



SUBMISSIONS IN RESPONSE TO THE CALL FOR GLOBAL TREATY ON VIOLENCE AGAINST WOMEN

By
PARTNERS FOR LAW IN DEVELOPMENT¹

The submissions are in response to the following questions posed by the Special Rapporteur on violence against women, its causes and consequences:

- i. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?
 - ii. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?
 - iii. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?
 - iv. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?
 - v. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?
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In view of the multiplicity of international law instruments relating to elimination of violence against women we believe that gender based violence (GBV) against women is clearly recognised as a violation of international human rights law. Both treaty law and the work of your mandate, the SRVAW, sufficiently ground the normative framework on violence against women in the international legal system. CEDAW General Recommendations 12 and 19 in 1989 and 1992 respectively, firmly framed the scope of violence against women in international law, which was expanded and deepened through the UN Declaration on the Elimination of Violence Against Women, the Beijing Platform for Action, the work of your mandate, the SRVAW, the jurisprudence through CEDAW Optional Protocol and the Rome Statute of the International Criminal Court, 2002. The work of other treaty bodies and mandate holders in articulating GBV in the context of torture, racism, disability, conflict, sexual orientation and gender identity, have strengthened the intersectional framing of VAW in its aggravated forms and across contexts. In this context, it is important to acknowledge the unstinting efforts of the global women's movement in developing this normative framework, and facilitating the integration of intersecting aspects of GBV into the work of related treaty bodies and special mechanisms.

Conceptually, CEDAW locates VAW as an extreme manifestation of discrimination against women, situated along the continuum that begins with more routine, normalized forms of discrimination. This firmly establishes GBV against women as a systemic form of oppression,

¹ Partners for Law in Development (PLD) is a legal resource group pursuing the realization of social justice and equality for women through law, particularly in contexts of marginalization shaped by gender, sexuality, culture and poverty in India. See www.pldindia.org and www.cedawsouthasia.org

rather than an aberration, that embedded in unequal social, economic, cultural and political structures. Most significantly, this entails transformation developed through a holistic understanding of due diligence obligations in responding to manifestations of violence, in combination with elimination of all forms of discrimination and corrective measures to instate substantive equality.

In acknowledgement of the binding nature of these norms, the States parties report to the CEDAW including on VAW, many have ratified the CEDAW OP to avail of its inquiry and complaints procedures. Likewise, countries have welcomed the country missions by the SRVAW to identify gaps that remain and suggest ways to address these. Yet, despite these advances in norm setting and State parties acceptance to report and engage with the UN human rights system, GBV persists and remains deeply entrenched. This points towards challenges related to implementing the human rights obligations related to eliminating it, arising from incorporation gaps at the domestic level, limited understanding of obligations in relation to VAW and political will. In this context, we believe that the drafting of a new General Recommendation proposed by the CEDAW, to update GR-19, provides a valuable opportunity for elaborating comprehensive guidance for carrying out state obligation, in relation to all aspects of the due diligence framework, for elimination of VAW.

That gender based violence persists is not primarily due to conceptual deficiency in the international framework, and rather due to difficulties in its implementation. Therefore, our primary area of focus must be on strengthening implementation within the existing framework that is sufficiently robust to undertake this. A new treaty may serve to fragment the legal framework, diluting the focus of the international framework as it applies to gender based violence, while providing no additional conceptual clarity to that which is currently in effect. It is our view that immediate efforts should be placed on strengthening current mechanisms and focusing political attention on enforcement of the current legal framework, rather than expending political and financial capital on a new treaty which may nevertheless suffer from limited implementation.

In light of the above, in response to question (i) on whether there is a need for a separate legally binding treaty on violence against women with a separate monitoring body, it is our view that there is no such need. We believe that there is fragmentation of policies and legislation to address gender-based violence, and therefore answer question (iv) in the affirmative. It is our view that an additional treaty would increase this fragmentation and detract from a cohesive and streamlined approach to addressing gender based violence. The political and monetary capital required for the formation of a new treaty is in fact likely to detract from political and financial capital available for the existing mechanisms of implementation. Therefore, in answer to question (v) we believe efforts should instead focus on strengthening the existing institutions and mechanisms addressing gender based violence.

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