



**IWRAW-Asia Pacific
Partner Feedback to the
Update on General
Recommendation No. 19
on Violence Against Women
by the CEDAW
Committee**





REPORT

IWRAW-Asia Pacific Partner Feedback to the Update on General Recommendation No. 19 on Violence Against Women by Committee on Elimination of All Forms of Discrimination against Women (CEDAW)

Background to this report

General Recommendation 19 (GR 19) was issued in 1992 and recognises gender-based violence against women (GBVAW) as a form of discrimination under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The main aim of GR 19 was to clarify state obligation to address violence against women as a violation to women's human rights. Since then, multiple states have taken measures at the national level to address violence in pursuance of their obligations under CEDAW and other human rights treaties and reported to CEDAW and other treaty bodies on those measures.

However, given the changing context and forms of violence which women face all over the world, there is a need to ensure that GR 19 continues to reflect current realities and address the expanding manifestation, perpetuation and/or exacerbation of violence against women. As a result, In March 2015 the CEDAW Committee decided to update General Recommendation 19.¹

As a part of the process to update GR19, on 28 July 2016 the CEDAW Committee adopted a draft General Recommendation² (GR) expanding upon the 1992 GR, and consequently sought inputs from experts and civil society organisations (CSOs) through gathering comments and feedback from these groups online, via the OHCHR website.

In order to support the Committee's work on gaining input into the draft paper, and before the draft was publicly shared on 28 July 2016, IWRAW-Asia Pacific (IWRAW-AP) had decided to lead an initiative to gather feedback from both CSOs and experts on GBVAW via an online survey. The survey was distributed to approximately 70 organisations requesting CSOs and experts to provide clarification on the substantive, definitional, legal & procedural issues related to Violence against Women which they considered as a priority in the country or region, as well ways to improve implementation of state obligations to address violence against women. After receiving 26 responses from women's rights organisations and networks, academics and other experts specializing in work on GBVAW, the responses were collated and synthesised to reflect a holistic view of the concerns and issues raised by these groups.

¹ <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DraftUpdateGR19.aspx>

² CEDAW/C/GC/19/Add.1 (found at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/19/Add.1&Lang=en)

List of respondents:

Before expanding upon the general concerns of groups specialising in GBVAW, it is worth revisiting the role GRs and its importance as a tool for advocacy. GRs are effective means of expanding the understanding of an issue and providing guidance on what actions states need to take to end existing discrimination in that area. Women's groups can draw on/invoke GRs to advocate for changes in laws, policies and programmes and to insist on the allocation of resources to address specific forms of discrimination. In short GRs are an important part of the practice and jurisprudence of the treaty and add value to efforts to bring about practical change at a national level.

The input of CSOs is key to ensuring that the updated GR19 is relevant and effective as an advocacy tool and will enable the identification of laws and policies that contribute positively to eliminating violence as well as those that perpetuate or legitimise it. CSO input is also critical to identifying implementation gaps, allowing State Parties to take appropriate measures in this regard.

This report collates the feedback and recommendations from the respondents to this survey. From the feedback gathered by the partners of IWRAW-AP, there appears to be a consensus that the general aim behind updating General Recommendation 19 should be to identify and name the expanding forms of GBVAW taking place globally, as well as identifying the shifts in political, economic and cultural contexts exacerbates GBVAW occurs. Another main priority of the GR 19 update should be to solidify the elements of State obligation. Most of the feedback received during the survey highlighted the need for the Committee to elaborate the specific elements in relation to the standard of conduct expected by the state when exercising due diligence in responding to legal, systemic and cultural norms and practices which contribute to violence against women, and dealing with circumstances which prevent women from accessing justice and redress, especially women and girls who face multiple forms of discrimination. In addition, other issues highlighted included general issues around impunity, as well as the role of different actors in perpetuating violence and impunity.

The partners who contributed to the report with feedback include:

- Association for Emancipation, Solidarity and Equality of Women of Republic of Macedonia (ESE), Macedonia
- The Bangladesh Legal Aid and Service Trust (BLAST), Bangladesh
- The Asian-Pacific Resource & Research Centre for Women (ARROW)
- International Federation for Human Rights (FIDH)
- Butterfly: Asian and Migrant Sex Workers Network
- Canadian HIV/AIDS Legal Network
- Working Women's Network, Japan
- Masimanyane, South Africa
- Partners for Law in Development, India
- OutRight Action International
- Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer (CLADEM)
- Andy Yeyantri, Indonesia
- Vrinda Grover, lawyer, India

- Maliha Zia, lawyer, Pakistan
- Women's Aid Organisation (WAO), Malaysia
- The Advocates for Human Rights
- KAFA (enough) Violence & Exploitation, Lebanon
- The Swedish-CEDAW Network, Sweden
- Spanish CEDAW Shadow Report Platform, Spain
- Colectivo Mujeres Alderecho (MAD), Colombia
- Coalition to Stop Violence against Women, Armenia
- Democracy Today NGO, Armenia
- Women's Centre for Change, Malaysia
- Lorraine Ocheil, lawyer, FIDA Kenya.

EXECUTIVE SUMMARY

1. GBVAW must not be treated in a symptomatic manner. The update to GR19 must consider and contextualise GBVAW in detail, and address the current realities and complexities of global political and economic systems which have contributed to the manifestation and perpetuation of GBVAW, as well as acted as a barrier to eliminating GBV. Examples of contexts that need to be elaborated:
 - The neo-liberal economy
 - Growth and development
 - Conflict and post-conflict situations
 - Religious fundamentalism
 - Migration
2. While the Committee has been able to define GBVAW very broadly, the Committee will also need to address the different forms of GBVAW which are increasingly emerging. The feedback from our partners has highlighted the need for the types of violence which need further elaboration:
 - Violence related to sexual, reproductive and health rights
 - Economic violence
 - Online violence
 - Stalking
 - Institutional violence
3. As many partners have highlighted the need for the Committee to recognise the way intersectionality exacerbates violence and vulnerability of women to violence, it is thus important for the Committee to spell out the contexts and indices of intersectionality which compounds violence. The updated GR will need to identify vulnerable groups and address harmful practices and policies to these particular groups:
 - LGBTIQ
 - Sex workers
 - Aging women
 - Girls
 - Indigenous and minority
 - rural women

4. The updated GR must strengthen clarity and support capacity of states to address their legal obligations to eliminate GBVAW including calling on states to identify and repeal substantive, evidentiary and procedural laws without delay those which are harmful (ie discriminates against women in prosecuting GBVAW). The recommendations should be elaborate, precise and illustrated with real examples. From the questionnaire feedback we have received, legal measures and policies addressing GBVAW that could be divided into:
- Legislative gaps acting as a barrier to conviction
 - Barriers of access to justice
 - Substantive laws which discriminate against women seeking justice for GBVAW
 - Procedural laws which discriminate against women seeking justice for GBVAW
 - Evidentiary laws which discriminate against women seeking justice for GBVAW
 - Stereotypical assumptions
 - Gaps to redress/compensation/remedies
 - Plural legal systems
 - Legal, policy or programmatic approaches/solutions in addressing GBVAW role of the judiciary and prosecutorial services
5. Given the changing contexts and paradigms of GBVAW, when addressing state obligation the updated GR should also utilise clarify the principle of due diligence, especially in relation to violence perpetrated by non-state actors. The GR should identify examples of non-state actors including Multinational corporations and business entities, and further elaborate the standard of conduct expected in relation to GBV.

CONTEXTS OF GBVAW

In order to adequately and instructively clarify state obligation in addressing GBVAW, it is imperative that the updated GR consider and contextualise in detail, the current realities and complexities of global political and economic systems which have contributed to the manifestation and perpetuation of GBVAW as well as acted as a barrier in eliminating GBVAW.

Partners have expressed the view that so far GR 19 and the other practice of the CEDAW Committee have addressed most issues that women face globally. However, there is further scope for the GR to be used to influence the economic and social factors that increase women's vulnerability to sexual and GBVAW and/or trigger violence against women, especially in the Global South.³

While directly connecting specific manifestations of the global political economy to the prevalence of GBVAW⁴ may be difficult to do, it is important that the updated GR draw links between GBVAW and women's lack of access to and control over resources. For example, the struggle to control power and resources have led to the assumption of neoliberal policies

³ Bangladesh Legal Aid and Service Trust (BLAST), Bangladesh, <http://www.blast.org.bd/>

⁴ J. True *The Political Economy of Violence Against Women: A Feminist International Relations Perspective* Australian Feminist Law Journal, The Volume 32 (June 2010)

adopted globally as well as a steady increase in armed conflicts. Neo-liberal policies and armed conflict are often built on prevailing gender, class and ethnic inequalities which play a role in reconfiguring economic and social structure which contribute to the incidence of GBVAW.⁵

The feedback provided by our partners in the questionnaire has provided a breakdown of particular economic and political manifestations which has an impact on the prevalence of GBVAW. These include:

- Neo-liberal economic globalisation:
 - Although many states are now bound to neo-liberal economic reforms due to intergovernmental trade agreements, there still exists no specific human rights framework to hold actors of economic globalisation such as international financial institutions, inter-governmental organisations, and private actors accountable for human rights abuses. This has manifested in a great imbalance of power between people, and especially marginalised groups, not limited to women, and private institution/business entities and led to an increase in work environments which are unsafe and abusive, where non-state actors are allowed to operate with minimal accountability.
 - Neo-liberal economic policies has also manifested in the steady roll-back of social benefits provided by states, as well as a general move towards privatisation and deregulation of state-provided services. These measures have consequently curtailed the accessibility and reduced the quality of health-care and safe shelter services available to women who face gender-based violence.
- Growth and development⁶:
 - Connected to the current global economic order, partners have expressed the need for greater clarification of the links between economic growth and development in the Global South, and the prevalence of GBVAW.
 - While links between poverty and forms of GBVAW such as domestic violence have been established, some partners highlight the need for the international community to address the real life impact of particular *types* of growth and development models on GBVAW, as well as the need for specific state obligations to rectify and ensure that laws and policies which are aimed at encouraging growth and development do not exacerbate the prevalence of GBVAW or serve as a barrier to addressing it.
 - The updated GR should also highlight the impact of poverty on marginalised groups and its relation to GBVAW.
- Conflict and post-conflict situations:
 - The lack of law and order, as well as the lack of availability of state infrastructure, have been major obstacles in addressing VAW in both conflict and post-conflict situations. An updated GR should elaborate the implication of these obstacles in perpetuating impunity by both state and non-state actors through the normalisation of violence and lack of sanctions, as well as the lack of access to justice for women who face violence.

⁵ Para 54, UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, 28 May 2014, A/HRC/26/38

⁶ Skype Interview with Vrinda Grover, India 3/06/2016

- In this regard, merely referring to General Recommendations No. 30 (2013) (GR30) is not sufficient. The updated GR 19 should make greater linkages to GR 30 by articulating aspects of state obligation in relation to GBV in conflict prevention, conflict and post-conflict situations with more clarity.
- Examples of issues that need clarification are:
 - The form of reparations in transitional economies
 - Challenges of access to justice for GBV victims in conflict situations
 - Challenges of gathering evidence in the absence of forensic agencies, or a police force.
- Religious fundamentalism
 - In the Updated GR, the Committee will need to consider the role of religious interpretation in certain societies where religious ideologies can be converted as a justification of violence.
 - One of the main manifestations of religious extremism and fundamentalism is the limitation of access to and participation by women in public life. Imposing strict cultural and religious based restrictions on women hinders their mobility and access to health care and limits their legal personality. These strict restrictions on women to private sphere has exacerbated the prevalence of GBVAW and impaired the ability of women to hold state and non-state actors accountable for GBVAW. This perpetuates impunity and the regressive interpretation, and imposes barriers to the establishment of norms and standards on women’s human rights and the adoption of measures to eliminate GBVAW.
 - Religious arguments have been utilised by states to supersede international obligations to address GBVAW. Many states evade international obligations by making reservations to articles which affect the essence of the international agreements related to human rights, under the pretext of “cultural” and “religious particularities”, their “non-conformity with national law”, or by claiming a lack of national mechanisms and financial resources for implementation.⁷ As a result, cultural practices both by state and non-state actors such as FGM, honour killings as well as forced marriage are justified through the interpretation of religious fundamentalism.
 - To address this issue, the Committee will need to consider the implications of laws and policies related to fundamentalism which perpetuate impunity. Partners have provided examples of religious fatwas which impose evidentiary requirements that make it in practice impossible for women to prove they were raped⁸ and also refer to sharia evidentiary laws which punish women who have been raped, for adultery.⁹

⁷ Based on input by KAFA Lebanon, Lebanon, <http://www.kafa.org.lb/>, who organised a Conference in Beirut on 12-14, December 2015, on “The Civil Society and Challenges of Failure to Protect Women” that was attended by representatives of women’s organizations and legal professionals from 13 Arabic countries. “. The meeting aimed to discuss the challenges to protect women, especially in conflicts and post-conflict situations, and the suffering of women and girls at times of wars and armed conflicts in Palestine, Yemen, Syria, Iraq and Libya, and the systematic brutal practices committed against women and girls, and civilians in general, such as murders, abduction and captivity, trafficking, and sexual enslavement.

⁸ See FIDH’s (International Federation for Human Rights), <https://www.fidh.org/en/>, upcoming research on the *Rise of Political Islam and its Impact on the Rights of Women in the Arc of Crisis*.

⁹ Skype Interview with Andy Yeyantri, Indonesia 16/06/2016

- Plural legal systems: religious traditions and practices often give rise to a plural legal system. The challenges faced to address GBVAW in these systems would need to be addressed by the Committee. The challenges of protecting women against violence are further elaborated under the law and policy section below.
- Substantive, evidentiary and procedural laws rooted in religious fundamentalism need to be examined and revoked if they fail to protect women against violence adequately, despite a state's insistence that these laws reflect cultural and religious particularities.
- Migration
 - The implications of internal and external forced movement caused by both armed conflict and economic purposes needs to be considered by the Committee.
 - The situations of internally displaced people stateless persons, asylum seekers and refugees need to also be taken into account in both the manifestation of and impact of GBVAW and developing responses to prevent and protect against it.
 - The Committee will also need to highlight how the migration of women for the economic reasons may contribute to changing gender roles and increased participation in the workforce, but may also continue to place women in unequal power relations and leave them exposed to exploitation and violence from those who have power over them. This can result in abusive working conditions as well as a concentration of women in the lower segment of the value chain.
 - Partners have documented an increased risk of psychological and physical abuse, sexual violence and exploitation throughout the migratory process.¹⁰ In destination countries, women become even more vulnerable to abuse from their own partner as they are cut off from their family and environment, while difficult living conditions may exacerbate this violence.¹¹ Migrant women who live in countries of destination might also be subjected to acts of violence perpetrated by men from their own communities.¹²

FORMS OF GBVAW

While GR 19 has attempted to ensure that states take a broad interpretation of the term violence, over the years, the recognition of new forms of violence has emerged. While the forms of violence listed below are by no means exhaustive, feedback from the questionnaire highlighted 4 main forms of violence which needed to be addressed by the Committee in an updated GR.

- Denial of Sexual and Reproductive Health Rights:
 - This includes the denial of safe and legal abortion services, involuntary invasive procedures on body including involuntary sterilisation and denial on contraception and sexual and reproductive health services.¹³

¹⁰ FIDH

¹¹ FIDH

¹² FIDH

¹³The Asian-Pacific Resource & Research Centre for Women (ARROW), <http://arrow.org.my/>

- The updated GR could also take the opportunity to take into account General Comment 22 of the Economic, Social and Cultural Rights (CESCR) on the right to sexual and reproductive health, as well as the 2011 landmark annual report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.¹⁴
- Economic violence¹⁵
 - Economic violence as a form of violence is often highlighted by the CEDAW Committee in its Concluding Observations:
 - In the 2013 Concluding Observations on the combined seventh and eighth periodic report on Hungary, the CEDAW Committee recognised that Hungary lacked ‘specific provisions related to other forms of violence, such as economic and psychological violence and stalking.’¹⁶
 - In the 2014 Concluding Observations on the combined fourth and fifth periodic report on Georgia, the Committee raised concerns over the ‘growing number of women murdered by husbands, partners- includes psychological, physical, economic and sexual violence’¹⁷
 - However, the term needs further clarification by the Committee. The Committee will need to clarify economic violence as a type of GBVAW, and consider the economic implications of GBVAW.
 - Often, where men are the breadwinners in the family, physical violence is followed by economic deprivation of women, involves the denial to women of their basic human right to food, housing and shelter, and limits their ability to access justice and the services to address the violence faced. This situation further perpetuates impunity.
- Online Violence
 - Due to the rising use of the internet, women’s groups have found that new and varied forms of sexual abuse and exploitation have developed online.
 - Social media for example, has become a forum for a lot of intimidation.¹⁸ Women are subjected to death and rape threats disproportionately compared to men.
 - Revenge porn has also become a new phenomenon where aggrieved boyfriends would take a photograph of the girlfriend and create a pornographic video to share online in order to revenge the ‘wrongdoing’ of the girlfriend.¹⁹
 - The concepts of consent, privacy and autonomy will need to be clarified by the Committee.
 - The challenges surrounding the use of digital evidence to address GBVAW should also be highlighted.
- Stalking
 - Stalking has been identified by the Committee as a form of violence in several Concluding Observations:

¹⁴ FIDH

¹⁵ Association for Emancipation, Solidarity and Equality of Women (ESE), Macedonia, <http://www.esem.org.mk/en/>

¹⁶ CEDAW/C/HUN/CO/7-8

¹⁷ CEDAW/C/GEO/CO/4-5

¹⁸ Vrinda Grover

¹⁹ Masimanyane, South Africa

- In the 2013 Concluding Observations on Hungary, the Committee recognised that Hungary lacked ‘specific provisions related to other forms of violence, such as economic and psychological violence and stalking.’
 - Institutional violence :
 - In the 2006 a study on Violence against Women by the Secretary-General identified the need for the state to address the incidence of violence of women in custody.²⁰
 - Custodial violence²¹ against women in state institutions includes violence in police cells, prisons, social welfare institutions, and immigration detention centres.
 - The control wielded by correctional officers over women’s daily lives may also result in violence through demands for sexual acts in exchange for privileges, goods or basic necessities.²²
 - The 2006 Report also found that although instances of custodial violence against women are reported in countries all around the world, there is little quantitative data to establish the prevalence of such violence
 - Femicide
 - Latin American groups²³ have expressed the need for the Committee to provide clarity on the term ‘femicide’ as various Latin American countries have begun to legally utilise the term ‘feminicide/femicide.’
 - For example, In 2015 Brazil’s Penal Code was amended to redefine "femicide" as any crime that involves domestic violence, discrimination or contempt for women, which results in their death. Heavier sentences were also introduced for crimes committed against particular groups of women, such as pregnant women, girls under 14, women over 60 and women and girls with disabilities. Brazil is the sixteenth Latin-American nation to include a Femicide Act in its national legal framework.²⁴
 - Given the pervasiveness of the term in the Latin American region, it would be helpful if the Committee elaborate upon the concept and context of “femicide,” as well as the impact of using the term in defining offences which result in death, and whether it is capable of addressing GBVAW more effectively.

IDENTITIES

In its concluding observations and GRs, the Committee has consistently highlighted the inextricable link between discrimination of women based on sex and gender with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste,

²⁰ Page 44, Background documentation for: 61st session of the General Assembly Item 60(a) on advancement of women Secretary-General’s study on violence against women. A/61/122/Add

²¹ Also referred to by Spanish CEDAW Shadow Report Platform, Spain

²² Background documentation for: 61st session of the General Assembly Item 60(a) on advancement of women Secretary-General’s study on violence against women

²³ Spanish CEDAW Shadow Report Platform and CLADEM

²⁴ <http://www.unwomen.org/en/news/stories/2015/3/in-brazil-new-law-on-femicide-to-offer-greater-protection>

and sexual orientation and gender identity.²⁵ General Recommendation 33 (GR33), recognises that grounds for intersectional or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socio-economic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, and being lesbian, bisexual, transgender women or intersex persons.²⁶ Additionally, GR 33 emphasized the discrimination faced by women rights defenders who are frequently targeted because of their work.²⁷

The feedback received from IWRAW-AP's partners highlighted the need for the Committee to recognise the way intersectionality exacerbates violence and vulnerability of women to violence by spelling out the contexts and indices of intersectionality that compounds violence.²⁸ Amongst the main intersectional identities highlighted were:

LBTIQ

- Hate violence against lesbian, bisexual, transgender, intersex and queer (LBTIQ) women needs to be addressed in an updated GR. Listed below are some concerns raised by our partner organisation, OutRight Action International:
 - The prevalence of rape and physical violence, perpetrated against lesbians, bisexual women and trans-persons in an attempt to coerce them to conform and/or 'cure' them of their homosexuality, lesbianism, or non-conforming gender
 - Underreporting of forced marriage of lesbians
 - Lack of studies and availability of disaggregated data on violence such as forced pregnancies, pregnancies because of rape, and/or abortions for pregnancies faced by lesbians
 - Non-sensitization of public officials: state workers such as police, social workers, health care workers are not sensitized and they impose additional layers of discrimination each time an individual encounters the system.
 - Laws discriminating against LBT individuals in cases of violence:
 - There is seldom adequate legal protection for LBT persons from violence for in the private sphere, or from family violence or partner violence. Many existing domestic violence laws do not extend protections to LBT individuals either because the laws do not cover women in *de facto* couples or women in same-sex relationships.
 - Rape laws in general very narrowly define rape so that they cannot be accessed by victims of non-penile-vaginal rape or non-genital rape or same-sex rape.

Sex workers

- The longstanding debate in the feminist movement regarding the status of sex work as work versus its being inherently violent and exploitative, has also been captured in this

²⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28

²⁶ Para 8, UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 33 on women's access to justice* 23 July 2015 CEDAW/C/GC/33

²⁷ Para9, UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 33 on women's access to justice* 23 July 2015 CEDAW/C/GC/33

²⁸ Spanish CEDAW Shadow Report Platform

consultation process. While sex worker groups²⁹ themselves have advocated for drawing a clear and definitive distinction between sex work and sexual exploitation and a clear recommendation that sex work is not inherently exploitative, other human rights³⁰ and women's organizations³¹ have claimed that prostitution should be recognized as a form of violence against women and state obligations in addressing it as such should be clarified under GR 19.

- However, protecting the human rights of sex workers and addressing the violence faced by them requires the removal of laws that criminalize and penalize sex workers. This is because criminalization pushes the sex industry underground, making women vulnerable to exploitation and unable to seek redress for rights violations.
- Further, repeal of criminal laws against third parties is also necessary to ensure safer working spaces and reduce the risk of violence for sex workers. There needs to be a clear distinction between sex work and trafficking. In order to reduce violence towards sex workers, and particularly migrant sex workers, overbroad anti-trafficking laws that are abused to criminalize sex work should be reformed. Lastly, criminal sanctions should be reserved for those who abuse and exploit sex workers.
- Thus, laws, policies and practices that criminalize and penalize sex workers, including in situations where the sale of sex may not be illegal, but sex workers are nevertheless subject to harassment, extortion, violence and other forms of abuse at the hands of police and other law enforcement should be removed.³²

Women who use drugs

- Women who use drugs are vulnerable to multiple forms of discrimination, including physical and structural violence.
- Domestic and international anti-drug policies are currently a leading cause of rising rates of incarceration of women around the world, who are disproportionately subject to punitive sanctions resulting in lengthy prison sentences. In some countries, such as Russia, police violence against women who use drugs is common, while many women in prison are subject to “numerous manifestations of violence” including sexual and physical assault, sexual harassment and psychological violence.

STATE OBLIGATION

Legal Obligations under CEDAW to address GBVAW

The GR should take the opportunity to strengthen the clarity on the international legal framework for addressing GBVAW especially through the treaty body process. For further details see section on Laws and Policies.

Due diligence

²⁹ Butterfly: Asian and Migrant Sex Workers Network (<http://www.butterflysw.org/>) and Canadian HIV/AIDS Legal Network (www.aidslaw.ca)

³⁰ The Advocates for Human Rights, <http://www.theadvocatesforhumanrights.org/>

³¹ CLADEM (Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer), <http://www.cladem.org/>

³² Asian Sex Worker Network

In the new GR, due diligence should be elaborated as a form of state obligation. The concept of due diligence, present in many international human rights conventions, outlines the standard of conduct the states are obliged to comply with in order to ensure that the enjoyment of rights are not interfered with. The concept of due diligence has been applied to cases of GBVAW under the CEDAW Convention as well as under the OP-CEDAW. However, if states are going to use due diligence as a guideline for conduct, the concept needs to be developed further. The concerns of our partners in relation to due diligence are as follows:

- State practice of due diligence:
 - States often neglect their obligation to act with due diligence to prevent violations of rights or to investigate and punish acts of violence that are carried out by non-state actors.³³ The Committee should identify relevant non-state actors and elaborate upon the standard of conduct of the state in protecting GBVAW.
 - The updated GR will need to articulate the obligations of state and non-state actors by defining non-state actors. 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.
 - 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 Committee³⁴ itself and other international human rights treaty bodies, including the Human Rights Committee³⁵ (HRC), the Committee on Economic Social and Cultural Rights³⁶ (CESCR) and the Child Rights Committee³⁷ (CRC)
 - The Committee should also separately define ‘private actors’ separately. In this regard, 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.

³³ Women’s Aid Organisation (WAO), Malaysia, <http://www.wao.org.my/>

³⁴ 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]

³⁵ 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).]

³⁶ 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

³⁷ 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]

- The need to link due diligence to other international instruments and human rights process for clearer standards and guidance:
 - The GR could be linked to the UPR process, as it is mandatory for every state to be accountable and report to the Human Rights Council every four years, while states are able to opt out of the CEDAW reporting cycles.
 - It might be useful to explore linking up to the business and human rights discourse - Ruggie's Respect, Protect and Access to Remedy framework – to strengthen the obligation of the state to ensure corporations create and ensure a safe working environment, free of sexual harassment for women.

LAWS AND POLICIES

In the updated GR, it is imperative that the recommendations call on states to identify and repeal substantive, evidentiary and procedural laws that are harmful (i.e. that discriminate against women in the prosecution of GBVAW).

Through the concluding observations, the CEDAW Committee has often raised concerns over discriminatory national laws and policies, as well as legal practices which continue to discriminate against victims of violence in seeking justice. The Committee has, for example, highlighted the need for states to address the gaps in their domestic violence laws and implementation by recommending measures such as the introduction of appropriate sanctions and criminalisation of acts of domestic violence.³⁸ In other instances, the Committee has also urged states to provide training to judges and prosecutors on the application of laws related to GBV, as well as to introduce standardised procedures for police forces to deal with these types of cases.³⁹ The updated GR 19 should seek to supplement the Concluding Observations by identifying specific laws, policies and practices which act as a barrier to eliminating GBVAW, and provide recommendations which are elaborate precise and instructive. This is crucial to ensuring that the GR can be utilised as an advocacy tool that is capable of informing national laws and policies. The update of GR 19 should:

- Identify and address:
 - good and bad legal practices commonly used in addressing different types of GBVAW
 - general legislative gaps or discriminatory laws that are a barrier to eliminating GBVAW and which weaken the enabling environment for women in terms of safeguarding their right to life, bodily integrity, health, etc.
 - potential conflicts in laws or in the legal system that could weaken the state's ability to enact anti-GBVAW and gender equality laws to promote and protect women's human rights: for example parallel or plural legal systems
 - functions and practices of state mechanisms which monitor and assess the impact of awareness raising activities against GBVAW
 - gaps in the legal system and legal culture that acts as a barrier that prevents women from reporting instances of violence
 - barriers to convicting a person who performs harmful customary practices against women
 - the causes of impunity for GBVAW

³⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women - Albania*, 16 September 2010

³⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women - Belarus*, 16 December 2011, CEDAW/C/BLR/CO/7

- substantive laws which need to be repealed due to their discriminatory nature (such as legislation allowing child marriage, or the Constitution recognizing customary practices - which would make it difficult to prohibit these practices by law)
- gaps in evidentiary procedures: evidentiary laws in the penal code and practices that discriminate against women, making it difficult for women to seek justice for GBVAW
- gaps in legal procedures: procedural laws and practices in the penal code which discriminate against women, making it difficult for women to seek justice for GBVAW
- stereotypical assumptions within laws, that in effect discriminate against women
- gaps in access to justice for women
- gaps in redress/compensation
- Strengthen understanding about specific legal, policy or programmatic approaches/solutions in addressing GBVAW and recommend for
 - addressing the importance of the role of the judiciary and prosecutorial services
 - Victim-centred approach to legal aid and remedy
 - Monitoring the impact of Ex officio prosecution of GBVAW/victimless prosecution to ensure a victim centred approach, while ensuring the societal aspect of VAW crimes are addressed
 - Protocols on Investigation and evidence collection that are victim-centred and ongoing capacity building of law enforcement officials, prosecutorial officers and judicial actors

SPECIFIC AREAS FOR ACTION

Below are some of the examples of legislation, legal practices and culture, as well as policies our partners have raised some concerns over:

a) Legislative gaps acting as a barrier to addressing GBVAW

ESE, Association for Emancipation, Solidarity and Equality of Women of Republic of Macedonia, Macedonia:

- **Absence of ex-officio prosecutions:** under the Macedonian Criminal Code, the criminal act of ‘bodily injury’ is not prosecuted ex officio and prosecution depends on the consent of the victim, which often leads to withdrawal of criminal prosecution by the victims.

Women’s Centre for Change Change (WCC), Malaysia⁴⁰

Missing in Malaysian legislation on sexual violence:

- **No laws prohibiting marital rape**
- **Lack of recognition of non-physical, scientific evidence in rape** i.e. psychological impact of rape and coping mechanisms, in the evidence laws
- **Narrow definition of rape:** Lack of laws criminalizing all forms of rape, e.g. penetration of orifices and by whichever body parts or objects.
- **Lack of a gendered approach to rape:** The parties subjected to rape have not been defined to include all genders especially in recognition of power dynamics / position of authority of the rapist.

⁴⁰ <http://wccpenang.org/>

- **Lack of Sexual harassment laws** that apply beyond the scope of employment.

Coalition to Stop Violence against Women and Democracy Today NGO, Armenia

Armenia lacks legislation addressing domestic violence:

- **No jurisdiction to file a protection order** or remove a violent perpetrator from his home.
- **Lack of domestic violence legislation**, such that cases covered by the Criminal Code depend on the level of bodily injuries.

Gaps in Armenian legislation addressing sexual violence:

- Does not explicitly exclude marital rape but doesn't prohibit it either
- Does not have a gendered lens
- **Laws punishing false reporting:** conviction in false reporting common practice.

BLAST, Bangladesh

Issues with the definition of rape

- **No legislation addressing sexual harassment**
- **Guidelines on sexual harassment not being adequate enough to cater for all situations:** there are no clear guidelines in relation to when such harassment takes place in a public place or within the family)
- **Definition of sexual harassment too narrow:** touching of female genital part falling under the purview of the guideline to touching of any other area not addressed.

Women's Aid Organisation, Malaysia

- **Stalking not recognised as a form of violence**
- **Lack of independent and comprehensive sexual harassment act** where employment act only deals with narrow context of employer employee relationship

Masimanyane, South Africa

The South African **Domestic Violence Act is gender neutral**. As a result, victims acting in self-defence may be prosecuted under the law.

Maliha Zai, Lawyer, Pakistan

- **Narrow definition/recognition of rape:** only penile rape is considered as rape
- **Lack of recognition of impact of sexual violence**
- **Lack of clarity around the concept of consent in rape laws:** Although the penal code defines rape through lack of consent, the concept of consent is still unclear
- The current penal code allows for perpetrator of honour killings to be excused if the crime is forgiven by another family member.

Lorraine Ochiel, lawyer, FIDA Kenya, Kenya

Although there exist laws which out GBVAW, there is a **lack of laws which would aid the victims in coming forward**. One of the major barriers for women seeking justice is stigmatization. Offering anonymity might be valuable

b) Barriers to access to justice

ESE, Macedonia

- **Costs for expert's opinions** for initiating damage compensation lawsuits are borne by the victim: criminal procedure which pertain to compensation of damaged property, the victim will need to prepare an expert witness testimony and pay for it herself
- **Strict and lengthy legal aid requirements:** GBV victims fail to meet the requirements set out by Macedonia's law on groups who are entitled to free legal aid; administrative court taxes, costs for expert opinions, costs for obtaining evidence and other costs for victims of GBVAW are not covered under the law. The procedure for approval of free legal aid is also very lengthy.

Coalition to Stop Violence against Women and Democracy Today NGO, Armenia

There are no legal aid services provided to victims of violence.

c) **Substantive laws which discriminate against women seeking justice for GBVAW**

BLAST, Bangladesh Legal Aid and Services Trust, Bangladesh

Substantive laws that need to be changed in Bangladesh:

- The draft Child Marriage Restraint Act, 2014 should be approved and enacted without any change of minimum age at marriage of girls under any special circumstances from 18.

d) **Procedural laws which discriminate against women seeking justice for GBVAW**

BLAST, Bangladesh

- **Prevention of women with intellectual disabilities from providing evidence** under the S.118 Evidence Act 1872
- **Admissibility of character evidence of the victim in rape trials** under the .S. 155(4) Evidence Act 1872 which allows for

WCC, Malaysia

- Malaysia allows for use **screen / video link when giving testimony** to protect victims of violence
- Essential facilities in court for victims are available (witness rooms; screens; video-link; video playback). However, these **procedural norms are not implemented uniformly.**

e) **Evidentiary Laws which discriminate against women seeking justice for GBVAW**

WCC Malaysia

- **Case law often requires proof of physical resistance or protest against sexual intercourse as evidence of rape.**
- **Case law still requires a corroboration warning on the evidence of sexual crime complainants and women rape survivors:** The Legislation only requires corroboration warning to selected categories of witnesses who are said to require higher scrutiny (133A of Evidence Act)

Kimiko Okada, Working Women's Network, Japan

Regarding sexual violence, the **Supreme Court has set a higher standard for victims' testimonies, making it extremely difficult to get convictions.**

Andy Yeyantri, Indonesia

- In criminal code, **act of rape defined as involving the use of force.**

- Medical reports may not be used as evidence: **forensics report only provided if the victim obtains a letter of recommendation from the police.**

Coalition to Stop Violence against Women and Democracy Today NGO, Armenia

In Armenia, victim's testimonies are not being given sufficient power; **records without knowledge of the perpetrator are being considered illegal.** Witnesses also avoid giving testimonies in domestic violence cases.

Maliha Zai, Lawyer, Pakistan

- Law of evidence states **a woman's testimony and witness is half of that of a man**
- Evidence act allows for **examination of a woman's sexual history** to impeach the victim's character during trial.

f) Stereotypical assumptions

BLAST, Bangladesh

- S.118 of the Evidence Act which prevents women with intellectual disabilities from providing evidence stems from the assumption that a person with an 'unsound' mind cannot testify in court.

Kimiko Okada, Working Women's Network, Japan

Regarding sexual violence, the Supreme Court has set a higher standard for victims' testimonies, making it extremely difficult to get convictions.

- The Court stated that victims' testimonies require 'particular careful consideration,' and just being detailed and specific was insufficient.
- Testimonies from women from more vulnerable groups, such as children, or women with disabilities may also be rejected as evidence.

CLADEM, Guatemala

Government agencies responsible for investigating or prosecuting crimes often display bias against female victims of violence,

- The Public Ministry's practice of ordering **women to submit to a so-called "veracity test" administered by psychologists at the National Institute of Forensic Science ("Instituto Nacional de Ciencias Forenses" or "INACIF") to demonstrate credibility.** The test is not required by law, and the Public Ministry does not request victims in any other type of criminal case to submit to it.

Andy Yeyantri, Indonesia

Court questioning of the victim during rape trials often looks at **factors such as the attire worn by the victim at the time of rape, the time of day the rape took place and whether or not the victim was married.**

Maliha Zai, Lawyer, Pakistan

Perpetuation of rape myths and expected attitude of women through concept of 'honour': women are deemed worthy of all honour, resulting in need for protection/control and easy to 'stain' and therefore building the concept of removing dishonour through murder.

g) Gaps in Redress/Compensation/Remedies

ESE, Macedonia

- **Determination of sentences does not take into account risk factors and aggravating circumstances sufficiently:** planning of the attack; children were witnesses; weapon possession; treatment of the victim; whether the parties are still living together; history of previous violence; previous convictions or criminal history of the abuser should be taken into account when determining the perpetrators sentence
- **Courts often fails to respect the urgent deadlines set in the law to impose temporary measures of protection:** so far only only in 46,7% of petitions for imposition of temporary measures of protection against domestic violence have been issued on time.
- There is often **milder sanctioning of perpetrators of domestic violence:** the alternative measure of conditional judgment has been issued in 62% of the judgments issued on grounds of domestic violence.

WAO, Malaysia

Remedies for domestic violence:

- **Court order allows perpetrator to only be excluded from just a ‘specific part of a shared residence’** The court will not make an order for exclusive occupation unless satisfied that there is no other way to secure the personal safety of the survivor
- Confusion among victims and even police officers **whether domestic violence is a arrestable offense**, which it is.
- **Police officers do not have the authority to arrest a person who breaches a domestic violence interim protection order (IPO) or protection order (PO) without a warrant.** In situations that require immediate protection, the police cannot intervene if the power of arrest has not been attached to the warrant.
- **The court can order the survivor and perpetrator to attend counselling**, ordering a form of reconciliation between the survivor and the perpetrator.

Coalition to Stop Violence against Women and Democracy Today NGO, Armenia

- **Inadequate sentences to protect victims:** domestic violence is typically qualified as beating, a criminal offence under the Armenian criminal code, which is punishable by fine or detention for a maximum of 2 months.

Lorraine Ocheil, lawyer, FIDA Kenya, Kenya

Language related to sentencing of GBVAW related offences needs to be more specific.

h) Plural Legal Systems

Partners from Bangladesh, South Africa, Pakistan, Guatemala, Malaysia and Indonesia have identified challenges faced in addressing GBVAW in a plural legal systems:

BLAST, Bangladesh

Stereotypes and harmful practices continue through informal justice system. The High Court has issued some noteworthy rulings on Fatwa but it is not enough to address such stereotype and harmful practices as at times law enforcers also help perpetuate stereotypes.

Masimanyane, South Africa

A Traditional Courts Bill before parliaments at the moment will give **traditional authorities the right to deal with cases outside of the formal legal system** which subjects women to the authority of tribal chiefs.

CLADEM, Guatemala

Customary law is being invoked as justification of violence against women. There have been some cases where women are reprimanded for denouncing their husbands and even being driven away from their communities.

WCC, Malaysia

Due to the plural system of laws in Malaysia, there exists a criminal procedure and evidence law for Syariah criminal cases in each state in Malaysia. In these laws, the **value of the evidence from a woman is less compared to a male witness.**

Andy Yeyantri, Indonesia

- **Mediation contributing to impunity:** Judges may also ask the perpetrator and victims to both take oath to forgive each other
- In Aceh, **local regulation in Shariah law, treats rape as ‘Zina’, an act of adultery.** This creates confusion in roles of evidence
- Zina has also been used to criminalize women by forcing the victims to make false confessions.

i) Legal, policy or programmatic approaches/solutions in addressing GBVAW role of the judiciary and prosecutorial services

CLADEM, Guatemala

National Institute of Forensic Sciences **lack specialized protocols on cases of violence against women and especially sexual violence.**

BLAST, Bangladesh

Better coordination between Ministries in addressing GBVAW

- To better address violence against women, it is important for all ministries to work together to stop violence against women in all settings of the society
- In Bangladesh, the Ministries are still far from being at that level and mostly work act on an isolated basis which reduces the scope and effectiveness of the various initiatives taken by the Ministry of Women and Children Affairs.

Coalition to Stop Violence against Women and Democracy Today NGO, Armenia

- **Legal actors often engage in victim-blaming, using a woman’s sexuality against her or engaging in other forms of discrimination**
- **Lack of system whereby police investigate and record evidence properly.** Only in the event that a lawyer asks for information do the police present cases
- **Lack of documentation/registration of cases of domestic violence**
- **Lack of trained judges, prosecutors, and lawyers who adhere to gender stereotypes and victim-blaming**
- **Absence of law enforcement units and family courts to tackle domestic violence.**

BLAST, Bangladesh

Inadequacy and the lack of capacity of legal mechanisms to address SGBV

- Resources must be put in place to provide for *in camera* trials and to ensure that courts are more women friendly.

WCC, Malaysia

Good policies and laws still **lack uniform implementation**:

- Provisions and facilities are not uniformly implemented, resulting in instances where such facilities are unavailable to SGBV victims, or SGBV victims not being informed of their rights.

Vrinda Grover, Lawyer, India

Investigation in India is said to be unprofessional and investigation is not objective: the general police system that enjoys [permits/promotes/allows?] impunity and forensic labs which are inefficient:

- There are fast track courts for sexual cases but capacity is lacking
- Training of court still not gender sensitive: training should take a twin pronged approach of gender training and actual police training, which would include evidence gathering, etc.
- Lack of investment in basic infrastructure to set up forensic labs. The government has instead chose to allocate resources into creating helplines which do not assist women in taking material steps to address the violence faced.

Lorraine Ocheil, lawyer, FIDA Kenya, Kenya

- Guidelines for handling cases by police to streamline procedures when working with GBVAW need to be created
- There is also lack of sensitization and accountability on the part of the police. The justice system also discourages women from reporting attacks.