

GENDER-BASED VIOLENCE IN INTERNATIONAL HUMAN RIGHTS LAW – THE EFFICACY OF THE UNITED NATIONS HUMAN RIGHTS LEGAL FRAMEWORK AND CEDAW IN ADDRESSING THE ISSUE

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Abstract: Despite the numerous advances that have been made in gender-based violence and femicide (GBVF) or violence against women and girls (VAWG) at the national and international levels, GBVF continues at pandemic levels throughout the world. One of the main reasons for the high rates of GBVF is that there is currently no global legally binding treaty that comprehensively addresses VAW. The purpose of this paper is to consequently examine whether and how VAWG is being acknowledged and regulated within the international human rights law, and more specifically within CEDAW. It calls for an internationally binding treaty to effectively address VAWG.

Keywords: CEDAW and violence against women, Femicide, Gender-based violence, International human rights law, Treaty on gender-based violence

1. INTRODUCTION

It is without a doubt that human rights violations are committed against both men and women. However, the impact of such violations differs according to the victim's gender. Research highlights that acts of violence against women and girls (hereinafter VAWG) have at their core some characteristic that provides a basis for their classification as “gender-based violence” (hereinafter GBV) (Simon-Butler and McSherry, 2019; Vetten, 2000, p. 47). This means that such violence is “directly related to the unequal distribution of power and to the asymmetrical relationships that exist between men and women in society, which perpetuate the devaluation of women and their subordination to men” (Rico, 1997, p. 5). What differentiates this type of violence from other forms of aggression or coercion is that it is violence that is directed against a woman because she is a woman or that affects women disproportionately (Council of Europe, 2012). Accordingly for this article the terms “gender-based violence” and “violence against women” (hereinafter VAW) will be used interchangeably (Council of Europe, 2011, (hereinafter the *Istanbul Convention*), Article 3).¹

GBV and femicide (hereinafter GBVF) (Harmes & Russell, 2001; Manjoo, 2014) which is the most extreme end to gender-related violence currently exists at pandemic

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¹ In more recent legal documents like the *Istanbul Convention*, there are examples of the two terms being merged, and the term ‘gender-based violence against women’ is used.

levels around the world (Rubenstein, 2018). Global estimates suggest that an estimated 736 million women, almost one in three, have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their life (UN Women, 2023), and one in three women worldwide will experience GBV in their lifetime (World Health Organisation, 2023). In 2022 alone, approximately 48 800 women and girls globally were killed by their intimate partners or other family members (UN Women, 2023), and more than one billion women lack legal protections from domestic violence (Rubenstein, 2018, p. 9). Its harmful consequences endanger the life trajectories of women and girls in multiple ways (Deane 2023a, Deane 2023b).²

However, GBV does not only result in a wide range of negative consequences for the affected women and girls, but also for their children, families, and communities (Deane, 2023a; Tavares & Wodon, 2017, p. 1). It is therefore understandable that GBV is widely considered a violation of women and girls fundamental human rights. The framing of GBV as a human rights violation highlights a crucial conceptual shift. It indicates an acknowledgement that women are not exposed to violence because of an in-born vulnerability or through mere coincidence. However, VAWG is directly related to the deep-rooted discrimination and structural inequalities in society and which the state has an obligation to address. Clearly preventing and addressing GBV requires a holistic approach and includes legislative, administrative, and institutional measures and reforms, including the eradication of gender stereotypes (UN Office of the High Commissioner for Human Rights, 2024a, para 8).

Accordingly, the *Declaration on the Elimination of Violence Against Women* (UN General Assembly, 1993 (hereinafter *DEVAW*) defines GBV as “any act of . . . violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering for women, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life” (Article 1). This type of violence recognises the deeply rooted social and cultural structures, norms and values that govern society, which is often perpetuated by a culture of denial and silence (Heise, Ellsberg & Gottemoeller 1999, p. 1). GBV occurs in both the private and public spheres, disproportionately affecting women. Indeed, through the characterisation of such violence as being “gender-based” the United Nations (hereinafter UN) has emphasised the necessity to understand this violence, as occurring within the context of women’s and girls’ subordinate status in society.

Femicide, “the killing of females by males *because they are female*” (Russell, 2021, p. 1), is considered the most extreme consequence of GBV and is a term that bears a conceptual value as a tool that “specifically points to and politicises the sexist, patriarchal, misogynistic killing of women and girls by men” (Russell, 2021, pp. 1-2). Importantly the term “femicide” addresses not only the symptoms, which is the growing numbers of women murdered at the hands of men, but it also highlights the intersectional and

² The rates of depression, anxiety disorders, unplanned pregnancies, HIV etc., are higher in women who have experienced violence. These women suffer from many other health problems that can last for years after the violence has ended.

underlying causes rooted in structural dynamics of patriarchy which are embedded in various systems, like the institutions of the police, state, and international system as a whole. The UN Office on Drugs and Crime (hereinafter UNODC) estimates in 2017 alone are as follows: the global rate of female homicide was approximately 2.3 per 100 000 of the female population, 87 000 women were intentionally killed, of which approximately 90 percent of suspects were male, women are mostly killed in the context of intimate or family relationships, the total number of female victims, six out of ten women (58 percent) were killed by a partner or male relative, one third were killed by a former or current partner and women were victims in 82 percent of all homicides carried out by intimate partners (UN Office on Drugs and Crime (UNODC), 2018, pp. 1-2). The report also highlighted that femicide victims have previously experienced non-lethal GBV and the vast majority of femicide cases occur as the final phase of interpersonal or domestic violence. These persistent rates of GBVF are indeed concerning.

There is currently a plethora of international and regional (UN Dag Hammarskjöld Library, 2024a; UN Dag Hammarskjöld Library, 2024b; Meyersfeld, 2012) legal instruments that hold the promise for the attainment of women's full and fundamental human rights. The persistence of violence in all its forms remain the greatest obstacle to achieving those rights. Despite the rates of GBVF, to date there is no universal treaty that exists which deals exclusively with VAWG, let alone femicide. However, some soft laws have been adopted that attempts to explicitly recognise VAWG as a human rights issue. These include the UN's resolution on domestic violence in 1985 (UN General Assembly, 1985), and the 1993 *DEVAW*. For example, through its definition as articulated above, *DEVAW* acknowledges VAWG across the board, and brings it out of the private sphere and into the public and international arena (Charlesworth & Chinkin, 2000, p. 235).

Of particular importance to this article, the most significant UN instrument is the *Convention on the Elimination of All Forms of Discrimination against Women* (UN General Assembly, 1979 (hereinafter *CEDAW*). *CEDAW* is hailed as the international bill of rights for women and considered the most prominent among the treaties that have been interpreted to address VAW (Atrey, 2018, p. 859). *CEDAW* provides a foundational framework that has been instrumental in raising awareness and understanding of women's human rights and has led to real improvement in the human rights of women and girls.³ However, of growing concern is that neither *CEDAW* nor any other international human rights treaty specifically identifies VAW in its text (Tchoukou, 2023). It has been argued that this absence makes the fundamental nature of *CEDAW* ineffective in addressing the critical issue of VAG (Rubenstein, 2018, p. 18). These limitations in addressing the growing rates of GBVF is argued to be evidence of the need for a binding international treaty that ensures the essential human rights of women and girls are fully realised (Smith, 2014, p. 88; Tchoukou, 2023).

³ For example, *CEDAW* seeks to realise true factual and juridical equality for women, through the mechanisms of legal, social, cultural, economic, and political change and explicitly calls for "the practical realization of this principle," placing a substantive obligation on State Parties to achieve results, rather than mere commitments. *CEDAW* Article 2 (a).

In addition, the elimination by 2030 of all forms of VAWG, and the achievement of equality are key targets adopted under the Sustainable Development Goals (UN General Assembly, 2015 (hereinafter the SDGs)). The overall objectives of the Agenda 2030 cannot be attained if these human rights are not realised.⁴ In fact, the prevalence of various forms of violence against women and girls worldwide remains too high to be able to achieve the SDG targets under current trajectories. Therefore, while existing instruments have laid important groundwork and pioneered promising standards and practices, there remains a failure to effectively address this pervasive global issue with a unified global effort. Regarding the failure of *CEDAW* to address GBVF effectively, it has been argued that while it was groundbreaking at the time of its adoption, “*CEDAW* has not evolved in lockstep with evolving ideas on the nature of discrimination” (Alkuwari, 2022, p. 225) and that “whereas the world has changed, the text of the treaty, for the most part, has not” (Atrey, 2018, p. 859). Consequently, a new solution in the form of a binding international treaty that specifically addresses GBV, including femicide is called for.

1.1. The purpose and aim of this study

Consequently, the purpose of this paper is to examine whether and how VAW is being acknowledged and regulated within the international human rights law (IHRL) framework, and more specifically within the UN system and *CEDAW*. This analysis is done with the aim of interrogating if and how VAWG can be more effectively regulated and addressed within IHRL. The purpose of this paper arises from the genuine concerns around the challenges being faced by IHRLs, where VAWG remains one of the most immediate challenges requiring effective action. Such immediate and effective action would include the adoption of a more binding international human rights treaty that can be efficiently utilised and enforced to specifically address all forms of GBV.

It is important to acknowledge that even though *CEDAW* does not specifically include VAW within its provisions, the importance of this treaty lies within its fundamental developments of IHRL and as its place as the most important legally binding human rights treaty for women. *CEDAW* lays the foundation upon which the continued work for women’s rights has been developed, thereby making this instrument crucial for the purpose and aims of this paper. The main aim of this paper being to advocate for a separate binding international treaty on GBVF.

1.2. Methodology and delimitations

To achieve its aims, this paper has been prepared based on desktop research, which reviews information published in accredited journals and books. To include diverse evidence in achieving the purpose and aim, this paper will in relevant parts also refer

⁴ Both *CEDAW* and many of the SDGs, in its essence, are aimed towards promoting the duty and responsibility of countries to achieve gender equality and the empowerment of women and girls. At the heart of Article 1 of *CEDAW* therein lies the promise of a substantive approach to equality, which contemplates women’s distinctive position without comparing similarly situated females and males.

to grey literature like newspapers, reports by governments, international organisations, research institutions and national and international non-governmental organisations (hereinafter NGOs).

In achieving its' aims some delimitations are applied. Firstly, the length of a research paper itself demands a limited and narrow focus. Therefore, this review will focus on only a selection of relevant and authoritative sources. Whilst this paper may in relevant parts refer to the three regional human rights courts, the scope of this paper will be mostly limited to the UN system and *CEDAW*. Reference will be made to the regional instruments to gain support for the recommendation towards an international treaty for VAWG.

Secondly, this paper is delimited with regards to discussing GBVF from the perspectives of IHRL. For example, although IHRL is applicable in times of armed conflict for example, no particular discussions related to GBV in wartime are included within this paper. Furthermore, whilst noting that several factors related to GBV do exist within IHRL, it is important to mention that the intention is to discuss whether and in fact the UN instrument in *CEDAW* is an effective tool in combating and eliminating *GBVF*.

Lastly, it is acknowledged that whilst there may very well be alternative solutions to eliminating *GBVF* on a global level, the recommendation towards a specific international treaty on VAWG is recognised as the most apt solution and best serves the purpose of this paper.

2. PROTECTION OF THE HUMAN RIGHTS OF WOMEN UNDER INTERNATIONAL LAW

2.1. Universal Declaration of Human Rights

Whilst early human rights laws enacted by the UN did not specially mention VAW, they are still relevant. One of these laws include the 1948 *Universal Declaration of Human Rights* (UN General Assembly, 1948 (hereinafter *UDHR*), which was not originally binding on member states. It has however received such wide acceptance as *the* framework of fundamental human rights principles that it is currently acknowledged as a binding expression of customary law and an authoritative interpretation of the foundational treaty of the UN itself, the *United Nations Charter* (UN, 1945). At the time of the adoption of the *UDHR* there was a broad consensus that the rights contained therein should be translated into legal form as treaties, which would directly bind those States that agreed to their terms. This led to extended negotiations in the Commission on Human Rights, a political body composed of State representatives, which until 2006⁵ met annually in Geneva to discuss a wide variety of human rights issues (UN General Assembly, 2006).

⁵ The Commission has since been replaced by the Human Rights Council, which meets three times a year.

2.2. The International Convention on the Elimination of All Forms of Racial Discrimination

Due to the political imperatives at that time and which arose from the apartheid regime in South Africa, the *International Convention on the Elimination of All Forms of Racial Discrimination* (UN General Assembly, 1965 (hereinafter *ICERD*) was the first treaty agreed to. *ICERD* dealt with the specific phenomenon of racial discrimination (UN Office of the High Commissioner for Human Rights, 2012, p. 5). In addition to defining racial discrimination in Article 1, *ICERD* sets out in detail State parties' obligations to combat this scourge (*ICERD*, Articles 2-7). Apart from requiring States to refrain from such acts, the *ICERD* also requires a State to take appropriate measures against racial discrimination rooted in society, including the propagation of racist ideas advocated by groups and organisations (*ICERD*, Article 2).

The *ICERD* also sets out an extensive series of specific human rights in the i.e., civil, political, economic, social, and cultural spheres (*ICERD*, Article 5), and most of which are enumerated in the *UDHR*. Such rights are to be guaranteed without distinction on racial grounds. Additionally, the *ICERD* establishes as a basic right an effective remedy, whether through the courts or other institutions, against acts of racial discrimination (*ICERD*, Articles 11 and 14). The *ICERD*, in part II, requires all State parties to report periodically to the Committee on the Elimination of Racial Discrimination on the measures they have taken to give effect to the Convention (*ICERD*, Articles 11-14). In its General Recommendation No. 25 (2000) on gender-related dimensions of racial discrimination the Committee on the Elimination of Racial Discrimination, which oversees compliance with *ICERD*, recognised the gender dimensions of racial discrimination and said it would “endeavour in its work to take into account gender factors or issues which may be interlinked with racial discrimination” (Committee on the Elimination of Racial Discrimination, 2000, p. 152).

2.3. International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

Following the adoption of the *UDHR* two additional human rights treaties were adopted, the 1966 *International Covenant on Civil and Political Rights* (hereinafter *ICCPR*) and the *International Covenant on Economic, Social and Cultural Rights* (hereinafter *ICESCR*). The two Covenants have a similar structure and some of their articles adopt the same, or very similar, wording. Article 6 of the *ICCPR* protects the right to life and the right to liberty and security of person (Article 9). These provisions reaffirm Article 3 of the *UDHR* which states that “everyone has the right to life, liberty and security of person”. The *ICCPR* also guarantees, among other rights, freedom from torture, freedom from slavery, equality before the law, freedom of movement, rights relating to family life and children and minority groups' rights to their culture, religion, and language. The *ICCPR* further upholds the right of both men and women to enjoy the civil and political rights in the Covenant (Article 3) and equal protection under the law (Article 14).

Whilst these articles do not explicitly refer to VAW, through various general comments the Human Rights Committee has addressed GBV in relation to several of

the *ICCPR*'s provisions including in addressing states' responsibility to eliminate and protect women from violence. One such example includes General Comment No. 35 (UN Human Rights Committee (HRC) 2014), adopted in December of 2014, which specifically addresses State Parties' obligation to protect women from domestic violence and GBV (HRC, 2014, p. 9):

“States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. For example, States parties must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists, retaliation against witnesses, violence against women, including domestic violence, the hazing of conscripts in the armed forces, violence against children, violence against persons on the basis of their sexual orientation or gender identity, and violence against persons with disabilities.”

In addition, General Comment No. 36, adopted in September of 2019, also addresses GBV as a deprivation of the right to life (HRC, 2019, p. 61):

“Any deprivation of life based on discrimination in law or in fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.”

Other general comments of significance which seek to address VAW includes General Comment No. 31: The nature of the general legal obligation imposed on states parties to the Covenant (UN Human Rights Committee, 2004), General Comment No. 28: Article 3 - The equality of rights between men and women (UN Human Rights Committee, 2000), General Comment No. 27: Article 12 - Freedom of movement (UN Human Rights Committee 1999), General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (UN Human Rights Committee, 1990), General Comment No. 17: Rights of the child (UN Human Rights Committee, 1989) and General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (UN Human Rights Committee, 1988). These general comments are however not legally binding. It acts as a guide to not only assist State parties to implement the treaties but can also be used to monitor and advocate for full treaty implementation, thus strengthening the enjoyment of specific rights by rights holders (Keller & Grover, 2012, p. 116).

Like the *ICCPR*, the *ICESCR*, upholds many basic rights that implicitly obligate states to protect women from violence. For instance, the *ICESCR* upholds the right to the highest standard of physical and mental health (*ICESCR*, Article 12). Both Covenants use the same wording to prohibit discrimination based on, *inter alia*, sex (*ICESCR*, Article 2), as well as to ensure the equal right of men and women to the enjoyment of all rights contained in them (*ICESCR*, Article 3). The *ICESCR* further guarantees, *inter alia*, the right to work, the right to form trade unions, rights relating to marriage, maternity and

child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.

The provisions of the two Covenants, as well as other human rights treaties discussed below, are legally binding on the States that ratify or accede to them. States that ratify these treaties periodically report to bodies of experts, which issue recommendations on the steps required to meet the obligations laid out in the treaties. However, unlike treaties, but like the general comments issued by the HRC, recommendations also have a non-binding status. The treaty-monitoring bodies do however provide authoritative interpretations of the treaties and, if States have agreed, they also consider individual complaints of alleged violations (UN Office of the High Commissioner for Human Rights, 2012). In any case, another problematic aspect is the way in which the decisions about individual complaints of the treaty-monitoring bodies are received and the value that each state party gives to them in their domestic legislation. This raises doubts about their value as an effective mechanism.

2.4. Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment

In 1984, the *Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment* (UN General Assembly, 1984 (hereinafter *CAT*) was adopted to deal with torture and other ill-treatment. Article 7 of the *ICCPR* already banned torture and cruel, inhuman, or degrading treatment or punishment, but *CAT* goes much further and develops a legal scheme aimed at both preventing and punishing these practices. After defining torture, *CAT* makes it clear that no circumstances of any kind, including orders from a superior, can justify an act of torture. Whilst *CAT* does not specifically address VAW, the Committee against Torture, which monitors *CAT*, seeks to redress this omission by regularly addressing issues of VAWG (Sveaass & Gaer, 2022). This is done to ensure that attempts are being made “to update traditional notions of torture to their contemporary setting” (Edwards, 2006, pp. 350-51). This is crucial as *CAT* is the only legally binding instrument at the international level that is concerned exclusively with the eradication of torture or other ill-treatment. It consequently is vital that *CAT* covers acts of VAW when it amounts to torture or other ill-treatment.

Accordingly, the Committee against Torture addresses VAW through for example, clarifying States responsibilities for torture by non-state actors. Historically, the common understanding of torture was that it referred to violence and humiliation directly at the hands of state actors (Wilson, 2018, p. 2). While *CAT* had addressed VAW at the hands of state officials, it was only in 2001 that the Committee for the first-time expressed concerns about trafficking and domestic violence in its concluding observations and recommendations (UN Committee Against Torture, 2001a & 2001b). At that time, various developments in the fight against VAW broadened the scope of human rights law to issues of concern to women and girls including rape and other forms of sexual abuse, trafficking and domestic violence which resulted in a deconstruction of the public and private divide (Wilson, 2018, p. 2).

In January 2008 a major development through the publication of General Comment No. 2 (hereinafter GC 2) was realised (UN Committee against Torture, 2008). GC 2 clarified that where State authorities fail to exercise due diligence to prevent, investigate, prosecute, and punish non-state actors, “its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts” (paragraph 18). The Comment goes further and explains that “the State’s indifference or inaction provides a form of encouragement and/or de facto permission” to non-State actors. Since GC 2, *CAT* has increasingly addressed VAW at the hands of private actors within the scope of its work. In reviewing country compliance with *CAT*, both the Committee and the Special Rapporteur on Torture routinely request information on the prevalence of VAW in countries around the world (Sveaass & Gaer, 2022, p. 183). The Special Rapporteur on Torture published a report in 2019 on the relevance of the prohibition of torture to the context of domestic violence (UN, 2019). State parties are therefore obligated to prohibit, prevent, and redress torture and ill treatment in a wide variety of contexts in which it has control as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm (UN Committee against Torture, 2008). Significantly, *CAT* notes the applicability of the due diligence principle “to States parties’ failure to prevent and protect victims from GBV, such as rape, domestic violence, female genital mutilation, and trafficking” (UN Committee Against Torture, 2008, para 18).

This is specifically significant as other international and regional bodies have gone on to apply the due diligence principle. Most notably is *CEDAW*, specifically its General Recommendation No. 19 (UN CEDAW, 1993 (hereinafter GR 19), para 9) and more extensively in General Recommendation No. 35 on GBV (UN General Assembly, 2017, (hereinafter GR 35), updating GR 19. Additionally, the Inter-American Court of Human Rights (hereinafter IACrHR) has applied the principle in the case of *Velásquez Rodríguez v. Honduras* (case 7920, Inter-Am. C.H.R. 35, OEA/ser.L./V./III.19, 19 November 2015, para 79), in *González et al. (“Cotton Field”) v. Mexico*, (IACrHR, 16 November 2009), *Rosendo Cantú et al v Mexico*, Preliminary Objections, Merits, Reparations and Costs, judgment of 31 August 2010), and in *López Soto v. Venezuela* (IACrHR, 14 May 2019). The European Court of Human Rights has similarly developed a body of jurisprudence relating to the positive obligations of effectively preventing, investigating, prosecuting, punishing, and providing remedies for acts of violence perpetrated by state and non-state actors. Some examples include *Opuz v. Turkey* (App No. 33401/02, 9 July 2009, paras 185-87), *Talpis v. Italy* (Application No. 41237/14, 21 March 2017) and *Osman v. UK* (App No 23452/94, 28 October 1998, para. 116).

2.5. Convention on the Rights of the Child

The *Convention on the Rights of the Child* (UN General Assembly, 1989 (hereinafter *CRC*) which entered into force in 1990 and defines a child as anyone below the age of eighteen. Through the *CRC*, girls are protected from all forms of violence, such as sexual abuse and trafficking (*CRC*, Article 19). The treaty also protects girls from harmful practices such as child marriage and female genital mutilation. The Committee

on the Rights of the Child is tasked with interpreting the *CRC*. States Parties are obliged to submit reports to the Committee describing the measures taken to implement the *CRC*.

2.6. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

In 2002, the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (UN General Assembly, 2001 (hereinafter *OP-CRC-SC*) entered into force. The *OP-CRC-SC* addresses acts that constitute trafficking in children for the purpose of sexual exploitation (Article 2) and calls upon State Parties to protect the rights and interests of child victims (Article 8) through prosecution and support services and educational programmes (Article 10). States Parties to the *OP-CRC-SC* are also obliged to submit reports to the Committee on the Rights of the Child outlining the measures taken to implement the protocol (Article 12).

2.7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* entered into force on 1 July 2003 (UN General Assembly, 1990 (hereinafter *ICRMW*). The *ICRMW* guarantees rights to migrant workers without distinction based on several protected grounds, including sex (Article 7). The Committee on Migrant Workers, tasked with interpreting the *ICRMW*, monitors State Parties compliance with the Convention.

2.8. Convention on the Rights of Persons with Disabilities

In addition, the *Convention on the Rights of Persons with Disabilities* (UN General Assembly, 2007 (hereinafter *CRPD*) recognises the multiple discrimination that women with disabilities are subjected to and requires State parties to address this by taking “all appropriate measures to ensure the full development, advancement and empowerment of women” in the enjoyment of their human rights (*CRPD*, Article 6).

It is quite clear that none of these treaties have been designed to deal specifically with VAW or GBV. The issues around GBV are interpreted into the existing provisions through comments and recommendations, which may not have the same authority as specific treaty provisions.

2.9. CEDAW

The most important development for women in international law, has been the adoption of *CEDAW* and the creation of the CEDAW Committee to oversee its implementation. *CEDAW*'s preamble recognises that despite the existence of other instruments, women still do not enjoy equal rights with men. It goes on to assert that VAW is a form of discrimination, directed towards a woman because she is a woman or that affects women disproportionately. This violence seriously inhibits women's ability to

enjoy rights and freedoms on a basis of equality with men. The Convention, in Article 1, articulates the nature and meaning of sex-based discrimination by defining discrimination as “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. Such discrimination includes any differential treatment based on sex which prevents women from exercising their fundamental human rights and freedoms. State parties are further obligated to eliminate discrimination through appropriate legislation prohibiting discrimination, ensuring the legal protection of women’s rights, refraining from discriminatory actions, protecting women against discrimination by any person, organisation, or enterprise, and modifying or abolishing discriminatory legislation, regulations, and penal provisions (Article 2).

States are not only obligated to address discriminatory laws, but also practices, traditions, and customs, as well as discrimination against women by private actors (Article 5). Article 5 establishes that in addition to recognising women’s legal equality and promoting their *de facto* equality, States should also strive to eliminate the socio-cultural norms and patterns that perpetuate harmful gender stereotypes and strive to create a society that promotes the realisation of women’s full rights. *CEDAW* thus reaches beyond the narrow concept of formal equality and aims for equality of opportunity and equality of outcome, substantive equality. In achieving this goal, States may utilise temporary special measures until such time as the objectives of equality of opportunity and treatment have been achieved (Article 4).

However, like the earlier human rights mechanisms, *CEDAW* does not explicitly mention VAW. *CEDAW*’s primary focus was in ensuring that State Parties “condemn discrimination against women in all its forms” (Article 2). The recognition by the UN Special Rapporteur, Manjoo, that VAW is not the root of the problem but occurring because of other forms of discrimination (Manjoo, 2011) acknowledged VAW or GBV as the most extreme manifestation of discrimination. This international recognition and acknowledgement led to the adoption of GR 19 by the CEDAW Committee (UN CEDAW, 1993). Notably, GR 19 was a critical precursor to the recognition of VAW as a serious human rights issue at the 1993 Vienna World Conference. This conference and the subsequent adoption of the *Vienna Declaration and Programme of Action* (UN General Assembly, 1993b (hereinafter the *Vienna Declaration*) is widely regarded as a watershed moment for women’s rights. It was the first time that women’s rights were universally accepted as human rights and paved the way for the growing integration of women’s rights and the gender perspective into human rights norms and practice (Priddy, 2014, p. 3). The then Human Rights Commission (now the Human Rights Council) also condemned GBV for the first time in 1994 and in the same year appointed a Special Rapporteur on VAW, its causes and consequences (UN Human Rights Council, 1994). The Special Rapporteur is tasked with ensuring that the issues around GBV is integrated into the UN human rights framework and its mechanisms and seeks to achieve this through providing concluding remarks and recommendations (UN Office of the High Commissioner for Human Rights, 2024b, para 1).

Unlike previous recommendations on VAW, like General Recommendation No. 12 on VAW, (UN CEDAW Committee, 1989), GR 19 defined VAW and targeted its root causes within the inequality framework. It went on to identify all acts of GBV as forms of discrimination. GR 19 clarified that discrimination against women, as defined in Article 1 of the Convention, included GBV, that is “violence which is directed against a woman because she is a woman or that affects women disproportionately”, and consequently constituted a violation of their human rights. It includes acts that “inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence” (GR 19, para 6). GR 19 also specifically addresses domestic violence as a form of discrimination against women, stating that “family violence is one of the most insidious forms of violence against women” and includes “battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes” the lack of economic independence, the abrogation of their family responsibilities by men, adversely impacting women’s health and their ability to participate in family and public life on a basis of equality (GR 19, para 23).

As an update to GR 19, the CEDAW Committee, after 25 years, adopted General Recommendation No. 35 (UN General Assembly, 2017, (hereinafter GR 35) in 2017. GR 35 builds upon and reinforces GR 19 as well as an understanding of the challenges and appropriate responses it had expressed through its concluding observations to states’ reports, individual communications, and inquiries (Chinkin, 2020, p. 2). GR 35 was adopted at a time when there was a resistance towards women’s rights concerns which lead to the erosion of frameworks developed to eliminate gender-based discrimination (Priddy, 2014, p. 10). In justifying the need for yet another recommendation in GR 35, the CEDAW Committee’s intention was to provide States parties with further guidance aimed at accelerating the elimination of GBV (GR 35, para 3). The Committee noted that current legislation addressing GBV remains “non-existent, inadequate and/or poorly implemented” (GR 35, para 7) and that GBV remains socially entrenched as a mechanism “by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated” (GR 35, para 10).⁶ The high rates of GBV around the world saw the incidences of such violence become more persistent and occurring “in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology mediated settings and in the contemporary globalized world it transcends national boundaries” (GR 35, para 6).

The importance of GR 35 is that it elaborates on the gender-based nature of this form of violence, by building on the work of the Committee and other international human rights mechanisms, as well as developments at national, regional (*Istanbul Convention; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (Organization of American States (OAS), 1994 (hereinafter *Convention of Belém do Pará*); *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (African Union, 2003 (hereinafter the *Maputo Protocol*),

⁶ This echoes the language in the preamble to *DEVAW*.

articles 1(j), 3(4), 4(2), 5, 11, 12(d), 13(c), 20, 22(b), 23(b) and international levels, most importantly within the European context and the jurisprudence of the European Court of Human Rights. For example, in 1999, the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* was adopted and entered into force in 2000 (UN General Assembly, 1999 (hereinafter the *Optional Protocol*). Article 2 of the *Optional Protocol* provides individuals or groups from state parties to the *Protocol* with an opportunity to raise complaints to the Committee about violations of any rights contained in *CEDAW*.

The *Optional Protocol* thus enables the Committee to determine these claims and to make both specific recommendations for redress to the individual complainant and more general ones directed at addressing wider societal issues. Article 8 further invests the Committee with the powers to conduct an inquiry into grave or systemic violations of human rights set out in *CEDAW*. Consequently, in Manila, Philippines, for example, inquiries have been made regarding women's access to health and reproductive services (UN CEDAW Committee, 2017), in *Ciudad Juárez*, Mexico VAW, more specifically femicide/feminicide concerns have been raised (UN CEDAW Committee, 2005), whilst enquires have been made about the rights of indigenous women in Canada (UN CEDAW Committee, 2015b), the abduction of women and girls for marital purposes in Kyrgyzstan (UN CEDAW Committee, 2018b) and access to abortion in Northern Ireland, UK (UN CEDAW Committee, 2018a). These enquires identified manifestations of GBV in a specific factual context. The Committee accordingly made recommendations for its elimination and for reparations for victims, their families and, where appropriate, the community. In some cases, for example in *Ángela González Carreño v Spain* (2012) CEDAW/C/58/D/47/2012, recommendations made by the CEDAW Committee for redress have led to important results (UN CEDAW Committee, 2014a). For instance, the Spanish Supreme Court in July 2018 held that the recommendations made by the Committee under the *Optional Protocol* were binding on the domestic courts (UN Office of the High Commissioner for Human Rights, 2018).

However, recently the Spanish Supreme Court's Judgment 786/2023 of 13 June 2023 has affirmed, regarding a *CAT* decision which pointed out the violation by Spain of Articles 1, 12, 13 and 16 of *CAT*, that these Articles, 1, 12, 13 and 16, are mere legislative policy recommendations in a case of torture against a woman detainee. The importance and significance of jurisprudence and research reports therefore cannot and should not be underestimated, but their internal consideration by states is not yet definitively established.

In GR 35, the term “gender-based violence against women” is consequently used as a more precise term that makes explicit the gendered causes and impacts of the violence. The term further strengthens the understanding of the violence as a social rather than an individual problem, requiring comprehensive responses, beyond those to specific events, individual perpetrators, and victims/survivors.

For various reasons states obligations when drafting and complying with human rights instruments on specifically VAW has been met with reservations (Amnesty International, 2004; UN CEDAW Committee, 1997). These reservations have impacted

responses to VAW. In response thereto, one of the most important provisions of the updated GR 35 is that it now describes in detail the general obligations of states parties under *CEDAW*. States parties have an obligation to prevent, punish and provide reparation, as the parties have the obligation to eliminate discrimination against women by all appropriate means and without delay (Part III). States are responsible for violence that results from their own actions and omissions, as well as those of non-state actors, where the state has not implemented measures to tackle VAW with due diligence (Part III). The principle of due diligence is crucial as it provides the missing link between human rights obligations and acts of private persons. Where a state party fails to take all appropriate measures to prevent acts of GBV, fail to investigate, prosecute, and punish, and provide reparation to victims, these are considered serious violations of the due diligence principle.

GR 35 recommends specific measures that may be required to address violence targeted against women within some such categories, for instance to repeal laws that allow for medical procedures on women with disabilities without their informed consent, or that criminalise abortion, sex work, or being lesbian, bisexual, or transgender (Part A, 29(i)). It also seeks the repeal of laws deemed protective, including guardianship laws that restrict the ability of women with disabilities from testifying in court, or so-called ‘protective custody’ (Part A, 29 (iii)). GR 35 is thus “rich in specificities as well as capturing generalities” in that states are to examine ‘gender-neutral laws and policies to ensure they do not create or perpetuate existing inequalities’ and to take appropriate remedial action where this is the case (Chinkin, 2017, para 4).

It is also important to note that GR 35 effectively amplifies state obligations as set out in GR 28 (UN CEDAW Committee, 2010b (hereinafter GR 28)). In the GR 28 on the core obligations of States parties under Article 2 of *CEDAW*, it is indicated that the obligations of States are to respect, protect and fulfil women’s rights to non-discrimination and the enjoyment of de jure and de facto equality. The scope of those obligations in relation to GBV occurring in particular contexts is addressed in GR 28 and other general recommendations, including in General Recommendation No. 26 (UN CEDAW Committee, 2008) on women migrant workers; General Recommendation No. 27 (UN CEDAW Committee, 2010a) on older women and the protection of their human rights; General Recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations (UN CEDAW Committee, 2013); Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices (UN CEDAW Committee, 2014c); General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (UN CEDAW Committee, 2014b); General Recommendation No. 33 (UN CEDAW Committee, 2015c) on women’s access to justice; and General Recommendation No. 34 on the rights of rural women (UN CEDAW Committee, 2016).⁷

⁷ Further details on the relevant elements of the general recommendations referred to herein may be found in those recommendations.

The CEDAW Committees' approach towards the realisation of GR 35 emphasises how committed the Committee has been towards addressing VAWG. However, despite this GBV is still at pandemic levels and consequently raises concerns on whether GR 35 is sufficient or is a different type of instrument necessary to address the continued VAW. To answer this concern the following discussion will firstly analyse some of the most significant contributions of GR 35 and then go on to look at its limitations.

GR 35 reiterates what are considered the foremost barriers to the elimination of VAW and effective state responses, *inter alia* culture, tradition, religion, and fundamentalist ideologies (paras 7, 31b). The Committee emphatically recognises the structural causes of GBV notably 'the ideology of men's entitlement and privilege over women' (GR 35, para 19) and the harmful effects of prejudices and gender stereotyping. GR 35 also refers to factors that are less often remarked upon, like reduction in public spending, austerity economics and extraterritorial corporate behaviour. It also recognises the adverse impact of aspects of contemporary life, including *inter alia* environmental degradation, militarisation, displacement, globalisation of economic activities, foreign occupation, armed conflict, violent extremism, and terrorism (GR 35, para 14) and these recognitions have been entrenched through various opinions (UN CEDAW Committee, 2010c; UN CEDAW Committee, 2011). This approach by the Committee recognises the complicity of the Global North in the 'pervasiveness of gender-based violence against women' and the concomitant culture of impunity (GR 35, para 7).

Furthermore, States are required to take measures for the advancement of women in 'all fields, in particular in the political, social, economic, and cultural fields' (CEDAW, Article 3). GR 35 elaborates on this considerably by recognising that VAW occurs in 'all spaces and spheres of human interaction' including in the 'family, community, public spaces, workplace, leisure, politics, sport, health services, educational settings, and their redefinition through technology-mediated environments ... the Internet and digital spaces' (GR 35, para 20). This broad scope is welcome as it implicates both state and non-state actors and clearly sets out the responsibility of states for the acts or omissions of each. The Committee also importantly acknowledges that the prohibition of GBV "has evolved into a principle of customary international law", a recognition wherein GR 19 was the catalyst for (GR 35, para 2).

While GR 19 lists multiple manifestations of VAW, it was neglectful of the diversity of women. CEDAW itself does not explicitly address intersectional discrimination. GR 35 corrects this and considerably expands on the multiple and intersecting forms of violence women experience. The CEDAW Committee refers to its own practice and accumulated knowledge on harmful intersections, listing not only the most recognised grounds of intersectional discrimination (such as ethnicity), but also specific circumstances which might compound the violence (e.g. presence of armed conflict, being an asylum seeker or a human rights defender) (Nousiainen, 2017, para 7). Intersectionality is a theme throughout GR 35 that reinforces inclusivity and builds on this by recognising that 'gender-based violence may affect some women to different degrees or in different ways' and, accordingly, different responses must be developed. The catalogue of affecting factors has also been considerably extended (GR

35, para 12). GR 35 also refers to recommendations on ‘harmful practices’ (such as ‘honour killings’) and requires a gender sensitive approach to the prohibition of torture, and internet-mediated forms of VAW, which have thus far received little attention by human rights bodies.

One of the major limitations is that despite GR 35 containing detailed guidance to states parties on how they should address the issue of GBV, such an approach has already been tried and tested, with varying results. If one were to look at the multitude of documents issued by the UN that is relevant to VAW some of the resolutions adopted by the UN General Assembly include *DEVAW*, numerous resolutions by the Commission on Human Rights (UN Women, 2007; UN Women, 2020b) and resolutions by the Human Rights Council (2008, 2009, 2010). In addition, VAW was addressed in the *Vienna Declaration*, in various reports by the different UN Special Rapporteur on VAW, its causes and consequences since its inception in 1994 (UN Human Rights Special Procedures, 2022) and the *Beijing Declaration and Platform for Action* (UN, 1995 (hereinafter *Beijing Declaration*) which contains various detailed recommendations on the measures which states should adopt to address VAW. The CEDAW Committee itself has issued several Concluding Observations (UN CEDAW Committee, 2009; McQuigg, 2018, Chinkin, 2020) relevant to VAW in relation to the periodic reports submitted by states parties, and has also made recommendations dealing with communications submitted under the individual complaint’s procedure found in the *Optional Protocol to CEDAW*. GR 35 effectively collates and distils the key elements of the conclusions and recommendations made by the CEDAW Committee and condenses and includes these into one document, without having much impact on the rates of GBVF.

Whilst the situation of women has improved greatly over the years, the continued rates of GBVF has resulted in the current UN Special Rapporteur on VAW, Dubravka Šimonović, calling on stakeholders to make submissions on whether a separate legally binding treaty on VAW with a separate monitoring body should be adopted (UN, 2016). In what can be deemed support for such an approach, the CEDAW Committee itself has stated that “a new instrument and its new monitoring body would certainly increase the burden of States parties and reinforce the trend of fragmentation’ (UN Office of the High Commissioner for Human Rights, 2016, p. 2). Whilst many were opposed to the adoption of yet another instrument on VAW others argued strongly for it (UN General Assembly, 2017).

One of the main arguments for advancing the need for a specific treaty dealing with GBV is that neither *CEDAW* nor any other UN treaty specifically references GBV and whilst GR 35 does cover a wide range of acts that could be considered as VAW or interpreted as such, it is optional. An international treaty on the other hand would be legally binding. GR 35, like GR 19 and its other general recommendations remain non-binding interpretations of *CEDAW*’s obligations. It has been said that ‘interpretation is at best a corrective and indirect mechanism to fix the errors of the original human rights framework’ (Edwards, 2013, p. 338). The general recommendations therefore cannot make up for an absence of binding obligations regarding GBVF concerns.

Another concern is that even though VAW is now accepted as constituting a form of discrimination against women (*Opuz v Turkey* (2009) Application No 33401/02, Merits and Just Satisfaction, 9 June 2009), *CEDAW* remains a treaty whose focus is on discrimination. For example, rape has been recognised as a crime against humanity and a war crime in international criminal law (UN General Assembly, 1998 (hereinafter the *Rome Statute*), Articles 7 (1)(g), 8(b)(xxii), 6(b)), but rape and battery are still listed as discrimination in GR 19.

Regarding the specific issue of femicide, *CEDAW*'s framework response to violence does not explicitly recognise acts of femicide as serious human rights issues. Indeed, the effectiveness in *CEDAW* in addressing GBVF is that it provides a rather roundabout answer to femicide (Nadji, 2015, p. 342). Manjoo succinctly states the problem as the following:

“The functioning of the (CEDAW) Committee regarding violence against women is to try and fit this pervasive human rights violation under the discrimination label, and to then find ways to justify the Committee’s jurisdiction by using other provisions in the CEDAW. When it receives a complaint, or when it interrogates the state parties’ reports, it does what I call jurisdictional gymnastics to address the issue of violence against women. It has to ask questions such as: Is violence against women discrimination? Is the violence due to stereotyping? Is it due to family relations?” (Nadji, 2015, p. 343).

This rather roundabout approach requires identifying underlying stereotypes and the placing of the violence within a framework of “discrimination” first. This focus on discrimination deters from the severity of the physical and mental harm inherent in GBVF. Since *CEDAW*'s focus is on discrimination and placing acts of violence within a discrimination framework it dilutes the seriousness inherent in acts of VAWG, impacting its rates and how it is addressed on a national and international level. It can therefore be argued that this inadequate focus has created an urgent need that must be filled by an internationally binding treaty on VAW. The adoption of a UN treaty on VAW would provide a more coherent and straightforward approach to addressing GBV as it could remove the need to strictly adhere to a discrimination framework. Such an approach would go a long way towards rectifying the omission of GBVF within the IHRL treaty framework and assist to reinforce the statements made by the CEDAW Committee and the other UN human rights bodies on VAW. In addition, a global treaty is a necessity for states to be held accountable as regards their responses to VAW (Manjoo, 2014, para 68).

Additionally, in her report of May 2014 Manjoo further stated that “despite the existence of interpretative guidelines and monitoring by human rights treaty bodies...the limitations of large and varied mandates, coupled with time constraints when examining State party reports, result in insufficient interrogation concerning the information relating to VAW, its causes and consequences, and insufficient assessment of responses” (Manjoo,

2014, para 51). The CEDAW Committee has made excellent efforts and progress in addressing VAW. They however work under pressurised conditions and have a relatively short time to consider every country's reports. The fact that VAW is only one of a multitude of issues that needs to be addressed by the Committee means that they are unable to devote the necessary time and consideration required to effectively address the GBV pandemic. Clearly an advantage of a global treaty on violence would enable the monitoring body of such an instrument to focus exclusively and comprehensively on VAW. Recommendations to states on this issue can then be made to every state in a more detailed manner.

3. UN RESOLUTIONS ON VAW

Both the UN Human Rights Council and the General Assembly have also addressed VAW through various resolutions (UN Women, 2012; UN Women, 2022). Pronouncements by these bodies, known as charter-based mechanisms, express strong aspirations but, by their nature, are unenforceable. Unlike the human rights treaties discussed above, which national governments ratify, and agree to be bound by, no process exists for governments to submit to the authority of charter-based mechanisms. However, and although such resolutions do not have binding legal authority, they are influential and sets international standards and best practices. In this regards the UN has stated that while “the Assembly is empowered to make only non-binding recommendations to States on international issues within its competence, it has, nonetheless, initiated actions, political, economic, humanitarian, social and legal, which have affected the lives of millions of people throughout the world” (UN, 2015, para 3).

One of the most important resolutions on VAW is *DEVAW*. Adopted by the UN General Assembly in 1993, *DEVAW* was the first international instrument to explicitly address VAW. It establishes the most comprehensive set of standards in international law for the protection of women against sexual and GBV. *DEVAW* recognises VAW as “an obstacle to the achievement of equality” and a “manifestation of historically unequal power relations between men and women,” as well as a violation of fundamental freedoms including the prohibition against torture (Preamble). Its definition of violence as articulated above is one of the most accepted standards for the definition of GBV. *DEVAW* not only declares that State actors should refrain from engaging in VAW, but also asserts that States should take affirmative measures to prevent and punish violence committed by public and private actors alike and establish support networks to care for victims of GBV (Article 4).

In 2004, the General Assembly also specifically addressed domestic violence in Resolution 58/147, entitled the *Elimination of Domestic Violence against Women* (UN General Assembly, 2004 (hereinafter *EDVAW*)). In this important resolution, the General Assembly recognised that domestic violence is a human rights issue with serious immediate and long-term implications. It consequently condemned all forms of VAWG, including domestic violence in its various forms (Preamble) and called for an elimination of violence within the family (para. 1). The General Assembly also included in the resolution several specific actions that States should take to eliminate domestic violence, including strengthening legislation, providing training to public officers, improving police response, and creating educational campaigns (para 7).

3.1. Beijing Declaration

As women increasingly demanded that violence be recognised as a human rights abuse, the mid-1990s saw a proliferation of charter-based mechanisms addressing VAW. Of specific importance is the 1995 Fourth World Conference on Women in Beijing, which converged women's rights with the broader discussion of human rights and the two became firmly entwined (Clinton, 1995). VAW was identified as a key human rights priority, and the *Beijing Declaration* was consequently adopted. It reaffirms the fundamental principal that the rights of women and girls are an “inalienable, integral and indivisible part of universal human rights” (*Beijing Declaration*, Chapter 1, para 9) and proceeds to set the agenda for States to identify and eradicate GBV. The *Beijing Declaration* requires all governments to address several critical areas of concern, including addressing VAW, by developing strategies or national plans of action to implement the Declaration locally.

The Commission on the Status of Women (CSW) (UN Women, 2020) is a commission of the Economic and Social Council (ECOSOC) and is tasked with promoting gender equality, combatting VAW on a global scale and ensuring the proper implementation of the Declaration. ECOSOC's most recent resolution (UN Economic and Social Council, 2020) reaffirmed the importance of the *Beijing Declaration* and the CSW's commitment to continue working toward its full implementation worldwide. Furthermore, the *Beijing Declaration* is a crucial blueprint for achieving various goals of the SDGs including addressing global challenges like poverty, climate change, and inequality, as well as the critical Goal 5 of ensuring equal education for girls and combatting VAW. Therefore, although not legally binding, the *Beijing Declaration* remains an integral document in the global fight for women's rights.

These charter-based mechanisms, resolutions, special procedures, and action plans have brought attention to important issues regarding VAW. It provides an important source of international law and has a soft power that may be persuasive in interpreting treaties, but they are not enforceable like treaties. These charter-based mechanisms, resolutions and plans inform countries of the need to combat VAW, but the countries can never be held accountable. Accordingly, these mechanisms cannot be considered a suitable substitute for a legally binding treaty on VAW. However, its contribution can form the basis for informing the development of a binding treaty on GBV.

4. REGIONAL FRAMEWORKS

4.1. Convention of Belém do Pará

Regional treaties contribute to the current progress towards an effective international response to VAW. Various regional instruments that complement the international legal and policy framework include for example *Convention of Belém do Pará*, the first binding treaty to specifically address the issue of VAW. Considered one of the strongest regional treaties it requires State parties to apply due diligence and to not only refrain from violence themselves but to prevent, investigate, and impose penalties for such violence (*Convention of Belém do Pará*, Article 7(b)). Accordingly, the requirement

of due diligence means that a state can be found liable for an act, if it fails to prevent the violation and respond appropriately, even when the act was not perpetrated by the State (Manjoo, 2014). States are also obliged to establish “fair and effective legal procedures for women who have been subjected to violence” (*Convention of Belém do Pará*, Article 7(f) as well as “the necessary legal and administrative mechanisms to ensure women subjected to violence have effective access to restitution, reparations or other just and effective remedies” (*Convention of Belém do Pará*, Article 9(g). They are required to constantly update domestic laws to prevent and punish VAW (*Convention of Belém do Pará*, Article 1).

The *Convention of Belém do Pará* defines VAW as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere” (Article 1). Crucially, this definition defines the right to be free from violence as including the right to be free from all forms of discrimination. Importantly, this differs from *CEDAW* as *CEDAW* characterises violence as a form of discrimination. The right to be free from violence incorporates the right to be valued and educated free of stereotyped patterns of behaviour, and to be free from social and cultural practices based on concepts of inferiority and subordination (*Convention of Belém do Pará*, Article 6).

Regarding the monitoring mechanisms, firstly, States parties must file reports with the Inter-American Commission of Women (*Convention of Belém do Pará*, Article 10)⁸ and secondly individuals, groups, and NGOs of the OAS can petition the Inter-American Commission on Human Rights with complaints of violations of the convention by States parties (*Convention of Belém do Pará*, Article 12). The Commission decisions are not binding on States parties, but the Commission can refer certain cases to the IACrHR, which can issue binding decisions (UN High Commissioner for Refugees, 2024).⁹ In 2004, the OAS established the Follow-up Mechanism to the *Belém do Pará Convention* (Organization of American States, 2004 (hereinafter MESECVI) which aims to promote the implementation of the convention, and to establish a system of technical cooperation, thereby strengthening the *Convention of Belém do Pará* (MESECVI, Article 1). MESECVI’s creation is evidence of States parties’ commitment to accountability, including building expertise and capacity among themselves.

4.2. Istanbul Convention

The 2011 *Istanbul Convention* is a leading regional treaty that significantly contributes towards the developing legal frameworks of VAW. *The Istanbul Convention*

⁸ These reports include information on measures States parties have adopted in accordance with the Convention, difficulties they have had, and factors that contribute to VAW.

⁹ The IACrHR is one of three regional human rights tribunals, together with the European Court of Human Rights and the African Court of Human and Peoples’ Rights. It is an autonomous legal institution whose objective is to interpret and apply the American Convention. The IACrHR exercises a contentious function, in which it resolves contentious cases and supervises judgments; an advisory function; and a function wherein it can order provisional measures.

states that “‘violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life” (Article 3). This definition builds on the due diligence obligations and the models of the European and IACrHR’s (Organization of American States & Council of Europe, 2014).

Like the *Convention of Belém do Pará*, the *Istanbul Convention* has an established monitoring mechanism in the Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) (Organization of American States & Council of Europe, 2014). Notably, States parties are required to submit responses to questionnaires about their legislative progress. This process provides a forum to coordinate efforts to combat VAW (Organization of American States & Council of Europe, 2014).

The OAS and the Council of Europe have developed the strongest regional treaties with effective enforcement mechanisms¹⁰ devoted exclusively to combating VAW. These treaties provide a comprehensive guide for treaty members’ actions through concrete recommendations that details implementation standards and allows for the development of skills and resources to achieve the goals of the treaties. However, the *Convention of Belém do Pará* is binding and specific within the Americas and the *Istanbul Convention*, despite being lauded internationally, was specifically drafted for the European community. These treaties may not be relevant to other continents and are therefore limited in its effect, enforcement, and implementation. Since these treaties do provide a benchmark for addressing VAW, it can be utilised as exemplars for an international treaty on GBV.

4.3. Maputo Protocol

Furthermore, the *Maputo Protocol*, was adopted by the African Union in 2003 and contains provisions relevant to VAW for African women. The *Maputo Protocol* states that explicit efforts to end VAW are aligned with a woman’s right to dignity and security (*Maputo Protocol*, Article 3, para 4) and that States are obliged to report to the African Union on the efforts made to identify legislative and other measures taken to implement the rights afforded women under this Protocol (Article 26). The *Maputo Protocol* is however considered “weak” (Rubenstein, 2018, p. 30) due its inconsistent reporting system (Asuagbor, 2016, p. 3) and the African Commission’s inability to ensure its enforcement (Rubenstein, 2018, p. 31).

This failure on the part of the African Union to ensure effective enforcement and timely reporting standards is crucial. Where there is an absence of strong enforcement mechanisms, implementation guidelines and tools to develop and strengthen efforts

¹⁰ Implementation of the *Istanbul Convention* is still new, making its effectiveness difficult to evaluate. Nonetheless, the strong language of the treaty and its monitoring mechanism make it a prime model for an international convention on VAW.

to effectively combat GBV, initiatives toward the elimination thereof will fall short. Significantly not all regions have treaties on GBV, for example, the Middle East and Asia. The non-binding nature of these regional treaties to other regions, the gaps in implementation and inefficiencies in reporting identified in the *Maputo Protocol* together with the absence of treaties on GBV in the Middle East and Asia, indicates an urgent need for the uniform protection of women on a wide scale. This argument is strengthened by the inadequacies found in the only international treaty dedicated to women's rights, *CEDAW*.

5. CONCLUDING REMARKS

Despite the numerous advances that have been made in GBV, the various policy, legal and other measures adopted at the national and international levels, GBV continues to be widespread and present in all regions and countries, in familiar and new forms. One of the main reasons for the high rates of GBV is that there is currently no global legally binding treaty that comprehensively addresses GBV. *CEDAW* as the international bill of rights for women, provides some concrete protections for women and girls. Its emphasis on a discrimination framework and failures to explicitly address key topics, including rape, assault, or even violence, is a major omission in the fight against GBV. The CEDAW Committee in attempting to complement *CEDAW* and address these oversights and failures issued various general recommendations including GRs 19 and 35. These recommendations, specifically GR 35 is indeed a truly progressive development in advancing GBV. However, the general recommendations are not binding and serve as soft laws, leading to optional ratification and implementation by countries. Such an approach does not serve the agenda for the elimination of GBV, and neither will it assist in achieving the developmental goals by 2030.

It is further noted that GR 35 is a vital reminder of the importance of human rights in all policies and practices directed towards advancing international agendas, specifically the achievement of the SDGs. To achieve the SDGs, specifically Goal 5, by 2030, countries need to accelerate their efforts in ending discrimination and violence in all its forms. They require the necessary incentive to be obligated to report and answer on continued violations relating to VAW. It is argued that a separate legally binding treaty on VAW will go a long way towards achieving such goals.

Within the context of regional systems of human rights protection for women, there are several legally binding provisions on GBV. For example, the *Istanbul Convention*, the *Convention of Belém do Pará*, and the *Maputo Protocol*. Despite the strength of the regional treaties in the Americas and Europe, the *Maputo Protocol* applicable for African women in the African continent, and the human rights mechanisms in the form of the European Court of Human Rights and the IACrHR that have specifically addressed VAWG, these treaties and mechanisms can only have persuasive value in other jurisdictions. These can never be a substitute for an internationally binding treaty on VAW. As the name suggests, they are only applicable and binding within its' specific region. They do not bind States in other regions. Notably, its provisions on VAW also do vary in terms of scope and applicability. Therefore, since regional treaties provisions vary according to their specific needs there remains the need for a uniform set of obligations to be adopted.

Furthermore, treaties can and should be adopted to respond to critical issues arising at any given time. For example, international human rights law has increasingly developed to recognise the need for a gender perspective on for example torture and other ill-treatment in the adoption of *CAT*. Additionally, the *ICERD* which prohibits the abhorrent practice of racial discrimination in South Africa and its concomitant effects of exclusion and segregation saw the international community respond directly to the issue with a legal treaty specifically making racial discrimination a human rights violation and its practice illegal. *CEDAW* is a creature of its time and if it were to be drafted today, VAW would be explicitly addressed and probably in some detail. This begs the question and concerns of why, given the current epidemic proportions of GBVF in the world, has the international community not yet responded similarly with the adoption of a specific treaty targeted at GBVF, especially as they have previously done so.

Indeed, lessons have been learned in the decades since the passing of *CEDAW*. Laws, treaties, and jurisprudence has evolved. A new international treaty will allow for the inclusion of these lessons learned including for example, prohibiting reservations to the treaty provisions. It can also include the recommendations and concluding remarks made over the years by the CEDAW Committee. This experiences together with the strength and weaknesses of the regional treaties will strengthen the drafting and implementation of a global treaty on GBV.

In conclusion, the current international efforts to combat GBVF is far from adequate with no international treaty specifically addressing VAW. *CEDAW* which is the most prominent among the applicable treaties, and other conventions like such as the *ICCPR* and *CAT* have been interpreted to address VAW, with varying degrees of success. However, overall, these have not been effective enough in addressing the GBV pandemic. Various non-binding charter-based mechanisms also address VAW, but despite strong language, they carry no enforcement mechanisms. There remains a need for every country in all regions to have access to a binding treaty, specifically addressing VAW. This can only be achieved through the adoption of an internationally binding treaty.

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