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Informal panel discussion on the UN mechanisms for the elimination of legislation that discriminates against women

I am honoured by the invitation to speak at this panel as a member and Chairperson of the CEDAW Committee. My remarks will be of a personal nature, though some of my observations will be based on the discussions in the Committee.

Introductory remarks

As of January 2008, the servicing of the Committee was transferred from the Division for the Advancement of Women (DAW) to the Office of the High Commissioner for Human Rights. The Committee considers the consolidation of the servicing of the treaty bodies within the Office of the High Commissioner for Human Rights as an important step towards the continuing harmonization of the human rights treaty bodies' system, as well as towards greater cooperation with the human rights infrastructure.

During its fortieth session, the first one in Geneva, at the beginning of this year, the Committee met with the High Commissioner for Human Rights and the President of the Human Rights Council. During the dialogue with the High Commissioner, the Committee discussed several issues relevant to its work and to the integration of women's rights at the heart of human rights agenda and human rights machinery in Geneva. The Committee has also discussed with the President of the Human Rights Council the (re)establishment of a closer working relationship between the Council and the Committee and the input the

Committee might provide to the women's rights and gender elements of its work.

To secure such an input to the work of other relevant UN bodies the CEDAW Committee has established a very good working relationship with the CSW and the Third Committee to which its Chair regularly reports on the Committee's work, whereas currently, there is no such link between the Committee and the Human Rights Council. For that reason I am very glad to participate at this panel on topic relevant for the CEDAW Committee and for the Human Rights Council - UN mechanisms for the elimination of legislation that discriminates against women.

Views of the Committee concerning a special rapporteur on discriminatory legislation

The Committee considered the question of the advisability of a special rapporteur on discriminatory legislation, as requested by the Commission on the Status of Women at its 49th session. The Committee's views had been reflected in the SG's report to the 50th session of CSW, in March 2006. On the second request of the CSW, the Committee decided not to send any further comments on this matter to the 51st session of the CSW. The Committee's positions as reflected in the SG report of 2006 is:

While the Committee appreciated fully the desire of the Commission on the Status of Women to carry out its mandate to work towards the elimination of discriminatory legislation, as called for in the Beijing Platform for Action and the outcome document of the twenty-third special session of the General Assembly, the Committee did not see the necessity of establishing a special rapporteur on discriminatory legislation.

Instead, the Commission might consider other avenues of pursuing the same objective. Should the Commission decide, however, to pursue the establishment of such a mechanism, the Committee would recommend that the Commission include in the mandate of the special rapporteur a requirement to address various types of discriminatory laws; customary and other forms of law (common and codified law); and de jure and de facto discrimination against women. The mandate should clearly spell out the scope of the discriminatory legislation to be covered and should also include indirect discrimination. Lastly, the Commission should consider the ways in which a mandate holder could have a significant political impact at the national level.

Now I would like to address the following topics:

- 1 The CEDAW Convention and its scope with respect to discriminatory legislation,
- 2 The Committees mandate and its outputs with respect to discriminatory legislation,
3. The Committees efficiency and follow-up to concluding observations.

1. The CEDAW Convention and its scope with respect to discriminatory legislation

The CEDAW Convention, adopted 28 years ago, provides a legally binding international framework that prescribes for all its 185 States Parties legal and other measures for the elimination of all forms of discrimination against women, including discrimination contained in legislation. Very comprehensive definition of discrimination against women in Article 1 of the Convention covers de jure

and de facto discrimination by any person, organization or enterprise in all areas of life.

Ratification by 7 States is needed in order for the Convention to achieve the goal of universal ratification and confirmation of the universal right of a woman not to be discriminated against because she is a woman.

The Optional Protocol to the Convention, ratified or acceded to by 90 States, provides to individuals who claim to be victims of violation of any of the Convention's rights or victims of grave or systematic violations of the Convention's provisions redress before the CEDAW Committee.

If the post of a special rapporteur on laws that discriminate against women is going to be established, his or her mandate would cover those 7 States that have not ratified the Convention yet, but such a special rapporteur on laws that discriminate against women would focus only on discriminatory legislation whereas the Convention is covering all forms of discrimination against women, direct and indirect, de jure and de facto.

The scope of the Convention is clearly including the obligations of 185 States Parties to eliminate all forms of discrimination against women including the abolition of discriminatory laws against women. By ratifying or accepting the Convention States Parties assume an obligation to incorporate the Convention into their national legal systems and to harmonize national legislation with the provisions of the Convention.

States Parties are under obligation to amend or repeal the existing laws, regulations, and customs and practice that are discriminating against women and to repeal any national criminal provisions discriminating against women. Those

obligations are contained in Article 2 of the CEDAW Convention that lists the general obligations and the legal and practical steps that a State Party must take to implement the Convention. It contains an obligation of States Parties to the Convention to:

1. Condemn discrimination against women in all its forms,
2. Implement the policy of eliminating discrimination against women by all appropriate means and without delay.

Article 2.a) covers de jure and de facto equality of women and men as the key concept for the elimination of discrimination against women. It requires that the State Party embodies the principle of equality of men and women in the national Constitution or other laws for equal de jure protection of human rights of women and men. The obligation to embody the principle of equality of men and women does not only include legal or normative obligation, it also includes the obligation to ensure the practical realization of this principle i.e. achieving actual equality of men and women.

The required incorporation of the principle of equality of men and women in the Constitution or other appropriate laws is particularly important for de jure and de facto equality of women and man. Prohibition of discrimination against women as it is defined in Article 1 of the Convention also needs to be incorporated in the Constitution or other laws. Together they constitute the basis of an appropriate legal framework on the national level for the implementation of the policy of elimination of discrimination against women.

The obligation to modify and abolish laws is seen as an “immediate” obligation of States Parties, though in practice it takes time to effect changes. There must be competent tribunals to examine women’s rights issues, and this

has been sadly lacking, with States not providing information about cases relating to discrimination and equality.

The CEDAW Committee has pronounced that reservations on Article 2 go against the scope and objective of the Convention. One encouraging aspect is that some States Parties have either withdrawn or narrowed their reservations on Article 2.

2. The Committee's mandate and its output with respect to discriminatory legislation

The Convention is a dynamic or “living” human rights instrument. Through the work of the CEDAW Committee composed of 23 independent experts during the past 26 years the Convention is a dynamic or “living” human rights instrument.

The Committee provides further interpretation of the Convention's provisions and rights through its:

- General Recommendations,
- Concluding comments addressed to the individual States Parties, and
- Views adopted with respect to the cases under the Optional Protocol.

Let us see their relevance with respect to the obligations of States to abolish discrimination against women contained in the discriminatory legislation.

General Recommendations

The CEDAW Committee has the mandate under article 21 of the Convention to make general recommendations elaborating the Committee's view of the obligations assumed under the Convention. At the twenty-ninth CEDAW

Session, the Committee decided that its next general recommendation would be on Article 2 of the Convention. In July 2004, the Committee held a Day of General Discussion on the elements that should be included in a general recommendation on Article 2. At its next session the Committee is going to examine the draft General Recommendation on Article 2 that is addressing discriminatory laws.

Concluding observations

Drafting the concluding observations is one of the most important tasks of a treaty body, because they can make a difference in the context of how a particular State implements the Convention. They should, therefore, focus on concrete issues and should be “implementable” by the State, providing tools the State can use to develop and strengthen their policies relating to the implementation of the Convention. Over the years, the Committee has made considerable progress in how it formulates its concluding comments, but more should be done.

During 2006 and 2007, the Committee examined the implementation of the Convention and adopted concluding observations on 69 States Parties, and in 2008, it will have examined another 8 States and adopted respective concluding observations. The examination of the concluding comments adopted for 77 States Parties provides an excellent source for the assessment of the Committee’s work with respect to the obligation of States Parties to abolish discriminatory legislation.

From those concluding observations it is evident that the Committee is addressing and identifying the existing discriminatory laws that are contrary to the Convention.

In many cases there is a lack of understanding of States parties of the purpose and intention of the Convention, including an understanding of discrimination. States Parties think they have fulfilled the terms of the Convention because they have a provision that prohibits discrimination on certain grounds and have formal guarantees. However, they do not understand the meaning of non-discrimination, the notion of indirect discrimination or the notion that neutrality can be discriminatory in itself. In all such cases the Committee has recommended the incorporation of the principle of equality as contained in Article 2 and the definition of discrimination against women in line with Article 1 of the Convention in the national legal system

Also, in many cases the Committee has called States Parties to assess the compatibility of national legislation and to bring it in line with the Convention. In a number of cases the Committee has called for the abolishment of specific discriminatory laws, Acts, or discriminatory practices.

3. The Committee's efficiency and follow-up to concluding observations

Only a few years ago, in 2005, when we started to examine the idea of a special rapporteur on discriminatory legislation, the Committee had a huge backlog in reviewing State Party reports, including the significant number of States Parties to the Convention that had not submitted their initial reports. Situation is very different today. After the General Assembly's approval of the increased meeting time and work in two chambers, the Committee examined 31 reports in 2006 and 38 reports in 2007, or 69 in two years, and cleared the backlog.

This new situation is providing the Committee with an opportunity to focus on non reporting States Parties – those that have not yet submitted their initial reports or have a long delay with respect to the periodic reports, but also to further improve its working methods. Very important is the follow-up process on the implementation of the concluding observations. All treaty bodies request States Parties to provide information on the implementation of the previous concluding observations in their subsequent reports and during the constructive dialog. In addition, several treaty bodies have also introduced formal procedures to closely monitor the implementation of specific concluding observations.

Due to previous insufficient meeting time the CEDAW Committee only addressed this issue sporadically, for example, when it discussed the issues of harmonized working methods of treaty bodies that have instituted follow-up procedures such as the appointment of country rapporteurs (practice of the HRC and CERD Committee) or the follow-up implementation seminars (practice of the CRC Committee).

The Committee held an informal meeting in Geneva from 24 to 26 October 2007, discussing the issue of the follow-up to the concluding comments in light of the practice of other treaty bodies. Participants expressed their interest in exploring the model of the CRC in organizing regional or sub-regional follow-up workshops. They noted that this possibility should be further discussed in detail and requested the OHCHR to explore possible sources of funding for this purpose.

Conclusion

The CEDAW Committee has, under the Convention, a very explicit mandate to address de jure and de facto discrimination against women and it is increasingly identifying discriminatory laws in its concluding observations.

Attached to this statement you will see examples of the Committee's recent recommendations on discriminatory laws that show the work done by the Committee in the identification of discriminatory laws and shows how CEDAW repeatedly request States to repeal those laws. It also underlines two important points.

First, one can see that CEDAW by means of its concluding observations addresses in a very systematic way areas where discriminatory legislation persists. Therefore, States parties to CEDAW are regularly monitored to identify and repeal their legislations that discriminates against women.

Second, this sample of recent concluding observations also shows that many discriminatory laws persist from one reporting cycle to the next one, in all areas covered by the Convention and in all parts of the world.

Very important work of the Committee with respect to the identification of discriminatory laws in the concluding observations and recommendations could be further improved if all those involved in the reporting process under the Convention focus on a clear identification of discriminatory laws and provide very specific and concrete inputs to the Committee with respect to the content of discriminatory laws or practices. UN field offices, agencies and funds could play an important role in providing such country specific information. The

same goes for NGOs with respect to their very important shadow reports and for National human rights institution with respect to their inputs.

Recent request of the Committee to follow-up the practice of the CRC with respect to the issue of follow-up to concluding observations should be supported with adequate financial resources for the organization of such follow-up seminars that should focus on the implementation of the concluding observations in general and in particular on the elimination of discriminatory laws in line with the Committee's recommendation and the Convention's requirements.

In all cases where the Committee has recommended in its concluding observations elimination of discriminatory laws or practices against women and the girl child we need to see the changes of such laws at the national level "without delay", with the full involvement of the respective Governments and all other stakeholders that have their role to play, such as Parliaments, NGOs, National human rights institutions and the UN agencies working in the country. Technical assistance for such legislative changes if requested from the Office of the HCHR could include the expertise of the available former or current CEDAW Committee members.

We should use today's panel discussion to explore all possible avenues aimed at the elimination of all laws that discriminate against women, without any further delay, including those discriminatory laws identified by the Committee in concluding observations that clearly constitute the lack of compliance with Convention's obligations and have a negative impact on women's equality.