



**SUMMARY SUBMISSIONS TO THE CEDAW
TOWARDS THE DRAFT UPDATE OF GENERAL
RECOMMENDATION NO. 19**

**BY
PARTNERS FOR LAW IN DEVELOPMENT¹**

There is a pressing need to provide “States parties with further and comprehensive guidance aimed at accelerating the elimination of gender-based violence against women.” The importance of such an elaboration through a General Recommendation (GR) cannot be over-emphasized in view of the intractable and entrenched discriminatory structures that perpetuate and condone violence against women. Even as this exercise opens an opportunity for further elaborating upon implementation, the persistent and deeply entrenched nature of obstacles call for a deliberative exercise deserving of in-depth work, time and participation. It is hoped this is possible notwithstanding the deadline of September 30. The submissions are provided by way of summary points for each of the sub heading of the draft GR-19.

Introductions

1. Emphasise the framing of GBV against women to be an extreme manifestation of discrimination against women, to establish the continuum with more routine, normalized forms of discrimination. Often States parties refer to violence in terms of ‘incidents’, to frame GBV as an aberration rather than an outcome of discrimination, along a continuum of less grave to brutally violent, embedded in social, economic, cultural and political structures.
2. In view of the persistent nature of GBV against women, and the challenges surrounding implementation of human rights obligations to eliminate it, an elaboration of these **challenges** is necessary. A section on challenges to elimination will be useful in setting the context (either in the introduction or as a sub-heading in itself), within which the update to GR-19 assumes importance. This section needs to elaborate barriers to elimination of GBV despite normative advances, treaty ratification, legislative advances and much more over the years. As these challenges are the impetus for providing

¹Partners for Law in Development (PLD) is a legal resource group pursuing the realization of social justice and equality for women through law, particularly in contexts of marginalization shaped by gender, sexuality, culture and poverty in India. See www.pldindia.org and www.cedawsouthasia.org

guidance for accelerating the elimination of GBV against women, the examples of barriers to implementation of human rights obligations must go beyond the few mentioned in para 4, page 3. These may also include the following:

- i. The implementation of many of the special laws on GBV are conditional upon creation of new mechanisms that facilitate redress, capacity development of new or existing mechanisms, and resource allocations to enable this within a given time frame. What often happens is that state obligation tends to remain limited to legislative enactment. In many instances, existing state functionaries are assigned additional charge to carry out burdensome responsibility mandated to new mechanisms under special laws. The mechanisms are not only inadequate in number, but poorly resourced, assigned responsibilities in addition to the original mandate for which they were created, without any sustained capacity development. This renders the special laws ineffective and merely of symbol value.
- ii. In federal model of governance, the Centre ratifies human rights treaties, followed by enactment of laws, leaving the next steps to the discretion of the federal states. In many cases, resource allocation for creation of new mechanisms mandated by special laws, their capacity building is delegated entirely to the priorities of the federal States. Federal structure cannot become an excuse for the States parties' non-fulfillment of international obligations, and there must be a commitment from the Centre to follow through its human rights obligations for a particular period to ensure institutionalization of new perspectives, processes and systems introduced by the special laws.
- iii. Resource allocation towards eliminating GBV, or even special laws to combat the same, remains an area on which there is little or no reporting. Efforts towards gender budgeting are reduced to percentages figures when in fact, the budgetary allocations must be contextualised in terms of needs assessments, goals and outcomes.
- iv. Although necessary, the data to demonstrate the indicators of impact of laws and programmes remains missing. There is little or no serious effort to monitor qualitative and quantitative impact of steps taken by States parties at the domestic level – this is evident in the reporting to CEDAW, which does not go beyond a listing of laws and programmes.
- v. Often special laws are enacted with on a theme without complying with substantive equality framework, or universal standards for eliminating GBV. Instead, laws might be protectionist or even condoning of violence, and sometimes, include penalty for 'false cases' by complainants, which freezes rather than enables women to access legal redress.

1. Recognise the evolving normative framework over the years – beginning with GR 12 and 19 in 1989 and 1992 respectively, along with the contribution of DeVAW, Beijing Platform for Action, the work of the mandate of SRVAW, jurisprudence through CEDAW OP, and so on. The drafting of a new GR poses a valuable opportunity for convergence through recognition and acknowledgment, the contributions of different mechanisms within the UN human rights system that are dedicated to addressing GBV against women. Additionally, contributions by other bodies/ resolutions by the General Assembly and the Human Rights Council that articulate GBV in the context of torture, discrimination arising on account of race, disability, sexual orientation and gender identity, will strengthen the intersectional framing of VAW.
2. It might help to structure the section on ‘scope’ to differentiate between (a) manifestations of GBV (intersectionally, arising from status, context and location); (b) with the due diligence framework of state obligation on which both the SRVAW and CEDAW has provided guidance.
3. Under para 8 on page 4, it would be relevant to address the ‘declarations’ made with respect to core articles of CEDAW, that in effect operate like reservations to limit the extent of state obligation.

General obligations of States parties under the Convention relating to GBV against women

1. There is a need to define State responsibility for acts or omissions of transnational actors, including foreign military bases in host countries. In this context, the responsibility must be defined in respect of prosecution, punishment as well as in respect of reparations to the victims.
2. The elaboration of general obligations of the State is structured around legislative, executive and the judicial levels. There is a need to address other actors within the judicial process, such as the legal aid, prosecution, support services too.
3. Support services, mechanisms/ agencies administering compensation/ criminal injuries, shelter, health care, towards fulfilling reparative obligations of the state to address consequences of GBV on the victims need specific mention and elaboration.

Recommendations

1. The recommendations need to be categorized under each aspect of due diligence responsibility cast upon the State. Obligations relating to reparations and restorative justice towards the victims is one of the most underdeveloped and neglected area in most jurisdictions. States do not view reparations as a justice sector response to violence, leaving unaddressed and unattended the consequences of violence upon victims, their families and society at large. This contributes to the fear and entrenches status quo. A need for guidelines that outline transformatory steps for healing and recovery to victims, rather than the meagre protectionist measures under social welfare schemes, cannot be overemphasized. This would benefit from an independent sub heading, so as to not collapse it under protection and redress in one para on page 11. For additional

information and discussion, see <http://pldindia.org/wp-content/uploads/2015/11/Journey-from-Victim-to-Survivor.pdf>

2. Under para (b)(i) on pages 7-8, it is important to refer to the importance of comprehensive sexuality education as a preventive measure necessary for addressing discrimination and reducing risk from sexual abuse and harm.
3. Under para c) on page 8, in relation to (negative) gender stereotypes and prejudices, it is important to specify that it amongst other things also alludes to glorifying traditional roles of women. In many contexts, initiatives claiming to address ‘stereotyping’ strike at nudity, sexually explicit images of women, or unconventional/ non-normative representations of women. Such efforts are moralistic and not liberatory, as they intend to punish and stigmatise sexually explicitness, nudity, non-normativity thereby reinforcing gender stereotypes.
4. Under para j) on page 9 in respect of repealing legal provisions that discriminate against women, mention must be made of criminal provisions that seek to punish women for purportedly filing false complaints of sexual harassment at workplace, or sexual violence. Such provisions have a chilling effect, and serve to dissuade women from complaining about issues on which there is silence, stigma and a historical legal vacuum. Complaints with insufficient evidence are often deemed to be false, resulting in punitive consequences on complaints. At a macro level, such provisions and related discourse has turned into a backlash against special laws on GBV.

Madhu Mehra
Executive Director
Partners for Law in Development
New Delhi
September 30, 2016