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Committee on the Elimination of Discrimination
against Women
UNOG-OHCHR
CH-1211 Geneva 10
Switzerland

7 October 2016

DRAFT UPDATE OF GENERAL RECOMMENDATION NO. 19 (1992) ON GENDER-BASED VIOLENCE AGAINST WOMEN- CALL FOR COMMENTS

Dear Ms. Hayashi,

I am writing to you with regard to the Committee on the Elimination of Discrimination against Women's (the Committee) call for comments on the Draft update of General Recommendation No. 19 on gender-based violence against women (Draft update).

Amnesty International welcomes the openness and transparency shown by the Committee in the process of updating the General Recommendation No. 19 through public consultation with interested stakeholders. The organization especially welcomes the clarification of the obligations of States parties under the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) relating to gender-based violence against women. It is also pleased to see that the Draft refers to *gender-based violence against women* and thereby no longer risks conflating gender with women.

Amnesty International is greatly supportive of the Draft update and believes that it provides comprehensive guidance to States of their obligations under the Convention to protect against violence that is directed against a woman because she is a woman or that affects women disproportionately. This submission includes some additional suggestions relating to the particular situations of women affected by intersecting forms of discrimination, including marginalized and criminalized women; institutional violence as a specific form of gender-based violence; the sexual autonomy of women within the definition of rape; the provision of health-care services for survivors of violence; and the need for effective implementation of the SDGs and follow-up.

Marginalized and criminalized Women

Amnesty International welcomes the Committee's acknowledgement that "gender-based violence may affect some women to different degrees, or in different ways, than other women because they experience varying and intersecting forms of discrimination, which frequently have an aggravating negative impact" (para. 11).

The Committee cites General Recommendation 28 (Core Obligations), which addresses intersectionality and the varying factors that deepen and entrench discrimination against women, such as "race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity"¹. We recommend that the Committee reiterate this important discussion and analysis in the update of General Recommendation 19, instead of only referencing it.

Moreover, we suggest that the Committee specifically acknowledge that marginalized women are often at greater risk of gender-based violence from state and non-state actors which is often accompanied by impunity. Many marginalized

¹ General Recommendation 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of Discrimination Against

women do not seek state or police protection from violence out of fear of exposing themselves to additional penalization, criminalization and/or institutional violence.² As a result, violence and crimes against these women often go unreported, under-investigated and/or unpunished, offering perpetrators impunity.³

Amnesty International suggests that the Committee specifically recommend that states repeal discriminatory laws and policies, criminal or otherwise, that subject women to greater risk of gender-based violence and adopt policies that specifically aim to combat violence that particular marginalized women face and increase protection and access to justice for these women. This additional analysis is supported by the Committee's General Comment 33⁴ and past work of the Committee,⁵ and other independent experts.⁶

Amnesty International recommends that the Committee specifically acknowledge the marginalization and criminalization faced by transgender individuals; including through affirming in paragraph (9) that references to "women in this document include girls, including transgender women and girls."

Transgender people regularly face high levels of marginalization, gender-based discrimination and violence and often experience exclusion in a number of areas including education (e.g. leaving or being excluded from school because of enforced gender normative dress codes or bullying) and work (e.g. high unemployment levels due to discrimination on the basis of their gender identity or expression), which often results in high levels of poverty.⁷ Transgender women are also often subject to stereotypes. These can contribute to the stigma, marginalization and violence that transgender individuals, especially women, are subjected to and leads to profiling by police.⁸ In addition to facing widespread stigma for transgressing sexual and gender norms, transgender women may be exposed to criminalization and penalization in multiple intersecting ways—based on their real or perceived sexual orientation, gender identity and HIV status. Some are

² For example, violence against sex workers by police, clients and community members, violence against women who use drugs, violence against women and girls with disabilities at the hands of health care providers and family members and violence against Indigenous women among others.

³ See Amnesty International reports "What I'm doing is not a crime": The human cost of criminalizing sex work in the City of Buenos Aires, Argentina (AMR 13/4042/2016); The human cost of 'crushing' the market: Criminalization of sex work in Norway, (EUR/36/4034/2016); Harmfully Isolated: Criminalizing sex work in Hong Kong (ASA 17/4032/2016); Outlawed and abused: Criminalizing sex work in Papua New Guinea (ASA 34/4030/2016); Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples*, Victoria Tauli Corpuz, UN Doc A/HRC/30/41; Women Enabled, Submission to CEDAW for General discussion on Access to Justice for women, 2013 available at http://www.womenenabled.org/pdfs/feb2013_CEDAW.pdf; S. Ortoleva, 'Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System,' *ILSA Journal of International and Comparative Law* 17.2, 2011; WHO, 'Violence Against Women and HIV/AIDS: Critical Intersections, Violence against Sex Workers and HIV Prevention,' Information Bulletin Series, No. 3, 2005; C.M. Lowndes et al., 'Injection Drug Use, Commercial Sex Work, and the HIV/STI Epidemic in the Russian Federation', *Sexually Transmitted Diseases*, 2003; 'Rights, Risks & Health', p.37 (citing UNIFEM, 'A legal analysis of sex work in Anglophone Caribbean', 2007; USAID, C. Jenkins, C. Sainsbury, Cambodian Prostitutes' Union, Women's Network for Unity, *Violence and exposure to HIV among sex workers in Phnom Penh, Cambodia*, 2006; A. Crago, *Our Lives Matter: Sex Workers Unite for Health and Rights*, 2008, p. 31-32; I. Pauw and L. Brener, "You are just whores—You can't be raped': Barriers to safer sex practices among women street sex workers in Cape Town', *Culture, Health and Sexuality*, 2003, pp. 465-81.

⁴ In General Recommendation 33 (on women's access to justice), the Committee calls for states to abolish "discriminatory criminalization, and review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women", having expressed concern that "[w]omen are also disproportionately criminalized due to their situation or status, for instance women in prostitution". Committee on the Elimination of Discrimination against Women, General Recommendation 33 (Women's access to justice), UN Doc. CEDAW/C/GC/33, 23 July 2015, paras. 5(i) and 49.

⁵ See CEDAW, General Recommendation 26 (women migrant workers), UN Doc. CEDAW/C/2009/WP.1/R, 5 December 2008, para. 5; CEDAW, Concluding Observations: Lithuania, UN Doc. A/55/38, 2000, para. 152; Armenia, UN Doc. CEDAW/C/ARM/CO/4/Rev.1, 2009, para. 27; Egypt, UN Doc. CEDAW/C/EGY/CO/7, 2010, para. 25; CEDAW, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/OP.8/CAN/1, 2015, para.120; CEDAW, Concluding Observations: China (including mainland China, Hong Kong and Macau), UN Doc. CEDAW/C/CHN/CO/6, 2006, para. 19; CEDAW, Concluding Observations: China, UN Doc. CEDAW/C/CHN/CO/7-8, 2014, para.28; CEDAW, Concluding Observations: Lithuania, UN Doc. A/55/38, 2000, para. 152; see also Armenia, UN Doc. CEDAW/C/ARM/CO/4/Rev.1, 2009, para. 27; Egypt, UN Doc. CEDAW/C/EGY/CO/7, 2010, para. 25).

⁶ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, UN Doc. A/HRC/14/20, 2010; Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, UN Doc. A/HRC/23/41, 2011; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/66/254; Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, Catarina de Albuquerque: Stigma and the realization of the human rights to water and sanitation, UN Doc. A/HRC/21/42, 2012; Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, Ms. Magdalena Sepúlveda Carmona, visit to Namibia, UN Doc. A/HRC A/HRC/23/36/add.1"; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Juan E. Mendez, UN Doc A/HRC/22/53 2013 Report of the Working Group on the issue of discrimination against women in law and in practice UN. Doc A/HRC/ 44 2016

⁷ K. Slamah, S. Winter and K. Ordek, 'Stigma and violence against transgender sex workers,' *RH Reality Check*, 16 December 2010, available at <https://rewire.news/article/2010/12/16/stigma-exclusion-violence-against-trans-workers/>.

⁸ See, for example, Arizona Appeal Court Overturns Monica Jones's conviction for 'Walking While Trans', *The Advocate* 27 January 2015; E. Fitzgerald, S. E. Patterson, D. Hickey, C. Biko, Meaningful Work: Transgender Experiences in the Sex Trade, December 2015, available at: http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf

assumed to be involved in sex work and/or other criminalized work based on their gender identity alone.⁹ Along these lines, transgender people suffer frequent and grave violations of their rights, high rates of violence, including loss of life.

To this end, Amnesty International recommends that the Committee reiterates its analysis in General Recommendations 28 (core obligations) and 26 (women migrant workers) to confirm that states' convention-related obligations apply to all women.¹⁰ Moreover, the Committee should reaffirm that "the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them".¹¹

Institutional violence

Amnesty International suggests that the term "institutional violence" be added in the Draft update as a specific form of gender-based violence, perpetrated by the State. The Draft update mentions gender-based violence that occurs "under the direct control of the State" (Para.12), "committed by State agents" (13.a) i), through "laws that promote or justify gender based violence" or "stereotypical attitudes" (Para.14.a), due to "institutional practices and conduct and behaviour of individual public officials" (14.b). Institutional violence against women is a concept which has been used by the Inter-American Court of Human Rights to refer to the systematic state practice which subjects women and girls to violence and that occurs in contexts where the state has control over women's freedom and autonomy, for example, health care institutions in relation to the provision of sexual and reproductive health services¹².

Definition of rape

Paragraph 15, Prevention (I): We suggest that the update to General Recommendation 19 emphasize 'lack of consent' as a core element in the definition of rape. Sexual violence, including rape, can also constitute a violation of a victim's right to sexual autonomy.

The obligation on the State to provide for effective protection of sexual autonomy of women and girls has been recognized and reflected also in the jurisprudence of the CEDAW Committee, i.e. gender stereotyping around consent has been the leading concern in the reasoning in the *Vertido v. Philippines* (Case No.18).¹³ Other international bodies have also acknowledged that rape is a crime against an individual's sexual autonomy (M.C. vs. Bulgaria (App. No 39272/98)

⁹ Amnesty International, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the United States* (Index: AMR 51/122/2005) ("LGBT individuals who do not conform to traditional gender norms, especially in their appearance or presentation, are more likely to be singled out for verbal, physical and sexual abuse. It also shows that transgender individuals are disproportionately targeted by law enforcement officials." This risk increases further in the intersection with race or migrant status. Amnesty International has previously found that: "Within the LGBT community, transgender individuals, people from ethnic or racial minorities, young people, homeless people, and sex workers are at most risk of police abuse and misconduct); NSW Statement on High Levels of Violence Against Transgender Sex Workers in Turkey, 2016, available at: www.nswp.org/resource/nswp-statement-high-levels-violence-against-transgender-sex-workers-turkey; UNDP, UNFPA, UNAIDS and APNSW, *Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, 2012; Susana T. Fried and Alex Teixeira, *International Gay and Lesbian Human Rights Commission input memo to the UN Secretary-General's Study on Violence Against Women*, available at www.un.org/womenwatch/daw/vaw/ngocontribute/International%20Gay%20and%20Lesbian%20Human%20Rights%20Commission.pdf; CESCR General Comment No. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22. 2016, Paras. 2, 23, 30, 40 and 59.

¹⁰ See CEDAW, General Recommendation 28 (Core obligations of States Parties under Article 2 of CEDAW), UN Doc. CEDAW/C/2010/47/GC.2, 2010, paras. 18 and 26; see also CEDAW, General Recommendation 26 (women migrant workers), UN Doc. CEDAW/C/2009/WP.1/R, 2008, para. 14.

¹¹ CEDAW, General Recommendation 28, UN Doc. CEDAW/C/2010/47/GC.2, 2010, paras. 18 and 26.

¹² In a recent report Amnesty International has documented the institutional violence promoted and facilitated by the state through laws, policies or practices that violate sexual and reproductive rights. The State as a catalyst for violence against women and torture or other ill-treatment in the context of sexual and reproductive health in Latin America and the Caribbean. 2016. AMR 01/3388/2016 Available at: <https://www.amnesty.org/download/Documents/AMR0133882016ENGLISH.PDF>

The Inter-American Court of Human Rights has also used the concept of 'institutional violence' to refer to various forms of violence by state authorities against women during the judicial process. See Inter-American Court of Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, para 164, available at: <https://www.cidh.oas.org/women/Accesso07/cap2.htm> The Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) issued a statement in 2014 acknowledging that: "the negation of public policy and sexual and reproductive health services exclusively to women, through norms, practices, and discriminatory stereotypes, constitutes a systematic violation of their human rights and subjects them to institutional violence by the State, causing physical and psychological suffering." Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, available at: <https://www.oas.org/en/mesecevi/docs/CEV111-Declaration-EN.pdf>

¹³ See: Yoko Hayashi, "Vulnerable groups: access to justice, jurisprudence and procedure", presented at OHCHR Workshop, Strasbourg, October 21-22, 2015, available at: http://www.ohchr.org/Documents/Countries/NHRI/StrasbourgPresentations/Y_Hayashi.docx

ECHR). The right to sexual autonomy has been articulated in the Beijing Platform for Action, paragraph 96: “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence”.

Therefore Amnesty International suggests amending the first sentence of Paragraph 15, Prevention (I) in the draft in the following way: “Ensure that sexual assault, including rape is characterized as a crime against women’s rights to sexual autonomy, personal security and their physical and mental integrity.”

Health-care services for survivors of violence

Paragraph 15, Protection and redress (a): We support Marie Stopes International’s suggestion to amend the paragraph with the following addition in bold and underlined:

iii Health-care services should be responsive to trauma and include reproductive health services. Services should be timely (emergency contraception and post-exposure prophylaxis needs to be provided within 72 hours) and comprehensive (including access to safe abortion), and available without the condition for victims to initiate legal actions or any other legal or administrative barriers. For many women their first and only contact with care and possible recourse to justice is the health system and services are therefore vital entry points not just to save lives and support women but for onward referral to legal and other support services.

International cooperation

Paragraph 15, International cooperation, (b): We suggest amending the paragraph to reflect the state obligation to ensure the right to participation in decision-making processes through enabling civil society’s meaningful participation in the Sustainable Development Goals’ (SDG) implementation and follow-up processes¹⁴, and encourage states to align SDGs follow-up and reporting with periodic reporting to the CEDAW Committee.

b) Prioritize implementation of relevant Sustainable Development Goals, in particular Goals 5 on gender equality and empowerment of all women and girls and to promote peaceful and inclusive societies for sustainable development, enable meaningful participation of civil society working on women’s rights and gender equality including women human rights defenders (WHRDs) in the SDGs implementation and follow-up processes, provide access to justice and build effective, accountable and inclusive institutions at all levels. Support national plans to implement the Sustainable Development Goals and boost international support and cooperation for knowledge-sharing and effective and targeted capacity-building, and provide information on progress in SDGs’ implementation in the reports under article 18 of the Convention.

¹⁴ ICCPR Arts. 19 and 25; CEDAW Art. 7, CEDAW General Recommendation 23.