



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

GENDER OMBUD ADVISORY

**COMMENTS OF THE COMMISSION ON HUMAN
RIGHTS TO THE CEDAW COMMITTEE DRAFT ON
GENERAL RECOMMENDATION 19 (1992): Accelerating
elimination of gender-based violence against women**

CHR A2016-005

Background

The Commission on Human Rights of the Philippines (CHRP), as an “A” Status National Human Rights Institution (NHRI) and as Gender and Development Ombud under the Magna Carta of Women (RA 9710) submits its comment to the Committee on the draft GR 19. This submission is likewise pursuant to the Amman Programme of Action of 2012 in which NHRI’s commit, among others, to encourage and aid in the compilation of an evidence base on the nature, extent, causes and effects of all forms of gender-based violence, and on the effectiveness of measures to prevent and address gender-based violence¹.

The Commission’s comment to the draft draws from its experience and challenges in addressing gender-based violence in the Philippines including its independent submission to the Committee during the 64th CEDAW session², its National Inquiry on Reproductive Health and Rights, the Concluding Observations of the Committee for the Philippines for its 7th and 8th report³ and the recently held Consultation on CEDAW GR 19⁴. This comment reiterates the Committee’s concluding observations on the State’s obligation to further “accelerate its achievement of substantive gender equality and the full realization of women’s human rights;” calling for “gender-sensitive approach to development” and “with special attention to women facing multiple and intersecting forms of discrimination” and “women’s participation.” With these, the CHRP focuses its comments on three points; (1) providing updated guidance to States in addressing needs of women facing intersecting forms of discrimination, addressing the

¹ Amman Programme of Action (2012), par. 15

² http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1019&Lang=en

³ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1019&Lang=en

⁴ The CHRP conducted a Consultation on GR 19 with Women’s Legal and Human Rights Bureau on the 27th-28th of September 2016. Representatives came from various CSOs working with women’s human rights.

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invisibility of violence as experienced by women with diverse SOGI, women with disabilities, persons living with HIV, rural, migrant and indigenous women; (2) a focus on situations which exacerbate and aggravate women's risk to gender-based violence, and the need for guided state interventions in prevention and redress and protection, and (3) strengthening and updating guidance in addressing the continuum of violence through reiterating State's obligation to condemn all forms of violence, including forms not explicitly mentioned in the GR or may be emerging and addressing impunity.

Scope:

Par 9: GBV in context of armed conflict and emergency

For par. 9, it is recommended that another sentence be added to highlight heightened risks of gender-based violence, and of the exacerbation of existing forms of GBV in certain situations:

“Risks of gender-based violence and previously existing forms of GBV is further aggravated and exacerbated in periods of armed conflict, in states of emergency due to political events, natural disasters, or development aggression.”

Basis:

It is important to reiterate the obligations of States under GR 28 as it relates to addressing violence in cases of states of emergency and armed conflict. The Committee has previously stated that such situations have a “deep impact on and broad consequences for the equal enjoyment and exercise by women of their fundamental rights.⁵” Drawing attention to such heightened risks to GBV obligates States to “adopt strategies and take measures addressed to the particular needs of women⁶” in such contexts. In the submissions of the CHRP during the 64th session, the CHRP has raised the “multiple and intersecting forms of discrimination experienced by indigenous and Moro women in the context of displacement, development aggression, and/or conflict⁷.” The Committee in the concluding observations has reiterated GR 30 (2013) on women in prevention, conflict and post-conflict situations, and of the State's obligation to apply zero tolerance to fight impunity, and provide necessary support to women and girls who are at risk of or victims of such violence as well as in times of armed conflict⁸.

Par. 11: GBV and intersecting forms of discrimination

For Par. 11, it is recommended that the GR incorporate in its discussion of intersectionality of discrimination, the “compounded effects of more than

⁵ CEDAW/C/2010/47/GC.28, p. 11

⁶ Id., par. 11

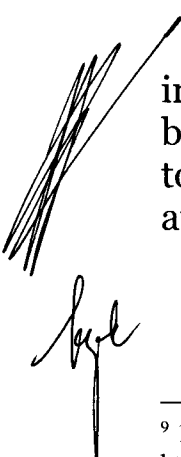
⁷ CEDAW/C/2010/47/GC.28, p. 26

⁸ CEDAW/C/GC/30

one form of discrimination and the “need for solutions that respond to the aggravated forms of discrimination⁹.” It is proposed to read:

General Recommendation 33 on women’s access to justice highlights that intersecting 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 or maternal status, age, urban/rural location, health status, disability, property ownership and identity as lesbian, bisexual, transgender woman or intersex person¹⁰. Accordingly, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, than other women because they experience varying and intersecting forms of discrimination. *Women who face multiple and compounded risks/violations face greater barriers in accessing justice due to marginalization arising from grounds such as status or location in systems of inequality in addition to gender¹¹. Intersectionality requires differentiated State responses and for measures, including temporary special measures, that correspond to additional risk and vulnerability and greater barriers to justice. The Committee and the SRVAWs have consistently called for identifying and addressing the effects of multiple systems of discrimination operating simultaneously, rather than addressing each form of discrimination in isolation of the other¹². This makes visible the concerns of marginalized women, as well as contexts that heighten the risks and vulnerability of women to violence¹³.*

Basis:



The work of the Committee has long incorporated the framework of intersecting, multiple and compounded forms of discrimination experienced by women. The proposal seeks to echo the enumeration of GR 33 on access to justice in full, as it recognizes how intersecting factors of discrimination affect women’s access to justice.

⁹ 15 years of the UN SRVAW, Its Causes and Consequences, P. 25

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

¹⁰ CEDAW/C/GC/30, par. 8

¹¹ 15 years of the UN SRVAW, Its Causes and Consequences, P. 25

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

¹² 15 years of the UN SRVAW, Its Causes and Consequences, P. 25

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

¹³ 15 years of the UN SRVAW, Its Causes and Consequences, P. 48

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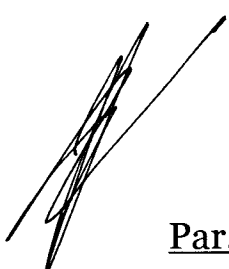
General Obligations of State parties

Responsibility for Acts or omissions of State Actors

Par 13 a (i) (ii)

It is recommended that Par. 14 on the scope of State Obligation be strengthened by emphasizing that State obligation requires not only legal and policy measures to prevent acts and omission but also the accountability for violations and combatting impunity

- i.,States parties must have an effective legal and services framework in place to address all forms of gender-based violence against women, including that committed by State agents. **The Committee has also emphasized that having a system in place to address a problem is insufficient; it must be put into effect by State Actors who understand and adhere to the obligation of due diligence.¹⁴ States are particularly urged to ‘launch a zero-tolerance campaign on violence against women¹⁵, with the objective of raising awarenesss of the problem and to make it ‘socially and morally’ unacceptable¹⁶.**
- ii. State parties are responsible for preventing these acts of omissions – including through training and adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct and to investigate, prosecute and apply appropriate legal or disciplinary sanctions in all cases of gender-based violence against women, including those constituting international crimes, as well as in cases of failure, negligence, or omission on the part of public authorities. **Not only must officials not themselves commit acts of gender-based violence, they must respond effectively and promptly to allegations of such violence ¹⁷ . The obligation of state parties to address gender-based violence include combating a climate of impunity and silence whereby violence is socially legitimated and women suffer extreme violence without criminal accountability for perpetrators¹⁸.**



Par. 14, (c)



(b) At the Executive level

¹⁴ Fatma yildirim v. Austria para 12.1.2; Sahide Goeke v. Austria , cited in Chinkin. *Violence against Women*. CEDAW, A Commentary (2013). P. 466

¹⁵ Eg. CO Iraq, A/55/38,23rd Session (2000) para 190; CO Republic of Congo, A/58/38, 28th Session (2003) para 166 cited in Chinkin. *Violence against Women*. CEDAW, A Commentary (2013). P. 467

¹⁶ CO Romania, A/55/38/, 23rd Session (2000), para 307, cited in Chinkin. *Violence against Women*. CEDAW, A Commentary (2013). P. 467

¹⁷ Chinkin. *Violence against Women*. CEDAW, A Commentary (2013). P. 469

¹⁸ CO Mozambique, CEDAW/C/MOZ/CO/2/ (2007) pars. 24 cited in Chinkin. *Violence against Women*. CEDAW, A Commentary (2013). P. 469

.....Appropriate measures to modify or eradicate customs and practices that constitute discrimination against women, including those that justify or promote gender-based violence against women, must also be taken at this level. **At this level, it should be assured that inefficiency, complicity, and negligence in public authorities charged with investigating allegations of violations should be investigated and adequately sanctioned¹⁹.**

(c) At the Judicial level

...According to articles 2 (d), (f) and 5 (a), all judicial bodies are required to refrain from engaging in any act or practice of discrimination or gender based violence against women, and all legal procedures in cases involving allegations of crimes of gender-based violence against women must be impartial and fair, and unaffected by gender stereotypes. **As part of the State's obligation under the Convention, Courts are strongly encouraged to ensure that decisions and processes are in accordance with the Convention and that rules and practices which perpetuate discrimination and which bar effective access to justice for GBV are modified, amended and duly addressed.**

Recommendation:

Prevention, Protection and Redress:

For the recommendations cutting across Prevention, Protection and Redress, the Committee might consider providing specific guidance to States in recognizing, addressing, and providing differentiated response to gender-based violence as experienced by **specific groups of women** facing intersecting and multiple forms of discrimination, specifically the following:

Women and Girls with disability: Women and girls with disability experience institutional and systemic violence from the family, the community, and by State and non-State institutions. Gender-based violence against women with disabilities, while serious, are often invisible and marked with impunity²⁰. Women and children with disabilities are at heightened risk to experience sexual or domestic violence for various reasons, including their low status in communities, their social isolation, their dependence on others and lack of knowledge about their rights²¹. There is little information available about the violence they experience and its extent²². Measures to ensure accessibility has been largely absent, and at most uneven, with many women and girls with disability unable to report GBV. Further relevant to this proposed section would be the views of the Committee in the case of R vs. the

¹⁹ Mexico Inquiry, par. 274; CO India, CEDAW/IND/CO/SP.1 (2010) para. 15

²⁰ 15 years of the UN SRVAW, Its Causes and Consequences, P. 25

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

²¹ A/HRC/32/42/Add.2, p. 9

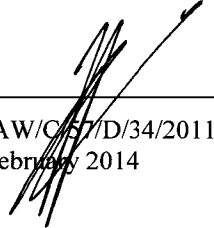

²² A/HRC/32/42/Add.2, p. 9

Philippines as it articulates State Obligation in addressing GBV against women and girl children with disability. In said case, the Committee reminded States to ensure the free and adequate assistance of interpreters at all stages of legal proceedings, whenever needed and to ensure all proceedings involving rape and other sexual offences are conducted impartially and fairly and free from prejudices and stereotypes related to gender, age and disability²³.

Women with diverse SOGIE: Women of diverse sexual orientation and gender identity and expression (“SOGIE”) are subjected to gender-based violence from the family, the community, and from State institutions. The stigma that women with diverse SOGI face in primarily heteronormative and patriarchal societies expose them to different and often extreme forms of discrimination and gender-based violence. While states have acknowledge the different forms of violence based on SOGI, there remains to be a lacuna on data and monitoring from States and the responses have not been as directed in implementing effective legislative and other preventive and protective measures that address these forms of violence.

Rural Women: Women and girls from rural communities and located in geographically isolated and disadvantaged areas face heightened risks to gender-based violence and are faced with greater barriers in accessing justice. During consultations, accessibility of mechanisms and processes, the intersecting factors of poverty and heightened traditional and patriarchal values in rural areas have been raised which contribute to GBV of rural women. Invisibility and non reporting of GBV is common, particularly in geographically inaccessible and disadvantaged areas. In times of disaster and armed conflict, rural women are faced with even greater risk to GBV with scant and limited govenment interventions, mechanisms, and support. GR 19 recommendations of prevention, strengthened protection and redress for rural women is recommended.

Migrant Women: By the nature of their work, migrant women are largely recognized as being exposed to greater risk of violence with very limited access to justice in the country of destination, as well as countries of origin. The kinds and nature of employment, the country of destination and the status of the migrant contribute to the vulnerability and risks to violence for migrant workers. In the case of domestic workers whose nature of work is largely in the private sphere, violence is primarily invisible the intervventions of both origin and destination States largely absent. For undocumented migrant workers, increased vulnerability to violence is linked to the existing laws in destination countries that bar undocumented migrants women from accessing State authorities. In the report of the SRVAW, there are also laws excluding undocumented immigrant women from accessing



²³ CEDAW/C/57/D/34/2011, Views adopted by the Committee at its fifty-seventh session, 10-28 February 2014

State shelters for domestic violence exposing them to arrest, and further vulnerable to a range of violations²⁴. (p. 27)

Women living with HIVs: Women living with HIVs face not only the stigma borne by the virus but also various forms of GBV which are often invisible and unaddressed in the policies and measures of the State. The SRVAW in its report has worked on this and has previously linked gender inequality and the additional and specific forms of stigma borne by women upon contracting the virus²⁵. The SRVAW has cited, for instance, how it increases the experience of stigma and results in desertion and impoverishment within the family and the community, in terms of social ostracism, withdrawal of family/community care, disentanglement from succession and property rights, and, in many cases, violence. moreover, HIV/AIDS further impedes women's access to health care and justice²⁶. With this, the CHRP recommends that GR 19 provide specific guidance to State actors in addressing and countering stigma and for enhanced measures for prevention policies to combat the enhanced discrimination and violence that HIV-positive women experience.²⁷

IP and Muslim Women: As observed by the Committee, Muslim, indigenous and other women living in rural areas in the Philippines are subjected to forced evictions and relocations and various forms of gender based violence as a result of armed conflict, natural disasters and displacement development projects and extractive industries. The Committee also recognized that this specific contexts expose IP and Muslim women to greater risk of violence in the family and in their communities. Taking into account personal and collective violence faced by these women, and as they intersect with the religion and cultural and traditional practices, the Committee may provide guidance in the prevention, protection and redress of GBV in this areas and contexts.

Additional Comments:

The CHRP likewise recommends that the continuum of violence and impunity of violence be strengthened in the prevention, protection, and redress section by providing specific sections addressing the following, and providing guidance for State actions and interventions:

Addressing all forms of violence wherever they occur:

Many forms of violence shared by CSOs and partners during the consultation on GR 19 and which may require articulation in the current draft GR 19, specifically:

²⁴ 15 years of the UN SRVAW, Its Causes and Consequences, P. 27

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

²⁵ 15 years of the UN SRVAW, Its Causes and Consequences, P. 12

<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

²⁶ 15 years of the UN SRVAW, Its Causes and Consequences, P. 12

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²⁷ 15 years of the UN SRVAW, Its Causes and Consequences, P. 12

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- a) *Violence committed by and through the digital space/ through ICT* – Part of the continuum of GBV is the perpetration of GBV through digital spaces. In the Philippines, gender-based violence perpetuated through ICT intersect with cases of prostitution, trafficking of women and girls, and sexual harassment, and violence in intimate relationships, among others. In addition to the recognition of these forms of GBV in the draft GR 19, and in recognition of the anonymity and often impunity involved in these kinds of violations, State obligation in providing redress mechanisms and ensuring access to justice in such cases is recommended. As technology and ICT are likewise sites of empowerment for women and girls, in the areas of prevention, the use of digital spaces and ICT to combat and prevent GBV, and in changing stereotypes and attitudes may be developed.
- b) *Violence in the form of misogyny and the proliferation of ‘hate speech’/ targeting of women-* While the work of the Committee addressed the links of gender stereotypes and traditional practices with gender based violence, there has been lack of guidance for States on the links of violence against women, misogyny and the perpetuation of rape culture in relation to the right to freedom of expression. During our consultation, hate speech against women has been raised as forms of GBV, as part of the continuum of violence and how it contributes to extreme forms of GBV. Concerns were likewise raised when hate speech and discriminatory acts are committed by State actors and institution, including the highest officials of the land.
- c) *Violence connected to wider struggles of Indigenous women and struggles against development frameworks which exacerbate GBV and risks of GBV:* The work of both the Committee and the SRVAW has covered violence against IPs and against groups asserting self-determination. Violence for these groups of women are both personal and collective. In the Philippines, IPs and Moro women struggle against GBV in the family and in the community as they likewise struggle collectively as a group for self-determination.
- d) *Economic Violence* – In the work of SRVAW, two mandate holders have examined the impact of social and economic policies as well as the relationship of political economy to women’s human rights²⁸. In this sense connections have been made on macroeconomics with violence against women. However, consultations of the CHRP raised once again issues of economic violence in the family, including in abandoned families. Poverty and its link with gender based violence have been discussed in relation to rural and indigenous women, particularly those in the context of development aggression. With this, measures of

²⁸ 15 years of the UN SRVAW, Its Causes and Consequences, P. 28
<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>

prevention, protection and redress in cases of economic violence and economic policies impacting on GBV are recommended.

Strengthening guidance for prevention, protection and redress

The SRVAW has previously articulated that at the core of the violence against women pandemic lies unequal power gender relations, patriarchy, homophobia, sexism and other harmful discriminatory beliefs and practices²⁹. It is recommended that measures for prevention should include recognition of these causes and identification of measures to address them, espousing a holistic approach with interventions at various levels: the legislative, executive, the judiciary and to include National Human Rights Institutions (NHRI). It is further recommended that the draft GR 19 include sections emphasizing participation of women-survivors of violence and women's organizations and CSO's in the programming, implementation and monitoring of measures on GBV.

Issued this 19th day of December 2016, Quezon City, Philippines.



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²⁹ A/HRC/32/42/Add.2, p. 3