CEDAW Draft Recommendation on Women's Access to Justice

Comments by SIHA and REDRESS

7 May 2014

1. The Strategic Initiative for Women in the Horn of Africa ("SIHA") is a network of civil society organisations from Sudan, South Sudan, Somalia, Somaliland, Ethiopia, Eritrea, Djibouti, and Uganda that aims to strengthen the capacity of women's rights organisations and address violence against women in the Horn of Africa. REDRESS is a non-governmental organisation that focuses on achieving justice and reparation for survivors of torture and ill-treatment throughout the world. We thank the Working Group responsible for drafting the General Recommendation on Women's Access to Justice for the opportunity to provide these comments on the draft.

2. The organisations congratulate the Working Group on what is already a very strong General Recommendation, which we are confident will be of great assistance to both States Parties and victims of discrimination and other human rights violations. We note that the draft reflects the long experience of the Committee and the input of many organisations, and is therefore solidly grounded in practical reality for women.

3. In this submission we provide some suggestions for ways in which we consider the draft may be strengthened even further, and we hope that the Committee will find this helpful in the process of finalising the text. For ease of reference, we follow the structure of the draft. In some places we have suggested specific wording for inclusion, while in others we have raised more general points for the Committee's consideration.

I. Introduction and Scope

4. In **paragraph 1**, it may be helpful to put the General Comment in context by briefly outlining the adverse consequences of a denial of access to justice, and why ensuring effective access to justice is crucial for the realisation of other rights.

5. These issues have been of longstanding concern to the Committee. As expressed in the concept note for the half day of general discussion on this topic, "legal rights are only meaningful if they can be asserted. Access to justice is therefore also an essential component of rule of law and a means for women to actively claim the entire range of rights provided for in the Convention."[1] Where women do not have access to justice their rights can be violated with impunity, the damage caused to victims of violations is unrepaired, and the rule of law is undermined.

6. It may also be helpful in this section to briefly set out the types of cases and concerns that require access to justice – giving an illustrative rather than exhaustive list. Women may seek access to justice for all kinds of reasons which may include seeking justice directly against state entities for human rights violations (across the whole spectrum of rights), but also have the right to access justice to address contract issues, property matters, employment issues,

[1] 'Access to Justice – Concept Note for Half Day General Discussion', Endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, p. 2, http://www.ohchr.org/Documents/HRBodies/CEDAW/AccesstoJustice/ConceptNoteAccessToJustice.pdf.

criminal cases, matrimonial and family matters and administrative law issues. Some of these cases have specificities – so for example in relation to serious violations against the person including violence against women, a judicial remedy must always be available (as to which see further comments on paragraph 22, below) – but equal and effective access to justice for all of these types of cases is necessary to uphold, and ensure the effective realisation of women's rights.

II. Common issues and recommendations on women's access to justice

Availability of justice

7. In **paragraph 11(a)**, we suggest that reference should also be made to laws that recognise and guarantee the right of access to justice without discrimination, both at the constitutional level and in statute. This is a matter touched on by the draft at paragraph 2, which recognises that "[m]any international and regional human rights treaties and declarations as well as most national constitutions contain guarantees relating to non-discriminatory access to justice systems and remedies.[2]"

> Suggested wording: *The* availability *of justice requires laws that guarantee the right of access to justice without discrimination and adequate institutions and resources, such as non-discriminatory legal procedures, remedies and support services, to ensure effective and efficient justice for all women.*

8. In relation to constitutional guarantees in particular, this is addressed further in relation to paragraph 37(a), below.

Adapted and appropriate justice

9. We suggest that **paragraph 11(c)** could be strengthened by referring to the establishment of procedures to enable the effective participation of women in justice procedures. This is a point that is already made in the draft concerning criminal proceedings (at paragraph 43(c)) and in relation to specialised mechanisms (at paragraph 48(c)), but would benefit from being made more generally.

> Suggested wording: *Justice systems must be adapted and appropriate to the needs of different women, and should ensure their effective participation in justice processes. They should be contextualized, dynamic and take account of increasing demands for justice by listening to stakeholders and responding appropriately, if necessary through the creation of new institutions, procedures and mechanisms.*

A. Gender-based and intersectional forms of discrimination

10. As the Committee is aware, in some countries women's testimony is given less weight than men's testimony in judicial proceedings.[3] In **paragraph 12**, it would be therefore helpful to refer to procedural and/or evidentiary rules that accord an inferior status to women's testimony, as well as those that exclude it completely.

> Suggested wording: *Direct gender-based discrimination in connection with access to justice may include the existence of procedural and/or evidentiary rules that specifically exclude or accord inferior status to women's testimony…*

11. In **paragraph 13**, we suggest that physical and/or mental illness or disability is added to the list of situations that can make it more difficult for women and girls to access justice without discrimination. Sometimes such physical or mental illness is a result of a violation itself: so for example a victim of torture may first require psychological treatment before being able to

[2] See, for example; Articles 7 and 8 of the Universal Declaration of Human Rights, Articles 2 and 14 of the International Covenant on Civil and Political Rights, Articles 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights.
[3] See eg. Concluding observations on Pakistan, CEDAW/C/PAK/CO/3 (CEDAW, 2007), paras. 16-17.

contemplate accessing justice, or physical injuries resulting from the torture may make it impossible, without appropriate support, for a victim to attend court in person.[4]

12. We also suggest that "stigmatisation" be included as an umbrella term for women who are seen as not conforming to norms: this may apply, for example to women accused of supposed "witchcraft", those living with HIV/AIDS, to trafficking victims or women who have been subjected to sexual violence.[5]

> Suggested wording: *Certain situations, including: poverty, geographical remoteness, stigmatisation, illiteracy, physical and/or mental illness or disability, women's traditional roles as carers,…*

B. Discriminatory legal frameworks and procedures

13. We welcome **paragraph 15** and the emphasis on discriminatory laws, regulations, procedures, customs and practices which deny women's human rights and undermine the availability and accessibility of justice for women. We suggest that a cross-reference be made in a footnote in this paragraph to the issue of discriminatory criminal laws that specifically target women, currently addressed in paragraph 42 of the draft.

> Suggested wording*: … Article 2 of the Convention contains obligations for States parties to adopt appropriate legal and other measures to eliminate all forms of discrimination against women by public authorities and by all other people, organizations and enterprises.*[6] *…*

14. This section is also a logical place to include reference to a significant discriminatory legal barrier to justice for victims of rape in many jurisdictions, namely the criminalisation of rape complainants for "adultery" if charges are found unproven. This is a major obstacle to victims of rape coming forward in jurisdictions where it exists.[7]

15. Footnote 7 to paragraph 16 could also be expanded to include reference to other types of immunities that create barriers to justice, such as foreign state immunity and domestic official immunities that are equally concerning.[8] As currently drafted there is a risk that this reference to immunities could be read more narrowly than intended.

16. **Paragraph 17(b)** refers to mandatory reporting of violence against women and other violations of human rights. We welcome this recommendation, but suggest that what mandatory reporting requires, and who such requirements are usually directed at, could be spelled out more clearly here.[9]

17. We also strongly welcome the recommendation for *ex officio* prosecutions, but suggest that investigations as a first step also be referred to, so that it recommends "*ex officio* investigations and prosecutions".

---

[4] See, Committee Against Torture, 'General Comment No. 3: Implementation Article 14 by States Parties' CAT/C/GC/3, (2012) ("CAT General Comment No. 3"), para. 38. See also Concluding Observations on Uganda, CEDAW/C/UGA/CO/7 (CEDAW, 2010), paras. 45-46 ("The Committee also expresses its serious concern at reports that women with disabilities, especially in Northern Uganda, face stigma and isolation, gender-based violence and obstacles to accessing justice").

[5] See eg. Concluding Observations on Burkina Faso, CEDAW/C/BFA/CO/6 (CEDAW, 2010), paras. 45-46) (supposed "witchcraft"); Azerbaijan, CEDAW/C/AZE/CO/4 (CEDAW, 2009), para. 23 (victims of trafficking); Uganda, CEDAW/C/UGA/CO/7 (CEDAW, 2010), paras. 45-46 (older women and women with disabilities; Greece, CEDAW/C/GRC/CO/7 (CEDAW, 2013), para. 22 (prostitutes suffering from HIV/AIDS); Russian Federation, CEDAW/C/USR/CO/7 (CEDAW, 2010), para. 22 (victims of sexual and domestic violence).

[6] As to discriminatory laws criminalising women's conduct see paragraph [42].

[7] See, eg. KCHRED and REDRESS (2008), 'Time for Change: Reforming Sudan's Law on Rape an Sexual Violence', November 2008, http://www.redress.org/downloads/publications/Position%20Paper%20Rape.pdf, p.33.

[8] See, eg. Concluding Observations on Fiji, CEDAW/C/FJI/CO/4 (CEDAW, 2010), para. 12.

[9] For an analogous recommendation in relation to children by the Committee on the Rights of the Child see 'General Comment No. 13: The right of the child to freedom from all forms of violence,' CRC/C/GC/13 (CRC, 2011), para. 49.

18. Again we welcome the reference to ensuring appropriate evidentiary requirements in **Paragraph 17(c)**, however we suggest this should also recognise the fair trial rights of the accused in criminal proceedings.

> Suggested wording: *Measures must be adopted to ensure that the evidentiary requirements necessary to prove the existence of different forms of violence against women are not overly restrictive, inflexible or influenced by sexist stereotypes, while taking due regard for the fair trial rights of defendants in criminal proceedings.*

19. The recommendation in **Paragraph 17(d)** concerning implementation of decisions is crucial. We are aware of numerous cases where courts or other bodies have found in victims' favour, only for decisions to go unexecuted. In some countries judgment holders must take formal additional steps to enforce the judgment, sometimes involving payment of fees beyond their means.[10] It is therefore important to clarify in this General Recommendation that, where a State Party has been found responsible for a violation, it must fully implement any corresponding orders promptly and without requiring separate execution proceedings by the victim, as has been recognised in the jurisprudence of bodies such as the European Court of Human Rights.[11]

20. We therefore suggest that the Committee be more specific in this recommendation. Rather than "develop follow up procedures to guarantee the full implementation of decisions", one possibility would be to recommend that States designate one official or body responsible for coordinating to ensure prompt implementation of judgments against the State, with procedures for oversight by the Court. This would give greater clarity about who is responsible for coordinating responses from appropriate ministries and departments, provide victims with one point of contact, and allow for greater accountability if decisions are not implemented.

C. Overcoming sex and gender stereotypes

21. In relation to **paragraph 20**, we stress that, while social discrimination is an important barrier for women's human rights defenders, the persecution they face is often politically motivated, particularly in countries where comprehensive women's rights present a threat to political elites. This point could be made in another section of the General Recommendation, but we suggest that if so, it is cross-referenced here.

22. Another significant barrier to overcome is the perception of women's rights issues by both mainstream human rights organisations and women's movements in many countries. Many mainstream human rights organisations do not see issues such as early marriage, sexual harassment, rape, and female genital mutilation as issues that fall within their remit. Similarly, conventional women's movements may see women's human rights defenders as outsiders because such human rights defenders often directly challenge the political *status quo*. Alienation from both the mainstream human rights movement and the conventional women's movement often serves to undermine women's human rights defenders. We suggest that a recommendation aimed at supporting the position of women's human rights defenders within civil society is included in this section.

---

[10] See REDRESS (2013), 'Submission to the Committee on the Elimination of Discrimination Against Women for Consideration of the Combined 6th and 7th Report of the Democratic Republic of the Congo', 24 June 2013, paras. 22-24, http://www.redress.org/downloads/publications/131001REDRESS%20submission%20to%20CEDAW%20on%20DRC%20-%20Final.pdf. See also the Committee's Concluding Observations on Democratic Republic of the Congo, CEDAW/C/COD/CO/6-7, (CEDAW, 2013), para. 22(b).

[11] On this, see the European Court of Human Rights, *Burdov v Russia (No. 2)* (2011), App. No. 33509/04, 15 January 2009, para. 68("A person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see Metaxas v. Greece, no. 8415/02, § 19, 27 May 2004). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for execution. This is particularly relevant in a situation where, in view of the complexities and possible overlapping of the execution and enforcement procedures, an applicant may have reasonable doubts about which authority is responsible for the execution or enforcement of the judgment (see Akashev v. Russia, no. 30616/05, § 21, 12 June 2008)").

23. In relation to the recommendation **in paragraph 22(b)**, we suggest that the outreach should involve engagement with both young males and females, and include work on gender relations.

D. Available and accessible justice systems

24. We agree fully with the wording of **paragraph 22**, and the importance of developing multiple gender-sensitive fora through which women can seek and obtain justice. However, it is also important to stress, as the Committee has done on previous occasions, that for certain violations a judicial remedy must always be available and accessible, and the provision of a quasi judicial procedure or administrative procedure will not suffice.[12]

25. We note that the draft General Recommendation already recommends *ex officio* prosecutions for violence against women,[13] however we suggest that the need for a judicial remedy should also be stressed in this paragraph. States must take positive steps to ensure non-discriminatory access to the Courts for certain violations of women's human rights, including violence against women, and should be encouraged in addition to develop other quasi-judicial institutions which complement the Courts.

E. Education and awareness raising

26. We suggest that in this section greater emphasis is placed on interactive education of women and their communities, which builds on the knowledge and awareness that women and communities have. An approach which assumes that they do not hold any knowledge or awareness is disempowering, as opposed to an approach that involves knowledge passing in both directions.

F. Legal aid and public defense

27. We strongly welcome **Paragraphs 27-28** and the recommendations it puts forward.

28. In addition, in many countries where legal aid systems are not well developed, independent or appropriately funded, non-governmental organisations fill an important gap in providing legal advice and representation to women. However, a number of States impose severe restrictions on the operation of such organisations, limiting their ability to function effectively.[14] We therefore urge the Committee also to recommend that States Parties ensure that independent legal aid provision is not hindered either through restrictions in funding and fundraising capacity or unreasonable constraints upon the capacity for legal aid organisations to exist and function. Similarly independent legal aid organisations must be able to provide outreach to individuals and communities (paragraph 28(b)).

29. Restrictions and limitations on independent legal aid provision ties into a wider issue which we suggest is raised in the General Recommendation: the link between access to justice, and guarantees of other civil and political rights, as well as economic and social rights. Particularly important are the right to vote in free and fair elections and the freedoms of expression and association. Where these are restricted or denied this provides an enabling environment for other human rights violations, including denial of access to justice.

G. Evidence-based policies and programmes on access to justice

30. The use of the word "complaints" in **paragraph 30(a)** could be read in a narrow way to mean only complaints of human rights violations, where we understand the intention of this recommendation to be broader: to allow States parties to have an overview of the operation of

[12] See, eg. 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', forty-seventh session, 2010, para. 34; Human Rights Committee, 'General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant', CCPR/C/21/Rev.1/Add.13 (2004), paras. 18, 34. See also Human Rights Committee, *Giri v Nepal*, Views adopted 28 March 2011, UN Doc. CCPR/C/101/D/1761/2008, para. 6.3.

[13] At paragraph 17(b) of the draft.

[14] See for example, Amnesty International (2012), 'Stifling Human Rights Work: The impact of civil society legislation in Ethiopia', 12 March 2012, http://www.amnesty.org/en/library/info/AFR25/002/2012/en, pp. 13, 25-26.

the justice system as a whole as accessed by women. We therefore suggest that the word "complaints" is replaced by "cases and complaints". It may also be helpful to clarify whether this recommendation is intended to apply to all cases and complaints lodged by men and women in all areas of law.

31. In **paragraph 30(b)** we suggest that the wording is made more specific, ie:

> *Develop and implement effective procedures to sustainably engage women and civil society…*

H. Remedies

32. We strongly welcome the draft's emphasis in **paragraph 32** on the importance of reparation, and the need for such reparation to take multiple forms. It is encouraging that the draft draws from and builds upon other international human rights law instruments and practice in setting out the types of reparation that may be awarded. However, to ensure even greater consistency with standards already expressed in international law, including as synthesised in the Basic Principles and Guidelines on the Right to Remedy and Reparation for Gross Violations of Human Rights and Serious Violations of International Humanitarian Law (the "Basic Principles"),[15] and as recently elaborated on by the Committee Against Torture in its General Comment No. 3,[16] we suggest the following amendments to the draft:

    (i) It would be helpful to include a statement as to the adequacy and effectiveness of reparation. Reparation should be "adequate, effective and prompt",[17] and "proportional to the gravity of the violations and the harm suffered";[18]

    (ii) In international law relating to reparation the term compensation has traditionally been conceived as financial compensation, and it may therefore be confusing to refer to "monetary non-monetary compensation" without further explanation. It may be clearer to say "compensation (whether provided in the form of money, goods or services)";

    (iii) "Reinstatement" to a position has generally been considered a form of restitution, and is reflected as such in the UN Basic Principles.[19] We suggest that the separate reference to "reinstatement" be removed, or included in brackets after the reference to restitution;

    (iv) Medical and psychological care and social services are generally considered to fall within "rehabilitation" as a form of reparation.[20] As such we suggest that the reference to these types of reparation be included in brackets after "rehabilitation";

    (v) For consistency with other international documents it may be helpful for the General Recommendation to follow more closely the order of the different forms of reparation as found in the UN Basic Principles, namely: "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition";[21]

[15] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Res. 60/147 of 16 December 2005 ("UN Basic Principles").
[16] CAT General Comment No. 3, above n. 4.
[17] UN Basic Principles, Principle 11 (adequate, effective, and prompt); CAT General Comment No. 3, para. 6 (adequate and effective), para. 10 (prompt, fair and adequate).
[18] UN Basic Principles, Principle 15; CAT General Comment No. 3, para. 6.
[19] UN Basic Principles, Principle 19 ("Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property").
[20] UN Basic Principles, Principle 21. See also CAT General Comment No. 3, para. 13.
[21] UN Basic Principles, Principle 18.

(vi) We suggest the term "reparation" is preferable to "reparations" throughout (see also **paragraph 33(c) and 54(b)**) to ensure consistency and alignment with the terminology used in instruments such as the UN Basic Principles.

(vii) We are encouraged to see the reference to the Nairobi Declaration and Principles in footnote 24 to this paragraph. We suggest it may also be beneficial to cite the UN Basic Principles and the Committee Against Torture's General Comment No. 3, with reference to their potential applicability to violence against women.

(viii) The Nairobi Declaration also stresses that where violations are committed in the context of structural discrimination, reparation should be transformative to address underlying inequalities which led to the violation in the first place, rather than seeing restitution and reintegration as sufficient goals.[22] This approach has been strongly endorsed by the Inter-American Court of Human Rights and the Special Rapporteur on Violence against Women.[23] We suggest that this point should be made clearly in this paragraph.

Suggested wording: *As the Committee notes in its General Recommendation 28 (2010), 'without reparation, the obligation to provide an appropriate remedy is not discharged.' Remedies should be adequate, effective and prompt, and provide individual redress that is proportional to the gravity of the violations and the harm suffered.*[24] ~~*and include*~~ *To be adequate and effective reparation should include, as appropriate,* ~~*different forms of reparation such as; recognition of the truth;*~~ *restitution (including reinstatement), compensation (whether provided in the form of money, goods or services),* ~~*monetary and non-monetary compensation; restitution,*~~ *rehabilitation (including medical and psychological care and other social services),* ~~*and reinstatement;*~~ *measures of satisfaction such as*~~*;*~~ *recognition of the truth, public apologies*~~*;*~~ *and public memorials*~~*,*~~ *and guarantees of non-repetition*~~*;*~~ ~~*medical and psychological care and other social services*~~*. Where violations arise out of structural discrimination reparation must be designed to change the situation, so that its effect is not only of restitution and reintegration, but also of rectification.*[25] *In addition to the provision of individual reparations*~~*,*~~ *when necessary, remedies should also address systematic and systemic problems, mandate institutional reforms and include orders to repeal, amend or enact legislation and to bring perpetrators to justice.*[26]

33. **Paragraph 33(f)** is very important and we welcome this statement in the draft. In our experience States may try to rely on a combination of truth and reconciliation commissions and administrative reparation programmes (usually limited to financial compensation) as substitutes for judicial remedies and wider reform.[27] We therefore suggest that this paragraph is strengthened and clarified by inclusion of the following words:

[22] Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007), available at: http://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf, para. 3.
[23] IACtHR, *González et al.* ("*Cotton Field*") *v Mexico* (Preliminary Objection, Merits, Reparations, and Costs) Series C, No. 205 (November 16, 2009) paras. 450-451; Report of the Special Rapporteur on violence against women, its causes and consequences, (2010) A/HRC/14/2, para. 78.
[24] See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Res. 60/147 of 16 December 2005 ("Basic Principles"), Principles 11 and 15. See also Committee Against Torture, General Comment No. 3: Implementation by States Parties of Article 14, paras. 6 and 10.
[25] IACtHR, *González et al.* ("*Cotton Field*") *v Mexico* (Preliminary Objection, Merits, Reparations, and Costs) Series C, No. 205 (November 16, 2009) para. 450; Report of the Special Rapporteur on violence against women, its causes and consequences, (2010) A/HRC/14/2, para. 78; Nairobi Declaration on Women's and Girls Right to a Remedy and Reparation (2007), para. 3.
[26] See the Nairobi Declaration on Women's and Girls Right to a Remedy and Reparation (2007).
[27] See concerns for example about the transitional justice process in Nepal: Advocacy Forum Nepal, REDRESS and APT (2014), 'Submission to the Human Rights Committee ahead of its Examination of Nepal's Second Periodic Report under the International Covenant on Civil and Political Rights', February 2014, http://www.redress.org/downloads/publications/AF%20REDRESS%20APT%20Nepal%20submission%20for%20website.pdf, pp. 7-15.

Suggested wording: *Ensure that within post-conflict or transitional justice contexts, non-judicial remedies for mass human rights violations, such as truth and reconciliation commissions and administrative compensation programmes complement, rather than supplant, ~~are not used as substitutes for~~ judicial remedies and other forms of reparation.*

III. Specific recommendations

A. Constitutional law

34. In relation to **paragraph 37(a)**, and with reference to our comment at paragraph 7, we suggest the Committee consider also including a recommendation for constitutional recognition of the right of access to justice without discrimination. This may be achieved as a singular right (such as the right of equal access to justice),[28] or through the combined effect of the right of access to justice, and constitutional prohibition of discrimination.[29]

D. Criminal law

35. We commend the Committee for its recognition in **paragraph 42 and 43(g)** of the impact of discriminatory criminal laws that target women. This is a significant issue in SIHA's work in Sudan, for example. This point could be made even more strongly by recognising that it can be a deliberate use of the legal framework to target women.

36. In addition, an issue we encounter regularly, and with which the Committee is regularly confronted, is inadequate criminalisation of crimes against women, that is where a crime is on the statute books but is defined in such a way as to be discriminatory or ineffective.[30] We therefore suggest that the word "adequately" be inserted before the word "criminalize" in the final sentence of **paragraph 42**.

Suggested wording: *The Committee has observed, however, that some criminal justice systems are used to discriminate against women by criminalizing behaviours that are not criminalized or punished in the same ways if they are performed by men. ~~and/or by failing~~ In addition, many criminal justice systems fail to adequately criminalize or to act with due diligence to prevent and redress crimes that disproportionately or solely affect women.*

37. Although to some extent covered by **paragraph 43(a)**, we suggest in addition that a further specific recommendation is made that States ensure that violations against women are criminalised and that such criminal laws are gender-sensitive and in line with international standards.

38. We note that the recommendation in **paragraph 43(b)** concerning specialised gender units in police stations and prosecution offices is similar to that made in **paragraph 23(c)**. The wording in paragraph 23(c) is more directive, however ("should be established" as opposed to "[c]onsideration should be given to the establishment"), and we suggest that the former, stronger wording be used in both.

39. Another issue that the Committee may wish to consider including in this section is the **use of extraterritorial jurisdiction** to investigate and prosecute those accused of crimes under international law, including certain types of gender-based violence. In situations of impunity for gender-based violence, extraterritorial prosecutions may provide another important avenue of justice for victims: States have the right, and in some cases the duty, to investigate, and prosecute (or extradite), those suspected of certain international crimes committed outside

[28] See, eg. Constitution of India, Section 39A (Equal justice and free legal aid: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.")

[29] See, eg. Constitution of South Africa, Section 34 (Access to courts) and Section 9 (Equality).

[30] So, for example, on the definition of rape in criminal law see Concluding Observations on Lao People's Republic, CEDAW/C/LAO/CO/7 (CEDAW, 2009), paras. 25-26.

their borders.[31] In some cases, reference to international courts may also be appropriate. States should ensure that their legal framework allows for the exercise of extraterritorial jurisdiction in line with international law, and should cooperate with international courts and other states to bring alleged perpetrators to justice.[32]

40. Another issue that could be usefully addressed in this section is responding to violations of women's human rights by peacekeepers and related personnel in conflict and post-conflict settings. In countries as diverse as Angola, Bosnia and Herzegovina, Cambodia, Democratic Republic of the Congo (DRC), East Timor, Eritrea, Kosovo, Liberia, Mozambique, Sierra Leone, and Somalia, numerous examples of rape, paedophilia, prostitution, and other forms of sexual exploitation and abuse have come to light in recent decades.[33] However, there has been very little accountability for this abuse, and new instances continue to be reported.[34] We suggest that the Committee could usefully make the following recommendations directed towards States parties who contribute troops to peacekeeping missions in this regard. Troop contributing countries must:

    (i) ensure that troops and related personnel sent on peacekeeping missions are vetted to ensure the exclusion of those associated with serious violations of international humanitarian and human rights law, including sexual violence;[35] and

    (ii) have the appropriate legal framework in place to investigate, prosecute and punish any of their troops and non-military personnel responsible for criminal violations of women's human rights taking place extraterritoriality, must ensure that they do so when credible allegations are raised, and must report to the UN on the progress and outcome of misconduct investigations and prosecutions.[36]

E. Administrative law

41. For administrative law remedies in relation to the issues highlighted in **paragraph 44** to be effective, a prerequisite is the appropriate budget allocations for the laws in place (eg. in relation to health services, social security entitlements, etc.) We suggest that his point is made in the paragraph.

42. The recommendation in **paragraph 45(c)** concerns administrative detention. We note that this terminology is most commonly used for "security" detention, rather than detention for immigration or extradition purposes. The Human Rights Committee's draft General Comment on Article 9 (currently under discussion) states that such detention presents severe risks of arbitrary deprivation of liberty,[37] and imposes very strict limits on such detention, and we suggest that the Committee reflect this in its own general recommendation. In line with obligations under the International Covenant on Civil and Political Rights and other human rights treaties, we suggest that recommendation should at least call for "prompt and continued effective judicial review of such detention…"[38] We also suggest that this paragraph is included under a separate heading as it is very different to the other issues addressed under 'Administrative Law'.

---

[31] For example under the Convention Against Torture, Articles 5-7, the Convention on the Protection of all persons from Enforced Disappearance, Articles 9-10 or in relation to grave breaches of the Geneva Conventions.
[32] On cooperation with the International Criminal Court see Concluding Observations on Côte d'Ivoire, CEDAW/C/CIV/CO/1-3 (CEDAW, 2011), para. 28(g).
[33] See further Carla Ferstman (2013), 'Criminalizing Sexual Exploitation and Abuse by Peacekeepers', USIP Special Report, September 2013, http://www.usip.org/sites/default/files/SR335-Criminalizing%20Sexual%20Exploitation%20and%20Abuse%20by%20Peacekeepers.pdf, p. 2.
[34] *Ibid.*
[35] UN Security Council Resolution 1888, 30 September 2009, para 3.
[36] See the UN Model Memorandum of Understanding in UNGA, 'Report of the Special Committee on Peacekeeping Operations and its Working Group', A/61/19 (2007), Articles 6 and 7.
[37] Human Rights Committee's draft General Comment No. 35, 'Article 9: Liberty and Security of the Person', http://www.ohchr.org/Documents/HRBodies/CCPR/GConArticle9/CallComments/DGC_Article9_RighttoLiberty.doc, para. 15.
[38] International Covenant on Civil and Political Rights, Article 9(3) and *ibid.*

G. Plural legal systems

43. We suggest that the word "harmonise" in **paragraph 52(a)** be used with caution, as it does not give a clear standard. A better approach may be to ensure that the application of the norms, procedures and practices is compatible with the human rights standards contained in the Convention and in other international human rights instruments. In relation to this issue, we suggest that the Committee should encourage states to promote and support research and knowledge sharing by women and men that seeks to develop human rights based interpretations of religion and a human rights compliant evolution of cultural beliefs.

H. Alternative dispute resolution processes

44. We support the draft's approach to alternative dispute resolution procedures in **paragraph 53**, which recognises that they may be appropriate in some circumstances, but that they must be carefully managed, and are inappropriate in a number of situations, including concerning violence against women.

45. SIHA is currently working with female and male mediators in Sudan. Ensuring an effective mediation programme requires extensive training and resource allocations, follow-up and recognition by the legal system of the mediator's role. It also requires very careful selection of mediators, to ensure that their belief systems and practice are compatible with women's and girls' rights (so male mediators should not be polygamists, and should support girls' education, for example). We suggest that these issues could helpfully be reflected in the recommendations.

I. National human rights institutions and Ombuds

46. In relation to national human rights institutions ("NHRIs") and Ombuds offices, a key issue is to ensure that there is adequate support to allow poor women to access these mechanisms, for example by the provision of transport costs.

47. It would also be helpful for this section to again address the issue of implementation of decisions after **paragraph 56(c)**. The Committee might, for example, recommend that States put in place a framework coordinating implementation of decisions of NHRIs and Ombuds offices, and a process of regular review of statistics on degree of implementation.

IV. Optional Protocol to CEDAW

48. The Optional Protocol to CEDAW is an important mechanism in relation to women's access to justice. It not only provides an important mechanism at the international level, but through its operation also makes a positive contribution to identifying problems in the operation of justice systems at the national level, and elucidating standards to assist States to meet their obligation. We suggest that this important role of the Optional Protocol is stressed in **paragraph 57**.

49. In relation to implementation of decisions in **paragraph 58(b)**, we suggest the following more specific wording:

> *Implement the views of the Committee in decisions under the Optional Protocol without delay and establish a mechanism to ensure prompt implementation of such decisions in future.*

ACCESS TO JUSTICE FOR GIRLS

50. One area that is not covered in detail and which we suggest could be covered in a separate paragraph is access to justice for girls. Children have specific needs and rights and face specific barriers in relation to accessing justice, and these could helpfully be reflected in this General Recommendation.

51. In addressing this issue the Committee may wish to refer to the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.[39] It may also wish to draw on the jurisprudence developed by the Committee on the Rights of the Child on this issue, for example through the following General Comments:

- General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, paras. 66-72 (Remedial measures)
- General Comment No. 12 (2009) on the right of children to be heard, CRC/C/GC/12
- General Comment No. 10 (2007) on children's rights in juvenile justice, CRC/C/GC/10
- General Comment No. 5 (2003) on General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/C/GC/5, paras. 24-25.

For further information please contact Hala al-Karib, Regional Director, SIHA Network (hala@sihanet.org or +256 414286263) or Sarah Fulton, International Legal Advisor, REDRESS (sarah@redress.org or +44 20 3286 5435).

[39] ECOSOC Resolution 2205/20, 22 July 2005.