

30 September 2016

**UN Special Rapporteur on violence against women, its causes and consequences –
Stakeholder Consultation**

Reply submitted by Global Rights for Women, Centre for Equality Advancement and
Women’s Support Center on adequacy of international legal framework on violence against
women¹

Global Rights for Women, Centre for Equality Advancement, and Women’s Support Center are grateful to the Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, for the opportunity to give input on this critical issue of the adequacy of the international legal framework on violence against women.

Global Rights for Women (GRW) is an international non-governmental organization based in Minnesota, USA working towards a world where women’s human rights to equality and freedom from violence are fully realized. GRW collaborates with partners around the world to promote women’s human rights to equality and freedom from violence through legal reform and systems change. GRW’s staff of experts have more than 20 years of experience working internationally on legal and systems reform to end violence against women and consulted with the United Nations in many capacities, notably as a participant in the expert group meeting on good practices in legislation to address violence against women, convened by the United Nations Division for the Advancement of Women, in cooperation with the United Nations Office on Drugs and Crime, in May 2008.

Centre for Equality Advancement (CEA) is a Lithuanian based NGO. For more than 10 years, CEA has worked to change stereotypes for women and girls to feel safer. CEA organizes informational campaigns, engages in systems-change advocacy, provides training courses and seminars, publishes articles, manuals and other publications, carries out research and provides expertise on the themes of gender equality, diversity and human rights.

Women’s Support Center (WSC) is an Armenian based NGO that provides services to victims of violence and conducts systems change advocacy. WSC’s mission is prevention of domestic violence through the protection and empowerment of the victim, rehabilitation of family members; challenging systems and institutions so they respond more effectively to the needs of battered women and their children; promoting social change; and educating the community on gender equality and domestic violence and its consequences.

¹ Cheryl Thomas and Amy Lauricella, Global Rights for Women, authored this submission. Vilana Pilinkaitė and Margarita Jankauskaitė, Centre for Equality Advancement and Mary Matosian, Women’s Support Center, provided valuable background information and revisions, and are signatories to this submission.

GRW, CEA and WSC acknowledge the considerable work that has already been done by the former Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, with input from civil society and international legal experts, on reviewing and analyzing the relevant international and regional human rights instruments.² GRW, CEA and WSC agree with her conclusion that, in order to close the gap in the normative legal framework prohibiting violence against women, a new comprehensive, specific, legally binding international instrument that establishes global minimal norms and standards is necessary.³

1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?

The world needs a binding legal instrument and monitoring body with authority to hold governments accountable for their duty to protect women's safety and address impunity for violence. Despite the current legal framework, such additional international law, specifically dedicated to violence against women, would more effectively promote safety and equality for women and decrease impunity for offenders.

Victims' are inadequately protected and served by current international law. Establishing uniformity, specificity and State accountability through a binding and refined global instrument is urgently needed, rather than maintaining the status quo with various and incomplete and inadequate standards and obligations for different regions of the world.

- Former Special Rapporteur Manjoo documented the challenges the regional human rights systems have.⁴ Regional frameworks have not been, and will not be, as effective as an international instrument would be globally. A strong instrument endorsed internationally will bolster and energize the current cross border grassroots effort to end impunity for violence against women and is more likely to lead to communities where victims are provided the services and remedies they need in a way that meets best practices.
 - Regional binding instruments only exist in the Americas and Europe, Africa needs to improve its framework (this is evidenced in the Special Rapporteur on the rights of Women in Africa's submission to this call), and there is no such instrument in Asia. The current binding regional instruments and a new international instrument can complement each other and strengthen the global movement to end violence against women.
- Many experts hesitate and argue that the current environment is not right for this issue and effort, including many of the submissions to this call. However, recently at the meetings Commission on the Status of Women 58, many grassroots organizations and NGO stakeholders expressed great enthusiasm for a binding instrument and it was clear that deliberations could support these activists and re-energize the movement to end violence against women at all levels. In March 2014,

² See A/HRC/29/27 and A/HRC/29/27/Add.4.

³ A/HRC/29/27 at 19-20.

⁴ A/HRC/29/27 at 5-19.

at CSW58, stakeholders from around the world attended five public meetings to learn about and discuss the current legal framework that prohibits violence against women and the need for a binding international framework.⁵

- The following examples from the Committee on the Elimination of Discrimination Against Women indicate the exigent need for a binding international agreement that addresses gender biases and myths that perpetuate violence. This agreement should reflect best practices in law and policy on violence against women:
 - Two CEDAW Committee decisions (Karen Tayag Vertido, 2010⁶ and R.P.B. v. The Philippines, 2014⁷) made recommendations to the Philippines to change the legal definitions of rape and sexual assault to focus on lack of consent rather than force or violence. The Committee cited the exact language from the underlying court evidencing a dangerous misunderstanding of sexual assault and bias towards victims, and yet after four years, the law had not been changed:
 - ❖ According to the CEDAW Committee, two regional trial courts cited same legal precedence: “(a) it is easy to make an accusation of rape; it is difficult to prove but more difficult for the person accused, although innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defence.”⁸
 - ❖ In both cases, the CEDAW Committee noted that courts continued to rule based on gender-based myths, prejudices, and stereotypical notions regarding the victim's gender, age, disability, and actions.⁹

⁵ Those forums included the Side Events *Violence against Women: Istanbul Convention and Belem do Para*, presented by France, Argentina, Council of Europe and the Organization of American States (March 10, 2014); *Strengthening the International Legal Framework on Violence against Women*, presented by the United Nations Special Rapporteur on Violence against Women (March 12, 2014); *Beyond 2015: Due Diligence Framework to End Violence against Women*, presented by the Due Diligence Project (March 13, 2014), and the Parallel Events *Addressing Violence against Women Within the Post 2015 Agenda: A Convention to Eliminate Violence?*, presented by Australian Women against Violence Alliance, Scottish Women's Aid, End Violence against Women Coalition, UK (March 13, 2014); and *Has the Time Come? The Gaps in the Global Framework on Violence against Women* presented by The Working Group to Ban Violence against Women and Girls Worldwide (March 13, 2014).

⁶ CEDAW/C/46/D/18/2008.

⁷ CEDAW/C/57/D/34/2011.

⁸ CEDAW/C/46/D/18/2008 ¶ 2.9; CEDAW/C/57/D/34/2011 ¶ 2.5.

⁹ CEDAW/C/46/D/18/2008 ¶¶ 8.4-8.8; CEDAW/C/57/D/34/2011 ¶¶ 8.9, 8.11.

- This kind of blatant manifestation of misunderstandings of the dynamics of sexual assault and other forms of violence are prevalent among powerful legal authorities throughout the world.

A binding international agreement that reflects best practices and prioritizes victim safety is the distinctive, prominent and strong tool the world needs to hold States accountable for reforming dangerous laws and addressing biased interpretations of laws.

2. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?

Yes, State due diligence and implementation obligations need specific elaboration and direction to ensure that governments fully understand, appreciate, and act on those obligations. A specific, binding agreement can provide this level of direction and also provide necessary monitoring and enforcement. Many State laws are inadequate to protect women from violence and hold offenders accountable.¹⁰ Some examples of how an international instrument could address this are:

- States' responsibilities to investigate, prosecute and punish violence against women, as well as provide appropriate reparations and services, should be outlined in a binding international instrument rather than be incorporated into international law on a piecemeal basis through multiple general recommendations, country report concluding comments, and international jurisprudence.
- States' responsibilities to train all law enforcement, legal professionals and judicial personnel on victim-centered interventions should be outlined in a binding international instrument that can be incorporated into national law.
- States' responsibilities to fund: 1) cooperative systems change efforts to respond to VAW led by NGO's; 2) autonomous civil society organizations that serve victims of violence through the establishment of shelters, provision of social services, and other support, should be outlined in an international instrument.
- The revision of CEDAW's non-binding General Recommendation 19 is evidence that there is an incorporation gap of the current international norms and standards and a very real inability to collect and follow all of the diverse statements and standard setting. Even with the expected revisions to GR19 highlighting the responsibility for acts or omissions of State and non-State actors, including prevention, protection and redress, data collection and monitoring, and international cooperation, the revisions are still non-binding and lacking in sufficient detail to hold States accountable.¹¹

Importantly, a new international binding instrument could include specific language that reflects decades of best practices and lessons learned from legal reform at the national level around the world. We know that legal system intervention in violence against women cases is critical, but difficult, especially in cases of private actors. Poorly drafted language

¹⁰ See responses to question #3 below.

¹¹ See CEDAW/C/GC/19/Add.1 and all expert stakeholder suggested comments and revisions displayed by CEDAW on information page.

and/or lack of guidance on enforcement can have disastrous consequences for victims. This has been a potent message at the national level.

An international instrument can be explicit in guiding States on best practices. It could also draw new and focused attention to violence against women as a human rights violation that States must address.

3. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?

Yes, despite the recommendations contained in the Handbook for Legislation on Violence Against Women and its Supplement on Harmful Practices and the nonbinding rulings of the CEDAW committee and binding regional frameworks, it is well documented that States continue to maintain harmful gaps in their legislation prohibiting VAW.¹² Here are a few common domestic law failures:

- No laws prohibiting domestic violence
- New legal obligations that are not accompanied by requirements for financial allocations
- No civil order for protection remedies
- Remedies or legal system intervention that are dependent on evidence other than victims' testimony
- Inadequate enforcement of criminal laws in violence against women cases
- Requirements of showing of force versus lack of consent in rape cases
- Exceptions to rape charges if person marries victim
- Marital rape not recognized a crime
- Mediation or conciliation required or encouraged in domestic violence and sexual assault cases
- Rapists allowed parental rights
- Possibility of dismissal of charges of honour based violence when family requests

4. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?

There is ample evidence of a fragmentation of national policies and legislation compared with what experts have determined are internationally accepted best practices over the

¹² See A/HRC/29/27/Add.4 Submission 2 at 2-5. See also Handbook for Legislation on Violence against Women, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>; Supplement to the Handbook for Legislation on Violence against Women, <http://www.un.org/womenwatch/daw/vaw/handbook/Supplement-to-Handbook-English.pdf>.

course of the past four decades.¹³ There is huge disparity and lack of uniformity in the laws and policies that are being developed at an unprecedented speed around the world. For example:

- In Lithuania, there is a law criminalizing domestic violence, showing an understanding of the danger victims are in, and yet, legal system officials utilize mediation and reconciliation proceedings in cases involving domestic violence, evidencing a misunderstanding of the bargaining power (not to mention very real safety concerns) of a victim. Additionally, Lithuania still does not provide a civil protective measure remedy to victims of violence despite recent amendments to its law. CEA notes that the response to intimate partner violence (IPV) is very ineffective due to absence of risk assessment by police and courts, insignificant sentences, repeated violence and failure to protect victims and ensure perpetrator's accountability.
 - In 2015, the State Audit in Lithuania released a report on implementation of the legal instruments in Lithuania, focusing on the protection of victims of domestic violence. The report concluded that there was ineffective application of protection and restrictive measures in the cases of IPV by courts and high numbers of repeated domestic violence. The report was critical of the courts' sentences for perpetrators, determining they were very soft and hardly enforcing accountability. For example, the sentences cover such obligations as commitment to stay at home from 11 pm till 6 am, restraint from changing the place of residence and apologies for a victim.¹⁴
 - The State Audit's report also noted the absence of risk assessment used by law enforcement and courts, which makes it difficult to effectively evaluate the dangers and threats for victims in the process of criminal investigation and court procedures. Similarly, a review of the Prosecutors' office practices showed a lack of a gender sensitive approach to violence, and a failure to incorporate the use of power and control behaviour by perpetrators into the implementation of legal instrument to protect victims of domestic violence and ensure perpetrator's accountability. As a result, prosecutors do not effectively cooperate with police in the pre-trial investigation and fail to protect victims effectively from the repeated violence.¹⁵
- In Bulgaria and Croatia, legislators failed to explicitly require adequate funding for the government responses to violence against women when enacting their laws.

¹³ See generally Handbook for Legislation on Violence against Women, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>; Supplement to the Handbook for Legislation on Violence against Women, <http://www.un.org/womenwatch/daw/vaw/handbook/Supplement-to-Handbook-English.pdf>.

¹⁴ *Valstybės Auditas, 2015. Ataskaitos santrauka. Apsaugos nuo Smurto Artimoje Aplinkoje Organizavimas*, on file with signatory Centre for Equality Advancement.

¹⁵ Prosecutor's office, email communication 2016-01-30, on file with signatory Centre for Equality Advancement.

Implementation of laws requires organization, cooperation, resources, training, education, and monitoring, to name a few. All of these activities require adequate funding to be successful. These two countries are examples where, but for ongoing efforts by civil society and NGOs to hold their governments accountable, enforcement of new laws would not have occurred.

- In Armenia, Morocco and many other countries, States have utterly failed to pass any domestic violence legislation.
- In many countries in Latin America and elsewhere, civil protection remedies exist but are completely unenforced.
- In the United States, where laws criminalize acts of violence against women, it took years of advocacy work at all levels to achieve government funding to programs throughout the country to support the effective enforcement of these laws. Strong international law could shorten this process where laws are new and accelerate the protection of women and the accountability of abusers.
- In Spain, the law dedicates funding for services to victims of violence and educating victims through a government supported website about the various resources available.

A successful national response to combat violence against women must not only involve a strong legal framework with explicit language on violence against women but also a willingness to repeatedly and on an ongoing basis examine *how* the laws are working and *whether* they're being implemented effectively through a monitoring body.

5. 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?

Global Rights for Women, Centre for Equality Advancement and Women's Support Center believe that, in order to effectively protect women and girls from the most widespread human rights violation on earth, a specific binding international instrument with an implementation structure and monitoring mechanism is needed. However, a concurrent and interim solution could be to adopt a more robust and refined version of revised General Recommendation 19 (taking into consideration the many submissions from experts, including GRW, currently posted on CEDAW's website) and create a binding protocol.

We recommend that the CEDAW Committee take a stronger stance on multi-sectoral coordination and cooperation both nationally and sub-nationally throughout the world. A coordinated community response for implementation of a response to violence against women has proven to work in countries that have had laws for decades.

Other ideas for reform are:

1. Strengthen CEDAW's reporting process. The reporting processes for the Convention of Belém do Pará and the Istanbul Convention can be models.

2. Prioritize violence against women issues in the CEDAW Committee's follow-up to Concluding Observations.
3. Include violence against women issues in the Common Core Document, so the Committee can target its Concluding Observations with respect to violence against women for follow-up in the periodic reporting process.
4. Undertake efforts to increase knowledge and education among community members and women's advocates about the availability of the individual complaints procedure of the Optional Protocol when domestic remedies fail. Additional resources and funding should be allocated to realize the potential of this procedure.
5. Allocate additional resources to increase the capacity of the Committee to use the Optional Protocol's inquiry procedure and realize its potential to achieve systemic change on violence against women.
6. Consider a new Optional Protocol to CEDAW that is singularly focused on violence against women. It should be open to all States and include a provision that prohibits reservations. Alternatively, it could institute a review process where reservations are analyzed as to whether they are consistent with the treaty.
7. With a new Optional Protocol to CEDAW, consider establishing a separate and autonomous monitoring body. This monitoring body should consist of experts with extensive experience on violence against women.