**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**

***Background Paper of the UN CEDAW Committee***

The Convention on Elimination of All Forms of Discrimination against Women and the practice of the CEDAW Committee address comprehensively all issues related to Gender-Based Violence against Women and Girls, affirmed the CEDAW Committee at its 86th session.

**Main advantages of monitoring GBVAW under the CEDAW Convention**

1. In its General Recommendation No. 19 (1992) on violence against women, CEDAW considers GBVAW as a form of discrimination prohibited by Article 1 of the Convention. In addition, it is extensively and contextually addressed by Article 5 of the Convention, given that gender stereotyping is a significant factor, root cause and driver of discrimination leading to GBVAW. The Committee includes systematic references to GBVAW during constructive dialogues with State parties delegations under the reporting procedure, in its jurisprudence on individual communications and inquiries under the current OP, as well as in the work of the CEDAW Working Group on gender-based violence against women.

The significant advantage of the CEDAW Convention is its consideration of GBVAW within the broader context of discrimination, which is essential, as it permits a comprehensive interpretative approach. Acts of gender-based violence experienced by women often occur in a broader framework of discrimination and social stigma. The Convention allows addressing of intersecting forms of discrimination that render women susceptible to gender-based violence in the first place.

2. The CEDAW Convention functions as a flexible and dynamic treaty, amenable to interpretation and adaptation in response to contemporary issues. Article 31 (1) of the Vienna Convention on the Law of Treaties (VCLT) provides that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. Furthermore, article 31 (3) (b) and (c) stipulate that, in the interpretation of a treaty, there shall be taken into account, together with the context, any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation, and any relevant rules of international law applicable in the relations between parties.

The object and purpose of the CEDAW Convention is to address all forms of discrimination against women and girls, which encompasses GBVAW, both existing and emerging forms, which underlie and perpetuate discrimination against women. Accordingly, the CEDAW Committee consistently interprets all articles of the Convention in light of the gender-based violence that underpins them, and includes GBVAW in its considerations of all forms of discrimination against women. In doing so, the Committee adopts a flexible approach, considering new developments and principles, and adequately expansively interprets the Convention, as mandated by the rules of interpretation provided for in Article 31 VCLT. The consistent inclusion of GBVAW into all its work, including State dialogues, Concluding observations and recommendations (COBs), General Recommendations (GRs), Communications and Inquiries, establishes a clear practice of applying the CEDAW Convention in a manner that encompasses GBVAW, which State parties have accepted. Consequently, international law allows the CEDAW Convention to evolve in response to emerging developments and changing circumstances.

**Strong need for implementation of the existing international legal framework**

3. The prohibition of GBVAW is not only entrenched in Article 1 of the CEDAW Convention, thereby permeating every other article. Still, it is also further elucidated by General Recommendations No. 19 and GR 35 from 2017, updating GR 19. GR 35 affirms that *opinio juris* and state practices have evolved to elevate the existing standards on the prohibition of GBVAW to the status of customary international law. Given the rights guaranteed by CEDAW and the practice under CEDAW, the current challenges of persistent and pervasive GBVAW, are related to the need to enhance implementation of the existing legal frameworks and to encourage State parties to increase the allocation of financial resources towards relevant policies and programmes.

Priority should be assigned to ensuring and strengthening the comprehensive implementation of the treaties and other existing instruments. Besides the CEDAW at the UN level, additional specialized treaties concerning GBVAW are Convention No. 210 of the Council of Europe on preventing and combating VAW and domestic violence, the Istanbul Convention, the Maputo Protocol to the African Charter on Human and Peoples’ Rights, and the Inter-American Convention on the Prevention, Punishment and Eradication of GBVAW (the Belem do Para Convention) are in place.

4. The pressing need for better national implementation of the existing framework can for instance be fostered by enhancing visibility and awareness of the international GBVAW framework. This could encompass targeting CSOs, activists, legal professionals, educators, the media, and other stakeholders. Ensuring stakeholders are well-informed about the array of existing instruments available for safeguarding women's rights, such as its individual complaints mechanisms under the OP, along with the Committee's publications and outputs, could catalyse civil society's impetus for change, thereby compelling States to comply with their treaty obligations. Within the CEDAW framework, a wealth of expertise, information, guidelines, training opportunities, and materials addressing GBVAW already exists. Enhancing CEDAW's online presence, notably through improved utilization of social media and heightened promotion of various publications, including from the WG on GBVAW can contribute to this effort.

Furthermore, in the pursuit of bolstering the implementation of the GBVAW framework, fostering strategic, tactical and innovative collaboration between diverse international and regional mechanisms is indispensable. This extends to harmonising efforts between regional GBVAW treaties and instruments like the Rome Statute, which criminalises GBV in situations of conflict. Capitalising on synergies between these mechanisms can curtail fragmentation and ensure a more unified approach. The establishment of institutional linkages on thematic issues across mechanisms holds not only practical but also symbolic value. This can rekindle attention to the issue and potentially amplify overall State endorsement and implementation.

**Adequacy of the current international framework on Gender-based Violence against Women**

5. The CEDAW Convention originally did not incorporate an explicit prohibition of GBVAW. However, GBVAW has been a concern of the Committee since the adoption of the Convention in 1979. Already in its General Recommendation No. 12 (1989), CEDAW called on States parties to specifically include in their reports information about legislative and other measures to protect women from violence in everyday life. In its ground-breaking General Recommendation No. 19 (1992), the Committee first interpreted GBVAW as a form of discrimination against women, prohibited by Article 1 of the Convention. This means that GBVAW falls under the ambit of all CEDAW Convention Articles. In 2017, CEDAW adopted General Recommendation No. 35 on GBVAW, updating General Recommendation No. 19, acknowledging that States parties had endorsed the Committee’s interpretation with the result that the *opinio iuris* and state practice on the prohibition of GBVAW had evolved, as mentioned above, into a principle of customary international law (see GR 35 para. 2). This means that even those States that did not ratify CEDAW are required by international human rights law to protect women from GBVAW and this is exemplified in the CEDAW Cities project and International CEDAW reviews by Non-State Parties who consistently utilize the CEDAW framework, standards and procedures to protect women from GBV and institute protective mechanisms against GBVAW.

Although General Recommendations are not legally binding, they are authoritative interpretations of States’ obligations and recommend targeted measures to implement treaty provisions and establish accountability standards for the CEDAW Convention. No State party has opposed the three General Recommendations dealing with GBVAW or challenged the Committee’s competence to address GBVAW. It is to be noted that the CEDAW Convention is one of the most ratified treaties in the UN system.

In the GRs, in conjunction with Articles 1 & 2 and especially Article 5 of the Convention, the Committee recommends effective redress for violations. The Convention recognises violence as a severe form of discrimination that gives rise to and underpins all other forms of discrimination against women. The notable strength of the Convention is that it contextualises GBVAW within the broader spectrum of discrimination against women in all settings. In particular, the Convention makes gender stereotyping (Article 5), both the starting point and context to deal with GBVAW.

6. Accordingly, States parties are required to address GBVAW, including through legislation and practical measures as per CEDAW Article 2, as well as across various fields of public policy such as education, health, employment, media, political life and within its national development priorities, all of which encompass elements of gender stereotyping. This induces State accountability for GBVAW arising from their actions, those of their agents, and even non-state actors, where the State knew or should have known about the occurrence of GBVAW and could have prevented it. States parties must also provide gender-sensitive, unbiased, and competent justice and law enforcement systems extending to the police, social and healthcare services, and other state agents like migration officers and educators who respond to GBVAW. The State obligations and due diligence obligations further extend to eradicating or modifying norms, customs, and practices that endorse or facilitate GBVAW, thereby demanding preventive action across all realms where states must take all appropriate measures for realisation, including in the private sector.

The Committee conducts an in-depth, country-specific examination of GBVAW, with GBVAW being systematically addressed at all stages of a State party’s reporting process. Prior to the dialogue with the Committee, States parties and NGOs present reports on the progress achieved in eliminating discrimination against women, which also cover GBVAW. During the constructive dialogues, the Committee poses questions to State party delegations to assess their adherence to and need for GBVAW guidance, and subsequently adopts Concluding Observations with detailed, specific recommendations for eliminating GBVAW. GBVAW is then addressed under different articles and in many contexts, not only under article 5, but also under article 6 (trafficking in women & exploitation of prostitution), articles 7 and 8 (political violence), article 9 (statelessness & violence), article 10 (bullying, harassment in education), article 11 (sexual harassment at the workplace), article 12 (reproductive health violence), article13 (economic empowerment of women and the link with GBVAW), article 14 (rural women, vulnerable, marginalised women & violence) and article 16 (violence within the family).

7. Furthermore, much of the work that is being done under the Optional Protocol /OP/ to CEDAW pertains to GBVAW. The OP grants individuals the right to file complaints, called individual communications, following the exhaustion of domestic remedies, resulting in a decision by the Committee. Numerous individual communications have addressed various forms and contexts of GBVAW. In fact, addressing states' responsibility for GBVAW constitutes a significant portion of the Committee's jurisprudence under the OP.

Under the inquiry procedure of the OP, which allows for investigations into alleged grave or systematic violations, five out of the seven inquiries, on which the Committee issued reports, have focused on GBVAW as the primary concern. The remaining two, centered on sexual and reproductive health, also tackled GBVAW.

Additionally, the CEDAW Working Group on GBVAW addresses exclusively and extensively the topic of GBVAW and publishes recommendations and guidance on specific issues within this field to assist States parties in tackling GBVAW.

8. The CEDAW Committee’s output, including COBs and jurisprudence, is regularly referenced by other treaty bodies and UN entities and has also been referenced by some domestic courts. These bodies, such as the HRC, CAT, CESCR, UPR, UNFPA and UN country teams, also already address issues of GBVAW in their engagement with States parties. For instance, the HRC recognises GBVAW, including domestic violence and marital rape, as violations of Article 6 (the Right to Life) and Article 9 (Right to Liberty and Security of Person) of the International Covenant on Civil and Political Rights, and CESCR deals with matters of maternal mortality and sexual and reproductive health under Article 12 (Right to Health) of the International Covenant on Economic, Social and Cultural Rights. CAT also regards GBVAW, encompassing acts like rape, domestic violence, FGM, and trafficking, as forms of torture or ill-treatment.

Moreover, the CEDAW Committee maintains robust formal working relationships with other UN mechanisms that address GBVAW. These entities include the Special Rapporteur on Violence Against Women (currently Reem Alsalem), a mandate established in 1994, and the Secretary-General's Special Representative on sexual violence in conflict (currently Pramila Patten), established in 2009. To enhance cooperation between UN and regional independent expert mechanisms focused on addressing discrimination against women, the Elimination of Discrimination and Violence Against Women Platform (EDVAW), composed of relevant UN and regional women’s rights mechanisms, was launched in 2018, with CEDAW actively participating as a member.

Numerous UN instruments also address GBVAW, including the 1993 Declaration on Violence against Women, the 1993 Vienna Declaration and Programme of Action, the Beijing Platform on GBVAW, and SDG 5.2, which explicitly aims to eliminate violence against women.

**Conclusion**

**The CEDAW Convention has proven to be a dynamic instrument that the Committee has consistently interpreted to address GBVAW as a primary concern.**

**The CEDAW Committee recognizes the crucial role of gender-based violence against women within its mandate, underscoring its significance in understanding patriarchal power dynamics and control over women—an integral aspect of the CEDAW's core principles. While addressing gender-based violence against women is a central focus, the CEDAW's mandate extends beyond this realm. The Convention and the Committee actively delve into a comprehensive examination of all structural and intersectional forms of discrimination against women. This includes a thorough exploration of direct and indirect, *de jure* and *de facto*, as well as formal and substantive equality. The commitment to this approach is evident in the meticulous application of Convention articles, COBs, and the CEDAW Committee's jurisprudence. Non-State Parties, even those not bound by under-reporting obligations, embrace and utilize these legal instruments as tools and benchmarks for legal, policy, and programmatic actions. These efforts aim to advance and assess progress toward substantive equality across various spheres, encompassing protection against gender-based violence against women. This approach has yielded positive and transformative outcomes in numerous regions.**

**At this critical juncture, the Committee's foremost priority is to emphasize and actively promote women's decision-making and leadership. This involves reinforcing the pivotal role of both the CEDAW Convention and the Committee in shaping a new global order amidst a technological revolution and a heightened awareness of intersectionality. Additionally, the Committee is committed to countering emerging threats to the rule of law and global peace and security. It seeks to bolster the universal women's human rights regime by fostering the full and equal participation of women in addressing contemporary global crises, such as extremism, fundamentalism, climate change, epidemics, as well as political and economic challenges.**