From Rights to Action

Using international rights and mechanisms on violence against women in the UK

Rights of Women 2011
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Disclaimer: This report provides a basic overview of complex terminology, rights, processes and procedures under international law and policy. This guide is for information purposes only and does not constitute legal advice. The information contained in this report is correct to December 2010. The law may have changed since then and you should seek legal advice on the current law. Rights of Women cannot accept responsibility for any reliance placed on the legal or other information presented in this report.

© Rights of Women 2011
This handbook provides an introduction to the international human rights law, policy and mechanisms relevant to combating violence against women (VAW) and how they relate to law and practice in the United Kingdom (UK). Human rights are the basic rights and freedoms that all humans should be guaranteed. They are universal, meaning that they apply to everyone, everywhere, and are centred on the principles of equality and dignity.

Too often, international human rights laws and the mechanisms to enforce them are presented in an overly legalistic way, to be understood and used by lawyers in court. In fact, the language and concepts of human rights have a dynamic role to play outside of court and can be used in our daily work to influence changes to the policies and practices of Government at all levels, as well as within our own organisations.

This handbook seeks to demystify the law around human rights and empower groups working to promote women’s rights to apply human rights in their work to influence law, policy and practice on VAW. It is not exhaustive and intends to provide an introduction to VAW under international human rights law.

**Who should use this handbook?**

This handbook has been written for professionals working on women’s rights and VAW in the UK within non-governmental organisations (NGOs), such as women’s organisations. It will be particularly useful for individuals who have an interest in influencing law and policy on VAW.

This includes all individuals working on women’s rights including:

- project workers
- policy officers
- campaigners

It will also be useful for individuals who, whilst not directly involved in campaigning or policy work, are interested to find out how international law can influence law and policy in the UK, including:

- refuge workers
- caseworkers
- outreach staff

**Why use international human rights law?**

Generally speaking, the UK has comprehensive domestic human rights and equality law as well as strong mechanisms for promoting and enforcing the law. This means that most human rights problems, and concerns over gaps in protection, can be addressed using domestic law and mechanisms.

However, sometimes the law, and often the policy, falls short of the protection that is required or has been recommended by experts in international human rights law. In these cases, international human rights law and mechanisms can be very useful on two basic levels:

- **First**, the language and standards of international human rights law can be used as a negotiating tool to influence the development of domestic law and policy when we speak with local, regional and national Government as well as other decision-makers.

- **Second**, international human rights law mechanisms can be used as additional levers when domestic lobbying and campaigning is not having as much impact as desired, or as a ‘last resort’ in specific cases where an individual’s human rights have been put at risk or violated, but it has not been possible to obtain an effective remedy through domestic law and mechanisms.

**Using the language and standards of international human rights law in your work**

International human rights law can be used in all of your work, and at different stages for different purposes:

- **Guiding principles for your own work and approach**

Understanding VAW as a human rights issue will help you to take a rights-based approach to your own work. Taking a rights-based approach means applying human rights law and standards to your own work and decision-making and making human rights a reality in people’s lives.

For example, if you are an Independent Domestic Violence Advisor (IDVA) or a refuge worker working with women survivors of domestic violence, a rights-based approach would mean that you take the
perspective that you should support a woman because it is her right to receive support when she has experienced domestic violence, rather than supporting her because you have sympathy for her.

• Influencing local and national policy

Although this handbook will help you to adopt a rights-based approach to your work inside your organisation, it is primarily designed to help NGOs (such as women’s organisations) use international law and standards to influence the decisions and policies of local, regional and national Government and other statutory authorities.

Using international law and standards will help you to make authoritative and persuasive arguments about the changes that are needed in domestic law and policy to improve women’s access to their rights. It provides an authoritative foundation and framework for your arguments because it has been agreed by States around the world and sets out the core minimum standards of living which all human beings are entitled to.

Governments know that they are required to adhere to international law and the inclusion of references to international law obligations in your work can be very useful in ensuring that your concerns are taken seriously.

You can refer to human rights law and policy:

• In your policy and campaigning work, for example, in your responses to Government and public authority consultations or when you develop a campaign

• In your day-to-day work, for example, in conversation or correspondence with public authorities such as representatives of the local authority or police, or when you write a supporting letter for a woman who is experiencing domestic violence

Using and referring to human rights in your work on VAW will:

• Equip you with an authoritative framework and language to argue for improvements in law, policy and practice for the benefit of women

• Increase general public awareness of human rights so that more people can claim their rights

• Empower others to use and refer to human rights in their work

Using international human rights law mechanisms

If you feel that your views are not being listened to you might want to consider putting additional pressure on the Government by complaining to an international monitoring body. There are many to choose from, and this handbook will help you decide the best one/s to use.

Although Governments such as the UK Government do not always follow international law, they generally recognise that it is important to do so and do not like to be singled out as a law-breaker. Because of this, it can be quite useful to apply additional pressure through the international human rights mechanisms.

There are many different international human rights mechanisms that are useful for addressing violence against women (VAW). Some will be more useful than others, depending on the circumstances of the case and the outcome desired.

You can use international human rights mechanisms as an additional policy lever, in conjunction with any policy and campaigning work at the domestic level. For example, you might want to raise concern about a policy or general trend that you think the Government should do something about. This might be a law or policy that restricts the rights of some women to the help and support they need to escape a situation of violence, such as the ‘no recourse to public funds’ rule that denies some women from abroad from accessing the housing and welfare benefits required to secure a space in a refuge. You might also express concern about the absence of a law or policy that ensures that women’s rights are effectively fulfilled, such as the lack of a policy that explicitly requires local authorities to provide or fund women’s refuges.

You can also use international human rights mechanisms as a ‘last resort’ when you believe that an individual’s human rights have been violated but they have not been able to access an effective remedy through domestic law and mechanisms.

International human rights law can appear removed from the day-to-day realities and functioning of our work. Governments around the world often appear to pay little attention to it, and the mechanisms for enforcement are weak. Despite these challenges we hope to demonstrate that although international human rights law cannot solve all the problems we face, if used creatively it can help you work towards securing women’s rights in many different ways. We hope that by using and referring to international human rights law in your work, you can help women to access their rights, and at the same time contribute towards the promotion and enforcement of human rights standards at home and abroad.

Using and referring to international human rights law has a reinforcing effect: it needs to be understood and used by all of us in order to have an impact on individual lives.

The focus of this handbook

This handbook only looks at international human rights law and policy that has been developed and agreed by the United Nations (UN). This means that it does not look at human rights law and policy that has been developed and agreed in the European region, for example within the Council of Europe or the European Union.

Introduction
International human rights law places obligations on the State, which is the UK. The UK Government has the primary obligation to protect and promote human rights. However, the implementation of human rights obligations often requires the involvement of regional and local authorities and other national bodies. The UK Government should therefore take steps to ensure these authorities are doing what is necessary to implement human rights obligations. The Governments in Wales, Scotland and Northern Ireland must ensure the same wherever this responsibility for law and policy has been devolved.

Where examples of domestic law and policy are given in this handbook, they relate to law and policy in England and Wales, because this is where Rights of Women’s services operate and the area of law and policy for which we have expertise.

How to use this handbook

This handbook has been drafted to provide an overview of the international human rights laws and mechanisms relevant to VAW in the UK. Where relevant, suggestions for further reading and useful online resources are provided in the further reading section of this handbook. Words that are highlighted in blue are included in the glossary of terms.

The handbook is divided into two sections:

- **Section 1** provides an overview of international human rights law and how it is relevant to VAW. It addresses the UK’s legal obligations as well as its policy commitments on VAW. It sets out what the UK Government should be doing to prevent and respond to individual cases of VAW as well as VAW in society generally.

- **Section 2** provides an introduction to the main international human rights mechanisms relevant to combating VAW. It sets out how you might use these mechanisms to support your own lobbying, campaigning and policy work, as well as work on individual cases. This section will help you choose which human rights mechanisms to use. Suggestions for further reading are provided at the end of the handbook for when you would like to know more.

Section 1: Human rights and violence against women

Chapter 1 looks at international human rights law and policy, how it is formed, why it is useful as well as its limitations, and how it relates to UK law and policy. It explains some legal terms that are used in the rest of the handbook.

Chapter 2 explores the definition of VAW and looks at how VAW has been addressed under international human rights law. It also provides an outline of the UK’s legal obligations under international human rights law to prevent and respond to VAW.

Chapter 3 looks in more detail at specific human rights including the right to non-discrimination, the right to life, the right to be free from torture and the right to health, and how these rights are relevant to VAW.

Chapter 4 looks at the UK’s commitments under three important international human rights policy documents that provide extra detail and guidance on what the UK should be doing to implement its legal obligations on VAW.

Section 2: UN human rights mechanisms relevant to violence against women

Chapter 5 provides an overview of the work the UN human rights treaty bodies, which are the UN bodies responsible for monitoring the UK’s legal obligations under the core international human rights treaties. It provides information on how NGOs, such as women’s organisations, can engage with these mechanisms to influence law and policy in the UK.

The following chapters 6-8 look in more detail at the work of three of the human rights treaty bodies that have set out detailed standards on VAW:

Chapter 6 looks at the UK’s obligations on VAW under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and explores the work of the UN body that monitors the UK’s obligations under that treaty, the Committee on the Elimination of Discrimination against Women (CEDAW Committee).

Chapter 7 looks at the UK’s obligations on VAW under the International Covenant on Civil and Political Rights (ICCPR) and explores the work of the UN body that monitors the UK’s obligations under that treaty, the Human Rights Committee (HRC).

Chapter 8 looks at the UK’s obligations on VAW under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and explores the work of the UN body that monitors the UK’s obligations under that treaty, the Committee on Economic, Social and Cultural Rights (CESCR).

Chapter 9 provides an overview of other UN human rights mechanisms, including the mechanisms of the Human Rights Council and the Commission on the Status of Women (CSW) that can be used for lobbying, campaigning and policy work, as well as work on individual cases.

Chapter 10 provides guidance on how to decide which of the many UN human rights mechanisms to use in different situations.

A word about terminology

The use of the term ‘victim’ in this report reflects the use of the term in law and legal proceedings and by international human rights mechanisms. However, we do acknowledge that there are many women who would prefer to use the word ‘survivor’.
This report uses the term BAMER women as shorthand for Black and/or Asian and/or Minority Ethnic and/or Refugee (including asylum seeking) women. BAMER women are a diverse group of women and we do not use the term to mean that those women falling within this category are identical or uniform. Also, nor do we believe that all Black, Asian and Minority Ethnic women are refugees or seeking asylum. Rather, we use the term because we acknowledge that BAMER women have shared experiences of discrimination and the barriers they face when trying to access justice. In this report we have used the Equality and Human Rights Commission’s definition of ethnic minority, which means that a person is considered to belong to an ethnic minority if they identify as having an ethnic identity other than White British. This means that we include women from white ethnic minorities, such as White Irish women and women from other parts of Europe.

This report uses this term ‘honour crime’. Honour crimes are not a separate or specific form of violence but the reason or motive given or assumed for some acts of violence. The concept of honour (linked to culture, religion or identity) is sometimes used to justify male violence against women. Whilst we acknowledge that some violence against women is perpetrated in the name of honour, it is our position that all forms of violence against women are violent crimes and we therefore do not address this concept as a separate and specific form of violence.

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Rights of Women dedicates this handbook to the women worldwide who struggle to secure justice, equality and a future safe from violence.
What is international human rights law?

Human rights are the basic rights and freedoms that all humans should be guaranteed. They are universal, meaning that they apply to everyone, everywhere, and are centred on the principles of equality and dignity.

The ideas of human rights were first agreed at an international level in 1948 when the Universal Declaration of Human Rights (UDHR) was adopted by a resolution of the United Nations (UN) General Assembly. The UDHR is a declaration that was adopted at the end of the Second World War, in response to the atrocities of war and a concern for humanity. The idea behind it was to set out common values and aspirations of States and set a standard of human rights and fundamental freedoms for all people everywhere. It is not legally binding, but the rights it contains have been incorporated into numerous international treaties and the national constitutions of many countries.

All human beings are born free and equal in dignity and rights

Universal Declaration of Human Rights, article 1

Central to the idea of human rights is that all human beings should be guaranteed equal rights and dignity. The core principle of equality sets the foundation for all human rights, confirming that everyone is entitled to human rights simply by virtue of being human, regardless of their race, gender, language, religion, political or other opinion, national or social origin, property, birth or any other status.

The International Bill of Human Rights

The UDHR sets out economic, social and cultural rights (such as the right to health and education) as well as civil and political rights (such as the right not to be tortured and the right to freedom of expression). When the UN began translating the principles and aspirations of the UDHR into legally binding documents, two international treaties were adopted:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

The UDHR, together with the ICCPR and the ICESCR are now collectively referred to as the International Bill of Human Rights.

The division of economic, social and cultural rights and civil and political rights has had a lasting effect on States’ attitudes and obligations under international human rights law. Arguments have been put forward by States that economic, social and cultural rights express aspirations rather than legal obligations. This issue is dealt with in more detail in Chapter 2.

Despite the division of UDHR rights into two separate treaties, participating States to the Vienna World Conference on Human Rights in 1993 agreed that “all human rights are universal, indivisible and interdependent and interrelated”. More recent treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
contain provisions on both civil and political rights and economic, social and cultural rights.

All human rights are universal, indivisible, interdependent and interrelated

At the Vienna World Conference on Human Rights in 1993, participating States agreed that, “all human rights are universal, indivisible and interdependent and interrelated”.

Human rights are universal because they apply to everyone.

Human rights are inalienable because they cannot be taken away or denied. Some rights can be limited but only in strictly defined ways which are provided for in law. Some rights are absolute and can never be limited, such as the right to be free from torture.

Human rights are indivisible and interdependent because they are all equally important and mutually interdependent; none can be fully enjoyed without the others. Recognition of the indivisibility of all human rights is especially important when we are considering the human rights of women because the economic and social condition of women will have a strong bearing on their enjoyment of civil and political rights. For example, it is very difficult to see how women’s rights to political participation and the conduct of public affairs (a right set out in the International Covenant on Civil and Political Rights, ICCPR, article 25) can become a reality if women do not also have a right to education (a right set out in the International Covenant on Economic, Social and Cultural Rights, ICESCR, article 13) and employment (ICESCR articles 6 and 7).

State obligations under international human rights law

International human rights law establishes legal obligations to enforce human rights principles that have existed for many years. It consists of agreements that States have made concerning the way that a State treats the people living within its territory and under its control, referred to as a State’s jurisdiction.

Whilst most bodies of international law govern relationships between States, international human rights law is useful because it governs the relationship between a State and the people within its jurisdiction.

Under international human rights law, a State must make sure that all people within its jurisdiction have equal access to their rights. A State is the main duty bearer. This means that the State has the main duty of responsibility to make sure that everyone enjoys their human rights. Individuals and in some circumstances, groups of individuals, are the rights holders. When we complain about a breach or violation of our human rights under international law, we are complaining about the actions or omissions of the State. This is the case even when the person who committed the wrongdoing we want to complain about is not formally associated with the State. International human rights law is concerned both with the things that a State does to interfere with our human rights, and also what it does not do to protect and fulfil our human rights.

The UK State

International human rights law is about how States interact and agree laws at the international level and how they treat individuals in the State.

International human rights law places obligations on the State, which is the United Kingdom of Great Britain and Northern Ireland (the UK). The UK Government has the primary obligation to protect and promote human rights. However, the implementation of human rights obligations often requires the involvement of regional and local authorities and other national bodies. The UK Government should therefore take steps to ensure these authorities are doing what is necessary to implement human rights obligations. The Governments in Wales, Scotland and Northern Ireland must ensure the same wherever this responsibility for law and policy has been devolved.

The State has negative and positive obligations under international human rights law. It has negative obligations to refrain from causing harm or breaching anyone’s human rights. These obligations are referred to as the duty to respect human rights. In addition to not doing any harm, the State has positive obligations to protect and fulfil human rights. Together, these make up the obligations of States to respect, protect and fulfil all human rights.

The State can be held responsible for the acts or omissions of its own State actors. A State actor is an organisation or individual that is carrying out a public function. These actors could be a public authority, such as a local authority, a police force, the National Health Service (NHS), or private organisations that have been contracted by a public authority to carry out a public
function, such as a private security firm contracted to run a detention facility. These actors could also be individuals, such as an individual police officer, nurse, teacher or local counsellor, who interferes with an individual's rights when working in an official capacity.

The State can also be held responsible for the acts or omissions of non-State actors. A non-State actor can be any organisation, private company or individual that is not formally associated with the State. These actors could be your mother or father, a friend, a bank or corporate enterprise; practically anyone who infringes upon someone's rights when they are not carrying out a public function, working for, or running contracted services for, a statutory authority.

The State can be held responsible for the acts or omissions of non-State actors when it fails to effectively prevent and protect individuals from harm committed by them or when it fails to provide an effective remedy in the event of harm. This is because the State has positive obligations, meaning it must not just refrain from causing harm but take proactive steps to protect and fulfil everyone's human rights. The standard of care required of a State in the exercise of its positive obligations to prevent and respond to harm caused by non-State actors is generally referred to as the due diligence standard. This is discussed in more detail in chapter 2.

The focus of this handbook: International human rights law and policy

There are three different levels of human rights law relevant to violence against women (VAW) in the UK:

1. Domestic human rights law: This is the law that has been adopted through an Act of Parliament, such as the Human Rights Act 1998 or the law that the courts in the UK have established through their decisions, referred to as case-law.

2. Regional human rights law: This is law developed and agreed in the European region (within the Council of Europe and the European Union). An example of law that falls in this category is the European Convention on Human Rights (ECHR).

3. International human rights law: This is law developed and agreed at the international level, between States that might or might not be in the European region. Usually, international human rights law is developed and agreed within the UN system. An example of law that falls in this category is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

This handbook focuses solely on international human rights law and policy, and specifically international human rights law and policy developed within the UN system. This section provides an overview of how the law and policy is formed, and how it is relevant to the UK.

How is international human rights law formed?

There are four main types of international law. They are:

- Treaty law, which is the most commonly used source of international law
- Customary international law, which is nowadays used mainly when there is no treaty agreement on a particular issue
- General principles of law
- Judicial decision-making and the teaching of the highly qualified legal writers

This handbook focuses on human rights treaty law because it is the most significant type of international human rights law relevant to the UK.

Human rights treaty law

A treaty is a legally binding agreement between two or more States. A treaty might also be called a convention or a covenant (these terms are often used...
interchangeably and mean the same thing). There are hundreds of international treaties, but there are nine core international human rights treaties (see chapter 5).

When a State becomes legally bound to a treaty, it is called a State party to that treaty. A treaty only really has relevance to the actions of a particular State if it is a State party so it is important to check this. A State can become a State party to a treaty in two stages, or in one stage. When a State becomes a State party to a treaty in two stages, it first signs the treaty. By doing this, a State confirms that it agrees with the content and principles of that treaty. It commits to not doing anything against the ‘spirit’ of the treaty but is not legally bound by its provisions. In order to be legally bound by the treaty, the State must next ratify the treaty. The process of ratification is the process by which the State confirms that it is legally bound by a treaty. Alternatively, a State might decide to become a State party to a treaty in one step. This process is called accession and the State accedes to the treaty (becomes legally bound without having to sign the treaty first).

It is also important to check whether the State has made a reservation to the treaty in question. A reservation is a statement made by a State upon ratification or accession to a treaty that is made with the intention of excluding or modifying the legal effect of certain parts or provisions of the treaty as they apply to that State. Many States make reservations to treaties, and they do so when they want to sign a treaty but do not agree with a particular provision or want to make clear how they understand a particular provision. These statements are sometimes also referred to as ‘interpretive declarations’ or ‘interpretive statements’, but if the effect of the statement is to modify or exclude the legal effect of parts of the treaty, then they are reservations. For example, the UK has entered reservations to a number of international human rights treaties stating that the UK will only implement the treaty where it is not in conflict with immigration law adopted by the UK, such as laws that control the conditions of an individual’s arrival and stay in the UK.

Under international law, a State is allowed to enter a reservation to a treaty unless the reservation is:

- Expressly prohibited by the treaty, or
- It is contrary to the object and purpose of the treaty (this means that the reservation undermines the reason that the treaty was adopted, or the objective that the treaty seeks to achieve)

There is no agreement amongst international lawyers about the legal implications of when a State enters a reservation that is not allowed (referred to as an ‘impermissible reservation’). This has been a particularly problematic issue for human rights treaties because many States have entered reservations that really undermine the object and purpose of a treaty. There is a strong argument to suggest that when a State enters an impermissible reservation, the treaty remains in force, as if the reservation had not been entered.

**How is international human rights policy formed?**

There are many sources of human rights policy or standards that are not legally binding on States, but do have persuasive political and moral authority. These sources and standards can be used as policy guidance to States on their obligations under international human rights law and sometimes contribute towards the development of human rights law in the long-term. They can also be very useful when international law does not provide detailed guidance on the content of a legal obligation in a particular situation.

Examples of sources of human rights policy or standards that are particularly useful include:

- Resolutions of the UN General Assembly
- Declarations, statements and resolutions made by a large number of States, for example at the UN Human Rights Council, or other intergovernmental meetings
- The decisions and statements of UN human rights treaty bodies

**Resolutions of the UN General Assembly**

Resolutions of the UN General Assembly are not legally binding on States, but they represent a common understanding and agreement between UN member States. A resolution has more moral and political authority when a high number of States vote in its favour. A resolution adopted by consensus is one that no State has opposed, and is a particularly persuasive source. Although not legally binding, General Assembly resolutions can contribute towards the formulation of customary international law.

Examples of useful General Assembly resolutions relevant to VAW include:

- Universal Declaration of Human Rights (UDHR), adopted by UN General Assembly resolution 217 A (III) of 10 December 1948
• UN Declaration on the Elimination of Violence against Women, adopted by UN General Assembly resolution 48/104 of 20 December 1993 (see chapter 4 for more information on this document)

Declarations, statements and resolutions of States made at world conferences

Declarations, statements and resolutions of States made at world conferences and other international meetings can have a similar moral and political authority to resolutions of the UN General Assembly. A State that signs up to a commitment or statement of aspiration on a particular issue might not be legally bound to implement it, but is politically and morally bound to do so. It can be a source of embarrassment for States to be held to account when they fail to implement a publicly stated commitment. This is also the case, for example, when a State has signed an international treaty, but has not ratified it.

A good example of this kind of agreement is the Beijing Declaration that committed States to implementing the Beijing Platform for Action (BPfA). These two documents were adopted by consensus by all 189 participating States at the Fourth World Conference on Women, organised by the UN and held in Beijing on 4-15 September 1995. More than 5,000 representatives from 2,100 non-governmental organisations participated in the conference. See chapter 4 for more details on this agreement.

Even when an agreement or statement is not legally binding on a State, it can be very useful, especially when a State has signed the document or voted in its favour, and has repeatedly affirmed its commitment.

Decisions, concluding observations and general comments of the UN human rights treaty bodies

There are currently nine UN human rights treaty bodies that monitor State obligations under the different human rights treaties. A human rights treaty body is a group of independent experts appointed to make decisions and elaborate on the meaning of the treaty in question, explain specific State obligations, and monitor the implementation of the treaty by States parties. The human rights treaty bodies have powers and functions similar to that of a court of law; they can decide on individual cases and suggest appropriate remedies. However, they do not have the power to make legally binding decisions. A list of each of the human rights treaties and the treaty bodies that monitor them is provided in table 1, chapter 5. More information on the work of the human rights treaty bodies is contained in chapters 5-8.

The human rights treaty bodies have issued particularly useful policy guidance on VAW. For example, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the human rights treaty body that monitors State obligations under CEDAW, has issued useful guidance to States in its General Recommendation No. 19 on violence against women. More information on this document is set out in chapter 4.

Other useful resources

Another good policy resource is the work of independent experts, often called ‘special rapporteurs’ appointed by the UN Human Rights Council. More information on their work is contained in chapter 9.

How does international human rights treaty law relate to UK law?

Whether or not international law is part of UK law and can be enforceable in the domestic courts depends on the type of international law it is. Treaties have to be passed into law by an Act of Parliament in order to be enforceable in domestic courts, and this is done in a two-stage process:

First, the UK becomes a State party to an international treaty. At this stage, the UK is legally bound to the treaty and must not do anything in breach of the treaty. If there is an international monitoring body for the treaty, then it will criticise the UK if it does anything to breach the treaty (see chapters 5-8 for information on these bodies). At this stage however, the provisions of the treaty cannot be relied upon to bring a case in the UK courts. The courts can only interpret and apply the provisions of UK law. Despite this, the courts are required to interpret UK law in light of the international treaty, and it is important that lawyers refer to international law to support their arguments.

Second, in order for a treaty to be enforced in the national courts, Parliament must pass a law to incorporate the treaty into domestic law. Once a treaty has been incorporated into domestic law, we can use the rights it contains directly in the national courts.

Of the nine core international human rights treaties, the UK has incorporated just one, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), into domestic law. At the European regional level, the UK has also incorporated most of the provisions of the European Convention on Human Rights (ECHR) into domestic law, through the Human Rights Act 1998.
The role of international human rights law in policy-making and advocacy

Human rights law has a dynamic role outside of the courtroom and whilst the courts may not be able to apply international law in some cases, the UK Government has committed at an international level to adhere to international standards on many issues. It is therefore very relevant and important to remind Government and statutory agencies of these commitments when they are developing new law and policy. Often, human rights law and principles, which have been negotiated and agreed by States, represent the common minimum standard that must be expected of States. They must be seen as the baseline and a core non-negotiable minimum that must be obtained, rather than the goal.
From Rights to Action

Chapter 2

Human rights and violence against women: An overview

Chapter summary
This chapter explains the international definition of violence against women (VAW) and the importance of applying this definition to all work on VAW.

VAW is inseparable from the discrimination and inequality experienced by women everywhere related to their gender. VAW is also often inseparable from the multiple forms of discrimination that women face related to other factors such as disability, race and ethnicity, language, age, sexual orientation and immigration status.

Because individual acts of VAW form part of a broader pattern of inequality and discrimination, they cannot be understood or effectively addressed in isolation. This means that the State must address the disadvantage and discrimination faced by women in all areas of life, including in education, health, employment and access to goods and services, in addition to addressing the needs of individual women to ensure that they obtain an appropriate remedy and support for the violence that they experience.

VAW is relevant to all human rights, including the right to non-discrimination, equal protection of the law and equality before the law; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to life; the right to equality in the family; the right to health; the right to just and favourable conditions of work; and the right to liberty and security of the person.

The UK is a State party to seven of the nine core international human rights treaties. This chapter explains the obligations of the UK Government to respect, protect and fulfil the human rights of women and ensure that women can live their lives free from VAW.

Defining violence against women
The international definition of violence against women (VAW) is outlined in article 1 of the United Nations (UN) Declaration on the Elimination of Violence against Women (DVAW):

“The term violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Although DVAW is not legally binding, it is a persuasive policy document because it sets out the general international consensus on what State obligations are in respect of VAW. The UK voted in favour of DVAW when it was adopted in 1993. In fact, DVAW was adopted by consensus by the UN General Assembly, meaning that no State opposed it. The definition of VAW that DVAW contains was reaffirmed two years later by 189 State signatories to the Beijing Declaration and Beijing Platform for Action (BPfA).

Article 2 of DVAW provides detail on the different forms of VAW:

“Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

What’s in a definition?

It is important to define VAW in order to understand its causes and consequences. Only a clear definition will ensure that VAW is addressed in all its forms. States sometimes try to limit their obligations and narrow the scope and definition of VAW. For example, a State might address physical violence, but fail to address psychological violence.

There is no definition of VAW in UK law. Despite this, the UK Government has signed both DVAW and the Beijing Declaration and has pledged to apply the UN definition in all its work on VAW. All statutory authorities can be reminded of the State’s obligations under international law, and the UK’s commitment to DVAW and the Beijing Declaration if they do not apply the international definition of VAW.

Important aspects of the definition include:

• It is not exhaustive, meaning that it does not explicitly set out all potential acts of VAW, leaving space for new forms of VAW to be identified. If a form of violence is not mentioned, it does not mean that it does not fall within the definition. For example, financial abuse is a form of VAW that fits within the definition but is not explicitly mentioned.

• It focuses on the effects of VAW. This means that there need not be an intention or motive behind an act for it to constitute VAW. The effect on women is the defining factor. For example, prostitution can be a form of VAW even though the definition refers to “forced prostitution”. This is because of the harmful consequences of prostitution on the women involved.

• VAW occurs in many different forms and includes physical, sexual, psychological violence.

• VAW occurs in many different sites (or places), including private and public spaces such as the family and the general community.

• VAW is gender-based violence, meaning that it is violence that women experience because they are women or affects women disproportionately. It is a form of violence that is inextricably linked to gender discrimination and inequality.

Forms of violence against women

There are many different forms of VAW, and the definition is open-ended, so as to anticipate the emergence of new forms of VAW not yet captured in any international law or policy. The many different forms of VAW include:

• Coerced or forced abortion
• Coerced or forced pregnancy
• Coerced or forced sterilisation
• Domestic violence
• Dowry-related violence
• Female Genital Mutilation (FGM)
• Forced marriage
• Forced prostitution
• Pre-natal sex selection and female infanticide
• Sexual harassment
• Sexual violence
• Sexual violence, including rape
• Stalking
• Trafficking

Cycles of discrimination and violence

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.

CEDAW Committee, General Recommendation No. 19, Violence against women

As the DVAW definition sets out, VAW is gender-based violence. In fact, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the committee responsible for monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) uses the terms violence against women and gender-based violence interchangeably to mean the same thing. In its General Recommendation No. 19 on violence against women, the CEDAW Committee defined gender-based violence as:

“Violence that is directed at a woman because she is a woman or affects women disproportionately.”

This is a useful and complementary definition to the more detailed DVAW definition because it reminds us that in all its manifestations, VAW is a form, a cause and a consequence of discrimination.
It is not possible to understand fully the causes or consequences of VAW without looking at the discrimination and inequality that women face at home and in the community. VAW is the result of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement.11

The relationship between VAW, inequality and discrimination is complex and mutually reinforcing. It can be understood as a cycle of discrimination, inequality and violence.

Cycle: violence – discrimination

Because individual acts of VAW form part of a broader pattern of inequality and discrimination, they cannot be understood or effectively addressed in isolation. This means that in order to effectively prevent and respond to individual cases of VAW, structural change is needed. The State must address the disadvantage and discrimination faced by women in all areas of life, including in education, health, employment and access to goods and services, in addition to addressing the needs of individual women to ensure that they obtain an appropriate remedy and support for the violence that they experience.

Furthermore, because the disadvantage that women experience today is tied to disadvantage and discrimination throughout history, there must be an emphasis on women’s empowerment to challenge contemporary power dynamics and claim women’s share in decision-making at all levels.

Multiple discrimination and violence against women

Individual acts of VAW also occur within the context of other forms of discrimination and inequality. This means that VAW often cannot be understood in isolation from factors additional to gender, such as disability, race and ethnicity, language, age, sexual orientation and immigration status.

Under international human rights law and policy States have an obligation to address the needs of the most disadvantaged women and respond to multiple discrimination, which is discrimination that an individual experiences on more than one ground of discrimination, or because of a combination of grounds of discrimination. Multiple discrimination can have a compound effect on a woman and expose her to greater risk of particular forms of VAW. It can also impose additional barriers to accessing State protection, legal remedies and rehabilitation services. Because of this, strategies for identifying, preventing and responding to VAW must be multifaceted and tailored to meet the specific needs of different groups of women who are at risk of violence arising from a number of factors in addition to their gender, for example women in prostitution, women with disabilities, Black, Asian, Minority Ethnic, Refugee or asylum-seeking (BAMER) women, migrant women, younger women, older women and gang-affected women.

Multiple discrimination

The CEDAW Committee in its General Recommendation No. 25 on temporary special measures has outlined how:

“Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties [to CEDAW] may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”13
**Violence, culture and social norms**

VAW cannot be justified or condoned using any cultural arguments, including ideas of custom, tradition or religion. The harm caused by VAW cannot be denied, trivialised or otherwise played down by referring to these ideas. States are expressly required to condemn VAW, which means that any cultural argument put forward to justify it must be criticised.

It is sometimes argued that human rights are not universal and that in fact they have been imposed by external sources on local culture. These arguments must be challenged. At the same time, cultural practices that discriminate against women and perpetuate VAW are frequently regarded as belonging to ‘others’, whether they live in developing countries or belong to local immigrant communities. These attitudes too must be challenged. Women are too often entangled between these two ideological approaches as the ‘weak victims’. Such arguments artificially isolate the understanding of VAW from the broader social, political and economic contexts that exist worldwide, oppress women and perpetuate VAW.

All forms of VAW are perpetuated and condoned by dominant social, cultural and traditional ideas, wherever and whenever they occur. They must all be challenged through women’s empowerment and challenging stereotyping and dominant social attitudes.14

**State obligations on violence against women under international human rights law**

International human rights law, like all bodies of international law, is law that has been made by States. It tends to reflect State interests, and the prevailing social and political attitudes in different countries around the world. It is not surprising therefore that international human rights law is not always as advanced as we might like. In particular, States and international legal scholars have been very slow to develop international law that responds to the specific situation and needs of women. Feminist scholars have pointed to the fact that international law reflects the unequal gender relations that exist in societies throughout the world, arising from the “systematic exclusion of women from participation in the institutions of government and in decision making”,16 meaning that women have been absent from the development of international law. Despite this, there has been considerable progress over the last three decades, leading to the adoption of gender-specific treaties, such as CEDAW, and the mainstreaming of a gender analysis into the work of the committees monitoring all other human rights treaties.

When it is considered that the same individuals and groups who have traditionally controlled laws within the state also determine how the state will act in its relations with other states, it is hardly surprising to find that international law speaks from the perspective of an exclusively male hierarchy of power or that shows little concern for women, their interests and their special vulnerabilities

Charlesworth and Chinkin, The boundaries of international law, a feminist analysis, MUP, 2000

**International human rights treaties**

This section looks at the UK’s obligations under international human rights treaties. There are nine core international human rights treaties and the UK is a State party to seven of them. There is no international treaty that specifically addresses VAW,17 but all of the core international human rights treaties are relevant to VAW.

On a very general level, all of the international human rights treaties are relevant to VAW because of the cycle of women’s inequality, discrimination and violence: the causes and consequences of VAW are intricately connected to women’s experiences of inequality and discrimination in the enjoyment of all their human rights. On a specific level, an individual act of VAW can engage the responsibility of the State in relation to a particular human right or number of rights set out in one or more of the core human rights treaties.

The following human rights, which are found in the International Bill of Human Rights as well as a number of different human rights treaties to which the UK is a State party are particularly relevant:

- The right to non-discrimination, equal protection of the law and equality before the law
- The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment
- The right to life
• The right to equality in the family
• The right to the highest standard attainable of physical and mental health
• The right to just and favourable conditions of work
• The right to liberty and security of the person

The meaning of some of these rights, and their relevance to VAW, is explained in more detail in chapter 3; the way that VAW has been addressed under specific human rights treaties is explained in chapters 5-8.

The nine core human rights treaties
There are nine core international human rights treaties. Each of these treaties has established a committee of experts, called a human rights treaty body to monitor implementation of the treaty provisions by States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns. More detail on the work of each of these treaties and the committees of experts is provided in chapter 5.

The UK is a State party to seven of the nine core international human rights treaties:
1. International Covenant on Economic, Social and Cultural Rights (ICESCR)
2. International Covenant on Civil and Political Rights (ICCPR)
3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
4. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
7. Convention on the Rights of Persons with Disabilities (CPRD)

The UK has not signed or ratified the following two international human rights treaties:
8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)

Respect, protect, fulfil
When States sign up to international human rights treaties, they undertake a three-tiered obligation to respect, protect, and fulfil human rights.19

Respect
The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. This is often referred to as a negative obligation to not infringe on the rights of individuals.

The duty to respect human rights in the context of VAW includes a duty on State actors such as the police or prison officials not to commit acts of VAW. It also includes an obligation to ensure that apparently gender-neutral laws and policies do not have an unintended and adverse impact on women. This might be for example a law or policy that only allows local authorities to spend money on projects that are for the benefit of both men and women. On the face of it, this might seem fair. However, such a law or policy would have an adverse impact on availability of funding for women-only services, such as women-only refuges for women fleeing domestic violence.

Protect
The obligations to protect and fulfil are positive obligations because they require the State to be proactive and ensure that everyone enjoys their human rights.

The obligation to protect means that the State does not only have to refrain from interfering with the enjoyment of human rights and protect individuals from human rights violations carried out by State actors, it must also take positive steps to protect individuals from interference of their human rights by non-State actors. Non-State actors might be individuals in society or the family, and they might also be private companies and organisations. This is very important when addressing VAW, because VAW is so often perpetrated by such individuals in the private sphere.

State obligations to protect women from VAW can be understood on two levels:
• Protecting individuals and groups of women from known threats or risk of violence
• Protecting women in society generally from violence

First, the State (through relevant authorities such as the police) has an obligation to take reasonable steps to prevent a real and immediate threat of violence to an individual woman that the authorities are aware of, or ought to be aware of.20 This might require, for example the police to undertake special measures to protect an individual woman who is known to be at risk of violence and/or the civil courts to grant an injunction to protect her (such as a non-molestation order, or an occupation order in England and Wales).21 The CEDAW Committee in its General Recommendation No. 19 on
violence against women has outlined that protective measures also include the provision of refuges, counselling, rehabilitation and support services for women who are at risk or have experienced VAW.\textsuperscript{22}

Second, the State has an obligation to prevent VAW in a more general way, in order to protect all potential victims of VAW. This requires the State to adopt gender-sensitive law and policy to protect women from violence, including effective criminal law and civil law provisions and policies to deter potential perpetrators. The State must also challenge social attitudes that condone or perpetuate VAW.

The obligation to protect human rights relates closely to the due diligence standard that is required of States when they protect women from violence committed by non-State actors and is discussed below.

**Fulfil (promote, facilitate, provide)**

The obligation to fulfil requires States to take steps to ensure that in practice, everyone enjoys their human rights. This includes adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of human rights.\textsuperscript{23}

The obligation to fulfil means that States must make rights a reality, not just an aspiration or a legal commitment. For example, States must not only adopt gender-sensitive legislation and policy but also periodically review and monitor it to ensure that it is implemented in a non-discriminatory manner and does not place women at a disadvantage.

The obligation to fulfil also requires that every individual has access to effective remedies if their rights have been violated.

In the context of VAW, this might include ensuring that appropriate facilities and special measures are available for women, and ensuring access to legal representation and legal aid on a basis of equality.

The obligation to fulfil contains within it obligations to promote and facilitate access to rights, and to provide a specific right when an individual or group is unable, for reasons beyond their control, to realise the right themselves.\textsuperscript{24} The obligation to provide could be important where, for example, a woman experiencing violence from an intimate partner or family member might need the State to provide alternative housing and shelter. The obligation to provide could also require the State to ensure access to legal aid where a woman experiencing violence is unable to pay for legal representation.

**Fulfil: The right to an effective remedy**

The obligation to fulfil human rights includes an obligation to ensure that everyone has access to an effective remedy if they consider that their rights have been violated. This means that every individual must have access at the domestic level to judicial, administrative, legislative or other authorities that have the power to provide redress and have their decisions enforced. Most of the time, the effective remedy will require access to a court of law.

A remedy must be effective, independent, enforceable and available on a basis of equality and non-discrimination. The UN Committee on Economic, Social and Cultural Rights (the committee that monitors the International Convention on Economic, Social and Cultural Rights) has stated that the obligations to fulfil requires States to “establish appropriate venues for redress such as courts and tribunals or administrative mechanisms that are accessible to all on the basis of equality, including the poorest and most disadvantaged and marginalised men and women”.\textsuperscript{25} This means that the authorities responsible for ensuring domestic remedies, such as HM Courts Service, must take into account the specific needs of women who have experienced VAW. This might include providing separate entrances and waiting areas so that the applicant (such as a woman applying for a domestic violence injunction) and respondent (such as the person who the injunction will be applied to) do not have to meet each other.

**States parties must ... ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be determined in a fair hearing by a competent and independent court or tribunal where appropriate**

CEDAW Committee, General Recommendation No. 28
Breaking down the false public/private divide

The positive obligations of States under international human rights law (to protect and fulfil) are especially useful when addressing VAW. This is because many cases of VAW are perpetrated by private individuals, including intimate partners, family members, and individuals in the wider community. States have often argued that many forms of VAW, such as domestic violence, are private acts for which the State has no responsibilities. International law breaks down this false divide between public and private acts and places all forms of VAW, wherever they occur, within the responsibility of the State.26

The content of the three obligations to respect, protect and fulfil can overlap, but they provide a useful framework to understand the different levels of State obligations to women who experience or are at risk of experiencing violence.

<table>
<thead>
<tr>
<th>Obligation</th>
<th>What is it?</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respect</td>
<td>The State and its authorities must not interfere with the enjoyment of women's human rights.</td>
<td>Police and law enforcement officers must not commit an act of VAW such as rape. Law and policy must not directly or indirectly put women at risk of violence.</td>
</tr>
<tr>
<td>Protect</td>
<td>The State and its authorities must take measures that prevent non-State actors such as individuals or private companies from interfering with women's rights.</td>
<td>Effective prosecution and conviction of VAW crimes act as a deterrent to potential offenders. Adequate civil and criminal law remedies available for women when they are at risk of or experience violence, such as domestic violence injunctions.</td>
</tr>
<tr>
<td>Fulfil (provide, facilitate, promote)</td>
<td>The State and its authorities must adopt appropriate legislative, administrative, budgetary, judicial and other measures to ensure that rights are enjoyed by women in reality and in full.</td>
<td>Women have effective access to court when they experience violence and the process from report to court is gender-sensitive Adequate budget is allocated to deliver specialist services for women at risk of, or experiencing VAW.</td>
</tr>
</tbody>
</table>

The due diligence standard

The positive obligations of States under general international law described above mean that States can be held responsible for acts of violence perpetrated by private persons or entities (such as private companies) if they fail to act with due diligence to prevent, punish, investigate and redress harm caused by private persons or entities.27 This does not mean that every act of VAW committed by a non-State actor is a human rights violation that the State can be held responsible for. Rather it means that if the State does not act with due diligence to prevent and respond to all forms of VAW perpetrated by non-State actors, it can be held responsible for that violence under international law.

Whilst the due diligence standard applies to State obligations in relation to all human rights, it has been developed as a particularly useful tool to identify the specific obligations of States to prevent and respond to VAW.

When this standard is considered in light of the principles of equality and non-discrimination, it requires States to employ all means to ensure that efforts to prevent, investigate, punish and provide remedies for VAW are as effective as the efforts employed with regards to other forms of violence. This means that the law, policies and their implementation must be gender-sensitive and respond to VAW within a wider context of gender inequality.
States should be held accountable for complicity in violence against women, whenever they create and implement discriminatory laws that may trap women in abusive circumstances.

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

In 1999, the former UN Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, developed a check-list of considerations for determining whether or not a State is compliant with the duty of due diligence in relation to VAW:

- Ratification of international human rights instruments
- Constitutional guarantees of equality for women
- The existence of national legislation and/or administrative sanctions providing adequate redress for women victims of violence
- Policies or plans of action that deal with the issue of VAW
- The gender-sensitivity of the criminal justice system (including police practice, judicial decision making, sensitivity of health-care professionals assisting in the prosecution of VAW)
- Accessibility and availability of support services such as shelters, legal and psychological counselling, specialised assistance and rehabilitation
- The existence of measures to raise awareness and modify discriminatory policies in the field of education and the media
- The collection of data and statistics concerning VAW

As is clear from the variety of different actions on the list, whilst the adoption of gender-sensitive law and policy is an essential requirement, it is not enough to meet the due diligence standard. A range of actions are required to ensure that the State acts with due diligence to prevent and effectively respond to VAW.

Progressive realisation of economic, social and cultural rights

Following the adoption of the Universal Declaration of Human Rights (UDHR), the UN set out to translate its principles into a legally binding treaty. However, as highlighted in chapter 1, economic, social and cultural rights and civil and political rights were set out in two separate international human rights treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

There are important differences between the way that State obligations are set out in the ICCPR and ICESCR. Under the ICCPR, States are required to “respect” and “ensure” rights, indicating a definite and immediate legal obligation.

State obligations under the ICESCR are set out quite differently. ICESCR article 2(1) sets out that States parties are:

“required to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights...by all appropriate means, including particularly the adoption of legislative measures”.

This obligation is set out in less definite terms because States are required to “take steps” rather than “ensure” rights. It is also not immediate because States commit to take steps to achieve progressively the rights contained in the ICESCR.

Because of the way that State obligations under the ICESCR are worded, it has been argued that it is not possible for a court to apply economic, social and cultural rights and make a decision on whether or not they have been fulfilled. It has also been argued that it is not clear when there has been a violation of an economic, social or cultural right because States are only required to take steps towards an open-ended goal, such as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Such arguments have been undermined by the fact that economic, social and cultural rights have been effectively applied by courts in a number of countries, and there is now an Optional Protocol to the ICESCR which provides a right to complain to the UN Committee on Economic, Social and Cultural Rights (CESCR) about violations under that treaty (see chapter 8 for more details on this mechanism).

CESCR has provided guidance to States on their legal obligations to implement economic, social and cultural rights under ICESCR in its General Comment No. 3 on the nature of States parties obligations:

- The rights contained in the ICESCR are subject to progressive realisation, meaning that they do not impose an immediate obligation, but should be realised gradually, according to available resources. However, States have an immediate obligation to take “deliberate, concrete and targeted” steps towards the full realisation of the rights.
- The obligation to ensure the right to non-discrimination and the equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation.
Any deliberately **retrogressive measures** require very careful consideration and must be fully justified according to the “full use of the maximum available resources.” A retrogressive measure is a measure which ‘claws back’ rights that have already been granted (for example, cuts to health or unemployment benefits). A State cannot do this unless it can justify the measures by showing that it has used all available resources.

Each right entails a **minimum core obligation**. States must ensure the satisfaction of, at the very least, minimum essential levels of each of the rights set out in the treaty but this does take into account any resource constraints in the country concerned. This means that States must take steps according to their **maximum available resources**. If a State claims not to be able to respect, protect and fulfil an economic, social or cultural right it must be able to demonstrate that every effort has been made to use all resources that are available.⁹

State obligations to respect, protect, and fulfil the economic, social and cultural rights of women who are at risk of VAW must be seen in this context, especially when the State is allocating budget and resources. For example, the Government must not introduce retrogressive measures that directly or indirectly lead to backward steps being taken with respect to women’s economic social and cultural rights. If a retrogressive measure is adopted, it must not be discriminatory, and it should only be adopted after the most careful consideration of all the alternatives, and justified in the context of the full use of the maximum available resources.

CESCR has explained that any deliberately retrogressive measure may violate State obligations under ICESCR. Retrogressive measures might take the form of privatisation of services such as health-care and education. They might include cuts to social expenditure such as social security, health-care services and childcare. These measures increase the costs of such services and decrease their availability to women. The State must ensure that any cuts to social expenditure in any field such as health, education or housing do not have a disproportionate impact on women who are at risk of, or experiencing VAW. This would support a strong argument that cuts to the housing budget and housing benefit must not result in a reduction in the availability of refuges for women fleeing VAW where they are already in short supply. Consideration of whether a measure is discriminatory must also take into account the impact on women who experience multiple discrimination. For example, cuts to the health and health-care budget might disproportionately reduce the availability of specialist outreach services for ethnic minority women at risk of VAW.
In focus: Key human rights related to violence against women

Chapter summary
This chapter looks in more detail at a number of the human rights that are found in the international human rights treaties to which the UK is a State party, and that are particularly relevant to violence against women (VAW). This overview is intended as an introduction to the way that general human rights law applies to VAW. All human rights are relevant to combating VAW and this section provides an overview of just four:

Chapter 3.1: Equality and non-discrimination
Chapter 3.2: The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment
Chapter 3.3: The right to life
Chapter 3.4: The right to health

This chapter begins with an overview of the principles of equality and non-discrimination, which have a central place in all strategies to combating VAW and have informed the development of international human rights law as it applies to VAW. It then looks at the right not to be subjected to torture, the right to life and the right to health.

Each sub-chapter provides information on:
- How the right is addressed in international human rights treaties
- What the right means in practice
- How the right is relevant to VAW
- What it means for the State to respect, protect and fulfil the right
3.1 Equality and non-discrimination

**Summary**

States must take measures to ensure that women enjoy human rights on a basis of non-discrimination and equality with men. This means that the law, policy or other measures taken to fulfil State obligations under human rights law must be gender-sensitive. These measures must respond to the way that gender discrimination exposes women to specific forms of human rights violations and presents barriers which impede women’s access to remedies.

To guarantee non-discrimination and equality in the enjoyment of all human rights, States must comprehensively address all forms of VAW through law and policy and ensure that measures taken to prevent, punish and provide remedies for acts of VAW are as effective as measures taken in respect of human rights concerns that are not gender-specific.

This might require the adoption of temporary special measures which are time-bound, targeted law and policy measures taken to accelerate women’s progress towards equality in all fields of life.

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**The right to non-discrimination**

The right to non-discrimination is set out in article 2 of both the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). These treaties set out a list of prohibited grounds of discrimination including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. These provisions prohibit discrimination in the enjoyment of human rights set out in the two treaties.

There are other human rights treaties to which the UK is a State party that have been adopted to protect and elaborate on the rights of specific groups of individuals and contain non-discrimination provisions related to those groups such as:

- Article 1 of the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) which defines discrimination against women. Article 2 requires States to eliminate discrimination against women in all its forms.

- Article 1 of the *International Convention on the Elimination of all Forms of Racial Discrimination* (ICERD) which defines racial discrimination. Article 2 requires States to eliminate racial discrimination in all its forms.

- Article 5 of the *Convention on the Rights of Persons with Disabilities* (CRPD) which prohibits discrimination on the basis of disability. This prohibition is further elaborated in article 6, which requires States to recognise that women and girls with disabilities are subject to multiple discrimination.

**What is the right to non-discrimination?**

The right to non-discrimination is about forms of action (or inaction) that are not allowed because it places specific groups of individuals at a disadvantage unreasonably.

The definition of discrimination under international human rights law has been set out by the Human Rights Committee (the human rights treaty body that monitors the ICCPR):

“any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

The key elements of this definition establish that discrimination is:

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*Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights*

UN Human Rights Committee\(^\text{31}\)

The principles of equality and non-discrimination are central to the protection of all human rights, including the right of women to live their lives free from all forms of violence against women (VAW). The central importance of equality and non-discrimination is made clear in the text of international human rights treaties and the decisions of the human rights treaty bodies.
Any distinction, exclusion or restriction: This could be a rule, policy or practice.

Based on a prohibited ground or grounds of discrimination: The international human rights treaties prohibit discrimination on different grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Sometimes an open-ended list, including the phrase “any other status” is provided, so that new grounds of discrimination such as sexual orientation can be included.\(^{33}\) In other treaties, just one prohibited ground is addressed, such as sex discrimination under CEDAW.

Which has the purpose or effect: There is no need to prove intent to do harm. The defining element of discrimination is its effect on individuals.

Causing disadvantage to a person, or group of persons: If there is no disadvantage, there is unlikely to be discrimination.

Not every different treatment constitutes discrimination

Not every difference in treatment or rule, policy or practice that has a different impact on different groups of individuals constitutes discrimination. In fact, under international law, the right to non-discrimination is violated when a State, without an objective and reasonable justification, fails to treat differently persons whose situations are significantly different.\(^ {36}\) This is a basic principle of non-discrimination that stems from the principle of substantive equality, which requires individuals or groups of individuals who share a protected characteristic and who are in different situations to be treated differently according to their specific needs (see below for information on substantive equality).

The general test to establish whether a difference in treatment or impact is allowed is that the rule, policy or practice must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means used and the aim sought to be realised.\(^ {37}\)

An example in relation to sex or gender-based discrimination is the need to accommodate for the specific situation of women during pregnancy, for example through the provision of maternity leave and maternity pay. This difference in treatment relates to biological criteria because biologically, only women can become pregnant. However, the criteria for justifying different treatment could also be social or economic. For example, although both men and women are at risk of domestic violence, the prevalence and effects of domestic violence are different for women and men. The social criteria indicate that women experience disproportionately higher rates of domestic violence than men. This must be taken into account when allocating funding for health, housing and outreach support services for survivors of domestic violence. If the funding criteria are gender-neutral and do account for different prevalence rates, women are likely to be discriminated against in access to those services.

Sex or gender-based discrimination?

- The term sex refers to biological differences between men and women.
- The term gender refers to the roles, behaviours, identities and attributes that a particular society ascribes to women and men. This often results in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.

The text of CEDAW refers to sex-based discrimination. However, The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the human rights treaty body that monitors CEDAW, has stressed that CEDAW prohibits both sex and gender-based discrimination and uses the two terms interchangeably.

CEDAW focuses exclusively on discrimination against women but gender-based discrimination under international human rights generally refers to any discrimination based on the socially constructed roles ascribed to men and women, and can affect women or men. It is intricately linked to discrimination on grounds of sexual orientation and gender identity. The CEDAW Committee has been very slow to address these issues,\(^ {34}\) but in 2010 adopted General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, which sets out that State obligations to eliminate discrimination against women under CEDAW must be understood to include intersectional discrimination and its negative impact on women, including on grounds of sexual orientation and gender identity.\(^ {35}\)
Definition of discrimination against women

The definition of discrimination against women is provided in article 1 of CEDAW. It is very similar to the general definition of discrimination but addresses discrimination against women exclusively:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

The CEDAW Committee in its General Recommendation No. 19 on violence against women has emphasised that VAW, or gender-based violence, is a form of discrimination within the meaning of article 1 of CEDAW. VAW can also engage a number of other rights contained in CEDAW and this is discussed in more detail in chapter 6.

Stand-alone and dependent non-discrimination provisions

In some of the treaties to which the UK is a State party, the right to non-discrimination is set out in a “free-standing” or autonomous non-discrimination provision, meaning that discrimination is prohibited in law or in fact in any field regulated and protected by public authorities. For example, if housing benefit is provided in domestic law there can be no discrimination in the allocation of housing benefit even if there is no right to housing benefit in the treaty. Treaties that have stand-alone non-discrimination provisions include:

- International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Rights of Persons with Disabilities (CRPD)

In other human rights treaties to which the UK is a State party, the right to non-discrimination is set out in a dependent non-discrimination provision. This means that the right to non-discrimination can only be used together with other human rights set out in the treaty. For example, it might be used when someone has experienced discrimination in relation to the right to health under the ICESCR. This is a narrower right to non-discrimination because in order to take effect it is dependent upon another right in the treaty that is relevant to the discrimination experienced. For example, an individual who has experienced discrimination in access to housing benefit will probably not be protected by a treaty that only contains a dependent non-discrimination provision if that treaty does not also include a right to housing benefits. Examples of treaties with dependent rights to non-discrimination include:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)

Prohibited grounds of discrimination or protected characteristics?

Following the entry into force of the Equality Act 2010, the prohibited grounds of discrimination in England, Wales and Scotland are referred to as ‘protected characteristics’. This term is quite useful because it is easier to understand what it means. International law usually refers to prohibited grounds or grounds of discrimination.

The idea behind prohibited grounds of discrimination or ‘protected characteristics’ is that each concerns a characteristic that:

- a person cannot change, and / or
- a person should not be forced to change because it is so central to their being or identity

Different forms of discrimination

The prohibition of discrimination under international law covers both direct and indirect discrimination. Like the definition of discrimination itself, the definition of different forms of discrimination varies slightly according to the treaty, treaty body or court in question. However, the following definitions provide a useful guide.

Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another person because of a protected characteristic/prohibited ground of discrimination. This form of discrimination is quite easy to identify because the difference in treatment that causes disadvantage will be obvious. There will be a law, rule or a practice that explicitly treats people who share a protected characteristic or ground of discrimination
differently. Examples include a rule that allows only men to apply for a particular job, a higher rate of pay for men doing the same job as women, or different school curricula for boys and girls.

The definition of direct discrimination also includes discrimination by association and perception:

- **Discrimination by association** means that an individual can be subject to discrimination because of her association with an individual who has a protected characteristic. For example, a carer might experience discrimination by association because of her association with an individual who has a disability.

- **Discrimination by perception** means that an individual can experience discrimination because of a protected characteristic that she is wrongly thought to have. This might happen, for example, if a heterosexual woman goes on a gay pride demonstration and experiences discrimination because she is wrongly thought to be a lesbian.

**Indirect discrimination**

Indirect discrimination occurs when there is a rule, a policy or practice that applies to everyone but which particularly disadvantages people who share a protected characteristic/prohibited ground of discrimination. This form of discrimination can be less easy to identify because on the face of it, everyone is treated in the same way. However, the impact causes disadvantage to a group of people who share a protected characteristic/ground of discrimination.

Under international law, it is the impact of the rule, policy or practice that is important to establish discrimination, not the intention. The impact of indirect discrimination on individuals can be the same as the impact of direct discrimination.

An example of indirect discrimination is a rule whereby full-time employees receive a higher salary grade than part-time employees. Such rules apply to everyone but are likely to place women at a disadvantage because women are more likely to work part-time than men.

**Multiple discrimination**

It is essential that States address multiple discrimination, which is discrimination that an individual experiences on more than one ground of discrimination or because of a combination of grounds of discrimination.

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**Case study: Indirect discrimination and violence against women with an insecure immigration status in the UK**

Rights of Women believes that the rules which restrict access to welfare benefits and community care services to all individuals with an insecure immigration status constitute indirect discrimination against women. The rules that restrict access to welfare benefits and community care services, such as the ‘no recourse to public funds’ rule, mean that women with an insecure immigration status who are experiencing domestic violence and other forms of VAW often cannot access a refuge. The rule applies to men and women with an insecure immigration status but disproportionately places women at a disadvantage because they are more likely to experience domestic violence, and need to go into a refuge, than men.

The discrimination that an individual experiences because of a combination of grounds of discrimination is also sometimes referred to as intersectional discrimination. This is where an individual experiences discrimination on more than one ground in such a way that the different forms of discrimination are impossible to separate. For example, a Black woman might experience discrimination in such a way that the discrimination she experiences because she is Black is inseparable from the discrimination she experiences because she is a woman.

Multiple discrimination can have a considerable impact on women’s experiences of inequality and disadvantage. The Convention on the Rights of Persons with Disabilities (CRPD) is the only international human rights treaty that explicitly refers to specific obligations of States arising from the multiple discrimination that women face, but the human rights treaty bodies that monitor State obligations under the core international human rights treaties have stressed that States must pay attention to multiple or intersectional discrimination.
Women facing multiple discrimination

The CEDAW Committee has emphasised that the discrimination women experience based on their gender is inseparable from other factors such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity. It has called on States to adopt legal and policy provisions to prohibit and eliminate intersecting forms of discrimination and their compound negative impact on women, including through the adoption of temporary special measures (explained further below).42

The Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee) has set out in its General Recommendation No. 25 on Gender Related Dimensions of Racial Discrimination that “racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men.”

The equal right of women and men to the enjoyment of all human rights

Whilst there is no general ‘right to equality’ set out in any of the human rights treaties, a number of the treaties to which the UK is a State party explicitly set out the equal right of women and men to the enjoyment of all human rights:

- Article 3 of both the ICCPR and ICESCR require States to ensure the equal right of women and men to the enjoyment of all human rights set out in the two treaties
- Article 3 of the CRPD sets out that the equal right of women and men is a basic principle of the CPRD
- CEDAW sets out in articles 2-16 a range of measures required of States to ensure women enjoy equal rights with men

Equality and non-discrimination: Two sides of the same coin

There are different ideas about equality and the relationship between equality and non-discrimination. The UN human rights treaty bodies tend to approach equality and non-discrimination as positive and negative expressions of the same principle. The term discrimination is focussed on a specific form of action, whilst equality describes an ideal.43

It is useful to look at the different approaches to equality that exist to understand what equality means under international law, and how the idea of equality is relevant to combating VAW.

Formal and substantive equality

The different approaches can be broadly divided into two categories: formal equality and substantive equality.

Formal equality is a very basic and narrow idea of equality. This approach considers equality to require individuals to receive the same or “symmetrical” treatment, without paying attention to people’s different situations or circumstances. Any difference in treatment on the basis of sex or gender is not allowed.

This approach is outdated and does not satisfy the obligations of States under international human rights law. International law requires States to adopt a substantive approach to equality.

Substantive equality (sometimes referred to as de facto equality, which means equality in fact) is a much broader idea that is focussed on equality in practice. A substantive approach to equality requires differently situated people to be treated differently, according to their individual circumstances, so that they can realise their capabilities and participate in society as equals. It recognises that the opportunities that individuals and groups of individuals have to participate in all aspects of society are influenced by the social, economic and cultural context as well as current and past experiences of discrimination and disadvantage.

It is not possible to achieve substantive equality through the law alone. The negative stereotypes and attitudes that place women at a disadvantage must be challenged through education and the media; and proactive policies must be adopted in all spheres of life to encourage women’s participation.

There are two broad approaches to substantive equality: equality of opportunity and equality of results.

Equality of opportunity is a term often associated with substantive equality. Equality of opportunity means that everyone should have, from the outset, the same opportunities so that they can realise their capabilities and participate in all areas of economic, social, political and cultural life as equals. It recognises that treating differently situated people in the same way can cause or exacerbate disadvantage. In order to achieve equality in practice, the law and policy must take account of the different opportunities that men and women experience related to the social, economic, cultural and political context.

This approach to substantive equality is focussed on the starting point; it says that if people have an equal opportunity from the outset, then the outcome is dependent on each individual and how they choose to live their life.
This approach recognises that everyone doesn’t set out in life from the same starting point, with the same opportunities; individuals must be treated differently in some circumstances in order to have equal opportunities. However, different approaches to substantive equality disagree on the type and extent of different treatment that is allowed in order to ensure that everyone has an ‘equal opportunity’.

At its narrowest, equal opportunity is about breaking down the formal barriers that prevent people from participating in society as equals. For example, to address inequality in a particular employment sector, educational qualifications which are not strictly necessary for a job may be relaxed. But disadvantaged groups might still lack the training which is necessary to do the job, and they may be discouraged from applying for the job because there is a lack of role-models from that disadvantaged group already doing the job. A mother with small children might be discouraged because of long working hours or child-care requirements. A broader understanding of equal opportunities might require that resources be provided to make sure that members of disadvantaged groups can make use of the new opportunities. In the example above, this might mean that training should be offered to women who are interested in the job; flexible working hours arranged and child-care provided.45

Whilst equal opportunity is a good idea in principle, it is very difficult to measure whether individuals and groups of individuals actually have equality of opportunity in practice.

An equality of results or outcomes approach takes the equality of opportunity approach one step further. This approach considers that progress towards equality in practice must be measured by looking at the results or outcomes. This approach can be quite controversial because it is linked with ideas of redistributive justice (meaning justice that is achieved through redistribution of power and resources so that everyone has access to power and resources) and supports the adoption of measures that give preferential treatment to groups of individuals who are disadvantaged, over groups of individuals who are not disadvantaged, in order to correct past injustice and ensure equality in practice. From this perspective the redistribution of resources and power is not only allowed by the principle of equality, but may also be required in order to make any real progress towards equality in reality.

In relation to the example concerning women’s participation in employment, an equality of results or outcomes approach might go one step further. In addition to the adoption of flexible working hours and the provision of training and child-care, quotas might be adopted, that require a certain number of women to be recruited. This would ensure that women participate in relatively equal numbers in the workforce.

Both approaches to substantive equality (opportunity and outcomes or results) recognise the need for temporary special measures to enable a disadvantaged group of individuals to have an equal opportunity to participate in society and realise their capabilities. Although under national law and policies in many countries, including the UK, an equality of outcomes approach is controversial and can be the subject of heated public debate, the core human rights treaties and the treaty bodies that monitor the treaties have been very clear that equality should be understood in substantive terms and sometimes requires adoption of temporary special measures (see below).

Temporary special measures

A number of human rights treaties contain provisions referring explicitly to the need to adopt specific measures to accelerate progress toward achieving substantive equality. These measures are referred to in different ways. For simplicity, the term used here is temporary special measures, which is the term adopted in CEDAW and applied by the Committee on Economic, Social and Cultural Rights (the treaty body that monitors the ICESCR). However, the other treaties and human rights treaty bodies use a variety of terms including ‘special measures’, ‘affirmative action’ and ‘positive measures’. These are all terms used to describe time-bound measures that are adopted to correct disadvantage experienced by groups who share particular characteristics and to accelerate progress towards equality for those groups.

The treaties that contain explicit provisions for temporary special measures include:

- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), article 4(1)
- Convention on the Elimination of all Forms of Racial Discrimination (ICERD), article 1(4)
- Convention on the Rights of Persons with Disabilities (CRPD), article 5 (4)

In addition to the treaties that explicitly contain provisions for the adoption of temporary special measures, the Human Rights Committee (the human rights treaty body that monitors the ICCPR) and the Committee on Economic, Social and Cultural Rights have set out that similar measures are allowed and may be required to eliminate discrimination and promote equality under the ICCPR46 and the ICESCR48.
The term temporary special measures covers a range of targeted law and policy measures that seek to guarantee equality, including equality in access to social goods and resources such as education, housing, health-care and employment for disadvantaged groups. Examples of the measures that might be undertaken include:

- Targeted advertising and promotion of certain goods and services
- Allocation or reallocation of resources
- Preferential treatment
- Outreach and support programmes
- Educational and vocational training and support
- Targeted recruitment, hiring and promotion
- The use of quota systems

Temporary special measures are both forward-looking and restorative: they are adopted to accelerate progress towards equality, as well as to correct the effects of past and current discrimination that has placed one group of individuals at a disadvantage compared to others.

International human rights treaties and the human rights treaty bodies that monitor them have set out that the adoption of temporary special measures forms an essential part of, and not an exception to, the principles of equality and non-discrimination. These measures do not constitute discrimination as long as they do not result in unequal or separate standards and the measures are discontinued when the objectives of equality of opportunity and treatment have been achieved.

Under the domestic law of many countries, including the UK, the idea of adopting temporary special measures is quite controversial because it involves giving preferential treatment to one group of individuals over another, in order to correct the effects of past disadvantage and ensure progress towards equality. Despite this, international human rights treaties and the treaty bodies that monitor State obligations under the treaties have been quite clear that the adoption of temporary special measures is not only sometimes desirable but in some circumstances is required, in order for States to fulfil their obligations to prohibit discrimination and ensure equality.

In this way, the idea of non-discrimination and equality under international human rights law reaches beyond the ideas of non-discrimination and equality contained in domestic law and policy in many countries, because it requires structural change and the redistribution of resources.
It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

CEDAW Committee, General Recommendation No.25

Temporary special measures under CEDAW

Article 4(1) of CEDAW provides that:
"Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

The CEDAW Committee has explained the meaning of temporary special measures under CEDAW in its General Recommendation No. 25 on temporary special measures, available online: http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf

Under CEDAW, any legislative or policy measures taken to accelerate progress toward equality between men and women in practice are allowed so long as:

- The measures do not result in unequal or separate standards
- The measures are discontinued when the objectives of equality of opportunity and treatment have been achieved

Temporary special measures to accelerate gender equality in the UK

An example of the way that temporary special measures have been used to accelerate progress towards equality between women and men in the UK is the adoption of women-only shortlists for parliamentary elections.

The CEDAW Committee in 2008 expressed concern that the UK does not make full use of temporary special measures to accelerate progress towards substantive equality between women and men in all areas addressed by the CEDAW Convention. It recommended the UK Government adopt:

“Legislative and administrative measures, outreach and support programmes, allocation of resources and creation of incentives, targeted recruitment and the setting of time-bound goals and quotas to accelerate the realisation of women’s de facto equality with men in all areas of life”.

What might trigger the need to adopt temporary special measures under CEDAW?

The CEDAW Committee sees equality of results as a logical outcome of equality of opportunity. From this perspective, equality of opportunity can be measured by “women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision making and political influence”.

State obligations under CEDAW require women to be given an “equal start” and “empowered by an enabling environment to achieve equality of results”.

Therefore, temporary special measures might need to be adopted in any area of life where women are under-represented or experience different outcomes that place them at a disadvantage compared to men.
This might be disproportionately low:

- Representation of women in senior political posts and regional and local decision-making bodies
- Representation of women in particular professions or particular jobs within a particular profession (for example, high number of women nurses but low number of women surgeons)
- Reporting, conviction and prosecution rates for gender-specific crimes, such as domestic violence and sexual violence

This also might be disproportionately high:

- Rates of maternal mortality
- Prevalence of VAW
- Representation of women in informal sector jobs
- Representation of women living on minimum wage

The CEDAW Committee has called on States to adopt temporary special measures wherever needed to accelerate progress toward equality in respect of all areas of life covered by CEDAW, including in the fields of education, the economy, politics, employment and health. It has also called for the adoption of temporary special measures to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women; and in the areas of credit and loans, sports, culture and recreation, and legal awareness. The Committee has also stressed that where necessary, such measures should be directed at women subjected to multiple discrimination. 53

**Equality of results is the logical corollary of de facto or substantive equality.** These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence

CEDAW Committee, General Comment No. 25, on temporary special measures.

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**Violence against women, equality and the right to non-discrimination**

The principles of equality and non-discrimination are central to understanding and addressing VAW.

On a general level, as is discussed in chapter 2, because VAW is a form, cause and a consequence of discrimination against women, combating discrimination against women in all areas of life is key to combating all forms of VAW.

The CEDAW Committee addresses VAW as a form of discrimination prohibited by the definition of discrimination against women in CEDAW. That means that States parties to CEDAW have an obligation to eliminate all forms of VAW as part of their general obligation to eliminate discrimination against women under CEDAW.55 See chapter 6 for more details on how the CEDAW Committee addresses VAW.

Other human rights treaty bodies address VAW by looking at a range of human rights, such as the right to be free from torture and the right to health. States must ensure that they take measures to ensure that women enjoy these human rights on a basis of equality with men. This means that the law, policy or other measures taken to fulfil State obligations under human rights law must be gender-sensitive and must respond to the way that gender discrimination exposes women to specific forms of rights violations and presents barriers which impede access to remedies.

To guarantee non-discrimination and equality in the enjoyment of all human rights, States must comprehensively address through law and policy all forms of VAW and prevent, punish and provide remedy for violations of women’s human rights as effectively as other violations that are not gender-specific. This might require different treatment to secure equal enjoyment and protection of rights, for example special measures of protection and assistance to women.
survivors of violence through the criminal justice system in recognition of the potential for re-victimisation if they are faced with a perpetrator in criminal proceedings. This might include, for example the adoption of laws that allow women who have experienced VAW to participate as a witness in criminal proceedings through video-link or behind a screen. It might also include provisions such as separate entrances and waiting areas in courts.

The need to adopt gender-sensitive law and policy is discussed in more detail in chapter 4, which sets out the UK’s international human rights policy commitments on VAW.

**Respect, protect, fulfil**

States must ensure women’s rights on an equal basis with men and respect, protect and fulfil women’s human rights to be free from VAW.

<table>
<thead>
<tr>
<th>Obligation</th>
<th>What is it?</th>
<th>Example: equality and non-discrimination</th>
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<tr>
<td><strong>Respect</strong></td>
<td>The State and its authorities must not interfere with the enjoyment of women’s human rights.</td>
<td>Amend any laws, policies or procedures that directly or indirectly deny women, or specific groups of women, equal enjoyment of all their human rights. This would require, for example, amending a law that does not recognise rape in marriage. Adopt and implement gender-sensitive law and policy measures to prevent and punish acts of VAW perpetrated by State actors. This includes making sure that there are effective and independent mechanisms for investigating and punishing acts of VAW committed by the police, and prison or detention centre staff.</td>
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<tr>
<td><strong>Protect</strong></td>
<td>The State and its authorities must take measures that prevent non-State actors such as individuals or private companies from interfering with women’s rights.</td>
<td>Protect women from discrimination, including acts of VAW perpetrated by non-State actors, such as their employers, or their family. For example, adopt effective law and policy on sexual harassment in the workplace. Take measures to challenge and eliminate negative social attitudes that perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. This might include, for example, launching a public awareness campaign on what it means to consent to sex and the definition of rape. Put in place effective gender-sensitive criminal law and civil law provisions to deter potential perpetrators from committing VAW backed up by law-enforcement, for the prevention, suppression and punishment of breaches of those provisions, and ensure women have effective access to remedies.</td>
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<tr>
<td><strong>Fulfil</strong></td>
<td>The State must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure the practical realisation of the elimination of discrimination against women and women’s equality with men.</td>
<td>Adopt comprehensive and gender-sensitive guidelines and procedures for law enforcement and the judiciary to make sure women’s rights are protected in practice, and that women are able to make complaints about violations of their rights. This might include guidelines for police to ensure that they respond appropriately and sympathetically when women first report rape and domestic violence. Adopt temporary special measures in all fields, where necessary, to accelerate women’s equality and freedom from violence. This might include temporary special measures in the fields of health, education, and public awareness, for example, by ring-fencing of budgets for those sectors to specifically address VAW. Design public policies, programmes and institutional frameworks that are aimed at fulfilling the specific needs of women, leading to the full development of their potential on an equal basis with men.</td>
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In focus: Key human rights related to violence against women
3.2 The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment

Summary

The right not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment means that the State must ensure that no State actor or non-State actor inflicts severe pain or suffering, whether physical or mental, or subjects an individual to cruel, inhuman or degrading treatment or punishment. All forms of violence against women that meet this threshold are prohibited in absolute terms under international law, and the State can be held responsible for the private acts of individuals, such as acts of rape or domestic violence, if it fails to act with due diligence to prevent, punish and repair harm caused by such acts.

The right not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment is set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as the International Covenant on Civil and Political Rights (ICCPR), article 7.

It is also set out in the following human rights treaties to which the UK is a State party, with respect to children under article 37(a) of the Convention on the Rights of the Child (CRC) and persons with disabilities under article 15 of the Convention on the Rights of Persons with Disabilities (CRPD).

Although there is no explicit right not to be subjected to torture set out in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), these treaties prohibit discrimination (on grounds of sex and race respectively) that undermines an individual’s enjoyment of their human rights on a basis of equality. The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the human rights treaty body that monitors CEDAW, has set out in its General Recommendation No. 19 on violence against women that all forms of violence against women (VAW) that constitute torture or cruel, inhuman or degrading treatment or punishment are prohibited as a form of discrimination against women under article 1 of CEDAW.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

International Covenant on Civil and Political Rights, article 7

What is the right not to be subjected to torture?

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is an absolute right, meaning that there are no exceptions or limitations to the right. It is also a right that cannot be subject to derogations, meaning that it cannot be suspended or restricted in any way at any time, regardless of the circumstances, even during a war or public emergency.

The definition of torture is set out in article 1 of CAT:

“[T]he term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third...”
person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The definition does not set out the different acts of torture but rather sets out three essential elements that together constitute torture. These are:

- **Severe pain or suffering (physical or mental)**

Torture is restricted to the infliction of severe pain or suffering. In this way the definition sets a high threshold of pain and suffering. Other less severe forms of ill treatment might instead constitute cruel, inhuman or degrading treatment or punishment (see below). The definition of torture clearly sets out that the severe pain or suffering can be physical or mental.

- **Intentionally inflicted for a purpose (including for any reason based on discrimination of any kind)**

For an act to constitute torture it must be intentionally inflicted. The torture could be inflicted for many purposes, including punishment, retaliation, humiliation, or discrimination. The purpose element is always fulfilled in cases of VAW because the definition of torture explicitly refers to discrimination, and VAW is a form of gender-based violence that constitutes discrimination.60 Where it can be shown that an act had a specific purpose, the intent element can be implied.61

- **By or at the instigation of, or with the consent or acquiescence of the State**

This element sets out that severe pain or suffering is torture if it is inflicted by the State authorities or if the State fails to protect individuals from torture and ill treatment committed by non-State actors. The term ‘acquiescence’ refers to the failure of the State to act or do anything about an act of torture which it knew or ought to have known about but did not try to prevent. If the State fails to act with due diligence to prevent and respond to VAW committed by non-State actors, the inaction amounts to encouragement and/or permission of the violence, and so the State can be held responsible.

The UN Committee against Torture has set out State responsibility for torture committed by non-state actors:

“Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifferences or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.”62

What is cruel, inhuman or degrading treatment or punishment?

The terms cruel, inhuman and degrading punishment or treatment are used to indicate degrees of suffering that are less severe than torture.

Despite the application of different terms related to the severity of pain or suffering, all forms of torture and cruel, inhuman and degrading punishment or treatment are prohibited under international law and the ban is absolute, meaning that there can be no excuses and the right cannot be derogated.

The Human Rights Committee, interpreting State obligations under the ICCPR has said that it is not necessary to “draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.”64
The principle of non-refoulement

The absolute prohibition of torture and cruel, inhuman and degrading punishment or treatment also includes an obligation not to return an individual to another country where they face a risk of torture, or cruel, inhuman and degrading punishment or treatment. This ban on sending a person to another country where they face a risk of torture or cruel, inhuman and degrading punishment or treatment is called the principle of non-refoulement.65

Violence against women and the right not to be subjected to torture and other forms of cruel, inhuman and degrading treatment or punishment

All forms of VAW that meet the definition of torture and other forms of cruel, inhuman and degrading punishment or treatment are prohibited in absolute terms under international law, and the State can be held responsible for the private acts of individuals, such as acts of rape or domestic violence, if it fails to act with due diligence to prevent, punish and repair harm caused by such acts.

This might include but is not limited to rape and other forms of sexual violence, forced abortion, as well as denial of access to safe abortion to women who have become pregnant as a result of rape or whose welfare is at risk, forced sterilisation, domestic violence, female genital mutilation, human trafficking, forced marriage and other forms of VAW such as gender hate crime and violence committed in the name of ‘honour’ such as dowry-related violence.

The Committee against Torture has emphasised that States must effectively protect everyone from torture and other forms of cruel, inhuman and degrading treatment or punishment and ensure that “laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction.”66

The right not to be subjected to torture or cruel, inhuman and degrading punishment or treatment must be enjoyed without discrimination of any kind. In order to make this a reality, States must take special steps to protect individuals and groups of individuals who are marginalised, or who are especially at risk of being tortured.

Gender is a key factor that exposes women to a risk of torture, and to specific forms of torture. The Committee against Torture has emphasised how gender intersects with other characteristics, such as race, nationality, religion, sexual orientation, age or immigration status to determine the way that women and girls are subjected to or at risk of torture or ill-treatment and the consequences of torture. It has also highlighted how both men and women might be subjected to torture because of discriminatory attitudes about gender roles, and on “the basis of their actual or perceived non-conformity with socially determined gender roles”.67 As part of the obligation to combat
torture, States must challenge the negative social stereotypes and attitudes that place rigid control on the way that individuals live their lives and express their gender identity.

The principle of non-refoulement means that the State cannot send a woman back to a country where she is at risk of VAW, including at the hands of non-State actors, where the State is unable or unwilling to protect her from that violence. This protection that flows from the prohibition of torture is absolute, and is additional to refugee protection.68

**Respect, protect, fulfil**

The right not to be subjected to torture or cruel, inhuman and degrading punishment or treatment, like all human rights, imposes a three-tiered obligation on States to respect, protect and fulfil the right.

<table>
<thead>
<tr>
<th>Obligation</th>
<th>What is it?</th>
<th>Example: The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Respect</strong></td>
<td>The State and its authorities must not direct or indirectly interfere with women's rights to be free from torture.</td>
<td>Adopt and implement law and policy measures to prevent and punish acts of VAW perpetrated by State actors, such as police, prison and detention centre staff. For example, set up independent monitoring of women's prisons and police stations. Strictly adhere to the principle of non-refoulement in cases where a woman faces risk of return to VAW that would constitute torture or cruel, inhuman and degrading punishment or treatment. For example, adopt and implement robust and gender-sensitive asylum law, policy and practice to make sure women who are survivors or at risk of VAW are not re-victimised in the asylum process and/or returned to a country where they are at risk.</td>
</tr>
<tr>
<td><strong>Protect</strong></td>
<td>The State must prevent non-State actors from interfering with women's right to be free from torture.</td>
<td>Protect women in society from VAW generally: Put in place effective criminal and civil law provisions to deter potential perpetrators from committing VAW, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions as well as remedies. For example, take efforts to make sure that law and policy is as effective a deterrent in terms of conviction and prosecution rates as non gender-specific crimes. Protect a woman where it is known or ought to be known that she is at risk of VAW: For example, in individual cases, provide immediate and comprehensive assistance from coordinated professional services to provide health-care, legal assistance, information on rights and necessary resources to exercise them such as shelters, restraining orders and financial aid.</td>
</tr>
<tr>
<td><strong>Fulfil</strong></td>
<td>The State must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to enable women to fully realise the right to be free from torture.</td>
<td>Deliver training on the causes and consequences of all forms of VAW to all law enforcement personnel and health professionals. Adopt and implement gender-sensitive rules and procedure in criminal and civil law to ensure women who experience VAW have equal access to justice. For example, adopt special measures in rape trials. Challenge negative social attitudes that perpetuate and condone VAW through education and the media. For example, challenge rape myths and publicise and launch a media campaign on the effects of domestic violence or rape. Ensure sufficient budget is allocated for the provision and delivery of specialist services for women at risk of all forms of VAW, and vigorously support the work of non-governmental organisations (NGOs) such as women's organisations working in this field.</td>
</tr>
</tbody>
</table>

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**In focus: Key human rights related to violence against women**

37


### Summary

The right to life means that the State must not arbitrarily take away a woman’s life, and must put in place effective civil and criminal law provisions, backed up by effective law enforcement (such as an effective and gender-sensitive police force and court system), to protect women from VAW and provide effective remedy in the event of a breach of a woman’s rights. The State can be held responsible for the death of a woman if it can be shown that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to her life which they were aware of, or ought to be aware of.

The right to life is set out in article 6 of the International Covenant on Civil and Political Rights (ICCPR). It is also set out in two additional human rights treaties to which the UK is a State party, with respect to children under article 6 of the Convention on the Rights of the Child (CRC) and persons with disabilities under article 10 of the Convention on the Rights of Persons with Disabilities (CRPD).

Although there is no explicit right to life set out in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) or the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), these treaties prohibit discrimination (on grounds of sex and race respectively) that undermines an individual’s enjoyment of their human rights on a basis of equality. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), the human rights treaty body that monitors CEDAW, has used CEDAW’s non-discrimination provisions to address discrimination in enjoyment of the right to life, in a case where a State did not do all it should have done to protect a woman’s right to life when she was at risk of domestic violence (see case study, Şahide Goekce v Austria, in chapter 6).

What is the right to life?

**Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.**

*International Covenant on Civil and Political Rights, article 6(1)*

The Human Rights Committee has explained in detail what the right to life means in its General Comment No. 6 on the right to life, available online: http://www.unhchr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3

However, this general comment does not provide any specific detail on the right to life in the context of violence against women.

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The right to life is a right that cannot be subject to any derogations, meaning that it cannot be suspended or restricted even in times of public emergency or war. Unlike the prohibition of torture however, it is not an absolute right because under international law there are certain strict circumstances when a State might deprive an individual of life without committing a violation of the right to life. An example might be the proportionate and non-discriminatory use of force in strict circumstances to protect the life of others. The right to life is better described as a right not to be arbitrarily deprived of life, meaning that States can deprive individuals of life but only in strict circumstances and provided that law and procedures are followed and there can be no discrimination in the enjoyment of the right.

The right to life, like all human rights, imposes positive obligations and negative obligations. This means that the State must not only refrain from arbitrary deprivation of life, but also take appropriate steps to safeguard the lives of individuals from non-State actors.

The positive obligations of States in relation to the right to life require States to put in place effective civil and criminal law provisions backed up by effective law enforcement (such as an effective and gender-sensitive police force and court system) for the prevention and punishment of breaches of the right to life.

In specific circumstances, the positive obligations of States require the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. This standard sets out that the State can be held responsible for the act of a private individual, and will fail...
In focus: Key human rights related to violence against women

its due diligence obligation to protect the right to life, if it can be shown that "the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge". 70

Under international human rights law, the right to life should not be understood in a restrictive manner. For example, the Human Rights Committee (the human rights treaty body responsible for monitoring the ICCPR) has highlighted the obligation of States to take all possible measures to increase life expectancy.71

**Violence against women and the right to life**

All forms of violence against women (VAW) that place a woman's life at risk raise concerns under the right to life.

The right to life, as all other human rights, should be enjoyed by all men and women on an equal basis, and States have an obligation to respect and to ensure it without discrimination. This means that the law and policy must be tailored to address gender-specific threats to life, such as the effect of law and policy on the prevalence of unsafe abortion and maternal mortality, and the prevalence and consequences of domestic violence and other forms of VAW that place women's lives at risk.

The Human Rights Committee has expressed concern about the criminalisation of abortion when pregnancy threatens the life of the mother or results from rape and has called on States to amend their laws and introduce exceptions to the general prohibitions of abortions.72 It has raised serious concern about the implications on women's right to life of restrictive abortion laws where illegal abortions are common and unsafe abortions are known to contribute to high rates of maternal mortality. For example, in 2010 it called on Poland to urgently review the effects of the restrictive anti-abortion law on women under article 6.73

Another example of a State failing to respect, protect and ensure women's right to life would be a failure to adopt and fully implement across all areas of Government a coordinated and effective strategy as well as support services for addressing domestic violence and other forms of violence that disproportionately affect women and place their lives at risk.

**Respect, protect, fulfil**

The right to life, like all human rights, imposes a three-tiered obligation on States to respect, protect and fulfil the right.

<table>
<thead>
<tr>
<th>Obligation</th>
<th>What is it?</th>
<th>Example: The right to life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respect</td>
<td>The State and its authorities must not interfere with the enjoyment of women's right to life.</td>
<td>Appropriate law and policy measures are adopted and implemented to prevent and punish acts of VAW perpetrated by State actors, such as police, prison and detention centre staff. Do not deny or limit access to safe abortion when a mother’s life is at risk.</td>
</tr>
<tr>
<td>Protect</td>
<td>The State must prevent non-State actors from interfering with women’s right to life.</td>
<td>Protect women from threats to their life because of VAW in society generally: Put in place effective criminal and civil law provisions to deter potential perpetrators from committing VAW, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions as well as remedies. Protect a woman where it is known or ought to be known that her life is at risk because of VAW: For example, provide immediate and comprehensive assistance from coordinated professional services to provide health-care, legal assistance, information on rights and necessary resources to exercise them such as shelters, restraining orders and financial aid.</td>
</tr>
<tr>
<td>Fulfil</td>
<td>The State must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to enable women to fully realise the right to life.</td>
<td>Deliver training on the causes and consequences of all forms of VAW to all law enforcement personnel and health professionals e.g. ensure front-line police staff have been trained in how to respond appropriately to a woman reporting domestic violence. Adopt and implement gender-sensitive rules and procedures in criminal and civil law to ensure women who experience VAW have equal access to justice. For example, ensure women who have experienced domestic violence have access to the legal aid and support needed to access civil and criminal law remedies. Challenge negative social attitudes that perpetuate and condone VAW through education and the media.</td>
</tr>
</tbody>
</table>
3.4 The right to health

Summary
The right to health means that the State must not interfere with a woman’s enjoyment of the highest attainable standard of health, and must put in place effective civil and criminal law provisions, backed up by effective law enforcement (such as an effective and gender-sensitive police force and court system), to protect women from non-State actors interfering with their health. It includes a right to the factors that promote our ability to lead a healthy life such as gender equality and safe and healthy working conditions. It also includes a right to equal access to health-care, meaning that gender-sensitive and specialist health-care must be available, accessible, acceptable and of high quality, for all groups of women.

The right to health is set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 12.

It is also set out in a number of human rights treaties to which the UK is a State party including with respect to children under article 24 of the Convention on the Rights of the Child (CRC) and persons with disabilities under article 25 of the Convention on the Rights of Persons with Disabilities (CRPD). A right to health-care without discrimination and on the basis of equality between women and men is provided under article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and without distinction as to race, colour, or national or ethnic origin, under article 5(iv) of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

Underlying determinants of health
The factors that promote our ability to lead a healthy life are referred to as the underlying determinants of health and they include food and nutrition, housing, access to safe drinking water and adequate sanitation, safe and healthy working conditions, and a healthy environment, and gender equality.

What is the right to health?
The right to the highest attainable standard of physical and mental health is a wide ranging right which is concerned with ensuring equal access to timely and appropriate health-care, at the same time as the wide range of social and economic factors that can help us lead a healthy life.

The right to the highest attainable standard of physical and mental health is not a right to be healthy, because the State cannot provide protection against every possible cause of ill health. Instead, it is a right to the enjoyment of the range of facilities, goods, services and conditions necessary for us to attain the highest attainable standard of health. It includes the right to a system of health protection that provides equality of opportunity for everyone to enjoy the highest attainable level of health.

Availability, accessibility, acceptability and quality (AAAQ)
The Committee on Economic, Social and Cultural Rights in its General Comment No.14 on the right to health has set out a framework for understanding the State obligations related to the right to health. It has set out that public health facilities, goods and services as well as the underlying determinants of health must...
be available, accessible, acceptable, and of good quality:

- **Availability:** Public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity.

- **Accessibility:** Accessibility has four overlapping dimensions. Health facilities, goods and services have to be accessible to everyone on a basis of:
  - **Non-discrimination:** attention must be paid to the needs of all groups of individuals, especially the most vulnerable or marginalised groups.
  - **Physical accessibility:** within safe physical reach for all sections of the population, especially vulnerable or marginalised groups, including ethnic minorities, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS.
  - **Economic accessibility (affordability):** health facilities, goods and services must be affordable for all.
  - **Information accessibility:** the right to seek, receive and impart information and ideas concerning health issues.

- **Acceptability:** All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

- **Quality:** As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality.

### Violence against women and the right to health

Violence against women (VAW) constitutes a violation of the right to health, where the State perpetrates or condones violence by failing to act with **due diligence** to prevent and respond to it. International human rights bodies have tended to focus on certain types of VAW under the right to health, such as female genital mutilation (FGM) and forced sterilisation and abortion. Despite this, the right to health is relevant to all forms of VAW because it puts women’s physical and psychological health and lives at risk.

The right to health includes the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. This, combined with the principles of equality and non-discrimination means that States must recognise and provide for the different and specific needs of different groups of individuals in society, and pay particular attention to the needs of individuals who are disadvantaged or have specific health-care needs, such as women who are at risk of, or have experienced VAW.

Gender-specific health-care facilities must be provided to enable women who have experienced VAW to access health-care that is available, accessible, acceptable and of quality. Targeted health-care strategies, plans and services must be tailored to address VAW and ensure health-care meets the needs of women who face discrimination and disadvantage because of multiple characteristics such as race, ethnicity, disability and age. For example, the State must recognise and respond to the different needs of ethnic minority women who will face multiple barriers to accessing health-care services and the underlying determinants of health. This might require the provision of specialist outreach services for particular groups of women who are at risk of VAW.

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[To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women’s right to health throughout their life span. ... [a] major goal should be reducing women’s health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights](#)
Respect, protect, fulfil

The right to health, like all human rights, imposes a three-tiered obligation on States to **respect, protect and fulfil** the right.

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Meaning</th>
<th>Example: The right to health</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Respect</strong></td>
<td>The State and its authorities must refrain from interfering directly or indirectly with women’s right to health.</td>
<td>Ensure fully informed consent is obtained prior to health-care or medical procedures, such as abortion or sterilisation. Do not deny or limit access to health-care services for women who have experienced VAW. Do not limit access to contraceptives and other means of maintaining sexual and reproductive health. Do not withhold, censor or misrepresent health information.</td>
</tr>
<tr>
<td><strong>Protect</strong></td>
<td>The State must prevent non-State actors from interfering with the right to health.</td>
<td>Enact and enforce laws and policies that prohibit and punish all forms of VAW. Provide for appropriate physical and mental health services for women at risk and survivors of VAW. Provide other appropriate services, such as refuges and outreach and support, to enable women to leave violent and abusive situations.</td>
</tr>
<tr>
<td><strong>Fulfil</strong></td>
<td>The State must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realise the right to health.</td>
<td>Adopt a national health plan and systems that address all forms of VAW and integrate a gender perspective. Ensure that gender-sensitive and specialised health-care programmes are available, accessible, acceptable and of good quality. Tailor health-care to the needs of different groups of women at risk of VAW and ensure availability, accessibility, acceptability and quality of specialist health services for different groups of women such as rural women, women involved in prostitution, disabled women and ethnic minority women. Train health-care workers to detect and manage the health consequences of VAW. Health-care workers are often in a unique position to support the early identification of VAW. Ensure that survivors of all forms of VAW have the right to adequate rehabilitation that covers their physical and mental health.</td>
</tr>
</tbody>
</table>
Chapter summary

Over four years, between 1992-1995 three important global policy documents were adopted, specifically addressing State obligations under international human rights law to prevent and respond to violence against women (VAW):

- CEDAW Committee, General Recommendation No. 19 on violence against women (1992)
- UN Declaration on the Elimination of Violence against Women (1993)

Although not legally binding, these three documents provide comprehensive and mutually reinforcing policy guidance to States on their obligations under international human rights law to prevent and respond to all forms of VAW. They set out in detail how the UK should be addressing VAW.

This chapter provides a brief introduction to each document, including an overview of how they were adopted; their significance internationally, and in the UK.

The three documents have similar content, and so the principles and standards set out in each are addressed together. Ten key issues common to all three documents are set out and explained, which establish in detail the commitments that States around the world, including the UK, have made to address and respond to VAW.

Four years: Three mutually reinforcing policy documents on violence against women

Over four years, between 1992-1995 three important global policy documents were adopted, specifically addressing State obligations under international human rights law to prevent and respond to violence against women (VAW):

- CEDAW Committee, General Recommendation No. 19 on violence against women (1992)
- UN Declaration on the Elimination of Violence against Women (1993)

Prior to the adoption of these documents, there had been no international agreement that explicitly set out State obligations in relation to VAW under international law. There is still no international legally binding treaty that addresses VAW and so although these documents are not legally binding, they provide powerful policy and lobbying tools for women’s rights activists around the globe. Their adoption has influenced the way that the international human rights treaty bodies have addressed State obligations to respect, protect and fulfil women’s rights. They have also been cited by important international human rights courts, such as the European Court of Human Rights.

All three documents contain similar, and at times identical content, and this is important because it means that they are mutually reinforcing. The three documents can be used together to highlight the obligations that the UK Government has to address VAW; the UK Government has publically committed to implement each of them. However, these are not legally binding documents, so it is very important that non-governmental organisations (NGOs), such as women’s groups, publicise them and use them in their work at every opportunity in order to keep them alive and on the top of the national and international agenda.
General Recommendation No.19 of the CEDAW Committee

What is it?
General Recommendation No. 19 is a policy document that has been adopted by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the committee that has the power to monitor State obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It provides a detailed overview of State obligations to eliminate VAW under CEDAW.

What significance does it have in international law and policy?
General Recommendation No.19 of the CEDAW Committee is the most detailed guidance issued by an international human rights treaty body to date on VAW. It is mostly relevant to States that have signed or ratified CEDAW, such as the UK.

How does it relate to the UK?
This document is not legally binding on the UK but provides authoritative guidance on the specific obligations that the UK has to address VAW under CEDAW, which is legally binding on the UK. The UK must report to the CEDAW Committee every four years on its progress putting in place its obligations under CEDAW and must use this document as a guide when it reports on VAW. The UK has recognised the authority of the CEDAW Committee to issue authoritative guidelines on specific matters like VAW by becoming a State party to CEDAW and by signing the Optional Protocol to CEDAW which is an additional treaty that allows the CEDAW Committee to consider complaints submitted about the UK (for more information about submitting a complaint to the CEDAW Committee, see chapters 5 and 6).

The full text of the CEDAW Committee’s General Recommendation No.19 can be read online:
http://www.unhchr.ch/tbs/doc.nsf/0/300395546e0dec52c12563ee0063dc9d?Opendocument

UN Declaration on the Elimination of Violence against Women

What is it?
The UN Declaration on the Elimination of Violence against Women (DVAW) is an international policy document which was adopted by a resolution of the UN General Assembly in 1993. It sets out the obligations of States around the world to eliminate VAW, and draws its authority from a common agreement of basic human rights that everyone, everywhere is entitled to. It draws on the obligations of States under the Universal Declaration of Human Rights (UDHR) and international human rights treaties.

What significance does it have in international law and policy?
DVAW was adopted by consensus by the UN General Assembly, meaning that no State opposed it, including the UK. As is explained in Chapter 1, resolutions of the UN General Assembly are not legally binding on States, but they represent a common understanding and agreement between UN member States. Of all international policy agreements made between States that are not legally binding, UN General Assembly resolutions are the most authoritative so it is very important that this document has been adopted by the UN General Assembly.

How does it relate to the UK?
The UK voted in favour of the UN General Assembly resolution that adopted DVAW and by doing this, publically committed to implement it.

The full text of the UN Declaration on the Elimination of Violence against Women (DVAW) can be read online:

The Beijing Platform for Action

What is it?
The Beijing Declaration and Beijing Platform for Action (BPfA) were the outcome documents of the Fourth World Conference on Women which was organised by the United Nations (UN) and held in Beijing, China on 4 to 15 September 1995.

The States that signed the Beijing Declaration, including the UK, committed to implement the BPfA, which is a long agreement that presents an agenda for women’s empowerment.82 The BPfA recognises that equality between women and men is a matter of human rights and a condition for social justice.83 It emphasises that women share common concerns that can be addressed only by working together and in partnership with men towards the common goal of gender equality, whilst recognising that some women face particular barriers to their empowerment because of such factors as their race, age, language, ethnicity, culture, religion or disability, or because of other status.84
The BPfA sets out twelve critical areas of concern. For each of the twelve critical areas of concern, strategic objectives with concrete actions to be taken by governments (as well as others, such as NGOs) to achieve women’s full advancement and equality are set out.

<table>
<thead>
<tr>
<th>Beijing Platform for Action – Twelve Critical Areas of Concern</th>
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<tbody>
<tr>
<td>• Women and Poverty</td>
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<td>• Women and Education</td>
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<td>• Women and Health</td>
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<td>• Violence against Women</td>
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<td>• Women and Armed Conflict</td>
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<td>• Women and the Economy</td>
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<td>• Women in Power and decision-making</td>
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<td>• Institutional Mechanisms for the Advancement of Women</td>
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<td>• Human Rights of Women</td>
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<td>• Women and the Media</td>
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<td>• Women and the Environment</td>
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<td>• The girl-child</td>
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VAW is one of the twelve critical areas of concern identified within the BPfA that States must address in order to accelerate progress toward gender equality and women’s empowerment.

By signing up to the BPfA, the Government committed to take specific actions to achieve the following three strategic objectives to combat VAW:

- **Strategic Objective D1**: obligation to take integrated measures to prevent and eliminate violence against women
- **Strategic Objective D2**: study the causes and consequences of violence against women
- **Strategic Objective D3**: eliminate trafficking in women and assist victims of violence due to prostitution and trafficking

The BPfA sets out a large number of specific actions that States must undertake in order to meet these three strategic objectives related to VAW.

The BPfA is important because it sets out detailed obligations of States to eliminate VAW, and places these within the broader context of combating discrimination against women in all areas of life, such as the economy, education and health.

**What significance does it have in international law and policy?**

The Beijing Declaration and BPfA were agreed and adopted by representatives from 189 States participating in the Fourth World Conference on Women, including the UK. The participation of so many States in its formulation and adoption means that it is a powerful and persuasive global policy document on women’s rights. Much of its content on VAW reflects and builds on DVAW and the CEDAW Committee’s General Recommendation No. 19. This document is useful because it is more detailed than the earlier two documents.

The BPfA is very closely related to CEDAW and the CEDAW Committee has requested that States parties to CEDAW submit information on action taken in relation to the twelve critical areas of concern of the BPfA, including on VAW, in their reports to the CEDAW Committee.85

**How does it relate to the UK?**

The UK was one of 189 States that signed the Beijing Declaration in 1994 and by doing this, committed publicly to implement the specific actions on VAW set out in the BPfA. Because the BPfA makes direct reference to DVAW and General Recommendation No. 19 of the CEDAW Committee, the UK reaffirmed its commitments under those documents at the same time.

The UK must report on its progress implementing the BPfA, including its commitments on VAW, when it reports to the CEDAW Committee every four years.86 In 2008, the CEDAW Committee urged the UK to take note of its obligations under the BPfA and report on progress implementing the BPfA in its next report to the Committee (see chapters 5 and 6 for information on the reporting process under CEDAW).87

The full text of the Beijing Platform for Action (BPfA) can be read online: [http://www.un.org/womenwatch/daw/beijing/platform/](http://www.un.org/womenwatch/daw/beijing/platform/)
What is the difference between the BPfA, DVAW and General Recommendation No. 19?

Whilst they address many issues in common, the three documents are also useful in different ways.

- General Recommendation No. 19 is particularly useful for helping us to understand the Government’s specific obligations to combat VAW under CEDAW.
- The DVAW is useful because it was adopted by consensus by the UN General Assembly and this gives it a special authority on the international stage. Whilst it is not law, it has more authority than most policy documents.
- The BPfA is useful because it sets out the issues in the most detail. It also sets out VAW as one of 12 major gender equality concerns that States must address. This makes an important point of embedding VAW within broader strategies to combat discrimination against women and promote gender equality. It also has a strong focus on trafficking and prostitution.

The content of international human rights policy on violence against women

This section provides an overview of the content of the three policy documents and sets out ten major themes which run through all of the documents. By signing DVAW and the BPfA, and recognising the competence of the CEDAW Committee to interpret the UK’s obligations under CEDAW, the UK Government has committed to:

1. Adopt the international framework for defining and responding to violence against women

VAW should be addressed as a form, cause and a consequence of discrimination against women and that the solution to VAW lies in women’s full advancement in all areas of life.

The BPfA and DVAW set out the internationally recognised definition of VAW:

“The term violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

General Recommendation No. 19 offers a complementary definition. It defines VAW (referred to as gender-based violence) as “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.”

All three documents approach VAW as a form of gender-based violence that violates, nullifies or impairs women’s enjoyment of their human rights and fundamental freedoms and is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

The BPfA and DVAW stress that VAW is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement.

General Recommendation No. 19 highlights that gender-based violence contributes to women’s “low level of political participation and to their lower level of education, skills and work opportunities.”
2. Address violence against women as a human rights issue and implement international human rights commitments

VAW is a human rights issue that must be addressed through the full adoption and implementation of international human rights instruments and standards.

States are responsible not only for VAW perpetrated by State actors, but also acts of violence perpetrated by non-State actors where the State fails to act with due diligence to prevent, investigate and punish all acts of VAW.

The BFPA commits States to ratify and implement international human rights norms and instruments as they relate to VAW, paying particular attention to implementing CEDAW and CEDAW’s General Recommendation No. 19. This is important as it gives additional authority to the work of the CEDAW Committee.

DVAW calls on States to ratify CEDAW or remove reservations to CEDAW. This is important for the UK because it maintains a number of reservations to CEDAW that undermine its object and purpose and should be withdrawn (see chapter 1 for an explanation about reservations).

All three documents underscore clearly that States may be held responsible for VAW and violations of the human rights of women if they fail to act with due diligence to prevent, investigate and punish all acts of VAW whether those acts are perpetrated by the State or non-State actors.

3. Adopt strategic policies and action plans on violence against women

Strategic action plans should be adopted that address all forms of VAW that fall within the international definition. These action plans should be integrated, and they must be mainstreamed throughout all Government activity, and across all Government departments such as immigration, health, education, culture, employment and justice.

The BFPA commits States to take “integrated measures to prevent and eliminate violence against women”, “formulate and implement, at all appropriate levels, plans of action to eliminate violence against women”, and “promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women”.

Similar requirements are set out in DVAW, which calls on States to pursue by all appropriate means and without delay a policy of eliminating violence against women. It sets out that States should develop national plans of action, taking into account the potential to cooperate with NGOs, particularly those working on VAW.

4. Address multiple discrimination and the needs of specific groups of women

Multiple discrimination, and the specific situation and needs of different groups of women, in particular the most disadvantaged groups of women, must be addressed in all law, policy and action plans on VAW.

DVAW calls on States to adopt measures directed towards women who are especially vulnerable to VAW and expresses concern that “some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence”. It sets out that States should develop national plans of action, taking into account the potential to cooperate with NGOs, particularly those working on VAW.

The BFPA calls on States to improve the situation of all women, without exception, who often face similar barriers while giving special attention to groups that are the most disadvantaged. It stresses that women “face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or because of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and to their socio-economic status, including their living conditions in rural, isolated or impoverished areas. Additional barriers also exist for refugee women, other displaced women, including internally displaced women as well as for immigrant women and migrant women, including women migrant workers.”
Intersecting identities and violence

When it signed the BPfA, the UK committed to:
“take special measures to eliminate violence against women, particularly those in vulnerable situations, such as young women, refugee, displaced and internally displaced women, women with disabilities and women migrant workers”\(^{106}\) and “recognize the vulnerability to violence and other forms of abuse of women migrants, including women migrant workers, whose legal status in the host country depends on employers who may exploit their situation”.\(^{107}\)

General Recommendation No. 19 does not explicitly refer to the needs of specific groups of women, beyond emphasising the increased risk of violence and barriers to accessing services faced by rural women.\(^{108}\) Subsequent General Recommendations of the CEDAW Committee have, however, stressed State obligations to address multiple and intersectional discrimination.\(^{109}\)

These commitments are important for the UK because national action plans and policies have been weak on addressing the needs of specific groups of women, for example refugee women and women with an insecure immigration status.\(^{110}\)

5. Adopt and implement gender-sensitive law and remedies on all forms of violence against women

States must enact and enforce civil and criminal law provisions to effectively prevent and punish all forms of VAW whether committed by State or non-State actors, effectively protect women at risk or subject to VAW and ensure that they have access to civil and criminal remedies, including compensation.

All three documents stress the need for States to adopt effective legal measures, including criminal law remedies and civil law remedies and sanctions, to address all forms of VAW, wherever and by whomever it occurs.\(^{111}\)

DVAW and the BPfA contain almost identical text calling on States to:
“Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms”.\(^{113}\)

General Recommendation No.19 calls on States to adopt “[e]ffective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence”\(^{114}\) and ensure that effective complaints procedures and remedies, including compensation are provided.\(^{115}\)

General Recommendation No. 19\(^{116}\) and the BPfA\(^{117}\) specifically call on States to ensure that women's access to effective remedies includes compensation.\(^{118}\)

A criminal law remedy is a remedy that is obtained through criminal proceedings. Criminal proceedings are proceedings which are brought by the State against an individual, like a prosecution of an alleged perpetrator of domestic violence for common assault. A sanction is a penalty or other means of enforcement that is sometimes part of the remedy. The ability of an individual to report domestic violence to the police and have it properly investigated and if appropriate, prosecuted would be a criminal remedy, and the imposition of a sentence of imprisonment on someone found guilty of common assault would be a sanction.

A civil law remedy is usually obtained through civil proceedings. Civil proceedings are proceedings that are brought by one individual against another (rather than by the State against that individual). In England and Wales, civil law remedies for domestic violence include injunctions such as non-molestation orders, occupation orders and harassment orders. A person can choose whether a civil or criminal remedy will best meet their needs or they can seek to use both (for example, by reporting an offence to the police and applying to the family courts for a non-molestation order). In England and Wales there are circumstances where it is possible for the criminal courts to impose a civil remedy on an individual as a result of criminal proceedings, for example, the imposition of a restraining order following the trial of an alleged perpetrator of harassment.\(^{112}\)
Central to State obligations is that the law adopted and the policies and procedures for its implementation must be gender-sensitive and ensure women’s effective access to remedies. Both DVAW and the BPfA stress that States must ensure women are not re-victimised because of gender-insensitive law or enforcement practices. This might happen for example, if the police or the judiciary employ discriminatory attitudes and practices or fail to recognise and accommodate for the specific needs and potential vulnerability of women survivors of VAW in the criminal justice system. General Recommendation No. 19 underscores that the law related to VAW must give “adequate protection to all women, and respect their integrity and dignity.”

The BPfA calls on States to “periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders”. Importantly, it also calls on States to “create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges”. Finally, the BPfA and DVAW underscore the need for States to disseminate information on the assistance and remedies available to women who are at risk or who have experienced violence.

These provisions are important for the UK because they set out that the law and legal policy on VAW must be comprehensive, taking into account and reflecting the protection needs of all women who are at risk of, or who have experienced any form of VAW. This means for example addressing why many women withdraw complaints prior to prosecution of offenders, and making sure that women are not re-victimised when they engage with law enforcement authorities and the justice system. It presents a strong argument for the adoption and expansion of special measures in both civil and criminal courts to support women’s access to remedies.

6. Adopt and implement gender-sensitive policies on all forms of violence against women

States should adopt and implement gender-sensitive policy measures to prevent and respond to VAW at all levels and mainstream a gender perspective across all areas of Government activity. Such measures should support the implementation of the law and strategic action plans to combat VAW. Everyone responsible for implementing the law and policy should have sound knowledge of the causes and consequences of VAW.

The BPfA calls on States to “promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women and actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the re-victimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices.”

DVAW calls on States to “[d]evelop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions” and “[e]ncourage the development of appropriate guidelines” to support the implementation of the principles DVAW contains on VAW.

General Recommendation No. 19 calls on States to review their laws and policies and “take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.” It refers to specific measures that should be undertaken in various fields such as health-care and employment, and in relation to specific forms of violence such as trafficking, workplace sexual harassment and domestic violence.

7. Ensure access to and availability of services for all women

States should provide or support services to ensure women are protected from VAW, support their rehabilitation and ensure their access to effective remedies. Required services include provision or support of refuges, specially trained health workers, health and social care, counselling, rehabilitation and free or low-cost legal aid. Specialist services should be provided for particular groups of women, especially the most disadvantaged, as well as particular forms of VAW. States should recognise and support the role of women’s organisations and other NGOs in providing services to women.
All three documents underscore the obligation of States to establish or provide support to services for women who are at risk or have experienced any form of VAW. State provision or support for services is framed through the obligation to protect women from violence and facilitate their access to effective remedies, including legal remedies as well as supporting their rehabilitation.

**General Recommendation No.19** calls for States to take protection measures and establish, or provide support to, services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling.129

**The BPfA** calls for States to “[p]rovide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence.”130

**DVAW** calls for States to “ensure, to the maximum extent feasible in the light of their available resources … that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.”131

**The BPfA and General Recommendation No.19** pay attention to the needs of specific groups of women. The BPfA calls on States to “ensure that women with disabilities have access to information and services in the field of violence against women”132; and to establish “linguistically and culturally accessible services for migrant women and girls … who are victims of gender-based violence.”133. General Recommendation No. 19 highlights that States should ensure “services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities”.134 It also pays specific attention to the need to ensure the safety of women who have experienced domestic violence, and for specialist services for families where incest or sexual abuse has occurred.135

**The BPfA and DVAW** underscore the important role that NGOs and the women’s movement play in combating VAW. The BPfA calls on States to “[g]ive vigorous support to the efforts of non-governmental and community organizations to eliminate violence against women”136 and support initiatives of women’s organisations137, whilst DVAW calls for States to “[f]acilitate and enhance the work of the women’s movement and non-governmental organizations and cooperate with them at local, national and regional levels”.138

8. **Allocate adequate budget and resources on violence against women**

The State should allocate adequate resources to implement law, policy and action plans on VAW.

Both **DVAW and the BPfA** call on States to allocate adequate resources to eliminate VAW.

**DVAW** calls on States to “[i]nclude in government budgets adequate resources for their activities related to the elimination of violence against women”139. By signing the BPfA, the UK committed to “[a]llocate adequate resources within the government budget and mobilize community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all appropriate levels.”140.

9. **Challenge discriminatory attitudes and raise awareness about violence against women**

States must condemn all forms of VAW and challenge discriminatory attitudes and stereotypes about women and gender roles that perpetuate VAW. The State must take action to raise general public awareness as well as the capacity and awareness of State actors such as the police and immigration personnel to challenge and respond to VAW through training, education and the media.

The **BPfA and DVAW** both call on States to condemn VAW and not invoke any custom, tradition or religious consideration to avoid their obligations to eliminate discrimination against women.141

All three documents call for States to provide training to State actors, such as law enforcement officers, and other public officials such as immigration, health and education personnel, to sensitize them to the needs of women who have experienced VAW:

**The BPfA** calls on States to develop and fund “training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured.”142
DVAW calls on States to take “measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women”.143

General Recommendation No. 19 asserts that “[g]ender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the [CEDAW] Convention”.144

The three documents also call for more general public awareness raising through education and the media to modify negative social attitudes and stereotypes:

Both the BPfA and DVAW call on States to “[a]dopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women”.145

The BPfA also calls on States to organise and fund information campaigns, including community based education and training programmes to raise awareness about the effects of VAW; VAW as a human rights issue, and how to communicate without violence.146

General Recommendation No. 19 asserts that “[e]ffective measures should be taken to ensure that the media respect and promote respect for women147 and that States should introduce education and public information programmes to help eliminate prejudices that hinder women’s equality148 and change attitudes concerning the roles and status of men and women.149 General Recommendation No.19 also emphasises that “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision… these forms of gender-based violence help to maintain women in subordinate roles… These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence”.150

10. Study the causes and consequences of violence against women

States must study the causes and consequences of VAW and collect disaggregated data and statistics on VAW in order to develop and monitor effective prevention strategies.

Both DVAW and the BPfA call on States to “[p]romote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women”151 and publicly disseminate the statistics and findings of the research.152

General Recommendation No.19 asserts that States “should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence”.153 States parties to CEDAW must also “[i]dentify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result”154 when they report to the CEDAW Committee.

The BPfA has a strong focus on studying the causes of VAW in order to develop effective prevention strategies. It highlights that “[t]he absence of adequate gender-disaggregated data and statistics on the incidence of violence makes the elaboration of programmes and monitoring of changes difficult. Lack of or inadequate documentation and research on domestic violence, sexual harassment and violence against women and girls in private and in public, including the workplace, impede efforts to design specific intervention strategies”.155
Chapter summary

There are nine core international human rights treaties. The UK is legally bound (because it is a State party), to implement seven of them.

This chapter provides an introduction to the work of the international human rights treaty bodies, which are the United Nations (UN) bodies, made up of independent experts, that monitor the core human rights treaties. It provides an overview of their main functions and the different types of work that they do.

It also sets out the many ways that non-governmental organisations (NGOs), such as women’s organisations, can engage with the human rights treaty bodies to influence their work on violence against women (VAW). This can be very useful for influencing law and policy on VAW in the UK. It also sets out the circumstances when individuals and NGOs can complain about a particular case or trend concerning human rights in the UK to the different treaty bodies.

Unlike courts of law, the human rights treaty bodies do not have the power to issue legally binding recommendations or decisions. This means that the State is not legally bound to implement the recommendations of the treaty bodies. However, the treaty bodies have been given the power to monitor State implementation of the treaties, and this has been explicitly set out in the texts of the various treaties. The treaty bodies are therefore the most authoritative source of information and guidance on State obligations under the human rights treaties.

The effectiveness of the work of the human rights treaty bodies is heavily dependent on NGOs and others such as the media publicising the findings of the treaty bodies. In this way, NGOs play a critical role in supporting the effectiveness of the treaty body system.

This chapter provides an overview to the work of all of the human rights treaty bodies. The following three chapters, chapters 6-8 provide more detailed guidance on the way that three of the human rights treaty bodies have addressed VAW, and how you can use their work to influence law and policy on VAW in the UK.

Links to useful resources for when you would like to know more are provided in the further reading section of this handbook.

The core international human rights treaties

There are nine core international human rights treaties. These include the two international covenants (the International Covenant on Civil and Political Rights, ICCPR and the International Covenant on Economic, Social and Cultural Rights, ICESCR), which together with the Universal Declaration of Human Rights (UDHR) make up the International Bill of Human Rights (see chapter 1). They also include seven further human rights treaties that each deal with a specific human rights concern or elaborate on the rights of specific groups of people, such as women, children, people with disabilities, and racial and ethnic minorities. The UK is legally bound (because it is a State party) to implement seven of the nine core international human rights treaties (see table 1, on page 60).

Some of the core international human rights treaties have been supplemented by the adoption of an optional protocol, which is a supplementary treaty that provides additional protection on a particular issue or provides for additional procedures and powers for
monitoring the implementation of the core treaty by States. Like treaties, an optional protocol is only legally binding on a State when that State has ratified or acceded to it.

Human rights for groups that don’t have a specific human rights treaty

There is not a human rights treaty for every group of people who experience discrimination or could benefit from one. For example, there is no human rights treaty that specifically addresses the rights of people because of their sexual orientation and gender identity. This does not mean that lesbian, gay, bisexual and transgender (LGBT) people are not protected by international human rights law and the human rights treaty bodies have made this clear in their work. However, it does indicate that States have been slow to agree on specific standards related to the rights of LGBT people.

The lack of specific treaties concerning the rights of particular groups of people means that it is important to encourage the other human rights treaty bodies to address the situation of these groups, such as LGBT people, through their work.

The text of all of the nine core international human rights treaties, as well as the status of signatures and ratifications of each treaty, can be viewed on the website of the UN Office of the High Commissioner for Human Rights (OHCHR), online: http://www2.ohchr.org/english/law/

Monitoring State obligations under the core human rights treaties

Each of the core human rights treaties provides for a committee of experts to monitor the implementation of the treaty by each State party. The committees of experts for each of the core human rights treaties are collectively referred to as the human rights treaty bodies. Table 1 in this chapter provides a list of the names of each of the human rights treaty bodies.

In addition to the nine human rights treaty bodies, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) established the Subcommittee on Prevention of Torture (SPT). The role and mandate of the SPT differs from the other treaty bodies because it was set up to complement the work of the Committee against Torture (CAT Committee), which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The role and mandate of the treaty bodies

The human rights treaty bodies do not have the power to issue legally binding decisions or guidance to States parties. However, they sometimes have the power to consider individual complaints (referred to as communications, see below), and issue judgments or decisions in a way that is similar to the way a court of law might issue a decision or judgment on a case. When making a judgment, a human rights treaty body might recommend the award of compensation, the change of legislation or policy where it is found to be incompatible with the treaty, or provision of shelter to protect women from violence against women (VAW). However, the decisions of the human rights treaty bodies cannot be legally enforced. They are not legally binding and are usually called ‘views’, ‘recommendations’ or ‘observations’.

Although the treaty bodies do not have the power to issue legally binding decisions or judgments, they are the most authoritative source of interpretation of State obligations under the core international human rights treaties. This is because they have been given a mandate (meaning authority to perform certain functions and powers), set out clearly in the text of each of the treaties, to monitor the implementation of the treaties by States parties.

The work and decisions of the treaty bodies are usually made public and so it can be very embarrassing for the State where the committee of experts has been critical of a failure to implement the treaty properly. Most States find criticism from the human rights treaty bodies embarrassing, but it can be particularly embarrassing for a State such as the UK whose government claims to uphold human rights and take a world lead on promoting human rights when the human rights situation at ‘home’ is criticised.

Because the decisions and guidelines set out by the human rights treaty bodies are not legally binding, their effectiveness relies on the willingness of States to implement them and the efforts of non-governmental organisations (NGOs) to publicise them and use them in their work at every opportunity. In this way, NGOs can play a critical role in supporting the effectiveness of the treaty body system.

The precise composition and mandate of each of the treaty bodies varies and is set out in the treaty and optional protocols that they monitor but there are a number features common to all of the treaty bodies.

Each treaty body is made up of a committee of between 10 and 23 independent experts. The experts are elected by States, but are expected to serve in their
personal capacity and to carry out their duties impartially and objectively. The expertise and impartiality (or independence) of the individual experts serving on the treaty bodies can have a significant impact on the effectiveness and quality of the work of each of the bodies.

The human rights treaty bodies are committees of between 10 and 23 experts who have been given the role of monitoring the way that States parties implement the international human rights treaties. They get their mandate, meaning their authority to carry out their role, from the human rights treaties. This means that the treaty bodies have the authority to decide on the meaning of State obligations under the treaties and identify when a State is compliant with its obligations.

The human rights treaty bodies conduct work that is very similar to a court of law but cannot issue legally binding decisions.

The main role of the treaty bodies is to monitor the domestic implementation of the international human rights treaties in each State party. This means that the human rights treaty bodies look at all of the steps taken by a State to implement human rights. For the UK this would be looking at how the State has implemented human rights across the whole State including in England, Wales, Scotland and Northern Ireland. In fulfilling this role, the treaty bodies provide specific guidance to individual States as well as general guidance to all States parties about the nature of their obligations under the treaties.

All of the treaty bodies:157

- **Issue general comments/recommendations** that are directed at all States parties. These documents explain State obligations under the treaties, and provide more detail on what a specific treaty provision means in practice.
- **Review periodic reports** submitted by States parties on the implementation of a treaty at the national level. The treaty bodies issue **concluding observations/recommendations** to the State party that has submitted a report once the report has been reviewed.

Some treaty bodies perform additional roles, and might have a mandate to:

- **Consider complaints submitted by individuals** (and sometimes groups of individuals) known as **individual communications**, alleging that their human rights have been violated.
- **Hold confidential inquiries** when they receive reliable information about serious, grave or systematic human rights violations in a State party.
- **Consider complaints submitted by one State party against another**. These complaints are known as **inter-State complaints**.
- **Issue statements, letters and decisions as part of early warning measures and urgent procedures**.

See table 1 on page 60 for a summary of the roles and mandates of the different treaty bodies.

**General comments / recommendations issued by the treaty bodies**

The human rights treaty bodies issue **general comments** (sometimes called **general recommendations**), which provide an authoritative interpretation of State obligations under each of the treaties.

These general comments or recommendations are very useful because they provide guidance and elaborate on the meaning and content of the different treaty provisions or articles. General comments or recommendations provide useful detail where the treaty itself might be very brief. For example, the ICCPR provides a right to life, but does not set out what a right to life actually means in practice and what the State must do to ensure the right to life. The Human Rights Committee, the treaty body that monitors State obligations under the ICCPR, has adopted a general comment on the right to life which sets out the meaning of the right to life and State obligations to respect, protect and fulfil the right.

General comments and recommendations also provide guidance on how treaty provisions are relevant in different situations. For example, there is no treaty provision or article in the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) that explicitly refers to VAW. The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its **General Recommendation No. 19 on violence against women** however has set out clearly that many of CEDAW’s provisions impose obligations on States to effectively prevent and respond to VAW. Chapter 4 provides an overview of this document and explains in more detail why it is an authoritative policy document that the UK must follow.

**State reports to treaty bodies**

The human rights treaty bodies monitor the implementation of the human rights treaties through reports that are submitted by the States parties to the treaties (referred to as **State reports**, or **periodic reports**), as well as information provided by other reliable sources, such as NGOs, and **national human rights institutions** (such as the Equality and Human Rights Commission in the UK).
General comments

General comments or recommendations can be very useful where you want to know more about what a particular treaty provision means in practice. There are some general comments and recommendations that set out clearly the Government’s obligations in relation to VAW. Some of these are set out in chapters 6-8.

States are also expected to use and refer to the general comments or recommendations when they provide information on the domestic implementation of the human rights treaties in their periodic reports to the treaty bodies.

The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the human rights treaty body that monitors CEDAW, criticised the UK in 2008 for failing to refer to the general recommendations issued by the Committee when it submitted its periodic reports. The general recommendations issued by the CEDAW Committee are a useful tool because the Government should be using them to monitor its progress towards implementing the CEDAW Convention.

When a State is party to one of the international human rights treaties, it is required to submit periodic reports to the treaty body that monitors the treaty. The treaty in question will specify when and how often the States parties must report to the relevant treaty body, but it is usually every 4-5 years.

States parties to the treaties are required to submit detailed reports about how they are implementing the rights set out in the treaty. The format and content required of State reports is similar under each of the treaties but it does vary and so the treaty bodies have set out specific reporting guidelines for each treaty. These are available on the UN Office of the High Commissioner for Human Rights (OHCHR) website.

Alongside the report States also submit a ‘common core document’ which is submitted to every treaty body. This document contains information relevant to all of the human rights treaties, such as general information on the way that human rights are protected in law and policy, and the framework for monitoring and protecting human rights in the State.

Consideration of State reports to treaty bodies

The State report is discussed by the committee of experts for the relevant treaty body at public meetings. Representatives from the State party that has submitted a report are invited to attend the session and discuss its content with the committee of experts.

NGOs can generally attend these sessions, and depending on the treaty body in question, might be able to have an active role in the session, for example by making a statement at the meeting to highlight particular issues they would like to be addressed. For example, the CEDAW Committee and the Committee against Torture allow representatives from NGOs to speak at the meeting and put forward their concerns.

NGO input into the process

NGOs play a vital role in the process of monitoring State obligations under the treaties and providing information to the treaty bodies.

There are a number of different opportunities for NGOs to contribute to this monitoring process. One of the most effective ways is for NGOs to submit written information to the committee before the public meeting. This information can be submitted after the State has submitted its formal report, and so it offers the opportunity for NGOs to highlight any gaps or inconsistencies in the State report. To make this process as effective as possible, NGOs are encouraged to agree upon and jointly submit information to the treaty bodies so that the committee doesn’t receive too much information, and that the information provided by different NGO sources is consistent. The reports submitted by NGOs are often referred to as ‘shadow reports’ because they shadow the State report and pick up where there are gaps. The rules for submitting this information varies depending on the treaty in question.

In advance of the public meeting when the State report is considered, the committee of experts prepares a list of issues and questions for the State party, and the State party usually submits answers in writing. Information from NGO shadow reports is often used by the treaty bodies to formulate the list of issues and questions. Committee members may also consult formally or informally with NGOs on the content of the State report, and the shadow report to get a good picture of the situation.

There are a number of useful handbooks that provide more detail on these processes and how NGOs can engage with the human rights treaty bodies. For links to these resources, see the further reading section of this handbook.

Concluding observations

After the public meeting and considering all of the information submitted by the State party and other relevant sources such as NGOs, the committee of experts issues concluding observations (also referred to as concluding comments). These concluding
observations set out positive aspects where the State has made progress implementing the treaty, as well as concerns where there are gaps in implementation. The concluding observations also set out recommendations for the concrete steps that the State should take to implement its obligations under the treaty, where gaps have been identified.

When the State submits the next periodic report, it must report on progress in relation to the specific recommendations set out by the committee of experts in the concluding observations. Because there can be 4-5 years between reports, some committees have now started to request interim reports from States to follow up on implementation of the concluding observations. For example, the CEDAW Committee considered a periodic report from the UK in 2008 and requested in its concluding observations that the UK Government submit a follow up report one year later.

**Individual communications**

A number of the treaty bodies can consider complaints submitted by individuals (and sometimes groups of individuals) who claim that their rights have been violated (see table 1, on page 60). These complaints are known as **individual communications** (they may also be referred to as complaints or petitions) and are submitted by an individual or group of individuals against a State party to the treaty, such as the UK.

A human rights treaty body can only consider complaints related to a particular State party if that State has expressly allowed the treaty body to consider individual communications. Depending on the treaty in question, the State does this either by declaring that the treaty body has competence under the relevant treaty article, or by becoming a State party to an optional protocol (such as the Optional Protocol to CEDAW) that provides for individual communications.

**Complaints against the UK**

To date, the UK has agreed to allow just two of the human rights treaty bodies to consider individual communications:

- CEDAW Committee
- UN Committee on the Rights of Persons with Disabilities (CRPD Committee), the human rights treaty body that monitors the Convention on the Rights of Persons with Disabilities (CRPD)

**How to submit a complaint**

To be considered by a human rights treaty body, the complaint needs to pass what is referred to as **admissibility criteria** and this can vary according to the treaty in question.

Once a State has allowed a treaty body to consider individual communications, the treaty body can consider complaints from any individual who claims that their rights have been violated under the treaty that it is responsible for monitoring. Some of the treaty bodies can also consider complaints submitted by groups of individuals.

Under all treaties, a complaint will only pass the admissibility criteria if the complainant (the person or group of individuals who are submitting the complaint) has exhausted all **domestic remedies** (unless the remedies available are ineffective or unreasonably delayed). That means that the complainant/s must take their case through the domestic legal system as far as it can go before submitting a complaint to the human rights treaty bodies. In the UK this could mean that an appeal to a higher court has been refused or has failed to deliver an effective remedy.

The human rights treaty bodies will not consider a case that is already being considered or has been decided by another international or regional human rights complaint mechanism, such as another human rights treaty body or the European Court of Human Rights. It should be noted however that this does not include complaints submitted to the Human Rights Council special procedures (see chapter 9). This means that you can submit a complaint on the same case to the special procedures of the Human Rights Council and to one of the human rights treaty bodies.

If you intend to use this mechanism, it is essential that you obtain the informed consent of the individual/s concerned. This means that the individual/s fully understand what it means to submit a complaint to the particular human rights treaty body, as well as the potential risks and benefits of submitting the complaint.

**Putting together a strong case**

The procedure for making a complaint varies slightly under each of the international human rights treaties. Although it is not essential to have legal advice or support from an organisation that has experience submitting individual communications, it is a very good idea. This is because the procedure and criteria for admissibility can be difficult to fulfil for people that have not done it before.

**Pros and cons to submitting an individual communication**

There are a number of pros and cons to submitting an individual communications to one of the human rights treaty bodies.

You might want to make a complaint about the UK when an individual’s rights have been violated but the UK law and/or law enforcement mechanisms have not provided you with an effective remedy. A significant advantage of this procedure is that the treaty body considers all of the facts of the case and comes to a decision in a similar way to a court. The treaty body might find a violation of a right or rights under the treaty; it might also find no violation.

Although the decision of the treaty body is not legally binding on the State, the treaty body is recognised as the most authoritative body to interpret State obligations under the treaty and by allowing the treaty
bodies to consider individual communication, the State in question has recognised this. The decision of the treaty body is made in writing and the State will be politically and morally obliged to comply with it.

Another advantage is that human rights treaty bodies can request the State to take interim measures of protection to prevent irreparable harm to the victim of the alleged violation (harm that is impossible to repair), whilst the treaty body considers the complaint. For example, in one case concerning a woman experiencing domestic violence in Hungary, the CEDAW Committee asked the State authorities to provide the woman and her children with a safe place to live whilst the Committee decided on the case. In another case, the Human Rights Committee (the human rights treaty body that monitors the ICCPR) took interim measures and asked Canada not to deport a child to Guinea whilst it considered a complaint that she faced a real risk of female genital mutilation (FGM) if she were to be deported.

A major disadvantage to submitting an individual communication is that it takes a very long time (two to three years) for the human rights treaty body to make a final decision in a case. The admissibility criteria can be quite difficult to fulfil, especially in States that have strong domestic human rights law and mechanisms such as the UK. Finally, it must be remembered that the decision is not legally binding on the State concerned, although the decision will be very persuasive.

Using the jurisprudence of the human rights treaty bodies

The decisions of the human rights treaty bodies on individual complaints (referred to as the jurisprudence) can be a useful policy tool and have benefits beyond the individual case. It can be used as a policy tool in the country that was subject to the complaint as well as other countries. This is because the jurisprudence arising from the individual communications sets out clearly what action, or inaction of a State, might constitute a violation of a particular treaty or treaty article. The treaty bodies also provide concrete guidelines and recommendations to States on how to remedy a violation and prevent future violations. They usually provide specific recommendations about the right of the individual to effective remedy (for example, they might recommend compensation) but also provide recommendations on structural changes in the State as a whole, such as changing the law or policy on a particular issue, to prevent a similar case happening again. The jurisprudence of the human rights treaty bodies therefore complements the other guidelines set out in general comments and concluding observations.

This has been very useful in relation to VAW because unlike the international violence against women policy documents, which provide a range of broad recommendations, the jurisprudence sets out clearly what acts or omissions of the State constitute a violation of women’s human rights. It has, for example, given some indication about what might amount to a violation of a State’s due diligence obligation to effectively protect women from VAW. For more information, see for example the jurisprudence of the CEDAW Committee, set out in the case studies contained in chapter 5.

Confidential inquiries

A number of the human rights treaty bodies can initiate confidential inquiries if they receive reliable information indicating towards grave or systematic violations of the rights contained in the treaty that they are responsible for monitoring. The word grave is used to indicate the most serious violations of human rights, such as torture. The word systematic is used to refer to human rights violations that are widespread or are committed as part of a policy or scheme.

The human rights treaty bodies conduct inquiries by examining all evidence available to them including information submitted by the State concerned and other reliable sources, such as information from NGOs and individuals. The inquiry might include a visit to the State concerned, but only with the express permission of the State.

Inquiries conducted by the treaty bodies are confidential. When the inquiry is complete, the treaty body submits its findings and recommendations to the State. The State has six months to respond and inform the treaty body of measures taken to remedy the
situation. The treaty body might decide to include a summary of the inquiry in its annual report, after consultation with the State party,166 which is publicly available.

**NGO input into the process**

NGOs can encourage a human rights treaty body to conduct an inquiry into a situation in a State party by submitting strong evidence documenting grave or systematic violations to the treaty body. See chapter 5 for information on how to submit information for an inquiry under CEDAW to the CEDAW Committee.

**How to submit information for a confidential inquiry in the UK**

The UK has recognised the competence of three human rights treaty bodies to conduct inquiries in the UK:

- Committee against Torture (CAT Committee)167
- CEDAW Committee168
- CRPD Committee169

These treaty bodies can initiate an inquiry in the UK if they receive reliable information containing well-founded indications of serious or systematic violations of the treaties that they monitor. There are no strict guidelines or restrictions on the format that information that should be submitted in. Information can be sent by email or post using the same contact details for individual communications, provided on the website of OHCHR:

http://www2.ohchr.org/english/bodies/question.htm

By December 2010, the CAT Committee had used its confidential inquiry procedure several times (but never in relation to the UK) and the CEDAW Committee had used its powers to conduct one inquiry, into a situation concerning VAW in Mexico. More detail on the CEDAW inquiry is provided in chapter 5.

**Inter-State complaints**

Several of the human rights treaty bodies have procedures for addressing inter-State complaints. These procedures vary slightly but allow for one State party to complain about the way that another State party is, or is not, implementing its obligations under a particular treaty. This mechanism has not ever been used by any State to date.

**Early warning measures and urgent procedures**

One treaty body, the Committee on the Elimination of Racial Discrimination (CERD Committee), which monitors the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), has established early warning measures and urgent procedures.

**Early warning measures** aim to prevent existing problems from escalating into conflict. They also include confidence-building measures to strengthen racial tolerance. The CERD Committee has set out that early warning measures could be used to address a variety of situations including where there is:

- Gaps in the law so that it does not prohibit or define all forms of racial discrimination
- Poor implementation of the law including a lack of recourse procedures
- A pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance
- A significant pattern of racial discrimination evidenced in social and economic indicators

**Urgent procedures** aim to respond to problems that require immediate attention to prevent or limit the scale or number of serious violations of ICERD. The CERD Committee has set out that these procedures could be used to address a variety of situations including where there is:

- A serious, massive or persistent pattern of racial discrimination
- A situation that is serious where there is a risk of further racial discrimination

Action taken under these procedures might include sending a letter to the State concerned requesting it to urgently provide information on the situation, or the adoption of a decision that details specific concerns, along with recommendations for action addressed to the State concerned as well as other UN bodies, including other human rights mechanisms as well as the UN Secretary General (the head of the UN Secretariat, which is the international staff of the UN) and the UN Security Council (the UN body that has primary responsibility for the maintenance of international peace and security).

**NGO input into the process**

The CERD Committee can consider a situation under its early warning measures and urgent procedures on the basis of the information provided by a number of sources including other UN bodies, NGOs and national human rights institutions (such as the Equality and Human Rights Commission in the UK).
The CERD Committee has used this mechanism once in relation to the UK, when it sent a letter to the UK Government in 2010 with regard to concerns over the planned forced eviction of a Romani and Irish Traveller community from a site in Basildon, Essex.\textsuperscript{170}

It is possible that this procedure could be used by NGOs such as women’s groups in the UK to draw the attention of the CERD Committee to VAW that is affecting Black, Asian, Minority Ethnic, Refugee and asylum-seeking (BAMER) women, or to cases where the State is failing to effectively prevent and respond to VAW experienced by BAMER women. The CERD Committee has issued useful guidance to States parties to ICERD, through its \textbf{General Recommendation No. 25 on Gender Related Dimensions of Racial Discrimination} on this issue, and has highlighted how certain forms of racial discrimination “may be directed towards women specifically because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict... abuse of women workers in the informal sector or domestic workers employed abroad by their employers.”\textsuperscript{171}
<table>
<thead>
<tr>
<th>Human rights treaty</th>
<th>Is the UK a State party to the treaty?</th>
<th>Treaty body</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights (ICESCR)</td>
<td>Yes</td>
<td>Committee on Economic, Social and Cultural Rights (CESCR)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 20 August 1976</td>
<td></td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
<td>Yes</td>
<td>Human Rights Committee (HRC)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 20 August 1976</td>
<td></td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</td>
<td>Yes</td>
<td>Committee on the Elimination of Racial Discrimination (CERD Committee)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 6 April 1969</td>
<td></td>
</tr>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</td>
<td>Yes</td>
<td>Committee on the Elimination of Discrimination against Women (CEDAW Committee)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 7 May 1986</td>
<td></td>
</tr>
<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>Yes</td>
<td>Committee against Torture (CAT Committee)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 7 January 1989</td>
<td></td>
</tr>
<tr>
<td>Convention on the Rights of the Child (CRC)</td>
<td>Yes</td>
<td>Committee on the Rights of the Child (CRC Committee)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 15 January 1992</td>
<td></td>
</tr>
<tr>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)</td>
<td>Not yet</td>
<td>Committee on Migrant Workers (CMW)</td>
</tr>
<tr>
<td></td>
<td>Not signed or ratified</td>
<td></td>
</tr>
<tr>
<td>Convention on the Rights of Persons with Disabilities (CRPD)</td>
<td>Yes</td>
<td>Committee on the Rights of Persons with Disabilities (CRPD Committee)</td>
</tr>
<tr>
<td></td>
<td>Ratified, 8 June 2009</td>
<td></td>
</tr>
<tr>
<td>International Convention for the Protection of All Persons from Enforced Disappearance (ICPES)</td>
<td>Not yet</td>
<td>Committee on Enforced Disappearances (CED)</td>
</tr>
<tr>
<td></td>
<td>Not signed or ratified</td>
<td></td>
</tr>
</tbody>
</table>

Table 1: The role of the human rights treaty bodies and their mandate in relation to the UK
<table>
<thead>
<tr>
<th>Complaints procedure/powers of treaty body</th>
<th>Can this be used by individuals in the UK?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Individual communications</strong> and <strong>Confidential inquiry procedure</strong> established under the Optional Protocol to the ICESCR, which by December 2010 was not in force(^{159}) and the UK had not yet signed or ratified.</td>
<td>Not yet</td>
</tr>
<tr>
<td><strong>Individual communications</strong> procedure established under the First Optional Protocol to the ICCPR which the UK has not yet signed or ratified.</td>
<td>Not yet</td>
</tr>
<tr>
<td><strong>Individual communications</strong> procedure established under article 14 of ICERD. This is effective only if a State has declared that it recognises the competence of the CERD Committee to receive such complaints. The UK has not yet done this.</td>
<td>Not yet</td>
</tr>
<tr>
<td><strong>Early warning measures</strong> and <strong>urgent procedures</strong> established by the CERD Committee and used to address racial discrimination in all State parties to ICERD.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Individual communications</strong> and <strong>Confidential inquiry procedure</strong> established under the Optional Protocol to CEDAW which the UK acceded to on 17 March 2005.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Individual communications</strong> procedure established under article 22 of CAT. This is effective only if a State has declared that it recognises the competence of the CAT Committee to receive such complaints. The UK has not yet done this.</td>
<td>Not yet</td>
</tr>
<tr>
<td><strong>Confidential inquiry procedure</strong> established under article 20 of CAT. Under article 28, a State party can opt out of this but the UK has not done so.</td>
<td>Yes</td>
</tr>
<tr>
<td>The <strong>Subcommittee on Prevention of Torture (SPT)</strong> visits and inspects places of detention, a role established under the Optional Protocol to CAT. The UK ratified this on 22 June 2006.</td>
<td>Yes</td>
</tr>
<tr>
<td>The CRC Committee does not have any powers to consider complaints.</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Individual Communications</strong> procedure established under article 77 of the ICMW.(^{160})</td>
<td>Not yet</td>
</tr>
<tr>
<td><strong>Individual Communications</strong> and <strong>Confidential Inquiry</strong> procedure established under the Optional Protocol to the CRPD which the UK ratified on 7 August 2009.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Individual Communications</strong> procedure established under article 31 of the ICPED.(^{161}) This is effective only if a State has declared that it recognises the competence of the CED to receive such complaints. The UK has not yet done this.</td>
<td>Not yet</td>
</tr>
</tbody>
</table>
Chapter summary

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is a treaty that commits States to eliminate all forms of discrimination against women and to secure the full advancement and development of women.

The implementation of CEDAW by States parties is monitored by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee). CEDAW does not mention violence but the CEDAW Committee addresses violence against women (VAW) as a form of discrimination. This means that State obligations to eliminate discrimination against women set out in articles 2 and 3 of CEDAW include an obligation to eliminate VAW.

VAW is also addressed through other CEDAW articles which prohibit discrimination against women in particular areas of life, such as employment and health. CEDAW sets out concrete obligations that States have to eliminate gender stereotypes that perpetuate discrimination, including VAW.

All forms of VAW constitute discrimination under CEDAW. The State can be held responsible under CEDAW for any act of VAW that is perpetrated by State actors such as the police, or when it fails to exercise due diligence to prevent, punish and provide compensation for violence committed by non-State actors such as the members of a woman’s family or the general public.

The UK is a State party to CEDAW and the Optional Protocol to CEDAW meaning that the CEDAW Committee receives and considers reports on women’s rights in the UK. It also means that individuals in the UK can complain to the CEDAW Committee when they think their rights have been violated, or request that the Committee conduct a confidential inquiry into grave and systematic violations of women’s rights.

This chapter provides an overview of useful decisions and comments made by the CEDAW Committee about the UK and other States that you can use to lobby for improvements in law, policy and practice on VAW in the UK.

Overview of the CEDAW Convention

The main object and purpose of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is to eliminate all forms of discrimination against women and to secure the full advancement and development of women and de facto (or substantive) equality between women and men. The treaty body that monitors CEDAW, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) has explained that this means women enjoying their rights on a basis of equality with men, measured as equality of outcomes or results, such as “women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision making and political influence”. CEDAW contains 30 articles, which set out obligations to combat discrimination against women and accelerate progress towards equality between women and men in all spheres of life. CEDAW sets out that women must enjoy on an equal footing with men civil and political rights as well as economic, social and cultural rights.

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CEDAW in the UK

CEDAW:
- **Adopted:** 18 December 1979, **entered into force** 3 September 1981
- **Status in UK:** in force, ratified by UK on 7 April 1986
- **Treaty body:** Committee on the Elimination of Discrimination against Women (CEDAW Committee)
- **Reservations:** the UK has entered a number of reservations to CEDAW. In 2008 the CEDAW Committee called on the UK to withdraw its reservations. For a full list of reservations see: http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm

The CEDAW Committee:
- Comprised of 23 members who meet three times a year in Geneva and New York
- Issues General Recommendations to all States parties to CEDAW on how to implement CEDAW
- Considers reports from the UK on the implementation of CEDAW in the UK and issues concluding observations. Reports must be submitted by the UK every four years, or whenever requested by the CEDAW Committee.

Under the Optional Protocol to CEDAW, the CEDAW Committee:
- Considers individual communications (the UK has signed up to this)
- Conducts confidential inquiries into grave and systematic violations of CEDAW (the UK has signed up to this)

Timeline and key dates for the UK:
- Most recent UK report considered by the CEDAW Committee: July 2008
- Next UK report due to be submitted to the CEDAW Committee: May 2011

Full text of CEDAW, the Optional Protocol to CEDAW, and website of the CEDAW Committee online: http://www2.ohchr.org/english/bodies/cedaw/index.htm

CEDAW provisions relevant to combating violence against women

This section provides an overview of the provisions or articles of CEDAW that are relevant to eliminating violence against women (VAW).

Of all human rights treaties, CEDAW is unique because it is concerned exclusively with the protection and promotion of women’s rights and the elimination of gender discrimination. The CEDAW Committee has developed the most comprehensive and detailed standards on VAW of all of the human rights treaty bodies.

The CEDAW Committee has made clear that “gender-based violence may breach specific provisions of the [CEDAW] Convention, regardless of whether those provisions expressly mention violence”.174

Article 1 sets out the definition of discrimination against women. The definition of discrimination under CEDAW includes direct and indirect discrimination (see chapter 3.1). Importantly, the definition is open-ended so that new and emerging forms of discrimination175 such as VAW, which were not explicitly identified in CEDAW when it was drafted, can be addressed. The CEDAW Committee in its General Recommendation No. 19 on violence against women and subsequent comments has explained that VAW is a form of discrimination that falls within this definition. This means that VAW can be addressed using the general ban on discrimination against women under CEDAW as well as specific bans on discrimination in different areas of life.
Definitions of discrimination against women and violence against women

Unlike the general definition of discrimination found in other human rights treaties, CEDAW addresses discrimination against women exclusively.

Article 1 of CEDAW defines discrimination against women as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

VAW is a form of discrimination that is covered by this definition. The CEDAW Committee has defined VAW as “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.”

The CEDAW Committee uses the terms ‘violence against women’ and ‘gender-based violence’ interchangeably to mean the same thing.

Articles 2 and 3 contain general and far-reaching provisions that require States to condemn all forms of discrimination against women, pursue a policy of eliminating discrimination against women in all its forms, and take all appropriate measures to guarantee women human rights on a basis of equality with men, in all fields of life including political, social, cultural and economic fields. Owing to these comprehensive provisions that apply to women’s rights generally and in all fields of life, the CEDAW Committee has highlighted that the “spirit of the Convention covers other rights, which are not explicitly mentioned in the [CEDAW] Convention but which have an impact on the achievement of equality of women with men and which represent a form of discrimination against women.” This means that CEDAW is relevant wherever women do not enjoy substantive equality with men in relation to any aspect of life, or human right set out in other human rights treaties.

Article 4 provides for the adoption of temporary special measures aimed at accelerating substantive equality between women and men. The CEDAW Committee has highlighted that States should focus on equality of outcomes or results. In relation to VAW this means women enjoying their life free from gender-based violence. Time-bound measures that aim to ensure women’s equality in practice and achieve equality of results in the field of VAW might include:

- Ring-fencing of local, regional and national funding for women-only services for VAW
- Special measures /facilities in courts to ensure women feel safe and enjoy equal access to justice

Article 5 sets out a general obligation on States to modify social and cultural patterns, with a view to eliminating prejudices and gender stereotyping.

Articles 6-16 set out the specific obligations of States to eliminate discrimination against women and ensure women’s rights on equal terms with men in relation to:

- Article 6: trafficking and prostitution
- Article 7: political and public life
- Article 8: represent Government at the international level
- Article 9: nationality
- Article 10: education
- Article 11: employment
- Article 12: health-care and family planning
- Article 13: economic and social life (including family benefits, financial loans/credit, participation in all aspects of cultural life)
- Article 14: rural women
- Article 15: equality before the law
- Article 16: marriage and family life

Articles 17-30 set out procedural issues and obligations of States under CEDAW, and the mandate of the CEDAW Committee.

Equality and non-discrimination under CEDAW

CEDAW addresses discrimination against women in public and private life, including in the family. The CEDAW Committee has underscored that States have three core obligations related to the elimination of all forms of discrimination against women:

- Ensure that there is no direct or indirect discrimination against women in the law.
- Improve the position of women in society through concrete and effective policies and programmes. This might require temporary special measures.
- Address gender relations and the persistence of gender-based stereotypes that affect women not only through acts by individuals but also in law, and legal and societal structures and institutions.

The CEDAW Committee has made clear that equality under CEDAW means equality of results. Steps taken
by States must move beyond ideas of formal equality or same treatment. Progress toward equality must be accelerated and in some circumstances this requires the adoption of temporary special measures that give preference to women to allow them to enjoy their rights on an equal footing with men.\textsuperscript{180}

**General recommendations of the CEDAW Committee relevant to violence against women**

All of the General Recommendations concerning the obligations of States under CEDAW can be accessed online: http://www2.ohchr.org/english/bodies/cedaw/comments.htm

This section provides an overview of the general recommendations of the CEDAW Committee relevant to combating VAW.

These general recommendations are useful as they set out detailed guidance on what the UK should be doing to combat VAW under CEDAW.

**General Recommendation No. 14: Female circumcision**

This recommendation sets out State obligations to take appropriate and effective measures to eradicate the practice of female circumcision\textsuperscript{181} (this is another term for female genital mutilation or FGM). It calls on States to collect and disseminate data on female circumcision; support women’s organisations at the national and local levels working for the elimination of female circumcision and other practices harmful to women; encourage politicians, professionals, religious and community leaders at all levels, including the media and the arts, to co-operate in influencing attitudes towards the eradication of female circumcision and introduce appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision. It also recommends that States include in their national health policies appropriate strategies aimed at eradicating female circumcision.

**General Recommendation No. 19: Violence against women**

This is the most detailed general comment or recommendation issued by a human rights treaty body to date on VAW. It sets out in detail State obligations to prevent and respond to all forms of VAW under CEDAW.

It asserts that although the text of CEDAW does not mention violence, VAW is a form of discrimination within the meaning of article 1 of CEDAW. This means that the comprehensive obligation to eliminate discrimination against women set out in articles 2 and 3 of CEDAW include an obligation to eliminate VAW. It also sets out how VAW can be addressed through other CEDAW articles which prohibit discrimination against women in particular areas of life, such as employment and health, or require State action in relation to particular social issues such as challenging gender stereotypes that perpetuate discrimination and VAW.

The CEDAW Committee asserts that all forms of VAW constitute discrimination under CEDAW. The State can be held responsible under CEDAW for any act of VAW that is perpetrated by State actors such as the police, or when it fails to exercise due diligence to prevent, punish and provide compensation for violence committed by non-State actors such as the members of a woman’s family or the general public.

For more detailed information on General Recommendation No. 19, see chapter 4.

**General Recommendation No. 21: Equality in marriage and family relations**

This recommendation elaborates State obligations to ensure equality in marriage and family relations. It underscores that women must have equal rights with men in respect of the right to freely choose a spouse and enter into marriage only with their free and full consent, which is particularly relevant for addressing forced marriage. It addresses a variety of issues concerning women’s rights in marriage, such as right to own property, and to pass nationality onto the children.

**General Recommendation No. 25: Temporary special measures**

This recommendation sets out in detail the meaning of temporary special measures under article 4(1) of CEDAW. The adoption of temporary special measures aimed at accelerating progress toward substantive equality for women are not only allowed but may be required under CEDAW. Progress toward the goal of substantive equality needs to be understood in terms of equality of outcomes or results which might be quantitative and/or qualitative in nature; “that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.” States may need to take specific temporary special measures to eliminate multiple discrimination against women and its compounded negative impact on women, for example specific measures to ensure the rights of disabled women.

**General Recommendation No. 26: Women migrant workers**

This recommendation focuses on women migrant workers but makes clear that all articles of CEDAW protect all categories of migrant women, regardless of
their immigration status, against gender-based discrimination including violence. While States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations under CEDAW and other human rights treaties to respect, protect and fulfil the human rights of women throughout the migration cycle. Women migrant workers may experience increased vulnerability to exploitation and abuse including sexual violence, sexual harassment and physical violence, especially in sectors where women predominate. Undocumented women migrant workers are particularly vulnerable; the State has an obligation to secure their rights and their situation requires specific attention.

Specific obligations of States towards women migrant workers in respect of VAW are set out, including that all victims of abuse must be provided with relevant emergency and social services, regardless of their immigration status. The State must guarantee women migrant workers have access to remedies when their rights are violated; provide mandatory gender-sensitive training for relevant public and private recruitment agencies and employees, including criminal justice officers, immigration authorities, social services and health-care providers; ensure the availability of linguistically and culturally appropriate gender-sensitive services for women migrant workers including emergency shelters, health-care services, police services for women migrant workers, such as domestic workers and victims of domestic violence.

General recommendation No. 27: Older women and protection of their human rights

This recommendation was adopted to address the multiple forms of discrimination experienced by older women and out of concern that States pay very little attention to the specific needs and vulnerabilities of older women. Older women face increased vulnerability to exploitation and abuse, and barriers to accessing services, particularly older women who live in rural areas. The General Recommendation highlights that “[g]ender stereotyping and traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular older women with disabilities, including on family relationships, community roles, their portrayal in the media, attitudes of employers, health workers and other service providers and can result in violence and psychological, verbal and financial abuse.” States must collect, analyse and disseminate data disaggregated by age and sex to enable development of strategies to respond to the situation of older women, including through law and policy.

General Recommendation No. 28: The core obligations of States parties under Article 2 of the CEDAW

This recommendation sets out State obligations under article 2 of CEDAW, which requires States to condemn discrimination against women and pursue a policy of eliminating discrimination against women in all its forms. The policy must be comprehensive and identify all women within the jurisdiction of the State (including non-citizen, migrant, refugee, asylum-seeking, and stateless women) as rights-holders. This is important because many States, including the UK, try to use economic and political reasons to justify limiting their obligations to respect, protect and fulfil the rights of women from abroad. The policy must be results-oriented and should establish indicators, benchmarks and timelines, and ensure that all aspects of the policy are adequately funded.

The recommendation is very useful because it sets out in detail what it means to respect, protect and fulfil women’s right to non-discrimination and to the enjoyment of equality under CEDAW. It underscores that intersectionality is central to understanding State obligations under CEDAW. Because of this, States have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular.

The recommendation reiterates that gender-based violence is a form of gender discrimination under CEDAW and States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence. It can breach specific provisions of CEDAW, regardless of whether those provisions expressly mention violence. Where women are at risk or have experienced discrimination, including violence, States must ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary. States parties should financially support independent women’s legal resource associations and centres in their work to educate women about their rights to equality and to assist them in pursuing remedies for discrimination.

Individual communications under CEDAW

Under the Optional Protocol to CEDAW, the CEDAW Committee can consider individual communications, which are complaints submitted by or on behalf of individuals or groups of individuals who claim their rights have been violated under CEDAW. The UK is a State party to the Optional Protocol to CEDAW and so the CEDAW Committee can consider complaints about the UK.

This power of the CEDAW Committee has not been widely used and to date the CEDAW Committee has considered just 14 individual communications concerning all States parties to CEDAW. Although very few individual communications have been considered by the CEDAW Committee to date, a large proportion of the communications considered concern VAW. The CEDAW Committee has found violations of
CEDAW under the individual communications procedure in relation to a number of cases concerning VAW including:

- Rape law and legal procedure
- Forced sterilisation
- Responses to domestic violence

Three case studies are set out below which provide a summary of how the CEDAW Committee has addressed complaints concerning the handling of rape and domestic violence cases by State authorities in the Philippines, Hungary and Austria. These are useful because they provide examples of the potential issues that UK-based individuals and non-governmental organisations (NGOs) such as women’s organisations could address using the CEDAW individual communications procedure.

**How to submit a complaint against the UK under CEDAW’s individual communications procedure**

Details and advice on how to submit a complaint to the CEDAW Committee under the individual communications procedure have been published by the Equality and Human Rights Commission (EHRC), online:

http://www.equalityhumanrights.com/uploaded_files/humanrights/a_lever_for_change.pdf

The CEDAW Committee has published a fact sheet, which includes a model complaint form, online:

http://www2.ohchr.org/English/law/cedaw-one.htm

By December 2010, two complaints had been submitted to the CEDAW Committee about the UK under the individual communications procedure but neither of these complaints passed the admissibility criteria, and so they are not discussed here. Experience with these two cases underscores the importance of studying the procedural requirements carefully before submitting a complaint. For this reason, individuals and NGOs intending to submit an individual communication to the CEDAW Committee are strongly advised to seek support and advice from relevant lawyers or organisations.

**Case studies: violence against women cases addressed by the CEDAW Committee**

**Rape law and legal procedure: Karen Tayag Vertido v The Philippines**

This complaint concerned the judicial handling of an alleged rape case where the court relied on discriminatory attitudes and gender stereotypes to dismiss the credibility of the complainant and acquit the defendant. The judge relied on “gender-based myths and misconceptions” to assess the credibility of the complainant, and questioned why she did not try to escape; did not shout for help; accepted a lift from the defendant after the alleged rape; did not appear to physically resist. In short, she did not follow what was expected from a rational and “ideal victim”.

The CEDAW Committee found a violation of the State’s obligations under articles 2 (f) and 5 (a), which require States to take appropriate measures to modify or abolish laws and regulations that are discriminatory, as well as customs and practices that constitute discrimination against women. The CEDAW Committee also found that article 2(c) implies a right to an effective remedy and that right had been violated because the case had not been dealt with in a fair, impartial, timely and expeditious manner. This case had remained at the trial court level for eight years between 1997 and 2005. Having found these violations, the CEDAW Committee recommended that the State party compensate the victim for her financial and non-financial losses because she had lost her job, and been re-victimised by the discriminatory approach of the court. It also made general recommendations concerning legal and judicial approaches to rape in the Philippines to ensure that court proceedings involving rape allegations are pursued without undue delay and that all legal procedures concerning rape and other sexual offences are impartial, fair and not affected by gender stereotyping. The CEDAW Committee recommended review of the legal definition of rape to place lack of consent at its centre and the delivery of appropriate training for judges, lawyers, law enforcement officers and medical personnel on CEDAW and understanding crimes of rape and other sexual offences in a gender-sensitive manner.

**Domestic violence: A.T. v Hungary and Şahide Goekce v Austria**

The CEDAW Committee has considered three cases concerning domestic violence. The first case, A.T. v Hungary, was submitted by a woman seeking protection from violence and is discussed below. The second and third cases, Şahide Goekce v Austria and Fatima Yildirim v Austria, concerned violations of the rights of two women who had been killed as a result of domestic violence. Both cases raised similar issues, and a summary of one of them, Şahide Goekce v Austria, is provided below.
A.T. v Hungary\textsuperscript{185}

This complaint was submitted by A.T., a Hungarian woman who had been subjected to domestic violence for four years by her former partner who was also the father of her children. The domestic violence included physical violence which required medical treatment and hospitalisation, financial abuse and threats of violence to herself and her children. A.T. could not escape the violence because there were no appropriate women’s refuges and there were no protection or restraining orders in Hungarian law. Once her abusive ex-partner had moved out of the family home, A.T. had taken steps to permanently exclude him from the home. The Hungarian courts refused because A.T. jointly owned the property with her ex-partner and her request would breach his right to property. There were two criminal cases against A.T.’s ex-partner which were long-standing and the police had never detained him.

A.T. complained to the CEDAW Committee that the State had failed in its duty to provide her with effective protection from the serious risk to her physical integrity, physical and mental health, and life by her former partner. She requested urgent \textit{interim measures} to protect her from threats to her life from her former partner. Whilst it was considering the complaint, the CEDAW Committee acted on this urgent request and asked the State to provide immediate, appropriate and concrete, preventive interim measures of protection to A.T. as may be necessary to avoid irreparable damage (damage that would be impossible to repair) to her, including to offer a safe place for her and her children to live and provide her with financial assistance, if needed.

Referring to General Recommendation No. 19 and the duty of States to exercise due diligence to prevent violence and protect women, the CEDAW Committee found that Hungary had violated articles article 2 (a) (legislation on equality), (b) (legislation and other measures to prohibit discrimination against women) and (e) (take all appropriate measures to eliminate discrimination against women). It stated that articles 2(a), (b) and (c) require the prevention of, and protection of women from VAW. In finding this violation, it referred to previous \textit{concluding observations} of the CEDAW Committee on Hungary, when it had expressed serious concern that there was no specific legislation to combat domestic violence and sexual harassment and that “no protection or exclusion orders or shelters existed for the immediate protection of women victims of domestic violence”. The CEDAW Committee stressed that women’s “human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.” Hungary had violated these provisions, violating A.T.’s human rights and fundamental freedoms, particularly her right to security of person.

The Committee also found that the State had violated article 5 (a) (duty to modify social and cultural conduct or practices which are based on the inferiority of either sex) of the sexes or stereotyped gender roles) and article 16 (obligation to eliminate discrimination in marriage and family relations) together. It highlighted that “traditional attitudes by which women are regarded as subordinate to men contribute to violence against them.” The Committee stressed that A.T. had been subject to domestic violence for four years by her former partner yet had been unsuccessful, through civil or criminal proceedings to bar him from her home. She could not have asked for a restraining or protection order since neither option currently exists in the State party. She had been unable to flee to a shelter because none are equipped to take her in together with her children, one of whom was fully disabled. The Committee considered that these facts taken together violated CEDAW articles 5(a) and 16.

The CEDAW Committee made a number of recommendations to the State including that it should take immediate and effective measures to guarantee the physical and mental integrity of A.T. and her family and ensure that she is given a safe home, legal assistance, and reparation proportionate to the physical and mental harm she had experienced. It also made recommendations about the situation in Hungary generally including to introduce a specific law prohibiting domestic violence against women that should provide for “protection and exclusion orders as well as support services, including shelters”. The Committee also called on Hungary to provide “victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, to ensure them available, effective and sufficient remedies and rehabilitation”.

Şahide Goekce v Austria\textsuperscript{186}

This complaint was submitted by two organisations working in Austria to protect and support women victims of VAW. They brought the claim on behalf of Şahide Goekce who was shot dead by her husband, Mustafa Goekce, following repeated incidents of domestic violence which included violent assault, battery, coercion and death threats which were known to the police.

Over the three year period prior to her death, starting with a violent incident that was reported to the police on 3 December 1999 and ending with the shooting of Şahide Goekce on 7 December 2002, the frequency of calls to the police about disturbances and disputes and/or battering had increased. The police had issued orders prohibiting Mustafa Goekce from returning to their apartment on three separate occasions. On two occasions the police had made requests to the Public Prosecutor that Mustafa Goekce be detained but these were refused. At the time of Şahide Goekce’s death, a three-month injunction was in effect that prohibited Mustafa Goekce from returning to the family apartment. The authors of the communication alleged, and the State did not refute, that the police had received information that Mustafa Goekce was in possession of a weapon, despite the fact that he was subject to a valid weapons ban. They also alleged, and
the State did not refute, that Şahide Goekce had called the emergency services a few hours before she was killed, but no patrol car was sent.

Considering the above factors, the CEDAW Committee held that **the police knew or should have known that Şahide Goekce was in serious danger**; they should have treated the last call from her as an emergency, in particular because Mustafa Goekce had shown that he had the potential to be a very dangerous and violent criminal. The CEDAW Committee concluded that by not responding to the call immediately, **the police were accountable for failing to exercise due diligence to protect Şahide Goekce**.

The CEDAW Committee also held that although such cases should be determined on a case-by-case basis, the behaviour of Mustafa Goekce had crossed such a high threshold of violence that the Public Prosecutor should not have denied the requests of the police to arrest and detain him. The CEDAW Committee stressed that a perpetrator’s rights to freedom of movement and fair trial cannot supersede a woman’s rights to life and physical and mental integrity.

The CEDAW Committee underscored that States may be held responsible for private acts if they fail to act with due diligence to prevent violations of rights, investigate and punish acts of violence, and provide compensation. In this case, although Mustafa Goekce had been prosecuted for killing Şahide Goekce, the CEDAW Committee found that the State had violated its obligations under CEDAW articles 2 (a) and (c) through to (f), and article 3, read in conjunction with article 1 and general recommendation 19 of the Committee and the corresponding rights of Şahide Goekce to life and physical and mental integrity.

In making its decision, the CEDAW Committee acknowledged that Austria had established a comprehensive model for addressing domestic violence that included legislation, **criminal and civil law remedies**, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators. However it underscored that for such a system to work in practice, State actors, such as the police and judiciary must exercise due diligence. The CEDAW Committee made a number of recommendations to the State including to:

- **Strengthen implementation and monitoring of law on domestic violence, and provide sanctions for the failure to do so.**
- **Vigilantly and in a speedy manner prosecute perpetrators of domestic violence and ensure that criminal and civil remedies are utilised in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim; and also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasising that the perpetrator’s rights cannot supersede women’s human rights to life and to physical and mental integrity.**
- **Improve coordination among law enforcement and judicial officers and ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with NGOs working on gender-based violence.**
- **Strengthen training programmes and education on domestic violence for judges, lawyers and law enforcement officials, including on CEDAW and General Recommendation No. 19.**

**Concluding observations of the CEDAW Committee on violence against women**

This section provides an overview of concluding observations issued by the CEDAW Committee on VAW. It focuses on concluding observations issued to the UK because the CEDAW Committee has issued some very useful and detailed recommendations to the UK on VAW.

When the CEDAW Committee considers **periodic reports** from States parties, and engages in dialogue with States on the **domestic implementation** of CEDAW, it asks questions about measures adopted by the State to address VAW. The CEDAW Committee is probably the most proactive of all human rights bodies in asking States about VAW. However, the quality of the questions do depend a great deal on how much information is available to the CEDAW Committee on the issue of VAW. It is therefore very important that NGOs include information on VAW in their **shadow reports**.

**Concluding observations on violence against women issued to the UK**

The CEDAW Committee highlighted a number of issues of concern in relation to the UK’s obligations to address VAW when it considered the UK’s periodic report in 2008.187

In 2008 the CEDAW Committee reviewed a periodic report from the UK and called on the UK Government to adopt comprehensive measures to address VAW in accordance with its **General Recommendation No. 19 on violence against women**.

The CEDAW Committee expressed particular concern about the:

- Prevalence of violence against women and girls, including domestic and sexual violence and low prosecution and conviction rates of sexual violence cases

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**i** In 2008 the CEDAW Committee reviewed a periodic report from the UK and called on the UK Government to adopt comprehensive measures to address VAW in accordance with its General Recommendation No. 19 on violence against women.
• Lack of a comprehensive national strategy and programme to combat all forms of violence against women and girls
• Lack of adequate support and services for victims, including shelters, which is compounded by the funding crisis facing NGOs working on VAW
• Gender-neutral interpretation of Gender Equality Duty and the negative impact that was having on funding for women-only services, such as refuges and rape crisis centres, women’s health organisations and black, minority and ethnic women’s organisations

The CEDAW Committee made concrete recommendations and asked the UK Government to:

• Ensure full implementation of legislation on VAW, as well as the prosecution and conviction of perpetrators
• Adopt and implement a unified and multifaceted national strategy to eliminate violence against women and girls, which would include legal, education, financial and social components
• Expand training and programmes for parliamentarians, the judiciary and public officials, in particular law enforcement personnel and health-service providers, to ensure that they are sensitised to all forms of VAW and can provide adequate support to victims
• Expand public awareness-raising campaigns on all forms of violence against women and girls
• Establish additional counselling and other support services for victims of violence, including shelters
• Provide “adequate and sustained funding support, for NGOs working in the area of violence against women”
• Provide “increased and sustained funding” to NGOs working in the area of women’s rights and reassess the way that funding is allocated to make sure it does not disadvantage women’s organisations

The CEDAW Committee also made specific recommendations in relation to forced marriage, FGM, trafficking, abortion, multiple discrimination as well as concerns about refugee and immigrant women:

Forced marriage: the CEDAW Committee recommended full implementation of legislation on forced marriage and the wide dissemination of guidelines for public authorities. It called on the UK to establish additional counselling and other support services for victims, including shelters, and to improve cooperation and support for NGOs working on forced marriage.

FGM: the CEDAW Committee expressed concern that there had been no prosecutions under the Female Genital Mutilation Act (2003) and the Female Genital Mutilation Prohibition (Scotland) Act (2005) and that the number of women and girls who had undergone or were at risk of female genital mutilation was on the rise. It recommended training for public officials and education and awareness-raising programmes involving community and religious leaders, women’s organisations and the general public.

Trafficking: the CEDAW Committee expressed concern at the continuing prevalence and extent of trafficking, which is addressed specifically under article 6 of CEDAW. It called on the UK to address criminal justice measures and the prosecution of traffickers as well as the protection and rehabilitation of victims of trafficking, including “provision of adequate support services to victims, including those who do not cooperate with the authorities”. The CEDAW Committee also urged the UK to grant victims of trafficking indefinite leave to remain (the right to live in the UK for an unlimited amount of time) and to improve reintegration programmes for women subject to trafficking to prevent their victimisation.

Abortion: the CEDAW Committee expressed concern that abortion continued to be illegal in Northern Ireland with limited exceptions (the law on abortion in Northern Ireland is different from the rest of the UK) and that this was having harmful consequences for women’s health. It called on the UK to conduct a public consultation in Northern Ireland on the abortion law. It referred to its general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action, and called on the UK to consider amending the law to remove punitive provisions imposed on women who undergo abortion. The Committee called on the UK to monitor carefully the delivery of health services to make sure it responded in a gender-sensitive manner to all health concerns of women.

Multiple discrimination: The CEDAW Committee expressed concern that particular groups of women, particularly ethnic and minority communities (including Traveller communities, refugee and immigrant women), were particularly vulnerable and suffer multiple discrimination, especially in access to education, employment and health-care. The CEDAW Committee was concerned that women from Traveller communities experienced high numbers of miscarriages and stillbirths, and had the highest maternal mortality rate among all ethnic groups. It also expressed concern that women of minority and ethnic communities suffered higher rates of depression and mental illness, while women of Asian descent had higher suicide and self-harm rates. It called on the UK to implement targeted and “culturally appropriate strategies and programmes, including preventive and interventional programmes, to address mental health issues faced by women of different ethnic and minority communities.” It also asked the UK to conduct regular and comprehensive studies on intersectional discrimination against ethnic minority women, collect statistics on their situation in employment, education, health and public life and submit this information in its next periodic report.
Refugee and immigrant women: the CEDAW Committee expressed concern about the situation of immigrant women and women asylum-seekers. It was concerned that asylum on the grounds of gender-related persecution, including VAW, was not frequently granted and that women in insecure immigration status were not allowed to access public funds, such as health-care services, public housing and social security benefits, with particularly negative consequences for victims of violence. It recommended that the UK take measures to effectively respond to the needs of those women and review the “no recourse to public funds” policy that stops women accessing vital services, to ensure the protection of and provision of support to victims of violence. It also called on the UK to pay “specific attention to the vulnerability of women asylum-seekers while their claims are under examination and to ensure the full implementation of the Asylum Gender Guidelines.”

The strong recommendations made by the CEDAW Committee to the UK in 2008 reflected the success of a strong shadow report on VAW. They also reflected the success of representatives from women’s groups who attended the public sessions of the CEDAW Committee in Geneva when it considered the UK’s report and lobbied the CEDAW Committee members on VAW in the UK.

How to submit a shadow report to the CEDAW Committee

NGOs, such as women’s organisations in the UK, can submit a shadow report to the CEDAW Committee concerning VAW in the UK in contribution to the periodic review of the UK when it reports every four years.

The UN has published an information note for NGOs that want to participate in the work of the CEDAW Committee when it reviews States. The information note includes information on how, where and when to send your shadow report and is available online:

http://www2.ohchr.org/english/bodies/cedaw/docs/NGO_Participation.final.pdf

The further reading section of this handbook also provides links to useful resources that give tips on how to draft a shadow report to CEDAW.

It is a good idea to find out if other organisations are planning to submit a shadow report, and submit information together.

Concluding observations of the CEDAW Committee to other States

It is also useful to look at the concluding observations that the CEDAW Committee has published in relation to other States parties to CEDAW. These also provide guidance to UK based NGOs and women’s groups on the issues that the UK must address because of its obligations under CEDAW, even if they are not explicitly set out in the treaty. Concluding observations to other States parties are particularly useful when developing a campaign or policy position on an issue that the CEDAW Committee has not yet addressed in relation to the UK.

For example, the CEDAW Committee has not addressed the issue of access to and availability of legal aid on VAW in the UK (legal aid, or public funding enables some people who cannot afford to pay privately to get legal advice and representation free of charge). However, in February 2010 the CEDAW Committee issued concluding observations to The Netherlands on legal aid. It expressed concern that while perpetrators of domestic violence in the Netherlands had access to free legal aid, victims of domestic violence had access to legal aid only in exceptional circumstances. It called on The Netherlands “to ensure without any further delay that free legal aid is provided to all victims of domestic violence.”

You can see all of the concluding observations that the CEDAW Committee has issued to all States parties to CEDAW, as well as the shadow reports that have been submitted by NGOs and others online:

http://www2.ohchr.org/english/bodies/cedaw/sessions.htm

Confidential inquiries

The CEDAW Committee has the power to conduct confidential inquiries in the UK if it receives reliable information indicating towards grave or systematic violations of CEDAW. This is because the UK is a State party to the Optional Protocol to CEDAW. Individuals and NGOs can submit information to the CEDAW Committee if they think that grave and systematic violations of women’s rights have or are occurring in the UK (see chapter 5 for more details on confidential inquiry procedures).

By December 2010, the CEDAW Committee had used its powers to conduct confidential inquiries just once. This was an inquiry into VAW in Mexico, which was concluded in 2004. The CEDAW Committee conducted an inquiry after it received information about grave and systematic violations of women’s rights, specifically the
rape and murder of women in a particular area of Mexico called Ciudad Juarez in the state of Chihuahua, Mexico. The CEDAW Committee found that the State was responsible for grave and systematic violations of human rights and issued a series of concrete recommendations. This inquiry and the publicity around the case led to a number of positive developments. For example, in 2007, Mexico passed a law called the Mexican General Law on Women’s Access to a Life Free of Violence.190

How to submit information on the UK under CEDAW’s confidential inquiry procedure

Details and advice on how to submit information to the CEDAW Committee about the UK under the confidential inquiry procedure have been published by the Equality and Human Rights Commission (EHRC), online:
http://www.equalityhumanrights.com/uploaded_files/humanrights/a_lever_for_change.pdf

The full report of the CEDAW Committee’s inquiry into VAW in Mexico, and the reply of the Government of Mexico can be accessed online: http://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf
Chapter summary

The International Covenant on Civil and Political Rights (ICCPR) sets out a range of civil and political rights relevant to the elimination of violence against women (VAW), such as the right to non-discrimination and the equal right of men and women to the enjoyment of civil and political rights; the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be subjected to slavery or forced labour; the right to liberty and security of the person; the right to private and family life; and the right to marry with free and full consent and equality in marriage.

The Human Rights Committee (HRC), the treaty body responsible for monitoring the ICCPR, has set out how many of the ICCPR rights are relevant to combating VAW. General Comment No. 28 on the equality of rights between men and women is particularly useful.

The UK Government must submit reports every four years to the HRC about the implementation of ICCPR rights in the UK. The HRC has not issued strong recommendations on VAW to the UK through this procedure but it has done to other States. This means there is a real potential and need for non-governmental organisations (NGOs) such as women’s organisations to submit information on VAW in the form of shadow reports in upcoming review sessions of the HRC.

The HRC has the power to consider complaints from individuals about violations of their rights under the ICCPR but the UK has not accepted this mechanism. This means that individuals cannot complain directly to the HRC about violations of their rights by the UK.

Overview of the ICCPR

The International Covenant on Civil and Political Rights (ICCPR) sets out a range of civil and political rights (such as the right to life, freedom from torture, freedom of expression and thought, conscience and religion) and establishes the Human Rights Committee (HRC), which is the human rights treaty body that monitors the ICCPR.

The ICCPR, together with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR) makes up the International Bill of Human Rights.
The ICCPR in the UK

**ICCPR:**
- **Adopted:** 16 December 1966, entered into force: 23 March 1976
- **Status in UK:** in force, ratified by UK on 20 May 1976
- **Treaty body:** Human Rights Committee (HRC)
- **Reservations:** the UK has entered a number of reservations to the ICCPR, including concerning nationality and citizenship, and immigration law. For a full list of reservations see: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

The Human Rights Committee:
- Comprised of 18 members who meet three times a year in Geneva and New York
- Issues General Comments to all States parties to the ICCPR
- Considers reports from the UK on the domestic implementation of the ICCPR and issues concluding observations. Generally, reports must be submitted by the UK every four years but this can vary

Under the First Optional Protocol to the ICCPR, the Human Rights Committee:
- Considers individual communications (the UK has **not** signed up to this)

Timeline and key dates for the UK:
- Most recent UK report considered by the Human Rights Committee: July 2008
- Next UK report due to be submitted to the Human Rights Committee: July 2012

Full text of the ICCPR, the Optional Protocol to the ICCPR and the website of the Human Rights Committee online: [http://www2.ohchr.org/english/bodies/hrc/index.htm](http://www2.ohchr.org/english/bodies/hrc/index.htm)

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### ICCPR provisions relevant to combating violence against women

Most if not all of the rights contained in the ICCPR are relevant to combating violence against women (VAW) on a general level, because VAW is both a cause and a consequence of women’s unequal enjoyment of all their human rights. Some of the provisions that are particularly relevant include:

- **Article 2:** right to non-discrimination and the right to an effective **remedy**
- **Article 3:** equal right of men and women to the enjoyment of civil and political rights in the ICCPR
- **Article 6:** right to life
- **Article 7:** right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- **Article 8:** right not to be subjected to slavery or forced labour
- **Article 9:** right to liberty and security of the person
- **Article 10:** right of all persons deprived of their liberty to be treated with dignity
- **Article 16:** right to recognition before the law
- **Article 17:** right to private and family life
- **Article 24:** right of children to special measures of protection
- **Article 23:** right to marry with free and full consent; equality in marriage
- **Article 26:** right to equality before the law and equal protection of the law

The HRC’s General Comment No. 28 is particularly useful because it sets out State obligations to prevent and respond to VAW under many of these articles (see below).

### How does the Human Rights Committee address violence against women?

The HRC addresses VAW as a violation of specific civil and political rights, such as the right to life and the right to be free from torture, depending on the nature of the violence.

The HRC sometimes, but not always, addresses VAW issues using the right to non-discrimination (article 2 and 26) or the equal right of women and men to the enjoyment of ICCPR rights (article 3). But unlike the Committee on the Elimination of Discrimination against Women (CEDAW Committee, see [chapter 6](#)), it does not look at VAW as a form of discrimination that can be addressed using women’s right to equal enjoyment of human rights or non-discrimination alone. Where non-discrimination or equality is raised, it is always together with other rights such as the right to life and the right to be free from torture.
Equality and non-discrimination under the ICCPR

The ICCPR contains a number of provisions related to equality and non-discrimination.

**Article 2 (1)** contains what is referred to as a dependent non-discrimination provision because it sets out a right to non-discrimination in the enjoyment of any rights set out in the ICCPR. It can only be relied on together with another right in the ICCPR, such as the right to life or freedom from torture. This article explicitly prohibits discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term “other status” leaves the list open so that new prohibited grounds can be identified.

**Article 3** sets out a right to equality between women and men in the enjoyment of all ICCPR rights. Again, this is a dependent provision, but is useful because it emphasises the broader goal of equality and the fact that States must adopt positive measures in all areas so as to achieve the effective and equal empowerment of women.

**Article 26** provides a free-standing or autonomous non-discrimination provision. It sets out that everyone is “equal before the law and are entitled without any discrimination to the equal protection of the law”. This is very useful because it means that discrimination is prohibited in law or in fact in any field regulated and protected by public authorities. For example, if welfare benefits are provided in a State, discrimination in access to welfare benefits is prohibited under the ICCPR, even though there is no right to welfare benefits under the ICCPR.

The HRC’s General Comment No. 18 sets out in detail what the right to non-discrimination means under the ICCPR. It states that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate” under the ICCPR. This is an understanding of non-discrimination which reflects a substantive equality approach.

The HRC has asserted that principle of equality sometimes requires States parties to take affirmative action in order to eliminate conditions which cause or perpetuate discrimination (see chapter 3.1 for information on affirmative action and temporary special measures).

The HRC has also called on States to take measures to counter multiple discrimination and sets out that discrimination against women “is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.”

General comments of the Human Rights Committee relevant to violence against women

The HRC has not adopted a general comment that exclusively addresses VAW but a number of its general comments address the issue in some detail. These general comments are useful as they set out detailed guidance on what the UK should be doing to combat VAW under the ICCPR.

**General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation**

This general comment addresses article 17, which provides for the right of everyone to be protected against arbitrary or unlawful interference with their privacy as well as against unlawful attacks on their honour and reputation. It briefly addresses an issue particularly relevant to VAW when it asserts that personal and body searches “must be carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.” This is an important safeguard against potential acts of sexual violence.

**General Comment No. 17: Rights of the child**

This General Comment addresses article 24 of the ICCPR, which requires States to adopt special measures to protect children. It stresses State obligations to prevent children from “being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution”.

**General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses**

This general comment elaborates on State obligations under article 23 of the ICCPR concerning equality in family relations. Article 23(3) sets out that no marriage shall be entered into without their free and full consent. This means that no one can be subject to forced marriage. It also sets out that when States adopt family planning policies, they “should not be
discriminatory or compulsory”. This reaffirms for example, women's right to autonomy over her body and reproductive life. Article 23(4) of the ICCPR sets out that States must take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. The general comment asserts that during marriage, each partner “should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage.” It establishes that there can be no “discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance of alimony, visiting rights or the loss or recovery of parental authority” and that the best interests of the child is the most important consideration.

General Comment No. 28: Equality of rights between men and women

This general comment elaborates on State obligations under article 3, which sets out the equal right of men and women to the enjoyment of all ICCPR rights. It provides substantial guidance on the information States must submit in their periodic reports to the HRC and by doing this shows how specific treaty articles are relevant to VAW. Information on VAW is requested under the following treaty articles:

The right to life (article 6): The HRC asserts that the “subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female foetuses”. States must submit data on birth rates and on pregnancy and childbirth-related deaths of women; gender-disaggregated data on infant mortality rates; measures taken to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions; and measures to protect women from “female infanticide, the burning of widows and dowry killings.”

The right to be free from torture or to cruel, inhuman or degrading treatment or punishment (article 7) as well as the need to adopt special measures to protect children (article 24): States must submit information on “national laws and practice with regard to domestic and other types of violence against women, including rape”; whether “access to safe abortion to women who have become pregnant as a result of rape” is provided; measures to prevent forced abortion or forced sterilisation; the extent of Female Genital Mutilation (FGM) and measures to eliminate it; and “measures of protection, including legal remedies, for women whose rights under article 7 have been violated” because of these forms of VAW.

The right to be free from torture or to cruel, inhuman or degrading treatment or punishment (article 7) as well as the right of all persons deprived of their liberty to be treated with dignity (article 10): States must provide information on whether men and women are separated in prisons and whether women are guarded only by female guards. This is an important safeguard against VAW in prisons and other detention centres, such as immigration detention centres.

Access to justice and the right to a fair trial (article 14): States must report on whether “measures are taken to ensure women equal access to legal aid, in particular in family matters”.

The right to private and family life (article 17): States must provide information on the effect of any laws and practices that interfere with women's right to enjoy privacy, for example “where the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections, including protection against rape.” This right is also important for ensuring women's sexual and reproductive rights, as it prohibits forced sterilisation; general requirements concerning the number and spacing of children; and any rules that require doctors to report women who have undergone abortion. In such cases, “other rights such as the right to life and to be free from torture or cruel, inhuman or degrading treatment or punishment might also be at stake”.

Freedom of expression (article 19): States must report on legal measures to restrict the publication or dissemination of “obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment” and “is likely to promote these kinds of treatment of women and girls”.

The right to marry with free and full consent and equality in marriage (article 23): this includes a woman's right to marry only when she has given her free and full consent, and so prohibits forced marriage.

General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant

This general comment does not explicitly address VAW but is important because it sets out that States have positive obligations to protect individuals from interference of their rights by non-State actors. It sets out there may be circumstances where a failure “to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by non-State actors” will constitute a
violation of the ICCPR. It also stresses that this includes the obligation to provide effective remedies in the event of a violation of rights under article 2, paragraph 3 of the ICCPR.

**Individual communications under the ICCPR**

Under the Optional Protocol to the ICCPR, the HRC can consider individual communications, which are complaints, submitted by or on behalf of individuals who claim their rights have been violated under the ICCPR.

Unfortunately, the UK is not yet a State party to the Optional Protocol to the ICCPR and so the HRC cannot consider complaints about the UK. Despite this, it is useful to look at decisions that the HRC has made under this procedure in relation to other States. This is because decisions on individual cases (often referred to as views) show us how the ICCPR can be applied to real life situations. They also help us to understand what State action or inaction on VAW might constitute a breach or violation of the ICCPR.

The individual complaints procedure has been used actively by individuals in States that have acceded to or ratified the Optional Protocol to the ICCPR. However, the potential of the HRC to address individual communications concerning VAW has been significantly under-used. The following case of Diene Kaba v Canada provides an example of a case where the HRC has found a violation of the ICCPR because of State failure to effectively respond to VAW.

**Case Study: Diene Kaba v Canada**

This case was submitted to the HRC by Ms Diene Kaba who was in Canada but faced a risk of deportation with her daughter Fatoumata to Guinea, where Fatoumata risked being subjected to Female Genital Mutilation (FGM).

When Fatoumata was 6 years old, her father arranged for her to undergo FGM but her mother, Ms Kaba arrived just in time to prevent it. Ms Kaba’s husband beat her for preventing the FGM. Ms Kaba and Fatoumata escaped and left Guinea for Canada where they claimed refugee status as victims of domestic violence and because Fatoumata was at risk of FGM. Canada refused refugee status to Ms Kaba and Fatoumata, because they did not find Ms Kaba’s evidence reliable (there were a number of inconsistencies). Ms Kaba submitted evidence letters from her relatives stating that her husband had beaten her in the past; that he was determined to have Fatoumata undergo FGM; and he planned a forced marriage for Fatoumata. Ms Kaba also had a letter from her husband threatening to kill her if she did not return Fatoumata to him. Ms Kaba divorced her husband with the help of her family once she was in Canada. Although the divorce granted Ms Kaba custody over Fatoumata, the law in Guinea automatically grants custody to the father so he would have had authority over her.

The HRC decided that Ms Kaba had failed to provide sufficient evidence to back up her allegations that she would face a risk of domestic violence if she were to be returned to Guinea and so focused only on the risk of FGM faced by Fatoumata. The HRC asserted that under article 7 of the ICCPR, States are under an obligation not to send an individual to another country where they face a real risk of being killed or subjected to torture or cruel, inhuman or degrading treatment or punishment. The HRC stressed that, “there is no question that subjecting a woman to genital mutilation amounts to treatment prohibited under article 7 of the Covenant. Nor is there any question that women in Guinea traditionally have been subjected to genital mutilation and to a certain extent are still subjected to it.” The question the HRC had to answer was whether Fatoumata faced a “real and personal risk” of being subjected to such treatment if she returned to Guinea. The HRC requested interim measures and for Canada not to deport Fatoumata to Guinea whilst it considered the case.

In this case, the HRC found the context and particular circumstances of the case demonstrated a real risk of Fatoumata being subjected to genital mutilation if she were to be returned to Guinea. This was because although the law in Guinea prohibits FGM, it is not effectively enforced. In reaching this conclusion the HRC asserted that genital mutilation is a common and widespread practice in Guinea (there was evidence that 90 per cent of girls undergo FGM); that those who practice FGM are not punished; and that her mother seemed to be the only person opposed to carrying out the FGM, and she did not have much authority because men had the authority in Guinean society. Fatoumata was only 15 years old at the time the HRC was making its decision and so the HRC found that her deportation to Guinea would violate article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment) together with article 24(1) (right to protection as a minor) of the ICCPR.

**Concluding observations of the Human Rights Committee on violence against women**

The HRC did not issue concluding observations concerning any form of VAW to the UK when it considered the UK’s sixth periodic report in July 2008 or its fifth periodic report in October 2001. This is deeply disappointing, especially because non-governmental organisations (NGOs) submitted information in the manner of shadow reports to the HRC concerning a number of VAW concerns. For example in advance of the 2008 session, Amnesty International submitted information concerning women’s rights under articles 2, 3, 6, 7 and 26 on the lack of an integrated strategy to address all forms of VAW; the impact of the ‘no recourse to public funds’ requirement on women subject to immigration control; and the crisis in funding for specialist services in relation to VAW.
Despite this, the HRC has issued concluding observations to other States on many different forms of VAW. For example, in 2009-10 the HRC issued concluding observations on:

- Bride abductions;
- Domestic violence, including high prevalence of domestic violence affecting particular groups of women, such as indigenous women;
- Femicide (killing of women because they are women);
- FGM; forced marriage, early marriage and polygamy;
- Rape and other forms of sexual violence, including rape in marriage; sexual exploitation of women and children;
- Sexual harassment, including sexual harassment against girls in schools; so-called “honour crimes”; and trafficking of women and girls for sexual exploitation and domestic servitude.198

The many concluding observations on VAW issued by the HRC in recent sessions indicate a willingness on behalf of the HRC to address the issue. It also underscores the need for UK-based NGOs, such as women’s organisations, to submit a strong shadow report on VAW to the HRC when the UK next submits its periodic report under the ICCPR. Many NGOs submit shadow reports to the HRC on the UK and they will not necessarily address VAW or gender issues. It is also a good idea to find out which NGOs plan to submit a shadow report to the HRC and encourage them to include a gender perspective and information on VAW too. A possible way of finding this out is to see which NGOs have submitted shadow reports on the UK to the HRC in the past.

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**How to submit a shadow report to the HRC**

NGOs, such as women’s organisations can submit information on VAW in the form of a shadow report to the HRC when the UK next submits its periodic report under the ICCPR.

Details on how and where to submit a shadow report to the HRC have been set out in the following UN publication:


You can see all of the concluding observations that the Human Rights Committee has issued to all States parties to the ICCPR, as well as the shadow reports that have been submitted by NGOs and others online: http://www2.ohchr.org/english/bodies/hrc sessions.htm
Chapter summary

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out a range of economic, social and cultural rights relevant to the elimination of violence against women (VAW), such as the right to non-discrimination and the equal right of men and women to the enjoyment of economic, social and cultural rights; the right to health; the right to work; the right to education; and the protection of the family, mothers, children and young persons.

The Committee on Economic, Social and Cultural Rights (CESCR), the human rights treaty body responsible for monitoring the ICESCR, has set out how many of the ICESCR rights are relevant to combating VAW. General Comment No. 14 on the right to health and No.16 on the equality of rights between men and women are particularly useful.

The UK Government must submit reports every five years to CESCR about the implementation of ICESCR rights in the UK. CESCR has issued recommendations to the UK to improve its response to VAW in the past, especially concerning rape, domestic violence and the abortion law in Northern Ireland.

CESCR will soon have the power to consider complaints (individual communications) from individuals about violations of their rights under the ICESCR but the UK has not yet accepted this mechanism. This means that individuals cannot complain directly to CESCR about violations of their rights by the UK.

Overview of the ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out a range of economic, social and cultural rights (such as the right to health, education, employment, adequate standard of living and social security) and establishes the Committee on Economic, Social and Cultural Rights (CESCR), which is the human rights treaty body that monitors the ICESCR.

The ICESCR, together with the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) makes up the International Bill of Human Rights.
ICESCR in the UK

ICESCR:
- **Adopted:** 16 December 1966, **entered into force:** 3 January 1976
- **Status in UK:** in force, ratified by UK on 20 May 1976
- **Treaty body:** Committee on Economic, Social and Cultural Rights
- **Reservations:** the UK has entered a number of reservations to the ICESCR. For a full list of reservations see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en

The Committee on Economic, Social and Cultural Rights:
- Comprised of 18 members who meet twice a year in Geneva
- Issues General Comments to all States parties to the ICESCR
- Considers reports from the UK on the domestic implementation of the ICESCR and issues concluding observations. Reports must be submitted by the UK every five years but this can vary

Under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic Social and Cultural Rights:
- Considers individual communications (this is not yet in force and the UK has not signed up to this)

Timeline and key dates for the UK:
- Most recent UK report considered by the Committee on Economic, Social and Cultural Rights: May 2009
- Next UK report due to be submitted to the Committee on Economic Social and Cultural Rights: June 2014

Full text of the ICESCR, the Optional Protocol to the ICESCR and the website of the Committee on Economic, Social and Cultural Rights online: http://www2.ohchr.org/english/bodies/cescr/

ICESCR provisions relevant to combating violence against women

Most if not all of the rights contained in the ICESCR are relevant to combating violence against women (VAW) on a general level, because VAW is both a cause and a consequence of women’s unequal enjoyment of all their human rights. Some of the provisions that are particularly relevant include:

- **Article 2:** right to non-discrimination and the right to an effective remedy
- **Article 3:** equal right of men and women to the enjoyment of economic, social and cultural rights in the ICESCR
- **Article 6:** right to work
- **Article 7:** right to just and favourable conditions of work
- **Article 10:** protection of the family, mothers, children and young persons
- **Article 11:** right to an adequate standard of living, including adequate food
- **Article 12:** right to health

In general, CESCR’s general comments are particularly useful because they set out State obligations to prevent and respond to VAW under many of these articles (see below).

**How does the Committee on Economic, Social and Cultural Rights address violence against women?**

CESCR addresses VAW as a form of discrimination. It has reflected and reinforced the approach of the Committee on the Elimination of Discrimination against Women (CEDAW Committee, see chapter 6) and has stated:

“Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent,
investigate, mediate, punish and redress acts of violence against them by private actors”.

This means that the State can be held responsible under ICESCR for any act of VAW that is perpetrated by State actors such as the police, or when it fails to exercise due diligence to prevent, punish and provide compensation for violence committed by non-State actors such as the members of a woman’s family or the general public, when the violence restricts a woman’s enjoyment of her economic, social or cultural rights.

Through its work considering State reports and issuing general comments, CESCR has addressed VAW through different economic, social and cultural rights, such as the right to health and just and favourable conditions of work, depending on the nature of the violence. It sometimes, but not always, addresses VAW using the right to non-discrimination (article 2) or the equal right of women and men to the enjoyment of ICESCR rights (article 3) in conjunction with these other economic, social and cultural rights.

**Equality and non-discrimination under the ICESCR**

The ICESCR contains a number of provisions related to equality and non-discrimination.

**Article 2 (2)** contains what is referred to as a dependent non-discrimination provision because it sets out a right to non-discrimination in the enjoyment of any rights set out in the ICESCR. It can only be relied on together with another right in the ICESCR, such as the right to health or work. This article explicitly prohibits discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term “other status” leaves the list open so that new prohibited grounds can be identified. CESCR has set out many additional prohibited grounds of discrimination including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation. It has also set out that a prohibited ground of discrimination might also arise from the intersection of two grounds of discrimination such as sex and disability.

In relation to the ground of nationality, CESCR has stressed that the ICESCR “rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation”. This means that the State cannot use as an excuse a woman’s immigration status to restrict her economic, social and cultural rights.

**Article 3** sets out a right to equality between women and men in the enjoyment of all ICESCR rights. Again, this is a dependent provision, but is useful because it emphasises the goal of equality. CESCR has explained that when ICESCR was drafted, even though article 3 overlapped with article 2(2), it was thought “necessary to reaffirm the equality rights between men and women.” In this way it reinforces article 2(2).

CESCR has addressed State obligations to combat discrimination and promote equality together, stating that non-discrimination logically flows from the principle of equality. It has set out clearly that articles 2(2) and 3 establish a requirement on States to ensure substantive equality in the enjoyment of all economic, social and cultural rights.

CESCR has stated that temporary special measures may sometimes be required in order to accelerate and secure progress towards substantive equality and that the principle of equality will sometimes require States to “take measures in favour of women” in order to “suppress conditions that perpetuate discrimination” (see chapter 3.1 for information on temporary special measures).

CESCR has called on states to address multiple discrimination experienced by women and stated that many women “experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.” It has set out that multiple discrimination “has a unique and specific impact on individuals” and requires particular consideration and remedies.

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**The Committee on Economic, Social and Cultural Rights** has explained in detail the meaning of equality and non-discrimination under the International Covenant on Economic, Social and Cultural Rights in its General Comment No. 20: Non-discrimination in economic, social and cultural rights, online:

http://www2.ohchr.org/english/bodies/cescr/comments.htm

**General comments of the Committee on Economic, Social and Cultural Rights relevant to violence against women**

All of the General Comments concerning the obligations of States under the ICESCR can be accessed online:

http://www2.ohchr.org/english/bodies/cescr/comments.htm
CESCR has not adopted a general comment that exclusively addresses VAW but a number of its general comments address how VAW is relevant under specific articles of the ICESCR. General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights is particularly useful (see below).

**General Comment No. 5: Persons with disabilities**

This general comment sets out that both “the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2)”, which establishes the right of mothers to protection before during and after childbirth. Concerning the equal right of men and women to the enjoyment of all human rights (article 3), CESCR stresses the importance of addressing multiple discrimination experienced by women with disabilities, and asserts that persons with disabilities “are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected”.

**General Comment No. 7: The right to adequate housing**

This general comment concerning the right to housing (article 11(1)) highlights that women “are particularly vulnerable to acts of violence and sexual abuse when they are rendered homeless”.

**General Comment 11: Plans of action for primary education**

This general comment concerning primary education (article 14) highlights the link between access to primary education and reduced vulnerability to violence and exploitation. CESCR stresses “there is a direct correlation between…primary school enrolment levels for girls and major reductions in child marriages.” It also sets out that “the lack of educational opportunities for children often reinforces their subjection to various other human rights violations” and leaves them particularly “vulnerable to forced labour and other forms of exploitation”.

**General Comment No. 13: The right to education**

This general comment concerning the right to education (article 13) underscores that education “has a vital role in empowering women [and] safeguarding children from exploitative and hazardous labour and sexual exploitation”.

**General Comment No. 14: The right to the highest attainable standard of health**

This general comment elaborates on the meaning of the right to health (article 14). It sets out that the right to health includes freedoms and entitlements. Freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. Entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

CESCR stresses that gender equality is one of the underlying determinants of health (meaning that it is one of the factors necessary to achieve the highest attainable standard of health). States must integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men. It asserts that States must “develop and implement a comprehensive national strategy for promoting women’s right to health throughout their life span” and that a “major goal should be reducing women’s health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.” It stresses that it is important to take “preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.” States are obliged to “ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence.”

In respect of children and adolescents (article 12(2)(a)), States must “adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children.” CESCR asserts that States must establish information campaigns, in particular with respect to HIV/AIDS, sexual and reproductive health, traditional practices and domestic violence. It stresses that violations of the obligation to protect the right to health follow from the failure of a State to take all necessary measures to protect everyone from non-State actors interfering in their right to health. This includes “the failure to protect women against violence or to prosecute perpetrators” and “the failure to discourage the continued observance of harmful traditional medical or cultural practices”. It also asserts that violations of the obligation to fulfill “include a failure to adopt a gender-sensitive approach to health; and the failure to reduce infant and maternal mortality rates”.

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Freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. Entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

CESCR stresses that gender equality is one of the underlying determinants of health (meaning that it is one of the factors necessary to achieve the highest attainable standard of health). States must integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men. It asserts that States must “develop and implement a comprehensive national strategy for promoting women’s right to health throughout their life span” and that a “major goal should be reducing women’s health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.” It stresses that it is important to take “preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.” States are obliged to “ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence.”

In respect of children and adolescents (article 12(2)(a)), States must “adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children.” CESCR asserts that States must establish information campaigns, in particular with respect to HIV/AIDS, sexual and reproductive health, traditional practices and domestic violence. It stresses that violations of the obligation to protect the right to health follow from the failure of a State to take all necessary measures to protect everyone from non-State actors interfering in their right to health. This includes “the failure to protect women against violence or to prosecute perpetrators” and “the failure to discourage the continued observance of harmful traditional medical or cultural practices”. It also asserts that violations of the obligation to fulfill “include a failure to adopt a gender-sensitive approach to health; and the failure to reduce infant and maternal mortality rates”. 

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General comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights

This general comment addresses the nature of State obligations under the ICESCR when they are read in light of the equal right of men and women to the enjoyment of all economic, social and cultural rights under article 3.

CESCR asserts that States have an obligation to ensure the widest possible protection and assistance to the family, and that marriage is entered into with the free consent of the intending spouses under article 10(1). It stresses that implementing article 3, in relation to article 10, requires States to, amongst other things:

“provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage; to ensure that men and women have an equal right to choose if, whom and when to marry - in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion; and to ensure that women have equal rights to marital property and inheritance upon their husband’s death.”

CESCR goes on to define VAW in the manner that it has been defined by the CEDAW Committee and sets out that:

“Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.”

In relation to the right of everyone to an adequate standard of living, including adequate food and the right of everyone to be free from hunger (article 11(2)) together with 3, States parties must “address customary practices under which women are not allowed to eat until the men are fully fed, or are only allowed less nutritious food.”

In relation to the right to health (article 12) together with article 3, States must, at minimum, remove “legal and other obstacles that prevent men and women from accessing and benefiting from health care on a basis of equality”. This includes, amongst other things, addressing the ways in which gender roles affect access to determinants of health, such as ... the removal of legal restrictions on reproductive health provisions; the prohibition of female genital mutilation; and the provision of adequate training for health-care workers to deal with women’s health issues.”

General Comment No. 18: The right to work

This general comment elaborates on the right to work (article 6). It does not explicitly address VAW but it does set out that the right to work must be enjoyed without discrimination; is a right to freely chosen or accepted work; and means a right to decent work. This is “work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration” (meaning payment). These fundamental rights also “include respect for the physical and mental integrity of the worker in the exercise of his/her employment.” The general comment stresses that “respect for the individual and his [or her] dignity is expressed through the freedom of the individual regarding the choice to work”. This right prohibits forced labour, and is particularly important in relation to specific forms of VAW such as the trafficking in women for purposes of domestic labour and sexual exploitation, as well as sexual harassment in the workplace.

Individual communications under the ICESCR

CESCR will be able to consider individual communications under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), when that treaty enters into force.

At the time of writing, the OP-ICESCR had not entered into force, because it did not have enough States parties. When it does enter into force, CESR will only be able to consider individual communications submitted by or on behalf of individuals or groups of individuals about States that have ratified or acceded to the OP-ICESCR. The UK has not yet done this.

Concluding Observations of the Committee on Economic, Social and Cultural Rights on violence against women

CESCR made a number of recommendations on VAW in its concluding observations to the UK when it considered the UK’s combined fourth and fifth periodic report in May 2009. CESC noted with concern that despite the steps taken by the UK, VAW was still a widespread problem. It called on the UK to reinforce its measures to combat VAW and made specific recommendations in relation to domestic violence and rape (expressing with concern the low number of rape cases brought to court).

CESCR specifically recommended that the UK:

- Intensify efforts to raise awareness about the gravity of domestic violence offences and the mechanisms available to victims of domestic violence.
• Improve training for police and law enforcement officials and judges in relation to rape cases, and to increase the support services for victims at the local level

• Take appropriate measures to ensure that complaints of rape are diligently and impartially investigated and prosecuted without any inherent bias or scepticism towards alleged victims

CESCR also called upon the UK to “amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality”.

A number of VAW concerns raised by non-governmental organisations (NGOs) in their shadow reports were not picked up by CESCR in its concluding observations to the UK, including the issue of the impact of the “no recourse to public funds” rule on women subject to immigration control.\(^{209}\) This indicates that there is room for greater engagement with CESCR and coordinated lobbying by NGOs working on VAW in the UK in advance of upcoming review sessions when the UK submits its next periodic report.

**Concluding observations on violence against women issued to other States**

CESCR addresses many forms of VAW in its concluding observations. A review of concluding observations issued to States in 2009-10\(^{210}\) shows that CESCR addressed the following forms of VAW:

Domestic violence, including high prevalence of domestic violence affecting particular groups of women, such as indigenous women and rape in marriage; FGM; forced marriage, early marriage and polygamy; rape and other forms of sexual violence, including rape in marriage and sexual violence in the context of armed conflict and forced displacement, and ethnically motivated rapes; restrictive abortion laws including clandestine and unsafe abortions in cases of rape, incest or foetal abnormality; sexual harassment in the workplace; so-called “honour killings”; and trafficking of women and girls for the purposes of sexual exploitation and forced labour.\(^{211}\)

Generally, CESCR addressed all of these forms of VAW under article 10 (especially 10(1) and 10(3)) of the ICESCR, which concerns the provision of protection and assistance to the family and provides that marriage must be entered into with the free consent of the intending spouses (article 10(1)) and requires that children and young persons “should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law” (article 10(3)).

CESCR also addressed concern about “the persistence of harmful traditional practices such as dowry, levirate [the practice whereby a widow is required to marry her deceased husband’s brother], polygamy, forced and early marriage and female genital mutilation” in one State under article 3 exclusively,\(^ {212}\) and the issue of sexual harassment in the workplace under the right to just and favourable conditions of work (article 7) alone,\(^ {213}\) and together with article 10.\(^ {214}\) In some concluding observations, CESCR raised concern about VAW without mentioning a specific treaty article.\(^ {215}\)

You can see all of the concluding observations that the Committee on Economic, Social and Cultural Rights has issued to all States parties to the ICESCR, as well as the shadow reports that have been submitted by NGOs and others online: [http://www2.ohchr.org/english/bodies/cescr/sessions.htm](http://www2.ohchr.org/english/bodies/cescr/sessions.htm)
Chapter Summary

This chapter provides an overview of United Nations (UN) human rights monitoring mechanisms that are not dependent on the UK becoming a State party to a treaty. It focuses on those mechanisms that UK-based non-governmental organisations (NGOs) such as women's organisations can engage with to encourage the UK to improve its responses to violence against women (VAW), as well as mechanisms that individuals can complain to if an individual woman’s human rights are at risk. These mechanisms complement the work of the human rights treaty bodies (see chapters 5-8) and are important mechanisms to engage with. The following chapter, chapter 10, provides guidance on how to choose which human rights mechanism would be most effective to use in any given situation.

All of the mechanisms described in this chapter can be used by anyone around the world, including any individual or NGO in the UK. Unlike the human rights treaty bodies, the work that they can do is not dependant on the UK Government accepting their authority.

This chapter looks at the following four mechanisms:

- Human Rights Council monitoring and complaints mechanisms
  - Universal Periodic Review (UPR)
  - Human Rights Council special procedures
  - Human Rights Council complaint procedure
- Commission on the Status of Women
  - Communications procedure

Human Rights Council monitoring and complaints mechanisms

The Human Rights Council is the central human rights body of the United Nations (UN) responsible for promoting and protecting human rights around the world. It is an inter-governmental body, meaning that it is a body made up of representatives from States serving in their official capacity (unlike the human rights treaty bodies which are made up of independent experts). The Human Rights Council is made up of 47 UN member States from around the world that are elected by members of the UN General Assembly. Its main purpose is to address human rights situations around the world and make recommendations on them. There are three mechanisms at the Human Rights Council that non-governmental organisations (NGOs) such as women's groups can engage with to monitor or complain about VAW in the UK. These are the Universal Periodic Review, the Human Rights Council special procedures and the Human Rights Council complaints procedure, and are discussed below.

Universal Periodic Review

What is the Universal Periodic Review (UPR)?

The Universal Periodic Review (UPR) is a mechanism through which 47 member States of the Human Rights Council monitor the human rights situation in all of the 192 UN member States.

The human rights situation in each of the UN member States is reviewed every four years by the Working Group on the UPR, which is made up of representatives from all Human Rights Council member States. The Working Group on the UPR meets three times a year and reviews the human rights situation in 16 UN member States each session. In this way, all UN member States are reviewed on rotation, in a four-year cycle.
How does the UPR work?

The human rights situation in each State under review is examined during a three-hour review session, which consists of a discussion between the State under review and the other Human Rights Council member States, as well as UN member States who are not on the Human Rights Council but want to participate as observers. During this session, representatives from the UN member States can ask questions and/or make recommendations to the State under review.

Some NGOs that have registered with the UN to attend such meetings can attend the review sessions, however they cannot participate in the discussion and can only observe.218

After the review session, an outcome document is produced by the UN, which provides a summary of the discussion, including the questions, comments and recommendations made by States to the country under review, as well as the responses made by the State under review. The outcome document is later adopted by a resolution of the Human Rights Council.

The UPR process is intended to complement and not duplicate the work of the human rights treaty bodies (see chapters 5-8). It is a very different process to the reporting and monitoring process under the human rights treaty bodies because the review of the situation in each State is led by representatives of the other States sitting on the Human Rights Council, acting in their official capacity. It is a process that is set up to enable States to influence and put pressure on each other to improve the human rights situation at the national level.

How is the UPR relevant to violence against women in the UK?

The human rights situation in the UK is assessed every four years under the UPR process. This includes an assessment of the implementation of the UK’s legal obligations under all of the core human rights treaties to which the UK is a State party, as well as international human rights policy documents that the UK has committed to, such as the UN Declaration on the Elimination of Violence against Women and the Beijing Declaration and Beijing Platform for Action (BPfA).

UPR review of the UK

The human rights situation in the UK is reviewed every four years under the UPR process. The UK was reviewed for the first time in April 2008 and it is anticipated that the UK will next be scheduled for review in 2012.219 You can see all of the documents related to the 2008 review of the UK, including the outcome document, on the UN website:

http://www.ohchr.org/EN/HRBodies/UPR/Pages/gbsession1.aspx

The review of the UK is based on three documents:

- **National report:** This is an overview of the human rights situation in the UK, prepared by the UK Government and either delivered as a speech or in writing (no more than 20 pages).

- **Compilation of UN information on the UK:** This document presents a summary of everything that has been said by the UN about the human rights situation in the UK (no more than 10 pages). This includes summaries of the concerns and recommendations that the human rights treaty bodies and the Special Procedures of the Human Rights Council have made, including concerns and recommendations on VAW.

- **Summary of stakeholder submissions:** This is a digest of information submitted by what the UN calls ‘UPR stakeholders’. These include NGOs and national human rights institutions (NHRIs), such as the Equality and Human Rights Commission (EHRC) in the UK.

During the review process, participating States have the opportunity to ask the UK Government questions about the issues raised in the three documents. They might for example ask the UK Government what it has done to follow up or address concerns and recommendations made by the UN human rights treaty bodies on VAW. For example, during the 2008 UPR of the UK, the representative for India referred to reports of an increase in VAW in the UK and recommended the UK Government “set up a strategic oversight body, such as a Commission on Violence against Women, to ensure greater coherence and more effective protection for women”.220

The participating States might also ask questions based on information on VAW submitted by NGOs and other stakeholders. NGOs have a vital role to play in the questions that States ask the UK (see below).
How to get involved

Get involved in the consultation on the national report

States such as the UK are encouraged by the Human Rights Council to hold a broad national consultation when they prepare their national report for the UPR. NGOs can urge the UK government to hold a consultation and participate in it, to make sure VAW issues are addressed in the national report.

Submitting information on violence against women

NGOs in the UK can submit information when the UK is scheduled for review. This information might (but it is not guaranteed) be included in the summary of stakeholder submissions. Information will only be included if it is reliable and from a credible source. This means that it is helpful to submit information together with other NGOs as a coalition, to give the submission more authority.

Submitting information for the UPR on the UK

Information submitted to the UPR process should be no longer than 5 pages if just one NGO is submitting, or 10 pages if a group of NGOs are submitting information together. It should usually be submitted seven months in advance of the review session.

Information must be submitted according to the technical guidelines for the submission of stakeholders’ information, available online: http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf

Encourage States to ask questions about violence against women

In addition to submitting written information, some NGOs try to persuade States to ask questions on particular issues during the review. It is possible that no State will ask a question about VAW in the UK, even if it is mentioned in the three review documents, so it is a good idea to encourage them to do so. It is most effective to target the States that have a track record of asking questions on women’s rights. Some States, such as Canada, Mexico and Slovenia appear to regularly ask questions about women’s rights during UPR sessions.

One NGO called UPR-info produces an analysis of the questions asked by different States and you can view it online here:

http://www.upr-info.org/-Issues-analysis-.html

You can lobby representatives of other States to ask questions on VAW by contacting their embassies in the UK, as well as the embassies to the UN in Geneva. There are a number of websites that provide detailed information on how to do this and they are set out in the further reading section.

Following up on the outcome document

Once the outcome document has been adopted, NGOs in the UK have a vital role to play in using the recommendations and the commitments that the UK made during the UPR review session. The UPR document can be used in your policy work and engagement with the national, regional and local government to remind them of the public commitments the UK made on VAW during this process.

Why get involved?

The UPR is an excellent opportunity to publically assess whether or not the UK Government is implementing all of the commitments it has made under international human rights law and policy. It reinforces and brings together the work of all of the other human rights mechanisms at the UN and presents an opportunity to follow up on concerns and recommendations made to the UK, for example by the human rights treaty bodies such as the Committee on the Elimination of Discrimination against Women (CEDAW Committee, see chapter 6).

The UPR consists of a cycle of 4-yearly reviews; the UK Government will be asked at each review what it has done to implement the recommendations and commitments of the previous review. Whilst the review is not legally binding, it is a very useful policy tool because it will embarrass the UK Government if other UN member States do not think that it is upholding its human rights commitments.

Remember that the review is about all human rights concerns in the UK and not just VAW. This means that VAW could be overlooked amongst other human rights concerns unless NGOs such as women’s groups make an effort to submit information on VAW and encourage States to ask questions on it.
Human Rights Council special procedures

What are the Human Rights Council special procedures?
The Human Rights Council special procedures are independent experts, or groups of independent experts who have been given the authority (referred to as a mandate) by the Human Rights Council to monitor and make recommendations on the human rights situation in a particular State, or a thematic human rights concern around the world, such as VAW.

The special procedures most relevant to addressing VAW in the UK are the independent experts working on thematic issues, who are usually called special rapporteurs (though some are called ‘Special Representative of the Secretary-General’ or ‘Independent Expert’).

Many of the special rapporteurs are relevant to VAW but there are some that are especially relevant. They include:

- Special Rapporteur on violence against women, its causes and consequences
- Special Rapporteur on trafficking in persons, especially in women and children

How are special procedures relevant to violence against women in the UK?
The special procedures working on thematic human rights concerns do three types of work that are relevant to VAW in the UK. They:

- Take urgent action on individual cases, by sending an urgent appeal to a State asking for information and, where necessary, asking the Government of the State to take action.
- Send letters of allegation when they receive a communication that does not require urgent action but relates to violations that already occurred and/or to general patterns of violations.
- Carry out country visits to investigate the human rights situation in a particular State (although they can only do this if the State has agreed to a visit).
- Develop standards and guidelines for States on the thematic human rights issue they work on. This is useful because they often set out how a particular human rights issue, such as the right to health, the right to housing or the right to be free from torture, is relevant to VAW.

How to use the Human Rights Council special procedures

Submit a complaint about an individual case
Anyone can submit a complaint to one or more of the relevant special procedures about an individual case, for example when an individual’s human rights are at risk or have been violated.

The special procedures send a letter, called a communication to the State concerned when they receive reliable and credible information about a human rights violation that is relevant to their mandate. There are two different types of communication that the Special Procedure might send:

A letter of allegation requesting information on a particular case is sent to the State when the case is not urgent and/or when the special procedure would like more information on the case. The UN Special Rapporteur on violence against women, its causes and consequences sends letters of allegation when she receives a communication that does not require urgent action but relate to violations that already occurred and/or to general patterns of violations - including the legal framework and its application as regards VAW.

An urgent appeal is sent when the complaint concerns a very serious human rights violation and the alleged violation is of an urgent nature, for example when an individual’s life is at risk.

The most obvious procedure to use for work on VAW is the Special Rapporteur on violence against women, its causes and consequences although it is a good idea to think about whether other special procedures could be useful. For example, if the case concerns housing such as access to a refuge, it might be a good idea to send a complaint to the Special Rapporteur on adequate housing too.

The special procedures sometimes jointly send communications to a State when the issue of concern falls under more than one mandate.

Submitting a complaint can be a very effective way of drawing attention to a particular case and getting the UN involved. It will not deliver a direct remedy for the individual woman concerned but will put pressure on the UK Government to protect her, put an end to the violation of her human rights, and provide an effective remedy.

Unlike the procedure followed by the human rights treaty bodies, there is no requirement to exhaust domestic remedies, meaning that the case does not have to have been taken through the UK courts or other appropriate complaint mechanisms before it is submitted to the special procedures.

It is important to note that a summary of all cases, including the names of the individuals and the responses received from States is included in a public report that is submitted to the Human Rights Council each year. Names are withheld only in specific cases, such as those involving children and sexual violence. It is therefore very important that the individuals concerned have given their informed consent, meaning that they fully understand what submitting a complaint means, including the potential risks and benefits, and authorise the submission.
Again, whilst the Special Rapporteur on violence against women, its causes and consequences is the most obvious expert to invite, other special procedures might also be relevant. For example, in June 2009 the **Special Rapporteur on the human rights of migrants** conducted a visit to the UK. He investigated and made recommendations on a number of issues relevant to VAW. For example, he recommended that the UK protects women migrants who have been subjected to VAW whether in the UK or in their country of origin and called on the UK to “consider granting access to public services, particularly health-care services, public housing and social security benefits to migrant women with an insecure immigration status who are victims of violence”.²²²

### Human Rights Council complaint procedure

The Human Rights Council complaint procedure is a procedure set up to address “consistent patterns of gross and reliably attested violations of all human rights and fundamental freedoms”. This means that it is only appropriate to use the Human Rights Council complaint procedure to address very serious human rights violations that have either occurred over a long period of time, or that are widespread and affecting a large number of people. Anyone can submit a complaint (referred to as a communication), including individuals and NGOs. Two working groups, consisting of independent experts, consider the complaints and if they take on the case or situation, ask the relevant State to submit information on the allegations. This procedure is completely confidential but can be very effective as States do not like to be singled out for investigation. However, this procedure has a number of limitations and is not particularly useful for groups in the UK. This is because the procedure tends to be used in relation to very serious human rights violations occurring on a huge scale in other countries, for example where there has been widespread torture and rape in the context of an armed conflict. Additionally, the process can be very slow and should not be used for urgent matters (it takes up to 24 months to process a complaint) and the confidentiality of the process means that if a case on the UK were to be considered, there would be no possibility of publicity around the case or using the case in policy and campaigning work (the individual/s submitting the complaint are kept informed of the progress of the complaint but nothing is made public).

### Commission on the Status of Women

The **Commission on the Status of Women (CSW)** is a UN policy-making body dedicated exclusively to **gender** equality and the advancement of women. Like the Human Rights Council, it is an inter-governmental body, meaning that it is a body made up of representatives from States serving in their official capacity. Representatives from 45 UN member States make up the CSW at any one time. Every year,
representatives of UN member States meet in New York to evaluate progress on gender equality worldwide. The CSW is the main inter-governmental body responsible for monitoring the implementation of the Beijing Declaration and BPfA (see chapter 4).

Unlike the other UN human rights mechanisms described in this handbook, the CSW does not address the human rights situation in any particular State and instead it focuses on addressing global or regional trends. This means that it is less useful for addressing VAW in the UK, and for policy and campaigning work. However, the CSW does have a communications procedure that individuals and NGOs can use.

**Commission on the Status of Women Communications procedure**

Any individual or NGO can submit information, referred to as a communication, to the CSW about an alleged violation of human rights that affects the status of women in any country in the world.

When the CSW receives a communication about a case or situation in a particular State, it sends the information on to that State and invites the Government to submit a reply within twelve weeks. Each year, before the annual session of the CSW in February or March, the CSW staff prepares a confidential report summarising all of the complaints and State replies received over the year. This document is used to identify “emerging trends and patterns of injustice and discriminatory practices against women for purposes of policy formulation and development of strategies for the promotion of gender equality”.223

It is important to note that this procedure is not intended to provide or recommend a remedy for individuals, or to publicly highlight the situation in a particular State. However, the procedure could offer an additional policy tool for NGOs working on VAW. For example, the CSW complaint procedure could be used to highlight a particular trend, such as the lack of sufficient women’s refuges and specialist women-only organisations providing services to women who are at risk or have experienced VAW. Although the entire process is confidential, the UK Government will be asked direct questions about a particular situation and will be requested to provide answers. This process could have an impact on policy and decision-making because as with other human rights mechanisms, States do not like to be singled out by UN bodies for their record on human rights.

**How to submit a complaint under the CSW communications procedure**

Guidelines on how and where to submit a complaint is available on the CSW website: [http://www.un.org/womenwatch/daw/csw/communications_procedure.html](http://www.un.org/womenwatch/daw/csw/communications_procedure.html)

There is no strict format for submitting information, which could be in the form of a letter to the CSW, but it is a good idea to look at the criteria advertised on the website about the kind of information you should include.

Communications submitted by 1 August each year will be considered by the CSW at its annual session in February/March the following year.
Chapter 10

How to decide which international human rights mechanism to use

Chapters 5-9 of this handbook have set out many different international human rights mechanisms that can be used to influence law and policy on violence against women (VAW) in the UK. The next question is: how to decide which mechanism is the most relevant and useful in a specific situation?

Factors to consider

There are a number of factors to consider when making a decision about the most effective way to address a particular concern using the international human rights mechanisms. In some circumstances, it might be most effective to approach more than one mechanism, although it is important to remember that you cannot submit an individual communication on the same case/s to more than one human rights treaty body.224

Factors to consider include:

- Ethical issues
- Is your concern about a general trend or a specific case?
- Does your concern relate to an individual or group of individuals for whom there is a specific mechanism?
- The urgency of your concern
- The timing of your concern
- The track record of the different mechanisms on VAW

For all of the above factors, remember that if you approach a human rights treaty body, you must check whether the UK is a State party to the treaty and has the authority to consider the kind of submission you are making on the UK.

Ethical issues

Ethical issues must be considered first. If you intend to complain about a specific case, you must obtain the informed consent of the individual/s concerned. This means that the individual/s fully understand what it means to submit a case or complaint to a particular human rights mechanism and the potential risks and benefits of submitting the complaint. It is important to consult with the individuals concerned to find out what their preferred option for action is (if any), and the outcome they expect or desire. The individual/s concerned must be aware of all the pros and cons of the process, and must be aware that none of the mechanisms can issue legally binding decisions on the UK. This means that whilst the various international human rights mechanisms can and do issue concrete recommendations to States about specific action that should be taken when a violation is found, they cannot legally enforce the recommendation.

If your complaint is about a general trend, for example under the early warning measures and urgent procedures of the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD Committee) or the Confidential Inquiry procedure of the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), it is important to consult with the groups affected and their representatives, such as non-governmental organisations (NGOs) working with those people, to choose which mechanism might deliver the best outcome for them.

Is your concern about a general trend or a specific case?

If your concern is about a general trend, law or policy measure

There are a number of options including:

- Submitting information to the Commission on the Status of Women complaints procedure (see chapter 9)
- Requesting that one of the Human Rights Council special procedures (such as the UN Special Rapporteur on violence against women, its causes and consequences) conduct a visit to the UK to investigate the issue (see chapter 9)
- Submitting information and contributing to a ‘shadow report’ to one or more of the human rights treaty bodies when the UK is next scheduled to submit its State report (see chapters 5-8)
- Submitting information to contribute to the Universal Periodic Review when the UK is next scheduled for review (see chapter 9)

If your concern is about a general trend, law or policy measure affecting Black, Asian, Minority Ethnic, Refugee or asylum-seeking (BAMER) women, you might consider:

- Submitting information under the early warning measures and urgent procedures of the CERD Committee (see chapter 5)
If your concern is about a specific case of violence against women

If your concern is about a specific case of VAW (concerning the rights of an individual or group of individuals) you have two options that could be used separately, or together:

- Complain to a human rights treaty body under the individual communications procedure
- Complain to one of the Human Rights Council Special Procedures

**Human rights treaty body individual communications procedure**

You might want to submit an individual communication to one of the human rights treaty bodies with a mandate to consider complaints against the UK.

These are:

- UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) (see chapter 5 and 6)
- UN Committee on the Rights of Persons with Disabilities (CRPD Committee) (see chapter 5)

However, it is important to note that you must have exhausted all domestic remedies before you submit a complaint to a human rights treaty body (unless the remedies available are ineffective or unreasonably delayed). This means that the complainant/s must take their case through the domestic legal system as far as it can go before submitting a complaint to the human rights treaty bodies. In the UK this could mean that an appeal to a higher court has been refused or has failed to deliver an effective remedy.

**Human Rights Council special procedures – communications**

You might also consider submitting a complaint under the communications procedure of one or more of the Human Rights Council special procedures (see chapter 9). You can do this instead of, or as well as submitting an individual communication to one of the human rights treaty bodies.

**Treaty body or special procedure complaint?**

Admissibility considerations:

You do not have to exhaust all domestic remedies before you submit a complaint to one of the Human Rights Council special procedures. This means that if your case has not been taken as far as it can go in the UK domestic courts but you still want to make a complaint, you can submit it to one or more of the Human Rights Council special procedures (but not the treaty body communications procedures, as explained above).

The human rights treaty bodies apply strict admissibility criteria when considering whether or not to take up a case (see chapter 5). It can sometimes be difficult for individuals to meet the admissibility criteria, especially if they have no legal or expert assistance when submitting an individual communication. The CEDAW Committee for example has rejected a high proportion of cases at the admissibility stage of the complaint.

Whilst the Human Rights Council special procedures do require information to be submitted in a particular format (see chapter 9), the admissibility criteria is less strict. This could be a factor to consider in cases where an individual or NGO does not have access to legal or expert advice and support when submitting a complaint.

**Urgent cases:**

The human rights treaty bodies have the power to request that States take interim measures of protection to prevent irreparable harm (harm that is impossible to repair) to a victim of an alleged human rights violation, whilst a complaint is considered under the individual communication procedures (see chapter 5). Similarly, some of the Human Rights Council special procedures can make an urgent appeal to a State when they receive a complaint concerning a very serious human rights violation and when the alleged violation is of an urgent nature, for example when an individual’s life is at risk. This means that both options are useful in urgent cases.

**Outcome or remedy desired:**

Both the human rights treaty bodies and the Human Rights Council special procedures will ask questions, and request a response from the State about the individual case in question, if they decide to take up the case. This is useful as it draws the attention of the State to the fact that the case is being monitored at the international level.

The human rights treaty bodies consider individual cases in more detail and they are likely to issue more detailed and concrete recommendations. The Human rights treaty bodies make a decision in a similar manner to the way that a court makes a decision, about whether or not human rights violations have occurred. This can be useful as it provides a reasoned and authoritative argument as to why the State must act in a certain way to protect the individual’s human rights.

The Human Rights Council special procedures on the other hand do not determine whether or not a violation of human rights has occurred although they may make recommendations to the State concerned.
Does your concern relate to an individual or group of individuals for whom there is a specific mechanism?

If you are considering submitting information to a human rights treaty body, you might want to use one that addresses a specific issue relevant to your concern. For VAW, the obvious treaty body might be the CEDAW Committee. However, if your concern relates to the situation of women with disabilities and VAW, you might prioritise the Convention on the Rights of Persons with Disabilities (CRPD).

Similarly, it is worth checking if there is a Human Rights Council special procedure that is relevant to your concern. Again, whilst the Special Rapporteur on violence against women, its causes and consequences might be the most obvious choice, you could consider submitting information to other special procedures instead, or as well. For example, if your concern relates to a lack of specialist VAW services for ethnic minority women, there are a number of special procedures (depending on the specific details of your complaint) that you might consider submitting information to, such as:

- Special Rapporteur on violence against women, its causes and consequences
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living
- Independent Expert on minority issues

The timing of your concern

For general policy and campaigning work, rather than action on individual cases, the timing of your concern might determine which mechanism you use. For example, you should consider:

- Is one of the human rights treaty bodies due to consider a State report from the UK? (see chapters 5-8)
- When is the next review of the UK under the UPR? (see chapter 9)

It might be that the UK is up for review before a treaty body that you would not immediately consider submitting information to. However, it is worth looking at the concluding observations issued to States parties, general comments/recommendations and jurisprudence of that treaty body to see whether it has addressed any issues of relevance to your concern.

As is set out in chapters 5-8 and 9, these international human rights mechanisms can have a useful influence on law and policy on VAW in the UK if they are provided with reliable information that can be used to make concrete recommendations to the UK Government through the periodic review processes.

The track record of the different mechanisms on violence against women

Finally, it is a good idea to consider the track record of each of the human rights mechanisms and their approach to working on VAW. Some mechanisms will be better at addressing gender issues than others. For example, the Committee against Torture (the human rights treaty body that monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and the Human Rights Committee, (the treaty body that monitors the International Covenant on Civil and Political Rights) have both been criticised in the past for not addressing torture from a gendered perspective. They have however, improved their approach significantly in recent years.
Further reading

General

Useful websites


  Provides details and links to information on the work of all of the UN human rights mechanisms including the human rights treaty bodies and the Human Rights Council.

• International Service for Human Rights website: http://www.ishr.ch/

  Contains information on the UN human rights system generally, and includes detailed pages and links to resources and guides on the work of the Human Rights Council, including the Universal Periodic Review and the Human Rights Council special procedures.

Guidebooks


  This handbook provides a detailed overview of all of the UN human rights mechanisms, such as the treaty bodies, the special procedures of the Human Rights Council, and the Universal Periodic Review.

Human rights treaty bodies (general)


  This guide provides an overview of the work and mandate of all the UN human rights treaty bodies, and how to engage with them.


  This guide provides a basic overview of the work of the UN human rights treaty bodies and how you can engage with them. It also provides information specifically relevant to the UK, such as examples of what the human rights treaty bodies have said to the UK through their concluding observations.

Committee on the Elimination of Discrimination against Women

General

• Rules of procedure of the Committee on the Elimination of Discrimination against Women, online: http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW_Rules_en.pdf

  These are the rules and procedures followed by the CEDAW Committee when it considers reports, communications and inquiries. They are useful because they set out how the Committee considers information from NGOs and explains the process.

• IWRAW Asia-Pacific CEDAW knowledge resource website: http://www.iwraw-ap.org/ knowledge/index.htm

  IWRAW Asia-Pacific is an NGO that has published extensive and detailed information and guidance for NGOs on CEDAW, its Optional Protocol, and how to engage with the work of the CEDAW Committee. This website contains a number of resources.

• UNIFEM website: http://www.unifem.org/cedaw30/success_stories/

  UNIFEM has developed an online toolkit on CEDAW, including information on success stories where NGOs have used CEDAW effectively to influence changes in their own countries.
CEDAW individual communications and inquiry procedure


   This is an in-depth guide, which provides comprehensive information on using the Optional Protocol to CEDAW.


   This guide explains how CEDAW, and in particular, its Optional Protocol, can be used to guarantee the rights of women in the UK specifically.

CEDAW shadow reporting


Human Rights Committee


   This fact sheet has been produced by the UN to provide an overview of the work of the Human Rights Committee.

- Centre for Civil and Political Rights website: http://www.ccprcentre.org/

   This website provides online resources and updates on the work of the Human Rights Committee.

Committee on Economic, Social and Cultural Rights


   This guide provides information on how to draft and submit shadow reports on women’s economic, social and cultural rights to the CEDAW Committee and the Committee on Economic, Social and Cultural Rights.

- ESCR-Net website: http://www.escr-net.org/

   This website provides online resources and updates on the economic, social and cultural rights issues.

Universal Periodic Review


- UPR-info website: http://www.upr-info.org/

   This website provides detailed information on the UPR including detailed information for NGOs wanting to get involved.
Glossary of terms

**Accede**: When a State accedes to a treaty, it confirms that it is legally bound by it in one step, without signing the treaty first.

**Admissibility criteria**: The criteria or factors taken into account by an international human rights mechanism, such as a human rights treaty body, to determine whether or not it will consider a complaint.

**Autonomous non-discrimination provision**: A legal provision, such as a treaty article, that prohibits discrimination in law or in fact in any field regulated and protected by public authorities. These are also referred to as ‘free-standing’ non-discrimination provisions.

**Civil law**: The purpose of the civil law is to uphold individuals’ rights and the purpose of a court hearing in a civil matter is to determine whether those rights have been violated. Civil proceedings are proceedings which are usually brought by one individual against another (rather than by the State against an individual). This means the onus is on the individual to take action themselves, by applying to the civil court. Civil proceedings can involve making a claim for damages (a sum of money) against another individual/company or in the context of violence against women, seeking a court order for personal protection. In England and Wales the Family Proceedings Court, the County Court and the High Court deal with civil matters and have the power to make civil law remedies.

**Civil law remedies**: A civil law remedy is usually obtained through civil proceedings. Civil law remedies include awards of damages (money) or orders for personal protection (injunctions). In England and Wales, civil law remedies for domestic violence include injunctions such as non-molestation orders, occupation orders and harassment orders. A person can seek a civil or criminal remedy or they can attempt to use both (for example, by reporting an offence to the police and applying to court for a non-molestation order). In England and Wales there are circumstances where it is possible for the criminal courts to impose a civil remedy on an individual as a result of criminal proceedings, for example, the imposition of a restraining order following the trial of an alleged perpetrator of harassment.

**Concluding observations / concluding comments**: The observations and recommendations issued by a human rights treaty body after consideration of a State party's report.

**Convention**: See treaty.

**Core international human rights treaties**: See table 1 in chapter 5 for a list of the nine core international human rights treaties.

**Covenant**: See treaty.

**Criminal law**: Is law that governs behaviour which makes a person liable to punishment by the State. The main purpose of criminal law is for the State to punish, deter and condemn behaviour which is deemed criminal, with a view to protecting the public and preventing harm. Criminal proceedings are brought by the State against an individual accused of committing a crime. In England and Wales the Magistrates’ and Crown courts decide whether a person is guilty of a criminal offence and have the power to make criminal remedies.

**Criminal law remedies**: A criminal law remedy is obtained through criminal proceedings. Criminal law remedies are given by the criminal courts and include prison sentences, suspended sentences and community sentences (such as unpaid work). In order to obtain a criminal remedy in England and Wales, for example in relation to an incident of domestic violence, an individual must initiate criminal proceedings by reporting the incident to the police, who will investigate it and pass it to the Crown Prosecution Service, who will make the decision whether to prosecute. If the decision is made to prosecute there will be a trial in the criminal courts. If the perpetrator is found guilty of committing the crime they are accused of, the court can then deliver a criminal remedy, for example by sentencing the perpetrator of domestic violence to a prison sentence for the crime of common assault.

**Dependent non-discrimination provision**: A legal provision, such as a treaty article, that prohibits discrimination only in relation to certain rights or benefits. For example, a treaty article that prohibits discrimination in the enjoyment of other human rights set out in that treaty. This can be contrasted with an autonomous non-discrimination provision.

**Domestic implementation**: Refers to the steps taken by a State to implement international human rights obligations at the domestic level. In the UK these steps include all of the law, policy and other measures that apply in England, Wales, Scotland and Northern Ireland to implement international human rights obligations.

**Domestic law / domestic courts/ domestic remedies**: Domestic law is the law of a particular State (for the UK this means the law in England, Wales, Scotland and Northern Ireland) and domestic courts are the courts in a particular State. Domestic remedies are the procedural means by which rights are enforced in a particular State, or the means by which rights violations are prevented or redressed.

**Due diligence**: The term due diligence broadly means due ‘care’ or ‘attention’. Under international law, the due diligence standard refers to the standard of care
required of States to prevent, investigate, punish and provide remedies for acts of violence regardless of whether these are committed by State or non-State actors.

Equality of outcomes / results: An approach to substantive equality that considers that progress towards equality in practice must be measured by looking at the outcomes or results, for example, “women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision making and political influence”.225

Gender: Refers to the roles, behaviours, identities and attributes that a particular society ascribes to women and men. This often results in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.

Gender identity: Refers to a person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.226

Gender-sensitive: A gender-sensitive approach is one that takes into account the different experiences of women and men because of both their sex and gender. For example, to adopt a gender-sensitive policy, it is essential to take into account the different impact that the policy will have on men and women and if necessary, make sure it contains different provisions for men and women so that it does not have an unintended negative impact on men or women.

General comments / general recommendations: Authoritative guidance issued by a human rights treaty body on the meaning and content of different provisions or articles in the treaty that it is responsible for monitoring. This might be guidance on the meaning and content of a particular human right, a thematic issue, or a procedural matter.

Grave: The word grave is used to indicate the most serious violations of human rights, such as torture.

Ground of discrimination: Refers to the criteria or characteristic upon which a form of discrimination is based, for example race, ethnicity, disability, sex or gender. The prohibited grounds of discrimination in a particular treaty relate to characteristics which a person cannot change, and / or a person should not be forced to change because it is so central to their being or identity.

Human Rights Council: The central human rights body of the United Nations responsible for promoting and protecting human rights around the world. It is a body made up of representatives from States serving in their official capacity.

Human rights treaty body / bodies: A committee of independent experts appointed to monitor the implementation by States parties of the core international human rights treaties. Also referred to as a ‘committee’ or ‘treaty-monitoring body’.

Individual communication: A complaint submitted by or on behalf of an individual who claims that his/her rights under one of the international human rights treaties have been violated by a State party. Only some of the treaty bodies have the authority to consider this kind of complaint.

Interim measures: Powers of an international human rights mechanism, such as a human rights treaty body or special procedure of the United Nations Human Rights Council to request that a State takes urgent action to prevent harm to an alleged victim of a human rights violation that is impossible to repair, whilst the complaint is considered in full.

Inter-governmental organisation / body: An organisation that is mostly made up of States.

International Bill of Human Rights: The term used to refer collectively to the Universal Declaration of Human Rights (UDHR) and two international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Intersectional discrimination: Refers to discrimination that an individual experiences because of a combination of grounds of discrimination.

Jurisdiction: The jurisdiction of a State refers to the territory of the State as well as other areas where it has control (jurisdiction can also refer to the authority or power of a court or tribunal to hear a particular case or dispute).

Jurisprudence: The decisions of a court or bodies that make decisions in a similar way to a court, such as the human rights treaty bodies, on individual cases or complaints.

Mandate: The authority to perform certain functions and powers.

Member State: In this guide, member State refers to one of the 192 States that are members of the United Nations (UN). Where specified, it also refers to a member State of the UN Human Rights Council.

Multiple discrimination: Refers to discrimination that an individual experiences on more than one ground of discrimination, or because of a combination of grounds of discrimination (this form of multiple discrimination is sometimes referred to as intersectional discrimination).

National human rights institution (NHRI): A body set up by a State to operate independently from the Government with the specific role of promoting and protecting human rights. In the UK these are the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission.
Negative obligation/s: The obligations of States under international human rights law not to interfere in the enjoyment or exercise of anyone's rights. For example, the obligation not to commit torture.

Non-governmental organisation (NGO): An organisation that is independent from government control and is non-profit-making.

Non-State actor: An organisation, private company or individual that is not formally associated with the State. These actors could be a member of your family, a bank or corporate enterprise; practically anyone who infringes upon someone’s rights when they are not carrying out a public function, working for, or running contracted services for, a statutory authority.

Object and purpose: The object and purpose of a treaty refers to the reason that a treaty was adopted, or the objective that the treaty seeks to achieve.

Optional protocol: A supplementary treaty that provides additional protection on a particular issue or provides for additional procedures and powers for monitoring the implementation of another treaty. The optional protocol to a treaty is only legally binding on a State when that State has ratified or acceded to it.

Periodic report: See State report.

Positive obligations: The obligations of States under international human rights law to protect individuals from interference of their rights by non-State actors; and fulfil everyone's human rights by taking steps to ensure that in practice, everyone enjoys their human rights. This includes adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of human rights.

Ratify/ratification: The process of ratification is the process by which the State confirms that it is legally bound by a treaty, after it has already signed the treaty.

Remedy: The procedural means by which a right is enforced, or the means by which a violation of a right is prevented or redressed.

Reservation: A statement made by a State upon ratification or accession to a treaty that is made with the intention of excluding or modifying the legal effect of certain parts or provisions of the treaty as they apply to that State. States can make reservations to a treaty when they sign, ratify, or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon ratification.

Resolution: Within the United Nations (UN) system, a resolution is a formal text adopted by a UN body, such as the UN General Assembly.

Respect, protect, fulfil: The obligations of States under international human rights law. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. The obligation to protect requires States to take steps to protect individuals from interference of their human rights by non-State actors. The obligation to fulfill requires States to take steps to ensure that in practice, everyone enjoys their human rights. This includes adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of human rights.

Sex: A person’s sex refers to the biological differences between men and women. Treaty provisions that prohibit discrimination on grounds of sex have been interpreted by some of the human rights treaty bodies to encompass discrimination on grounds of gender.

Shadow report: A report submitted to a human rights treaty body by a non-governmental organisation (NGO) for consideration at the same time as the State report. It is submitted to provide the human rights treaty body with extra information and an alternative view of how the State party has implemented its obligations under the treaty in question (sometimes called an alternative report when the State fails to submit a report).

Sign: When a State signs a treaty, it confirms that it is not legally bound by its provisions. This is a preparatory step indicating a State’s intention to be fully bound by a treaty at a later date.

Special rapporteur: An independent expert who has been given the authority by the United Nations Human Rights Council to monitor and make recommendations on the human rights situation in a particular State, or a thematic human rights concern around the world, such as violence against women.

State actor: An organisation or individual that is carrying out a public function. These actors could be a public authority (such as a police force or local authority) or a private organisation that has been contracted by a public authority to carry out a public function (such as a private security firm contracted to run a detention facility). These actors could also be individuals, such as an individual police officer, nurse, teacher or local counsellor, who breaches an individual’s rights when working in an official capacity.

State: The official institutions responsible for controlling a country, such as local, regional and national government, the police and the army. The word country refers to a geographical area, while the term State refers to the institutions that govern it. In the UK this includes the local, regional and national Governments in England, Wales, Scotland and Northern Ireland.

State party/ States parties: A State party is a State that has consented to be legally bound to implement a treaty, for example by ratifying or acceding to that treaty.

State report: The report that each State party to one of the core international human rights treaties is required to submit periodically to the human rights treaty body that monitors that treaty, setting out the steps it has taken to implement its obligations under...
the treaty (these reports are also referred to as periodic reports or periodic State reports).

**Statutory authority:** An organisation required by law to provide public services.

**Substantive equality:** Equality in fact or in practice. Substantive equality requires differently situated people to be treated differently, according to their individual circumstances, so that they can realise their capabilities and participate in society as equals. Also sometimes referred to as *de facto* equality in some treaties, which in Latin means ‘in fact’.

**Systematic:** The word systematic is used to refer to human rights violations that are widespread or are committed as part of a policy or scheme.

**Temporary special measures:** A range of time-bound, targeted law and policy measures that are adopted to correct disadvantage experienced by groups who share particular characteristics and to accelerate progress towards equality for those groups. Sometimes referred to as special measures, affirmative action measures, positive measures or positive action measures.

**Treaty:** A legally binding agreement between two or more States. A treaty might also be called a convention or a covenant.

**United Nations (UN):** An international intergovernmental organisation established in 1945 which is concerned with the maintenance of international peace and security. It is currently made up of 192 member States and its stated aims are to maintain international peace and security; develop friendly relations among nations and promote social progress, better living standards and human rights. It provides a forum for its 192 member States to express their views and can take action on a wide range of issues.

**United Nations General Assembly:** One of the main organs of the United Nations (UN). It is the main policymaking body that is comprised of all 192 UN member States. It provides a forum for discussion between States around the world on important issues such as peace and security. It meets every year between September and December, as well as at other times as required. It cannot issue legally binding decisions but its recommendations are an important indication of world opinion and have political and moral authority. Each member State has one vote.
The Organisation of American States (OAS) has adopted the Inter-American
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Charlesworth and Chinkin, The boundaries of international law, a feminist

CEDAW Committee, General Recommendation No. 25: Temporary special

Theresa May, Home Secretary and Minister for Women and Equality, stated

UN Committee on the Elimination of Discrimination against Women

Upon signature of the UN Convention on the Rights of Persons with

You can view the Universal Declaration of Human Rights (UDHR) online:

These four sources of international law are set out in Article 38 (1) of the

Statute of the International Court of Justice.

Upon signature of the UN Convention on the Rights of Persons with Disabilities (CRPD) on 30 March 2007, the UK entered the following reservation: “The United Kingdom reserves the right to apply such legislation, insofar as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, as it may deem necessary from time to time.” A full list of the UK’s reservations to the CRPD is available on the UN website:

UNICEF, UK Government withdraws reservations to UNCRC, 22 September 2008, online:

UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 19: Violence against women.

Theresa May, Home Secretary and Minister for Women and Equality, stated at the Annual Women’s Aid National Conference 2010 that, “I agree with the UN’s definition of violence against women and I will ensure it informs our work across government”. The full text of the speech is online at:

UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 19: Violence against women, para 6.


Yakin Ertürk, former UN Special Rapporteur on Violence against Women, its causes and consequences, Violence against Women: From Victimization to Empowerment, 2008, online:

CEDAW Committee, General Recommendation No. 25: Temporary special measures.


Charlesworth and Chinkin, The boundaries of international law, a feminist analysis, MUP, 2000.

The Organisation of American States (OAS) has adopted the Inter-American Convention of the prevention, punishment and eradication of violence against women (Convention of Belém Do Pará). However, this treaty has been specifically adopted under the inter-American regional system and whilst it is a very positive development that can and should be used to influence and persuade the development of international law elsewhere, it has little influence on the actions of States outside of the Americas.

This list is set out in the CEDAW Committee’s General Recommendation No. 19. It is not exhaustive, and other human rights are relevant to violence against women.

UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14. The right to the highest attainable standard of health, para 33.

This reasoning was set out by the European Court of Human Rights in relation to the right to life under article 2 of the European Convention on Human Rights, in the case of Dovan v United Kingdom, Judgment of 29 October 1998, application no. 23452/94 and in relation to the prohibition of ill-treatment under article 3 in the case of 2 and Others v the United Kingdom, Judgment of 10 May 2001, application no. 29392/95.

For information about the civil law remedies available to women who have experienced or who are at risk of violence against women in England and Wales, see Rights of Women’s legal guide, A guide to domestic violence injunctions, online:

CEDAW Committee, General Recommendation No. 19: Violence against women, para 24 (iiii).

CESCR, General Comment No. 14: The right to the highest attainable standard of health, para 23.

CESCR, General Comment No. 13: The right to education, para 47; General Comment No. 12: The right to adequate food, para 15; General Comment No. 14: The right to the highest attainable standard of health, para 23.

CESCR, General Comment No. 16, para 21.

For further discussion see Chinkin, Christine., A Critique of the Public/Private Dimension, in European Journal of International Law, EJIL, 10, 1999, p387-395.


International Covenant on Civil and Political Rights (ICCPR), article 2(1).

CESCR, General Comment No 2: The nature of States parties obligations.

Human Rights Committee, General Comment No. 18: Non-discrimination.

This is the definition adopted by the UN Human Rights Committee, interpreting State obligations under the International Covenant on Civil and Political Rights (ICCPR). See Human Rights Committee, General Comment No. 18: Non-discrimination. The text of the ICCPR does not define what discrimination is, but this definition is generally accepted as the international definition. It broadly reflects the definition of discrimination contained in the text of other human rights treaties dealing with specific issues, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of Persons with Disabilities (CRPD). The Committee on Economic, Social and Cultural Rights (CESCR), interpreting State obligations under ICESCR, has also set out a similar definition of discrimination.

For example, sexual orientation is not explicitly mentioned in either the ICCPR or the ICESCR but the Human Rights Committee and CESCR have declared sexual orientation to be a prohibited ground of discrimination because it is comparable to the other grounds. See for example, CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, para 27.

See International Gay and Lesbian Human Rights Commission, Equal and Indivisible: Crafting Inclusive Shadow Reports for CEDAW, online:


See for example the decision of the European Court of Human Rights (ECHR) in the case of Thlimmenos v. Greece, where the court held that “the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.” Thlimmenos v. Greece, application no. 34369/97, judgment of 6 April 2000, para. 44.

This reasoning was set out by the ECHR in the Belgian Linguistics Case, 1 ECHR 578 p.252, and has been applied by the Human Rights Committee in its General Comment No. 18: Non-discrimination.

For more information on the Equality Act 2010, see Government Equalities Office, Equality Act 2010: What do i need to know? A Summary guide for voluntary and community sector providers, online:
This definition has been adapted from Government Equalities Office, Equality Act 2010. What do I need to know? A Summary guide for voluntary and community sector providers, online: 

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For more information on these rules and the financial and other support options that may be available to women with an insecure immigration status in the UK, see Rights of Women’s legal guide Seeking Refugee? Domestic violence, immigration law and “no recourse to public funds”, online: 


Schiek, Waddington and Bell, Cases, Materials and Text on National, Supranational and International Non-discrimination law, Ius Commune Casebooks; for the common law of Europe, Hart Publishing, 2007, p266. See also CESCR, General Comment No.16. The equal right of men and women to the enjoyment of all economic, social and cultural rights, para 10, where CESCR States that “(t)he principle of non-discrimination is the corollary of the principle of equality”.

CEDAW Committee, General Comment No. 16. The equal right of men and women to the enjoyment of all economic, social and cultural rights.

Example adapted from Fredman and Spencer, Beyond discrimination: its time for enforceable duties on public bodies to promote equality outcomes, European Human Rights Law Review, 2006.


The Human Rights Committee uses the term “affirmative action”, see Human Rights Committee, General Comment No 18: Non-discrimination, para 10. CESCR, General Comment No. 2: Implementation of article 2 by States parties, para 25-6.

CEDAW Committee, General Recommendation No. 25: Temporary Special Measures.

CEDAW Committee, General Recommendation No. 25: Temporary Special Measures.

CEDAW Committee, General Recommendation No. 25: Temporary Special Measures. 

CEDAW Committee, Concluding observations: The Netherlands, UN Doc. CEDAW/C/NLD/CO/5, 2009. 

The CEDAW Committee has set out that any act of violence against women can be addressed through the comprehensive obligation to eliminate all forms of discrimination against women under CEDAW articles 2 and 3 in addition to the other substantive provisions of CEDAW under articles 5-16, regardless of whether they mention violence. See its General Recommendation No. 19: Violence against women, paras 6 and 10.


CEDAW Committee, General Recommendation No. 28, para 9.


see UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 15 January 2008, UN Doc. A/HRC/7/3, para 30. See also the decision of the Committee against torture (CAT Committee) in V.I. v. Switzerland, CAT/C/37/D/262/2005, CAT Committee, 20 November 2006, para 8.10, a rape case where the CAT Committee determines that the purpose here is satisfied on a number of grounds including:  
interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender.


62 CAT Committee, General Comment No. 2, Implementation of article 2 by States parties, para 21. 


64 Human Rights Committee, General Comment No. 20: Concerning prohibition of torture and cruel treatment or punishment, para 4.

65 For information on protection from non-refoulement in UK law, see Rights of Women’s legal guide Seeking Refugee? A Handbook for asylum-seeking women, online: www.rightsofwomen.org.uk.

66 CAT Committee, General Comment No. 2: Implementation of article 2 by States parties, para 21.

67 The UN Special Rapporteur on torture other cruel, inhuman or degrading treatment or punishment has also stated that in the refugee context, even where there is no risk of torture on return to another country, if the woman concerned has experienced IAW in the past in that country, “re-exposure to the stimulus might constitute psychological torture (e.g. when medical expertise indicates that there might be a risk of suicide if a survivor is returned)” and in the refugee context, even if there is no risk of future persecution, past persecution may nonetheless warrant granting of international protection. See UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, 12 January 2008, UN Doc. A/HRC/7/3, para 59.

68 This standard has been developed by the European Court of Human Rights and followed by UN human rights treaty bodies. See, European Court of Human Rights, Dorman v. the United Kingdom, judgment of 28 October 1998. See also the reasoning of the CEDAW Committee in CEDAW Committee, Şahide Goecke v Austria, Communication No. 52/2005, views adopted 6 August 2007.

69 European Court of Human Rights, Opuz v. Turkey. European Court of Human Rights, Application No. 334/01/02, judgment of 9 June 2009.

70 Human Rights Committee, General Comment No 6: The right to life, para 5.

71 Concluding Observations of the Human Rights Committee: Gambia, UN Doc. CCPR/C/GMB/CO/1, 12 August 2004, para 17.

72 Concluding observations of the Human Rights Committee: Poland, UN Doc. CCPR/C/PO/CO/47, 27 October 2010, para 12.

73CESSR, General Comment No. 14: The right to the highest attainable standard of health, paras 8 and 9.

74 CESC, General Comment No. 14: The right to the highest attainable standard of health, para 4.

75 This section is paraphrased from the CESC, General Comment No. 14: The right to the highest attainable standard of health.

76 CESC, General Comment No. 14: The right to the highest attainable standard of health.

77 UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 19: Violence against women (hereinafter, CEDAW Committee, General Recommendation No. 19).

78 UN Declaration on the Elimination of Violence against Women, UN General Assembly resolution 48/104, 20 December 1993 (hereinafter, DVAW).

79 Beijing Declaration and Beijing Platform for Action (BPfA), adopted at the Fourth World Conference on Women, Beijing, China, 15 September 1995 (hereinafter, BPA).

80 In particular, DVAW and the BPA contain certain provisions in common.

81 BPA, Chapter I, para 1.

82 BPA, Chapter I, para 1.

83 BPA, Chapter I, para 3 and BPA, Chapter IV, paras 45 - 46.

84 UN, Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties, UN Doc. HRI/RIN/1/Rev.1/Add.2, para G, 1, 5 May 2007.

85 For more information and analysis on UK progress implementing the BPA in relation to violence against women, see Rights of Women, Measuring up? UK compliance with international commitments on violence against women, June 2010, online: www.rightsofwomen.org.uk.

86 CEDAW Committee, Concluding observations: United Kingdom of Great Britain and Northern Ireland, UN Doc. CEDAW/C/UK/COD, 10 July 2008, para 297.

87 BPA, Chapter IV (D), para 113; DVAW, article 1.

88 CEDAW Committee, General Recommendation No. 19, para 6.

89 BPA, Chapter IV (D), para 112; DVAW, article 1; CEDAW Committee, General Recommendation No. 19, para 7.

90 BPA, Chapter IV (D), para 117; DVAW, preamble: CEDAW Committee, General Recommendation No. 19, para 11.

91 BPA, Chapter IV (D), para 118; DVAW, preamble.

92 CEDAW Committee, General Recommendation No.19, para 25.

93 BPA, Chapter IV, Strategic Objective D.1, para 124 (a).

94 BPA, Chapter IV, Strategic Objective D.1, para 124(b).


CESCR, General Recommendation No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights, paras 1-3.

CESCR, General Recommendation No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights, para 10: “The principle of non-discrimination is the corollary of the principle of equality.”

CESCR, General Recommendation No. 20: Non-Discrimination in Economic, Social and Cultural Rights, para 8(b) and General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights, paras 6-8.

CESCR, General Recommendation No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights, para 5.


See Amnesty International, United Kingdom: Briefing to the Committee on Economic, Social and Cultural Rights, April 2008, online: http://www2.ohchr.org/english/bodies/bodies/cescr/cescr42.htm.

This overview includes forms of VAW addressed during the 42-44th sessions of CESC.

See CESC, Concluding observations issued during its 42-44th sessions to Afghanistan, Algeria, Australia, Brazil, Cambodia, Chad, Colombia, Cyprus, Democratic Republic of Congo, Kazakhstan, Madagascar, Mauritius, Poland, Republic of Korea and United Kingdom.


For example, CESC, Concluding observations: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, UN Doc. E/C.12/GBR/CO/5, 12 June 2009.

See the Human Rights Council website: http://www2.ohchr.org/english/bodies/hrcouncil/.

In 2011, the Human Rights Council was undergoing a review of its work and functioning, following the adoption of UN General Assembly resolution No. 60/251 on 3 April 2006. The Universal Periodic Review (UPR) was under review as part of this process. By December 2010, a number of proposals were under consideration, including changes the periodicity of the review (such as to proposal to change the review to a five-year cycle). For updates and information on the outcome of the review see the UPR pages on the Office of the High Commissioner for Human Rights (OHCHR) website: http://www2.ohchr.org/en/HRBodies/UPR/Pages/UPRMain.aspx. The website of the non-governmental organization (NGO) Universal Periodic Review (UPR) also contains useful information and updates: http://www.upr-info.org/.

NGOs with consultative status with ECOSOC can attend UPR sessions. You can find out about what this is and how to get consultative status with ECOSOC on the UN website: http://esango.un.org/paperless/Web?page=static&content=intro.

This will be subject to the outcome of the review on the work and functioning of the Human Rights Council that was ongoing in 2011. It is possible that the next review of UK will be held at a later date.


The full title of this special procedure is the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.


The treaty bodies will also not consider an individual communication that has already been considered or is under consideration by another international or regional human rights complaint mechanism, such as the European Court of Human Rights or the European Court of Justice.

CEDAW General Recommendation No. 25: Temporary Special Measures.

Every year in the United Kingdom (UK) it is estimated that 3 million women experience violence including domestic violence, rape and sexual violence, sexual harassment, female genital mutilation, forced marriage, crimes in the name of honour, trafficking and sexual exploitation.

Generally speaking, the UK has comprehensive law and policy on violence against women as well as strong mechanisms for promoting and enforcing the law. However, as our research report *Measuring up? UK compliance with international commitments on violence against women in England and Wales* found, there are gaps and very often the implementation of those laws and policies fall short in ensuring women effective protection and remedies to address the violence in their lives.

International law provides a framework for ensuring that women in the UK are adequately protected from violence. *From Rights to Action* is a vital resource for non-governmental organisations (NGOs), such as women’s organisations, working to support women affected by violence in the UK. It is essential reading for all those who seek to ensure a future free from violence for all women.

Rights of Women aims to achieve equality, justice and respect for all women. From Rights to Action provides a practical introduction to the international human rights law, policy and mechanisms relevant to combating violence against women and how they relate to law and practice in the UK.

Too often, international human rights laws and the mechanisms to enforce them are presented in an overly legalistic way.

This handbook seeks to demystify the law around human rights and empower organisations working to promote women’s rights to apply human rights in their work to influence law, policy and practice on violence against women.