
COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Special protection needed for disabled, lesbian, migrant, and older women: Burkina Faso, Czech Republic, Malta, Uganda, and Tunisia



Photo: UN/Eskinder Debebe

The Committee on the Elimination of Discrimination Against Women (the Committee) held its 47th session in Geneva from 4 to 22 October 2010. The Committee considered the reports of five State parties to the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention): Burkina Faso, Czech Republic, Malta, Uganda, and Tunisia. The Committee also reviewed the exceptional report of India on the 2002 Gujarat massacres.¹ The review of Bahamas that had been scheduled was postponed.²

State delegations varied in size, from Malta with five representatives to Burkina Faso and the Czech Republic with 13 each. All delegations had more women than men. States appeared open in their engagement with the Committee but provided information of variable quality. Malta, Tunisia and Uganda attempted to deny their responsibility regarding access to abortion, violence against women, and the rights of lesbian, bisexual, and transgender individuals.

NEW GENERAL RECOMMENDATIONS

The Committee adopted two new general recommendations, which will provide guidance to States in implementing the Convention. General Recommendation 27 on older women calls on States to ensure the full enjoyment of human rights by women in all stages of their lives.³ It emphasises that older women often fall victim to multi-dimensional discrimination, and outlines the specific obligations of States in areas such as violence, work and health.

General Recommendation 28, on the Core Obligations of States Parties under Article 2 of the Convention, clarifies that protection from discrimination under the Convention encompasses not only grounds explicitly mentioned but also other grounds such as age, class, race and ethnicity.⁴ In particular, its acknowledgement of sexual orientation and gender identity as grounds on which it is prohibited to discriminate, is important and a sign of growing international recognition. Recently, the Committee on Economic, Social and Cultural Rights (CESCR) acknowledged this in its General Comment 20.⁵ Nevertheless, sexual orientation and gender identity remain very sensitive issues, especially in intergovernmental UN bodies.⁶ It remains to be seen how the General Assembly will react to the Committee's work, when the Committee presents its annual report in late 2011.

1 See ISHR's *Human Rights Monitor Quarterly Issue 3*, P. 22. Available at <http://www.ishr.ch/quarterly>.

2 This was decided at very short notice, only four days before the sessions. The review of Algeria originally scheduled for January 2011 was also postponed but a new date was not announced.

3 CEDAW/C/2010/47/GC.1, available at <http://bit.ly/dF9zds>. The rights of the elderly were also discussed in the Human Rights Council Advisory Committee, which caused some controversy because there was no explicit request by the Human Rights Council to do so. See also <http://bit.ly/fqLgL>.

4 CEDAW/C/2010/47/GC.2, available at <http://bit.ly/f4j4pE>. CEDAW Art. 2 calls on States to 'condemn discrimination against women in all its forms' and to pursue 'a policy of eliminating discrimination'.

5 E/C.12/GC/20, available at <http://bit.ly/hOEAEx>.

6 An attempt to reference General Comment 20 in a General Assembly resolution on the international covenants (A/C.3/64/L.22) failed and led to a vote for the first time in over 40 years. See also p 5-6 at <http://bit.ly/fVWwMc>.

Furthermore, the Committee decided to commence development of a new general recommendation on women in armed conflict and post conflict situations, and a joint general recommendation with the Committee on the Rights of the Child on harmful traditional practices. This is in line with efforts to intensify coordination among treaty bodies.⁷

NGO AND NHRI PARTICIPATION

The Committee received no information from national human rights institutions (NHRIs) for this session. However, non-governmental organisations (NGOs) submitted between three and eight reports for each State examination,⁸ and several NGO representatives briefed the Committee. In accordance with the Committee's practice, these briefings took place on the Monday of the week of the relevant review. Committee members were receptive to information provided by NGOs using it frequently when reviewing States. This included issues raised by NGOs regarding maternal mortality, property rights, marriage and divorce law, trafficking, and restrictions placed on civil society.

THEMES

Violence against women

Violence against women was a recurring theme throughout the reviews.⁹ All concluding observations referenced this issue and recommended States enact legislation on domestic violence,¹⁰ prosecute perpetrators and assist victims,¹¹ and raise awareness of women's rights in accordance with the Convention.¹²

The Committee was disturbed by the lack of legislation to protect women from violence in Burkina Faso, Tunisia and Uganda. In the case of Tunisia perpetrators of rape may escape punishment if they marry the victim. The delegation said the Government is willing to adopt legislation to prevent rapists from escaping prosecution.

In Uganda, violence against women and girls is the most common crime. The Committee was particularly concerned about impunity for rape because of a pattern of police case files being 'lost', and the delay in adoption of a bill criminalising marital rape. However, Uganda also received praise for its domestic violence act, and family and child protection units.¹³

7 In 2009, treaty body members issued the Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System, available at <http://bit.ly/g7TEqX>. In November 2010 several NGOs proposed, as part of a comprehensive response to the Dublin Statement, that harmonisation could be improved by adopting joint general comments. See also <http://bit.ly/ffFt87>.

8 Burkina Faso seven; Czech Republic six; Malta three; Tunisia four; and Uganda eight.

9 See ISHR's *Human Rights Monitor Quarterly* Issue 3, P. 22. Available at <http://www.ishr.ch/quarterly>.

10 Burkina Faso, Tunisia and Uganda.

11 Czech Republic and Malta.

12 Uganda.

13 These units are available to women and girls at all police stations, to

Protection of particularly vulnerable women

A recurring theme was the obligation of States to protect the rights of particularly vulnerable groups of women.¹⁴ The Committee systematically enquired about the rights of disabled, ethnic minority, and older women, as well as women targeted because of their sexual orientation and gender identity. This was especially evident during the review of Uganda, where women are reported to be victims of serious human rights abuses.¹⁵ The Committee also followed up on NGO information about widespread exclusion of women in Malta due to their sexual orientation, but only received evasive responses from the State.

The marginalisation of ethnic minority women was especially an issue in the Czech Republic, where Roma women are subject to multiple forms of discrimination. The Committee was concerned that current legislation does not adequately address this problem with a view to achieving substantive equality.

The Committee was also alarmed by discrimination against older and disabled women in Burkina Faso and Uganda, who are often excluded from society. Consequently, they are disproportionately affected by poverty, violence, and other human rights violations, and their needs are not adequately reflected in Government policies. The situation of older women in rural areas was also of concern with regard to Tunisia, and the Committee requested further information to be included in the next State report.

Health

All States reviewed face difficulties in regard to women's right to health, particularly in the areas of access to abortion,¹⁶ maternal mortality,¹⁷ HIV/AIDS,¹⁸ mental health,¹⁹ and reproductive health.²⁰ Malta was severely criticised, by Ms Zohra Rasekh and Ms Magalys Arocha Dominguez, for its extremely restrictive stance on abortion.²¹ Committee members stated that high numbers of illegal abortions occur as a result. It asked when the Government of Malta will review its position on the matter. The Committee called on the Government to remove reservations to Article 16 of the Convention, which the Committee said is inconsistent with its practice.²²

address family and children issues.

14 General Recommendation No. 28, para 31, recognises that certain groups of women are particularly vulnerable to discrimination, including 'women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women.'

15 See also 'CEDAW: Uganda denies human rights violations faced by LGBT and disabled women', available at <http://bit.ly/eijwED>.

16 Uganda and Malta.

17 Burkina Faso, Malta and Uganda.

18 Uganda, Tunisia and Burkina Faso.

19 Tunisia and Uganda.

20 Czech Republic.

21 Abortion is illegal in Malta, even when there is a risk to the mother's health. Ms Rasekh said this prohibition is something she expects from her own country, Afghanistan, but not a European country.

22 Additionally, the Committee's concluding observations called for Malta

The Czech Republic was criticised for the three-year time limit for victims to claim compensation for forced sterilisation. The Committee insisted compensation and reparation should be given to all victims.

In relation to HIV/AIDS, Burkina Faso made the curious remark that this was becoming a women's health problem because 'women do not know how to negotiate when it comes to intercourse with men'. The Committee recommended in its concluding observations that the State carry out more awareness-raising campaigns to combat the growing HIV/AIDS infection rates.²³

Discriminatory laws

Uganda, Malta and Tunisia all faced criticism over discriminatory laws. The Committee was critical of Uganda's inheritance and marriage laws that currently give priority for inheritance to the eldest child. Additionally, despite recent changes to the marriage law, polygamy is still allowed and is discriminatory as it applies differently to different people depending on their type of marriage.²⁴ Tunisia was also criticised for its discriminatory property and inheritance laws. Despite some reform, these laws continue to disadvantage women, who are only legally entitled to an inheritance if there are no male heirs.²⁵

Committee has mixed reaction to new Working Group

The Human Rights Council recently established a working group of five independent experts on discrimination against women in law and practice.²⁶ The decision was noted with mixed feelings by the Committee. The Chairperson raised concerns this would lead to duplication, undermine the credibility of the Committee, and consume the Secretariat's resources at the expense of the treaty bodies.

These issues were raised during the resolution's negotiations but States seemed to agree the Working Group would complement rather than duplicate the Committee's work.

Traditional values

The adverse impact of traditional values on the enjoyment of human rights by women was another cross-cutting issue of the session.²⁷ This is particularly interesting in light of discussions in the Council, where the Russian Federation initiated a controversial initiative to examine the positive contributions

of traditional values to human rights.²⁸ In the Committee, members consistently addressed certain traditional values as an impediment to the enjoyment of a wide range of human rights within all States under review, regardless of their cultural or religious specificities.²⁹

OTHER DEVELOPMENTS

During the review of the exceptional report on India, Ms Rasekh suggested the Committee visit the country. The Committee deemed the Government had failed to fulfil its obligations under the Convention, and was unrelenting in its calls for just reparation and rehabilitation of victims and an end to impunity. Additionally, the Committee was not impressed with the delegation's attempts to downplay the massacre by calling it a 'sporadic incidence of violence'. It is therefore surprising the Committee's request for a country visit was not followed up in the concluding observations.³⁰

CEDAW members – varying degrees of engagement

Among the most active Committee members are Mr Cornelis Flinterman, one of only two male members, and Ms Ferdous Ara Begum, Ms Nicole Ameline, Ms Pramila Patten, and Ms Dorcas Coker-Appiah. Ms Rasekh made fewer but pointed interventions and was not afraid to tackle contentious issues. While some Committee members covered a wide range of topics, others had specific areas of interest. Ms Saisuree Chutikul focused almost exclusively on trafficking; Ms Coker-Appiah on sexual violence; Ms Meriem Belmihoub-Zerdani on participation of women in the political sphere; and Mr Flinterman on definitions of discrimination in legislation and issues related to sexual orientation and gender identity. Ms Ruth Halperin-Kaddari, Ms Begum, and Mr Flinterman were most receptive to NGO information and asked most questions during NGO briefings. Finally, Mr Flinterman, Ms Chutikul, and Ms Patten all referenced outcomes from the UPR process, and other treaty bodies, namely the Human Rights Committee, CESCR and the Committee on the Rights of the Child (CRC). ■

to remove its reservations to Articles 11, 13 and 15.

23 CEDAW/C/BFA/CO/6.

24 There are four types of marriage in Uganda: customary, church and civil, Muslim and Hindu.

25 The Committee suggested Tunisia remove its reservations to the Convention, particularly to Article 16 regarding equal rights within marriage and the family.

26 A/HRC/RES/15/23. See also ISHR news piece at <http://bit.ly/i7FK9m>.

27 See also 45th and 46th sessions of CEDAW in *Human Rights Monitor Quarterly*, Issues 1 and 3, 2010, available at <http://www.ishr.ch/quarterly/previous-editions>.

28 See ISHR news piece at <http://bit.ly/fkEbjr>.

29 This included the under-representation of women in public and political spheres (Czech Republic and Malta), discriminating inheritance and family laws (Tunisia, Uganda and Burkina Faso), female genital mutilation (Burkina Faso), and reluctance to report incidents of violence (Malta, Uganda and Burkina Faso).

30 CEDAW/C/IND/CO/SP.1.