



Submission of Comments and Suggestions by International Women’s Rights Action Watch Asia Pacific

To the Draft update of General Recommendation No. 19 on Violence Against Women by Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)*

Introduction

Paragraph 2.

COMMENTS

1. When acknowledging women’s non-governmental organisations prioritisation of gender-based violence against women, address the need for greater engagement between states and UN bodies with women rights groups in overcoming challenges to address gender-based violence against women going forward.
2. Substitute in third sentence of the paragraph starting with: “The Committee acknowledges that civil society, contributing to the recognition of this violence as a *human rights* (replace ‘concern’ with ‘violation’) and the adoption of laws and policies to address it.”

Paragraph 3.

COMMENTS

1. We request the Committee to take into consideration the need to emphasise the embedded architecture of the CEDAW Convention in expanding and framing the articulation of violence against women as a human rights violation in order to underline the importance of the CEDAW Convention and the practice of the Committee and States parties in developing the conceptual and implementation frameworks in relation to VAW under international law and its impact in influencing domestic law standards. The Committee should include a sentence in the paragraph, such as: *CEDAW Committee practice and state practice on CEDAW compliance so far on VAW, has established the foundation for global norms and standards on VAW, as evinced by state reporting and level of implementation of GBVAW laws, policies and programmes.*

Paragraph 4.

COMMENTS

1. We suggest moving the sentence on non-state actors to the end of the paragraph. Non-state actors should be defined with more precision. Although international law has yet to provide a clear definition of non-state actors, defining non-state actors in the updated General Recommendation would enable a stronger articulation of the obligations of actors and non-state actors.
2. As this paragraph is setting the context for the need of General Recommendation 19, a greater elaboration of contextual treatment is needed. The manifestation of the contemporary political economic climate in phenomenon such as the neo-liberal economy, conflict and post conflict situations, migration, etc. should be elaborated in order to path the way for strong links between the underlying economic and social structures which contribute to the incidence of gender-based violence against women, and negatively impact the obligations of states and non-state actors to implement and enforce laws and policies to ameliorate the impact of these structures.
3. In framing the context is important to highlight other factors that exacerbate the implementation gaps in the global system in addressing gender-based violence against women including the lack of political will

to address GBV as a matter of rule of law and access to justice, both globally and nationally, which perpetuates a culture of impunity surrounding violence against women that is leading to these regressions

4. Substitute the third sentence with:

“In addition, in some States parties there has been erosion of legal and policy frameworks to address equality of women with men and non-discrimination on the basis of sex and gender, sometimes as a result of *shrinking democratic spaces and consequent deterioration of rule of law, as well as other factors such as the reduction in public spending or justified in the name of tradition, culture, religion or fundamentalist ideologies.*”

Scope

Paragraph 7.

COMMENTS

1. We suggest adding the word “substantive” to the phrase in 1st sentence “...right to non-discrimination and the enjoyment of *substantive* equality...” to emphasise the scope of state obligation to address GBVAW to ensure non-discrimination and substantive equality in law and in practice.
2. Add General Recommendation No. 25 (2004) on Temporary Special Measures and General Recommendation No. 26 (2008) on Migrant Workers to the list of General Recommendations which address state obligation in relation to gender-based violence against women in particular contexts.

Paragraph 8.

COMMENTS:

1. Stronger articulation is needed in the second sentence to highlight the illegality of maintaining reservations under Art 2 and 16 which fetter state obligation to address gender-based violence against women, especially because most of the states which have entered wide-ranging and incompatible reservations did so more than 10 years ago; this is arguably sufficient time to remove any barriers to full compliance. Thus we suggest to substitute sentence with:

As reservations to CEDAW act as a barrier to addressing and rectifying discriminatory national laws, policies and state practices, states parties must immediately address and review reservations to the Convention that are incompatible with and impede the achievement of the object and purpose of the Convention to eliminate discrimination against women, including gender-based violence against women.

2. An additional paragraph should be included to emphasise the role of General Recommendation 19 in addressing new and emerging forms of violence as a human rights violation; it should also refer to examples of such new types of violence. Naming specific forms of violence where possible negates the argument that a particular form of VAW does not fall within the ambit of state obligations under CEDAW and is essential to ensure legal recognition of gender-based violence by States parties and that they through review and revise their laws. The forms/categories of violence should include: economic violence, physical violence, sexual violence, psychological violence, female genital mutilation, reproductive violence, online violence (related to ICT and the World Wide Web), stalking, etc. Settings where women are at increased risk of GBV should also be articulated to include intimate partner violence, as well as institutional and custodial violence. The list should not be exhaustive, and the overarching definition of gender-based violence should be broad enough to include other unnamed forms of violence.

Paragraph 9

COMMENTS:

1. Since the update articulates a contemporary and contextual framework for addressing gender-based violence against women under CEDAW, it may be useful to include in this Paragraph a definitional section reflecting this updated normative framework which flows from the existing GR19 and how it develops the framework on VAW further.
2. Substitute the second sentence of the paragraph with:
“This violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic *harm to women*, threats of such acts, harassment, coercion and *other* deprivation of liberty.”
3. Economic harm and psychological violence needs to be defined as they are important forms of harm that are often neglected from lack of conceptual clarity and thus correlating weak policy responses, and as there appears to be a lack of guidance on the terms in international norms and standards and the Committee is a source of such guidance. Economic harm will need to be defined more precisely and narrowly to ensure that economic harm in itself does not constitute a form of violence. The definition should clearly distinguish economic harm as a consequence of other forms of discrimination,ⁱⁱ and economic violence. The circumstances in which economic violence occurs should also be limited and defined. A broad definition of economic violence would conflate economic violence and economic harm as a consequence of discrimination, and potentially create legal uncertainty in terms of evidence, making it difficult for victims to prove that economic violence has occurred.
4. The forms of violence should be articulated in terms of rights which are tied to international instruments and the interpretations by treaty bodies, where each form of violence would co-respond to a particular violation of right. This could be done by inserting either a paragraph or sentence after elaborating of different forms of violence, rearticulating General Recommendation No. 19, Paragraph 7,ⁱⁱⁱ as well as Article 1 of CEDAW^{iv} and Article 3 of the Declaration on the Elimination of Violence against Women.^v
5. The third sentence of the paragraph, “These are affected by cultural, economic, ideological, political, religious, social and environmental factors, as evidenced in the case of harmful practices or in crimes against women human rights defenders or activists,” would be more appropriately placed under a separate paragraph that specifically addresses the context of gender-based violence in the contemporary globalised world.

Paragraph 10.

COMMENTS:

1. The first sentence of the paragraph, “The Committee considers that gender-based violence against women is the fundamental social, political and economic mechanism by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated” needs to be revised.

While gender-based violence against women contributes to the perpetuation of gender roles and subordination, it is not by any means the *only* factor which causes inequality. To state so would over-emphasise the role of gender-based violence against women in causing current social gender inequality and subsequently detract from recognising and addressing the underlying causes of discrimination against women.

- 2.

Paragraph 11.

COMMENTS:

1. In order to draw a strong link between intersectionality and the scope of state obligation, the paragraph will need to provide a non-exhaustive list of examples related to the indices of intersectionality which compounds violence. This can be done by making an explicit reference to General Recommendation 28, paragraph 18, which identifies factors exacerbating gender-based violence to include “race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity” and other international instruments referencing emerging factors such as “work and descent”^{vi}.

2. When referencing General Recommendation No.33 on women’s access to justice, the third sentence should make full reference to the Recommendation by including all the grounds covered by General Recommendation 33, which also includes socio-economic status and/or caste, language, religion or belief, political opinion and origin. However, this may appear repetitive of the intersectional identities outlined in the reference to General Recommendation No. 28, paragraph 18. In this case, the paragraph should refer to either General Recommendation No. 28 or general Recommendation No. 33 to avoid repetition.
3. The paragraph should also emphasise the list of factors contributing to intersectional discrimination should not be seen as exhaustive and should be revised according to evolving contexts.

Paragraph 12.

COMMENTS:

1. When articulating the different spheres in which gender-based violence takes place, conceptual linkages should be made to state obligation and the broader political-economic factors that influence the institutions/actors, legal/regulatory frameworks, practices and culture related to these spheres. For example, the migration of women for the purposes of economic reasons may contribute to increased participation of women in the workforce but in the lower segment of the value chain. The unequal power relations between women and large corporations often results in abusive working conditions where the large continues to enjoy impunity.
2. The paragraph should separate the duties of state actors and non-state actors in order to address obligations which remain relevant to the emerging context and forms of gender-based violence against women.

ADDITIONAL COMMENTS

This section should also define an overarching victim/survivor-centered approach in framing laws and policies in response to gender-based violence against women where the victim’s rights and interests are placed at the center of all measures. As opposed to approaches which focus on deterrence and punishment, a victim-centered approach prioritises the victim’s/survivor’s access to justice and evidentiary rules and legal procedure which protect the rights of victims/survivors during legal proceedings, and ensures that secondary victimization due to laws which are insensitive to gender considerations, enforcement practices or other interventions, is minimized. Furthermore, a victim/survivor-centered approach also prioritises the victim’s access to appropriate and good quality social services related to health, etc. The Committee may wish to draw upon elements of the Istanbul Convention’s victim/survivor-centered framework. The Istanbul Convention takes a comprehensive approach to the protection of and assistance to all victims of violence against women through a comprehensive framework to ensure the victims’/survivor’s further safety, and seeks to re-establish their physical and psychological health and re-build their lives.^{vii}

General obligations of States parties under the Convention relating to gender-based violence against women

Para 13.

COMMENTS

1. Relate the third sentence of the paragraph, “This is an obligation of immediate nature...cannot be justified on any grounds including cultural or religious grounds,” to the Committee’s earlier directive statement on the illegality of maintaining reservations that contradict the “object and purpose” of CEDAW (including Art 2 and 16) and seek priority action from states.

Paragraph 13. b) Responsibility for acts or omissions of non-State actors

Sub-paragraph i.

COMMENTS

1. As the terms ‘non-State actor’ and ‘private actor’ are being used interchangeably, this should be clearly stated. In addition to specifying the wording in Art 2 (e), it may be helpful to expressly list the actors being referred to. In this regard, a general reference may be made to the Preamble of the Sustainable Development Goals Agenda adopted recently by the UN General Assembly, which in defining private actors refers to micro-enterprises, cooperatives, multinational corporations, civil society organizations and philanthropic organizations^{viii} in general. Further, recognizing that transnational corporations and armed groups are two specific groups that bear mentioning in light of current geo-political evolution and their consequent impact on the doctrine of state responsibility, specific references could also be made to the UN Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework that apply to vis-à-vis business enterprises”^{ix} and to General Recommendation No. 30 of the Committee on Women in Conflict Prevention, Conflict and Post-conflict Situations.^x
2. Further in defining the remit of duties of non-State actors including the extra-territorial obligations of State parties in regulating non-State actors, reference should also be made to treaty body practice of the Committee^{xi} itself and other international human rights treaty bodies, including the Human Rights Committee^{xii} (HRC), the Committee on Economic Social and Cultural Rights^{xiii} (CESCR) and the Child Rights Committee^{xiv} (CRC) that have referred to a State obligation to regulate corporations based in their territory in relation to overseas activities and in relation to development assistance programmes in so far as they have an adverse impact on human rights of individuals in other countries.

Paragraph 14

General Comment

Citation from existing GRs and practice of the Committee has been used mainly in this section of our comments since the conceptual clarity and practice around legal norms on gender-based violence has been established from within the CEDAW architecture.

Since there is an argument for a stronger role of these organs of the state in prioritising and playing a more catalytic role in the domestic context to demonstrate compliance with CEDAW and political will to address GBVAW, we are making suggestions for a more systemic, proactive and comprehensive institutional and policy framework from the various spheres of governance including comprehensive gender equality reform agendas, the need for (interim) judicial activism where legal gaps exist, and prioritisation of resources and political agenda around women’s human rights and gender equality by the executive.

Paragraph 14.

COMMENT

Substitute the last sentence with:

All these legal and policy measures must recognise that gender-based violence against women is a *human rights violation and discrimination under this Convention and in impact* affected by *intersectional and multiple forms of discrimination*.

Paragraph 14. Sub-paragraph a)

COMMENT

Substitute with:

a) At the legislative level, according to article 2 (b), (c), (e), (f) and (g) and article 5 (a) *and the following CEDAW practice*, States are required to adopt legislation prohibiting all forms of gender-based violence against women *recognizing it as a human rights violation and aiming to address specifically the adverse impact of violence on women and girls*. This legislation should include gender-sensitive provisions and effective legal protection, including sanctions and reparation in cases of such violence. The Convention also requires the repeal of all laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for these acts *as well as harmonization of the*

norms, procedures and practices of religious, customary, indigenous and community justice systems with the human rights standards enshrined in the Convention and other international human rights standards.^{xv} Such laws may be part of statutory, customary, religious, indigenous or common law, civil law, including family law, criminal law, evidentiary and procedural law, such as provisions based on discriminatory or stereotypical attitudes or practices which allow for gender-based violence against women or mitigate sentences in this context.

Paragraph 14. Sub-paragraph b)

COMMENT

Substitute with:

b) At the executive level, according to article 2 (c), (d) and (f) and article 5 (a), States are obliged to *address impunity surrounding GBV through galvanizing actions^{xvi} and adopting diverse institutional measures.* They include the establishment of competent national tribunals, the design of focused public policies and the development and implementation of monitoring mechanisms *to evaluate the effectiveness of these measures and make recommendations for remedial actions.* States parties should provide accessible, affordable and *good quality services, adopting a victim-centered approach to protect women from gender-based violence and provide reparation to all its victims/survivors.^{xvii} States parties must also eliminate institutional practices and the conduct and behaviour of individual public officials that constitute gender-based violence against women or that involve the toleration of such violence or a failure to respond appropriately.* Appropriate measures to modify or eradicate customs and practices that constitute discrimination against women, including those that justify or promote gender-based violence against women, must also be taken at this level. *Lastly, States should prioritize their response to addressing GBV through allocating adequate financial and other resources.*

Paragraph 14. Sub-paragraph c)

COMMENT

Substitute with:

c) At the judicial level, according to articles 2 (d), (f) and 5 (a), all judicial bodies are required to refrain from engaging in any act or practice of discrimination or gender-based violence against women, and all legal procedures in cases involving allegations of crimes of gender-based violence against women must be impartial and fair, and unaffected by gender stereotypes. The application of preconceived and stereotyped notions of what constitutes gender-based violence against women, their responses to such conduct and the level of proof required to substantiate its occurrence can affect women's right to the enjoyment of equality before the law, fair trial and the right to an effective remedy established in articles 2 and 15 of the Convention. *This needs to be addressed through capacity building for all actors of the justice system^{xviii}. Judicial bodies are also obliged to interpret law and policies, to the maximum extent possible, in line with the obligations of States parties under the Convention and where this is not possible, draw attention of appropriate authorities to inconsistency between national law, including national religious and customary laws and the Convention^{xix}.*

Recommendations

Paragraph 15.

Prevention

Sub-paragraph a)

COMMENT

Substitute with:

a) Adopt and implement effective legislative and other appropriate preventive measures to address the underlying causes of gender-based violence against women, including the denial of their civil, cultural, economic, political and social rights. *In framing such laws and policies, State parties should address the macro socio-economic and political factors that disproportionately impact women and increase their vulnerability to GBV.*

Sub-paragraph b)

COMMENT

Substitute with:

b) Develop and implement effective measures, with the active participation of all relevant stakeholders, such as women's organisations, to address the stereotypes, prejudices, customs and practices that condone or promote such violence and underpin structural inequality of women with men, as described in article 5 and *that ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions to address pervasive impunity against gender-based violence*^{xx}.

Sub-paragraph b) point iii.

COMMENT

Insert new recommendation:

iii. Institutional reform

Sub-paragraph c)

COMMENT

General comment: Media and increasingly social media is a critical actor/space as well as possible risk in changing the political discourse and socio-cultural understanding around gender-based violence against women. As the media consist of a very wide set of actors, including entities which are part of the fourth estate, as well as commercial broadcast and advertising media, it may be instructive to expand the paragraph to capture both due diligence responsibility of the state as well as preservation of the principle of press freedom based on public interest.

Substitute with:

c) Adopt and implement effective measures to *regulate* the media, and strengthen self-regulatory mechanisms of the media, including advertising and information and communications technologies to eliminate negative and stereotyped portrayal of women and girls, including women human right's defenders.

Explanation: The issue of workplace discrimination and its manifestation as specific forms of GBV such as sexual harassment at the workplace is a very significant issue. Hence, we suggest removing the phrase 'discrimination against women in their work' from sub-paragraph c) and having a new sub-paragraph m) addressing the issue specifically, as below.

Sub-paragraph c) point iv.

COMMENT 1

Substitute with:

iv. Strengthening the institutional capacity of national human rights institutions to *monitor and review* media that portray images or content that are gender-discriminatory and objectify or demean women or promote violent masculinities.

COMMENT 2

Include point v. to include reference to recommendation made in Concluding Observations to Croatia, 2015, as below:

v. Empower relevant agencies/ mechanisms with regulatory and enforcement function to deal with gender-discriminatory media or content objectifying women^{xxi}

Sub-paragraph d)

COMMENT

Substitute with:

d) Provide mandatory, recurrent and effective capacity-building, education and training for the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators, health-care, education and social *welfare* personnel, including *those* working with women in institutions such as residential care homes and prisons, to equip them to address gender-based violence against women adequately...

Sub-paragraph d), point i.

COMMENT

Suggest rephrasing this point as the meaning is not clear.

Sub-paragraph d), point ii.

COMMENT 1

Substitute with:

ii. The understanding of the *rights context* of women, including those affected by intersectional and multiple forms of discrimination based on specific identities, as victims/survivors of gender-based violence, and ways to address them and eliminate factors, such as secondary victimisation, that weaken women's confidence in State institutions, and

COMMENT 2

The issue of secondary victimisation and its correlation with weakening women's confidence in State institutions is very significant and has a direct implication on State obligations to address impunity surrounding gender-based violence. Accordingly, we suggest highlighting that the Addendum as a whole recommends that 'a victim centered approach to addressing gender-based violence' be adopted, in accordance with our recommendation in the 'Scope' section above.

Sub-paragraph e)

COMMENT

Substitute with:

e) Encourage, including through the use of incentives and disincentives and corporate responsibility models, *emphasizing self-regulation alongside regulation by state agencies and compliance with domestic legal standards*, the engagement of the private sector, including businesses and transnational corporations, in efforts to eradicate all forms of gender-based violence against women, *including discrimination at the workplace*, and their responsibility for such violence in the scope of their action. This should include the establishment of internal complaints procedures and support measures for women victims/survivors of such violence *in seeking legal remedies against gender-based violence through the formal justice system*.

Sub-paragraph f)

GENERAL COMMENT:

1. Suggest that the Committee foreground this recommendation in its established position that ensuring women's equal and effective access to justice requires State parties to minimize conflict of laws through harmonizing practices of plural justice systems with the Convention.^{xxii} This should, in addition reference the State obligation to provide legal protections against discrimination by enacting enabling legislation and abolishing or amending discriminatory laws and regulations, specifically Constitutional and legislative measures.
2. Regarding plural legal systems per se, acknowledge that these have undergone historical transformations (including due to colonialism and impact on legal systems) which supports a reform agenda that will respond to contemporary problems and issues.

COMMENT 1:

Substitute footnote, as below:

CEDAW Recommendations to Egypt, CEDAW/C/EGY/CO/7 (2010), CEDAW Recommendations to Singapore CEDAW/C/SGP/CO/3 (2007) [para 16 (c) Provide for equal choice of adjudication between Syariah and family courts.] and CEDAW Recommendations to Chad CEDAW/C/TCD/CO/1-4 (2011) [para 15 (b) Take measures to sensitize the public on the importance of addressing violations of women's rights through judicial rather than traditional justice mechanisms, with the aim to abandon the use of discriminatory practices, such as *diyya* and forcing a victim of rape to marry the perpetrator, and also to ensure that victims have access to effective remedies and reparations]

Sub-paragraph g)

COMMENT

Explanation: The recommendations made by the Committee to Singapore and Chad represent best CEDAW practice. Accordingly, this strong articulation of State obligations bears mentioning in the footnotes.

Regarding Egypt, the recommendation to be drawn from the Concluding Observations do not seem clear and could benefit from further elaboration.

Explanation: The use of the term 'commensurate with the gravity of the offence' underpins the legal sanctions to the common law principle of proportionality. It is important to do so in order to ensure that the role of stringent legal penalties is not overstated in addressing GBV.

Substitute with:

g) Introduce, where these do not exist, or strengthen legal sanctions for all forms of gender-based violence against women, *commensurate with the gravity of the offence*, in all spheres without delay

Sub-paragraph h)

COMMENT 1

Suggest rephrasing this sentence to focus the recommendation on the victim/ survivor and not the perpetrator.

Explanation: As this recommendation related to prevention of gender-based violence and the deterrent effect of laws on addressing gender-based violence, centering it around the perpetrator puts undue emphasis on the fair trial rights of the accused while taking away from the right of access to justice of the victim/ survivor.

COMMENT 2

Suggest moving the sentence, "Fees or court charges should not be imposed on victim/ survivor." to the following section on '**Protection and redress**' as it relates to the state obligation to ensure access to justice by removing among other, economic barriers to access to justice.

Sub-paragraph j)

sub-point ii.

COMMENT

Substitute with:

ii. Discriminatory evidentiary rules and procedures and their use as justifications, including *admissibility of past sexual history evidence and the use of medico-legal evidence collection practices such as the 'two finger test'*.

Explanation: As this recommendation relates to legal provisions, we suggest separating out the recommendation regarding addressing mitigating factors based on culture, religion and 'male privilege'. Conflating the two may result in confusion regarding the state obligation in this regard.

In addition, definitional guidance on the terms 'legal defence' and 'mitigating factors' would be critical to assess the elements of such legal technicalities which may be differently understood and applied in the different categories of legal systems and jurisdictions.

Sub-paragraph k)

COMMENT

Substitute with:

k) Examine gender-neutral laws and policies, *including in particular laws enacted specifically to address gender based violence constructed on a gender neutral basis*, to ensure that they do not exacerbate existing inequalities and repeal them if they do so.

Sub-paragraph l)

COMMENT 1

This is an important recommendation in terms of the ideology and approach to addressing VAW as a crime both against the victim and against the state, and the Committee's General Recommendation will be critical in assisting states in understanding the how specific law and policy choices to their responses affect this balance of public interest and individual justice. The related philosophy around criminal justice as relates to this issue should also be clearly articulated e.g. that penal and other enforcement principles are based on remedies to the individual, public interest/safety, non-recurrence, rehabilitation of perpetrators and social and legal recognition of gender-based violence as a crime and human rights violation and be illustrative to recommendations related to remedy/sanctions as well as definitional elements of the crime. This could be further elaborated and related to the parts on scope and context to illustrate the Committee's approach to these issues.

COMMENT 2

Sentence 2, definition of rape: Since this is such a critical legal question, a greater elaboration and definition is needed to clarify how the substance and the practice of law needs to change to ensure impunity for such crimes are addressed to the appropriate degree and the technical elements of the recommended definition of rape which "is based on lack of consent".

Substitute with:

l) Ensure that sexual assault, including rape, is characterised as a crime against women's rights to *life*,^{xxiii} personal security and their physical and mental integrity. Ensure that the definition of rape, including marital and acquaintance rape, *is not premised on use of force and physical evidence alone* but is based on lack of consent, and takes account of coercive circumstances. Any time limitations, where they exist, should prioritise the interests of the victims/survivors.

COMMENT 3

Suggest that the Committee issue further guidance on the broader evidentiary issues relating to burden of proof in rape cases that balancing the fair trial rights of the accused with the right of access to justice of the victim/survivor.

COMMENT 4

Also suggest the Committee take the opportunity to address questions related to certain legal questions including ex officio prosecution and the need to monitor these to ensure both social justice and individual remedy are addressed in balance.

Sub-paragraph m)

Insert new recommendation:

m) Address workplace discrimination against women, in particular gender-based violence against women in the workplace, by enacting laws providing penal sanctions *as well as regulating private actors including through putting in place a system of incentives and disincentives to ensure compliance*, against such violence and mandating that workplaces put in place standard operating procedures to address such violence.

Protection and redress

Sub-paragraph a) sub-point ii.

COMMENT

Substitute with:

ii... Providing appropriate protection to prevent further or potential violence. This should include immediate risk assessment and protection, comprising a wide range of effective measures and, where appropriate, the issuance of eviction, exclusion or restraining orders, *including during the pendency of legal proceedings, against alleged perpetrators and preventing image capturing and broadcasting, in cases where this may violate the dignity, emotional condition and security of girls and women. The primacy of women's and children's human rights to life and physical and mental integrity, and the best interest of the child shall be maintained while determining the perpetrators or alleged perpetrators' rights or claims during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation.*

Sub-paragraph a) sub-point iii.

COMMENT

Substitute with:

iii. Ensuring access to *social welfare protection*, financial aid and free or low-cost legal aid^{xxiv} medical, psychosocial and counselling services,^{xxv} education, training and employment opportunities for victims/survivors of gender-based violence against women, and their family members...

Sub-paragraph a) sub-point v.

COMMENT

Substitute 'residence status' with '*status or residence*'^{xxvi}

Sub-paragraph a) sub-point vi.

COMMENT

Suggest rephrasing the recommendation as it is not clear whether 'sanctions' referred to in the recommendation relate to the person violating the eviction/ exclusion/ restraining order or to the agency tasked with enforcing the order.

Sub-paragraph b)

COMMENT

Suggest that this critical recommendation be elaborated further to include specific state obligations in light of General Recommendation No. 28 and GR 30 if it is recommending political action around gun control and issues of militarism.

Sub-paragraph c)

COMMENT 1

Substitute with:

Provide effective reparation to women victims/survivors of gender-based violence. Reparation should include different measures, such as monetary compensation, *including exemplary damages in case of omission and failures on part of the State*, and the provision of legal, social and health services for a complete recovery, and satisfaction and guarantees of non-repetition in line with general recommendation No. 28.

Data collection and monitoring

Sub-paragraph a)

COMMENT 1

Substitute with:

a) Develop and evaluate all legislation, policies and programmes *in consultation with civil society organisations, in particular women's organisations*. States parties should *ensure multi-sectoral coordination* among all levels of the justice system, *law enforcement agencies, services providers* and the organisations that work to protect and support women victims/survivors of gender-based violence, taking into account their views.

COMMENT 2

The State obligation to ensure data collection and monitoring through formal state agencies should be outlined separately.

COMMENT 3

The obligation in respect of State parties' need to 'encourage the work of human rights and women's non-governmental organisations' should be broadened to highlight the multiple roles NGOs can play in preventing and providing support to victim/ survivors of gender-based violence, including through awareness raising, service provision and data collection and monitoring. Further, this obligation should be included in the foregoing section on protection and redress.

Sub-paragraph b)

COMMENT 1

Substitute with:

b) Establish a system to collect, analyse and publish statistical data on the number of complaints about gender-based violence against women, including gender-based killings of women, the number of protection orders issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction rates *as well as time taken for disposal of cases*.

COMMENT 2

In addition, to specifying the category of 'gender-based killings of women' include list of the other forms of gender-based violence, as above. This is because data collection can be an important first step in triggering advocacy at the national level to address gender-based violence.

Sub-paragraph c)

COMMENT

Substitute with:

c) Undertake or support surveys, research programmes and studies on gender-based violence against women, in order to, among other things, assess the prevalence of gender-based violence experienced by women and social or cultural beliefs regarding such violence *and take into account new and emerging form of gender based violence*. These studies and surveys should take into account intersecting forms of discrimination, based upon the principle of self-identification.

Sub-paragraph e)

COMMENT

With respect to the setting up of a mechanism or body to coordinate, monitor and assess the implementation and effectiveness of measures to prevent and eliminate all forms of gender-based violence against women, the establishment of such mechanism or body should be grounded in a legal instrument that addresses gender-based violence nationally.

International cooperation

Sub-paragraph b)

Substitute with:

b) Prioritise implementation of *the Sustainable Development Goals*, in particular Goals 5 on gender equality and empowerment of all women and girls, 16 to promote peaceful and inclusive societies for sustainable development, provide access to justice and build effective, accountable and inclusive institutions at all levels and 17 *on strengthening the means of implementation and revitalizing the global partnership for sustainable development, in particular with respect to the role of the private sector ranging from micro-enterprises to multinational corporations in the implementation of the new Agenda*. Support national plans to implement the Sustainable Development Goals and boost international support and cooperation for knowledge-sharing and effective and targeted capacity-building and *report on the status of development and implementation of these plans under the periodic review process to the Committee*.

END NOTES

*In general, where the above comments refer to substitution of sentences the changes made to the text of the Draft Update on General Recommendation No. 19 have been italicized

ⁱⁱ Refer to general Recommendation No.29 (2013) on Economic consequences of marriage, family relations and their dissolution

ⁱⁱⁱ Recommendation No. 19 (1992), para 7:

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.

^{iv} Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or propose 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 and any other field.

^v Declaration of Elimination of Violence against Women (1993), Article 3: Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia: (a) The right to life; (b) The right to equality; (c) The right to liberty and security of person; (d) The right to equal protection under the law; (e) The right to be free from all forms of discrimination; (f) The right to the highest standard attainable of physical and mental health; (g) The right to just and favourable conditions of work; (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

^{vi} Draft UN Principles and Guidelines for the effective elimination of discrimination based on work and descent is a legal framework, 2013

^{vii} See Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)

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- ^{viii} UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October, 2015
- ^{ix} UN Office of the High Commissioner for Human Rights, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", 2011
- ^x CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, par. 13-18
- ^{xi} CEDAW Concluding Observations: India UN Doc. CEDAW/C/IND/CO 4 - 5 (24 July 2014) [The Committee reaffirms that the State party must ensure that the acts of persons under its effective control, including those of national corporations operating extraterritorially, do not result in violations of the Convention and that its extraterritorial obligations extend to actions affecting human rights, regardless of whether the affected persons are located on its territory, as indicated in the Committee's general recommendation Nos. 28 and 30]
- ^{xii} HRC Concluding Observations: Norway UN Doc. E/C.12/NOR/CO/5 (13 December 2013) [The Committee also recommends that the State party adopt policies and other measures to prevent human rights contraventions abroad by corporations that have their main offices under the jurisdiction of the State party, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant. The Committee draws the attention of the State party to its statement on the obligations of State parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, section A).]
- ^{xiii} Concluding Observations: Germany UN Doc. E/C.12/DEU/CO/5 (12 July 2011) [The Committee calls on the State party to ensure that its policies on investments by German companies abroad serve the economic, social and cultural rights in the host countries.]; See also: Maastricht Principles on Extra-territorial Obligations of States in the Area of Economic Social and Cultural Rights
- ^{xiv} Concluding Observations: Canada UN Doc. CRC/C/CAN/CO/3-4 (6 December 2012) [The monitoring of implementation by companies at home and abroad of international and national environmental and health and human rights standards and that appropriate sanctions and remedies are provided when violations occur with a particular focus on the impact on children]
- ^{xv} General Recommendation No. 33, par. 64
- ^{xvi} Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, E/CN.4/1996/53, 5 February 1996
- ^{xvii} General Recommendation No. 33, par. 14
- ^{xviii} General Recommendation No. 33, par. 29
- ^{xix} General Recommendation No. 28, par. 33
- ^{xx} Economic and Social Council, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1 8 February 2005, Principle 35.
- ^{xxi} Concluding Observations, Croatia, 2015
- ^{xxii} General Recommendation No. 33, par. 63. Also see: CEDAW Concluding Observations, Kenya, 2007 CEDAW/C/KEN/CO/6 (CEDAW, 2007), CEDAW Concluding Observations Myanmar, 2008 CEDAW/C/MMR/CO/3 (CEDAW, 2008), CEDAW Concluding Observations Madagascar, 2008 CEDAW/C/MDG/CO/5 (CEDAW, 2008), CEDAW Concluding Observations Papua New Guinea, 2010 CEDAW/C/PNG/CO/3 (CEDAW, 2010)
- ^{xxiii} *Prosecutor v. Akayesu*, the ICTR, while finding rape to be a crime against humanity, stated that "[s]exual violence was a step in the process of destruction [of the Tutsi group] —destruction of the spirit, of the will to live, and of life itself." Case No. ICTR-96-4-T, Judgment, ¶ 731 (Int'l Crim. Trib. for Rwanda, Sept. 2, 1998)
- ^{xxiv} General Recommendation No. 33, par. 37 and General Recommendation 28, par. 34
- ^{xxv} General Recommendation No. 33, par. 16.
- ^{xxvi} General Recommendation No. 32, par. 37. See also: See Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, art. 61