

Patricia Schulz and Amanda Dale\*

## **Every Woman Treaty: Weakening the Protections Against Gender Based Violence Against Women <sup>1</sup>**

The need for a new global instrument on violence against women is an idea that has been promoted by [Every Woman](#), a coalition advocating for the adoption of the so-called Every Woman Treaty (EWT).<sup>2</sup> It recently published a first draft. The EWT campaign has accurately identified violence against women and gender-based violence as a global pandemic. It has marshalled the justifiable outrage over this “shadow pandemic”, using UN terminology, to gain momentum for its campaign for a new treaty.

However, the proposed new instrument (EWT), contrary to its claims, does not represent progress in legal protections for women experiencing violence. On the contrary EWT, is a distraction from the crucial task of implementing the protections already guaranteed by international human rights law (IHRL) at the local/national level. The EWT initiative is flawed in several ways which we explore below, but fundamentally, it is founded on a misunderstanding of the nature and role of IHRL.

The EWT initiative both: a) weakens the present system of international legal protections against violence against women and, b) campaigns on a false promise to bring an end to the worldwide pandemic of GBVAW through the addition of more law, rather than national implementation of existing norms.

### **A) Weakening of the present system**

#### **1. The normative framework: alleging normative gaps is erroneous and weakens the present protection offered by CEDAW.**

Our detailed analysis of the EWT campaign and draft treaty reveals that it rests on a mistaken analysis of the present set of protections against gender-based violence. The Convention on the Elimination of Discrimination Against Women (CEDAW) is a treaty that protects against ‘all forms of discrimination against women’. As such, the interpretation of the treaty within the evolving norms of international human rights law sees violence as a

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<sup>1</sup> This text reflects the presentation Patricia Schulz made during a webinar convened on 2 December 2021, by [UNRISD and IGC on December 2, 2021](#), under the title **A New Global Norm on Violence Against Women**. See also Amanda Dale, December 11, 2019, <https://ohrh.law.ox.ac.uk/cedaw-the-every-woman-treaty-that-already-exists/>

<sup>2</sup> <https://everywoman.org/who-we-are/>

serious form of discrimination that gives rise to and underpins all other forms of discrimination that women experience.

EWT denounces what it describes as “normative gaps” in this set of protections. EWT thereby disregards the evolution that has taken place in law since 1989, derisively referring to this proper role of progressive lawmaking as “retrofitting” the treaty.<sup>3</sup> Gender-based violence against women (GBVAW), not mentioned in the CEDAW Convention, was authoritatively interpreted by the CEDAW Committee in its groundbreaking General Recommendation 19 as a form of discrimination against women, prohibited by [Article 1](#). This anchor in Article 1 is key: It means that GBVAW falls under the ambit of all the CEDAW Convention articles. Contrary to the claims of EWT, states are **bound** to act on GBVAW.

Indeed, Article 2 of CEDAW sets the obligations of states to address the needed legislation on GBVAW (adopt, revise, remove) and practical measures (financial, training, shelters, protection orders, data). This protection is required not only through criminal law, but also within different fields of public policy, such as in education, work, media, and politics. States are accountable for GBVAW stemming from their acts, those of their agents and also that of non-State actors, when the State knew or should have known that GBVAW was or might be occurring/had occurred, and the State could have prevented it (due diligence principle). States must also ensure a gender sensitive, non-biased and competent justice system – this applies to the police, social and health services, and other State agents (e.g. migration officers and teachers)<sup>4</sup> that respond to GBVAW. States must take all measures to eradicate or modify norms, customs, and practices which condone or enable GBVAW, and thus have an obligation of prevention. Such obligations apply to all fields of action, which states must take ‘all appropriate measures’ to realise.

As mentioned above, a standalone treaty such as that suggested by EWT would sever GBVAW from this gender equality and non-discrimination normative framework. It is this very non-discrimination context, and its interpretation by the Committee, that provides all the elements EWT mistakenly claims are missing from CEDAW. By focusing on GBVAW alone, the EWT weakens the protections offered through states’ obligations to civil and political, economic, social, and cultural rights. The implementation of these rights is key to guaranteeing women and girls a life free of GBVAW, by addressing the underlying elements of gender discrimination that make women vulnerable to violence, such as lack of good education, adequate housing, awareness of rights, and economic autonomy and related grounds of discrimination, such as disability, race, migration status, and many more.

The Committee has provided a comprehensive interpretive framework with its General Recommendations (GRs) and extends protections well beyond the EWT draft treaty. This framework provides authoritative guidance to states and other stakeholders as to the obligations entailed by the articles of the CEDAW treaty itself.

No State has opposed the three General Recommendations dealing directly with GBVAW<sup>5</sup> nor any of the other ones also handling this issue. This normative framework has been

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<sup>3</sup> <<everywoman.org>>

<sup>4</sup> General Recommendation 32 and GR 36

<sup>5</sup> GR 12, 19 and 35

recognised by all countries. Based on constant State practice, the Committee stated that “the prohibition of gender-based violence against women has evolved into a principle of customary international law” (GR35, paragraph 2). This means that all states, even those that have not ratified CEDAW, are required, by the agreed upon principles of international law, to fulfill the obligation to protect women against gender-based violence.

On closer examination, EWT’s allegation that CEDAW and the IHRL system contain normative gaps does more to weaken the protection against GBVAW ensured by CEDAW, and by the **UN human rights system as such, than it does to strengthen it.** The EWT appears ill-informed about the role of other treaty bodies that also deal with GBVAW<sup>6</sup>, as well as the Special Procedures<sup>7</sup> created by the Human Rights Council.

## 2. Monitoring: alleging insufficient monitoring, weakens the present protection

Monitoring is exercised by the CEDAW Committee through the State reporting process and through individual communications (cases) and inquiries (into alleged grave or systematic violations) based on the Optional Protocol (the OP). The OP grants individuals the right to gain a hearing when they have exhausted domestic remedies and obtain a decision by the Committee. Its Article 8 allows for investigative powers into states parties where systemic issues are credibly alleged. If the Committee considers there were violations of women’s human rights, it makes recommendations to the State concerned.

In the state **reporting process**,<sup>8</sup> the Committee asks questions of the states to test their adherence to and need for guidance in order to fulfill their obligations. Following this, the Committee adopts Concluding Observations and Recommendations including on GBVAW, based on the General Recommendations mentioned above. **Concluding Observations and Recommendations** are country specific, detailed, and precise. They preempt the EWT proponents’ criticisms of CEDAW — the so-called “normative gaps” — such as requiring legislation, training, resources, shelters, data, etc.

There have been numerous individual communications dealing with different forms and settings of GBVAW. In fact, a study of the jurisprudence of the CEDAW Committee showed that the largest single issue focused on by the Committee is holding states accountable to their obligations to protect against GBVAW.

Of its seven inquiries so far into grave or systematic violations of women’s rights, five concern GBVAW as their main theme; the two other ones, on sexual and reproductive health and rights, also addressed GBVAW.

## 3. Politicizing of GBVAW undermines the present CEDAW protection

*Politicising GBVAW in the negotiation on a new treaty*

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<sup>6</sup> CAT, CCPR, CRC, ESCR

<sup>7</sup> SR on VAW, SR on the right to health, SR on extreme poverty, SR on cultural rights, etc. See <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en> for the list of thematic SP’s

<sup>8</sup> States are to report periodically on their implementation of the Convention, Article 18

The negotiation of a new treaty does not happen in a political void. We are currently experiencing a global backlash on human rights. A significant number of states have allied to actively oppose women's rights. Negotiating a new treaty would give them the opportunity to limit the protections we currently have in place.

The EWT campaign is oblivious to this context. At the UN level, gender, sexual and reproductive health and rights, homosexuality, and women's full enjoyment of their human rights are attacked systematically.

At the European level, the message is also clear. Turkey has withdrawn from the Istanbul Convention alleging that "The Istanbul Convention, originally intended to promote women's rights, was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Türkiye's social and family values."<sup>9</sup> Other East-European countries are openly discussing following suit, and drafting their own treaty with regressive content.

Even if the claims of the EWT proponents regarding a lack of protection in international human rights law were accurate, the increased backlash and repression of human rights organizations and women human rights defenders in numerous countries is not a positive climate for a negotiation on such a complex issue. Given that the premise of their project rests on incorrect claims and a misconception of the legal framework, their initiative is all the more perplexing.

#### *Politicizing of GBVAW due to the planned monitoring system and weakening of monitoring*

Added to the problems identified above, the draft treaty foresees a Conference of Parties with State representatives as the monitoring body. Thus, unlike the current structure of CEDAW, which is monitored by independent experts, monitoring in the proposed treaty would be overseen by the State representatives who by definition defend political views and are not there as experts in GBVAW. They would thus have no obligation to be impartial and independent. The draft treaty indirectly admits the lack of expertise of State representatives by suggesting that a Roster of Experts be designed to support the COP.

The politicization and lack of expertise would weaken recommendations both substantively and in their acceptance by State parties. Indeed, the EWT structure repeats an already existent process in the human rights monitoring system of which it appears unaware: the Universal Periodic Review (UPR), a self-monitoring state party review system which CSOs are able to attend.

#### **4. Undermining monitoring by duplication**

In the unlikely event that a new treaty is adopted, states (and other participants to the reporting/implementation processes, such as national human rights institutions, NGO's, and UN agencies) would be faced with two treaties and two monitoring bodies dealing directly with GBVAW. Other treaties and their monitoring bodies would also continue to address

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<sup>9</sup> Turkey's Communication Directorate, 22 March 2021

GBVAW in their fields (e.g. CAT, ICCPR, ICESCR, CRC, CMV) to which states must also provide information.

Duplication is already hotly criticised by states which urgently request measures to limit their burdens.<sup>10</sup> However, instead of suggesting reinforcement of the CEDAW framework, or supporting implementation at the national level, the EWT chose to mimic a weakened version of what already exists. The financial and human resources consequences for OHCHR would affect the whole of the treaty body system, effectively depleting the force of the current protections.

## **B) Misleading hopes on efficiency, time and resources**

### **1. NO treaty ensures its full application by states**

Contrary to the promises made by the EWT campaign and draft treaty, NO treaty **ensures** that it will be fully respected by the states that ratify it, even if the normative framework is comprehensive and states commit to appropriately fund the implementation of the rights defined for people and the duties of states.

### **2. NO treaty will ensure resources for GBVAW at the national/local level.**

Contrary to what the EWT campaign and draft treaty also claim, NO treaty will **ensure** resources for GBVAW at the national/local level. International human rights is a system of norm creation and legal obligation agreed to by a fellowship of states parties. The human rights system of law, and human rights treaties, are not substitutes for national governments' role in implementation of these agreed upon norms. Through IHRL, states commit to make available the resources needed for implementation of their obligations. And yet, if ratification of treaties or guarantees in Constitutions ensured resources, there would not be 2 billion people without sanitation, almost 130 million girls outside of school, and political prisoners. The human rights system would be adequately financed by states at the UN level, and national budgets would permit the implementation of these rights and constitutional guarantees. We are afraid the EWT initiative is selling a fairy tale. But worse than this, it is selling a fairy tale that undermines the norms and protections that they neither appear to understand nor represent accurately in their materials and campaign.

### **The greatest need is implementation of existing agreements through coordinated action at national/local levels**

Through responsible and strategic leadership, the EWT initiative could marshal its momentum to guide states in the fulfilment of their existing obligations. Indeed, this is precisely the point of human rights treaties and their monitoring systems: national CSO's, feminist movements, anti-violence activists and human rights defenders are an intended and crucial component of the fulfilment equation. Through their honest appraisal of states' (lack

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<sup>10</sup> An important discussion has been going on, in what is called the Treaty body strengthening process. It hasn't delivered the needed support to enable the treaty body system to deliver its functions better...one of the gaps being an increase in human and financial resources.

of) fulfilment of their obligations, through the existing opportunities to report to the committee's that monitor states, people living in their communities and countries, provide balance to states' claims. EWT's impressive advocacy and work at the grassroots level among NGO's running shelters, offering legal, psychological, social consultations, could be a force for good in this implementation gap. They could support NGOs to use treaty bodies' Country Observations to lobby State authorities to adopt good laws, programmes, and policies against GBVAW and to match this with the necessary budgets.

Such action must also include awareness-raising targeting the professionals dealing with GBVAW, educators, media, and the general public as to the existence of the frameworks we have been enumerating here. Men and boys could also be engaged in all efforts, in particular to address the power differential between them and the women who experience violence. Supporting NGO's to use the CEDAW reporting cycle to enhance their domestic activism is indispensable, as they have been and are at the forefront of the fight against GBVAW, poverty, lack of education of women and girls, etc. Good data from the ground up is indispensable to tailor the proper measures recommended by the monitoring bodies.

Additionally, the CEDAW Committee recommends the creation of a permanent, high-level inter-ministerial structure at the national level to fulfill states obligations. This would be tasked with preparation of reports and follow-up on implementation of recommendations. This mechanism ensures coordination and institutional memory. It is a pragmatic solution to overcome the silo mentality often encountered and to ensure cooperation, sharing of knowledge, resources and definition of further measures in the fight against GBVAW at the national level.

One suggestion to marshal the efforts of the EWT project that has been made by others within the international human rights systems is to develop an Optional Protocol to the CEDAW Convention specifically on GBVAW, although we are sceptical as to its necessity and wonder about its effects. Different ratification rates for the present OP and the GBVAW OP could mean weakened protections overall. It is worth noting that the CEDAW OP has been ratified by only 114 of the 189 countries that ratified the Convention, emphasizing a strengthened role for CEDAW's robust vision for a gender-equal world through practical and concrete obligations.

There is already much expertise, information, guidelines, training possibilities, and materials on GBVAW throughout many mechanisms and agencies of the UN. The challenge is to offer them in a coordinated fashion. One such practical effort has been made through the office of the Special Rapporteur on VAW, bringing together all the mechanisms with responsibilities for international standards on GBVAW. Likewise, the Sustainable Development Goals (SDG) framework has been used positively, and other frameworks could also be mobilized, for instance within the COVID-19 recovery plans that CEDAW and the Working Group on Discrimination Against Women and Girls have issued.

**CEDAW is one of the most universally ratified of the human rights treaties. The seven UN member states that have not ratified or acceded to the convention are Iran, Nauru, Palau, Somalia, Sudan, Tonga, and the United States (which signed the Convention on 17 July**

1980).<sup>11</sup> The passion and outrage marshalled by the EWT would be better directed at implementing, ratifying and funding the existing legal and practical framework instead of creating a new one, with all the risks of regression and dissipated energy.

**Women and girls deserve action now, not protracted and ill-founded promises.**

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<sup>11</sup> "Status of Ratification Interactive Dashboard", online: *OHCHR Dashboard* <<http://indicators.ohchr.org/>>.