The CEDAW Committee and Gender-Based Violence against Women: General Recommendation No 35

Title: The CEDAW Committee and Gender-Based Violence against Women: General Recommendation No 35.

Author: Dr. Ronagh J.A. McQuigg.

Address: School of Law, Main Site Tower, Queen’s University Belfast, Belfast BT7 1NN.

Email address: r.mcquigg@qub.ac.uk

Word count: 5374
The CEDAW Committee and Gender-Based Violence against Women: General Recommendation No 35

Dr. Ronagh J.A. McQuigg*

Keywords: UN Committee on the Elimination of Discrimination against Women, General Recommendation No 35, General Recommendation No 18, violence against women, UN treaty on violence against women.

On 14 July 2017, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) adopted its General Recommendation No 35 on gender-based violence against women.1 The purpose of this document was to update the Committee’s General Recommendation No 19 on violence against women, which had been adopted 25 years previously.2 This article will examine General Recommendation No 35 and analyse the extent to which the adoption of this document may contribute to addressing the issue of gender-based violence against women. However, although General Recommendation No 35 is undoubtedly a positive development in the response of international human rights law to this issue, it will be argued that further measures are necessary, in the form of a UN treaty on violence against women.

1 CEDAW and Violence against Women

At the UN level, the primary instrument relating to the rights of women is the UN Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW).3

* Lecturer, School of Law, Queen’s University Belfast. Email: r.mcquigg@qub.ac.uk


3 1249 UNTS 13.
However, rather surprisingly, this Convention contains no express reference to the issue of violence against women. It seems nevertheless that this omission can be explained by the fact that CEDAW was formulated in 1979, at a time when there was little, if any, recognition of violence against women as an issue falling within the ambit of international human rights law. As Edwards states, ‘Prior to the 1990s…violence against women was not seen as a major issue, and if it was recognised as an issue at all, it was considered an issue for national governments (and criminal law) rather than international law.’\textsuperscript{4} Although violence against women is now regarded as an issue which clearly must be addressed at the international level, the fact remains that there is no express mention of violence against women in CEDAW, or indeed in any other UN human rights treaty. The approach adopted by the CEDAW Committee has however been to interpret CEDAW in such a manner as to encompass this issue, as best exemplified to date by the Committee’s General Recommendation No 19.\textsuperscript{5}

The CEDAW Committee adopted General Recommendation No 19 on violence against women in 1992. According to this document,

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based


\textsuperscript{5} It is worth noting that this document had a precursor in the form of the CEDAW Committee’s General Recommendation No 12 on violence against women, which was issued in 1989. This was however a very brief document which did not explain how the issue of violence against women actually fell within the ambit of CEDAW.
violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.  

General Recommendation No 19 then went on to explain how particular articles of CEDAW, although not referring expressly to the issue of violence against women, should nonetheless be interpreted in such a way as to cover this issue, and made various recommendations to states as regards how they should respond to violence against women. 

It is fair to say that since 1992, ‘General Recommendation 19 has been the basis of the (CEDAW) Committee’s work on violence against women.’ Based on the interpretation of CEDAW set out in this document, the CEDAW Committee frequently makes recommendations on this issue in its Concluding Observations on the periodic reports submitted by states parties under CEDAW’s monitoring procedure. Also, under the individual communications procedure contained in the Optional Protocol to CEDAW, the Committee has found states to be in violation of the Convention in instances relating to violence against women.

---

6 At para 6.
7 Articles 2, 3, 5, 6, 10(c), 11, 12, 14 and 16 of CEDAW.
8 At para 24.
10 The large majority of the Concluding Observations made by the CEDAW Committee since the adoption of General Recommendation No 19 refer expressly to violence against women.
Now, 25 years after the adoption of General Recommendation No 19, the CEDAW Committee has issued a further General Recommendation on violence against women, in the form of General Recommendation No 35. The CEDAW Committee points out in the latter that, despite the work of the Committee and of other bodies such as civil society groups, ‘gender-based violence against women…remains pervasive in all countries of the world, with high levels of impunity.’ The aim of the CEDAW Committee in adopting General Recommendation No 35 is to provide states parties with ‘further guidance aimed at accelerating the elimination of gender-based violence against women’, in the hope that this will contribute towards the amelioration of this situation.

2 Terminology used in General Recommendation No 35

While the title of General Recommendation No 19 referred simply to ‘violence against women’, interestingly the title of General Recommendation No 35 instead uses the phrase ‘gender-based violence against women’. According to the CEDAW Committee, this more specific term is used as it ‘makes explicit the gendered causes and impacts of the violence.’ It seems that the CEDAW Committee decided to use this term from the outset in order to counter arguments which advocate a gender neutral approach to addressing violence. It is true that there has been a move towards gender neutrality by some jurisdictions, for example England and Wales, to issues such as domestic violence. Notably such gender neutral approaches have received strong criticism from former UN Special Rapporteur on violence against women.

12 At para 6.
15 For example, the current cross-governmental definition of domestic violence which was adopted by the Home Office in March 2013 is entirely gender neutral (see www.gov.uk/guidance/domestic-violence-and-abuse).
against women, its causes and consequences, Rashida Manjoo. In 2015, Manjoo commented that,

The distortion of understanding of equality and gendered responses, is leading to gender-neutral responses and an abandonment of a focus on women’s empowerment.… (T)he goal of substantive equality will be difficult to attain in a context of growing gender neutrality in laws, policies and practices.16

With the use of the phrase ‘gender based violence against women’, the CEDAW Committee emphasises that the issue in question is essentially violence directed at women because they are women, thus making this type of violence different from violence more generally and thereby justifying and indeed necessitating a gendered response. As the Committee states, ‘gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.’17 Indeed General Recommendation No 35 proceeds to state that,

The Committee regards gender-based violence against women to be rooted in gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behavior. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it.18


18 At para 19.
Notably the effects of gender-based violence against women are explained in considerably more detail by the CEDAW Committee in General Recommendation No 35 than they were in General Recommendation No 19, which on this point simply stated that, ‘Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.’\textsuperscript{19} It seems that the much more detailed explanation found in General Recommendation No 35 is certainly to be welcomed. At a time when there is a move towards gender neutral approaches, General Recommendation No 35 provides a timely reminder of the reasons why gender-based violence against women requires a gendered response.

### 3 Content of General Recommendation No 35

In General Recommendation No 19, the CEDAW Committee made the point that, ‘Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.’\textsuperscript{20} However General Recommendation No 35 goes considerably further and states that, ‘Gender-based violence against women constitutes discrimination against women…and therefore engages all of the obligations in the Convention.’\textsuperscript{21} While a large part of General Recommendation No 19 is devoted to a section entitled ‘Comments on specific articles of the Convention’, which explains how a selection of CEDAW provisions relate to violence against women, this is not the approach adopted in General Recommendation No 35. Although specific provisions of CEDAW are referred to in

\textsuperscript{19} At para 1.

\textsuperscript{20} At para 6.

\textsuperscript{21} At para 21.
the new document, overall there appears to be less of an emphasis on explaining how precisely
the specific provisions of CEDAW mandate the obligations and recommendations put forward
by the CEDAW Committee. This broader approach may be problematic, as will be discussed
later in this article.

The primary difference between General Recommendations No 19 and No 35 relates
to the amount of detail contained therein on the responsibilities of states parties. For example,
many acts of gender-based violence are committed by private individuals, which means that
the concept of ‘due diligence’ is of particular importance in this area. In General
Recommendation No 19, the CEDAW Committee asserted that, ‘Under general international
law and specific human rights covenants, States may also be responsible for private acts if they
fail to act with due diligence to prevent violations of rights or to investigate and punish acts of
violence, and for providing compensation.’ General Recommendation No 35 sets out in
considerably more detail what the concept of due diligence actually entails in practice. It
specifies that this obligation encompasses actions by corporations operating extraterritorially,
and that states parties must adopt measures to prevent human rights breaches abroad by
corporations over which they may exercise influence, whether by using incentives or by
regulatory means. The General Recommendation continues,

Under the obligation of due diligence, States parties have to adopt and implement
diverse measures to tackle gender-based violence against women committed by non-
State actors. They are required to have laws, institutions and a system in place to
address such violence. Also, States parties are obliged to ensure that these function

22 At para 9.
effectively in practice, and are supported and diligently enforced by all State agents and
bodies.\textsuperscript{23}

The obligations relating to due diligence include all areas of State action ‘at the federal,
national, sub-national, local and decentralised levels as well as privatised services’, and to set
out in detail how these duties apply to the legislative, executive and judicial branches.\textsuperscript{24}

The inclusion of this level of detail on due diligence reflects the significant and
substantial developments in this concept since General Recommendation No 19 was adopted.
In particular, the UN Special Rapporteur on violence against women, its causes and
consequences, has elaborated in detail on the due diligence standard.\textsuperscript{25} In addition, there are
now two regional treaties on violence against women – the Convention of Belém do Pará and
the Istanbul Convention - which expressly refer to the concept of due diligence.\textsuperscript{26} Given the
crucial importance of due diligence in the development of human rights law in the area of
violence against women, the detailed attention paid by the CEDAW Committee to this concept
in General Recommendation No 35 is unsurprising and certainly to be welcomed.

As regards the more specific recommendations made by the CEDAW Committee, again
these are set out in substantially greater detail in General Recommendation No 35 than in
General Recommendation No 19. For example, in relation to legislative measures, General

\textsuperscript{23}At para 24 (b).

\textsuperscript{24}At para 26.

\textsuperscript{25}See for example ‘The Due Diligence Standard as a Tool for the Elimination of Violence Against Women’,
Report of the Special Rapporteur on violence against women, its causes and consequences, Yakın Ertürk, 20

\textsuperscript{26}See article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence
against Women 1994 (the Convention of Belém do Pará); and article 5(2) of the Convention on Preventing and
Combating Violence against Women and Domestic Violence 2011 (the Istanbul Convention).
Recommendation No 19 sets out that, ‘States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.’

General Recommendation No 35 contains an entire section entitled ‘General Legislative Measures’ which consists of five paragraphs, the first of which asserts that states should,

Ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological identity, are criminalised and introduce, without delay, or strengthen legal sanctions commensurate with the gravity of the offence as well as civil remedies.

General Recommendation No 35 also asserts that states should ensure that all legal systems protect victims/survivors of gender-based violence against women and ensure they have access to justice and to an effective remedy, and lists in detail types of legal provisions which are discriminatory against women and should therefore be repealed. In addition, states should examine gender-neutral laws and policies to ensure that they do not create or perpetuate inequality, and amend or repeal them if they are found to do so; ensure that sexual assault is characterised as a crime against women’s right to personal security and their physical, sexual and psychological integrity; ensure that the definition of sexual crimes is based on lack of freely given consent; and ensure that any time limitations prioritise the interests of victims/survivors.

---

27 At para 24(b).
28 At paras. 29-33.
29 At para 29.
30 At para 30.
31 At para 31.
32 At para 32.
and afford consideration to circumstances hindering their capacity to report violence to the authorities.33

As regards the provision of support measures to victims/survivors of violence against women, General Recommendation No 19 asserts that, ‘States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling.’34 It also provides that, ‘Measures that are necessary to overcome family violence should include…services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes’.35 Again much more detail is provided in General Recommendation No 35, which refers to,

Ensuring access to financial aid and free or low-cost high quality legal aid, medical, psychosocial and counselling services, education, affordable housing, land, child care, training and employment opportunities for women victims/survivors and their family members…States should provide specialist women’s support services such as free of charge 24-hour helplines, and sufficient numbers of safe and adequately equipped crisis, support and referral centres, as well as adequate shelters for women, their children, and other family members as required.36

General Recommendation No 35 also asserts that states parties should provide support measures as regards gender-based violence to women in institutions, such as asylum centres;37

33 At para 33.
34 At para 24(k).
35 At para 24(r).
36 At para 40(c).
37 At para 40(d).
and establish and implement appropriate multi-sectorial referral mechanisms to ensure effective access of women survivors to comprehensive services.38

In addition, General Recommendation No 35 provides much more detail on areas such as criminal and civil law measures of protection; the need to raise awareness of issues surrounding violence against women; the involvement of the media; violence in the workplace; research and data collection on violence against women; and the provision of reparations to victims/ survivors than is found in General Recommendation No 19. There are also a number of areas mentioned in General Recommendation No 35 which are not referred to in General Recommendation No 19, such as the need to develop and implement effective measures to make public spaces safe and accessible to all women and girls;39 the necessity of addressing factors such as accessibility and availability of firearms and of substances such as acid which may be used to attack women;40 and the need to allocate appropriate financial and human resources to implement effectively laws and policies surrounding gender-based violence against women.41

4 Is General Recommendation No 35 Sufficient?

As demonstrated above, General Recommendation No 35 contains detailed advice to states parties to CEDAW on how they should address the issue of gender-based violence against women. Generally speaking, this advice is not new. The UN has issued a multitude of

38 At para 40(e).
39 At para 36.
40 At para 42.
41 At para 53.
documents relevant to violence against women. For example, the UN General Assembly has adopted various Resolutions on this issue, including the UN Declaration on the Elimination of Violence against Women.\textsuperscript{42} Resolutions as regards violence against women were also adopted by the Commission on Human Rights,\textsuperscript{43} and have been adopted by the Human Rights Council.\textsuperscript{44} In addition, violence against women was addressed in the Vienna Declaration and Programme of Action which was adopted by the World Conference on Human Rights in Vienna in June 1993. Since the creation of the office of the UN Special Rapporteur on violence against women, its causes and consequences in 1994, those who have held this post have issued numerous reports. In addition, the Beijing Declaration and Platform for Action which was issued following the fourth world conference on women organised by the UN, which took place in 1995, contains various recommendations on the measures which states should adopt to address violence against women.\textsuperscript{45} The CEDAW Committee itself, as noted previously, has issued a huge number of Concluding Observations relevant to violence against women in relation to the periodic reports submitted by states parties, and has also made recommendations to states parties in dealing with communications submitted under the individual complaints procedure found in the Optional Protocol to CEDAW. In effect, General Recommendation No 35 distils the key elements of the statements on violence against women which the CEDAW Committee in particular had previously made and puts these into one document.

\textsuperscript{42} General Assembly Resolution A/RES/48/104, 20 December 1993.


The adoption of General Comment No 35 is a very positive addition to this canon of material. Having the key recommendations made by the CEDAW Committee (and indeed the UN human rights bodies more generally) in one document makes this information much more accessible, not only to states, but also to civil society groups working in the area of combating violence against women. General Recommendation No 35 constitutes a very useful document which such groups can use in order to place pressure on states to adopt further measures to address this issue. It is also advantageous that a large number of civil society groups had an input into the drafting process of General Recommendation No 35 through making submissions to the CEDAW Committee on a draft version of the General Recommendation.46

However, is General Recommendation No 35 sufficient or is a different type of instrument necessary in order to address violence against women? The current UN Special Rapporteur on violence against women, Dubravka Šimonović, recently called for submissions from stakeholders on the issue of whether a separate legally binding treaty on violence against women with a separate monitoring body should be adopted.47 A diversity of responses to this question were received.48 However, would the adoption of such an instrument be beneficial? It is true that in terms of content, General Recommendation No 35 covers most, if not all, of what any potential UN treaty on violence against women would be likely to include. However, the critical difference between General Recommendation No 35 and a treaty is that while the latter would be legally binding on states parties, this is not the case as regards General

46 In July 2016 the CEDAW Committee decided to issue a draft update of General Recommendation No 19 and invite all interested parties to submit comments in writing on this draft by September 2016. The final version of the draft update was issued in July 2017 as General Recommendation No 35.


Recommendation No 35. General Recommendations are, as the name suggests, merely advisory. They are ‘recommendations’ to states, as opposed to constituting legally binding obligations. The stark fact remains that neither CEDAW nor any other UN treaty contains any express mention of gender-based violence against women. General Recommendation No 35, like its predecessor, General Recommendation No 19, is simply a non-binding interpretation of CEDAW obligations. As Edwards comments, ‘interpretation is at best a corrective and indirect mechanism to fix the errors of the original human rights framework’. Gender-based violence against women is one of the most prevalent human rights violations globally. As the CEDAW Committee itself comments, ‘gender-based violence against women…remains pervasive in all countries of the world, with high levels of impunity.’ It is thus problematic, to say the least, from the perspective of principle that none of the UN treaties refer expressly to this issue. There are also difficulties as regards coherence. General Recommendation No 35 makes very detailed assertions in relation to what states parties should do in order to comply with their obligations under CEDAW. However, purely from a perspective of logic, given that CEDAW contains no express reference to gender-based violence against women, it is difficult to see how complying with CEDAW entails complying with such detailed duties as regards this very issue. A similar comment in terms of logic could of course also have been made in respect of General Recommendation No 19; however the issue is brought more sharply into focus in relation to General Recommendation No 35, given that the latter is so much more detailed. As noted earlier in this article, there seems to be less of an emphasis in General Recommendation No 35 than in General Recommendation No 19 on explaining how precisely the specific articles of CEDAW mandate the recommendations put forward by the CEDAW

49 Edwards, supra n 4 at 338.

Certainly the ‘stretching’ of human rights instruments to cover issues which may not have been in the minds of the drafters of such instruments is fairly common. However, General Recommendation No 35 raises the question of whether in this instance, the limits of coherence have been stretched to beyond breaking point.

Of course, there are other examples of treaties which do not refer specifically to gender-based violence against women being used to address this issue. For example, although the European Convention on Human Rights (ECHR) contains no express reference to domestic violence, the European Court of Human Rights (ECtHR) has placed positive obligations on states to adopt measures to address this issue.\(^ {51}\) It must be noted however, that these duties are fairly limited in scope, and consist largely of ensuring that criminal justice responses to domestic violence are of an adequate standard.\(^ {52}\) Also, in some respects, the ECHR may actually constitute a better base than CEDAW from which to work as regards developing obligations on forms of gender-based violence against women such as domestic violence. This is due to the fact that CEDAW is a treaty on discrimination. In order for an issue to come within the potential ambit of CEDAW, it must constitute a type of gender-based discrimination and be approached in that manner. The ECHR however contains provisions such as the right to life\(^ {53}\) and the right to be free from torture and inhuman and degrading treatment.\(^ {54}\) Although violence against women is now accepted as constituting a form of discrimination against

---

51 See for example, *Bevacqua and S. v Bulgaria* Application No 71127/01, Merits and Just Satisfaction, 12 June 2008; *Opuz v Turkey* Application No 33401/02, Merits and Just Satisfaction, 9 June 2009; *Kalucza v Hungary* Application No 57693/10, Merits and Just Satisfaction, 24 April 2012; and *Valiuliene v Lithuania* Application No 33234/07, Merits and Just Satisfaction, 26 March 2013.

52 For further discussion of the jurisprudence of the ECtHR on domestic violence, see R McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights* (Routledge, Abingdon 2017) at 60-67.

53 Article 2.

54 Article 3.
women,\(^{55}\) this is arguably not the analysis which first comes to mind when one considers this issue. Violence against women appears to fall more obviously within the ambit of, for example, inhuman and degrading treatment. It is also noteworthy that even though the ECHR has been used by the ECtHR to address gender-based violence, the Council of Europe has nevertheless seen fit to adopt a specific treaty on violence against women in the form of the Istanbul Convention.

The adoption of a UN treaty on gender-based violence against women, as opposed to relying on General Recommendation No 35 as constituting the primary UN document on this issue, would also therefore allow for a move away from the discrimination framework which the linkage with CEDAW entails. Rashida Manjoo, the former UN Special Rapporteur on violence against women, states the problem succinctly:

> The functioning of the (CEDAW) Committee regarding violence against women is to try and fit this pervasive human rights violation under the discrimination label, and to then find ways to justify the Committee’s jurisdiction by using other provisions in the CEDAW. When it receives a complaint, or when it interrogates the state parties reports, it does what I call jurisdictional gymnastics to address the issue of violence against women. It has to ask questions such as: Is violence against women discrimination? Is the violence due to stereotyping? Is it due to family relations?\(^{56}\)

The adoption of a UN treaty on violence against women would avoid such complexities, as there would be no further need to adhere so tightly to a discrimination framework. It is arguable that a more straightforward and coherent approach could then be adopted.

\(^{55}\) For example, the ECtHR has found violations of Article 14 of the ECHR, the prohibition of discrimination, in cases involving domestic violence against women, such as \textit{Opuz v Turkey} Application No 33401/02, Merits and Just Satisfaction, 9 June 2009.

\(^{56}\) Manjoo and Nadj, \textit{supra} n 16 at 343.
Nevertheless, would a UN treaty on violence against women actually make a difference in practice? Essentially, would states be more likely to comply with a legally binding instrument than with ‘soft law’ standards such as those found in General Recommendation No 35? It is of course impossible to provide a conclusive answer to this question. It does seem however that the use of legally binding provisions, as opposed to ‘soft law’, may contribute to increased rates of compliance. As Shelton remarks, ‘In the long run…non-binding norms in human rights are generally not as effective as binding commitments and the enforcement possibilities that come with them for victims and their representatives.’57 It is notable that the former Special Rapporteur, Rashida Manjoo, has been vociferous in expressing the view that the lack of legally binding standards on violence against women is extremely problematic in terms of holding states accountable as regards their responses to this issue. Indeed the primary focus in Manjoo’s final report as Special Rapporteur was on the need for a UN treaty on violence against women. In this report she commented that,

Such an instrument would ensure that States are held accountable to standards that are legally binding, it should provide a clear normative framework for the protection of women and girls globally and should have a specific monitoring body to substantively provide in-depth analysis of both general and country-level developments. With a legally binding instrument, a protective, preventive and educative framework could be established to reaffirm the commitment of the international community to its articulation that women’s rights are human rights, and that violence against women is a human rights violation, in and of itself.58

---


It must of course be acknowledged that the adoption of a UN treaty would not be without attendant difficulties. There are issues surrounding treaty proliferation and also the resources which would be needed in order to service another treaty monitoring body which would require careful consideration. Nevertheless, it seems that such views on the part of a former Special Rapporteur on violence against women should not be dismissed lightly.

5 Conclusion

In conclusion therefore, it is not questioned that the adoption of General Recommendation No 35 by the CEDAW Committee is a welcome development. It is 25 years since General Recommendation No 19 was adopted and understandings of violence against women have developed greatly during this time. Over the past 25 years the CEDAW Committee, as well as other UN bodies, have issued a multitude of statements on this issue, and having these essentially distilled into one document is helpful, both for states and also for civil society groups seeking to place pressure on governments to take further measures to address the issue of violence against women. General Recommendation No 35 contains largely very sound advice to states which, if followed, would be likely to result in substantial improvements in this area. In addition, the use of the term ‘gender-based violence against women’ is meritorious, in that this emphasises that the issue is violence against women because they are women, and thus assists in validating the necessity for a gendered approach to this issue.

General Recommendation No 35 now effectively constitutes the primary document of the CEDAW Committee, and indeed of the UN generally, as regards violence against women. However, the question arises of whether General Recommendation No 35 is sufficient to fulfil
this role. Arguably the key difficulty with General Recommendation No 35 is that the standards contained therein are not legally binding on states. As discussed above, it appears indefensible that in the present day there are no UN treaty provisions which expressly address this issue. In addition, the current approach of attempting to interpret CEDAW, an instrument which makes no express reference to violence against women, in such a manner as to necessitate the very detailed measures specified in General Recommendation No 35 is problematic in terms of logic and coherency. The creation of a new treaty on gender-based violence against women would not only address these difficulties, but would also have the advantage of allowing for a move away from the discrimination framework in which the CEDAW Committee’s approach is of necessity embedded, thus opening the way for a more straightforward approach to the conceptualisation of this issue.

It is submitted therefore that, although General Recommendation No 35 constitutes a welcome step on the road to addressing gender-based violence against women, there remains more work to be done. The current Special Rapporteur on violence against women has stated that,

the decision related to the necessity of any new instrument…should be assessed and discussed through proper inclusive consultations carried out by the States Members of the United Nations and the State parties to the Convention, with the participation of independent global and regional mechanisms, non-governmental organizations, national human rights institutions and all other stakeholders.\(^\text{59}\)

It is hoped that such discussion will take place and potentially result in the adoption of a treaty on violence against women.

\(^{59}\) UN General Assembly, *supra* n 48 at para 102.