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“Gender Based Violence and Human Rights In the Midst of Covid-
19”

Master’s Thesis

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Abstract

This thesis will be a demanding probe into the legal systems that are in place to protect individuals based on their gender. An in-depth exploration of how exactly these legal systems are being measured, modified, monitored and the overall effectiveness will be undertaken. There is a need for this research, since the process of gender equality has been proven to be dangerously slow and greatly affecting millions of people worldwide. Due to the current circumstances of the Covid19 pandemic there is also an incredible impending danger that indicates that Gender Based Violence has increased tenfold.

Current statistics indicate that it will take up to 99 years to close the existing gender gap. This gap is directly tied to gender based violence because it is the most prominent immediate determinate of this issue. The disadvantages that are apparent to people based on their gender creates an unfair inequality that can be remedied to create an equal and just society. This thesis is proposing to attempt to find and negotiate ways of speeding up this process of gender equality and therefore the elimination of Gender Based Violence in an appropriate and compelling manner. It will be a stepping-stone in a lengthy and arduous process of improving the world. The method of achieving this goal is to critically examine the processes that are already in place to remedy the significant gaps.

It must also be noted that since there is limited space and time unfortunately this thesis will not be looking into any form of intersectionality. Therefore, this paper will only delve into the current measures in place without any detailed acquisition of the different forms of feminism including trans, disabled, race, immigration status, sexual orientation and non-binary people (trans). It must be acknowledged that these issues are pivotal and part of the movement but cannot be discussed due to the limitations/constraints of the thesis. Ultimately this paper will address issues that will serve as a learning curve for the future of feminism and also the elimination of gender based violence with the purpose of counteracting intersectionality.

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, Covid-19, Patriarchy.

Czech Abstrakt

Tato diplomová práce si klade za cíl zkoumat právní systémy chránící jedince na základě jejich genderu, s jakou přesností jsou tyto systémy porovnávány, modifikovány, sledovány, a do jaké míry jsou účinné. Výzkum této problematiky je nezbytný zejména proto, že proces vyrovnávání genderových nerovností je nebezpečně pomalý a značně ovlivňuje životy milionů lidí na celém světě. Kvůli současným okolnostem pandemie covidu 19 také vzrůstá riziko genderově motivovaného násilí. Současné statistiky naznačují, že bude trvat nejméně 99 let, než se zcela smaže v současné době existující příjmová nerovnost mezi muži a ženami. Tento problém je úzce spjat s genderovým násilím, jelikož působí nejnámennější škody. Genderové znevýhodnění vytváří zjevné nerovnosti, které však mohou být napraveny ve prospěch rovnější a spravedlivější společnosti.

Předkládaná práce se pokouší nalézt způsoby, jak tento proces urychlit a předložit návrhy řešení genderových nerovností a genderově podmíněného násilí. Má být jedním z odrazových můstků v obtížném a zdoluhavém procesu zlepšování světa kolem nás. Způsob, jak toho dosáhnout, spočívá v kritickém zhodnocení procesů, které se již snaží tento cíl naplňovat a pokouší se zacelit existující genderové nerovnosti.

Je však třeba zmínit, že vzhledem k omezenému času a prostoru se tato diplomová práce nebude zabývat žádnými formami intersekcionality. Daná problematika je zkoumána bez zohlednění dalších forem feminismu a nezahrnuje transsexuální osoby, nebinární jedince, zdravotně znevýhodněné, imigranty nebo rasové aspekty. Výzkum ale bere v potaz, že i tato témata jsou pro feminismus klíčová.

Cílem této práce je tedy zabývat se problematikou, která poslouží jako inspirace pro další výzkum v oblasti gender a feminismu a napomůže k eliminaci genderově motivovaného násilí.

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, covid-19, patriarchát

Declaration

I hereby declare that this Master's Thesis on the topic of "gender based violence and Human Rights in the Midst of Covid-19" is my original work and I have acknowledged all sources used.

Place: Olomouc

Date: 2021

Signature: ELISHKA JOSIPOVIC

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List of Abbreviations and Acronyms

Convention on the Elimination of Discrimination Against Women -CEDAW

European Court of Human Rights- ECtHR

European Union- EU

Female Genital Mutilation -FGM

Gender Based Violence- GBV

Human Rights -HR

Istanbul Convention -IC

United Nations - UN

Violence Against Women and Girls - VAWG

Council of Europe- COE

1. Introduction.

1.1 Introduction of the human rights issue behind gender based violence.

Gender equality is a contentious topic due to the question as to whether it is advancing and will ever be accomplished completely. This is because gender equality does not exist in its entirety, this therefore highlights the point of contention that without equality females are being denied this basic fundamental human right and inequality is used as a tool for discrimination. This tool of discrimination is what indirectly leads to VAWG and is crucial to understanding its complexities.

It is extremely vital that delineation of clear-cut definitions for key words used throughout this paper be made. This delineation begins with VAWG. VAWG can be widely and broadly defined but in this case, it includes trans and non-binary individuals as well as women and girls. As previously mentioned, unfortunately it must be expressed that there is little to no research on violence against individuals who do not fit into the criteria of women and girls. Therefore, this paper will focus on those who do fit into these two major categories so as to build and strengthen the literature available. The definition of violence in this case can include physical, financial, emotional, spiritual, sexual, threatening behaviors such as taunts, and damage to property. It can also include forced marriage, stalking forced abortion, honor killings and sexual harassment. Essentially any act or behavior perpetrated that can be seen to entice fear in an individual.¹ To contribute further, VAWG is also part of the gender explanation, simply those who fit the definition above and, also when violence occurs in a clear-cut way only to women and girls. For more clarity, an example of this is female genital mutilation, the act where the outside genitalia of women and girls is cut off as part of a ritual.²

Human Rights in general means the freedoms and rights every individual is entitled to in their lives. In this context, it is in relation to the denial of these rights to women and girls due to their gender. There have been many studies carried out that indicate the human rights of women is in the fight for feminism and equality between all genders. There will be a section in this paper that further investigates prior theses' and theories on this specific topic. There is still no indication of insightful in-depth research of the effects during covid19 this paper is hoping to attempt to contribute to the sparse literature in this area. The gap that exists in this knowledge is extremely apparent in these pandemic times as there is a desperate need for it. The increase of VAWG has heightened propitiously and the available resources are simply not there. This paper will also fill the gaps in the research on the last line of defense when it comes to this topic and in this case it is the availability of appropriate legislation and legal mechanisms. There have been

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

² RICHARDS, David L, and HAGLUND, Jillienne. *Violence Against Women and the Law*. Taylor & Francis Group, 2015. pp. 30.

many papers written about primary intervention but very little on the overall effectiveness of the final level of intervention.

The structure chosen for this thesis allows for the flow and intricate nuances to be announced and identified. As there is limited space in the thesis it is crucial to structure it in this way by only discussing the predominant material. The thesis will also include the strength of sociological perspectives as it is impossible to delve into this topic without drawing upon this theory. This is because in order to counter the problem there needs to be societal changes and therefore the thesis will have more emphasis on this theory.

It is of paramount importance that further research of this topic be undertaken as covid19 pandemic continues and the impact that this pandemic will have is yet to be determined. This means the research available is not fully developed and considering the danger to women and girls it is undoubtedly urgently required.

1.2 Objectives.

The overall objective of the topic is to strive for a better future in the management of women's human rights. This can be achieved through learning from current and past events plus a deep analysis that will be evident throughout this thesis. The research is from all over the world and does not specify one area, but it is during the time period of pre pandemic to current and post pandemic. The sources used are all feasible online and have been peer reviewed and only used if relevant.

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 question and hypothesis.

The hypothesis is to discover the gaps in the legislation in regard to GBV and human rights and then to develop and learn from these gaps. Due consideration of the current climate, the pandemic and measures needed and those that are currently in place will be made to solidify the hypothesis. Then of course the effects on the current system in place the pandemic has taken. This will be done in parts with the genesis at prior evaluation of other theses topics, results of the UN's research and the facts and research during covid19. Then it will move on to the method and feminist theory that underpins this research and thesis. The key piece of legislation that is being unearthed is the convention of elimination of all forms of discrimination

against women (CEDAW) followed by the Istanbul Convention. Then the analysis of the avenues to the law through the European Court of Human Rights (ECtHR) as well as the committee segment of the CEDAW with a focus on precedent. Then there will be a brief look into the situation of covid19 and the resources available.

After that, the results will be identified and reworked in the final two sections where the gaps in the law and policies are to be continued into what can be done about these gaps and moving forward.

The questions asked by this thesis are the following:

- Are these international structures doing enough to propel gender equality and eliminate GBV?
- Was the legislation in place enabled to handle such a pandemic?
- What does this pandemic mean for women and girls in relation to GBV and what about the future?

1.4 Methodology.

The main target of this investigation is the United Nations (UN) this is due to the fact that they are the largest international body fighting in this battle.³ This organization specializes in human rights and takes pride in their combat against GBV. There will also be some probing into other organizations and entities that work in tangent with the UN. Within the UN there are a number of sustainable development goals and number five focuses on gender equality. This goal has refined a number of groups and legislation including the CEDAW and UN Women.⁴

There is an insurmountable demand for this form of research principally since the escalation of violence due to the Covid19 pandemic.⁵ Even before this pandemic the rate of gender equality was progressing at a stagnant pace; it has now decreased in its rate by 30%.⁶ This necessitated the stipulation for these forms of research and probe as it is the genesis of prosperity for the universality of the world as a whole.

The entirety of the research was done through online databases the foremost source was journal articles specifying in critiquing GBV. Websites are another authority as the UN understands the influence on education and as a result have all their information readily and easily accessible through websites. Statistics and evidence-based research was also utilised as

³ MANJOO, Rashida, McRAITH, Calleigh. Gender-Based Violence and Justice in Conflict and Post-Conflict Areas. Cornell: Cornell International Law Journal, 2011. pp. 20-31.

⁴ Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979.

⁵ MANJOO: Gender-Based Violence, p. 22.

⁶ ETIENNE, Margareth. Addressing Gender-based violence in an International Context. Harvard's women's law journal. 1995, volume 18, p142.

this is one way to have direct access to empirical research. Interviews were considered as part of the research but were sequentially eliminated as it would delve into a hypersensitive area for the participants which could cause further pain and suffering.

The criteria for culling the correct knowledge and material is the relevance of the topic and the overall contribution. Also, only highly peer reviewed and reputable papers according to evidence base criteria were sourced due to the high amount of false information that is affronted to our minds every day. Accordingly, the information detailed has been eminently and irrefutably discovered and reproduced.

This paper is constructed in a pivotal moment of history as we are in the crux of a global pandemic which has affected every area of the world. As we are in the midst of the pandemic there is no way to have foresight into the future effects; it can only be viewed as the current affects. The time period this paper fixates on the period just before the beginning of the pandemic as well as the middle/current of the pandemic. These time periods are identified as the two crucial niches in the 21st century to have the greatest effect on the current population. To be precise in the identification of the period of time it is the start of the 2000s until modern time, but the absolute crux of the period of time is right before the corona virus hit in March 2020 to now April 2021.

1.5 Feminist Theory & History of GBV.

The feminist theory that underpins the elimination of GBV is indispensable as all the research indicates a direct correlation between the theory and GBV. Feminism is the movement towards gender equality that entails the taking down of the patriarchy. There has been several links to patriarchy and men's violence towards women specifically sexual violence. It must also be said that not all GBV is committed by men, just a greater proportion. There have been many cases of women who commit FGM on other women this is one example of how this violence can be perpetrated by women. The links exist due to patriarchy and the fact that the patriarchy stipulates the subordination of women which in turn allows men to establish the right to cause/base violence against them.⁷

The structured disadvantages that patriarchy implements on women is another example of the reason for GBV. Patriarchy is a system in which men hold the power in not only social spheres, but political and even familial areas. This can be seen in the holding of property, the gender pay gap, and the positions of power that men hold in politics and in everyday life for most people.⁸ This system acquiesces the feeling of invisibility and nothingness onto women and is then only visible to those holding the power - men. This structured society of patriarchy allows for the continuance of violence against women. An aspect of overthrowing patriarchy must necessitate that men participate in the cleansing of patriarchy, as toxic masculinity is another cause for

⁷ FRAZER, & HUTCHINGS, The Feminist Politics of Naming Violence....., p. 200.

⁸ Ibidem pp 201.

GBV. Toxic masculinity is basically behavior that stems from traditional outdated cultural norms that have harmful outcomes targeted at men to perpetuate insecurities and violence.⁹

From the theoretical standpoint that feminism portrays and can be scientifically proven is that gender inequality on the societal level perpetuates GBV. The research has proven that the more unequal women are when compared to men there is a higher chance of those men being violent towards women.¹⁰ This theory delves into the status of a woman as contributing factors specifying areas such as power, economic, social, and educational statuses. As this theory describes how it dictates that fear must be preserved in women's mind in order for the patriarchy to continue on untethered.¹¹

This patriarchal theory functions because women are perceived to be on an unequal standing to men and therefore it allows men to treat them how they deem fit. In some cases, men attack women because they are threatened by them exceeding their own successes.¹² Then in turn women are not as fearful of men when they are able to access social standing and feel powerful within themselves and under the perception of society.

The final facet of the feminist theory is the doctrine on how the feminist theory can be best implemented. It is common knowledge that in order to make any progress and legitimate change in human rights it is momentous to enter the theory into the international realm. In this case respectively creating customary international norms within the international human rights area. To define this further by creating laws as violations of human rights affecting society as a whole on an international level against gender inequality. Then stipulating social norms from those laws with precedent and what is referred to as feminist jurisprudence.¹³

The United Nations do incorporate feminist theory within its framework. A giant symbol of this is UN Women an entirely separate entity. They have also incorporated this theory within its sustainable development goals as goal number five; achieve gender equality and empower all women and girls. Through the legal framework it is evident with CEDAW and the Istanbul Convention and the Universal Declaration of Human Rights article 2 which states the entitlement to freedom regardless of sex.¹⁴

The discrimination of women is systematic and ingrained within society and has been since the genesis. Therefore it is even more difficult to overcome since these barriers have been normalized within society for centuries and go on unnoticed. This thesis will explore these

⁹ PRICE, S, Lisa Feminist frameworks: Building theory on violence against women. Delhi: Aakar Books, 2009. pp. 130.

¹⁰ YODANIS, Carrie, L. Gender Inequality, Violence Against Women, and Fear: A Cross-National Test of the Feminist Theory of Violence Against Women. Sage Publications. Journal of Interpersonal Violence, 2004, Volume 19. No 6. pp. 656.

¹¹ Ibidem pp. 657.

¹² Ibidem pp. 672.

¹³ 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. pp. 48.

¹⁴ Universal Declaration of Human Rights Paris 10 December 1948 article 2.

systematic challenges that exist for women as a means of correcting these systematic disadvantages for women.

GBV has been a hidden concern for centuries dating back to the 18th century since the domination of men and the creation of the patriarchy. Ever since men have had control and power the subordination and discrimination of women has existed. Overtime it has continued to progress unprovoked and unhindered. Rape was often used as a form of punishment during wars and was common practice during the World Wars. Although many feminists have been attempting this as a gender issue it wasn't until the UN finally created the CEDAW that it was officially labeled as GBV or VAWG. There is still such ambiguity on the history and topic in general since it is underreported and does not receive the attention it deserves. Therefore it is difficult to pinpoint exact historical development.¹⁵

This then has the direct outcome of indicating the systematic oppression that women have been on the receiving end on for centuries. The fact that gender has allowed for this level of maltreatment for this period of time shows the ingrained effect it has in society and therefore the systematisms of this issue. This brief history and current effect combine together to repeatedly express the value of breaking down these wrong social codes. This thesis will look into the social aspect as well as the legal one to determine a method of at least beginning this process.

1.6 Evaluation of prior research on the topic.

This section contains the evaluation of two other theses found online that relate to this topic the rest of the material that has been found has been used as references. The evaluation and investigation into other scholarly articles will be used as sources of information for the contents of this thesis. In Griffith's paper she outlines an extensive account for the primary prevention level of VAWG. 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.¹⁶ 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.

The second thesis by Edwards discussed a lot of gender bias and the progress that international human rights law has made. Edwards interviews members within the 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 torte or torture

¹⁵ FOX, C, Vivian. Historical Perspectives on Violence Against Women. *Journal of International Women's Studies*. 2002, Volume 4 Issue 1, pp. 20.

¹⁶ 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. pp. 200.

and the non-discrimination on basis of sex.¹⁷ 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.

These papers were also written over ten years ago which leaves room for an overall report on how the issue has progressed in the past ten years.

1.7 Results of the UN's research on the topic.

This section will delve into the most important facts and figures that the UN women have collected in order to determine again the need for this thesis and further background information. The UN Women is a branch of the UN that is created for the entire purpose of gender inequality and eliminating 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.

The UN Women institution has consulted with teams all over the world on almost a constant basis; they collaborate together to create the global database on VAWG.¹⁸ 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.¹⁹ One in three women will experience a form of violence in their lifetime and are experiencing it right now.²⁰ The data indicates that less than 40% of women who experience violence seek any form of help.²¹ 155 countries have passed laws on domestic violence and 140 have laws on sexual harassment in the workplace.²² 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 18.²³ A minimum of 200 million women and girls ages 15-49 have undergone FGM in the

¹⁷ EDWARDS, JILL, Alice. Violence Against Women, Feminist Thoery, and The United Nations Human Rights Treaty Bodies. Australian National University, 2008. pp. 305.

¹⁸ 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>.

¹⁹ 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>.

²⁰ Ibidem.

²¹ Ibidem.

²² Ibidem.

²³ Ibidem.

31 countries where the practice is focused.²⁴ 15 million girls aged 15-19 worldwide have experienced forced sex.²⁵

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 15.²⁶ 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.²⁷

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' women and girls.

1.8 Research and facts during Covid-19.

Due to prior exploration of the topic, it can be stated that as a result of covid-19 and the restrictions set in place VAWG will increase by exuberant amount. One fact that could be recorded is the number of calls to helplines that have increased five -fold.²⁸ The UN is referring to it as the 'shadow pandemic', the violence that has increased by such a large amount and been hidden in the shadows. The UN has responded with 48 countries implementing prevention and response plans to VAWG in the covid-19 response plans by September 2020.²⁹ These policies and more importantly the legislation will be examined to determine if it was enough to withstand this influx of violence due to the pandemic.

²⁴ 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>.

²⁵ Ibidem.

²⁶ Ibidem.

²⁷ Ibidem.

²⁸ Ibidem.

²⁹ Ibidem.

2. International Legal Bodies.

2.1 Analysis of the CEDAW.

The CEDAW was created with gender specificity in mind and to compensate for the other human rights regimes and the indivisibility of human rights in general. It has been viewed by notarized feminist scholars and optimists as a single device with the potential to eliminate gender inequality.³⁰ CEDAW is both a committee and a form of international treaty that combines together to create both legislature and means of protection that is backed up by the committee as an additional force. These two organizations function parallelly to present the finest form of defense for gender equality where the committee discusses cases brought before the committee which are used as precedent than implements recommendations based on the precedents created.

The committee is an independent branch of the United Nations composed of twenty-three gender experts from around the world. This branch is a subsidiary of the UN meaning it functions in conjunction with the UN, but it focusses on the apparent inconsistencies. The current treaties available that have been developed by the UN is not substantial in achieving the goal of the elimination of VAWG therefore it was mandatory to create the CEDAW to propel it forward. The committee functions like many UN organisations in that it sits together to discuss possible breaches of the treaty then articulates recommendations to the breaching party.³¹

The international treaty that this committee works from is under the same name and founded in 1979 in New York. It can take on many names, but it is essentially a document that is a Bill of Rights for women and concurrently has a manual on gender equality. The preamble is extensive and the most informative part which focuses on clarifying the purpose and method of implementation of the text.³² The overall treaty is small, consisting of thirty articles divided into six sections, yet it still manages to cover a wide range of problems. The articles are broken down into aspects such as education, public life, political roles, workplace, and the right to freedom. Throughout the text the onus is on the signing state parties to implement the equality between men and women.³³

In order to efficiently demonstrate the faults that have been derived from the participating states this paper will divulge the problematic areas which are not entirely narrowed in within the legislation. To reiterate this paper will look at individual states and which articles are breached from within and why rather than first look at legislation and then the breaches within states. It begins with the insight of the largest fault of the lack of enforcement powers that the entire organisation of the UN has to adequately punish breaching parties as well as lack of sufficient implementation of the feminist theory. To further distinguish this focus it looks at the socio-legal

³⁰ HELMUM, Anne, SINDING AASEN, Henriette, Women's Human Rights: CEDAW in International Regional and National Law. Cambridge University Press. 2013, pp. 3.

³¹ AHRENS, Ronald, Z. PRESTON, Christopher United Nations..... p52.

³² Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979.

³³ Ibidem.

aspects and effects of the legislation. This means the social reaction each state has to the signing and ratifying of the treaty. This is because it is the highlighted problematic area for change that will have the largest effect in society.

To break down the inconsistencies that have not been covered by the CEDAW will be highlighted below in sections that cover, wording of the legislation, implementation of the feminist theory, lack of enforcement powers, and problematic states. These holes which not only has been left untethered but has allowed for the Covid19 pandemic to create such a monumental devastation on a global scale.

2.1.1 Legislative Gaps.

The first part of the analysis will be on the legislation itself since the document is a tool as a means of controlling the violations of GBV. Article 2 alone mentions the word women twelve times there is also the notation of equality with men twice.³⁴ These gendered terms prove to be problematic as it characterizes these two categories even though in article 1 it states a definition it does not prevent the misinterpretation. This is because there are more than two genders and the states in the following paragraphs find these specific terms precarious. The greatest opposition to the document is the outlining of the genders and their roles. If the legislation was to be reworded to state equality between genders or sexes it would remove this opposition and encumber all individuals.³⁵ Article 5 (b) states the proper understanding of maternity as social recognition and responsibility of men and women.³⁶

This once again is not clear enough and allows for misapprehension. This only stresses the importance of social recognition and responsibility without distinguishing that a woman may give birth to a child but has no obligation to take on the role as primary care giver. There is also no sentence that clearly demonstrates the history that women were mostly responsible for caring for children but now the men have a commitment to change this. It also once again allows only for two genders and stresses the lack of inclusivity and permits the attack of anti-feminists.³⁷ Article 11 is about the workplace and discrimination that is commonly thrust upon women. It is well worded but it evidently misses one clear form of discrimination that is seen around the world and that is equal pay. There is no steps or even mention of this topic only ways of ensuring women are treated equal within the workplace and have access to the same facilities

³⁴ Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 2.

³⁵ 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, pp 421.

³⁶ Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 5(b).

³⁷ COWELL, Frederick. Reservations to human rights treaties in recommendations from the universal periodic review: an emerging practice? 2020, *the international journal of human rights*, Volume 25 No 2, pp 280.

and treatment. Perhaps it is time to update the section and add a piece since it is one of the ginormous issues that is around the world and clearly plays a role in disadvantaging women.³⁸

These are only three examples of gaps and badly worded areas discovered within the CEDAW document that can be easily re-examined. Since the inception of the document that has not been many changes and it desperately needs to be reviewed in order to keep up to date with modern challenges for example like covid19 and the recognition of other genders.

One of the earlier and more critical probing of the CEDAW is the wording and gendering of the legislation. The fact that the terms women and girls are used a fair amount gives an overemphasis of the role of women as a child carer and limits this potential. Then there is the hyperbole of the impression of women in the public sphere which is vital but demeans the root cause of domestic violence which occurs mostly as a private matter. The CEDAW is right to focus on the role of women but in a de-gendered method in the public sphere as it will prevent VAWG in the long run but the immediate threat that COVID-19 brings is to domestic violence within the private sphere. If the CEDAW had given more attention to the private arena it may have been a modicum more prepared for the effects of the pandemic.³⁹ It has also skipped over fundamental complications such as the caste-system which severely disadvantages women in such states as India.

It also seemed to have missed economic challenges that some women within these systems face due to the fact they are women. For example, access to a means of earning money which may be blocked by the caste they belong to would need special measures taken in order to compensate for this dilemma. There were also challenges in relation to bringing women's issues into the forefront to be used with the same ferocity as human rights by the UN. This may have been the case as women's issues have progressed so far to be a mammoth obstacle that states have now given the much-needed attention it deserves. This has all still been washed away and swept under the rug in what the UN is referring to as the shadow pandemic. If it had been given the attention and publicized and received as well as it should have been, the shadow pandemic may have fallen under a different name and outcome.⁴⁰

2.1.2 Feminist theory.

³⁸JURASZ, Olga. About Justice that is yet to come: a few remarks about the international pursuit of post-conflict gender Justice. *Journal of Gender Studies*, 2015. Volume 21 No 1, pp 61.

³⁹SAKSENA, Anu. CEDAW: A Mandate for Substantive Equality. *Indian journal of gender studies*. 2007, Volume 14, Number pp 486.

⁴⁰RADEMACHER, E, Heidi. Rights based organising, CEDAW, and gender mainstreaming: The Reciprocal character of the transnational women's rights movements and gender policy. Stony Brook University. 2018 pp 24.

To begin with as established earlier the feminist theory is of the utmost importance and it is not possible to discuss GBV without discussion about equality. As touched on before the socio-legal aspect must be addressed together in order to actually make any progress in this field. There have been many criticisms of the CEDAW beginning with the fact that it relies too much on the enforcement of the first responders such as police and judicial changes. In Frazer and Hutchings piece they discuss the politics of naming violence which the UN does not address in too much detail. It is outlined that they need to focus more on implicating the deconstruction of gender roles and eliminating such things as gender all together. This can be done by including more non-binary terms and opening the idea to women as also being the perpetrators of this form of violence. They state that 'the UN and the CEDAW do not intertwine the politics of violence with the feminist theory enough to make effective dramatic changes'.⁴¹ This will therefore allow this kind of violence to be continued unnamed and the entirety of the concept of gender left unexamined. Throughout the treaty the terms woman and man are used copious amounts of times which allows for participating parties to find wiggle room to circumvent the law.

A fundamental principle of the CEDAW framework is the feminist and gender analysis which ensures the applicability of the legislation. This is explicit in the wording and analysis of the intention of documents and committee. Some feminists have critiqued the adoption of the gendered analysis which can be palpable when it comes to violence but lacking in civil and political or economic matters. Thus, creating a gap between the gendered analyses throughout the text.⁴² Although this paper does focus primarily on GBV it must take into account the civil, political and economic concerns which tend to lead to the violence. Unlike the CEDAW which have chosen to neglect this part of welfare. This is apparent in the *Munoz-Vargas y Sainz de Vicuna v Spain* case where a woman attempted to succeed the Spanish throne. She claimed a violation under article 2 of the CEDAW but was denied since Spain had not ratified the legislation or treaty until after her attempted succession.⁴³ This was not unanimous as one committee member dissented and believed that it was a violation of equality as women did not have equal rights to the throne.

The explanation included the further display of inferiority of women within Spain and how they are not entitled to the same social privileges which as explained earlier trickles down to VAWG. The most common target for objections within the CEDAW is the line of succession to the throne which is a symbol of power and representation within these societies. The impact this case had was to solidify the acceptance that women in these states will never have equal footing in society at all. Another case that highlights the gap within the communication sphere for women is *GD and SF v France* which involved a women's right to their mother surname. The logic behind the ruling was that under 16(1)(g) women can keep their surnames but does not protect children who have been blocked from inheriting their mother surname. These are only a few examples of some of the conservative values that are enshrined within the CEDAW committee. They may seem like miniscule decisions, but they then set precedent which shows

⁴¹ FRAZER, Elizabeth, HUTCHINGS, Kimberly. *The Feminist Politics*.....212p.

⁴² PUSEY, Lisa & CUSACK, Simone. *CEDAW and the Rights to Non-Discrimination and Equality*. Melbourne journal of international law, Volume 14, No 1, 2013. pp 60.

⁴³ *Ibidem* pp 64.

prevalent and detrimental effects to these women and the society they live in.⁴⁴ These two cases address the international treaty sections article 2, 16(1)(g) that prove room to maneuver and circumvent the law. This is due to each state's interpretation, but this simple case law provides precedent which permits other states to follow suit.

2.1.3 State Opposition.

One of the more enigmatic states that have had predicaments with the utilization of the CEDAW legislation is Spain. Spain has made good progress in terms of gender equality but yet some gaps remain. The first which is the refusal for constitutional reform for the heir to the throne in their monarchy. This has been highly debated and criticized. The successor to the throne which is highly favorable for men regardless if there is a potential woman successor who is older.⁴⁵ An example of this is when law 11/ 1990 came into effect through a CEDAW driven initiative it was for the non-discrimination of people based on sex. There have been a number of reforms and complete adherence to the CEDAWs requests yet there are still no substantial or dramatic advances in the actual evidence alive in Spain.

As Spain was one of the first countries to adhere to the CEDAW and the elimination of GBV through various other treaties it still has a large number of (45) murdered women in the year 2019 through GBV.⁴⁶ Another quite significant division within Spain is the lack of enforcement of its strong recommendations from the CEDAW. This is unequivocal within the sphere of girls and in particular the indirect influence mothers have on their children and the Roma population. Through a meticulous report constructed by the CEDAW they recommended several changes that Spain simply did not take on board. There has been a high number of abortion rates for young girls aged 12-18. The CEDAW made recommendations to start education programs which will reach these Roma groups and Spain simply does not provide this education.

Another finding of the report was the high number of girls who are human trafficked from within Spain and highlighted yet a number of steps needed to prevent it. It also discussed the significance of emphasising the importance of violence a woman suffers in front of her children, the affects and measures to alleviate the issue. The giant gorge between the capabilities to force Spain's hand and to simply strongly suggest allows for this behavior of VAWG to continue unprovoked. The CEDAW needs to be able to have some form of enforcement or at least a punishment mechanism to allow for this gorge to be filled and put an end to VAWG altogether.⁴⁷

⁴⁴ PUSEY & CUSAK, CEDAW and the Rights..... p67.

⁴⁵ LALAGUNA, & DURAN, Paloma. The CEDAW'S Reception in Spain. The Gap between Law and Practice. Yearbook on Humanitarian Action and Human Rights. 2011, Number 9, pp 55.

⁴⁶ Ibidem p60.

⁴⁷ STOFFELS, Abril Ruth. The role of the CEDAW Committee in the implementation of public policies on gender issues: analysis through a study of the protection of girls rights in Spain. The international journal of human rights. 2019 Volume 23, No 8, pp 1320.

All these examples above are clear violations of the international treaty for example article 2 (a) to ensure through law or appropriate means the realisation of the treaty, and (b) adopt appropriate legislation and sanctions were appropriate to prohibiting discrimination.⁴⁸ To further demonstrate the legislative link the human trafficking rates in Spain and lack of governmental action is a direct violation of article 6 which demands the state to take on responsibility to prevent the trafficking of women.⁴⁹

To establish why and how this gap is so significant in Spain a discussion of the landmark case of Angela Gonzalez. She has been fighting this battle since 1996 when she gave birth to her first child and was subject to an insurmountable level of violence by her partner. During an unsupervised visit following a separation the father murdered his daughter. This unsupervised visit was certified by a judge. Angela first sought compensation through the Spanish system where she was denied. She then contacted the CEDAW. It is important to note that Angela lodged 30 complaints of violence which only resulted in conviction of a minor offence and a small penalty. There was an order but it only lasted two months, so it was not substantial at all. Following this the judge ordered separation but not as a result of the violence then gave the order for unsupervised visits.

Angela appealed the decision, and it was fruitless just like all her other attempts to seek a remedy through the Spanish legal system. After the murder she attempted once again to exhaust some justice through the Spanish court she was eventually denied once again even by the ministry of justice and the constitutional court.⁵⁰ Then she decided to seek an alternative avenue of justice through the CEDAW. The CEDAW found that there was a failure to safeguard the child exhibited by the Spanish courts. This then led to the reconsideration by the Spanish constitutional courts. The important articles of the CEDAW are article 24 'state must adopt necessary measures at national level aimed at achieving full realisation of rights recognised'. From the optional protocol article 7(4) the state must give consideration to the views of the committee'. This read in conjunction with Spanish constitution article 96 which confirms international supremacy in tangent with article 10(2) in relation to international human rights law.

This laid the foundation for the decision in agreeing with the CEDAW and compensating Angela with 600,000 Euros. It also was monumental with the discussion about rule of law within Spain because this determined that economic compensation must be implemented in cases of the breach of international treaties. This was not without fault as the Spanish court did not discuss legal enforceability or policy recommendations to prevent further incidents in the breakdown of law. If this was to be achieved, it would eliminate the individual complaint mechanism that is common use for the CEDAW. To provide further information of fault 87% of CEDAW decisions were met with inadequate responses and implementation.⁵¹ This was a long overdue success

⁴⁸ Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 2(a)(b).

⁴⁹ Ibid article 6.

⁵⁰ CASLA, Koldo. Supreme Court of Spain: UN Treaty Body individual decisions are legally binding. Blog of European Journal of International Law. August 1st 2018.

⁵¹ CASLA, Koldo. Supreme Court of Spain: UN Treaty Body individual decisions are legally binding. Blog of European Journal of International Law. August 1st 2018.

for the rule of law in Spain. The decision has only highlighted more faults by the CEDAW and the bridge between the implementation of international treaties only being effective in cases like Angela's spanning over 20 years.

Since the CEDAW legislation specifically has such broad and blanket terms it automatically permits the anomalies or difficult situations to be omitted. One of these strenuous locations is in Sub-Saharan Africa. As is the case for many states there is a ratification of the legislation but there are no adjustments or compliance recorded. This is certainly the case in these states as the ingrained cultural norms are almost impossible to infiltrate and command. There are committees set up that ensure the monitoring of compliance but within these states they are not competent enough. The identified gap here is even though these states have taken all the precautionary steps to adhere to the CEDAW treaty it has NOT been internalized enough in society to dismantle these ingrained problematic social norms.⁵² The process of acculturation which is the process of adopting beliefs and behavioral patterns within society has not occurred in this culture/states. This means in these states there needs to be a paradigm shift in order for the acculturation of these new societal values to take place. These programmatic approaches that have been implemented within these states have created a genesis for these adaptations. Yet this is not substantial as the approach taken did not consider the dismantling of these existing discriminating values and laws.

The ratification of the CEDAW simply skipped this step and simply attempted to overtake without initial deliberation of existing laws. This can also be related directly back to article 5(a) of the CEDAW which demands the elimination of these cultural perceptions claiming the superiority of men over women⁵³. These practices are a direct breach of this article and dictates that this article is not substantial enough to prohibit these actions. There is not necessarily a direct link to the Rwanda genocide but there are implications of the war crime of rape as a prime example of these structural inequalities. The pre-existing perceptions of women's status in society allowed for this horrible war crime to take place at such a substantial level.⁵⁴ This is also a great example for how this genocide was able to breakdown the existing social norms since it eliminated the majority of the male population which readied the state for change. Rwanda is only one example in which it was able to implement these changes and is the only state to be able to do so due to the atrocity of the genocide. These values are still prevalent in such states as Uganda which has a complicated history with the basic principle regarding women's right to property.

The attempt for women to even get co-ownership rights was arduous and painstaking. It is also a direct violation of article 15 (2) women's right to be treated right/equally in regards to property specifically.⁵⁵ Once again this example demonstrates the inadequacy of the legal framework

⁵² BANKS, M, Angela, CEDAW, Compliance and Custom: Human Rights Enforcement in Sub-Saharan Africa. Fordham International law journal, 2009, Volume 32 No. 3. pp 784.

⁵³ Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 5(a).

⁵⁴ BANKS, CEDAW, Compliance....., p789.

⁵⁵ Convention of the Elimination of All Forms of Discrimination against Women New York 18 December 1979 article 15 (2).

stipulated by the CEDAW. This is because the CEDAW did not intervene or enable the consideration of the existing attempt of these women's right to law and the dual law system in Uganda. The system works with legal norms and cultural norms in the case that women took this long journey to property rights due to the customary laws. Which the CEDAW overlooked and allowed for the circumventing by the Ugandan parliament. The CEDAW needs rigorous and intricate implementation procedures and analysis for these problematic states due to the unique conformity of the systemic discrimination prevalent in these states.⁵⁶

There is also the issue of predominantly Islam states in ratifying the convention and then simply not complying with the legislation at all. This is evident in Malaysia and Saudi Arabia where the religion is not separate from the state at all. The most prominent example that has been in the media lately is that finally in 2018 women were allowed to drive despite Saudi Arabia ratifying CEDAW in 2001. For seventeen years they continue to discriminate against women, and they still do now with such harsh laws and customs that breach the CEDAW. The CEDAW was not written to be tailored to circumstances such as the clash of a strong religion and religiously dominated states such as Malaysia and Saudi Arabia. The CEDAW was written with such broad and general terms that it really made it easy for states to maneuver and dodge any form of responsibility.⁵⁷ Moreover in Pakistan women's access to education is extremely limited despite the ratification of the legislation in 1996. This is because the Pakistani government simply overlooks these contentious spheres.

The largest barrier which is prohibiting girls' access to education is the fundamentalist religious traditions that often clash with the CEDAW. An incredibly wide-spread example of this is Malala the activist born and raised in Pakistan who stood up to the Taliban who were attempting to prevent her from receiving an education. She was shot in the head and survived and now advocates for this exact cause on a global scale. This example is one of the failures of the UN's intervention within Pakistan as she a young girl had to be shot in the head to be recognized and given a much-needed platform to make change. The hold that Islamic states dictate and enshrine in its people is if there was a choice between human rights and Islamic law the latter will always win. The constant threat that young girls are put under, who wish to get an education is enormous, life threatening and has been around since the accession Pakistan made to the CEDAW. Pakistan has not ratified the optional protocol and refuses to but they are still liable to it, yet it makes no variation since Pakistan complies with which articles it picks and chooses. There is no enforcement that the UN can implement through the CEDAW to ensure equal rights within Pakistan therefore women and girls will continue to suffer.⁵⁸ There is no mention within the original document of religion and some of the practices that have been proven to point

⁵⁶BANKS, CEDAW, Compliance....., p780.

⁵⁷AHMAD, Nadzrah et al. CEDAW implementation in Malaysia: An overview of Reservations from Islamic Perspective. Intellectual Discourse Special Issue. 2017. pp 620.

⁵⁸ SUDDUTH, Jennifer. CEDAWs: Flaws: A critical analysis of why CEDAW is failing to protect a women's right to education in Pakistan. Journal of law and education. 2009, Volume 38 Number 4, 563-592p.

towards discrimination against women. This proves a gap in the treaty as the states have now demanded it through the above circumstances.

All these examples are proof of the concept of political willingness of states. This is simply the idea that in order for these forms of legislation to work the states need to be ready and willing to actually comply. The states above have signed and ratified the document but have made no real changes and adherence to the document. The lack of political will is outlined above in the states indirect opposition to the CEDAW it is also further defined below in the indirect state opposition to the IC. This concept needs to be taken seriously and contemplated when creating these documents. If there was a means of tackling this issue by the CEDAW in order to create some kind of compliance mechanism for the states. Another avenue that can be taken is to create a motivational system that can sway political will towards the correct decision.⁵⁹

2.1.4 General recommendation 35.

The general recommendation 35 which was implemented in 2017 was a surge in the appropriate direction yet it still was not enough to make a considerable difference. This recommendation is the latest one to focus primarily on GBV and was an update from the nineteenth.⁶⁰ There is yet to be a recommendation for situations of state of emergency given the prior disease control of SARS, Ebola and Malaria. In the updated recommendation it must be noted that there is a mention of intersectionality and how this concept contributes to gender inequality. It briefly declared this concept but did not put any preventative action in place to negate these effects. It also did not class the aspects of race, disability, sexual identity and other factors in place as the overall figurehead of intersectionality. There was no combinational effort to identify and manage the conceptual limitations of this theory.⁶¹ Another critique of this refresher is the lack of evidence in crucial areas such as the comment on the slow deterioration of the rule of law.⁶² There are also subjects that take precedence in modern times over other subjects without this data or proof which invites the question of funds allocation.⁶³ Although the Committee is limited in its immeasurable task of considering all recommendations brought forward through NGOs and various institutions it must excogitate a filtering system. This is to be able to affront prevailing concerns for example there is no refugee/asylum claim in the category of GBV.⁶⁴ To progress this front further it could have also been used to include an emergency

⁵⁹CARMEN, Malena. From Political won't to political will: building support for participatory governance. Sterling Kumarian Press. 2009, pp 56.

⁶⁰ 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. pp 160.

⁶¹ 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, pp 1111.

⁶² 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.

⁶³ VIJEYARASA: CEDAW's....., p163.

⁶⁴ Ibidem p164.

clause for future epidemics that may occur. This recommendation lacks in its depth and /reportable capabilities. This then in turn leads to the enormity of missing aspects in wording and articles in terms of the above mentioned gaps.

2.1.5 Optional protocol.

The optional protocol that was brought in several years ago the CEDAW was much needed in fact imperative. This was because there were no enforcement measures whatsoever and there needed to be a way in which the measures could be taken on by the member states. The precarious detail of the optional protocol is the inquiry procedure. In the fourteen years since implementation, it has only been used once. This in itself sends a statement of why go to all the trouble of establishing a power and then not use it. The under-enforcement also relates to such challenges women will meet for example access to legal aid as well as the exhaustion of domestic remedies. Another contributing factor is the more men will use these forms of justice the more there are concerns for human rights violations. One more facet is the lack of action of non-state action for example domestic violence how would this aim counterattack this dilemma. The covert nature of the entire operation is also not appealing as there is a dismissal of avenues of tracking progress.

They do this through article 8 of the protocol which is barely used and if it is no way of apprehending this knowledge.⁶⁵ One example of this is the alarming rates of disappearances of women at the border between Mexico and the US. There was an inquiry conducted after a much-needed demand for it and it eventuated into nothingness. Since 2014 there has been a steady rise in the use of inquiries and there is also an option for the committee to investigate without a formal submission. This method only further advances the idea of the incompetence's of this procedure and the optional protocol. This is because nothing is stopping the committee from using this power to the best of its ability to be advantageous for women's human rights. Another point of concern was the target of these inquiries and the optional protocol would prioritise certain rights over others.

This was highlighted in the destitute investigation of the deaths and disappearances in women at the US-Mexico border. Civil and political rights have the main stage when it comes to the inquiries of the optional protocol. This permits issues such as health and sexual freedom to be left to the background and therefore targeted by perpetrators. The complete and full potential of the optional protocol that had been promised has not been fulfilled. It has made steady progress, but it still had a mountain to climb in order to reach the level that is implored.⁶⁶

⁶⁵Optional Protocol to the Convention of on the Elimination of All Forms of Discrimination against Women, December 2000.

⁶⁶ O'ROURKE, Catherine. Bridging the enforcement gap? Evaluating the inquiry procedure of the CEDAW Optional protocol. *Journal of gender, social policy & the law*, Volume 27 Number 1. Pp 20.

2.1.6 Lack of enforcement powers.

The United Nations has one colossal fault that has been evident throughout its functioning and that is it cannot do anything but recommend solutions with no enforceable power. This is also the case when it comes to states reservations on legislation. Within the CEDAW framework it permits reservations as long as it does not contradict the object and purpose of the treaty. There is also the possibility to remove reservations if they notify the Secretary-General who then would be the one to notify the other member states.⁶⁷ The flaw in this system lies with the fact that there are no objective criteria to determine if a state's reservation contradicts the object or purpose of the treaty. There is also no independent committee which has the sole focus of handling the reservations that states bring. There is such a thing as a joint enterprise which is a form of constructive dialogue where all parties sit and discuss the issues. This system in fact encourages states to not adhere to certain parts of the legislation by claiming reservations and eliciting a discussion to avoid the compliance of the particular section. There are many reservations and opting out of certain sections of the CEDAW from states all around the world and for many reasons. This highlights the gaps where the states have refused to sign off on the entirety of the document. For example, Spain has rejected article 2 and 9 by refusing to allow a woman to take the crown. This has been accepted by the committee despite it clearly being in direct contradiction with the object and purpose of the treaty. This creates a cyclical procedure of avoidance of accountability by the member states. As they are not punished or forced to be held liable for direct breaches of the convention. They can escape this through not only reservations but also simply evading the committee and its recommendations.⁶⁸

As is being demonstrated there are many gaps and problematic areas that need to be addressed within the CEDAW framework. These measures and solutions will be answered towards the end of the paper which will allow the continuation of VAWG to be eliminated.

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

This particular treaty is different to begin with to the CEDAW since it operates within the Council of Europe. It was substantiated by the COE as a form of monitoring and opposing VAWG as well as domestic violence. It differentiates itself from other international bodies as it constructs policies that connect national and governmental bodies such as GREVIO. Its primary focus is on prevention, prosecution and protection activities.⁶⁹ The convention also has two monitoring components, an independent expert body (GREVIO) and a committee of parties. They work in a tangent where the expert body constructs and submits reports and the committee ensures their

⁶⁷ RIDDLE, Jennifer. Note: Making CEDAW Universal: A critique of CEDAW'S reservation regime under article 28 and the effectiveness of the reporting process. *George Washington International Law Review*, 2002, Volume 34, pp 18.

⁶⁸ Ibidem pp 20.

⁶⁹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011.

implementation. The actual document itself is larger than the CEDAW and contains 81 articles divided between twelve chapters. Therefore, it is comprehensive and lengthy this is because it also includes the research methods and techniques in gathering data and more formal requirements.⁷⁰

In order to properly analyze the text, the following paragraphs will study individual states and their apprehension to the treaty then the subsequent violations of the text. This is done as it is simply a more efficient way of deep diving into the intricate details of each state's problematic areas.

2.2.1 Gender Ideology opposition.

The first issue that will be examined is the Bulgarian opposition by various NGOs to the convention that it would be able to prevent and protect women from GBV as well as maintain this 'gender ideology' ⁷¹ The initial problem the Bulgarian government and NGOs found were redefining gender from sex and which would motivate people to choose their own sex and gender. They also put forward the notion that redefining gender ideology may cause psychological violence to children as it would redefine family values. Moreover, they discussed how children as well as older people and men could be affected by this violence but not protected by this convention.⁷² The lawyers from the NGO brought their case forward in the constitutional court of Bulgaria. The court ruled for the binary nature of sex this was the case as it would really shake the Bulgarian constitution if they were to introduce a third gender and or eliminate gender. ⁷³

This amendment to ratifying the convention did leave people of intersex and LGBTG crowd vulnerable and without protection. Despite this it highlighted an issue where some countries with certain and specific constitutions were unable to be ratified without deconstructing it entirely. The convention is broad and unable to be tailor made for each state which is the problem Bulgaria faced.⁷⁴ This led to Bulgaria mending the pieces themselves through the government's strategy for the child and the new draft for social services. This opposition delayed the implementation of the document and allowed for the anti-gender campaign to continue in Bulgaria. This highlights a gap in the legislation as it created this state to manifest this propaganda with such opposition to the norms within which in turn leaves numerous amounts of people without protection. There should be a process in which a de facto ratification of the document should be allowed to cover the gaps identified. ⁷⁵ The NGO's within Bulgaria attempted to contend against the rigid governmental views on gender roles and failed. This in

⁷⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011.

⁷¹ ILCHEVA, Miriana. Bulgaria and the Istanbul Convention- Law Politics and Propaganda vs The Rights of Victims of Gender-Based Violence. Open Journal for European Studies, 2020. 3 (1), pp 50.

⁷² Ibidem pp51.

⁷³ Ibidem pp52.

⁷⁴ VAJDA, Munivrana Maja, and BOSAK, Martina. The Reality Behind the Istanbul Convention: Shattering Conservative Delusions. Women's Studies International Forum 74, 2019, pp79.

⁷⁵ ILCHEVA, Bulgaria.....pp56.

itself shows a breach of Article 9 of the convention by Bulgaria stating that the parties should recognise and support the work of non-state actors.⁷⁶ This is essentially where the breakdown happened as the NGO's in Bulgaria attempted to hold the government accountable for the discrimination based on gender and by promoting this gender ideology. It also allowed for this grave violation to affect the LGBTG population which is yet another identified gap. This dissociation from the refusal to disassemble gender is clearly a violation of article 14 in teaching the non-stereotyped gender roles. The IC is also missing this fundamental discharging of the removal of stereotyped gender roles that is needed to be outlined within the text. A combination of all these things allowed for the increase and relentless bigotry that individuals receive in Bulgaria this is also highlighted below in the case study.

Another critical consequence of the Istanbul Convention in Bulgaria due to the constitutional battle has been cyberbullying. This is yet another gap that the convention has failed to maintain and identify.⁷⁷ The use of media was pivotal in the movement against the Convention with the government posting propaganda. There were also tons of death threats and vicious online attacks from trolls on politicians supporting the Convention. There were a number of memes that were published that portrayed immortality that would come with the IC. They were used concurrently with images of gay pride which incites a form of bullying towards the LGBTQ+ crowd. There is latent homophobia and xenophobia evident in these threats and memes created on the internet. Women are more likely to be threatened online which leads to psychological harm and damage. This is often overlooked due to the online nature and there is no mention of cyber bullying or discrimination in this form. As can be demonstrated it has been used in the campaign to deem the IC unconstitutional and threaten female politicians as well. This form of abuse and violence should not be neglected as in some circumstances it has led to disastrous circumstances with the murder of some women. The newest amendment of the IC should include a section that relates to the damage of propaganda and internet bullying and threats.⁷⁸ This can be seen in Article 17 of the legislation which outlines the prevention of the use of media to harm women.⁷⁹ This article does not provide enough detail into the cyber bullying it does not mention it all. The article states the respect of their dignity which could be argued in this case but given the irrelevant focus given by the EU and Bulgarian government it is not likely to be the case. Therefore, there needs to be an amendment to this article of the treaty as it lacks a vital part of information that permits the discrimination of women to take place in the form of cyberbullying.

Several other countries within the EU took the same standpoint as Bulgaria in understanding the problematic wording and use of gender throughout the convention. The Latvian state was one of those, but they differentiate due to the fact they already had several measures in place that did

⁷⁶ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 9.

⁷⁷ BANKOV, Kristian, Cyberbullying and hate speech in the debate around the ratification of the Istanbul convention in Bulgaria: a semiotic analysis of the communication dynamics. *Social Semiotics*, 2020, Volume 30 No 3, pp 350.

⁷⁸ *ibidem* Pp 355.

⁷⁹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 17.

not contradict family values to eradicate GBV. The documentation that they have in place states equality between men and women as opposed to equality between the genders. This is a crucial nuance amidst these two policies as one resists traditional family values and the other does not.⁸⁰ This proved problematic since the EU had not provided a definition of gender until much later in the EU gender equality strategy 2020. This then led to enormous room for not only interpretation but hostility as there was no clear-cut answer and definition. The Latvian government made valid points in analysing article 12 of the convention as it must change the way of people's thinking. This seems like an impossible task and is broadly worded as it stipulates the stereotypes of women which are not on the discrimination of women but the inferiority of women.

Due to the wording and ambiguity of the convention the Latvian government also interpreted it to allow for the discrimination of men without rational bias.⁸¹ Further to this the established convention does not take into account how the states are supposed to implement these policies it simply states what must be done. The lack of a clear in depth definition page longer than half a page within the Istanbul convention is proving to be precarious as the space for clarification is desperately needed. The case is still before the constitutional court today in Latvia on the beginning of the process of ratification. This proves yet again another gap due to these ambiguities of the wording of the legislative ratification of the convention is still not secure therefore the citizens of Latvia do not have secure protection.⁸² A prime example of this misinterpretation by the states on this idea of family values may be directed from the wording of the 'convention' itself. The treaty has one hundred mentions of the word scattered throughout the text but only fifteen mentions of gender. This then sends a message to the contracting parties of the usage of the words and the not so serious nature and importance of implementing gender blind principles to prevent VAWG.

2.2.2 Turkish Opposition.

The Turkish government has ratified the convention to coincide and amend the current legislation it has in place. In doing this the feminist NGOs have recommended some voids. It starts with stipulating the lack of room for women to access legal services for those who do not know how to. This ties in with the language barrier as well where due to community ties it may be difficult for these individuals to access the legal system. This is shown in the population of Kurdish women who reside in Turkey and don't speak Turkish who have struggled to gain access to the services.⁸³ To go on from this is another problem with no mandatory alternative dispute resolutions. Within Turkey the police force is seen to believe in family violence as a private matter and sometimes will not prosecute the perpetrator. This leaves a gap in which the

⁸⁰ VIZGUNOVA, Elizabete, and GRAUDINA, Elina. The Trouble with 'Gender' in Latvia: Europeanization through the Prism of the Istanbul Convention. *Baltic Journal of Law & Politics*, 2020, Volume 13 Number 1. Pp 110.

⁸¹ *ibidem* pp 114.

⁸² *Ibidem* pp 120.

⁸³ GUNES, Ayse, Legal Implications of Turkey's Accessions Istanbul Convention by Enacting and Redefining its Laws on Violence Against Women. *Women & Criminal Justice* 2019, pp 4.

victim may not be able to find some sort of justice since alternative dispute resolution is heavily frowned upon and not sourced enough.

If there were ways in which an angle of alternative dispute resolution could be implemented for this case focusing on VAWG it may serve as a more appropriate purpose.⁸⁴ An example of a case that occurred in Turkey is of a man who killed his wife and only got fifteen years jail time despite showing no remorse for his actions. This case shows that Turkey does not abide by article 42 of the convention. This coincides with article 51 due to the fact that there have been reported incidents of a women being in danger and then being murdered due to police inaction. These inactions and further lack of faith in the justice system that is pertinent in Turkey show the patriarchal values are difficult to uproot. This shows the convention will only be possible to adhere to completely in cultures where patriarchy is not so incredibly entrenched. This is because it does not account for states that have rigid patriarchal systems rather a blanket statement that will prove to be problematic and not tailored to these in specific patriarchal dominated circumstances.⁸⁵

These examples show a breach or lack of depth in the article 9 again with the Turkish government not considering the NGO's options. This then demands a revamp of this particular article to make it an effective part of the treaty. Also, article 19 is in violation with the lack of understanding on Turkey's behalf with the Kurdish population having the same access to the legal system as other people in Turkey.⁸⁶ This breakdown in Turkey distributing equality before the law could be seen as a failure by the convention to clearly word and force this article upon the contracting parties. Now with the customs and police perspective as a private matter this is a direct violation of the general obligations article 12, (1) with the parties' responsibility to remove these harmful customs or practices.⁸⁷ This showcases yet another fault in the wording perhaps or the parties ability to adhere to this article.

Another gap that has been identified is within Turkey is the influx of refugees due to the armed conflict in Syria. Turkey took in an unprecedented number of refugees in and had to amend and change the laws from the guest status they had before to the new and reformed refugee status.⁸⁸ The Turkish government still did not permit these refugees full protection; they admit them as refugees because they do not have the same economic benefits. Turkey was one of the first states to ratify the convention, but it lacks immensely in its implementation specifically for women and girls who are refugees. This is fundamentally important as one of the main reasons for women seeking asylum is GBV yet in Turkey women are not afforded equal standing in legal matters.⁸⁹ This gap is prominent as there are no gender-sensitive measures in

⁸⁴ GUNES, Legal Implications.....pp 6.

⁸⁵ Ibidem pp 10.

⁸⁶ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 19.

⁸⁷ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 12, (1).

⁸⁸ GULLU, Canan, Syrian Refugee Women and Girls in Turkey & the Istanbul Convention. Turkish Policy quarterly, 2019, Volume 18, Number 1. Pp 80.

⁸⁹ Ibidem pp 82.

place for women and children seeking asylum evident in Turkey. The Feminist groups that exist within Turkey are pressuring the government to enact article 60 and 61 of the convention. As refugees under Turkey's national law do not have the same rights as EU citizens, they are not afforded protection under this convention. Therefore, it is necessary to ensure that the state ratifies and adopts the convention in full.⁹⁰ Article 60 and article 61 are both vital and relevant to the crisis in Turkey and have proven to be a liability as it has not been instigated purposefully in Turkey.⁹¹ It indicates the right intention of the convention but lack of effectiveness. The article has not proven to be competent and therefore a brutal error in the convention.

To give an up-to date response to the current climate in Turkey they have officially withdrawn from the treaty they helped to create. This has been an accumulation of all the problem areas given above with certain articles within the convention. Another part that played a role was the lack of the incorporation into domestic law. The entire event of the withdrawal was controversial to say the least as it indicated the state of deterioration of the system in Turkey. The withdrawal can be done by the President but is not entirely legal as he must meet certain aspects of the Turkish constitution. This was the fact that if the President made a declaration of withdrawal it could simply pass by publishing the decision. In a statement made by the communication directorate he stated the logic behind the withdrawal and commented that it was due to the treaty not agreeing to Turkey's social and family values. He went on to mention that there are several other states in the same boat and even Poland may follow suit. This is the first state to withdraw from the convention and it was permitted under article 80 which states the procedure for denunciation that could happen at any time.⁹² The lack of mentioning a grace period of three months in this article is problematic as overnight without any NGO's or legal bodies in Turkey to do something to prevent this from happening the action had been taken. The only thing that the COE can do is express deep concern for the state. This should lead to some legal reform in identifying the gaps in the articles to prevent further states such as Poland from doing the same. If there had been a three-month grace period this could allow the COE to come up with a tactical plan to ensure that millions of individuals in Turkey are to be without basic Human Rights.

This gives evidence to the cataclysmic blunder that the convention creates if a big player in the convention withdraws.

2.2.3 Post-colonial Feminist Theory.

Finally, there have been some arguments put forward by the post -colonial feminist theory on the over-emphasis of cultural distinctiveness when it comes to addressing violence. That the drafter of the document can only view the treaty through a stigmatising culturalism lens. The convention does not single out specific forms of violence that need special attention as it forms a different type of cultural violence. Such as the FGM or forced marriage that has a cultural

⁹⁰ GULU, Syrian Refugee..... pp 83.

⁹¹ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011 article 60, 61.

⁹² CALI, Basak. Withdrawal from the Istanbul Convention by Turkey: A testing problem for the Council of Europe. Blog of European Journal of International Law. March 22 2021.

aspect attached to it and therefore needs to be managed in a culturally respectful way.⁹³ The postcolonial feminist lens identified the use of honor through the convention that is not a justifiable reason for violence. Yet this is also problematic as they are referred to as harmful cultural practices and generalises this sub-group. They do not specify the difference between cultural FGM and cosmetic cutting. It's the generalization of these wordings that prove to be dubious. The drafter also has the same ambiguous wording when it comes to the vulnerable people section. There is no designation of who these vulnerable people are and the circumstances in which might make them vulnerable. It is then detailed in the explanatory report that it could mean pregnant, disabled, refugee or undocumented migrant people. Yet this does not explain a racialized or gendered factor that could contribute to the 'persons made vulnerable by particular circumstances'.⁹⁴ This not only allows ambiguity but stigmatises these groups as powerless and places these groups as wrong when it is in fact the surrounding circumstances that are wrong. This places the vulnerability on the people rather than the entire social context which is the problem and the drafter missed this.⁹⁵ They have used the perpetrators gaze as they target these women because they are less likely to seek ramification. This then identifies the problem with the justice system rather than these individuals themselves. In turn this fixes these groups into a form of helplessness that remains in place and is difficult to overcome.⁹⁶

Not only is it important to look at this post-colonial view but to review the problematic articles throughout the treaty. These articles include article 9, 80, 19,12,60,61, 17 and 9 to reconsider the wording and implementation. The gendered language is also an area that allows for states to misinterpret and stigmatise family values as an excuse to refuse to ratify or comply with the treaty.

3. Investigation into the current avenues and access to the law.

This section will delve into the current structures in place for hearing and deciding on all legal matters. It will look into the International treaties, and how they are being used through the European Court of Human Rights, and the CEDAW committee. The thesis will examine the prior steps that need to be taken before entering the courts then the processes of the courts and quasi courts of the CEDAW. After this examination it is necessary to also look at the affect and consequences of these avenues of justice. This is vital as it is the fundamental organ/body used to measure the effectiveness of the international treaties in this case the IC and CEDAW.

⁹³ PERONI, Lourdes, Violence Against Migrant Women: The Istanbul Convention Through a Postcolonial Feminist Lens. *Female Legal Studies*, 2016, 24. Pp 55.

⁹⁴Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence Istanbul November 2011.

⁹⁵ PERONI, Violence Against Migrant Women:pp 56.

⁹⁶ Ibidem pp 57.

3.1 CEDAW Committee.

The main target of this paper is to overly criticize the monumental instrument of the overall CEDAW which is the leading combatant of VAWG. Therefore, the committee and cases that come before it are the next appropriate target of examination. The committee sees cases of breaches of the legislation within the ratifying member states. The process is broken down into three avenues: the first individual communication, second state to state complaints and finally inquiries. Anyone is able to lodge a complaint against a state as long as it has clear indication of which article of which treaty document was violated. Then of course it will be determined if this is an actual violation or simply perceived. Through state-to-state basis it is a little stricter which must be done with compliance of article 29 of the CEDAW. The final avenue of inquiries must be accomplished through article 8 of the document proceed on its own initiative and an in depth inquiry into a targeted state. Another aspect is the need for all avenues of the law to be exhausted before applying to the CEDAW. This can prove to be an issue as some of these states as evidenced below have broken law systems and can find it almost impossible to achieve the exhaustion of the system. The receptiveness of the committee is not exactly in question it is the defectiveness of which is presented in the following cases.⁹⁷ The following cases have been identified as it exacerbates an already broken system. There was great difficulty in finding cases that have some of relevance to the covid-19 pandemic as with the procedure of exhausting all domestic courts it generally takes years before a case is presented before an international committee. Finally these cases are chosen to show that even before the covid19 outbreak the system had many flaws specifically in these more vulnerable states chosen Bulgaria and the Philippines. These states are vulnerable due to the status of gender equality being alarmingly low and therefore where the CEDAW needs to be present most.

3.1.1 Bulgaria Case Study.

Beginning with the V.K case heard in 2011 which related to a woman suffering from domestic violence and applied for an intervention order but was only granted an interim order. The case went through all the resources available in Bulgaria and thus was submitted to the CEDAW for violations of Bulgaria's positive obligations. This is clear in the following facts the case found domestic violence was not considered a criminal matter, judicial officers had no training in domestic violence, any physical violence is only prosecuted if it kills or seriously injured the person, lack of understanding of other forms of violence that is not physical, and no law on equality between genders. This in itself is an inconsistency between the legislation and its implementation. The case was heard in the CEDAW which resulted in discovery of the restrictive definitions of domestic violence within the Bulgarian system. These restrictions led to deeper discrimination which can be seen in the lack of legislation of equality and discrimination against women. The following recommendations were made: the removal of inflexibility of

⁹⁷ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER. Human Rights Bodies Complaint Procedures [online]. Ohchr.org, 27th of March 2021 [cit. On 27th of March 2021] Accessible at <https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx>

protection orders, the burden of proof must not discriminate against women, training for judges, and the availability for shelters for women suffering from violence. All these recommendations made should have already existed upon the ratification of the CEDAW by Bulgaria.⁹⁸

The next case which showcases the lack of development in that time or impact of the first decision within Bulgaria by the CEDAW is the case of V.P.P 2011. In this case it was about the sexual assault of a minor committed by B.G an older man in a neighboring apartment building. The problematic feature was the two year wait before the indictment of B.G and the subsequent plea deal which only resulted in a three -year suspended sentence. B.G continued to reside within close proximity of the victim and there were no precautions taken to ensure the safety of the victim. V.P.P filed a complaint to the CEDAW of violations under several acts but more importantly lack of due diligence of the system, provide an effective remedy, provide ongoing protection from B.G, no policy measures to address this violence against women and girls and the continued support of negative gender stereotypes of violence by the Bulgarian system. Repeatedly the CEDAW made recommendations on the clarification and consistency of the laws in relation to rape and sexual assault. It also made a recommendation on further structural changes that Bulgaria needs to make. Finally, it also made the state give sufficient reparations to the victim that should have occurred in the first place.⁹⁹ The simple fact that this case had to yet again be sent to the CEDAW when Bulgaria should have implemented and been monitored in order to have these changes in place to prevent incidents like these occurring.

Once again another case within Bulgaria heard through the systems of CEDAW is the case of Jallow in 2012. This being the third case in a small amount of time shows that Bulgaria has not made any changes that have been recommended by the CEDAW in the two prior cases. In this case the woman, a Gambian national suffered multiple horrendous acts of violence including sexual, physical and economical at the hands of a Bulgarian national A.P. He tortured and often ridiculed the woman with comments about her skin and illiteracy. These views are a direct reflection of the gender stereotypes and superiority that Bulgarian men feel due to the lack of equality. The child services got involved with the case and recommended she leave A.P but offered no guidance and no interpreters. Jallow got a protection order but had a lack of understanding due to no interpreter and A.P had been granted custody of her daughter. The case was then brought to CEDAW they found that there was lack of consideration of the vulnerability due to her foreigner status and illiteracy. Once again, more recommendations had been made in particular to the migration statue and disadvantaged background of the victim. These points are already outlined within the CEDAW legislative framework and should have been considered by the Bulgarian court system in the initial phase.¹⁰⁰

Bulgaria ratified and signed the CEDAW back in 1982 they have also subsequently done the same for the optional protocol in 2006. There was also an inquiry into the state in 2006 and yet

⁹⁸ *Case of V.K. v. Bulgaria*. Committee on the Elimination of Discrimination against Women (CEDAW); 2011.

⁹⁹ *Case of V.P.P. v. Bulgaria*. Committee on the Elimination of Discrimination against Women (CEDAW); 2011.

¹⁰⁰ *Case of Jallow v Bulgaria*. Committee on the Elimination of Discrimination against Women (CEDAW); 2012.

the following cases have still occurred which once again shows this giant gap between ratification and actual compliance. This is evidence of the lack of state willingness to abide by the law and the CEDAW having no actual power to enforce there compliance.

3.1.2 Philippines case study.

The Philippines is a developing state that really does not only rely on these mechanisms but depends on them for protection since it's unbelievably difficult to gain access to justice within the domestic avenue. The CEDAW heard two cases and made recommendations but they proved to be fruitless in terms of repercussions and lasting effect.

The first case is *Vertido v Phillipines 2010* which was about a significant rape that occurred back in 1996 by the President of a Chamber which is a prestigious position. The case ended in a finding of not guilty and no punishment due to the reasons of the no attempted escape by the victim. This in turn gave reason to Vertido bringing the case to the CEDAW for violations of the right to non-discriminations, right to effective remedy, and the freedom from wrongful gender stereotyping. This led to the recommendations of the CEDAW to enforce upon the Philippines the eradication of negative gender customs and legislation. This was because of the findings of the judges on the standing and personality of the perpetrator and the lack of actions by the victim. This is a reminder of the shortcomings of the initial implementation of the CEDAW legislation and framework that should have prevented such an outlandish decision. It seems almost ludicrous that a person of such a respected position of a judge could not only believe in these myths of rape but publish it and set precedence according to it.¹⁰¹

The second case is the case filed in 2011 but decided in 2014 the rape of a young woman with a disability *R.P.B v Phillipines 2014*. The victim was seventeen at the time of the offence in 2005 and mute and had a hearing disability. She followed the required steps and reported the crime to a male police officer via her sister as an aid, but it was conducted in Fillipino when the victim only knew how to read English. The case took five years to be heard and the final decision made which was the acquittal of the perpetrator. This was once again because of the rape myths given during the hearing including the ease of making a rape accusation, only two people present at the time, lack of real evidence, and finally the evidence of prosecution needs to stand on its own merits and not be influenced by the defense. The CEDAW weighed up the time of five years it took for the case to be heard and decided upon. It also considered the autonomy of a woman being taken away in rape and the personal security, and bodily integrity contraventions. The recommendations made were the training of the members of the judiciary, the eradication of gender bias, interpreters to be given and utilised by those from disadvantaged backgrounds.¹⁰²

The evidence in these two cases is astronomical in the lack of care or consideration of the CEDAWs recommendations given to the Philippines. The inadequacy of the power and strength

¹⁰¹ *Case of Vertido v. Phillipines*. Committee on the Elimination of Discrimination against Women (CEDAW); 2010.

¹⁰² *Case of Vertido v. Phillipines*. Committee on the Elimination of Discrimination against Women (CEDAW); 2010.

of the CEDAW is not enough because if the initial recommendations were considered it could have interrupted the second case and stopped it in its tracks. The CEDAW has posed no real threat to disrupt the gender discrimination for the Philippines are developing nation in desperate need of intervention.

These two case studies show how each scenario can expose these disastrous chasms in the CEDAW imperfect system. This system is ineffective and only dispenses the room for the pandemic of Covid19 to exacerbate and really cause monumental damage to women suffering all over the world. The two cases have created precedent of faults within the committee, this is shown with the ratification of the international treaty by both states but still systematic errors continue. The Philippines still has cultural norms as shown in the judges' remarks in the cases that directly discriminate against women in the Philippines. The Bulgarian case highlights incidents of GBV that have not been sufficiently dealt with on the primary level of intervention by the Bulgarian justice system. These two countries were selected as representations of the faults and room for the international bodies to improve. In this case they can create an apparatus for catching these cases that slip through the cracks and then create policies that have the strength to make change within the countries. Not the recommendations that are given to by the CEDAW and not followed.

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 the focus on VAWG. It has been functioning since 1998 and working off 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 it 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 also 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. The measurements and rules for admissibility are not strict which gives a lot of freedom and ensures that the case will be heard.¹⁰³ Despite this as determined in the following case it cannot always lead to just outcomes and results.

3.2.1 Rumor v Italy.

A significant case that stands out where there has been a symbolic violation of a woman's rights in a domestic violence case is the Rumor v Italy heard in the ECtHR. The facts of the case were that an Italian woman had suffered various forms of violence perpetrated by her partner which included physical violence and threatening her with scissors and a knife. The police intervened and sent the woman and her child to psychiatric care since the child had also witnessed the

¹⁰³ 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=>.

attack. The partner was subsequently found guilty of attempted murder and kidnapping through the Italian system and sentenced to four years and eight months. Then upon his release under house arrest he was located fifteen kilometers from the victim's residence.¹⁰⁴

The victim then applied to the ECtHR for violations of article 3 and 14 in conjunction with the European Convention of Human Rights.¹⁰⁵ She filed the application claiming that she was under incredible psychological distress since the attack and the Italian authorities had not done enough to counter the gender issue in domestic violence. The framework that had existed prior and after the offence had not been substantial in protecting her on the basis of discrimination of gender. This was because she had not been made aware of the release of the perpetrator and only found out due to the fact that he called her himself.

The sizable argument was the fact he continued to pose a threat to her and her children due to his release and the location being within a fifteen- kilometer radius and he was able to contact her and her children.¹⁰⁶ The case was accepted into the ECtHR but was ultimately found to be no violation on behalf of the Italian authorities. In relation to article 3 it says that she had been standing since she was in a vulnerable position, but the Italian framework had fulfilled its positive obligations. In the decision it was outlined that the court system had not remained passive and had charged the perpetrator of a crime.

It went on to make remarks that the release and placement at this particular facility did not breach this right as it was within the legislative framework of appropriate measures. This concluded no breach of either article 3 or 14 as all the measures of punishing the perpetrator had taken place and therefore countered the effects of domestic violence.¹⁰⁷ This conclusion was astonishingly disheartening for victims of domestic violence not only within Italy but around the world. This was because it clearly dictated that once the perpetrator has been charged and gone through the system the protection of the victims was no longer of concern. This victim and her children would have to continue to live in fear which will count towards the psychological factor of VAWG. Yet it would not be considered as a point of distress in both the domestic and international sphere. The reach of the protection of domestic violence only stretches as far as the offence itself and not what is to occur as a direct result of it. This is unacceptable and indicates an enormous gap in the system of protection.¹⁰⁸

¹⁰⁴ *Rumor v. Italy*, Appl. no. 72964/10, Judgment of 27 May 2014

¹⁰⁵ European Convention on Human Rights, 3 September 1953 article 3, and 14.

¹⁰⁶ *Rumor v. Italy*, Appl. no. 72964/10, Judgment of 27 May 2014

¹⁰⁷ MCQUIGG, J.A, Ronagh. Domestic Violence as a Human Rights Issue: *Rumor v Italy*. European Journal of International Law, Volume 26, Issue 4, 2016. pp 1012.

¹⁰⁸ *Ibidem* pp 1015.

3.2.2 Teršana v Albania.

In the case of Teršana v Albania this involved an acid attack against a woman that took place in 2009. She had suspicions that her ex-partner was the perpetrator given the prior domestic violence incidents. This case was special since there was never any real investigation into what happened and who had committed the crime. To this day no one has been convicted of the crime. This case had of course exhausted all options in the Albanian legal framework. Then the case was eventually decided in 2020 in the ECtHR.

It was ruled that there was a violation of the right to life with the logic that the state failed to investigate the crime adequately. This was a particular case as it was a pinnacle in GBV and the state did not identify the perpetrator or the substance used. This case was left untouched for over ten years with no updates to the victim. This is where the failure and violation lie. It was not until 2020 when the case was finally given a decision which was the violation of article 2. It then ordered Albania to pay Teršana 12 thousand euros for damages and then a further 2720 euros for expenses.¹⁰⁹ This was the correct decision made by the court, but it came a little too late. In these eleven-year gaps between the attack and this judgement there was sufficient time for more attacks to occur.

This leaves the female population vulnerable and can still be argued that they are still in this state. It is evidence of the lack of police work and simply care by the Albanian authorities which is a cultural practice. This lack of consideration is what continues to put women in danger although the court made a decision it is fair to say that it may not make any change. This happened to be the only case to come before the court and find some modicum of justice but is not enough to protect the women of Albania thus the gap in the not fulfillment of these important treaties is maintained.

3.2.3 Wasiewska v Poland.

This case study that originated from Poland was chosen because it is meaningful given that there has been talk about the state withdrawing from the IC. This case will be an example as to why this is not a favorable idea. The case is Wasiewska and Poland, in this circumstance the victim had been thrown out of her flat by her husband. In doing this she was left without her belongings and access to her daughter and granddaughter. The applicant then argued that the judicial body failed to evict her husband rather than her and made it impossible to make some form of legislative action against him since she did not have access to her personal belongings.

This case was heard by the ECtHR but ultimately dismissed due to the lack of meeting the criteria set out in article 35. This set out a high benchmark for the victim to reach and seek justice. Therefore, this woman had been denied the right to be protected. This strict criteria and the lack of services that this woman had been provided allowed for the case to be inadmissible. It is vital to show this case as it proves the high standard and situations in which the case reaches the

¹⁰⁹ Case of Teršana v Albania. European Court of Human Rights judgement of 4 August 2020.

court but is finally dismissed which results in a loss for everyone involved and the continuance of GBV.¹¹⁰

These selected cases were chosen as a depiction of the oversight of the legal bodies in the protection of individuals in relation to VAWG. The cases are scrupulously handpicked as they caught media attention and had an impact in terms of ripple effect and promoting gender equality. Each case is a meticulous representation of certain articles in the international treaties that seem to evidence inconsistencies between practice and idea. In the end in some cases justice was served but it was too late and should provide the International organisations with a good indication of the room for improvement.

All these organisations have been instrumental in safeguarding victims of VAWG yet it also highlights the limitations and flaws that need to be repaired. The limitations are substantial as these courts create precedent and send a clear message to all those involved. These limitations and cracks in the system allow for such a monumental effect of the pandemic to broadcast the reality of the lack of protection and effectiveness of these organisations.

4. Ebola outbreak & Covid19 Impact

4.1 Ebola outbreak

It is vital to look at another situation where there was forced quarantine or lockdown in order to prevent the rapid spread of a contagious disease. In this case it was the Ebola outbreak in West Africa which occurred from 2013-2015.¹¹¹ The result of the school closure and mandatory quarantine was leaving the young girls and women defenseless. This was in the sense of exploitation, coercion, sexual abuse and lead to a number of unwanted pregnancies.¹¹² This was not the only unbelievable outcome the number of diseased were recorded but the number of victims of violence were not. The women also were not welcome to participate or attend local community meetings that discussed the preventative measures and care needed to stop the spread of the disease. During this pandemic there was an increase in 19% of women seeking support services and in Liberia over 80% of women were denied health services.¹¹³ In this incident the women and girls of West Africa were grievously overlooked and now the women and girls are also suffering due to these international bodies not learning from this incident. This was not the only cataclysmic event that has occurred in the past century either with the global financial crisis and SARS were the increase of VAWG increased drastically.

¹¹⁰ Case of Wasiewska v Poland. European Court of Human Rights judgement of 2 December 2014.

¹¹¹ ONYANGO M.A, RESNICK K, DAVIS, A, SHAH R.R Gender-Based Violence among Adolescent Girls and Young Women: A neglected consequence of the West Africa Ebola outbreak. Springer Cham, 2019, pp 125.

¹¹² Ibidem pp 126.

¹¹³ JOHN, Neetu, ROY, Charlotte, MWANGI, Mary, RAVAL, Neha & MCGOVERN, Terry. COVID-19 and gender-based violence: hard-to-reach women and girls, services and programmes in Kenya. Gender & Development, 2021 Volume 29, No 1, pp58.

When these pandemics have occurred in the past policies such as quarantine, restrictions on movement and school closures directly hinder women and girls. Then there are policies that are indirectly gendered for example the closure and force to work from home will effect women more who tend to do more caring roles such as cleaners, childcare workers or nurses who work on the front line. This has been referred to as ‘shock absorber’ since the duties are highly feminised such as at care of children and sick people and when these services can’t be afforded anymore in times of crisis and tend to fall on women’s shoulders.¹¹⁴ This also puts an economic stress which leads to partners lashing out with more aggression which results in the increase in intimate partner violence. There is also a high danger in unintended pregnancies and sexual abuse in young girls particularly. The loss of livelihood also contributes to this and being stuck indoors with the perpetrator leads to the increase in violence and decrease in the ability to leave the relationship without the right support services. There is also a huge redirection of funds to emergency services rather than to the services that can be used to aid in GBV such as shelters and call lines.¹¹⁵

These trends were easily seen in the early stages of the covid outbreak with a police station in the province of Hubei China reported an increase of triple the amount of domestic violence. In France domestic violence increased 30% during their lockdown and the services such as nurses, rape survivor specialists, and mental health professions are being redirected to the covid pandemic.¹¹⁶

4.2 Italy a case study.

The most suitable choice for a case example to use is Italy as it was the inaugural state to enact measures and collide with Covid19. A lockdown in this context meant that individuals are required by the law to stay inside the house and must only leave the house for necessities. The lockdown began in March 2020 and lasted two months then a second lockdown was 28 days in November, the final lockdown to date is 15 days in January 2021. The lockdown meant that individuals are required by the law to stay inside the house and must only leave the house for necessities. This is a collection of about 83 days to be locked inside with a potentially violent partner which was the scenario for many Italian women and girls’.¹¹⁷ This paper has been written in an estimated years’ time since the first lockdown so it should be ample time to have a strategy in place.

A little background on the level of GBV in Italy it has been registered in national institute of statistics that 2 million women have suffered physical or sexual violence from partners this

¹¹⁴CARINO, Giselle, MCGOVERN, Terry, CASEY, Sara E & JOHN, Neetu. Lessons never learned: Crisis and gender based violence. John Wiley & Sons, 2020, Volume 20 pp66.

¹¹⁵JOHN et all COVID-19.....pp 59.

¹¹⁶ Ibidem pp58.

¹¹⁷ BELIZZI, Saverio et al. Violence Against Women in Italy During the COVID-19 Pandemic. International Journal of Gynecological Obstetrics. 2020 August. Volume 150 No2. pp 259.

amounts to 13.6% of the population.¹¹⁸ The current statistics show that 855,000 women are now suffering violence from a current partner and this does not take into account the underreporting that is common with this crime.¹¹⁹ The numbers also indicated that the services made available through the IC under article 24 which dictates that telephone lines be made accessible for women suffering from violence doubled during this period.

During the lockdown it was reported that 2867 women reached out to support shelters which accumulated to a 74.5% increase.¹²⁰ Of these reported women it was determined that one quarter of the percentage was the first time reporting or seeking assistance.¹²¹ This not only put a strain on these women's shelters and services but also for the women who had already suffered harm found it difficult to seek medical treatment. It was found that the workers in hospital are under immense pressure and are unable to sensitize signs of VAWG. Another statistic found that of the women who phoned a service a drastically low proportion sought further counselling or medical assistance. The women are evidently being abused but have no way of reaching additional relief. This once again highlights the significant heightening of this issue during this time and the desperate need for measures and an appropriate reaction from international bodies.

The preeminent breakdown that caused the impairment for the women and girls in Italy was the connection between these groups on the ground campaigns from NGO's. This then extended to the front line defenders such as the call centers and the anti-violence centers. The government was not communicating directly to these groups and therefore were not implementing efficient policies. Whereas in Spain there was a campaign set up with a hashtag #liberapoui which sparked uproar and caused movement. An example of this breakdown in communication in Italy was that they handed out pamphlets on information on the information on the topic. In comparison to Spain where whatsapp was used as a tool for communication and distributing information which proved to be more effective using the same tool media as the hashtag.¹²² Another case was the government communicating with pharmacies about informing victims who come forward but not directing them towards these shelters. Once again a disruption in communication which caused many women to continue to suffer.¹²³

UN women have circumscribed many policies and briefs that cover the shadow epidemic across the board. It was best said by the UN secretary general Antonio Guterres '*for many women and girls, threat looms largest where they should be safest. In their own homes*'.¹²⁴ This quote signifies the importance of these policies and procedures to be implemented correctly and accurately in order to serve as stable protection for women and girls. Yet this only serves as a

¹¹⁸DONATO, Stellamarina. Gender-Based Violence against Women in Intimate and Couple Relationships. The case of Spain and Italy during COVID-19 Pandemic Lockdown. 2020, Italian Sociological Review, 10 pp 878.

¹¹⁹ Ibidem.

¹²⁰ Ibidem.

¹²¹ Ibidem.

¹²² DONATO, Gender-Based Violence.....p880.

¹²³ Ibidem.

¹²⁴ Ibidem p 881.

band aid in controlling the issue at hand with blanket policies and endorsements. For example, the issue brief of ending VAWG with the tagline added of Covid19.¹²⁵ There are five essential guidelines. The first is self-explanatory which is to include in the national plans additional resources to this area and those resources be evidence based. The second is to bolster the existing services in place to tackle VAWG, third is a contribution to the second with the build capacity of the key workers improving response quality. Following this is having women lead policy change, recovery and solutions. The final guideline is the collection of sex-disaggregated data which unleashes vital information in understanding the impact and method of response thus needed.¹²⁶

These policies as exemplified above in Italy are all well and good but not effective in actually creating a system of protection. This is because they are not implemented befittingly so they are essentially a waste of time and funds. If the UN was able to at first create a policy in case of emergencies that could be defaulted to it would prevent this. It is also possible to look into the level of violence and gender equality and measure already in place then create tailor made policies. This would prove more potent and actually enact some form of change and level of safeguarding in a more preventative level.¹²⁷

In terms of other measures in place that actually have some modicum of stability in Italy, the medical professionals in Italy have started to follow up on patients through a telemedicine service that is socially distant and safe. There has also been phone counseling service as well but has proved problematic as complete privacy is needed but not attainable.¹²⁸ Italy has also allowed for more family leave to the affected working parents as another measure. There has also been a signal for help campaign implemented which is yet another band-aid method. The individuals in danger need hands on treatment in these scenarios and they are unable to get them. WHO has strategised four key components which Italy has attempted to accommodate. They include the prioritisation of prevention of violence, defining the issue through sample collection, use of research to understand factors of VAWG and the implementation of promising interventions.¹²⁹

It is unfortunate that there is not enough evidence and resources available to further interpret the effects of the shadow pandemic. The information above is only one of many clandestine facets that was able to be uncovered of the effects of this pandemic that has come to light. Even

¹²⁵UN WOMEN. Covid-19 and Ending Violence Against Women and Girls [online]. Unwomen.org, 13th of February 2021 [cit. On 13th of February 2021] Accessible at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-Covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>.

¹²⁶ Ibidem.

¹²⁷ Ibidem.

¹²⁸BARBARA, Giussy et al. COVID-19 Lockdown, and Intimate Partner Violence: Some data from an Italian Service and Suggestions for Future Approaches. Journal of Women's Health. October 2020, Volume 29, No 10. pp 100.

¹²⁹ Ibidem pp 103.

with this little knowledge there has still not been an effective legal or policy that has emanated. The UN has been demanded to facilitate action on a preventative planned level to anticipate any further detriment. So far on an international and national level as indicated above there has only been band-aid type action. There is an insurmountable demand for legislation defined guidelines and adjustments.

5. Identifying the gaps in laws and policies.

5.1 The use of Gendered Language.

The primary predicament that is confining the feminist movement within the UN is the wording of its documents. As outlined in the beginning of this section one of the substantive theories behind the elimination of VAWG is the elimination of gender altogether. This has been proven throughout Sweden as they make small measures such as non-gendered bathrooms to display this and the education of a gender blind system.¹³⁰ This has led to a decrease of VAWG but not a complete elimination. The UN and the documents they provide has an astonishingly and tremendous amount of gendered language. Article 1 and 2 of the legislation begins the sentence with discrimination against women.¹³¹ This is an aberration as individuals who do not fit into these categories for example the intersex population or even young girls or trans do not have equal footing and access to the same rights. There have been special reports that are fixated on this problem, but it is not as highly published or attainable as the CEDAW and lacks years of research and implementation. This is not enough to mend the gaps that have been evident for years and continue to do so leaving millions of people exposed.¹³²

5.2 What is gender bias analysis?

The gender bias analysis that is tethering through the CEDAW committee needs to be addressed. The fact that they skim over the important rights such as economic, political and communicative rights essentially open up the space for VAWG. Therefore, it shows a flawed inconsistent system that needs to be remedied.¹³³

¹³⁰ ABRAMOWITZ, Sharon, MORAN, H, Mary. International Human Rights, Gender-Based Violence and Local Discourses of Abuse in Post Conflict Liberia: A Problem of Culture? African Studies Review . 2012 Volume 55 (2), p 125.

¹³¹ Convention of the Elimination of All Forms of Discrimination against Women, New York 18 December 1979 article 1, 2.

¹³² KLUGER, Jeni, Gender Based Violence and the Law. Georgetown University, World Development Report. 2017,pp 20.

¹³³ PUSEY & CUSAKCEDAW and the Rights p66.

5.3 Under representation and knowledge in targeted vulnerable groups.

As discussed above such groups such as intersex, trans, migrants, undocumented workers and disabled individuals are overlooked within the legislation framework. These differences are mentioned but not given the attention that is much needed. When there is mention of some cultural practices such FGM it is often worded in a discriminatory manner which shows lack of knowledge. These gaps can prove to be incredibly detrimental as it is perceived from these bodies to be sufficient when they are in fact hindering the cause. For example, in Turkey the high population of Muslim and refugees need exceptional consideration due to the circumstances they will come across. What both the IC and the CEDAW have in terms of these disadvantaged groups is merely not enough.¹³⁴

5.4 Failures within the court system.

The judicial branch of these organisations are not without fault in fact the last line of defense available for these individuals should be faultless. As shown throughout this text there are a number of cases that have made it to this final destination and still denied justice. The judicial system is imperfect in its form of punishment and rule of law not remaining strong and impenetrable.¹³⁵

5.5 The advancement of the monitoring body tool and customisation of recommendations.

The monitoring system of the CEDAW was put in place as a way to customise recommendations for precise issues that have arisen. Yet it is not that potent as the recommendations and reports made still seem to fall short. The blanket language used within the legislation permitted these instances of discrepancies between states. This forced the UN to create these bodies despite the creation of these monitoring bodies the prosecution has been fruitless. This is because the UN body did not counter the different cultural malpractices evident in these states. The Sub-Saharan African countries have a different set of social norms that are NOT apparent in Spain or Pakistan other problematic states.¹³⁶ They also do not counter the lack of communication between governmental bodies and NGO's like in Italy. It is not considered enough to write the specific circumstances such as level of violence and equality in each individual states so then it can implement accurate policies.

5.6 No enforceable power.

This is a gargantuan oversight of the UN in all facets of the international organisation and must be transposed. In relation to the CEDAW they have monitoring bodies and the optional protocol

¹³⁴ FENTON, A Rachel & MOTT, Helen. The intervention Initiative theoretical underpinnings development and implementation. Policy Press 2008, pp 173.

¹³⁵ TERRY, Geraldine & HOARE, Joanna. Gender-Based Violence. Oxfam, 2007, pp 46.

¹³⁶ SJOHOLM, Maria. Women's rights in Regional Human Rights Law Regime. BRILL, 2017, pp 20.

that has been set up to endeavor to ameliorate this problem. It has not been successful as seen above; many states simply ratify these treaties, put in place reservations and then continue without any repercussions. It is simply a mechanism for no accountability and the states can walk all over the CEDAW adhering to whichever principles suit them. There are countless illustrations throughout this text in case law and through studies and papers. Specifically, the lack of avenues for girls in Pakistan to gain an education and Spain still holding bias for men to succeed the crown rather than women. Another more dangerous example is the continued discrimination through the legal system in the Philippines with negative gender stereotypes. These continue to occur without any real repercussions as the CEDAW has conducted countless reports and made recommendations, yet people continue to suffer.¹³⁷

5.7 Lack of Emergency articles or plans.

No section that clearly outlines for instances in a state of emergency or in desperate times of armed conflict. The committee is in place, but this matter needs to be ingrained in legislation as it can act as a primary preventative matter as a deterrent as well as base as a plan of action. This has the highest demand for as given current circumstances something should have been done before to prevent such an escalation of the problem. There has been an Ebola pandemic discussed above as well as the SARS pandemic and global financial crisis before and several armed conflicts in which women and girls suffered the most. Yet despite this no special recommendation or report or protocol is in place to attempt to counterattack the circumstance.¹³⁸

6. A way forward.

6.1 How to ingrain gender neutral language.

One way to make monumental strides forward for the UN is to take on a post genderism approach. This involves the movement of centralising the movement towards the elimination of gender all together. To translate this, it means living in a world that is beyond any form of gender identity. This would simply eradicate the means for people to be discriminated upon by their reproductive organs or gender performance. Which seems like a more lenient approach which can also be figuratively speaking a fantasy. As explained earlier it can be achieved by elementary processes like the no labeling of bathrooms, using gender neutral terms and education. The uncomplicated fix that can be done immediately is rewording the CEDAW by replacing words like women to individual or persons and then discrimination based on sex. This is the first tool in educating and the catalyst for this progressive movement to begin.¹³⁹ To

¹³⁷AGHTAIE, Nadia & GANGOLI, Geetanjali. Understanding Gender Based Violence. Taylor & Francis Group, 2015, pp 66.

¹³⁸ MERRY, Engle, Sally. Human rights & Gender Violence: Translating International Law into local justice. The university of chicago press. pp 250.

¹³⁹ Kluger, Gender Based Violence.....p 24.

reiterate it is a mechanism that can minimise the level of violence received by women but not all together eliminate it as that would take several decades to achieve.

6.2 How to fix the gender bias analysis?

The gender bias analysis can be remedied through answering the simple question coined by Katherine T Bartlett which is the woman question. This is simply by answering the gender implications of a decision if women have been omitted in the consideration and ramifications.¹⁴⁰ This means there needs to be an over examination into the typical scenarios or impediments that women might encounter in comparison to men. This also encompasses some concepts that may directly disadvantage women. Are there any assumptions made on women and are these interests then invisible or simply peripheral? It is the overlapping analysis of all the possibilities and considerations that make it a unique question.¹⁴¹ This permits a more gender sensitive approach as it is an over compensation of discussion which is what is needed to fix the decades of mistreatment of women. Another practice that needs to be upheld is also endorsing the elimination of masculinities. This not only will stipulate the equality between the genders but functions as an antidote for the behaviors of men rather than simply a band-aid. The man question implies the determining factors in how men accept privilege within society. Which shows another viewpoint of deconstructing the stereotypes from within by the analysis of how they came about in the first place. The dissection of the entirety of the issue where there is no omittance of any view or idea is the only way to effectively tackle this monumental challenge.

Finally, the intra-gender approach must also be considered which will form the final part of the holistic approach. This is then examines the category of people who do not necessarily fit into either male or female stereotypes who fit into this gray area. This is the other question which can be managed or framed within the optional protocol or amendments made indicates a nuanced approach. This approach has been lacking so far but is needed to regulate the intersectional feminist approach.¹⁴²

One incredibly detailed factor that is missing throughout the entire feminist framework is the lack of participation of men. The feminist movement is centered on women, but the main impingement is the lack of men's involvement. If the legislation could be reworded phrases to encourage the participation of men and not the discouragement it will lead to more entanglement of all genders. The inclusive nature of the system is not that exactly, in fact it excludes men's roles by not explicitly mentioning the value of their role in this fight. The narrow nature as well of the vested interest of women lies within their gender when it could also lie within its allies in this case other genders.¹⁴³

¹⁴⁰ Kluger, Gender Based Violence.....p24.

¹⁴¹ PUSEY & CUSAK, CEDAW and the Rights..... p70.

¹⁴² Ibidem p71.

¹⁴³ 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, pp 420.

6.3 Targeting vulnerable and disadvantaged groups.

This once again can relate to the tailoring of legislation or follow up reports from these organisations to maintain social order with the new challenges. An example is the influx of refugees in Turkey and how a lot of these people were left without human rights due to the particular wording of Turkish law. There needed to be a mechanism in place that the IC or CEDAW could implement that would hold the Turkish government accountable for the gap in the law. For several years and even now these individuals went unprotected and became vulnerable to all forms of violence.

The way forward is to consult NGO's further and individuals who work within these groups in great detail and actually take on board the advice. The outside body of the EU, and the UN are just that, an outside body they need to dig deeper into limitations and individual struggles evident in these states. These groups of people will experience different impediments to others and therefore need to be given special attention that is followed up routinely. The wording and phrasing also needs to permit a specialised method of implementation. For example, the articles that mention that these women need to have access to the law in their own language. That is all it mentions there is no follow up on how the state is supposed to achieve this goal. There needs to be a firmer connection and relationship between these big bodies, the UN and the EU to these discriminated states.¹⁴⁴

6.4 The judicial rebalance.

The rule of law is a weak point in the punitive facet of the VAWG in the international bodies. This is because there are outliers that allow for precedent and serve as a deterrent for example the Rumor case in Italy. This shows that there are gaps and forms of violence that are not going to be politicised by the international system. This weakens the rule of law and sends various messages on what is to be tolerated or not tolerated. This ambiguity is problematic and can be fixed with consistent ruling and correct decisions through the judicial branch. The threat of violence must be taken seriously and at the very least recommendations to be made as a form of signaling this as abusive behavior and is unacceptable. Consistent ruling can be remedied by further education and diversity on the judges' panel. There needs to be not only cultural sensitivity and more experience but the diversification of the members. The education will ensure that all the members actualise the legislation in the same and correct manner.¹⁴⁵

There is also the method of seeking these sources of justice which entails that all domestic avenues must be exhausted. This is not efficient as in some of these underdeveloped countries where women don't have access to domestic sources of the legal system. This may be because their state may not have legal aid or if they do these women are unable to use it. Therefore, it once again identifies this gap and dictates the necessity to remedy it. This can be done by

¹⁴⁴ VERLOO, Mieke, LOMBARDO, Emanuela. Institutionalizing intersectionality in the European Union? Policy developments and contestants. *International Feminist Journal of Politics*. 2009, Volume 11, Number 4, pp 490.

¹⁴⁵ LOMBARDO, Emanuela, AUGUSTIN, Roladsen, Lise. *Intersectionality in European Union policy making: the case of gender-based violence*. Sage Publishers, 2016. pp 8.

allowing exceptions under strict requirements that the defendant can access international courts before exhausting domestic ones. These measures may need to be monitored by another body as there may be numerous cases, but it can be filtered through a mechanical procedure of these nominated groups mentioned above being targeted.¹⁴⁶

6.5 How to customise and embed recommendations into statutory and binding processes.

The CEDAW does set out reports and monitoring bodies to these problematic states which it should not have to, if the framework to begin with functioned. They struggle to interact with prominent members of society in these given states. If they were able to consult on a more in-depth level with these individuals it would prove to be fruitful. They need to be able to get on the ground and conduct accurate research in these areas with the help of locals. This would allow for progress to start and make an impact instead of being this outside body dictating orders it would have a profound understanding. This can also intersect then with the enforceable power described in the next paragraph to carry out 'punishments' that would fit the state. These measures also need to be taken for the IC as seen in Bulgaria Latvia and Croatia they need tailor made points to establish effectiveness. This means a method to counter the family values enshrined that are fundamentally detrimental to women and girls. The EU needs to put together a monitoring body that can infiltrate and prevent these harmful family values from doing more damage through the same methods outlined before.¹⁴⁷

To go on from this point the general recommendation 35 that continued on from identifying and mending the gap for intersex people. It was a step forward but in the wrong direction as the covid19 pandemic occurred and became the main concern. When this recommendation could have set up a procedure in case of emergencies but chose to target this issue instead.¹⁴⁸

6.6 The implementation of an enforceable power.

If the UN was able to design a punitive scheme to emphasise rehabilitation rather than the deterrent side, it would prove most effective. This requisite can be implemented through the court system. A prime illustration is the prosecution in the Akayesu case in the Rwanda Tribunal which was the first instance of prosecuting rape as a war crime. This monumental decision then went on to serve almost as precedent in the Yugoslavian war trail which had a similar decision making rape a crime against humanity. This was then picked up on by the Security Council Secretary- General which took the idea of to pay specific consideration to gender-related matters.¹⁴⁹ If something similar could be utilised, non-violent but extremely discouraging and tailored to each state depending on their circumstances it will prove to be a deterrent. For

¹⁴⁶ BRADY, Helen. The power of precedents: using case law and ad hoc international criminal tribunals and hybrid courts in adjudicating sexual violence and gender-based crimes at the ICC. Australian journal of Human Rights. 2012, Volume 18, Number 2, pp 101.

¹⁴⁷ SJOHOLM, Maria. Women's rightsp18.

¹⁴⁸ ibidemp15.

¹⁴⁹ GOLDSTONE, Richard, J. Prosecuting rape as a war crime. Case Western Reserve Journal of International Law. 2002, Volume 34, Issue 1, p 279.

example these cases can be used in further circumstances of genocide and behave as a huge detriment. It can send a strong message that this form of discrimination is not tolerated and that routine non-compliance is a thing of the past.¹⁵⁰ It also was able to change how the two UN Tribunals viewed gender-specific matters. If another monumental case like this was to be brought before the courts in the time of a pandemic it could serve as a great enforceable power the UN can use.¹⁵¹

6.7 Learning from the Pandemic caused by Covid19.

The gaps identified were outlined above and the categorical steps that need to be taken are primarily the addition of the CEDAW and IC that allows for in case of state of emergency. This is still a remediable matter as we can learn from what is needed in this pandemic and create a brand -new plan for future pandemics or conflicts. The latest CEDAW recommendation does outline the issue of Global warming which is a pressing pending issue and is an accurate representation of this form of report being done well. This can be done in the same manner in the latest report highlighting the research and what measures proved ineffective and effective which can stimulate the plan of action. This can be amenable to life post-pandemic and in cases of similar circumstances which may be armed conflict. The report should not be too broad but allow for the customization of each scenario to prevent missing any particular circumstances. Once again it should be put together through several consultations with experts and thorough research.¹⁵² This will set a better tone for the future and attempt to formulate a positive spin on the past disastrous year. It can include such clauses as how the funding can be redistributed to shelters and call lines. As well as delivering an informative method of communication through such tools as the media. The most important clause should include how women should be at the forefront of these policies and measures and considered at the highest level and not left behind. If this could be advised it would make such a drastic impact for the future goal of eliminating VAWG but for now it will begin the process and work as a minimiser.¹⁵³

¹⁵⁰AGHTAIE, Nadia & GANGOLI, Geetanjali. Understanding.....pp 76.

¹⁵¹ Ibidem.

¹⁵²AMPARITA S, STA Maria. Gender-Based Violence in International Criminal law: A Closer Look at the Elements of Rape. *Ateneo Law Journal*. 2012. Volume 57:343. p 344.

¹⁵³ DLAMINI, Nobuhle Judy. Gender-Based violence, twin pandemic to COVID-19. 2020, *Sage Journals*, Volume 47, pp 4.

7. Conclusion.

The CEDAW has been coined the law without sanction by Sally Engle Merry which epitomizes the authority it has in the human rights sphere.¹⁵⁴ The foremost indispensable act that needs to be taken is to learn from this pandemic both the virus and the shadow pandemic. This is possible by creating some form of emergency planning for potential future catastrophes. There also needs to be reconsideration of both the IC and CEDAW with feminist standpoints. The de-gendering of the wording of the legislation for both the IC and CEDAW. This can be achieved by re-assessment of the current legislative frameworks in place of the CEDAW and IC. Then the court system that works with them as the last line of defense. The international court systems need to cater for exceptions for use in situations where legal systems in certain states are broken beyond repair. They also need to be more considerate when making decisions as it sets precedent and needs to be established with absolute certainty.¹⁵⁵

These methods which have been scrutinised immensely in this thesis will lead to the eventual amelioration of discrimination against women and girls. For now the thesis has discovered the fact that this is in fact feasible but in the distant future. The main result is that these small steps are going to make some dramatic effect and change that can lead to this eventual outcome. It is basically the process in reducing and minimizing GBV to begin which shall eventually lead to the elimination. Which once again stresses the importance of the need to complete these miniscule changes that can build up and lead to bettering the world when it comes to gender.

This end goal of achieving gender quality and thus elimination of VAWG can only be done through connecting both sociological perspectives and law. Which has been highlighted throughout the text as without this unique combination it cannot be achieved. This is through gender mainstreaming in education channels and legislative wording which will form as an attack on all fronts.¹⁵⁶

¹⁵⁴MERRY, Engle, Sally. Human rights & Gender Violence: Translating International Law into local justice. The university of chicago press, pp 25.

¹⁵⁵ Ibidem.

¹⁵⁶ Ibidem.

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