

**III. TRENDS REGARDING THE INTEGRATION OF A GENDER
PERSPECTIVE INTO THE WORK OF
UNITED NATIONS HUMAN RIGHTS TREATY BODIES ***

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I. Introduction

1. During their eighth meeting, held at Geneva from 15 to 19 September 1997, the persons chairing the United Nations human rights treaty bodies invited the Division for the Advancement of Women to prepare a background paper analysing the measures that have been and should be taken by the treaty bodies in order to integrate gender perspectives into their work.¹ The General Assembly, in resolution 52/118 of 12 December 1997, endorsed the request for the study, to be used by the United Nations High Commissioner for Human Rights and the human rights treaty bodies as a guide to incorporating gender perspectives into their work. The Commission on Human Rights, in its resolution 1998/27 of 17 April 1998, also welcomed the proposed study. The present report has been prepared in response to these requests.

2. The report consists of two main parts. The first, on background and context, sets the context within which attention to gender by the human rights treaty bodies is to be considered. To that end, recent developments within the United Nations system to increase attention to the human rights of women and the gender dimensions of human rights are reviewed. Conceptual aspects of the protection and promotion of human rights from a gender perspective are also examined in this part of the report.

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Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women *de jure* and *de facto* in their reports. ... Steps should also be taken ... to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses.²

6. Since their fifth meeting in September 1994, in follow-up to a recommendation by the Commission on the Status of Women,³ the integration of a gender perspective in the work of the treaty bodies has been a regular theme of the meetings of the chairpersons of the human rights treaty bodies. The chairpersons have stated their support for the relevant recommendations contained in the Vienna Declaration and Programme of Action and have proposed a number of recommendations for action by each treaty body in order to effectively integrate

Rights. Experts from all of the human rights treaty bodies attended the meeting, as did representatives of the United Nations agencies, non-governmental organizations, as well as other experts and observers. It was the first time that a group of this nature had met to discuss the interpretation of women's rights relating to a particular theme. The meeting formulated 32 recommendations for improving women's health rights, several of which focused directly upon measures to be taken by the human rights treaty bodies.¹³

12. The United Nations Population Fund/Division for the Advancement of Women/Office of the United Nations High Commissioner for Human Rights round table on human rights approaches to women's health is indicative of the growing trend among entities of the United Nations system to emphasize a human rights X or rights-based X approach to planning and programming.¹⁴ This trend was also apparent in a special discussion of senior United Nations officials at the coordination segment on A follow-up to and implementation of the Vienna Declaration and Programme of Action, held by the Economic and Social Council in July 1998.¹⁵

13. In response to the increased emphasis on human rights throughout the United Nations system, and recognizing that women's enjoyment of human rights is conditioned by their gender roles, the Administrative Committee on Coordination Inter-Agency Committee on

women=s inequality. A specific policy, strategy or measure is then developed, frequently by a women-specific machinery, to address the issue. The mainstreaming approach broadens a general policy or strategy in any sector to take into account considerations of gender with a view to achieving gender equality.²⁴ In terms of human rights, it requires an approach to rights and freedoms that accounts for gender-based differences.

25. A dual strategy X attention to women-specific issues by women-specific machinery, and a gender approach by mainstream mechanisms X reinforces an understanding that gender equality must be addressed as a strategic objective by society as a whole, rather than being

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in 1995, the Committee identified the allegations of ill-treatment of foreign workers, including women domestic servants of foreign origin, as a principal subject of concern, and recommended that the State party show the utmost diligence in preventing acts of ill-treatment being committed against foreign workers, especially foreign women domestic servants, and take all appropriate measures to ensure that they are not subjected to any racial discrimination.³¹

35. These observations indicate that in the States parties concerned, the Committee clearly identified the two overlapping elements contributing to the discrimination identified. The fact that they were women meant that the workers were more likely to be employed in domestic service. The fact that they were foreign domestic workers made them particularly vulnerable to abuse.

36. In considering the report of the former Yugoslav Republic of Macedonia,³² the Committee expressed concern over the low levels of participation of Albanian girls in rural areas in secondary and higher education. In so doing, the Committee identified several factors leading to the discrimination, namely nationality and location in rural areas, in conjunction with gender.

37. In several concluding observations, the Committee addressed the persistence of dual legal systems in the area of personal status law such as marriage, inheritance and succession.³³ While the Committee noted that this can lead to unequal treatment between Blacks and Whites, or cause serious discrepancies in the system applicable to white, coloured and black people under existing law, the Committee did not go further and inquire into the situation of women compared to that of men in specified groups.

38. There are instances where Committee members have addressed the situation of women per se in the reporting State rather than the situation of women of a specified group.³⁴

39. So far, the Committee has adopted 23 general recommendations.³⁵ They address issues such as refugee and displaced persons, the rights of indigenous peoples, training of law enforcement officials in the protection of human rights, the situation on non-nationals, and paragraph 1 of article 1 (the Convention's definition of racial discrimination), all of which are of considerable relevance for women and have clear gender dimensions. No recommendation expressly refers to gender as a factor in the issue, or right, addressed. General

3. General recommendations

42. The Committee has recognized in some cases that when considering racial/ethnic discrimination, a range of factors including gender, should be considered. The main task facing the Committee now is to apply this methodology in a more consistent and systematic manner with regard to all provisions of the Convention. The following is an indicative list of issues which the Committee may wish to consider:

(a) The extent to which remedies, such as compensation, are available for the types of discrimination that women of the specified group suffer and the extent to which these women are de facto able to access complaint mechanisms and remedies;

(b) The steps taken to ensure that women of the specified groups are informed of their rights;

(c) The extent to which the legislative prohibitions of racial discrimination as defined by the Convention are sensitive to gender-based acts of racial discrimination;

(d) The extent to which investigatory mechanisms accord investigation of racial discrimination against women equal priority as acts of racial discrimination against men;

(e) Request that all data provided on racial/ethnic discrimination against women be made available to the Committee.

its recent sessions, the Committee has regularly used gender-inclusive language (references are to Apersons≡, Avictims≡, Acitizens≡).

2. Constructive dialogue and concluding comments

46. A review of the Committee=s work since late 1993, indicates that the major areas addressed by the Committee in its concluding comments include: remedies for victims of torture including compensation and rehabilitation; legislative provisions, including definitions of the offences; specific methods of

would act as thematic rapporteur on issues relating to gender.⁴⁴

5. The Committee's inquiry procedure

53. The Committee's two published reports under its article 20 (inquiry) procedure were reviewed.⁴⁵ In the case of Turkey, the Committee included a recommendation that women prisoners be transferred from a particular prison to another. The body of the report, however, provides no further indication that gender-based torture was an issue raised by the Committee. No reference to gender issues was made in the report on Egypt.

6. Next steps for the Committee against Torture

54. Committee members have shown understanding of the fact that women are subjected to gender-specific forms of torture and ill-treatment and have raised pertinent gender issues during the constructive dialogue with States parties. So far, such concerns have not been reflected in the Committee's concluding comments. However, since the Committee's summary records are much less accessible and less widely distributed than its concluding comments, the Committee's gender-specific concerns receive substantially less visibility than other matters addressed by the Committee in its concluding comments. There is now also ample evidence that women are frequently subjected to sexual violence, including rape, in situations of conflict, especially armed conflict. Opportunities could be sought to raise such violations not only during the dialogue, but also in the concluding comments.

55. The Committee has the opportunity to expand the lines of inquiry on gender-specific issues that fall within the scope of the Convention. The following is an indicative list of issues which the Committee could pursue:

(a) The extent to which legislative prohibitions of torture cover gender-based acts such as sexual violence, genital mutilation,

rights recognized therein apply to individuals without distinction on the basis of, *inter alia*,

measures against violence against women and by ensuring access to safe contraception.⁵⁶

65. In other instances, the Committee has identified discrimination against women in conjunction with laws which may restrict the right to leave the country for spouses in the absence of the consent of the husband.⁵⁷ While the Committee considered this (and other) provisions to be incompatible with articles 3 (and 23) of the Covenant, it did not address the relationship of article 3 to article 12 (freedom of movement).

3. General comments

66. So far, the Committee has adopted 26 general comments. General comment 18 addresses non-discrimination, and reference to gender issues are included in general comment 4 (on article 3), and 19 (on marriage and the family).

67. The Committee has acknowledged that more remains to be done in order to reflect gender considerations in its concluding comments. One of the steps taken in this regard is the Committee's decision to update its general comment on article 3, concerning women's equal right to the enjoyment of all rights covered by the Covenant. At the same time, the Committee's growing sensitivity to the impact of gender on the enjoyment by women of their human rights remains to be reflected more systematically in its general comments. Given the Committee's own experience and the simultaneous elaboration by the Committee on the Elimination of Discrimination against Women of a general comment on articles 7 and 8 (women in public life), the elaboration of general comment 25 (on article 25, public life) provided such an opportunity. The Committee's ongoing work on a general comment on article 12 could reflect gender issues raised by the Committee in the past (Lebanon). Revision of past general comments could be considered in order to reflect the Committee's pronouncements on, for example, women's right to life (article 6) and freedom from torture (article 7).

4. Interaction with the Committee on the Elimination of Discrimination against Women

68. The Committee has designated one of its members to follow, on a regular basis, the work of the Committee on the Elimination of Discrimination against Women (currently Ms. Elizabeth Evatt), and to report thereon to the Human Rights Committee. Information about the work of the Committee on the Elimination of Discrimination against Women is also provided to the Human Rights Committee by its secretariat.⁵⁸

5. Next steps for the Human Rights Committee

69. The Committee regularly addresses many gender-specific concerns in conjunction with the rights protected by the International Covenant. The Committee now has the opportunity to explore factors that impact particularly on women's enjoyment of human rights, including through action by private actors and where the State has a due diligence obligation to ensure equal enjoyment of rights by women.

70. Some of the further issues the Committee could consider include the following:

(a) The extent to which obstacles to the right to life include threats that are particular to women, such as harmful traditional and customary practices or threats stemming from women's reproductive function, such as reproductive health care, along the lines of the concluding comments of Peru and Colombia;

(b) The extent to which sexual abuse, rape and violence against women committed as acts of war or in armed conflict constitute torture and/or ill-treatment;

(c) The extent to which de facto restrictions are placed by family members on women=

(d) Restrictions on women=s rights in public life, including requirements that women receive consent for political participation from husbands or male relatives; harassment of politically active women;

(e) Persecution of women because of family relationships;

(f) Recognition of persecution on the basis of sexual abuse, harassment, genital mutilation and other gender-based oppression;

(g) Respect for women=s reproductive rights as a privacy issue;

(h) Relationship between freedom of religion and, in particular, the right to manifest religious beliefs, and women=s right to equality;

(i) Freedom of expression issues, including censorship imposed on women writers or of materials and information on equality rights;

(j) Limits on the production and distribution of family planning information and limitation, including by private actors, of women=s access to such information;

parties.⁶⁰ It was also represented at the

prejudice.⁶² It has also identified women=s subordinate role in society and many forms of

rights protected by the Covenant. In its statement

discuss working methods and the development of concrete social indicators on child rights and women's rights. A workshop to examine ways to coordinate action to promote the two conventions was also held. The United Nations Children's Fund has convened several meetings to address issues of common interest in the framework of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.⁷³

5. Next steps for the Committee on the Rights of the Child

96. Some of the further issues the Committee could consider include the following:

(a) Reproductive rights of girls, including access to family planning and contraception, and information thereon;

(b) Juvenile justice issues affecting girls, including issues relating to abortion;

(c) Needs of particular groups of girls, such as refugee and displaced girls;

(d) Health rights of girls, including nutrition, protection from sexually transmitted diseases, human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS);

(e) The situation of working girls, including conditions of work, forced labour/slavery, protection from exploitation and sex work.

IV. Conclusions

97. The review of the work of the five mainstream treaty bodies in the five years since the adoption of the Vienna Declaration and Programme of Action indicates that attention to the situation of women in the framework of guarantees of equal enjoyment of rights and of non-discrimination is being broadly achieved, and thus the mandate of the Vienna Declaration and Programme of Action is being implemented to some extent. This is exemplified in areas such as discrimination against women in education or employment, or women's rights in marriage and the family. There is also growing attention to situations that are specific to women, in particular violence against women in its many manifestations. However, the impact of these specific situations of women on the enjoyment of other rights protected under the same instrument (e.g., freedom of movement, or work-related rights) remain to be further developed.

98. Awareness of the gendered nature of human rights is developing (for example in elaborating gender factors of the right to life, or identification of certain measures that lead to discrimination against a specified group of women), but there is not yet a clear acknowledgement or understanding that gender is an important dimension in defining the substantive nature of rights. This remains particularly so in a context where an explicit non-discrimination guarantee is absent, such as in the conceptualization of torture or of gender aspects in racial discrimination. Even where non-discrimination guarantees of human rights are monitored, the gendered nature of the rights themselves remain largely to be explored (for example with regard to defining the right to work, housing, an adequate standard of living, freedom of movement, or freedom of expression). Human rights treaty bodies can make a major contribution in this regard through their constructive dialogue with States parties to assess compliance with treaty obligations and through the interpretation of human rights norms in general comments/recommendations and jurisprudence on the basis of individual complaints.

99. States parties= obligations to prevent and redress violations of women=s rights by private persons, such as husbands or employers, also need to be further clarified and expanded. Women=s different life experiences, both in private and in public life, such as in employment, education or political life, need to be assessed more explicitly to identify obstacles to the enjoyment of rights. In this regard, treaty bodies have an opportunity to bring greater clarity to States parties= obligations to respect, protect and promote and fulfil human rights for all.

100. There is also a need to strengthen the understanding of women=s enjoyment of rights in the context and within the scope of particular treaties. While the Convention on the Elimination of Racial Discrimination and the Convention against Torture or Other Cruel or Inhuman Treatment or Punishment may have apparent limitations in this regard as they do not refer specifically to their application without distinction on the basis of sex, they, like the other treaties, are grounded in the Universal Declaration of Human Rights. In this regard, rather than assessing the situation of women per se and focusing on women-specific issues, treaty bodies have the opportunity to assess enjoyment of rights and of factors and difficulties impeding implementation of rights for women and men, respectively, within the scope of a particular treaty. For example, an assessment of the overall situation of women in a reporting State under the Convention on the Elimination of Racial Discrimination arguably goes beyond the scope of the Convention, but assessing factors that might constitute additional obstacles to women of a specified racial group and not encountered by women of another group would be within the Committee=s responsibilities. A particular study of the intersection of race and gender could assist in clarifying these factors.

101. In their reporting guidelines, general comments and concluding observations/comments, several treaty bodies require that data and information be disaggregated by sex. Such information can greatly facilitate a prima facie assessment of the position of women and men with regard to particular rights or issues and thus give an initial indication of difference and potential disadvantage. While remedying the lack of such

data is primarily a responsibility of States parties, the explicit request for such data and related analysis by the Committees, may provide an incentive for Governments to provide such information in a more systematic manner.

V. Recommendations for further action

102. The human rights treaty bodies have specific functions within the overall human rights activities of the United Nations. Strategies for further strengthening gender mainstreaming need to take these into account, including in terms of accountability. Progress requires action in several different areas. The following recommendations are addressed primarily to the treaty bodies themselves, but also to States parties, the Committee secretariats, entities of the United Nations system and non-governmental organizations.

103. The explicit commitment of the Committees to contributing to the achievement of gender equality is a first prerequisite, and is expressed in actions already taken by most of the treaty bodies in follow-up to the Vienna Declaration and Programme of Action, the Fourth World Conference on Women and the recommendations of the chairpersons. To different degrees, such steps and measures remain of an ad hoc nature and indicate that there are differing views within and among the Committees of the appropriateness of such actions. There remains a need for ongoing discussion by the treaty bodies on the relevance of gender in international human rights law so that efforts can be systematized and gender mainstreaming can proceed in a predictable and sustained manner.

104. It is recommended that treaty bodies review actions already taken with regard to the amendment of reporting guidelines, the preparation of lists of issues and of concluding comments/observations, to ensure that explicit attention is paid, in a systematic manner, to gender dimensions in the consideration of the reports of States parties. Treaty bodies could also adopt explicit decisions on mainstreaming and identify specific gender-related facts to guide

their work, for example in their general comments/recommendations.

105. In requesting data and information disaggregated by sex, and specific information with regard to the situation of women in reporting guidelines, lists of issues and during oral questioning it is recommended that this be not limited to separate, women-specific sections or presented primarily in conjunction with women's reproductive functions or responsibilities for children. Rather, a mainstreaming approach requires that particular rights, and measures taken for their implementation be assessed with regard to women's and men's ability to benefit from these rights and the particular measures taken for their implementation. Interaction with States parties concerning such information in the lists of issues and in the oral questions should be pursued in a more systematic manner.

106. The language used by Committees is also relevant. Consistent use of masculine pronouns or of situations primarily experienced by men suggests lack of concern for women's enjoyment of human rights.

107. Drawing explicit linkages between incompatibility of certain actions or denial of rights for women and rights in

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117.States parties should provide information disaggregated by sex to all treaty bodies and should prepare their reports in a gender-sensitive way, ensuring that the factors women encounter in the enjoyment of rights are made explicit.⁷⁴ Information submitted to the Committee on the Elimination of Discrimination against Women should be adapted more systematically and submitted to other treaty bodies under relevant articles.

Notes

¹ A/52/507, para. 62.

² A/CONF.157/24 (Part I), chap. III, sect. II.B, para. 42.

³ See Commission on the Status of Women

economic, social and related fields and the integrated and coordinated implementation and follow-up of major United Nations conferences and summits, the Economic and Social Council has increased its attention to gender issues and to the mainstreaming of a gender perspective in all policies and programmes. See, for example, ECOSOC resolutions 1998/46 and E/1998/44.

²⁰ This section draws largely from the report of the Secretary-General on the thematic issues before the Commission on the Status of Women at its forty-second session, E/CN.6/1998/5, paras. 91B93, and the report of the expert group meeting APromoting women=s enjoyment of their economic and social rights≡, convened by theB

³⁴ Example of Morocco, CERD/C/SR.1021 and A/49/18, para. 217.

³⁵ HRI/GEN/1/Rev.3 and A/52/18.

³⁶ *Official Records of the General Assembly, Fifty-first Session, Supplement No. 18 (A/51/18)*, para. 626.

³⁷ Examples include the Libyan Arab Jamahiriya, CAT/C/SR.203, the United Kingdom of Great Britain and Northern Ireland, CAT/C/SR.234, Senegal, CAT/C/SR.247, and the Russian Federation, CAT/C/SR.264.

³⁸ CAT/C/SR.285.

³⁹ CAT/C/SR.284/Add.1, Ukraine.

⁴⁰ Peru, CAT/C/SR.193, Libyan Arab Jamahiriya, CAT/C/SR.201, Morocco, CAT/C/SR.203.

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Committee on the Elimination of Discrimination
against Women (E/1998/22, paras. 409 to 437).

⁷¹ E/1996/22, annex VI, para. 11.

⁷²