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STRENGTHENING ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED VIOLENCE UNDER INTERNATIONAL HUMAN RIGHTS LAW

by

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Submitted in partial fulfilment of the requirements for the degree of
Master of Laws by Coursework and Research Report
at the University of the Witwatersrand, Johannesburg

Date: 31 October 2023

DECLARATION

I, 1727192, declare that this Research Report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Laws (by Coursework and Research Report) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

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ABSTRACT

This research report critiques the current mechanisms available for ensuring accountability for sexual and gender-based violence (SGBV) in the context of international human rights law. It appraises the international, as well as regional, legal frameworks for SGBV, identifying common mechanisms flowing from those instruments. The report also identifies gaps and current challenges in the efforts to provide increased accountability for survivors and victims of SGBV. Key findings include an inefficient, heteronormative approach in respect of, and protection for, non-binary and gender-diverse victims of SGBV, and poor reporting by states in terms of the international human rights instruments. It concludes that taking a more gender-inclusive approach to instruments, and advocating for a new binding instrument with a more encompassing human-rights framing, may be of value, alongside the development of more progressive feminist jurisprudence. While these solutions do not claim to be the cure for all SGBV violations, they will greatly contribute to the protection of persons affected.

Keywords: sexual and gender-based violence; international human rights law; international law; human rights; accountability

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1. Introduction

According to United Nations (UN) Secretary-General, António Guterres, sexual violence threatens a person's fundamental rights to life, dignity, peace and safety.[1] Sexual and gender-based violence (SGBV) remains one of the most prevalent forms of human rights violations within the international human rights realm, with continuous widespread violations during times of both international and domestic conflict and instability, and in personal spaces.[2]

According to a 2021 World Health Organization study,[3] 'almost one in three women across the world have experienced one or both forms of intimate partner and non-partner sexual violence at least on occasion in their lifetime'. Given an estimated 736 million women in the world,[4] this amounts to an astounding number of SGBV incidences and clear human rights violations against a significant portion of the world's population. The violence is not limited to this demographic, however, and does not end there. Men and boys who do not subscribe to cultural norms of masculinity, as well as members of the lesbian, gay, bisexual, transgender, intersex and queer community (LGBTIQ+) also experience SGBV, an area in which research has until recently been limited.[5]

The UN has gender equality as a priority with multiple international instruments emphasising the attainment of gender equality. For example, the Preamble, as well as arts 1 and 2 of the Universal Declaration of Human Rights (UDHR),[6] and the Preamble to the UN Charter[7] place a focus on reaffirming equal rights between men and women. The UDHR, along with the

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[1] United Nations Peacekeeping 'Conflict-related sexual violence' (undated) <https://peacekeeping.un.org/en/conflict-related-sexual-violence>.

[2] MD Muluneh, V Stulz, L Francis & K Agho 'Gender based violence against women in sub-Saharan Africa: A systematic review and meta-analysis of cross-sectional studies' (2020) 17 *International Journal of Environmental and Public Health* 903, 904.

[3] World Health Organization 'Violence against women prevalence estimates, 2018' (2021) <https://www.who.int/publications/i/item/9789240022256> xvi.

[4] World Bank 'Violence against women and girls – what the data tell us' (1 October 2022) <https://genderdata.worldbank.org/data-stories/overview-of-gender-based-violence/>.

[5] M Loken & JJ Hagen 'Queering Gender-Based Violence Scholarship: An Integrated Research Agenda' (2022) 24 *International Studies Review* 1, 2. See also International Committee of the Red Cross '"That never happens here": Sexual and gender-based violence against men, boys and/including LGBTIQ+ people in humanitarian settings' (3 February 2022) <https://www.icrc.org/en/document/sexual-gender-violence-against-men-boys-lgbtiq>.

[6] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[7] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.

International Covenant on Civil and Political Rights (ICCPR)[8] and the International Covenant on Economic, Social and Cultural Rights (ICESCR),[9] are often collectively known as the 'International Bill of Human Rights'.[10]

Over the course of the past two decades, there has been an increased focus[11] on tackling SGBV to ensure the protection and realisation of human rights for example, the right to life, freedom from discrimination, freedom from torture and degrading treatment and the right to safety and security.[12] While SGBV and violence against women (VAW) are often used interchangeably, for the purposes of this research report, they are distinguishable, taking into consideration the definitions of the terms 'sexual violence' and 'gender-based violence'. Sexual violence has been referred to as a 'form of gender-based violence and encompasses any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting',[13] including, but is not limited to, 'rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking and sexual enslavement'.[14] Gender-based violence (GBV) has been defined as 'a harmful act directed against individuals or groups of individuals on the basis of their gender. It may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices'.[15] By way of comparison, Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No 19 defines GBV as 'violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.[16] It is clear that the latter definition, under General

[8] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

[9] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

[10] United Nations Human Rights Office of the High Commissioner (OHCHR) 'International Bill of Human Rights' (undated) <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>.

[11] J Ulrich 'Confronting gender-based violence with international instruments: Is a solution to the pandemic within reach?' (2000) 7 *Indian Journal of Global Legal Studies* 629, 629.

[12] The fundamental human rights are found in international and regional human rights documents such as the UDHR (note 6 above).

[13] United Nations Human Rights Office of the High Commissioner (OHCHR) 'Sexual and gender-based violence in the context of transitional justice' (October 2014) <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OnePagers/Sexual_and_gender-based_violence.pdf>.

[14] Ibid 13.

[15] Ibid.

[16] CEDAW General Recommendation No 19: Violence against women (1992) UN Doc A/47/38 para 6.

Recommendation No 19, is narrower. Karen Graaf notes that placing an exclusive focus on VAW hinders the effectiveness of SGBV accountability mechanisms, resulting in the exclusion of many groups experiencing GBV, often at higher rates than the cis-gendered women who are traditionally seen as its victim'.[17]

While both men and boys can also be victims of SGBV, women and girls experience GBV to a disproportionately greater degree.[18] The term 'VAW' is thus considered a form of GBV but the terms should not be used interchangeably. An analysis of the language used in international instruments reveals a strong focus on the concept of 'sex' rather than 'gender',[19] which leads to a predominantly binary approach to protection. Luc Mergaert's research supports this research report's criticism of the existing approach to SGBV – that is, it is exclusionary to some extent. Mergaert, in examining the UN and the Council of Europe's model, found it lacking for a number of reasons. Honing in on the UN model, he found that by focusing on VAW, the UN model reinforced harmful gender stereotypes, excluded men and non-binary persons without adequate intersectionality and treating women as a monolithic group.[20] However, there are some areas that are not completely gender static and there has been some developments in this regard. For example, CEDAW Committee General Recommendation No 36 calls upon state parties to address discrimination in the education context and specifically includes reference to the protection of lesbian, bisexual, transgender girls and women.[21] Despite some progress in changing the ethos around tolerating SGBV, there has been no decrease in SGBV in private and public spaces, and victims[22] hardly see substantive accountability[23] for these heinous violations. Substantive accountability, as used in this research report, refers to a meaningful measure of justice or relief for victims of SGBV[24]. It begs the question: what else can be done to strengthen

[17] K Graaf 'The implications of a narrow understanding of gender-based violence' (2021) 5(1) *Feminist Encounters: A Journal of Critical Studies in Culture and Politics* 13.

[18] CEDAW (note 16 above) para 6. See also Ulrich (note 11 above) 631.

[19] The UN Charter, UDHR, ICCPR and ICESR all focus on the biological nature of sex. The CEDAW in art 1 and 5 also refers to women in relation to the term 'sex'. See also MAA Freeman & C Chinkin & B Rudolf *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (2012) 15.

[20] L Mergaert, M Linková & S Strid 'Theorising gender-based violence policies: A 7P framework' (2023) 12 *Social Sciences* 385, 387.

[21] CEDAW General Recommendation No 36: The right of girls and women to education (2017) UN Doc C/GC/36 para 45.

[22] The author uses the term 'victim' throughout the research report in line with the approach that such a person has been subject to a violation under international law or criminal law. The author also recognises that the term 'survivor' may have equal importance with regard to a person's agency.

[23] P Schulz & A Kreft 'Accountability for conflict-related sexual violence' (2022) *Oxford Research Encyclopedia of International Studies* <https://doi.org/10.1093/acrefore/9780190846626.013.702>.

[24] The concept of 'substantive accountability' is taken and developed from M Dawson & A Maricut-Akbik 'Procedural vs Substantive accountability in EMU governance: between payoffs and trade-offs' (2021) 28 *Journal*

systems to hold perpetrators and states accountable for SGBV, and to contribute towards a reduction in SGBV while delivering justice to its victims?

This research report aims to critique the existing legal instruments and make suggestions towards strengthening mechanisms to ensuring accountability for SGBV within the context of international human rights law. In part one, the report provides an introduction to locate the issue of SGBV. Part two examines the legal framework, the current mechanisms, and the gaps in accountability for SGBV. Part three identifies what opportunities exist for strengthening accountability for SGBV. Part four concludes by summarising recommendations on increasing accountability.

2. Overview of international human rights legal framework and mechanisms on accountability for SGBV

This section examines existing international human rights legal frameworks and prevailing mechanisms in relation to ensuring accountability for SGBV. Several international instruments provide some accountability for SGBV while other mechanisms offer some other relief for victims of SGBV within the international human rights law sphere. Some of these overlap with international law and more specifically, in the area of international criminal law and international humanitarian law. Due to its limited scope, this research report will focus on the obligations of states in relation to the corresponding rights of victims of SGBV under international human rights law (IHRL). The discussion is divided into two sections: the first looks at the role of IHRL within SGBV through the lens primarily of relevant legal instruments (whether so-called hard law or soft law) at the UN and regional levels; and the second examines the part played by special procedures under the auspices of international and regional human rights systems.

2.1 Legal framework

International law regulates interactions between states and comprises of hard and soft law. Under the international law framework, this research report examines conventions, declarations

of European Public Policy 1707, 1715. Dawson and Maricut-Akbik's version of substantive accountability involve examining the 'substantive worth of the policy decision' and whether the implementation of a decision or policy achieves the goals it is originally designed. In the context of this research report, the fundamental question is how accountability mechanisms currently meet the needs of victims.

and general recommendations. Given the prevalence of SGBV against predominantly women, the report, as a point of departure, examines the instruments that offer protection centered around women for SGBV and then establishes how far this protection can be extended in order to identify where the gaps may lie.

2.1.1 International instruments

While the author acknowledges that other UN instruments which are not women specific, such as the Convention on the Rights of the Child (CRC)[25], the Convention on the Rights of Persons with Disabilities (CRPD)[26] and International Covenant on Economic, Social and Cultural Rights (ICESCR)[27] also address SGBV, these will not be considered given the limited scope of the research report. Hence, at the international (UN) level, focus is on two instruments - the main treaty on women's rights, and the first international declaration on VAW.

2.1.1.1 Convention on the Elimination of All Forms of Discrimination against Women: The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)[28] may be considered the backbone of an international bill of women's rights as it contains key principles on achieving gender equality and is a key international instrument upon which UN Women bases its work.[29] CEDAW places an obligation on states to realise substantive equality between men and women within their legal systems and to remove discriminatory practices.[30]

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[25] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3. For further reading on SGBV under CRC, please see C Beninger 'Combating sexual violence in schools in Sub-Saharan Africa: Legal strategies under regional and international human rights law' (2013) 13 *African Human Rights Law Journal* 281.

[26] Convention on the Rights of Persons with Disabilities (adopted 12 December 2006, entered into force 3 May 2008) 2515 UNTS 3. For further reading on SGBV under CRPD, please see H Combrink 'Promises of protection? Article 16 of the Convention on the Rights of Persons with Disabilities and gender-based violence in South Africa' (2017) 53 *International Journal of Law and Psychiatry* 59-68.

[27] ICESCR (note 9 above) art 3, 10 & 12. For further reading on SGBV under ICESCR, please see C Chinkin 'Gender and Economic, Social, and Cultural Rights', in E Riedel & G Giacca & C Golay (eds), *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges* (2014) 134-160.

[28] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1982) 1249 UNTS 13 (CEDAW).

[29] UN Women 'Convention on the Elimination of All Forms of Discrimination against Women' (2007) <https://www.un.org/womenwatch/daw/cedaw/>. UN Women is the entity of the United Nations tasked with accelerating progress for gender equality and empowerment of women. One of the main priorities include protecting women and girls from all forms of violence. UN Women 'About UN Women' (undated) < https://www.unwomen.org/en/about-us/about-un-women>.

[30] CEDAW (note 28 above) arts 3 & 11.

In referencing Margaret Keck and Kathryn Sikkink, Ramona Vijeyarasa highlights one glaring shortcoming of CEDAW is that the Convention makes no explicit reference to forms of SGBV.[31] It would appear that VAW, was intended to be addressed under CEDAW implicitly through its articles.[32] The CEDAW Committee, in its early years, also gave some recognition to SGBV through questions posed to states on topics such as domestic violence, rape and sexual offences.[33] However, I believe this approach remained a shortcoming because as Vijeyarasa demonstrates, many states opted not to report or provide information on the issue likely because they did not see this as an obligation to report on, ultimately limiting the room for accountability.[34] The issues of specific clarification on covering SGBV under CEDAW was only subsequently addressed under two critical general recommendations[35] of the Committee on the Elimination of Discrimination against Women (CEDAW Committee).

First, General Recommendation No 19,[36] where the CEDAW Committee clarified that discrimination against women under art 1 of CEDAW included GBV and 'violence that is directed against a woman because she is a woman or that affects women disproportionately', and further confirmed that regardless of whether or not it mentioned violence expressly, it would constitute a contravention of the provisions of the Convention.[37] The Committee felt the need to clarify this position specifically because it had found that states failed to find the strong correlation in 'discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms'.[38]

Second, General Recommendation No 35 advanced protection against SGBV under IHRL by recognising the prohibition of GBV as a norm of customary international law.[39] It also sets out clear liability for both state and non-state actors at various levels to ensure the prevention of SGBV and access to remedies for victims,[40] as well as swapping out the term

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[31] R Vijeyarasa 'CEDAW's General Recommendation No 35: A quarter of a century of evolutionary approaches to violence against women' (2020) 19(2) *Journal of Human Rights* 153.

[32] B Rana & V Perrie 'CEDAW: A Tool for Addressing Violence against Women' in SS Aneel & UT Haroon & I Niazi *70 Years of Development: The Way Forward* (2019) 111, 113.

[33] Vijeyarasa (note 31 above) 156.

[34] Ibid 156.

[35] Although the CEDAW Committee's General Recommendation No 12: Violence against women (1989) touched on the issue of violence against women, it did not go further owing to concerns by some CEDAW members about the lack of explicit reference to SGBV, and uncertainty that it was recognised as an obligation.

[36] CEDAW General Recommendation No 19 (note 16 above).

[37] Ibid para 6.

[38] Ibid para 4.

[39] CEDAW General Recommendation No 35 on gender-based violence against women, updated General Recommendation No 19, (2017) UN Doc CEDAW/C/GC/35 para 2.

[40] Ibid para 33.

'violence against women' for '*gender-based* violence against women', explicitly highlighting the gendered nature and consequence of the violence.[41] This appears to be progress. However, a direct reading of the phrase still limits the parameters to women – this of course may be due to the objective of CEDAW and its focus on women and as mentioned, a predominant affected group of SGBV. A final critical contribution of General Recommendation No 35 is its emphasis on the intersectionality of GBV experienced by women based on a non-exhaustive list of identifying factors.[42]

While these developments have made some positive advances to increased protection in addressing SGBV, as rightly noted by Vijeyarasa, a lack of deep analysis on how these intersecting identities affect or increase a person's vulnerability to and experience of violence represents an obstacle to effective implementation and realisation of accountability for victims of SGBV.[43] This is because it allows persons to interpret how SGBV manifests and impacts victims based on their own understanding. Without access to a true reflection of the needs of victims and their lived experiences, states and policy makers are at risk of undermining attempts for comprehensive relief for SGBV victims. Policies that aim to address the needs of victims of SGBV must be relevant and responsive and should avoid often critical, theoretical and out-of-touch words on paper.[44] Neil Englehart and Melissa Millar opine that CEDAW is ambitious (in that it attempts to address both formal and substantive equality and change social norms) but that it lacks 'teeth'. They concluded in their analysis that CEDAW emerged as a 'qualified success story' with 'demonstrable positive effects' in spite of the varied protection and promotion of the types of women's rights'.[45]

Under CEDAW, accountability mechanisms exist both in terms of reporting and complaints mechanisms. A state has a duty to report on its progress in terms of the Convention,[46] in which the CEDAW Committee may make concluding observations to identify areas for further action or clarify a state's obligations relating to respective rights.[47] Cosette

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[41] Ibid para 9. Emphasis added.

[42] CEDAW (note 39 above) para 12.

[43] Vijeyarasa (note 31 above) 162.

[44] JN Clark 'Beyond a "survivor-centered approach" to conflict-related sexual violence?' (2021) 97(4) *International Affairs* 1067, 1068. For example, Clark references Hillary Douglas from the British Red Cross who has observed that there is a disconnect between material/policy that is meaningfully translated into practice by the states in conflict-related sexual violence for health and justice systems. See also C Bunch 'Women's rights as human rights: Towards a re-vision of human rights' (1990) 12 *Human Rights Quarterly* 486.

[45] NA Englehart & MK Miller 'The CEDAW Effect: International Law's Impact on Women's Rights (2014) 13(1) *Journal of Human Rights* 22-47.

[46] CEDAW (note 29 above) art 18.

[47] Ibid art 21.

Creamer and Beth Simmons in their research, established that the self-reporting and engagement with the CEDAW Committee led to significant positive effect on realising women's rights.[48] An inspection of available concluding observations confirms that this reporting process enhances accountability towards SGBV through protection by states.[49] I, however, stress that the process is often balanced with shortfalls by states which are also highlighted by the CEDAW Committee in these concluding observations. Also, CEDAW permits an inter-state procedure in terms of art 29 of CEDAW[50] for disputes between states parties over the application or interpretation of CEDAW to, if it cannot be settled by negotiation, be heard in an arbitration, failing which it can be referred to the International Court of Justice.

While General Recommendation Nos 19 and 35 are viewed as soft law and merely persuasive, art 21 of CEDAW provides for general recommendations to be produced by the CEDAW Committee upon considering reports or information from state parties.[51] These general recommendations serve to clarify states' obligations and thus could be seen to have an authoritative effect for the purposes of accountability to victims of SGBV.

To supplement CEDAW, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) was adopted.[52] One of the main purposes of the Protocol is to strengthen CEDAW, placing 'the Convention on an equal footing with other human rights treaty mechanisms'.[53] It is a crucial mechanism to increase accountability for SGBV. Under OP-CEDAW, states parties acknowledge the competence of the CEDAW Committee[54] to receive and consider complaints from individuals or groups within a state party's jurisdiction which CEDAW was silent on.[55] This is done through the submission of a communication by either individuals or groups directly or on their behalf, claiming that

[48] CD Creamer & BA Simmons 'The Dynamic Impact of Periodic Review on Women's Rights' (2018) 81 *Law and Contemporary Problems* 31, 33.

[49] CEDAW Committee 'Concluding observations on the fifth periodic report of South Africa' (2021) CEDAW/C/ZAF/5. South Africa has made several positive developments towards addressing SGBV in its policies and legislation. Similarly, some improvements were also noted with Sao Tome and Principle, Venezuela and Turkey.

[50] CEDAW (note 28 above) art 29.

[51] Ibid art 21.

[52] Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83 (OP-CEDAW).

[53] Commission on the Status of Women: Report on the fortieth session (11-22 March 1996) UN Doc E/CN.6/1996/15 Annex III para 12.

[54] OP-CEDAW (note 52 above) art 1.

[55] Ibid art 2.

their rights under CEDAW have been violated.[56] Article 4 of OP-CEDAW requires that all domestic remedies be exhausted before a communication is considered, except where there may be unreasonable delay or unlikely to bring effective relief.[57] It also sets out grounds for a communication to be inadmissible.[58]

Several cases demonstrate the need for the communications procedure where states have failed to take action against SGBV. CEDAW Committee has thus considered communications regarding violations of rights and failure to fulfil related state obligations in CEDAW. For example, in *AT v Hungary*,[59] under art 7 of OP-CEDAW, the Committee found that the state party had failed to discharge its obligations resulting in violation of rights of the complainant under CEDAW.[60] The complainant in this case had faced continuous domestic violence and threat by her husband.[61] Comparably, the role of the states' due diligence towards preventing and protecting against SGBV was considered and confirmed in *Angela González Carreńo v Spain*[62] and in *X and Y v Georgia*[63].

In terms of art 8 of OP-CEDAW, the Committee can also address violations through an inquiry procedure where they receive credible information on systemic or grave violations by a state party.[64] In addition to the requirement that states must be party to CEDAW and OP-CEDAW, there is an option for states to forego the inquiry process if they declare beforehand that they do not recognise the powers of the Committee in terms of arts 8 and 9.[65] The opt out clause essentially removes an avenue of accountability preventing the Committee in visiting the territory of the state to conduct an investigation.

As of 22 October 2023, there are 80 signatories and 115 parties to OP-CEDAW[66] with six states opting out of the inquiry procedure in terms of art 10.

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[56] Ibid. See also UN Women 'Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (22 December 2000) <https://www.un.org/womenwatch/daw/cedaw/protocol/>.
[57] OP-CEDAW (note 52 above) art 4.
[58] Ibid art 4.
[59] *AT v Hungary* CEDAW Communication No 2/2003 (2005), UN Doc CEDAW/C/32/D/2/2003.
[60] Ibid para 9.6. The CEDAW Committee found that the state had violated rights in art 2 (a), (b) and (e) and art 5 (a) in conjunction with art 16 of CEDAW.
[61] *AT v Hungary* (note 59 above) para 2.1.
[62] *González Carreńo v Spain* CEDAW Communication No 47/2012 (2014) UN Doc CEDAW/C/58/D/47/2012.
[63] *X and Y v Georgia* CEDAW Communication No 24/2009 (2015) UN Doc CEDAW/C/61/D/24/2009.
[64] OP-CEDAW (note 52 above) arts 8 & 9.
[65] Ibid art 10
[66] United Nations Treaty Collection 'Status of Treaties – Chapter IV: Human Rights 8.b) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. New York, 6 October 1999' [<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=_en>.

In theory, the inquiry procedure should enhance the enforcement of women's rights under human rights law. However, Catherine O'Rourke's analysis of the efficacy of the inquiry procedure has determined that it has not had a significant impact. This has been characterised by reticence of the CEDAW Committee to apply art 8, as well as enforcement challenges owing to its merely authoritative nature, and a lack of awareness and understanding of this mechanism.[67] Thus resulting in possibly negligible difference between states that have opted out in terms of art 10 and states that are willing to undergo the inquiry process.[68] One such example of the possible impact is Bangladesh, as one of the states who has opted out in terms of art 10 of OP-CEDAW. Bangladesh is considered a state with high levels of SGBV.[69] Andrew Byrnes and Marsha Freeman, as part of their evaluation of the impact of CEDAW included Bangladesh as part of their country impact case study.[70] Byrnes and Freeman found that overall, Bangladesh has little improvement on addressing equality but some progress was made in terms of legislation relating to violence against women.[71] This does not necessarily translate to effective implementation and accountability. Had the inquiry process been available to Bangladesh, this might have been an additional avenue to hold Bangladesh accountable when a reporting mechanism have yielded little fruit. Nevertheless, given the number of states parties to OP-CEDAW, art 8 provides numerous victims from within countries that are open to inquiries with an additional avenue to achieving accountability for SGBV.

Conversely, a notable finding by the CEDAW Committee under art 8 of OP-CEDAW, in response to a request for an inquiry by non-governmental organisations (NGOs), concerned the mass occurrence of sexual violence of women in Ciudad Juárez .[72] The Ciudad report found that there were serious lapses in compliance demonstrated by ongoing and widespread VAW including murder and disappearances of women.[73] However, activating the

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[67] C O'Rourke 'Bridging the enforcement gap? Evaluating the inquiry procedure of the CEDAW Optional Protocol' (2019) 27(1) *American University Journal of Gender, Social Policy & the Law* 1, 11-12.

[68] Ibid 67.

[69] United Nations Development Programme Bangladesh 'Gender-based violence: Taking stock of Bangladesh' shadow pandemic' (10 April 2022) <https://www.undp.org/bangladesh/blog/gender-based-violence-taking-stock-bangladesh%E2%80%99s-shadow-pandemic>.

[70] AC Byrnes & M Freeman 'The impact of the CEDAW convention: Paths to Equality' (2012) 7 *UNSW Law Research Paper* 1, 32-40.

[71] Ibid 40.

[72] 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 (2005) CEDAW/C/2005/OP.8/MEXICO (Ciudad report).

[73] Ibid para 263.

inquiry procedure was a lengthy process ahead of the Ciudad report, and other inquiries have followed the same trajectory of lengthy timelines to activate this procedure.[74]

Through the individual complaint and inquiry process under OP-CEDAW, both the *Hungary* decision and the *Ciudad* report confirmed a positive obligation on states to ensure that SGBV does not take place within their territories, extended violations by non-state actors within the purview of OP-CEDAW, and demonstrated that successes can be achieved through these mechanisms.

2.1.1.2 Declaration on the Elimination of Violence against Women: The Declaration on the Elimination of Violence against Women (DEVAW)[75] recognises that violence against women violates women's rights and fundamental freedoms and echoes the principles in arts 1 and 2 of the UDHR. DEVAW highlights harmful customary practices such as female genital mutilation and domestic violence (practiced in some states) as broader international human rights violations,[76] and also confirms the duty of the state to prevent violence and protect women, both in the public and private spheres.[77] The contribution of DEVAW cannot be ignored. Although DEVAW is not binding, it sets out fundamental norms[78] and has also demonstrated its authoritative value in the protection against SGBV. Bonita Meyersfeld, in an appraisal of DEVAW, found that it had positively influenced the increased protection against domestic violence both in Nicaragua and Sweden.[79] DEVAW was also referenced by the UN Human Rights Council in its resolution 1994/45,[80] in motivating for the very first appointment of a Special Rapporteur on violence against women and girls, its causes and consequences. DEVAW's authoritative value is also confirmed in CEDAW Committee's General Recommendation No 35 where it acknowledged improvements of state practice in addressing

[74] C O'Rourke (note 67 above) 25.

[75] Declaration on the Elimination of Violence against Women (adopted 20 December 1993) A/RES/48/104 (DEVAW).

[76] Council of Europe 'Instruments and measures adopted by the United Nations' (undated) <https://www.coe.int/en/web/gender-matters/united-nations>.

[77] DEVAW (note 74 above) art 4.

[78] United Nations High Commissioner for Refugees 'Chapter 6: The International and Regional Legal Framework' in *UNHCR Handbook for the Protection of Women and Girls* (2008) <https://www.unhcr.org/47cfad542.pdf> 350; see also B Meyersfeld *Domestic Violence and International Law* (2010) 38. Meyersfeld has also argued that DEVAW is a representation of customary international law.

[79] B Meyersfeld *Domestic Violence and International Law* (2010) 291-310.

[80] UN Commission on Human Rights Resolution 1994/45: Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women (4 March 1994) E/CN.4/RES/1994/45.

SGBV based on landmark political documents and makes reference to DEVAW as an influence.[81]

2.1.2 Regional instruments

There are several regional instruments that complement the UN legal framework for addressing SGBV. This section examines some key instruments in the three established regional human rights systems – namely, the African system, the European system and the Inter-American system.

2.1.2.1 African human rights system: While the African Charter on Human and Peoples' Rights (African Charter)[82] does not specifically address SGBV, some of its provisions are recognised as relevant to factors that prevent or protect against SGBV, including the rights to enjoyment of freedom without distinction based on social groups,[83] equality,[84] dignity and freedom from torture.[85] In terms of the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) is established to 'promote human and peoples' rights',[86] and its mandate is set out in art 45 of the African Charter. The African Charter provides for both inter-state and individual complaints. Articles 47 to 54 creates an accountability mechanism by providing for a communication channel between member states: where a state party believes that another has violated a provision in the Charter, it may send a written communication to the Secretary General of the African Union (AU) and the chairperson of the ACHPR.[87] Under the individual complaints procedure, and similar to the provisions in the OP-CEDAW, there is a requirement that all domestic remedies must first be exhausted before the ACHPR may act, unless the exhaustion of the process would be too long.[88]

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),[89] which is a supplementary treaty to the African Charter,

[81] CEDAW (note 39 above) footnote 2.
[82] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).
[83] Ibid art 2.
[84] Ibid art 3.
[85] Ibid art 5.
[86] Ibid art 30.
[87] Ibid art 47.
[88] African Charter (note 82 above) art 50.
[89] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) CAB/LEG/66.6 (Maputo Protocol).

places an obligation on states parties to adopt and implement suitable interventions to protect the dignity and rights of women from all violence.[90] States further have a duty to enact and enforce laws to prohibit VAW in private or public, hold perpetrators accountable;[91] and adopt any other measures necessary to prevent, punish and eradicate all forms of VAW.[92] Article 1 of the Maputo Protocol defines 'women' as 'persons of female gender, including girls'.[93] There has been some debate as to whether the protection afforded in the Maputo Protocol extends to all women, including transgender women. Given that the definition refers to the 'female gender' and not to 'sex', it can be argued that transgender women are included under the Maputo Protocol. This view is supported by Tegan Snyman and Annika Rudman,[94] as well as Ashwanee Budoo.[95] However, many African states shy away from this application owing to cultural and religious influences, often applying a heteronormative view to sexual orientation and gender identity. This has been apparent in at least two strategic cases launched by NGOs in favour of this interpretation and application to afford transgender women protection under the African Charter and Maputo Protocol.[96] The ACHPR's withdrawal of the Coalition of African Lesbians (CAL)'s observer status in 2018 further demonstrates pushback from member states with a preference for more 'traditional values' that do not recognise LGBTIQ+ rights.[97] The withdrawal followed a request from the AU's Executive Council in July 2015 in which it directed the ACHPR to consider withdrawing observer status to NGOs that imposed values contrary to the 'African values' This was explained in the advisory opinion by the African Court on Human and Peoples' Rights (ACtHPR).[98]

The Maputo Protocol has nonetheless served as a foundation for a number of ground-breaking SGBV cases in the region. These include the historic *Coalition on Violence against*

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[90] Ibid art 3.
[91] Ibid art 4(2)(e).
[92] Ibid art 4(2)(b).
[93] Ibid art 1.
[94] T Snyman & A Rudman 'Protecting transgender women within the African human rights system through an inclusive reading of the Maputo Protocol and the proposed Southern African Development Community Gender-Based Violence Model Law' (2022) 33(1) *Stellenbosch Law Review* 57, 59.
[95] A Budoo 'The Maputo Protocol and inclusivity' (2019) <https://www.chr.up.ac.za/images/researchunits/sogie/documents/2019_transmaputo_project_1.pdf>.
[96] *Nathanson v Mteliso* [2019] ZWBHC 135 (Bulawayo High Court decision); see also *Republic v Kenya National Examinations Council: Ex-Parte Audrey Mbugua Ithibu* [2014] eKLR (Nairobi High Court of Kenya at Nairobi). The two cases were a result of conservative interpretation of gender and in turn, application to SGBV.
[97] International Justice Resource Center 'African Commission bows to political pressure, withdraws NGO's observer status' (2018) <https://ijrcenter.org/2018/08/28/achpr-strips-the-coalition-of-african-lesbians-of-its-observer-status/>.
[98] *Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition of African Lesbians* Request No 002/2015, ACtHPR Advisory Opinion (28 September 2017) para 5.

Women case,[99] in which the domestic court based its decision on the Maputo Protocol along with other instruments, such as CEDAW, to find that the Government of Kenya's failure to investigate and prosecute SGBV-related crimes a violation of their positive obligations. General damages were also rewarded in this regard. In *Equality Now and Ethiopian Women Lawyers Association*,[100] where a girl child was abducted, raped and subsequently forced to marry her rapist in accordance with cultural practice of forced marriages, the ACHPR found violation under the African Charter. Its reasoning was grounded in the Ethiopian government's failure to prevent the abduction and rape and to investigate and punish the perpetrator which violated their right to integrity, dignity and security and to be protected resulting in a right to compensation for the victim. [101] The Supreme Court of Uganda in *Law Advocacy for Women in Uganda v Attorney General*,[102] confirmed that when considering the right to culture, it could not be conducted in a manner that was cruel and degrading as well as subject to a form of torture. Referring to art 5 of the Maputo Protocol, it ruled that female genital mutilation violated the Ugandan Constitution as well as other treaties and conventions to which Uganda was party. Most recently, in *AK v Minister of Police*[103] the South African Constitutional Court confirmed that the state 'has a duty to protect women against all forms of gender-based violence that impair their enjoyment of fundamental rights and freedoms' and is required to take reasonable and appropriate measures to prevent such violations.[104] All of the abovementioned cases dealt with damages to victims as a form of accountability and confirm the positive duty on states to protect and a need to interpret and apply their domestic laws to prevent SGBV.

In examining three judgments from the Economic Community of West African States Community Court of Justice (ECOWAS Court), Charlene Kreuser holds the view that the ECOWAS Court has advanced protection of SGBV for women further than the ACHPR or ACtHPR have.[105] These ECOWAS Court decisions have confirmed that states parties have a duty to protect women from SGBV under specific scenarios: when women were assumed to be

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[99] *Coalition on Violence Against Women v Attorney-General of the Republic of Kenya; Kenya Human Rights Commission (Interested Party); Kenya National Commission on Human Rights* (Amicus Curiae) [2020] eKLR.

[100] *Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia* Communication No 341/2007, ACHPR Decision (16 February 2016).

[101] Ibid para 160.

[102] *Law Advocacy for Women in Uganda v Attorney General* [2007] UGSC 71 <https://ulii.org/akn/ug/judgment/ugsc/2007/71/eng@2007-04-05>.

[103] *AK v Minister of Police* [2022] ZACC 14.

[104] Ibid para 3.

[105] C Kreuser 'Article 3: Right to dignity' in A Rudman & CN Musembi, TM Makunya (eds) *The Protocol to the African Charter on Human and People's Rights on the Rights of Women In Africa: a commentary* (2023) 74,82.

sex workers and abused[106], in cases of domestic violence often culturally accepted as private matters[107] and that states hold liability in some cases of SGBV violations by non-state actors especially if the state fails to conduct proper investigations.[108]

While the Maputo Protocol is the fore leading instrument under the African human rights system for SGBV accountability and protection, there is potential for increased mechanism for relief to SGBV violations once they come into force, under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa[109], the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa[110] (with express provision that states protect women with disabilities from SGBV and provide accompanying psychosocial and rehabilitation support, as required[111]) and the African Charter on the Rights and Welfare of the Child (ACRWC)[112] (which protects against all forms of torture including sexual abuse through special monitoring units and recognises a state's duty to take measure against sexual exploitation and abuse). Soft law such as multiple ACHPR resolutions specifically address and enhance protection and accountability for SGBV such as right to reparations victims of sexual violence[113] and 'the protection against violence against persons on the basis of their real or imputed sexual orientation or gender identity.'[114] Other useful soft law includes art 67 (ii) of the Principles and Guidelines on ESCR

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[106] *Dorothy Njemanze, Edu Oroko, Justina Etim and Amarachi Jessyford v Federal Republic of Nigeria*, Application No. ECW/CCJ/JUD/08/17, ECOWAS Court Judgment (12 October 2017). For additional critique on the case, see also Kreuser (note 104 above) 82.

[107] *Mary Sunday v Federal Republic of Nigeria*, Application No. ECW/CCJ/JUD/11/18, ECOWAS Court Judgment (17 May 2018). For additional critique on the case, see also Kreuser (note 104 above) 82.

[108] *Aircraftwoman Beauty Igbobie Uzezi v Federal Republic of Nigeria, Application* No. ECW/CCJ/JUD/11/21, ECOWAS Court Judgment (30 April 2021). For additional critique on the case, see also Kreuser (note 104 above) 82.

[109] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa (adopted 31 January 2016).

[110] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (adopted 29 January 2019).

[111] Ibid art 27(j).

[112] The African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49 art 16 & 27.

[113] ACHPR Resolution on Right to Remedy and Reparations of Victims of Sexual Violence (adopted ACHPR/Res.111 (XXXXII) 07 of 28 November 2007).

[114] ACHPR Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (adopted ACHPR/Res.275 (LV)14 of 12 May 2014)

in African Charter which encourages states to take measures to prevent VAW and reduce its impact on the health of survivors.[115]

Complementing the role of the ACHPR, the ACtHPR can through its mandate, deal with complaints relating to violations[116] and grant binding as well as provide advisory opinion on relevant SGBV issues upon request.[117] Judgments from the ACtHPR are binding on state parties.[118] In *Association pour le Progrès et la Défense des Droits des Femms Maliennes (APDF) and the Institute for Human Rights and Developemnt in Africa (IHRDA) v Republic of Mali*,[119] the ACtHPR found that the Malian law that permitted child marriages violated the ACHPR, the Maputo Protocol and the African Charter on the Rights and Welfare of the Child. Such judgment are important as they confirm protections against forms of SGBV but are also binding on all state parties who are bound to these treaties.

2.1.2.2 European human rights system: The European Court of Human Rights (ECtHR) was established under the European Convention on Human Rights (ECHR)[120] with powers to consider breaches in terms of inter-state cases[121] or individual applications regarding a violation under the ECHR.[122] The ECtHR has developed precedent-setting jurisprudence around SGBV. Most notably, the landmark judgment of *Opuz v Turkey*[123] which confirmed state obligations around domestic violence and resulting in the creation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).[124] The Istanbul Convention specifically aims to protect women from all forms of violence including domestic violence.[125] The Convention sets out very comprehensive

[115] ACHPR Principles and Guidelines on the Interpretation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (adopted 24 October 2011, entered into force 24 October 2011).
[116] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) OAU/LEG//EXP/AFCHPR/PROT art 3.
[117] Ibid art 4.
[118] Ibid art 30.
[119] *Association pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Republic of Mali,* Application No. 046/2016, ACtHPR Judgment (11 May 2018).
[120] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) (ECHR) art 19.
[121] Ibid art 33.
[122] Ibid art 34.
[123] *Opuz v Turkey* Application No. 33401/02, ECtHR Judgment (9 June 2009).
[124] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210 (Istanbul Convention).
[125] Ibid art 1(a).

parameters for the implementation of multisectoral policies to address the 4 Ps – prevention, protection, prosecution and policies – and complements and expands the standards set by other regional human rights organisations in the SGBV protection field.[126]

While particular attention is paid to 'women victims of gender-based violence', the Istanbul Convention applies to 'all victims of domestic violence'[127] with recognition in its definition of 'gender' that it is a social construct of society.[128] Specific categories, including gender identity and sexual orientation, are also included in the list of unacceptable grounds of discrimination.[129] States parties to the Istanbul Convention have clear duties (both positive and negative obligations), including preventing, punishing and providing reparations for violations by non-state actors.[130] Chapter 5 of the Istanbul Convention directly sets out legal remedies for SGBV violations, including provision for compensation and civil remedies should a state fail to meet its obligations under the Convention.[131]

2.1.2.3 Inter-American human rights system: In the Inter-American system, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)[132] confirms the right of 'every woman to be free from violence both in the public and private spheres'.[133] It affirms that states parties have both a positive and negative duty to prevent and protect women from violence as well as investigate and punish cases of violence.[134] There is a duty on states parties to ensure timely and effective legal procedures for victims of SGBV.[135]

Two accountability mechanisms are provided for under the Belém do Pará Convention. First, art 11 gives power to the Inter-American Court to provide advisory opinions to states

[126] Council of Europe 'Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence' (2011) <https://rm.coe.int/ic-and-explanatory-report/16808d24c6> art 1.
[127] Istanbul Convention (note 123 above) art 2(2).
[128] Ibid art 3(c) defines gender as 'the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men'.
[129] Ibid art 4(3).
[130] Ibid art 5 provides that the parties and their authorities, officials, agents and other actors must refrain from engaging in gender-based violence against women and must take measures necessary to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors.
[131] Ibid arts 29 & 30.
[132] Organisation of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) (Convention of Belém do Pará).
[133] Ibid art 3.
[134] Ibid art 7.
[135] Ibid art 7(f).

parties or to the Inter-American Commission of Women (CIM) in relation to the interpretation of the Convention.[136] Second, under art 12, it permits 'any person or group of persons, or any non-governmental entity legally recognised in one or more member states of the Organisation' to lodge petitions containing denunciations or complaints of violations of art 7 to the Inter-American Commission on Human Rights (IACmHR).[137] The advisory mechanism is similar to that of the Istanbul Convention. The Convention has led to a number of decisions that have assisted victims of SGBV and their families in holding states parties accountable – for example in the *Cotton Field* case[138] before the Inter-American Court of Human Rights (IACtHR). Subsequent to a petition filed to the IACmHR, a case was brought against the United Mexican States (Mexico) in relation to their international responsibility, disappearance and death of three women. The court found that the state was considered responsible for the failure to provide adequate measures of protection and preventing the crimes of the victims, despite cognisance of the evidence of gender-related violence resulting in the murder of hundreds of women and girls. Of value was also consideration of the lack of action taken by the authorities regarding the disappearances, their role in impeding access to justice, conducting investigations of the homicides without the requisite care and deficient reparation under art 7 of the Belém do Pará Convention.[139]

2.2 Special procedures: international and regional level

At the international level, the focus is on special procedures within the UN human rights system. Within the UN Human Rights Council are various special procedures (special rapporteurs, working groups or independent experts) appointed for the purposes of monitoring, advising and reporting publicly on human rights issues and situations.[140] Some of these mechanisms at a UN level are mirrored at the regional level. For example, the ACHPR has created subsidiary mechanisms such as working groups and special rapporteurs.[141]

Mandates for special procedures of the Human Rights Council are either thematic

[136] Ibid art 11.
[137] Ibid art 12.
[138] *González and ors ('Cotton Field') v Mexico* IACHR Series C No 205, IACtHR Judgment (16 November 2009) para 2.
[139] Ibid para 2.
[140] United Nations Human Rights Office of the High Commissioner 'Special Procedures of the Human Rights Council' (undated) <https://www.ohchr.org/en/special-procedures-human-rights-council>.
[141] I Bantekas & L Oette *International Human Rights Law and Practice* 3 ed (2020) 283.

mandates or country-specific mandates. Mandate holders may convene expert consultations, assist in the growth of the standards within international human rights and champion specific areas of rights.[142]

Since 1994, the Human Rights Council has appointed a Special Rapporteur on violence against women and girls, its causes and consequences (SRVAW).[143] Several other special procedures have been appointed to address forms of SGBV, including an independent expert on protection against violence and discrimination based on sexual orientation and gender identity,[144] a working group on discrimination against women and girls[145] and the Special Rapporteur on trafficking in persons, particularly women and children.[146]

Thematic reports produced by special rapporteurs are useful as they provide an analysis of IHRL and how it relates to specific issues; they can also provide clarity and guidance to states on their obligations under IHRL. For example, the SRVAW has produced a number of reports and communications clarifying the internal laws of states that advance and protect victims against SGBV. One such report focussed on states' responsibility to criminalise and prosecute rape as a grave and systematic human rights violation and a manifestation of gender-based VAW, in line with international human rights standards.[147] In the SRVAW's report, she highlighted deficiencies with regards to the criminalisation of rape by state parties despite the recognition of rape as torture.[148] Some progressive steps highlighted include the development of jurisprudence for greater accountability in the IAcmHR's framing of rape as torture under the American Convention on Human Rights,[149] as well as a similar approach in the ECtHR that led to the landmark judgment of *MC v Bulgaria*[150] in 2003. In the *Bulgaria* case, the court established the positive obligation of states to enact criminal law provisions to

[142] Ibid 108.
[143] Resolution 1994/45 (note 79 above).
[144] Resolution adopted by the Human Rights Council: Mandate of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (adopted 7 July 2022) UN Doc A/HRC/RES/50/10.
[145] Resolution adopted by the Human Rights Council: Elimination of discrimination against women (adopted 8 October 2010) UN Doc A/HRC/RES/15/23.
[146] Resolution adopted by the Human Rights Council: Mandate of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (adopted 22 June 2020) UN Doc A/HRC/RES/43/22.
[147] D Šimonović 'Report of the Special Rapporteur on violence against women, its causes and consequences: Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention' (19 April 2021) UN Doc A/HRC/47/26.
[148] Ibid para 29.
[149] Ibid para 30.
[150] Ibid para 31; *MC v Bulgaria* Application No. 39272/98, ECtHR Judgment (4 December 2003).

effectively investigate and punish rape. These development has been important given the fact that the framing of rape as a human rights violation has been unequally applied within state definitions[151] resulting in decreased accountability opportunities for victims.

Similarly, from a regional perspective, the Special Rapporteur on the Rights of Women in Africa (SRRWA) worked with civil society organisations, other dignitaries and experts to produce the Niamey Guidelines.[152] These are useful in providing guidance and support to member states of the AU to optimise implementation of their obligations to combat sexual violence and its consequences with a comprehensive approach for all on sexual violence, taking into consideration the context within which SGBV takes place on the continent. While the guidelines are soft law, they contribute to the collective strengthening of protection against and accountability for SGBV. If applied by states, it provides a comprehensive guide in how to address multiple layers of SGBV from improved, victim-centred services, increased access to justice practices but most importantly, it explicitly addresses VAW in peace and conflict settings, and that in times of conflict, forms of SGBV are often utilised as a weapon of war.

2.3 Customary international law

Customary international law (CIL) offers some protection in SGBV. First, as already been canvassed in section 2.1.1.1 above, CEDAW does not expressly address SGBV and does so only through the CEDAW Committee General Recommendations Nos 19 and 35. Although general recommendations are not binding, General Recommendation No 35 has affirmed the existence of a customary law that prohibits VAW which perhaps inadvertently, limits protection and accountability for other SGBV victims, while General Recommendation No 19 situates SGBV as a violation of CEDAW.[153]

Second, there are opposing views on the impact of the customary-law prohibition of VAW. On the one hand, Tatsiana Ziniakova suggests that the adoption of DEVAW and subsequent adoption of regional instruments demonstrate the evolution of this customary law.[154] On the other hand, even if one were to apply the generous approach (that there exists a customary-law prohibition of VAW), there remain practical hindrances in the current position. Ronagh McQuigg in her analysis, while making reference to a 2015 UN study, demonstrates

[151] Ibid para 10.
[152] ACHPR 'The Guidelines on Combating Sexual Violence and its Consequences in Africa' (adopted 5 November 2017, entered into force 5 November 2017) (Niamey Guidelines).
[153] CEDAW (note 16 above).
[154] T Ziniakova 'Gender-based violence in international human rights law: Evolution towards a binding post-binary framework' (2020-2021) 27(3) *William & Mary Journal of Race, Gender, and Social Justice* 709, 753.

that historically, states have responded poorly to SGBV and that there are 'immense deficiencies which are currently characteristic of state responses' and that the lack of 'legally binding treaty provisions at the international level which address this issue, appears to constitute the over-riding argument in favour of the adoption of a UN treaty on violence against women'.[155] It would enhance chances of compliance and accountability, avoid ambiguity and encourage uniform application if a structured set of obligations on SGBV were clearly outlined for states – one that is inclusive, having an intersectional lens and complementing existing structures such as the CEDAW Committee. Ziniakova argues that taking a step further to include explicit codification would not be harmful if it's a rule. Alternatively, states who reject this codification process indicate a lack of genuine commitment to gender equality.[156]

3. Opportunities to strengthen accountability

Having analysed the abovementioned mechanisms for SGBV accountability, this research report now turns to five areas that need to be addressed in order to increase accountability for SGBV within IHRL. It is submitted that there has been significant development in increasing protection of women's rights in relation to SGBV. However, the definitions as laid out in the legal frameworks generally, as well as the fact that states still apply interpretation of the application of SGBV protection quite conservatively, such as illustrated in section 2.1.2.1, means there is room to extend such protection to more groups of persons as set out below. States also remain challenged in complying with reporting obligations, which are an important vehicle for accountability for SGBV, as demonstrated in both in CEDAW concluding observations and at the African regional level. In considering a random selection of CEDAW concluding observations, it was noted that states often were either tardy with report submissions[157] or skipped reporting deadlines altogether resulting in submission of one report dealing with combined due periodic reports.[158]

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[155] R McQuigg 'Is it time for a UN treaty on violence against women?' (2017) 22(3) *International Journal on Human Rights* 305.

[156] Ziniakova (note 153 above) 756.

[157] CEDAW Committee Concluding observations on the fifth periodic report of South Africa (23 November 2021) UN Doc CEDAW/C/ZAF/5.

[158] CEDAW Committee Concluding observations on the seventh periodic report of Slovakia (31 May 2023) UN Doc CEDAW/C/SVK/CO/7; Concluding observations on the combined initial and second to fifth reports of Sao Tome and Principe (31 May 2023) UN Doc CEDAW/C/STP/CO/1-5 ; Concluding observations on the ninth periodic report of China (31 May 2023) UN Doc CEDAW/C/ CHN/9.

3.1 Intersectionality

SGBV affects human rights issues broadly and undermines the right of a victim to dignity, health, well-being, security and agency. As alluded to in some of the instruments discussed in section 2 above, SGBV cuts across people of all groups and is pervasive at all levels of social and economic standing in society. The first identified opportunity to strengthen accountability for SGBV is to undertake a deeper analysis of how intersecting identities affect or increase a person's potential vulnerability to and experience of SGBV; and to provide such analysis to those who apply and implement the relevant treaties to secure better protection and accountability for all victims of SGBV.[159] The aim is to provide context and guidance on intersectionality to ensure that no victims are left behind or excluded from accessing justice and, where appropriate, that reparations are made. This approach is reflected in the CEDAW Committee's General Recommendation No 35. As Vijeyarasa states, general recommendations enable progressive interpretation of women's rights issues in line with the times and that research evidences how general recommendations contribute to 'legal and policy change on the ground'.[160] Vijeyarasa convincingly argues further that having this better understanding on how intersectionality operates can only assist in effectively tackling overarching SGBV structures such as 'patriarchy, racism, capitalism and sexism' and how they all uphold inequality.[161] In this regard, Janine Clark advocates for a social-ecological mode that goes beyond the victim-centered approach.[162] In the past, authors like Martha Nussbaum have criticised the cursory manner in which the CEDAW Committee has treated issues of bisexual, lesbian and transgender women,[163] thus illustrating a key gap in effective accountability for SGBV victims.

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[159] The most prominent concept of intersectionality is affiliated with Kimberlé Crenshaw as developed in 1989. Sujata Warrier explains that the application of this concept allows a better understanding of how a victim's overlapping identities such as gender, religion, race, class and sexual orientation can expose them to sexual and gender-based violence, and grounds it in institutional structures that have historically marginalised communities. This approach is critical in order to move away from a binary and narrow thinking on SGBV prevention and accountability. See S Warrier 'Inclusion and Exclusion: Intersectionality and Gender-Based Violence' in R Geffner, JW White, LK Hamberger, A Rosenbaum, V Vaughan-Eden & VI Vieth (eds) *Handbook of Interpersonal Violence and Abuse Across the Lifespan* (2022) 2539-2552.

[160] Vijeyarasa (note 31 above) 162.

[161] Ibid. While referencing the 2011 report, the 2016 report of the Special Rapporteur on violence against women and its causes and consequences noted the 'continued lack of response to multiple and intersecting forms of discrimination, both inter- and intra- gender, and its nexus with violence.' There was further insight on 'how the lack of attention to intersectionality not only inhibits policymakers from assessing inequalities between women and men, but also inhibits their ability to assess how differently positioned women experience discrimination and violence' UN Doc A/HRC/32/42].

[162] JN Clark (note 44 above) 1068.

[163] M Nussbaum 'Women's Progress and Women's Human Rights' (2016) 38(3) *Human Rights Quarterly* 596; also referenced by Vijeyarasa (note 31 above).

3.2 Non-binary and transgender persons

Following on from the identification in section 1 of the gap regarding accountability for SGBV, it should be acknowledged that no current treaties provide explicit protection and redress for non-binary and transgender person for crimes of SGBV under IHRL. Ziniakova notes that although there is 'some leeway for an "evolutionary interpretation" argument', most states have chosen to interpret the definitions as binary.[164]

The point has already been made that there may be some protection if one applies a progressive interpretation to some of the international and regional instruments such as the Maputo Protocol and the Explanatory Report to the Istanbul Convention.[165] However, the lack of a standard definition of GBV across international instruments opens the risk to varied interpretations and applications of accountability for SGBV, and specifically as to who may be considered victims, including trans and non-binary persons, if at all.[166] While current instruments have a strong focus on the protection of women, and with good reason, owing to the prevalent nature of violence targeted at women, there currently exists a lacuna in relation to the protection of non-binary and gender-diverse persons. If the objective of IHRL is to ensure equal protection and realisation of fundamental human rights (including freedom from violence), such a 'partial approach' to accountability for victims of SGBV places groups at risk in a position of inadequate recourse. A more inclusive approach is needed to avoid unintended 'othering' or some forms of SGBV being deemed acceptable by society and the state.

Building on the argument for inclusivity and the importance of the inclusion of sexual orientation and gender-diversity principles, Ziniakova explains that non-binding, guiding documents such as the Yogyakarta Principles[167] increase protection against and accountability

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[164] Ziniakova (note 153 above) 736-737. The author refers to UN definitions that have afforded some protection and which could be extended to vulnerable males, an approach that 'takes into account social constructions of masculinity and femininity'.

[165] The Explanatory Report (note 125 above) para 53 states that art 4 of the Istanbul Convention on the right to non-discrimination includes 'categories of individuals such as transgender or transsexual persons, cross-dressers, transvestites and other groups of persons that do not correspond to what society has established as belonging to "male" or "female" categories'.

[166] Ziniakova (note 153 above) 727.

[167] International Commission of Jurists (ICJ) 'Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity' (March 2007). The Yogyakarta Principles developed in 2006 by a 'distinguished group of human rights experts' are not binding but outline international principles and affirm international human rights that relate to sexual orientation and gender identity. In 2017, the Yogyakarta Principles were further developed (YP plus 10) based on an increased understanding of intersectionality in SGBV in international human rights law, and how a person suffers violence based on the grounds of sexual orientation and gender identity, recognising the distinct and intersectional grounds of gender expression and sex characteristics.

for SGBV. They do so by keeping the definition of GBV wide and by acknowledging how violence manifests against people with diverse sexual orientation, gender identity, gender expression, and sex characteristics,[168] thus assisting in the contextualisation of how GBV is experienced by gender-diverse people.[169] Again, this context is strongly linked to the intersectionality of how violence manifests in various social groups and, of course, moves away from a theoretical approach to the practical needs of victims. Referencing Darren Rosenblum,[170] Ziniakova argues for a 'more inclusive framework of the Yogyakarta Principles' but stops short of advocating for the rewriting of CEDAW.[171]

However, it is submitted in this research report that CEDAW and OP-CEDAW have gone as far as they can in their current form, and that a new treaty or protocol specifically addressing gender-diverse persons is needed.

3.3 New treaty or protocol on SGBV

Given the absence of express inclusion of non-binary and transgender persons in the relevant instruments in IHRL, as illustrated above, it may be valuable to develop a new stand-alone treaty specifically to address SGBV. Although this has been an ongoing debate, a new treaty or additional protocol to CEDAW could address accountability gaps and increase missing protection for all SGBV victims.

Former UN SRVAW, Rashida Manjoo, advocated during her mandate for a new binding treaty on SGBV. In her 2015 report, Manjoo examined the legal provisions and mechanisms available for SGBV accountability within the African, Inter-American and European systems. She concluded that normative gaps existed in the protection, prevention and accountability in respect of VAW.[172] She also advocated that a binding instrument would be essential to reinforce

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[168] Ziniakova (note 153 above) 735.

[169] Ibid 736.

[170] D Rosenblum 'Unsex CEDAW, or what's wrong with women's rights' (2011) *Columbia Journal of Gender and Law* 98-194. Rosenblum points out that currently CEDAW has a gap in the protection against SGBV and as it stands, exposes a shortcoming in international law. His article proposes a broader rethinking of gender in the context of international human rights and the reinterpretation of CEDAW or the broader adoption of the Yogyakarta Principles.

[171] Ziniakova (note 153 above) 736 acknowledges the importance of the women's rights movements as women are prevalent victims of SGBV but advocates rather for an approach that is not 'trans-exclusionary'.

[172] R Manjoo 'Report of the Special Rapporteur on violence against women, its causes and consequences: Existing legal standards and practices regarding violence against women in three regional human rights systems and activities being undertaken by civil society regarding the normative gap in international human rights law' (10 June 2015) UN Doc A/HRC/29/27.

the standards set out in international human rights instruments[173] as 'current norms and standards within the United Nations system emanate from soft-law developments and are of persuasive value, but are not legally binding'.[174] Alternatively, as identified by Ziniakova, rather than a completely new treaty, an additional protocol could be a good compromise, as there is significant body of jurisprudence on GBV developed by the CEDAW Committee. [175] For these reasons, either a new binding treaty or additional protocol is recommended. It would provide a significant framework for the strengthening of accountability for SGBV victims.

3.4 Progressive feminist jurisprudence

To support the interpretation of existing treaties and the impetus towards a new international binding treaty that sets out clear parameters, obligations and the rights of SGBV victims under IHRL, jurisprudence should be developed in line with a progressive feminist lens that advances the rights of victims and accountability mechanisms. This should take place at international, regional and domestic courts as well as treaty body levels, where applicable. Where there is lack of clarity on existing treaties (international and regional), and considering that certain treaties were drawn up and signed decades ago while the needs of an ever-changing society evolve, new jurisprudence can assist in keeping existing treaties relevant in the current contexts. A growing body of progressive feminist jurisprudence will advance the protections required for those who are on the outside of current SGBV protection and accountability mechanisms. To facilitate this, cases should be encouraged because the failure by victims or civil society organisations to bring SGBV cases before the relevant courts (or tribunals) and treaty bodies contributes to a lack of new jurisprudence being developed to shape the discourse of SGBV protection. Annika Rudman motivates for jurisprudence, saying that it is an 'important mechanism through which international human rights law becomes operative and accessible … through the interpretation and application of the law by continental and regional human rights courts'.[176] Ziniakova supports this thinking as she argues that prevention of SGBV can be enhanced through 'a growing body of human rights jurisprudence and inclusive interpretations of existing instruments'.[177] Undoubtedly, one must consider that victims often do not report

[173] Ibid (Summary).
[174] Ibid para 63.
[175] Ziniakova (note 153 above) 763.
[176] A Rudman 'A feminist reading of the emerging jurisprudence of the African and ECOWAS Courts evaluating their responsiveness to victims of sexual and gender-based violence' (2020) 31(3) *Stellenbosch Law Review* 424, 424.
[177] Ziniakova (note 153 above) 757.

cases of SGBV, noting often the structural barriers to access to justice, particularly women.[178] Acknowledging a fundamental link between access to justice and progressive jurisprudence, Rudman underscores how developing jurisprudence may define unique state obligations in order effectively take into account and improve access to justice for women in SGBV cases.[179] Rudman motivates this point through her analysis of two judgments that have come out of the ECOWAS Court which developed state's obligations in relation to the right to effective remedy in *Mary Sunday v The Federal Government of Nigeria*[180] and the need to dispense with justice in accordance with international standards in *EI v The Federal Government of Nigeria*[181].

3.5 Improved state reporting

Within international law, periodic state reporting remains one of the essential components in monitoring as well as serving as effective protection under the implementation of a treaty or human rights instrument. This runs true for IHRL instruments for SGBV. The process in a SGBV context would involve engaging with all stakeholders such as state departments, civil society members and, to an extent, the public or victims of SGBV in scrutinising its policies, programmes and relevant laws and then reporting back to the relevant treaty body on its achievements and what is still required to improve upon in meeting its obligations to addressing SGBV under international law. However, poor state reporting universally under international human rights instruments remains a challenge.[182] Navanethem Pillay in a report on strengthening the UN human rights treaty body systems underscores the importance of state reporting. The report also makes two recommendations that would improve state reporting, including providing technical support for increased capacity for state reporting and resources

[178] A Rudman 'Article 8: Access to justice and equal protection before the law' in A Rudman, CN Musembi & TM Makunya (eds) *The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa: a commentary* (2023) 179,191.
[179] Ibid 191-193.
[180] ECOWAS Court (note 106 above).
[181] *EI v Federal Republic of Nigeria* Application No. ECW/CCJ/JUD/09/22, ECOWAS Court Judgment (25 April 2022).
[182] UN Secretary General 'Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights: report of the Secretary-General' (1993) UN Doc A/48/508. See also CD Creamer & BA Simmons ' The Proof is in the Process: Self-reporting under International Human Rights Treaties' (2020) 114 *The American Journal of International Law* 1, 4; A Jonhson ' Barriers to fulfilling reporting obligations in Africa under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2021) 21 *African Human Rights Journal* 176, 179.

to provide support to treaty bodies, such as the CEDAW Committee.[183] An example of a model that has been successful is a project which the University of Pretoria's Centre for Human Rights (CHR) has undertaken in providing training workshops with the aim of strengthening the capacity of state parties to the African Charter and the Maputo Protocol to fulfil their reporting obligations to the ACHPR. To date, the CHR has trained thirty of the forty four countries which have ratified the Maputo Protocol.[184]

4. Conclusion

Strengthening accountability for SGBV must be done in a manner that affords protection as well as relief to all victims and not a select few. This research report has identified key areas where mechanisms exist and where there are opportunities to increase accountability by taking a more inclusive and bold approach that falls outside a cis, heteronormative approach to women, and to who is considered to be a victim of SGBV. This requires a meaningful application of intersectionality and consideration of transgender and non-binary persons. An inclusive approach does not remove the hard-fought gains for women's rights and protection but rather extends them to those who do not fall under a cisgender understanding of womanhood and who fall outside the outdated norms of masculine or patriarchal understanding of gender.[185] We must accept that the world and society are changing. Key strengthening interventions recommended include a binding, comprehensive, inclusive new international treaty (or protocol to an existing relevant treaty) that affords protection to and accountability for all SGBV victims, taking intersectionality into account. There is also an opportunity to strengthen the mandate of human rights committees through this process.

The prohibition of GBV can be strengthened through a more inclusive, human rights jurisprudence. To ensure an expanded interpretation for protection of rights within treaties, increasing the number of cases brought before national, regional and international courts and treaty bodies can also assist in developing and producing more progressive feminist jurisprudence that moves the needle in a non-binary and gender-diverse society to ensure better accountability for all victims of SGBV under an international human rights framework.

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[183] N Pillay 'Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights' (June 2012) https://www.refworld.org/pdfid/4fe8291a2.pdf.

[184] University of Pretoria Centre for Human Rights Maputo Protocol: State reporting to the African Charter on Human and People's Rights of Women in Africa (undated) https://www.maputoprotocol.up.ac.za/>

[185] Ziniakova (note 153 above) 724. The article references the concept taken from A Pendea, D Grzemy & E Keen Gender Matters: A Manual on Addressing Gender-Based Violence Affecting Young People (2019) <https://www.coe.int/en/web/gender-matters>.

Finally, if state reporting enforcement mechanisms are improved, this can result in an additional avenue for increased accountability against SGBV whereby states feel some onus and political will to comply with its international obligations to take positive and reasonable measures to protect its citizens which I believe was the original intention. Various levels of opportunity exist and should be utilised in order to strengthen accountability for SGBV under IHRL and ensure that all victims have some form of relief in enforcing their rights.

BIBLIOGRAPHY

Books and chapters in books

Keck ME & Sikkink K 'Transnational networks on violence against women' in Keck ME & Sikkink K (eds) *Activists Beyond Borders: Advocacy Networks in International Politics* (1998)

Kreuser 'Article 3: Right to dignity' in Rudman A, Musembi CN & Makunya TM '*The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary'* (2023)

Meyersfeld B *Domestic Violence and International Law* (2010)

Pendea A, Grzemy D & Keen E '*Gender Matters: A Manual on Addressing Gender-Based Violence Affecting Young People'* (2019) <https://www.coe.int/en/web/gender-matters>

Rudman A 'Article 8: Access to justice and equal protection before the law' in Rudman A, Musembi CN & Makunya TM '*The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary'* (2023) <https://www.pulp.up.ac.za/pulp-commentaries/the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-women-in-africa-a-commentary>

Warrier S 'Inclusion and Exclusion: Intersectionality and Gender-Based Violence' in Geffner R, White JW, Hamberger LK, Rosenbaum A, Vaughan-Eden V & Vieth VI (eds) *Handbook of Interpersonal Violence and Abuse Across the Lifespan* (2022)

Journal articles

Bunch C 'Women's rights as human rights: Towards a re-vision of human rights' (1990) 12 *Human Rights Quarterly* 486

Clark JN 'Beyond a "survivor-centered approach" to conflict-related sexual violence?' (2021) 97(4) *International Affairs* 1067

Englehart NA & Miller MK 'The CEDAW effect: International law's impact on women's rights' (2014) 13(1) *Journal of Human Rights* 22

Gagglioli G 'Sexual violence in armed conflicts: A violation of international humanitarian and human rights law' (2014) 96 *International Review of the Red Cross* 505

Graaf K 'The implications of a narrow understanding of gender-based violence' (2021) 5(1) Feminist Encounters: A Journal of Critical Studies in Culture and Politics 13

Johnson A ‘ Barriers to fulfilling reporting obligations in Africa under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa’ (2021) 21 African Human Rights Journal 176-203

McQuigg R ‘Is it time for a UN treaty on violence against women?’ (2017) 22(3) *International Journal on Human Rights* 305-324

Mergaert L, Linková M & Strid S ‘Theorising gender-based violence policies: A 7P framework’ (2023) 12 *Social Sciences* 385

Muluneh MD, Stulz V, Francis L & Agho K ‘Gender based violence against women in sub-Saharan Africa: A systematic review and meta-analysis of cross-sectional studies’ (2020) 17 *International Journal of Environmental and Public Health* 903

Nussbaum M ‘Women’s progress and women’s human rights’ (2016) 38(3) *Human Rights Quarterly* 596

O’Rourke C ‘Bridging the enforcement gap? Evaluating the inquiry procedure of the CEDAW Optional Protocol’ (2019) 27(1) *American University Journal of Gender, Social Policy & the Law* 1

Rosenblum D ‘Unsex CEDAW, or what’s wrong with women’s rights’ (2011) *Columbia Journal of Gender and Law* 98-194

Rudman A ‘A feminist reading of the emerging jurisprudence of the African and ECOWAS Courts evaluating their responsiveness to victims of sexual and gender-based violence’ (2020) 31(3) *Stellenbosch Law Review* 424

Snyman T & Rudman A ‘Protecting transgender women within the African human rights system through an inclusive reading of the Maputo Protocol and the proposed Southern African Development Community Gender-Based Violence Model Law’ (2022) 33(1) *Stellenbosch Law Review* 57-77

Stachow E ‘Conflict-related sexual violence: a review’ (2020) 166 *BMJ Military Health* 183

Ulrich J ‘Confronting gender-based violence with international instruments: Is a solution to the pandemic within reach?’ (2000) 7 *Indian Journal of Global Legal Studies* 629

Vijeyarasa R‘CEDAW’s General Recommendation No 35: A quarter of a century of evolutionary approaches to violence against women’ (2020) 19(2) *Journal of Human Rights* 153

Ziniakova T ‘Gender-based violence in international human rights law: Evolution towards a binding post-binary framework’ (2020-2021) 27(3) *William & Mary Journal of Race, Gender, and Social Justice*

Website sources

Budoo A 'The Maputo Protocol and inclusivity' (2019) <https://www.chr.up.ac.za/images/researchunits/sogie/documents/2019_transmaputo_project_1.pdf>

Council of Europe 'Instruments and measures adopted by the United Nations' (undated) <https://www.coe.int/en/web/gender-matters/united-nations>

International Committee of the Red Cross '"That never happens here": Sexual and gender-based violence against men, boys and/including LGBTIQ+ people in humanitarian settings' (3 February 2022) <https://www.icrc.org/en/document/sexual-gender-violence-against-men-boys-lgbtiq>

International Justice Resource Center 'African Commission bows to political pressure, withdraws NGO's observer status' (2018) <https://ijrcenter.org/2018/08/28/achpr-strips-the-coalition-of-african-lesbians-of-its-observer-status/>Schulz P & Kreft A 'Accountability for conflict-related sexual violence' (2022) *Oxford Research Encyclopedia of International Studies* <https://doi.org/10.1093/acrefore/9780190846626.013.702>

United Nations Human Rights Office of the High Commissioner (OHCHR) 'Sexual and gender-based violence in the context of transitional justice' (October 2014) <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OnePagers/Sexual_and_gender-based_violence.pdf>

United Nations Human Rights Office of the High Commissioner (OHCHR) 'Special Procedures of the Human Rights Council' (undated) <https://www.ohchr.org/en/special-procedures-human-rights-council>

United Nations Human Rights Office of the High Commissioner (OHCHR) 'International Bill of Human Rights' (undated) <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

United Nations Peacekeeping 'Conflict-related sexual violence' (undated) <https://peacekeeping.un.org/en/conflict-related-sexual-violence>

United Nations Treaty Collection 'Status of Treaties – Chapter IV: Human Rights' <https://treaties.un.org/pages/ParticipationStatus.aspx?clang=_en>

UN High Commissioner for Refugees (UNHCR) 'Chapter 6: The International and Regional Legal Framework' in UNHCR *Handbook for the Protection of Women and Girls* (2008) <https://www.unhcr.org/47cfad542.pdf>

UN Women 'Convention on the Elimination of All Forms of Discrimination against Women' (2007) <https://www.un.org/womenwatch/daw/cedaw/>

World Bank 'Violence against women and girls – what the data tell us' (1 October 2022) < https://genderdata.worldbank.org/data-stories/overview-of-gender-based-violence/>

World Health Organization 'Violence against women prevalence estimates, 2018' (2021) <https://www.who.int/publications/i/item/9789240022256>

Cases

AK v Minister of Police [2022] ZACC 14 (South African Constitutional Court decision)

Aircraftwoman Beauty Igbobie Uzezi v Federal Republic of Nigeria No ECW/CCJ/JUD/11/21 (2021) (ECOWAS Court Judgment)

AT v Hungary CEDAW Communication No 2/2003 (2005) UN Doc CEDAW/C/32/D/2/2003

Aydin v Turkey 57/1996/676/866 (1997) (ECHR Judgment)

Coalition on Violence Against Women v Attorney-General of the Republic of Kenya; Kenya Human Rights Commission (Interested Party); Kenya National Commission on Human Rights (Amicus Curiae) [2020] eKLR (High Court of Kenya at Nairobi decision)

Dorothy Njemanze, Edu Oroko, Justina Etim and Amarachi Jessyford v the Federal Government of Nigeria No. ECW/CCJ/JUD/08/17 (2017) (ECOWAS Court Judgment)

Equality Now and Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia Communication No. 341/2007 (2016) (ACHPR decision)

EI v Federal Republic of Nigeria No. ECW/CCJ/JUD/09/22 (2022) (ECOWAS Court Judgment)

González et al ("Cotton Field") v Mexico IACHR Series C No. 205 (2009) (IACtHR Judgment)

Law Advocacy for Women in Uganda v Attorney General [2007] UGSC 71 https://ulii.org/akn/ug/judgment/ugsc/2007/71/eng@2007-04-05 (Supreme Court of Uganda decision)

Mary Sunday v Federal Republic of Nigeria No ECW/CCJ/JUD/11/18 (2018) (ECOWAS Court Judgment)

MC v Bulgaria 39272/98 (2003) (ECtHR Judgment)

Nathanson v Mteliso [2019] ZWBHC 135 (Bulawayo High Court decision)

Opuz v Turkey 33401/02 (2009) (ECtHR Judgment)

Republic v Kenya National Examinations Council: Ex-Parte Audrey Mbugua Ithibu [2014] eKLR (High Court of Kenya at Nairobi decision)

Declarations, guidelines, recommendations, reports, resolutions, findings and other documents

African Commission on Human and Peoples' Rights *The Guidelines on Combating Sexual Violence and its Consequences in Africa* (adopted 5 November 2017, entered into force 5 November 2017) (Niamey Guidelines)

Council of Europe *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence* (2011) <https://rm.coe.int/ic-and-explanatory-report/16808d24c6>

Fourth World Conference on Women *Beijing Declaration and Platform for Action* (Beijing Declaration) (adopted 16 September 1995)

Manjoo R 'Report of the Special Rapporteur on violence against women, its causes and consequences: Existing legal standards and practices regarding violence against women in three regional human rights systems and activities being undertaken by civil society regarding the normative gap in international human rights law' (10 June 2015) UN Doc A/HRC/29/27

Šimonović D 'Report of the Special Rapporteur on violence against women, its causes and consequences: Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention' (19 April 2021) UN Doc A/HRC/47/26

UN Commission on Human Rights *Resolution 1994/45: Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women* (4 March 1994) UN Doc E/CN.4/RES/1994/45

UN Commission on the Status of Women *Commission on the Status of Women: Report on the Fortieth Session* (1996) UN Doc E/CN.6/1996/15

UN Committee on the Elimination of Discrimination against Women (CEDAW) *CEDAW General Recommendation No 12*: *Violence against women* (1989) UN Doc A/44/38

UN Committee on the Elimination of Discrimination against Women (CEDAW) *CEDAW General Recommendation No 19: Violence against women* (1992) UN Doc A/47/38

UN Committee on the Elimination of Discrimination against Women (CEDAW) CEDAW General Recommendation No 35 on gender-based violence against women, updated general recommendation No 19 (2017) UN Doc CEDAW/C/GC/35

UN Committee of the Elimination of Discrimination against Women (CEDAW) *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 (2005) UN Doc CEDAW/C/2005/OP.8?MEXICO (Ciudad report)

UN General Assembly *Declaration on the Elimination of Violence against Women* (adopted 20 December 1993) UN Doc A/RES/48/104 (DEVAW)

UN General Assembly *Transforming Our World: the 2030 Agenda for Sustainable Development* (2015) UN Doc A/RES/70/1

UN Human Rights Council *Resolution adopted by the Human Rights Council: Mandate of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (adopted 7 July 2022) UN Doc A/HRC/RES/50/10

UN Human Rights Council *Resolution adopted by the Human Rights Council: Elimination of discrimination against women* (adopted 8 October 2010) UN Doc A/HRC/RES/15/23

UN Human Rights Council *Resolution adopted by the Human Rights Council: Mandate of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material* (adopted 22 June 2020) UN Doc A/HRC/RES/43/22

UN Secretary General 'Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights : report of the Secretary-General' (1993) UN Doc A/48/508

N Pillay 'Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights' (June 2012) <https://www.refworld.org/pdfid/4fe8291a2.pdf>.

Treaties and international and regional instruments

African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol)

Council of Europe *Council of Europe Convention on preventing and combating violence against women and domestic violence* (adopted 11 May 2011, entered into force 1 August 2014) CETS 210 (Istanbul Convention)

Organization of Africa Unity (OAU) *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) (1982) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (African Charter)

Organization of American States (OAS) *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (adopted 9 June 1994, entered into force 5 March 1995) (Convention of Belém do Pará)

United Nations *Charter of the United Nations* (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

UN General Assembly *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)

UN General Assembly *Convention on the Rights of Persons with Disabilities* (adopted 12 December 2006, entered into force 3 May 2008) A/RES/61/106 (CRPD)

UN General Assembly *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)

UN General Assembly *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entered into force 3 September 1982) 1249 UNTS 13 (CEDAW)

UN General Assembly *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

UN General Assembly *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

UN General Assembly Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83 (OP-CEDAW)