

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 3 PANEL DISCUSSION ON WOMEN’S HUMAN RIGHTS HUMAN RIGHTS COUNCIL, 11<sup>TH</sup> SESSION 4 JUNE 2009

Overview .....	1
Opening comments from the panel: Part I .....	2
Opening comments from the panel: Part II .....	3
Interactive dialogue .....	4
New special procedures mandate .....	4
Role of the UPR.....	5
Education.....	6
Conclusion .....	6
Further information.....	6

### Overview

In its *Resolution 6/30* adopted on 14 December 2007, the Human Rights Council reaffirmed the principle of gender equality and the need for a comprehensive approach to the promotion and protection of the human rights of women. It also decided to incorporate into its programme of work an annual full-day meeting to discuss the human rights of women, including measures that can be adopted by States and other stakeholders, to address human rights violations experienced by women.

The 2009 annual full-day meeting on women’s human rights took place on Thursday 4 June 2009 and focused on non-discrimination in the law, with a view to identifying concrete steps to further women’s equality, including the role to be played by the UN human rights mechanisms in the advancement of equality before the law. Particular attention as to be give to the UPR process and the special procedures in facilitating the identification of legislation or practices of discrimination against women, as well as pointing to best practices to eliminate them.

In her opening remarks, the High Commissioner for Human Rights, Ms Navanethem Pillay, emphasised that ‘inequality in the law exists in all regions of the world and in all legal traditions’. She stressed that ratification of or accession to all human rights treaties, including, as a matter of priority, the *Convention on the Elimination of All Forms of Discrimination against Women* and its *Optional Protocol*, were indispensable steps to achieve women’s equality in law. She urged States that have yet to accept the Convention to do so this year, which marks the thirtieth anniversary of its adoption by the General Assembly. She reiterated that international human rights treaties prohibit discrimination on the basis of sex and include guarantees to ensure that women and men enjoy their civil, cultural, economic, political, and social rights on a basis of equality,

but that, despite this prescription, global and national realities indicate that there is a wide gulf between international legal obligations and their implementation. While acknowledging ‘the progress that has undoubtedly been achieved in implementation of women’s rights in recent decades in many areas’, Ms Pillay emphasised that the 2005 target deadline established by the Beijing +5 review for the revocation of laws that discriminate against women (hereafter 2005-deadline)<sup>1</sup> ‘has come and gone’. She noted that ‘that call remains unheeded’ and that ‘many of these laws are still in force and continue to be applied to the detriment of women and girls’.

Overall, the quality of the annual full-day meeting was disappointing. There was very little evidence of States adapting their Statements based on what panellists had presented, or in their responses to the first round, which runs counter to the idea of a panel discussion. Instead, many States focused on national efforts in safeguarding women’s rights. This thwarted efforts to receive support for particular initiatives proposed at the international level. This problem has been common across various panel discussions in the Human Rights Council.

### Opening comments from the panel: Part I

The first part of the panel discussion focused on the institutional aspects of equality before the law.

The first expert panel comprised:

- Ms Rama Yade, Minister of State for Foreign Affairs and Human Rights of France
- Mr Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions
- Mr Leandro Despouy, Special Rapporteur on the independence of judges and lawyers
- Ms Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences
- Mr Frank La Rue Lewy, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Mr Michael O’Flaherty, Member of the Human Rights Committee
- Ms Pramila Patten, Member of the CEDAW Committee

In her opening remarks, Ms Yade stated that almost five years after the 2005 deadline for removing discriminatory legislation against women, the world was still far from having achieved a victory over inequality of women, regardless of region. She recognised progress made, but noted that there was still the possibility of moving backwards. She underlined that discrimination against women was rooted in the continuation of practices and prejudices that belonged to another era, and that inequalities related to the inferior social status allocated to women. She further urged for CEDAW to become universal.

Mr Despouy briefly reflected on the different types of problems and facets of discrimination. He noted that the text of a law itself can be discriminatory, and that inequality can stem from the application of the law, and not the text itself, due to cultural practice or prejudice. He highlighted the difficulties for women to participate in the administration of justice, and examples of complete impunity for sexual crimes committed against women, such as the use of rape as a weapon of war. He insisted that the UN could not continue to turn a blind eye to such a clear problem.

Mr Alston said that gender inequality was the single biggest challenge to the international human rights system at every level, which needed to be confronted. He highlighted the complexity of the challenges, such as: the relationship between law and practice; the question of direct versus indirect State responsibility; the relevance of human rights law to non-State actors; and the relationship between law and culture. He put forth the issue of witchcraft as an example to highlight the complexity of cultural understandings and the balancing of human rights. He stressed that women were targeted overwhelmingly and estimated that thousands were killed every year on the grounds that they were witches. While mentioning a suggestion made to him to

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<sup>1</sup> This deadline was set at the Special Session of the General Assembly to review the Beijing Platform for Action.

‘outlaw witchcraft’, he underscored that in many countries, however, peoples’ belief in supernatural powers was customary, and that one could ‘not simply jump in and say it was illegal’ to hold spiritual beliefs and traditions. Although he underlined that ‘culture must never be used as an excuse to perpetuate gender inequality’, he added that one could not neglect the cultural complexities when dealing with human rights and in particular when dealing with issues of gender equality. Mr La Rue Lewy underscored that it was very important to focus on freedom of expression from the point of view of women. He noted that women throughout the world had been silenced, both in domestic legislation and international practices and customs of some countries. Women should learn how to express themselves without being afraid of what the consequences may be. For this, different elements were needed, including access to relevant information, access to mechanisms that provide for communication, access to education, and paying attention to what women say. He concluded that freedom of expression was a main instrument to halt violence against women and all forms of discrimination.

Mr O’Flaherty stated that ‘rarely can there have been so unachieved a UN goal’ as the 2005-deadline. He emphasised that the issue had been a dominant preoccupation of the Human Rights Committee, which, in the 2005-2008 period, had reviewed the periodic reports of 50 States and had raised issues of women’s inequality before the law and related discrimination concerns with 47 of those States. He highlighted that the Committee had identified 133 specific concerns, including: discriminatory laws, such as laws on legal guardianship of unmarried women by men, inheritance, and polygamy; failure by States to address discriminatory customary law, such as persistence of ‘bride price’ and female genital mutilation; discriminatory gaps in the laws themselves, such as persistence of burden of proof for rape on the victims, failure to address rape, marital rape and approaches to tackling trafficking; and discriminatory enforcement of the law, such as the persistence of banned customary practices such as honour crimes. He also addressed the ‘inter-sectoriality’ of the problems, such as the interplay between discrimination and poverty, discrimination and the situation of indigenous people, and discrimination and experiences of the girl child. In addressing the question on how the treaty bodies could respond to these issues and whether there was enough law, he underscored that ‘there is plenty of law’, and that, for example, the *International Covenant on Civil and Political Rights* (ICCPR) is ‘replete with sturdy provisions’ which can address issues of inequality before the law and, more generally, discrimination against women. Furthermore, he highlighted the importance of the new General Comment 20 on non-discrimination by the Committee on Economic, Social and Cultural Rights, where the Committee has said that ‘the notion of the prohibited ground of sex has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles’. He added that this new General Comment raised the issue of whether the other treaty bodies would need to revisit their General Comments on the issue of discrimination against women.

Ms Patten said that 30 years after the adoption of CEDAW many States were still pervasively retaining many discriminatory laws, which indicated that the pace of reform was far too slow and that it was ‘time to act because women cannot wait’.

### Opening comments from the panel: Part II

The second part of the panel discussion presented a wider perspective on equality before the law from academia and civil society.

The second expert panel was made up of:

- Ms Maha Abu-Dayyeh Shamas, Civil Society Representative
- Ms Ratna Kapur, Director of the Centre for Feminist Legal Research
- Ms Marianne Mollmann, Advocacy Director for Human Rights Watch’s Women’s Rights Division
- Ms Yakin Ertürk, Special Rapporteur on Violence against Women, its Causes and Consequences
- Ms Pramila Patten, Member of the CEDAW Committee

Ms Maha Abu-Dayyeh Shamas, a civil society representative, spoke about the difficulties Palestinian women face in regard to their national law, which regards domestic violence as a family matter and therefore was protected from government intervention, and gives women the right to participate actively but not equally in social and economic affairs. Ms Shamas expressed the view that signing on to a principle, in this case the *Convention on the Elimination of all forms of Discrimination against women* (CEDAW) was not sufficient, and suggested the need to find a mechanism to ensure that local law did not violate women's rights.

Ms Ratna Kapur, Director of the Centre for Feminist Legal Research from India addressed the issue of equality in relation to women, stressing concern over the conflation of women's human rights with violence against women. The focus on violence against women puts them in a State of victimisation and in so doing has created a protectionist approach to women who are portrayed as weak. States that have given attention to equality among women only stop at formal equality and not substantive equality. Formal equality does not address the marginalisation of women in the political arena, which in turn does not live up to the requirements of CEDAW. In order to achieve substantive equality, Ms Kapur suggested a change in the way the issue of human trafficking is tackled and advised on the need to dismantle structural differences in the labour market, which would mean equal pay for equal value of the work done.

Ms Marianne Mollmann, Advocacy Director for Human Rights Watch's Women's Rights Division, touched upon the discriminatory laws that several States still maintain, for instance family codes where passing on nationality is only for men and married women are subject to control of their husbands, and the criminalisation of actions that are required by women, for example the use of contraception and abortions. She stated that the use of gender neutral laws, such as those enacted in Iran, are inappropriate. She concluded with a call for a gender focal point or new special procedure to ensure the elimination of these discriminatory laws.

### Interactive dialogue

A total of 53 States participated in the discussion.<sup>2</sup> Among the interesting observations were the following.

### **New special procedures mandate**

Many panellists<sup>3</sup> raised the proposal for a new special mechanism to ensure the protection of women's rights. The idea would be to create a new thematic mandate of Special Rapporteur on discrimination against women, completing and deepening the existing instruments and mandates, and in so doing close protection gaps.

Algeria, Pakistan on behalf of the Organisation of the Islamic Conference (OIC), and Egypt rejected the proposal for a new special mechanism, sighting infringement on the mandate of CEDAW, the polarisation of the system as it would be perceived as an attack against certain cultures, and the wastage of resources. Egypt did not see the necessity for a Special Rapporteur to follow-up treaty body recommendations and pointed out that no single individual would be knowledgeable enough to know about legislation in all countries of the world. The delegation suggested that the Universal Periodic Review could play a role in this instead. The Russian Federation also opposed the creation of a new mechanism, stating that 'the subject is not new', and that the Commission on the Status of Women already had a thorough study on the question of whether it was appropriate to have a Special Rapporteur on legislation which is discriminatory to women. It highlighted that, in the final analysis of this study, this idea did not receive the necessary support of the Member States of the

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<sup>2</sup> Chile (on behalf of GRULAC), India, Nigeria, Paraguay (on behalf of MERCOSUR and Associated States), Argentina, Mexico, Columbia, Norway, Czech Republic (on behalf of EU), Bahrain, Azerbaijan, Switzerland, Philippines (on behalf of ASEAN), Slovenia, Ukraine, Luxembourg, Russian Federation, Lithuania, Iceland, Turkey, Yemen, Kazakhstan, Serbia, United Arab Emirates, UK, Algeria, China, Indonesia, Germany, Bosnia and Herzegovina, South Africa, Pakistan (on behalf of the OIC), Italy, Canada, US, Egypt, Qatar, the Netherlands, Sri Lanka, Sweden, Austria, Cuba, Brazil, Congo, Thailand, Croatia, Tunisia, Iran, Vietnam, Senegal, Nepal, Chile, Morocco.

<sup>3</sup> Ms Yade, Mr Despouy, Mr O'Flaherty, Ms Patten, Ms Mollman, Ms Shamas.

Commission. It added that the Council already had a Special Rapporteur on violence against women and a Special Rapporteur on trafficking in people, including women and children, and that their mandates included the issue of discrimination.

On the other hand, Austria, Congo, Tunisia, Nigeria, Slovenia, Luxembourg and Iceland and the International Federation for Human Rights (FIDH) supported the idea of a possible new special mechanism with the view that States should receive, when required, technical support to determine laws that require review in order to ensure the elimination of discrimination against women. Germany supported the implementation of a new mechanism, as long as complementarity with other mechanisms was secured. It added that without political will, none of the mechanisms will work. The Czech Republic (on behalf of the European Union) noted that creating a new mandate was ‘worth considering’, while Norway, the Czech Republic (on behalf of the EU), and Switzerland asked the panel questions about the synergies and the complementarity between the UN system, in particular CEDAW, and a possible new mechanism.

In their replies, some panellists again reiterated the call for a special mechanism. Ms Patten said that such a mechanism could complement CEDAW, with CEDAW providing a legal framework and the new mechanism generating momentum for reform. She added that, for example, by compiling a global index of discriminatory laws still in force, a new mechanism could facilitate the exchange of best practices and model legislation. She added that the special machinery would promote exchange of good practices, capacity building and technical assistance for States in repealing discriminatory laws. The independent special mechanism would build on the concluding observations of the CEDAW Committee and follow up with State parties and address other States that are not party to the Convention. Mr O’Flaherty noted that the experience to date showed that complementarity, when carefully constructed, could work to the benefit of the system. He also argued that more experts on this issue were needed to be elected to the treaty bodies, and that the representation of women in the treaty bodies was ‘unacceptably low’.

In response to the concerns communicated by Pakistan, Ms Kapur stressed that the targeting of specific countries was unacceptable and the creation of such a mechanism would expose the myth that certain countries and cultures have no blemishes in regard to women’s equality rights. She pointed out that the CEDAW Committee met with States only once every five years and a new Special Rapporteur could be used to draw attention to the distinction between formal and substantive equality of women.

### **Role of the UPR**

Several panellists<sup>4</sup> and States<sup>5</sup> addressed the issue of how the UPR process could complement the work of other UN mechanisms, especially the work of CEDAW<sup>6</sup>, in addressing discrimination against women. Chile (on behalf of GRULAC) asked what criteria the panel recommended to be used during the UPR to evaluate progress made by States. In support of the proposal, the Netherlands referred to the UPR as a strong instrument for the improvement of human rights standards and stressed its ability to play an important role in the elimination of laws that discriminate against women, through follow-up to UPR recommendations and follow-up to CEDAW and other treaty body recommendations. Austria explained that the specific nature of a peer review of the UPR process constitutes an important forum to highlight problems and exchange best practices with a view to further equality between women and men.

In replying, Ms Patten stated that the UPR could play a more significant role in combating discrimination against women, and that CEDAW regards the UPR process as a strong ally. She added that the UPR process would gain significantly in improving collaboration with non-governmental organisation and the UN agencies in that process. Ms Ertürk stressed that the UPR should take gender issues as one of the criteria in the review.

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<sup>4</sup> Mr Despouy, Ms Ertürk, Ms Patten, Mr O’Flaherty.

<sup>5</sup> Chile (on behalf of GRULAC), Turkey, UK, the Netherlands, Austria, Egypt

<sup>6</sup> Austria, Egypt, the Netherlands, Mr O’Flaherty

Mr O’Flaherty supported the effectiveness of the role of the UPR process as an opportunity for discussion of States’ human rights obligations and ratification of treaties after a national consultative process has taken place.

## Education

The education policy of States has the fundamental ability to bring a necessary cultural change so that society might become equal for women and men. Brazil was of the view that to ensure women are respected in their right to education, it is necessary to combat discrimination in all forms, which affects access to education as well as performance in school. Effective combating of school drop-outs for girls, review of laws that hindered access to education for women, and the provision of professional training centres for young mothers were some of the suggestions made by State parties and NGOs to ensure access to education for girls and women.<sup>7</sup>

## Conclusion

Before the closing remarks were made, Ms Patten acknowledged the lack of funding and technical difficulties faced by States in improving their legislation to eliminate discrimination against women. Ms Patten reiterated that a possible new special mechanism had been discussed in the 42<sup>nd</sup> session of the CEDAW meetings and would draw attention to State parties with discriminatory laws and ensure their elimination.

The President of the Council, Mr Uhomoibhi, closed the discussion by highlighting the political will shown from member States, the OHCHR and other stakeholders to face up to the challenges ahead to make equality of women before the law a reality. He stressed the need for more to be done to advance this important agenda and restated the specific call by several States for a special mechanism to address legalisation related to equality of women.

## Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council’s proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to [information@ishr.ch](mailto:information@ishr.ch).
- Oral Statements made at the Council, as well as other informal documents and draft resolutions are available on the ‘OHCHR extranet’ at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: ‘hrc extranet’ Password: ‘1session’.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

*NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.*

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<sup>7</sup> Canada, Congo, Chile and the Worldwide Organisation for Women

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