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

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Introduction

Gender-based 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 gender-based 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 individual cases of violence against women and reporting developments at the national level.

This guide was originally developed with contributions from Celia Boyon, Lyndsay Cumming, Joanna Evans, Valentina Frolova, Giada Girelli, Andrii Gladun, Conny Klocker, Kate Levine, Joyce Man, Jennifer MacLeod, Caroline Njoya, Olga Okhotnikova, Joanne Sawyer, Sabrina Vashisht and Hillary Vedvig.

The guide was updated in December 2022 by Camilla Alonzo, with contributions from Jess Gavron, Kate Levine and Dariana Gryaznova.

Acronyms and abbreviations

CSW	Commission on the Status of Women
CEDAW Committee/ the Committee	Committee on the Elimination of Discrimination against Women
the Convention	International Convention on the Elimination of All Forms 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 Protocol/ CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
SRVAW	UN Special Rapporteur on violence against women, its causes and consequences

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

General overview

The Convention on the Elimination of All Forms of Discrimination against Women 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 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.[1]

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)

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).

The CEDAW Committee

Pursuant to Article 17 of the Convention, the implementation of the rights and obligations contained therein is monitored by a Committee comprising 23 independent experts. Committee members are elected by secret ballot (Article 17(2)) and serve a four-year term (Article 17(5)).[2]

The Committee's work includes examining reports submitted by States Parties, and making suggestions and recommendations based on their consideration of the same (Article 18(1)) (see further below); and adopting general recommendations on issues affecting the practical implementation of the Convention (Article 21(1)). The Committee also conducts inquiries and examines individual complaints (referred to as 'communications') alleging specific violations of the Convention by States Parties and pursuant to the Optional Protocol to the Convention. The Committee can only conduct inquiries and consider individual complaints in relation to States that have ratified the Optional Protocol to the Convention.

State reports

1 *See Introduction to the Convention, para. 3.*

2 A list of current and past members of the Committee is available here: https://www.ohchr.org/en/treaty-bodies/cedaw/membership

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.[2] The Committee has issued reports on Armenia (2016), Azerbaijan (2015), Georgia (2014), Russia (2021), and Ukraine (2017). These five reports all highlighted similar issues, such as the prevalence of gender-based 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.[3]

General recommendations

The Committee makes general recommendations addressed to all States parties on any issue affecting women worldwide and relating to the interpretation and application of the relevant provisions of the Convention (Article 21 CEDAW). So far, the Committee has issued a number of general recommendations, including General Recommendation Nos. 19 and 35 (see below) concerning gender-based 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.[4]

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.

1 In 2018, the Committee reinstated a simplified reporting procedure (initially made available from 1 January 2015 on a pilot basis), which is available to all States upon request where they have (i) previously submitted an initial report which was considered under the regular procedure, and (ii) submitted an updated common core document: CEDAW Committee, Simplified reporting procedure.

2 A calendar of country reviews and documentation deadlines is available here: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/MasterCalendar.aspx?Treaty=CEDAW. State reports to the Committee, alternative reports from NGOs, and concluding observations by the Committee are available here: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx

3 See also Levine, K., *Preventing and addressing violence against women in Russia, Ukraine, Azerbaijan, Georgia and Armenia*, EHRAC Bulletin No. 25, Summer 2016.

4 For the Committee's decisions, select 'CEDAW' from the drop down menu for 'Filter Treaty'.

A number of inquiries have been conducted to date, including two related to gender-based violence against women, into:

- the failure to prevent and protect women and girls from domestic violence in South Africa (CEDAW/C/ZAF/IR/1, 12.05.21);
- the practice of female genital mutilation in Mali (CEDAW/ C/IR/MLI/1, 24.12.2019);
- 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);[1]
- the murder and disappearances of women in Ciudad Juárez in Mexico (CEDAW/C/2005/OP.8/MEXICO, 27.01.05).

CEDAW framework and principles on gender-based violence against women

Definition of gender-based violence against women

The Convention does not expressly refer to gender-based 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 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 gender-based 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 gender-based violence against women within their definitions of discrimination, and expanded 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*

1 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)

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:

— recognizes that the prohibition of gender-based violence has evolved into a principle of customary international law (para. 2);

— encourages the use of the more precise phrasing "gender-based violence against women", compared to "violence against women" previously (para. 9);

— states that gender-based violence against women is linked to and exacerbated by various factors affecting their lives (paras. 12 and 14);

— emphasizes that gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices (para. 16).

Core rights and obligations

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 gender-based 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 gender-based 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 gender-based violence against women.[1]

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[2], 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).[3]

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)).

1 See, for example: European Court of Human Rights: *Opuz v. Turkey* (No. 33401/02, 09.06.09); Inter-American Court of Human Rights: *Velasquez Rodriguez 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.

2 E.g. *Velásquez-Rodríguez v. Honduras*.

3 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.

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 Ukraine and has been signed by Armenia (but not yet ratified). It has not been signed by Russia or Azerbaijan.

States' obligations to eliminate gender-based violence against women and intersectional discrimination

Women and girls often experience discrimination on the basis of multiple and intersecting identities, known as intersectional discrimination. As the Committee states in General recommendation No. 33:

"discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership and identity as a lesbian, bisexual or transgender woman or intersex person." (para. 8).

This extends to gender-based violence against women, where women and girls who share other identities – including ethnic minority women, women with disabilities and migrant women – are often at greater risk of experiencing such violence:

- In General Recommendation No. 35, the Committee notes that gender-based violence may affect some women to different degrees or in different ways given that women experience varying and intersecting forms of discrimination, meaning that "appropriate legal and policy responses are needed" (para. 12).

- In its joint General Recommendation No. 31 with the Committee on the Rights of the Child, the CEDAW Committee highlighted that harmful practices are grounded in discrimination on the basis of inter alia sex, gender and age, and that those who belong to, or are perceived as belonging to, disadvantaged groups are at a higher risk of becoming victims (paras. 6-7, 15 and 16(c)).

- In General Recommendation No.37, the Committee noted that women and girls face a heightened risk of gender-based violence during and following disasters, with women and girls with disabilities at particular risk (paras. 5 and 55-57).

- In General Recommendation No. 38, the Committee notes the particular vulnerability of refugee and migrant women to forms of gender-based violence such as trafficking (para. 10).

- In its new General Recommendation No.39 on the rights of indigenous women and girls, the Committee highlights that indigenous women and girls are disproportionately at risk of gender-based violence, with discrimination often rooted in racism and stereotypes.

- Other UN Committees have also highlighted intersectionality in the context of gender-based violence against women. For example, the Committee on the Rights of Persons with Disabilities has noted that women with disabilities are at a heightened risk of violence, exploitation and abuse compared to other women (General Comment No. 3, section IV A)

The Committee has emphasised the need to consider intersectional discrimination and how it influences the scope of positive obligations in relation to gender-based violence against women under the Convention: in General recommendation No. 28, the Committee stated that *"Intersectionality is a basic concept for*

understanding the scope of the general obligations of States parties contained in article 2. (…) States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them". For example, States must ensure that measures taken in the areas of prevention, protection, prosecution and punishment take into account the particular situation of women affected by intersecting forms of discrimination (General Recommendation No. 35, para. 28).

The Committee considered intersectionality in its 2015 inquiry into violence against aboriginal women in Canada (CEDAW/C/OP.8/CAN/1), in which it stated that "*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.

The Committee has also considered intersectional discrimination in a number of individual communications relating to gender-based violence against women (this list is non-exhaustive):

- The case of *Jeiranova v. Georgia* (No. 140/2019, 25.10.2021) concerned gender and honour-based violence against Ms. Jeiranova, who was an ethnic Azerbaijani woman. The Committee explicitly stated (for the first time in a gender-based violence case) that she was a victim of intersecting discrimination: *"the infliction of ill-treatment on Ms. Jeiranova, the basis of the denial of an autopsy on the objections of relatives known to have posed a threat to her, the Kakheti Prosecutor's qualification of her behaviour as "dishonourable" and the decision to terminate the investigation based on the conclusion that she had committed suicide because of her "shameful" behaviour and faithlessness confirm that Ms. Jeiranova was the victim of intersecting discrimination related to her ethnicity and the stereotypical attitudes of the police and judicial authorities."* (para. 7.6)

- The case of *Isatou Jallow v. Bulgaria* (No. 32/2011, 28.08.2012) concerned the psychological, physical and sexual abuse of Ms. Jallow (a Gambian national) and her daughter by her husband (a Bulgarian national) whilst Ms. Jallow was living in Bulgaria. The Committee stated that *"the State party's authorities failed to act with due diligence, to provide her with effective protection and to take into account her vulnerable position, as an illiterate migrant woman with a small daughter without a command of Bulgarian or relatives in the State party"* (para. 8.2)

- *R.P.B. v. the Philippines* (No. 34/2011, 21.02.2014) concerned a case of sexual violence against a woman who was deaf and mute. The Committee recalled that women with disabilities *"suffer from a double discrimination" and emphasized the importance of ensuring that women with disabilities "enjoy effective protection against sex and gender-based discrimination by States parties and have access to effective remedies"* (para. 8.3).

- The case of *O.N. and D.P. v. Russia* (No. 119/2017, 24.02.2020) concerned the state's failure to effectively investigate a violent offence committed by private individuals against two women owing to them being a lesbian couple. The Committee held that the case showed *"a failure by the State party in its duty to uphold women's rights, in particular in the context of violence and discrimination against women based on their sexual orientation and to eliminate the barriers that the authors faced in seeking justice in their case, in particular negative stereotypes associated with lesbian women (…)"* (para. 7.10)

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

To date, the Committee has examined 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 gender-based 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).[1]

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:

- 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), *O.G. v. Russia* (No. 91/2015, 6.11.2017), *X and Y v. Russia* (No. 100/2016, 16.7.2019) and *S.L. v Bulgaria* (No. 99/2016, 19 July 2019).

Failure to act with due diligence to prevent, investigate and punish acts of gender-based 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

1 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.

- 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. The Committee found that the State Party had not adopted appropriate legislative and other measures to prohibit gender-based 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.

Further, in *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; provide free legal aid.

In *X and Y v. Russia* (No. 100/2016, 16.7.2019), where both authors had suffered repeated acts of domestic violence, the Committee recommended that the State *"conduct an exhaustive and impartial investigation to determine the failures in the State party's structures and practices that have caused the authors to be deprived of protection"* (para. 11(a)(iii)).

Other communications involving the failure to observe due diligence standards include *S.L. v Bulgaria* (No. 99/2016, 19 July 2019), *S.T. v Russia* (No. 65/2014, 25.02.2019), *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).

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. 8). 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).

Private prosecution

In *O.G. v. Russia* (No. 91.2015, 6.11.2017), which concerned domestic violence, the Committee stated that requiring a victim of domestic violence to resort to private prosecution is a denial of access to justice, since it places the burden of proof entirely on the victim. The Committee referred to its General Recommendation No. 33 on women's access to justice (3 August 2015), where it calls on States to revise rules on burden of proof in order to ensure equality between the parties in all fields where power relations deprive women of fair treatment by the judiciary (para. 15(g)).

In *X and Y v. Russia* (No. 100/2016, 16.7.2019), the Committee stated: *"private prosecution proceedings, in which they must call and interrogate witnesses, collect evidence, ensure their constant presence, and thereby be forced to constantly confront the perpetrators directly at the trial or risk having the proceedings closed, with no protection system in place for victims of domestic violence, cannot be considered a proper*

mechanism to address, prosecute and sanction a crime as serious as domestic violence" (para. 9.7).

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,[1] 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.[2] 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.[3] The analysis of gender stereotypes represents an important factor in understanding the underlying causes of gender-based 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;
- 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), *A.T. v. Hungary* (No. 2/2003, 26.01.2005) and *X. and Y. v Russia* (No. 100/2016, 16.7.2019).

Honour-based violence

Jeiranova v Georgia (No. 140/2019, 25.10.21) concerned gender and honour-based violence against Ms. Jeiranova, who was an ethnic Azerbaijani and Georgian national living in a predominantly Azerbaijani Muslim village. After the authorities failed to take action to protect her from further violence, or to arrest and prosecute the perpetrators, Ms. Jeiranova was found to have died in an apparent suicide. The Committee held that:

- the Georgian authorities' failure to investigate the gender and honour-based violence inflicted on Ms. Jeiranova, and prosecute those responsible, contributed towards her death; and
- the Georgian authorities had failed to provide any other effective protection to Ms. Jeiranova and to take appropriate measures to eliminate discrimination against her, noting that she was the victim of intersecting discrimination related to ethnicity and stereotypical attitudes of the police and judicial

1 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.

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

3 Holtmaat, R. (2012) pp.163ff.

authorities.

The Committee called on Georgia to carry out a prompt, thorough and independent investigation into Ms. Jeiranova treatment and death, and prosecute and sanction those responsible. It also recommended that her children receive adequate compensation, as well as an official apology from the state.

Gender-based violence against women in the context of asylum claims

In *M.E.N. v. Denmark* (No. 35/2011, 26.7.13), which concerned a survivor of sexual violence's claim for asylum in Denmark, the Committee confirmed that 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 Committee clarified that *"if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Convention will be violated in another jurisdiction, the State party itself may be in violation of the Convention. For example, a State party would itself be in violation of the Convention if it sent back a person to another State in circumstances in which it was foreseeable that serious gender-based violence would occur".*

However, the proof of a *"real, personal and foreseeable risk"* of violence 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.[1]

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 Mongolia and sought asylum in the Netherlands. However, her asylum request was rejected on the basis that there was no reason to expect that the Mongolian authorities would be unable to provide her with effective protection. The Author complained that the Netherlands had failed to protect her in denying her asylum request.

The Committee found her communication inadmissible, noting that she had failed to explain how the Mongolian authorities had failed to protect her or show a real risk that they would be unable to do so upon her return to the country. The Committee also pointed out that the Author had failed to explain why she had not followed up on complaints to the authorities at the time. As such, the Committee found that the Author had failed to substantiate her claim that the denial of her asylum application by the Netherlands would expose her to a personal and foreseeable risk of serious forms of gender-based violence if returned to Mongolia and that the Mongolian authorities have failed, or would fail, to provide her with effective protection from such forms of violence.

Other forms of gender-based violence against women

The Committee has considered individual communications relating to other forms of gender-based violence against women, including trafficking (e.g. *D.G. v The Netherlands* (No. 52/2013, 23.07.2015)), harmful practices such as female genital mutilation (e.g. *M.N.N. v Denmark* (No. 33/2011, 15.07.2013) and reproductive or obstetric violence (e.g. *S.F.M. v Spain* (No. 138/2018, 28.02.2020).

1 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).

Submitting a communication to the CEDAW Committee

Communications to the Committee are submitted by email to the OHCHR Petitions and Urgent Actions Section (PUAS) at petitions@ohchr.org. Authors are strongly encouraged to use the OHCHR model complaint form – there is detailed guidance available on the OHCHR website on how to complete the complaint form, including in relation to maximum word limits.[1] Submissions must be in writing (preferably typed) and signed, and must be in either English, French, Russian or Spanish. Submissions in other languages will not be processed.

For more detailed information on how to submit a communication to the Committee, see OHCHR's guidance.

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).

The Author of an individual communication has to provide in detail which steps have been taken in order to exhaust domestic remedies. Given that the Committee may not be familiar with the domestic law of the state in question, it is important that the Author clearly explains the domestic remedies that are available and how they work in practice, and that they provide an analysis of the remedies that have been exhausted in their case.

The State bears the burden of showing which specific and applicable remedies have not been exhausted. 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".*

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.

1 https://www.ohchr.org/en/documents/tools-and-resources/form-and-guidance-submitting-individual-communication-treaty-bodies

39/2012, 17.02.2014)).[1]

It should be noted that Authors are not required to exhaust domestic remedies where the application of such remedies is "unreasonably prolonged or unlikely to bring effective relief" (Article 4(1) CEDAW-OP). Whether a remedy is unreasonably prolonged is assessed on a case-by-case basis. In the case of *A.T. v. Hungary* (No. 2/2003, 26.01.2005), the Committee noted that domestic criminal proceedings were stillpending, and stated that a delay of over three years from the dates of the incidents that were the subject of proceedings for assault and battery would amount to an unreasonably prolonged delay within the meaning of Article 4(1) CEDAW-OP, particularly given that the Author had been at risk of irreparable harm and threats to her life during that period (para. 8.4).

Examination by another international body

A communication will be declared inadmissible where the same matter has already been examined by the Committee, or has been or is being examined under another procedure of international investigation or settlement (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.

The "same matter" has been interpreted to mean "the same author, the same facts and the same substantive rights".[2]

In certain circumstances, complaints may be admissible even where they have previously been examined by the ECtHR – for example, where the complaint concerns different substantive rights,[3] or where the ECtHR examination was limited to consideration of admissibility only and was based on procedural issues.[4] An inadmissibility decision from the ECtHR without reasons is unlikely to be sufficient to render a case automatically inadmissible (*N.S.F. v. United Kingdom* (No. 10/2005, 30.05.2007); *T.N. v. Denmark* (No. 37/2012, 19.11.2011)).[5]

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.[6]

The case of *N v. Netherlands* (No. 39/2012, 17.02.2014), discussed above, highlights the obstacles encountered when dealing with asylum-related communications to the Committee, in terms of adequately substantiating that there is a real, personal and foreseeable risk to the Author.

1 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.
2 See *X and Y v. Georgia* (No. 24/2009), para 6.2.
3 See *X and Y v. Georgia* (No. 24/2009), para 6.6.
4 *S.T. v. Russian Federation*, (No. 065/2014): "In the present case, the Committee observes that the Court declared the author's application inadmissible, given that it considered that "it is not in compliance with the requirements set forth in articles 34 and 35 of the [European Convention on Human Rights]". In such circumstances, the Committee considers that the decision of the Court was based on procedural issues, and not on reasons that indicate a sufficient consideration of the merits of the case" (para 8.3).
5 Connors, J. (2012), above, pp.640f.
6 Ibid., pp.643f.

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.[1] The use of interim measures is governed by Article 5 of CEDAW- OP.

In the context of gender-based violence against women, potential situations where interim measures might be used include:

- 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))
- for protection to prevent irreparable damage to the Author and/or the Author's children, as seen in *A.T. v. Hungary* (No. 2/2003, 26.01.2005) and *J.I. v. Finland* (No. 103/2016, 02.05.2016); or
- to ensure protection of the Author's physical integrity while the communication is pending (*V.K. v. Bulgaria* (No. 20/2008, 25.07.2011)).

Third Party Interventions

The Committee's Working Methods provide for the submission of relevant written information and/or documentation from third parties where this may assist in the examination of a communication.[2] Any third party interventions should not exceed 7,000 words and, if accepted, will be forwarded to both parties who will be given two months in which to submit written comments in reply.

Lawyers who are interested in submitting third party interventions can consult the list of pending cases that the Committee publishes on its website.[3]

Remedies

When the Committee concludes that a violation of CEDAW has taken place, it can recommend the following:

- Individual recommendations concerning the Author(s) of the complaint, e.g. for the State to provide adequate financial compensation to the Author commensurate with the gravity of the violation(s) of their rights. It should be noted that, unlike the ECtHR, the Committee will not specify the amount of compensation to be awarded.
- General recommendations, e.g., for the State to adopt comprehensive legislation to prevent or address a certain issue. For examples of recommendations, see *Jeiranova v Georgia* (CEDAW/C/80/D/140/2019); *O.G. v. Russia* (CEDAW/C/68/D/91/2015); *X and Y v. Russia* (CEDAW/C/73/D/100/2016).

When submitting a complaint, it is possible for the Author to request specific remedies, and indeed Authors are encouraged by the Committee to do so. This ability to request specific individual and general recommendations is a distinct feature of proceedings before the Committee (as compared to the ECtHR) and can be valuable for domestic advocacy and implementation purposes.

1 Connors, J. (2012) pp.647ff.
2 Working Methods of the Committee on the Elimination of Discrimination Against Women and its Working Group on individual communications received under the Optional Protocol to the CEDAW Convention, section E: https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/WorkingMethods.docx.
3 https://www.ohchr.org/en/treaty-bodies/cedaw/individual-communications - see Table of Pending cases

Implementation and Follow-Up

Under the Optional Protocol, there is a CEDAW Working Group on communications, which is tasked with following up on whether the State has complied with the Committee's decision. Members of the CEDAW Working Group act as follow-up rapporteurs, whose role is to promote compliance with the decision through bilateral dialogue with the State.

When the Committee concludes that a violation of CEDAW has taken place, the State is invited to provide information, within six months, on the steps it has taken to implement the recommendations (Article 7(4) CEDAW-OP). The State's response is then transmitted to the Author for comments, which they must submit within two months. The relevant rapporteur from the CEDAW Working Group on communications will then meet periodically with representatives of the State to obtain updated information on implementation of the Committee's decisions. This information is routinely shared with the Author(s) for their comments.

The CEDAW Working Group on communications adopts periodic reports in relation to cases where this follow-up dialogue is taking place, where it sets out a summary of the progress made in implementing the Committee's decision and assigns a grade to reflect its assessment of the matter, ranging from A (implementation satisfactory) to E (no measures taken). The Working Group can close the follow-up dialogue where it assesses the implementation measures taken by the State to be satisfactory. The Working Group may also decide to close the dialogue process where it considers that the State has not given effect to the decision and where further follow-up work is ineffectual.[1]

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. The Committee also recommended that Georgia ratify the Istanbul Convention.

Following the decision, EHRAC worked 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 was upheld on appeal.

EHRAC also engaged with the UN Special Rapporteur on violence against women (SRVAW – see below) during her country visit to Georgia. EHRAC raised the implementation of the Committee's recommendations in X and Y v. Georgia with the SRVAW, as well as highlighting other pending cases which concerned similar systemic issues relating to gender-based violence against women in Georgia.

During the implementation period, Georgia ratified the Istanbul Convention, which ushered in a raft of legal reforms to enact the Convention's provisions in domestic law and practice, including: the criminalisation and expanded legal definition of 'domestic violence', the introduction of a free legal aid service for victims, and the criminalisation of 'forced marriage'. Harsher sanctions were introduced for perpetrators of domestic violence, and specific provisions were introduced that classified stalking as a criminal offence.

1 For more information, see: https://www.ohchr.org/en/treaty-bodies/cedaw/follow-concluding-observations

In 2019, the Committee decided to close the follow-up dialogue with the State, with a finding of a satisfactory resolution of its recommendations in the case.[1]

See EHRAC's discussion of the Committee's decision in *X and Y v. Georgia* and its subsequent implementation: https://ehrac.org.uk/en_gb/key-ehrac-cases/x-and-y-v-georgia/

1 Report of the Committee on the Elimination of Discrimination against Women, A/75/38; https://ehrac.org.uk/en_gb/un-womens-rights-body-concludes-satisfactory-implementation-of-first-ever-international-decision-on-domestic-violence-in-georgia/

THE UN SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN (SRVAW)

The SRVAW and 'special procedures' under the UN system

There are a number of 'special procedures' under the UN Human Rights Council.[1] These are independent human rights experts with mandates to report and advise the UN Human Rights Council on human rights from a thematic or country-specific perspective, and are often known as 'Special Rapporteurs'. They are tasked with: undertaking country visits; sending communications to States and others in relation to individual cases of reported violations or broader concerns; contributing to the development of international human rights standards; and engaging in advocacy and public awareness-raising.

The Special Rapporteur on violence against women, its causes and consequences (SRVAW) was appointed in 1994, and its mandate has since been extended. Many of the other thematic mandates are also relevant to women's rights and violence against women, such as the Special Rapporteurs 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.

In October 2022, the Human Rights Council also established a Special Rapporteur on the situation of human rights in the Russian Federation, whose mandate may include issues relating to gender-based violence against women.[2]

Mandate of the SRVAW

The SRVAW has a mandate from the UN Human Rights Council to seek and receive information from governmental and non-governmental organisations on violence against women, its causes and consequences, 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 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; and perpetrated or condoned by the State.[3]

Tasks and activities

In order to fulfil their mandate, the SRVAW undertakes country visits; submits annual thematic reports; and deals with urgent appeals and communications to States regarding alleged cases of gender-based violence against women. The SRVAW also participates in conferences and issues statements.

Country visits

The SRVAW can carry out a country visit where the State in question has sent an invitation for a fact-finding mission (at the SRVAW's request) or where the State has issued a standing invitation to all thematic special procedures. Armenia, Azerbaijan, Georgia and Ukraine have all extended standing invitations. The SRVAW

1 The list of thematic mandates can be found here: https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM

The list of country mandates can be found here: https://spinternet.ohchr.org/ViewAllCountryMandates.aspx

2 https://www.ohchr.org/en/news/2022/10/human-rights-council-adopts-six-resolutions-appoints-special-rapporteur-situation

3 SRVAW, Preliminary report submitted by the Special Rapporteur on violence against women (E/CN.4/1995/42), para. 5.

will typically spend 10-14 days on a country visit.[1] The goal of these visits is to assess the human rights situation in relation to violence against women by consulting with stakeholders including State institutions and NGOs.

The SRVAW produces a mission report following the visit containing their findings, conclusions and recommendations, which is submitted to the UN Human Rights Council. 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 made a number of findings about the scope and magnitude of domestic violence in Russia, and identified opportunities and obstacles to combating violence. The SRVAW also looked specifically at gender-based violence against women in the North Caucasus, focusing on the impact of military operations and insecurity on women's lives. The SRVAW's report 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 following the disintegration of the Soviet Union.

- Azerbaijan (2014 report): The SRVAW looked at manifestations of gender-based violence against women and girls in both private and public spheres, including in the transnational sphere through trafficking and displacement, and considered the implications of such violence for the enjoyment of women's human rights more broadly. The SRVAW and 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), noting that such norms and attitudes perpetuated impunity for crimes against women.

- Georgia (2016 report): The SRVAW found 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 outputs of the SRVAW's country visits, in particular their mission reports, are helpful evidence for legal representatives to cite in litigation, and may also be relied on by other international bodies. For example, the ECtHR has relied on evidence from SRVAW reports when examining cases relating to gender-based violence against women:

- In *Eremia and Others v. Moldova* (No. 3564/11, 28.08.2013, paras. 37 and 39), the ECtHR drew on the SRVAW's findings in Moldova to emphasise the opinion that the authorities repeatedly condone gender-based violence against women and discriminatory attitudes.

1 See Commission on Human Rights Resolution (E/CN.4/RES/1994/45, 4.03.94), para. 10; Human Rights Council Resolution (A/HRC/RES/7/24, 28.03.08), paras. 6 and 9.

- In *Volodina v. Russia* (No. 41261/17, 09.07.2019), which concerned domestic violence, the ECtHR referred to the SRVAW's report following her visit to Russia in 2004. The ECtHR noted the SRVAW's findings in relation to the prevalence of domestic violence, the patriarchal norms and values in Russia underlying gender-based violence against women, issues around underreporting and weaknesses in the legislative framework, and the inadequate response of the authorities, and relied on this evidence to find a violation of Article 14 (non-discrimination) in conjunction with Article 3.

Thematic reports

The SRVAW also produces annual 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);
- State responsibility for eliminating violence against women (A/HRC/23/49);
- Violence against indigenous women and girls (A/HRC/50/26); and
- Violence against women journalists (A/HRC/44/52).

Urgent appeals and communications

The SRVAW is mandated to seek and receive information on gender-based violence against women from Governments, treaty bodies, specialised agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and NGOs. Where such information is received, the SRVAW can send a letter – known as a communication – to the Government or other relevant stakeholder on the alleged human rights violation.[1] In the communication, the SRVAW may request information on the facts and steps taken by the Government, and where necessary will request that the authorities take action – including to halt the violation in question, investigate it, bring perpetrators to justice and/or provide remedies to the victim(s).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.

1 Communications reports of special procedures can be found here: https://www.ohchr.org/en/special-procedures-human-rights-council/communications-reports-special-procedures
Search Communications sent and replies (database): https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

It should be noted that this is not a quasi-judicial procedure, and the SRVAW is not able to enforce their views or recommendations. However, the communications can play an important role in drawing the Government's attention to human rights violations, and in raising public awareness more broadly. The SRVAW reports to the UN Human Rights Council on communications sent and replies received.

Individuals or organisations can make submissions to the SRVAW to draw their attention to alleged human rights violations. Allegations may concern individuals or convey information relating to a general prevailing situation condoning and/or perpetrating gender-based violence against women. Such submissions:

- are sent directly to the SRVAW using an individual complaint form;
- can be single or joint;
- can be confidential;
- should provide factual information in relation to the case or complaint in question, and if possible should identify the rights that have allegedly been violated;
- 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;

Given that this is not a judicial or quasi-judicial mechanism, it is not necessary to provide extensive evidence in your submission or to have exhausted domestic remedies. However, you should ensure that you provide sufficient detail to enable the SRVAW to consider the issue. Further guidance is available on the SRVAW website.

EDVAW Platform

In 2018, the SRVAW launched an initiative to develop thematic and institutional cooperation and coordination between different international and regional mechanisms working on gender-based violence against women, known as the EDVAW Platform. The long-term aims of the EDVAW Platform are to accelerate the domestication of international and regional standards, achieve gender equality and empower women and girls. The EDVAW Platform comprises the following mechanisms:

- SRVAW
- CEDAW Committee
- UN Working Group on the issue of discrimination against women
- Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI)
- Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)
- African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa
- Inter-American Commission on Human Rights Rapporteur on the Rights of Women

The EDVAW Platform meets at least once a year to share information about each body's current work and focus areas, discuss coordination and cooperation, and consider new strategic priorities. The Platform also convenes panel events and meetings with institutional stakeholders, and issues joint statements on topics falling within their mandates. Through this work, the EDVAW Platform has sought to reduce the fragmentation of efforts towards tackling gender-based violence against women through "harmonizing

the link between conventions in different regions".[1] One area identified for improvement is to consider how best the EDVAW Platform can better connect and cooperate with civil society organisations.[2]

Further information about the EDVAW Platform's activities is available on its website.

1 Meeting notes from 10th Meeting of the EDVAW Platform, held online in October 2021: https://www.ohchr.org/sites/default/files/2022-01/10th-Global-EDVAW-Platform-Meeting-Notes.pdf.
2 Ibid.

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/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-elimination-all-forms

Rules of Procedure of the CEDAW Committee: https://www.ohchr.org/en/treaty-bodies/cedaw/rules-procedure-and-working-methods

CEDAW Committee's General Recommendations: https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations

CEDAW Committee Concluding Observations: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3

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

OHCHR form and guidance for submitting an individual communication to treaty bodies: https://www.ohchr.org/en/documents/tools-and-resources/form-and-guidance-submitting-individual-communication-treaty-bodies .

Resources on EHRAC website

EHRAC Guide to litigating cases of violence against women: https://ehrac.org.uk/en_gb/resources/ehrac-guide-to-litigating-cases-of-violence-against-women/

Guide to litigating self-defence in contexts of domestic violence against women: https://ehrac.org.uk/en_gb/resources/self-defence-guide/

The right of victims of domestic violence to self-defence: stereotypes and prejudices in the decisions of Russian courts: https://ehrac.org.uk/en_gb/resources/the-right-of-victims-of-domestic-violence-to-self-defence-stereotypes-and-prejudices-in-the-decisions-of-russian-courts/

International avenues for bringing complaints of human rights violations against the Russian Federation after its expulsion from the Council of Europe: https://ehrac.org.uk/en_gb/resources/ehrac-briefing-note-international-avenues-for-bringing-complaints-of-human-rights-violations-against-the-russian-federation-after-its-expulsion-from-the-council-of-europe/

EHRAC Witness Statement Preparation Guide: https://ehrac.org.uk/en_gb/resources/ehrac-witness-statement-preparation-guide/

ANNEX 2: CEDAW COMMUNICATIONS REFERRED TO IN THIS GUIDE

Communications referred to in this guide

Case	Communication Number	Year of decision	Subject Matter	Findings
A.T. v. Hungary	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
Angela González Carreño v. Spain	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
Goekce v. Austria	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
Herrera Rivera v. Canada	26/2010	2011	Asylum-related communication challenging deportation on basis of risk of domestic violence.	Inadmissible - failure to exhaust domestic remedies
Isatou Jallow v. Bulgaria	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
Jeiranova v Georgia	140/2019	2021	Failure to investigate and prosecute gender and honour-based violence contributing to woman's death.	Violation of CEDAW Articles 2 (b)–(f) and 5 (a), in conjunction with Articles 1 and 3
Kell v. Canada	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
M.E.N. v. Denmark	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
M.N.N. v. Denmark	30/2011	2013	Asylum-related communication on risk of FGM	Inadmissible - failure sufficiently to substantiate claim
M.P.M. v. Canada	25/2010	2012	Asylum-related communication on risk of domestic violence.	Inadmissible - failure to sufficiently substantiate claim
M.W. v. Denmark	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)
N. v. Netherlands	39/2012	2014	Rape of a women by her employer and subsequent lack of State action.	Inadmissible - failure sufficiently to substantiate claim

Communications referred to in this guide

Case	Communication Number	Year of decision	Subject Matter	Findings
N.S.F. v. United Kingdom	10/2005	2007	Admissibility of asylum- related domestic violence claim.	Inadmissible - failure to exhaust domestic remedies
O.G. v. Russia	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
O.N. and D.P. v. Russia	119/2017	2020	Failure to effectively investigate violence against lesbian couple.	Violation of CEDAW Article 1, 2(b)–(g) and 5 (a).
R.P.B v. the Philippines	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
S.L. v Bulgaria	99/2016	2019	Repeated domestic violence; failure to take protective measures and failure to enact legislative changes.	Violation of CEDAW Article 2 (a)-(c) and (e)-(g), Article 5(a) and Article 16(1)(c), (g) and (h), in conjunction with Article 1
S.T. v Russia	65/2014	2019	Domestic violence; failure to prevent and effectively investigate.	Violation of CEDAW Article 2(c) and (d), read in conjunction with Article 1, and Article 5(a).
S.V.P. v. Bulgaria	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)
T.N. v. Denmark	37/2012	2014	Domestic violence and child custody.	Inadmissible - failure sufficiently to substantiate claim
Tayag Vertido v. Philippines	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
V.K. v. Bulgaria	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
X. and Y. v. Georgia	24/2009	2015	Repeated domestic and sexual violence against wife and daughter, and subsequent State inaction.	Violation of CEDAW Articles 2(b)-(f) in conjunction with Articles 1 and 5(a) and General Recommendation No. 19
X and Y v. Russia	100/2016	2019	Repeated domestic violence against two women by their husbands and subsequent failures in State action.	Violation of Articles 2 (a), (e), (f) and (g), 3 and 5 (a) of the Convention, together with Article 1

Communications referred to in this guide

Case	Communication Number	Year of decision	Subject Matter	Findings
Y.C. v. Denmark	59/2013	2014	Asylum-related communication on risk of domestic violence and lack of religious freedom.	Inadmissible - failure sufficiently to substantiate claim
Y.W. v. Denmark	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
Yildrim v . Austria	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

European Human Rights Advocacy Centre

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

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