

- a. At the Global Level
  - i. UN Treaties and Conventions
    1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or the Convention) (1979)

The United Nations General Assembly adopted CEDAW in 1979. Since then, it has become a truly global convention – all but seven members of the United Nations have ratified or acceded to it.<sup>ii</sup> The Convention contains minimum standards by which States should comply, and, as a result of its nearly global acceptance, its standards should be viewed as an international benchmark.<sup>iii</sup>

The Convention aims to eliminate all forms of discrimination against women on the basis of sex.<sup>iv</sup> The Convention itself does not explicitly reference violence against women, but the Committee on the Elimination of Discrimination Against Women (the Committee) has clarified under its General Recommendations that violence against women is discrimination.<sup>v</sup>

The Convention focuses on discrimination against women, rather than discrimination against both men and women, to call attention to the fact that women have suffered and continue to suffer from various forms of discrimination on the basis of their sex.<sup>vi</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>vii</sup>

“[The Convention] guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status, and on a basis of equality with men.”<sup>viii</sup> The Convention is intended to cover even those rights that may not be explicitly mentioned in the Convention but that nonetheless impact women achieving equality with men.<sup>ix</sup> This is important to the issue of violence against women.

Article 2 sets forth the States parties’ legal obligations to “respect, protect, and fulfil women’s right to non-discrimination and to the enjoyment of equality.”<sup>x</sup> The Committee notes that there are three obligations that are central to efforts in eliminating discrimination: 1) parties ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination in the public and private spheres by competent tribunals as well as sanctions and other remedies; 2) improve the de facto position of women through concrete and effective policies and programs; and 3) address prevailing gender relations

and the persistence of gender-based stereotypes that impact women through individual acts or in law, legal and societal structures and institutions.<sup>xi</sup>

The Committee, which is made up of 23 experts, monitors the implementation of CEDAW.<sup>xii</sup> These individuals of “high moral standing and competence in the field covered by the Convention” were nominated by their governments and elected by the States parties.<sup>xiii</sup> Every four years, States parties are expected to submit a report covering measures that they have adopted to effectuate CEDAW.<sup>xiv</sup> The Committee reviews these reports and provides recommendations for areas of further action.<sup>xv</sup> The Committee also reviews complaints from individuals that are submitted under the Optional Protocol to CEDAW, which is discussed in more detail below.

In addition, as mentioned above, the Committee provides general recommendations regarding the interpretation of CEDAW.<sup>xvi</sup> These recommendations are not binding on the States parties to the Convention.<sup>xvii</sup> To date, the Committee has adopted 30 General Recommendations, several of which include specific recommendations regarding violence against women.<sup>xviii</sup>

As stated above, it is under these General Recommendations that the CEDAW Committee clarifies that gender-based violence is discrimination under the Convention.<sup>xix</sup> Under the CEDAW Committee’s General Recommendation No. 19, the Committee suggested to States parties to have the following comments in mind with regard to their reporting and in reviewing their laws and policies:

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.<sup>xx</sup>

Moreover, the Committee clarified that the Convention applies not only to violence by public authorities,<sup>xxi</sup> but that “[u]nder general international law and specific human rights covenants, **States may also be responsible for private acts if they fail to act with**

**due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.**<sup>xxii</sup> This language directly addresses domestic and intimate partner violence and, of course, those assaults committed by offenders who are not public authorities.

The Convention provides some support to combating violence against women, both through its language and its implementation and enforcement.<sup>xxiii</sup> These benefits are described in the “Pros” column of the charts below, but the Convention is far from comprehensive on these issues. The Convention is broad in nature, does not directly address violence against women, and lacks strong enforcement mechanisms. The CEDAW Committee has attempted to fill in gaps with respect to violence against women and has directly addressed the obligations of the States parties under the Convention with respect to these issues, but such recommendations are not legally binding on the States parties. The following charts relating to the Convention’s language and implementation summarize some of the benefits and drawbacks of or gaps in the Convention on issues relating to violence against women:

**Language of the Convention on the Elimination of All Forms of Discrimination against Women**

<b>Pros</b>	<b>Cons</b>
<p>The language of the Convention is broad in its scope. Under Article 2, “States parties condemn discrimination in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and...undertake: ... (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; ... (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, <b>customs and practices</b> which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.”</p>	<p>The Convention itself contains no specific language regarding violence against women. There is no requirement that violence against women must be criminalized or that states must provide civil remedies or services for victims of violence or fund efforts to address violence.</p>
	<p>“Women” under the Convention does not always include “girls and adolescents.” Including a statement that it does for certain purposes implies that it does not for others.<sup>xxiv</sup></p>

	<p>There are no guidelines to determine what reservations are actually incompatible with the intent of the Convention. Other human rights treaties have procedures with respect to reservations.<sup>xxv</sup></p>
<p>Article 6 requires States parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation and prostitution of women.”</p>	
<p>Article 16 of the Convention relates to the elimination of discrimination in marriage and family matters, and Gen. Rec. 21, para. 16 (1994) states: “Subject to reasonable restrictions based for example on a woman’s youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law.”</p>	
<p>The detailed General Recommendations provide explanation of the text of the Convention. Notably, these General Recommendations have become more substantive over the years. These General Recommendations have addressed:</p> <ul style="list-style-type: none"> <li>• Measures to provide effective protection against gender-based violence;<sup>xxvi</sup></li> <li>• Measures to overcome family violence;<sup>xxvii</sup></li> <li>• Application of obligations in periods of armed conflict or in states of emergency;<sup>xxviii</sup></li> <li>• Measures to eliminate the practice of female circumcision;<sup>xxix</sup></li> <li>• The minimum age for marriage for both men and women is 18 and States should require registration of all marriages;<sup>xxx</sup></li> <li>• States party obligations extend to the actions of private actors if the States have not acted with due diligence.<sup>xxxi</sup></li> <li>• States should discourage notions of gender inequality that are affirmed by laws, or by religious, private law or custom.<sup>xxxii</sup></li> <li>• States should ensure: enforcement of laws and policies to address violence</li> </ul>	<p>The General Recommendations are not legally binding.</p>

<p>against women and sexual abuse of girl children and the provision of appropriate health services; training to enable health-care workers to detect and manage health consequences of gender-based violence; enactment and enforcement of laws that prohibit FGM and marriage of girl children;<sup>xxxiii</sup></p> <ul style="list-style-type: none"> <li>• “States parties are responsible for all of their actions affecting human rights, regardless of whether the affected persons are in their territory.” States party obligations apply to citizens and non-citizens;<sup>xxxiv</sup></li> <li>• “Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation.”<sup>xxxv</sup></li> </ul>	
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### **Implementation of the Convention on the Elimination of All Forms of Discrimination against Women**

<b>Pros</b>	<b>Cons</b>
<p>The Convention is truly global – only 7 members of the UN have not ratified it.<sup>xxxvi</sup></p>	<p>The Convention has the highest number of reservations, and even if the States party ratified or acceded to the Convention without reservation, the CEDAW Committee has noted that the laws do not conform to the Convention.<sup>xxxvii</sup></p>
	<p>There is weak implementation of the Convention. “In general, the Women’s Convention has been subject to weaker implementation obligations and procedures, its monitoring body has been provided fewer resources and been given a lesser mandate, reservations to the Convention are subject to fewer restrictions, and the failure of States to maintain their obligations to the Convention are less vigilantly pursued.”<sup>xxxviii</sup> The CEDAW Committee is viewed by some as having the least authority among all of the treaty committees.<sup>xxxix</sup></p>
<p>The language of the Convention gives freedom to the States parties to enact policies that are appropriate within the individual country’s framework – it’s not a one-size-fits-all</p>	<p>The Committee has weak enforcement powers if the State party doesn’t enact necessary measures.</p>

<p>approach. The policies enacted are still subject to review by the CEDAW Committee to determine whether the State party has adopted all necessary measures to comply with its obligations under the Convention.</p>	
<p>The language of the Convention requires States to report on women’s rights.<sup>xi</sup> These reports are required under Article 18 and track the State party’s progress and identify problem areas in implementing the Convention. The States party’s initial report is due within the first year of ratification, and subsequent reports are then due every four years. These reports are reviewed by the Committee for the Elimination of All Forms of Discrimination against Women, which is described under Article 17.</p>	<p>State reports are routinely inaccurate and late.<sup>xii</sup> There are no sanctions for failure to submit accurate and timely reports.</p>
	<p>In 1994, 15 years after the Convention was open for signature, the Committee notes that, even though States report that constitutions and laws comply with the Convention, customs, tradition and failure to enforce the laws in reality violate the Convention.<sup>xlii</sup></p>
<p>Article 29 describes the interstate procedures. Any conflicts between States parties on the interpretation of the language of the Convention have to be resolved through arbitration. If the conflict is not resolved through arbitration, the conflict goes to the International Court of Justice, which decisions are binding on States.</p>	<p>States party can opt out of this enforcement mechanism through reservations,<sup>xliii</sup> and States tend not to sue other states and respect sovereignty.</p>

## 2. Optional Protocol to CEDAW (2000)

Although the Convention does not contain language specifically addressing violence against women, the Optional Protocol establishes a complaint process, under which the CEDAW Committee has analyzed cases regarding violence against women in terms of the Convention.<sup>xliv</sup> But the Committee’s review of such matters is not binding and it lacks strong enforcement remedies.

<b>Pros</b>	<b>Cons</b>
<p>The language of the Optional Protocol allows individuals and groups to file complaints<sup>xlv</sup> with the CEDAW Committee.<sup>xlvi</sup> There is no time limit on when complaints may be filed.</p>	<p>The Committee’s decisions are not legally binding, nor does the Optional Protocol state that States parties have to comply with the Committee’s final views.<sup>xlvii</sup></p>

	“The Committee reiterates that it is not in a position to review the assessment of facts and evidence by domestic courts and authorities, unless such assessment was in itself arbitrary or otherwise discriminatory.” <i>V.K. v. Bulgaria</i> at 17, 9.6 (2011).
The language of the Optional Protocol gives the Committee the power to conduct inquiries into systematic violations of women’s rights <sup>xlvi</sup>	States can opt out and exempt themselves from the inquiry procedure at the time of ratification. <sup>xlix</sup>
There are no reservations allowed to the Optional Protocol. <sup>1</sup>	
	The Committee does not have authority to impose sanctions.

<sup>i</sup> For list of UN human rights treaties, see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

<sup>ii</sup> These seven countries are: the United States, Sudan, South Sudan, Iran, Palau, Tonga, and Somalia.

<http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/>

<sup>iii</sup> CEDAW, Art. 23. “Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: (a) In the legislation of a State Party; or (b) In any other international convention, treaty or agreement in force for that State.” In other words, the Convention provides minimum standards by which States should comply, and these standards have been accepted by nearly every member of the United Nations.

<sup>iv</sup> The General Recommendations from the Committee on the Elimination of Discrimination Against Women are referred to in these endnotes as “Gen. Rec.” Gen. Rec. No. 28, para. 4.

<sup>v</sup> Gen. Rec. No. 19.

<sup>vi</sup> Gen. Rec. No. 25, para. 5. “The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.”

<sup>vii</sup> CEDAW, Art. 1.

<sup>viii</sup> Gen. Rec. No. 28, para. 4.

<sup>ix</sup> *Id.*, para. 7.

<sup>x</sup> *Id.*, para. 9.

<sup>xi</sup> Gen Rec. No. 25, para. 7.

<sup>xii</sup> CEDAW, Art. 17.

<sup>xiii</sup> *Id.*

<sup>xiv</sup> CEDAW, Art. 18 (1).

<sup>xv</sup> CEDAW, Arts. 18 and 21.

<sup>xvi</sup> CEDAW, Art. 21(1)

<sup>xvii</sup> Luisa Blanchfield, *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate, 2011*, at 3, available at <http://www.fas.org/sgp/crs/row/R40750.pdf> ; Salma Khan, *Role of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Realization of Women’s Reproductive Health, Sexual Health and Reproductive Rights, 1999*, available at <http://www.un.org/popin/icpd/icpd5/hague/cedaw.pdf> (“The General Recommendation of the Committee as a treaty monitoring body carry significant weight for States parties and the

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committee takes the opportunity to suggest the States parties to make use of those to give effect to the provisions of the Convention.”

<sup>xxviii</sup> See, e.g., Gen. Rec. No. 19, para. 24(t); Gen. Rec. No. 19, Specific recommendations, para. 24(r); Gen. Rec. No. 12.

<sup>xix</sup> Gen. Rec. No. 12 (1989) – State obligations to protect women from violence in the family, workplace, or other area of social life under Articles 2, 5, 11, 12, and 16 of CEDAW; Gen. Rec. No. 19 (1992) – gender-based violence may breach specific provisions of the Convention, whether or not those provisions mention violence. States may be responsible for private actions if they fail to act with due diligence to prevent violation of rights or investigate and punish acts of violence. States should take appropriate and effective measures to overcome all forms of gender-based violence.

<sup>xx</sup> Gen. Rec. No. 19, para. 7. See also Gen. Rec. No. 28, para. 19.

<sup>xxi</sup> Gen. Rec. No. 19, para. 8.

<sup>xxii</sup> Gen. Rec. No. 19, para. 9; see also Gen. Rec. No. 24, para. 17 (“States and parties cannot absolve themselves of responsibility in these areas [relating to State health functions] by delegating or transferring these powers to private sector agencies.”); Gen. Rec. No. 28, para. 13 (“Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors....States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention.”); Gen. Rec. No. 28, para. 19 (“States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence.”).

<sup>xxiii</sup> The Optional Protocol to CEDAW, which is discussed below, also provides enforcement mechanisms.

<sup>xxiv</sup> Gen. Rec. No. 24, para. 8 (“For the purposes of the present general recommendation, therefore, ‘women’ includes girls and adolescents.”); but see Gen. Rec. No. 28, para. 21 (“States parties in particular are obliged to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence.”)

<sup>xxv</sup> Gen. Rec. No. 20, para. 1(c)

<sup>xxvi</sup> Gen. Rec. No. 19, para. 24(t): “States parties should also take all legal and other measures needed to provide effective protection against gender-based violence, including, inter alia:

- Effective legal measures, including penal sanctions, civil remedies compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- Protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.”

<sup>xxvii</sup> Gen. Rec. No. 28, para. 32 – Unless States provide reparations to women whose rights under the Convention are violated, then the State has not discharged its obligations under Article 2. Under Gen. Rec. No. 19, Specific recommendations, para. 24(r), the Committee recommends that measures to overcome family violence include:

- “Criminal penalties where necessary and civil remedies in case of domestic violence;
- Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
- Services to ensure the safety and security of victims of family violence, including refuges, counseling and rehabilitation programs;
- Rehabilitation programs for perpetrators of domestic violence;
- Support services for families where incest or sexual abuse has occurred.”

<sup>xxviii</sup> Gen. Rec. No. 28, para. 11.

<sup>xxix</sup> Gen. Rec. No. 14 (1990).



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<sup>xxx</sup> Gen. Rec. No. 21, para. 36 and 39.

<sup>xxxii</sup> Gen. Rec. No. 19.

<sup>xxxiii</sup> Gen. Rec. No. 21, para. 44.

<sup>xxxiiii</sup> Gen. Rec. 24, para. 15

<sup>xxxv</sup> Gen. Rec. 28, para. 12.

<sup>xxxvi</sup> Gen. Rec. No. 19, para. 24(g).

<sup>xxxvii</sup> *Supra*, note iii.

<sup>xxxviii</sup> Ontario Women's Justice Network, CEDAW: Background Information, *available at* [http://owjn.org/owjn\\_2009/legal-information/international-law/281-cedaw-background-information](http://owjn.org/owjn_2009/legal-information/international-law/281-cedaw-background-information) ("OWJN CEDAW"). *See also* Gen. Rec. No. 21, para. 45-6; Gen. Rec. No. 21, para. 43. ("Consistent with articles 2, 3 and 24 in particular, the Committee requires that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention."); Gen. Rec. No. 28, para. 41 (The Committee considers Article 2 to the Convention to be its essence. Thus, reservations to this article are incompatible with the purpose of the Convention and incompatible with Article 28); HRI/GEN/1/Rev. 9 (vol. II) at 319 (the Committee in General Recommendation No. 4 "[e]xpressed concern in relation to the significant number of reservations that appeared to be incompatible with the object and purpose of the Convention.")

<sup>xxxix</sup> OWJN CEDAW, *supra* note xxxvii.

<sup>xl</sup> *Id.*

<sup>xi</sup> OWJN CEDAW. The CEDAW Committee has provided additional explanation of reporting obligations of States parties with respect to violence against women in several General Recommendations: Gen. Rec. No. 9 – States "should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender..."; Gen. Rec. No. 12 – periodic reports should include data on the incidence of violence of all kinds against women and on women who are the victims of violence.; Gen. Rec. No. 19, para. 24(s): "States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken."

<sup>xli</sup> OWJN CEDAW.

<sup>xlii</sup> Gen. Rec. No. 21, para. 15.

<sup>xliii</sup> As of 2006, this was the Article with the most reservations. *See* CEDAW/SP/2006/2.

<sup>xliv</sup> *See, e.g.,* A.T. v. Hungary.

<sup>xlv</sup> Examples of the complaint process include *Sahide Goekce v. Austria* and *Fatma Yildirim v. Austria* – although Austria had an acceptable system in place to deal with violence and abuse, it failed to ensure that individuals involved in the system acted in such a way to protect individual victims. Austria was in violation of numerous provisions of the Convention. Recommendations to improve implementation and monitoring of its legislation, strengthen training programs, and take related steps to improve implementation, including improving prosecution. *A.T. v. Hungary* – lack of specific legislation to combat DV and SH constituted a violation of human rights and fundamental freedoms particularly security of a person.

<sup>xlvi</sup> Optional Protocol, Art. 2.

<sup>xlvii</sup> Optional Protocol, Art. 4.

<sup>xlviii</sup> Optional Protocol, Art. 8.

<sup>xlix</sup> Optional Protocol, Art. 10.

<sup>l</sup> Optional Protocol, Art. 17.