

**COMMENTS OF THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION
TO THE DRAFT UPDATE OF GENERAL RECOMMENDATION NO. 19 (1992):
ACCELERATING ELIMINATION OF GENDER-BASED VIOLENCE AGAINST WOMEN**

**September 30, 2016
Geneva, Switzerland**

The International Development Law Organization (IDLO) – the only intergovernmental organization exclusively devoted to promoting the rule of law and access to justice – commends the Committee on the Elimination of All Forms of Discrimination against Women (the Committee) on continuing to advance new strategies in the fight against gender-based violence (GBV). IDLO appreciates this opportunity to respond to the solicitation of comments to the Draft General Recommendation 19 on Accelerating Elimination of Gender-Based Violence against Women (Draft General Recommendation).

Recognizing the important work that has been carried out by the Committee in updating General Recommendation 19 to reflect the significant advances made in the fight against GBV and emphasize its underlying root causes, IDLO would like to bring special attention to the following themes, which are of particular significance to IDLO as an organization devoted to the advancement of the rule of lawⁱ.

ROBUST AND RESPONSIVE LEGAL FRAMEWORKS AND INSTITUTIONS

1. ADDRESSING BROADER INSTITUTIONAL CHALLENGES IS CRITICAL TO GBV LEGAL AND JUSTICE SECTOR RESPONSE

The Committee notes, under Paragraph 14 (a, b, c), the legislative, executive and judicial obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) in combating GBV, such as adoption of effective legislation, promulgation of appropriate national policies, and establishment of institutions that provide access to justice, protective services, reparation, and impartial and fair adjudication of GBV cases. These obligations, however, require that States have in place robust and responsive legal frameworks and institutions that embody international legal standards. In IDLO's experience, in many countries, legal and justice institutions are at various stages of development, efficiency and responsiveness. In conflict, fragile and humanitarian situations, these institutions are often non-existent, eroded or unable to function.

Accordingly, IDLO recommends urging States, through specific language in the Draft General Recommendation, (i.e. Paragraph 4), to acknowledge that broader legal and justice sector challenges (such as corruption, clogged dockets, lack of judicial personnel, lack of funds) have an impact on women's access to justice and efforts to accelerate the elimination of GBV. States should ensure addressing GBV is an integral component of legal and justice sector reform processes.

2. ESTABLISHING SPECIALIZED UNITS TO INVESTIGATE, PROSECUTE AND ADJUDICATE GBV CASES

IDLO's work with the specialized GBV prosecution units in Afghanistanⁱⁱ and sexual offenses criminal court in Liberia,ⁱⁱⁱ among others, as well as evidence from similar experiences in other countries,^{iv} indicate that creation of specialized bodies to investigate, prosecute and adjudicate

cases of GBV provides for better reporting, protection and redress to women victims/survivors. Such specialization increases the availability of well-trained personnel to address the special needs of women and can improve outcomes. However, for these specialized units to be fully effective, they have to be supported by strong political will, adequate mandate, as well as comprehensive and sustained capacity development.

We recommend that a specific paragraph be added to the Draft General Recommendation's provisions under Protection and Redress as follows: *"Establishing and supporting specialized law enforcement units (including specialized police and prosecutors units) and specialized courts dedicated to addressing GBV against women, with clear mandates and responsibilities, human and financial resources, and capacity development measures, to strengthen the response to cases of GBV and to ensure effective support to GBV survivors."*

3. LINKING JUSTICE, PROTECTION AND SUPPORT SERVICES

IDLO has noted in its work against GBV that accountability is further strengthened and attrition rates can be reduced when the link between justice, protection and support services are mutually reinforced and coordinated. This means ensuring women's privacy, safety and well-being before, during and after legal proceedings. This also means promulgating and implementing clear and coordinated regulations and protocols on roles and responsibilities of providers.

IDLO commends the focus on ensuring effective measures to protect and assist women, complainants and witnesses of GBV. However, it recommends the following: (a) additional language in relation to Paragraph 15(a)(i), adding "before" and "after", thus ensuring protection of women's privacy and safety before, during and after legal proceedings; (b) additional paragraph: *"Ensuring coordination of protective, support and justice services to women before, during and after legal proceedings, based on clear coordination and cooperation protocols"*; and (c) amendment of Paragraph 15(a)(vi) as follows: *"Assigning specific responsibility for monitoring and ensuring compliance with protection orders to a requisite law enforcement agency and establishing and implementing appropriate sanctions for non-compliance."*

ADDRESSING GBV IN SITUATIONS OF CONFLICT, FRAGILITY AND HUMANITARIAN EMERGENCIES

IDLO commends the Committee's focus on intersecting forms of discrimination (paragraph 11) and on the various contexts where GBV occurs, including in the context of conflict, civil unrest, natural disasters, and the movement of people, including migration and displacement (paragraph 12). To strengthen these paragraphs, IDLO provides the following comments:

4. ADDRESSING GBV IN CONFLICT AND FRAGILE SITUATIONS

IDLO supports the strengthening of justice institutions, in many cases in post-conflict and fragile settings. Often, in these situations, justice institutions have limited capacities and resources or have been eroded, delegitimized, subjected to elite capture, or may simply not exist. Institutional inability, inefficiency or non-existence present specific challenges for survivors of GBV. This is especially true in cases where GBV has been widely perpetrated as a strategy or weapon of war^v. IDLO recommends additional language to either Paragraph 11 or 12 to highlight the gravity of these situations, taking into account the recommendations and commitments made in the World Humanitarian Summit^{vi}.

5. ADDRESSING GBV IN HUMANITARIAN EMERGENCIES

On September 19, 2016, at the United Nations Summit for Refugees and Migrants, IDLO highlighted the importance of upholding the human rights of people on the move.^{vii} Refugee and migration flows have increased dramatically in recent years. Displaced women and girls, as well as those in situations of armed conflict, are particularly vulnerable to numerous human rights violations, including GBV. Cases of GBV during times of upheaval are well documented, and the need for prompt identification of such cases and the provision of immediate and effective protective assistance is paramount. This applies as much to places of displacement (such as refugee camps) as to the voyage of displacement itself.^{viii}

It is therefore recommended that a specific paragraph be added to the Draft General Recommendation's provisions under Protection and Redress as follows: *"Ensuring identification of and accountability for cases of gender-based violence against women in humanitarian emergencies, including refugee, migration and other forced displacement flows, and providing effective protective and support measures in relation to such violence, including for women and girls rescued at sea, women and girls in refugee camps, and any other locations where refugee/migrant women and girls may be found, including in countries of origin, transit and reception."*

STRATEGIC ENGAGEMENT WITH INFORMAL JUSTICE SYSTEMS

6. STRATEGIC ENGAGEMENT WITH CUSTOMARY, RELIGIOUS, TRADITIONAL AND OTHER INFORMAL SYSTEMS

Although consistent figures are difficult to obtain, evidence clearly indicates that most women use informal justice systems. This is explained by a number of factors that drive women away from the formal legal system and make informal systems more accessible. IDLO's work^{ix} has shown that recognizing legal pluralism and strategically engaging informal justice institutions are critical to helping women access justice and in turn, achieve the enjoyment of their human rights and redress in case of their violation. On the other hand, ignoring informal systems can result in dismissing one of the few – if not the only – justice entry points available for many women and girls.

Although the Committee addresses informal justice systems in Paragraphs 14 (a) and 15(f), IDLO recommends that the Draft General Recommendation recognize the importance of strategically engaging with informal justice systems and their actors to ensure their sensitization and responsiveness to GBV based on international standards and national laws. It is also crucial for the draft to recognize that informal justice systems may provide alternative or complementary strategies to addressing GBV, in that they may "give scope to creative and more meaningful projects targeting women's interests that do not exist at the formal justice level."^x

It is therefore recommended that an additional paragraph be added under Prevention, following paragraph (d), as follows: *"Strategically engage with informal justice institutions, including by providing institutionalized, long-term and effective education, sensitization, training and other capacity development measures to informal justice sector actors and users on GBV (its causes and consequences, women's rights to redress and assistance, and international human rights standards in combating gender-based violence)."*

WOMEN'S LEGAL EMPOWERMENT

7. ROLE OF WOMEN'S LEGAL EMPOWERMENT

IDLO believes that women's legal empowerment is an integral part of the solution to advance women's access to justice. Our work^{xi} indicates that legal empowerment programs, such as legal education, legal aid services, use of community paralegals, and rights awareness, are crucial. When women are informed of their rights and are encouraged to discuss or challenge formal or informal laws and practices, they can put pressure on justice systems to better protect their rights. Legal empowerment strategies, therefore, do not only increase women's legal literacy, but also can enhance women's capacity to claim their rights; to engage in legal, development and service-delivery processes, and to improve the quality of legal protection and justice that they receive.

It is therefore recommended that the Committee include additional language as follows: (a) insert language after Paragraph 12 to highlight the central role that women's legal empowerment plays in demanding, negotiating and claiming for their rights as survivors of or as advocates against GBV; and (b) include under Prevention, a paragraph on women's legal empowerment as follows: *"Put in place legal empowerment measures for women and girls, including legal education, rights awareness, legal aid services, and paralegal support, to advance women's legal literacy on GBV and mechanisms for redress and support, and improve responsiveness of the justice sector and other institutions to GBV. Women and civil society organizations must be involved in ensuring legitimacy and sustainability of measures targeting women's legal empowerment and access to justice."*

8. IMPROVING SAFETY FOR WOMEN IN PUBLIC SPACES

Ensuring safe public spaces for women is closely related to a woman's ability to exercise her voice and agency. Laws and regulations requiring specific measures to lower the risk of GBV are applicable in both humanitarian emergencies and in times of peace and stability.^{xii} These measures include ensuring proper street lighting, providing easy access to goods and services such as water collection points (including those found in refugee camps), and addressing sexual harassment during public gatherings or events. Such efforts lend themselves well to states' efforts under Sustainable Development Goal 11 (Making Cities Inclusive, Safe, Resilient and Sustainable). It is therefore recommended that a new paragraph be added to the Draft General Recommendation's provisions under Prevention, as follows: *"Adopt and implement effective measures that seek to minimize the risk of GBV in public areas and create safe and inclusive spaces for women in both urban and rural areas, including assessing urban planning and environmental design."*

WOMEN'S PARTICIPATION IN POLICY MAKING AND JUSTICE DELIVERY

9. WOMEN'S PARTICIPATION IN GBV POLICY AND LAWMAKING AND IN JUSTICE SECTOR DELIVERY

Women are central to any effort aimed at strengthening States' responses to GBV. Women's effective participation in all aspects of public life is a human right and a matter of equality. However, women's participation in the elaboration of GBV legislation and policies has also been increasingly recognized, including in UN forums, to be instrumental. IDLO recommends the following: (a) insert language after Paragraph 12 to highlight the importance of women's participation in GBV policy and law-making; and (b) include under Prevention specific language on: *"Ensuring women's equal representation and participation in the design, formulation, implementation, monitoring and evaluation of GBV and related policy and laws"*.

10. WOMEN AS LEGAL AND JUSTICE PROFESSIONALS

Women are severely underrepresented among legal and justice professionals. Where women are present in the justice sector, they face pervasive barriers to effective participation including stereotyped notions about women legal professionals; discriminatory social and cultural norms; lack of mobility and security; unequal access to education and training; challenges in reconciling work and family responsibilities; and other forms of political, civil, economic, social and cultural challenges. IDLO's work^{xiii} highlights that improving women's ability to work in justice institutions is essential – not only to ensure that women enjoy equal opportunities in their workplace and profession, but also to strengthen women's access to justice, especially where pathways for redress are gendered, issues are sensitive or seen as a “women's issue”, or where survivors have limited social mobility.

While the Committee recognizes underrepresentation as a key concern for women, such as in General Recommendation 25, IDLO recommends that the Draft General Recommendation use additional language to highlight its importance to accessing justice in response to GBV, as follows: (a) insert an additional paragraph on Women's Participation, Representation and Empowerment after Paragraph 12 to highlight the importance of women legal and justice professionals in combatting GBV; and (b) include under Prevention specific language on: “*Ensuring women's equal and effective participation as legal and justice professionals, including temporary special measures to accelerate de facto equality, capacity development for women lawyers, prosecutors and judges to address specific gendered challenges, and eradication of social, customary and other discriminatory practices against women legal and justice actors*”.

STRENGTHENING INTERNATIONAL COMMITMENTS

11. STRENGTHENING INTERNATIONAL AND REGIONAL COMMITMENTS

IDLO has observed in its work that progress can be achieved when local strategies are complemented with international efforts. We commend the specific linkage made by the Draft General Recommendation between Sustainable Development Goal 5 on gender equality and empowerment and Sustainable Development Goal 16 and the focus on prioritizing implementation of these mutually reinforcing goals.

To strengthen the section on international cooperation, IDLO recommends that an additional paragraph be added to address ratification and domestic application of international commitments as follows: “Strengthen commitment to international gender equality and anti-GBV commitments, including: (a) Removal of any and all reservations to the Convention; (b) Ratification of or accession to the Optional Protocol to CEDAW, and publicize the ratification of the instrument so as to ensure broad national coverage of the availability of this mechanism; (c) Publicize widely the Convention, General Recommendation 19 and its update, landmark decisions of the Committee, including those related to GBV against women. (d) Ratification of or accession to appropriate regional human rights instruments addressing GBV and ensure their domestic application; and (e) Extend invitations for country visits to the Special Rapporteur on Violence against Women, its Causes and Consequences, to obtain a better understanding of GBV against women and improve the response to this phenomenon.”

The International Development Law Organization (IDLO) enables governments and empowers people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

-
- ⁱ IDLO's Strategic Plan (2013-2016) identifies promoting gender equality and upholding the rights of women and girls as one of its strategic goals. This is further elaborated in its Gender Strategy (2015-2016).
- ⁱⁱ IDLO's work in Afghanistan supporting specialized Elimination of Violence Against Women (EVAW) units—a specialized prosecution unit focused on violence against women—bears out this trend, with 1,674 cases of GBV registered across the country in 2014; see International Development Law Organization (IDLO), Annual Report, 2015, available at: <http://www.idlo.int/sites/default/files/pdfs/publications/IDLO-Annual%20Report%202014.pdf>.
- ⁱⁱⁱ "IDLO Launches Project to Combat Sexual Violence in Liberia," IDLO Press Release, 10 February 2016, available at: <http://www.idlo.int/sites/default/files/pdf/initiatives/IDLO%20press%20release%20-%20Liberia%20project%20launch%20100216%20FINAL.pdf>.
- ^{iv} See, e.g., UN Women, Virtual Knowledge Centre to End Violence against Women and Girls; available at: <http://www.endvawnow.org/en/articles/144-specialized-courts-tribunals-for-violence-against-women.html> and <http://www.endvawnow.org/en/articles/145-specialized-prosecutors.html?next=146>.
- ^v Security Council Resolution 1820, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf>
- ^{vi} World Humanitarian Summit, available at: <https://www.worldhumanitariansummit.org/summit#chairsummary-linking>
- ^{vii} Statement of the International Development Law Organization (IDLO) available at the High Level Plenary Meeting on Addressing Large Movements of Refugees and Migrants, United Nations Summit for Refugees and Migrants, September 19, 2016, available at: <http://www.idlo.int/news/highlights/idlo-dg-addresses-high-level-plenary-meeting-refugees-and-migrants>.
- ^{viii} See, e.g., UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, UNDOC A/HRC/32/42, 19 April 2016, p. 17, where protection of women and girls from violence in situations of displacement is highlighted, available at: <http://www.refworld.org/pdfid/57615d1e4.pdf>.
- ^{ix} International Development Law Organization, Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment, available at: http://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Full_Report.pdf.
- ^x Ibid.
- ^{xi} Ibid.
- ^{xii} United Nations Division for the Advancement of Women, Handbook for Legislation on Violence against Women, Department of Economic and Social Affairs, p. 90.
- ^{xiii} See e.g. International Development Law Organization, Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities, available at: <http://www.idlo.int/publications/womens-professional-participation-afghanistans-justice-sector-challenges-and>