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## THE CASE FOR STRENGTHENING THE INTERNATIONAL FRAMEWORK ON VIOLENCE AGAINST WOMEN WITH A NEW OPTIONAL PROTOCOL ON VIOLENCE AGAINST WOMEN TO THE CEDAW CONVENTION

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### ABSTRACT

*Gender-based violence against women and girls is a widespread phenomenon, making it imperative to examine the protective strength of the international framework for preventing and combating violence against women. This article examines the historical context of the international framework's establishment and evolution, based on the recognition of violence against women as a form of discrimination against women and a human rights violation. As a form of discrimination against women, violence against women implicitly falls under the scope of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which does not explicitly address violence against women. Violence against women has been explicitly recognized as a human rights violation by the adoption of the UN Declaration on the Elimination of Violence against Women (CEDAW) and the establishment of the mandate of the UN Special Rapporteur on Violence against Women. This framework has been further developed through the elaboration of soft law instruments at the global level and legally binding instruments on violence against women at the regional level, namely the Convention of Belem do Para, the Maputo Protocol, and the Istanbul Convention. The Istanbul Convention captures and upgrades soft law standards and by this provides a template for how CEDAW could be strengthened through an Optional Protocol. This analysis takes into consideration feminist activists' and experts' proposals for strengthening the international framework and concludes that the most*

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*expedient path is through the adoption of a legally binding Optional Protocol on Violence against Women to the CEDAW Convention. If adopted, the Optional Protocol on Violence will build upon the Declaration on the Elimination of Violence against Women and the CEDAW Committee's general recommendations, and it will strengthen the CEDAW Convention's legally binding framework into one that not only implicitly but explicitly includes violence against women and guides and accelerates the protection of the right of every woman to a life free from violence.*

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## I. INTRODUCTION

Violence against women and girls is a phenomenon without borders,<sup>2</sup> affecting one in every three women worldwide, while its most lethal form—gender-related killing of women and girls or femicide<sup>3</sup>—is increasing.<sup>4</sup> This indicates a lack of enforceable legal and other measures by states to prevent and combat such violence despite the international human rights framework on violence against women. This framework initially omitted any explicit inclusion of protection from violence against women, which changed gradually over time through the recognition of violence against women as a form of discrimination against women and as a human rights violation.<sup>5</sup> Violence against women, as a form of discrimination against women, implicitly falls under the scope of the U.N. Convention on the Elimination of all Forms of Discrimination against Women (the CEDAW Convention)<sup>6</sup> of 1979. However, the Convention does not have an explicit article or definition of violence against women. The Committee on the Elimination of Discrimination against Women (the CEDAW Committee)

<sup>2</sup> YAKIN ERTURK, *VIOLENCE WITHOUT BORDERS: PARADIGM, POLICY, AND PRACTICE CONCERNING VIOLENCE AGAINST WOMEN 4* (Yakin Erturk et al. eds., 2015).

<sup>3</sup> U.N. Resolution A/RES/68/191 uses the term “gender-related killing of women and girls,” G.A. Res. 68/191, U.N. Doc. A/RES/68/191, at 1 (Dec. 18, 2013); the U.N. Special Rapporteur on Violence Against Women uses the term “femicide” or “gender-related killing of women and girls”; Dubravka Šimonović (Special Rapporteur on Violence Against Women, Its Cause and Consequences), *Violence Against Women, its Causes and Consequences*, U.N. Doc. A/71/398 (Sept. 23, 2016).

<sup>4</sup> U.N. Office on Drugs and Crime, *Gender-Related Killings of Women and Girls (Femicide/Feminicide)*, at 3 (Mar. 2022), [https://www.unodc.org/documents/data-and-analysis/briefs/Femicide\\_brief\\_2023.pdf](https://www.unodc.org/documents/data-and-analysis/briefs/Femicide_brief_2023.pdf).

<sup>5</sup> Art. 3(a) of the Istanbul Convention defines violence against women as “a violation of human rights and a form of discrimination against women.” Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence*, art. 3(a), opened for signature May 11, 2011, C.E.T.S. No. 210 [hereinafter *Istanbul Convention*] <https://rm.coe.int/168008482e>.

<sup>6</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature Mar. 10, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter *CEDAW Convention*].

clarified this by adopting general recommendations on violence against women.<sup>7</sup> This interpretation of violence as a form of discrimination has been accepted by 189 of the CEDAW Convention's State Parties,<sup>8</sup> missing 6 UN member states to reach universality.<sup>9</sup>

An explicit definition and recognition of violence against women as a human rights violation has been achieved through the adoption of the 1993 UN Declaration on the Elimination of Violence against Women (the DEVAW).<sup>10</sup> While the DEVAW has the advantage of being a universal instrument that applies to all states, it is a soft law instrument that lacks legally binding force (unlike conventions such as CEDAW).<sup>11</sup> Another key development was the establishment of the human rights expert mechanism of the UN Special Rapporteur on violence against women and girls, its causes and consequences (SRVAW) in 1994.<sup>12</sup> The SRVAW mandate operates under the international human rights framework, reinforcing that violence against women is a human rights violation.<sup>13</sup> It does so primarily through recommendations on ways and means to eliminate violence against women at the national, regional, and international levels,<sup>14</sup> contributing to normative developments in this area. This global framework is supplemented by key policy documents and soft law instruments, including the Vienna Declaration and Plan of Action of 1993; the

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<sup>7</sup> CEDAW Comm., General Recommendation No. 12, U.N. Doc. A/45/38 (1989); CEDAW Comm., General Recommendation No. 19, U.N. Doc. A/47/38 (1992) [hereinafter General Recommendation No. 19]; CEDAW Comm., General Recommendation No. 35, U.N. Doc. CEDAW/C/GC/35 (2017) [hereinafter General Recommendation No. 35].

<sup>8</sup> Off. of the U.N. High Comm'r for Hum. Rts., Human Rights Indicators, CEDAW Status of Ratification Interactive Dashboard (Feb. 21, 2023), <https://indicators.ohchr.org/>.

<sup>9</sup> See *id.* Iran, Palau, Somalia, Sudan, Tonga, and the United States of America have not ratified it, although Palau and the United States have signed it.

<sup>10</sup> G.A. Res. 48/104, U.N. Doc. A/RES/48/104, Declaration on the Elimination of Violence Against Women, at arts. 1-2 (Dec. 20, 1993) [hereinafter DEVAW].

<sup>11</sup> Felicia Maxim, *Hard Law Versus Soft Law in International Law*, 2020 CONF. INT'L DR. 113, 114 (2020). Instruments or treaties with legally binding force require national acceptance or ratification process and their domestication at the national level, while soft law instruments do not require formal acceptance and domestication.

<sup>12</sup> Comm'n on Hum. Rts. Res. 1994/45, U.N. Doc. E/CN.4/RES/1994/45 (Mar. 4, 1994). The United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, including its causes and consequences, on March 4, 1994.

<sup>13</sup> Dubravka Šimonović (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Statement at the Commission on the Status of Women* (Mar. 15, 2021).

<sup>14</sup> U.N. Comm. on Hum. Rts., *Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women*, E/CN.4/RES/1994/45, (Mar. 4, 1994). Art.7(a) "invites the Special Rapporteur, in carrying out this mandate, and within the framework of the Universal Declaration of Human Rights and all other international human rights instruments" and 7(b) calls it to "recommend measures, ways, and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences."

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Beijing Declaration and Platform for Action (BDPA); the Commission on the Status of Women's (CSW) conclusions on violence against women; and the Human Rights Council and the General Assembly's resolutions on violence against women.<sup>15</sup> At the regional level, legally binding conventions have further expanded this international women's rights framework to combat violence against women.<sup>16</sup> As a result of those normative developments, today we have an international framework on violence against women that is: "*complex, fragmented, and in some ways convoluted in its application,*"<sup>17</sup> which contributes to the lack of its full and forceful implementation at the national level in the majority of states.<sup>18</sup>

The broader context of the lack of application of the international framework on violence against women includes an upsurge in retrogressive movements, and a backlash against feminism, gender equality, and women's reproductive rights, driven by misogynistic propaganda aimed at rolling back and restricting women's rights and agency.<sup>19</sup> Since the Taliban takeover in August 2021, Afghanistan has experienced an unprecedented rollback of women's rights, marked by the imposition of "gender apartheid,"<sup>20</sup> which fully excludes women and girls from public life and schools. At the same time, women's protests and movements like #MeToo and #NiUnaMenos have amplified public rejection of gender-based violence while exposing the failure of states to enact and enforce laws and measures to combat such violence.<sup>21</sup>

Globally, UN statistical data on the implementation of SDG Agenda Goal No. 5—achieving gender equality and empowerment of women—<sup>22</sup> confirms

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<sup>15</sup> The specific part of this framework on conflict-related sexual violence was established by the UN the Security Council's resolution 1325 on Women's Peace and Security of 2000 follow-up resolutions including 1820 of 2008, as well as the adoption of the International Criminal Courts and adoption of its Rome Statute, is not specifically addressed in this article, although strengthened International framework on violence against women will have a positive impact on this agenda. Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (July 17, 1998).

<sup>16</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), 33 I.L.M. 1534 (June 9, 1994); Protocol to the African Charter on Human and People's Rights of Women in Africa, July 11, 2003; Istanbul Convention, *supra* note 5.

<sup>17</sup> Šimonović, *supra* note 3, para. 18.

<sup>18</sup> *Id.* para. 69.

<sup>19</sup> *Id.* at paras. 20, 21.

<sup>20</sup> Karima Bennouna, *Statement to the U.N. Security Council Briefing on Afghanistan* (Sept. 26, 2023).

<sup>21</sup> Dubravka Šimonović (Special Rapporteur on Violence Against Women, its Causes and Consequences), *Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-Based Violence Against Women and Girls, and its Prevention*, U.N. Doc. A/HRC/47/26 (Apr. 19, 2021).

<sup>22</sup> U.N. Women, SDG 5: Achieve Gender Equality and Empower All Women and Girls (2017), <https://www.unwomen.org/en/node/36060>; U.N. Secretary-General, *Progress*

that progress remains too slow.<sup>23</sup> At the current pace, it will take 300 years to end child marriage, 286 years to close gaps in legal protection and remove discriminatory laws, and 140 years for women to achieve equal representation in positions of power and leadership.<sup>24</sup> Currently, 49 countries still lack laws protecting women from domestic violence,<sup>25</sup> while many others need to align their laws with international standards on combating violence against women.<sup>26</sup> The UN Secretary-General identified patriarchy and oppressive power structures as an obstacle to progress and urged states to: “fight back and take concrete action to challenge and transform gender norms, value systems, and institutional structures that perpetuate exclusion or the status quo.”<sup>27</sup>

Furthermore, there is a rapid development of new online forms of violence against women that are not explicitly addressed under the international human rights framework on violence against women adopted before their development.<sup>28</sup> Although the international framework on violence against women applies to many forms of online facilitated, committed, assisted, or aggravated forms of violence against women, there are many challenges related to its application and enforcement, while some new forms of online violence against women, such as the online nonconsensual distribution of intimate images, require specific norms on their prohibition or criminalization at the national and international levels.<sup>29</sup>

These challenges, negative trends, and data confirm a widening gap between the international normative framework on violence against women and its

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*Towards the Sustainable Development Goals*, para. 9, U.N. Doc. E/2017/66 (May 11, 2017) [hereinafter *Empower Women and Girls*].

<sup>23</sup> U.N. Dept. of Econ. and Soc. Aff.’s, Gender Equality (2023), <https://unstats.un.org/sdgs/report/2023/Goal-05/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Empower Women and Girls*, *supra* note 22.

<sup>26</sup> See Reem Alsalem (Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences), *Visit to Poland*, para. 6, U.N. Doc. A/HRC/56/48/Add.1 (May 3, 2024); Reem Alsalem (Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences), *Visit to Libya*, para. 76(a), U.N. Doc. A/HRC/53/36/Add.2 (May 4, 2023); Dubravka Šimonović (Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences), *Visit to Ecuador*, para. 12, U.N. Doc. A/HRC/44/52/Add.2 (May 22, 2020); Dubravka Šimonović (Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences), *Visit to Bulgaria*, para. 5, U.N. Doc. A/HRC/44/52/Add.1 (May 19, 2020); Dubravka Šimonović (Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences), *Visit to Nepal*, para. 10, U.N. Doc. A/HRC/41/42/Add.2 (June 19, 2019).

<sup>27</sup> U.N. Secretary-General, *Our Common Agenda Policy Brief 9: A New Agenda for Peace*, at 7, U.N. Doc. SG/SM/21885 (July 20, 2023).

<sup>28</sup> Dubravka Šimonović (Special Rapporteur on Violence against Women, Its Causes and Consequences), *On Online Violence Against Women and Girls from a Human Rights Perspective*, para. 14, U.N. Doc. A/HRC/38/47 (June 18, 2018).

<sup>29</sup> *Id.* at paras. 19, 23.

implementation at the national level. These challenges call for a careful examination of the international framework's protective strength and for strengthening its efficacy through the adoption of an Optional Protocol on Violence against Women to the CEDAW Convention.<sup>30</sup>

## II. HISTORICAL BACKGROUND ON THE ESTABLISHMENT OF AN INTERNATIONAL FRAMEWORK ON VIOLENCE AGAINST WOMEN

### A. *The UN Commission on the Status of Women*

The international framework on human rights began with the adoption of the Universal Declaration on Human Rights (UDHR) by the UN General Assembly on December 10, 1948.<sup>31</sup> During drafting, the Assembly called a Commission on Human Rights to prepare “an international bill of rights”.<sup>32</sup> From a women's rights perspective, the challenge was to make the international bill of rights gender-neutral, instead of gender-blind or gender-sensitive, as was the predominant standard at that time.<sup>33</sup> During the drafting of the UDHR, women representatives of the UN Commission on the Status of Women (CSW) challenged the terminology “All men are born free and equal,” proposing the use of a more inclusive term “*all people*” and influencing the current wording “*all human beings are born free and equal in dignity and rights*,”<sup>34</sup> which represented an achievement at that time. Also, the UDHR's preamble enshrined the principle of equal rights of men and women.<sup>35</sup> The UDHR was followed by the adoption of two legally binding conventions: the Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural

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<sup>30</sup> See generally G.A. Res. 54/4, Optional Protocol on the Convention of the Elimination of All Forms of Discrimination against Women (Oct. 15, 1999) (The title of the Optional Protocol in this article does not include “and girls” because it is understood that the CEDAW Convention includes women and girls using the lifecycle approach and the same would be true for a new optional protocol. However, during the drafting process for a new optional protocol, States may choose to add “and girls.”)

<sup>31</sup> U.N., Universal Declaration of Human Rights, History of the Declaration, <https://www.un.org/en/about-us/udhr/history-of-the-declaration>.

<sup>32</sup> *Id.*

<sup>33</sup> Robert F. Kennedy Hum. Rts., *How Women Shaped the Universal Declaration of Human Rights* (Mar. 2, 2023), <https://rfkhumanrights.org/our-voices/how-women-shaped-the-universal-declaration-of-human-rights-2/>.

<sup>34</sup> Comm. on the Status of Women, *Report on the Second Session*, U.N. Econ. and Soc. Council, 2nd Sess., U.N. Doc. E/615 (Jan. 5-19, 1948) [hereinafter Report on the Second Session].

<sup>35</sup> U.N., Women Who shaped the Universal Declaration (2019), [https://www.un.org/sites/un2.un.org/files/2019/11/women\\_who\\_shaped\\_the\\_udhr.pdf](https://www.un.org/sites/un2.un.org/files/2019/11/women_who_shaped_the_udhr.pdf); see also Comm. on the Status of Women, *Report on the Third Session*, U.N. Econ. and Soc. Council, 3rd Sess., U.N. Doc. E/1316, (1949).

Rights (1966).<sup>36</sup> They included the symmetrical and gender-neutral prohibition of sex-based discrimination in the enjoyment of human rights and affirmed equal rights for women and men.<sup>37</sup> These treaties were silent on widespread discrimination, particularly violence against women, which was then viewed as a “social matter of crime prevention and criminal justice”<sup>38</sup> and not recognized as a systematic human rights violation falling under the state’s responsibility to prevent it.<sup>39</sup> Within this initial gender-neutral human rights framework, a gender-specific framework for women’s human rights began to emerge.<sup>40</sup> The establishment of the UN Commission on the Status of Women (CSW) in June of 1946 enabled this process, marking an important recognition of the specifics of women’s rights and the need for a separate UN intergovernmental body to secure equal rights for women.<sup>41</sup> Initially, the CSW was a Sub-Commission on the Status of Women<sup>42</sup> under the Commission on Human Rights (HRC), but it became the Commission on the Status of Women after its request for its independent status<sup>43</sup> was granted by the United Nations Economic and Social Council (ECOSOC)<sup>44</sup> The CSW’s mandate is to promote women’s rights “with the object of implementing the principle that men and women shall have equal rights and to develop proposals to give effect to such recommendations.”<sup>45</sup> This enabled the CSW to use its normative standard-setting mandate to gradually develop a set of key legally binding and soft law instruments on women’s rights

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<sup>36</sup> G.A. Res. 2200A, para. 1, U.N. Doc. A/RES/2200A (XX1) (1966).

<sup>37</sup> Dubravka Šimonović, *International Framework on Violence Against Women with Focus on the CEDAW*, U.N. Doc EGM/PVAWG/EP.7 (Sept. 17-20, 2012).

<sup>38</sup> Christine Chinkin, *Violence Against Women, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 445* (Marsha A. Freeman et al., 2012).

<sup>39</sup> *Id.*

<sup>40</sup> Dubravka Šimonović, *Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions*, 36 *HUM. RTS. Q.* 590, 591 (Aug. 2014).

<sup>41</sup> Dubravka Šimonović, *The UN Commission on the Status of Women*, in *THE OXFORD HANDBOOK ON THE U.N. HUMAN RIGHTS SYSTEM* (Zeid Ra’ad Al Hussein & Jared Gensers eds.) (forthcoming 2025).

<sup>42</sup> U.N. Women, *Short History of the Commission on the Status of Women* (2019), <https://www.un.org/womenwatch/daw/cedaw/history.htm#> [Hereinafter History on Status of Women].

<sup>43</sup> The first chairperson of the Sub-Commission on the Status of Women, Bodil Begtrup (Denmark), formally on its behalf in her statement to the Economic and Social Council on May 28, 1946, “recommend to the Council that the Sub-commission should be established as a full commission.” *Statement to Econ. and Soc. Council by Mrs. Bodil Begtrup, Chairman of the Sub-Commission on the Status of Women*, U.N. Doc. E/PV.4 (May 28, 1946), <https://fraser.stlouisfed.org/title/international-documents-status-women-5488/fulltext>.

<sup>44</sup> Econ. and Soc. Council Res. 1946/29, (July 13, 1946).

<sup>45</sup> Econ. and Soc. Council Res. 1947/48, U.N. Doc E/425 (1947).

and violence against women,<sup>46</sup> comprising today's global framework.<sup>47</sup>

*B. From the Declaration on the Elimination of Discrimination Against Women (the DEDAW of 1967) to the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW) of 1979*

During its first 20 years, the CSW embarked on normative standard setting and elaboration of specific instruments addressing women's rights in specific areas of discrimination as expressed in national laws and constitutions in numerous UN Member States.<sup>48</sup> After this initial focus on instruments addressing specific areas of discrimination against women, the CSW began developing a comprehensive international instrument on discrimination against women in all areas of life, to articulate a growing understanding that discrimination against women stems from imposed structural and systematic legal and factual oppression of women under which different manifestations of violence against women are legalized and tolerated, all sharing common root causes and interconnections.<sup>49</sup> In 1965, the CSW drafted a universal soft law instrument on discrimination against women, the Declaration on the Elimination of Discrimination against Women (the DEDAW),<sup>50</sup> which the General Assembly adopted in 1967.<sup>51</sup> The DEDAW called for the legal incorporation of the principle of equality of rights in national constitutions or other laws<sup>52</sup> and its implementation at the national level.<sup>53</sup> It included the obligations of states to abolish existing laws, customs, regulations, and practices that discriminate against women and take all appropriate measures to abolish prejudice and other practices that are based on the idea of the inferiority of women.<sup>54</sup> For the first time, it defined discrimination against women as the "denial or limitation of their

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<sup>46</sup> See History on Status of Women, *supra* note 42.

<sup>47</sup> In 1948, the Comm. on Status of Women adopted the Resolution on the Political Rights of Women, Resolution on Educational Opportunities for Women, the Resolution on Economic Rights of Women, the Resolution on Equal Pay, and the Resolution on Property Rights of Married Women. See Report on the Second Session, *supra* note 34, paras. 14, 20, 25.

<sup>48</sup> See History on Status of Women, *supra* note 42; see also Report on the Second Session, *supra* note 34.

<sup>49</sup> See History on Status of Women, *supra* note 42.

<sup>50</sup> See Comm. on the Status of Women, *Report on the Twentieth Session*, U.N. Econ. and Soc. Council, 42nd Sess., Supp. No.7, U.N. Doc. E/4316 (1967); see also History on Status of Women, *supra* note 42.

<sup>51</sup> See G.A. Res 2263 (XXII), U.N. Doc A/RES/22/2263 (Nov. 7, 1967); History on Status of Women, *supra* note 42.

<sup>52</sup> G.A. Res 2263, *supra* note 51, at art. 2(a) ("The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law.").

<sup>53</sup> *Id.* at art. 11(1) ("The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights").

<sup>54</sup> *Id.* at arts. 2, 3.

equality and rights with men” and “an offense against human dignity”.<sup>55</sup> The CSW took on the role of monitoring its implementation and invited UN Member States and UN organizations to submit reports on their progress.<sup>56</sup> However, it soon became evident that as a soft law instrument, the DEDAW lacked accountability measures and a strong monitoring mechanism, leading to poor implementation.<sup>57</sup> In 1974, the CSW moved to upgrade the DEDAW into a legally binding convention on the elimination of all forms of discrimination against women.<sup>58</sup> From 1974 to 1976, the CSW drafted a comprehensive convention that incorporated provisions from the DEDAW while expanding and refining them with a stronger focus on women’s rights language and perspectives.<sup>59</sup> The CSW initially proposed establishing a subsidiary body to monitor its implementation,<sup>60</sup> but this did not materialize because during deliberations on the draft convention (that continued from 1977 to 1979, through a working group of the Third Committee of the General Assembly),<sup>61</sup> states opted instead to establish an independent expert treaty body for its monitoring similar to already established treaty bodies under other human rights treaties.<sup>62</sup> In 1979, the General Assembly adopted the UN Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention), the first legally binding instrument on women’s rights and their empowerment.<sup>63</sup> This treaty established the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) to monitor and guide its implementation.<sup>64</sup> The establishment of the CEDAW Committee transformed the CEDAW Convention into a “living” human rights instrument and part of an

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<sup>55</sup> *Id.* at art. 1 (It defined discrimination against women as “denying or limiting women’s equality of rights with men” that is “fundamentally unjust and constitutes an offence against human dignity”).

<sup>56</sup> See Comm’n on the Status of Women, *Report on the Twenty-Fourth Session*, U.N. Econ. and Soc. Council, 52nd Sess., Supp. No. 6, U.N. Doc. E/5109 (1972).

<sup>57</sup> See Comm’n on the Status of Women, *Report on the Twenty-Second Session*, U.N. ESCOR, 45th Sess., U.N. Doc. E/4619 (1969).

<sup>58</sup> See History on Status of Women, *supra* note 42.

<sup>59</sup> See *id.*

<sup>60</sup> See Comm. on the Status of Women, *Report on the Twenty-Sixth and Resumed Twenty-Sixth Sessions*, U.N. Econ. and Soc. Council, 62nd Sess., Supp. No. 3, UN Doc. E/5909 (1976).

<sup>61</sup> See PATRICIA SCHULZ ET AL., *THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND ITS OPTIONAL PROTOCOL, A COMMENTARY* 10 (Patricia Schulz et al. eds., 2nd. ed. 2012).

<sup>62</sup> Jane Connors, *Gender in the UN: CEDAW and the Commission on the Status of Women*, in *INTERNATIONAL HUMAN RIGHTS INSTITUTIONS, TRIBUNALS, AND COURTS* 169, 182. (Gerd Oberleitner ed., 2018).

<sup>63</sup> *Id.*

<sup>64</sup> General Assembly resolution 34/180 of 18 December 1979 by votes of 130 to none, with 10 abstentions. It entered into force on 3 September 1981, after 20 ratifications by Article 27 (1). CEDAW Convention, *supra* note 6, art. 17; History on Status of Women, *supra* note 42.

international framework on human rights instruments equipped with their respective treaty bodies.<sup>65</sup> It entered into force on September 3, 1989 in accordance with Article 27(1).<sup>66</sup>

The adoption of the CEDAW Convention marked the formal international recognition of women's rights as human rights and their integration into the international human rights framework in a groundbreaking way.<sup>67</sup> The CEDAW Convention strengthened this framework with a women's rights perspective by providing, for the first time, a comprehensive definition of discrimination against women—going beyond the gender-neutral prohibition of sex-based discrimination found in other human rights treaties.<sup>68</sup> It defines “*discrimination against women*” 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.*”<sup>69</sup>

The CEDAW Convention is structured around the obligation of the State's Parties to pursue a policy of elimination of all forms of discrimination against women and a policy of practical realization of the principle of equality of men and women which includes the full development and advancement of women.<sup>70</sup> Accordingly, State Parties have obligations to eliminate, prohibit, modify, or abolish existing laws, penal laws, regulations, customs, and practices that constitute discrimination against women, coupled with positive obligations to adopt different and specific measures for women's empowerment and the acceleration of their advancement in different areas of life.<sup>71</sup> The CEDAW includes the responsibility of states to take all appropriate measures to eliminate “*discrimination by any person,*”<sup>72</sup> which is at the core of the *due diligence principle*<sup>73</sup> and provides the basis for the interpretation that it is the State's responsibility to eliminate human rights violations perpetrated by private

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<sup>65</sup> Šimonović, *supra* note 40, at 595.

<sup>66</sup> On 3 September 1981, 30 days after the twentieth member State had ratified it, the CEDAW Convention entered into force. CEDAW Convention, *supra* note 6; History on Status of Women, *supra* note 42.

<sup>67</sup> History on Status of Women, *supra* note 42.

<sup>68</sup> Hanna Beate Schöpp-Schilling, *The Nature and Scope of the Convention*, in THE CIRCLE OF EMPOWERMENT: TWENTY-FIVE YEARS OF THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 10, 17. (2007).

<sup>69</sup> CEDAW Convention, *supra* note 6, art. 1.

<sup>70</sup> *Id.* at art. 2,3.

<sup>71</sup> *Id.* at art. 2-5.

<sup>72</sup> *Id.* at art. 2(e).

<sup>73</sup> For an explanation of the due diligence principle, see para 24 of the CEDAW General Recommendation No. 35, *supra* note 7. U.N. Hum. Rts. Off. of the High Comm'r, Women's Rights Are Human Rights, at 26-27, U.N. Doc HR/PUB/14/2 (2014) [hereinafter Women's Rights Are Human Rights].

persons against women.<sup>74</sup> Application of the due diligence principle on violence against women was later elaborated in the CEDAW Committee General recommendations and jurisprudence<sup>75</sup> and in the SRVAW thematic report.<sup>76</sup> The CEDAW Convention specifically addresses gender stereotypes<sup>77</sup> and specific areas of women's discrimination such as education, employment, trafficking and exploitation of prostitution, political participation, citizenship, health care and family.<sup>78</sup> However, this comprehensive framework lacks a separate explicit article on violence against women.<sup>79</sup>

*C. The CEDAW Committee General Recommendation No. 12 on Violence Against Women of 1989*

The CEDAW Committee addressed this omission of the inclusion of violence against women in the Convention text<sup>80</sup> relatively soon after it started its work and developed its procedures and working methods. The CEDAW Committee was established in 1981 and held its first session in Vienna in 1982, lasting only one week.<sup>81</sup> Over time, the number of ratifying states increased to 100 in 1990<sup>82</sup> and eventually to the current 189 State Parties.<sup>83</sup> In line with the growing number of ratifications, the Committee expanded its meeting time to three-week sessions held three times per year, with additional meetings for specific working groups.<sup>84</sup> At its inception, the CEDAW Committee had 18 experts, and expanded to the current 23 experts after the required 35 ratifications.<sup>85</sup> All State Parties to the Convention accept the obligation to periodically report to the CEDAW

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<sup>74</sup> *Id.*

<sup>75</sup> General Recommendation No. 35, *supra* note 7, para. 24(b).

<sup>76</sup> Yakin Ertürk (Special Rapporteur on Violence Against Women, its Causes and Consequences), *The Due Diligence Standard as A Tool For The Elimination Of Violence Against Women*, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006).

<sup>77</sup> CEDAW Convention, *supra* note 6, art. 5.

<sup>78</sup> *Id.* at arts. 6-16.

<sup>79</sup> Helen Rubenstein, *Time for a Change: The Need for a Binding International Treaty on Violence Against Women*, GLOB. RTS. FOR WOMEN (Feb. 2020), [https://globalrightsforwomen.org/wp-content/uploads/2020/02/Time\\_for\\_a\\_Change-2.pdf](https://globalrightsforwomen.org/wp-content/uploads/2020/02/Time_for_a_Change-2.pdf).

<sup>80</sup> ROSA CELORIO, *WOMEN AND INTERNATIONAL HUMAN RIGHTS IN MODERN TIMES: A CONTEMPORARY CASEBOOK* 38 (2022).

<sup>81</sup> *Dates and Locations of the Thirty-Nine Sessions of the Committee, Held Between 1982 and 2007*, Div. for the Advancement of Women, U.N. Dep't of Econ. and Soc. Aff.'s, [https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/dates\\_locations.html](https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/dates_locations.html) (last visited Jan. 16, 2025).

<sup>82</sup> Rep. of the Comm. on the Elimination of Discrimination Against Women, Ninth Session, para. 1, U.N. Doc. A/45/38 (1990) [hereinafter CEDAW Ninth Session].

<sup>83</sup> U.N. Treaty Collection, *Convention on the Elimination of All Forms of Discrimination against Women*, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&clang=_en) (last visited Jan. 16, 2025).

<sup>84</sup> G.A. Res. 62/218, para. 14 (Dec. 28, 2007).

<sup>85</sup> CEDAW Convention, *supra* note 6, art. 17(1).

Committee on its implementation.<sup>86</sup> Parties must prepare an initial report within a year after its entry into force and prepare a periodic report at least every four years, in addition to additional reports when requested by the Committee.<sup>87</sup> This establishes a periodic interaction between the CEDAW Committee and State Parties as well as other relevant stakeholders, particularly NGOs, national human rights entities, and relevant UN entities that participate in the reporting process.<sup>88</sup> The CEDAW Committee gradually developed its tools and increased the number and substance of its outputs. Beginning in 1982, the CEDAW Committee adopted session reports,<sup>89</sup> and in 1986 general recommendations using Article 21 of the Convention, which allows the Committee to “*make suggestions and general recommendations based on the examination of reports and information received from the State Parties.*”<sup>90</sup> The general recommendations are soft law instruments directed to all its State Parties; although they are not legally binding, they present an authoritative interpretation of legally binding provisions of the CEDAW Convention by the CEDAW Committee which expects State Parties to implement them in good faith.<sup>91</sup> To date, the CEDAW Committee has adopted 40 general recommendations.<sup>92</sup> Its early general recommendations were technical and related to reporting on the implementation of the Convention.<sup>93</sup> Around 1990, the CEDAW Committee started<sup>94</sup> to adopt substantive general recommendations that interpreted certain themes or provisions of the Convention itself, providing an authoritative interpretation relevant to their implementation by all its State Parties.<sup>95</sup>

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<sup>86</sup> *Id.* at art. 18.

<sup>87</sup> *Id.* at art. 18.

<sup>88</sup> *Id.* at arts. 18-22.

<sup>89</sup> In 1983 and during the first review of reports submitted pursuant to Article 18, the CEDAW Committee at the next session adopted minutes containing basic information about the examination of reports. Rep. of Comm. on the Elimination of Discrimination Against Women, *Official Records: Thirty-Eight Sess.*, U.N. Doc A/38/45 (Mar. 25, 1983). At its second session in 1983, the Committee considered the initial report of the Democratic Republic of Germany. See Comm. on the Elimination of Discrimination Against Women, *Summary Record of the Seventeenth Meeting*, U.N. Doc No. CEDAW/C/SR.17 at 2 (Aug. 9, 1983). It adopted the report at its third session in 1984.

<sup>90</sup> CEDAW Convention, *supra* note 6, art. 21(1).

<sup>91</sup> Schöpp-Schilling, *supra* note 68, at 25.

<sup>92</sup> U.N. Office of the High Comm’r of Hum. Rts., General Recommendations, Committee on the Elimination of Discrimination Against Women, <https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations> (last visited Feb. 17, 2025).

<sup>93</sup> Dubravka Šimonović, *Convention on the Elimination of All Forms of Discrimination against Women*, U.N. AUDIOVISUAL LIBR. OF INT’L L. 1, 3 (2009).

<sup>94</sup> CEDAW Convention, *supra* note 6, art. 18.

<sup>95</sup> Only in 1992, the CEDAW Committee introduced the practice of adopting Concluding Observations with specific recommendations for the concerned State Party under its examination. In 2008, the CEDAW Committee included an additional follow-up mechanism for the implementation of Concluding Observations. At its forty-fourth session, the Committee

In 1989, the CEDAW Committee addressed the omission of violence against women in the text of the Convention and adopted its General Recommendation No. 12 on Violence Against Women, which calls Convention State Parties to report on laws and other measures relating to the protection of women from violence, with accompanying data.<sup>96</sup> The CEDAW Committee explained that Articles 2, 5, 11, 12, and 16 of the Convention include the obligation of State Parties to protect women from violence and to report to the CEDAW Committee on such efforts.<sup>97</sup> In its first General Recommendation on violence against women, the CEDAW Committee did not fully elaborate how the CEDAW Convention encompasses violence against women, but it made an important step in clarifying that violence against women falls under the scope of the Convention and is included in a State's reporting responsibilities.<sup>98</sup>

*D. The Commission on Status of Women Resolution on Violence Against Women of March 1991*

Historically, violence against women was treated as a private matter outside of the scope of international human rights law and was only sporadically and implicitly addressed by the CSW.<sup>99</sup> This changed during preparations for the 1985 Third World Women's Conference in Nairobi, which produced the Nairobi Forward-Looking Strategies for the Advancement of Women, explicitly addressing violence against women: "Violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and the other objectives of the Decade and should be given special attention."<sup>100</sup> This recognition of violence against women as a major obstacle to the achievement of women's rights, coupled with the CEDAW Committee's adoption of its General Recommendation No. 12 on violence against women, led the CSW to examine the relatively thin international normative framework on violence against women.<sup>101</sup> With that aim, the CSW in 1991 adopted the

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appointed a rapporteur on follow-up to concluding observations and an alternate: Dubravka Simonovic and Barbara Bailey, respectively. The follow-up rapporteur should report to the Committee at each session. Comm'n on the Status of Women, *Results of the Forty-fourth and Forty-fifth Sessions of the Committee on the Elimination of Discrimination against Women*, para. 14, U.N. Doc. E/CN.6/2010/CRP.2 (Feb. 12, 2010).

<sup>96</sup> Comm. on the Elimination of Discrimination against Women, *Rep. on the Work of Its Eighth Session*, at 75, U.N. Doc. A/44/38 (1989).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> History on Status of Women, *supra* note 42.

<sup>100</sup> *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, para. 258, U.N. Doc A/CONF.116/28/Rev.1 (July 15-26, 1985).

<sup>101</sup> History on Status of Women, *supra* note 42.

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*Resolution on Violence Against Women*,<sup>102</sup> which recommended: “that a framework for an international instrument be developed in consultation with the Committee for the Elimination of Discrimination against Women that would address explicitly the issue of violence against women.”<sup>103</sup> This wording suggests the perception that an additional explicit instrument on violence against women was needed, while at the same time not specifying the legal nature of this instrument. The Resolution’s starting point was: “*that the Convention on the Elimination of All Forms of Discrimination against Women does not explicitly address violence against women,*” and recognizing that the CEDAW Committee adopted General Recommendation No. 12 on violence against women.<sup>104</sup> The Resolution made clear that the development of an instrument on violence against women should include consultations with the CEDAW Committee, acknowledging that violence against women also falls under the CEDAW Convention scope.<sup>105</sup> However, this was not seen as an obstacle to the development of a specific instrument on violence against women.

In line with the CSW resolution, the Division for the Advancement of Women, which at that time serviced both the CSW and the CEDAW Committee, organized an expert meeting on violence against women in Vienna in 1991.<sup>106</sup> At that meeting, invited experts considered the type of instrument on violence against women which could best address the issue of violence against women, and adopted decisions that shaped the future elaboration of an international framework on violence against women.<sup>107</sup> They examined several possible alternatives to strengthen the International framework on violence against women, namely:

development and adoption by the General Assembly of a Declaration on Violence Against Women; enhancement of the reporting procedures by the State-Parties to the Convention on the Elimination of All Forms of Discrimination Against Women as well as to other Conventions on Human Rights; assignment of a Special Thematic Rapporteur on Violence Against Women under the Commission on Human Rights who will be given the necessary authority and rights; improvement of the communications mechanism of the Commission on the Status of Women; development and adoption of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women which should be ratified by

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<sup>102</sup> Comm’n on the Status of Women, *Rep. on the Work of Its Thirty-fifth Session*, at 3, UN Doc. E/CN.6/1991/14 (1991).

<sup>103</sup> *Id.* at 4.

<sup>104</sup> *Id.* at 4.

<sup>105</sup> *Id.* at 5.

<sup>106</sup> *Id.* at 9.

<sup>107</sup> U.N. Econ. Comm. for Africa, *Mission Report on the Expert Group Meeting on Violence Against Women*, U.N. Doc. ECA/ATRCW/3.1(v)/91, paras. 1-2 (Nov. 11-15, 1991).

the States-Parties; development and adoption of a special Convention on Violence Against Women.<sup>108</sup>

In addition to those discussions on the substantive protocol on violence against women, experts discussed establishing a complaint mechanism that would empower the CEDAW Committee with competencies to consider complaints related to all rights in the Convention.<sup>109</sup> The expert group recommended that: “for the time being it might be useful to develop and adopt a Declaration on Violence Against Women which in perspective may serve as a basis for an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women or a special Convention.”<sup>110</sup> From today’s perspective, we can observe that many of these proposals were later realized: the CEDAW Committee adopted a new general recommendation on violence against women while the UN General Assembly adopted the Declaration on the Elimination of Violence against Women and the UN Commission on Human Rights established the mandate of the Special Rapporteur on violence against women.<sup>111</sup> The U.N. also adopted the Optional Protocol to the CEDAW Convention on the complaint procedure.<sup>112</sup> The only remaining question regarding upgrading the Declaration on Violence Against Women to an optional protocol on violence against women under the CEDAW Convention or into a special instrument on violence against women was shelved until recently when this question has regained relevance.

*E. The CEDAW General Recommendation No. 19 on Violence Against Women of 1992*

The CEDAW Committee, for its part, indirectly addressed the dilemma of selecting between the development of the Optional Protocol on Violence Against Women to the CEDAW Convention and the development of a separate convention on violence against women by invigorating the General Recommendation No. 12 on Violence Against Women with its landmark General Recommendation No. 19 on Violence Against Women in 1992.<sup>113</sup> Through General Recommendation No. 19, the CEDAW Committee improved the reporting procedure on violence against women—as was envisaged in the recommendations of the Expert group meeting in Vienna—and provided a substantive, authoritative, interpretation of how the Convention’s definition and scope implicitly cover violence against women.<sup>114</sup> It explained that the definition

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<sup>108</sup> *Id.* para. 10.

<sup>109</sup> Jane Connors, *Optional Protocol*, in *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, A COMMENTARY* 610 (Marsha A. Freeman et al. eds., 2012).

<sup>110</sup> U.N. Econ. Comm. For Africa, *supra* note 107, para. 10.

<sup>111</sup> Connors, *supra* note 109, at 615, 653, 663.

<sup>112</sup> *Id.* at 610-11.

<sup>113</sup> *Id.* at 664.

<sup>114</sup> General Recommendation No. 19, *supra* note 7, para. 6.

of discrimination against women in Article 1 of the Convention “includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.”<sup>115</sup> This General recommendation establishes as a cornerstone principle that gender-based violence is a form of discrimination against women.<sup>116</sup> This definition not only interprets violence against women as a form of discrimination against women, but it also, for the first time, includes a definition of gender-based violence against women.<sup>117</sup> The Committee further explained that gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.<sup>118</sup> These provisions include “the right to life; the right not to be subject to torture or cruel, inhuman, or degrading treatment or punishment; the right to liberty and security of person; etc.”<sup>119</sup> However, this definition does not specify that acts of violence against women result in physical, psychological, and sexual harm.<sup>120</sup> By this General Recommendation, the CEDAW Committee successfully provided an interpretation of violence against women as a form of discrimination against women falling under the CEDAW Convention’s scope, which applies to all CEDAW State Parties.<sup>121</sup> CEDAW Convention State Parties accept this interpretation and the majority of them regularly include information on violence against women in their reports on the implementation of the CEDAW Convention.<sup>122</sup> This General Recommendation No. 19 on the inclusion of violence against women reduced the likelihood of a separate or stand-alone convention on violence against women, since articulating violence against women as a form of discrimination under the CEDAW Convention provides a solid basis for the expansion of this avenue through the adoption of the Optional Protocol on Violence Against Women.<sup>123</sup>

*F. Declaration on the Elimination of Violence Against Women (DEVAW) of 1993*

The resulting document of the Third World Human Rights Conference held in Vienna in 1993, the Vienna Declaration and Program of Action, included strong language on violence against women as a human rights violation, called for the adoption of the Declaration on Elimination of Violence Against Women, and welcomed the decision of the Commission on Human Rights to consider the

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<sup>115</sup> *Id.*

<sup>116</sup> CELORIO, *supra* note 80, at 38-39.

<sup>117</sup> Chinkin, *supra* note 38, at 452.

<sup>118</sup> General Recommendation No. 19, *supra* note 7, para. 6.

<sup>119</sup> *Id.* para. 7.

<sup>120</sup> *Id.*

<sup>121</sup> *See* General Recommendation No. 19, *supra* note 7, paras. 1, 4, 5, 7.

<sup>122</sup> General Recommendation No. 35, *supra* note 7, paras. 2, 5.

<sup>123</sup> *Id.* at paras. 3, 27, 28.

appointment of a special rapporteur on violence against women.<sup>124</sup> In 1993, the Commission on the Status of Women approved a draft Declaration on the Elimination of Violence against Women (DEVAW), prepared by an expert group meeting on violence against women held in Vienna in 1991.<sup>125</sup> This draft was introduced at the CSW in a report of the Secretary-General (E/CN.6/1993/12)<sup>126</sup> and later adopted without a vote by the General Assembly on December 20, 1993.<sup>127</sup> The DEVAW became the first universal instrument to recognize violence against women as a human rights violation, stating: “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms.”<sup>128</sup> The DEVAW also provides the first universal definition of violence against women as “gender-based violence” encompassing physical, sexual, or psychological harm: “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>129</sup> The DEVAW Preamble addresses the origin of violence against women as rooted in “historically unequal power relations between men and women” which results in “domination over and discrimination against women by men... [which] ...establishes violence against women as one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”<sup>130</sup> As a human rights instrument, it enumerates the rights that could be violated when violence is committed against women: the right to life; the right to equality; the right to liberty and security of person; the right to equal protection under the law; the right to be free from all forms of discrimination; the right to the highest standard attainable of physical and mental health; the right to just and favorable conditions of work; and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>131</sup> It also includes a due diligence principle by calling states to: “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence

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<sup>124</sup> World Conf. on Hum. Rts., *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23, paras. 37, 38, 40, (June 25, 1993).

<sup>125</sup> “The experts agreed that for the time-being it might be useful to develop and adopt a Declaration on Violence Against Women which in perspective may serve as a basis for an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women or a special Convention. The draft of such Declaration has been developed and adopted.” U.N. Econ. Comm. For Africa, *supra* note 107, para. 10.

<sup>126</sup> U.N. Secretary-General, *Monitoring the Implementation of the Nairobi Forward-looking Strategies for the Advancement of Women*, U.N. Doc. E/CN.6/1993/12, para. 1 (Oct. 7, 1992).

<sup>127</sup> DEVAW, *supra* note 10.

<sup>128</sup> *Id.* at pmb.

<sup>129</sup> *Id.* at art. 1.

<sup>130</sup> *Id.* at pmb.

<sup>131</sup> *Id.* at pmb., art. 3.

against women, whether those acts are perpetrated by the State or by private persons.”<sup>132</sup> The Declaration also recognizes how specific groups of women can be more vulnerable to gender-based violence, an important precursor for the incorporation of intersectionality into the international human rights framework.<sup>133</sup>

The DEVAW did not establish an expert or intergovernmental monitoring mechanism.<sup>134</sup> Its implementation was intended to be monitored by other treaty bodies.<sup>135</sup> It calls for States to include information on its implementation in their reports submitted under relevant human rights instruments.<sup>136</sup> However, this model relies on the willingness of states to submit such reports to other treaty bodies and requires other treaty bodies to actively request and accept the submission of such information under their respective reporting processes.<sup>137</sup> This never fully materialized. However, the CEDAW Committee and other treaty bodies now request information on violence against women under the scope of the respective instruments and general recommendations without referring to the DEVAW.<sup>138</sup>

The DEVAW also calls for States to ratify the CEDAW Convention if they have not yet done so, and addresses its linkages with the CEDAW Convention.<sup>139</sup> It proclaims that those two instruments mutually reinforce and complement each other such that: “effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, outlined in the present resolution, will strengthen and complement that process.”<sup>140</sup> This proclamation positions the DEVAW as a complementary instrument to the CEDAW Convention aimed at strengthening and complementing its implementation through its specific focus on violence against women.<sup>141</sup> However, in reality, there is a lack of synergies between the two instruments based on their differences concerning their universality, scope, and their different legal force. The DEVAW’s disadvantage is its non-legally binding force, while its advantage is being a universal instrument applicable to all UN member States,

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<sup>132</sup> *Id.* at art. 4(c).

<sup>133</sup> CELORIO, *supra* note 80, at 44.

<sup>134</sup> Rubenstein, *supra* note 79, at 21.

<sup>135</sup> DEVAW, *supra* note 10, art. 4(m).

<sup>136</sup> *Id.*

<sup>137</sup> Andrew Byrnes & Marsha Freeman, *The Impact of the CEDAW Convention: Paths to Equality*, WORLD DEV. REP. 2012, at 13 (2011).

<sup>138</sup> U.N. Comm. on the Elimination of Discrimination Against Women, *Compilation of Guidelines on the Form and Content of Reports to be Submitted by State Parties to the Int’l Human Rights Treaties*, U.N. Doc HRI/GEN/2/Rev.1/Add.2, at 2-3 (May 5, 2003).

<sup>139</sup> DEVAW, *supra* note 10, art. 4(a).

<sup>140</sup> *Id.* at pmb1.

<sup>141</sup> *Id.*

not just State Parties to the CEDAW Convention, which was more important when it was adopted than now.<sup>142</sup> This gradually changed with the increased ratification of the CEDAW Convention to 100 State Parties in 1990<sup>143</sup> and now 189 State Parties have ratified it.<sup>144</sup> It is close to, but still not yet universal.<sup>145</sup> An additional, important obstacle is the lack of its full acceptance or applicability in specific areas due to numerous reservations entered by its State Parties, which block the application of its specific provisions at the national level.<sup>146</sup> Some entered reservations are of a general nature, which is contrary to the purpose and objective of the CEDAW Convention and are therefore impermissible and as such are challenged by the CEDAW Committee and other States Parties.<sup>147</sup> Additionally, there is an ongoing process of reservation withdrawal facilitated by the fact that the CEDAW Committee regularly recommends to concerned States the withdrawal of reservations. The DEVAW as a not legally binding instrument lacks monitoring of its implementation by an expert or intergovernmental body. The DEVAW encourages UN Member states to develop “appropriate guidelines to assist in the implementation of the principles outlined in the present Declaration,”<sup>148</sup> which could potentially enable an intergovernmental monitoring at the CSW session. However, those guidelines were never developed, leaving an unfinished task that contributes to the DEVAW’s weak implementation. To address this gap, the fourth Special Rapporteur on violence against women, its causes, and consequences (SRVAW), in her 2016 report, called for renewed attention to the Declaration on the Elimination of Discrimination against Women, and in particular, the need for States to: “consider the possibility of developing guidelines to assist in the implementation of the principles set forth in it.”<sup>149</sup> This call remains unaddressed, and could be addressed in the future, superseded by the adoption of the Optional Protocol on Violence against Women to the CEDAW Convention, or both.

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<sup>142</sup> Chinkin, *supra* note 38, at 448.

<sup>143</sup> CEDAW Convention had 100 ratifications in 1990. CEDAW Ninth Session, *supra* note 82, at 84-86.

<sup>144</sup> CEDAW Convention, *supra* note 6.

<sup>145</sup> Siobhán Mullally, *CEDAW Reservations and Contested Equality Claims*, in *FRONTIERS OF GENDER EQUALITY* 88 (2023).

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*; see CEDAW Convention, *supra* note 6, art. 28(2). For a more general overview of reservations to all State Parties to CEDAW made until 1996, see Convention on the Elimination of All Forms of Discrimination Against Women, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/C/1997/4, para. 5 (Nov 12, 1996).

<sup>148</sup> DEVAW, *supra* note 10, art. 4(n).

<sup>149</sup> Special Rapporteur on Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/32/42, para. 81 (Apr. 19, 2016).

*G. Establishment of the Special Rapporteur on Violence Against Women of 1994*

The creation of the mandate of the SRVAW was another step towards the recognition of violence against women as a human rights violation.<sup>150</sup> The mandate was created on March 4, 1994 by a Commission on Human Rights resolution “on the question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women.”<sup>151</sup> The SRVAW is tasked with “recommend(ing) measures, ways, and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences.”<sup>152</sup> The founding resolution authorizes the mandate to operate within the framework of the Universal Declaration of Human Rights (UNDHR) and all other international human rights instruments, including the CEDAW and the DEVAW.<sup>153</sup> In 2008, the Human Rights Council, in its resolution 7/24, added the Beijing Platform for Action to the international framework for the operation of the SRVAW.<sup>154</sup> Such a broad international framework that includes UNDHR and all other international human rights instruments allows the SRVAW to use all available and relevant human rights instruments to address violence against women in their country-specific and thematic reports, contributing to a progressive interpretation. The mandate has been regularly renewed by the Commission on Human Rights (CHR) and later its successor, the Human Rights Council (HRC).<sup>155</sup> It was most recently renewed in 2022 by resolution 50/7.<sup>156</sup> The mandate holders are independent experts appointed by the Human Rights Council for a period of three years, and whose appointments are usually renewed for subsequent terms through a process of nominations and appointments by the UN Human Rights Council.<sup>157</sup>

SRVAW’s mandate at its inception was to report to the CHR (now the HRC), but its universal nature led to the expansion of its reporting to other UN organs and bodies.<sup>158</sup> Since 2007, the SRVAW has presented annual reports to the

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<sup>150</sup> Comm’n on Hum. Rts., *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission*, U.N. Doc. E/CN.4/1995/42, at 4 (Nov. 22, 1994).

<sup>151</sup> Comm’n on Hum. Rts. Res. 1994/45, *supra* note 12.

<sup>152</sup> *Id.* at art. 7(b).

<sup>153</sup> Comm’n on Hum. Rts. Res. 1994/45, *supra* note 12, art. 7.

<sup>154</sup> Human Rights Council Res. 7/24, U.N. Doc. A/HRC/RES/7/24, para. 6 (Mar. 28, 2008).

<sup>155</sup> *See* Comm’n on Hum. Rts. Res. 1994/45, *supra* note 12; Human Rights Council Res. 50/7, U.N. Doc. A/HRC/Res/50/7 (July 7, 2022).

<sup>156</sup> Human Rights Council Res. 50/7, *supra* note 155, para. 2.

<sup>157</sup> Hum. Rts. Council, Information on the Selection and Appointment Process for Independent United Nations Experts of the Human Rights Council (last visited Jan. 25, 2025) <https://www.ohchr.org/en/hr-bodies/hrc/sp/basic-information-selection-independent-experts>.

<sup>158</sup> *See infra* notes 163-168.

General Assembly and holds an annual interactive dialogue with the delegates of the Third Committee of the General Assembly.<sup>159</sup> In line with this and the mandates founding resolution, the Secretary-General sends mandate reports to the attention of the CSW to assist it in its work in the area of violence against women.<sup>160</sup> In reality, those reports are rarely utilized by the CSW.<sup>161</sup> Since 2008, the SRVAW has participated at the opening sessions of the CSW through its statements, but without the possibility of an interactive dialogue through which to present its reports.<sup>162</sup> Since 2018 the SRVAW mandate participates, by invitation, at the Commission on Crime Prevention and Criminal Justice (CCPCJ).<sup>163</sup> The fourth SRVAW started this practice and delivered a statement focusing on cooperation between the Commission in matters of criminal justice, prevention of violence against women, and femicide counting and prevention.<sup>164</sup>

Through their reports, all Special Rapporteurs on Violence Against Women have addressed different forms of violence against women as human rights violations and “have provided a fuller account of the causes and consequences of the multiple forms and sites of violence.”<sup>165</sup> Unlike the CEDAW Committee’s constraints and limitations to explore issues of violence against women in depth<sup>166</sup> based on the structure of State Parties reporting on all other forms of discrimination, the SRVAW mandate solely focuses on violence against women in its thematic, country mission

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<sup>159</sup> Human Rights Council Res. 7/24, *supra* note 154, para. 12. H.R.C requested that the mandate holder present reports to the General Assembly and oral reports to the Commission on the Status of Women.

<sup>160</sup> Human Rights Council Res. 2003/45, U.N. Doc. E/CN.4/RES/2003/45, para. 34 (Apr. 23, 2003).

<sup>161</sup> Comm’n on Hum. Rts. Res. 1994/45, *supra* note 12, para. 11; Human Rights Council Res. 7/24, *supra* note 154, para. 12. Paragraph 11 of the founding resolution 1994/45 and Paragraph 12 of the resolution 7/24 ask the Secretary-General to ensure that the reports of the Special Rapporteur are brought to the attention of the Commission on the Status of Women to assist in the Commission’s work in the area of violence against women.

<sup>162</sup> Comm’n on the Status of Women, Statement by Ms. Rashida Manjoo, Special Rapporteur on Violence against Women, its Causes and Consequences at the Commission on the Status of Women (Mar. 11, 2014), <https://www.ohchr.org/en/statements/2014/03/statement-ms-rashida-manjoo-special-rapporteur-violence-against-women-its-causes?LangID=E&NewsID=14448>.

<sup>163</sup> Human Rights Council Res. 32/19, U.N. Doc. A/HRC/RES/32/19, para. 20 (July 19, 2016). “Requests the Special Rapporteur on violence against women, its causes and consequences to hold consultations or participate in the work, as appropriate, and by the invitation of the Commission on Crime Prevention and Criminal Justice of the United Nations Office on Drugs and Crime in order to accelerate the implementation of the goals of the Special Rapporteur on prevention of and response to violence against women.”

<sup>164</sup> Comm’n on Crime Prevention and Crim. Just., Rep. on the Twenty-Seventh Session, U.N. Doc. E/2018/30 (May 20, 2019).

<sup>165</sup> Chinkin, *supra* note 38, at 473.

<sup>166</sup> *Id.*

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reports and communications procedure.<sup>167</sup> Country visits allow the mandate to gain first-hand information, hold meetings with different stakeholders, and visit shelters for women victims of violence and prisons for women in order to compile country-specific reports.<sup>168</sup> However, due to limited financial and other constraints, they can only visit two countries per year, which limits the mandate's universal reach and means that less than half of the UN Member States have been visited by the mandate since its establishment.<sup>169</sup>

The mandate founding resolution of 1994 and follow-up resolutions include "periodic consultations with CEDAW and all other treaty bodies,"<sup>170</sup> resulting in regular meetings and exchanges of good practice between mandate holders and the CEDAW Committee through which both expert mechanisms influence the other's work on preventing and combating violence against women.<sup>171</sup> However, such cooperation was limited to exchanges only, until the SRVAW was invited by the CEDAW Committee in 2016 to participate in its update of General Recommendation No. 19 on violence against women.<sup>172</sup>

Up to now, the mandate's thematic interpretative work has addressed a range of topics related to violence against women and has expanded understanding of various aspects of the international framework of human rights and its application to violence against women.<sup>173</sup> By this, it has contributed to the developments of soft law standards in this area.<sup>174</sup> From the beginning, the mandate was primarily focused on standard-setting work and the development of implementation strategies.<sup>175</sup>

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<sup>167</sup> *Id.*

<sup>168</sup> Special Procedures of the Hum. Rts. Council, Country and Other Visits <https://www.ohchr.org/en/special-procedures-human-rights-council/country-and-other-visits> (last visited Jan. 17, 2025); Special Rapporteur on Violence Against Women and Girls, Country Visits <https://www.ohchr.org/en/special-procedures/sr-violence-against-women/country-visits> (last visited Jan. 17, 2025).

<sup>169</sup> *See id.*

<sup>170</sup> Comm'n on Hum. Rts. Res. 1994/45, *supra* note 12, para. 10.

<sup>171</sup> For example, on 5 November 2018, the Special Rapporteur briefed the CEDAW Committee at its seventy-first session, held in Geneva. During the meeting, a framework for cooperation on combating violence against women was agreed between the mandate of the Special Rapporteur and the Committee. Dubravka Šimonović (Former Special Rapporteur on Violence Against Women, its Causes and Consequences), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/41/42, para. 7 (June 20, 2019).

<sup>172</sup> On 30 October 2016, the Special Rapporteur participated in a meeting, held in Geneva, of the Committee's working group on updating general recommendation No. 19 and on 2 and 3 February 2017, she participated in a follow-up expert group meeting of the working group, held in London. Special Rapporteur on Violence Against Women, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/35/30, para. 8 (June 13, 2017).

<sup>173</sup> *Id.* para. 63.

<sup>174</sup> Šimonović, *supra* note 171, para. 63.

<sup>175</sup> *Id.*

The mandate has continuously evolved over the years through the work of the respective mandate holders. The first Special Rapporteur, Ms. Radhika Coomaraswamy,<sup>176</sup> noted in her preliminary report that her mandate: “consists of setting out the elements of the problem before her, the international legal standards and a general survey of incidents and issues as they relate to the many problem areas.”<sup>177</sup> During her tenure, the issue of violence against women was new on the human rights agenda, and she noted that violence against women is implicitly included in the CEDAW Conventions definition of discrimination against women.<sup>178</sup> Her focus was primarily on encouraging States to pass appropriate legislation and to establish mechanisms to combat violence against women.<sup>179</sup> For that purpose she developed a framework for model legislation addressing domestic violence.<sup>180</sup> The second SRVAW, Yakin Ertürk,<sup>181</sup> emphasized implementation and accountability as priority areas of the mandate, noted that “prevention” should be part of the due diligence obligation of States, and elaborated the report on the Due Diligence Standard.<sup>182</sup> The third SRVAW, Rashida Manjoo,<sup>183</sup> produced a report on Reparations for women who have been subjected to violence.<sup>184</sup> The fourth SRVAW Dubravka Šimonović<sup>185</sup> developed

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<sup>176</sup> Ms. Radhika Coomaraswamy served on the mandate from 1994 to 2003. *Id.*

<sup>177</sup> Radhika Coomaraswamy, para 8, *Preliminary Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. E/CN.4/1995/42 (Nov. 22, 1994).

<sup>178</sup> *Id.* para. 85

<sup>179</sup> Women’s Rights are Human Rights, *supra* note 73, at 6-7.

<sup>180</sup> Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences – A Framework for Model Legislation on Domestic Violence*, U.N. Doc. E/CN.4/1996/53/Add.2 (Feb. 6, 1996).

<sup>181</sup> Yakin Ertürk served as the mandate holder from 2003 to 2009. During her tenure, she produced 17 country reports and 7 thematic reports. During that period, the scope of the mandate was expanded, with the Council requesting in its resolution 7/24 that the mandate holder present reports to the General Assembly and oral reports to the Commission on the Status of Women. *See* Šimonović, *supra* note 171, para. 64.

<sup>182</sup> Yakin Ertürk (Former Special Rapporteur on Violence Against Women), *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, U.N. Doc. E/CN.4/2006/61, para. 19 (Jan. 20, 2006).

<sup>183</sup> Rashida Manjoo served from 2009 to 2015, during which time she produced 19 country visit reports and 11 thematic reports, 6 of which were presented to the Human Rights Council and 5 were submitted to the General Assembly and oral reports to the CSW. *See* Šimonović, *supra* note 171, para. 65.

<sup>184</sup> Rashida Manjoo (Former Special Rapporteur on Violence Against Women), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/14/22, paras. 12–85 (Apr. 23, 2010).

<sup>185</sup> Dubravka Šimonović served from 2015 to 2021 and she produced 11 country list reports and 11 thematic reports to the Human Right Council and to the General Assembly, and oral reported to the CSW and CCPCJ. *See* U.N. Off. of the High Comm’ner of Hum. Rts., Dubravka Šimonović, former Special Rapporteur (2015-2021), <https://www.ohchr.org/en>

a Report on Rape and the Model Law on Rape.<sup>186</sup> She started the long-term Femicide Watch Initiative,<sup>187</sup> initiated the establishment of the EDVAW Platform,<sup>188</sup> and called for the elaboration of the Optional Protocol on Violence Against Women by the CEDAW Convention.<sup>189</sup> The Fifth SRVAW, Reem Alsalem, addressed violence against indigenous women and girls and issued a joint statement of the current and past two mandate holders calling for the adoption of an optional protocol to the CEDAW on violence against women.<sup>190</sup> All SRVAWs used and commented on the international normative framework on violence against women, flagged implementation gaps in their country-specific reports, and recommended general measures and tools for combating and preventing violence against women.<sup>191</sup> In general, since its establishment, the SRVAW mandate has significantly contributed to the elaboration of soft law standards on preventing and combating violence against women and the evolution of an international framework on violence against women.

*H. The Beijing Platform for Action of 1995, the Outcome Review Document of 2000, and the CSW expanded mandate*

The last UN World Conference on Women held in Beijing in 1995 resulted in the adoption of the Beijing Declaration and Platform for Action (BDPA),<sup>192</sup>

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/special-procedures/sr-violence-against-women/dubravka-simonovic-former-special-rapporteur-2015-2021 (last visited Jan. 28, 2025).

<sup>186</sup> Dubravka Šimonović (Former Special Rapporteur on Violence Against Women), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: A Framework for Legislation on Rape (Model Rape Law)*, U.N. Doc. A/HRC/47/26/Add.1 (June 15, 2021).

<sup>187</sup> Šimonovic, *supra* note 3; *see also* U.N. Off. of the High Comm'ner of Hum. Global Femicide Watch (Dec. 10, 2015), <https://www.ohchr.org/en/special-procedures/sr-violence-against-women/femicide-watch-initiative> (last visited Feb. 20, 2025).

<sup>188</sup> U.N. Off. of the High Comm'ner for Hum. Rts., *EDVAW Platform: Background*, <https://www.ohchr.org/en/edvaw/background> (last visited Feb. 20, 2025).

<sup>189</sup> Dubravka Šimonović (Former Special Rapporteur on Violence Against Women), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on the Adequacy of the International Legal Framework on Violence Against Women*, U.N. Doc. A/72/134, paras. 92, 93 (July 19, 2017) [hereinafter Report on Violence Against Women].

<sup>190</sup> Reem Alsalem et al., Statement by Current and Former Special Rapporteurs on Violence Against Women, Its Causes and Consequences: Now Is the Time for an Optional Protocol to CEDAW on Violence Against Women and Girls, U.N. HUM. RTS. SPECIAL PROC.'S (Dec. 7, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/stm-op-vaw-sr-vaw-7-12-23.pdf>.

<sup>191</sup> *See* U.N. Hum. Rts. Off. of the High Comm'ner, Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences: Annual Thematic Reports <https://www.ohchr.org/en/special-procedures/sr-violence-against-women/annual-thematic-reports> (last visited Feb. 202, 2025).

<sup>192</sup> U.N., Fourth World Conference on Women, 4-15 September 1995, Beijing, China <https://www.un.org/en/conferences/women/beijing1995> (last visited Feb. 20, 2025). The

which included violence against women and girls among its twelve critical areas of concern.<sup>193</sup> The Vienna Declaration and Programme of Action and the BDPA called for the adoption of the Optional Protocol to the CEDAW Convention on the complaint procedure, but not on violence against women.<sup>194</sup> This suggests that the development of the general recommendations on violence against women by the CEDAW Committee, the adoption of the DEVAW in 1993, and the establishment of the SRVAW mandate in 1994, were all perceived as adding up to a sufficient international framework on violence against women at that time.<sup>195</sup> The BDPA also includes references to the SRVAW mandate and calls for its support to expand the soft law international framework on violence against women.<sup>196</sup>

The implementation of BDPA was entrusted to the CSW and the CEDAW Committee under its reporting procedure.<sup>197</sup> The CSW mandate<sup>198</sup> was reshaped

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First World Women's Conference was in Mexico City in 1975. The Second World Women's Conference was held in Copenhagen in 1980. The Third World Women's Conference was held in Nairobi in 1985. U.N. Women, World Conferences on Women, <https://www.un-women.org/en/how-we-work/intergovernmental-support/world-conferences-on-women> (last visited Feb. 20, 2025).

<sup>193</sup> World Conference on Women, *Report of the Fourth World Conference on Women*, para. 29, U.N. Doc. A/CONF.177/20/Rev.1 (Sept. 4–15, 1995).

<sup>194</sup> See World Conference on Human Rights, *Vienna Declaration and Programme of Action*, para. 40, U.N. Doc. A/CONF.157/23 (July 12, 1993) (where the Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights acknowledged the need for new procedures to strengthen the implementation of women's human rights and called on CSW and the CEDAW Committee to "quickly examine the possibility of introducing the right of petition through the preparation of an Optional Protocol to CEDAW"); U.N. Women, *Platform for Action*, para. 230(k) (Sept. 1995), <https://www.un.org/womenwatch/daw/beijing/platform/human.htm> ("Support the process initiated by the Commission on the Status of Women with a view to elaborating a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women that could enter into force as soon as possible on a right of petition procedure, taking into consideration the Secretary-General's report on the optional protocol, including those views related to its feasibility . . . .")

<sup>195</sup> See Rashida Mango & Christina Beninger, *Closing the Protection Gap Through a Legally Binding CEDAW Optional Protocol on Violence against Women and Girls*, 13 INT'L HUM. RTS. L. REV. 313, 316 (2024).

<sup>196</sup> U.N. Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, para. 124(r), (1995), [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA\\_E\\_Final\\_WEB.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf). ("Cooperate with and assist the Special Rapporteur of the Commission on Human Rights on violence against women in the performance of her mandate and furnish all information requested . . . .")

<sup>197</sup> *Id.* para. 322 ("The Committee on the Elimination of Discrimination against Women, in implementing its responsibilities under the Convention on the Elimination of All Forms of Discrimination against Women, should, within its mandate, take into account the Platform for Action when considering the reports submitted by State Parties.").

<sup>198</sup> Econ. and Soc. Council Res. 1946/29, *supra* note 44; Econ. and Soc. Council Res. 1947/48, *supra* note 45; Economic and Social Council Res. 1987/22, Measures to Strengthen the

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to add: “(a) [a]ssist the Council in monitoring, reviewing, and appraising progress achieved and problems encountered in the implementation of the [BDPA] . . . .”<sup>199</sup> The CSW assumed the role of following up on its implementation each year and holding a review of the BDPA every five years.<sup>200</sup> The first substantive review of the BDPA was in 2000 at the level of the UN Special Session, which adopted further actions and initiatives to implement the Beijing Declaration and Platform for Action (BDPA +5 Outcome) that calls States to “[i]ncrease cooperation, policy responses, effective implementation of national legislation and other protective and preventive measures aimed at the elimination of violence against women and girls.”<sup>201</sup> After that, the CSW began to organize somewhat formal and symbolic reviews of the BDPA every 5 years.<sup>202</sup> The fear of possible erosion of the achieved standards on women’s rights that prevented the organization of the Fifth World Conference proposed in 2012 by Ban Ki-moon led to the pragmatic and diplomatic alternative of simply reconfirming the BDPA and the BDPA +5 Outcome document every five years.<sup>203</sup> Under the BDPA framework of 12 critical areas of concern, the CSW addresses violence against women only periodically or sporadically as determined by its multi-year work program<sup>204</sup> and not yearly as is needed.

For example, in 1998 the CSW adopted Agreed Conclusions on violence against women.<sup>205</sup> In 2003 at its 47th session, the CSW did not adopt its draft

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Role and Functions of the Commission on the Status of Women (Mar. 26, 1987); Comm’n on the Status of Women, *Women’s Economic Empowerment in the Changing World of Work* (January 2017), [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/UNW\\_CS61\\_Brochure\\_EN.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/UNW_CS61_Brochure_EN.pdf).

<sup>199</sup> See Economic and Social Council Res. 1996/6, at II(2) (July 22, 1996), <https://ecosoc.un.org/sites/default/files/documents/2023/resolution-1996-6.pdf>. (“(b) Continue to ensure support for mainstreaming a gender perspective in United Nations activities and develop further its catalytic role in this regard in other areas; (c) [i]dentify issues where United Nations system-wide coordination needs to be improved in order to assist the Council in its coordination function; (d) [i]dentify emerging issues, trends and new approaches to issues affecting the situation of women or equality between women and men that require urgent consideration and make substantive recommendations thereon; (e) [m]aintain and enhance public awareness and support for the implementation of the Platform for Action . . . .”).

<sup>200</sup> Econ. and Soc. Council Res. 1946/29, *supra* note 44; Econ. and Soc. Council Res. 1947/48, *supra* note 45.

<sup>201</sup> UN Women, *Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome*, para. 96, (Sept. 15, 1995), [https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA\\_E\\_Final\\_WEB.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf).

<sup>202</sup> *Previous Sessions*, UN WOMEN, <https://www.unwomen.org/en/csw/previous-sessions> (last visited Feb. 19, 2025).

<sup>203</sup> Anne Marie Goetz, *The New Competition in Multilateral Norm-Setting: Transnational Feminists & the Illiberal Backlash*, 149 *Dædalus*, J. Am. Acad. Arts & Sci. 160, 166 (2020).

<sup>204</sup> Economic and Social Council Res. 2020/15 (July 17, 2020).

<sup>205</sup> Comm’n on the Status of Women, *Women and Armed Conflict Agreed Conclusions*, U.N. Doc. E/1998/27 (1998).

agreed conclusions on women's human rights and the elimination of all forms of violence against women and girls.<sup>206</sup> In 2007, the CSW adopted agreed conclusions on "Elimination and prevention of all forms of violence against the girl child."<sup>207</sup> In 2013, the CSW adopted agreed conclusions on the "Elimination and prevention of all forms of violence against women and girls."<sup>208</sup> In general, because the CSW does not have the tools to effectively monitor the BDPA implementation, the realization of this landmark plan of action, including its part in monitoring violence against women, is weak and uneven.<sup>209</sup> This has been recognized by the High-Level Advisory Board on Effective Multilateralism (HLAB) which in its report of 2022<sup>210</sup> calls for: "A recommitment to the Beijing Platform of Action by systematic follow-up and a more ambitious set of implementation markers."<sup>211</sup> At the Summit of the Future held on 22 September 2024 world leaders adopted the Pact for the Future at the UN General Assembly, that calls for the CSW's "revitalization."<sup>212</sup> If done, the CSW revitalization should scale up the implementation of the BDPA as well as the international framework on women's rights, adding more focus on violence against women.

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<sup>206</sup> Press Release, Comm'n on Status of Women, Commission on Status of Women Fails to Adopt Draft Agreed Conclusions on Violence Against Women, As It Closes Forty-Seventh Session (Mar. 25, 2003).

<sup>207</sup> Comm'n on the Status of Women, Agreed Conclusions on the Elimination of All Forms of Discrimination and Violence Against the Girl Child, U.N. Doc E/2007/27 (2007).

<sup>208</sup> Comm'n on the Status of Women, Agreed Conclusions on the Elimination and Prevention of All Forms of Violence Against Women and Girls, U.N. E/2013/27 (2013), [https://www.un.org/womenwatch/daw/csw/csw57/CSW57\\_Agreed\\_Conclusions\\_\(CSW\\_report\\_excerpt\).pdf](https://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_(CSW_report_excerpt).pdf).

<sup>209</sup> Comm'n on the Status of Women, Political Declaration on the Occasion of the Twenty-Fifth Anniversary of the Fourth World Conference on Women (Mar. 9, 2020), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/64/CSW64-Declaration-EN-Fin-WEB.pdf>.

<sup>210</sup> High-Level Advisory Board on Effective Multilateralism, *A Breakthrough for People and Planet Effective and Inclusive Global Governance for Today and the Future*, U.N. UNIV. 15 (July 24, 2023), [https://highleveladvisoryboard.org/breakthrough/pdf/highleveladvisoryboard\\_breakthrough\\_fullreport.pdf](https://highleveladvisoryboard.org/breakthrough/pdf/highleveladvisoryboard_breakthrough_fullreport.pdf).

<sup>211</sup> *Id.*

<sup>212</sup> G.A. Res. A/RES/79/1, Pact for the Future (Aug. 27, 2024), [https://www.un.org/pga/wp-content/uploads/sites/108/2024/09/Pact-for-the-Future\\_Rev3\\_under-silence-until-3-September-13h00.pdf](https://www.un.org/pga/wp-content/uploads/sites/108/2024/09/Pact-for-the-Future_Rev3_under-silence-until-3-September-13h00.pdf) ("Action 46 (d) Explore options, in the context of the forthcoming Thirtieth anniversary of the Fourth World Conference on Women, to revitalize the Commission on the Status of Women to promote the full and effective implementation of the Beijing Declaration and Platform for Action, to achieve gender equality, the empowerment of all women and girls, and promote and protect their human rights and to ensure that the Commission is fit for purpose.").

### III. CONTRIBUTION OF REGIONAL INSTRUMENTS ON VIOLENCE AGAINST WOMEN

#### A. *The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), 1994, and the MESECVI in 2004*

The UN global international framework on violence against women has been complemented and expanded at the regional level by the adoption of legally binding instruments on violence against women, starting in 1994 with the adoption of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), by the Organization of American States.<sup>213</sup> The Convention of Belém do Pará entered into force in March 1995 and has been ratified by 32 States.<sup>214</sup> This Convention is the first legally binding international instrument on violence against women that provides a legally binding definition of violence against women 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 the private sphere.*”<sup>215</sup> Article 1 further specifies that violence against women includes physical, sexual, and psychological violence,<sup>216</sup> mirroring the DEVAW definition while also expanding it by explicitly including the “death” of women.<sup>217</sup> This is a very important addition because it includes gender-related killings or femicide under the definition of violence against women.<sup>218</sup>

Also, this Convention spells out the responsibility of States to “apply the due diligence principle guiding the adoption of measures to prevent, investigate, and impose penalties for violence against women.”<sup>219</sup> It is the first international convention to establish a right for women to be free from violence in both the public and private spheres as an overarching human right of every woman.<sup>220</sup> Article 5 spells out that violence against women “prevents and nullifies the exercise of” civil, political, economic, social, and cultural rights embodied in regional and international human rights instruments that include, among others, the rights listed in Article 4:

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<sup>213</sup> O.A.S., Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, June 9, 1994, 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará].

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* art. 1.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> O.A.S., *Guide to the Application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará Convention)*, at 19–20, OEA/Ser.L/II.6.14 (2014), <http://www.oas.org/en/mesecevi/docs/bdp-guiaaplicacion-web-en.pdf>.

<sup>219</sup> Convention of Belém do Pará, *supra* note 213, at art. 7.

<sup>220</sup> *Id.* art. 3.

the right to have her life respected; the right to have her physical, mental, and moral integrity respected; the right to personal liberty and security; the right not to be subjected to torture; the right to have the inherent dignity of her person respected and her family protected; the right to equal protection before the law and of the law; the right to simple and prompt recourse to a competent court for protection against acts that violate her rights; the right to associate freely; the right of freedom to profess her religion and beliefs within the law; and the right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.<sup>221</sup>

States should

take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that sustain the persistence and tolerance of violence against women; establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; and effective access to restitution, reparations or other just and effective remedies as well as other measures as may be necessary to give effect to this Convention.<sup>222</sup>

Article 7 of the Convention of Belém do Pará establishes the obligation of State Parties to “condemn all forms of violence against women and to pursue, by all appropriate means and without delay, policies to prevent, punish, and eradicate such violence.”<sup>223</sup> They have an obligation to adopt “fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures,” as well as to “establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.”<sup>224</sup> These provisions are justiciable and have been used before the Inter-American Commission and Court, which have developed important jurisprudence on violence against women.<sup>225</sup> When the Convention of Belém do Pará was adopted, it did not establish a separate expert mechanism to monitor its implementation, which was remedied ten years later, in 2004, when the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) was

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<sup>221</sup> *Id.* art. 4–5.

<sup>222</sup> *Id.* art. 7.

<sup>223</sup> *Id.* art. 7.

<sup>224</sup> *Id.* art. 7(f) and (g).

<sup>225</sup> Rosa Celorio, *The Istanbul Convention through the Lens of the Americas and Africa*, in *PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE: A COMMENTARY ON THE ISTANBUL CONVENTION*, 34, 44 (Sara De Vido & Micaella Frulli eds., 2023).

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established.<sup>226</sup> MESECVI consists of a political organ comprised of representatives of all State Parties, as well as an expert mechanism composed of experts in this area from each State Party (the MESECVI).<sup>227</sup> The monitoring process operates through multi-lateral evaluation rounds and follow-up rounds, during which the Committee of Experts prepares and circulates a questionnaire on the measures taken by the State Party to address violence against women.<sup>228</sup> The State Party replies to the questionnaire.<sup>229</sup> The Committee of Experts is the technical part of the MESECVI, composed of independent experts who serve the MESECVI in a personal capacity.<sup>230</sup> The mandate of the Committee of experts includes preparing and circulating the questionnaire on the implementation of the Belém do Pará Convention and evaluating the responses of the State Parties.<sup>231</sup> Based on the responses of the State Parties, it issues national and hemispheric reports with a series of recommendations to strengthen the implementation of the Convention.<sup>232</sup>

The Belém do Pará Convention complements and expands the global international framework on violence against women at the regional level with a more specific legally binding roadmap of legislative and other measures needed to combat violence against women.<sup>233</sup> The Belém do Pará Convention codified soft law developments which preceded it, including the explicit obligation of State Parties to provide protective measures and establish services for the protection of victims, like shelters, which was novel at the time.<sup>234</sup> The legally binding nature of the Belém do Pará Convention requires its incorporation at the national level and the adoption of national laws on violence against women by its State Parties.<sup>235</sup> The MESECVI, through its interpretative work and elaboration of soft law instruments like model laws, continuously contributes to its implementation.<sup>236</sup> For example, the MESECVI adopts hemispheric reports on the implementation of the Belém do Pará Convention, thematic reports on critical areas of concern, general recommendations of the committee of experts,

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<sup>226</sup> *What is MESECVI?*, O.A.S., <https://www.oas.org/en/mesecvi/about.asp> (last visited Jan. 7, 2025) (last visited Feb. 19, 2025).

<sup>227</sup> *Id.*; *The Mesecevi Process*, O.A.S., <https://www.oas.org/en/mesecvi/process.asp> (last visited Jan. 7, 2025). “The MESECVI process operates through multi-lateral evaluation and follow-up rounds[.]”

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Committee of Experts*, O.A.S., <https://www.oas.org/en/mesecvi/experts.asp> (last visited Jan. 7, 2025).

<sup>231</sup> *See id.*

<sup>232</sup> *See id.*

<sup>233</sup> *The Convention in Brief*, O.A.S., [https://belemdopara.org/CIM\\_MESECVI/the-convention-in-brief/](https://belemdopara.org/CIM_MESECVI/the-convention-in-brief/) (last visited Jan. 7, 2025).

<sup>234</sup> Convention of Belém do Pará, *supra* note 213, at art. 8.

<sup>235</sup> *See id.* art. 7.

<sup>236</sup> *What is MESECVI?*, *supra* note 226.

tools like model law or guides, political declarations, and other documents.<sup>237</sup> For example it adopted the Inter-American Model Law on the Prevention, Punishment, and Eradication of Gender-Related Killing of Women and Girls (Femicide/Feminicide) in 2018<sup>238</sup> as the first regional recognition of femicide/feminicide as a form of violence against women falling under the Belém do Pará Convention.

*B. The Protocol on the Rights of Women in Africa to the African Charter on Human Rights (the Maputo Protocol) of 2003*

In 2003, the African Union adopted the Protocol on the Rights of Women in Africa to the African Charter on Human Rights (the Maputo Protocol) to better protect women's rights at the regional level.<sup>239</sup> It entered into force on November 25, 2005.<sup>240</sup> The Maputo Protocol includes a definition of discrimination against women that follows the CEDAW Convention definition of discrimination against women but also includes a legally binding definition of violence against women, inspired by the DEVAW definition:

‘Violence against women’ means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war.<sup>241</sup>

This definition omits the articulation of violence against women as “gender-based” violence against women, while explicitly expanding its application to the area of armed conflict or war.<sup>242</sup> It also contains a specific article on the elimination of harmful practices such as female genital mutilation.<sup>243</sup>

In some areas, it extends beyond other legally binding or soft law instruments on women's rights. For example, it explicitly authorizes “medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother

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<sup>237</sup> See *Library*, O.A.S., <https://www.oas.org/en/mesecvi/library.asp> (last visited Jan. 7, 2025).

<sup>238</sup> See O.A.S., *Inter-American Model Law on the Prevention, Punishment, and Eradication of the Gender-Related Killing of Women and Girls (Femicide/Feminicide)* (2018), <https://www.oas.org/en/mesecvi/docs/LeyModeloFemicidio-EN.pdf>.

<sup>239</sup> See Protocol to the African Charter on Human and People's Rights of Women in Africa, July 11, 2003, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf> [hereinafter Protocol on Rights of Women in Africa].

<sup>240</sup> *OAU/AU Treaties, Conventions, Protocols & Charters*, AFR. UNION, [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf) (last visited Jan. 7, 2025).

<sup>241</sup> Protocol on Rights of Women in Africa, *supra* note 239, at art. I(i).

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* art. 5.

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or the fetus.”<sup>244</sup> The Maputo Protocol establishes a procedure for reporting under Article 26(1) that envisages that every two years, State Parties shall submit their periodic reports on the legislative and other measures taken to the African Commission on Human and Peoples’ Rights (ACHPR).<sup>245</sup> In 2010, the African Commission on Human and Peoples Rights (ACHPR) adopted Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and established that each State Party must submit its report in two parts.<sup>246</sup> The first part is on the implementation of the rights in the African Charter, and the second part is on the implementation of the rights in the Maputo Protocol in line with the Reporting Guidelines.<sup>247</sup> Today, 44 out of 55 African Union Member States have ratified the Maputo Protocol.<sup>248</sup> Like the Belém do Pará Convention, the Maputo Protocol also expanded a framework on violence against women at the regional level, but its implementation is weak.<sup>249</sup> Comparable to the Belém do Pará Convention, it did not establish a specific independent expert mechanism to monitor its implementation at its inception.<sup>250</sup> Recently, a new initiative for the adoption of a new convention on violence against women started in February 2023 when the African Union Assembly of Heads of State and Government adopted the decision on the negotiation of an African Union convention on ending violence against women and girls (*Assembly/AU/Dec.865(XXXVI)*) during their 36th Assembly held from February 18-19, 2023 in Addis Ababa, Ethiopia.<sup>251</sup> This was followed by the Assembly decision (*Assembly/AU/DEC.882 (XXXVII)*) during the 37th Summit of AU Heads of State in February 2024 that commits to “expedite the negotiations of the AU Convention on EVAWG in preparation

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<sup>244</sup> *Id.* art. 14(2)(c)

<sup>245</sup> *Id.* art. 26(1)

<sup>246</sup> Afr. Comm’n on Hum. & Peoples’ Rts. Rules of Proc., *Guidelines for State Reporting Under the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, at 1 (2010), <https://achpr.au.int/en/documents/2010-02-05/state-reporting-under-protocol-rights-women-africa>.

<sup>247</sup> *Id.*

<sup>248</sup> List of Countries Which Have Signed, Ratified/Acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, AFR. UNION, <https://au.int/en/treaties/1170> (last visited Feb. 19, 2025).

<sup>249</sup> Office of the U.N. High Comm’r for Hum. Rts., Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence Against Women, Its Causes and Consequences at the Sixtieth Session of the Commission on the Status of Women (March 14, 2016), <https://www.ohchr.org/en/statements/2016/03/statement-ms-dubravka-simonovic-special-rapporteur-violence-against-women-its>.

<sup>250</sup> *The Protocol on the Rights of Women in Africa: Strengthening the Promotion and Protection of Women’s Human Rights in Africa*, AMNESTY INT’L (June 2004), <https://www.amnesty.org/en/wp-content/uploads/2021/09/ior630052004en.pdf>.

<sup>251</sup> Assembly of the African Union, *Decisions, Declarations, Resolution and Motion*, Assembly/AU/Dec. 839-865(XXXVI), 36<sup>th</sup> Ordinary Session (2023), [https://au.int/sites/default/files/decisions/44015-Assembly\\_AU\\_Dec\\_839\\_-\\_865\\_XXXVI\\_E.pdf](https://au.int/sites/default/files/decisions/44015-Assembly_AU_Dec_839_-_865_XXXVI_E.pdf).

for its consideration for adoption by the AU Summit in February 2025.<sup>252</sup> On 17 February 2025, the African Union adopted the African Union Convention on Ending Violence Against Women and Girls (AU CEVAWG) aimed at ending all forms of violence against women and girls.<sup>253</sup> This demonstrated a clear recognition of a need for further normative development at the regional level in the area of preventing and combating violence against women, which could positively influence the normative development related to the adoption of the Optional protocol on violence against women to the CEDAW Convention at the global level.

*C. Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) of 2011*

Relatively late, in 2011, the Council of Europe (COE) Member States adopted the Convention on Preventing and Combating Violence Against Women and Domestic Violence<sup>254</sup> (the Istanbul Convention). It is the second regional treaty that specifically addresses violence against women but as the latest one, it captured all relevant normative developments at the global and regional level that preceded it.<sup>255</sup> It entered into force on August 1, 2014 and has been ratified by 39 out of 46 member states of the Council of Europe and also by the European Union.<sup>256</sup> The process of its conception started earlier, in 2006, when the Secretary General of the Council of Europe established a task force of eight experts entrusted to assess the necessity for a new instrument on violence against women.<sup>257</sup> The task force was mandated to examine the existing

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<sup>252</sup> Assembly of the African Union, *Decision on the Report on Gender Equality and Women's Empowerment by H.E Nana Addo Dankwa Akufo-Addo, President of the Republic of Ghana*, Assembly/AU/Dec.882(XXXVII), 37th Ordinary Session (2024), [https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/Assembly AU DEC 882 \(XXXVII\)\\_E.pdf](https://portal.africa-union.org/DVD/Documents/DOC-AU-DEC/Assembly%20AU%20DEC%20882%20(XXXVII)_E.pdf).

<sup>253</sup> *UN Women in Africa Celebrates the African Union's Historic Adoption of the Convention on Ending Violence Against Women and Girls*, UN WOMEN (Feb. 17, 2025), <https://africa.unwomen.org/en/stories/press-release/2025/02/un-women-in-africa-celebrates-the-african-unions-historic-adoption-of-the-convention-on-ending-violence-against-women-and-girls>.

<sup>254</sup> Istanbul Convention, *supra* note 5.

<sup>255</sup> *See id.*

<sup>256</sup> *Chart of Signatures and Ratifications of Treaty 210*, COUNC. OF EUR. (2024), <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=210> (last visited Feb. 19, 2025).

<sup>257</sup> *The Council of Europe Task Force to Combat Violence Against Women, Including Domestic Violence*, COUNC. OF EUR., [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Intro\\_Task\\_Force\\_EN.asp](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Intro_Task_Force_EN.asp) (last visited Jan. 31, 2025) (It was mandated to evaluate the effective functioning of the measures for preventing and combating violence against women adopted at national and international level; to make proposals for revising these measures or for adopting new measures; to develop a method to assist member states to adopt practical policies for combating violence against women; to assess the results of the monitoring framework based on indicators prepared by the CDEG in 2004 which aims to evaluate progress in

state of affairs of law and practice on preventing and combating violence against women and propose measures or mechanisms needed.<sup>258</sup> In its Final Activity Report,<sup>259</sup> the task force concluded that the existing soft law Recommendation Rec (2002) 5 of the Committee of Ministers on the Protection of Women against Violence<sup>260</sup> was not strong enough to effect protection against such violence and proposed the adoption of a legally binding European convention on combating violence against women as a gender-specific instrument.<sup>261</sup> This situation is comparable to the current global one in which the DEVAW and CEDAW General recommendations are not strong enough to harmonize this area and accelerate changes at the national level.

The Committee of Ministers of the Council of Europe established the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) and entrusted it to prepare “one or more legally binding instrument(s), as appropriate, to prevent and combat domestic violence including specific forms of violence against women; other forms of violence against women and to protect and support the victims of such violence and prosecute the perpetrators.”<sup>262</sup> The drafting process lasted two years (2008 – 2010).<sup>263</sup> During the first two meetings, delegates discussed the purpose and the scope of the new instrument and proposals for the elaboration of a convention on domestic violence or on violence against women.<sup>264</sup> The accepted solution included an instrument that would focus on the elimination of violence

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the implementation of the *Recommendation Rec(2002)5 on the protection of women against violence*; to further identify other possible roles of men in the context of family violence, not just as perpetrators of violence, but as victims of family violence, as well as their role in both preventing violence within the family and protecting victims of such violence; to prepare a blueprint for the Council of Europe Campaign and to identify the main subjects to be highlighted in preventing and combating violence against women during the Campaign as well as the activities to be conducted there under).

<sup>258</sup> *Id.*

<sup>259</sup> COUNC. OF EUR. TASK FORCE ON VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE, FINAL ACTIVITY REPORT (2008), [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/Final\\_Activity\\_Report.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/Final_Activity_Report.pdf).

<sup>260</sup> *Id.* at 1.

<sup>261</sup> *Id.* at 79.

<sup>262</sup> *Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO)*, COUNC. OF EUR. (May 20, 2009), <https://rm.coe.int/16805d141d>.

<sup>263</sup> CAHVIO, *The Negotiations*, COUNC. OF EUR., <https://www.coe.int/en/web/istanbul-convention/cahvio> (last visited Feb. 19, 2025).

<sup>264</sup> Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO), on its First Meeting, 3–4 CAHVIO (May 4, 2009) 5 (2009), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805938a2>; Committee on Preventing and Combating Violence Against Women And Domestic Violence (CAHVIO), on its Second Meeting, 21 CAHVIO (2009) 31 (2009), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805938a3>.

against women and deal with domestic violence, which affects women disproportionately, while also allowing for the application of its provisions to all victims of domestic violence.<sup>265</sup> The drafting process benefited from all existing international instruments and jurisprudence on violence against women that served as a basis for negotiation and elaboration of legally binding provisions but it also significantly expanded the existing framework on violence against women.<sup>266</sup>

The fact that all CoE Member States are State Parties to the CEDAW Convention enabled drafters to use and expand already legally binding and soft law instruments like the CEDAW Committee General Recommendation No. 19, to which specific reference is included in the Convention Preamble.<sup>267</sup> The interim report of the Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO) drew upon existing legal standards and jurisprudence from the UN system and other regional systems in Africa and the Americas.<sup>268,269</sup> The Istanbul Convention integrates and builds upon the CEDAW framework provisions of prohibiting discrimination against women and gender equality that are replicated in it.<sup>270</sup> The Istanbul Convention, similarly to the DEVAW, acknowledges that it will “contribute to the elimination of all forms of discrimination against women,”<sup>271</sup> emphasizing a link between the elimination of violence against women and the elimination of discrimination against women. It mirrors some of the general provisions of the CEDAW Convention, like the obligation of states to incorporate the principle of equality between women and men in their constitutions or order legislation and ensure its practical realization.<sup>272</sup>

In addition to reinforcing some of the CEDAW Convention’s key principles, the Istanbul Convention provides explicit, legally binding definitions of violence against women and gender-based violence against women.<sup>273</sup> The Istanbul

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<sup>265</sup> Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO), Interim Report, CAHVIO 4 (2009), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680593fc7> [hereinafter Interim Report].

<sup>266</sup> *Working Towards a Convention on Preventing and Combating Violence Against Women and Domestic Violence*, COUNC. OF EUR. (2010), [https://www.humanrights.ch/cms/upload/pdf/151103\\_flyer\\_cahvio\\_en.pdf](https://www.humanrights.ch/cms/upload/pdf/151103_flyer_cahvio_en.pdf).

<sup>267</sup> Istanbul Convention, *supra* note 5 at pmbl.

<sup>268</sup> See Interim Report, *supra* note 265.

<sup>269</sup> COUNC. OF EUR., GENDER EQUALITY AND THE ISTANBUL CONVENTION: A DECADE OF ACTION 15, (2021), <https://rm.coe.int/final-prems-rapport-de-berlin-may-2021/1680a3d7fd>.

<sup>270</sup> Dubravka Šimonović, *Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions*, 36 HUMAN RIGHTS Q. 590, 590–606, (2014), <https://www.jstor.org/stable/24518259>.

<sup>271</sup> Istanbul Convention, *supra* note 5, at art. 1(b).

<sup>272</sup> *Id.* art. 4.

<sup>273</sup> *Id.* art. 3(d) (“[V]iolence that is directed against a woman because she is a woman or that affects women disproportionately”).

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Convention defines violence against women:

[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.<sup>274</sup>

This definition builds on and expands the DEVAW definition of violence against women with the explicit recognition of violence against women as a human rights violation and at the same time as a form of discrimination against women, which was omitted in the DEVAW.<sup>275</sup> It also adds “*economic harm*” under its manifestations.<sup>276</sup> It also defines gender-based violence against women as “violence that is directed against a woman because she is a woman or that affects women disproportionately,” which mirrors the CEDAW General Recommendation No. 19 definition.<sup>277</sup> Altogether the Istanbul Convention provides a comprehensive definition of violence against women and of gender-based violence against women.<sup>278</sup> To define gender-based violence against women, it defined the term “gender” as “the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for women and men.”<sup>279</sup> This provision was perceived as controversial and was interpreted in conjunction with the Convention’s anti-discrimination clause which includes among other grounds also “gender, gender identity, and sexual orientation”<sup>280</sup> as parts of “*gender ideology*” in this Convention.<sup>281</sup> This Convention also for the first time defined domestic violence as: “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim,”<sup>282</sup> by which it expands its scope to all those living in the domestic unit as well as those not living at the same residency.<sup>283</sup> This challenged standards for its State Parties that have more restrictive domestic violence laws.<sup>284</sup>

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<sup>274</sup> *Id.* art. 3(a).

<sup>275</sup> DEVAW, *supra* note 10, at art. 1; *see also id.* art. 3(a).

<sup>276</sup> Istanbul Convention, *supra* note 5, at art. 3(a); *see* DEVAW, *supra* note 10, at art. 1.

<sup>277</sup> Istanbul Convention, *supra* note 5, at art. 3(d); *see also* General Recommendation No. 19, *supra* note 7, para. 6.

<sup>278</sup> The Istanbul Convention, *supra* note 5, at arts. 3, 6.

<sup>279</sup> *Id.* art. 3(c).

<sup>280</sup> *Id.* art. 3(c) & 4(3) (“gender ’shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men . . .”).

<sup>281</sup> Andrea Krizsán et al., *Who is Afraid of the Istanbul Convention? Explaining Opposition to and Support for Gender Equality*, *COMPAR. POL. STUD.* 3 (2024).

<sup>282</sup> Istanbul Convention, *supra* note 5, at art. 3(b).

<sup>283</sup> *Id.*

<sup>284</sup> *See* GREVIO recommendations, for example, for Bosnia and Herzegovina: “GREVIO strongly encourages the authorities of Bosnia and Herzegovina to align more closely to the

Additionally, the Istanbul Convention defines State obligations and the State's due diligence obligations to establish measures for prevention, punishment, protection, and policies for cooperation and expands standards and legal and other measures under each.<sup>285</sup> This includes the adoption of specific protection measures and services for victims on prohibition and criminalization of specific forms of violence against women<sup>286</sup> and a victim-centered approach for the effective prosecution of perpetrators.<sup>287</sup> It calls for the new and systematic collection of data on violence against women based on objective criteria that measure the progress of its implementation.<sup>288</sup> It calls for the establishment of mechanisms at the national level needed to coordinate different actors and measures for its implementation.<sup>289</sup> For the first time, it provides for the establishment of 24/7 helplines free of charge<sup>290</sup>, the establishment of shelters<sup>291</sup>, and types of protection orders.<sup>292</sup> It provides a model provision for the prohibition or criminalization of specific forms of violence against women, like sexual harassment, stalking, forced abortion, female genital mutilation, and sexual violence and rape.<sup>293</sup> On rape, it models the first international definition of rape that is structured around lack of consent rather than the use of force, which drastically changes the paradigm for prosecution.<sup>294</sup>

The Istanbul Convention established a strong monitoring expert mechanism: the Group of Experts on Action against Violence against Women and Domestic Violence (the GREVIO) and the Committee of the Parties to the Istanbul Convention.<sup>295</sup> The GREVIO initially started with 10 members while after its 25th ratification, it was expanded to the current 15 experts in line with Article

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Istanbul Convention the definitions of domestic violence and gender-based violence currently in use, as well as to harmonize the legal definitions of domestic violence across all areas of law, in order to improve its application." GRP. OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO), BASELINE EVALUATION REPORT BOSNIA AND HERZEGOVINA 14, <https://www.ecoi.net/en/file/local/2083890/GREVIO+baseline+evaluation+report+on+Bosnia+and+Herzegovina.pdf>.

<sup>285</sup> Istanbul Convention, *supra* note 5, at art. 5.

<sup>286</sup> *Id.* at arts. 33–40 (art. 33 on psychological violence, art. 34 on stalking, art 35 on physical violence, art. 36 on sexual violence, including rape, art. 37 on forced marriage, art. 38 on female genital mutilation, art. 39 on forced abortion and forced sterilization, and art. 40 on sexual harassment).

<sup>287</sup> *Id.* arts. 12(3), 49, 56(a, e, f, i).

<sup>288</sup> *Id.* art. 11 (data collection and research).

<sup>289</sup> *Id.* art. 10 (coordinating body).

<sup>290</sup> *Id.* art. 24 (telephone helplines).

<sup>291</sup> *Id.* art. 23 (shelters).

<sup>292</sup> *Id.* arts. 52–53 (art. 52 – Emergency barring orders; art. 53 – Restraining or protection orders).

<sup>293</sup> *Id.* arts. 34, 36, 38–40.

<sup>294</sup> *Id.* art. 36 (sexual violence, including rape).

<sup>295</sup> *Id.* art. 66 (group of experts on action against violence against women and domestic violence).

66 (2) and (3).<sup>296</sup> It had its first meeting in 2015 and since then, the GREVIO has fully assumed its important role in ensuring the implementation of the Istanbul Convention by its 39 State Parties.<sup>297</sup> Through its country monitoring process, it receives a baseline report and conducts a country visit after which it adopts a comprehensive report with recommendations that provide the state with information about gaps in its legal and policy measures and actions it needs to take.<sup>298</sup> Recently it has started its thematic evaluation round procedure (2023-2031) on building trust by delivering support, protection and justice.<sup>299</sup> Its ratification and national harmonization process triggered important public debates at the national level and significantly improved laws, preventive measures, and services for victims of violence against women.<sup>300</sup> Many State Parties changed their laws and implemented improved support services.<sup>301</sup> They also adopted specific criminal offenses on forced marriage, stalking, female genital mutilation, rape, and sexual violence in line with the standards of the Istanbul Convention.<sup>302</sup> The Istanbul Convention is open for ratification by non-State Parties in Europe and beyond, but this has not yet happened.<sup>303</sup> The Istanbul Convention's standards have universal value and all states can use them as a model law to improve their national legislation, but as a model, it is without legally binding force that enables States to pick and choose only provisions that they like and apply them without an international expert-based monitoring for an objective assessment of its implementation. Results achieved at the national level in the ratifying State Parties in terms of legal changes and new measures adopted demonstrate that such an instrument on violence against women is also needed at the global level to capture the evolution in this area and expand the CEDAW's legally binding framework into one that will trigger harmonization of national laws, especially by those States that have the political will to accelerate combating and preventing violence against women.

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<sup>296</sup> *Id.* art. 66, para. 2–3.

<sup>297</sup> *GREVIO Meetings*, COUNC. OF EUR.: ISTANBUL CONVENTION, <https://www.coe.int/en/web/istanbul-convention/meetings> (last visited Jan. 6, 2025); *Country-Monitoring Work*, COUNC. OF EUR.: ISTANBUL CONVENTION, <https://www.coe.int/en/web/istanbul-convention/country-monitoring-work> (last visited Jan. 6, 2025).

<sup>298</sup> *GREVIO Steps in Evaluation Procedures*, COUN. OF EUR.: ISTANBUL CONVENTION, [https://www.coe.int/en/web/istanbul-convention/steps-in-the-first-baseline-evaluation-procedure#%2221392012%22:\[5\]}](https://www.coe.int/en/web/istanbul-convention/steps-in-the-first-baseline-evaluation-procedure#%2221392012%22:[5]}) (last visited Jan. 6, 2025).

<sup>299</sup> *GREVIO Provisional Timetable for the First Thematic Evaluation Round Procedure*, COUNCIL OF EUROPE: ISTANBUL CONVENTION, <https://rm.coe.int/provisional-timetable-for-the-1st-thematic-evaluation-round-procedure-/1680aa0e4c> (last visited Jan. 16, 2025).

<sup>300</sup> COUNC. OF EUR., *THE ISTANBUL CONVENTION: 10 YEARS OF ACTION* 8, 10 (2022), <https://rm.coe.int/brochure-10th-anniversary-of-the-ic-77f5a8d356/1680a9b5d0>.

<sup>301</sup> *Id.* at 5, 10, 17.

<sup>302</sup> *Id.* at 10; *See generally* Els Leye et al., *The Added Value of and Resistance to the Istanbul Convention: A Comparative Study in 27 European Member States and Turkey*, 3 *FRONTIERS HUM. DYNAMICS* 1, 6–11 (2021).

<sup>303</sup> Istanbul Convention, *supra* note 5, art. 76 Accession to the Convention.

IV. FURTHER SOFT LAW DEVELOPMENTS OF AN INTERNATIONAL FRAMEWORK  
ON VIOLENCE AGAINST WOMENA. *The CEDAW Committee Jurisprudence and Practice on Violence Against Women*

In 1999, the CEDAW Convention was supplemented by the Optional Protocol to the Convention that established two complaint procedures: (1) individual communications or petitions and (2) inquiries on serious or systematic violations of rights under the Convention.<sup>304</sup> The Optional Protocol was adopted by the General Assembly by consensus, rapidly entered into force in 2000 and to date has been ratified by 115 States.<sup>305</sup> After its adoption, the CEDAW Committee was mandated to examine individual cases of violations of women's rights under the CEDAW Convention and inquiries on grave or systematic violations of women's rights, concerning individuals from the States that have ratified this Optional Protocol.<sup>306</sup> This expanded mandate to deal with complaints and inquiries on violations of the rights under the Convention turned the CEDAW Committee into a quasi-judicial body with the power to decide if and how women's rights guaranteed by the Convention were treated by the State Parties and to recommend reparations and remedies to the victim as well as general measures to States to address systemic problems with the law or its implementation.<sup>307</sup> This expanded quasi-judicial mandate enables the CEDAW Committee to examine the Convention's implementation in cases of violence against women using its general recommendations on violence against women in conjunction with the articles of the Convention.<sup>308</sup> The Committees' jurisprudence on violence against women, in some landmark cases, provided important guidance on standards for preventing and combating violence against

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<sup>304</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women arts. 2, 8, Oct. 6, 1999, 2131 U.N.T.S. A-20378 [hereinafter *Optional Protocol*].

<sup>305</sup> *Id.*

<sup>306</sup> Up to now, 104 State Parties have accepted the Optional Protocol, of which four have ruled out the possibility of undertaking investigations of serious or systematic violations of rights under Articles 8 and 9. For a list of signatories, participants, declarations, and reservations to the Optional Protocol, see Status of Treaties, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8-b&chapter=4&clang=\\_en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8-b&chapter=4&clang=_en) (last visited Feb. 20, 2025).

<sup>307</sup> JANE CONNORS, GENDER IN THE UN: CEDAW AND THE COMMISSION ON THE STATUS OF WOMEN, 169–197 (2018).

<sup>308</sup> CEDAW jurisprudence, *see. e.g.*, *Jallow v. Bulgaria*, Commc'n. No. 32/2011, U.N. Doc. CEDAW/C/52/D/32/2011 (CEDAW Comm. Aug. 28, 2012) at para 8.6 “With regard to the author’s allegation of a violation of article 5, paragraph (a), and article 16, paragraphs 1 (c), (d), (f) and (g), of the Convention, the Committee observes that it addressed those articles in its general recommendation No. 19 (1992) on violence against women.”

women.<sup>309</sup> For example, in the committee's early cases of femicide of immigrant women killed by their husbands, *Şahide Greece v. Austria*<sup>310</sup> and *Fatma Yildirim v. Austria*, the CEDAW Committee made it very clear that women suffering violence at the hands of their partners had the right to receive full protection from the laws and regulations in place and found a violation of the right to life and physical and mental integrity by the failure of State officials to detain the perpetrator despite his known risk to the victim.<sup>311</sup> *Fatma Yildirim v. Austria* explained that "the perpetrator's rights could not take precedence over women's rights to life and to physical and mental integrity."<sup>312</sup>

The CEDAW Committee in its jurisprudence on violence against women elaborated on State Parties' due diligence obligations, which require states to undertake measures to prevent, investigate, punish, and compensate women's human rights violations done by private persons.<sup>313</sup> However, the CEDAW Committee's jurisprudence by its nature is case and country-specific, and as such will not necessarily lead to a wide-ranging overhaul of legislation, or the establishment of services for combating violence against women in the States concerned and other States with similar gaps.<sup>314</sup> For example, the definition of rape based on the lack of consent was elaborated on in the CEDAW Committee

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<sup>309</sup> *Goekce v. Austria*, Commc'n No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005 (CEDAW Comm Aug. 6, 2007).

<sup>310</sup> *Id.*

<sup>311</sup> *Yildirim v. Austria*, Commc'n No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (CEDAW Comm. Oct. 1, 2007).

<sup>312</sup> *Id.*

<sup>313</sup> CEDAW jurisprudence on violence against women, in particular *A.T. v. Hungary*, Commc'n No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (CEDAW Comm. 2005); *A.S. v. Hungary*, Commc'n No. 4/2004, U.N. Doc. CEDAW/C/36/D/4/2004 (CEDAW Comm. Aug. 29, 2006); *Yildirim v. Austria*, Commc'n No. 6/2005, U.N. Doc. CEDAW/C/39/D/6/2005 (CEDAW Comm. 2007); *Goekce v. Austria*, Commc'n No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005 (CEDAW Comm. 2007); *Vertido v. Philippines*, Commc'n No. 18/2008, U.N. Doc. CEDAW/C/46/D/18/2008 (CEDAW Comm. 2010); *V.K. v. Bulgaria*, Commc'n No. 20/2008, U.N. Doc. CEDAW/C/49/D/20/2008 (CEDAW Comm. 2011); *Abramova v. Belarus*, Commc'n No. 23/2009, U.N. Doc. CEDAW/C/49/D/23/2009 (CEDAW Comm. 2011); *Kell v. Canada*, Commc'n No. 19/2008, U.N. Doc. CEDAW/C/51/D/19/2008 (CEDAW Comm. 2012); *Jallow v. Bulgaria*, Commc'n No. 32/2011, U.N. Doc. CEDAW/C/52/D/32/2011 (CEDAW Comm. 2012); *S.V.P. v. Bulgaria*, Commc'n No. 31/2011, U.N. Doc. CEDAW/C/53/D/31/2011 (CEDAW Comm. 2012); *R.P.B. v. Philippines*, Commc'n No. 34/2011, U.N. Doc. CEDAW/C/57/D/34/2011 (CEDAW Comm. 2014); *González Carreño v. Spain*, Commc'n No. 47/2012, U.N. Doc. CEDAW/C/58/D/47/2012 (CEDAW Comm. 2014); *X. and Y. v. Georgia*, Commc'n No. 24/2009, U.N. Doc. CEDAW/C/61/D/24/2009 (CEDAW Comm. 2015); *Belousova v. Kazakhstan*, Commc'n No. 45/2012, U.N. Doc. CEDAW/C/61/D/45/2012 (CEDAW Comm. 2015); *M.W. v. Denmark*, Commc'n No. 46/2012, U.N. Doc. CEDAW/C/63/D/46/2012 (CEDAW Comm. 2016); and *L.R. v. Republic of Moldova*, Commc'n No. 58/2013, U.N. Doc. CEDAW/C/66/D/58/2013 (CEDAW Comm. 2017).

<sup>314</sup> *See* Gen. Recommendation No. 30, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013).

in the case *Vertigo v Philippines*,<sup>315</sup> but this did not trigger changes to law at the national level, since as a soft law recommendation, the findings were rejected by the Philippines.<sup>316</sup> Similarly, the SRVAW elaborated a thematic report on rape as a human rights violation with the Model Law on Rape that serves as a tool for harmonization of national laws with international standards, but this also has not yet triggered significant changes at the national level.<sup>317</sup>

In comparison, a definition of rape introduced in the Istanbul Convention centered on the lack of consent requires changes in criminal law in all 39 ratifying States<sup>318</sup> and the EU.<sup>319</sup> These cases demonstrate how jurisprudence could contribute to the elaboration of international standards, but only when they are codified as legally binding provisions in a ratified international instrument are they then incorporated into the national laws of ratifying states.<sup>320</sup> Many of the individual cases and inquiries before the CEDAW Committee are addressing violence against women and girls, testifying at the same time that violence is very common and also that there are a lack of adequate laws and other measures and services at the national level to prevent and eliminate such violence.<sup>321</sup>

The CEDAW Committee recently provided on its website a background paper on the “CEDAW Convention and the practice of the CEDAW Committee as the basis of the international legal framework on Gender Based violence against

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<sup>315</sup> *Vertido v. Philippines*, Commc’n No. 18/2008, U.N. Doc. CEDAW/C/46/D/18/2008 (CEDAW Comm. Sept. 22, 2010).

<sup>316</sup> Comm. on the Elimination of Discrimination Against Women, Rep. of Comm. on the Elimination of Discrimination Against Women on Its Fifty-First Session, U.N. Doc. A/67/38 (2012). No specific follow-up action could be undertaken in relation to communication No. 18/2008 (*Karen Tayag Vertido v. the Philippines*), as the Permanent Mission of the Philippines had not responded to the Committee’s request for a follow-up meeting, transmitted early in the session.

<sup>317</sup> Dubravka Šimonovic (Special Rapporteur on Violence Against Women, its Causes, and Consequences), *Addendum to Rape as a Grave, Systematic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-Based Violence Against Women and Girls, and its Prevention: Model Law on Rape*, U.N. Doc. A/HRC/47/26/Add.1 (June 15, 2021), <https://www.ohchr.org/en/calls-for-input/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence-against>; *See generally* Šimonovic, *supra* note 21.

<sup>318</sup> IONEL ZAMFIR ET AL., DEFINITIONS OF RAPE IN THE LEGISLATION OF EU MEMBER STATES 1-2 (2024), [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_IDA\(2024\)757618](https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2024)757618).

<sup>319</sup> The European Union signed the Istanbul Convention on June 13<sup>th</sup>, 2017, and deposited the instrument of approval on June 28<sup>th</sup>, 2023. The Convention entered into force on October 1<sup>st</sup>, 2023. *See* Istanbul Convention, *supra* note 5, at art. 36.

<sup>320</sup> ANDREW BYRNES ET AL., FROM EXCLUSION TO EQUALITY 51 (Marilyn Achiron et al. eds. 2007) (“It is a basic principle of international law that a State party to an international treaty must ensure that its own domestic law and practice are consistent with what is required by the treaty”).

<sup>321</sup> *Gender-Based Violence Against Women and Girls*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/women/gender-based-violence-against-women-and-girls#:~:text=One> (last visited Feb. 20, 2025).

Women and Girls”<sup>322</sup>, in which the CEDAW Committee elaborates advantages of monitoring GBVAW under the comprehensive framework of the Convention as well as its interpretative power of expanding its application. It concludes that the CEDAW Convention has proven to be a dynamic instrument that the Committee has consistently interpreted to address GBVAW as a primary concern.<sup>323</sup> This paper summarizes the CEDAW Committee’s interpretation and practice of utilizing the Convention’s framework as an inclusive one of gender-based violence against women and girls. This interpretation can be perceived as both a counterargument and a foundation for the elaboration of the OP on VAW within the CEDAW framework, which depends on a preference to the soft law or legally binding legislation on violence against women.

*B. The CEDAW Committee General Recommendation No. 35 on Gender-based Violence Against Women of 2017*

In 2016, the CEDAW Committee embarked on updating General Recommendation No. 19 on violence against women and complementing it with new General Recommendation No. 35, on gender-based violence against women.<sup>324</sup> Its elaboration was a response to the growing number of initiatives that call for a new separate and stand-alone convention on violence against women,<sup>325</sup> but it was also a response to the adoption of the Istanbul Convention, whose standards went beyond the CEDAW Committee General Recommendation No. 19 on violence against women of 1992.<sup>326</sup> The CEDAW Committee established its Working Group on General Recommendation No. 35 and invited the fourth SRVAW to participate in its elaboration.<sup>327</sup> The SRVAW participated at the Working Group meetings and on July 18, 2017, General recommendation No. 35 (2017) on gender-based violence against women, updating General recommendation No. 19, was adopted at the CEDAW sixty-seventh session.<sup>328</sup> The Committee also launched this general recommendation at a high-level panel discussion on November 14, 2017 in Geneva in which the SRVAW participated.<sup>329</sup> This is the first example of a formal collaboration

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<sup>322</sup> U.N. CEDAW Comm., CEDAW Convention and the Practice of the CEDAW Committee as the Basis of the International Legal Framework on Gender-Based Violence Against Women and Girls, <https://www.ohchr.org/en/treaty-bodies/cedaw>.

<sup>323</sup> *Id.*

<sup>324</sup> See generally General Recommendation No. 35, *supra* note 7.

<sup>325</sup> As an example, early initiatives of Every Woman Treaty called for a separate convention, and the organization now supports the Optional Protocol to the CEDAW Convention. See EVERY WOMAN TREATY, <http://www.everywoman.org> (last visited Feb. 20, 2025).

<sup>326</sup> See Istanbul Convention, *supra* note 5.

<sup>327</sup> Report on Violence Against Women, *supra* note 189 para. 8.

<sup>328</sup> *Id.* para. 8.

<sup>329</sup> Launch of CEDAW General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/treaty-bodies/cedaw/launch-cedaw-general->

between any treaty body, the CEDAW Committee, and a special procedures mandate holder (SRVAW in this case).<sup>330</sup>

While General recommendation No. 35 was based on the CEDAW Committee jurisprudence, it was also inspired by the Istanbul Convention, which went beyond its General recommendation No. 19.<sup>331</sup> It also expands the understanding of violence to include violations of sexual and reproductive health rights, and recognizes that violence against women under specific circumstances could amount to torture.<sup>332</sup> It recognizes “that the prohibition of gender-based violence has become a norm of international customary law,”<sup>333</sup> which is an aspirational statement that could be attributed to the DEVAW as a universal instrument. It further expands its previous elaboration of the due diligence standard in General Recommendation No. 12 and now includes different levels of liability of the State for acts and omissions committed by its agents and its responsibility for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors<sup>334</sup> which is an aspirational statement that could be attributed to the DEVAW as a universal instrument. It further expands its previous elaboration of the due diligence standard in General Recommendation No. 12 and now includes different levels of liability of the State for acts and omissions committed by its agents and its responsibility for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors.<sup>335</sup> This General Recommendation No. 35 strengthened the perception of the CEDAW Convention as an instrument for the elimination of discrimination against women, inclusive of gender-based violence against women.<sup>336</sup> The CEDAW Committee also established a separate Working Group on Violence against Women as envisaged in the Framework Agreement for cooperation with the SRVAW concluded in 2018, which is a promising development.<sup>337</sup> Recently the CEDAW Committee published on its website the

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recommendation-no-35-gender-based-violence-against-women-updating-general (last visited Feb. 20, 2025) [Hereinafter Launch of CEDAW General Recommendation No. 35].

<sup>330</sup> DUBRAVKA ŠIMONVIĆ ET AL., 25 YEARS IN REVIEW OF THE BEIJING PLATFORM FOR ACTION 10 (2020) [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Booklet\\_BPA.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Booklet_BPA.pdf).

<sup>331</sup> See Istanbul Convention, *supra* note 5.

<sup>332</sup> General recommendation No. 35 *supra* note 7, para. 16.

<sup>333</sup> *Id.* para. 18.

<sup>334</sup> Launch of CEDAW General Recommendation No. 35, *supra* note 329.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *Framework of Cooperation Between the CEDAW Committee and the Special Rapporteur on Violence Against Women*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (Nov. 8, 2018), [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/SRVAW\\_CEDAW\\_FrameworkCooperation.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/SRVAW_CEDAW_FrameworkCooperation.pdf) (aims to strengthen already established cooperation and advance the promotion and implements of CEDAW General Recommendation No. 35).

document “CEDAW Convention and the practice of the CEDAW Committee as the basis of the International Legal Framework on Gender-Based violence against Women and Girls.”<sup>338</sup> This background paper elaborates how the CEDAW Committee plays an important role by providing an authoritative interpretation of the CEDAW Convention’s coverage of violence against women through its consistent inclusion in dialogues with States, its concluding observations, general recommendations, communications, and inquiries.<sup>339</sup> It rightfully concludes that this “all has established a clear practice of applying the CEDAW Convention in a manner that encompasses gender-based violence against women, which State Parties have accepted”.<sup>340</sup>

This practice of the CEDAW Committee is remarkable and commendable but it is not without limitations embedded in its comprehensive framework inclusive of all forms of discrimination against women, under which violence against women is just one segment. The structure and limitations of State Party reporting constrain the CEDAW Committee from exploring the issue in depth, and due to this,<sup>341</sup> the CEDAW Committee has not always pushed as far as some of the reports of the SRVAW.<sup>342</sup> The Convention’s comprehensive framework and the limited lengths of the CEDAW Concluding Observations imposed by the OHCHR secretariat limit the number of its recommendations addressing all relevant issues in the State Party under the periodic examination.<sup>343</sup> The CEDAW Committee Concluding Observations usually contain only one paragraph of all concerns and one for recommendations on violence against women, which is a limited focus on violence against women that is integrated with all other forms of discrimination against women.<sup>344</sup> In comparison, the SRVAW country visit reports comprehensively address all forms of violence against women in the visited state.<sup>345</sup> However, there are also SRVAW imposed

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<sup>338</sup> *Committee on the Elimination of Discrimination against Women*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/treaty-bodies/cedaw> (last visited Feb. 20, 2025).

<sup>339</sup> CEDAW Committee 86th session, CEDAW Convention and the Practice of the CEDAW Committee as the Basis of the International Legal Framework on Gender-Based Violence Against Women and Girls 1–3 (2023) [hereinafter CEDAW Basis of Legal Framework].

<sup>340</sup> *Id.*

<sup>341</sup> Chinkin, *supra* note 38 at 473.

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> CEDAW Basis of Legal Framework, *supra* note 339, at 3.

<sup>345</sup> Special Rapporteur on Violence Against Women, *Country Visits*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/special-procedures/sr-violence-against-women/country-visits> (last visited Feb. 20, 2025); Special Procedures of the Human Rights Council; *Country and Other Visits*, <https://www.ohchr.org/en/special-procedures-human-rights-council/country-and-other-visits> (last visited Feb. 20, 2025).

limitations of only two country visits per year, which is not in line with its universal reach.<sup>346</sup>

The CEDAW Committee's examination of violence against women under the CEDAW Convention reporting process could be compared with the GREVIO examination under the Istanbul Convention reporting process. All 39 State Parties to the Istanbul Convention are also the State Parties to the CEDAW Convention and all underwent the CEDAW Committee's examination and received the CEDAW Concluding Observations inclusive of recommendations on violence against women.<sup>347</sup> After ratification of the Istanbul Convention, they all underwent regional examination by the GREVIO and received a comprehensive country-specific report with detailed recommendations on harmonization of their laws and practices with the Convention's standards.<sup>348</sup> Those GREVIO recommendations address the issues of: the criminalization of rape centered on the lack of consent; sexual harassment; stalking; female genital mutilation; forced sterilization; and forced child marriage.<sup>349</sup> The CEDAW Committee's recommendations on violence against women for the same States do not have such comprehensive, numerous, and detailed recommendations, which is a result of its limited possibility to extensively address violence against women.<sup>350</sup> As such, CEDAW recommendations on violence against women have not yet stimulated a broad-based review of laws and policies on violence against women or a review of criminal laws,<sup>351</sup> and other measures needed to combat and prevent violence against women.

An additional obstacle to the CEDAW Committee's monitoring efficiency is related to the forthcoming prolongation of reporting periodicity. In 2023, as a part of the treaty bodies' strengthening process, the treaty bodies' chairpersons agreed to extend the reporting obligation to a period of eight years instead of four.<sup>352</sup> If implemented, this would lengthen the current reporting period, and by doing so, decrease the CEDAW Committee's possibility to follow up on the implementation of its recommendations, including those on violence against

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<sup>346</sup> See Special Rapporteur on Violence Against Women, *Country Visits and Reports*, <https://www.ohchr.org/en/special-procedures/sr-violence-against-women/annual-thematic-reports>.

<sup>347</sup> Council of Europe, *Key Facts about the Istanbul Convention*, <https://www.coe.int/en/web/istanbul-convention/key-facts> (last visited Feb. 20, 2025) [hereinafter *Key Facts about the Istanbul Convention*].

<sup>348</sup> Council of Europe, *Country-Monitoring Work*, <https://www.coe.int/en/web/istanbul-convention/country-monitoring-work> (last visited Feb. 20, 2025).

<sup>349</sup> *Key Facts about the Istanbul Convention*, *supra* note 347.

<sup>350</sup> Helen Rubenstein, *A Summary of Global Rights for Women's Recently Published Report Time for a Change: The Need for a Binding International Treaty on Violence Against Women*, GLOBAL RTS. FOR WOMEN, (2022), <https://globalrightsforwomen.org/time-for-a-change-the-need-for-a-binding-international-treaty-on-violence-against-women/>.

<sup>351</sup> Frances Raday, *Gender and Democratic Citizenship: The Impact of CEDAW*, 10 INT'L J. CONST. L. 512, 512 (2012).

<sup>352</sup> G.A. Res 57/202, para. 83 (Sept. 14, 2023).

women and girls, which require more frequent and detailed monitoring of their implementation.<sup>353</sup>

*C. Initiatives on Strengthening the International Framework on Violence Against Women*

The adequacy of an international framework on violence against women has been specifically addressed by some academics, NGOs, and SRVAW mandates. For example, Alice Edwards in her book on violence against women points out that characterizing violence against women as sex discrimination has, importantly, filled a gap in international human rights law, namely the absence of an explicit binding prohibition on violence against women.<sup>354</sup> However, she argues that this is not sufficient and that the adoption of a specific provision of a treaty is needed and proposes that a protocol on violence against women could be attached to one of the human rights instruments, logically to the CEDAW, although it could also be attached to the ICCPR.<sup>355</sup> Alternatively, a stand-alone treaty might be preferred.<sup>356</sup> Former CEDAW expert Heisoo Shin in her book on General Recommendation No. 19 establishes “the missing link” between discrimination and violence, providing an explanation of violence against women as a form of discrimination against women.<sup>357</sup>

The adequacy of an international framework on violence against women has been more or less addressed by majority of SRVAW mandate holders up to now. This began with the first SRVAW, Radhika Coomaraswamy, where in her report to the UN Human Rights Commission in 1996 she concluded that at present there is not a comprehensive international legally binding instrument on violence against women and called the international community to consider the possibility of adopting an international convention on the elimination of violence against women.<sup>358</sup>

After that, in 2015, the third SRVAW Rashida Manjoo in her last report proposed an examination of the normative gaps within the existing international binding legal frameworks and called for the elaboration of a new stand-alone convention on violence against women with a separate treaty body.<sup>359</sup> Her

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<sup>353</sup> *See id.*

<sup>354</sup> ALICE EDWARDS, *VIOLENCE AGAINST WOMEN UNDER INTERNATIONAL HUMAN RIGHTS LAW* 183 (Cambridge Univ. Press 2013).

<sup>355</sup> *Id.* at 338.

<sup>356</sup> *Id.*

<sup>357</sup> HEISOO SHIN, *CEDAW AND VIOLENCE AGAINST WOMEN: PROVIDING THE “MISSING LINK,”* IN *THE CIRCLE OF EMPOWERMENT: TWENTY-FIVE YEARS OF DISCRIMINATION AGAINST WOMEN* 229 (Hanna Beate Schöpp-Schilling, Cees Flinterman eds., 2007).

<sup>358</sup> Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. E/CN.4/1996/53/ (Feb. 5, 1996).

<sup>359</sup> Rashida Manjoo (Special Rapporteur on Violence Against Women, its Causes and Consequences), *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social*

successor SRVAW Dubravka Šimonovic prepared a thematic report on the adequacy of the international legal framework on violence against women<sup>360</sup> and also separately invited global and regional human rights expert mechanisms that monitor the implementation of international instruments on violence against women to express their views on the existing gaps and shortcomings in the implementation and incorporation of the current legal framework and whether these amounted to a need for a new instrument on violence against women.<sup>361</sup> Based on inputs received, she drafted a specific report to the General Assembly in 2017 on the adequacy of the international legal framework on violence against women, which detailed the responses she received and offered her perspective.<sup>362</sup> She grouped 291 submissions under three options.<sup>363</sup> First, a group of civil society organizations and the Special Rapporteur on the Rights of Women in Africa felt that an international legally binding treaty on violence against women was needed based on the argument that there is a normative gap on violence against women in an international framework.<sup>364</sup> Second, a group of civil society organizations as well as the CEDAW Committee and the GREVIO opposed a new stand-alone treaty on violence against women, proposing instead better support of existing instruments and claiming that normative gaps on violence against women do not exist.<sup>365</sup> Third, a group of civil society organizations, the MESECVI, the ASEAN Intergovernmental Commission on Human Rights, and the UN Working Group on the Discrimination against Women and Girls in law and in practice supported the creation of an Optional Protocol on violence against women as a supplementary instrument to the CEDAW Convention.<sup>366</sup>

Based on the analysis of these submissions, the SRVAW Šimonović opposed a separate stand-alone treaty on violence against women, explaining that this option would expose the existing legal framework of the CEDAW Convention to the risk of isolating provisions aimed at addressing gender-based violence against women from the structural causes of discrimination against women.<sup>367</sup> She found that “the argument of a normative gap on violence against women at

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*and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/26/38, para. 68 (May 28, 2014).

<sup>360</sup> Report on Violence Against Women, *supra* note 189 para. 3.

<sup>361</sup> *Id.* para. 13.

<sup>362</sup> *Id.* paras. 84–102.

<sup>363</sup> *Id.* paras. 23–24.

<sup>364</sup> *Id.* para. 20.

<sup>365</sup> *Id.* paras. 20–21.

<sup>366</sup> *Id.* paras. 15–22.

<sup>367</sup> *Id.* para. 91. “The Special Rapporteur supports the interpretation of violence against women as a form of discrimination against women and girls and a human rights violation. Therefore, the option of creating a separate treaty would expose the existing legal framework under the Convention on violence against women to the risk of isolating provisions aimed at addressing gender-based violence against women from the structural causes of discrimination against women.”

the international level does not take into account the coverage by the Convention of gender-based violence as a form of discrimination against women and the recent adoption of General Recommendation No. 35 (2017) on gender-based violence against women.”<sup>368</sup> She concluded the current legal framework on violence against women is “complex, fragmented, and in some ways convoluted in [its] application.”<sup>369</sup> After this analysis, she supported the third option and recommended that “an optional protocol to the CEDAW Convention could be considered as a long-term solution, which could aid implementation.”<sup>370</sup> Two years later, in 2019, in the report on 25 years of the mandate and 25-year review of the Beijing Declaration and Platform for Action, she called for the adoption of an Optional Protocol to CEDAW based on General recommendation No. 35.<sup>371</sup> CEDAW General recommendation No. 35 did not trigger changes at the national level due to the lack of its broad promotion by the UN system and its intergovernmental bodies like the CSW which is why an Optional Protocol is needed in addition to General Recommendation No. 35.<sup>372</sup>

In addition to this, the fourth Special Rapporteur Simonovic proposed other initiatives aimed at strengthening the international framework and mechanisms on violence against women. She called for a stronger focus on violence against women, including through (a) the initiation of a fifth United Nations World Conference on Women;<sup>373</sup> (b) the elaboration of a global implementation plan on violence against women; and (c) the inclusion of violence against women as a standing agenda item of the CSW to establish a regular platform for the annual examination of the progress achieved in eliminating violence against women.<sup>374</sup> In 2018,<sup>375</sup> she launched the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women (EDVAW

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<sup>368</sup> *Id.* para. 87.

<sup>369</sup> *Id.* para. 92.

<sup>370</sup> *Id.* para. 93.

<sup>371</sup> Šimonović, *supra* note 171, para. 91.

<sup>372</sup> *Id.* para. 37.

<sup>373</sup> Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence Against Women, its Causes and Consequences at the 61st Session of the Commission on the Status of Women (CSW61), U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, (Mar. 13, 2017), <https://www.ohchr.org/en/statements/2017/11/statement-dubravka-simonovic-un-special-rapporteur-violence-against-women-61st>.

<sup>374</sup> Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence Against Women, its Causes and Consequences for the 63rd Session of the Commission on the Status of Women, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, (Mar. 11, 2019), <https://www.ohchr.org/en/statements/2019/03/statement-ms-dubravka-simonovic-special-rapporteur-violence-against-women-its> (“I would also like to propose that all of you attending this commission consider and call for the inclusion of violence against women among the main themes for each session of the CSW.”).

<sup>375</sup> *Background EDVAW Platform*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/edvaw/background> (last visited Feb. 20, 2025).

Platform),<sup>376</sup> for cooperation between independent global and regional expert monitoring mechanisms on the elimination of discrimination and violence against women. The EDVAW Platform started to issue joint statements and press releases on women's rights and violence against women.<sup>377</sup> The EDVAW Platform also addressed the contribution of its expert mechanism to the implementation of the Beijing Platform for Action in 2020, and their contribution to the work of the Commission on the Status of Women and called for its stronger human rights-based approach in 2021.<sup>378</sup>

The UN Secretary-General in his report *Our Common Agenda*<sup>379</sup> called for the adoption of “an emergency response plan to accelerate the eradication of violence against women and girls, as a priority.”<sup>380</sup> Those calls and initiatives: for the adoption of the optional protocol on violence against women to the CEDAW, a global plan of action, and the inclusion of violence against women in regular sessions of the CSW, are challenging the current low-level treatment of violence against women at the global level. There is also a recognition for the need to prioritize violence against women at the global level, especially by way

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<sup>376</sup> The EDVAW Platform was launched in March 2018. It is composed of seven United Nations and regional independent expert mechanisms dedicated to addressing discrimination and violence against women and girls, promoting accountability, and advancing their human rights. The EDVAW Platform expert mechanisms include: UN Working Group on discrimination against women and girls (WGDAG), the Chair UN Special Rapporteur on violence against women and girls (SR VAWG) UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa (A SRWHR) Inter-American Commission on Human Rights' Rapporteur on the Rights of Women (IA RWHR); *See id.*

<sup>377</sup> Statements on Eliminating Discrimination and Violence Against Women, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/edvaw/statements> (last visited Feb. 20, 2025); *see e.g., Absence of Consent Must Become the Global Standard for the Definition of Rape, Say Experts* U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (Nov. 25, 2019); *Independent Women Human Rights Mechanisms Are Part of the Solution to “Push Back the Pushbacks and Keep Pushing Back”* U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (Mar. 20, 2019).

<sup>378</sup> U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, *25 Years in Review of the Beijing Platform for Action*, (Jan 1, 2020), <https://www.ohchr.org/en/documents/tools-and-resources/25-years-review-beijing-platform-action-2-booklets>. (1) *Beijing Platform for Action: Contributions of the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence Against Women (EDVAW Platform) Towards its Implementation* (2020); and (2) *EDVAW Platform and the Commission on the Status of Women: Call for a Human Rights-based Approach in the Implementation of Strategies for the Elimination of Discrimination and Violence Against Women* (2021).

<sup>379</sup> U.N. Secretary-General António Guterres, *Our Common Agenda: Rep. of the Secretary-General*, 6 (2021).

<sup>380</sup> *Id.* at 30–31.

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of adopting a stronger, more efficient, international framework, complete with potent enforcement mechanisms.<sup>381</sup>

*D. Joint Statement by Current and Former Special Rapporteurs on Violence Against Women and Girls Calling for Adoption of an Optional Protocol to CEDAW on Violence Against Women and Girls*

In 2023, a core group of UN Member States was established to advocate for a new Optional Protocol to the CEDAW: Costa Rica, Sierra Leone, Antigua and Barbuda, and the Democratic Republic of Congo.<sup>382</sup> This initial group of States, jointly with Every Woman Treaty<sup>383</sup>, and with the participation of the current SRVAW and two former SRVAWs held a panel discussion on the Optional Protocol on violence against women to the CEDAW.<sup>384</sup> The event was held during the annual 16 Days of Activism against Gender-based Violence in 2023 and was attended by high-level officials of the core group of States and civil society.<sup>385</sup> This event can be seen as the formal start of the UN Member States initiative for a new Optional Protocol on Violence against Women to CEDAW that is now ongoing. As a follow-up to that meeting, on December 8, 2023, the SRVAW Reem Alsalem, and former SRVAWs, Dubravka Simonovic and Rashida Manjoo, issued a joint statement calling for the creation of a new instrument: “Now is the time for an optional protocol to CEDAW on violence against women and girls.”<sup>386</sup> They acknowledged the CEDAW Committee’s important role “in ensuring that the term discrimination against women implicitly covers violence against women[,]”<sup>387</sup> and noted that although “the General Recommendations provide authoritative interpretations of CEDAW and

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<sup>381</sup> See DR. ELEANOR ANN NWADINOB ET. AL, *SAFER SOONER: TOWARD A GLOBAL BINDING NORM TO END VIOLENCE AGAINST WOMEN AND GIRLS* 87 (Michelle Hamilton & Sasha Grossman eds., 2023).

<sup>382</sup> See Joint Statement, Ant. & Barb., Costa Rica, Dem. Rep. Congo, & Sierra Leone, Core Group of Friends of a New Optional Protocol to CEDAW to Eradicate Violence Against Women and Girls (Dec. 7, 2023), <https://everywoman.org/wp-content/uploads/2024/03/Joint-Statement-on-OP-Core-Group-of-Friends-Update-logos-Dec-7-2023.docx.pdf>.

<sup>383</sup> In 2023, Every Woman Treaty, the largest NGO lobbying for a separate stand-alone convention on violence against women, put its support behind the adoption of a new Optional Protocol on violence against women attached to the CEDAW.

<sup>384</sup> See Every Woman Treaty, *UNiTE! The Need for an Optional Protocol to CEDAW to End Violence Against Women and Girls*, YOUTUBE (Dec. 7, 2023), <https://www.youtube.com/watch?v=-VQmZVWmP4s>.

<sup>385</sup> See *Four Nations Launch Initiative for Global Treaty*, EVERY WOMAN TREATY (Dec. 7, 2023), <https://everywoman.org/four-nations-launch-initiative-for-global-treaty/>.

<sup>386</sup> Statement, Reem Alsalem, Special Rapporteur on Violence Against Women and Girls, Dubravka Simonovic, and Rashida Majoo, former Special Rapporteurs on Violence Against Women, *Now is the Time for an Optional Protocol to CEDAW on Violence Against Women and Girls* 1 (Dec. 7, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/stm-op-vaw-sr-vaw-7-12-23.pdf>.

<sup>387</sup> *Id.*

guidance for State Parties on the implementation of their obligations under the Convention, the much-needed improvements in law and in practice to address violence against women at the national level, have yet to take effect.”<sup>388</sup> They explained that the lack of a universally accepted legal framework that explicitly defines and criminalizes violence against women and sets out prevention and protection measures and entitles victims to reparations continues to be a “principal stumbling block that must be overcome” and concluded:

We therefore believe that a global treaty dedicated to ending gender-based violence against women would constitute a timely and effective way of advancing gender equality and non-discrimination, ending violence and achieving greater accountability and justice for crimes committed against women and girls. To ensure that minimum global standards on women’s rights are not further compromised but are upheld and strengthened, it would be essential for this global treaty to be attached to CEDAW as an optional protocol, whereby it would provide an explicit legally binding roadmap on the measures needed to combat and prevent violence against women and trigger much-needed changes at the national level to secure every woman’s right to live a life free from violence.<sup>389</sup>

## V. CONCLUSION

The current global legal framework on violence against women is a narrow and bumpy road that is possible to use but the travel is very slow and is becoming slower due to new obstacles (like the increase in reporting periods to the CEDAW Committee to eight years). At the same time, we are building and adding new roads by which we can travel faster and with better guidance. Adoption of a new Optional Protocol on violence against women and girls to the CEDAW Convention would be like opening a new fast lane for achieving gender equality. It would enable accelerated travel towards the elimination of violence against women. This option would allow those who do not want to use the new road to continue to use the old one, as it would remain and could be improved. All States with the political will to accelerate the combating violence against women will use the new road, a legally binding roadmap to uphold women’s rights to life free from violence.

The success of the regional instruments on violence against women, the Belém do Pará and the Istanbul Convention, provides evidence that more specific international standards on violence against women narrow implementation gaps and trigger revisions of laws and practices by States. The new African convention on violence against women demonstrates a need for more detailed normative standards at the regional levels. This could be the case at the global level with the adoption of the legally binding Optional Protocol on

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<sup>388</sup> *Id.*

<sup>389</sup> *Id.* at 2.

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Violence Against Women to the CEDAW Convention with the paramount objective to provide governments, policymakers, NGOs, and other stakeholders with a universal, updated, coherent, and explicit legally binding roadmap for harmonizing national laws, policies, and practices with international standards on preventing and combating violence against women and girls and as a result, accelerating the end to violence against women.

The Optional Protocol on violence against women will not in any way jeopardize the current application of the CEDAW Convention in the arena of violence against women but will expand and supplement its legal framework with an optional legally binding instrument on violence against women that requires ratification and domestication at the national level. Although violence against women was successfully included under the CEDAW Convention scope as a form of discrimination against women, at the global level a legally binding definition of violence against women is lacking. The Optional Protocol on Violence Against Women could provide a uniform definition of violence against women, inclusive of all types of violence against women: physical violence, sexual violence, psychological and economic violence, based on the DEVAW and the CEDAW Committees definitions. Also, the DEVAW and CEDAW's General recommendations on violence against women as well as the CEDAW Committee work and jurisprudence, and the SRVAW reports and work, all coupled with the regional instruments on violence against women already provide a solid basis for the elaboration and adoption of an Optional Protocol on Violence against Women to the CEDAW Convention. It will codify key legal and other measures for the prevention, protection, and prosecution of perpetrators, interlinked with the broader framework of discrimination against women provided by the CEDAW Convention. It could also outline necessary legal measures and services for victims like helplines, protection orders, shelters, risk assessments, and other necessary measures, as well as a collection of comparable and comprehensive data on violence against women and girls and femicide<sup>390</sup> including the establishment of national mechanisms on violence against women and femicide watches.<sup>391</sup>

The CEDAW Committee, as a large committee composed of 23 experts could be entrusted to monitor its implementation or other options could be explored. In any case it would be beneficial to empower the CEDAW Committee or other monitoring body to conduct state visits for the preparation of its respective reports on violence against women. A stronger monitoring role could also be

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<sup>390</sup> Cf. U.N. Office on Drugs and Crime & U.N. Entity for Gender Equality and the Empowerment of Women, *Statistical Framework for Measuring the Gender-Related Killing of Women and Girls* (2022), [https://www.unodc.org/documents/data-and-analysis/statistics/Statistical\\_framework\\_femicide\\_2022.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/Statistical_framework_femicide_2022.pdf).

<sup>391</sup> Cf. *Femicide Watch Initiative*, U.N. OFFICE OF THE HIGH COMMISSIONER ON HUMAN RIGHTS (last visited Feb. 20, 2025), <https://www.ohchr.org/en/special-procedures/sr-violence-against-women/femicide-watch-initiative>.

envisaged for the SRVAW mandate, either through more country visits and/or through expansion to a Working Group on Violence against Women and Girls composed of five experts, following the format of the Working Group on Discrimination Against Women and Girls.

The adoption of the Optional Protocol on Violence Against Women to the CEDAW should capture and consolidate the soft law progress achieved at the global level building upon and expanding the DEVAW and the CEDAW Convention's recommendations on violence against women. This substantive Optional Protocol on violence against women would for ratifying States turn the CEDAW Convention into a more robust and comprehensive women's treaty that explicitly and directly defines violence against women as a human rights violation and form of discrimination against women and protects the right of every woman to a life free from violence.