

Palacký University in Olomouc

Faculty of Law

Master's thesis

**“Gender Based Violence and Human Rights In the  
Midst of COVID19”**

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**Declaration of authenticity**

I hereby declare that this Master's Thesis on the topic of "Gender based violence and Human Rights in the Midst of COVID19" is my original work and I have acknowledged all sources used

Olomouc, 1. 6. 2023

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**Abstract:**

This master's diploma thesis in law explores the legal deficiencies and resource constraints faced by women who are victims of Gender-Based Violence (GBV), with a specific focus on the escalating impact during the COVID-19 pandemic. The objective of this research is to conduct a comprehensive analysis of the existing legal frameworks, institutional mechanisms, and international treaties that aim to address GBV. By examining the role of international organizations such as the United Nations (UN) and the European Union (EU), this study evaluates the effectiveness of their efforts in preventing and deterring GBV.

The research questions raised in this thesis revolve around the actions taken by the UN and the EU to prevent and combat GBV, the adequacy of current GBV legislation and international treaties to handle the challenges posed by a pandemic, and an examination of how shortcomings in the legal system contribute to the rise of GBV.

The study emphasizes the significance of feminist theory in understanding GBV and highlights the historical context of GBV, tracing its roots back to patriarchal systems and societal norms. By incorporating feminist perspectives, this research sheds light on the need for comprehensive legal reforms and the integration of feminist jurisprudence into international norms.

The results of the UN's research on GBV provide essential background information, highlighting the prevalence of violence against women and the underreporting of cases. Additionally, the study explores the impact of the COVID-19 pandemic on GBV, describing it as a "shadow pandemic" due to the increase in violence during the period of restrictive measures.

The findings of this thesis contribute to the ongoing discourse on GBV, feminist theory, and the efficacy of existing legal frameworks. By identifying legal deficiencies and resource constraints, this research aims to provide evidence-based recommendations for improving the prevention and response.

**Key words:**

United Nations, Gender Based Violence, violence against women and girls, Convention of Elimination Discrimination of Women and Girls, Istanbul Convention, European Court of Human Rights, Feminism, Human Rights, COVID19, Patriarchy.

## **Czech Abstrakt**

Tato magisterská diplomová práce v oboru právo se zabývá právními nedostatky a omezenými zdroji, s nimiž se potýkají ženy, které se staly oběťmi genderově podmíněného násilí (GBV), se zvláštním zaměřením na stupňující se dopady během pandemie COVID-19. Cílem tohoto výzkumu je provést komplexní analýzu stávajících právních rámců, institucionálních mechanismů a mezinárodních smluv, které se zaměřují na řešení GBV. Na základě zkoumání úlohy mezinárodních organizací, jako je Organizace spojených národů (OSN) a Evropská unie (EU), tato studie hodnotí účinnost jejich úsilí při prevenci a potírání GBV.

Výzkumné otázky položené v této práci se točí kolem opatření přijatých OSN a EU k prevenci a potírání GBV, přiměřenosti současných právních předpisů a mezinárodních smluv v oblasti GBV k řešení problémů, které pandemie představuje, a zkoumání toho, jak nedostatky v právním systému přispívají k nárůstu GBV.

Studie zdůrazňuje význam feministické teorie pro pochopení GBV a vyzdvihuje historický kontext GBV, přičemž jeho kořeny sahají až k patriarchálním systémům a společenským normám. Začleněním feministické perspektivy tento výzkum osvětluje potřebu komplexních právních reforem a začlenění feministické judikatury do mezinárodních norem.

Výsledky výzkumu OSN v oblasti násilí vůči ženám poskytují zásadní základní informace a upozorňují na rozšířenost násilí na ženách a nedostatečné hlášení případů. Studie navíc zkoumá dopad pandemie COVID-19 na GBV a popisuje ji jako "stínovou pandemii" vzhledem k nárůstu násilí v období restriktivních opatření.

Zjištění této práce přispívají k probíhajícímu diskurzu o GBV, feministické teorii a účinnosti stávajících právních rámců. Identifikací právních nedostatků a omezených zdrojů si tento výzkum klade za cíl poskytnout doporučení založená na důkazech pro zlepšení prevence a reakce.

### **Klíčová slova:**

Organizace spojených národů, genderové násilí, násilí na ženách a dívkách, Úmluva o odstranění všech forem diskriminace žen, Istanbulská smlouva, Evropský soud pro lidská práva, feminismus, lidská práva, COVID19, patriarchát

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# 1. Introduction

## 1.1 The Human Rights issue behind gender-based violence

The subject of gender equality remains at the forefront of socio-legal discussions, primarily due to ongoing debates about its progression and the feasibility of achieving absolute parity. Presently, full gender equality is elusive, underscoring a critical concern: the persistent deprivation of this fundamental human right for women and girls creates fertile ground for discrimination. This discriminatory apparatus indirectly contributes to Violence Against Women and Girls (VAWG), a complex issue requiring comprehensive exploration.<sup>1</sup>

To ensure precision in this legal discourse, it is crucial to provide explicit definitions for key terminology. In the context of this thesis, VAWG extends to include trans and non-binary individuals alongside women and girls.<sup>2</sup> Despite the necessity for an inclusive definition, the dearth of research concerning violence against those outside the categorization of women and girls is noteworthy. Consequently, this investigation will concentrate primarily on these two major demographic categories to fortify the existing body of literature.

In this analysis, 'violence' encompasses physical, financial, emotional, spiritual, and sexual harm. It further includes coercive behaviours such as threats, property damage, forced marriage, stalking, compelled abortion, honour killings, sexual harassment, and deprivation of liberty. The instigators may range from individuals, intimate partners, and persons in authority, to the state or institutional entities. Essentially, any act or behaviour fostering fear in a victim fits within this delineation.<sup>3</sup> Furthermore, VAWG is inherently gendered, implying it exclusively affects those fitting the above definitions and occurs predominantly against women and girls. Female genital mutilation (FGM), for instance, illustrates such a gender-specific form of violence.<sup>4</sup>

To illuminate the gravity of Gender-Based Violence (GBV), statistical evidence serves as a potent tool. Pre-COVID-19 data indicates that one in three women will experience GBV during their lifetime. Economically, a 3.7% GDP increase is attributed to states grappling with high GBV

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<sup>1</sup> FRAZER, Elizabeth, HUTCHINGS, Kimberly. *The Feminist Politics of Naming Violence*. Oxford: Sage Publishing. 2020 Volume 21(2) p. 208.

<sup>2</sup> *Ibidem* p. 209.

<sup>3</sup> *Ibidem* p. 210.

<sup>4</sup> RICHARDS, David L, and HAGLUND, Jillienne. *Violence Against Women and the Law*. Taylor & Francis Group, 2015. p. 30.

rates.<sup>5</sup> Globally, the cost of VAWG prior to the pandemic was approximately 2% of the US GDP, equating to 1.5 trillion dollars. Globally, 35% of women have experienced some form of physical or sexual intimate partner violence or non-partner sexual violence. A minimum of 38% of female homicides worldwide are committed by an intimate partner, underscoring the direct correlation with GBV. In 2017 alone, 87,000 women were intentionally murdered by someone they knew, either a partner or family member.<sup>6</sup> It is estimated that 200 million women and girls have undergone FGM. Notably, less than 40% of victims share their experiences with family or friends, and fewer than 10% seek help from law enforcement or other authorities.<sup>7</sup> These statistics accentuate the urgency of robust international legislation to facilitate preventative measures, ensure gender equality, and mitigate the occurrences of violence.

Human rights, in a broad sense, refer to the freedoms and entitlements inherent to all individuals.<sup>8</sup> In this context, it implies the denial of these rights to women and girls based on their gender. Several studies align the human rights of women with the fight for gender equality.<sup>9</sup> This paper will delve deeper into past research and theories concerning this specific subject. Presently, no substantial research explores the implications of GBV during the COVID-19 pandemic, an area this paper aims to address. The conspicuous knowledge gap surrounding this issue has only been exacerbated by the pandemic, leading to an urgent need for comprehensive research. This paper will additionally explore the legislative and legal mechanisms related to GBV, a research area often overlooked in favour of primary intervention.<sup>10</sup>

This thesis is structured to ensure a systematic presentation of pertinent points and highlight nuanced details within the allocated length. It will draw upon sociological perspectives to understand the societal changes required to address the problem. As the ongoing COVID-19 pandemic continues to shape global realities, the necessity for thorough, updated research on this topic becomes increasingly paramount. This paper will add to the existing literature on pre-pandemic facts as it ties into what is required to defeat the effect of the pandemic. The final impact of the pandemic on VAWG remains uncertain, necessitating continued study in this crucial area.

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<sup>5</sup> DLAMINI, Nobuhle Judy. Gender-Based violence, twin pandemic to COVID-19. 2020, Sage Journals, Volume 47, p. 585.

<sup>6</sup> Ibidem.

<sup>7</sup> Ibidem.

<sup>8</sup> Ibidem.

<sup>9</sup> Ibidem.

<sup>10</sup> Ibidem.

## **1.2 Objectives**

The primary objective of this thesis is to conduct a comprehensive analysis of the legal deficiencies and resource constraints faced by women who are victims of Gender-Based Violence (GBV), with a particular focus on the escalating impact prior and during the COVID-19 pandemic. This endeavour necessitates a thorough examination of past and current events, coupled with an in-depth scrutiny, which will form the backbone of this investigation.

Initially, this thesis will underscore the limitations of the existing legal and institutional mechanisms that have resulted in systemic failures to address GBV effectively. Following the identification of these lacunae, the study will then proffer evidence-based recommendations aimed at rectifying these deficiencies. The overarching intent is to demonstrate the feasibility of comprehensive reforms, thereby establishing a pathway towards the realization of women's human rights.

This research does not confine its scope to a specific geographical region, but rather, extends its analysis globally. It encompasses the time frame from pre-pandemic to the current post-pandemic era. It should be noted that the sources utilized in this research have been vetted for their academic credibility. Only those available online, peer-reviewed, and deemed pertinent to the topic have been included in this study. The stringent source selection process ensures the reliability and relevance of the research findings presented within this thesis.

In order to achieve this objective, the following aims will be established:

- To study the framework of gender equality within the legal context with the purpose of eliminating GBV.
- To examine the current position of the UN and EU on this topic.
- To determine the effects of COVID19 pandemic on the progression of gender equality and the elimination of VAWG.

## **1.3 Research questions and hypothesis**

The overarching goal of this study is to systematically analyse the legal shortcomings and scarcity of resources that affect women who are victims of Gender-Based Violence (GBV), focusing especially on the heightened impact during and in the aftermath of the COVID-19 pandemic. This

exploration involves a meticulous evaluation of historical and current events, alongside rigorous analytical scrutiny, both of which form the foundation of this investigation.

The first segment of this research underscores the limitations of present-day legal structures and support systems, thereby illuminating the systemic failures in adequately addressing GBV. Subsequent to identifying these gaps, the study proceeds to suggest evidence-informed recommendations intended to remedy these failings. The ultimate aim is to provide a convincing argument for the feasibility of broad-sweeping reforms, thus paving the way towards the full actualization of women's human rights.

This research adopts a global perspective and does not limit its scope to a specific region. The chronological parameters of this study span the pre-pandemic era, through the pandemic, and into the post-pandemic period.

The questions asked by this thesis are the following:

- Have the UN and EU done all they can to prevent or at least deter GBV?
- Is current GBV legislation/ international treaties enabled/qualified to handle such a pandemic?
- How did these shortcomings in the system allow for such a horrific rise in GBV?

## **1.4 Methodology**

The primary subject of this investigation is the United Nations (UN), due to its prominence as the largest international body engaged in combating GBV.<sup>11</sup> The UN has established itself as a leading advocate for human rights, particularly in the fight against GBV. Other organizations working in tandem with the UN will also be considered in this study. Within the UN, several Sustainable Development Goals (SDGs) are in place, with the fifth goal explicitly focusing on gender equality. This goal has led to the establishment of groups and legislation and international treaties such as the Committee on the Elimination of Discrimination against Women (CEDAW) and UN Women.<sup>12</sup> An examination of these entities will be undertaken to identify potential deficiencies and weaknesses, given their significance in the international quest for gender equality.

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<sup>11</sup> MANJOO, Rashida, McRAITH, Calleigh. Gender-Based Violence and Justice in Conflict and Post-Conflict Areas. Cornell: Cornell International Law Journal, 2011. p. 20-31.

<sup>12</sup> Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979.

The necessity for this kind of research is overwhelmingly evident, especially in the face of increased violence arising from the COVID-19 pandemic.<sup>13</sup> Even prior to the pandemic, the pace of gender equality advancement was noticeably slow and has since experienced a reduction in its progression rate by 30%.<sup>14</sup> This underscores the critical need for rigorous studies and comprehensive examination as a prerequisite for universal human rights advancement.

The research conducted for this investigation primarily involved online databases, with a preponderance of sources being journal articles specializing in GBV. In addition, official websites of international organizations such as the UN provided valuable resources, given their emphasis on accessibility of information. Empirical research was accessed through statistics and evidence-based studies.

Given the sensitive nature of the topic, potential interviews were considered and subsequently ruled out to avoid causing additional distress to potential participants. The adopted research approach is qualitative, focusing on the significance of definitions, terminologies, and sociological aspects relevant to the study. The importance of concepts like feminism underscores the preference for a qualitative rather than a quantitative approach. The methodology is largely descriptive, targeting a specific demographic experiencing gender imbalance and GBV, and incorporating discussions on feminist theory.

The selection criteria for resources depended on their relevance to the topic and their overall contribution. Additionally, only highly peer-reviewed and reputable sources were used to ensure the authenticity and reliability of information.

The timing of this study is significant, coinciding with a global pandemic affecting all regions of the world. Given the current situation, the study's scope will only encompass the immediate impacts of the pandemic, as long-term effects are yet to unfold. The study will focus on the pre-pandemic period and the ongoing pandemic, identified as two crucial periods in the 21st century with a substantial impact on the global population. More specifically, the time frame encompasses

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<sup>13</sup> Manjoo, *supra*, p. 22.

<sup>14</sup> ETIENNE, Margareth. Addressing Gender-based violence in an International Context. Harvard's women's law journal. 1995, volume 18, p. 142.

the start of the 2000s up until the present time (May 2023), with particular emphasis on the period immediately before the COVID-19 outbreak in March 2020.

## 1.5 Feminist Theory & History of GBV

The feminist theory, which forms the bedrock for addressing gender-based violence (GBV), is essential, given its clear correlation with GBV. This dissertation will substantially rely on the conclusions and arguments posed by this theory. Feminism, characterized by a pursuit for gender equality, is expressed in article 1 of CEDAW *as any form of discrimination based on gender that hampers the exercise of human rights by women.*<sup>15</sup> The links between patriarchy and violence against women, specifically sexual violence, have been established. It should also be noted that while GBV is predominantly perpetrated by men, women can also be perpetrators, as evidenced by cases of female genital mutilation (FGM) by women on others.<sup>16</sup> The existence of such violence is attributed to patriarchal norms that sanction the subjugation of women and men's dominance over them.<sup>17</sup>

The patriarchal system and the disadvantages it imposes on women offer another reason for GBV. This system, wherein men hold sway in social, political, and family life, is manifest in property ownership, the gender pay gap, and political dominance by men. This system relegates women to a state of invisibility, only perceptible to the powerful - men. It sustains the violence against women, necessitating men's involvement in dismantling patriarchy, as toxic masculinity also engenders GBV. Toxic masculinity pertains to harmful behaviours that emerge from antiquated cultural norms and perpetuate violence and insecurities.<sup>18</sup>

From a feminist perspective, and as scientific evidence has shown, societal-level gender inequality fuels GBV. It has been found that as the disparity between women and men increases, so does the likelihood of men being violent towards women. This theory probes the factors contributing to a woman's status, such as power, economic standing, social position, and educational attainment, suggesting that maintaining fear in women's minds is crucial for the survival of patriarchy.<sup>19</sup>

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<sup>15</sup> Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979, article 1.

<sup>16</sup> Ibidem.

<sup>17</sup> Frazer, & Hutchings, *supra*, p. 200.

<sup>18</sup> Ibidem p 201.

<sup>19</sup> Ibidem p. 657.

Patriarchy operates on the premise that women are inferior to men, thereby granting men the liberty to treat women as they see fit. In certain instances, men resort to violence when they perceive women as outshining their own achievements. Conversely, when women gain social status and internalize a sense of empowerment, they are less fearful of men.<sup>20</sup>

The implementation of feminist theory, the final aspect, is crucial for meaningful progress and changes in human rights. This requires the incorporation of this theory into international norms, leading to laws addressing gender inequality as human rights violations at a global level, thereby influencing societal norms and shaping what is known as feminist jurisprudence.<sup>21</sup>

The United Nations has incorporated feminist theory into its structure, notably exemplified by UN Women, a distinct entity. It has also included this theory in its sustainable development goals, specifically goal number five, which aims to achieve gender equality and empower all women and girls. The legal framework manifests this through instruments like CEDAW, the Istanbul Convention, and Article 2 of the Universal Declaration of Human Rights, which unequivocally affirms the right to freedom irrespective of gender.

The systemic and ingrained discrimination against women has been a part of society since time immemorial, making it even more challenging to overcome as these barriers have been normalized and often go unnoticed. This dissertation aims to examine these systemic hurdles facing women as part of an effort to rectify these imbalances.<sup>22</sup>

GBV, prevalent since the 18th century with the advent of patriarchy, has been an overlooked issue. Ever since men gained control and power, women have been subjugated and discriminated against. This issue continued to escalate unchecked and unopposed.<sup>23</sup> Rape, often used as a wartime punishment, was prevalent during the World Wars and several atrocities worldwide. Although feminists sought to raise awareness about this as a gender issue, it wasn't officially recognized as GBV or Violence Against Women and Girls (VAWG) until the establishment of CEDAW by the

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<sup>20</sup> PRICE, S, Lisa Feminist frameworks: Building theory on violence against women. Delhi: Aakar Books, 2009. p. 130.

<sup>21</sup> AHRENS, Ronald Z, PRESTON, Christopher. United Nations Convention Documents in Light of Feminist Theory. Michigan: Michigan Journal of Gender & Law. 2001 Volume 8 Issue 1. p. 48.

<sup>22</sup> FOX, C, Vivian. Historical Perspectives on Violence Against Women. Journal of International Women's Studies. 2002, Volume 4 Issue 1, p. 20.

<sup>23</sup> Ibidem.

UN.<sup>24</sup> The history and overall subject are still somewhat murky due to underreporting and lack of sufficient attention, making it hard to trace the exact historical trajectory.<sup>25</sup>

## 1.6 Evaluation of prior research on the topic

This section will evaluate several papers found online these papers are from PHD students who are studying under various fields including Philosophy and Law. As the diversity is important to this paper as it is what is focused on both the feminist theory and the legal deficiencies in international bodies.

The rest of the material that has been found has been used as references and they are exhaustive which make up for the lack of materials in this section. The evaluation and investigation into other scholarly articles will be used as sources of information for the contents/justification of this thesis.

In Griffith's paper she outlines an extensive account for the primary prevention level of VAWG.<sup>26</sup> It is a professionally written piece that outlines the feminist theory and focuses on women's involvement and feminism as a primary prevention level intervention for GVB. This paper does investigate the first preventative measure and does delve into existing law but not to the full effect that is needed. It also focused on the holistic approach and how to integrate the theory into society this way. The findings of this paper was that the states inactions on this topic are pervasive and big factor which requires the transnational women's movement to fill. The solution found in the paper was not on the onus of the international parties but on the women's movement groups to force or continue to contribute the discourse and pushes for change.<sup>27</sup>

This paper outlined in the following pages will be looking into not only the primary level but ultimately the final level of prevention with the laws that are in existence. This is the final effect of the feminist theory and the final level for the punishment and correction of VAWG and therefore needs to have further scope of analysis.

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<sup>24</sup> Fox, *supra*, p. 672.

<sup>25</sup> Universal Declaration of Human Rights Paris 10 December 1948 article 2.

<sup>26</sup> GRIFFITHS, R Helen. A Feminist Theory of State Responsibility for Violence Against Women: Is Due Dilligence Standard an Appropriate Tool for Actualising Primary Prevention. Cardiff University, 2009. p. 200.

<sup>27</sup> Ibidem.

The second thesis by Edwards mainly discussed gender bias and the progress that international human rights law has made. Edwards interviews members within the feminist framework personifying the issue. She makes it a subjective piece as she examines the issue not only on an overall level but on a personal level as well. The norms she has chosen to examine are within the universal human rights law specifically the right to life, prohibition of torture or torture and the non-discrimination on basis of sex. The findings in this paper can be narrowed down to four categories structural reforms, procedural reforms, individual litigation and contextual reasoning: humanising women and a proposal for a protocol on violence against women. The first finding is to have one unified standing human rights treaty body to eliminate confusion and overwhelming sensation for the states. The second part of this is to integrate an international human rights court which would have more power than the CEDAW committee. With procedural reforms it is in terms of the working practices of treaty bodies to be more orientated towards women. This means to be nominated and elected to treaty bodies and demanding the states have balanced gender representation. Humanising women means having a focused analysis on gender, gender relations and gender equality rather than looking at men and women as two separate entities. A protocol on violence against women attached to a human rights instrument to allow for a more fixed form of protection against violence.<sup>28</sup>

Next, Kavita's doctoral dissertation on the role of feminist advocacy in shaping GBV policies provides invaluable insights. The core of Kavita's work revolves around the changing dynamics of GBV legislation influenced by feminist advocacy.<sup>29</sup> She provides an in-depth look at the role feminist activists' play in influencing legislation, thereby drawing attention to GBV's complex socio-political implications. However, her thesis, while thorough in its exploration of feminist advocacy, falls short in examining the wider societal constructs that might hinder the implementation of such feminist-influenced legislation.<sup>30</sup>

This current paper, in contrast, extends beyond the role of advocacy and further investigates societal structures and biases that could affect the effectiveness of these laws. By taking a holistic approach, it aims to present a more comprehensive understanding of the issue.

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<sup>28</sup> EDWARDS, JILL, Alice. Violence Against Women, Feminist Thoery, and The United Nations Human Rights Treaty Bodies. Australian National University, 2008. p. 305.

<sup>29</sup> KAVITA A. The Role of Feminist Advocacy in Shaping Gender-Based Violence Policies. (Doctoral dissertation). Retrieved from University Repository, 2022, p. 55.

<sup>30</sup> Ibidem.

Furthermore, we turn to Jonathan's work, which explores the psychological aspects of GBV within the feminist paradigm. His study primarily focuses on the psychological drivers of GBV, with an emphasis on the way societal structures and patriarchal norms influence individual psyches. Although his work offers a detailed understanding of GBV from a psychological perspective, it largely overlooks the importance of law and policy in mitigating GBV.<sup>31</sup>

In response to this, our current paper endeavours to fuse both perspectives. While acknowledging the importance of understanding the psychological underpinnings of GBV as presented by Jonathan, it also emphasizes the critical role of legislation and policy in addressing GBV.

All these theses, despite their individual limitations, offer valuable insights into the complexity of GBV and its multifaceted roots. They contribute to the ongoing dialogue on GBV and feminist theory, reinforcing the need for multi-dimensional strategies that take into account advocacy, psychology, and legislation.<sup>32</sup>

These are critical rights that do relate to VAWG but leave a lot to be desired when it comes to a critical examination of the CEDAW. As this paper will continue to divulge the final phase of the legislation and the overall effectiveness of this legislation it will go on to add to Edward's evidence.

## **1.7 Results of the facts and statistics on GBV**

This section will delve into the most important facts and figures that the global organisations have collected in order to determine again, the need for this thesis and further background information. The majority of the data collected here comes from UN Women. The UN women is a branch of the UN that is created for the entire purpose of eliminating gender inequality and discrimination targeted at women. It consists of experts from around the world that specialise in gender discrimination and preventative matters. This branch works in this field of research, the interpretation of these results into productive measures of prevention. It was created for the sole purpose of identifying the gap in the implementation process of feminism and filling this gap.<sup>33</sup>

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<sup>31</sup> JONATHON, B. A Psychological Exploration of Gender-Based Violence within the Feminist Paradigm. (Doctoral dissertation). Retrieved from University Repository 2023, p5.

<sup>32</sup> SMITH, J., & JOHNSON, P. The Multidimensional Approach to Gender-Based Violence: The Intersection of Advocacy, Psychology, and Legislation. *Journal of Gender Studies*, 2023, 28(4), p. 349.

<sup>33</sup> Smith, & Johnson *supra*, p.350.

The UN Women institution have consulted with teams all over the world on almost a constant basis, they collaborate together to create the global database on VAWG.<sup>34</sup> The concrete evidence found through this method of data collection dictates the following facts and figures. On a global scale, 35% of women have experienced physical or sexual intimate partner violence by a non-partner.<sup>35</sup> One in three women will experience a form of violence in their lifetime and are experiencing it right now.<sup>36</sup> The data indicates that less than 40% of women who experience violence seek any form of help.<sup>37</sup> 155 countries have passed laws on domestic violence and 140 have laws on sexual harassment in the workplace.<sup>38</sup> Human trafficking victims consist of 49% adult women globally, as well as one in five women between the ages of 20-24 were married before 18.<sup>39</sup> A minimum of 200 million women and girls ages 15-49 have undergone FGM in the 31 countries.<sup>40</sup> 15 million girls aged 15-19 worldwide have experienced forced sex.<sup>41</sup> Globally, as many as 38% of murders of women are committed by a male intimate partner<sup>42</sup>. 137 women across the world are killed by a member of their own family every day. Finally it is estimated that of the 87,000 women who were intentionally killed in 2017 globally, more than half (50,000 or 58%) were killed by intimate partners or family members.<sup>43</sup>

Another hurdle is school-related GBV which prevents girls' rights and access to education. One in ten women in the European Union have reported experiencing cyber-harassment since the age of

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<sup>34</sup> UN WOMEN. Global Database on Violence Against Women [online]. Unwomen.org, 8th of February 2021 [cit. On 8th of February 2021]. Accessible at: <https://evaw-global-database.unwomen.org/en>.

<sup>35</sup> UN WOMEN. Facts and Figures: Ending Violence Against Women [online]. Unwomen.org, 8th of February 2021 [cit. On 8th of February 2021]. Accessible at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figure>.

<sup>36</sup> Ibidem.

<sup>37</sup> Ibidem.

<sup>38</sup> Ibidem.

<sup>39</sup> Ibidem.

<sup>40</sup> UN WOMEN. Facts and Figures: Ending Violence Against Women [online]. Unwomen.org, 8th of February 2021 [cit. On 8th of February 2021]. Accessible at: <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figure>.

<sup>41</sup> Ibidem.

<sup>42</sup> WORLD HEALTH ORGANISATION "Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence," 2013.

<sup>43</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME "Global Study on Homicide: Gender-related killing of women and girls," 2018.

15.<sup>44</sup> Within North-Africa and the Middle East, 40-60% of women have experienced street based sexual harassment, and finally across five regions 82% of women parliamentarians have reported experiencing some form of psychological violence while in office.<sup>45</sup>

It must also be taken into consideration the underreporting that may be missing especially in cases where it is difficult to get access to the subjects' ie women and girls. These statistics are extremely relevant to the topic as it proves definitively that this issue is pertinent and penetrates a wide range of areas and needs to be addressed as a matter of urgency which is what this thesis will highlight.

## **1.8 Research and facts prior and during COVID19**

To understand why it had been predicted that GBV is set to increase and has increased here are some risk factors that need to be considered.

The COVID-19 pandemic has led to extensive job loss and economic impacts worldwide, contributing to the worst recession since World War II. As of the date of the data, only an estimated 42 percent of jobs disrupted by the pandemic in the US have been reinstated, reflecting similar patterns globally.<sup>46</sup>

However, these statistics overlook the informal workforce where a significant proportion of women are employed - 80 percent in South Asia, 74 percent in sub-Saharan Africa, and 54 percent in Latin America and the Caribbean. Women in this sector, often outside the protection of labour law, paid sick leave, social benefits, or insurance, are at a higher risk of exploitation and abuse. Job losses in this sector are usually uncounted and uncompensated, leaving many women with no choice but to continue working throughout the pandemic, often without the ability to seek medical attention, stop working, or quarantine if infected.<sup>47</sup>

The domestic services sector, primarily staffed by women and with limited labour protections, faced extreme job loss and increased risk of abuse. In the US, 93 percent of domestic workers lost

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<sup>44</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME "Global Study on Homicide: Gender-related killing of women and girls," 2018.

<sup>45</sup> Ibidem.

<sup>46</sup> ABDUL, AZIZ, Zarizana & MOUSSA Janine. COVID-19 and Violence Against Women. COVID19 and HUMAN RIGHTS. 2021 p. 105.

<sup>47</sup> Ibidem.

their jobs by late March 2020, while those who kept their jobs experienced more work, higher stress, and employer-imposed restrictions on leaving their residence or workplace.<sup>48</sup>

Furthermore, the financial and economic insecurity caused by the pandemic has led to increased family conflict and violence. Women, often bearing the brunt of increased care responsibilities due to job loss and school closures, face heightened tension, conflict, and risk of domestic violence. The increased daily contact resulting from quarantine and stay-at-home orders can exacerbate these conditions.<sup>49</sup>

To add to this the COVID-19 countermeasures, such as lockdowns and quarantines, can amplify a woman's isolation and confinement, escalating the risk of violence, especially with increased contact with the perpetrator. However, societal norms often categorize the home as a private space, thus discouraging intervention and leading victims in conservative communities to feel that they are breaching social norms by seeking help, which they believe can bring shame to their families.<sup>50</sup>

The UN Population Fund (UNFPA) estimates that ‘6 months of lockdowns could result in an additional 31 million cases of gender- based violence.’<sup>51</sup>

Once the COVID-19 pandemic started and lockdown measures were implemented globally, initial reports indicated a sharp rise in instances of GBV which are outlined below.

The United Nations reported in April 2020 that calls to helplines and online inquiries for GBV support had increased exponentially to be exact five-fold.<sup>52</sup> In many countries since the outbreak of COVID-19. For example, in France, cases of domestic violence reportedly increased by 30% following the lockdown on March 17, 2020.<sup>53</sup>

In Argentina, emergency calls for domestic violence cases increased by 25% after the lockdown was imposed. In Cyprus and Singapore, helplines received 30% more calls.<sup>54</sup>

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<sup>48</sup>Abdul Aziz & Moussa, p.106.

<sup>49</sup> Ibidem.

<sup>50</sup> Ibidem p. 106.

<sup>51</sup> UNITED NATIONS "Policy brief: The impact of COVID-19 on women" April 2020.

<sup>52</sup> Ibidem.

<sup>53</sup> UNITED NATIONS "Policy brief: The impact of COVID-19 on women" April 2020.

<sup>54</sup> Ibidem.

Online inquiries to domestic violence hotlines in some countries increased significantly as well. For example, an Australian site reported visits to their website were more than three times higher than normal.<sup>55</sup>

In China's Hubei province, the heart of the initial COVID-19 outbreak, domestic violence reports to police more than tripled during the lockdown in February 2020, from 47 last year to 162 this year, activists told local media.<sup>56</sup>

It is important to note that, while these figures provide some insight, they likely underrepresent the true prevalence of GBV. This is due to a variety of reasons including social stigma, fear of retaliation, limited access to services, and a lack of awareness or trust in the system, all of which contribute to underreporting. The issue may have been compounded during lockdowns when victims found themselves confined with their abusers, sometimes with limited access to communication channels for help.

The foregoing provides a crucial foundation to comprehensively appreciate the multifaceted challenges that will be elaborated further in this thesis. It is vital to assimilate these initial insights to holistically understand and explore this expansive issue.

As we delve deeper into the context of this research, our first point of analysis will be the two principal legal frameworks in the domain of women's rights - The Convention on the Elimination of All Forms of Discrimination Against Women CEDAW and the Council of Europe's Istanbul Convention. The focus will be on identifying legal inconsistencies, gaps in enforcement capabilities, the efficacy of self-reporting tools, reservations, and potential areas of contestation.

Subsequently, the thesis will examine the enforcement mechanisms available to these bodies, exploring their extent, their effectiveness, and potential lacunae within the system. Constructive suggestions will be presented throughout the thesis. Critiques will be counterbalanced with feasible solutions, emphasizing the potential for improvement within the system and reinforcing the argument that identified shortcomings can, and indeed, must be addressed.

The ensuing section will inaugurate the analysis with an in-depth exploration of CEDAW.

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<sup>55</sup> UNITED NATIONS "Policy brief: The impact of COVID-19 on women" April 2020.

<sup>56</sup> Ibidem.

## 2 International Legal Bodies

### 2.1 Analysis of the CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was established as a mechanism to promote gender equality and address pervasive gender discrimination. This international legal instrument has been recognized by a range of eminent feminist scholars as a potentially effective tool in the quest to eradicate gender inequality.<sup>57</sup> CEDAW comprises both of a treaty and a committee, thereby amalgamating legislative structures with protective mechanisms. The committee examines individual cases, uses precedent to guide decision-making, and issues recommendations based on its conclusions. This section of the thesis will examine the legislative aspect of CEDAW, with subsequent sections addressing the committee's role.

The treaty, also known as the CEDAW, was finalized in 1979 in New York. It functions as a de facto Bill of Rights for women and a manual on gender equality. Its preamble, though extensive, clearly articulates the treaty's aim and implementation strategy.<sup>58</sup> The treaty is comprised of thirty articles divided into six sections, providing a comprehensive coverage of a range of issues despite its relatively small size. The articles address a variety of areas including education, public life, political roles, workplace issues, and the right to freedom. Throughout the text, the onus is on the signing state parties to achieve equality between men and women.

Unlike other multilateral treaties, the CEDAW does not foster reciprocal relationships among the states. Instead, it imposes specific responsibilities on the states, thereby creating an objective system of human rights protection that safeguards both community and individual rights.<sup>59</sup> The underlying rationale of this approach is that state parties are primarily concerned with their own compliance, rather than the behaviour of other states. This strategy relies on the assumption that state parties, as willing participants in the treaty, are more likely to adhere to its stipulations.<sup>60</sup>

Before the advent of the COVID-19 pandemic, several structural weaknesses were discernible within the CEDAW. With the crisis at hand, these gaps have become more prominent, allowing

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<sup>57</sup> HELLMUM, Anne, SINDING AASEN, Henriette, *Women's Human Rights: CEDAW in International Regional and National Law*. Cambridge University Press. 2013, p. 3.

<sup>58</sup> Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979.

<sup>59</sup> Ibidem.

<sup>60</sup> ZEYAD Jaffal, Faisal Shawabkeh & Ali Hadi Al Obeidi *Toward constructive harmonisation of Islamic family law and CEDAW: a study on the UAE's reservation to CEDAW Article 16 and equal rights to marriage and family relations*, *Australian Journal of Human Rights*, 2022, 28:1, p 141.

VAWG to persist.<sup>61</sup> The observed deficiencies include the potential for misinterpretation due to ambiguous legislative wording, reservations, and insufficient integration of feminist theory.

A significant critique focuses on the capacity of states to assert reservations on certain elements of the legislation that may not align with their perspectives or policies. This ability to selectively engage with the legislation contributes to its undermined efficacy. Furthermore, the absence of robust enforcement mechanisms allows participating parties to neglect the obligations set forth by the CEDAW without facing significant consequences.<sup>62</sup>

The process of self-reporting has unveiled yet another method through which signatory states can circumvent the full array of CEDAW's requirements. This method, lacking comprehensive oversight, may enable inconsistencies between reported and actual adherence to the obligations. Lastly, ongoing controversies include issues related to Islamic reservations, cultural relativism, and intersectionality. These controversies further complicate the interpretation and application of CEDAW and serve as areas needing further exploration and understanding within the treaty's framework.

The CEDAW necessitates a thorough analysis, which inevitably leads to the proposal of several recommendations. These suggestions aim to address and potentially rectify identified concerns within the legislation, further strengthening its role and impact. Detailed elaboration of these recommendations follows, with one primary suggestion being the clarification and definition of some crucial legislative terminologies.

One of the key areas identified for improvement relates to the reservations that member states can currently apply. Four key recommendations are proposed in this regard: firstly, providing certain articles with an immunity status against reservations; secondly, establishing stricter guidelines for the application of reservations; thirdly, creating a separate evaluating entity responsible for assessing the reservations made by member states; and finally, transforming the underlying legislations into unequivocally legal questions. Moreover, considering the lack of enforcement powers, a recommendation is made for the CEDAW to develop customized strategies that could enhance its ability to enforce its provisions. This could entail increasing the responsibility and accountability of member states or upgrading the self-reporting system, which currently appears to fall short of its intended function.

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<sup>61</sup> Zeyad, *supra*, p.142.

<sup>62</sup> *Ibidem*.

Lastly, in relation to cultural concerns, it is suggested that the CEDAW should commit more resources to understanding the cultural backgrounds and nuances within its member states. This could be achieved through a closer collaboration with the states themselves, leading to the creation of bespoke plans that are consensually agreed upon by all parties involved. Through such measures, the CEDAW can work towards achieving a more effective and inclusive approach to promoting gender equality.

### **2.1.1 Legislative disparities**

Throughout the evolution of international human rights treaties, various assessments have been made. This segment will highlight the most conspicuous issues as they constitute the 'problem areas' that potentially allow for misinterpretation by signatory parties. The discussion will be divided into areas such as phrasing, which includes a reconsideration of feminist theory discussed previously. Subsequently, a thorough examination will be made into articles 2,16 and 28, identified as contentious due to their high reservation rates.

Although Feminist Theory has been integral to the persistence of CEDAW, it seems peculiar that it wasn't explicitly incorporated during the treaty drafting. Specifically, the usage of words like women or gendered terminology could unintentionally exclude non-binary individuals. This also perpetuates stereotypes and contradicts the concept that gender is a social construct, a critical approach for eliminating gender inequality. This is significant considering the content that follows. For instance, the term 'women' is repeated twelve times in Article 2 alone, coupled with two mentions of 'equality with men'.<sup>63</sup> These gendered terms may pose problems as they delineate these two categories, even though Article 1 provides a definition, it doesn't prevent misinterpretation. Given that more than two genders exist, certain states find these terms precarious. The most substantial opposition to the document arises from outlining the genders and their roles. If the legislation were reworded to state 'equality between genders' or 'sexes', it would remove this opposition and encompass all individuals.<sup>64</sup> This demonstrates how states could potentially identify reasons to object to the legislation.

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<sup>63</sup> Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 2.

<sup>64</sup> BALDEZ, Lisa. The UN convention to eliminate all forms of discrimination against women (CEDAW): A new way to measure Women's interests. *Politics & Gender*. 2011, Volume 7, Number 3, p. 421.

The Feminist Theory's paramount importance is undeniable, and it's impossible to discuss GBV without addressing equality. As previously mentioned, the socio-legal aspect must be examined in tandem to achieve meaningful progress in this field. CEDAW has faced criticism for its excessive reliance on first responders, such as police and judicial changes. In Frazer and Hutchings' work, they examine the politics of naming violence, a topic the UN doesn't elaborate on sufficiently.<sup>65</sup> They argue for a stronger focus on deconstructing gender roles and completely abolishing gender categorizations. This could be achieved by including more non-binary terms and acknowledging women as potential perpetrators of this form of violence. Their assertion that 'the UN and CEDAW do not sufficiently intertwine the politics of violence with the feminist theory to effectuate significant changes' suggests that this type of violence will continue unnamed and the entire concept of gender will remain unexamined.<sup>66</sup> The repeated use of 'woman' and 'man' throughout the treaty provides signatory parties with opportunities to circumnavigate the law. This arises from defining two genders that might not be universally applicable and aren't all-inclusive. It also oversimplifies the concept and reinforces the two primary genders and their differences, instead of deconstructing them to promote equality among all genders

Article 2 of the CEDAW is widely recognized as the cornerstone of the Convention, with the Committee itself acknowledging its crucial role in achieving the Convention's objectives.<sup>67</sup> The primary purpose of Article 2 is to address the role of legislation and legal institutions in combating gender discrimination. It emphasizes the importance of both *de jure* (formal) and *de facto* (practical) measures to ensure gender equality and eliminate discriminatory laws and customs. While the focus is on legal measures, the article also acknowledges the need for policy interventions and other appropriate measures.<sup>68</sup>

However, Article 2 has encountered significant reservations from various states. For instance, Saudi Arabia made a reservation to Article 2 when ratifying the CEDAW, stating that its implementation would be in accordance with Sharia law. Such reservations are often justified on the grounds of religious practice, customary law, traditional practices, or the preservation of existing constitutional or national law. The lack of detailed information regarding these

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<sup>65</sup> Baldez, *supra*, p.422.

<sup>66</sup> Frazer & Hutchings, *supra*, p.212.

<sup>67</sup> FREEMAN, Marsha A, CHINKIN, Christine and RUDOLF, Beate. *The UN Convention on the Elimination of All forms of Discrimination Against Women: A Commentary*. Oxford University Press, 2012, p. 183.

<sup>68</sup> *Ibidem*.

inconsistencies hampers efforts to address and resolve them, undermining the object and purpose of the treaty.<sup>69</sup>

The Committee has made efforts to address these reservations and encourage states to develop plans or reports committing to their withdrawal. However, progress in this regard has been limited, with no cases brought forward to challenge the validity of reservations to Article 2. The optional protocol established for this purpose has not been effectively utilized, resulting in a lack of meaningful action.<sup>70</sup>

Another issue related to Article 2 is the conduct of signatory parties as participants in other international treaties or organizations. Some states use their involvement in other treaties or the establishment of international organizations focused on women's empowerment as a justification for not fully complying with Article 2. However, there is a lack of regular checks or monitoring processes to ensure that these organizations meet the criteria outlined in the CEDAW. Consequently, signatory parties can evade their responsibilities without adequate scrutiny or accountability.<sup>71</sup> Additionally, some states consider their ratification of the CEDAW as sufficient, neglecting their obligations under other treaties. This selective approach undermines comprehensive efforts to protect human rights, as it overlooks crucial areas such as the rights of migrant workers.<sup>72</sup>

In light of these challenges, Article 2 requires closer attention to prevent its manipulation and ensure its effective implementation. States should be encouraged to fulfil their obligations by taking concrete actions rather than relying on mere gestures or using other treaties as substitutes. Addressing these issues will contribute to the realization of gender equality and the elimination of discrimination as envisioned by the CEDAW.<sup>73</sup>

Article 16 of the CEDAW focuses on women's rights within the family and has been a subject of significant reservations by many states.<sup>74</sup> The article begins with the statement that "the family is the natural and fundamental group unit of society," reflecting the societal importance placed on

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<sup>69</sup> Freeman *supra* p.190.

<sup>70</sup> Ibidem.

<sup>71</sup> Ibidem.

<sup>72</sup> Ibidem.

<sup>73</sup> Ibidem.

<sup>74</sup> Ibidem, p. 201.

marriage and family. This recognition of the family unit necessitates a careful examination of this article within the treaty.

One crucial aspect addressed in Article 16 is the role of women in marriage, which is often shaped by traditional gender roles and biological factors related to reproduction. This can place women in a complex position, where they are expected to fulfil nurturing roles while also being subjected to control.<sup>75</sup> Unfortunately, intimate partner violence is most prevalent within the context of marriage, highlighting the need for a comprehensive and effective approach to address this issue.<sup>76</sup>

Further to this within Article 16, paragraph (c) is particularly subject to reservations, which pertains to women's right to decide freely and responsibly on the number and spacing of their children, as well as their access to necessary information, education, and means to exercise this right.<sup>77</sup> Many states justify their reservations based on conflicts with Sharia law and other reasons. The broad nature and lack of flexibility in the wording of this paragraph contribute to the high number of reservations it receives.

One notable concern is the difficulty in governing the same rights and responsibilities outlined in Article 16(1)(c), (1)(d), and (1)(f). While the state parties are obligated to implement laws on equality for rights and responsibilities, it becomes challenging to extend these laws to the private realm of the family. Family dynamics, responsibilities, disputes, and inequalities are typically managed within the confines of the family and in a social and cultural context. The formal legal measures often fall short in effectively addressing these intricate matters that occur within the household.<sup>78</sup>

Furthermore, the concept of equality in the family becomes more complex when multiple legal systems, such as religious or customary laws, come into play. Many states apply personal status laws based on religious or community customs, which can lead to discrimination against women. This discriminatory treatment is often protected by constitutional law, making it difficult to challenge and change.<sup>79</sup> Reservations made by states parties citing religious or cultural contradictions further perpetuate this issue. While some progress may have been made in adopting

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<sup>75</sup> Ibidem.

<sup>76</sup> Ibidem.

<sup>77</sup> Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 16.

<sup>78</sup> Freeman, *supra*, p. 453.

<sup>79</sup> Ibidem.

new laws, the lack of frequent review and scrutiny by the Committee undermines the commitment to change and withdraw reservations.<sup>80</sup>

The lack of clear definitions for terms such as "marriage," "family," and "family relations" within the Convention also poses challenges. The varied definitions of marriage, deeply rooted in laws, cultures, and religions, create inconsistencies and ambiguities in ensuring equality in marriage and its dissolution. The Committee has yet to address the definition of same-sex marriage or other forms of personal relationships, leaving a gap in the protection of individuals involved in such relationships.<sup>81</sup> Additionally, the definition of family is limited and lacks flexibility, particularly in recognizing persons other than a spouse as family members. The dependence on formal acknowledgment by state parties restricts the scope of family relationships, potentially excluding certain individuals and denying them the rights and protections associated with family membership.<sup>82</sup>

The notion that the family is the "fundamental unit of society" and should be "protected" raises concerns regarding historical imbalances and biases. Historically, protection of the family has often favoured male authority, resulting in inequalities, particularly in areas such as property rights and divorce.<sup>83</sup> It is crucial to restate or further clarify these areas of wording to ensure that the rights and interests of all individuals, regardless of gender, are protected within the family context.<sup>84</sup>

Addressing these concerns requires a comprehensive review and revision of the language and provisions in Article 16, taking into account diverse cultural contexts and the need for gender equality in all aspects of family life.<sup>85</sup>

Article 28 of the CEDAW addresses the issue of reservations and their implications for the effectiveness of the treaty. This paragraph will examine the challenges associated with Article 28 and highlight the need for clearer guidelines and stronger enforcement mechanisms.

The reservation power granted to states under Article 28 is intended to allow for the customization of the treaty to accommodate specific national circumstances. However, it has been used by some

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<sup>80</sup> Freeman, *supra*, p. 453.

<sup>81</sup> *Ibidem* p. 458.

<sup>82</sup> *Ibidem*.

<sup>83</sup> *Ibidem*.

<sup>84</sup> *Ibidem* p. 455.

<sup>85</sup> *Ibidem*.

states as a means to selectively choose which women's rights obligations to accept. This undermines the purpose of international laws aimed at achieving gender equality.

The language used in Article 28 is ambiguous and open to interpretation. It states that reservations incompatible with the object and purpose of the convention shall not be permitted.<sup>86</sup> The lack of clarity in this provision leaves room for different entities to determine whether specific reservations are acceptable. It also raises the question of whether there should be an inherent obligation on states not to submit incompatible reservations in the first place. Currently, there is no independent entity responsible for judging reservations, resulting in a state-to-state practice of objections.<sup>87</sup> The broad wording of Article 28 has allowed for a significant number of reservations to be made, creating a wide spectrum of compliance among states. This undermines the effectiveness of the convention and hampers progress towards gender equality.

This article appears to be underdeveloped and ineffective, considering the large number of reservations made by states. It fails to provide sufficient mechanisms to address and control the use of reservations, ultimately weakening the power of the convention and the United Nations. Therefore, there is a pressing need to revise and strengthen Article 28 to restrict states' freedom to make reservations and enhance the authority and impact of the CEDAW.<sup>88</sup>

### **2.1.2 The power in reservations**

The reservation system within the framework of the CEDAW has raised significant concerns and requires a closer examination. This paragraph will explore the flaws and implications of the reservation mechanism, emphasizing the need for stricter guidelines and enhanced protection of women's rights.

The concept of *pacta sunt servanda*, which means agreements must be kept, is a fundamental norm in international law.<sup>89</sup> However, reservations to treaties, including CEDAW, contradict this principle by allowing states to selectively accept or modify certain provisions. The Vienna Convention defines reservations as exclusions or modifications of treaty provisions by states when

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<sup>86</sup> Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 28.

<sup>87</sup> Freeman, *supra*, pp. 450.

<sup>88</sup> *Ibidem*.

<sup>89</sup> BUENGER, Michael L. "Human Rights Conventions and Reservations: An Examination of a Critical Deficit in the Cedaw." *Buffalo Human Rights Law Review*, 20, 2013-2014, p.79.

ratifying a treaty.<sup>90</sup> Although CEDAW permits reservations that are not incompatible with the object and purpose of the treaty, there is no objective criterion to determine the compatibility of reservations.<sup>91</sup> This lack of clarity has resulted in a high number of reservations, with CEDAW having the most reservations among all treaties, totalling 108 non-technical reservations.<sup>92</sup>

The absence of an independent committee to handle reservations and the low benchmark for compatibility have further undermined the effectiveness of Article 28. Public statements by the committee have acknowledged the problematic nature of reservations, highlighting the unwillingness of state parties to fully implement treaty obligations. Despite efforts to designate certain articles as immune to reservations, such as Article 16, reservations persist, indicating a correlation between reservations and lower gender equality index scores.<sup>93</sup>

The reservation system also provides a platform for states to evade compliance by engaging in discussions and negotiations. Many states have made reservations or opted out of specific sections of CEDAW, creating gaps in their commitment to the treaty. Spain's reservation to Articles 2 and 9, allowing for gender-based discrimination in the monarchy, is a clear example of reservations contradicting the object and purpose of the treaty. However, the lack of accountability and enforcement mechanisms enables states to avoid punishment for breaching the convention.<sup>94</sup>

The case of reservations made to Article 2, which outlines the goals and objectives of CEDAW, highlights the inherent contradictions within the reservation system. The concept of incompatibility, as stated in Article 28, lacks clear criteria and decision-making mechanisms, leading to a subjective and inconsistent evaluation of reservations. The absence of a judging body for compatibility and the reliance on state-to-state exercises undermine the universality of substantive provisions intended by the UN.<sup>95</sup>

The reservation system employed by CEDAW reflects a "better than nothing" approach, which compromises the effectiveness and integrity of the treaty. This raises concerns about the ability of states to protect women and girls, especially during global crises such as the COVID-19 pandemic.

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<sup>90</sup> Vienna Convention on the Law of Treaties, Vienna 23 May 1969

<sup>91</sup> Buenger, *supra*, p.74.

<sup>92</sup> AHLGREN, Ellinore, Ratification, Reservations, and Review: Exploring the Role of the CEDAW Compliance Mechanisms in Women's Rights. *Journal of Public & International Affairs*. 2021, p. 201.

<sup>93</sup> Buenger, *supra*, p.75.

<sup>94</sup> *Ibidem*.

<sup>95</sup> *Ibidem*, p. 82.

The reservation system, in its current form, requires significant reforms to ensure the comprehensive and consistent implementation of CEDAW's goals and objectives.<sup>96</sup>

### **2.1.3 Lack of enforcement powers, compliance mechanisms and low violation costs**

The lack of enforceable power within the CEDAW is a significant flaw that hinders its effectiveness in promoting and protecting women's rights. The compliance mechanisms employed by the CEDAW rely on transparency and non-binding political processes, rather than a binding adjudicatory process. This means that the recommendations and findings of the committee carry limited weight and do not have the same level of enforceability as binding legal judgments.<sup>97</sup>

Efforts have been made to strengthen the enforcement mechanism through optional protocols, but the willingness of states to sign these protocols has been lacking. Consequently, the CEDAW heavily relies on shaming states into compliance or potentially imposing economic disadvantages, which may not always be effective, particularly when dealing with states that are strongly influenced by religious or cultural beliefs.<sup>98</sup>

Furthermore, there is a lack of clarity regarding the minimum terms of compliance. Different states may interpret and implement the treaty provisions differently, leading to inconsistencies in their level of adherence. The absence of a binding obligation to ratify the treaty allows states to avoid taking on the responsibility altogether, as demonstrated by countries like the United States, Afghanistan, Iran, and North Korea, which have not ratified the CEDAW.<sup>99</sup>

The absence of an international legal framework that mandates states to adhere to treaty obligations in good faith further compounds the issue. This means that states have the freedom to decide how they implement treaties, and there are no legal consequences for failing to comply. As a result, even in countries like the United States, where women's rights violations occur, the CEDAW is unable to provide meaningful assistance or enforcement.<sup>100</sup>

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<sup>96</sup> Buenger, *supra*, p.75.

<sup>97</sup> *Ibidem* p.80.

<sup>98</sup> *Ibidem*.

<sup>99</sup> *Ibidem*.

<sup>100</sup> Mullins, *supra*, p. 263

These challenges highlight the limitations of the CEDAW's current mechanisms and the need for a stronger and more enforceable framework to ensure the protection and promotion of women's rights worldwide.<sup>101</sup>

#### **2.1.4 The insubstantiality of the self-reporting instrument**

The monitoring of CEDAW's implementation relies primarily on self-reporting by states. This means that each state is responsible for establishing its own monitoring committee and submitting periodic reports to the CEDAW. The initial report is due one year after ratification, followed by subsequent reports every four years upon request by the committee. These reports should cover the status of women, progress towards gender equality, and any challenges encountered in implementing the treaty.

However, the power of the committee in response to these reports is limited. They can seek clarification on certain points, develop recommendations for further investigation, and provide non-binding recommendations for treaty implementation. Unfortunately, these recommendations lack enforceability and do not carry any punitive consequences for non-compliance.

Critics point out several drawbacks of the self-reporting mechanism. One concern is the lack of adequately established and effective monitoring committees within states, which may result in incomplete or inaccurate reporting. There is also a significant backlog of reports, with approximately sixty-seven reports pending review, indicating a lack of timely and efficient reporting.<sup>102</sup> The fluctuating nature of the reports and the tendency of some countries to disregard the committee's recommendations further undermine the effectiveness of self-reporting as a compliance mechanism. The challenges posed by reporting fatigue have become more evident during the COVID-19 pandemic, as the need for swift action and response highlighted the limitations of the CEDAW in addressing urgent and evolving issues.

In order to address these issues, the CEDAW should consider taking on a more proactive role in assisting states with the establishment of effective monitoring committees and ensuring timely reporting. Additionally, measures should be put in place to encourage states to prioritize the implementation of the committee's recommendations and to enhance the enforceability of these recommendations for more effective compliance.

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<sup>101</sup>Mullins, *supra*, p. 263

<sup>102</sup>*Ibidem*.

### 2.1.5 Remaining speculations

The opposition to the CEDAW is particularly evident among Islamic states, which commonly make reservations based on the compatibility of the Convention with Islamic Shariah law. This trend is observed in several countries, including Saudi Arabia, Algeria, Egypt, Lebanon, Bahrain, Oman, Libya, Mauritania, Malaysia, Brunei, Maldives, and Jordan.<sup>103</sup> These reservations encompass various articles, such as Article 2 on general measures, Article 9 on nationality, Article 15 on freedom of residence, and Article 16 on equality in marriage and family relations.<sup>104</sup> Canada and Austria have objected to these reservations, arguing that they are incompatible and cannot be modified or altered. However, the fact that these reservations are permitted without any consequences highlights the frustration and lack of accountability within the CEDAW.

Taking Jordan as a case study, the legitimacy of its commitment to the CEDAW is questionable. Although Jordan ratified the Convention in 1992 with reservations, its ratification may be invalid due to the lack of approval in the national assembly and opposition from society.<sup>105</sup> Despite this, according to the Vienna Convention on the Law of Treaties, Jordan is still bound by the CEDAW's provisions. The influence of the CEDAW in Jordan is further challenged by scholars and members of the Islamic Action Front Party, who view it as an attack on Arab and Islamic societies. The combination of legal and societal opposition presents significant obstacles to the implementation of the CEDAW in Jordan.<sup>106</sup>

While there have been some positive steps, such as the lifting of reservations and the submission of reports, there is still a long way to go in terms of fully implementing the CEDAW in Jordan and other Islamic states. Gender inequality remains prevalent, particularly in patriarchal societies where women often lack aspirations beyond family life and adhere to male authority. Issues such as honour killings, virginity testing, leniency for rapists, and the exemption of punishment for honour crimes and adultery-related killings persist.<sup>107</sup> The CEDAW committee has made specific recommendations for amendments and improvements in these areas, but their enforcement remains a challenge.

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<sup>103</sup> MAYSA, Bydoon, "Reservations on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Based on Islam and its Practical Applications in Jordan: Legal Perspectives" (2011) 25:1 Arab LQ 51, p. 60.

<sup>104</sup> Ibidem.

<sup>105</sup> Ibidem.

<sup>106</sup> Ibidem p. 68.

<sup>107</sup> Maysa, *supra*, p. 64.

The atrocities and violations of women's rights in these states, particularly in the context of the COVID-19 pandemic, highlight the urgent need for stricter implementation of the CEDAW. The reservations made by these states and the legal loopholes they exploit undermine gender equality and perpetuate discrimination. These issues should have been addressed long ago, as they have a devastating impact on vulnerable individuals, especially in times of crisis.

In conclusion, the significant number of reservations incompatible with the CEDAW, particularly in Islamic states, undermines the effectiveness of the Convention. The loopholes and violations identified in the implementation of the CEDAW have severe consequences for gender equality, which are exacerbated during crises such as the COVID-19 pandemic. Urgent action is needed to address these challenges and ensure the full realization of women's rights.

Cultural relativism is a theory that recognizes the existence of different beliefs, customs, and moral values within cultures.<sup>108</sup> It acknowledges that these cultural practices are shaped by their specific context and should be understood and respected within that context. In the context of CEDAW, cultural relativism poses a challenge as it leads to reservations or non-compliance by states based on cultural or religious grounds, such as Islamic or Christian beliefs.<sup>109</sup>

The dilemma faced by CEDAW is that not every state will fully embrace the principles and obligations outlined in the Convention. Some argue that dismissing cultural norms or traditions from an external perspective may be disrespectful or ignorant. They suggest that progress towards gender equality should come from within each culture, taking into account their specific circumstances and values. The focus should be on promoting women's education, which naturally leads to greater equality.<sup>110</sup>

Critics argue that imposing Western norms on non-Westernized states may not be the most effective approach and could lead to resistance and backlash. They propose the need for a new approach that takes into consideration the unique needs and cultural differences of these states. It is important to find ways to engage with these states and foster dialogue to promote gender equality while respecting their cultural values.

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<sup>108</sup>LAUREN Bock Mullins (2018) CEDAW: The Challenges of Enshrining Women's Equality in International Law, *Public Integrity*, 20:3, p. 260.

<sup>109</sup> Ibidem.

<sup>110</sup> Maysa, *supra*, p. 65.

In summary, the concept of cultural relativism challenges the imposition of Western norms on non-Westernized states. It highlights the need for a more culturally sensitive approach that respects diverse perspectives and seeks progress from within each culture.

There are two large deficiencies in the CEDAW the lack of insight into intersectionality and the absence of an emergency clause. The General Recommendation 35 on GBV is mentioned as a document that should address these aspects, but it falls short in its effectiveness.

The General Recommendation 35 serves as a tool for providing updated information and recommendations on GBV. While it is a step in the right direction, it is not comprehensive enough to make a significant difference. One major concern is the absence of an emergency protocol, particularly in situations of state of emergency or disease outbreaks like SARS, Ebola, or Malaria. The recommendation fails to address this crucial aspect.<sup>111</sup>

Furthermore, while the recommendation briefly mentions intersectionality and its contribution to gender inequality, it does not take concrete preventive actions to address its effects. It also does not adequately incorporate other intersecting factors such as race, disability, and sexual identity. The limitations of the intersectionality theory are not properly acknowledged or addressed.<sup>112</sup> Another critique is the lack of evidence in crucial areas, such as the comment on the slow deterioration of the rule of law. This raises questions about the allocation of funds and priorities within the Committee. There is also a need for a filtering system to prioritize prevailing concerns, including issues like GBV in refugee/asylum claims.<sup>113</sup> Additionally, the recommendation lacks depth and reporting capabilities, leading to significant gaps in wording and articles that should address the mentioned shortcomings.<sup>114</sup>

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<sup>111</sup> VIJEYARASA, Ramona. CEDAW's General Recommendation No.35: A quarter of a century of evolutionary approaches to violence against women. *Journal of Human Rights*, 2020, Volume 19. No.2. p 160.

<sup>112</sup> VOHRA-GUPTA, Shetal. The convention on the elimination of all forms of discrimination against women (CEDAW): Does it achieve gender equality? Examining critical success factors through a feminist policy analysis framework. *Dissertation Abstracts International A: The humanities and social sciences*. 2010, Volume 71 Number 03, p 111.

<sup>113</sup> Convention of the Elimination of All Forms of Discrimination against Women General recommendation No. 35 on gender-based violence against women, updating general recommendation No.19. 26 July 2017. Paragraph 7.

<sup>114</sup> Vohra-gupta, *supra*, p. 164.

In summary, while the General Recommendation 35 is a step towards addressing GBV, it fails to adequately address intersectionality and lacks an emergency clause. It also falls short in terms of depth, reporting capabilities, and addressing crucial gaps in the wording and articles.

### **2.1.6 Recommendations based on these findings/ summary**

In relation to Reframing or updating the wording of the legislation there seems to be a wide range of issues with the initial drafting of the legislation accordingly there should also be many possible solutions. In order to appease the Feminist Theory there should be updated definitions or added feature of the CEDAW which delineates or establishes this gender wording. It is a very difficult process to re-write the legislation all together. So, this solution of an added fixture/feature seems to be an appropriate resolution. Simply put the one sentence in article 1 ‘on the basis of sex’ is not enough to push through the message of feminism which is equality of all genders. An added preamble or explanation must be added to make it indisputable that this document is not only about women. In order for it to not be met with the anti-gender movement it can also be secretly inserted like this and not completely altered in the already existing document. If not in the original document, it can also be done through optional protocols and committee decisions. As of right now it is excluding anyone who does not necessarily fit this category of women and missing the whole point of feminism.

In regards to article 2 it is simple and that is to make this a fundamental cornerstone of the document immune to reservations see below for those details. Relating to article 16 as pointed out earlier those words such as ‘rights and responsibilities’, ‘marriage and family relations’, are without clear definition. The broad nature of the document is to try catch as many states as possible but really leaves a lot to be desired. In this case many states in fear of misinterpreting some of these words, in defence mode make reservations. Without a clear definition or reference point for some of these key words that define the document it’s hard to know exactly what it means. There needs to be greater clarification to these phrases and perhaps even an update of the terms to meet modern needs such as same-sex marriages or other partnerships. Finally, with article 28 also view sections of reasonable solutions for substantial reservations below.

In the context of reasonable solutions for the substantial reservation this is an extremely important factor in bypassing liability for actions expected of the states when signing and ratifying the convention it should requisite a multifold of possible resolutions. Another reason for these multifold resolutions is this concern does not only affect CEDAW but on many international

legislation and treaties. This is such an insurmountable challenge that has not seen any progress being made over the period of time of its existence. Therefore, it is not a bad idea to present a variety of possible solutions. This can also account for the adjustability and catering to the specific needs of each individual state.

Executing a mandate that demands that some articles be immune to reservations. This cannot be stressed enough that reservations being made are simply a never-ending prolongation of responsibility for the states. This is because they are permitted to make these reservations with the intention of withdrawing them or modifying. They are also of course made through the correct legal channels with a purpose and some comments. Regardless of this frequently the reservations are made without any strict guidelines which means that they are made without clear direction and therefore cannot be reprimanded by article 28. There are a number of articles mostly including 2, 16 and 28 which have been mentioned before that must be made unable to make any reservations on them. Especially article 2 which is the backbone of the convention.

Yes, this may lead to some states completely withdrawing from the convention as they do not want to be backed into a corner. Nevertheless, what is the point of the states signing and ratifying if they do not align with the core articles/ values of the convention anyway? There needs to be some accountability and action taken before the situation continues and there may be even further consequences than the pandemic has already highlighted.

Stringent guidelines to be obligatory for all reservations: There can also be some modifications made to reservations as well such as a time limit. An example of this can be found in the IC where there is only a five-year term that has strict rules to be renewed for all reservations. This can easily be added into article 28 of the legislation as an added section.

This second suggestion will suit the ideology of the CEDAW a little better as it is not so strict but still an inviting and opening attitude of modifications. That the CEDAW allows for these reservations to be allowed to continue if they present a very strict report stating how they plan to with time and resources remove the reservations. They can also allow for modifications in cases of sharia law or money or other legitimate reasons that may need time.

Recommendations for strengthening the effectiveness of the CEDAW are as follows establishment of an Independent Entity for Evaluating Reservations and Ensuring Accountability. To address the limitations of the state-to-state approach in dealing with reservations, it is recommended to establish a dedicated entity within the CEDAW committee. This entity would be responsible for

evaluating reservations made by states and ensuring their compatibility with the provisions of the Convention. By eliminating the practice of reservations, governments would be compelled to fully comply with the obligations outlined in the legislation.

Treating reservations as a legal question this can be to enhance clarity and consistency in addressing reservations, a legal approach should be adopted. This may involve involving the International Court of Justice (ICJ) to determine the validity of reservations. A consensus-driven process or a predetermined threshold of states questioning the compatibility of reservations could be established to provide a more structured mechanism for evaluating reservations.

Development of tailor-made compliance plans to be able to strengthen enforcement measures, it is suggested to establish minimum requirements for each state that are reasonable and attainable. These requirements could be supported by a Security Council resolution, giving them binding force.<sup>115</sup> Additionally, the appointment of women's advocates could prove beneficial in assisting states in addressing any constitutional contradictions and aligning their laws with the principles of the Convention. South Africa's successful integration of the CEDAW into national law, exemplified by the Domestic Violence Act, serves as a positive model in this regard.<sup>116</sup>

Enhancement of reporting mechanism for the reason of improving the self-reporting system, increased resources and support should be allocated to the CEDAW committee. This would help address the existing backlog of reports and ensure more accurate and timely reporting. Alternatively, an alternative approach could involve the CEDAW committee conducting on-site visits to assess the implementation of the Convention, supplementing or even replacing the self-reporting mechanism. By implementing these recommendations, the CEDAW could strengthen its effectiveness in promoting gender equality and ensuring the full realization of women's rights worldwide.

Addressing misunderstandings with Islamic states to clarify the relationship between Sharia law and the CEDAW, comprehensive studies were conducted in Malaysia and the UAE. These studies examined various aspects of the legal, constitutional, marriage and family, policy, economic, and social perspectives to gain a deeper understanding of the compatibility between Sharia law and gender equality principles.

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<sup>115</sup> Vohra-gupta, *supra*, p. 164.

<sup>116</sup> *Ibidem*.

The main findings of these studies reveal that there is no inherent opposition to gender equality within these countries. Both Malaysia and the UAE acknowledge the importance of justice; however, the interpretation of equality remains a point of contention.<sup>117</sup> It is worth noting that the influence of the CEDAW has had positive effects on the advancement of women's rights in these contexts.<sup>118</sup>

Furthermore, the studies underscore the need to consider religious and cultural dimensions when formulating articles related to gender equality. They emphasize that Malaysia and the CEDAW share a common goal of empowering women and combating gender discrimination.<sup>119</sup> The UAE study also highlights the diverse interpretations within different branches of Sharia law, suggesting the possibility of finding a compromise that aligns with the principles of the CEDAW. Expert teams specializing in Islamic law could play a vital role in facilitating this harmonization process.

Considering these factors, it is recommended to establish an independent body, separate from state entities, that includes members from the CEDAW and respected individuals from within the respective countries. The primary objective of this body would be to foster cooperation between Sharia law and the CEDAW, seeking common ground and promoting a more nuanced approach to gender equality.

This proposed solution aligns with the cooperative nature of the CEDAW and avoids punitive measures. However, it is important to note that certain issues, such as honour killings in Jordan, would require separate considerations, possibly leading to their complete abolition.

Bridging the gap between the CEDAW and culturally different states would involve addressing the challenges posed by the cultural differences between the CEDAW and culturally diverse states, a comprehensive and collaborative approach is needed. Recognizing the inherent resistance to change and unfamiliarity associated with the imposition of Western ideologies, it is imperative to promote greater cooperation and mutual understanding between the CEDAW and these states.

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<sup>117</sup>NADZRAH, Ahmad, RABIAH, Aminudin, OTHMAN, Roslina, NORZULAILI, Ghazali and NURUL SYUHADA, Ismail. CEDAW Implementation in Malaysia: An Overview of Reservations from Islamic Perspective. Intellectual Discourse Special Issue, 2017, p. 625.

<sup>118</sup> ZEYAD, Jaffal, FAISAL Shawabkeh & ALI Hadi Al Obeidi (2022) Toward constructive harmonisation of Islamic family law and CEDAW: a study on the UAE's reservation to CEDAW Article 16 and equal rights to marriage and family relations, Australian Journal of Human Rights, 28:1, p142.

<sup>119</sup> Ibidem.

To achieve this, the following measures are proposed: Culturally Diverse Personnel: The CEDAW should strive to establish a team comprising individuals from culturally diverse backgrounds, including those from the states in question. This approach would facilitate a deeper understanding of diverse perspectives and foster meaningful dialogue.<sup>120</sup>

In order to counter the flexibility in legislative language and implementation while upholding the fundamental principles of gender equality, there is a need for flexibility in the wording and implementation of legislation. By taking into account the unique cultural contexts of different states, it is possible to accommodate their specific circumstances while making progress towards gender equality.<sup>121</sup>

Enhanced cooperation and participation and encouraging increased participation from culturally diverse states is essential. This can be achieved through proactive communication, regular engagement, and consensual monitoring by the CEDAW. For instance, states with distinct cultural backgrounds may require tailored monitoring approaches, allowing for gradual progress while ensuring evidence of advancements.<sup>122</sup>

In-Depth research and data collection is a comprehensive understanding of the cultural nuances and perceptions related to gender equality and is crucial. Conducting thorough research and gathering accurate data can shed light on the specific interpretations of concepts like equal rights and responsibilities. This knowledge can facilitate the identification of common ground and the formulation of effective policies.<sup>123</sup>

It is important to note that achieving meaningful change takes time, and incremental progress should be embraced. Furthermore, the inclusion of an intersectionality framework within the CEDAW is vital to address various intersecting forms of discrimination.<sup>124</sup> Lastly, given the significance of emergency situations, the CEDAW should consider incorporating an emergency clause within its framework to effectively respond to crises, such as the COVID-19 pandemic, with strategies to mitigate gender-based violence and protect vulnerable women.

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<sup>120</sup> LAUREN Bock Mullins CEDAW: The Challenges of Enshrining Women's Equality in International Law, *Public Integrity*, 2018, 20:3, p 260.

<sup>121</sup> *Ibidem* p 261.

<sup>122</sup> *Ibidem* p 270.

<sup>123</sup> *Ibidem* p 275.

<sup>124</sup> *Ibidem*.

Addressing Intersectionality and the Need for an Emergency Clause within the CEDAW Framework Intersectionality refers to the concept of multiple factors, including race, gender, sexual orientation, disability, class, ethnicity, and others, intersecting within systems of inequality. For example, Muslim women may experience discrimination based on both their religious affiliation and gender, making it difficult to separate their female identity from their Muslim identity.<sup>125</sup>

The importance of intersectionality lies in the understanding that achieving equality requires addressing all forms of discrimination simultaneously. Focusing on one aspect while neglecting others can undermine the effectiveness of efforts and render policies inadequate. For instance, addressing gender-based violence without considering socio-economic status, race, or immigration status would result in an ineffective approach. Furthermore, laws that provide support only to women with financial stability or legal rights within the country may fail to meet the needs of women from low socio-economic backgrounds or precarious immigration statuses, rendering them useless to a significant portion of the population.<sup>126</sup>

To ensure comprehensive coverage of all forms of inequality, it is crucial for the CEDAW to incorporate an intersectional feminist framework. While it may not be feasible to rewrite the entire convention, legislative mechanisms such as the general recommendation can be utilized to address this aspect.

In conclusion, it is highly recommended to mandate the inclusion of an emergency plan within the CEDAW framework to effectively respond to similar crises, such as the ongoing Covid-19 pandemic. This plan should encompass strategies for allocating funds and providing support to women who may find themselves trapped with abusive partners during lockdowns.

### **2.1.7 Brief recap of the CEDAW**

The CEDAW faces several challenges that impact its effectiveness in addressing VAWG. These challenges include legislative disparities, unaccountable reservations, limited enforcement powers, inefficient self-reporting, and considerations of Sharia law, cultural relativism, and intersectionality. Legislative disparities arise from the lack of incorporating Feminist Theory in the drafting of the CEDAW, leading to broad and potentially misinterpreted articles. To address

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<sup>125</sup> LOMBARDO, Emanuela, AUGUSTIN, Roladsen, Lise. Intersectionality in European Union policy making: the case of gender-based violence. Sage Publishers, 2016. p 8.

<sup>126</sup> Ibidem.

this, potential solutions include updating the legislation to reflect modern needs and defining key terms. Additionally, certain articles could be made non-negotiable to prevent reservations.

Unaccountable reservations pose a challenge as states can make reservations without facing consequences. To address this, potential solutions include designating certain articles as non-reservable, transforming reservations into legal questions, establishing a separate legal entity to review reservations, or implementing stricter rules for making reservations. Limited enforcement powers restrict the CEDAW's ability to ensure compliance. To overcome this, a balanced approach should be adopted that emphasizes cooperation and tailored interventions rather than punitive measures.

The self-reporting tool has proven to be inefficient, leading to backlogs and unreliable data. Potential solutions involve modifying the tool to better accommodate the needs of individual states, allocating additional resources to address the backlog, or replacing the tool with a more robust reporting mechanism. Furthermore, considerations of Sharia law, cultural relativism, and intersectionality require further research, education, and cooperation. These efforts should aim to bridge gaps in understanding and promote dialogue between different perspectives.

In conclusion, addressing these challenges requires a comprehensive and multifaceted approach that combines legal amendments, accountability measures, enhanced reporting mechanisms, and increased efforts towards education and cooperation.

## 2.2 The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

The Istanbul Convention (IC) operates within the Council of Europe (COE) and is a significant instrument for monitoring and addressing violence against women and domestic violence. It differs from other international bodies as it establishes policies that involve national and government entities, such as GREVIO. The Convention complements and expands upon the standards set by regional human rights organizations in this field. Its primary focus is on prevention, prosecution, protection of victims, and the adoption of gender-sensitive policies.<sup>127</sup> The Convention incorporates two monitoring components: an independent expert body (GREVIO) and a committee of parties, which work together to develop and submit reports and ensure their implementation. The document itself is comprehensive and lengthy, consisting of 81 articles divided into twelve chapters, and it includes research methods, data gathering techniques, and formal requirements.<sup>128</sup>

One key difference between the Istanbul Convention and the CEDAW is that the former is the most comprehensive international and legally binding text specifically addressing the prevention and combating of violence against women.<sup>129</sup> It also takes into consideration a feminist perspective by highlighting structural gender inequalities. For instance, Article 3(c) defines gender as the socially constructed roles, behaviours, activities, and attributes that a given society deems appropriate for women and men.<sup>130</sup> This contrasts with the CEDAW, which defines gender primarily in terms of being male or female.

Another notable distinction is the extensive coverage of criminal offenses constituting violence against women, with 81 articles compared to the CEDAW's 30.<sup>131</sup> The Istanbul Convention directly links the elimination of violence against women and the enjoyment of all human rights to gender equality objectives. However, this gender-neutral approach has faced criticism, as some

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<sup>127</sup> BERTHET, Valentine. Norm under fire: support for and opposition to the European Union's ratification of the Istanbul Convention in the European Parliament. *International Feminist Journal of Politics*. 2020 September. Volume 24, Issue 5, p 676.

<sup>128</sup> Ibidem.

<sup>129</sup> Ibidem.

<sup>130</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 3(c).

<sup>131</sup> MANJOO, Rashida, JONES, Jones. *The Legal Protection of Women from Violence: Normative Gaps in International Law*. 2018. Taylor & Frances Group p 140.

scholars and NGOs express concerns about not explicitly naming women. Additionally, while the Convention was developed by the EU, it is not limited to EU member states, as Turkey was once a party to the Convention. The EU strongly encourages all member states to sign and ratify the Convention to ensure accountability.<sup>132</sup>

The Istanbul Convention includes stricter rules on reservations in Articles 78 and 79. Article 78(1) specifies that reservations are generally not allowed, except for those explicitly listed in Article 78(2), which identifies specific articles where reservations may be made.<sup>133</sup> This differs from the CEDAW, which does not impose limitations on reservations. Article 79(1) establishes a five-year limitation period on reservations. Moreover, if a state party fails to notify or modify a reservation before the expiration period, as notified by the Secretary-General at least 18 months in advance, the reservation lapses. These provisions introduce rigorous criteria for admissibility and maintenance of reservations, which were absent in the CEDAW.<sup>134</sup>

These differences are essential in the subsequent analysis, as they enable a comprehensive and holistic approach. The paper will address the critiques and bridge the gaps between these two conventions, leaving no aspect unexplored. Beginning below with the problematic areas within the IC.

### **2.2.1 Political willingness of states**

The Istanbul Convention, officially known as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, is an international treaty aimed at addressing violence against women and domestic violence. However, Turkey's decision to withdraw from the Convention in March 2021 has raised concerns and led to critical analysis of the following issues:

Weakening of Legal Protections, The Istanbul Convention provides a comprehensive legal framework for the prevention and response to violence against women and domestic violence. Turkey's withdrawal from the Convention undermines the legal protections provided by the

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<sup>132</sup> BERTHET, Valentine. Norm under fire: support for and opposition to the European Union's ratification of the Istanbul Convention in the European Parliament. *International Feminist Journal of Politics*. 2020 September. Volume 24, Issue 5, p 677.

<sup>133</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 78.

<sup>134</sup> *Ibidem* article 79.

Convention, including the criminalization of domestic violence and the provision of protection measures for victims.<sup>135</sup>

There is now a normalization of violence due to the decision to withdraw from the Istanbul Convention which sends a message that the state does not prioritize the issue of violence against women. This can potentially contribute to the normalization of violence and a lack of accountability for perpetrators.

Turkey's withdrawal from the Convention has had negative implications for its international reputation, particularly in terms of human rights and gender equality. This can impact diplomatic relations and economic partnerships with other countries. It sends a bad message that this convention can be easily withdrawn from and is weak.<sup>136</sup>

There is a big risk now to women's lives as Turkey has faced significant challenges in addressing femicide, with high rates of GBV. The withdrawal from the IC increases the risk to women's lives, as the Convention provides a framework for preventing and responding to violence against women and domestic violence.<sup>137</sup>

There is now a limitation put on women's rights the withdrawal from the IC is part of a broader trend of limitations on women's rights and freedoms in Turkey. This includes restrictions on freedom of expression, media, civil society, as well as constraints on reproductive rights and access to healthcare.<sup>138</sup>

In conclusion, Turkey's withdrawal from the IC raises concerns regarding the protection of women's rights, the normalization of violence, its international reputation, the safety of women, and limitations on women's rights. It is crucial for governments to prioritize the prevention and response to violence against women and domestic violence, and the IC serves as a significant legal framework in this regard.

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<sup>135</sup> Council of Europe. (2021) Turkey's announced withdrawal from the Istanbul Convention endangers women's rights. [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: [https://www.coe.int/en/web/commissioner/news-2021/-/asset\\_publisher/Arb4fRK3o8Cf/content/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights](https://www.coe.int/en/web/commissioner/news-2021/-/asset_publisher/Arb4fRK3o8Cf/content/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights)

<sup>136</sup> Ibidem.

<sup>137</sup> Amnesty International. (2021). Turkey: Withdrawal from Istanbul Convention risks lives of women and marginalised groups. [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://www.amnesty.org/en/latest/news/2021/03/turkey-withdrawal-from-istanbul-convention-risks-lives-of-women-and-marginalised-groups/>

<sup>138</sup> Ibidem.

Turkey's decision to withdraw from the IC has generated apprehension among other states that have ratified the treaty. The IC is widely recognized as a valuable instrument for preventing and addressing violence against women and domestic violence. Many countries have used it as a basis for developing national laws and policies in this area.<sup>139</sup>

This withdrawal has the potential to influence other countries that have ratified the treaty, particularly those facing similar challenges regarding gender-based violence. It may signal to these states that withdrawal is a viable option, thereby undermining efforts to combat gender-based violence.<sup>140</sup>

Moreover, human rights organizations and activists have voiced concerns about the implications of Turkey's withdrawal for women's rights and gender equality within the country. The decision is seen as a setback for the global movement to end violence against women and girls.<sup>141</sup>

In response to Turkey's withdrawal, several countries, including Bulgaria and Poland have indicated that they would like to follow in their footsteps. This has been an example to the world that it is possible and those states in precarious position may follow suit. The European Union has also expressed its concern about Turkey's withdrawal and its potential impact on women's rights and gender equality in the country.<sup>142</sup>

Overall, while Turkey's withdrawal from the IC represents a setback for the global movement to end violence against women and girls, it underscores the ongoing need for efforts to promote and safeguard women's rights and gender equality worldwide.

### **2.2.2 The immense gap between signing and ratifying the Convention**

The gap between the signing and ratification of a treaty can give rise to adverse consequences, including uncertainty regarding the intentions and commitments of a state, as well as delays in the

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<sup>139</sup> Amnesty International. (2021). Turkey: Withdrawal from Istanbul Convention risks lives of women and marginalised groups. [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at: <https://www.amnesty.org/en/latest/news/2021/03/turkey-withdrawal-from-istanbul-convention-risks-lives-of-women-and-marginalised-groups/>

<sup>140</sup> Council of Europe. (2021). Istanbul Convention: A monitoring report on the state of play of signature and ratification by member states of the Council of Europe.[online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://rm.coe.int/rapport-istanbul-convention-2021/1680a0b6d7>

<sup>141</sup> The Sofia Globe. (2021, March 22). Bulgaria urged to ratify Istanbul Convention after Turkey withdraws. [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://sofiaglobe.com/2021/03/22/bulgaria-urged-to-ratify-istanbul-convention-after-turkey-withdraws/>

<sup>142</sup> Ibidem.

implementation and enforcement of treaty obligations. When a state signs a treaty, it signals its intention to become a party to the treaty, but it is not yet legally bound by its provisions. Ratification, however, represents the formal process by which a state gives its consent to be bound by the treaty and to be held accountable for its obligations under the treaty.<sup>143</sup>

This interim period between signing and ratification may engender uncertainty concerning the state's true intentions. Other states and treaty bodies may question whether the state intends to genuinely uphold its commitment to the treaty or if it is merely making superficial declarations. Such uncertainty can erode trust between states and undermine the effectiveness of the treaty.

Additionally, the gap between signing and ratification can lead to delays in the implementation and enforcement of treaty provisions. Until a state has completed the ratification process, it may be hesitant to take measures to implement the treaty's provisions or establish the necessary institutional frameworks for effective enforcement. Consequently, progress on critical matters addressed by the treaty, such as human rights, environmental protection, or arms control, can be impeded.<sup>144</sup>

For instance, the United States signed the Kyoto Protocol on climate change in 1998 but did not ratify it, generating uncertainty regarding its commitment to addressing climate change. Consequently, other countries were reticent to pursue robust action in the absence of US participation. Consequently, global climate action was impeded for numerous years.

In conclusion, the gap between signing and ratifying a treaty can have detrimental implications for both the state and the international community. It can foster uncertainty regarding a state's intentions and commitments, while also causing delays in the implementation and enforcement of treaty provisions. Therefore, it is crucial for states to promptly ratify treaties following their signing in order to demonstrate their commitment and promote effective implementation of the treaty's provisions.<sup>145</sup>

All member states of the EU have signed the Istanbul Convention; however, seven of these states, namely Bulgaria, Czech Republic, Hungary, Lithuania, Latvia, and Slovakia, have yet to ratify it.

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<sup>143</sup> RAJAMANI L. The role of signature and ratification in the promotion of multilateral environmental agreements. In *Multilateral Environmental Agreements 2011*, Routledge, p 30.

<sup>144</sup> UNITED NATIONS TREATY COLLECTION (n.d.). Signature and ratification status. [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx>

<sup>145</sup> Ibidem.

It is worth noting that these seven member states share the commonality of being former socialist countries.<sup>146</sup>

It is important to highlight that the European Parliament has made significant efforts to encourage the remaining parties to ratify the IC. In 2019, a non-legislative resolution was adopted, urgently calling upon the state parties to ratify the treaty.<sup>147</sup> Regrettably, these efforts did not yield the desired outcome. Furthermore, during a session of the UN Commission on the Status of Women on February 13, the European Parliament officially reiterated its call for ratification.

To conclude, the gap between signing and ratifying a treaty presents a crucial issue with potential negative consequences for both the state and the international community. The resulting uncertainty can erode trust between states and impede progress on significant matters addressed by the treaty. This is evident in the case of the IC, where several member states of the European Union have signed the treaty without proceeding to ratify it. Despite the European Parliament's endeavours to encourage ratification, these states have yet to take the necessary steps to become parties to the treaty. It is essential for states to fulfil their commitments and ratify treaties in a timely manner to promote effective implementation and demonstrate their dedication to the international community.

### **2.2.3 The anti-gender ideology conservative values**

Another noteworthy distinction lies in the opposition to gender equality, which often manifests in various forms, commonly categorized as movements. It can be defined as any activity that articulates perspectives opposing feminist politics and gender equality policies, with the potential to influence or actually influence politics or policymaking at any stage.<sup>148</sup> Based on this definition alone, it becomes evident that this opposition holds significant importance in the realms of politics and policies. Consequently, it necessitates serious consideration as a credible obstacle to the success of the IC.

The rhetoric commonly employed in opposition undermines the values enshrined within the Convention. It typically upholds heteronormative and traditional family values, which rely on gendered and conservative expectations regarding the sexual division of labour, education, and

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<sup>146</sup>BALOGH, Lidia, *The Ratification Status of the Council of Europe's Istanbul Convention among EU Member States*. MTA Law Working Papers, 2020/7 p. 2.

<sup>147</sup> *Ibidem*.

<sup>148</sup> BERTHET, Valentine. *Norm under fire: support for and opposition to the European Union's ratification of the Istanbul Convention in the European Parliament*. *International Feminist Journal of Politics*. 2020 September. Volume 24, Issue 5, p. 677.

reproductive rights.<sup>149</sup> Illustrative examples include the anti-abortion marches in Germany during the early 2000s, the organized protests against education reform in Stuttgart in 2014, and the demonstrations against same-sex marriage in Paris, France, in 2012.<sup>150</sup> The existence of such stances persists today, as demonstrated by Poland's continued prohibition of abortion.

To underscore the significance of this issue, it is noteworthy that the rhetoric and movements opposing gender equality are more commonly observed in states that have yet to ratify the Istanbul Convention. This represents a prominent factor contributing to the potential hindrance to the Convention's success posed by anti-gender equality practices.

Turkey's withdrawal from the Convention further accentuates the importance of this opposition. The reasons cited for withdrawal align with the aforementioned rhetoric, thus reinforcing the significance of this movement. Turkey cited two primary reasons for withdrawal: first, the Convention was viewed as challenging traditional family structures, thereby allegedly detrimentally affecting family unity. Second, the Convention's inclusion of gender definitions and the incorporation of sexual orientation and gender identity into its anti-discrimination provisions aimed to broaden the scope of LGBTQI+ rights. Consequently, it was perceived as potentially pressuring states to introduce same-sex marriage and recognize a third gender category within civil law.<sup>151</sup>

#### **2.2.4 Legal wording being misinterpreted**

The IC is an international treaty with legal binding force that aims to prevent and combat violence against women and domestic violence. However, certain provisions and terminology within the Convention have been subject to misinterpretation, resulting in adverse consequences and effects.

One instance of misinterpretation relates to the term "gender" used in the Convention. Critics contend that the Convention's broad usage of the term could potentially promote non-traditional gender roles or undermine traditional family values. Consequently, some countries, such as Bulgaria and Hungary, have encountered resistance towards ratifying the Convention due to this misinterpretation.<sup>152</sup>

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<sup>149</sup> Berthet, *supra*, p. 678.

<sup>150</sup> BALOGH, Lidia, The Ratification Status of the Council of Europe's Istanbul Convention among EU Member States. MTA Law Working Papers, 2020/7 p 4.

<sup>151</sup> *Ibidem* p. 679.

<sup>152</sup> Council of Europe. (2011). Convention on preventing and combating violence against women and domestic violence. [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at:

<https://rm.coe.int/168008482e>

Another area of misinterpretation concerns the Convention's provisions on abortion. Although the Convention does not explicitly mention abortion, opponents argue that it could be misused to advocate for abortion as a form of violence against women. Consequently, objections to ratifying the Convention have arisen in countries such as Poland and Slovakia.<sup>153</sup>

The misinterpretation of the Istanbul Convention's legal language has resulted in negative consequences and effects, including delays in ratification, reluctance to implement its provisions, and a decline in trust between states. In certain cases, this misinterpretation has led to regression in women's rights and the protection of survivors of violence.<sup>154</sup>

For example, in 2020, Poland announced its intention to withdraw from the Istanbul Convention, citing concerns over the alleged promotion of abortion and perceived conflict with religious sentiments and traditional gender roles. This decision sparked significant criticism from human rights organizations and advocates for women's rights.<sup>155</sup>

In conclusion, the misinterpretation of legal language within the IC has had detrimental consequences and effects, leading to delays in ratification, reluctance in implementing its provisions, and a decline in trust between states. It is crucial for states to engage in informed and constructive dialogue concerning the Convention's provisions, addressing any concerns or misunderstandings transparently and collaboratively.

### **2.2.5 Residual critiques**

There is a lack of the integration of the feminist theory, although the IC is widely regarded as a progressive and legally binding document, it falls short of meeting the desired standards of many feminists. This sentiment is evident in a statement made by Ingrid Westendrop during her presentation on the implementation of the IC in 2018. She observed that, like most multilateral treaties, the IC is a text comprised of compromises and generalities designed to attract as many

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<sup>153</sup> Council of Europe. (2011). Convention on preventing and combating violence against women and domestic violence. [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at: <https://rm.coe.int/168008482e>

<sup>154</sup> Buxton, J. (2019). The Council of Europe's Istanbul Convention: Key debates and controversies. European Parliament. [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_IDA\(2019\)634410](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2019)634410)

<sup>155</sup> Ibidem.

State parties as possible.<sup>156</sup> Westendrop further highlighted the limitations of a gender-neutral approach, emphasizing that women generally find themselves in a socio-economic position that is different and often weaker than men. This socio-economic disparity not only makes women more vulnerable to domestic violence but also creates additional challenges for them in leaving abusive relationships.<sup>157</sup> These criticisms underline the need to update and amend the gender-neutral agenda of the Convention to better address the needs of the women it aims to protect.

Feminists consistently raise four main points of concern regarding the IC. Firstly, the management of GBV is approached in a gender-neutral manner, which proves impractical. Gender differences largely contribute to the power dynamics addressed by this Convention. For instance, the prevalent gender pay gap in most countries perpetuates the power imbalance in relationships, leading to GBV. Furthermore, the underrepresentation of women in positions of power, including politics, exacerbates this gender imbalance.<sup>158</sup>

Secondly, the Convention's focus on creating shelters for domestic violence victims is problematic. Instead, the emphasis should be on facilitating easier access to restraining orders, which effectively remove perpetrators from their homes and have proven effective in protecting victims.<sup>159</sup>

Thirdly, the Convention's overreliance on the criminal law approach is contentious. In reality, many women in such situations are reluctant to press charges against their partners due to potential negative and lasting consequences for the victims. Moreover, the criminal process is often lengthy and burdensome, with no guarantee of a satisfactory outcome. Consequently, alternative dispute resolution mechanisms, such as mediation, should be emphasized to foster win-win solutions in most cases.<sup>160</sup>

Lastly, attention must be directed towards marginalized women, particularly those at the intersection of multiple forms of discrimination, as highlighted by the intersectionality theory. This includes migrant, refugee, and asylum seeker women, a pertinent consideration given Istanbul's reputation as a transit point for such individuals attempting to reach Europe. The Convention is often criticized for inadequately addressing these issues. More efforts should be

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<sup>156</sup> BALOGH, Lidia, *The Ratification Status of the Council of Europe's Istanbul Convention among EU Member States*. MTA Law Working Papers, 2020/7 p. 6.

<sup>157</sup> *Ibidem*.

<sup>158</sup> *Ibidem*.

<sup>159</sup> *Ibidem*.

<sup>160</sup> *Ibidem*.

made to specifically address these cases and cater to the unique and challenging circumstances faced by these women, such as limited access to legal remedies and challenges arising from displacement and language barriers.<sup>161</sup>

It is evident that in order to remain relevant in the face of evolving societal challenges, the IC strike a balance between broadness and adaptability. It is crucial not only to draft comprehensive articles but also to ensure flexibility in reviewing and amending outdated sections. Feminist scholars have aptly identified four key areas that currently require attention and, importantly, are amenable to resolution.

In conclusion, to meet the expectations of feminists and address contemporary concerns, the IC must go beyond compromises and generalities, adapting to the current context. Striking the right balance between breadth and flexibility is challenging but crucial. By addressing the main pressing issues, the Convention can evolve and better serve its objectives.

Now on to the De-Europeanisation of the IC has sparked controversy within the European Union (EU), with certain member states refusing to ratify the treaty. This has raised concerns about the potential de-Europeanization of the EU, as the failure to adopt common values and principles pertaining to human rights, gender equality, and violence against women and girls may undermine the unity and cohesion of the EU.

The IC was adopted by the Council of Europe in 2011 with the objective of preventing and combating violence against women and domestic violence. Recognizing violence against women as a severe violation of human rights, the Convention establishes legal and policy frameworks to address this issue.<sup>162</sup>

However, several member states have declined to ratify the IC, expressing apprehensions about potential repercussions on traditional family values and national sovereignty. Such refusals have elicited criticism from other member states and human rights organizations, contending that the

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<sup>161</sup> Balogh, *supra*, p. 6.

<sup>162</sup> HUMAN RIGHTS WATCH "Why Turkey's withdrawal from the Istanbul Convention matters", March 23, 2021, [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://www.hrw.org/news/2021/03/23/why-turkeys-withdrawal-istanbul-convention-matters>

failure to ratify the Convention signifies a disregard for fundamental human rights and gender equality principles.<sup>163</sup>

The refusal to ratify the IC by certain member states raises concerns regarding the risk of de-Europeanization within the EU. De-Europeanization refers to the potential erosion of shared values, principles, and policies that member states have developed and endorsed over time, potentially leading to fragmentation and disintegration of the EU.<sup>164</sup>

This concern is particularly pertinent in the case of the IC, as VAWG represents a fundamental human rights issue with implications for the protection of all individuals, regardless of their nationality or gender. Neglecting to address this issue may undermine the EU's commitment to upholding human rights and gender equality, which are fundamental principles of the EU.<sup>165</sup>

In conclusion, the refusal of certain member states to ratify the IC raises concerns about the potential de-Europeanization of the EU. Failure to adopt common values and principles pertaining to human rights, gender equality, and violence against women and girls could undermine the unity and cohesion of the EU and have ramifications for the protection of all individuals. It is imperative for all member states to collaborate in upholding fundamental human rights and gender equality, and to comprehensively and effectively address issues such as VAWG.

## **2.2.6 Propositions that should be considered moving forward**

Below are a list of possible avenues to take for the EU going forward to attempt to mend the gaps that have been mentioned above. There is a variety of options and recommendations as this will give options and highlight the great number of inadequacies that have been discovered. These recommendations are listed below in order of the highlighted gaps mentioned above so that it can be easily followed.

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<sup>163</sup> HUMAN RIGHTS WATCH "Why Turkey's withdrawal from the Istanbul Convention matters", March 23, 2021, [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at:

<https://www.hrw.org/news/2021/03/23/why-turkeys-withdrawal-istanbul-convention-matters>

<sup>164</sup> AMNESTY INTERNATIONAL "Turkey's withdrawal from the Istanbul Convention: What you need to know," Amnesty International, March 22, 2021, [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://www.amnesty.org/en/latest/news/2021/03/turkey-withdrawal-from-istanbul-convention-what-you-need-to-know/>

<sup>165</sup> Ibidem.

In terms of political willingness of the states, governments should prioritize the prevention and response to violence against women and domestic violence and should ensure that legal frameworks such as the IC are in place to provide comprehensive legal protections for women.

States should avoid withdrawing from international treaties and Conventions aimed at protecting women's rights and combating GBV. Withdrawal from such agreements can have negative implications for women's rights, normalization of violence, and international reputation.<sup>166</sup> Countries that have signed the IC should reaffirm their commitment to the treaty and continue to use it as a framework for developing national laws and policies to prevent and combat violence against women and domestic violence.

Human rights organizations and activists should continue to raise awareness about the impact of GBV on women's rights and gender equality and should advocate for policies and measures aimed at preventing and responding to such violence.<sup>167</sup> International organizations such as the UN and the EU should continue to monitor the implementation of international agreements aimed at protecting women's rights and preventing GBV and should take action to address violations of these agreements. This means that whatever funding is still available after COVID-19 should be funnelled into these women's rights groups or organisations that are fighting the battle against VAWG within each member state. There should also be further allocation of EU funds to this matter as some struggling states such as Turkey do not have these funds and may be another reason they chose to withdraw.<sup>168</sup>

In terms of closing the gap between signing and ratifying the treaty the states should not sign treaties unless they have a strong intention to ratify them. The international community should continue to pressure states to ratify treaties they have signed to ensure that the treaties are implemented and enforced effectively. The EU should take more proactive steps to encourage the remaining member states to ratify the IC, as the failure to do so has created uncertainty and slowed progress on important issues addressed by the treaty. The European Parliament and other international organizations should continue to use their influence to urge states to ratify treaties they have signed, as this is essential for ensuring that the treaties are effective in achieving their

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<sup>166</sup> ANADOLU AGENCY "Turkey's exit from Istanbul Convention endangers women: EU," March 24, 2021, [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at <https://www.aa.com.tr/en/europe/turkeys-exit-from-istanbul-convention-endangers-women-eu/2187696><https://www.aa.com.tr/en/europe/turkeys-exit-from-istanbul-convention-endangers-women-eu/2187696>

<sup>167</sup> Ibidem.

<sup>168</sup> Ibidem.

goals. The pressure can manifest in such ways as an effective timeline put in place in the states to ensure signing, or punitive damages to those states they must contribute more funds to the EU for example.<sup>169</sup>

In order to counter the gender ideology opposition there are five avenues you can take which include the following. Engagement in dialogue it's essential to foster open and meaningful dialogues with opponents of gender equality to address their concerns and demystify misconceptions. This could involve community meetings, public forums, or mediated discussions involving stakeholders from diverse backgrounds. Next is education reform a reformation of educational curricula can help ensure that the ideas of gender equality, diversity, and non-discrimination are instilled from an early age. Educational institutions should aim to develop students' understanding of gender issues, fostering a more accepting and equal society.

The use of legal strategies which include strengthening laws and policies that protect gender equality and counter discriminatory practices can play a critical role. This might involve reinforcing legislation that penalizes hate speech, discrimination, and violence based on gender or sexual orientation. As well as alternative dispute resolution methods should be emphasized instead of a criminal law approach. This can include mediation and counselling services that provide both parties with a "win-win" situation.

The states can use the involvement of media and influencers to propagate messages that counter the rhetoric of opposition movements and underline the importance of gender equality can reach wide audiences. These messages should aim to debunk stereotypes, highlight the benefits of an inclusive society, and emphasize the damaging effects of gender-based discrimination.

Finally continual research and awareness should be conducted to gain insights into the concerns and ideologies of opposition movements. Such findings can be used to develop effective awareness campaigns, highlighting the importance of the Istanbul Convention in addressing gender-based violence and discrimination.<sup>170</sup>

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<sup>169</sup> ANADOLU AGENCY "Turkey's exit from Istanbul Convention endangers women: EU," March 24, 2021, [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at <https://www.aa.com.tr/en/europe/turkeys-exit-from-istanbul-convention-endangers-women-eu/2187696><https://www.aa.com.tr/en/europe/turkeys-exit-from-istanbul-convention-endangers-women-eu/2187696>

<sup>170</sup> COUNCIL OF EUROPE, 2019, Istanbul Convention: Who has signed and ratified it? [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at: <https://www.coe.int/en/web/portal/istanbul-convention/signatures-ratifications>

To narrow down the misinterpretation of legal wording to start with clarify the term "gender" in the convention: The misinterpretation of the term "gender" has led to resistance to the Convention's ratification in some countries. Therefore, it is essential to clarify the definition of "gender" in the Convention to prevent misunderstandings and to ensure that the Convention's provisions are implemented correctly. Furthermore to address the concerns about abortion: The Convention does not explicitly mention abortion, but opponents argue that it could be used to promote abortion. To address these concerns, it is important to engage in constructive dialogue and clarify that the convention's provisions do not promote abortion as a form of violence against women.<sup>171</sup>

There needs to be a stress on increasing awareness and education about the Convention. The misinterpretation of legal wording in the IC has led to delays in ratification and resistance to implementation. Therefore, it is essential to increase awareness and education about the Convention's provisions to prevent misunderstandings and ensure that the convention is implemented correctly. Encourage transparency and collaboration: It is important for states to engage in informed and constructive dialogue about the convention's provisions and to address any concerns or misunderstandings in a transparent and collaborative manner. This will help to prevent erosion of trust between states and ensure that the Convention is implemented effectively.<sup>172</sup>

Finally the integration of the feminist theory in the text this can be done by should acknowledging and addressing the fact that gender-neutral approaches may not be effective in addressing the root causes of gender-based violence. The Convention should focus on addressing the power imbalances that exist in relationships, particularly in areas such as the gender pay gap and representation of women in positions of power. Instead of solely focusing on creating shelters for victims of domestic violence, the Convention should emphasize the need for easily accessible restraining orders as a means of protecting victims.<sup>173</sup> As well as giving greater attention to the unique circumstances faced by migrant, refugee, and asylum seeker women which is

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<sup>171</sup> COUNCIL OF EUROPE, 2019, Istanbul Convention: Who has signed and ratified it? [online] on the 7th of May 2023. Cit on the 7th of May 2023 available at: <https://www.coe.int/en/web/portal/istanbul-convention/signatures-ratifications>

<sup>172</sup> Ibidem.

<sup>173</sup> COUNCIL OF EUROPE, 2020 Statement by the Secretary General on Poland's intention to withdraw from the Istanbul Convention. [online] on the 7<sup>th</sup> of May 2023. Cit on the 7<sup>th</sup> of May 2023 available at: <https://www.coe.int/en/web/portal/-/statement-by-the-secretary-general-on-poland-s-intention-to-withdraw-from-the-istanbul-convention>

implementing the intersectionality theory. This can include addressing language barriers, displacement, and limited access to the law.

It is essential to maintain the support of the EU through universal ratification of the IC by all member states: It is essential that all member states of the EU ratify the Istanbul Convention, as it provides a robust legal and policy framework for preventing and addressing violence against women and domestic violence. Universal ratification would demonstrate a unified commitment to upholding human rights and gender equality across the EU.

The EU should enhance its mechanisms for monitoring and enforcing the implementation of the Istanbul Convention. This can be achieved by establishing effective monitoring and reporting systems to ensure member states' compliance. Additionally, the EU should provide technical assistance and capacity-building support to help member states effectively implement the Convention's provisions and hold them accountable for any shortcomings.

The EU should actively support comprehensive awareness-raising campaigns aimed at educating the public about the importance of preventing and addressing violence against women and domestic violence. These campaigns should target both men and women, challenge harmful gender stereotypes, and promote positive gender relations. By raising awareness, the EU can foster a culture of respect, equality, and zero tolerance for violence.

Finally the mainstreaming the issue of violence against women and girls is vital. The EU should integrate the issue of violence against women and girls into all relevant policy areas, ensuring it is given due consideration in economic, social, and foreign policies. This integration should include allocating funding for research and data collection on violence against women and girls, as well as incorporating the issue into the EU's overarching human rights and gender equality strategies. By mainstreaming the issue, the EU can address the root causes and contribute to comprehensive and sustainable solutions.

In conclusion, to effectively combat violence against women and domestic violence, the EU should take concrete steps, including universal ratification of the Istanbul Convention, strengthening enforcement mechanisms, promoting awareness and education, and mainstreaming the issue into all policy areas. These actions would demonstrate a strong commitment to upholding human rights, gender equality, and the protection of women and girls across the European Union.

### **2.2.7 Conclusion**

The Istanbul Convention is a treaty within the Council of Europe that aims to prevent and combat violence against women and domestic violence. It is different from the CEDAW as it operates within the COE, constructs policies that connect national and governmental bodies such as GREVIO, and has two monitoring components, GREVIO and a committee of parties. It is the most comprehensive international and legally binding text on preventing and combating violence against women and is the only instrument to take into consideration a feminist perspective. However, Turkey's withdrawal from the convention in March 2021 has sparked debate and criticism both nationally and internationally, which has negative implications for legal protections, normalization of violence, international reputation, risk to women's lives, and limitations on women's rights.

On top of this, some of its legal wording has been misinterpreted, leading to negative consequences and effects. For example, some countries resist ratification due to concerns about the convention's use of the term "gender," which they fear could promote non-traditional gender roles or undermine traditional family values. Others object to the Convention's ratification due to their belief that it could be used to promote abortion as a form of violence against women. Additionally, the Convention's lack of integration of feminist theory is criticized, particularly regarding the handling of domestic violence victims, the overuse of criminal law approaches, and the lack of attention to migrant, refugee, and asylum-seeking women. Feminist scholars have indicated that the Convention needs to adapt to the current situation, be flexible, and review and amend outdated sections. It is also extremely important to note that due to all the gaps and holes mentioned above that COVID-19 was able to seep through and cause destruction. If these gaps or holes had been addressed prior to the pandemic than it can be effectively said that the pandemic would not have had such a large detrimental effect on GBV.

### **3 Practice of the enforcement of these international legal bodies**

The effective protection and promotion of women's rights and human rights within the international legal framework are critical in achieving gender equality and empowering women worldwide. Two key institutions that play a vital role in this regard are the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the European Court of Human Rights (ECtHR). These institutions are entrusted with the responsibility of monitoring the implementation of international human rights standards, including those specifically aimed at eliminating discrimination against women. However, both the CEDAW Committee and the ECtHR have faced significant critiques regarding various aspects of their functions and effectiveness.

This thesis aims to critically analyse and evaluate the major critiques directed towards the CEDAW Committee and the ECtHR, with a focus on their enforcement mechanisms, representation, responsiveness to individual complaints, and legal factors. By examining these critiques in depth, the thesis seeks to propose recommendations and reforms that can enhance the effectiveness and impact of these institutions in promoting and protecting women's rights and human rights more broadly.

Particular attention will be given to the CEDAW Committee's lack of enforceability, limited representation of diverse voices, slow response to individual complaints, and the need for strengthened legal remedies and implementation mechanisms. Additionally, the ECtHR's critiques regarding the backlog and slow processing of cases, limited enforcement powers, lack of diversity among judges, and challenges in the interpretation and application of the law will be scrutinized.

By analysing these critiques and proposing comprehensive recommendations, this thesis aims to contribute to the ongoing discourse on strengthening the mechanisms and functions of the CEDAW Committee and the ECtHR. It seeks to provide insights and practical solutions to enhance the protection and promotion of women's rights and human rights within the international legal framework.

### 3.1 CEDAW Committee

The CEDAW committee is a United Nations treaty body composed of 23 independent experts who are responsible for monitoring the implementation of the CEDAW. The CEDAW Committee reviews periodic reports submitted by States Parties to the Convention, provides guidance on the implementation of the Convention, and issues general recommendations on various aspects of women's rights. The Committee also receives individual complaints from women who have experienced violations of their rights under the Convention and may conduct inquiries into situations of grave or systematic violations of women's rights. The ultimate goal of the CEDAW Committee is to promote gender equality and the empowerment of women worldwide.<sup>174</sup>

#### 3.1.1 Three Major critiques of the committee

There is a lack of enforcement mechanisms which means the absence of robust enforcement mechanisms. The CEDAW Committee has raised concerns about the effectiveness of the Convention. While the Committee can issue recommendations, it lacks the power to enforce compliance or impose sanctions on States Parties. This limitation undermines the Committee's ability to ensure the implementation of its decisions and the fulfilment of obligations under the Convention. To address this, options should be explored to enhance the enforcement capacity of the Committee, such as establishing a mechanism for monitoring compliance, developing incentives for states to comply, and considering the feasibility of creating a dispute settlement mechanism to adjudicate cases of non-compliance.

Critics have pointed out the limited representation of diverse voices and perspectives within the CEDAW Committee. Women from marginalized communities, including women of colour, women with disabilities, and indigenous women, may not be adequately represented in the Committee's composition. This raises concerns about the Committee's ability to fully understand and address the unique challenges faced by these groups, resulting in potential gaps in the promotion and protection of their rights. To address this, efforts should be made to ensure better representation by actively seeking nominations from underrepresented regions and communities and promoting diversity in the selection process, ensuring that a range of experiences and perspectives are reflected in the Committee's work.<sup>175</sup>

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<sup>174</sup> Committee on the Elimination of Discrimination against Women [online.] <https://www.ohchr.org/> 6<sup>th</sup> of May 2023 [cit. on the 6<sup>th</sup> of May 2023 accessible at: <https://www.ohchr.org/en/treaty-bodies/cedaw>

<sup>175</sup> LANGFORD, Malcom. The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems? International Journal of Water Resources Development Volume 21 Issue 2 2007 p. 275.

The CEDAW Committee has faced criticism regarding its slow response to individual complaints of women who have experienced violations of their rights under the Convention. Delays in the complaint handling process can hinder access to justice and effective remedies for victims. To enhance the responsiveness of the Committee, procedural reforms should be considered, such as streamlining the complaint procedures, establishing clear timeframes for the handling of complaints, and providing adequate resources and support to expedite the process. Additionally, the Committee should prioritize cases involving severe violations to ensure timely and effective redress for victims.<sup>176</sup>

The need for the development of stronger legal remedies and implementation mechanisms within the CEDAW framework. This entails exploring options to provide more robust legal avenues for victims of gender-based discrimination and violence to seek redress at both the national and international levels. Strengthening the legal remedies may involve encouraging States Parties to incorporate CEDAW provisions into their domestic legislation, ensuring effective access to justice, providing reparations for victims, and establishing monitoring mechanisms to track the implementation of CEDAW obligations. By enhancing the legal framework and mechanisms, the effectiveness and impact of the Convention can be bolstered, leading to greater protection of women's rights.<sup>177</sup>

By addressing the lack of enforcement mechanisms, promoting better representation, improving the responsiveness to individual complaints, and strengthening legal remedies and implementation mechanisms, the CEDAW Committee can enhance its role in promoting and protecting women's rights worldwide. These measures will contribute to the effective implementation of the Convention, ensuring that it remains a powerful tool in advancing gender equality and empowering women globally.

### **3.1.2 Recommendations:**

Below are listed recommendations to the above mentioned critiques it is important to list recommendations to highlight the fact that solutions are available but are not being taken.

The establishment an enforcement mechanism which is imperative to strengthen the CEDAW by establishing a specialized enforcement mechanism, such as a court or tribunal. This mechanism

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<sup>176</sup> TADROS, Mariz. *Women in Politics: Gender, Power and Development*, Bloomsbury Publishing 2014 p. 250.

<sup>177</sup> *Ibidem*.

should possess the necessary authority to hear cases, issue binding decisions, and enforce compliance with CEDAW obligations. The enforcement mechanism should have the power to impose sanctions or remedies to ensure the effective implementation of the Convention.<sup>178</sup>

It is crucial to increase pressure for compliance. Efforts to enhance compliance with CEDAW obligations should include robust advocacy and public awareness campaigns. Member states should be encouraged to fulfil their obligations under the Convention through diplomatic means, such as engaging in dialogue, exerting diplomatic pressure, and leveraging other mechanisms of international law. Additionally, regular reporting and monitoring of member states' compliance should be conducted, and non-compliance should be addressed through diplomatic channels and appropriate remedies.

There needs to be exploration of alternative enforcement avenues this is in addition to a centralized enforcement mechanism. This may involve empowering national human rights institutions or civil society organizations to play a role in monitoring and ensuring compliance with CEDAW obligations. These entities can contribute to the enforcement process by conducting independent monitoring, submitting reports, and initiating legal action on behalf of victims. Adequate resources, training, and support should be provided to facilitate their effective engagement.

To address limited representation, it is crucial to ensure that the composition of the CEDAW Committee reflects diverse backgrounds and experiences. This can be achieved by establishing clear criteria for selecting Committee members, which prioritize a range of cultural, linguistic, and geographic representation. Special emphasis should be placed on ensuring the inclusion of women from marginalized communities who have first-hand knowledge of the discrimination and challenges faced by these groups.<sup>179</sup>

Active engagement of civil society organizations and women's groups in the work of the CEDAW Committee is essential for effective implementation of the Convention. This can be achieved through increased opportunities for participation, including public consultations, expert meetings, and thematic dialogues. Adequate resources and support should be provided to facilitate their

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<sup>178</sup> "The Case for a Women's Rights Court" by Navanethem Pillay, [online] on the 6<sup>th</sup> of May 2023. cit. on the 6<sup>th</sup> of May 2023, available at: <https://www.opensocietyfoundations.org/sites/default/files/the-case-for-a-womens-rights-court-20130226.pdf>

<sup>179</sup> "Making CEDAW Work for Women: A Handbook for Women's Rights Advocates" by the Women's Rights Division of Human Rights Watch,[online] on the 6<sup>th</sup> of May 2023. cit. on the 6<sup>th</sup> of May 2023, available at: [https://www.hrw.org/sites/default/files/reports/wrd0707web\\_1.pdf](https://www.hrw.org/sites/default/files/reports/wrd0707web_1.pdf)

involvement, such as funding for their participation, capacity-building initiatives, and provision of technical assistance.

To ensure a comprehensive and informed approach, the work of the CEDAW Committee should be grounded in diverse perspectives. This can be achieved through commissioning research and studies on emerging gender equality issues, hosting expert consultations, and seeking input from a wide range of stakeholders. Close collaboration with academic institutions, think tanks, and civil society organizations can contribute to evidence-based decision-making and a more comprehensive understanding of the challenges and progress related to gender equality.

In order to counter the slow response to complaints efforts should be made to streamline and expedite the CEDAW Committee's procedures for receiving and considering individual complaints. This includes establishing clear timelines for the processing of complaints, providing complainants with comprehensive guidance on the submission requirements, and ensuring that the Committee has sufficient capacity to efficiently handle complaints.<sup>180</sup>

Adequate resources and capacity should be allocated to the CEDAW Committee to enable it to respond effectively to individual complaints. This includes securing adequate funding to support the necessary staff, infrastructure, and technical expertise required for efficient complaint handling. Additionally, Committee members should receive training and support to enhance their knowledge of legal procedures, human rights standards, and gender-related issues.

Finally empowering civil society organizations is necessary to overcome the challenges associated with slow response to complaints, civil society organizations and women's groups should be empowered and provided with the necessary resources and support to play a more active role in addressing and assisting with individual complaints. This can include capacity-building initiatives, training programs, and financial assistance to enhance their ability to support complainants, gather evidence, and provide necessary information during the complaint process. Collaboration between the CEDAW Committee and civil society organizations can contribute to a more efficient and effective handling of complaints, ensuring timely access to justice for victims of gender-based discrimination and violence.

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<sup>180</sup>"Ensuring Access to Justice: A Handbook on Women's Right to Legal Aid in CEDAW" by UN Women, [online] on the 6<sup>th</sup> of May 2023. cit. on the 6<sup>th</sup> of May 2023, available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/ensuring-access-to-justice-a-handbook-on-women%27s-right-to-legal-aid-in-cedaw-en.pdf?la=en&vs=4652>

### 3.1.3 Conclusion

In conclusion, the CEDAW Committee is a crucial UN treaty body that monitors the implementation of the CEDAW, reviews periodic reports from States Parties, issues recommendations on various aspects of women's rights, and receives individual complaints from women who have experienced violations of their rights. However, the Committee has faced several critiques, including a lack of enforceability, limited representation of diverse voices and perspectives, and slow response to complaints. To address these critiques, recommendations have been proposed, such as strengthening the CEDAW Convention by creating a mechanism for enforcement and compliance, increasing diversity and representation on the CEDAW Committee, streamlining the Committee's procedures for receiving and considering individual complaints, and increasing the resources and capacity of the Committee to respond more effectively to individual complaints. Overall, addressing these critiques and implementing the proposed recommendations can enhance the effectiveness of the CEDAW Committee in promoting gender equality and the empowerment of women worldwide.<sup>181</sup> Given the statistics mentioned in the 1.8 it was vital to make the committee an impenetrable source of practice of enforcement prior to the COVID-19 pandemic. As you can see that it is in fact not so strong and due to this reason now they will be inundated with cases which could have been significantly reduces if these critiques were resolved.

### 3.2 European Court of Human Rights

The European Court of Human Rights (ECtHR) is the prevailing organisation available within Europe for not only violations of human rights but with a focus on VAWG. It has been functioning since 1998 and working from the central document of the European Convention on Human Rights. The procedure to apply to the court is also a simple mechanism, easily accessible through the website through a word document submission. Then the application is scrutinised that it meets the requirements set out in Rule 47 of the rules of the court. These documents can also be viewed on the website through identifiable links. The website can also be viewed in two languages English and French. There is also a source of reasons why the court has found complaints inadmissible which indicated 51% to be ill-founded followed by 19% no exhaustion of all domestic procedures.

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<sup>181</sup> Ensuring Access to Justice: A Handbook on Women's Right to Legal Aid in CEDAW" by UN Women, [online] on the 6th of May 2023. cit. on the 6th of May 2023, available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/ensuring-access-to-justice-a-handbook-on-women%27s-right-to-legal-aid-in-cedaw-en.pdf?la=en&vs=4652>

The measurements and rules for admissibility are not strict which gives a lot of freedom and ensures that the case will be heard.<sup>182</sup> Despite this as determined in the following case it cannot always lead to just outcomes and results.

### **3.2.1 Three major critiques**

Criticism has been directed at the ECtHR regarding its limited enforcement powers. While the Court's judgments are binding on the states involved in cases, there is currently no mechanism in place to enforce compliance with these judgments. Consequently, some member states have been known to either disregard or delay the implementation of the Court's decisions. This undermines the credibility of the Court and weakens its ability to effectively protect human rights. To address this issue, proposals have been put forth to establish mechanisms for enforcing the Court's judgments, potentially including financial penalties or other measures to ensure prompt and effective implementation.<sup>183</sup>

Another area of criticism pertains to the lack of diversity among the judges of the ECtHR. Observations indicate that the Court's composition is predominantly comprised of male judges of white European backgrounds, with limited representation from Eastern European countries and minority groups. This lack of diversity raises concerns about the Court's capacity to fully comprehend and address the diverse experiences and perspectives of individuals from different backgrounds. To address this issue, there have been calls for the promotion of greater diversity and representation within the Court, including the appointment of judges from underrepresented regions and minority groups. Such measures aim to enhance the Court's understanding of various contexts and ensure the equitable protection of human rights for all individuals within its jurisdiction.<sup>184</sup>

The ECtHR faces challenges in the interpretation and application of the law, which can impact the effectiveness of its judgments. Critics argue that the Court's rulings sometimes lack consistency or fail to provide clear guidance on the interpretation of human rights standards. This can result in uncertainty regarding the scope and application of human rights protections. To address this challenge, there is a need for continued efforts to enhance legal clarity and coherence in the Court's

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<sup>182</sup> European Court of Human Rights. How to Lodge an Application [online]. echr.int, 27th of March 2021 [cit. On 27th of March 2021] accessible at <https://www.echr.coe.int/Pages/home.aspx?p=applicants&c=>.

<sup>183</sup> GAVRIELIDES, T. The enforcement of the European Court of Human Rights judgments: Is there a way forward? *International Journal of Human Rights*, 2018 22(5), p. 554.

<sup>184</sup> GUERRAOUI, Z, Diversity in the judiciary of the European Court of Human Rights: A critical analysis of the selection process. *Journal of Human Rights Practice*, 2018 10(3), p. 498.

jurisprudence. This can be achieved through well-reasoned judgments that provide thorough legal analysis, coherent reasoning, and precise guidance on the interpretation and application of human rights law. Additionally, regular dialogue and exchange between the Court, national legal systems, and legal practitioners can contribute to a more harmonized and effective implementation of human rights standards at both the domestic and supranational levels.<sup>185</sup>

By ensuring a more consistent and precise interpretation and application of the law, the ECtHR can strengthen its role in safeguarding human rights and promoting the rule of law across its member states.

### **3.2.2 Recommendations**

To address the multifaceted challenges faced by the ECtHR, comprehensive and targeted measures should be implemented:

To address the issue of limited enforcement powers, the ECtHR should explore innovative approaches to enhance compliance with its judgments. This can involve developing mechanisms to monitor and supervise the implementation of the Court's decisions, empowering the Committee of Ministers to oversee enforcement, and considering the imposition of meaningful sanctions for non-compliance. Furthermore, reinforcing dialogue and cooperation with national authorities and domestic courts will foster a collaborative approach to enforce ECtHR judgments and promote a culture of human rights compliance within member states.<sup>186</sup>

Achieving greater diversity and representation within the ECtHR is vital for enhancing its legitimacy and ensuring a more comprehensive understanding of human rights issues. The Court should adopt proactive measures to encourage the nomination and appointment of judges from underrepresented regions and minority backgrounds. Additionally, promoting diversity in the composition of chambers and panels will enrich the decision-making process, as diverse perspectives contribute to a more nuanced and balanced interpretation of human rights norms. Moreover, the Court should actively engage with civil society organizations and academic institutions to incorporate a wide range of expertise and experiences in its deliberations.<sup>187</sup>

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<sup>185</sup> Guerraoui, *supra*, p. 5.

<sup>186</sup> OVEY, C., & WHITE, R. *The European Convention on Human Rights*. Oxford University Press, 2010, p.167.

<sup>187</sup> KRIZAN, A. *Judicial Diversity in the European Court of Human Rights: A Critical View*. *Human Rights Law Review*, 2019,19(2), p. 270.

The ECtHR should strive for legal clarity and consistency in its judgments to strengthen its role as a guardian of human rights. This requires providing robust reasoning and clear legal principles in its decisions, ensuring coherence and predictability in its jurisprudence. The Court should proactively address potential inconsistencies and gaps in its case law by engaging in thorough legal analysis and issuing authoritative guidelines on the interpretation and application of human rights standards. Additionally, promoting dialogue between the Court and domestic authorities, as well as encouraging amicus curiae submissions, will foster an ongoing exchange of legal perspectives and contribute to the development of a coherent human rights framework.<sup>188</sup>

By implementing these comprehensive measures, the ECtHR can overcome its challenges and reinforce its effectiveness as a guardian of human rights in Europe. This will strengthen the protection of individuals' fundamental rights, ensure compliance with human rights obligations, and uphold the rule of law within member states.

It is important to note that these recommendations are not exhaustive and that addressing the critiques of the ECtHR will require a multifaceted approach that involves a range of actors, including states, civil society organizations, and the Court itself.

### **3.2.3 Conclusion**

In conclusion, ECtHR is a crucial international legal institution responsible for adjudicating human rights cases brought by individuals against their governments. While it has been praised for its role in protecting human rights across Europe, the ECtHR has also faced several critiques over the years. Its main critiques include concerns over its backlog of cases, limited resources, and perceived lack of transparency.

To address these critiques, some recommendations have been proposed. These include increasing the ECtHR's budget and staff to help it cope with its backlog of cases, adopting more efficient case management strategies, and improving transparency by publishing more detailed and accessible information about the Court's activities and decisions.

Furthermore, the ECtHR could benefit from strengthening its relationship with national courts and institutions, particularly in countries where there is a lack of awareness and understanding of human rights principles. This could involve providing training and resources to national judges,

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<sup>188</sup> Krizan, *supra*, p.270.

lawyers, and civil society organizations to help them better understand and apply human rights law in their work.<sup>189</sup>

Overall, the ECtHR remains an important institution for the protection and promotion of human rights in Europe, but it could benefit from continued efforts to address the critiques it has faced over the years. As mentioned several times in the text due to these gaps in the system COVID19 has had such a strong impact. This is resulting in an excessive amount of cases that are predicted to be seen before the ECtHR. These are cases that could have been prevented and at the very least reduced if these critiques had been examined more carefully.

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<sup>189</sup> Krizan, *supra*, p.270.

## 4 Summary of the results

This text provides an overview of the issue of GBV as a human rights issue. It highlights the lack of gender equality as a fundamental problem and how it indirectly leads to VAWG. The text also presents facts and figures about GBV, emphasizing its global impact, and the need for structural changes in legislation to prevent violence from occurring. The lack of research on GBV during the COVID-19 pandemic is also mentioned, and the objectives of the paper are presented, which aim to analyse and learn from current and past events to strive for a better future in managing women's human rights. The paper's primary focus is on the inadequacies of the current system, including legal mechanisms, and how sociological perspectives can be used to counter the problem. The text emphasizes the need for further research, especially during the COVID-19 pandemic, due to the increase in GBV.

This paper did manage to comprehend and analyse the legal gaps and resources for women and highlight the current system inadequacies. Therefore the objectives were met especially to study the framework for gender equality through the feminist lens to determine if feminism is progressing. The EU and UNs stance and work was clearly indicated throughout and thoroughly examined. There was unfortunately not enough facts or statistics to determine with accuracy the effects of the COVID-19 pandemic on the progress of gender equality and the elimination of VAWG.

It can be definitively said that the hypothesis was answered as there were numerous shortcomings discovered in the paper. To highlight only a few the misinterpretation of the wording in legislation, political will of states, lack of diversity and slow pace of the access to justice. However there has also been many solutions proposed such as a review of the legislation to be done with a feminist lens, to further encourage states even with some form of punishment to increase its participation in this topic. As well as hiring and being more careful with the diversity factor in these international bodies, and further cooperation between these legal bodies and the states who use them. Once again it needs to be mentioned that the effect of the pandemic could not be measured due to the sheer closeness of the event. But it can be said with these inadequacies found it can be estimated that the effect the pandemic had was larger than it needed to be.

To go into detail the UN and EU have made monumental progress with the fight against GBV but it is still not nearly enough. Given the increase of GBV in the pandemic and the fact there is still an enormous backlog of cases in both the Committee and the ECtHR which demonstrates the velocity of the problem. There are many ways that the EU and UN can do to deter GBV which is to enforce harsher penalties and responsibility on the states with further cooperation time and care. This is only one example of a recommendation to a defective system which has not done enough to prevent or deter GBV.

The current legislation was definitely tested as the pandemic hit it became obvious that the wording was not strong enough or specific to the feminist lens to help build a framework of protection for women before the pandemic. Therefore when it hit the women in their homes and everywhere were greatly afflicted. So to answer this question no the current GBV focused legislation was not equipped to handle this pandemic which is evident also in the increase of violence during the pandemic.

Finally there is a direct correlation with the gaps in the legal system which directly lead to the horrific rise in GBV. This was proven as the gaps were sufficiently identified so naturally with the gaps there the pandemic was able to seep through them and cause significant damage. Hence with these gaps comes consequences for not filling them. Not only shown in the statistics and rise of GBV but with the enormous amount of intimate partner deaths every year and cases coming before the committees and courts.

Overall gender equality is progressing and with that the reduction of GBV yet as you can see it is still not substantial enough. This paper has identified what needs to be done to achieve this goal in order to foster a safe and enriching environment and therefore a better and safer world to live in.

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