

General Recommendation 33 of the UN Committee on the Elimination of Discrimination Against Women (CEDAW)

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Ladies and Gentlemen,

It is a great honour to present to you the new General Recommendation no 33 of the CEDAW Committee on Women's access to justice. Indeed, at its July 2015 session, the Committee adopted the final text of the General Recommendation, after 4 years of work. Let me take you through the story behind General Recommendation No. 33, into its structure and content including into some special concerns, before arriving at my conclusion.

A. The story behind GR No. 33

A.1. General Recommendations, in general

The competence to adopt General Recommendations is found in Art. 21 Para. 1 of the Convention. The CEDAW Committee adopts General Recommendations based on its analysis of implementation problems of the Convention on the Elimination of All Forms of Discrimination Against Women that it identifies in the reporting process by State parties and in the procedures under the Optional Protocol, that is individual communications and inquiries. General Recommendations give authoritative guidance to State parties and other stakeholders on the Convention, on how to understand, interpret and implement its 16 substantive articles. They therefore help State parties to harmonize their national legislation with the Convention and to take the practical measures needed, including allocation of resources, to ensure the rights and respect the duties concerned. In the course of the years, General Recommendation's have become longer and more detailed.

A.2. The CEDAW Committee and the issue of access to justice

Since the beginning of its work, the Committee has confronted the issue of access to justice, based principally on Art. 2, 15 and 16 of the Convention. In each of its Concluding Observations and Recommendations, the Committee addresses access to justice in one or the other of its numerous aspects. A search regarding the CEDAW Committee in the Universal Human Rights Index of the Office of the High Commissioner for Human Rights¹, provides 166 entries under the terms "women's access to justice", 186 under "legal aid", 9 under "women's human rights defenders", 106 under "courts" while "awareness of their rights" by women will bring 261 entries, and "legal literacy" 81.

The Committee has also addressed various aspects of access to justice in previous General Recommendations², such as GR 19 on violence against women, GR 24 on women and health, GR 28

¹ <http://uhri.ohchr.org/en/>, as accessed in August 2015

² See in particular such as GR 19 on violence against women, GR 28 on the core obligations of State parties in relation to Art. 2 of the Convention, GR 21 and 29 dealing with marriage and family law, GR 30 on women in conflict situations and GR 32 on women, asylum and statelessness, <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

on the core obligations of State parties in relation to Art. 2 of the Convention, GR 21 and 29 dealing with marriage and family law, GR 30 on women in conflict situations, GR 31 on harmful practices (jointly with the Committee on the Rights of the Child) and GR 32 on women, asylum and statelessness.

In addition, practically all the individual communications that were accepted by the Committee illustrate difficulties encountered in accessing justice³.

A.3. The process leading to General Recommendation No. 33

The work was initiated and led by our Brazilian colleague, Professor Silvia Pimentel, a law professor at the University of Sao Paulo. She came up with the proposal and a first written contribution by a group of Latin American women lawyers, and human rights activists. The Committee decided in plenary to embark on a General Recommendation. It then formed a Working Group. A concept note was placed on our homepage. A half-day of general discussion was held in February 2013. We received over 50 written contributions, and there were almost 20 oral ones.

The drafting of the General Recommendation itself started in the spring of 2013. The Working Group worked during the following sessions and inter-sessionally on the Draft. The text was finalized in July 2015 and adopted in plenary. This process is the usual one followed by the Committee for the adoption of General Recommendations.

A.4. The challenge of drafting the General Recommendation on Access to justice

As for other General Recommendation's, the Committee had to come up with a text of universal validity while covering very different situations as well. Indeed, as the Committee reviews the situation of the 189 countries that have ratified the Convention, it is faced with different legal and justice systems, as well as different political, economic and social situations, all impacting on women's access to justice.

B. Structure and content of General Recommendation 33

In line with the Committee's principled position on substantive equality deriving from the Convention, the General Recommendation aims at guaranteeing a substantive right to access justice, not only a formal right to do so.

We looked for a structure that would enable us to embrace the diversity of situations and to group the common features of justice systems and of the obstacles women face as well as the ways these obstacles can be overcome, while recognizing the need for a separate treatment of a number of issues. The General Recommendation therefore has 6 parts.

³ <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Jurisprudence.aspx> and <http://juris.ohchr.org/en/Home/Index/>, as well as <https://opcedaw.wordpress.com/communications>

B.1. Part I (§1-12)

Part I contains the “Introduction and scope” of General Recommendation 33. It analyses State parties’ obligation to overcome the obstacles to women’s access to justice, including the existence of discriminatory substantive and procedural provisions, ignorance of their rights by women, poverty, isolation, gender stereotypes and bias against women in the justice system, plural legal systems. The substantive approach has implications in particular on the availability and accessibility of courts, the quality and accountability of the justice system, capacity-building and education for human rights, legal aid and representation before the justice system by competent and dedicated advocates for women’s claims and disputes, and the provision of remedies. The Introduction underlines that “Effective access to justice optimizes the emancipatory and transformative potential of law”.

B.2. Part II (§13-38)

Part II is devoted to “General issues and recommendations on women’s access to justice”. It is the longest part in the General Recommendation. In it, we address the elements that are common to all State parties.

The Committee has identified in Letter A the 6 components that are key to ensuring women’s access to justice. Justiciability means that laws and practical measures ensure access to and gender responsiveness of the justice system. Availability means the existence of all the needed infrastructures and personnels, courts, police stations, etc. and their presence over the whole territory of State parties. Accessibility covers a wide range of issues, from the removal of economic and linguistic barriers to justice to establishing one stop centers, and catering in particular to the rights of illiterate, rural women, and women with disabilities, etc. The good quality of the justice system concerns both the justice process, the decisions rendered and their implementation: it is measured on the international standards of competence, efficiency, independence and impartiality and needs evidentiary rules, investigations and proceedings that are free of gender stereotyping against women. Remedies should be appropriate, timely, and commensurate with the harm suffered. Finally, the accountability of justice systems means that women’s access to justice will be monitored, that data will be collected on a variety of indicators, qualitative studies and critical gender analysis will be conducted and corrections brought when needed.

Letter B addresses discriminatory laws, that can be substantive laws as well as procedural laws, and practices that entail discrimination against women; these laws and practices need to be modified and/or abolished such as “procedures that exclude or accord inferior status to the testimony of women” (Para.25 (a) (iv)).

Letter C deals with a main obstacle denying women access to justice, in other words, stereotypes and gender bias in the justice system. Capacity building of the actors of the justice system (judges, prosecutors, lawyers, law enforcement officers) therefore receives a lot of attention and is extended also to other actors, such as health professionals and social workers who often interact with the justice system. Overcoming these stereotypes and bias is of paramount importance to ensure

women's access to justice, as practically all the individual communications that the Committee admitted have shown⁴.

Letter D is devoted to issues of education and awareness raising on the impact of stereotypes and the need for education on the rights of women, including their right to claim for redress, among the general public, women and men, girls and boys (D1). The role that civil society, the media and information and communication technologies ICT's can play in education on women's rights, their access to justice and the overcoming of gender stereotypes is evoked in D2.

The presence, absence or limitations of legal aid and public defence in all fields of law and before all types of justice mechanisms, bodies and authorities have direct implications on women's access to justice. They are addressed in letter E, for instance information that free or low-cost legal aid, advice and representation exist, or the need for collaboration with NGO's in providing such services.

Part II ends with Letter F concerning the crucial question of Resources, human, financial and technical, which State parties should provide to enable the justice system to operate and deliver its mandate. For instance, violence against women is often not properly investigated, prosecuted, and a fortiori punished, due to lack of trained forensic personnel. As an extreme example, we were once confronted with a State party in which only in the capital city did judges have hard copies of the main codes, in particular Civil and family Code and Criminal code! Especially in conflict and post conflict situations, the complete collapse of the justice system is one of the main obstacles to the re-establishment of civil peace. This is the reason why we recommend requesting the support of the international community to build or rebuild the justice system, including courts and prisons, training or retraining of all justice actors, etc.

B.3. Part III (§39-53)

Part III contains Recommendations for specific areas of law, such as constitutional, civil, family, criminal, labour and social law, and considers special challenges for each. For instance Letter A on Constitutional law invites State parties to adopt "explicit constitutional protection for formal and substantive equality and non discrimination in the public and private spheres, including all matters of personal status, family, marriage and inheritance law, and across all areas of law". This aims at increasing the protection of women's access to justice by giving them the constitutional basis on which to base their claims and addressing one of the main obstacles in countries with plural legal systems.

Another example in Letter D on Criminal law deals with prevention of secondary victimization of women "in their interaction with law enforcement and judicial authorities". Indeed, the risk of secondary victimization prevents many women from defending themselves against criminal acts, in particular gender-based violence by male perpetrators, especially male family members, husbands, partners, fathers, etc.

⁴ CEDAW/C/46/D/18/2008; CEDAW/C/57/D/34/2011 ; CEDAW/C/49/D/20/2008; CEDAW/C/51/D/28/2010 ; CEDAW/C/58/D/47/2012

B.4. Part IV (§54-64)

Part IV deals with Recommendations for specific mechanisms including special courts, tribunals and commissions dealing with the human rights violations suffered by women in conflict and post conflict situations. It refers to General Recommendation 30 on those issues. Part IV also addresses the over-frequent recourse to mediation and conciliation procedures, in family and gender-based violence cases. The Committee is aware of the power imbalance between the parties and of the ensuing risk of depriving women of the normal legal remedies any other claimant would be able to rely on, due to the systematic recourse to mediation and or/conciliation. This risk is often even higher when women have their cases resolved by religious, indigenous or community authorities.

Part IV also encourages State parties to develop national human rights institutions and ombuds offices, to expand the “possibilities for women to gain access to justice”.

B.5. Part V (§65-66)

Part V deals with Withdrawal of reservations to the Convention. This short part tackles nonetheless a central issue. Many countries, especially those with plural legal systems, have made sweeping reservations to articles 2, 15 and 16, which are the key articles regarding women’s right of access to justice. The CEDAW Convention unfortunately beats the records for the extent and number of reservations to key articles of UN human rights conventions, but this has not discouraged the Committee. Indeed, we always ask State parties reporting before us where they stand with their reservations, whether they intend to withdraw them, or at least narrow them down and what obstacles they face. General Recommendation 33 will support our questioning even more now that we have systematically detailed the obligations of State parties regarding women’s access to justice.

B.6. Part VI (§67-68)

The last part, Part VI, invites State parties that have not yet ratified the 1999 Optional Protocol to the Convention to ratify it, so that the Committee can receive individual communications (art. 1-7) and conduct inquiries (art. 8-10). So far, 105 countries have ratified the Optional Protocol, about 55% of those that have ratified the Convention.

C. Conclusion

General Recommendation no. 33 aims at supporting State parties and other stakeholders to establish, maintain and monitor well functioning justice systems. These systems are to, in a gender sensitive manner and with gender competence, effectively, professionally, within reasonable time and cost, bring resolution to all the kinds of legal disputes, claims and cases that women can be involved in as claimants, defenders, witnesses, or any other capacity, and ensure the provision of remedies and their implementation.

For this, awareness raising of women and men on women’s rights and their right to claim justice, capacity building of all the actors of the justice system, judges, prosecutors, police officers, etc., and protection of human rights defenders are needed. Gender-sensitive data collection and gender-sensitive analysis of the data collected are essential. Critical gender analysis of decisions rendered, judicial proceedings, authorities involved, participation of women in them, legal reasoning followed and assumptions made, remedies offered and sanctions imposed, should be regularly conducted.

A sufficient budget for the justice system, participation of women in the justice system as judges, prosecutors, etc., proper infrastructures, buildings, equipment, are also key elements.

Ensuring that the justice system respects gender equality and non-discrimination on the basis of sex and gender in the access to justice, and that it addresses multiple and intersectional discrimination, means that there is good governance of the justice system across board and as a whole.

Failing that, State parties have not fulfilled their duty to provide access to justice to women on par with men, in a non-discriminatory fashion and to empower women thanks to the law and the justice system.