



Human Rights Watch Submission to the CEDAW Committee Update to General Recommendation 19: Violence Against Women *September 30, 2016*

Human Rights Watch welcomes the opportunity to provide input to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) for its updated General Recommendation (GR) on violence against women. Our suggestions below are based on Human Rights Watch’s research on this topic across different countries, legal systems, and cultures.

This submission follows the structure of the CEDAW Committee’s draft GR. We see that the CEDAW Committee is organizing the GR according to broad categories of state responsibilities, rather than by forms of violence against women. We support this approach, but offer some specific examples under the broad categories.

Introduction

Paragraph 5 notes that the GR aims to provide “further and **comprehensive** guidance.” We recommend deleting the word “comprehensive” since a short general comment cannot aim to be comprehensive. We recommend that the GR refer to more comprehensive documents, such as UN Women’s “Handbook for Legislation on Violence against Women” and UNODC’s “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women.”

Scope

Paragraph 7 refers to general recommendations that address violence against women. We recommend that you add General Recommendation No. 25 on temporary special measures, as it refers (in para. 9) to freedom from violence in its discussion of substantive equality.

While we understand that the GR is intended to guide States on implementation of CEDAW, we believe it would be helpful to refer to relevant general recommendations and comments, and jurisprudence from other treaty bodies and UN special rapporteurs. We recommend that you add a paragraph in the scope section with examples of relevant sources from other experts and bodies, while understanding that this would be a non-exhaustive list. This could include, for example, General Comment No. 3 of the Committee on the Rights of Persons with Disabilities (on women and girls with disabilities, which includes a section on freedom from violence); General Comment No. 13 of the Committee on the Rights of the Child (on freedom from violence, including gender-based violence); and General Comment No. 2 of the Committee against Torture

¹ UN Women, “Handbook for Legislation on Violence against Women,” 2012, http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502 (accessed September 13, 2016); UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” 2014, https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf, (accessed September 13, 2016).

(including material on gender-based abuses and on criminal responsibility of subordinates and superior authorities for torture and ill-treatment).

Paragraph 9 helpfully refers to women throughout their life cycle, noting that the GR refers to girls. We recommend the inclusion of an explicit reference to older women in this sentence, as their equal place in the life cycle is otherwise unrecognized. This would reinforce what the CEDAW Committee has said on violence against older women, including in its General Recommendation No. 27 (on older women).

Paragraph 9 refers to “death or physical, sexual, psychological or economic harm or suffering to women” as a result of violence against women. We suggest that you add a sentence noting that not all “harm or suffering” as a result of violence will be readily or physically apparent. Related to this, we suggest that the GR discourage States from having unreasonable standards for proving violence against women and the resulting harm or suffering, such as requiring medical certificates attesting to several weeks of physical incapacitation as a result of violence. (A further explanation of the latter point may fit well under paragraph 14(c) on state responsibility at the judicial level or paragraph 15 on protection and redress).

Paragraph 9 also refers to “coercion” in its discussion of multiple forms of gender-based violence. We recommend that you clarify what is meant by “coercion” in this paragraph.

In paragraph 11, we recommend that you include old age in the list of intersecting forms of discrimination to recognize older women’s experience.

In paragraph 12, we recommend adding “psychiatric hospitals, orphanages, residential care institutions, residential traditional or religious ‘healing centers’ run by spiritual leaders” to the list of places where women face violence. Human Rights Watch research finds that women with disabilities face significant violence in these settings.

General obligations of States parties under the Convention relating to gender-based violence against women

In paragraph 13 (a) we hope you will reflect the language on state responsibility used by the Committee against Torture in its General Comment No. 2. That general comment said, “States parties are obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity from *directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in* acts of torture....” In the last line of paragraph 13 (a)(i), we suggest adding the words “and accessible” in front of “legal and services framework” to ensure that these mechanisms are equally accessible to women with disabilities.

We welcome the inclusion in paragraph 14 that the response to gender-based violence against women implicates “all areas of State action.” We recommend that you reinforce and deepen this message by calling for a coordinated, multi-sectoral, collaborative response by public authorities and other service providers. This would reflect the positive experience many countries have had with the “coordinated community response” approach to combatting violence against women. We also recommend that you amend the reference in paragraph 14 from “all these legal and policy measures” to “all measures,” as the paragraph covers other measures.

We are glad to see the language in paragraph 14 (a) saying that states are required to adopt legislation prohibiting all forms of gender-based violence against women. We recommend that the language reflect more clearly the key requirements of such legislation, and refer to information in the UN Women Handbook for Legislation on Violence against Women.

Given that legislation on violence against women is a key tool in combatting this violence, we recommend that you expand this section substantially to reflect the major categories of topics covered in the UN Women Handbook, or further develop the references to legislation in the “prevention” section (paras. (g) – (k)). In addition, while accepting that in general the GR is not addressing specific forms of gender-based violence, we recommend that you make an exception in this section and discuss core elements of the legislative response to domestic violence. Again, the UN Women Handbook is a key resource for this, including the sections on scope of domestic violence, and the responsibilities of state authorities under domestic violence laws.

In the last line of paragraph 14, after “the level of proof required to substantiate its occurrence,” we recommend adding “and inaccessibility of courts and judicial mechanisms.” This would help to include barriers faced by women with disabilities.

Prevention

We found the section on prevention to be very detailed and helpful, and are pleased to see the reference to comprehensive sexuality education (prevention section, sub-para. (b)(i)). We recommend that you describe ‘sexuality education’ to ensure that States understand it broadly to encompass education on sexual development, sexual and reproductive health, interpersonal relationships, affection, intimacy and the importance of consent, body image, gender roles, and combatting the myth of the female hymen as an indicator of virginity. We also recommend adding “including in accessible and easy-to-understand formats” to ensure that such education is inclusive and accessible to girls with disabilities.

We recommend that sub-paragraph (c) call on States to ensure that efforts to encourage ICT social media platforms to address discriminatory content or gender-based violence online are consistent with article 19 of the ICCPR. Such efforts should be transparent and subject to due process safeguards.

Sub-paragraph (i) of this section states that gender-based violence against women should not be “referred to alternative dispute resolution procedures.” This phrasing may be too broad. We agree that there should be no *mandatory* mediation in gender-based violence or divorce cases, and that criminal forms of gender-based violence should remain in the criminal justice system. On the other hand, some countries have had a good experience with specialized courts or specialized court proceedings, which may have better training for court officials and support measures for survivors. We recommend that the GR support such specialized courts or mechanisms if the officials are adequately trained and gender-sensitive (in line with the UN Women Handbook, section 3.2.5), while calling for an end to mandatory mediation in cases involving gender-based violence.

Portions of the “prevention” section discuss specific legislation (e.g., paras. (j), (k) and (l)). If you expand the earlier section on actions on the legislative level to be more comprehensive, some of this material could move to the prior section. We would also like to see some clarification in the paragraphs on legislation. For example, in sub-paragraph (l) it is helpful that the draft says that the definition of rape should be based on lack of consent and take account of coercive circumstances. We recommend that this is further clarified to call on States to ensure that their criminal codes recognize rape as a physical invasion of a sexual nature without consent or under coercive circumstances. A physical invasion would include penetration, however slight, of any part of the body of the victim (or of the perpetrator by the victim) with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

Also in the prevention section, sub-paragraph (j) helpfully recommends the repeal of discriminatory legislation. It includes several examples, including of problematic evidentiary rules (sub-paragraph (j(ii))). We recommend that you add the example of discriminatory evidentiary practices focused on “virginity.” Human Rights Watch has found that so-called “virginity tests” continue to be used in some countries as part of post-rape documentation for criminal prosecution, perpetuating a very dangerous myth or ideology that a woman’s sexual past or experience – even the mere fact that she may have ever had sex before – is relevant to whether or not she could be or has been raped.

The GR helpfully calls for the repeal of the “defence of honour.” Some countries have repealed that defence for killings but not for other “honor” crimes, and some have retained the “fit of fury” defence/mitigating factor in sentencing when a perpetrator encounters behavior that is deemed sexually transgressive, including extramarital or homosexual sex. We therefore recommend that the GR clarify this point, calling more specifically for the repeal of such defences for a range of crimes, not just murder.

We also recommend that you add an additional category of legal provisions that should be repealed, namely, laws that deter women from reporting abuse, and include four examples of such laws: restrictive immigration laws; laws that criminalize adult, consensual sex work; laws that criminalize consensual sex outside of marriage between adults (or that criminalize children for engaging in consensual sex); and guardianship laws that deprive women of legal capacity.

Restrictive immigration laws can leave migrant women workers and other migrant women at risk of violence by their employers or families. Human Rights Watch has documented violence against migrant domestic workers by employers and their families in many countries. This is partly fostered by restrictive immigrant “sponsorship” laws which tie their legal status to their employers. It is also fostered by laws that tie a migrant women’s legal status to that of their husbands. Such laws deter victims from reporting violence, as it may mean risking deportation.

Criminalization of adult, consensual sex work creates barriers for those engaged in sex work to exercise basic rights, such as protection from violence, access to justice for abuses, and access to essential health services. Human Rights Watch research has shown that while sex workers routinely face physical and sexual violence, few sex workers file complaints, as they fear further abuse and prosecution. Victims of forced prostitution, trafficking, or other forms of exploitation can also find themselves prosecuted under such laws. We recommend that the GR call on States to repeal criminal laws on adult, consensual sex work, while maintaining laws that criminalize coercing a person to provide sexual services (whether this amounts to sexual assault, trafficking, forced prostitution, or other forms of exploitation).

Rape and sexual assault survivors are also deterred from reporting such crimes to authorities in countries where sexual relations outside of marriage are criminalized (for example, under *zina* laws) or where there are discriminatory laws based on sexual orientation or gender identity. Human Rights Watch has reported on many instances where survivors have faced prosecution after they reported rape because authorities suspected the sex was consensual and the woman was not married to the accused. We hope the GR will call for repeal of laws on adultery or extra-marital sex between consenting adults.

We also recommend that the GR call for repeal of laws depriving women, including women with disabilities, of their legal capacity. Women living under male guardianship rules or systems, and women with intellectual or psychosocial disabilities, who live under guardianship or similar restrictive systems in many countries face significant barriers in seeking redress for gender-

based violence. This is particularly true if the guardian is implicated in the abuse. Women with disabilities, for instance, can be prevented from lodging complaints or appearing as witnesses before judicial authorities in such cases.

Protection and redress

We are pleased to see the reference to protection orders in the section on protection and redress (sub-paragraph (a)(ii)). We recommend that this be clarified to reflect that orders for protection should be available both through civil and criminal law mechanisms, and that they should not be contingent on making a criminal complaint or seeking a divorce. Civil protection orders can provide women with a measure of protection while allowing them time to determine how to stay safe and whether to make a criminal complaint or seek a divorce. In addition, Human Rights Watch has examined protection order systems in several countries, and observed that many laws lack sufficient guidance on who can issue such orders, for how long, how they can be renewed or appealed, and the difference between emergency and long-term orders. While the GR cannot comprehensively address all these issues, we believe it would be helpful to refer to the UN Women Handbook regarding such issues (including Handbook section 3.6).

The GR has important language on health care and shelters in sub-paragraph (a)(iii) of the protection and redress section. However, we felt it should go further or be clarified in several ways. First, since some countries limit access to abortion, emergency contraception, or post-exposure prophylaxis for rape survivors, we recommend that you specifically call for access to such services. Second, some countries provide “shelter” services to women, but confine them and refuse to release them without permission of a guardian, effectively detaining them. Other shelters do not have capacity to accept children of survivors, which can be a real deterrent for women who may otherwise wish to leave an abusive situation. Some shelters inappropriately push women to reconcile with abusers, or capitulate to husbands or families who demand that survivors return to them. We recommend that the GR language on shelters state that they should respect women’s autonomy, increase capacity to allow children of survivors to stay with them where it is in their best interests, avoid pressuring women to reconcile with abusers, and ensure that no woman is de facto detained in a shelter, including not requiring a guardian or relative’s permission for the woman to leave. Third, the language on health services in sub-paragraphs (a)(iii) and (c) should include explicit reference to mental health services.

In paragraph (a)(iii), we also recommend that you emphasize the accessibility of the 24-hour helplines. We have documented that in many countries existing mechanisms to report violence against women are not equally accessible for women facing intersecting discrimination, especially women with sensory, intellectual, or psychosocial disabilities.

Data collection and monitoring

We suggest that paragraph (a) calls for the participation of women experiencing intersecting discrimination in consultations to ensure that programs are inclusive and accessible to all women.

We recommend that paragraph (b) includes “older age” as an intersecting form of discrimination against women by which data is disaggregated. We know that data collection on violence against women has traditionally excluded women over the age of 49, which prevents evidence-based responses for nearly a quarter of women globally.