



The Global Initiative

for Economic, Social and Cultural Rights

The Global Initiative for Economic, Social and Cultural Rights welcomes the opportunity to submit its comments on the draft update to CEDAW's General Recommendation no 19 (1992) on gender based violence against women. In this submission, we provide some general feedback on key themes, as well as some specific textual changes which we feel would strengthen the current draft.

General Feedback

1. Recognizing the Link between Women's Socioeconomic Status and Gender-based Violence

As an overarching point, we would like to highlight that the original GR 19 recognized the important relationship between women's economic and social rights and the phenomenon of violence against women, highlighting that "Lack of economic independence forces many women to stay in violent relationships" (at para. 23). **This recognition, however, is not reinforced in the draft update, which we believe is a missed opportunity and a gap which should be filled before the update is adopted by the Committee.**

In addition to the recognition that poverty makes it more difficult for women to flee violence, it should at the same time be recognized that for women poverty is also often a precursor to gender-based violence: it places women in precarious and dangerous situations where they are more likely to encounter gender based violence. This is evidenced in the situation of women who, lacking viable economic options, trade sex for money; women who risk their security when they cannot afford safe transportation; women whose lack of access to toilets means that they have to go out of the house at night to relieve themselves, despite the risks; and women who have no option but to work in precarious/isolated workplaces, including domestic workers and especially migrant domestic workers. In each of these cases and many others, it is poor women – by virtue of their poverty – who face the greatest risks of gender-based violence because they do not enjoy their economic and social rights and this time and time again forces them into situations in which they are vulnerable to gender-based violence.

To address these questions, it is vital that States take adequate measures to address structural discrimination in the area of economic and social rights which entrenches women's poverty, including by ensuring that women have access to social security and are able to enjoy an adequate standard of living. Employers should also be encouraged to adopt 'safe leave' strategies for victims of domestic violence which include workplace safety planning; paid leave for victims; protection from discrimination or adverse action, and access to a women's advocate or other designated support person within the workplace.

In particular, we encourage the Committee to take a similar approach to the one that it took during its inquiry involving Canada into grave and systemic violations of CEDAW under the Article 8 of the OP-CEDAW. Here, the Committee looked at the issue of violence against Aboriginal women in Canada, and highlighted under "prevention of violence" the importance of "addressing the socioeconomic conditions of aboriginal women" (UN Doc.

CEDAW/C/OP.8/CAN/1, 30 March 2015, at paras. 111-119). Here the Committee specifically recognizes that “disadvantaged socioeconomic conditions and the lack of social services increase women’s vulnerability to violence, since the lack of access to such resources reduces the choices available to women in situations of risk and prevents them from escaping violence” (para. 112). We encourage the Committee to integrate similar language into the draft update to GR 19 under its section on prevention.

2. Addressing the Critical Question of Housing and Land

The current draft update contains scant mention of housing and land, and we believe additional elaboration would be helpful.

On housing, in all corners of the world, victims of domestic violence face the stark choice of either living on the street or being beaten by a partner. This relationship has been recognized various times by UN agencies and experts:

- Radhika Coomaraswamy, former UN Special Rapporteur on violence against women, its causes and consequences, noted in her 2000 report that “Housing policy is directly related to issues of violence against women Women who are economically dependent on their partner or their family are often faced with the dilemma of being abused or being homeless. Lack of shelter facilities forces up to 30 per cent of women who have fled domestic violence to return to their homes and thus to violence.”¹
- In 2003, the then UN Special Rapporteur on the right to adequate housing, Miloon Kothari, described the close link between housing rights and violence against women as follows: “In most countries, whether developed or developing, domestic violence is a key cause of women’s homelessness and presents a real threat to women’s security of person and security of tenure. Many women continue to live in violent situations because they face homelessness if they resist domestic violence.”²
- The UN Division for the Advancement of Women has stated: “Violence against women directly affects survivors’ housing. In many instances, survivors of violence have remained in situations where they are vulnerable to abuse due to an inability to find appropriate accommodation.”³
- In 2009, the Commissioner for Human Rights of the Council of Europe (CoE) issued a *Recommendation on the Implementation of the Right to Housing*, advocating for the adoption and implementation of national housing strategies by the CoE Member States.⁴ Section 4.3.6. of the Recommendation deals explicitly with women and women victims of violence, calling upon Member States “to protect women victims of violence through

¹ Radhika Coomaraswamy, ‘Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences,’ submitted pursuant to Commission Resolution 1997/44, UN Doc. E/CN.4/2000/68/Add.5 (24 Feb. 2000).

² Miloon Kothari, ‘Women and Adequate Housing,’ Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination, UN Doc. E/CN.4/2003/55 (26 Mar. 2003).

³ United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, ‘Handbook for Legislation on Violence Against Women,’ New York, 2010.

⁴ Council of Europe, Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing, CommDH(2009)5, Strasbourg, 2009.

specific legal and policy initiatives including the provision of specialized emergency shelters and other alternative housing.”

In many cases, victims of domestic violence have difficulty accessing alternative housing because of an abhorrent lack of domestic violence shelters, transitional housing programs, and public or market rate housing which is affordable to poor women. Victims of domestic violence are also routinely denied access to housing due to discrimination on the part of landlords and others who do not want to rent to women fleeing situations of violence for fear of aggravating the abuser. It is imperative that the housing security of these women is adequately ensured, so that access to housing does not become a barrier for women seeking to leave abusive situations.

Domestic violence is often a primary cause of homelessness for women. Women and girls facing homelessness face the additional threat of sexual abuse on the streets, or continued domestic violence should they return to their abusers. Long and short term housing options for abused women may be difficult or impossible to access. In developing countries, abused women often lack any access to safe houses or emergency shelters, while the trend in developed countries indicates continued reductions in budgetary allocations and restrictions in social services, resulting in a decrease in the numbers of temporary shelters available for abused women. Recognition of housing rights in the context of violence against women, and in particular domestic violence, must go beyond the provision of emergency shelters to transitional and permanent housing solutions.

On land, for women secure land rights can have another unique and profound effect. By providing women enhanced status in the household and community, secure rights can render them less vulnerable to domestic violence. Land rights can strengthen a women’s fallback position and her bargaining power within marriage, which likely serves to deter violence. And because these rights can enhance a women’s self-worth, they can thereby reduce her tolerance to violence. A study from India indicated that women who own land or a house face a significantly lower risk of marital violence. In Kerala, 49% of women without property reported physical violence and 84% reported psychological violence. However, significantly smaller percentages of women with land and a house reported physical and psychological violence – 7% and 16% respectively. In addition, 71% of propertied women who suffered violence left home compared to 19% of women without property, and a much smaller proportion of propertied women subsequently returned home.⁵ In West Bengal, the story is similar. Women with property were much less likely than women without property to report experiencing physical violence – 15% versus 40% - as well as psychological violence – 28% versus 50%.⁶ While studies from other regions are needed, these findings point to an important outcome linked to secure land and property rights for women.

In the lead up to the MDGs, the UN Task Team Report observed that “gender-based violence is one of the worst and most pervasive manifestations of inequality and discrimination.”⁷ The Report also pointed out that a development agenda that recognizes the centrality of human security must include efforts to prevent and reduce all forms of violence and abuse, particularly that of highly vulnerable populations such as women and girls. Efforts to address women’s lack of secure rights to land and property is one key way to help reduce gender-based violence.

⁵ Panda, P. & Agarwal, B. (2005). Marital Violence, Human Development and Women’s Property Status in India, *World Development* (33)(5), 823-850, at 836, 842).

⁶ Gupta, J. (2006). Property Ownership of Women as Protection for Domestic Violence: The Best Bengal Experience, in ICRW (2006) *Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience*, at 45.

⁷ UN System Task Team (2012). *Realizing the Future We Want for All*, 31-32.

3. Clarifying Standards around Eviction of Alleged Perpetrators

The draft update does include reference under current para 15(a)(ii) to eviction of perpetrators from the family home, however, **it should be clarified in the text that this is to be allowed regardless of who holds the title to the family home or regardless of who holds the lease of the property.** Several States have adopted legislation to this effect:

Serbia: the Family Law (adopted in 2005) introduced a provision on protection measures for victims of domestic violence, including shelter. According to Article 198(2) of the Family Law, courts can issue an order for the removal of the perpetrator from family housing, and they can also order that victims of domestic violence be allowed to move into family housing, in both cases regardless of the ownership of housing.⁸

India: Protection of Women from Domestic Violence Act (2005) provides that “every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.”⁹ In addition, the Act provides that a person suffering domestic violence “shall not be evicted or excluded from the shared household or any part of it by the respondent [i.e. the abuser] save in accordance with the procedure established by law.”¹⁰

Brazil: what has become popularly known as the ‘Maria da Penha Law’ (2006) for the first time in Brazil allows for the removal of the abuser from the home.¹¹

United States of America: women living in federally funded (including ‘Section 8’)¹² housing are protected by the federal Violence Against Women Act of 2005 (VAWA 2005).¹³ In part, this legislation provides – at least in cases of federally funded housing – that while abusers may be evicted from housing, victims must be allowed to stay.¹⁴

Specific Language Suggestions:

1. New paragraph under ‘Prevention’ (new subparas. under current para. 15):

Adopt and implement effective measures to address women’s disadvantaged socioeconomic condition and lack of social services which increase women’s vulnerability to violence, paying special attention to patterns of intersectional discrimination. Women’s disadvantaged

⁸ Article 198(2) of the Family Law of the Republic of Serbia, 2005. Similar legal improvements have been noted in other countries of the region. In the Czech Republic, the Act No. 135/2006 Coll. on Protection against Domestic Violence empowers the police intervening in domestic violence cases to ask the perpetrator to leave the household for ten days. In Bosnia and Herzegovina, the 2005 Laws on the Protection from Domestic Violence, adopted respectively in its Republika Srpska and the Federation of Bosnia and Herzegovina entities, both offer protection measures including removing the perpetrator from housing for the period of one to six months.

⁹ The Protection of Women from Domestic Violence Act, No 43 of 2005, 13 September 2005. See Section 17 of the Act on the ‘Right to reside in a shared household’.

¹⁰ Ibid.

¹¹ Federal Law 11340, aka Lei Maria da Penha (Maria da Penha Law), of 7 August 2006. See Section 2, Article 22 on ‘Urgent Protective Measures.’

¹² ‘Section 8’ refers to Section 8 of the United States Housing Act of 1937. It is a voucher program of the federal government which allows very low-income families, the elderly, and the disabled to afford housing in the private market.

¹³ The Violence Against Women and Department of Justice Reauthorization Act of 2005 (H.R. 3402). Public Law Number 109-162. See sections 606 & 607, Amendments to the Low-Income Housing Assistance Voucher Program and Public Housing.

¹⁴ Acts of abuse under VAWA 2005 include domestic violence, dating violence or stalking.

socioeconomic condition reduces the choices available to women, placing them in situations of risk, and prevents them from escaping violence. States should adopt temporary special measures to remedy gender-based discrimination and inequality in the enjoyment of economic and social rights, and ensure that women have access to social security and basic social protection floors that ensure an adequate standard of living.

Encourage employers to adopt ‘safe leave’ strategies for victims of domestic violence which include workplace safety planning; paid leave for victims; protection from discrimination or adverse action, and access to a women’s advocate or other designated support person within the workplace.

2. Additional Language to Para 15 (subpara. (a)(ii & iii)) on ‘Protection and Redress’:

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 against alleged perpetrators. Eviction orders should enable victims/survivors of gender-based violence against women, and their children to stay in their current place of residence, even if they do not formally hold the title/lease to the home/land or if the title is held in the alleged perpetrator’s name. Perpetrators or alleged perpetrators’ rights or claims during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women’s and children’s human rights to life and physical and mental integrity, and the best interest of the child shall be the paramount principle.

Ensuring access to financial aid and free or low-cost legal aid, medical, psychosocial and counselling services, education, training and employment opportunities for victims/survivors of gender-based violence against women, and their family members. Health-care services should be responsive to trauma and include reproductive health services. States should provide 24-hour helplines, and sufficient numbers of safe and adequately equipped crisis, support and referral centres, and emergency shelters for women and their children, and other family members as required. Longer term support and transitional services, including those which enable victims/survivors to access adequate housing, land, child care, and transportation, etc. should also be prioritized. These services should be available in the whole territory of the State party, and accessible to all women, in particular to those affected by intersecting forms of discrimination, and take account of any specific needs of their children.

3. New paragraph under ‘Protection and Redress’ (new subparas. under current para. 15):

States must prohibit discrimination against victims/survivors of gender-based violence against women, particularly in relation to housing, land, education and employment.