new treaty, studies on best practices suggest there are proven ways to effectively reduce violence against women.<sup>348</sup> These include challenging social norms that support male authority and control over women and condone violence against women, reducing

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<sup>343</sup> [Interview 29]. With Lauren Walker Bloem, April 20, 2017.

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.*

<sup>346</sup> Sharon Kotok, Retired Officer in Charge of International Women's Programs, U.S. State Department, interviewed by Maram Falk, April 3, 2017, transcript.

<sup>347</sup> "National Network To End Domestic Violence | Violence Against Women Act", *Nnedv.Org*, accessed 10 April 2017, <http://nnedv.org/policy/issues/vawa.html>.

<sup>348</sup> *Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And Non-Partner Sexual Violence* (World Health Organization, 2013).

levels of childhood exposure to violence, reforming discriminatory family law, strengthening women's economic and legal rights, and eliminating gender inequalities in access to formal wage employment and secondary education.<sup>349</sup> For example, grassroots efforts in Brazil and South Africa are challenging social norms through education and outreach, by influencing male youth through male feminists, in partnership with women and girls. They instruct their pupils away from negative masculinity traits through education and exposure of women's roles and contributions to society.<sup>350</sup> It is unlikely that a new treaty would be the best tool to implement such programs.

Implementation of current treaty obligations is not perfect; however, a new treaty would not directly improve the situation for implementing current obligations. States currently make different levels of progress in the implementation of treaty obligations, depending on the level of authority of implementing mechanisms, the available resources to the justice system, the capacity of law enforcement, and judicial and government agencies desire and capabilities to pursue cases to their final conclusion.<sup>351</sup> All of these challenges would be best addressed from a local or national approach.

For example, one Eastern European country has ratified CEDAW, but domestic politics has prevented any comprehensive law on eliminating discrimination against women.<sup>352</sup> Thus, no substantive outcome has resulted from ratifying CEDAW as of yet. There may be the high-level political will to sign on to international treaties, but until a country is socially ready to implement an anti-discrimination law, it will not work. If important stakeholders do not believe in the law and do not understand it, then implementation is going to be challenging, or nearly impossible.<sup>353</sup> To be more effective in future endeavors, along with ratifying treaties, global efforts could increase trainings to equip stakeholders, to train a percentage of the Ministers of Justice, Ministry of Social Affairs, the Ministry of Education and Health.<sup>354</sup> These decision-makers need intensive trainings geared towards a change in attitude to combat the discrimination, racism, prejudice, and myths circulating in society, if they are to fully enforce even the best written law.<sup>355</sup>

The CEDAW Committee's mandate and increasingly strong regional treaties complement each other.<sup>356</sup> Violence against women as an issue needs to be housed within the CEDAW framework, but to really make a difference, countries need specific multisectoral mechanisms about how to implement the law on the ground.<sup>357</sup> Recent regional mechanisms increasingly provide that level of specificity, outcomes measures, and capacity building for states and officials. For example,

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<sup>349</sup> *Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And Non-Partner Sexual Violence.*

<sup>350</sup> "Program H - Promundo - EN", *Promundo - EN*, last modified 2017, accessed May 8, 2017, <http://promundoglobal.org/programs/program-h/>.

<sup>351</sup> UN Human Rights Office of the High Commissioner, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). Submission to the Special Rapporteur on Violence Against Women. 2016. Accessed 12 April 2017)

<sup>352</sup> Mary (Maro) Matosian, Executive Director of Women's Support Center NGO -Armenia, interviewed by Maram Falk and Lauren Walker Bloem, March 21, 2017, transcript.

<sup>353</sup> *Ibid.*

<sup>354</sup> *Ibid.*

<sup>355</sup> *Ibid.*

<sup>356</sup> *Ibid.*

<sup>357</sup> *Ibid.*

within any given country, it is important to look at what a social worker does, and what a policeman does - each has separate roles and responsibilities. Some countries have social workers working for a municipality, while for other countries do not. The institutional setting within which a country implements laws needs to be considered, and people within those institutions need to be trained accordingly.<sup>358</sup>

In summary, those opposed believe a new treaty in itself will not change minds and attitudes, but rather believe countries need the political and social will to change from within. Given CEDAW's current reporting mechanism that includes violence against women, and a growing number of regional treaties, there are places where countries can commit themselves to combat violence against women if the political will exists. Furthermore, global efforts and resources can increasingly equip stakeholders to implement treaty obligations and laws that already exist before we can know if the current system is sufficient to combat violence against women.

### *Arguments for a new treaty*

On the other hand, various stakeholders we spoke with and articles we read advocate for the need for a new, global, binding treaty on violence against women. We outline their arguments here, which can be grouped into five themes that oppose the arguments listed, above. They are, (1) CEDAW is *inadequate* for the scope and nuance of violence against women, (2) soft law efforts are *insufficient*, (3) regional efforts have shown progress but are *not globally accessible*, (4) *impunity* (and not only social norms) is the main root cause of violence against women, and (5) implementation of current mechanisms remain a challenge and this merely suggests *how* a new treaty needs to be developed, it does not presuppose the ineffectiveness of a new treaty.

#### ***(1) CEDAW is inadequate***

The International Human Rights Clinic at Santa Clara University, in their response to the Special Rapporteur on the need for a new treaty, argue a new treaty is needed because, "CEDAW does not mention the words "rape," "assault," or even "violence," and therefore provides an inadequate legal framework to protect, defend, and guarantee women and girls the right to a life free from gender-based violence".<sup>359</sup> It is a fundamental problem that violence against women is currently only interpreted into a convention, based on general recommendations.<sup>360 361</sup> In other words, a legal framework that relies on creative interpretations of more general human rights law is inadequate to address the nuance and specificity required to combat violence against women.<sup>362</sup> This results in the lack of an explicit definition of violence against women within CEDAW, as well as a lack of a clear definition of state's obligations.<sup>363364</sup>

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<sup>358</sup> *Ibid.*

<sup>359</sup> International Human Rights Clinic, Santa Clara University School of Law. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. (Accessed 12 April 2017)

<sup>360</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevet, and Maram Falk, March 31, 2017, transcript.

<sup>361</sup> [Interview 31] interviewed by Lauren Walker Bloem, Alexandra Sevet, and Maram Falk, April 15, 2017, transcript.

<sup>362</sup> International Human Rights Clinic, Santa Clara University School of Law. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. (Accessed 12 April 2017)

<sup>363</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevet, and Maram Falk, March 31, 2017, transcript

<sup>364</sup> [Interview 31] interviewed by Lauren Walker Bloem, Alexandra Sevet, and Maram Falk, April 15, 2017, transcript.

Some argue that conflating violence against women and discrimination against women results in inadequate or incomplete description of the legal concept of violence against women as its own human rights violation.<sup>365</sup> Currently, the only avenue for individual complaints is the Optional Protocol and specifically only residents from states that have signed on to the Optional Protocol can bring complaints to the CEDAW Committee.<sup>366</sup> In addition, individual complainants must first exhaust all domestic remedies, and few cases have the resources to proceed to a judicial decision at the UN level.<sup>367</sup> Instead, a specific monitoring body with expertise in gender-based violence would be better situated to serve victims of violence, especially if it focused on trying specific cases.<sup>368</sup> Furthermore, those against a new treaty often cite that the CEDAW Optional Protocol provides the needed mechanisms by granting monitoring and reporting authority to the Committee. However, the Optional Protocol also provides an avenue of relinquishment for this authority through an “opt-out” clause in which States Party can choose to not acknowledge the Committee’s added responsibility.<sup>369</sup> In addition, there is insufficient dialogue within the broad mandates of these legally binding mechanisms specifically on violence against women, and insufficient assessment of State parties’ responses. This issue has recently been addressed by the CEDAW Committee by providing two-year follow-ups for States in order to follow up on the implementation of recommendations.<sup>370</sup> This could either make the CEDAW Committee more effective, or it could further exacerbate the time and resource constraints of the Committee as they examine State party reports.<sup>371</sup> Important to reiterate, violence against women is only one item within many forms of discrimination addressed by the CEDAW committee in their reporting, though it is included in most of the committee’s reports.

Some states have ratified CEDAW without reservations and yet violence against women, persist. The “Nordic Paradox” is an example of this phenomenon, occurring in Northern European states.<sup>372</sup> In this paradox, women experience disproportionately high rates of domestic violence from intimate partners, despite relatively high equality and freedoms under the law.<sup>373</sup> This paradox demonstrates that the issue of violence against women is not exclusively persistent for non-Western states which have no underlying mechanism to address violence or even discrimination against women. Challenges remain in enforcing CEDAW broadly in many countries, and especially with regards to violence against women, which remains a widespread problem in every corner of the world.

## ***(2) Soft law efforts are insufficient***

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<sup>365</sup> International Human Rights Clinic, Santa Clara University School of Law. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. (Accessed 12 April 2017)

<sup>366</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevet, and Maram Falk, March 31, 2017, transcript

<sup>367</sup> International Human Rights Clinic, Santa Clara University School of Law. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. (Accessed 12 April 2017)

<sup>368</sup> International Human Rights Clinic, Santa Clara University School of Law. Submission to the Special Rapporteur on Violence Against Women, OHCHR. 2016. (Accessed 12 April 2017).

<sup>369</sup> *Ibid.*

<sup>370</sup> Šimonović. Global And Regional Standards On Violence Against Women.

<sup>371</sup> A/HRC/26/38

<sup>372</sup> Enrique Gracia and Juan Merlo, "Intimate Partner Violence Against Women And The Nordic Paradox", *Social Science & Medicine* 157 (2016): 27-30, doi:10.1016/j.socscimed.2016.03.040.

<sup>373</sup> *Ibid.*

In addition to CEDAW addressing violence against women, our paper examined various soft law efforts to combat violence against women. There has been an inconsistent approach to violence against women across regional systems, and through soft law instruments like DEVAW.<sup>374</sup> Soft law helps to inform norm development and expansion, but lacks monitoring and reporting mechanisms, as well as lacks measurable goals.<sup>375</sup> CEDAW and regional instruments, as well as soft law, provide a *foundation* for a new comprehensive, legally binding treaty, but are insufficient by themselves.<sup>376</sup> Soft law merely indicates aspiration and political consensus.<sup>377</sup>

On a practical level a new treaty could provide the means through which global action on violence against women could occur, above and beyond current soft law efforts.<sup>378</sup> Important to note, a new treaty will not create the concrete changes needed to combat violence against women on the national and local level automatically. The benefit of a new treaty is that it would require formal language to the issue of violence against women and the accompanying mechanism for implementation into individual nations' laws and practice.

### ***(3) Regional efforts are not globally accessible***

Regional Conventions - like the Istanbul Convention and the Belém do Pará - attempt to fill in some of these reporting and normative gaps. The School of Law, Queen's University, Belfast, in their submission to the Special Rapporteur on the need for a new treaty also argue that there are gaps in the current international and regional legal framework, and that therefore, a new treaty is the best solution.<sup>379</sup> Rashida Manjoo, the former Special Rapporteur on violence against women, argues that regional treaties themselves do not fill in missing normative framework gaps at the global level.<sup>380</sup> The Special Rapporteur continues that despite the specificity of regional treaty instruments, there is no consensus definition between regional treaties, and this demonstrates the need for a universal legally binding instrument on violence against women at the United Nations level.<sup>381</sup> It should be noted that the Istanbul Convention and the ASEAN RAP were both established after Manjoo's tenure, so she was not including those regional developments in her analysis. We do not know definitively if they would change her analysis, but we note that they still lack a consensus definition of violence against women. One women's rights advocate mentioned that while she would love for her country to sign the Istanbul Convention, and it would be helpful, her country will not likely sign it because it is perceived to be Western.<sup>382</sup>

### ***(4) Impunity is the main root cause of violence against women***

International treaties and law can be a tool for NGOs on the ground to push for better laws, and the full implementation of laws. The Director of an NGO in Morocco said she strongly believes in the need for a new, international treaty on violence against women. She views total impunity

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<sup>374</sup> Brunger and Dowds, *Call For Submissions*

<sup>375</sup> *Ibid.*

<sup>376</sup> *Ibid.*

<sup>377</sup> Christine Chinkin, "Violence Against Women: The International Legal Response", *Gender & Development* 3, no. 2 (1995): 23-28, doi:10.1080/741921810.

<sup>378</sup> Brunger and Dowds, *Call For Submissions*

<sup>379</sup> *Ibid.*

<sup>380</sup> A/HRC/26/38

<sup>381</sup> A/HRC/26/38

<sup>382</sup> [Interview 29]. With Lauren Walker Bloem, April 20, 2017.

as the major issue. She outlines three forms of impunity:<sup>383</sup>

1. Impunity encompasses peoples' cultures, beliefs, behaviors, values, both related to women and the value of women, as well as the fact that we tend to excuse boys and men for anything that they do. There is no accountability for those actions.
2. A structural aspect feeds into and reflects the cultural impunity. There is a lack of structures and services for women victims of violence to receive justice, to escape situations, to be compensated, to thoroughly investigate, prosecute, rehabilitate, or provide education to the offenders or possible offenders.
3. And then, third, based on the textual level of the law, there is impunity written into the law for acts of violence against women. So impunity infiltrates all the three different elements of social change.

An international treaty on violence against women would send a very clear message that the world will not tolerate violence against women.<sup>384</sup> The Special Rapporteur on the Rights of Women in Africa, Lucy Asuagbor, states, “the attention that a global violence against women treaty would draw is the momentum that would trigger this mode of influence thereby forcing states to espouse higher ideals in matters of violence against women.”<sup>385</sup> Ending impunity is a crucial step to ending violence against women, and a new treaty could give advocates a tool they need for accountability as well as for state actors to implement laws.

***(5) Implementation of current mechanisms has been insufficient to date, suggesting the need for a new treaty that is implementation-focused, concrete and multi-sectoral***

We read about and heard from advocates that acknowledge on-the-ground implementation challenges and also believe in the need for a new treaty. They emphasize a new treaty needs to have global consensus, concrete implementation steps for stakeholders, a multi-sectoral approach, and a binding treaty mechanism.<sup>386</sup> NGOs and practitioners on the ground need one central location for guidance on combating violence against women.<sup>387</sup> This new treaty body would fill in gaps we found within CEDAW and regional bodies, and address the issue of impunity. A new treaty would not only energize the longstanding discussion on violence against women, it would essentially elevate the priority of the issue in its own right independently from all other issues of human rights. It could push the conversation forwards to include best practices, standards, and global consensus about what next steps should be and what government obligations are.<sup>388</sup>

The NGO coalition Everywoman Every Where, actively takes this stance. It emphasizes the need to fill the gap between UN work, frontline practitioners, and survivor experiences.<sup>389</sup> It also emphasizes the need for implementation to be an integral part of drafting the treaty, and not

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<sup>383</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, March 31, 2017, transcript

<sup>384</sup> Brunger and Dowds, *Call For Submissions*

<sup>385</sup> *Special Rapporteur On The Rights Of Women In Africa Submission To The Special Rapporteur On Violence Against Women* (OHCHR, 2016).

<sup>386</sup> [Interview 31] interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, April 15, 2017, transcript.

<sup>387</sup> [Interview 31] interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, April 15, 2017, transcript.

<sup>388</sup> Stephanie Willman Bordat, Founding Partner at Mobilising for Rights Associates MRA, interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, March 31, 2017, transcript.

<sup>389</sup> [Interview 31] interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, April 15, 2017, transcript.



something added on years later.<sup>390</sup>

In summary, some experts argue a legally binding treaty is needed to clearly establish a normative framework for the protection of women and girls on a global scale that does not currently exist. CEDAW does not report on violence against women to the level of specificity required for this issue. Its Optional Protocol is for all forms of discrimination, and again does not offer accessible redress for victims of violence. Regional treaties, while innovative, do not provide the globally accessible framework required. Drafters of a new treaty should look to their progress and complement efforts. Aligning metrics and measures would help to decrease any possible burden on states. A new international treaty is needed to end the impunity afforded to perpetrators of violence against women. This legally binding instrument, with its own specific monitoring body, would provide targeted and in-depth analysis for the issue of violence against women. It would establish a protective, preventative, and educative framework that would articulate that violence against women is a human rights violation, in and of itself.<sup>391</sup>

## Conclusion and Recommendations

Our research demonstrates that various treaties and declarations currently work towards the implementation and monitoring of efforts to end violence against women. We commend the ongoing work of the CEDAW Committee to update General Recommendation 19, which directly addresses the issue of violence against women, due out summer 2017. CEDAW's reporting mechanism is the first to explicitly tackle women's issues, and should continue to address progress made on violence against women and provide recommendations within its reporting mechanism on discrimination against women. We note the UPR process also addresses progress and concerns on violence against women to some extent.<sup>392</sup> Regional bodies – in particular Belem do Para and the Istanbul Convention - provide concrete frameworks for ongoing monitoring of the implementation of recommendations on the specific issue of violence against women. The Istanbul Convention especially takes a concrete, practical approach and provides an implementation guide for those States with the political will to tackle the issue. It is also important to note the role of transnational advocacy networks, such as the organization Women Against Violence Europe (WAVE), in pushing for this current progress and keeping states accountable to their commitments.

Our study concludes, however, that current international, national, and local frameworks to combat violence against women have been incomplete and non-cohesive so far. The next step was to determine if current structures are sufficient, or if new mechanisms are required. In order to assess the best alternative, we identify five criteria we believe are important for the international framework to address. We gathered these priorities throughout our research and believe focusing on these priorities could mitigate the fears of those against a new treaty, as well as fulfill the key gaps seen by those in favor of a new treaty. They are (1) a globally inclusive definition, (2) robust reporting mechanism for effective treaty implementation, (3) robust reporting mechanism for state-level capacity building, (4) concrete implementation steps for

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<sup>390</sup> [Interview 31] interviewed by Lauren Walker Bloem, Alexandra Sevett, and Maram Falk, April 15, 2017, transcript.

<sup>391</sup> A/HRC/26/38

<sup>392</sup> See previous sections on reporting on violence against women with the CEDAW Committee and UPR.

stakeholders, and (5) wide buy-in from parties for future resources and political will. Based on the extensive analysis in the international framework section, above, none of the current mechanisms fulfill all five criteria. See *Appendix H* for a visual summary.

We find that a new treaty, drafted in a strategic and globally inclusive way, has the potential to fulfill these five criteria and fill current gaps in the international framework. **We conclude that the global community should consider a new treaty mechanism to bring increased coherence, implementation, and renewed efforts to combat violence against women.**

The debate on the need for a new international legally binding treaty still exists. There is not one singular conclusion that a treaty would be the most effective tool in eliminating violence against women. Although, we believe there is consensus that a gap in the implementation of existing standards persists. We believe this suggests current mechanisms are too disparate to be fully effective, especially for NGOs and practitioners who may be unsure where to look for an authoritative source for implementation guidelines. Furthermore, we believe a new treaty could address those implementation gaps by outlining concrete requirements for a multisectoral approach. It would also provide a global consensus around the issue that currently lacks in the regional treaties. Lastly, a binding treaty could establish an ongoing body of experts on the issue of violence against women to support dissemination of best practices and contribute to capacity building at the national and local level.

On the one hand, there are academics, practitioners, and activists who do not think that a new treaty on violence against women would be useful or effective for a variety of reasons. One concern is that what is needed is more focus on local practices, context, and laws. This focus includes time and resources for local solutions. These stakeholders emphasize a new treaty would not fulfill this on-the-ground implementation need. They emphasize another treaty with State-focused reporting (i.e. CEDAW for violence against women) will not fill in the local implementation gaps we currently face. While State and NGO reporting helps countries think through past efforts, reporting is not the same as implementation. GR19.2 is a good advancement, as are concluding observations addressing violence against women. However, this process does not go far enough to support states in-between reporting to implement, change, and improve their efforts. What is needed is a guide for implementation that is accessible and concrete for all countries, globally.

Others believe a new treaty is exactly this guide desperately needed to fill this implementation gap. This new treaty must be legally binding to provide a framework that establishes state obligations under due diligence, and thus hold more legitimacy for international stakeholders. These advocates see soft law documents as non-binding, simply aspirational goals. Further, since States parties' reports and the CEDAW Committee's concluding observations must address all Convention articles, violence against women is not getting the attention or expertise needed within this mechanism. Those advocating for a new treaty also believe in the current implementation gap, but believe a treaty is the best tool to push forwards the needed reforms, even at a local level.

There seems to be consensus that any new, global effort should provide concrete implementation steps, training, and capacity building measures for states and local actors, and provide resources for these efforts. This multisectoral approach would include training for stakeholders, providing guidance for police, hospitals, judiciary, social workers, and others.

Thus, the task at hand is for the international community to find consensus and converge all past efforts to combat violence against women into one collective resource, bringing with it global coherence and renewed efforts. It is important that this effort complements existing mechanisms and use language that is at least as strong as regional mechanisms. It will also need to define “violence against women” in order to start measuring rates of violence and track progress towards ending the practice.

### *Action Items*

We see a need for a new binding mechanism that provides global consensus on a definition of violence against women, a robust reporting mechanism that includes implementation and capacity building, concrete implementation steps for stakeholders, and buy-in from all parties.

**Support calls and current efforts for a new treaty on violence against women.** The existence of a large and diverse coalition formed by the organization Every Woman, Everywhere advocating for and taking steps towards a new legally binding instrument is a large factor in our conclusion. The existence of this coalition demonstrates that there has been concrete movement on the idea of a new treaty. In addition, these advocates believe that the work for a treaty must proceed in a very specific way. They state,

“A fast-moving top down process could produce a weak, ineffective treaty. With major issues concerning colonialist approaches, the success of this treaty depends largely on growth from the developing world, as opposed to an export from Western nations - a condition which many developing nations would be far less likely to support for political and historical reasons. The strategic focus of the Every Woman Everywhere Campaign is not simply a new law, but the most effective, comprehensive treaty possible. Rigorous research and analysis coupled with on-the-ground input from those most affected by violence against women i.e. advocates and survivors, is crucial.”<sup>393</sup>

After our analysis of the current contexts and viewpoints that exist, we support this view. Even those who are the most in favor of a new treaty are very aware that there is a specific way to approach its research and drafting. Based on our current knowledge, we feel that Every Woman Everywhere Coalition is taking the correct approach. We would only recommend pursuing an international treaty using this grassroots, research based approach that is inclusive of diverse stakeholders including survivors, front-line practitioners, and especially those in developing countries. We echo concerns that a weak and ineffective treaty could cause harm by diluting current regional treaties and the work of CEDAW and its committee. Therefore, we commend the strategic, inclusive, and purposeful approach of Every Woman Everywhere.

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<sup>393</sup> A/HRC/29/27/Add.

**Begin informal talks and search for a political champion for this issue either within UN or government ranks.** Due to our assessment of the political feasibility of a new treaty in current times, this will be a key need for a successful movement going forwards. It does not have to be rushed, as the right political champion at the right time will be key. We note in our analysis of the Convention on the Rights of Persons with Disabilities, and in the Ottawa Process, the key roles of the UN and State officials that pushed the movement into UN channels. It is possible a new treaty would not enter the UN system, however, avoiding the UN system poses some challenges for future resources and buy-in. We believe the best method is for key State actors to champion this issue at a strategic time, in close partnership with the Every Woman Everywhere coalition.

**Continue to support current implementation and capacity building efforts, and expand those efforts globally.** This work will strengthen both current efforts and lay the groundwork for a future treaty. If an international treaty comes to exist, local stakeholders such as police, hospitals, lawyers, judges, social workers, and grassroots advocates need to understand the purpose of the treaty and believe in its goals. In addition, increased capacity-building and implementation guidelines will help both current mechanisms and future instruments to be more effective. This future treaty will not be implemented in a vacuum. All efforts to engage global stakeholders will be beneficial both in the short term, utilizing current mechanisms, and also lays the groundwork for future implementation efforts of a legally binding treaty. Actions can include increasing communication among stakeholders, sharing knowledge, and training frontline practitioners about current laws and future laws. GRW is uniquely equipped with legal and advocacy knowledge to lead global efforts in communication, knowledge sharing, and mobilization to prepare the global community for advancement in women's rights, and to end violence against women.

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*Appendix A*

Interview Protocol

Global Rights for Women // Humphrey School of Public Affairs, University of Minnesota

|                   |  |
|-------------------|--|
| General Questions | <p>Could you give us a brief summary of your experience working within the human rights field generally?</p> <ul style="list-style-type: none"><li>• How did your experience encircle working with human rights issues regarding women?</li><li>• What laws impact your work? (international, national, local?)</li></ul> <p>How do you define the issue of “violence against women” broadly?</p> <ul style="list-style-type: none"><li>• What is the value of using such a term?</li></ul> <p>What major/broad issues do you see as contributing to the widespread reality of VAW?</p> <ul style="list-style-type: none"><li>• Where do you think energies should be best put to address the issues of VAW?</li></ul>   |
| CEDAW Convention  | <p><b>What do you see as the strengths of the CEDAW Convention, in particular regarding VAW?</b></p> <ul style="list-style-type: none"><li>• Language</li><li>• Scope (breadth vs. depth)</li><li>• Enforcement</li></ul> <p><b>What do you see are the gaps of the CEDAW Convention, in particular regarding VAW?</b></p> <ul style="list-style-type: none"><li>• Language</li><li>• Scope (breadth vs. depth)</li><li>• Enforcement</li></ul> <p><b>What was the value behind the <u>process</u> of developing the CEDAW convention?</b></p> <p>How, and by whom, was the process of the CEDAW convention challenged during UN adoption?</p> <ul style="list-style-type: none"><li>• Regional challenges</li><li>• Multilateral talks on parallel issues; is VAW used as leverage on other issues?</li><li>• National governance (i.e. U.S. issue of federalization)<ul style="list-style-type: none"><li>◦ Reservations</li></ul></li></ul> <p>How, and by whom, was the process of the CEDAW convention challenged during UN ratification?</p> |

|                                |   |
|--------------------------------|---|
|                                | <ul style="list-style-type: none"> <li>• Regional challenges</li> <li>• Multilateral talks on parallel issues; is VAW used as leverage on other issues?</li> <li>• National governance (i.e. U.S. issue of federalization) <ul style="list-style-type: none"> <li>○ Reservations</li> </ul> </li> </ul>   |
| <p>Istanbul Convention</p>     | <p><b>How do you see CEDAW’s strengths and gaps as compared to the Istanbul Convention?</b></p> <p>What do you see as the strengths of the Istanbul Convention, in particular regarding VAW?</p> <ul style="list-style-type: none"> <li>• Language</li> <li>• Scope (breadth vs. depth)</li> <li>• Enforcement</li> <li>• Regional Focus</li> </ul> <p>What do you see are the gaps of the Istanbul Convention, in particular regarding VAW?</p> <ul style="list-style-type: none"> <li>• Language</li> <li>• Scope (breadth vs. depth)</li> <li>• Enforcement</li> </ul> <p>How do you see the Istanbul Convention progressing in the future? If not seen as progressing, how do you see it hindered?</p> <p><b>How can the Istanbul Convention be used as an international tool, if at all?</b></p> <p><b>Tell us your thoughts about both the desirability and feasibility of expanding ratification to non-Council of Europe members?</b></p> |
| <p>Treaty <b>Processes</b></p> | <p><b><i>Keep in mind: What do they know about process, what we should look out for, what worked, what hasn’t, and what to do differently?</i></b></p> <p>If you could create a new Treaty on VAW, what specifically would you make sure to include? (<i>by treaty, we mean broadly some other options, like an Optional Protocol</i>).</p> <ul style="list-style-type: none"> <li>• Binding mechanism?</li> </ul> <p>Do you think there is the possibility to create a new treaty in our current times? Why or why not?</p> <ul style="list-style-type: none"> <li>• Would you use a UN process for this Treaty? If no, then what?</li> <li>• If not today, what about in the future?</li> <li>• What would be the necessary prerequisites to creating such a Treaty?</li> </ul>   |

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|                          | <p>Would a new Treaty be more effective in ending VAW? Why or why now?</p> <ul style="list-style-type: none"> <li>• How could it be framed to make it more effective?</li> <li>• If not, what may be a better method?</li> <li>• How could we make the Treaty, as-is, more effective?</li> <li>• What are the opportunities and likelihood of the multiple human rights conventions (like CEDAW and Istanbul) to collaborate and join efforts?</li> </ul> <p>What role do you see for NGOs in the process of negotiating a Treaty?</p> <ul style="list-style-type: none"> <li>• Solely as a lobby?</li> <li>• Educational tool to create grassroots movements?</li> </ul> <p>How effective were regional preliminary planning sessions (i.e. Belem do Para, Istanbul)?</p> <ul style="list-style-type: none"> <li>• How did the regional preliminary planning sessions differ across regions?</li> <li>• What were some of the other strategies explored in the different regions?</li> </ul> <p><b>Do you think there's a value in the process, even if it doesn't lead to a ratified convention?</b></p> |
| Implementation Processes | <p>Tell us about how you see international treaties and laws getting translated to national or local levels.</p> <ul style="list-style-type: none"> <li>• Have you seen it work well in the past?</li> <li>• If so, what were the key components of success?</li> <li>• What are areas for improvement to the current systems for national and local implementation?</li> </ul> <p>How do you see Reservations impacting the overall implementation of the Treaty?</p> <p>What were some the best “lessons learned” from the implementation processes of either/both convention(s)?</p> <p>What role do you see for NGOs in the implementation of the Treaty?</p> <ul style="list-style-type: none"> <li>• Mechanism for implementation?</li> </ul> <p>Describe the roles you expect specific nations to take.</p> <ul style="list-style-type: none"> <li>• Which nations or regional groups will be looked to for their leadership?</li> <li>• Which nations or regional groups may hinder the process? Why?</li> <li>• What regions would you expect to be absent in the conversations?</li> </ul>       |
|                          | <p>After all we have talked about, what are your thoughts on the desirability</p>  |

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|--|---|
|  | <p>and feasibility of a new, binding, international convention on violence against women?</p> <p>Anything else that we should be aware of, or that you'd like to add?</p> |
|--|---|



**Appendix B**

CEDAW reporting on violence against women: State Reports

| <b>List of States Reports to the CEDAW Committee analyzed for this analysis:</b> | <b>Publication Date (Oct 2015 – April 2017)</b> |
|--|---|
| 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                                    |
| <b>Total: 26</b>   |   |

Source: Committee on the Elimination of Discrimination against Women,  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=29](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

| <b>List of Issues (LOI) analyzed for this paper:</b> | <b>Publication Date (Oct 2015 – April 2017)</b> |                         |
|--|---|-------------------------|
| *Concluding Observations also analyzed               | List of Issues                                  | Concluding Observations |
| Democratic People’s Republic                         | March 2017                                      |                         |
| 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                                     | March 2017              |
| Germany  | August 2016                                     |                         |
| Jordan   | March 2016                                      |                         |
| Argentina*   | March 2016                                      | November 2016           |
| Armenia*   | March 2016                                      | November 2016           |
| 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                                   | July 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  | March 2016 |
| <b>Total: 42</b>     |               |            |

Source: Committee on the Elimination of Discrimination against Women,  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=18) (LOIs) and  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5) (Concluding Observations)

*Appendix D*

UPR reporting on violence against women: Reports of the Working Group on the Universal Period Review

| <b>List of Reports of the Working Group on the Universal Period Review analyzed for this analysis:</b>   | <b>Publication Date: 33<sup>rd</sup> Session of the Human Rights Council</b>  |
|--|---|
| Suriname<br>St. Vincent and the Grenadines<br>Samoa<br>Greece<br>Sudan<br>Hungary<br>Papa New Guinea<br>Tajikistan<br>Tanzania<br>Antigua and Barbados<br>Swaziland<br>Trinidad and Tobago<br>Thailand | July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016<br>July 2016 |
| <b>Total: 13</b>   |   |

Source: <http://uhri.ohchr.org/>

## Appendix E

A summary of country analysis from the volume: Hellum, Anne, and Henriette Sinding Aasen, eds. *Women's human rights: CEDAW in international, regional and national law*. Vol. 3. Cambridge University Press, 2013.

The Northern European states included in this analysis are the Netherlands, France, the UK, Finland and Norway, which have all acceded to the European Convention on Human Rights (ECHR) and are EU members.<sup>394</sup> The Editors consider these “strong regional mechanisms”. Since the writing of the book, the Istanbul Convention of the Council of Europe has also come into effect and all states are either parties or signatories.

The Netherlands ratified CEDAW in 1991 with a unique provision that the government periodically report to Parliament on the implementation of the Convention.<sup>395</sup> Despite the high degree of Parliament’s involvement, women’s organizations work and scholars, CEDAW is largely absent in political and legislative debates when compared to references to the Convention on the Rights of the Child and the European Court of Human Rights.<sup>396</sup> The UK signed CEDAW in 1981, and ratified it in 1986 with comprehensive reservations.<sup>397</sup> The Conservative and Labour governments have consistently refused to incorporate CEDAW into the Human Rights Act in spite of criticisms from the CEDAW Committee.<sup>398</sup> The UK relies heavily on EU law, and there is a lack of visibility for the Convention broadly.<sup>399</sup> France signed the Convention in 1980 and ratified in 1983 with a number of reservations.<sup>400</sup> Reservations remain pertaining to the social and economic rights of rural women to water and sanitation (Article 14.2(h)), and equality between men and women in marriage and family relations (Article 16(1)(g)).<sup>401</sup> Recent changes to France’s Constitution with regard to gender equality and twenty-two new laws relating to women’s rights were mainly adopted to comply with EU law, according to the author.<sup>402</sup> Finland ratified CEDAW in 1986.<sup>403</sup> The Act on Equality between Women and Men 1986 was a visible legislative outcome of the ratification.<sup>404</sup> In spite of constitutional reform and making human rights instruments a part of national law, references to CEDAW are low in comparison to EU law, the ECHR and the International Covenant on Civil and Political Rights (ICCPR). Norway ratified CEDAW in 1981 without reservations.<sup>405</sup> Norway’s Gender Equality Act of 1978 was already in force and assumed to be in conformity with CEDAW.<sup>406</sup> In 2009, the CEDAW was

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<sup>394</sup> Hellum and Sinding Aasen, eds. *Women's human right: CEDAW in international, regional and national law*.

<sup>395</sup> Van den Brink, Marjolein. Chapter 17. Women's human rights.

<sup>396</sup> *Ibid.*

<sup>397</sup> Sandra Fredman, "Chapter 18", in *Women's Human Rights*.

<sup>398</sup> *Ibid.*

<sup>399</sup> *Ibid.*

<sup>400</sup> Helene Ruiz Fabri and Andrea Hamann, "Chapter 19", in *Women's Human Rights: CEDAW In International, Regional And National Law*, 1st ed. (Cambridge University Press, 2013).

<sup>401</sup> *Ibid.*

<sup>402</sup> *Ibid.*

<sup>403</sup> Kevat Noussiainen and Merja Pentikainen, "Chapter 20", in *Women's Human Rights: CEDAW In International, Regional And National Law*, 1st ed. (Cambridge University Press, 2013).

<sup>404</sup> *Ibid.*

<sup>405</sup> Hellum and Sinding Aasen, eds. *Women's human right: CEDAW in international, regional and national law*.

<sup>406</sup> *Ibid.*

incorporated into the Human Rights Act and put on equal footing with the ICCPR, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the ECHR, which were all incorporated into the Act in 1999.<sup>407</sup>

In summary, these countries with stronger regional mechanisms rely more heavily on EU and ECHR law rather than CEDAW in national legislation and judicial decisions.

The authors also summarize findings from those countries with lacking or weak regional laws and mechanisms. They include countries in South Asia, Southern Africa, and Canada. The Editors consider Africa to have a “weak” regional mechanism since the Maputo Protocol has not yet been enforced, and the other nations have not ratified existing mechanisms or do not have any available to them.

The study in Australia demonstrates that state and non-state actors have used CEDAW as a vehicle for legal change.<sup>408</sup> The Sex Discrimination Act (SDA) of 1984 prohibits discrimination against men and women on the grounds of sex and marital status.<sup>409</sup> CEDAW has provided a policy framework and specific equality standards for a number of inquiries into policy reform in Australia.<sup>410</sup> Women’s advocacy groups use CEDAW frameworks for legal action and political solidarity, and find them more useful than ICESCR and ICCPR, neither of which are codified into domestic law.<sup>411</sup> The author posits that the SDA was a direct result of ratifying CEDAW one year prior, to address discrimination against women.<sup>412</sup> Australian courts have drawn on CEDAW and Committee output to give CEDAW-consistent interpretation to the SDA in a number of cases.<sup>413</sup> Canada ratified CEDAW in 1981 without reservations.<sup>414</sup> One year later, Canada included two new sex equality provisions in the Canadian Charter of Rights and Freedoms.<sup>415</sup> Women’s movements increasingly turned to the international community to keep the conservative government accountable for the growth of women’s poverty and inequality.<sup>416</sup> When India signed CEDAW in 1981, the Indian Constitution already guaranteed gender equality and mandated affirmative action for women.<sup>417</sup> By the time India ratified CEDAW in 1993, India had passed an extensive law reform to close the gaps between the constitutional promises of equality and their statutory laws.<sup>418</sup> Indian NGOs were involved in the Beijing Conference and CEDAW became a useful tool.<sup>419</sup> Local and national NGOs are heavily involved in shadow

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<sup>407</sup> *Ibid.*

<sup>408</sup> Andrew Byrnes, "Chapter 11", in *Women's Human Rights: CEDAW In International, Regional And National Law*. Vol. 3., 1st ed. (Cambridge University Press, 2013).

<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.*

<sup>412</sup> *Ibid.*

<sup>413</sup> *Ibid.*

<sup>414</sup> Lucie Lemarche, "Chapter 12", in *Women's Human Rights: CEDAW In International, Regional And National Law*, 1st ed. (Cambridge University Press, 2013).

<sup>415</sup> *Ibid.*

<sup>416</sup> *Ibid.*

<sup>417</sup> Madhu Mehra, "Chapter 13", in *Women's Human Rights: CEDAW In International, Regional And National Law*, 1st ed. (Cambridge University Press, 2017).

<sup>418</sup> *Ibid.*

<sup>419</sup> *Ibid.*

reporting.<sup>420</sup> Reservations around family law remain in place and are a barrier to implementation.<sup>421</sup> The Supreme Court has invoked CEDAW and India's judicial proceedings are an important mechanism for domesticating the CEDAW.<sup>422</sup> Nepal ratified CEDAW in 1991 without reservations.<sup>423</sup> Nepalese society is strongly influenced by Hindu religion and customary norms that define the status of women in terms of their sex and marital status.<sup>424</sup> Treaties take precedent over Nepalese law, and yet legislative and administrative changes have been slow following the ratification of CEDAW.<sup>425</sup> Pakistan acceded to the CEDAW in 1996, at the urging of a strong civil society and some governmental factions.<sup>426</sup> The struggle for domestication lies in the invisible power relations structure in Pakistan, where tension remains between the formal law and governmental policy on the one hand, and religious practice and beliefs on the other.<sup>427</sup> Accession 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.<sup>428</sup> CEDAW became a part of training programmes run by governmental bodies and NGOs.<sup>429</sup> So far, no steps have been taken to incorporate CEDAW into national legislation, though this is required by CEDAW and the Constitution.<sup>430</sup> Rather, a series of laws that are discriminatory towards women remain in force, including: the Citizenship Act of 1951, the Law of Evidence Act of 1984, and the Hudood Ordinance of 1979.<sup>431</sup> The courts have alluded to CEDAW four times in Pakistan's case law, the majority of which are by the same judge.<sup>432</sup> Zimbabwe signed on to CEDAW in 1991 and ratified without reservation in 1998.<sup>433</sup> The way state and non-state actors invoke CEDAW varies based on government rule.<sup>434</sup> The Constitution privileges customary law when it conflicts with the principle of gender equality in personal and family law.<sup>435</sup>

In conclusion, countries without a strong regional mechanism may rely more heavily on CEDAW language in national legislation and court interpretations than countries with stronger regional mechanisms. Another finding of this book's comprehensive review, CEDAW has been of most importance in relation to laws that provide protection against structural discrimination and discrimination on religious grounds.

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<sup>420</sup> *Ibid.*

<sup>421</sup> *Ibid.*

<sup>422</sup> *Ibid.*

<sup>423</sup> Kabita Pandey, "Chapter 14", in *Women's Human Rights: CEDAW In International, Regional And National Law*, 1st ed. (Cambridge University Press, 2013).

<sup>424</sup> *Ibid.*

<sup>425</sup> *Ibid.*

<sup>426</sup> Shaheen Sardar Ali, "Chapter 15", in *Women's Human Rights: CEDAW In International, Regional And National Law. Vol. 3.*, 1st ed. (Cambridge University Press, 2013)..

<sup>427</sup> *Ibid.*

<sup>428</sup> *Ibid.*

<sup>429</sup> *Ibid.*

<sup>430</sup> *Ibid.*

<sup>431</sup> *Ibid.*

<sup>432</sup> *Ibid.*

<sup>433</sup> Julie Stewart and Choice Damiso, "Chapter 16", in *Women's Human Rights: CEDAW In International, Regional And National Law*, 1st ed. (Cambridge University Press, 2013).

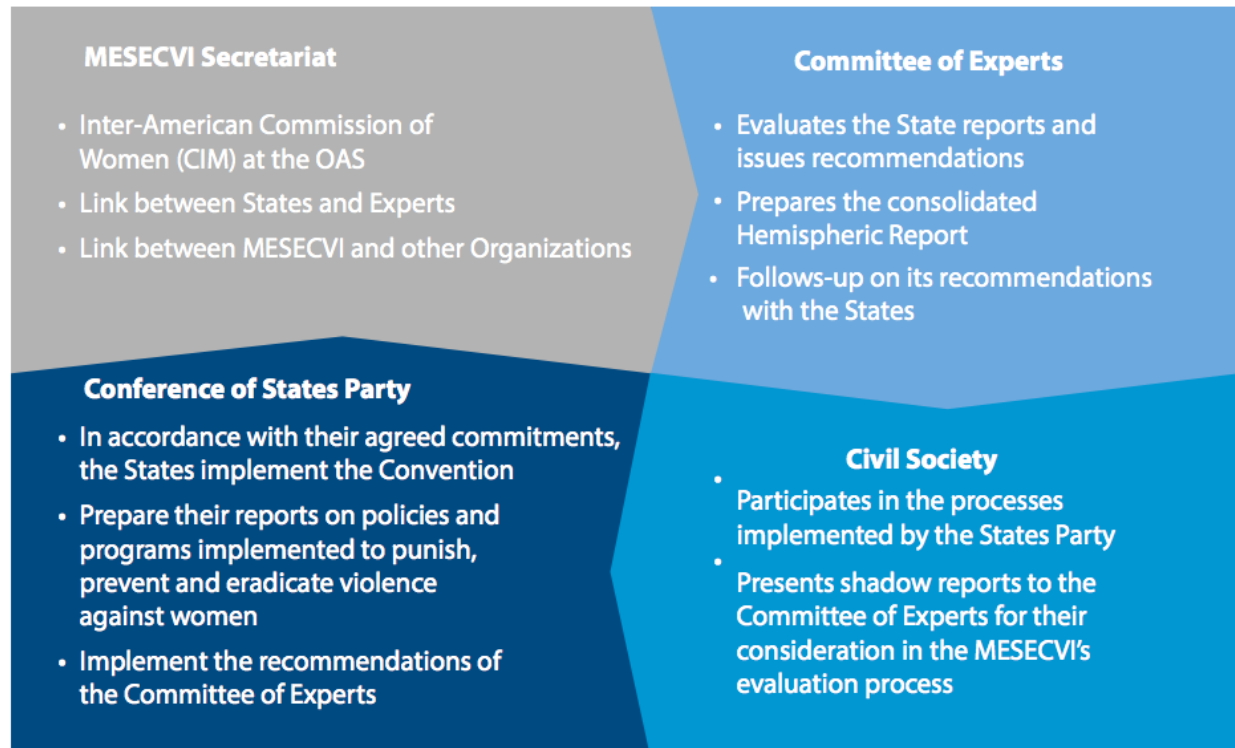
<sup>434</sup> *Ibid.*

<sup>435</sup> *Ibid.*

## Appendix F

Key actors in the Belém do Para follow-up mechanism, MESECVI.

Image 1



*Source: Regional Tools to Fight Violence Against Women: the Belém do Pará and Istanbul Conventions.*



**Appendix G**

Analysis of the precedent set by treaty processes for the Convention on the Rights of Persons with Disabilities, and the Ottawa Treaty, in comparison to the current political climate for a new convention on the elimination of violence against women.

|                                 | <b>Convention on the Rights of Persons with Disabilities</b> | <b>Ottawa Treaty</b> | <b>A Possible Convention on the Elimination of Violence Against Women</b> |
|---------------------------------|--|----------------------|---|
| <b>Declaration</b>              | YES  | NO                   | YES   |
| <b>International Engagement</b> | YES  | YES                  | YES   |
| <b>Non-state Actor(s)</b>       | YES  | YES                  | YES   |
| <b>State Actor(s)</b>           | YES  | YES                  | NO  |
| <b>Treaty</b>                   | YES  | YES                  | ?   |

*Appendix H*

Analysis of current international mechanisms to combat violence against women and the potential for a new treaty on violence against women.

| <b>CRITERIA</b>   | <b>CEDAW/<br/>GR19</b> | <b>DEVAW</b> | <b>ISTANBUL</b> | <b>NEW<br/>CONVENTION</b> |
|---|------------------------|--------------|-----------------|---------------------------|
| <b>Globally Inclusive Definition</b>                      | <b>YES</b>             | <b>YES</b>   | <b>NO</b>       | <b>YES</b>                |
| <b>Robust Reporting Mechanism<br/>(Implementation)</b>    | <b>YES*</b>            | <b>NO</b>    | <b>YES</b>      | <b>YES</b>                |
| <b>Robust Reporting Mechanism<br/>(Capacity Building)</b> | <b>NO</b>              | <b>NO</b>    | <b>YES</b>      | <b>YES</b>                |
| <b>Concrete Implementation Steps</b>                      | <b>NO</b>              | <b>NO</b>    | <b>YES</b>      | <b>YES</b>                |
| <b>Buy-in from Parties</b>                                | <b>YES</b>             | <b>NO</b>    | <b>YES</b>      | <b>YES</b>                |