



# International human rights law and violence against women: Thinking through the arguments for and against a new UN Convention

Never Stand Still

Law

**Andrew Byrnes**  
**Professor of Law**  
**Australian Human Rights Centre**  
**University of New South Wales**  
**Sydney, Australia**

**Waseda University, Tokyo**  
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## **B. The persistence and evolution of gender-based violence against women (GBVAW)**

- GBVAW persists worldwide and new forms have evolved
- New forms of violence, eg cyberviolence – cyberstalking, threats of violence, revenge porn
- Continuing legal and practical failures to address violence – many countries still have laws and practices , cultural customary or religious laws and attitudes which are conducive to or legitimate violence against women



# C. Existing international law and standards in relation to GBVAW (1)

## UN treaties and other instruments and documents

### *CEDAW Convention*

- does not explicitly refer to ‘violence against women’ (though article 6 deals with trafficking and exploitation of prostitution)
- covers all forms of discrimination, in relation to the enjoyment of ‘all fundamental human rights and freedoms) (article 1)

### *Other UN human rights treaties.*

### *UN Declaration on the Elimination of Violence against Women*

### *Beijing Platform and subsequent documents*



## C. Existing international law and standards in relation to GBVAW (2)

### Regional conventions specifically addressing violence against women

- *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994 ('Convention of Belém do Pará')*
- *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 ('Maputo Protocol')*
- *Council of Europe Convention on preventing and combating violence against women and domestic violence 2011 ('Istanbul Convention')*

**NO regional or subregional convention in the Asia Pacific region (though ASEAN Declaration).**



## D. Calls for a new UN convention – the justifications offered

- **additional measures needed** – both new or clarified norms and as well as strengthening implementation of existing norms) – law can make a difference
- **normative gap** in international human rights law
- a pressing need to provide **more detailed content** and guidance to States **in legally binding form**,
- need to provide a framework for transformative change
- adoption of such instruments by regional organisation show that they can perform a useful role.



## E. Evaluation of the 'normative gap' argument (1)

### The argument

There is a normative gap in international human rights law because:

- there is no explicitly binding UN human rights treaty addressing GBVAW; it needs to be recognised as 'a human rights violation in and of itself';
- the many standards and the jurisprudence that has developed are all 'soft law' and not binding under international treaty law or customary international law.



## E. Evaluation of the 'normative gap' argument (2)

- The CEDAW Convention interpreted in accordance with ordinary rules of treaty interpretation covers GBVAW
- The practice of the CEDAW Committee and the responses by the States parties – subsequent practice under article 31(3)(b) of the Vienna Convention on the Law of Treaties
- GBVAW under other UN human rights treaties, eg ICCPR and CAT
- Customary international law?
- Summary – no normative gap, though dispersed guidance and lack of clarity





## F. The advantages and potential drawbacks and complexities of drafting a new convention (1)

### Advantages

- Opportunity to **define** ‘violence against women’
- Opportunity to develop and provide **greater clarity** in relation to existing obligations (including ‘due diligence’ obligations and the concrete steps that States need to take
- May provide **a focus for activism** and provide advocates and others with **a tool** that can be involved to drive legal, and social change
- May provide governments and policymakers with a **coherent framework** for developing laws, policies and programs



## F. The advantages and potential drawbacks and complexities of drafting a new convention (2) - drawbacks

- unclear what **relationship** is envisaged between convention and existing norms and practices (especially those of CEDAW):
- **danger of undermining** or providing a pretext for States to suggest CEDAW does not cover GBVAW (or, at least, does not impose binding obligations)
- A specific convention on violence **may detract from a holistic analysis** of the broader discriminatory context in which GBVAW arises, including ‘definitional creep’ where most forms of discrimination become ‘violence’, eg ‘structural violence’ and ‘economic violence’
- Danger of ‘**freezing**’ a too detailed set of provisions in a treaty that may be hard to amend (inflexibility)



## F. The advantages and potential drawbacks and complexities of drafting a new convention (3)

- **political process of drafting a new convention** - risks States
  - (a) trying to limit what is understood as violence
  - (b) opening up disagreement with or challenges to CEDAW's approach in (updated) General recommendation 19
- Addition of **new international monitoring/implementation mechanism possibly excessive** (given CEDAW, SRVAW, and WGDAW), especially if it is not closely linked to the CEDAW framework and structures
- would require a **resource-intensive and lengthy campaign** to persuade States **to ratify it**, and may draw energy away from implementation efforts.



## **G. Possible form and content of a new convention: some issues**

- Should any new convention be substantive or merely procedural or monitoring?
- What substantive content might it contain? What level of detail is appropriate? What relationship should it have to the provisions and practice of the CEDAW Convention?
- Inclusion of ‘economic violence’?



## H. Principles that should guide the drafting of any new convention (1)

1. Starting-point: **not drawing on a blank sheet**, nor adding a gender-specific treaty to a human rights system that does not have a general women's human rights treaty.
2. Should **affirm CEDAW's binding obligations** in this area and indicate it is providing further detail.
3. Should adopt a **definition of violence that is expansive and flexible** but which does *not* seek to include most forms of discrimination against women under the rubric of 'violence'.
4. Should adopt **conceptual clarity in relation to the concept of 'due diligence'**: in particular distinguishing between 'obligations of due diligence' as a type of obligation (steps the State should take in relation to non-State actors), and 'due diligence' as a standard of conduct or fault.



## H. Principles that should guide the drafting of any new convention (2)

4. Should **link any international monitoring or implementation procedures to existing procedures**, in particular CEDAW and/or SRVAW.
5. Should **avoid duplicating procedures** such as existing individual communications or inquiry procedures (States should rather be encouraged to adhere to those).
6. Should include provisions specifically addressing the role of **different national institutions, including national human rights institutions** and other public bodies with a relevant mandate.
7. Should limit or prohibit **reservations**.



# I. The need for a multi-path strategy

- Building on CEDAW's jurisprudence and practice
- Drawing on and strengthening the jurisprudence of other UN human rights treaty bodies and mechanisms
- Using regional conventions and procedures where available
- Drawing on international standards and procedures to influence the domestic level



## **J. And what of CEDAW's Update to *General recommendation 19*?**

- It is available 'here and now' (at least it will be from early 2017)
- It should be used to inform the content of any convention (in addition to other sources)
- Is it too long? Too ambitious in scope and form? Usable by advocates, courts and government officials?
- How does it relate to the original General recommendation 19 (which is not being replaced, just 'updated'?)





**END**

