



Annex 2

Consultation from the Governing Bodies Committee's memo drafting team regarding the monitoring consequences of a stand-alone treaty versus an optional protocol on violence against women.

The memo drafting team of the Governing Bodies Committee (GBC) would like members of this Committee to form a united opinion on this matter and therefore request members to consider the analysis and questions presented in this document.

QUESTIONS:

Do you think that an optional protocol to CEDAW is preferable to a stand-alone treaty with a separate monitoring body?

Should a new monitoring/governing body be created or should the role of monitoring compliance with specific treaty terms fall within the ambit of the CEDAW Committee?

Why a new treaty and implications for monitoring/ governing body

As CEDAW focuses upon matters of discrimination it is a constricted instrument¹ that in its infancy did not envisage broader application to areas of violence. The provisions it contains are expressed in ambiguous language and do not make reference to violence against women, with Article 6 an exception to this.² Everywoman Everywhere coalition believes that violence against women is not adequately prevented or legally protected under U.N. treaty law, other than by 'soft law' in the form of the CEDAW Committee's Recommendations beginning with General Recommendation 19. Another example of UN consideration of VAW is the appointment of a UN Special Rapporteur on VAW, its causes and consequences since 1994.

The difficulty with holding states accountable for their policies that either directly or indirectly condones practices that amount to VAW is that soft law is non-binding on states. To address this, binding treaty provisions are required. However, we are not yet clear on whether this should be achieved only with a new discrete stand-alone treaty or alternatively an optional protocol. As the Expert Subcommittee: Governing Bodies this is a particularly relevant question that needs an answer. A determination on this key matter will clarify

¹ Hodson, Loveday. "Women's rights and the periphery: CEDAW's optional protocol." *European Journal of International Law* 25.2 (2014): 561-578.

² Manjoo, Rashida, and Daniela Nadj. "'Bridging the Divide': An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence Against Women." *Feminist Legal Studies* 23.3 (2015): 329-347.

whether a new monitoring/governing body will be created or whether the role of monitoring compliance with specific treaty terms will fall within the ambit of the CEDAW Committee.

Benefits of a new treaty and new treaty monitoring body

The third UN Special Rapporteur on Violence Against Women Rashida Manjoo called for a specific treaty on the issue of violence against women and girls, noting that there are significant normative gaps created by the non-binding nature of the existing women's human rights legal framework. One of the barriers she encountered towards the creation of a new treaty was the perception it would have negative implications for CEDAW. It is not entirely clear what these would be. It may be for example, an increase in the Committee's workload or a belief that such a change would negate some of the far reaching gains which CEDAW and its Committee have made in respect of generating obligations on states for non-state actors' behaviours, understanding discrimination broadly to incorporate violence (among others). For Manjoo a treaty specifying detailed provisions, with obligations upon states is essential to 'address the normative gap on a human rights issue that is widespread, pervasive, systemic, systematic, cutting across geographic/race/class boundaries, is resisted by people who should know better. The understanding of violence against women as a human rights violation in and of itself, thereby requiring specificity in international law is a notion that is foreign to some people.'³

A new treaty that stands on its own will be uninhibited by the limitations of CEDAW and equally a new monitoring body, separate from CEDAW will be free from the perceived drawbacks surrounding the Committee. This would allow the new treaty to proceed away from the dominance of political rhetoric and state centrality. It may be useful to reflect further on Manjoo's argument that, 'other human rights violations that are systemic and pervasive would not face a problem when discussions take place about a specific treaty. We need to acknowledge there is political reluctance to address women's human rights issues, including violence against women, through a legal lens of State responsibility and accountability, which would move it beyond the political rhetoric that we currently observe.'⁴

A new treaty would be able to restrict a state's ability to opt out of monitoring and compliance provisions, in a way that an Optional Protocol to CEDAW may not. This would assist with global implementation of new provisions. The value added by the Optional Protocol to CEDAW and its complaints' procedures that it introduced has led to greater participation of NGOs in the formation of the Committee's jurisprudence. This has led Reilly to suggest that the key role played by NGOs in the Committee case law underlies the Optional Protocol's 'potential not only as a redress route for particular individuals but also as a focus for wider mobilization around needed legal and policy reforms.'⁵ However, the cases that have come before the CEDAW Committee have been dominated by cases from Europe (although not exclusively). A new stand-alone treaty and separate monitoring system could reduce the focus on European women and be more inclusive, were it to successfully limit state reservations that hamper CEDAW.

³ See above at 343

⁴ As above at 343

⁵ N. Reilly. *Women's Human Rights: Seeking Gender Justice in a Globalizing Age* (2009) at 45

Disadvantages of a new treaty and separate governing body

A new treaty that creates a separate system from the CEDAW Committee will overlap with the work of the Committee. Furthermore the capabilities and experiences of the Committee have continuously developed over time, engaging with women's rights that are on the periphery of international law and positively communicating with states about how to address an individual woman's human rights, whilst expanding the dialogue concerning the wider women's population. Hodson refers to the periphery as matters of diversity and intersectionality, which other mainstream human rights bodies find difficult to connect with, remaining centric. The CEDAW Committee has therefore, been able to consider a wide range of issues that are relevant to all women and 'that have been largely overlooked by other international human rights tribunals.'⁶ In Hodson's view CEDAW must 'self-consciously ... travel to the periphery of rights and emphatically engage with marginal actors... Engaging more actively with the periphery would open CEDAW to the rich possibilities offered by women's rights and enable it to become a lioness with a roar that resonates.'⁷ An optional protocol could expand the Committee's mandate and give greater legitimacy to its jurisprudence and monitoring powers.

Whilst Manjoo favours a discrete new treaty, she does not reject an optional protocol as a suitable alternative. However, what is apparent from her view is that a separate monitoring body is essential.⁸ A disadvantage would be the cost of establishing a new monitoring body which could prevent states from ratifying a new treaty, making the optional protocol a more attractive prospect. McQuigg⁹ suggests that this concern may not be a deterrence to states, who have shown a willingness to ratify and sign treaties specifically dealing with violence against women in European and Inter-American Conventions.¹⁰ Clearly, any increase in CEDAW's workload to accommodate more detailed treaty provisions on violence against women would also involve further resources and financial commitments on states.

An optional protocol, which extends the CEDAW Committees' jurisdiction would enable the opportunity to amend or add to the existing enforcement mechanisms for women's human rights. This could include adding criteria governing penalties for state failure to comply with provisions.

A third way

Do you think there is a persuasive argument to support the creation of a detailed optional protocol that also creates a separate monitoring body from CEDAW Committee?

The GBC welcomes any comments on this very important issue. Please submit your comments directly to the GBC Char at no later than September 23, 2016.

Vanessa Bettinson, on behalf of the memo drafting team of the Governing Bodies Committee

⁶ Hodson, Loveday. "Women's rights and the periphery: CEDAW's optional protocol." *European Journal of International Law* 25.2 (2014): 561-578, at 577

⁷ See above at 578

⁸ Manjoo, Rashida, and Daniela Nadj. "'Bridging the Divide': An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence Against Women." *Feminist Legal Studies* 23.3 (2015): 329-347, at 346.

⁹ <https://theconversation.com/why-the-world-needs-a-un-treaty-to-combat-violence-against-women-53582>

¹⁰ Council of Europe Convention on preventing and combatting violence against women and domestic violence; Inter- American Convention on the Prevention, Punishment and Eradication of Violence Against Women