

TREATY BODY MONITOR

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COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 41ST SESSION 30 JUNE – 18 JULY 2008

MEETINGS ON WORKING METHODS

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Overview

While most of the Committee's meetings to discuss its working methods are usually closed, the Committee held two informal public meetings on 16 July 2008.

During the first meeting, NGOs had an opportunity to input into the Committee's development of a General Recommendation on Article 2 of the Convention. Most NGOs who took up this opportunity represented the lesbian, gay, bisexual and transgender (LGBT) communities, or had expertise in women's sexual and reproductive health issues. They stressed the need for the General Recommendation to explicitly state that sexual orientation and gender identity (SOGI) are grounds for unlawful discrimination against women under Article 2. Most Committee members welcomed the NGO input, however one member, Ms Zerdani (Algeria) opposed any references to SOGI in the text. In a lengthy and strident statement, she characterised lesbians as "a small minority (...) who do not adhere to what prevails in nature" and criticised NGOs for trying to "destabilise this Committee" by raising matters that are "not covered by international law". This outburst indicated that the Committee will have great difficulty in incorporating NGO input *and* achieving consensus amongst its members on the text the General Recommendation. The Chairperson of the Committee's taskforce developing the General Recommendation said that the Committee intended to complete their work 'as soon as possible', which may mean that the Committee may resort to the adoption of a compromise text.

During the second open meetings, the Committee briefed States parties on a range of developments concerning its working methods, including the release of its Convention-specific reporting guidelines and its

new policy on long-overdue reports. The Committee also emphasised the importance of greater involvement by national human rights institutions in its work (NHRIs).

In relation to the Committee's closed meetings, the agenda of the session, together with some of the documents posted on the Committee's webpage¹ and closing remarks by Chairperson, shed some light on developments this session. These included:

- Draft General Recommendation on Migrant Women: CEDAW considered feedback from the Committee on Migrant Workers on the draft.
- New format and content for Concluding Observations: the Committee decided to adopt more concrete and achievable recommendations, to introduce a follow-up procedure to encourage prompt implementation of the Concluding Observations and to use headings to distinguish thematic issues.
- Optional Protocol: discussion of reservations and review of Committee activities under the Optional Protocol.
- Meetings with UN agencies and funds based in New York: CEDAW met with UNICEF to discuss enhanced cooperation with the Committee on the Rights of the Child; Division for the Advancement of Women (DAW) briefed the Committee on the Secretary-General's Campaign to end violence against women, as well as its project to establish a coordinated database on violence against women and prevalence indicators to measure such violence.

Several Committee members participated in a side event on 'the future work of the CEDAW Committee' that was jointly hosted by the German and Netherlands Missions. As an expert panellist at this event, Ms Schöpp-Schilling (Germany) outlined the most critical thematic issues that the Committee needs to address. These included cultural relativism, the application of CEDAW in post-conflict countries, addressing the multiple forms of discrimination faced by rural women and achieving equitable sharing of family responsibilities between men and women.

General Recommendation on Article 2 – NGOs call for inclusion of sexual orientation and gender identity

In January 2004, the Committee decided that its next General Recommendation should elaborate on Article 2 of the Convention to clarify the scope and nature of States parties' obligations under CEDAW.² In July 2004, civil society and UN agencies were invited to suggest possible elements for inclusion in the General Recommendation.³ However, prior to this 41st session, the Committee had not sought further external contributions, and NGOs were not formally notified in advance of this new opportunity to provide input on the General Recommendation. Moreover, despite an initial statement by the Chairperson in her opening remarks, the draft General Recommendation was not made available to NGOs to inform their input at the meeting.

¹ These were the 'Ways and means of expediting the work of the Committee on the Elimination of Discrimination against Women,' CEDAW/C/2008/II/4, available at http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.2008.II.4_en.pdf and the 'Working paper on reservations in the context of individual communications,' CEDAW/C/2008/II/WP.2, available at http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.2008.II.WP.2_en.pdf

² Article 2 is one of the core provisions of CEDAW. It sets out the general obligations of States under the Convention, and lists the legal and practical steps a State party must take to achieve actual realisation of women's human rights. The text of the Convention is available at <http://www2.ohchr.org/english/law/cedaw.htm>

³ The issues raised by NGOs and UN agencies at this meeting included: women in armed conflict, women's reproductive rights and the Convention's status in domestic law. The UN press release summarising the meeting is available at http://www.iwraw-ap.org/press_gr26.htm

The framework of the General Recommendation

According to the Chairperson of the CEDAW taskforce developing the General Recommendation,⁴ Mr Flinterman (Netherlands), its primary audience is States parties, and in particular civil servants. It therefore has to be a “succinct, manageable and useable text” with clear interpretation of the Convention, based on the Committee’s experience. The structure he outlined bore a striking similarity to the publication *Possible elements for inclusion in a general recommendation to article 2 of CEDAW*, which was based on an expert group meeting on this topic held in Malaysia in 2007 that several CEDAW members attended.⁵ Mr Flinterman outlined the following structure for the General Recommendation on Article 2:

1. A general section emphasising the centrality of this article within CEDAW, and its dynamic status as a ‘living instrument’. It will explain how this article is linked to the other articles in Part I of the Convention, as well as Parts II-IV.
2. The Committee’s understanding of key concepts in this article, such as ‘gender’, equality versus equity, and intersectional discrimination.⁶
3. The scope and nature of State party obligations under this article, with a focus on the introductory text at the beginning of Article 2 (the chapeau) in which State parties formally ‘condemn’ all forms of discrimination against women. The text contains “difficult concepts” that are open to broad interpretation, such as ‘without delay’ and ‘by all appropriate means’. This section will also address the intersection of CEDAW with international humanitarian law, and the ‘territorial and personal scope’ of the article.
4. Other issues regarding general implementation, including the status of the Convention within the domestic legal order, and the legal protections States parties must provide (legislation, legal remedies etc); and
5. Other appropriate measures under Article 2 to assist with implementation.

NGO input on sexual orientation and gender identity

Of the six NGOs that provided input,⁷ five focused their comments on the need for the General Recommendation to explicitly recognise SOGI as grounds for discrimination against women.⁸ Some of the five organisations also encouraged the Committee to recognise a woman’s health status (including HIV/AIDS) as a possible ground for discrimination⁹ and to include a ‘non-exhaustive list’ of grounds for discrimination to guard against “new and as yet unknown forms of discrimination against women”.¹⁰ Those organisations stressed that omitting SOGI as a basis for unlawful discrimination under Article 2 would undermine the force and effect of the General Recommendation as some States parties would continue to seriously violate women human rights, including through arbitrary arrest and detention, torture and extrajudicial execution. Their statements detailed the jurisprudence that CEDAW, other UN treaty bodies and regional human rights institutions have developed on SOGI. They also reminded Committee members of the supportive statement that the former High Commissioner for Human Rights, Ms Louise Arbour, issued in

⁴ The 8 member taskforce comprises: Mr Flinterman (Chairperson), Ms Coker-Appiah (Ghana), Ms Dairiam (Malaysia), Ms Kaddari (Israel), Ms Pimental (Brazil), Ms Schoepp-Schilling (Germany), Ms Simonovic (Croatia), Ms Zerdani (Algeria).

⁵ The International Women’s Rights Action Watch (IWRAP) Asia Pacific, in collaboration with the Australian Centre for Human Rights of the Faculty of Law, University of New South Wales, convened this expert group meeting in February 2007. The publication is available at http://www.iwrap-ap.org/aboutus/pdf/Elements_paper_final_version_Jan9.pdf

⁶ When a woman experiences discrimination on the basis of her sex combined with other grounds, such as sexual orientation.

⁷ Latin American and Caribbean Committee for the Defence of Women’s Rights (CLADEM); International Women’s Rights Action Watch (IWRAP) Asia Pacific; Centre for Reproductive Rights; International Gay and Lesbian Human Rights Commission (IGLHRC) and International Lesbian and Gay Association (ILGA); Human Rights Watch; Canadian HIV/Aids Legal Network.

⁸ CLADEM focused its remarks on the need for the General Recommendation to address women’s economic, social and cultural rights, particularly the discrimination faced by women in developing countries in relation to housing and access to land, and in the workplace. CLADEM also noted that action is needed to address discrimination against women on the basis of their sexual orientation and other forms of gender discrimination, but did not elaborate in detail on this point.

⁹ Canadian HIV/Aids Legal Network, Centre for Reproductive Rights.

¹⁰ Centre for Reproductive Rights, IGLHRC/ILGA.

2007 at the New York launch of the Yogyakarta Principles on the application of international human rights law in relation to SOGI.¹¹

Committee members' mixed responses

Of the nine Committee members who responded, five welcomed the NGO input.¹² These members commended NGOs for raising these “sensitive” and “important” issues, and for the extensive research they referenced in their submissions to support their recommendations. Ms Neubauer (Slovenia) pointed out that the Committee was “always expanding our understanding of the grounds for discrimination against women” and appealed to NGOs to continue their collaboration with the Committee. Commenting on the pervasive and “extreme” nature of homophobia in the Caribbean, Ms Simms (Jamaica) was particularly appreciative of the NGO input, and agreed that CEDAW must not treat members of the LGBT community as “disposable people”. She encouraged the Committee to develop a General Recommendation that would provide a “sober, objective articulation of the issues” and reminded States that they had ratified CEDAW for “all women”.

However two members, Ms Begum (Bangladesh) and Ms Gabre (Egypt) expressed concern that NGO input had focused on SOGI issues to the detriment of other, “more serious forms of [economic and social] discrimination against women”, such as denial of the right to adequate food and housing. Ms Gabre advised the Committee to prioritise the needs of the majority of women when developing the General Recommendation, such as those living in poverty in Africa, Asia and Eastern Europe, warning that any other approach would result in the Committee appearing “unbalanced”.

The most critical and impassioned response to the NGO presentations came from Ms Zerdani (Algeria), who categorised lesbians as “a small minority” who “don’t adhere to what prevails in nature.” She encouraged the Committee to focus on the needs of other minorities, such as women “living under the yoke of war” in Iraq and Palestine. According to her, discrimination against lesbians would only be an issue for the Committee if same sex relations were permitted between men in one country, but not permitted between women in the same country. Ms Zerdani criticised the NGOs appearing before the Committee and implied they were misusing their funding to “destabilize the work of th[e] Committee with false issues” that “have no basis in international law”. When the Chairperson was about to interrupt Ms Zerdani for having used her time, she warned that as a member of the taskforce drafting the General Recommendation, she would oppose “until [her] dying breath, any matters not within [the Committee’s] purview” being incorporated into the text.

In his brief closing remarks, Mr Flinterman thanked all NGOs for their input and assured them that their remarks would be considered by the taskforce, although “some” would need “further reflection.”

NGOs were able to reply, and the Canadian HIV/AIDS Legal Network advised the Secretary of the Committee that it would provide members with copies of the Yogyakarta Principles in all six UN languages to encourage their familiarisation with the work of the international law experts who authored the Principles. The organisation also informed the Committee that the International Commission of Jurists had recently released its third compilation on Sexual Orientation and Gender Identity in Human Rights Law, which contained excerpts of jurisprudential, legislative and doctrinal references from the Council of Europe and the European Union.¹³ While acknowledging that lesbians are a minority, the NGO reminded the Committee that it had a responsibility to address all forms of discrimination against women, including their denial of economic and social rights, as well as discrimination based on sexual orientation and gender identity.

¹¹ The High Commissioner’s statement is available at

http://www.sxpolitics.org/mambo452/index.php?option=com_content&task=view&id=126 (scroll down to remarks by Mr Craig Mokhiber of OHCHR’s New York Office).

¹² Ms Shin (Republic of Korea), Ms Neubauer (Slovenia), Ms Arocha (Cuba), Ms Simms (Jamaica), Ms Pimentel (Brazil). Ms Kaddari (Israel) expressed appreciation for the NGO input but asked for more concrete information on how other treaty bodies have dealt with these types of violations, making it difficult to assess her views on the matter.

¹³ This report of over 230 pages, is available at http://www.icj.org/IMG/European_Compilation-web.pdf

The Chairperson emphasised that the Committee would “look at all inputs made prior to the meeting and by NGOs at this meeting”, and develop a General Recommendation that “covers all important points in relation to State party implementation of Article 2. How far we can go is yet to be decided, but we hope to go as far as possible.” The Chairperson indicated that if the kind of General Recommendation that NGOs called for at this meeting was not possible, these issues would be addressed in the future because CEDAW was a “living and evolving document.” Although other Committee members did not speak during the meeting, several of those who had remained silent reportedly did not share the views of Ms Zerdani.

Meeting with States parties

This meeting was very well attended by States parties, indicating that they appreciated the opportunity to engage with the treaty body outside of the regular review process. Although only a handful of States asked questions of the Committee,¹⁴ the topic that elicited most interest was the Committee’s new Convention-specific reporting guidelines.¹⁵ The Committee explained that as of 2009 under its new reporting guidelines, a State party will need to submit a common core document, *plus* a report that specifically relates to the implementation of the Convention. This latter report will be subject to page limits which the Committee intends to enforce.¹⁶ The Committee will continue the practice of developing a ‘list of issues’ that States parties need to respond to.

The Committee also introduced its new policy on long-overdue reports. It will now send reminders with specific timelines to States parties whose initial reports are either five¹⁷ or ten years overdue,¹⁸ requesting they submit a combined report for the overdue period. Only when this report is not submitted would the Committee now consider reviewing the State party in the absence of a report. The Committee emphasised that its goal is to support States parties to meet their reporting obligations, and to this end it encouraged greater use of the technical and advisory services provided by the Office of the High Commissioner for Human Rights, Division for the Advancement of Women (DAW) and other UN agencies. The Chairperson also reported that it had cleared its own backlog of State party reports and developed a timetable for the examination of new reports.

Another topic raised by the Committee was its *Statement on CEDAW’s relationship with NHRIs*.¹⁹ This sets out the Committee’s working relationship with NHRIs, and what it regards as the responsibilities of NHRIs to contribute to the implementation of CEDAW at the domestic level. The Chairperson emphasised the Committee’s desire to see more NHRIs submitting parallel reports and participating in its pre-sessional and sessional meetings.

Side event on future work of the Committee

This was a standing-room-only event, attended by many members of the Committee, staff from several UN Missions and UN agencies, as well as a wide range of NGOs. It allowed the German and Dutch Missions to formally launch a publication on the work of the Committee over the course of its first 25 years, co-edited by Ms Schöpp-Schilling and Mr Flinterman.²⁰ As a panellist, Ms Schöpp-Schilling reflected on the Committee’s history and identified critical issues and gaps in its work that should be addressed as a matter of priority. In

¹⁴ Nine States: Egypt, Chile, Portugal, Lebanon, Philippines, Netherlands, China, Democratic Republic of Korea, Mexico.

¹⁵ The new guidelines were adopted during CEDAW’s the 40th session (January 2008) and are available at <http://www2.ohchr.org/english/bodies/cedaw/docs/AnnexI.pdf>

¹⁶ Initial reports are limited to 60 pages and periodic reports to 40.

¹⁷ Afghanistan, Djibouti, Solomon Islands.

¹⁸ Bulgaria, Panama, Saint Vincent and the Grenadines, Senegal and Zimbabwe.

¹⁹ The statement was released in January 2008 and is available at <http://www2.ohchr.org/english/bodies/cedaw/docs/AnnexIe.pdf>

²⁰ Schöpp-Schilling, H.B. and Flinterman, C. (eds.), *The circle of empowerment: Twenty-five years of the UN Committee on the Elimination of All Forms of Discrimination Against Women*, Feminist Press at CUNY, 2008.

some cases she provided specific information about the nature of the problems and the tools the Committee should use to address them. Her more general comments suggested that some issues might only be beginning to factor in the Committee's thinking, such as the impact and responsibilities of global non-State actors, and further thought is needed to determine how best to address them. She recommended:

1. A General Recommendation on Article 5(a) is needed to interpret women's right to substantive equality regardless of the social or cultural context. The universal nature of human rights, including women's rights, meant that arguments about 'cultural relativism' cannot be accepted by the Committee to justify ongoing discrimination against women.
2. The General Comment on Article 2 that the Committee has begun work on will need to address the tension between the language of CEDAW (which refers to the need for States parties to address discrimination 'without delay'), and that of the *International Convention on Economic, Social and Cultural Rights* (which refers to the need for 'progressive realisation' of certain rights). There is considerable overlap between the rights recognised in the two instruments, and States parties need further guidance on how to manage what may appear to be (but are not) conflicting responsibilities.
3. Further work is needed to interpret Article 11 of CEDAW regarding women's rights in employment. In particular, the Committee needs to provide greater clarity about the responsibilities of States parties to foster more equitable sharing of family responsibilities between men and women.
4. A more in-depth exploration of the application of the Convention is needed when States parties are in post conflict situations. This includes the need for the Committee to elaborate on the linkages between CEDAW and Security Council *Resolutions 1325 and 1820*, which both deal with the theme of 'women, peace and security'.
5. The Committee needs to turn its attention to the impact of private global processes on women. It should begin to document the human rights violations by, and the responsibilities of, global non-State actors, such as corporations.
6. More focussed work is needed to effectively address the multiple forms of discrimination experienced by rural women.
7. The Commission on the Status of Women needs to appoint a Special Rapporteur to address discriminatory laws against women.

Comments from other panellists, CEDAW members and the audience, highlighted other challenges and opportunities for the Committee:

- Mr Flinterman mentioned the current under-utilisation of the Optional Protocol and the Committee's awareness of the need to raise its profile amongst women's NGOs.
- Ms Simonovic (Chairperson) stressed the need for the UN system to improve technical cooperation and support to countries that struggle to meet their reporting obligations.
- In response to a question on the relationship between the universal periodic review process (UPR) and the treaty body system, several panellists agreed that although there was some overlap in the two processes, they were distinctly different and needed to be kept separate. Rather than being concerned that some States might want to use the UPR to undermine the work of the treaty bodies, Committee members pointed out that the UPR process provided an additional mechanism to draw attention to their Concluding Observations and hold States accountable. They were encouraged by the fact that several States had referred to Concluding Observations in their questions during the UPR. Further, treaty bodies could follow up on relevant recommendations accepted by a State under the UPR process.

Looking forward

Although the Committee is now up to date on its review of States parties' reports, it has new challenges looming on the horizon, not least of which is the finalisation of a General Recommendation on Article 2. Given that General Recommendations are adopted by consensus and, given Ms Zerdani's remarks, it is

unclear whether the General Recommendation will explicitly recognise SOGI as grounds for discrimination against women. Where there is disagreement between the members, the Committee can soften the language, which might result in the General Recommendation incorporating a non-exhaustive list of forms of discrimination against women. This could include a ‘catch-all phrase’ condemning ‘all other forms of discrimination against women,’ thereby avoiding a direct reference to discrimination on the basis of SOGI. Alternatively, the Committee could decide to continue consideration of the draft until it reaches a consensus.

However, Mr Flinterman indicated that the taskforce on the General Recommendation would like to finalise it “as soon as possible”. This reluctance to delay finalisation of the text was further reflected in the comments of the Chairperson when she reminded NGOs that CEDAW was a “living document,” implying that if SOGI could not be addressed in the General Recommendation, there would be other opportunities for the Committee to combat discrimination on these grounds. The next session of the Committee will therefore need to revisit this matter to ensure that the draft text can be finalised and made available for further comment before its adoption.

In addition, the terms of 11 of the current 22 CEDAW Committee members will end at the close of this year. Although four of the 11 members are nominated by their governments for re-election²¹ on 30 July 2008, most are not²² and will be replaced by the newly elected members in January 2009.²³ The outcome of the 2008 election may therefore have a significant impact on the future directions and work of the Committee.

²¹ Ms Arocha Dominguez (Cuba), Ms Pimentel, Ms Dairiam, Ms Xiaoqiao (China)

²² Ms Schöpp-Schilling, Ms Gaspard (France). Ms Maiolo (Italy), Ms Shin (Korea), Ms Simms (Jamaica), Ms Tavares da Silva (Portugal), Ms Tan (Singapore).

²³ The list of candidates nominated by States parties is available at <http://www.iwraw-ap.org/news/election.htm>

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