

30 September 2016

Committee on the Elimination of Discrimination against Women – Stakeholder Consultation

Comments submitted by Global Rights for Women on Draft General Recommendation No. 19: “Accelerating efforts on gender based violence against women”¹

Global Rights for Women (GRW) is grateful to the Committee on the Elimination of Discrimination against Women (the Committee) for the opportunity to give input on this critical issue of the draft update to General Recommendation No. 19 in light of the remarkable developments made at the international and regional human rights treaty body level on the issue of violence against women and girls.

GRW acknowledges the considerable work that has already been done by the Committee on reviewing and analyzing the relevant international and regional human rights standards. GRW offers the comments below regarding incorporating the important principles contained in General Recommendation No. 33 on women’s access to justice into General Recommendation No. 19.

Scope

Paragraph 11. Addressing intersecting forms of discrimination.

Explicitly listing ways that intersecting forms of discrimination disadvantages women and girls is commendable and provides valuable guidance to States parties when tailoring their response to violence against women, revising or creating laws, issuing legal rulings, etc. However, the authors find the lists of the intersecting forms, by incorporating GR 28 and GR 33, to be inadequate. GR 33, paragraph 9, does not list any of the oppressive dynamics of domestic violence, such as societal and cultural shame/stigma, economic dependence, fear, custody of children, nationality, use of children to manipulate the legal system and abuse their mothers and other dynamics. In fact, GRW is unaware of any

¹ Cheryl Thomas and Amy Lauricella are the authors of this submission by Global Rights for Women (GRW). GRW is an international non-governmental organization based in Minnesota, USA working towards a world where women’s human rights to equality and freedom from violence are fully realized. GRW collaborates with partners around the world to promote women’s human rights to equality and freedom from violence through legal reform and systems change. GRW’s staff of experts have more than 20 years of experience working internationally on legal and systems reform to end violence against women and consulted with the United Nations in many capacities, notably as a participant in the expert group meeting on good practices in legislation to address violence against women, convened by the United Nations Division for the Advancement of Women, in cooperation with the United Nations Office on Drugs and Crime, in May 2008.

Committee General Recommendations that explicitly highlights domestic violence, one of the most pervasive forms of violence, as an intersectional form of oppression and discrimination.

Assuming that revising GR19 is intended to provide more guidance and more explicitly state areas of violence in the lives of women that is discriminatory, and in light of the limitations of the GR 33 list, the authors suggest that the Committee explicitly identify being a victim of domestic violence a form of discrimination and incorporate all of the dynamics a victim of domestic violence can suffer in the Committee's acknowledgment that gender-based violence may have an "aggravating negative impact."

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

Paragraph 14. a). At the legislative level.

States parties urgently need guidance given the rapid increase in the number of new laws prohibiting violence against women in the past 10–15 years. Many of these laws are non-gendered, meaning they can protect both men and women from discriminatory violence. And in many countries, this legislation is not being adequately used to protect those who are most often subjected to this violence, women and girls. The guidance to "include gender-sensitive provisions and effective legal protection" in legislation is too broad. States parties need explicit examples of what should be included in a law, and what shouldn't.

The recommendations contained in the Handbook for Legislation on Violence Against Women and its Supplement on Harmful Practices are a great start to addressing the harmful gaps in State legislation prohibiting violence against women.² Here are examples of components of domestic laws around the world that fail to conform with international best practices:

- No laws prohibiting domestic violence
- No civil order for protection remedies
- Remedies or legal system intervention that are dependent on evidence other than victims' testimony
- Inadequate enforcement of criminal laws in violence against women cases
- Requirements of showing of force versus lack of consent in rape cases
- Exceptions to rape charges if person marries victim

² See A/HRC/29/27/Add.4 Submission 2 at 2-5. See also Handbook for Legislation on Violence against Women, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>; Supplement to the Handbook for Legislation on Violence against Women, <http://www.un.org/womenwatch/daw/vaw/handbook/Supplement-to-Handbook-English.pdf>.

- Marital rape not recognized a crime
- Mediation or conciliation required or encouraged in domestic violence and sexual assault cases
- Rapists allowed parental rights
- Possibility of dismissal of charges of honour based violence when family requests

Recommendations

Paragraph 15. Prevention.

GRW suggests that the Committee explicitly state in the components of prevention the need of States parties to ensure access to civil orders for protection. Many countries have a criminal only option that is not controlled by the victim of violence, thereby limiting her capacity to keep herself safe and her autonomy in the decision-making process.

Paragraph 15. Prevention f). Incorporation of GR33.

GRW refers the Committee to, and hereby incorporates, its comments and concerns relating to Paragraph 11 of the draft GR19 regarding the failure to explicitly identify the dynamics of domestic violence that contribute to the inability of victims/survivors of gender-based violence to access an effective legal remedy.

Moreover, GRW notes that there are more significant shortcomings in the current guidance provided by GR33 on access to justice and to the extent the Committee relies on GR33, the following should be noted:

- Paragraph 9 – failure to include any of the unique dynamics of domestic violence as factors that make it difficult for women to access justice.
- Paragraph 14 – failure to mention multi-sectoral cooperation and coordination with other components and interventions of the response to violence against women - coordination is recognized by the international community as an essential element of the response to violence against women and girls.³
- Paragraph 14(d) – this recommendation is vague – the Committee could bolster draft GR19 by building in the need within the justice system for specific expertise on dynamics of particular forms of violence against women, like domestic or sexual violence.
- Paragraph 14(f) – this recommendation for monitoring justice system professionals does not state the subject of such monitoring beyond breaking the law – the Committee should consider expanding this language to including requiring that professionals be monitored for their capacity to enforce the law in a way that

³³ As the Committee is likely aware, the agreed conclusions of the 57th Session of the Commission on the Status of Women, recognizes the need for coordinated multi-sectoral services in paragraphs (ddd) and (eee). The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence explicitly references coordination in Articles 7, 8 and 10.

protects the safety and equality of women and girls and prioritizes accountability for abusers.

- Paragraph 15(c) – again, noting that professionals should handle cases in a gender-sensitive manner is too broad and vague.
- Paragraph 15(h) – laws should be drafted in a way that explicitly outlines ways to ensure victims’ access to justice rather than simply relying on NGOs and civil society to take part in the litigation process.
- Paragraph 16(b) – State parties must ensure that the provision of services to victims of violence are autonomous and staffed with professionals trained in the dynamics of violence.
- Paragraph 17(f) – State parties must again ensure that centres are staffed with professionals trained in the dynamics of violence.
- Paragraph 18 – in light of the sensitive and potentially dangerous nature of engaging with the justice system, it would be prudent to include a provision recommending that State parties take action to ensure the safe exchange of information between and among state agencies and NGOs in order to protect confidentiality.
- Paragraph 20(a) – State parties must also provide funding to civil society to ensure that an effective and independent monitoring mechanism is established.
- Paragraph 25(a)(iii) – the language referencing women witnesses and victims discharging a higher burden of proof than men is not adequate – explicit examples are necessary – additionally, it should be added that rules that place unreasonable evidentiary requirements in violence against women cases, like witness corroboration for a domestic violence or sexual assault case, should be abolished.
- Paragraph 44 – it is an internationally accepted best practice to ensure access to civil orders for protection in violence against women cases – GRW suggests that the Committee state this explicitly.
- Paragraph 46 – in the family law context, States parties must ensure that violence against women is considered equally as dangerous to children in all custody cases.

By explicitly including and addressing these gaps in GR33, draft GR19 will be more effective at providing States parties with the appropriate level of detail regarding their obligations under international human rights law and serve as a more useful tool in holding them accountable through Committee proceedings and reporting procedures.

Paragraph 15. Prevention l).

GRW commends the Committee for recommending that sexual assault and rape legislation be based on lack of consent and account for coercive circumstances. GRW requests that this paragraph also explicitly state that criminal prosecution can go forward in cases where women’s testimony is the only evidence of lack of consent.

Paragraph 15. Protection and redress.

GRW requests that coordination and a multi-sectoral community response be explicitly identified as a means to implement effective measures to protect and assist

women complainants and witnesses of gender-based violence before, during and after legal proceedings.

The joint global programme between UN Women, UNFPA, WHO, UNODC and UNDP, has identified the coordination of essential services, including the judiciary, as critical to an effective response to violence against women and girls.⁴ GRW suggests that the Committee take a stronger stance on multi-sectoral coordination and cooperation both nationally and sub-nationally throughout the world. A coordinated community response for implementation of laws and a response to violence against women has proven successful in communities where VAW laws have been in place for decades.

⁴ See <http://www.endvawnow.org/en/initiatives/view/1-essential-services.html>.