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Bridging the Definitional Gap In International Human Rights Law: A Comparative Analysis of Cedaw and Devaw on Gender-Based Violence In Turkey, Indonesia, and South Africa

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Abstract

International human rights law still relies on a definition of gender-based violence that many scholars regard as doctrinally incomplete. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) frames gender-based violence chiefly as a manifestation of discrimination, whereas the Declaration on the Elimination of Violence against Women (DEVAW) treats it as a distinct category of harm covering physical, sexual, and psychological suffering. This article argues that the divergence between the two framings contributes to inconsistent judicial and legislative responses to gender-based violence across states. The findings show three distinct pathways to the same failure: Turkey's 2021 withdrawal from the Istanbul Convention, Indonesia's uneven enforcement of Law No. 12 of 2022 on the Crime of Sexual Violence despite its comprehensive text, and South Africa's persistent implementation gap under the National Council on Gender-Based Violence and Femicide Act of 2024, whose own definition already mirrors DEVAW's broader scope.

Keywords: *Gender-Based Violence, International Human Rights Law, Comparative Legal Analysis.*

Abstrak

Hukum hak asasi manusia internasional hingga kini masih bertumpu pada definisi kekerasan berbasis gender yang oleh banyak sarjana dinilai belum memadai secara doktrinal. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) memaknai kekerasan berbasis gender terutama sebagai bentuk diskriminasi, sementara Declaration on the Elimination of Violence Against Women (DEVAW) memperlakukannya sebagai kategori kerugian tersendiri yang mencakup penderitaan fisik, seksual, dan psikologis. Artikel ini berargumen bahwa perbedaan pemaknaan tersebut turut menyumbang pada inkonsistensi respons yudisial dan legislatif terhadap kekerasan berbasis gender di berbagai negara. Hasil penelitian menunjukkan tiga jalur berbeda menuju kegagalan yang sama: penarikan diri Turki dari Konvensi Istanbul pada 2021, lemahnya penegakan Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual di Indonesia meskipun substansinya cukup komprehensif, dan kesenjangan implementasi yang terus berlangsung di Afrika Selatan di bawah National Council on Gender-Based Violence and Femicide Act 2024, yang definisinya sendiri sebenarnya telah sejalan dengan cakupan DEVAW.

Kata Kunci: *Kekerasan Berbasis Gender, Hukum Hak Asasi Manusia Internasional, Analisis Hukum Komparatif.*

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INTRODUCTION

The call for gender equality has not lost its urgency. It grows out of a persistent sense of injustice among people who feel classified, and consequently limited, by gender. During the colonial period in Indonesia, women were routinely excluded from public participation for no reason other than their sex. The social construct confined women to "sumur, dapur, kasur" the well, the kitchen, and the bed positioning them as household labourers and, more troublingly, as objects of sexual availability. This construct implied that women needed neither formal nor informal education to fulfil their assigned roles.

The consequences of that construct outlived colonialism. Gender-based classification has continued to restrict women's access to education and, in the workplace, to hiring and advancement, on the assumption that women cannot perform complex tasks. These patterns of exclusion are themselves a form of discrimination, and they form part of the broader continuum that produces gender-based violence a category of harm that, contrary to a still common assumption, is not confined to women alone.

Joan W. Scott[1] reframed this history by treating gender not merely as a social construct layered over biological sex, but as an analytical category in its own right, a primary way of signalling power relations between men and women. Scott[2] argued that the history of feminist thought is, at its core, a history of contesting the hierarchical relationship between the sexes and of attempting to reverse its operation. Read this way, a woman's identity is not a fixed biological fact but a product of the social and political processes she enters, and of the cultural symbols made available to her. Scott[3] thus supplies the conceptual starting point for this article, if gender is a signifier of power, then the legal definitions used to describe violence rooted in that power relation carry real consequences for how such violence is recognised, prosecuted, and prevented.

That consequence is precisely what current international human rights law struggles to manage. Deane[4] has shown that although the international legal framework on violence against women has been repeatedly reformed since the 1990s, the underlying conception of gender-based violence remains confused, and Tchoukou[5] argues more pointedly that international human rights law continues to be silent on the specific wrongfulness of gender-based violence as such, choosing instead to route it through the language of discrimination. CEDAW, the most widely ratified instrument on women's rights, exemplifies this silence its Article 1 defines discrimination against women without naming violence as a distinct legal wrong, leaving that task to a later, non-binding instrument DEVAW, whose broader definition has never been formally absorbed into CEDAW's text. The result is not a merely semantic disagreement between two United Nations instruments, it is a doctrinal gap that individual states are left to fill according to their own political will, which, as the case studies below demonstrate, they do unevenly.

This article is guided by three research questions. First, how does the definitional divergence between CEDAW and DEVAW contribute to inconsistent judicial and legislative responses to gender-based violence at the domestic level? Second, how is that divergence manifested in the legal frameworks of three CEDAW state parties, Turkey, Indonesia, and South Africa? Third, what interpretive or legislative reforms could reconcile the two instruments so as to strengthen the international standard on gender-based violence?

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[1]Joan Wallach Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988).
[2]Scott.
[3]Scott.
[4]Tameshnie Deane, "Gender-Based Violence in International Human Rights Law: The Efficacy of the United Nations Human Rights Legal Framework and CEDAW in Addressing the Issue," *The Age of Human Rights Journal* 23 (2024): 1-32, https://doi.org/10.17561/tahrj.v23.8662.
[5]Julie Ada Tchoukou, "The Silences of International Human Rights Law: The Need for a UN Treaty on Violence Against Women," *Human Rights Law Review* 23, no. 3 (2023): 1-36, https://doi.org/10.1093/hrlr/ngad016.

The existing literature tends to treat these questions separately. Feminist legal scholars such as Charlesworth, Chinkin, and Wright, and later Romany, have examined CEDAW's discrimination based framing largely as a matter of doctrine and theory, while comparative studies such as those of Deane and Ziniakova examine state compliance without placing the CEDAW-DEVAW definitional debate at the centre of the analysis. Country specific literature on Turkey's withdrawal from the Istanbul Convention, and on Indonesia's 2022 Law on the Crime of Sexual Violence, in turn rarely engages with the definitional debate at all. This article's contribution is to connect the three: it uses the CEDAW DEVAW definitional gap as a single analytical lens through which to read three structurally different national trajectories.

Turkey, Indonesia, and South Africa were chosen deliberately rather than for convenience. All three are CEDAW state parties, all three report persistently high or rising levels of gender-based violence notwithstanding ratification and each illustrates a different mechanism by which the definitional gap translates into domestic failure. Turkey shows what happens when a state formally exits a treaty that had already closed part of the definitional gap. Indonesia shows what happens when a state newly codifies a comprehensive definition into domestic criminal law but cannot yet enforce it evenly across a patriarchal society. South Africa shows that even a domestic definition that already mirrors DEVAW's broader scope does not by itself guarantee protection, because implementation depends on institutional capacity that legislation alone cannot create. Read together, the three cases allow the study to isolate the definitional variable from the enforcement variable, something a single country study cannot do.

The remainder of the article proceeds as follows. Section 2 reviews the literature on gender as an analytical category, on the concept of gender-based violence, on the CEDAW DEVAW definitional debate, and on the feminist legal critique of CEDAW's discrimination framing, before identifying the research gap this study addresses. Section 3 explains the descriptive-qualitative method, including the search strategy, inclusion and exclusion criteria, and the analytical framework. Section 4 presents the results and discussion, first setting out the definitional comparison between CEDAW and DEVAW, then examining Turkey, Indonesia, and South Africa in turn, and finally synthesising the three cases and engaging directly with the strongest counter-argument to the article's thesis. Section 5 concludes by answering the three research questions and proposing concrete reforms.

LITERATURE REVIEW

Gender

Lindqvist, Gustafsson Sendén, and Renström[6] reviewed how gender has been operationalised in empirical research and found that it is rarely treated as binary in the way sex is. Their review identifies four distinct components of gender, physiological or bodily aspects, self defined gender identity, legal gender, and gender expression. Social scientific research, they observe, tends to concentrate on gender expression while paying less attention to the legal and physiological components an imbalance that matters for law, because legal instruments must be able to speak to all four components if they are to describe gender-based harm accurately.

This multiplicity helps explain a recurring confusion between gender and sex. As Reckelhoff[7] notes, sex is a biological classification that can, in principle, be applied across species, whereas gender is a social category that applies only within a human social environment. Conflating the

[6]Anna Lindqvist, Marie Gustafsson Sendén, and Emma A. Renström, "What Is Gender, Anyway: A Review of the Options for Operationalising Gender," *Psychology and Sexuality* 12, no. 4 (2021): 332-44, https://doi.org/10.1080/19419899.2020.1729844.

[7]Jane F. Reckelhoff, "Is My Study Sex or Is It Gender?," *Hypertension* 80, no. 3 (2023): 497-99, https://doi.org/10.1161/HYPERTENSIONAHA.122.20745.

two, as some legal texts still do, risks importing a biological determinism into instruments that are meant to describe socially constructed harm.

Violence and Gender-Based Violence

Violence, as a general category, has attracted sustained scholarly attention precisely because its forms keep expanding. Fagerlund et al.[8] define violence broadly as an act that harms another person or group, arising from disputes, conflicting interests, or unresolved conflict, and occurring in settings as varied as the home, the school, the workplace, and public facilities. Gender-based violence is a subset of this broader category, distinguished not by the form the violence takes but by the fact that it is directed at a person because of their gender, or affects persons of a particular gender disproportionately.

International human rights law has been slow to name this distinguishing feature explicitly. Tchoukou[9] argues that the language used in legal instruments has the power to reinforce or dismantle the social structures that produce violence in the first place; a legal text that folds gender-based violence into the broader and older category of "discrimination" risks obscuring the specific power relation that makes the violence gendered.

Comparing the CEDAW and DEVAW Definitions

CEDAW's Article 1 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… of human rights and fundamental freedoms."*[10] Violence is not named in this text. DEVAW, adopted fourteen years later, closes part of that gap by defining violence against women as *"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."*[11] Unlike CEDAW, DEVAW is a General Assembly declaration rather than a binding treaty, so it carries persuasive rather than obligatory force.

The CEDAW Committee has partly bridged this gap through interpretation rather than amendment. General Recommendation No. 35 of 2017 updates the Committee's earlier General Recommendation No. 19 and explicitly reads gender-based violence into Article 1 as a form of discrimination that engages state responsibility, drawing on the language later developed in DEVAW and in the Istanbul Convention.[12] This soft law bridge is significant, and it is discussed further in Section 4, but it does not resolve the underlying doctrinal problem: General Recommendations interpret a treaty, they do not amend it, and their domestic reception depends on how seriously individual states treat CEDAW Committee jurisprudence in the first place.[13]

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[8]Monica Fagerlund et al., "Conceptualising Violence in Close Relationships: Discrepancies Between Police Conceptions and the Letter of the Law in Finland," *European Journal on Criminal Policy and Research* 28, no. 1 (2022): 37-56, https://doi.org/10.1007/s10610-020-09448-1.

[9]Tchoukou, "The Silences of International Human Rights Law."

[10]Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981), art. 1.

[11]United Nations General Assembly, Declaration on the Elimination of Violence against Women, UNGA Res. 48/104, 20 December 1993, art. 1.

[12]Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, paras. 1-9.

[13]CEDAW Committee, General Recommendation No. 35, paras. 9-10, reading Article 1 of CEDAW together with the definition of violence contained in General Recommendation No. 19 and DEVAW.

The choice to define gender-based violence through the lens of discrimination has drawn sustained feminist legal criticism. Charlesworth, Chinkin, and Wright[14] argue that international law in general, and human rights law in particular, developed around an implicitly male subject, so that harms experienced disproportionately by women including violence in the domestic sphere were historically treated as private matters outside the reach of public international law. Romany[15] extends this critique specifically to the public/private distinction embedded in CEDAW's discrimination framing, arguing that equating gender-based violence with discrimination can inadvertently reproduce the assumption that violence within the family is a private matter for the state to regulate only indirectly, through anti-discrimination guarantees, rather than a direct human rights violation in its own right.

Not every scholar treats the discrimination framing as a weakness. Raday[16] argues that CEDAW's substantive equality provisions, precisely because they are tied to discrimination rather than to isolated violent acts, give states a basis for structural remedies such as positive obligations to change discriminatory social patterns, that a narrower, incident-based definition of violence would not automatically require. On this reading, CEDAW's discrimination framing is not simply an oversight; it is a strategic choice that trades definitional precision for a broader mandate to address the structural causes of violence. This tension between precision and structural reach is revisited in Section 4.4, where the article proposes that the two framings are better read as complementary than as rivals.

Comparing Implementation Across Countries

Beyond doctrine, a growing body of comparative scholarship documents how the definitional gap plays out on the ground. Deane[17] reviews the efficacy of the United Nations human rights framework, including CEDAW, in addressing gender-based violence and finds that the absence of a single binding definition allows states considerable latitude in how, or whether, they criminalise gender-based violence domestically. Ziniakova[18] traces the evolution of international instruments from the Geneva Conventions and their Additional Protocols, through the Rome Statute, to CEDAW and DEVAW and argues that international law is moving, unevenly, towards a binding post-binary framework that would treat gender-based violence as a freestanding category rather than a subset of discrimination or of sex-based crimes.

For Indonesia, the passage of Law No. 12 of 2022 on the Crime of Sexual Violence has itself become the subject of academic study. Prihatini and Ardiansa[19] document how the bill took almost a decade of on-and-off deliberation before enactment, reflecting sustained political resistance despite Indonesia's CEDAW ratification since 1984. Subsequent needs assessment research by INFID[20] identifies concrete implementation gaps, including uneven distribution of victim

[14]Hilary Charlesworth, Christine Chinkin, and Shelley Wright, "Feminist Approaches to International Law," *American Journal of International Law* 85, no. 4 (1991): 613-45.

[15]Celina Romany, "State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law," *in Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994), 85-115.

[16]Frances Raday, "Gender and Democratic Citizenship: The Impact of CEDAW," *International Journal of Constitutional Law* 10, no. 2 (2012): 512-30, https://doi.org/10.1093/icon/mos022.

[17]Deane, "Gender-Based Violence in International Human Rights Law."

[18]Tatsiana Ziniakova, "Gender-Based Violence in International Human Rights Law: Evolution Towards a Binding Post-Binary Framework," *William & Mary Journal of Race, Gender, and Social Justice* 27, no. 3 (2021): 709–764.

[19]Cakra Wikara Indonesia, "10 Tahun Perjalanan RUU TPKS Menjadi UU TPKS," cited in Ella S. Prihatini and Dirga Ardiansa, "Passing the Sexual Violence Crime Law in Indonesia," *Politics and Governance* 12 (2024), https://doi.org/10.17645/pag.8245.

[20]International NGO Forum on Indonesian Development (INFID), *Needs Assessment Research Report*: *Analysis of Implementation Challenges and Needs for Operationalization of the Sexual Violence Law* (Jakarta: INFID, 2022).

assistance funds and regional service units. For Turkey, the 2021 withdrawal from the Istanbul Convention has produced an extensive legal and political-science literature, including Acar's[21] analysis of its practical consequences for victims, the International Commission of Jurists'[22] assessment of its compatibility with international obligations, and Günes's[23] account of the domestic "gender war" politics behind the decision. For South Africa, the 2024 National Council on Gender-Based Violence and Femicide Act has been examined primarily by practitioner and civil-society commentary rather than peer-reviewed legal scholarship, a gap this article's primary-source analysis partly addresses.

Research Gap

None of the literature reviewed above combines the doctrinal CEDAW-DEVAW debate with a structured comparison across three jurisdictions that differ in religious majority, legal tradition, and mode of definitional failure. Existing comparative work either stays within a single country or region, or treats the definitional question as background rather than as the organising variable. This article fills that gap by using the definitional divergence as the lens through which the three national trajectories are read, which in turn allows the cross case synthesis in Section 4.4 to distinguish the effect of definition from the effect of enforcement capacity - a distinction the single country literature cannot draw on its own.

METHOD

This research applies a descriptive method with a qualitative, doctrinal comparative approach. This design was chosen because the object of study, the relationship between an international definitional standard and its domestic reception is a question of legal meaning and institutional practice rather than of quantifiable causation, and is therefore better addressed through systematic reading of legal and academic texts than through statistical modelling.

Sources and Search Strategy

Data were collected through a structured literature study drawing on four categories of source: (a) primary legal instruments, including CEDAW, DEVAW, the Istanbul Convention, the Rome Statute, the four Geneva Conventions and their Additional Protocols, and the relevant national statutes of Turkey, Indonesia, and South Africa; (b) CEDAW Committee output, principally General Recommendations No. 19 and No. 35; (c) peer-reviewed journal articles and law review notes retrieved through Google Scholar, HeinOnline, SSRN, and the Directory of Open Access Journals (DOAJ); and (d) reports and statements from United Nations bodies, the International Commission of Jurists, Amnesty International, and national institutions such as Indonesia's Komnas Perempuan (National Commission on Violence against Women). Search terms combined "gender-based violence," "CEDAW," "DEVAW," "Istanbul Convention," "UU TPKS," and "National Council on Gender-Based Violence and Femicide" using Boolean operators, cross-checked against the reference lists of the most relevant results (a snowball step) to identify additional sources.

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[21]Esat Acar, "Turkey's Withdrawal from the Istanbul Convention: Lack of Rights for Victims of Gender Based Violence," *Fordham International Law Journal Online* 45 (2021).

[22]International Commission of Jurists, "Turkey's Withdrawal from Istanbul Convention a Setback for Women and Girls' *Human Rights*," 1 July 2021, https://www.icj.org/turkeys-withdrawal-from-istanbul-convention-a-setback-for-women-and-girls-human-rights/.

[23]Zeynep Kurtuluş Günes, "On Turkey's Withdrawal from the Istanbul Convention," *Zeitschrift für Vergleichende Politikwissenschaft* 17 (2023): 481-500, https://doi.org/10.1007/s12286-023-00588-2.

Inclusion and Exclusion Criteria

Sources were included if they were peer-reviewed journal articles, official treaty or declaration texts, enacted national legislation, or reports issued by an internationally recognised human rights body or non-governmental organisation, and if they addressed either the definition of gender-based violence in international law or its implementation in one of the three case study states. Publications from 2013 to 2026 were prioritised to ensure the currency of implementation data, while foundational legal instruments and canonical feminist legal theory, such as Scott's 1988 work and the 1991 Charlesworth, Chinkin, and Wright article were retained regardless of publication date on account of their continuing doctrinal authority. Sources were excluded if they were anonymous blog commentary without institutional affiliation, if they duplicated information already captured in a more authoritative source, or if they were non-English or non-Indonesian sources without an official translation.

Corpus and Analytical Framework

Applying these criteria produced a working corpus of 45 sources: 8 primary legal instruments, 19 peer-reviewed journal articles and law review notes, 10 institutional or non-governmental reports and committee documents, and 8 corroborating news or practitioner sources used only to verify factual or statistical claims rather than to support doctrinal argument. The corpus was analysed through qualitative content analysis following the data reduction, data display, and conclusion drawing/verification stages associated with Miles and Huberman's model of qualitative analysis. In the data reduction stage, excerpts were coded into three themes: definitional content, legislative content, and enforcement outcomes. In the data display stage, the coded excerpts were arranged into a comparative matrix organised by jurisdiction, which forms the basis of Table 2 in Section 4. In the conclusion drawing stage, the matrix was read through critical legal theory, following Maladi's[24] account of law as shaped not only by doctrinal syllogism but by non-doctrinal social, economic, and political factors, to interpret why formally similar legal commitments produced different enforcement outcomes across the three states.

Limitations

This design has three limitations that should qualify the findings. First, as a doctrinal-comparative literature review, the study cannot establish causal relationships between definitional choice and enforcement outcomes with the certainty that primary empirical or statistical research could provide, its findings are interpretive rather than causal. Second, the study relies on secondary implementation data, including non-governmental organisation reporting, where official judicial statistics in English were not available, which introduces a degree of dependence on the reporting choices of those organisations. Third, because Indonesia's Law No. 12 of 2022 and South Africa's 2024 Act are both recently enacted, their long-term enforcement records are not yet fully observable, and the findings on these two states should be read as an assessment of an early implementation period rather than a mature one.

[24]Yanis Maladi, "Kajian Hukum Kritis Alih Fungsi Lahan Hutan Berorientasi Kapitalis," *Dinamika Hukum* 13 (2013): 109-123.

RESULTS AND DISCUSSIONS

Results: Comparing the CEDAW and DEVAW Definitions

The content analysis confirms that CEDAW and DEVAW diverge along four dimensions: legal nature, core framing, scope of harm, and enforcement mechanism. Table 1 summarises these findings before they are interpreted in the discussion that follows.

Dimension	CEDAW (1979)	DEVAW (1993)
Legal nature	Binding multilateral treaty; 189 states parties, subject to periodic reporting and an Optional Protocol complaint procedure.	Non-binding General Assembly declaration; persuasive authority only, no treaty-body monitoring of its own.
Core framing	Gender-based violence addressed indirectly, as a form of "discrimination" under Article 1.	Gender-based violence named directly as a distinct category of "violence," Article 1.
Scope of harm	Distinction, exclusion, or restriction impairing recognition or enjoyment of rights; harm is framed structurally.	Physical, sexual, and psychological harm or suffering, including threats, coercion, and arbitrary deprivation of liberty.
Enforcement mechanism	State reporting to the CEDAW Committee; individual and inter-state complaints under the Optional Protocol (1999).	None; relies on states voluntarily incorporating the definition, or on its use as interpretive guidance by CEDAW and regional bodies.

Discussion: Turkey Retreating from International Standards

Turkey ratified CEDAW in 1985 and, in 2011, hosted the signing of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Istanbul Convention, which it was the first state to ratify. In 2012, Turkey passed Law No. 6284 on the Protection of Family and Prevention of Violence against Women, domesticating the Convention's core obligations.[25] On 20 March 2021, however, the Turkish Presidency announced Turkey's withdrawal by decree, a decision that took effect on 1 July 2021. The stated justification linked the Convention to the normalisation of positions the government considered incompatible with "social and family values," rather than to any specific deficiency in the treaty's protection of women.[26]

The CEDAW Committee itself responded directly, characterising the withdrawal as "a deliberately retrogressive measure" inconsistent with Turkey's due diligence obligations under CEDAW, and warning that it undermined the customary law status of the prohibition on gender-based violence.[27] The International Commission of Jurists[28] reached a similar conclusion, noting that withdrawal deprived Turkish women and girls of the Convention's monitoring mechanism, GREVIO, without providing any equivalent domestic substitute. The practical consequences were already visible before withdrawal: Acar[29] reports that, on 2014 survey data, only seven per cent of gender-based

[25]Republic of Türkiye, Law No. 6284 on the Protection of Family and Prevention of Violence against Women, 8 March 2012.

[26]"The Gender of Treaty Withdrawal: Lessons from the Istanbul Convention," *EJIL: Talk*!, 28 November 2022, https://www.ejiltalk.org/the-gender-of-treaty-withdrawal-lessons-from-the-istanbul-convention/, summarising the CEDAW Committee's 1 July 2021 statement on Turkey's denunciation of the Istanbul Convention.

[27]"The Gender of Treaty Withdrawal: Lessons from the Istanbul Convention."

[28]International Commission of Jurists, "Turkey's Withdrawal from Istanbul Convention."

[29]Acar, "Turkey's Withdrawal from the Istanbul Convention."

violence victims in Turkey reported the violence to police, and public prosecutors responded to only four per cent of cases involving physical or sexual violence against women, figures that illustrate an enforcement gap that predates, and arguably enabled, the political decision to withdraw.

Read through critical legal theory, Turkey's trajectory shows law's application shaped less by doctrinal syllogism than by non-doctrinal political factors.[30] Günes[31] frames the withdrawal as the product of a domestic "war over gender," in which the ruling government mobilised conservative constituencies against feminist and LGBTI+ movements it associated with the Convention, rather than as a response to any demonstrated flaw in the treaty's design. This reading is consistent with the survival of Law 6284 itself, which Turkey has not repealed even after withdrawing from the Convention that inspired it, suggesting that the withdrawal was substantially symbolic and political rather than a rejection of domestic protective measures as such.[32]

A fair counter-argument, however, tempers any claim that treaty membership alone would have prevented Turkey's gender-based violence problem. Bengisu[33] observes that implementation of Law 6284 was already inconsistent well before the 2021 withdrawal, with shelters underfunded and protection orders inconsistently enforced by local courts. On this reading, the Istanbul Convention's departure removed an important monitoring mechanism and a diplomatic constraint, but it did not create the underlying enforcement gap; that gap existed within the treaty framework as well as outside it. Civil society responses, including the We Will Stop Femicide Platform founded in 2010 by Münevver Karabulut, continue to press for enforcement of domestic protections independently of Turkey's international treaty status.[34]

Discussion: A Newly Codified Legal Framework Facing an Enforcement Gap in Indonesia

Indonesia ratified CEDAW in 1984 through Law No. 7 of 1984, yet a dedicated criminal statute on sexual violence took nearly four decades to follow. Law No. 12 of 2022 on the Crime of Sexual Violence (Undang-Undang Tindak Pidana Kekerasan Seksual, or UU TPKS) was enacted only after almost ten years of legislative deliberation.[35] The statute is structurally comprehensive: it comprises twelve chapters and ninety-three articles covering definitions, classifications of sexual violence, criminal procedure, and victim protection and recovery mechanisms, and it establishes Regional Technical Implementation Units for the Protection of Women and Children (UPTD-PPA) across all thirty-eight Indonesian provinces.[36]

Indonesia's National Commission on Violence against Women (Komnas Perempuan) recorded 289,111 cases of gender-based violence in 2023.[37] This figure should be read critically rather than taken at face value: it reflects only violence reported through formal channels and compiled in Komnas Perempuan's annual report, and comparative implementation research indicates that formal reporting substantially undercounts prevalence in patriarchal settings where stigma and

[30]Maladi, "Kajian Hukum Kritis."
[31]Günes, "On Turkey's Withdrawal."
[32]Günes, "On Turkey's Withdrawal from the Istanbul Convention."
[33]Bengisu, "Turkey's Withdrawal from the Istanbul Convention."
[34]Sezzizkalma, "We Will Stop Femicide Platform," Keep the Volume Up, 2024, https://www.sessizkalma.org/en/defender/we-will-stop-femicide-platform.
[35]Prihatini and Ardiansa, "Passing the Sexual Violence Crime Law in Indonesia."
[36]"The Urgency of Law Enforcement for Sexual Violence Based on Law Number 12 of 2022," Indonesian Journal of Law and Justice (2025).
[37]Sasmito Madrim, "Komnas Perempuan: Kekerasan Berbasis Gender Tahun 2023 Capai 289.111 Kasus," Voice of America | Indonesia, 2024, https://www.voaindonesia.com/a/komnas-perempuan-kekerasan-berbasis-gender-tahun-2023-capai-289-111-kasus/7517807.html.

informal dispute resolution discourage victims from coming forward.[38] A socio legal study of UU TPKS enforcement at the local level, for instance, found a persistent gap between the law's victim-centred principles and their translation into practice, attributing part of that gap to patriarchal norms, social stigma, and the continued use of informal settlement mechanisms even in cases the statute classifies as criminal.[39] A separate assessment of national implementation similarly found that community participation in prevention programmes remains low precisely because of prevailing patriarchal attitudes, notwithstanding the statute's formal reach into all provinces.[40]

These findings are consistent with earlier reporting that Indonesia ranked second only to India among the most dangerous countries for women in 2019, a ranking widely attributed by commentators to entrenched patriarchal and religiously conservative social attitudes rather than to any single legislative gap.[41] Read through the critical legal theory lens applied to Turkey above, Indonesia illustrates a different mechanism of the same underlying problem, unlike Turkey, Indonesia has not retreated from a binding international commitment, and its 2022 statute already adopts language closer to DEVAW's broad, violence-centred definition than to CEDAW's narrower discrimination framing. Yet the same non-doctrinal social factors, patriarchal norms embedded in adat (customary) practice and in conservative religious interpretation, continue to shape how, and whether, the statute is enforced at the local level, regardless of its comprehensiveness on paper.

This is not to say the codification itself was without value. The INFID needs assessment research identifies concrete institutional gains from the 2022 statute, including a dedicated Victim Assistance Fund and a nationally standardised service unit structure, both of which give future enforcement efforts a clearer institutional anchor than existed before 2022.

Discussion: Unresolved Femicide in South Africa

South Africa ratified CEDAW in 1995. Its domestic legal framework on gender-based violence is, on its face, unusually comprehensive: the Criminal Law (Sexual Offences and Related Matters) Amendment Act criminalises sexual intimidation as a distinct offence,[42] and the National Council on Gender-Based Violence and Femicide Act, signed into law on 24 May 2024, defines gender-based violence as "violence associated with gender, which includes physical, sexual, verbal, emotional, economic, domestic, educational or psychological abuse or threats of such acts of abuse in public or private life"[43] a definition that already tracks DEVAW's broad, violence-centred framing rather than CEDAW's narrower discrimination language.

Despite this comprehensiveness, implementation has lagged conspicuously. Reporting drawing on a Centre for Constitutional Rights study indicates that South Africa's femicide rate was approximately five times the global average in 2017, and roughly half of South African women

[38]"From Law on the Books to Law in Action: Legal Protection for Women Victims of Physical Sexual Harassment under Indonesia's UU TPKS," International Journal of Educational Review, Law and Social Sciences (IJERLAS), 2026, https://radjapublika.com/index.php/IJERLAS/article/view/5220.

[39]"From Law on the Books to Law in Action."

[40]F. A. L. Nitha, "Optimalisasi Implementasi UU TPKS: Tantangan dan Solusi dalam Upaya Penghapusan Kekerasan Seksual di Indonesia," *Journal of Legal Issues* (2024).

[41]Devina Heriyanto, "Indonesia Ranked Second-Most Dangerous Place for Women in Asia Pacific: Study," *The Jakarta Post*, 2019, https://www.thejakartapost.com/news/2019/03/06/indonesia-ranked-second-most-dangerous-place-for-women-in-asia-pacific-study.html.

[42]Republic of South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, as amended by Act 13 of 2015.

[43]Republic of South Africa, National Council on Gender-Based Violence and Femicide Act 9 of 2024, sec. 1, definition of "gender-based violence."

report having been assaulted at some point by someone close to them.[44] Amnesty International[45] found that 55 per cent of the targets set under South Africa's National Strategic Plan on Gender-Based Violence and Femicide, adopted in 2020, four years before the 2024 Act, had not been met within the plan's first year. The Council the 2024 Act was meant to establish was itself delayed. Soul City Institute chief executive Phinah Kodisang described the body as institutionally significant but noted that its formation "lacked meaningful consultation with civil society and survivors" and that its operationalisation proceeded slowly, with Board appointments finalised only in August 2026, more than two years after the Act was signed.[46]

South Africa therefore supplies the clearest test of this article's thesis. Because its domestic definition already resolves the CEDAW-DEVAW divergence in DEVAW's favour, the persistence of high femicide rates cannot be attributed to definitional ambiguity in the same way it can in Turkey or Indonesia. What critical legal theory highlights instead is that doctrinal completeness a well-drafted, DEVAW aligned statute is not sufficient without non-doctrinal institutional capacity: budget, staffing, and political will to operationalise the Council the statute creates.[47] This finding qualifies the article's broader argument. Closing the definitional gap at the international level, as Section 4.5 recommends, is a necessary step, but South Africa demonstrates that it is not, by itself, a sufficient one.

Comparison of the Three Countries

Table 2 summarises the three pathways identified in the discussion above.

Jurisdiction	Key legal instrument	Domestic definitional stance	Principal enforcement gap identified
Turkey	Law No. 6284 (2012); withdrawal from the Istanbul Convention (2021)	Formerly DEVAW-aligned via the Convention; definitional gain reversed by withdrawal.	Loss of the Convention's monitoring mechanism (GREVIO); pre-existing low reporting and prosecution rates.
Indonesia	Law No. 12 of 2022 (UU TPKS)	DEVAW-aligned on its face; broad, violence-centred statutory definition.	Patriarchal social norms and informal dispute resolution undermine local enforcement despite comprehensive statute.
South Africa	National Council on Gender-Based Violence and Femicide Act 9 of 2024	DEVAW-aligned; statutory definition already broad and violence-centred.	Institutional and budgetary delay in operationalising the Council itself; National Strategic Plan targets largely unmet.

Read together, the three cases show that the CEDAW-DEVAW definitional gap operates independently of a single cultural or religious variable: it produces failure in a Muslim-majority state with a conservative government (Turkey), in a Muslim-majority state with a young democracy (Indonesia), and in a religiously plural state with one of the world's most developed domestic

[44]"Implementation Concerns Mar Optimism over New GBV Law," *YFM News*, 24 May 2024, https://www.yfm.co.za/?p=21253, citing a Centre for Constitutional Rights study on South Africa's femicide rate.
[45]Amnesty International South Africa, "Signing of the National Council of Gender-Based Violence and Femicide Bill a Positive Step, but Implementation Is Key," 24 May 2024, https://amnesty.org.za/south-africa-signing-of-the-national-council-of-gender-based-violence-and-femicide-bill-a-positive-step-but-implementation-is-key.
[46] "Delayed GBVF Council Undermines National Plan to End Violence against Women," *Health-e News*, 2026, https://health-e.org.za/?p=53418, quoting Phinah Kodisang, CEO, Soul City Institute for Social Justice.
[47] Maladi, "Kajian Hukum Kritis."

gender-based violence statutes (South Africa).[48] This supports the article's central claim that the definitional gap is a genuine, independent contributor to inconsistent enforcement, rather than merely a symptom of any one country's political or religious context.

That claim must, however, be weighed against the strongest defence of CEDAW's discrimination framing, advanced by Raday[49] and consistent with the broader feminist legal literature reviewed in Section 2.4. On this view, tying gender-based violence to discrimination gives states a basis for structural, forward looking, remedies, changing discriminatory laws, policies, and social patterns that a narrower, incident-based definition of violence, focused on individual acts, might not by itself require. South Africa's experience partly supports this concern in reverse, its statute already speaks the language of violence rather than discrimination, yet the deeper structural conditions that produce femicide, unequal power, economic dependency, and normalised abuse remain unaddressed by the 2024 Act's institutional machinery alone.

The more defensible position, this article suggests, is not to treat CEDAW's discrimination framing and DEVAW's violence framing as rivals but to read them as complementary, in the manner the CEDAW Committee has already begun to do through General Recommendation No. 35. CEDAW's equality-based framing supplies the structural, state obligation dimension. DEVAW's violence-based framing supplies the definitional precision needed for criminal law to operate predictably. Turkey's withdrawal shows the cost of losing the DEVAW-aligned instrument altogether, Indonesia and South Africa show that even where domestic law absorbs DEVAW's precision, CEDAW's structural, discrimination-based obligations on states remain necessary to address the conditions that allow violence to persist despite a well-drafted statute.

CONCLUSION

This article set out to answer three questions. First, on how the CEDAW DEVAW definitional divergence contributes to inconsistent responses to gender-based violence, the evidence indicates that the divergence functions as a permissive gap: because CEDAW's binding text does not itself name gender-based violence as a distinct wrong, states retain considerable discretion over whether, and how precisely, to criminalise it domestically, and that discretion has been exercised unevenly even among states that have ratified the same treaty.

Second, on how the divergence is manifested domestically, the three case studies show three distinct pathways rather than one uniform failure. Turkey's 2021 withdrawal from the Istanbul Convention reversed an earlier definitional gain and removed an external monitoring mechanism, against a backdrop of already low reporting and prosecution rates. Indonesia's 2022 Law on the Crime of Sexual Violence closed the definitional gap on paper but continues to face an enforcement gap rooted in patriarchal social norms and informal dispute resolution at the local level. South Africa's 2024 National Council on Gender-Based Violence and Femicide Act shows that even a DEVAW-aligned domestic definition, paired with comprehensive sexual-offences legislation, cannot on its own overcome institutional and budgetary delay in the machinery meant to implement it.

Third, on possible reforms, this article proposes three concrete steps. The CEDAW Committee should continue to treat General Recommendation No. 35 as an authoritative interpretive bridge to DEVAW's broader definition, and states parties should be encouraged, through the Universal Periodic Review and CEDAW's own periodic reporting cycle, to align domestic statutory definitions of gender-based violence with that broader scope while retaining CEDAW's structural, equality-based state obligations. Domestic legislatures that have already enacted comprehensive

[48] Ziniakova, "Gender-Based Violence in International Human Rights Law," 720.

[49] Charlesworth, Chinkin, and Wright, "Feminist Approaches to International Law"; Raday, "Gender and Democratic Citizenship."

statutes, as Indonesia and South Africa have, should treat enactment as the beginning rather than the end of compliance, pairing legislative text with funded implementation bodies, standardised local service units, and independent monitoring. Finally, states considering withdrawal from regional instruments that already close part of the CEDAW-DEVAW gap, as Turkey did in 2021, should be understood by the international community as taking on a distinct and reviewable form of retrogression under their continuing CEDAW obligations, consistent with the CEDAW Committee's own 2021 characterisation of that withdrawal.

The article's contribution lies in connecting a long-standing doctrinal debate about CEDAW's discrimination framing to a structured comparison of three jurisdictions that differ in religious majority, legal tradition, and mode of definitional failure, which allows the definitional variable to be distinguished from the enforcement capacity variable in a way a single country study cannot achieve. Its practical implication is that ratification of CEDAW, or even the enactment of a comprehensive domestic statute, should not by itself be treated as a benchmark of compliance; monitoring frameworks, whether international or domestic, should include indicators of enforcement capacity alongside indicators of legislative text.

As a literature based study, this research has not gathered original prosecutorial or victim-experience data, and its findings on Indonesia and South Africa in particular reflect an early period of implementation for legislation enacted in 2022 and 2024 respectively. Future research could usefully extend this comparative framework through empirical fieldwork interviews with prosecutors, judges, or service providers in each jurisdiction or through a longitudinal study once Indonesia's and South Africa's statutes have been in force long enough to generate mature enforcement data. A further extension could apply the same CEDAW DEVAW lens to additional state parties outside the three studied here, to test whether the three pathways identified in this article - treaty retreat, uneven codification, and institutional delay recur, or whether other jurisdictions reveal further distinct mechanisms of the same underlying definitional failure.

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