**Response by Commissioner Lucy Asuagbor**

**(Special Rapporteur on the Rights of Women in Africa)**

**To Dr. Dubravka Šimonović**

 **(UN Special Rapporteur on violence against women, its causes and consequences)**

**On questions on the adequacy of the legal framework on violence against women.**

1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?

Violence against women (VAW) is pervasive; contextually/culturally justified; and increasingly condoned, normalized even anticipated in the world today. VAW constitutes a violation of human rights whose nature of violation consequently impairs or hinders the enjoyment of other rights. Acutely, VAW undoubtedly violates women’s dignity; this violation touches the very core of the *rasion d'être* for human rights, which is considered to be the recognition and protection of human dignity that is inherent and inalienable.

Presently, VAW has evolved and is understood to envisage various forms ranging from the family and community setting to state perpetrated/ condoned VAW. Its scale and impact today is considered to amount to gross and systemic violation of human rights with potential for deterioration. Faced with a comparable watershed, history and human rights practice thus far offer some insights. Historically, the atrocities of the Second World War prompted the global codification of human rights norms via the UN Charter and the Universal Declaration of Human Rights, which instigated the birth of the contemporary human rights movement. In practice, whenever a violation is codified in a global treaty, the broad understanding is that the issue is so grave that it warrants international attention. It follows therefore that we have on the global front conventions or treaties on genocide, war crimes, crimes against humanity *et cetera*.

Following this argument, then certainly VAW should have its own global treaty. A global VAW treaty would present a much-needed global recognition of the present scourge and scale of VAW, a universal commitment to resolve the same, the prospect for imposing upon States specific obligations and along with it an avenue for state/perpetrator accountability and justice for victims. While these aspects are provided for presently in the VAW legal architecture, they are mainly to be found through fragmented norms or instruments whose legal binding nature is largely inferred and not express.

In addition, a global VAW treaty with firm accountability mechanisms would likely succeed on account of the concept of acculturation[[1]](#footnote-1), which is a mechanism of social influence that influences States in ratification and compliance where nonconformity and deviance on the part of States draws shaming, shunning and exclusion. The attention that a global VAW treaty would draw is the momentum that would trigger this mode of influence thereby forcing states to espouse higher ideals in matters of VAW.

While a global VAW treaty would certainly present the prospect of a turning point in the narrative of State/perpetrator impunity; we must also be careful not to engage in a zero sum game. Having established at least in theory that there is need for a global VAW treaty, some counter arguments and practical considerations must be borne in mind.

The main counter argument that could be proffered is that the real challenge in dealing with the issue of VAW does not lie in the legal inadequacies but rather more in implementation. If this is the case, a global VAW treaty in this instance would therefore suffer the same challenge of non-implementation. Further, there is agreement that international incentives and pressure to conform play a significant role in influencing states to ratify human rights treaties. Domestic pressure particularly when a government wants to boost its reputation at home can also lead a State to accede to a human rights document. Coupled together, this means that States often end up making human rights commitments that they have not thought through in terms of actual feasibility. Worse still, States even sign up to commitments they have no intention of keeping.

Another objection that has been expressed against a global VAW treaty is that some regions like Africa, Europe and Inter America could rightfully claim that there is no normative gap. In light of this, a campaign to develop, ratify and implement an additional treaty mechanism would divert efforts and resources that would be better spent towards strengthening the existing regional systems of protection. However, this objection can be countered by the fact that Asia and the Oceania regions do not share this benefit of regional protection yet we know that very grave manifestations of VAW occur in the Arab world, South-East Asia, Oceania and Asia generally.

Overall, it is clear that the question on the adequacy of the VAW legal framework is highly nuanced and does not lend itself to a simple yay or nay. What is clear is that a separate global VAW treaty may not be the panacea that it is made out to be. However, a global treaty would certainly not impede or nullify progress towards dealing with VAW. If careful formulation and strategy is employed, it could in fact result in gains for the increased protection of women.

1. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?

Ideally, the distinction between human rights norms and standards at the international and regional fronts can be deemed to be less of a gap and instead viewed as a cultural relativity response. In fact, one of the justifications for having in place regional human rights systems is to present an avenue to realize international human rights standards through a regional lens that takes into account the context and peculiarities of each region.

In practice for instance, in the African human rights system we have the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol). Contrasted against CEDAW, the differences in provisions and protections offered do not present a gap. In fact, the Maputo Protocol has been lauded for its progressive stance and what is more for being responsive to VAW from an African context for instance through the provisions that prohibit female genital mutilation.

1. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?

I believe this to be true to a very large extent. There is critical challenge of implementation of international and regional standards into domestic law.

Under international law, it is considered that human rights largely allocate to states the “obligation of result” ‘since they do not prescribe precisely how the relevant rights are to be respected, and they are consistent with a diversity of law and institutions’.[[2]](#footnote-2) Under this obligation, states enjoy discretion as to the means with which to implement human rights norms. This may be contrasted with the “obligation of conduct” that is deemed to be stricter owing to more specificity as to what exactly is expected of the state.[[3]](#footnote-3) The discretion extended to states is well informed and backed by arguments for sovereignty and the doctrine of margin of appreciation. This discretion however no doubt accounts for the huge implementation problem that is facing VAW norms. This problem is twofold; in the first instance, in the process of domestication, international norms encounter specific country contexts, predominant cultural practices and such other peculiarities that inadvertently weaken the intended human rights protection. In the second instance, governments may simply not have the political will to fulfill their commitments and therefore blatantly fail to domesticate VAW norms and such conduct fails to attract responsibility on the part of the state ostensibly owing to the obligation of result i.e. if an actual violation with a victim has not presented itself, then there are hardly any international avenue to legally hold a state accountable for its omissions in this case the failure to domesticate VAW norms. This initial failure to domesticate or to do so in good faith then consequently creates an environment where VAW can thrive with impunity.

1. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?

As previously highlighted, international standards differ from regional standards that collectively suffer a lack of implementation at the domestic level. The resultant fragmentation works to the disadvantage of victims who may be faced with several but non-inclusive and non-complementary avenues of redress. In this instance, a global VAW treaty that prescribes clear and legally binding enforcement mechanisms at both the international and domestic levels could achieve some useful harmony.

1. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?

I believe that the most significant measures that need to be taken are those that will reverse the present narrative on state and perpetrator impunity in instances of VAW and turn it into a narrative of accountability. This differs from region and country but involves the espousal and implementation of human rights standards that guarantee accountability. This can be through the availability of legal avenues to hold perpetrators to account through complementarity mechanisms where justice for victims can be sought internationally particularly for gross or systemic violations as well as the presence of an effective domestic criminal justice system since enforcement mechanisms have better success rates when domestic in nature.

Should a global VAW treaty be adopted, there is need to ensure that it addresses the present lacuna whereby legal obligations are crafted generally whereas specific guidance is contained in non-binding documents.

In concluding, the fostering of cooperation among international and regional accountability mechanisms in identifying solutions at the global level will certainly lead to the formulation of harmonious standards and measures that are cognizant of the nuances and complexities of VAW as well as the lived realities of victims from across the globe.

1. For a more detailed discussion on acculturation and the mechanisms of social influence that influence state behavior see; ‘When do states comply with international treaties? Policies on violence against women in Post-communist countries’ Olga Avdeyeva *International Studies Quarterly* 51(2007) 877 – 900. [↑](#footnote-ref-1)
2. Second report on State responsibility by Mr. James Crawford, Special Rapporteur, ILC, 51st sess., UN Doc. A/CN.4/498 (1999), para. 54. [↑](#footnote-ref-2)
3. For a more detailed discussion on these obligations see n2 above;

‘Establishing state responsibility for breaching human rights treaty obligations: Avenues under UN human rights treaties’ Ineke Boerefijn *Netherlands International Law Review* (2009) 167 – 205; and

‘Revising the draft articles on state responsibility’ James Crawford *European Journal of International Law* 10 (1999) 435 – 460. [↑](#footnote-ref-3)