

## **People's Academy of International Law**

### Seminar: The Role of Women in the Struggle for Peace and Feminist Justice

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By Rashida Manjoo 'Violence against women – normativity with substantive legality'

*Honouring the memory of a comrade, Evelyn Durmayer, who was an exceptional lawyer, advocate and activist in the struggle for peace and feminist justice.*

### **Introduction**

The role of women in the struggle for peace and feminist justice is clearly visible in the many spheres of international law, policy and practice, including on the issue of violence against women. The need for binding international laws is a core imperative for many feminist human rights advocates and activists, in the quest for justice and accountability. For decades women have been working within the understanding that international laws matter and that reinforcing the specificity of fundamental rights in law is crucial – including the right to equality, dignity, non-discrimination and a life free of all forms of violence (public and private). It is acknowledged that treaties establish both norms and binding legal obligations which reflect a commitment to a set of explicit legal obligations in protection and prevention efforts, as well as international accountability. Treaties provide a political, legal and social resource to individuals and groups who work towards holding governments accountable. They impose political costs for non-compliance and can have the power to constrain. Treaties set visible goals and can serve an educative function, leading to domestic legal, institutional and jurisprudential developments in efforts to advance justice and accountability goals. In the sphere of violence against women, the role of women in the struggle for peace and feminist justice is reflected in the decades of advocacy and activism.

### **Violence against women**

Violence against women is currently acknowledged as a pervasive and widespread human rights violation, whether occurring in private or public spheres, and whether perpetrated by state or non-state actors. It occurs in times

of peace, conflict, transitions and post-conflict times; and in homes, communities, state institutions and other spaces. Women and girls are disproportionately affected and impacted by gendered violence which targets them based on both sex and gender grounds i.e. biological and social constructs of womanhood. The issue has been described as a global health pandemic by the World Health Organisation; as a shadow pandemic by UN Women during Covid; and has been interpreted as a prohibited form of discrimination by the Committee on the Elimination of all forms of Discrimination against Women (CEDAW).

Some of the continuing challenges regarding the prevention, protection and elimination of violence against women include among others: the persistence of patriarchal social and cultural norms; the gaps in laws, policies and practices; the poor global progress on gender equality; the global pushbacks on women's rights and gender equality; the growing problem of armed conflicts; the democratic backsliding which is resulting in authoritarian and repressive governance in many countries; the privileging and encouraging of soft law developments to avoid any legally enforceable accountability; and the lack of attention to addressing justice and accountability issues, thereby promoting and supporting impunity.

### **Standard-setting and normative framings**

The evolving acceptance that violence against women is a specific human rights violation linked to civil, political, economic, social, cultural and developmental rights, is evident in the work of the UN agencies and experts. This is however manifested through soft law normative framings within the UN system. Decades of feminist civil society advocacy on violence against women included activism at the UN world conferences in Mexico, Copenhagen, Nairobi and finally in Beijing in 1995. The first General Assembly resolution on domestic violence in the family was adopted in 1985. In 1991, a UN expert group meeting was held in Vienna, based on a call by the UN Commission on the Status of Women for an international instrument that would explicitly address VAW. Unfortunately, caution prevailed and the meeting recommended a declaration on the elimination of violence against women and produced a draft declaration – as opposed to a legally binding instrument. At the 1993 World Conference on Human Rights held in Vienna, there was very strong advocacy for the recognition of women's rights as human rights, and violence against women as a human rights violation.

Advocacy also resulted in pushing for the adoption of the declaration developed in 1991. This was adopted in 1993 as the Declaration on the Elimination of Violence against Women - a soft law instrument.

The promotion of soft law normative framings in respect of violence against women, has been the practice of the Committee monitoring the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which was adopted in 1979. This anti-discrimination treaty does not include a comprehensive and holistic provision on violence against women. Article 6 of CEDAW is limited to the suppression of all forms of traffic in women and the exploitation of prostitution of women. Using its interpretative discretion (to the Vienna Law on Treaties) the CEDAW Committee has defined violence against women as discrimination (Article 1) and linked it to the obligation to eliminate discrimination by State parties (Article 2). The Committee has done this through numerous General Recommendations which have been adopted over the years to provide guidance to State Parties on the interpretation of the treaty. The Committee has adopted General Recommendations Number 12, 19, 30 and 35 specifically on violence against women. The CEDAW Optional Protocol adopted in 1999, addresses a legal gap in the original treaty - through codification of an individual communication procedure and also an inquiry procedure. This legally binding normative development is the only one to date in respect of CEDAW and its discrimination mandate. Despite numerous violence against women cases being filed with the Committee, there has not been the development of binding legal provisions within the UN, on the issue of the legal gap in international law regarding violence against women.

There have been other historical and current developments regarding UN soft law standard-setting in respect of violence against women. These include the 1993 Declaration on the Elimination of Violence against Women (DEVAW); the 1994 creation of the mandate of the UN Special Rapporteur on Violence against Women, its Causes and Consequences (SRVAW); numerous resolutions by the General Assembly, the Commission on Human Rights and now the Human Rights Council; and the Security Council resolutions on Women, Peace and Security. At the regional level, specific instruments on violence against women include the Belem do Para in the Inter-American human rights system; the Istanbul Treaty

adopted by the Council of Europe; and the Convention on Violence against Women and Girls adopted recently by the African Union.

### **Current efforts to address the legal normative gap**

Addressing the issue of a normative gap in international law on the issue of violence against women has been undertaken in recent years by the UN Special Rapporteurs on Violence against Women and feminist women activists working with civil society organisations. In a 1996 report, the first Special Rapporteur on Violence against Women noted that the international community should consider the possibility of adopting an international convention on the elimination of violence against women. The second Special Rapporteur did not address the issue raised by her predecessor. Between 2009 and 2025, there have been numerous efforts by the third, fourth and fifth (current) Special Rapporteurs on the need for an international instrument addressing the legal normative gap on violence against women, including reports to the Human Rights Council and the General Assembly; support by a core group of States (including Antigua and Barbuda, Costa Rica, Democratic Republic of Congo and Sierra Leone); and advocacy work by civil society.

The current proposal that has been agreed upon by the three Special Rapporteurs is that there is a need for a new CEDAW Optional Protocol to comprehensively and holistically address violence against women and girls - explicitly as a human rights violation with clearly articulated State obligations. The current Special Rapporteur, during her 2025 reporting to the Commission on the Status of Women, reinforced the need for an international instrument to address the normative protection gap. She emphasised that the ‘adoption of an Optional Protocol will not only reaffirm our commitment to sex and gender equality but also provide a concrete legal tool to hold states accountable’. Based on a position paper that she was working on, she highlighted four elements that should be included in a new optional protocol. These include the articulation of: legal definitions and forms of violence; State obligations to end, prevent and respond to violence against women; clear ways in which the protocol complements existing instruments and standards; and specify implementation and monitoring mechanisms that are needed.

There has also been pushback from the CEDAW Committee, some UN agencies and some civil society organisations. The CEDAW Committee has been negative in its response to discussions about the normative gap and has insisted that the principle of non-discrimination in the Convention covers gender-based violence against women and girls. In General Recommendation 35, the Committee also asserts that the prohibition on violence against women has reached the status of customary international law. In 2025 the Committee released a public statement asserting that ‘The Committee is convinced that a new optional protocol might create a parallel process that could undermine full accountability under the Convention’. There is no additional information on how this conclusion is reached by the Committee.

### **Closing the protection gap – a procedural way forward**

The prescribed reading for this session has included an article titled ‘Closing the Protection Gap’. It includes an overview and analysis of comparative models of treaty-making processes and proposes a way forward regarding the procedural aspects for a new CEDAW Optional Protocol on violence against women and girls. The article analyses the political and advocacy process of development of one treaty and four optional protocols. The objective was to identify the normative and protection gaps that needed to be addressed – and to identify approaches, key factors, dynamics, participants, responses, timelines, and challenges.

The Convention on the Rights of Persons with Disabilities formed part of the analysis. It was adopted in 2006 and is the latest comprehensive stand-alone treaty adopted to fill a protection gap due to the legal lacuna in the international human rights law sphere. Of the nine Optional Protocols analysed, five are related to procedural aspects i.e. linked to individual communication procedures and some with an inquiry procedure. Four Optional Protocols that were analysed are related to substantive topics that were not fully addressed in the original treaty. These four include: two linked to the Children’s Rights Convention; one to the International Covenant on Civil and Political Rights; and one linked to the Convention against Torture. The last Optional Protocol is different from the other three as it addresses both substantive and procedural aspects.

The analysis of the case studies highlighted five commonalities in the procedural process, including: State leadership; NGO engagement; the role of designated committees or working groups at the UN level; high level UN agency support on a particular issue; and, acknowledging that there will be dissents, disagreements and lack of consensus - thus there will be the need for compromise and consensus-building during the negotiations.

The article then highlights how the elaboration and negotiation procedural process in respect of a CEDAW Optional Protocol could proceed. This would most often start with the adoption of a resolution through the Human Rights Council and/or the General Assembly. Considering that violence against women and girls is a human rights issue, the article notes that the starting point should ideally be a resolution through the Human Rights Council.

In conclusion, there is a need for 'The Role of Women in the Struggle for Peace and Feminist Justice' to be revived - in the struggle to close the normative protection gap in respect of violence against women.