

REDRESS

Ending Torture. Seeking Justice for Survivors

Comments on the Draft Addendum to General Recommendation No. 19 (1992): accelerating elimination of gender-based violence against women

Submitted by The Redress Trust

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I. Introduction

1. The Redress Trust (REDRESS) welcomes the invitation of the Committee on the Elimination of Discrimination against Women (the Committee or CEDAW) to provide comments on its Draft Addendum to General Recommendation No. 19 (Draft Addendum). We commend the Committee for this initiative. In this submission, we propose a number of suggestions we believe could additionally strengthen the Draft Addendum.

II. Separate Section on Redress

2. The current Draft Addendum deals with the issues of protection and redress in a joint section, with measures of protection highlighted in paragraphs a) and b) (pages 10-11) and measures of reparation summarised in paragraph c) (page 11).¹ We suggest that the final Addendum includes a separate section on redress to emphasise that the right to redress is a distinct right of victims and a legal obligation on States.
3. A separate section on the right to redress would allow the Committee to provide further clarity to States on the nature and content of their obligation to afford redress to victims of gender-based violence (GBV) and how to implement this obligation. It would also provide a useful opportunity to incorporate further components of the right to redress that are not captured in the current draft, thereby reflecting key developments regarding the right to redress since the General Recommendation No. 19's adoption in 1992. We suggest that the draft be amended to include:
 - a. Definition of "redress": the final Addendum should include a definition of the term "redress" to provide guidance to States on the meaning of redress. As there is no definition in the Convention on the Elimination of All Forms of Discrimination against Women (Convention) itself or in other General recommendations,² we suggest to follow the definition used by the Committee Against Torture (CAT) in its General Comment

¹ Draft Addendum, p. 10-11.

² See for instance General recommendation No. 33, providing that 'meaningful redress' is an essential component to ensure access to justice as per Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, yet it does not further define redress, General recommendation on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para. 14 (e).

No.3 which “considers redress to encompass the concept of ‘effective remedy’ and ‘reparation’.”³

- b. Definition of “remedy”: An expanded section on “redress” should also include a definition of the term “remedy” to assist States to meet their obligations. To ensure consistency with other instruments and standards, the term remedy could be defined as a judicial, administrative or other procedure that allows victims to assert the violation they experienced and seek reparation, including access to justice.⁴
- c. State obligation to provide reparation: In addition to the description of the different types of reparation included in the Draft Addendum,⁵ we recommend that it explicitly highlights that States are obliged to provide reparation,⁶ and to specifically refer to this principle in the context of GBV. The Committee has recognised GBV in its various forms as gender based discrimination and a violation of the Convention requiring States to provide reparation.⁷ The Guidance Note of the UN Secretary General on Reparations for Conflict-Related Sexual Violence (UN Guidance Note)⁸, the 2011 Report of the Special Rapporteur on trafficking in persons, especially women and children and his analysis of the right to an effective remedy⁹ and the 2010 report of the Special Rapporteur on Violence against women, its Causes and Consequences (the ‘Special Rapporteur’) on reparation¹⁰ could usefully be referenced as they provide guidance on what actions States are required to take to meet their obligations to provide reparation for GBV in different contexts.
- d. Court-ordered and administrative reparation: We welcome that the Draft Addendum acknowledges both court-ordered as well as administrative reparation.¹¹ However, we suggest that the General Recommendation specify that neither of these two possibilities should exclude the other. Courts and tribunals can act as important correctives to spur States to implement or improve administrative programmes for GBV.¹² The benefit of administrative programmes lies in their ability to process large number of claims efficiently and to provide greater access to victims.

³ See Committee Against Torture (CAT), General Comment No. 3, CAT/C/GC/3, 19 November 2012 (hereinafter CAT General Comment No. 3), para. 2; and Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/14/22, 23 April 2010 (hereinafter SRVAW Report 2010), para. 12.

⁴ See for instance, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, para. 5.

⁵ Draft Addendum, p. 11.

⁶ See e.g. Universal Declaration of Human Rights, 10 December 1948, Article 8; International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, Article 6; International Covenant on Civil and Political Rights, 16 December 1966, Article 2 (3); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Article 14; 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, 16 December 2005; CAT General Comment No. 3; UN Human Rights Committee, General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 29 March 2004, para. 16; CEDAW, General recommendation No. 33: General recommendation on women’s access to justice, CEDAW/C/GC/33, 23 July 2015, para. 19(b).

⁷ CEDAW, General Recommendation No. 19: Violence against women, 1992, para. 6 and 7.

⁸ UN Secretary General, Guidance Note on Reparations for Conflict-Related Sexual Violence, June 2014, at <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf>.

⁹ Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011, A.HRC/17/35, paras. 9-59.

¹⁰ SRVAW Report 2010.

¹¹ Draft Addendum, p. 11.

¹² REDRESS, Articulating Minimum Standards on Reparations Programmes in Response to Mass violations, Submission to the Special Rapporteur on the promotion of Truth, Justice Reparation and Guarantees of Non-Recurrence, July 2014, paras 80-82.

- e. *Reparation and development measures*: A separate section on redress should also underline the distinction between reparation measures and broader humanitarian intervention and/or general development-oriented policies.¹³ The needs of GBV victims can often overlap with general development needs, such as demands for health services, education, and socio-economic empowerment, which may lead States to deny reparation to them in view of existing development initiatives.¹⁴ At the same time, excluding development in the context of reparations is equally inappropriate. It may be appropriate in light of victims' marginalisation for reparations to include a greater share in development measures, or to provide victims with a greater voice in how decisions on development priorities are made. This helps to address the imbalance caused when victims have traditionally been kept out of those decisions and have been marginalised by that absence, which is one of the key contributing factors of their victimisation.
- f. *Prompt and interim reparation*: We welcome that the Draft Addendum indicates that remedies must be "promptly attributed" and recommend that the final text additionally underlines the need for urgency specifically in the context of GBV.¹⁵ GBV victims sometimes face urgent needs, which risk irreparable harm if unaddressed, including for example, fistulas, anal or uterine prolapses, and severe depression and anxiety. Reparation in such instances will only be effective if required measures are provided without delay. If necessary, measures deemed urgent should be provided on an interim basis.¹⁶
- g. *Standards of reparation*: The Draft Addendum should be amended to highlight that when designing reparation, States should apply a non-discriminatory approach according to which no victim is excluded from being a beneficiary of a reparation award because of a discrimination on the basis of their gender, religion, ethnicity or similar criteria.¹⁷ Positive measures must be put in place to enable all victim groups to access reparation measures, especially when the groups in question are traditionally discriminated or marginalised.¹⁸ The text should also emphasise the importance for States to ensure "a full understanding of the gendered-nature and consequences of the harm suffered"¹⁹ and ensure that reparation measures are comprehensive²⁰ and complementary to each other.²¹ This will help States to provide measures of reparation capable of addressing gender-specific consequences, such as unwanted pregnancies, children born out of rape, HIV/Aids infection, damage to reproductive organs, infertility, stigma, loss of family support, low self-esteem and feelings of worthlessness.²²
- h. *Transformative reparation programmes*: The Draft Addendum refers to, but does not explain, the need for transformative reparation programmes. An amended Addendum could elaborate to explain that for reparation programmes to be transformative, they must help to address the underlying discrimination or disadvantage which caused or contributed

¹³ SRVAW Report 2010, para 19.

¹⁴ See A. Saris and K. Lofts, *Reparation Programmes: A Gendered Perspective*, in Ferstman et al. (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity, Systems in Place and Systems in the Making*, April 2009, pp. 79-100.

¹⁵ Draft Addendum, p. 11.

¹⁶ UN Guidance Note, p. 12; CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 18 October 2013, (CEDAW GR30), para. 57(g).

¹⁷ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 25.

¹⁸ CAT General Comment No. 3, para 32-33; CEDAW GR30, para 38(c).

¹⁹ UN Guidance Note, p. 5; CEDAW GR30, para. 79.

²⁰ CAT, *Ali Ben Salem v. Tunisia*, 7 November 2007, Communication no. 269/2005, para. 16.8.

²¹ UN Guidance Note, pp. 5-6

²² University of California Berkeley Human Rights Center, *Sexual Violence: Medical and Psychological Support*, May 2011, p. 2-3.

significantly to the violation in the first place.²³ As stated in the UN Guidance Note and by the Special Rapporteur, “reparations should strive to have a transformative effect on these inequalities” A more detailed explanation of what the Committee understands by ‘transformative reparation’ could usefully include references to its own jurisprudence and that of other human rights bodies, and include: legislative reform;²⁴ training on specific gender issues for relevant state personnel (such as health providers, prison officers and judges);²⁵ provision of state-funded facilities;²⁶ and education on gender equality.²⁷

- i. Participation and consultation: The final Addendum should furthermore specify that participation and consultation are essential elements for effective reparation. This would reflect international standards and underline that the process of obtaining reparations should itself be empowering.²⁸ As stated by the Special Rapporteur, women’s participation in reparation discussions and processes is an opportunity for victims “to gain a sense of agency that may in itself be an important form of rehabilitation, especially when victims come to perceive themselves as actors of social change.”²⁹ The UN Guidance Note recommends “meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations.”³⁰
- j. Access in law and in practice: The Draft Addendum mentions that States should provide reparation and design reparation programmes, but does not refer to the need of victims to access reparation (programmes) in practice.³¹ Access to reparation in practice, however, is challenging for victims generally and in particular victims of GBV, for instance because of a risk of stigma and threat of retaliation.³² The final Addendum could outline that a prerequisite to achieving access in practice is: (i) access to information about what is

²³ Inter-American Court of Human Rights (IACtHR), *González et al. (“Cotton Field”) v. Mexico*, Judgement of 16 November 2009, Series C No. 205, para. 450; UN Guidance Note, p. 5; CEDAW GR30, para. 79.

²⁴ See for instance, CEDAW, *T.P.F. v. Peru*, 17 October 2011, CEDAW/C/50/D/22/2009, para. 9(i): The State party was recommended to ‘Review its laws with a view to establish a mechanism for effective access to therapeutic abortion under conditions that protect women’s physical and mental health and prevent further occurrences in the future of violations similar to the ones in the present case’; *Ms. V.K. v. Bulgaria*, 25 July 2011, CEDAW/C/49/D/20/2008, para. 9.16: The Committee recommended to: ‘ii. Amend article 10 (1) of the Law on Protection against Domestic Violence so as to remove the one-month time limit and to ensure that protection orders are available without placing undue administrative and legal burdens on applicants; and iii. Ensure that the provisions in the Law on Protection against Domestic Violence ease the burden of proof in favour of the victim by amending the Law accordingly’.

²⁵ See e.g. *T.P.F. v. Peru*, 17 October 2011, CEDAW/C/50/D/22/2009, para. 9: The Committee recommended the State party to take measures to provide ‘education and training programmes to encourage health providers to change their attitudes and behaviour in relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence’; *Inga Abramova v. Belarus*, 25 July 2011, CEDAW/C/49/D/23/2009, para. 9.2: The State party was recommended to ‘vi. Ensure that personnel assigned to work with female detainees receive training relating to the gender-specific needs and human rights of women detainees in line with the Convention as well as the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders’; *Ms. V.K. v. Bulgaria*, 25 July 2011, para. 9.16: ‘v. Provide mandatory training for judges, lawyers and law enforcement personnel on the application of the Law on Protection against Domestic Violence, including on the definition of domestic violence’.

²⁶ See e.g. *Ms. V.K. v. Bulgaria*, 25 July 2011, para. 9.16: The state party was recommended to ‘Ensure that a sufficient number of State-funded shelters are available to victims of domestic violence and their children and provide support to non-governmental organizations offering shelter and other forms of support to victims of domestic violence’.

²⁷ See e.g. Inter-American Commission of Human Rights, *Maria Da Penha Maia Fernandes v. Brazil*, 16 April 2001, Case 12.051, Report No 54/01, OEA/Ser.L/V/II.111 (2000), para. 61: The state party was recommended to ensure ‘The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.’

²⁸ UN Guidance Note, p. 9.

²⁹ SRVAW Report 2010, para. 29.

³⁰ UN Guidance Note, p. 1.

³¹ UN Guidance Note, p. 10; see also Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 11 July 2003, Article 4(2)(f).

³² Draft Addendum, p. 11.

available; and (ii) information on how to apply for reparation.³³ To provide further guidance, the final Addendum could also include a range of measures States should put in place to provide access, for example, protection of the identity of SGBV victims to avoid potential stigma; providing financial support for child care; putting in place awareness raising and other measures of outreach; and providing transportation to participate in the measures.³⁴ In the context of accessibility in practice, we also suggest that the Draft Addendum recommend that the required standard of proof for reparations be considered carefully. For court-ordered reparation awards, the UN Guidance Note recommends “to consider the adoption of a lower standard of proof than the standard which is required for a criminal conviction.” The final Addendum could for example recommend a standard which reflects the evidence victims can reasonably be expected to provide and which allows for presumptions or inferences, to make it easier for victims to prove the violation and harm suffered.³⁵

III. Suggested Textual Edits

4. We further suggest (set out in red, below) the following textual edits to the Draft Addendum:

- **Page 5, para 13:** This is an obligation of an immediate nature; delays cannot be justified on any grounds, including on cultural or religious grounds **or on grounds of lack of resources.**
- **Pages 5-6, para 13 (a)(ii):** States parties are responsible for preventing these acts or omissions [...] and to investigate, prosecute and apply appropriate legal or disciplinary sanctions **as well as provide reparation** in all cases of gender-based violence against women [...].
- **Page 8, para 15 (d):** Provide mandatory, recurrent and effective capacity-building, education and training for the judiciary, lawyers and law enforcement officers, including forensic medical personnel, **members of the armed forces, personnel designated for peace-keeping missions, [...].**

³³ African Commission on Human and Peoples’ Rights, Resolution 111: Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, 15 – 28 November 2007, para. 2; UN Guidance Note, p. 11.

³⁴ See UN Guidance Note, p. 11.

³⁵ See for instance IACtHR, *Caracazo v Venezuela*, Judgment of 29 August 2002 (Reparations and Costs), para.50; for administrative reparation programmes, the International Commission for Jurists recommends to process claims with “minimal formality”, see International Commission of Jurists, *Women’s Access to Justice for Gender-Based Violence – A Practitioner’s Guide*, February 2016, p. 78.