

The Bellagio Declaration on state obligation and role of the judiciary in ensuring access to justice for gender based violence, including sexual violence in an effective, competent manner and with a gender perspective

PREAMBLE

The participants at the International Judicial Colloquium on Women's Access to Justice in the Context of Sexual Violence, held at Bellagio on 7 and 8 December 2017, adopted the following Conclusions and Recommendations.

The participants recognised that gender-based violence against women and girls, including sexual violence is a form of discrimination and both a cause and consequence of inequality. They also noted with concern that such violence is growing in intensity in all regions and countries, both in its many longstanding manifestations as well in as newly emerging forms such as the prevalence of gender-based violence against women and girls in digital spaces and through the use of technology. They also raised concerns regarding the continuing impunity resulting from the failure of many justice systems to combat gender-based violence against women and girls and the failure of States to ensure that the justice system is capable of addressing it effectively.

The participants highlighted that sexual violence against women involves the violation of a range of human rights guaranteed to women and girls, including the right to life, bodily integrity, freedom from torture or cruel, inhuman or degrading treatment, health (including sexual and reproductive health and rights), respect for private life, right to just and favourable conditions of work, and non-discrimination and equality.

CONCLUSIONS AND RECOMMENDATIONS

1. The participants call on all judicial officers and those involved with the judicial system to implement internationally, regionally and nationally guaranteed human rights norms for the elimination of gender-based violence against women and girls within their jurisdictions without discrimination, gender stereotyping or other prejudicial attitudes. Impartiality of the judiciary and the right to a fair trial cannot be guaranteed to women otherwise.
2. The participants noted that significant advances have been made in the development of international and regional standards on the elimination of gender-based violence against women and girls including sexual violence, as well as in the development of national laws and policies to eliminate gender-based violence against women and girls. They also noted that despite the normative progress, impunity continues unchanged.
3. The participants acknowledged the important work done by the United Nations human rights treaty bodies and the United Nations Special Procedures to address sexual violence against women. In particular, they noted the importance of the work of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) under the reporting and Optional Protocol procedures and in its *General Recommendations* and other statements. The participants welcomed the adoption of [General Recommendation No. 35 on gender-based violence against women](#) and noted that the issue of sexual violence had also been addressed in a number of other *General Recommendations*.¹

¹ CEDAW *General Recommendation No. 12 on violence against women* (1989), *General Recommendation No. 19 on violence against women* (1992), *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations* (2013), *General Recommendation No. 32 on the gender-related dimensions of refugee status*,

4. The participants also noted in particular the importance of [the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women](#) (Convention of Belém do Pará), [the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (the Maputo Protocol), and [the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (the Istanbul Convention), and also the practice and jurisprudence of international and regional courts under other human rights treaties.
5. The participants underlined that States are under binding international legal obligations to take all necessary measures to prevent the occurrence of sexual violence and to investigate and prosecute sexual violence against women perpetrated both by state actors and non-state actors, and to provide effective and transformative remedies and reparations.
6. The participants reaffirmed the [Victoria Falls Declaration of Principles for the Promotion of Human Rights of Women, 1994](#) as well as those stated in the [Bangalore Principles on the Domestic Application of International Human Rights Law Norms, 1988](#) and in other judicial colloquia. These principles reflect the universality, indivisibility and inter-relatedness of human rights - inherent in men and women. These general principles are applicable in all countries, but the means by which they become applicable may differ. The participants underlined the vital role that an independent judiciary plays in the elimination of sexual violence against women and girls in interpreting and applying national constitutions and laws in the light of those principles.
7. The participants agreed that, where they have not done so, all States should be encouraged to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to remove any reservations they have made, to ratify the Optional Protocol, and to take into account the CEDAW Committee's jurisprudence under the Optional Protocol and its *General Recommendations*. States should also be encouraged to ratify the relevant regional treaties on violence against women.
8. The participants emphasised that domestic laws should be enacted, reformed or interpreted to conform to the international and regional human rights standards on the elimination of sexual violence.
9. The participants agreed that members of the judiciary² at all levels have opportunities to develop or apply the law in ways which are consistent with women's equality in cases involving gender based violence against women, including sexual violence. The participants noted that the actions of judicial officers in interpreting and applying the law may engage the responsibility of their State under international law if their decision and practices result in the violation of the human rights of women.
10. The participants agreed that members of the judiciary have a responsibility to be aware of applicable human rights norms as stated in international and regional instruments and national constitutions and laws and apply them systematically. It is crucially important for

asylum, nationality and statelessness of women (2014), *General Recommendation No. 33 on women's access to justice* (2015), *General Recommendation No. 34 on rural women* (2016) and *General Recommendation No. 36 on girls' and women's right to education* (2017). CEDAW *General recommendations* are available at www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx.

² This includes judges, judicial officers and others that exercise judicial powers within the court system.

them to be aware of and use the provisions of those instruments, which particularly pertain to women. In countries with a plural legal system, this responsibility applies also to the customary, traditional and/or religious authorities.

11. The participants agreed that judicial academies, universities and law schools should be encouraged to develop mandatory courses in human rights, which must include a module on the human rights of women and gender-based violence against women. They also recommended that induction or orientation programmes for new judges and programmes of continuing judicial education should mandatorily include material regarding women's rights and gender-based violence against women.
12. The participants recommended that States should carry out extensive legal awareness campaigns in the community in relation to women's human rights and gender based violence against women.
13. The participants recommended the development of closer links and co-operation across national frontiers by the judiciary for the sharing of information about good judicial practices on the progressive interpretation and application of human rights law standards as they relate to gender based violence against women, including sexual violence.
14. The participants recommended that special attention be given to processes, practices and procedural matters in pre-trial and trial proceedings/in court proceedings in order to create a conducive, friendly environment that enables access to justice for women and girls and avoid re-victimisation in cases of gender based violence against women, including sexual violence.
15. The participants recommended that mechanisms be put in place for the collection of judicial data on the number cases of sexual violence and on related homicide cases or gender-related killing of women per year³, disaggregated by the age and sex of the perpetrators, as well as the relationship between the perpetrator and the victim or victims, type of violence, geographical location as well as other relevant factors. Information concerning the prosecution and punishment of perpetrators should also be collected and published.

In conclusion, the participants committed to taking these conclusions and recommendations forward in their own jurisdictions thereby contributing to enhancing access to justice for women in cases of sexual violence.

³ This is in line with the call by the UN Special Rapporteur on Violence Against Women, its Causes and Consequences for establishment of the femicide watch and/or observatory as an interdisciplinary panel of experts that collect and analyze data on femicides with the aims of prevention of such cases. See also, Report of the Special Rapporteur on violence against women, its causes and consequences, A/71/398, 23 September 2016.

Explanatory Note

This Declaration is the outcome of an international judicial colloquium on women's right of access to justice and sexual violence organized from 7 to 8 December 2017 in Bellagio, Italy and attended by the following judges and women's rights experts who drafted this declaration:

1. Judge Joyce Aluoch, Judge and First Vice President, International Criminal Court
2. Judge Jacinta Correia, Judge, Dili District Court, Timor Leste
3. Judge Jad Maalouf, Summary Affairs Judge, Lebanon
4. Justice Nasir ul Mulk, Former Chief Justice, Supreme Court of Pakistan
5. Judge Susan Okalany, Resident Judge, High Court Circuit Mbale, Uganda
6. Judge Vacharin Patjekvinyusakul, Senior Judge, Taling Chan Provincial Court, Thailand
7. Justice Leona Theron, Judge, Constitutional Court of South Africa
8. Judge Amy Tsanga, Justice, High Court of Zimbabwe
9. Vrinda Grover, Senior Advocate, Supreme Court of India
10. Simona Lanzoni, Member, GREVIO
11. Patricia Schulz, Member, UN CEDAW Committee
12. Dubravka Simonovic, UN Special Rapporteur on Violence against women, its causes and consequences
13. Viviana Waisman, Executive Director, Women's Link Worldwide
14. Andrew Byrnes, Advisory Committee, IWRAW Asia Pacific; Professor, University of New South Wales and Member
15. Lesley Ann Foster, Chairperson, Board of Directors, IWRAW Asia Pacific; Executive Director, Masimanyane
16. Maria Herminia Graterol, Member, Board of Directors, IWRAW Asia Pacific
17. Umyra Ahmad Fikhri, Programme Officer, IWRAW Asia Pacific
18. Ishita Dutta, Programme Officer, IWRAW Asia Pacific

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