

A GUIDE TO USING THE UN CEDAW COMMITTEE AND THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN IN CASES OF GENDER-BASED VIOLENCE



**European Human Rights
Advocacy Centre**



**Middlesex
University
London**

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Introduction

Violence against women is a particularly prevalent form of discrimination against women, and has become an increasingly important area of focus globally. The [United Nations Committee on the Elimination of Discrimination against Women](#) (the Committee) and the [UN Special Rapporteur on violence against women, its causes and consequences](#) (SRVAW) are two of the leading international bodies focused on addressing this issue. They enforce the right of women and girls to be free from violence, as incorporated in the [International Convention on the Elimination of All Forms of Discrimination against Women](#) (the Convention). This guide sets out the key rights, obligations, and principles designed to prevent and remedy violence against women in the Convention framework; and looks at how these principles have been applied by the Committee and informed the work of the SRVAW. The guide also provides an overview of the procedural requirements for using the individual communications procedure of the Committee (in accordance with, *inter alia*, the [Optional Protocol to the Convention](#) (CEDAW-OP)), and engaging with the SRVAW on urgent appeals in individual cases and reporting developments at the national level.

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Acronyms and abbreviations

CSW	Committee on the Status of Women
CEDAW Committee/ the Committee the Convention	Committee on the Elimination of Discrimination against Women
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Istanbul Convention	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
Optional CEDAW-OP SRVAW	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women UN Special Rapporteur on violence against women, its causes and consequences

The Convention on the Elimination of All Forms of Discrimination against Women

General overview

The [Convention was adopted by the UN General Assembly in 1979](#) and entered into force in 1981. To date, [189 States have acceded to the Convention](#), including each of the countries in EHRAC's target region: Armenia (1993), Azerbaijan (1995), Georgia (1994), Russia (1981) and Ukraine (1981). It is the only international treaty focused exclusively on discrimination against women, and provides an additional layer of protection for individual rights in this regard to the [International Bill of Rights](#) (comprising the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)).

The CEDAW Committee

Pursuant to Article 17 of the Convention, the implementation of the rights and obligations contained therein is monitored by the Committee, whose work includes consideration of individual complaints (referred to as 'communications') alleging specific violations of the Convention by States Parties pursuant to the [Optional Protocol to the Convention](#).

The Committee comprises 23 independent experts, who examine reports submitted by States Parties, and make suggestions and recommendations based on their consideration of the same (Article 18(1)) ([see further below](#)); and adopt [general recommendations](#) on issues affecting the practical implementation of the Convention (Article 21(1));

Committee members are elected by secret ballot (Article 17(2)) and serve a four-year term (Article 17(5)).

State reports

States must submit a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention, and on the progress they have made in this respect (Article 18). Reports must be submitted within one year of the Convention entering into force in the State (Article 18(1)(a)) and every four years thereafter (Article 18(1)(b)).¹ The Committee reviews States' reports and adopts concluding observations on them. The Committee has issued reports on [Armenia](#) (2016), [Azerbaijan](#) (2015), [Georgia](#) (2014), [Russia](#) (2015), and [Ukraine](#) (2017). These five reports all highlighted similar issues, such as the prevalence of violence against women, the lack of provision of support services for victims, inadequate implementation of national legal frameworks, the prevalence of gender stereotypes, and barriers to women who have been victims of violence.²

General recommendations

The Committee makes [general recommendations](#) addressed to all Member States on any issue affecting women worldwide and often relating to the interpretation and application of the

¹ The Committee further introduced in 2014 a simplified reporting procedure for States which had submitted their common core document to submit overdue reports.

² See also Levine, K., [Preventing and addressing violence against women in Russia, Ukraine, Azerbaijan, Georgia and Armenia](#), EHRAC Bulletin No. 25, Summer 2016.

relevant provisions of the Convention (Article 21 CEDAW). So far, the Committee has issued [35 general recommendations](#), including General Recommendation Nos. [19](#) and [35](#) ([see below](#)) concerning violence against women.

Optional Protocol to CEDAW

The [Optional Protocol](#) (or CEDAW-OP) [entered into force in 2000](#) in 13 countries, and more recently in Armenia (2006), Azerbaijan (2001), Georgia (2002), Russia (2004) and Ukraine (2003). The Optional Protocol sets out two main avenues for addressing violations of women's rights: individual complaints and inquiries.

Individual Communications

Individual complaints (referred to as 'communications') may be submitted by victims or on behalf of victims who claim violations of their rights under the Convention against a State Party, pursuant to [Rules 56 to 75 of the Rules of Procedure of the CEDAW Committee](#). In special circumstances, the communication may be filed without the victim's consent (Article 2 CEDAW-OP). The Committee's decisions (adoption of views or inadmissibility) can be accessed [via an online database on the website of the Office for the High Commissioner for Human Rights](#).³

Inquiries

[Pursuant to Rules 76 to 91 of the Rules of Procedure](#), Article 8 of the CEDAW-OP establishes an inquiry procedure. This allows the Committee to initiate a confidential investigation by one or more of its members, where it has received reliable information of 'grave or systematic violations' by a State Party of rights established in the Convention. Where warranted and with the consent of the State Party, the Committee may visit the territory of the State in question to conduct an investigation. Any findings, comments or recommendations will be transmitted to the State Party concerned, which must respond within six months.

Four inquiries have been conducted to date, including two related to violence against women, into:

- the reproductive rights of women in Northern Ireland (UK), regarding the right to an abortion ([CEDAW/C/OP.8/GBR/1](#), 23.02.18);
- access to contraception in Manila in the Philippines ([CEDAW/C/OP.8/PHL/1](#), 10.06.2015);
- the murder and disappearances of aboriginal women and girls in Canada ([CEDAW/C/OP.8/CAN/1](#), 30.03.15);⁴
- the murder and disappearances of women in Ciudad Juárez in Mexico ([CEDAW/C/2005/OP.8/MEXICO](#), 27.01.05).

Format of individual communications and inquiry submissions

[CEDAW-OP](#) specifies the formal procedural requirements for individual communications and inquiry submissions. Both types of complaints must:

³ For [the Committee's decisions](#), select 'CEDAW' from the drop down menu for 'Filter Treaty'.

⁴ See also: Information received from the Government of Canada on the measures taken in response to the inquiry ([CEDAW/C/OP.8/CAN/3](#), 27.06.16)

- be in writing (Article 3);
- not be anonymous (Article 3);
- concern a State that is party to the Optional Protocol (Article 3);
- have exhausted domestic remedies unless unreasonably prolonged or unlikely to bring effective relief (Article 4(1));
- not concern an issue that is being examined under another procedure of international investigation (Article 4(2)(a));
- be sufficiently substantiated (Article 4(2)(c));
- concern violations that occurred after the Convention entered into force (Article 4(2)(e)).

There is no express time limit for bringing a communication to the Committee under the Optional Protocol, but a significant delay (for example, more than 3-5 years after exhaustion of domestic remedies) could be considered an abuse of the right by the Committee, and a communication could be found inadmissible on this basis.

CEDAW framework and principles

Definition of discrimination

The object of the Convention is to ensure States eliminate all forms of discrimination against women on the basis of sex and gender, and to guarantee women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms on an equal basis with men.⁵

The Convention incorporates a broad definition of discrimination:

“any distinction, exclusion or restriction on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms”. (Article 1)

This definition is based on sex understood as a biological category since the term ‘gender’ was not used as a human rights concept at the time that the Convention was drafted. However, today the Convention’s definition is understood to include sex, as well as gender-based, discrimination. This has been reaffirmed by [General Recommendation No. 28](#), which explicitly notes that the Convention is a “dynamic instrument” (para. 2), and refers to gender in relation to discrimination:

“The objective of the Convention is the elimination of all forms of discrimination against women on the basis of sex ... Although the Convention only refers to sex-based discrimination, interpreting Article 1 together with Articles 2(f) and 5(a) indicates that the Convention covers gender-based discrimination against women.” (paras. 4-5)

Definition of violence against women

The Convention does not expressly refer to violence against women, which was due to the general lack of visibility of this issue on the international agenda at the time of its drafting (1976-1979), and the collective failure to recognise multiple forms of violence against women

⁵ See [Introduction to the Convention, para. 3](#).

as systemic global patterns at that time. It is now established that, as a dynamic instrument, the Convention's definition of discrimination in Article 1 incorporates violence against women as a form of such discrimination. Such a consensus has developed through the general recommendations and decisions of the Committee, reports from the SRVAW, and legal instruments and judgments from regional human rights bodies, including the ECtHR.

Subsequent to the adoption of the Convention, various instruments unambiguously included violence against women within their definitions of discrimination, and expand on the nature of States' obligations to eliminate violence against women:

- The Committee's [General Recommendation No. 12](#) (1989) notes that States have an obligation to protect women from violence in the family, workplace or any other area of social life (Articles 2, 5, 11, 12 and 16 CEDAW). Further, it highlights that part of a State's reporting obligation includes information on any legislation in force to protect women from violence and support services, and statistical data collected on incidences of violence against women.
- The Committee's [General Recommendation No. 19](#) (1992) outlines the definition of gender-based violence as follows:
 - *“violence that is directed against a woman because she is a woman or violence that affects women disproportionately. It is a form of discrimination that seriously inhibits women's ability to enjoy and exercise their human rights and fundamental freedoms on the basis of equality with men”;*
 - It *“includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship, or violence perpetrated or condoned by the State or its agents regardless of where it occurs”;*
 - it can be perpetrated by public authorities and private actors.
- The [United Nations Declaration on the Elimination of Violence against Women](#) (1993) defined violence against women as *“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”* (Article 1).
- The Committee's [General Recommendation No. 35](#) (2017) updating General Recommendation No. 19:
 - encourages the use of the more precise phrasing “gender-based violence against women”, compared to “violence against women” previously (para. 9);
 - states that discrimination against women is linked to and exacerbated by various factors affecting their lives (paras. 12 and 14).

Core rights and obligations

The substantive rights set out in the Convention include freedom from discrimination and prejudice, and the right to equality with respect to: education (Article 10); employment (Article 11); health care (Article 12); economic life (Article 13); marriage (Article 16); and equality before the law (Article 15).

Article 2 is recognised as the *“very essence of the obligations of State parties under the Convention”* (para. 41, [General Recommendation No. 28](#)). It requires States to address all

aspects of their legal obligations under the Convention to respect, protect and fulfil women's rights to non-discrimination and enjoyment of equality with men. Seen as the Convention's backbone, it sets out the core obligations imposed on States. It also represents the general framework within which States are required to tackle discrimination against women in all areas, including violence against women. Such standards are not standalone, and as such, it cannot be read in isolation – it must be read in conjunction with the whole text of the Convention, most notably with Articles 1, 3, 4, 5(a) and 24, as well as general recommendations, concluding observations, views and other statements issued by the Committee (para. 7, [General Recommendation No. 28](#)).

Specifically, Article 2 of the Convention requires States Parties to:

- provide legal protection and abolish or amend discriminatory laws and regulations (Article 2(a),(f),(g));
- ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subject to discrimination (Article 2(b));
- ensure that the courts are bound to apply the principle of equality under the Convention and to interpret the law, as much as possible, in line with States' obligations under the Convention (Article 2(c));
- refrain from engaging in any act/practice that would constitute direct/indirect discrimination against women (Article 2(d)); and
- eliminate discrimination by public and private actors (Article 2(e)).

State obligations to respect, protect and fulfil in relation to eliminating violence against women

The State's obligations to respect, protect and fulfil the rights of women to non-discrimination and enjoyment of equality with men are based on the general international human rights law framework and are given expression through the general and specific obligations in the Convention.

The State's obligations are set out in the Committee's [General Recommendation No. 28](#) (para. 9):

- Obligation to respect: *“refrain from making laws, policies, regulations, institutional structures ... that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights”*;
- Obligation to protect: *“protect women against discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice women and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women”*;
- Obligation to fulfil: *“take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto”*.

[General Recommendation No. 35](#) underlines that the general obligations cover all areas of State action, in the legislative, executive and judicial branches, and at the federal, national, sub-national, local and decentralised levels, as well as in privatised services. They require legal norms, policies, programmes, institutional frameworks, and monitoring mechanisms. In accordance with Articles 2 and 5 of the Convention, they also require measures to eradicate

prejudices, stereotypes and practices which form the root cause of gender-based violence against women (para. 26).

States' due diligence obligations

The fundamental basis of the due diligence principle in international human rights law is the obligation of States to act with due diligence to prevent, investigate, and punish violations by State and, in certain circumstances, non-State actors. Over time, regional human rights mechanisms and instruments have developed the doctrine of due diligence in relation to specific human rights contexts, including violence against women.⁶

Despite the lack of an express reference to the responsibility of States Parties to act with due diligence in the Convention, such responsibility has subsequently evolved from the Committee's General Recommendation Nos. [19](#), [28](#) and [35](#), the [1993 Declaration on the Elimination of Violence against Women](#), comparative case law from the Inter-American Court of Human Rights,⁷ and [various reports of the SRVAW](#).

[General Recommendation No. 19](#) provides that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or investigate and punish acts of violence, and for providing compensation” (para. 9).⁸

States are required to act with due diligence in respect of the conduct of private individuals where the State knew or should have known about a dangerous situation including the risk of violence ([Yildirim v. Austria](#) (No. 6/2005, 21.07.2004)).

The [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#) (Istanbul Convention) further elaborates on the nature of States' due diligence obligation to eliminate violence against women, through expressly requiring States Parties to “take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors” (Article 5), and specifying specific steps to be taken to comply with the due diligence standard (Articles 18, 35, 49, 50-56). The Istanbul Convention [has entered into force in Georgia and has been signed by Armenia and Ukraine](#) (but not yet ratified). It has not been signed by Russia or Azerbaijan.

States' obligations to eliminate violence against women and intersectional discrimination

The Committee has emphasised the need to consider intersectional discrimination and how it influences the scope of positive obligations under the Convention:

In the Committee's inquiry into violence against aboriginal women in Canada ([CEDAW/C/OP.8/CAN/1](#), 29 March 2015) the Committee stated that “the Convention recognizes that particular groups of women may be subject to specific forms of discrimination

⁶ See, for example:

European Court of Human Rights: [Opuz v. Turkey](#) (No. 33401/02, 09.06.09);

Inter-American Court of Human Rights: [Velásquez Rodríguez v. Honduras](#) (Series C No 4, 29.07.88);

Inter-American Commission on Human Rights: [Maria da Penha Maia Fernandes v. Brazil](#) (Case No. 12.051, Report No. 54/01, 16.04.01), para. 56.

⁷ E.g. [Velásquez-Rodríguez v. Honduras](#).

⁸ Chinkin, C. (2012). Violence against Women, in Freeman, M.A., Chinkin, C. & Rudolf, B. (eds). *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*. Oxford, Oxford University Press, pp.443-474, pp.465f.

based on sex and other prohibited grounds of discrimination, and that States parties must address intersecting forms of discrimination". The Committee noted *"that intersectional discrimination increases the risk of violence and heightens the adverse consequences of violence when it occurs, and that States parties have special obligations to ensure that aboriginal people are entitled without discrimination to enjoy all human rights, as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples"* (para. 200). Among specific vulnerabilities of the community of aboriginal women, the Committee highlighted vulnerability to prostitution and trafficking; socioeconomic disadvantages; internalisation of patriarchal colonial structures; discriminatory stereotypes; lasting consequences of the sexual and racial discrimination against the aboriginal community during the colonial and post-colonial periods; and reluctance of the community to report violence to the police.

In [Kell v. Canada](#) (No. 19/2008, 28.02.2012), the Committee noted that *"in its [General recommendation No. 28](#), the Committee states that intersectionality is a basic concept for understanding the scope of the general obligation of States parties contained in Article 2 of the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognise and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned"* (para. 10.2). *"As the Author is an aboriginal woman who is in a vulnerable position, the State Party is obliged to ensure the effective elimination of intersectional discrimination"* (para. 10.3).

The Committee's decisions in individual communications concerning violence against women

To date, the Committee has declared admissible individual communications on physical, sexual, psychological and economic violence against women, and has found a number of violations of the Convention on different grounds. To illustrate the Committee's work regarding violence against women, core issues and related cases will be outlined below. Where communications are cited but not discussed, a short summary of case findings can be found in [Annex 2](#).

The Committee has decided individual communications relating to:

Flaws of domestic law and failures in its application

When it comes to flaws of domestic law and failures in its application, Article 2 of the Convention has to be considered closely. Its provisions deal with the role of law, legislation and legal institutions in the elimination of discrimination against women, be it formal (*de jure*) or in practice (*de facto*).⁹

[Tayag Vertido v. Philippines](#) (No. 18/2008, 16/07/2010) concerned gender stereotyping in a rape trial in which the Committee found violations of Article 2(c), 2(f), Article 5(a) of the Convention, read in conjunction with Article 1 of the Convention and General Recommendation No. 19. The Committee recommended that the State Party should:

⁹ Byrnes, A. (2012). Article 2, in Freeman, M.A., Chinkin, C. & Rudolf, B. (eds). *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*. Oxford, Oxford University Press, pp.71-100, p.73.

- review the definition of rape in the legislation so as to place the lack of consent at its centre;
- remove any requirement in the legislation that sexual assault be committed by force or violence; and
- enact a definition of sexual assault.

Other communications involving flaws of domestic law include: [R.P.B v. the Philippines](#) (No. 18/2008, 16.07.2010), [S.V.P. v. Bulgaria](#) (No. 31/2011, 12.10.2012), [V.K. v. Bulgaria](#) (No. 20/2008, 25.07.2011), [A.T. v. Hungary](#) (No. 2/2003, 26.01.2005), and [O.G. v. Russia](#) (No. 91/2015, 6.11.2017).

Failure to act with due diligence to prevent, investigate and punish acts of violence against women and compensate victims

[Angela González Carreño v. Spain](#) (No. 47/2012, 16.07.2014) raised issues of domestic violence, child visitation rights and child support. Finding violations of Articles 2(a)-(f), 5(a), and 16(1)(d) jointly with Article 1 of the Convention and General Recommendation No. 19, the Committee recommended that the State Party should:

- conduct an exhaustive and impartial investigation to determine whether there are failures in the State's structures and practices that have caused the Author and her daughter to be deprived of protection; and
- strengthen the application of the legal framework to ensure that the competent authorities exercise due diligence to respond appropriately to situations of domestic violence.

The Committee also emphasised that previous acts of domestic violence must be taken into consideration when determining custody and visitation rights regarding children, and the exercise of custody or visiting rights must not endanger the safety of the victims of violence, including children.

[X and Y v. Georgia](#) (No. 24/2009, 13.07.15) concerned repeated domestic and sexual violence and the State failure to respond adequately or at all to reports of the same.¹⁰ The Committee found that the State Party had not adopted appropriate legislative and other measures to prohibit violence against women as a form of discrimination, or ensured that women had equal rights before the law with men, in breach of Articles 2(b) to 2(f), in conjunction with Article 1 and 5(a) of the Convention and the Committee's General Recommendation No. 19. It recommended that, among other things, the State Party should:

- provide adequate financial compensation to those involved in the case;
- ensure that the victims of domestic violence and their children are provided with adequate support; and
- intensify awareness raising campaigns and introduce a zero-tolerance policy in respect of violence against women, specifically domestic violence.

¹⁰ Litigated before CEDAW by Article 42 of the Constitution (Georgia) with Interights and subsequently EHRAC. [See below.](#)

Other communications involving the failure to observe due diligence standards include [M.W. v. Denmark](#) (No. 46/2012, 22.02.2016), [S.V.P. v. Bulgaria](#) (No. 31/2011, 12.10.2012), [Isatou Jallow v. Bulgaria](#) (No. 32/2011, 23.07.2012), [Goekce v. Austria](#) (No. 5/2005, 06.08.2007), [Yildirim v. Austria](#) (No. 6/2005, 21.07.2004) and [A.T. v. Hungary](#) (No. 2/2003, 26.01.2005).

Further, in the recent decision of [O.G. v. Russia](#) (No. 91.2015, 6.11.2017), the Committee underlined that the State was required to:

- punish all acts of domestic violence, underlining that *“the Convention includes no statutory time limit on how long after the end of a relationship a spouse or partner can claim that the violence perpetrated by the ex-partner falls within the definition of ‘domestic’ violence”*; and
- act in a timely and adequate manner and to protect the victim from violence and intimidation; the case has to be addressed in a gender-sensitive manner and the reasoning should not be affected by stereotypes.

The Committee also recognised that *“the Author has suffered moral damage and prejudice, she was subjected to fear and anguish when she was left without State protection... when the State organs that ought to have been her protector, in particular the police, instead refused to offer her protection and denied her status as a victim”*. It recommended that the State take legislative measures: adopt comprehensive legislation; reinstate criminal prosecution of domestic violence; renounce private prosecution of domestic violence cases and soon; provide free legal aid.

Barriers to access to justice

In [General Recommendation No. 33 on women’s access to justice](#) (3 August 2015), the Committee notes the existence of *“a number of obstacles and restrictions that impede women from realising their right to access to justice on a basis of equality, including a lack of effective jurisdictional protection offered by States Parties in relation to all dimensions of access to justice”* (para. 3). Furthermore, the Committee acknowledges factors that might impede women’s access to justice such as illiteracy, trafficking, status as asylum seekers, deprivation of liberty, and socio-economic status (para. 8f). Women and girls face greater difficulties in accessing justice in rural areas, where informal justice mechanisms which do not fully conform to the Convention are more prevalent, as stated in [General Recommendation No. 34 on women’s access to justice](#) (7 March 2016).

Linguistic barriers (lack of translation services)

In [Isatou Jallow v. Bulgaria](#) (No. 32/2011, 23.07.2012), which concerned an illiterate migrant woman (with no command of Bulgarian or relatives in Bulgaria), who complained of domestic violence and child custody issues, the Committee found:

- a violation of Articles 2(b)-(f), 5(a), and 16(c), (d) and (f), read in conjunction with Articles 1 and 3; and
- that the State should take measures to ensure that women victims of domestic violence, in particular migrant women, have effective access to services related to protection against domestic violence and to justice, including the interpretation or translation of documents.

Other communications involving linguistic barriers include [R.P.B v. the Philippines](#) (No. 34/2011, 21.02.2014), where the Committee found the State Party in violation for failing to provide sign language interpreters to a deaf-mute woman who had been raped, during a trial on that matter.

Financial barriers (lack of legal aid)

In a case concerning sexual abuse suffered by a seven-year-old girl causing a mental disability ([S.V.P. v. Bulgaria](#) (No. 31/2011, 12.10.2012)), the Committee:

- held that the State Party had not provided a reliable system for effective compensation of the victims of sexual violence, including for moral damages, and that no legal aid scheme existed for the execution procedure, even for victims who are disabled as a result of the sexual violence experienced;
- found a violation of Article 2(a)-(c), (e)-(g), read together with Articles 1, 3, 5(a) and (b), 12 and 15(1); and
- recommended the amendment of the 2006 Legal Aid Act to provide legal aid for the execution of judgments awarding compensation to victims of sexual violence.

Other communications involving the need for the State to provide legal aid to victims of domestic violence include [A.T. v. Hungary](#) (No. 2/2003, 26.01.2005).

Gender stereotypes

The Committee acknowledges that the term ‘gender’ does not represent a static condition, but is a product of culture and society that is constantly changing,¹¹ and that gender stereotypes preserve a specific understanding of gender identities and roles in order to designate them as the natural and universal model conception.¹² Gender stereotypes that contribute to the discrimination and subordination of women and the inequality between men and women should be modified as stipulated by Article 5 of the Convention. Under Article 5, States have to address gender stereotypes rooted in their culture and society in order to tackle systemic and structural discrimination against women deriving therefrom.¹³ The analysis of gender stereotypes represents an important factor in understanding the underlying causes of violence against women.

In [V.K. v. Bulgaria](#) (No. 20/2008, 25.07.2011), concerning domestic violence, the Committee found that Articles 2(c)-(f), in conjunction with Articles 1, and 5(a) with 16(1), as well as [General Recommendation No. 19](#), had been violated. It held that:

- all State organs, including the judiciary, have an obligation to tackle traditional attitudes by which women are regarded as subordinate to men and which contribute to violence against them;
- stereotyping affects women’s right to a fair trial;

¹¹ Holtmaat, R. (2012). Article 5, in Freeman, M.A., Chinkin, C. & Rudolf, B. (eds). *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*. Oxford, Oxford University Press, pp.141-168, pp.147f; [General recommendation No.28](#) (CEDAW/C/GC/28) on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (16 December 2010), para.5.

¹² Cook, R.J. & Cusack, S. (2010). *Gender Stereotyping; Transnational Legal Perspectives*. Philadelphia, University of Pennsylvania Press, p.9

¹³ Holtmaat, R. (2012) pp.163ff.

- the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence; and
- the State should provide mandatory training for judges, lawyers and law enforcement on the application of the Law on Protection against Domestic Violence, including on the definition of domestic violence and on gender stereotypes.

Other communications involving gender stereotypes include [Angela González Carreño v. Spain](#) (No. 47/2012, 16.07.2014), [Isatou Jallow v. Bulgaria](#) (No. 32/2011, 23.07.2012), [Tayag Vertido v. Philippines](#) (No. 18/2008, 16.07.2010) and [A.T. v. Hungary](#) (No. 2/2003, 26.01.2005).

Admissibility criteria for individual communications to the CEDAW Committee

Article 4 CEDAW-OP contains a number of admissibility criteria and their fulfilment represents a precondition for the consideration of a communication in substance. Some of these criteria render a communication inadmissible *prima facie* while others need to be decided upon by the Committee. The most common grounds for inadmissibility are outlined below.

Exhaustion of domestic remedies

Authors of communications must exhaust domestic remedies (Article 4(1) CEDAW-OP). The State concerned must have the opportunity to respond to the substantive allegations of discrimination domestically ([N.S.F. v. United Kingdom](#) (No. 10/2005, 30.05.2007)); [M.E.N. v. Denmark](#) (No. 35/2012, 26.07.2013). Although the Author of an individual communication has to provide in detail which steps have been taken in order to exhaust domestic remedies, the State bears the burden of showing which specific and applicable remedies have not been exhausted. The exhaustion of domestic remedies is determined as at the time the Committee considers a communication, not at the time of its submission. Furthermore, providing the underlying facts of the discrimination (and the specific grounds on which the discrimination is based) are argued before the domestic courts, there is no need to cite them explicitly as Convention violations ([N. v. Netherlands](#) (No. 39/2012, 17.02.2014)).¹⁴ Further, in [O.G. v. Russia](#) (No. 91.2015, 6/11/2017) the Committee stated that, if the State claims that the Author failed to exhaust domestic remedies and refers to remedies that should have been exhausted by the Author, the State has to discharge its burden of proof and to “*provide explanation as to how domestic remedies would have been effective in securing the rights of the Author*”.

Examination by another international body

Communications already examined under another procedure shall be declared inadmissible (Article 4(2)(a) CEDAW-OP). This inadmissibility ground was included in order to avoid any duplication of consideration of a case at the international level, a practice followed by most international human rights instruments. However, an inadmissibility decision from the ECtHR without reasons is unlikely to be sufficient to render a case automatically inadmissible ([N.S.F.](#)

¹⁴ Connors, J. (2012). Optional Protocol, in Freeman, M.A., Chinkin, C. & Rudolf, B. (eds). *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*. Oxford, Oxford University Press pp.607-680, pp.634ff.

[v. United Kingdom](#) (No. 10/2005, 30.05.2007); [T.N. v. Denmark](#) (No.37/2012, 19.11.2011)).¹⁵

Failure adequately to substantiate claims

Manifestly ill-founded communications are also inadmissible (Article 4(2)(c) CEDAW-OP). The inadmissibility of manifestly ill-founded or insufficiently substantiated communications reflects concrete examples of the understanding that a communication should be compatible with the Convention.¹⁶

Admissibility and asylum claims

Issues of admissibility are frequently at the heart of individual communications related to asylum seekers. Article 2(d) of the Convention encompasses the obligation of State Parties to protect women from being exposed to real, personal and foreseeable risk of serious forms of gender based violence irrespective of whether such consequences would take place outside the territorial boundaries of the sending State Party. The proof of a real, personal and foreseeable risk represents a challenging threshold and so far, the Committee has found all individual communications on asylum seekers inadmissible, mostly due to the lack of substantiation of their claim or the non-exhaustion of domestic remedies.¹⁷

A case in point is [N. v. Netherlands](#) (No. 39/2012, 17.02.2014), concerning the rape of the Mongolian Author by her employer, leading to her becoming pregnant. The police questioned the employer, but released him. He subsequently held her captive and abused her physically and sexually. When she escaped, the police recorded statements and details of her injuries, but no proceedings followed. After a second unsuccessful attempt to escape the Author managed to leave the country.

The Committee found her communication inadmissible, pointing out that the Author had failed to explain why she had not followed up on complaints. The Committee found that she had failed to explain how the authorities had failed to protect her or show a real risk that they would be unable to do so upon her return.

Thus with regards vulnerable women seeking asylum, the Convention is similar to the ECtHR in being a potentially 'blunt tool'.¹⁸ The failure to exhaust domestic remedies has been cited as the reason for inadmissibility under both mechanisms.¹⁹

[N v. Netherlands](#) (No. 39/2012, 17.02.2014) highlights the obstacles encountered when dealing with asylum-related communications to the Committee. Nevertheless, there are potential remedies to tackle evidential complications affecting such cases.

¹⁵ Ibid., pp.640f.

¹⁶ Ibid., pp.643f.

¹⁷ The burden of proof is on the Author to demonstrate that (1) relocation within the country of origin would not be sufficient and no effective remedy can be offered within the country of origin; and (2) the risk complained of still exists at the time the complaint is assessed. See e.g. [Y.W. v. Denmark](#) (No. 51/2013, 02.03.2015); [Y.C. v. Denmark](#) (No. 59/2013, 24.10.2014); [M.P.M. v. Canada](#) (Communication No. 25/2010, 24.02.2012) 2012; [Herrera Rivera v. Canada](#) (No. 26/2010, 18.10.2011); [N.S.F. v. United Kingdom](#) (No. 10/2005, 30.05.2007).

¹⁸ Hodson, L., (2014) Women's rights and the periphery: CEDAW's optional protocol. *EJIL*. pp. 561-578, p. 573

¹⁹ As cited in Hodson: [Zhen Zhen Zheng v. Netherlands](#) (No. 15/2007, 26.06.2009); [M.P.M. v. Canada](#) (Communication No. 25/2010, 24.02.2012) 2012; [Herrera Rivera v. Canada](#) (No. 26/2010, 18.10.2011); [N.S.F. v. United Kingdom](#) (No. 10/2005, 30.05.2007).

Seeking interim measures from the CEDAW Committee

Similar to most international human rights treaty bodies, the Committee is entitled to request interim measures as may be necessary to avoid possible irreparable damage to the victim from the State Party concerned.²⁰ The use of interim measures is governed by Article 5 of CEDAW-OP.

Potential situations where interim measures might be used are the suspension of deportation (*M.N.N. v. Denmark* (No. 33/2011, 15/07/2013), *N.S.F. v. United Kingdom* (No. 10/2005, 30.05.2007)); or for protection to prevent irreparable damage to the Author and the Author's children, as seen in *A.T. v. Hungary* (No. 2/2003, 26.01.2005); and to ensure protection of the Author's physical integrity while the communication is pending (*V.K. v. Bulgaria* (No. 20/2008, 25.07.2011)).

Case study: *X and Y v. Georgia*

In *X and Y v. Georgia* (No. 24/2009, 13.07.2015), the Committee found that the State had failed in its duty to adopt appropriate measures to address domestic violence. The case involved a woman and her daughter whom the woman's husband had subjected to violent and sexual attacks. Despite X's complaints, the District Prosecutor's Office refused to open an investigation. The Committee recommended Georgia ensure victims receive support, intensify awareness-raising, and provide training for law enforcement officials.

Following the decision, EHRAC started working with local lawyers, civil society and officials to implement it. Alongside Georgian NGO Article 42 we applied for compensation for the Authors: as CEDAW does not quantify awards for compensation, the process involves applying for monetary damages from the domestic courts, using a legal mechanism set up by Georgian legislation, which was introduced directly in response to CEDAW's recommendations in this case. The Authors were awarded moral damages by the first instance court. The award has been appealed by the Ministry of Finance, and is pending a substantive hearing.

The UN Special Rapporteur on violence against women (SRVAW)

General overview

The [SRVAW](#) is an independent expert chosen by the UN Human Rights Council to report on violence against women and related issues. The position is completely independent from the UN and State Governments. The SRVAW reports directly to the Human Rights Council, although their reports are publicly available.

Mandate of the Special Rapporteur

The SRVAW is mandated to seek and receive information from governmental and non-governmental organisations on violence against women and to respond effectively. The SRVAW should take a comprehensive and universal approach to recommend measures, ways and means to eliminate all forms of violence against women and its causes. The SRVAW works closely with

²⁰ Connors, J. (2012) pp.647ff.

other special procedures and human rights mechanisms of the Human Rights Council, as well as with the [Commission on the Status of Women](#) (CSW).

The SRVAW focuses on violence against women:

- in the family;
- in the community;
- perpetrated or condoned by the State.

The SRVAW and the UN system

The SRVAW is one of a number of '[special procedures mandates](#)' that answer to the Human Rights Council. [Many of the thematic mandates](#) are relevant to women's rights, such as the special mandates on: the [sale of children, child prostitution and child pornography](#); [slavery](#); [trafficking in persons, especially women and children](#); and [the situation of human rights defenders](#).

Tasks and activities

The SRVAW produces country-specific and thematic reports and deals with communications on violence against women.

Country visits

The SRVAW will typically spend 10-14 days on a [country visit](#).²¹ The goal of these visits is to undertake a fact-finding mission by consulting with State institutions and NGOs. The SRVAW produces a mission report based on these findings, which is distributed to the media. These reports can be an important catalyst for change in a country, and NGOs can play an important role by advising the SRVAW and suggesting countries for visits. The SRVAW will generally publish a press release about forthcoming country visits and inviting submissions from, for example, civil society groups.

So far, among countries in EHRAC's focus region, the SRVAW has visited [Russia \(2004\)](#), [Azerbaijan](#) (2013) and [Georgia](#) (2016).

[Russia \(2006 report\)](#): The SRVAW stated that the *"lack of a domestic legislation on violence, gender biases, in particular in law enforcement and the judiciary, difficulties in accessing subsidised housing, residency registration practices, insufficient shelters for victims of violence as well as the extraordinary circumstances in the North Caucasus are among the factors that hinder women's access to justice"* (p.2), linking those developments to a surge of patriarchal values during Russia's transition.

[Azerbaijan \(2014 report\)](#): The SRVAW found that *"violence against women in the country seems to be underpinned by the persistence of patriarchal social norms, deeply rooted gender stereotypes and misconceptions as well as customary practices that are harmful to women"* (para. 4).

²¹ See Commission on Human Rights Resolution ([E/CN.4/RES/1994/45](#), 04.03.94), para. 10; Human Rights Council Resolution ([A/HRC/RES/7/24](#), 28.03.08), paras. 6 and 9.

[Georgia \(2016 report\)](#): The SRVAW noted that “*violence against women in Georgia is widespread and occurs both in private and public spheres, in urban and rural areas. ... The persistence of entrenched patriarchal attitudes and gender stereotypes makes gender-based violence tolerated*” (para. 9). She further expressed concern about a number of different manifestations of violence against women, including the high number of child and forced marriages in the region (para. 23-24).

Whilst welcoming legislative steps taken by the Government, the SRVAW expressed concern “*about the inconsistent and fragmented legislative framework on violence against women that is not yet fully in line with the CEDAW Convention and the Istanbul Convention, as well as their poor implementation, due to, inter alia, insufficient awareness about the content of the legal provisions, the lack of effective enforcement mechanisms, lack of sufficient human and financial resources, as well as the perpetuation of gender stereotypes and patriarchal attitudes*” (para. 61).

The outcome of country visits has wider relevance, and is relied on by other international bodies. This is evidenced by the ECtHR’s mention in [Eremia and Others v. Moldova](#) (No. 3564/11, 28.08.2013, paras. 37 and 39) of the [SRVAW’s findings in Moldova](#) to emphasise the opinion that the authorities repeatedly condone violence against women and discriminatory attitudes.

Thematic reports

The SRVAW also produces thematic reports analysing the legal and practical circumstances of women’s rights violations. These reports are sent to the Human Rights Council, the UN General Assembly and the CSW. Thematic reports can also be a useful advocacy tool.

So far, the SRVAW has produced thematic reports on issues including:

- domestic violence ([E/CN.4/1996/53](#) and [E/CN.4/1999/68](#));
- sexual violence, trafficking and violence against female migrant workers ([E/CN.4/1997/47](#) and [E/CN.4/2000/68](#));
- violence against women in armed conflict, custody and the context of refugees and internal displacement ([E/CN.4/1998/54](#) and [E/CN.4/2001/73](#));
- reproductive health consequences of violence against women ([E/CN.4/1999/68/Add.4](#));
- cultural practices in the family violating women’s rights such as female genital mutilation and honour killings ([E/CN.4/2002/83](#));
- the intersections of violence against women and HIV/AIDS ([E/CN.4/2005/72](#));
- the intersections of culture and violence against women ([A/HRC/4/34](#));
- reparations to victims of violence against women ([A/HRC/14/22](#));
- gender-motivated killings ([A/HRC/20/16/Add.4](#) and [A/HRC/20/16](#)); and
- State responsibility for eliminating violence against women ([A/HRC/23/49](#)).

Communications

The SRVAW is mandated to seek and receive information on violence against women from Governments, treaty bodies, specialised agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and NGOs. Communications can be used when violations are urgent, such as an imminent threat of the loss of life, or where a Government has failed to respond to a violation. Allegations may concern individuals or convey information

relating to a general prevailing situation condoning and/or perpetrating violence against women. The SRVAW can intervene directly by requesting facts and steps taken by the Government. The complaint must be based on reliable information but does not need to be made by the victim. The communications:

- are sent directly to the SRVAW;
- can be single or joint;
- can be confidential;
- do not need a lot of evidence;
- do not need to have exhausted domestic remedies;
- can be used regardless of whether a country has ratified the relevant treaties the complaint is based on;
- can be used with other international mechanisms;
- can be either an allegation letter or an urgent letter.

It is possible to submit an individual complaint or communication to the SRVAW using the [individual complaint form](#), available on the [SRVAW website](#).

The SRVAW also participates in conferences and issues statements. The reports and communications focus on substance and are concerned with whether the Government has exercised its due diligence, not just on whether they followed their own domestic law.

Annex 1: Additional Resources

Relevant texts, reports and jurisprudence

The Convention on the Elimination of All Forms of Discrimination against Women:
<https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: <https://www.ohchr.org/en/professionalinterest/pages/opcedaw.aspx>

Rules of Procedure of the CEDAW Committee:
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=65

CEDAW Committee's General Recommendations:
<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

CEDAW Committee Concluding Observations:
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5

CEDAW Jurisprudence: <http://juris.ohchr.org/en/search/results?Bodies=3&sortOrder=Date>

Special Rapporteur on violence against women, its causes and consequences:
<https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>

Webinar

Evans, J., Levine, K. and MacLeod, J. (2015) *“Addressing violence against women using UN mechanisms”*, see recording at: <http://ehrac.org.uk/resources/cedaw-committee-srvaw-guide/> and summaries at: <http://ehrac.org.uk/news/ehrac-launches-webinar-series/> and <http://ehrac.org.uk/news/ehrac-webinars-on-combatting-violence-against-women/>

Resources on EHRAC website

The CEDAW Committee's General Recommendation No. 35:
<http://ehrac.org.uk/resources/cedaw-committees-general-recommendation-35/>

Domestic homicide reviews in the UK: <http://ehrac.org.uk/resources/looking-behind-closed-doors/>

Preventing and addressing violence against women in Russia, Ukraine, Azerbaijan, Georgia and Armenia: <http://ehrac.org.uk/resources/preventing-and-addressing-violence-against-women-in-russia-ukraine-azerbaijan-georgia-and-armenia/>

Domestic violence in Russia, Ukraine and the South Caucasus:
<http://ehrac.org.uk/resources/domestic-violence-in-russia-ukraine-and-the-south-caucasus/>

CEDAW Decision in *X. and Y. v. Georgia*: <http://ehrac.org.uk/resources/cedaw-decision-x-and-y-v-georgia/>

Annex 2: CEDAW Communications referred to in this guide

Case	Communication No.	Year of decision	Subject Matter	Findings
<i>A.T. v. Hungary</i>	2/2003	2005	Domestic violence, lack of provision of shelters for mothers with children with disabilities, and State failure to act with due diligence.	Violation of CEDAW Articles 2(a),(b) and (e), and 5(a) in conjunction with Article 16 and General Recommendation No. 19
<i>Angela González Carreño v. Spain</i>	47/2012	2014	Repeated domestic violence, child visitation rights and child support.	Violation of CEDAW Articles 2(a)-(f), 5(a), and Article 16(1)(d) in conjunction with Article 1 and General Recommendation No. 19
<i>Goekce v. Austria</i>	5/2005	2007	Failure to act with due diligence to prevent a domestic violence-related death.	Violation of CEDAW Articles 2(a), and (c)-(f), and 3 in conjunction with Article 1 and General Recommendation No.19
<i>Herrera Rivera v. Canada</i>	26/2010	2011	Asylum-related communication challenging deportation on basis of risk of domestic violence.	Inadmissible - failure to exhaust domestic remedies
<i>Isatou Jallow v. Bulgaria</i>	32/2011	2012	Domestic violence and child custody issues in context of an illiterate migrant woman.	Violation of CEDAW Article 2(b)-(f), 5(a), and 16(c), (d), and (f) in conjunction with Articles 1 and 3
<i>Kell v. Canada</i>	19/2008	2012	Denial of legal aid to indigenous woman arbitrarily evicted from her property by her abusive partner.	Violation of CEDAW Articles 2(d),(e), and 16(h) in conjunction with Article 1
<i>M.E.N. v. Denmark</i>	35/2011	2013	Asylum-related sexual violence communication.	Inadmissible - failure to sufficiently substantiate claim, lack of State authority to consider gender-based allegations (with minority finding admissible with violations of CEDAW Articles 2(c) and (d) in conjunction with Articles 1 and 3
<i>M.N.N. v. Denmark</i>	30/2011	2013	Asylum-related communication on risk of FGM.	Inadmissible - failure sufficiently to substantiate claim
<i>M.P.M. v. Canada</i>	25/2010	2012	Asylum-related communication on risk of domestic violence.	Inadmissible - failure to sufficiently substantiate claim
<i>M.W. v. Denmark</i>	46/2012	2016	Child custody and domestic violence, subsequent lack of State action.	Violation of CEDAW Article 2, in conjunction with Articles 1, 5 (a) and (b), and 16(1)(d)

<i>N. v. Netherlands</i>	39/2012	2014	Rape of a women by her employer and subsequent lack of State action.	Inadmissible - failure sufficiently to substantiate claim
<i>N.S.F. v. United Kingdom</i>	10/2005	2007	Admissibility of asylum-related domestic violence claim.	Inadmissible - failure to exhaust domestic remedies
<i>O.G. v. Russia</i>	91/2015	2017	Domestic violence; failure to enact legislative measures and provide protection for victim.	Violation of CEDAW Article 2(a), (c), (d), (e) in conjunction with Articles 1, 3 and 5
<i>R.P.B v. the Philippines</i>	34/2011	2014	Gender and disability stereotyping in rape trial.	Violation of CEDAW Article 2 (c) (d), and (f) in conjunction with Article 1, and General Recommendations No. 18 and 19
<i>S.V.P. v. Bulgaria</i>	31/2011	2012	Sexual abuse of a female child and subsequent failures in State action.	Violation of CEDAW Article 2(a)-(c), and (e)-(g) together with Articles 1, 3, 5(a) and (b); Articles 12 and 15(1)
<i>T.N. v. Denmark</i>	37/2012	2014	Domestic violence and child custody.	Inadmissible - failure sufficiently to substantiate claim
<i>Tayag Vertido v. Philippines</i>	18/2008	2010	Gender stereotyping in a rape trial.	Violation of CEDAW Articles 2(c) and (f), and 5(a) in conjunction with Article 1 and General Recommendation No.19
<i>V.K. v. Bulgaria</i>	20/2008	2011	Domestic violence and subsequent failures in State action.	Violation of CEDAW Article 2(c)-(f) in conjunction with Articles 1 and 5(a), in conjunction with Article 16(1), and General Recommendation No. 19
<i>X. and Y. v. Georgia</i>	24/2009	2015	Repeated domestic and sexual violence against wife and daughter, and subsequent State inaction.	Violations of CEDAW Articles 2(b)-(f) in conjunction with Articles 1 and 5(a) and General Recommendation No. 19
<i>Y.C. v. Denmark</i>	59/2013)	2014	Asylum-related communication on risk of domestic violence and lack of religious freedom.	Inadmissible - failure sufficiently to substantiate claim
<i>Y.W. v. Denmark</i>	51/2013	2015	Asylum-related communication on risk of murder/violence, lack of State protection for violence against women.	Inadmissible - failure sufficiently to substantiate claim
<i>Yildrim v. Austria</i>	6/2005	2007	Failure to act with due diligence to prevent a domestic violence-related death.	Violation of CEDAW Articles 2(a) and (c)-(f), and 3 in conjunction with Article 1 and General Recommendation No. 19



**Middlesex University
The Burroughs
Hendon NW4 4BT
Tel: +44 208 411 2826
www.ehrac.org.uk
ehrac@mdx.ac.uk**

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