

TREATY BODY MONITOR

International Service for Human Rights



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COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 44TH SESSION WORKING METHODS REPORT 20 JULY – 7 AUGUST 2009

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Overview

In addition to its review of State party reports, the Committee held only two informal meetings that were open to NGOs. These provided NGOs and UN specialised agencies with an opportunity to comment on the Committee's development of two General Recommendations, the first of which deals with the protection of human rights of older women, and the second with the economic consequences of marriage and its dissolution for women. The Committee held a number of closed meetings relevant to its working methods, however it was only as a result of documents being posted on the Committee's website¹ and the opening and closing remarks of Committee members that NGOs were able to establish what topics were discussed and where progress was made.

In her opening remarks, the Chairperson, Ms Gabr (Egypt), outlined key meetings that Committee members had recently attended which would be discussed during the session. These included meetings with:

- representatives from the US Government to discuss its potential ratification of the Convention;
- Human Rights Council Advisory Committee tasked with developing draft guidelines to operationalise gender mainstreaming across the United Nations;
- Committee on the Rights of the Child to explore areas of common concern;
- 9th Inter-Committee Meeting of Treaty Bodies; and

¹ 'Ways and means of expediting the work of the Committee on the Elimination of Discrimination Against Women,' CEDAW/2009/II/4, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm> and the 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Report of the pre-session working group,' CEDAW/PSWG/2009/II, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm>. In Annex III of CEDAW/C/2009/II/4, the Committee discussed its current reporting guidelines and working methods. At the conclusion of the Annex, it noted that the Committee members meet on occasion to enhance their working methods through "revisions of reporting guidelines, preparation of the Committee's rules of procedure under the Optional Protocol and the working methods of the Committee in regard to parallel chambers. As of 30 May 2009, six such meetings have been convened."

- Joint CEDAW and UNHCR Seminar on the Protection of Women of Concern to UNHCR held in New York in early August 2009.²

The Chairperson also advised that the Committee would take advantage of the session being held in New York to meet with a range of UN entities. These included representatives from the Division for the Advancement of Women (DAW), UNIFEM, and the Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women (OSAGI). Additional meetings were held with the Independent Expert on Minority Issues, Ms. Gay McDougall, to discuss recommendations from the Forum on Minority Issues, and with a US-based member of the Committee Against Torture. The Chair noted that these exchanges were a critical means of strengthening existing linkages between the Committee and these entities, which she described as “essential to our work.”

Ms Jane Connors, Office of the High Commission for Human Rights (OHCHR), advised in her presentation to the Committee that work continued on the General Recommendation on article 2 on policy measures, and Mr Flinterman (Netherlands) would provide members with a progress briefing on the development of this General Recommendation during the session.

In her closing statement,³ the Chairperson noted that during the current session, the Committee had reflected on ways to celebrate the 30th anniversary of the Convention and the 10th anniversary of the Optional Protocol next year. Work had continued on its papers concerning the Committee’s relationship with parliaments and NGOs, and it had adopted the following:

- statement on gender and climate change, expressing the Committee’s concern about the absence of a gender perspective in the United Nations Framework Convention on Climate Change (UNFCCC) and other global and national policies and initiatives on climate change;⁴
- decisions on three cases under its Optional Protocol to the Convention; and
- new working methods on the procedure for following up on its concluding observations.

General Recommendation on older women

At its 42nd session (October-November 2008), the Committee decided to begin work on a General Recommendation on the protection of the human rights of older women.

On 21 July 2009, Ms. Begum (Bangladesh), Chairperson of the CEDAW working group developing the General Recommendation, introduced the proposed framework.⁵ She advised it would:

- explore the relationship between all articles of the Convention and ageing;
- outline the obligations of States parties under specific articles of the Convention to advance women’s right to age with dignity and free of discrimination;
- provide policy recommendations to States for mainstreaming older women into national policies; and
- offer guidance to States parties and NGOs on reporting to the Committee.

Ms. Begum went on to outline how the General Recommendation would assist States parties to implement specific articles of the Convention and address the multiple forms of discrimination women face as they age:

1. In implementing articles 2 and 3, States parties should collect statistical data disaggregated by age and sex. They should develop indicators on poverty, illiteracy, violence against women, health and housing. Further, specific attention should be given to the following groups: women caring for

² This meeting adopted recommendations for the protection of displaced and stateless women and girls.

³ The UN press release summarising the remarks made during the final (closed) meeting of the Committee is available at <http://www.un.org/News/Press/docs/2009/wom1753.doc.htm>

⁴ The statement is available at http://www2.ohchr.org/english/bodies/cedaw/docs/Gender_and_climate_change.pdf

⁵ See Concept note on the draft general recommendation on older women and protection of their human rights, CEDAW/C/2009/II/WP.1/R, 12 May 2009, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm>

HIV/AIDS sufferers, women who are disabled, migrant and minority women, and women living in rural areas and conflict zones.

2. With regard to articles 5, 6, 7, 8, 11, and 13, States parties should develop nationwide strategies to combat discrimination and violence against older women, whilst also addressing the feminisation of poverty. These strategies should provide opportunities for older women to participate more fully in the political, economic and social spheres of their community.
3. On articles 10 and 12, Ms. Begum recommended that States parties improve older women's access to vocational adult education, basic literacy training, and affordable or free healthcare.
4. In reference to articles 14 and 15, States parties should institute initiatives focused on the health needs of migrant and rural women, minority and disabled women and women living in conflict zones.
5. With regard to articles 15 and 16, States parties should work to combat discrimination against older women who are single due to divorce or widowhood.

NGO and UN agency input

The Committee then sought input from NGOs and UN entities on how to strengthen national and international practices to protect against the discrimination and abuse of older women.

Ms Carolyn Hannan, Director of DAW, spoke on behalf of her Division as well as the Population Division and the Division for Social Policy and Development. Ms. Hannan requested that the Committee structure the General Recommendation based on a “lifecycle approach.” She pointed out that the discrimination that older women face was a direct result of the discrimination they faced throughout their lives, specifically in the areas of healthcare, education, employment, property ownership, and family life. Further, discrimination was much more prevalent for, and increased attention should be paid to, poor women, refugees and internally displaced women. Ms. Hannan concluded by noting that women's lack of access to property and to higher income during earning years had a direct causal link to poverty and poor health in older age.

The United Nations High Commissioner for Refugees (UNHCR) was pleased by the Committee's reference to the particular risks faced by older women living in conflict areas or subject to internal displacement. However, UNHCR recommended that older women who were refugees also be the focus of the General Recommendation. UNHCR expressed specific concern regarding the denial of healthcare services to each of these vulnerable groups of older women as a result of their lack of legal status, lack of documentation, distance from facilities, and language or cultural barriers.

Several NGOs also addressed the Committee expressing support for the progress that the General Recommendation signified, as well as offering specific comments on its content.⁶ NGOs encouraged the Committee to include consideration of all aging women (including women of different regions, internally displaced women, women victims of violence, and women of different sexual orientations). They also advocated for government-sponsored training of healthcare workers to provide better palliative care to older women, and encouraged the Committee to swiftly adopt the General Recommendation.

Committee members' responses

Ms. Hayashi (Japan) congratulated the working group on its quick progress on drafting the recommendation, but stopped short of elaborating on her suggestion that this General Recommendation be consolidated with the Committee's work on the General Recommendation on article 2 when she noticed the Chair shaking her head in disagreement and frustration.

⁶ NGOs that addressed the Committee included: HelpAge International; Global Action on Aging; Human Rights Watch; The Greater Rochester Area Partnership for the Elderly; Timor-Leste National Women's Network; the Gray Panthers; and the NGO Committee on the Status of Women's Subcommittee on Older Women.

General Recommendation on economic consequences of marriage and its dissolution

During its 42nd session, the Committee also decided to develop a General Recommendation on the economic consequences of marriage and its dissolution on women.

On 4 August 2009, the Chair of the working group on this General Recommendation,⁷ Ms. Halperin-Kaddari (Israel), presented the concept note to the Committee.⁸ She opened the discussion noting that CEDAW was a living document and must continue to adapt to the changing situations of women worldwide. Although General Recommendation 21 focused on equality in marriage and would be a foundation for the new General Recommendation, Ms. Halperin-Kaddari noted that General Recommendation 21 did not adequately deal with the economic aspects of family relationships and their dissolution. Ms. Halperin-Kaddari outlined the following issues to be addressed by the General Recommendation:

1. Constitutional protections to protect women from the discriminatory effects of marriage under ethnic custom or religious law, as well as reservations based on religious or customary laws.
2. The monetary aspects of marriage formation, including bride price or dowry.
3. Choice of matrimonial regimes that control how property is shared by spouses.
4. Pre-nuptial agreements.
5. Administration and management of property gained during the marriage.
6. Upon dissolution of the marriage, issues relating to the division of marital property, a woman's right to remain in the home, and post separation child maintenance payments.
7. Inheritances, as well as practices requiring a widow to marry a relative of her spouse.
8. Protecting women's economic rights in polygamous relationships.
9. Educational initiatives geared towards women, men, judges and other decision-makers on the enforcement of this General Recommendation.

NGO input

Several NGOs made useful and constructive comments relating to the composition of the General Recommendation. The International Federation of Women Lawyers and Women in Legal Careers offered several themes for the Committee to consider, including unequal property distribution upon dissolution, discriminatory inheritance laws, the importance of marriage registration, the right of women to initiate a divorce, child custody and alimony, and the need to provide legal aid and ensure equality before the law for women seeking divorce. Two NGOs drew attention to the needs of highly vulnerable women, namely those subject to trafficking, domestic violence and abandonment. They stressed that it should be the State's responsibility to provide food and shelter, free legal and accounting services and greater accessibility for these victims to enforce alimony judgments.⁹

Professor Debra Liebowitz from Drew University in the US cautioned Committee members that "no matter what laws are put in place, you are not getting at the fundamental root cause of discrimination against women unless you address societal stereotypes." Met by nods of agreement by certain Committee members, Professor Liebowitz also suggested that while it was the practice of the Committee to move in chronological order of the Convention articles when questioning a State party, it would make more sense to move from article 8 directly to articles 15 and 16 to fully address the inequalities in family relationships.

The most controversial testimony, as interpreted by Committee members, came from a representative of Musawah, a global movement for equality and justice in the Muslim family. The representative highlighted

⁷ Members of the working group are: Ms. Ameline (France), Ms. Awori (Kenya), Ms. Jaising (India), Ms. Patten (Mauritius), Ms. Pimentel (Brazil), and Ms. Popescu (Romania).

⁸ 'General recommendation on economic consequences of marriage and its dissolution: a concept note', 5 June 2009, CEDAW/C/2009/II/WP.2/R, available at

http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW_%20C_2009_II_WP2.pdf

⁹ Sanctuary for Families; the International Women's Rights Action Watch Asia Pacific.

key provisions of Muslim law which she argued discriminated against women in marriage and upon divorce, including polygamy, division of property, inheritance laws, and child rearing upon divorce. Musawah recommended that the Committee encourage States parties to recognise the equality of men and women in marriage regardless of religion, to open the debate on religious laws, and to improve women's access to justice in family law.

Committee members' mixed responses

Certain Committee members responded to the NGOs with comments of agreement about the core issues to be addressed by the General Recommendation. These included the economic impact women face as a result of from time spent away from their careers to raise children; the need for States parties to improve their training of judicial officials; and the need for States to revise family laws providing for child support and alimony guidelines.¹⁰

Conversely Ms Gabr (Egypt), Ms. Rasekh (Afghanistan) and Ms. Belmihoub-Zerdani (Algeria) sharply changed the tone of the discussion by expressing their offence at the statement by the representative from Musawah. Ms. Rasekh commented that "in terms of inheritance and a few other issues, the Committee cannot ask States parties to change these aspects of Sharia law." In an attempt to mask discriminatory practices in Islamic law as "diversity among regions," and to "not antagonise" the large number of Muslim States parties, the Chairperson, Ms Gabr, advised that the Committee would not "get into issues of inheritance and Islamic law and restrictions of marriage on this issue." Taking a more aggressive tone, Ms. Belmihoub-Zerdani argued that since the Vatican and the United States were yet to ratify the Convention, they should be the focus of NGO criticism, rather than certain practices in a few Islamic States parties.

NGOs were afforded the opportunity to respond to Committee members, with some providing substantive information regarding gender awareness training for the judiciary and post-marital income guidelines that have been developed in the US. In response to the treatment of women under Islamic law, the representative from Musawah pointed out that it was "not a contest as to whose house needs to be brought into order first, but that human rights should be first for all."

Ms Gabr concluded the meeting by reiterating her view that the General Recommendation should reflect that there are many different cultures and schools of thought, and when it comes to Islamic law, what some regard as discrimination, was viewed by others as 'diversity'.

Conclusions and next steps

During a press event at the opening of the session,¹¹ Ms Gabr noted that Committee experts were studying the issue of widowed women and intended to discuss it with NGOs at the next session in Geneva.

The next session of the Committee will take place in Geneva from 18 January to 5 February 2010. It will consider the reports of Botswana, Egypt, Malawi, Netherlands, Panama, Ukraine, United Arab Emirates and Uzbekistan.

Last revised and updated: 28 August 2009.

¹⁰ Ms. Murillo de la Vega (Spain), Ms. Patten (Mauritius), Ms. Pimentel (Brazil) and Ms. Gabr (Egypt).

¹¹ The UN press release is available at http://www.un.org/News/briefings/docs/2009/090721_CEDAW.doc.htm

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