



IWRAW-Asia Pacific's Response to the Call of the Special Rapporteur on Violence against Women for submissions on the adequacy of the international legal framework

For a more detailed discussion on the current state of international human rights law and practice in relation to violence against women, as well as an assessment of the existence of a normative gap, and the desirability of a new convention, please refer to the unpublished discussion paper attached to this document entitled 'Gender-based Violence Against Women and International Human Rights Law: Options for Strengthening the International Framework.'

The need for a separate legally binding treaty on violence against women with its separate monitoring body.

Further new measures taken should not aim to create new obligations on states to address gender-based violence against women (GBVAW), but should serve the purpose of strengthening already existing standards and jurisprudence of regional and international treaty bodies on GBVAW, and enhance accountability of States' responses to the causes and consequences of GBVAW.

Existing international human rights law and regional mechanisms impose extensive and detailed obligations on States to address GBVAW.¹ The CEDAW Convention in particular, and the practice of the CEDAW Committee has played an important role in expanding and framing the articulation of violence against women as a human rights violation and discrimination under the Convention, attaching legally binding state obligations to respect, protect and ensure fulfilment of these rights. In adopting General Recommendation 19, the CEDAW Committee has recognised GBVAW as a form of discrimination and obliged states to adopt legal measures and policies to prevent various forms of GBVAW, protect survivors of GBVAW and ensure that perpetrators of violence are punished.

The scope of State obligations to address GBVAW has been further expanded and clarified through the adoption of several other of general recommendations related to GBVAW, its Concluding Observations,² individual communications decisions,³ and reports of inquiries

¹ At the international level, the UN General Assembly of the Declaration on the Elimination of Violence against Women was adopted in 1993, which was followed by the establishment of a special rapporteur on the subject by the UN Commission on Human Rights in 1994 Other UN human rights treaty bodies, such as the Human Rights Committee and the Committee against Torture, have also made clear that States parties' obligations under the International Covenant on Civil and Political Rights 1966 (ICCPR) and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT) include eliminating public and private violence against women; regional human rights bodies have reached similar conclusions under their general human rights conventions.

² In the six hundred Concluding Observations that have been adopted by the Committee since the adoption of General Recommendation No. 19 most have made explicit reference to gender-based violence against women.

³ See A. T. v. Hungary (case No. 2/2003), Fatma Yildirim v. Austria (case No. 6/2005), Sahide Goekce v. Austria (case No. 5/2005), Karen Vertido v. the Philippines (case No. 18/2008), V.K. v. Bulgaria (case No. 20/2008), Inga Abramova v. Belarus (case No. 23/2009), V.P.P. v. Bulgaria (case No. 31/2011), Isatou Jallow v. Bulgaria (case No. 32/2011), R. P. B. v. the Philippines (case No. 34/2011), Angela González Carreño v. Spain (case No. 47/2012), X. and Y. v. Georgia (case No. 29/2009), and Belouosova v. Kazakhstan (case No. 45/2012).

relating to individual States parties.⁴ These instruments have also been used by the CEDAW Committee to routinely address the emerging forms of GBVAW and its underlying causes, as well as its link to other forms of discriminations and the context in which GBVAW occurs.⁵

There is a wealth of state practice acknowledging their obligations and demonstrations of adherence to address GBVAW under CEDAW, which negates the traditional focus on the non-binding nature of CEDAW instruments. The specific responses of States parties' in endorsing the CEDAW Committee's pronouncements based on General recommendation 19, or country specific recommendations on GBVAW made in the Concluding Observations, and compliance to decisions made by the Committee under the Optional Protocol on such rights violations strongly suggests that State obligations as outlined by the General recommendation has a legally binding effect on state practice in relation to GBVAW.⁶

State practice have indicated their acceptance of the Convention's coverage of violence of General Recommendation 19 both tacitly and implicitly.⁷ Out of the 109 state party reports submitted under CEDAW between January 2010 and March 2015, 29 state parties explicitly endorsed general Recommendation 19, 11 generally endorsed CEDAW's General Recommendations, while all reporting state parties reported on GBVAW in their periodic reports in line with their obligation under article 18 of the Convention to report on 'the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect'. Under the Communications procedure under OP-CEDAW, in 20 out of 24 cases that involved complaints to VAW, state parties explicitly endorsed General Recommendation 19, while no state dissented from the general content of General Recommendation 19. The CEDAW Convention, Committee practice and state practice, has developed a substantial body of conceptual and implementation frameworks in relation to GBVAW under international law, establishing the foundation for global norms and standards on GBVAW that has influenced domestic law standards, and also served as a useful tool for advocacy by women's groups. In addition, the regional mechanisms created to address GBVAW draws upon the norms and standards of CEDAW and General Recommendation 19.⁸

Consultation with our national level partners have suggested that the incorporation and implementation of international norms at the domestic level is the main challenge faced in addressing GBVAW. (Discussed below) Energy and resources would be better spent in focusing on bridging the incorporation and implementation gaps between international

⁴ Mexico (CEDAW/C/2005/OP.8/MEXICO, 2005), Canada (CEDAW/C/OP.8/CAN/1, 2015) and the Philippines (CEDAW/C/OP.8/PHL/1, 2015).

⁵ Refer to General Recommendation No. 14 on female circumcision, No. 15 on women and AIDS, No. 18 on disabled women, No. 21 on equality in marriage and family relations, No. 24 on women and health, No. 26 on women migrant workers, No. 27 on older women and protection of their human rights, No. 30 on women in conflict prevention, conflict and post-conflict situations, No. 31 on harmful practices, No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 33 on women's access to justice, and No. 34 on the rights of rural women. The Committee has also addressed intersectional discrimination in its views on communications (Jallow v. Bulgaria, 2012; S.V.P. v. Bulgaria, 2012; Kell v. Canada, 2012; A.S. v. Hungary, 2006, among others) and inquiries (in particular, concerning Mexico (2005) and Canada (2015)).

⁶ Article 31(3)(b) of the Vienna Convention on the Law of Treaties. Also refer to IWRAW-AP options paper from para 45 to 56

⁷ A study was conducted by Andre Byrnes to map the practice of the CEDAW Committee and States in relation to General Recommendation 19 on violence against women. The finding of this study was later incorporated into IWRAW's upcoming paper, 'GBVAW and International Human Rights Law: Options for Strengthening the International Framework'

⁸ These conventions include the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994 (Convention of Belém do Pará), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 (Maputo Protocol), and the Council of Europe Convention on preventing and combating violence against women and domestic violence 2011 (Istanbul Convention), as well as the ASEAN Commission on the Rights of Women and Children.

standards and national laws and policies, rather than creating new legally binding international and regional standards.

National organisations are further concerned over the significant costs of governmental and civil society resources that would be required in negotiating a new convention, and its potential risk in diverting significant energy from implementation of the existing norms.⁹ Furthermore, partners also raise concerns over the impact of a new legally binding treaty on the well-established body of jurisprudence developed by the Committee in connecting GBVAW with other forms of discrimination.¹⁰ Placing GBVAW within the matrix of discrimination has allowed elucidation of new forms of GBVAW and expanded the scope of state obligation to protect women against GBVAW by creating a link between GBVAW and other forms of discrimination that exists as a consequence of inequality within the global political economy, as well as economic, social, cultural and religious context. To create a separate treaty would risk isolating GBVAW from the structural causes of violence.

Currently global monitoring and advisory bodies such as the CEDAW Committee, the Special Rapporteur on VAW and the Working Group on Discriminatory Law and Practice already perform a significant amount of work in monitoring and supporting state compliance to international standards for GBVAW. It would be difficult to see how another global level monitoring mechanism could address the critical issues related to VAW, when in all likelihood, its structure and powers/mandate/resources would be similar to existing global bodies whose successful impact and engagement with member states depend on various factors including political will, the competition for scarce resources at the country level, the determinants of human rights compliant culture which exists in that state and other socio-political factors.

Incorporation and implementation gaps of the international or regional human rights norms and standards in national laws and policies

Through the Concluding Observations, the CEDAW Committee has routinely raised concerns over the lack of implementation of laws to address GBVAW, as well as discriminatory national laws, policies, and legal practices that continue to discriminate against victims of violence in seeking justice.¹¹ Even where States have incorporated national laws that aim to address GBVAW, implementation gaps still remain. Law enforcement bodies and national agencies are often unequipped to respond to the needs of survivors of GBVAW.¹² Due to the lack of sensitisation, and the stigma attached to GBVAW, survivors often face re-victimisation during the investigative, judicial and prosecutorial process. Women who belong to marginalised groups face further discrimination due to their identity. Where good practices exist, there still remains lack of uniform implementation in most countries.¹³

⁹ Interview with Bangladesh Legal Aid and Service Trust (BLAST) on 19/09/2016, Bangladesh, <http://www.blast.org.bd/>

¹⁰ Interview with Vrinda Grover, lawyer, India on 21/09/2016

¹¹ CEDAW Concluding Observations: Egypt (2010) [the Committee recommended *expeditious adoption of a comprehensive law criminalizing all forms of violence against women, including domestic violence, marital rape, sexual violence, sexual harassment, institutional violence and crimes committed in the name of honour* as a result of increased incidence of GBVAW, both in public and private spheres.

CEDAW Concluding Observations: Lithuania (2010) [the Committee recommended the incorporation of gender sensitive law and policies as a response to the country's gender neutral domestic violence laws.]

¹² CEDAW Concluding Observations: Macedonia (2013) [the Committee recommended training to judges and prosecutors on the application of laws related to GBVAW, as well as to introduce standardised procedures for police forces to deal with these types of cases.]

¹³ Women's Center for Change, Malaysia

The CEDAW Committee has also expressed concern over insufficient support measures available for survivors of violence. Services such as shelters,¹⁴ healthcare¹⁵ and psychological support remain inaccessible.¹⁶ In addition, in its General Recommendations and Concluding Observations, the CEDAW Committee has consistently expressed concern over the lack of systematic data collection on GBVAW and the lack of data disaggregated by sex more generally. Data collection can be an important first step in triggering advocacy at the national level to address gender-based violence. The lack of such data creates challenges in assessing how laws that incorporate international human rights law standards are being applied in practice.

Progress towards bridging these incorporation gaps between international standards and national standards, as well as obstacles in implementation have been hindered by the contextual challenges taking place nationally, and at times at the regional level. The prevalence of the neo-liberal economic policies has led to privatisation of service providers, making support services for survivors of GBVAW inaccessible. In addition, the depreciation of GBVAW as a State priority has resulted in the reduction of budgetary allocations towards measures aimed at addressing GBVAW. Furthermore, stereotypes rooted in tradition, culture and religious fundamentalism continue to act as a barrier for countries to address GBVAW effectively, and the deterioration of rule of law in conflict inflicted areas as well as shrinking democratic spaces has exacerbated the State responses to GBVAW further.

Regional mechanisms are often adopted with the purpose of addressing the incorporation gap between international and national standards and norms. Regional mechanisms to address GBVAW often aim to supplement international norms with specificity that reflects the regional context, and create more concrete norms. This aim has not always materialized¹⁷ and has in some instances led to the dilution of state obligation that has been set out in international law.¹⁸

In addition, regional mechanisms are ineffective in enforcing norms related to GBVAW. Even in the Inter-American regional systems where progressive jurisprudence has been made in applying the Belém do Pará Convention by the Inter-American Court of Human Rights, there exists no strong institutionalised form of follow-up measures to ensure the findings and recommendations of the Court are implemented at the national level. It is mainly due to the pressure of civil society that states generally comply with the judgements made by the Court. Another instance of this challenge can be seen in the ASEAN region where the ACWC mandate is limited to promoting international laws and standards, rather than ensuring enforcement and implementation by the States.¹⁹

¹⁴ CEDAW Concluding Observations: Egypt (2010) [the Committee Raises concerns that Social support services suffer from inadequacy, insufficiency and lack of coordination-shelters for victims of domestic violence are limited to women under 50 years of age.]

¹⁵ CEDAW Concluding Observations: Russia (2010) [Committee raised concern over women suffering from access to protection from violence, access to justice, education, employment, and healthcare]

¹⁶ General Recommendation No. 33, par.14

¹⁷ The Maputo Protocol has been criticized for its inability reflect the national context of African countries in the region: this includes the argument that the aspirational provisions create legal obligations that States cannot meet; and that it relies on Western ideas of women's rights, without determining how and if customary law will be considered in its implementation. Refer to: Alice Armstrong, *Culture and Choice: Lessons from Survivors of Gender Violence in Zimbabwe* (Southern African Research and Documentation Centre, 1998).

¹⁸ Some aspects of the Maputo Protocol has been criticized for of the incoherent of some its aspects and fails to meet international standards. See Kirstin Davis "The emperor is still naked: why the Protocol on the Rights of Women in Africa leaves women more exposed to discrimination", *Vanderbilt Journal of Transitional Law*, vol. 42, No. 3 (2009). Other mechanisms, such as the Istanbul Convention, have been more effective in elaborating upon regional standards in addressing GBVAW.

¹⁹ Four Years on and Still Threading Water: A Report on the Performance of ASEAN Human Rights Mechanisms in 2013 (Forum Asia 2013)

Measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women

Based on our reading of the previous SRVAW's report, there is lack of clarity about the nature of the normative gap, and in relation to this how the establishment of a global instrument and a related monitoring mechanism will address the causal factors which enhance inequality and discrimination against women, and deepen stereotypes and serve to sanction GBVAW. The additional number of factors which deepen and increase the incidence of GBVAW are cited in the previous SRs report, which are not addressed by the formation of a global instrument.²⁰

Any new measures taken to accelerate prevention and elimination of violence against women should:

- 1) Build upon existing legal obligations and international commitment of States under CEDAW to take measures to eliminate GBVAW.
- 2) Comprehensively address GBVAW including any normative and implementation gaps in domestic laws and policies.

Participation and input of national constituencies in international processes is key to ensuring that norms and standards affirmed at the international level address the working realities on the ground. There is a need for greater engagement between women's rights organisations, especially those representing marginalised groups, and international bodies such as CEDAW.²¹ In order to build an intersectional approach to GBVAW within international instruments, treaty bodies should be stronger in articulating standards and measures to address GBVAW that are foregrounded in the experience of marginalised women.

To further develop an intersectional approach to GBVAW at the international level, GBVAW as an issue must not be limited to the remit of CEDAW. As the possibilities of addressing GBVAW through other UN Human Rights Treaty bodies such as the Human Rights Council, CRC, and ICESCR have yet to be explored, greater cooperation across these international treaties should be considered to facilitate stronger linkages between GBVAW and other forms of discriminations.²² In addition, measures could also be taken to enhance cooperation between the work of the Special Rapporteur on violence against women and other Special Rapporteurs such as the Special Rapporteur on poverty, the Special Rapporteur on migration and the Special Rapporteur on slavery in order to draw connection between each field of expertise to foreground GBVAW to its more structural causes.²³

In relation to CEDAW norms and standards, feedback from our national partners have also suggested that international instruments should place focus on further clarifying state obligations to reflect current complexities of global political and economic systems which have contributed to the manifestation and perpetuation of GBVAW as well as acted as a barrier in eliminating GBVAW. The increasing incidence of GBVAW committed by entities such as multinational corporations and non-state military actors due to the power imbalance caused the prevalence of neo-liberal economic policies and increasing armed conflict should be reflected in CEDAW instruments. The CEDAW Committee should expand upon the definition of non-state actors, and identify the scope of obligations imposed upon non-state actors to address GBVAW. Additional focus should also be placed upon articulating more detailed state obligations with regards to laws and policies to eliminate GBVAW. For example, common

²⁰ Refer to Paragraph 61 to 75 *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo [SRVAW 2014 report]*, UN Human Rights Council, 26th session, paras 6-42, UN Doc A/HRC/26/38 (2014).

²¹ Interview with Bangladesh Legal Aid and Service Trust (BLAST)

²² Interview with Bangladesh Legal Aid and Service Trust (BLAST)

²³ Interview with Vrinda Grover.

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examples of substantive, evidentiary and procedural laws that act as a barrier for survivors of violence to seek justice should be outlined. In reflecting national practices, the Committee could also draw upon good practices of States in implementing legal, policy or programmatic approaches/solutions in addressing GBVAW. The updating of General Recommendation 19 by the Committee would provide an opportunity for these articulations.

Feedback from national partners have also stressed that majority of efforts and resources on implementation incorporating and implementing international law standards should be focused on domestic strategies, particular on measures to strengthen the capacity of national institutions, and national human rights institutions.