

September 30, 2016

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**Re: Draft update of General Recommendation No. 19**

Distinguished Committee Members:

Sanctuary for Families (“Sanctuary”) respectfully offers this letter in response to the call for comments on the Draft Update of General Recommendation No. 19 on gender violence.

Sanctuary is the largest non-governmental organization in New York State, U.S.A., dedicated exclusively to addressing the multi-faceted needs of survivors of domestic violence, trafficking, and related forms of gender violence. In 2015, Sanctuary offered legal, shelter, clinical, and economic empowerment services to over 15,000 survivors, over 70 percent of whom were immigrants from 144 different countries. Because of this, our advocacy is by necessity both local and global. Sanctuary also advocates for policies and legislation to advance the rights of survivors and improve the response of systems to gender violence. Sanctuary conducts extensive community outreach, education, and training on gender violence to community advocates, attorneys, service providers, health care professionals, the judiciary, and law enforcement.

**INTRODUCTION**

Since the drafting of General Recommendation No. 19 (“GR 19”) there have been sweeping political, cultural and economic changes that have dramatically impacted the safety and status of women and girls around the world. These changes include: massive migration; the technological and digital revolution; the expansion and normalization of the sex industry; a surge in religious fundamentalism and xenophobic nationalism; the rise of criminal gangs; political upheaval and ethnic and religious conflict in the Middle East and Africa; the fall of the Soviet Union and the ensuing economic and political destabilization; and economic globalization. As women’s rights have advanced and women’s power and influence have increased in homes, workplaces, schools, and governments, women and girls have been subjected to an often violent backlash, perpetrated through, among others, mass trafficking; shockingly brutal kidnappings and rapes, sometimes *en masse*; serial torture and murder; the pervasive objectification and degradation of

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*\*in memoriam*

women in pornography and the media; and the forced exclusion of women from public spaces and their

confinement to the domestic sphere. Although real advances have been made in promoting gender equality since 1992, daunting obstacles threaten this progress and the full realization of women's human rights.

GR 19 has, for the last 25 years, provided invaluable guidance in addressing these challenges; its relevance today cannot be overstated. Sanctuary commends this Committee for revisiting GR 19 to ensure that it continues to serve as a driving force to accelerate efforts to eliminate gender violence. Sanctuary strongly endorses much of the Committee's Draft Update (the "Draft Update") to GR 19, and recommends the following modifications.

## **RECOMMENDATIONS**

### **1. AGENCY AND AUTONOMY (PARAGRAPH 15)**

Sanctuary urges the Committee to clarify that full "agency and autonomy" require meaningful choices unconstrained by gender violence, gender stereotyping, cultural or religious subjugation of women, poverty, lack of access to equal educational and employment opportunities, and other root causes of gender inequality. There can be no true agency or autonomy where these constraints circumscribe women's liberty and freedom of choice. Without clarifications in the Draft Update that address this reality, the concept of "agency and autonomy" as applied to women and girls could be readily hijacked to justify practices of gender oppression, such as prostitution and related forms of commercial sexual exploitation. Sanctuary further urges the Committee to clarify "agency and autonomy" as the concept relates to "the evolving capacity of adolescent girls," who are principle targets of gender violence because of their particular vulnerabilities, including cultural and religious practices that devalue the worth of girls and deny them opportunities and independence; still-developing cognitive, psychological, and emotional capacities; and economic dependence on others. An important consideration is the reality that girls and young women are disproportionately likely to be targeted by sexual predators and controlled by family members. The Committee must ensure that no language in the Draft Update can be used to justify practices of gender violence to which adolescent girls are more susceptible, including child and forced marriage, and trafficking and prostitution.

### **2. DUE DILIGENCE (PARAGRAPH 15(A) UNDER PREVENTION)**

Sanctuary strongly endorses the Draft Update's mandate that States parties earnestly and meaningfully embrace their due diligence obligations with respect to ending gender violence, including the Draft Update's recommendation calling on States parties to take preventative action through the adoption and implementation of "effective legislative and other appropriate preventative measures to address the underlying causes of gender violence." However, the Committee must recognize that the root causes of gender violence are varied and complex, and that preventative measures must be specifically crafted to address all factors, including gender inequality; lack of access to educational and economic opportunities; deprivation of reproductive rights; the proliferation of pornography; the stereotypical portrayal and/or objectification of girls and women in media; and the explosion of commercial sexual exploitation, including the escalating demand for the purchase of girls and women in prostitution. Additionally, any legislative action must include allocation of resources to facilitate swift, comprehensive, and effective

implementation. Finally, the Draft Update should emphasize to States parties that legislative and preventative measures must be comprehensive.

In connection with Paragraph 15(a)'s mandate to address root causes of gender violence, Sanctuary encourages the Committee to call on States parties to address, through legislative and preventative measures, the scourge of sex trafficking, prostitution, and related forms of commercial sexual exploitation. The Draft Update should call for States parties to adopt models similar to the Nordic model, which holds sex buyers accountable by imposing penalties, implements a nationwide public awareness and education campaign to discourage the practice of sex buying, and avoids the criminalization of prostituted people while providing meaningful social support for them.<sup>1</sup> This approach, especially with respect to avoiding the revictimization of victims, represents a paradigm shift in the treatment of victims of sex trafficking, prostitution, and related forms of commercial sexual exploitation since the promulgation of GR 19 and should be explicitly recommended in the Draft Update.

Also in connection with Paragraph 15(a)'s mandate to address root causes of gender violence, Sanctuary urges the Committee to include a recommendation that States parties implement effective measures to address practices that render girls vulnerable to gender violence in school settings and that restrict girls' access to education. Around the world, educational systems fail to take girls' and young women's reports of sexual violence seriously, to investigate rapes and other forms of gender violence, to support pregnant students, and to provide resources for female students that would protect them from gender violence and exploitation. For example, when girls are forced to pay for their own school uniforms, books, tuition and other items without government assistance, many have no option but to turn to prostitution to cover these costs. It is critically important that school administrators and teachers receive education about gender violence and how to assist victims. Similarly, preventative information about gender violence should be incorporated into the curricula of schools to combat gender stereotypes and the cultural acceptance of gender violence on the part of both male and female students.

### **3. CRIMINAL JUSTICE SYSTEM (PARAGRAPHS 15 (A), (F), (G), (H), (I), (J), AND (L) UNDER PREVENTION)**

Sanctuary strongly agrees with the Draft Update's focus on the role of the criminal justice system as one of the chief vehicles through which States parties address gender violence and protect victims' human right to access to justice. Around the world, criminal justice systems have long failed to protect victims and hold their abusers accountable. Instead, criminal justice systems have ignored and minimized crimes of gender violence, shifting the responsibility to victims, and failed to recognize the danger and trauma that victims of gender violence experience. In cases of prostitution and trafficking especially, the criminal justice system has targeted victims while ignoring pimps and other traffickers, and sex buyers. These systemic failures send the message to women that government institutions will not protect them. Furthermore, by failing to investigate, prosecute, and punish perpetrators, criminal justice systems around the world have granted perpetrators of gender violence social and legal license to harm women. Sanctuary emphasizes its support of Paragraphs (f), (g), (h), (i), (j), and (l) as crucial steps States parties must take to better protect women but encourages the Committee to emphasize that proactive, gender-sensitive criminal justice responses to gender violence require evidence-based, trauma-informed protocols in all criminal proceedings. States parties must recognize that the burden in all criminal cases is on the

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<sup>1</sup> See Kajsa Claude and The Swedish Institute, "Targeting the Sex Buyer. The Swedish Example: Stopping Prostitution and Trafficking Where It All Begins," 2010.

State and not the victim, and that States should therefore give great weight to the protection of the rights of victims throughout criminal investigation, prosecution, adjudication, and sentencing. With respect to women who are defendants in criminal proceedings for crimes that directly emerge from their victimization, courts should be required to consider evidence of justification and mitigation, and allow as admissible expert testimony on trauma and its effects. Sanctuary also urges the Committee to specify in Paragraph (i) that, like alternative dispute resolution programs, restorative justice programs can embolden and empower abusers and place victims at risk of further emotional, psychological, and physical harm, and therefore are improper fora for gender violence case.

#### **4. CIVIL LEGAL SYSTEM (PARAGRAPHS 15(A), (G) AND (J) UNDER PREVENTION; PARAGRAPH 15(A)(II) UNDER PROTECTION AND REDRESS)**

Sanctuary strongly endorses Paragraph 15(a)(ii) under Protection and Redress, recognizing that matrimonial and family law cases can solidify the domination of abusers or can serve as an important vehicle for the protection and empowerment of victims. Because women's economic inequality renders them vulnerable to gender violence, it is especially important that domestic violence is given great consideration in judicial determinations concerning property, marital assets, and child and spousal support.

Sanctuary strongly endorses Paragraph 15(j), recognizing that discriminatory laws have played a longstanding role in legitimizing and perpetuating violence against women. But in order to prevent child marriage and protect at risk girls, Sanctuary urges the Committee to specify in its recommendations that the marriage age should be raised to 18.

With respect to Paragraphs 15(a), (g) and (j) under Prevention, Sanctuary encourages the Committee to strengthen the Draft Update to ensure States parties require that their courts treat men and women equally by, for example, recognizing the legitimacy of property ownership claims of women and by regarding the testimony of women as equally credible as the testimony of men. These equality rights are critically important in women's ability to be free from gender violence.

With respect to Paragraph 15(a), legislation in areas of family and civil law should strengthen protections for women. For example, greater significance and weight should be accorded to gender violence in decision about the custody of children, and survivors of gender violence should not be subject to criminal or civil liability for allegedly failing to protect their children as a result of violence being perpetrated against them in the home. We strongly endorse the Committee's recommendation that women should be able to obtain civil orders of protection that require their abusers to stay away from them and that exclude abusers from the family home, but we recommend that the Committee add that victims should never be punished for violating orders of protection intended to protect them.

With respect to Paragraph 15(d), civil and family court judges should be educated and trained in the dynamics of power and control that characterize domestic violence, the effects of trauma on victims of gender violence, dangerousness and lethality factors in domestic violence cases, and the legal rights of victims.

#### **5. IMMIGRATION LEGAL SYSTEM (PARAGRAPH 15(A)(V) UNDER PROTECTION AND REDRESS)**

Sanctuary urges the Committee to expand on Paragraph 15 (a)(v) under Protection and Redress to include recommendations specifically calling on States parties to take strong measures to remedy

the exclusion of non-resident and immigrant women from the protections afforded to citizen women. Migration and a lack of lawful status lead to increased vulnerability to gender violence. The Committee should recommend that States parties adopt specific laws and policies that provide for: (i) safe housing and services for refugee women and their children, without which they are vulnerable to violence, specifically trafficking; (ii) recognition of gender violence as persecution affording refugee protection under the 1951 Convention; (iii) full and impartial proceedings without significant delay for asylum claims based on feared gender violence in the home country; (iv) assistance from law enforcement and service provision in cases of gender violence, particularly in the contexts of refugee camps and immigrant communities where the national language may not be widely spoken; (v) immigration relief based on experiencing gender violence; (vi) swift processes for family reunification for women granted immigration status; and (vii) assurance that exploitation in prostitution or other forms of gender violence will not impede immigration protection and relief.

#### **6. RESOURCES FOR VICTIMS (PARAGRAPH 15(A)(III) UNDER PROTECTION AND REDRESS)**

In connection with Paragraph 15(a)(iii) in the Protection and Redress section, the Committee should specify that all services for victims of gender violence prescribed in that section be gender sensitive and trauma-informed. Further, the housing needs of victims of gender violence extend beyond short-term crisis shelters, and States parties should endeavor to make available to victims of gender violence affordable, safe, and habitable long-term housing as well as legal representation when victims of gender violence are threatened with eviction or their housing is not habitable.

#### **7. PUBLIC EDUCATION AND TRAINING (PARAGRAPH 15, (C), (D) (J) UNDER PREVENTION)**

Sanctuary affirms Paragraph 15(d), which calls for members of the criminal justice system, including judges, lawyers and law enforcement personnel, to receive education and training regarding the impact of gender stereotypes and bias, the plight of women affected by intersectional discrimination, and the responsibility of criminal justice authorities to uphold the requirements of domestic and international provisions and standards. Sanctuary urges the Committee to expand Paragraph 15(d) to (i) include education and training regarding trauma and its effects and best practices for investigating and prosecuting gender crimes; and (ii) encourage law enforcement to partner with key actors in civil society, especially organizations with expertise in gender violence.

In connection with Paragraph 15(c), Sanctuary urges the Committee to include a recommendation that States parties undertake public education campaigns to raise awareness about the prevalence and nature of gender violence and to encourage members of the public to reject attitudes and actions that condone gender violence.

In furtherance of the goals of Paragraph 15(j), the Draft Update should call for a holistic approach to States parties' responses to harmful traditional practices of gender violence, such as female genital mutilation, child marriage, honor-related violence, dowry-related violence, and violence carried out against women by members of their husbands' families. In addition to prohibiting such practices, States parties should undertake widespread public education campaigns, especially in affected communities, and targeted training for law enforcement and judicial authorities, health care providers, and religious leaders.

We thank you in advance for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Judy H. Kluger". The signature is fluid and cursive, with the first name "Judy" being the most prominent.

Hon. Judy Harris Kluger  
Executive Director

A handwritten signature in black ink, appearing to read "Dorchon A. Leidholdt". The signature is cursive and somewhat stylized, with the first name "Dorchon" being the most prominent.

Dorchon A. Leidholdt  
Director, Center for Battered Women's Legal  
Services