

The CEDAW Committee: Global Leader in Tackling Violence against Women and Girls¹

Abstract

The article examines how the UN Committee on the Elimination of All Forms of Discrimination against Women has been instrumental in developing state obligations for tackling gender-based violence against women. The Committee first adopted a General Recommendation on violence against women in 1989 and then brought it unequivocally into international human rights law through its ground-breaking General Recommendation 19 in 1992. Twenty-five years later, in 2017, in light of the continuing and deadly violence against women that “remains pervasive in all countries, with high levels of impunity” the Committee updated its work in a further General Recommendation, No. 35. This Recommendation provides guidance to and an anchoring of the legal standards that have evolved over the last 25 years, while also looking forward in terms of current and emerging challenges and trends in this field.

1. Introduction

The year 2020 is a significant year for women’s human rights. It marks the 20th anniversary of UN Security Council Resolution 1325 on Women, Peace and Security (“WPS”) and 25 years since the Beijing Declaration and Platform for Action.² These landmark anniversaries have led to significant mobilisation by women’s movements around the globe to implement the rights set out therein and to advocate for the Sustainable Development Goals (“SDGs”)³ which are at their halfway point. However another anniversary, that marking 40 years of the Convention on the Elimination of All Forms of Discrimination against Women⁴ (“CEDAW”) - the UN’s blueprint for the advancement of women’s human rights - has passed, relatively speaking, under the radar.

¹ Christine Chinkin, Professorial Research Fellow, LSE Centre for Women Peace and Security and Keina Yoshida, Research Officer, LSE Centre for Women Peace and Security, This research forms part of the Arts and Humanities Research Council funded project “Feminist Approaches to the International Law of Peace and Security”.

² Fourth World Conference on Women, Beijing Declaration and Platform for Action, 1995, <http://www.un.org/womenwatch/daw/beijing/platform/>.

³ UN General Assembly Resolution 70/1, 21 October 2015, Transforming our world: the 2030 Agenda for Sustainable Development.

⁴ Convention on the Elimination of All Forms of Discrimination Against Women, 1979, 1249 UNTS 13.

40 years ago when the CEDAW was opened to states⁵ the term ‘violence against women’ was barely known; the Convention itself had no article directly on such violence.⁶ The more recent instruments have placed particular emphasis on states’ obligations to combat violence against women both in armed conflict and in non-conflict situations – the ‘everyday’ violence against women that has been termed another pandemic of our times.⁷ But these instruments, as well as others,⁸ have largely built on the significant and pioneering work that the CEDAW Committee has undertaken to develop a legal framework for combating gender-based violence against women and girls, thereby keeping the Convention responsive to contemporary challenges and providing substantive material for advocacy whether before judicial or policy decision-makers and practical measures for survivors.

This article focuses on the Committee’s latest contribution in this enterprise, its adoption in 2017 of its General Recommendation No. 35 (“GR 35”) updating General Recommendation 19 on violence against women.⁹ As its name suggests this General Recommendation builds upon and reinforces the earlier GR 19 on violence against women,¹⁰ as well as the wealth of understanding of the challenges and appropriate responses it had expressed through its concluding observations to states’ reports, individual communications and inquiries. It also draws upon regional initiatives, most importantly within the European context the Istanbul

⁵ The General Assembly requested the Secretary-General to present the Convention at the World Conference of the UN Decade for Women; Resolution 34/180, 18 December 1979, Convention on the Elimination of All Forms of Discrimination Against Women. This took place at Copenhagen in July 1980 when the Convention was signed by 64 states and received two ratifications.

⁶ CEDAW, article 6 requires states to take ‘all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’

⁷ “Treating Violence Against Women and Girls as a Pandemic” at <https://www.welshwomensaid.org.uk/2020/05/treating-violence-against-women-and-girls-as-a-pandemic/>.

⁸ E.g. UN General Assembly Resolution 48/104, 1994, Declaration on the Elimination of Violence against Women; UN Commission on the Status of Women, *The Elimination and Prevention of all Forms of Violence against Women and Girls*, E/CN.6/2013/L.5, 2013. See further CEDAW Committee, GR 35 fn 3.

⁹ Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, 2017 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en.

¹⁰ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against women, 11th session 1992, HRI/GEN/1/Rev.8, 1992.

Convention¹¹ and the jurisprudence of the European Court of Human Rights.¹² Despite signing the Istanbul Convention in 2012 with promises of ensuing ratification, the UK has to date failed to become a party.¹³ It is therefore especially important to remember that as a state party it is legally bound by CEDAW, although the Convention remains marginalised as an instrument of change within the country.¹⁴ The article reinforces the message of a series of events held at the LSE Centre on Women, Peace and Security in 2019 under the auspices of an Arts and Humanities Research Council funded project on a Feminist International Law of Peace and Security. These events considered the ways CEDAW can and should be used to remind states, and especially the UK, of its legal obligations to address structural gender inequalities. This in turn would contribute to realisation of the SDGs, notably SDG 5: “achieve gender equality and empower all women and girls”.¹⁵ These objectives are also core to sustainable peace and the Security Council’s WPS agenda of which the UK is a champion. In sum, this article and a fuller briefing report of two other important General

¹¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011, ETS 210 (“Istanbul Convention”); see also Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women, 1994 (“Convention of Belém do Pará”) and Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003 (“Maputo Protocol”), especially articles 1(j), 3(4), 4(2), 5, 11, 12(d), 13(c), 20, 22(b), 23(b).

¹² E.g. *Opuz v Turkey* (App. No.33401/02), judgment of 9 June 2009. See more recently *Volodina v Russia* (App. No.41261/17), judgment of 9 July 2019. This judgment discusses CEDAW unlike a worrying judgment of *Kurt v Austria* (App. No.62903/15), judgment of 4 July 2019, which was handed down 5 days prior to *Volodina*. For an analysis see Ronagh McQuigg ‘*Kurt v Austria: Applying the Osman Test to Cases of Domestic Violence*’ forthcoming in this journal. There are many cases in the Inter-American system. E.g. *Velásquez Paiz et. al. v Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 307, judgment of 19 November 2015 (in Spanish); *Rosendo Cantú et al v Mexico*, Preliminary Objections, Merits, Reparations and Costs, judgment of 31 August 2010; *Linda Lopez Soto et. al. v Venezuela*, Fondo, Reparaciones y Costas, judgment of 26 September 2018 (in Spanish). In the African system see *Aminata Diantou Diane (represented by APDF & IHRDA) v Mali*, ECW/CCJ/APP/35/17, judgment of 21 May 2018.

¹³ The Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 requires the government to lay before Parliament each year a report on its progress toward ratification.

¹⁴ C. Chinkin and J. Gordon, “The UK CEDAW Story” (2011) 3 E.H.R.L.R. 274. Although importantly the Court of Appeal stated in *QSA, Broadfoot and ARB v Secretary of State for the Home Department and Secretary of State for Justice* [2020] EWCA Civ 130 provides at para 23: “The recommendations of CEDAW express a point of view which is entitled to respect.

¹⁵ SDG 5.2: “5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.”

Recommendations adopted by the CEDAW Committee¹⁶ seek to raise the profile of CEDAW and to consider the question of where women and girls today would be without CEDAW.

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

CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and came into force on 3 September 1981.¹⁷ In 2020 it has 189 states parties; as an international human rights treaty it has legally binding obligations for state parties with respect to gender equality. The Convention has been described as “the definitive international legal instrument requiring respect for and observance of the human rights of women.”¹⁸ The purpose of CEDAW is to eliminate discrimination on the basis of sex and gender by any person, organisation or enterprise,¹⁹ⁱ including discriminatory stereotypes.²⁰ It thus seeks to eradicate inequality between women and men and to urge states to adopt emancipatory measures.²¹ The CEDAW Committee is a geographically diverse and independent expert UN treaty body responsible for overseeing the implementation of the Convention and as such “an international body specifically tasked with eliminating gender discrimination and advocating for transformative change and equality.”²² It is “the leading United Nations treaty body

¹⁶ C. Chinkin and K. Yoshida, *40 Years of the Convention on the Elimination of All Forms of Discrimination* (LSE, 2020) at <http://www.lse.ac.uk/women-peace-security/assets/documents/2020/LSE-WPS-40-Years-of-CEDAW.pdf>. The Report examines CEDAW Committee GR 35; GR 36 on the right of girls and women to education, CEDAW/C/GC/36, 2017; and GR 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37, 2018.

¹⁷ On the history of the adoption of the Convention see M. Freeman, C. Chinkin and B. Rudolf, *The UN Convention on the Elimination of all Forms of Discrimination against Women: A Commentary* (OUP, 2012), Chapter One. On the history of women’s rights as human rights see A. Fraser, "Becoming Human: The Origins and Development of Women's Human Rights" (1999) 21 (4) *Human Rights Quarterly* 853.

¹⁸ R. Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women," (1990) 30 (3) *Virginia Journal of International Law* 643.

¹⁹ CEDAW, article 2 (e).

²⁰ CEDAW, article 5 (a).

²¹ CEDAW, article 3; see also CEDAW Committee, General Recommendation No. 25 on article 4, paragraph 1, of the Convention (temporary special measures) 30th session, 2004, para 10: "The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns"; CEDAW Committee, General Recommendation No. 33 on *Women’s Access to Justice*, CEDAW/C/GC/33, 2015, para 2: "Effective access to justice optimizes the emancipatory and transformative potential of the law."

²² G. Fernandez and K. Yoshida, "Human Trafficking as a Gendered Phenomenon: CEDAW in Perspective," (2018) 32 (1) *Journal of Immigration, Asylum and Nationality Law* 36. On

responsible for monitoring the implementation of women's human rights".²³ The CEDAW Committee, along with the Working Group on Discrimination against Women,²⁴ the Special Rapporteur on Violence against Women, its Causes and Consequences,²⁵ the Commission on the Status of Women, UN Women²⁶ and more recently the Special Representative of the Secretary-General on Sexual Violence in Conflict²⁷ make up the UN's gender architecture, an international umbrella of entities focusing on the advancement of women's human rights in the international sphere.

On 6 October 1999, the Optional Protocol ("OP") to the Convention was adopted by consensus by the UN General Assembly²⁸ and entered into force on the 22 December 2000. Article 2 provides individuals or groups from state parties to the OP with the opportunity to complain about violations of Convention rights by the state to the Committee. The OP thus enables the Committee to determine these claims and to make both specific recommendations for redress to the individual complainant and more general ones directed at addressing wider societal issues. Article 8 further invests the Committee with the powers to conduct an inquiry into grave or systemic violations of human rights set out in the Convention. Inquiries have been made with respect to women's access to health and reproductive services in Manila, Philippines;²⁹ violence against women (femicide) in *Ciudad*

transformative equality and CEDAW see S. Fredman, *Discrimination Law*, (OUP, 2nd ed. 2011), Chapter One; S. Fredman, "Beyond the Dichotomy of Formal and Substantive Equality. Towards New Definitions of Equal Rights," in I. Coomans Boerefijn, F. Goldschmidt, J. Holtmaat and H. Wolleswinkel, R. (eds) *Temporary Special Measures: Accelerating De Facto Equality of Women Under Article 4(1) UN Convention on the Elimination of all forms of Discrimination Against Women*, (Intersentia, 2003): 111-8; M. Freeman, C. Chinkin and B. Rudolf, above note 17 at 272.

²³ S. Cusack and L. Pusey, "CEDAW and the Rights to Non-Discrimination and Equality," (2013) 14 *Melbourne Journal of International Law* 54.

²⁴ Mandate established by UN Human Rights Council Resolution 15/23, 8 October 2010.

²⁵ The Special Rapporteur on Violence against Women was mandated by United Nations Commission on Human Rights Resolution 1994/45, 4 March 1994.

²⁶ The UN Entity for Gender Equality and the Empowerment of Women was established pursuant to General Assembly Resolution 64/289, 2 July 2010 on System-Wide Coherence para 49.

²⁷ UN Security Council Resolution 1888, 30 September 2009 on Women and Peace and Security, para 4 requested the Secretary-General to appoint a Special Representative to address sexual violence in armed conflict.

²⁸ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999, UNTS 2131, 83.

²⁹ Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/OP.8/PHL/1, 22 April 2015.

Juárez, Mexico;³⁰ access to abortion in Northern Ireland, UK;³¹ abduction of women and girls for marital purposes in Kyrgyzstan;³² and the rights of indigenous women in Canada.³³ In each of these inquiries the Committee has identified manifestations of gender-based violence in the specific factual context and made recommendations for its elimination and for reparations for victims, their families and, where appropriate, the community. The importance and significance of the jurisprudence and inquiry reports should not be underestimated. In some cases, for instance *Ángela González Carreño v Spain*³⁴ the recommendations made by the CEDAW Committee for redress have led to important results: the Spanish Supreme Court in July 2018 held that the recommendations made by the Committee under the OP were binding on the domestic courts.³⁵ This is in stark contrast to the UK's refusal to incorporate CEDAW into its domestic law as repeatedly urged by the Committee.³⁶

A core part of the CEDAW Committee's work is the adoption of General Recommendations through which it provides authoritative guidance on state obligations under CEDAW.³⁷ General Recommendations are drafted after a discursive process involving general discussion

³⁰ Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention and reply from the Government of Mexico, CEDAW/C/2005/OP8/Mexico, 27 January 2005.

³¹ Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 6 March 2018.

³² Report of the inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women CEDAW /C/OP.8/KGZ/1, 21 September 2018.

³³ Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OP.8/CAN/1, 30 March 2015.

³⁴ CEDAW/C/58/D/47/2012, adoption of views 16 July 2014.

³⁵ UNOHCHR, "Spain sets milestone in international human rights law, say UN women's rights experts" *OHCHR News*, 8 November 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23849&LangID=E>. Accessed: 4 February 2020.

³⁶ The Committee reiterated the concerns it had expressed in 1999, 2008 and 2013 "regarding the lack of measures taken to fully incorporate the provisions of the Convention into its national legislation, leading to a fragmented and uneven legislative framework on the rights of women and girls"; CEDAW Committee, Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/8, 14 March 2019, para 13.

³⁷ *Ahmadou Sadio Diallo* (Republic of Guinea v Democratic Republic of the Congo) 2010 ICJ Reports, 639, para 66.

days and a period during which NGOs and other interested persons are invited to comment on drafts. They elaborate on Convention provisions and explain legal standards specifically in relation to women's equality, empowerment and justice.³⁸ General Recommendations are important interpretive instruments since they ensure that the Convention is a living, dynamic instrument³⁹ that develops global standards for women's rights. Especially significant in this regard is General Recommendation 28 ("GR 28") that was adopted in 2010⁴⁰ and elaborates states' obligations under article 2 of the Convention. It clarifies for instance that the Convention continues to be applicable during conflict and disasters. It covers gender-based as well as sex-based discrimination and that it is applicable to girls as well as women "since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence." It also addresses a criticism of the Convention that it presents an essentialist view of women that does not differentiate between their situations. GR 28 recognises intersectionality and that discrimination against 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". The Committee asserts that states parties are legally obliged to recognise the "compounded negative impact" of intersecting and multiple discriminations and to adopt appropriate programmes and policies.⁴¹ It also explains that the requirement that states pursue a policy of elimination of discrimination against women "without delay" means that it is an immediate obligation. It follows, according to the Committee, that delay cannot be justified "on any grounds, including political, social, cultural, religious, economic, resource or other considerations or constraints within the State."⁴²

³⁸ M. Freeman, C. Chinkin and B. Rudolf, above note 17 at 24; A. Byrnes, "The Convention on the Elimination of All Forms of Discrimination against Women," in W. Benedek, E. Kisaakye, and G. Oberleitner (eds) *The Human Rights of Women: International Instruments and African Experiences* (Zed Books, 2002): 119-72, 119, 22-23.

³⁹ CEDAW Committee, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 2010, para 1.

⁴⁰ Ibid.

⁴¹ CEDAW Committee, GR 28 para 18.

⁴² CEDAW Committee, GR 28 para 29.

The General Recommendations are crafted by experts on gender equality for women (and largely by women) and often address topics that are underdeveloped by other treaty bodies. It has been through General Recommendations that the Committee has taken decisive steps in framing states' positive obligations with respect to the elimination of gender-based violence against women.

3. Gender-based Violence against Women: General Recommendation No. 35 (2017)

The international normative landscape on violence against women has evolved exponentially since the establishment of the CEDAW Committee in 1982 and its adoption of GR 19 in 1992.⁴³ By identifying gender-based violence holistically as discrimination⁴⁴ against women coming with article 1 of CEDAW,⁴⁵ GR 19 identified multiple manifestations of violence against women, took them out of the private sphere and placed them within the context of structural inequalities predicated on gender relations. It spelled out that states under general international law are responsible for the acts of gender-based violence committed by their own agents and have positive obligations of due diligence to prevent, investigate and punish such violence by non-state actors and to make reparation.⁴⁶ It thus unequivocally brought gender-based violence against women into CEDAW and the domain of international human rights law.⁴⁷

⁴³ In 1989 the CEDAW Committee had adopted the much more limited General Recommendation No. 12: Violence against women, Eighth session, 1989. This set out that Convention articles 2, 5, 11, 12 and 16 require states parties "to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life" and to include measures taken in this regard in their reports to the Committee.

⁴⁴ The European Court of Human Rights has recognised violence against women, including domestic violence, as discrimination against women and failure to protect against such violence as breach of women's right to equal protection of the law; e.g. *Opuz v Turkey*, above note 12 at paras 185-91; *Volodina v Russia*, above note 12 at para 110.

⁴⁵ CEDAW Committee, GR 19 para 6 defines gender-based violence as "violence which is directed against a woman because she is a woman or that affects women disproportionately."

⁴⁶ CEDAW Committee, GR 19 para 9.

⁴⁷ This is now accepted by other UN human rights treaty bodies; see for instance UN Human Rights Committee General Comment No. 28: The equality of rights between men and women (article 3) (2000) CCPR/C/21/Rev.1/Add.10, 29 March 2000; Committee on Economic, Social and Cultural Rights, General Comment No. 16 (2005) The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/2005/4 11 August 2005, para 27; Committee against Torture, General

In the years following GR 19, in its concluding observations the CEDAW Committee regularly condemned “gender-based violence against women, in all its forms, wherever it occurs”,⁴⁸ addressing it in the particular factual contexts presented in the states parties’ and shadow reports and making recommendations. Nevertheless high levels of gender-based violence and gender-related killings against women and girls persisted, leading some women’s rights groups and feminist activists, including the former UN Human Rights Council Special Rapporteur on Violence against Women to call for a binding international treaty on violence against women.⁴⁹ There is, they argued, a normative gap which must be closed in order to tackle and eradicate violence against women and that a binding one-stop treaty would assist in bringing together the fragmented systems and in clarifying states’ obligations.⁵⁰ Perhaps as a response to these debates, and based on its accumulated experience, the CEDAW Committee in 2017 adopted GR 35 updating GR 19. This new General Recommendation was adopted following a widespread consultation process with more than a hundred contributions from civil society, women’s organisations and other stakeholders, including states.⁵¹

General Recommendation 35 is lengthy (nineteen pages) and provides a comprehensive guidance to states of their obligations with respect to prevention of gender-based violence against women, protection against such violence through civil law barring orders and criminal prosecution of perpetrators, provision of services (medical, psychosocial and counselling, education, affordable housing, land, childcare, training and employment opportunities) and

Comment No. 2, CAT/C/GC/2, 24 January 2008, para 22. Many of the UN Human Rights Council special procedures also integrate gender-based violence against women into their work.

⁴⁸ CEDAW Committee, GR 35 para 35.

⁴⁹ Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, A/HRC/26/38, 2014.

⁵⁰ See R. McQuigg, "Is it Time for a UN treaty on Violence against Women?" 2018 22 (3) *International Journal of Human Rights* 30. Similarly civil society and women’s groups are calling for a binding treaty on transnational corporations and businesses to clarify states’ obligations and ensure responsibility for corporate abuse.

⁵¹ The LSE Centre for Women, Peace and Security supported the Working Group of the CEDAW Committee by convening knowledge exchange workshops and provided impartial expert advice. See "General recommendation No 35 on gender-based violence against women, updating general recommendation No 19", LSE Centre for Women Peace and Security blogs at <https://blogs.lse.ac.uk/vaw/int/cedaw/general-recommendation-no-35/>.

compilation and coordination of data. At the outset the Committee makes the important suggestion that the prohibition of gender-based violence against women “has evolved into a principle of customary international law”,⁵² a process in which GR 19 has been a catalyst. The European Court of Human Rights reworded the Committee’s statement as an affirmation of customary status.⁵³ In practice this means that it is binding on all states whether they have signed up to CEDAW. They have a legal obligation to recognise that women and girls are entitled to a life free from violence⁵⁴ and to ensure that this right of freedom from violence is real rather than illusory or theoretical.⁵⁵

However, the reality is far from this ideal. As the Committee notes in GR 35, legislation addressing gender-based violence against women remains “non-existent, inadequate and/or poorly implemented”.⁵⁶ Gender-based violence remains socially entrenched as a mechanism “by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.”⁵⁷ Indeed GR 35 has come at a time when there is a “trend toward resistance, retrenchment, and a turn away from women’s rights concerns”,⁵⁸ a backlash that has eroded the frameworks developed to eliminate gender-based discrimination. Violence continues and is justified in the name of tradition, culture, religion or fundamentalist ideologies, and significant reductions in public spending – austerity.⁵⁹ It remains pervasive in

⁵² CEDAW Committee, GR 35 para 2 and the detailed citations in fn 2.

⁵³ *Volodina v Russia* above note 12 at para 110.

⁵⁴ CEDAW Committee, GR 35 para 14: “Gender-based violence affects women throughout their life cycle and accordingly references to women in this document include girls.”

⁵⁵ M. Freeman, C. Chinkin and B. Rudolf (eds) above note 12 at 451.

⁵⁶ CEDAW Committee, GR 35 para 7.

⁵⁷ CEDAW Committee, GR 35 para 10. This echoes the language in the preamble to the General Assembly’s Declaration on the Elimination of Violence against Women, above note 8: “Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

⁵⁸ S. Engle Merry, “The Global Travel of Women’s Human Rights,” paper presented at New York University (2017) <https://as.nyu.edu/content/dam/nyu-as/asSilverDialogues/documents/S%20Merry%20Resonance%20Dilemma%20silver%20prof%20article1.pdf>.

⁵⁹ In 2019 the CEDAW Committee expressed its concern at the “disproportionately negative impact of austerity measures on women” and recommended an audit of the effect and the adoption of mitigation measures “without delay” CEDAW Committee, Concluding Observations on the eighth

all countries of the world, manifesting “in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology mediated settings and in the contemporary globalized world it transcends national boundaries.”⁶⁰ Those who fight for women’s human rights are stigmatised and targeted. In other words, despite normative developments over the past 25 years at the international, regional and national level, the violence women and girls face in their daily lives remains real and deadly.

The Committee reaffirms the definition of gender-based violence it put forward in GR 19⁶¹ and which has become widely accepted.⁶² This definition expresses more explicitly than subsequent definitions the relationship between the violence and the sex of the victim.⁶³ The violence does not just happen to occur to women, but is motivated by “factors concerned with gender”,⁶⁴ such as the need to assert male power and control, to enforce assigned gender roles in society, and to punish what is perceived as deviant female behaviour.⁶⁵ The Committee explains that it prefers the expression “gender-based violence” to that of “violence against women” because it is more precise and explicit about the role gender plays in its incidence thereby highlighting that this violence is a social problem to which comprehensive responses are required.⁶⁶ In GR 19 such violence encompassed “acts that inflict physical, mental or sexual harm or suffering”; the Committee draws attention to an

periodic report of the United Kingdom of Great Britain and Northern Ireland, above note 36 at paras 17-8.

⁶⁰ CEDAW Committee, GR 35 para 6.

⁶¹ CEDAW Committee, GR 35 para 1.

⁶² E.g. *Volodina v Russia* above note 12 at para 110.

⁶³ Gender-based violence was not defined in the GA Declaration on Elimination of Violence against Women, above note 8, or in the Beijing Platform for Action. The Convention of Belém do Pará article 1 defines violence against women “as any act or conduct, based on gender”; the Maputo Protocol article 1 states that violence against women “means all acts perpetrated against women”. The Istanbul Convention article 3(d) states that “gender-based violence against women’ shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.” Neither the CEDAW GR 35 nor the Istanbul Convention define ‘disproportionately’.

⁶⁴ J. Connors, “Violence against Women”, Background Paper, United Nations Fourth World Conference on Women (1995) reprinted in H. Barnett (ed.) *Sourcebook on Feminist Jurisprudence* (Cavendish Publishing, 1997) 558, 562.

⁶⁵ CEDAW Committee, GR 35 para 9; see also para 19.

⁶⁶ This terminology does however differ from that of the mandate of the Special Rapporteur on violence against women.

expansion of this understanding to include physical, sexual, psychological⁶⁷ or economic harms.⁶⁸ The updating of GR 19 means that the Committee has addressed contemporary forms of violence such as that committed on the internet and digital spaces, that have also formed part of the current UN Special Rapporteur's focus during her mandate.⁶⁹ It has also been far more explicit about women's health and reproductive and obstetric violence than was the case in 1992.⁷⁰

Significantly, GR 35 provides lengthy and technical detail in expanding upon state obligations with respect to the acts and omissions of both its own organs and agents and those of non-state actors.⁷¹ In line with the general principles of international law on state responsibility⁷² it clarifies when acts are attributable to the state through the exercise of governmental authority by non-state actors and expands on the duty of due diligence that requires the state to "to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women."⁷³ This duty, described as underpinning the entire Convention, requires states parties to "adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors."⁷⁴ Prevention is especially important

⁶⁷ The concept of "coercive control" as explained in *R v Sally Challen* [2019] EWCA Crim 916, 28 February 2019 would come with the concept of psychological harm.

⁶⁸ CEDAW Committee, GR 35 para 14. The Maputo Protocol article 1 (j) and the Istanbul Convention article 3 (a) include economic harm.

⁶⁹ Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on Online Violence against Women and Girls from a Human Rights Perspective, A/HRC/38/47, 2018.

⁷⁰ The Committee found the UK to be responsible for grave and systematic violations of the Convention through the restrictive abortion regime in Northern Ireland which disproportionately restricted women's and girls' access to sexual and reproductive rights and subjected them to severe physical and mental anguish, constituting gender-based violence against women; Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland above note 36.

⁷¹ State obligations and due diligence are spelled out in the Istanbul Convention article 5: "(1) Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation. (2) Parties shall 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."

⁷² These are generally accepted as set out in the International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, UN General Assembly Resolution 56/83, 12 December 2001.

⁷³ CEDAW Committee, GR 35 para 24.

⁷⁴ CEDAW Committee, GR 35 para 24 (b).

and states must take steps to prevent violence against women where “authorities are aware or should be aware of the risk of such violence”⁷⁵

It is not just individual perpetrators of violence whose acts give rise to the state duty of due diligence; the Committee asserts that the state is also required to address violence caused by any organization or enterprise, including private corporations,⁷⁶ even when they are acting extra-territorially.⁷⁷ In particular, they must take the necessary measures to “prevent human rights violations perpetrated abroad by corporations over which they may exercise influence, whether through regulatory means or the use of incentives, including economic incentives.”⁷⁸ This mirrors the Committee’s increasing attention during the periodic review cycles to what corporations in the Global North are doing in the Global South. For example, the Committee’s concluding observations on the eighth periodic report of Australia addresses rights violations by Australian companies operating abroad which relate to the extractive industry.⁷⁹ Other actions and omissions of the state and non-state actors operating extraterritorially that can result in gender-based violence against women include extraterritorial military action and foreign occupation.

GR 35 explains in some detail what the duty of due diligence entails for each of the branches of Government.⁸⁰ For instance The Committee explains that states’ obligations include:

- For the legislative: adoption of legislation prohibiting all forms of gender-based violence against women and girls and putting “laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and

⁷⁵ CEDAW Committee GR 35 para 24. GR 19 did not address risk; cf “the officials were aware, or ought to have been aware, of the violence to which the applicant had been subjected and of the real and immediate risk that violence might recur. Given those circumstances, the authorities had an obligation to take all reasonable measures for her protection.”: *Volodina v Russia* above note 12 at para 87. On the lethality risk see Istanbul Convention, article 51.

⁷⁶ CEDAW Committee, GR 35 para 24(c).

⁷⁷ The Committee stated the extraterritorial application of the Convention in CEDAW GR 28, above note 39 at para 36; see also CEDAW GR 30 para 8.

⁷⁸ CEDAW Committee, GR 35 para 24(b).

⁷⁹ Committee on the Elimination of Discrimination against Women, Concluding Observations on the Eighth Periodic Report of Australia, CEDAW/C/AUS/CO/8, 2018. See also CESCR General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities’ E/C.12/GC/24, 23 June 2017, part C.

⁸⁰ CEDAW Committee, GR 35 paras 24 – 33.

are supported by all State agents and bodies who diligently enforce the laws”.⁸¹ This also requires harmonising domestic law with the Convention and repealing all laws that tolerate or condone gender-based violence against women.

- For the executive: adoption of and adequately budgeting for diverse institutional measures, including to design focused public policies, to develop and implement monitoring mechanisms and to establish and/or fund competent national tribunals.
- For judicial bodies: to refrain from any discrimination or gender-based violence against women; apply criminal law strictly to punish this violence, ensure that legal procedures in cases involving allegations of gender-based violence against women are conducted fairly and impartially and are not influenced by gender stereotypes that deny women access to justice, and contribute to secondary victimisation.⁸²

The CEDAW Committee has long recognised that having laws and a legal system in place to address the problem is insufficient in and of itself; these must also be put into effect by state actors who understand and adhere to the obligation of due diligence.⁸³ The Committee has specifically found violations of human rights in cases where women have turned to the law for protection, but where the law has instead left them and their children vulnerable to lethal violence.⁸⁴

GR 35 continues the trend identified in its GR 28 and is explicitly intersectional, recognising that “gender-based violence may affect some women to different degrees or in different

⁸¹ CEDAW Committee, GR 35 para 24(b).

⁸² CEDAW Committee, GR 35, para 26; See *Vertido v Philippines* Communication No. 18/2008, CEDAW/C/46/18/2008, 16 July 2010; *R.P.B. v Philippines* Communication No. 34/2011, CEDAW/C/57/D/34/2011, 12 March 2014.

⁸³ *Fatma Yildirim v Austria* Communication No. 6/2005 (2007), CEDAW/ C/39/D/6/2005, 6 August 2007, para 12.1.2; *Şahide Goecke v Austria* Communication No. 5/2005 (2007), CEDAW/C/39/D/5/2005, 6 August 2007, para 12.1.2. The European Court of Human Rights has similarly accepted that “that different legislative solutions in the sphere of criminal law could fulfil the requirement of an adequate legal mechanism for the protection against domestic violence, provided that such protection remains effective.” *Volodina v Russia* above note 12 at para 79.

⁸⁴ E.g. in *Angela Gonzalez v Spain* the applicant had filed more than thirty legal communications with the national courts seeking protection for herself and her daughter from her former partner, who killed her daughter in an unsupervised visit. The CEDAW Committee drew particular attention to gender stereotyping in that case and the breach of the rights of the girl child. *Angela González Carreño v Spain* Communication No. 47/2012, CEDAW/C/58/D/47/2012, 15 August 2014.

ways”.⁸⁵ It also makes it clear that states must repeal laws that criminalise abortion, sex work, or being lesbian, bisexual or transgender. GR 35 thus illustrates and operationalises the CEDAW Committee’s inclusive approach to women. It provides that women “experience varying and intersecting forms of discrimination, which have an aggravating negative impact”.⁸⁶ The Committee explains that these experiences and intersecting identities are also affected and exacerbated by cultural, economic, ideological, technological, political, religious, social, and environmental factors. The Committee reminds states that gender-based violence against women, including rape, domestic violence and harmful practices, may amount to torture⁸⁷ and even international crimes depending on the context.ⁱⁱ

The Committee makes very full and detailed recommendations (with examples) to assist states parties in relation to the legal and practical measures to take to combat violence against women and girls. These include:

- Undertaking legislative reforms including: criminalisation of all forms of gender-based violence against women and ensuring criminal sanctions are commensurate with the severity of the offence; securing access to justice for survivors of gender-based violence against women and the protection of the law; repeal of laws that tolerate or condone forms of gender-based violence against women, discriminatory evidentiary rules or procedures, laws that inhibit the reporting of gender-based violence against women; ensure that laws characterise gender-based violence against women and

⁸⁵ CEDAW Committee, GR 35 para 12. Factors listed by the Committee 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, being lesbian, bisexual, transgender or intersex, illiteracy, trafficking of women, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDs, deprivation of liberty, being in prostitution, geographical remoteness and stigmatisation of women fighting for their rights, including human rights defenders. Cf the non-discrimination provision in the Istanbul Convention article 4 (3).

⁸⁶ CEDAW Committee, GR 35 para 12

⁸⁷ In *Volodina v Russia* the European Court of Human Rights held that ongoing violence against a former partner that included abduction and assault and threats to life fall within ECHR, article 3 but did not specify whether the physical violence reached the threshold of torture. The Court also addressed the feelings of fear, anxiety and powerlessness that were caused through such actions as threats, publishing private photographs amounting to controlling and coercive behaviour constituted inhuman treatment within under Article 3 of the Convention; *Volodina v Russia* above note 12 para 73-5.

sexual assault including rape as crimes against a woman's right to personal security and physical, sexual and psychological integrity.

- Adopting measures for the prevention of gender-based violence. As well as establishing a legal system, in order to prevent violence against women states must establish a policy framework and take steps to change the attitudes and eradicate prejudices and stereotypes that are a root cause and enable such violence to persist.⁸⁸ This encompasses encouraging the media not to discriminate against women and to avoid harmful and stereotypical depictions of women and groups of women.⁸⁹ Other preventive measures include: promoting appropriate educational and awareness programmes and trainings; taking steps to ensure that public spaces are safe for women; training for the judiciary and other law enforcement personnel.
- Adopting measures for the protection of women from gender-based violence including: protection of victims and witnesses of gender-based violence before, during and after legal proceedings; establishment and implementation of comprehensive and accessible multi-sectoral services with participation by and cooperation with women's NGOs; addressing factors that aggravate women's risk of exposure to gender-based violence such as firearms, high rates of criminality and impunity.
- Ensuring prosecution and punishment of perpetrators; ensuring that gender-based violence is not subjected to mandatory processes of alternative dispute resolution such as mediation or conciliation;⁹⁰ reparations for victims and survivors; relevant and systematic research and data collection.
- Co-operation between international special agencies, the international community and civil society in seeking support to meet international human rights obligations.

4. GR 35 in Context: The Relationship with other General Recommendations and Covid-19

GR 35 is thus important as guidance to and an anchoring of the norms that have developed over the last 25 years, while also looking forward in terms of current and emerging challenges

⁸⁸ CEDAW Committee, GR 35 para 26. This is in line with CEDAW article 5 (a) which is echoed in Istanbul Convention, article 12 (1).

⁸⁹ CEDAW Committee, GR 35 para 30 (d); cf Istanbul Convention article 17.

⁹⁰ Cf Istanbul Convention article 48.

and trends in this field. It is a valuable resource for combating violence against women and girls that should be read together with the CEDAW Committee's concluding observations to states' reports and the jurisprudence it has developed since the coming into force of the OP. Decisions on individuals' complaints allow the Committee to apply its general principles to specific factual situations and thus to provide states with examples of what the duty of due diligence entails in practice and how intersecting factors (e.g. age, disability, minority status⁹¹) impact on the incidence of violence and on what constitutes appropriate responses.

GR 35 also reinforces and is reinforced by other General Recommendations adopted by the Committee and other international initiatives. For instance it emphasises the integration of gender equality content into curricula at all levels of education from early childhood, targeting stereotyped gender roles and ensuring age-appropriate, evidence-based, and scientifically accurate and comprehensive sexuality education for girls and boys as measures for the prevention of violence against women and girls.⁹² Awareness-raising programmes about the unacceptability of violence against women and girls should target men and women, professionals involved in prevention and protection responses and traditional and religious leaders. As GR 35 addresses education as a preventive mechanism, another General Recommendation adopted the same year, on education for women and girls (article 10 of the Convention),⁹³ in turn addresses gender-based violence against women and girls. It notes that in relation to such violence in public spaces and the risk of violence that females face when traveling to schools, availability and accessibility require educational institutions, particularly in rural areas, to be proximate and within their safe reach.

⁹¹ In its concluding observations to the UK the Committee especially noted the problems faced by asylum seekers and migrant women and women with disabilities. The former fear having their immigration status made known to authorities if they report violence and the latter face challenges in gaining access to justice and seeking protection for gender-based violence; CEDAW Committee, Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, above note 36 at para 29.

⁹² CEDAW Committee, GR 35 para 35 (a); see also CEDAW Committee, GR 33 above note 21 at para 30, which states that education from a gender perspective is essential to overcome discrimination that impedes access to justice for women and girls.

⁹³ CEDAW Committee, General Recommendation No.36 on the Right of Girls and Women to Education, above note 16.

GR 35 should also be read in conjunction with the Committee's General Recommendations No. 30 on women in conflict prevention, conflict and post-conflict situations⁹⁴ and No. 33 on women's access to justice.⁹⁵ Taken together these three General Recommendations set out states' obligations with respect to combating violence against women across the continuum from peacetime through conflict and its aftermath and ensuring that women and girls can access justice. They address the root causes of both the continuation of such violence and of what is too often the lack of any effective recourse to justice. They provide tools for the empowerment of women and thus align with the SDGs notably SDG 5 on gender equality and empowering women and girls and SDG 16 on the promotion of peaceful and inclusive societies.

The Committee also addresses and supervises state compliance with the United Nations Security Council's WPS agenda that was commenced with Resolution 1325 in 2000. Security Council Resolution 2467 (2019) urges states to strengthen access to justice for victims of sexual violence in conflict and post-conflict situations and offers some positive steps toward this end; CEDAW GR 33 fleshes out and strengthens these suggestions. The Security Council has incorporated GR 30 into its WPS resolutions⁹⁶ and in turn the CEDAW Committee reiterates that the WPS resolutions must be implemented in accordance with the requirements of the Convention and that states should include details of the measures they have taken to this end in their periodic reports to the Committee.⁹⁷

The Committee importantly views the incidence of gender-based violence in its social, economic and political contexts. GR 35 draws attention to globalisation, global supply chains, militarisation, environmental destruction, and the degradation of natural resources as wider factors affecting women's right to live a life free from gender-based violence. It has also explained how such violence is exacerbated by different forms of disaster, crisis and insecurity for women and girls. It has for instance gone beyond the Security Council WPS resolutions

⁹⁴ CEDAW Committee, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, CEDAW/C/GC/30, 31 October 2013.

⁹⁵ CEDAW Committee, GR 33. above note 21.

⁹⁶ E.g. UN Security Council Resolution 2467, 23 April 2019; UN Security Council Resolution 2493, 29 October 2019.

⁹⁷ CEDAW Committee, GR 30 above note 94 at paras 25-28.

through its awareness of how different forms of disaster and crisis create situations of heightened vulnerability to violence and insecurity for women and girls.⁹⁸ It thus notes situations of concern such as “internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organized crime” that do not constitute armed conflict but are nevertheless conducive to such violence.⁹⁹ This understanding is mirrored in General Recommendation No. 37 (GR 37) on the gender-related dimensions of disaster risk reduction in the context of climate change,¹⁰⁰ which takes account of the differential impact of climate change and environmental disaster on women. It emphasises that in the situations of lawlessness and homelessness that often follow disasters women face an increased risk of violence but rejects the categorisation of women and girls as passive ‘vulnerable groups’ in need of protection from the impact of disasters. This is a negative gender stereotype that fails to recognise the important contributions to disaster risk reduction, post disaster management and climate change mitigation and adaptation strategies that women are already making. Emergency and disaster risk planning must accordingly include gender sensitive training and appropriate responses.

In GR 37 the Committee noted that climate change and disasters include pandemics which “influence the prevalence, distribution and severity of new and re-emerging diseases” and that policies and budgeting should ensure women’s right to health.¹⁰¹ It has speedily responded to the “heightened risks of gender-based violence and discrimination faced by women due to the current COVID-19 crisis” through a Guidance Note on states’ continuing obligations under CEDAW in responding to the pandemic.¹⁰² It notes that restrictive measures

⁹⁸ UN Security Council Resolution 2242, 13 October 2015 on Women, Peace and Security notes the security threats caused by rising violent extremism, increased numbers of refugees and internally displaced persons, climate change and the global health pandemics but makes no recommendations in this regard.

⁹⁹ CEDAW Committee, GR 30 above note 94 at para 4.

¹⁰⁰ Above note 16.

¹⁰¹ CEDAW Committee, GR 37 paras 66 -68.

¹⁰² CEDAW Committee, Guidance Note on CEDAW and COVID-19 at <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; see also CEDW Committee, Call for joint action in the times of the COVID-19 pandemic, 21 April 2020, *ibid*.

imposed through social isolation, physical confinement and lockdown “may disproportionately limit women’s access to health care, safe shelters, education, employment and economic life. The effects are aggravated for disadvantaged groups of women and women in conflict or other humanitarian situations.” It sets out nine key points covering women’s physical, economic and psychological security that it calls upon states to take into account, including in each practical measures to ensure effectiveness. The nine measures include calling on state to address the disproportionate impact of the pandemic on women’s health; providing sexual and reproductive health as essential services; protecting women from gender based violence and protecting women and girls in humanitarian settings and continue implementing the women, peace and security agenda.

Taken together with its general recommendations, concluding observations and rapid responses to situations and challenges such as the global pandemic, the Committee illustrates how its standards on gender-based violence should be applied by states parties and reminds them that socio-political upheaval means that specific and special measures must be in place to ensure that violence against women is prevented.

5. Conclusion

In sum, in its General Recommendation No. 35 the CEDAW Committee and throughout all its other work provides an important and ongoing legal and policy blueprint for states and other actors (international institutions, non-governmental organisations, civil society) to follow in seeking the eradication of gender-based violence against women in all circumstances. It is currently drafting a General Recommendation on article 6 of the Convention, specifically on trafficking of women and girls in the context of migration that will further elucidate state obligations and provide further practical recommendations. This will be its 38th General Recommendation making it the most prolific of the UN human rights treaty bodies. Its case load under the OP has also expanded in recent years so that it has developed a detailed jurisprudence on gender-based violence against women and other Convention issues.

Survivors, civil society and women’s organisations have made a huge contribution over the last 25 years to building the legal standards with respect to states’ obligations for combating

violence against women in conflict and non-conflict situations, their access to justice and to understanding how these interact with other contemporary challenges, including climate change. As the CEDAW Committee has recognised “their activities have had a profound social and political impact contributing to the recognition of gender-based violence against women as a human rights violation and to the adoption of laws and policies to address it.”¹⁰³ However it is facing a difficult future with continued uncertainty about the future of the treaty bodies and budgetary cuts.

What is clear as CEDAW enters its fifth decade is that women worldwide need its protections as much – if not more – than ever. The pushback against women’s rights, especially their reproductive and sexual health rights, the targeting of women human rights defenders, and the use of “gender ideology” to deny women’s autonomy and choice are just some manifestations of the denial of women’s rights. For the UK the optimum would be for speedy ratification of the Istanbul Convention and its implementation alongside that of CEDAW. Just as the drafters of the Istanbul Convention drew on CEDAW and the Committee’s jurisprudence (as well as the regional instruments and jurisprudence) the CEDAW Committee took cognisance of the Istanbul Convention in drafting GR 35. The Committee regularly urges European states that have not done so to become parties to the Istanbul Convention, including the UK. It has itself responded to changing circumstances that further undermine women’s and girls’ right to be free from violence. All these instruments and ensuing opinions and decisions are supplementary together building a holistic edifice for tackling gender-based violence against women. The CEDAW Committee has demonstrated that the Convention can be interpreted to respond to these and other threats to women’s human rights. In turn, advocates, activists and academics must do their part in making CEDAW better known and in using it to challenge the actions of governments and others who would deny women their rights. CEDAW is an important tool that can be used for legal resistance to abuse of power.

¹⁰³ CEDAW Committee, GR 35 para 4.