



**Mandate of the Working Group on the issue of discrimination against women in law and in practice**

**Inputs on the draft update to General Recommendation 19: accelerating  
elimination of gender-based violence against women  
(CEDAW/C/GC/19/Add.1 of 28 July 2016)  
31 October 2016**

The Working Group welcomes the opportunity to contribute to the process of updating CEDAW's 1992 General Recommendation 19 on violence against women. As stated in its response to the call by the Special Rapporteur on violence against women regarding the adequacy of the international legal framework for violence against women (A/71/398), the Working Group is of the view that in the current context of resource constraints, rather than initiating work on developing a stand-alone convention on violence against women, energy and resources should be invested in strengthening existing mechanisms such as the CEDAW Committee, which addresses systematically the issue of violence against women and provides normative guidance through its General Recommendation 19. It is therefore a welcome and timely decision by CEDAW to consolidate the experience gained over the last 25 years with a view to filling any gaps through the updating of this important general recommendation.

The Working Group takes note of the numerous submissions from civil society organizations and other stakeholders to the excellent draft update and will not repeat the many inputs already put forward which it agrees with. Rather, the Working Group focuses its comments on the basis of implementing its mandate on eliminating discrimination against women in law and in practice since its establishment in 2011.

**General comments**

In implementing a broad and comprehensive mandate entrusted to it by the Human Rights Council, the Working Group systematically tackles violence against women as a cross-cutting issue in all areas of its work, including through its communications and country visits. The Working Group's annual thematic reports - women's political and public life (A/HRC/23/50), economic and social life (A/HRC/26/39), family and culture (A/HRC/29/40), and health and safety (A/HRC/32/44) highlighted the impact of violence against women in the private and public sphere on their health and well-being, restricting their economic and social potential throughout their life cycle. The Working Group paid special attention to sexual violence against girls in the education system, in child marriage and in prohibitions relating to termination of teenage pregnancy. The Working Group's reports also pointed out that women human rights defenders and community leaders are particularly targeted by gender-based violence and that women who do not conform to the gender stereotypes that predominate in some cultures and those who openly contest them, including within their own cultural or religious communities, are particularly vulnerable

to discrimination, violence and criminalization. The CEDAW Committee may find some of these reports relevant and useful for inclusion in the references.

The Working Group believes that women who are agents for change in society such as women human rights defenders, politicians, feminist activists, community leaders require special dedicated attention in the document. The Working Group suggests the inclusion of a recommendation on taking measures to prevent violence against them, including stigmatization, harassment, verbal abuse based on their sex, sexual abuse or rape, intimidation, attacks, death threats and even murder, and police harassment of female demonstrators.

### **Specific comments**

The introductory context could be broadened to include the globalized neo-liberal economy, conflict and post conflict situations, mass migration, violent extremism, shrinking democratic space, and deepening fundamentalism and the consequences and implications for gender-based violence against women (paragraph 4). Further expansion could be made regarding emerging and multiple forms of violence to include explicitly obstetric and reproductive violence (paragraph 12). Some clear definitions of terminology for gender-based violence and non-state actors could be usefully added in the introduction section, taking into account the systematic sexual violence against women and girls including in forced marriage. This would be a welcome contribution to increased clarity in this field.

The Working Group would recommend adding the concept of State structural violence against women, in particular through punitive restriction by law of women's sexual and reproductive freedoms. This could be included in either the Introduction or under the Scope sections.

In addition to considering women as subjects of rights and promoting their agency and autonomy, including the evolving capacity of adolescent girls, and the particular situation of women affected by intersecting forms of discrimination (paragraph 15), it is also important to include an overarching victim-centered approach as guiding all policy and legislative measures, and ensuring their access to justice and effective removal of impunity for perpetrators of gender-based violence. Evidentiary rules and legal procedures which protect the rights of victims during legal proceedings and laws on reparation to victims should be promulgated. Statutes of limitations for certain types of violence such as incest should be eliminated. Secondary victimization due to laws, enforcement practices or other interventions which are gender insensitive should be prevented.

As regards adopting and implementing effective measures in relation to the media (paragraph 15c), the Working Group believes that it is important to go beyond encouraging self-regulation by the media. It recommends the introduction of criminal penalties for violence against women or incitement to violence against women in the

media, including advertising and information and communications technologies, in the following cases:

- i. Publication, without their consent, of visual images of women's participation in sexually explicit situations, such as in the act of intercourse or in nude poses.
- ii. Portrayal of rape or other forms of gender-based violence, sexual abuse of children, domestic violence or honour killings as a normal and acceptable behaviour.
- iii. Commercial advertising for sexual exploitation.

Similarly, with regard to the private sector (paragraph 15e), the Working Group believes that it is important to go beyond encouragement, including through incentive measures and corporate responsibility models, and urges the adoption of governmental measures for recognizing, preventing and redressing gendered harms caused by corporate enterprises and for enforcing corporate responsibility to prevent violence against women within their organisational frameworks.

With regard to the recommendation for repealing all legal provisions that directly or indirectly discriminate against women, and thereby encourage, justify or tolerate gender-based violence against them; including in customary, religious and indigenous laws (paragraph 15j), the Working Group recommends mentioning specifically the need to eliminate penalties of stoning and lashing, in legislation or in judicial decisions for women condemned for adultery or any other sexual behavior, as they should be seen as the State's structural violence against women. It also recommends eliminating all other laws which exercise state punitive power against women for exercising sexual or reproductive autonomy, such as in cases of prostitution or termination of pregnancy (see A/HRC/32/44). Furthermore, the Working Group considers that prohibiting adultery as a criminal offence violates women's human rights, and leads to discrimination and violence against women, and it should be repealed.<sup>1</sup> In countries where several legal systems coexist, the formal State legal system should be made accessible to all women victims of gender-based violence, regardless of their religious, indigenous, national or social status, including members of minority communities and migrant women. Formal justice should be preferred to informal justice for the settlement of all family matters, including those relating to sexual violence and domestic violence, because the rulings and procedures of informal mechanisms frequently discriminate against women. Moreover, gender-based violence is seldom punished and is sometimes downplayed by religious or customary law courts (see A/HRC/29/40).

---

<sup>1</sup> See Working Group's statement on 18 October 2012:  
<http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>

Taking into account that domestic violence and workplace harassment are covered by the 1992 GR 19, the Working Group suggests to include a recommendation on taking preventive measures, deterring and severely punishing all forms of gender-based violence and sexual harassment against women in the public arena, including public transport and services, educational institutions, schools, health care facilities, birthing facilities, streets and cyberspace, whether it is perpetrated by State agents or by private persons. This could be possibly included in paragraph 15g on introducing sanctions for all forms of gender-based violence against women in all spheres.

Though it is clarified that references to women in the document include girls (paragraph 9), the Working Group believes that more attention should be dedicated to violence against girls. This could include recommendations for a full range of measures to protect girls against gender-based violence, including protection, prosecution, punishment, prevention, promotion and rehabilitation:

- i. In cases of rape or sexual abuse, including incest, issue timely and adequate protection orders, duly prosecute perpetrators, eliminate the period of limitations for reporting of the offence by the victim, and provide rehabilitation services for victims and family members. Provide access to safe termination of pregnancy for girls who are impregnated under the age of 18 in view of the high risk for their health and make provision for professional guardianship where parental or family involvement increases the girl's vulnerability to violence.
- ii. Prevent school-related gender-based violence where girls are violently targeted for attending school, or where they are subjected in school to sexual violence or harassment, including by teachers, by introducing, inter alia, confidential school reporting mechanisms, capacity-building for police, child-friendly courts, a public register of sexual offenders, barring sexual offenders from teaching and duly prosecuting and sentencing offenders.

Finally, the Committee may wish to articulate a stronger recommendation on reservations made to the Convention, especially under Article 2 and 16, in view of the wide-ranging nature and the incompatibility with the object and purpose of the Convention (paragraph 8 and 15) and reiterate that culture is not a static or unchanging concept, although some States tend to present it as such in order to justify discrimination and violent practices against women and girls. Several United Nations human rights experts, special procedures mandate holders including the Working Group on discrimination against women in law and in practice, treaty bodies and the Secretary-General of the United Nations have established that neither cultural diversity nor freedom of religion may justify discrimination against women. Discriminatory, repressive and violent practices against women should be eliminated, whatever their origins, including those founded in culture or religion (see A/HRC/29/40).

The Working Group looks forward to continuing its engagement and cooperation with CEDAW in the common endeavour of elimination of discrimination against women and the empowerment of women.