

**Examining the particular relevance of
the Convention on the Elimination of All Forms of
Discrimination Against Women
to the protection of women of concern to UNHCR**

Joint seminar of CEDAW Committee and UNHCR

New York, 16-17 July 2009

Summary of proceedings

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Acronyms

AGDM	Age, Gender and Diversity Mainstreaming
CDGECS	Community Development, Gender Equality and Children Section
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of Red Cross
IDP	Internally Displaced Person
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
PPLAS	Protection Policy and Legal Advice Section
SGBV	Sexual and gender-based violence
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations Populations Fund
UNHCR	United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women

Objectives, preparation and proceedings of the seminar

The seminar owed its origin to a shared interest by the CEDAW Committee (hereafter “the Committee”) and UNHCR in exploring ways of strengthening their cooperation, in order to increase the capacity of women of concern to UNHCR around the world to enjoy and exercise the rights to which they are entitled under the CEDAW¹.

The seminar was thus to focus on three main areas of collaboration:

- (i) the particular relevance of the CEDAW to women in situations of displacement, asylum, return, (re)integration or statelessness,
- (ii) ways in which UNHCR, its partners and women of concern might enhance their use of the CEDAW and of the Committee’s functions, and
- (iii) possible means of reflecting the perspectives of women and girls of concern to UNHCR, in the General Recommendations on the applicability of the CEDAW.

The planning of the seminar was entrusted by the Committee to a working group of five members.

A background paper on *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women* was prepared by Dr Edwards, Lecturer in Law and Head of the Forced Migration and Human Rights Unit of the Human Rights Law Centre of the University of Nottingham. Its aim was to provide participants with a common understanding of the linkages between the rights that the Convention seeks to protect, and the protection risks to which women of concern to UNHCR are frequently exposed.

Participants at the seminar included members of the Committee, while UNHCR was represented by its Division of International Protection Services, and by its gender advisors in the field. OHCHR played a supporting role, acting as Secretariat to the Committee. Several other United Nations and NGO partners also attended.²

Refugee and internally displaced women participated as resources persons, providing invaluable accounts of their personal experience of being displaced, and deprived of their human rights. For reasons of confidentiality, their names do not appear on the list of participants.³

The summary that follows provides a brief record of the discussions that took place, falling into four main sections:

- 1: Introduction (comprising introductory statements; presentation of the background paper; general observations on the paper);
- 2: Analysis of relevant articles of the CEDAW;

¹ See Concept Note appearing in Annex I.

² See List of Participants appearing in Annex II.

³ Their participation was facilitated by the Women’s Refugee Commission, an NGO affiliated to the International Rescue Committee.

- 3: Discussions in the two working groups;
- 4: Summary and recommendations of the seminar.

The seminar was chaired by Ms Coker-Appiah, Chairperson and member of the Committee. The two working groups were facilitated respectively by Ms Simonovic (Committee member), and by Mr Andrysek (Chief of the Protection Policy and Legal Advice Section, Division of International Protection Services, UNHCR).

1. Introduction

(a) Introductory statements

These were presented in turn by Ms Coker-Appiah, the Committee, Mr Bertrand, Director, UNHCR New York, and Mr Mokhiber, Deputy Director, OHCHR, New York.⁴

Ms Coker-Appiah emphasized that the joint seminar would be looking at effective ways of strengthening the protection available within the framework of CEDAW to women and girls in displacement, of concern to UNHCR. She insisted that despite the efforts already being made, their situation was alarming and more needed to be done. She hoped that the seminar would lead to concrete actions to improve the situation.

Mr Bertrand saw the seminar as a milestone in collective efforts to ensure that the rights of displaced and stateless women and girls were protected. He highlighted a number of common objectives shared by UNHCR and the Committee, notably that women should have equal rights to acquire, change, retain or pass on their nationality; and that violence against women should be recognized as a serious human rights violation. He also drew attention to the fact that sexual and gender-based violence could constitute persecution; and insisted on the need for refugee claims to be examined through gender-sensitive procedures. Mr Bertrand hoped that the meeting would result in guidance to all stakeholders on how they could make use of General Recommendations, and how the individual complaint mechanisms could be applied in a more strategic and effective way.

Mr Mokhiber deplored that women in displacement were frequent victims of multiple forms of discrimination, not only vis-à-vis men, but also in relation to other women in the country of asylum. He emphasized that the key legal obligation of States Parties to CEDAW was to protect the rights of all women, and hoped that the seminar would serve to strengthen the protection of women of concern to UNHCR.

(b) Presentation of the background paper

Introducing the main findings of her background paper on *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, Dr Edwards drew attention to two main thematic areas: 1) gender equality in the context of displacement; and 2) gender equality in relation to statelessness and the right to

⁴ See Annexes III, IV and V.

nationality. She explained that the paper was founded on three premises. Firstly, the principles put forward by CEDAW formed the essential elements of the international protection regime for displaced and stateless women. Secondly, displacement arising from armed conflict, persecution and/or other serious human rights violations was likely to aggravate the discrimination and inequality experienced by women. Thirdly, gender was not the only factor influencing how women and girls experienced displacement, as other identity-based characteristics could also cause discrimination.

Dr Edwards emphasized that inequality between women and men, and discrimination on the basis of sex was evident in all three stages of the displacement cycle: prior to displacement in the country of origin; during displacement including during refugee status determination procedures; and while in search of durable solutions.

She drew attention, moreover, to the fact that the right to a nationality was set out in many human rights instruments, including CEDAW's Article 9. CEDAW was thus an important tool to protect women from statelessness. However, nationality laws discriminating against women could put them at greater risk of becoming stateless, and this needed to be addressed more explicitly.

Dr Edwards favoured a broad interpretation of equality, emphasizing the need to eradicate social and cultural norms that reinforced the perception of women's inferiority to men. These efforts should go beyond effacing the symptoms, and address the root causes by including women, girls, men and boys in formulating the responses needed. Dr Edwards also reiterated the obligation under CEDAW to eliminate gender inequality in both public and private spheres. She welcomed the emphasis on linkages among civil, political, economic, social and cultural rights, as enshrined in CEDAW.

Recalling that the rights set out in the CEDAW applied throughout all three stages of displacement, Dr Edwards hoped to see strengthened cooperation between UNHCR and the Committee.

(c) Observations on the background paper

Participants welcomed the background paper and considered it a useful foundation for discussing potential synergies between the Committee and UNHCR. Although the paper had been presented to the Committee in a timely manner before the seminar, some felt that there had been insufficient time to ask questions related to its contents, or request elaborations on certain issues. It was therefore agreed to hold an extra session the second day to further discuss the background paper.

Participants expressed their appreciation for the complex issues covered in the paper, but suggested that some issues might be added, or explored more fully. They included: restrictions affecting refugee women in camps; reproductive health (including deaths of children born prematurely); lack of documentation for children; non recognition of diplomas; refugee women in detention; privacy rights; special measures for older and trafficked women.

Another issue requiring more information was that of the individual complaint mechanism enshrined in the Optional Protocol. This was particularly critical for

women seeking asylum having exhausted all domestic appeal procedures available to them, who had no access to judicial procedures in the country of asylum and who thus risked *refoulement*.

Some participants suggested the addition of a subsection on freedom of movement to address the specific situation of women living in camps, especially in countries that operated camp confinement policies and/or where limited registration was being carried out. Such practices could deprive women of asylum documentation, and result in detention and/or *refoulement*. Participants also highlighted that the protection risks of refugees living in urban areas might differ from those experienced by women in camp settings. Since UNHCR was currently working on a policy paper on urban refugees, it was suggested that this paper should reflect the main problems facing urban refugee women.

The plight of Roma refugees was also raised, since this issue was linked to minority rights, and Romas faced possible statelessness. It was observed that Bosnian Romas, for example, could not register their children partly because of the prohibitive cost. It was concluded, however, that this issue was beyond the scope of the paper.

In the course of the discussions, it was recalled that over 30 States currently had discriminatory nationality laws, and were not complying with Article 9 (2). However, several countries were in the process of amending their nationality laws. It was noted that very few countries applied *jus soli*, preferring the *jus sanguinis* approach. The decline in the use of *jus soli* in the European context, for example, was due in part to the efforts of some states to limit acquisition of nationality by children born to asylum-seekers, refugees, migrants and other women who might be pregnant when entering the country, or become pregnant during displacement/migration.

Some participants were of the opinion that the Committee should issue a General Recommendation on displacement, armed conflict and refugees. Dr Edwards noted, however, that not all refugees were fleeing armed conflict, and that a General Recommendation focusing only on this cause would exclude those fleeing political forms of persecution in repressive, autocratic or weak States, or those fleeing from other serious human rights violations.

It was explained that different legal frameworks might apply to asylum-seekers, refugees and IDPs, and this should be reflected in the paper. It was also stressed that the issues of refugees, IDPs and other persons of concern to UNHCR should not be confined to a single General Recommendation, but that their particular concerns should be integrated into other General Recommendations. The example of current discussions on the economic impact of divorce was mentioned in this context as particularly relevant to statelessness. Divorce could, indeed, result in a woman becoming stateless in situations where she had acquired nationality upon marriage to a national and the State applied discriminatory nationality laws based on the principle of “dependent nationality”.

Some diverging views were expressed concerning the understanding of Articles 2 and 1. (see below under 2(d) Equality before the law and Access to justice (Articles 1, 2(c), 3, and 15)).

It was agreed, in conclusion, that a revised version of the background paper, based on these inputs, would be issued following the seminar.⁵

2. Analysis of relevant CEDAW articles to women of concern to UNHCR

(a) Equality and non-discrimination on the basis of sex (Articles 1-5)

Introduction by Ms Lindholm-Billing, UNHCR, and Ms PN (refugee from Bhutan resettled to the US from Nepal, where she had lived in a refugee camp for 12 years).

Introducing Articles 1–5, which specify the nature and scope of the obligations of States Parties obligations towards women’s rights, Ms Lindholm-Billing observed that accessing and enjoying such rights was likely to be considerably more difficult in situations of displacement, owing inter alia to exposure to a new culture and language barriers. Persons in displacement could become targets of racism and xenophobia. A lack of privacy, further increased their vulnerability. They could also be denied access to health care and other services. Their lack of legal status and enforced idleness resulting from the absence of opportunities of finding work could lead to other socio-economic difficulties. In situations such as these, which could lead to aggravated gender inequality, it was imperative for States to ensure that women within their jurisdictions were protected by international laws, and had access to services and institutions, as stipulated in Article 2 of the CEDAW. Special measures of a temporary nature to address gender inequality and ensure that refugee women were integrated into their new societies thus needed to be promoted, such as quotas to ensure that immigrant women, including refugees, could participate in political life.

Ms PN, a refugee from Bhutan, explained how she had fled her home country with her parents in 1990, following protest rallies against discriminatory policies and the closure of schools. Together they had sought asylum in Nepal. She described the problems of wide-spread illiteracy, poverty, and domestic violence they had faced in her home country, and how many women suffered in silence. Women were also at risk of being sold to brothels, and there was an increasing spread of HIV/AIDS. Ms PN described the monotonous and frustrating life in the camp with very limited financial means. When Ms PN and her parents were resettled to the US in 2008, they found “a light at the end of the tunnel”. Ms PN appealed to all delegates to end the suffering of women, and take measures so that they could live in full dignity.

Discussion

A question was raised as to the nature of the obligation of States Parties to implement the provisions set out in the CEDAW as well as the implications of Security Council Resolutions 1325 and 1820, aimed at promoting the rights of women and girls in the context of armed conflict, peace and security. It was pointed out that women and girls of concern to UNHCR sometimes lived in remote areas, beyond the reach of

⁵ Revised edition of *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, was issued in August 2009, available at <http://www.unhcr.org/refworld/docid/4a8aa8bd2.html>.

governmental protection. It was emphasized, however, that the obligations of States Parties to CEDAW encompassed all women within their territory, without distinction. Every State Party needs to be aware that they could be held responsible for the treatment of women within their jurisdiction, regardless of their origin or legal status. It was therefore noted that the Committee needed to remind States Parties of their obligation to comply with and implement the standards set out in the Convention.

Two groups were identified as particularly vulnerable, for whom effective State protection was often lacking. The first group was that of older women, who might have little or no knowledge as to how to claim their rights, especially if they were from rural areas. These women were also likely to face special hardship when fleeing to safety, and could confront additional challenges when presenting their asylum-claims. They were also often at risk of violence. The second group was that of trafficked women, who might not be recognized as such by the recipient country. They could, however, be in need of international protection, having a well-founded fear of returning to their country of origin. Women being trafficked were not always aware of the possibility of seeking asylum, and it was important that this option should be signaled to them as part of identification and referral systems. Trafficked women could also be at risk of becoming stateless if their documents were confiscated. It was reiterated that UNHCR needs to make efforts to reflect the statelessness dimension of trafficking in its confidential comments. It was also suggested to raise this in a General Recommendation.

Some Committee members noted a lack of gender-sensitivity in the reports of the Special Representative on Internally Displaced Persons, and suggested to UNHCR to work more closely on this aspect. UNHCR explained that it had a Memorandum of Understanding with the Special Representative for Internally Displaced Persons. Although there was no systematic review of draft reports, UNHCR provided pre-mission briefings. It was acknowledged that this cooperation could be strengthened and improved. UNHCR also observed that, whereas the organization had a global mandate to protect refugees and find solutions for them, it had no such general mandate for IDPs. A number of factors determined whether or not UNHCR was involved, including a willingness on the part of the country in which persons were displaced for such an involvement. The primary responsibility remained with the authorities. In some cases they might themselves be the perpetrators of violence and human rights abuses leading to the displacement – a reality that complicated any potential intervention.

In answer to queries from participants about its efforts to ensure access women in detention, UNHCR explained that this depended on the country. The situation of persons of concern to UNHCR in detention was a core protection concern. In some cases, UNHCR had free and unhindered access, in others not. UNHCR worked closely with the International Committee of Red Cross (ICRC), and other partners, with a role in monitoring detention conditions. Asylum-seeking women should not be detained together with men, nor with persons convicted of serious crimes. UNHCR explained further that since 11 September 2001, indefinite detention had increased and the conditions of detention had deteriorated, including an increase in instances of abuse. Lack of access to detained women and their separation from their children remained major issues of concern. UNHCR needed active support in this area in order to improve the situation.

It was noted that many Roma women in Europe suffered discrimination and abuse, including forced sterilization. However, very few Romas applied for refugee status based on sterilization. An increase in the number of asylum applications made by Romas in 2008 had led to restrictions for the issue of visas for certain countries, illustrating how some countries were taking action against the right to seek asylum. It was stressed that the root causes of discrimination against Romas needed to be more firmly addressed.

A Committee member inquired why the confidential comments provided by UNHCR to the Committee were not made public. UNHCR explained that its aim was to provide precise, detailed and critical input. If the comments were made public, it could seriously jeopardize staff security and/or the ability to operate in a given country. This needed to be balanced against any gain from making the comments public, which was uncertain.

(b) Trafficking and sexual and gender-based violence (Article 6)⁶

Introduction by Ms Ngugi, UNHCR and Ms CU (IDP in Chechnya, studying in the U.S) and Ms DAO (IDP in Kenya since 2008).

Ms DAO emphasized that discrimination against women was not restricted to camps, but was a world-wide phenomenon that called for an impassioned response. She explained how, after her husband had passed away, her brother-in-law expected to inherit her, in accordance with the traditions of her culture. When she refused, she was taken by force. She was attacked by a mob in her house, and raped in front of her two children. She subsequently fled with her children, with nothing but the clothes they wore. They found refuge together with some other people. She described the extreme hardship of life in the camp, with no access to medical care, no sanitary towels, no food and no possibility to cook. There were no tents, it was raining and they were cold. At one point, she fell sick and was taken to the hospital, where she was diagnosed with HIV. Since she was breastfeeding her daughter, the baby also contracted HIV. Ms DAO said that many women suffered intensely and were waiting for the Government to intervene. Finally, the Kenya Red Cross had come to their rescue. Ms DAO stressed that women were systematically denied their rights, and appealed to the CEDAW Committee to address these issues, as many women were trapped in harsh situations and suffering in silence.

Ms CU, internally displaced in Chechnya, added that during the conflict there, it was explicitly forbidden to speak of any sexual abuse or rape that may have occurred. Despite a significant increase in violence against women, only 40% of perpetrators were convicted of their crimes. Victims of violence also risked honour killings on returning to their families. She urged the seminar to identify measures to prevent these crimes and ensure the protection of women from such violence, insisting that combating impunity was crucial. Ms CU also drew attention to the serious risks facing persons working on women's human rights in her country, including kidnapping and

⁶ Although Article 6 concerns trafficking and prostitution, it was agreed to include sexual and gender-based violence in this section.

murder. Ms CU urged the seminar participants to help address this matter, including more efforts to ensure such acts were investigated.

Discussion

The Committee members observed that personal accounts such as these underscored the importance of their work. They expressed the intensity of human tragedies in a way that no document could convey. Although people knew what was happening to women in IDP camps in Kenya, atrocities continued to occur. It was reiterated that the legal obligations of States Parties, as set out in Article 2, must apply to all women within a country's boundaries.

Participants welcomed the cooperation between UNFPA and UNHCR in humanitarian operations, including the provision of medical personnel for the treatment of rape among refugees and internally displaced persons. Challenges remained, however, such as the spread of HIV and other sexually transmitted diseases, as well as difficulties in accessing emergency contraception. Victims of trafficking often lacked access to health services due to their illegal status or lack of documentation. There was also a lack of medical personnel capable of detecting signs of sexual violence. It was noted that special attention needed to be given to indigenous and disabled women, who often faced multiple forms of discrimination, including forced sterilization.

In response to a question regarding the role of UNHCR in a situation such as the one described by Ms DAO, it was emphasized that there was an issue of clarity of mandates. In Kenya, the authorities had asked UNHCR to refrain from dealing with IDPs in their country, and requested the Red Cross to deal with them. On the other hand, UNHCR was involved in the protocol on reclaiming property for displaced women, under the framework adopted at the International Conference on the Great Lakes Region.⁷ Although the objectives of this Conference had not been fully realized, there had been close cooperation with civil society. The Association of Women Lawyers in Kenya had, for example, continued to play a key role in these efforts.

The challenges facing UNHCR in protecting victims of SGBV in Darfur was mentioned, notably cases of young women being raped while collecting firewood. The victims were subsequently ostracized from their own community, especially if they became pregnant, sometimes leading them to abandon their new-born babies. If apprehended, they would be subject to Sudanese laws and traditional justice systems. It had been observed that victims of violence often lacked access to health care because, in order to access medical services, they were required to report to the police. Moreover, they faced discriminatory practices in the application of the law and the impunity of non-State actors. UNHCR was seeking to address these issues through providing education and livelihood opportunities as tools to prevent women from becoming victims of sexual violence.

⁷ The Conference took place in Dar Es-Salaam, Tanzania, 19–20 November 2004, under the auspices of the United Nations and the African Union.

It was also emphasized that many displaced women deprived of ID and other legal documents, had no access to judicial procedures. Since such access was linked to persons being recognized before the law, participants stressed that further efforts by the Committee in this regard would be appreciated.

(c) Protection and empowerment (Articles 10-14, 16)⁸

Introduction by Ms David, UNHCR and Ms NK (refugee from Zimbabwe, granted asylum in the US) and Ms EWS (Liberian refugee in Guinea since 1990).

In this introduction, Ms David described UNHCR's efforts to empower women to protect themselves. Priority was thus being given to education, in order to help ensure equal access to primary and higher education, as well as vocational training. She also highlighted the importance of examining gender roles, and analysing changes in these roles in situations of displacement that might lead to tension and increased violence within the community. She stressed that protection cannot be undertaken in a gender-neutral manner. Gender perspectives therefore needed to be considered during the planning and implementation of assistance programmes and durable solutions and during the adjudication of asylum claims.

Ms David then explained UNHCR's Age, Gender and Diversity Mainstreaming (AGDM) strategy, and Executive Committee Conclusion 105 on Women and Girls at Risk, which sought to address inequalities existing among persons of concern, notably through empowering women and girls. She described UNHCR's two-pronged approach, which sought to mainstream age, gender and diversity, while also taking targeted action to bridge any identified gaps. UNHCR's special project - Women Leading for Livelihoods - was an example of such action, since it supported the economic empowerment of women wanting to become entrepreneurs and start small businesses. UNHCR also aimed to ensure equal and meaningful representation of women in leadership structures in camps and urban settings, providing them the opportunity to share in discussions of issues of concern to them, and influence decisions affecting them.

Ms NK, a refugee from Zimbabwe currently living in the US, described the challenges in her home country with regard to education and employment. Although in the 1980s, education had been a focus of the regime, resulting in a literacy rate of some 95%, developments over the last ten years had negatively affected the situation of women. Increased poverty had meant that families could only send one child to school and gave priority to the boy(s). Early marriage and early pregnancies were also a problem, as the legal marriage age for women was 16 years. This caused many girls, if enrolled, to drop out of school and most did not return after giving birth. Tradition restricted the role of women, and they were often encouraged or even forced to remain at home and tend to the family. In fact, women who entered the working world were seen as neglectful or greedy. Legislation allowed women to get loans, but banks often asked for the husband's authorization. This marginalization was leading women to enter the informal labour market. Ms NK also explained how her education in

⁸ These articles concern anti-discrimination measures in public and political life, international affairs, education, employment, health care, economic and social life, rural life, marriage and family life.

Zimbabwe and the degree that she had obtained was not recognized in the US, which made it very difficult for her to continue her education.

Ms EWS, a Liberian refugee living in Guinea, recalled that international protection was a temporary substitute for national protection, and that it remained the responsibility of States to protect their nationals. However, when governments were unable or unwilling to provide such protection, asylum-seekers, refugees and IDPs found themselves in vulnerable situations. She lived in an urban area and had been a victim of both sexual and economic exploitation. Her partner had left her for another woman who had been accepted for resettlement. She explained that her situation was not unique: many refugee women were exploited, abandoned, beaten or sexually abused. The only way to protect them from such harm was to empower them. She added that rather than losing hope, she had decided to turn her frustration into helping other women. She appealed to the Committee and to UNHCR to reinforce participation, economic opportunity, education, health and reproductive health services, to ensure physical security and organize integration programmes.

Discussion

Participants acknowledged that displaced women often became the sole providers for their families, although they faced particular difficulties in obtaining and keeping employment, notably due to lack of child-care and damaged family support structures. Refugees were also often denied the legal right to work and thus turned to the informal sector, where they were particularly vulnerable to exploitation. At the same time, they had unique health concerns such as lack of sanitary supplies, poor nutrition, and lack of medical support.

Participants acknowledged that, as mentioned by Ms NK, previous qualifications were not always recognized in the country of asylum. This was a general problem, but its impact was likely to be greater on women. In addition, women found themselves competing with the local workforce.

It was pointed out that under the 1951 Convention Relating to the Status of Refugees the right to work was the subject of three separate Articles (Articles 17, 18, and 19). In industrialized countries, there was a trend to grant employment rights as soon as a person has been recognized as a refugee, while such rights were not always extended to asylum-seekers. The denial of the right to work implicitly meant no social security. It was added that many governments maintained these limitations as a form of deterrence.

Participants also drew attention to differences between refugees and IDPs in enjoying and exercising their rights. These differences are often due to the fact that IDPs were nationals of the country where they found themselves, while refugees were not. Articles 10–14 of CEDAW were equally relevant to all women, regardless of their legal status. However, it was important to bear in mind that, while some rights applied without restrictions, others might be limited until status has been determined. Yet all persons under the jurisdiction of a State had basic human rights and they should be protected from violence and abuse. Participants agreed that UNHCR and the Committee should cooperate by using both frameworks (1951 Refugee Convention

and the CEDAW) to ensure the best possible application of the right to work and related rights on behalf of displaced women.

(d) Equality before the law and Access to justice (Articles 1, 2(c), 3, and 15)

Introduction by Ms Thater, UNHCR and Ms GL (refugee from Mongolia in the US).

Ms Thater recalled that access to justice, as specified in Articles 1, 2, 3 and 15 of CEDAW, was not a simple process for many victims of SGBV. She also referred to Article 14 of the International Covenant on Civil and Political Rights (ICCPR), adding that the Human Rights Committee had observed that the rights contained in this treaty were not limited to citizens of a country, but must be accessible to anyone. In addition, Article 16 of the 1951 Refugee Convention provided for free access of refugees to courts of law on the territory of all Contracting States. Arguably, the relevant provisions in the CEDAW covered access to criminal as well as administrative and civil proceedings.

She highlighted that women seeking legal assistance might have special needs, such as a female lawyer or interpreter who spoke their language. Women often faced challenges due to lack of access to courts and legal assistance, restrictions on movement, lack of transportation, and fear of reprisals.

Ms Thater noted that in many cases, local authorities were unwilling to prosecute crimes committed against refugees. She observed that SGBV was a wide-spread problem, compounded by a lack of effective investigation, prosecution and punishment for such crimes. In many cases of SGBV, especially rape cases, the perpetrators went unpunished, whereas the victims were prosecuted for adultery or forced to marry the rapist.

She stated that some refugees preferred informal justice systems although these systems did not always safeguard women's rights. One of UNHCR's special commitments to refugee women was to have 50% representation in decision-making fora, including in camp committees. She noted, however, that an increase in women's participation was not always meaningful. Often, their voices were not properly heard, but instead they became part of a system that perpetuated violence and discrimination against women.

Ms Thater reminded the seminar that only two women of concern to UNHCR, both asylum-seekers, had so far filed cases using the individual complaints mechanism available under CEDAW's Optional Protocol. However, both cases were dismissed as they had not exhausted domestic processes. It was important to increase knowledge of this procedure, and to provide this information to women and girls seeking redress.

Ms GL explained that, like many women seeking asylum, she had feared for herself and for her children. Without friends, employment or enough money for food, she had been in a desperate situation. Yet she had remained hopeful, realizing that she was not alone and was able to get support. She too, though, had faced problems in entering the U.S labour market, due to her age and difficulties in having her (master) degree recognized.

Discussion

In the light of the testimony provided by Ms GL, it was suggested that the Committee and UNHCR should join efforts in encouraging the US to ratify CEDAW, and thus improve the status and rights of asylum-seeking and refugee women in that country.

With regard to the interpretation of Article 15, a Committee member observed that the interpretation by UNHCR, as well as by the author of the background paper, tended to be broader than that of the Committee. It was pointed out that Article 15 addressed the general equality of women and men before the law, whereas Articles 1 and 2 (c) addressed access to justice. However, the majority argued that these articles must be read in conjunction with other relevant provisions. It was noted that since CEDAW did not have an explicit provision on the right to an effective remedy, or specifically address equal access to courts (as in the ICCPR and the 1951 Refugee Convention) it would be prudent to interpret equality before the law in a broad manner, including both substantive and procedural safeguards. UNHCR further noted that Article 15 was of particular relevance to ensure that women and girls had access to the refugee status determination processes, and that their claims were assessed taking into account possible gender-perspectives. The Committee underlined that it fully supported gender-sensitive refugee status determination procedures.

One of the refugee participants pointed out that refugees living outside camps were excluded from UNHCR's programmes, and unable to claim their rights. Although it was not their policy, UNHCR explained that in reality there was a difference between its services to urban refugees and to refugees in camps. In some countries, UNHCR faced restrictions as to where it could assist refugees. Participants encouraged UNHCR to seek improvement to the right to freedom of movement for refugees.

The discussion then turned to the complaints mechanisms under the Optional Protocol to the CEDAW. It was explained that complaints from women or groups of women could be conveyed through so-called communications. Civil society or lawyers, acting as counsels, could also file complaints on behalf of women. A Committee member clarified that the inquiry procedure was triggered if the Committee received reliable information of grave and/or systematic breaches. The Optional Protocol did not specify who ought to provide this information. It was mentioned, however, that the current expectation was that civil society would file a claim against a country.

It was acknowledged that both procedures, i.e. the inquiry and the individual complaints procedure, under the Optional Protocol were not very well known. It was agreed that both the Committee and UNHCR needed to provide training to practitioners on this. It was further suggested that the Committee could provide a recommendation on this issue, and provide UNHCR information that could be disseminated. It was also proposed that the two parties might explore how their joint efforts could encourage women suffering from such discrimination to make complaints, involving the Committee, UNHCR and NGOs.

(e) Nationality (Article 9)

Introduction by Ms Yacoub, UNHCR

Ms Yacoub drew attention to the fact that discrimination against women with respect to nationality rights could lead to statelessness for themselves and for their children. In particular, if nationality laws do not allow women to confer nationality on children, the children will be stateless unless they can acquire the nationality of their fathers and in many cases this proves to be impossible because the father is himself stateless or cannot confer his nationality under the legislation of his State. The effect of discriminatory nationality laws could be exacerbated in forced displacement and other migratory situations, especially when children were born abroad. Birth registration might not be undertaken (leading to difficulties of proving a link, notably parentage, for the grant of nationality), and/or the country of nationality of the mother did not provide for conferral of nationality by women and the State of birth did not grant nationality based on *jus soli*.

Ms Yacoub also discussed practical and legal impediments to obtaining a nationality, such as a lack of registration opportunities. More measures needed to be taken by States to prevent statelessness, and enhance the protection regime. She recalled that CEDAW was of utmost importance to prevent and reduce statelessness.

Regarding acquisition of nationality and foreign spouses, it was added that some States required men to support and sponsor their spouse financially. This could lead to tension and domestic violence. The possibility for women to acquire the nationality of the country in which they were seeking asylum could be a two-edged sword. By becoming a citizen a woman could benefit from stronger protection against *refoulement*, but if the change in status was contingent upon marriage, in some states it could lead to statelessness in the case of divorce because of application of the principle of “dependent nationality”. Women in countries where laws required them to renounce their own nationality in order to naturalize or when marrying were especially vulnerable. While waiting to acquire the husband’s nationality, women found themselves in a legal limbo, which also put them at a higher risk of violence and abuse.

Discussion

The Committee observed that it had addressed States Parties’ compliance with Article 9, but not the ways in which nationality laws could exacerbate discrimination against women, particularly those in displacement. It was highlighted that several States Parties had made reservations with respect to Article 9. The Committee encouraged UNHCR to follow up when the Concluding Observations on the country under examination recommended the withdrawal of reservations. UNHCR confirmed that this practice already existed, as demonstrated by the recent example of Morocco, which had now withdrawn its reservation. UNHCR added that it regularly sought to include relevant issues under Article 9 in its confidential comments. A unit at UNHCR Headquarters specifically working on statelessness, provided information on countries being reviewed and solicited relevant inputs.

With respect to practical cooperation between the Committee and UNHCR, it was recalled that the Committee was currently examining statelessness, and needed further inputs to this work, notably a list of States which still had discriminatory laws with regard to the transfer of nationality to children.

The Committee inquired as to the number of countries that did not practice transfer of nationality based on *jus soli*. It was explained that *jus soli* applied in very few countries and was decreasing, especially in Europe.

The Committee clarified that under the individual complaints mechanism, the complainant had to be a victim of a violation by a State Party. If considered a non-national of a given country, the State could decline to address the issue, on the grounds that the person was not a national. It was explained that, by contrast, nationality was not an admissibility requirement for the Committee, as the complaint mechanism covered stateless women, and included grievances related to violations of Article 9. In other words, any woman or group of women, within the jurisdiction of a State, could put forward a complaint, including violations of Article 9.

Responding to a request for further information about its mandate on statelessness, UNHCR explained that activities included advocating for improvements in legislations on nationality; encouraging accessions to the two statelessness conventions; capacity-building in countries where laws contained discriminatory provisions based on sex, and where women might become stateless. Other activities included approaching governments on behalf of particular groups, advocating for the granting of citizenship. It also included the establishment of mobile birth registration units to facilitate registration and ensure issuance of documents.

Participants also discussed the extent to which the Conclusions adopted by UNHCR's Executive Committee addressed statelessness. UNHCR explained that there was nothing to prevent these Conclusions from making reference to other international human rights instruments, such as particular provisions of CEDAW. Indeed, the latest Conclusion on statelessness does refer to CEDAW and indicates that the inability of women to confer nationality on their children is a cause of statelessness. However, ExCom Conclusions were adopted by consensus of all its members, and this could pose a challenge where a member was not Party to a particular treaty or had made reservations to certain provisions.

It was acknowledged that Article 9 and related issues required further examination. The suggestion was made that a separate general recommendation might be prepared, focusing solely on Article 9. However, no final consensus was reached on this suggestion.

3. Working group discussions

During the second day of the seminar, participants formed two working groups for more detailed discussions of certain aspects of the general theme under consideration. The composition of each group may be found in Annex II of this summary.

(a) Working Group I: Exploring elements for a future General Recommendation on the applicability of the CEDAW to women affected by forced displacement and/or statelessness

Discussions focused on ways through which future General Recommendations of the Committee could best integrate the perspectives of displaced and stateless women. A two-stage approach was suggested. As an immediate, short-term measure, steps could

be taken to explore how to include relevant language and issues in General Recommendations currently under preparation, notably:

- i. General Recommendation on Older Women;
- ii. General Recommendation on the Economic Consequences of Divorce, and
- iii. General Recommendation on Article 2

It was particularly important that these General Recommendations should emphasize the obligations of States to extend rights to all women in their territory, including asylum-seekers and refugees. To include language to this effect would be a priority for the Committee's forthcoming 44th session.

As a long-term measure, the possibility of formulating a General Recommendation, specifically addressing the applicability of CEDAW to women of concern to UNHCR was considered. It was agreed that the background paper was a useful starting point for drafting such a General Recommendation, as it contained a systematic analysis of relevant articles. Procedural articles might also be relevant; in addition to Articles 6 and 9, currently referenced in the paper.

The following aspects were identified as possible features of a General Recommendation:

- Real-life situations
- The issue of camp settlement versus urban refugees
- Different aspects of discrimination
- Access to justice, including the scope of related rights
- Complementarity of the 1951 Convention and CEDAW
- Gender-neutral vs. gender-specific
- SGBV against displaced women

A Committee member explained that it was standard procedure, once it had been agreed at plenary level to proceed with a General Recommendation, to form a working group that reflected regional representation, expertise and interest of the members. An initial background discussion would take place within the working group, followed by a public meeting with NGOs and United Nations agencies. All inputs would then be gathered and reviewed. The working group then reconvened and prepared a final draft.

As the priority of the Committee was to finalize reports related to State Party reviews, there was often a lack of time and resources to draft General Recommendations. It was also noted that the General Recommendation on Article 2 had not been issued, although work on it had started three years ago. A General Recommendation on women of concern to UNHCR was thus unlikely to be issued before one or two years.

(b) Working Group II: Maximizing the use of the CEDAW and its procedures for protecting the rights of displaced and stateless women

It was agreed that discussions of this topic would focus in particular on how UNHCR could further improve the quality and usefulness of its Confidential Comments to the Committee. It would also consider best practices in promoting and supporting the

implementation of the Committee's Concluding Observations and General Recommendations at country level: the role of individual women, women's groups and the community at large, NGOs, National Human Rights Institutions and the UN system, including in the area of technical assistance and capacity building.

The individual complaints mechanisms

The limited number of correspondences (22) and decisions (11) made so far, showed that the Committee still had limited experience in developing its jurisprudence. When considering the merits of a case, the Committee was mindful not only of the case in hand, but also its wider relevance, i.e. its potential use as a signal to States Parties on what was deemed non-acceptable treatment. It was reiterated that any woman, stateless or otherwise, within the jurisdiction of a State Party to CEDAW, could file a complaint.

Women submitting complaints who were not supported by counsel or NGOs often faced difficulties. It was therefore important to note that NGOs or lawyers could assist women who wanted to file a complaint against a State Party. The OHCHR Secretariat had prepared a model format which must be followed when submitting claims. Where the author (the claimant) had no access to a lawyer, the Secretariat assisted her to prepare the complaint. There could thus be substantial correspondence between the author and the Secretariat before the final complaint was submitted to the Committee for consideration. When a complaint was received by the Committee and declared admissible, it was forwarded to the State Party, which had six months to respond. The response was then forwarded to the author, who had the chance to refute it.

In order for the claim to be admissible, the author must first have exhausted all local remedies. If such remedies available in the author's country of origin were not effective, or the process was unduly long, exceptions could be made. It was noted that displaced and stateless women often lacked access to judicial institutions and that it could be difficult for these women to exhaust domestic remedies. This also applied to situations where an asylum-seeking or refugee woman would file a complaint against her country of origin. The Committee recognized that the challenge facing many refugee women face in this regard had not yet been properly addressed. However, it was specified that if the claimant did not have access to such procedures, this could be argued when the case was brought before the Committee, for instance, during exchanges between the Secretariat and the author. Article 5 of the Optional Protocol provided that the author could ask for interim measures if threatened with irreparable damage. So far, however, there had been very limited use of this Article.

The Committee reiterated that although a complaint did not necessarily have to refer to articles in CEDAW, it was necessary to provide evidence that the facts of the matter had been considered in the local justice process. In cases where the claimant did not specifically invoke a particular article of the CEDAW, the Committee would look into relevant provisions. It was explained that women could use CEDAW, relevant General Recommendations (e.g. No. 19 on Violence against Women) and other jurisprudence as part of their application for asylum, since most countries of asylum were parties to the CEDAW. A question was raised as to whether it was possible to obtain feedback from the Committee on complaints received, especially if the claim did not invoke any CEDAW articles. Another question concerned how to

identify when CEDAW was more applicable than other treaties, such as the Convention on the Elimination of Racial Discrimination.

The Committee had previously received some criticism with regard to the low number of admitted cases. A member noted that the low number of complaints made so far could indicate that the procedures needed to be changed. It was suggested that the Committee or part of it should meet to debate the issues raised as some were open to interpretation. The admissibility criteria, for example, needed to be sensitive to the specific situation of refugees, notably their difficulties in making use of all available domestic remedial channels, when outside the country concerned. The Committee added that it would have been better in the case of the two claims submitted by asylum-seekers (both of which had been declared inadmissible), if the authors had received professional legal assistance. It also noted that when a complaint was put forward twice, the second version rarely included any new or clarifying elements, unless the claimant had received help from counsel.

Participants agreed that increased awareness of the procedure and admission criteria was needed. While the Committee currently supported the training of lawyers and judges, UNHCR was encouraged to increase the knowledge of staff and persons of concern about the complaint mechanism, for instance, through workshops. This could be done in collaboration with NGO partners. It was emphasized that developed countries should not be left out in this endeavour. UNHCR observed that an internal memorandum set out how to file complaints under the complaints procedure, but that it would review this memorandum and the procedures it contained, to incorporate information provided during the seminar.

The inquiry process

Currently, 94 States were party to the inquiry procedure, and it was emphasized that this was a powerful but little used tool. The Committee noted that UNHCR might be in a position to identify situations where this procedure could be relevant. It was emphasized, however, that neither UNHCR nor States Parties could trigger the procedure, which should be initiated by civil society or NGOs. More information was required on these details. UNHCR needed to encourage greater use of the inquiry mechanism, by creating awareness of the tool. It was emphasized, however, that it should only be invoked in appropriate situations, i.e. when there was reliable information of systematic violations of women's human rights.

Confidential comments from UNHCR to the Committee

Both parties agreed on the need to know well in advance which countries were being considered in each session. This would permit UNHCR to prepare comments and the Committee to work on the list of questions. The possibility was mentioned of seconding a person from the Committee to UNHCR at field level, in order to ensure adequate capacity.

The Committee recalled the importance for its consideration of States reports of receiving confidential comments from UNHCR, observing that these comments needed to be timely. The Committee received such comments on the first day of the session, when they are already dealing with a number of countries, thus leaving

insufficient time to digest the information they contained. It would be preferable to receive the information at the pre-session working group, as the Committee could then include questions/concerns regarding refugees and internally displaced to be raised with the country under review. This would also give State Parties a better opportunity to respond. Information could be updated between the pre-session working group and the session itself. This update could be brief and limited to any significant additions.

UNHCR explained that field offices were notified three months before the pre-session. If no information was provided by these offices, a second request was sent before the main session. The feedback they could provide depended on the capacity of each field office. There was also a vetting procedure at UNHCR Headquarters; if the report was too superficial or unclear, submissions might be withheld. UNHCR normally submitted its comments two weeks before the main session started, but in future would aim at providing the information already at the pre-session. It also needed to be clarified whether there a bottleneck was causing a delay in delivery to the Committee members.

With regard to the substance of UNHCR's comments, the Committee noted that they were sometimes too wide in scope and not always directly relevant to the mandate of the Committee. There was a need to focus the comments as much as possible on women in displacement, with reference to provisions in CEDAW. One Committee member stressed that some issues could not be included due to confidentiality, and inquired whether, in such situations, UNHCR might ask an organization that could provide information publicly to do so. It was stressed that the confidentiality did not extend to the substance of the comments, but related to the source of the information which should not be revealed for protection reasons. If the Committee members were convinced that they are working with reliable information, they could present it as evidence.

Follow-up and use of Concluding Observations

Participants also discussed how to make better use of the Concluding Observations once issued. Previously, follow-up by the Committee had been limited, while waiting for the next round of reporting. It was recommended that State Parties should be called upon to give the Observations the widest possible circulation. The Committee currently highlighted two important points in each Concluding Observation which the State Party had to address. Although this has led to closer cooperation with State Parties, there was often little information on the implementation of the recommendations.

UNHCR explained that its field offices were provided with feedback on the Concluding Observations after each session. Specific points from the constructive dialogue were highlighted in the cover letter, and recommendations particularly relevant for UNHCR's mandate were extracted and highlighted. UNHCR Headquarters also encouraged field offices to make use of these points in both advocacy and capacity-building activities. It was noted that since UNHCR was providing information to several treaty bodies, the information was not disseminated to all offices, but only to those which had provided comments.

It was suggested that briefings could be organized by UNHCR, other UN agencies and/or in collaboration with NGOs. The Concluding Observations could be discussed with relevant stakeholders, for example, on how to achieve the best results. It might sometimes be difficult to reach the law enforcement entities, depending on the operational environment, but it could be particularly useful to involve judges.

Empowering displaced and stateless women and men to use the tools available under CEDAW and its Optional Protocol

Participants discussed the importance of empowering displaced and stateless women through sharing information with them about their rights and how to claim them. An example was the training already conducted by UNHCR, notably leadership training for refugee women, which included sections on CEDAW.

UNHCR reiterated the need to analyse the varying and evolving roles of men and women to clearly define areas where women are discriminated and their rights violated. This was particularly crucial in the displacement context where rapid changes take place in the living and working environment that lead to changed roles for men and women of different ages and backgrounds. UNHCR's promotes such gender analysis through its AGDM strategy and by using CEDAW.

UNHCR also noted the importance of men's contribution to work on gender equality. Governments should be encouraged in a General Recommendation, to include men at different levels, especially decisions that affected women. This effort should be a part of a prevention mechanism, in which men played an active part in activities aimed at gender equality. If projects were funded for women only, sidelining men, their outcome could be undermined. It was not enough to train and sensitize women on their rights: men and boys needed to be included as active partners in finding solutions to address gender equality and prevent SGBV. It was added that if men were to be held accountable, they needed to be on board from the start.

4. Closing remarks and recommendations

(a) Closing remarks

In closing the seminar, the Chair noted that this had been the first joint event of its kind. She recalled that the preparation of the seminar had been a long process, and that it marked a milestone in cooperation between the Committee and UNHCR. The seminar had proved a useful opportunity to draw the attention of the Committee members to a number of issues requiring follow-up.

The Chair welcomed the concrete recommendations that had emerged from the discussions. The seminar could serve as a foundation for future and improved cooperation between the Committee and UNHCR. She concluded that, in addition to the need for a General Recommendation, it was important to continue discussions, and potentially to also include State Parties at a later stage. This might require the establishment of a working group to move efforts forward.

(b) Recommendations

The participants agreed to the following:

- The Committee to undertake integrating forced displacement and statelessness issues into other General Recommendations currently under preparation on a) States' obligations under article 2 of the Convention, b) economic consequences of divorce, and c) older women and the protection of their human rights.
- The Committee to further consider the issuance of a General Recommendation on women affected by forced displacement or statelessness. A proposal in this regard would be presented for approval to the 44th session of the Committee.
- UNHCR to produce a shorter, bullet-point version of the background paper, to assist in the drafting of the General Recommendation.
- The Committee to systematically examine how States Parties to the Convention implement their obligations vis-à-vis women of concern to UNHCR as part of its regular activities.
- UNHCR to integrate the standards of the CEDAW in all future guidelines, handbooks and other relevant policy documents.
- UNHCR to work together with the United Nations Special Representative of the Secretary-General on the human rights of internally displaced persons, on improving the gender aspects of inputs to reports.
- UNHCR to seek to improve the relevance and quality of the confidential comments it communicated to the Committee, including through refining the guidance given to staff who prepared the initial drafts.
- Confidential comments to be sent by UNHCR to the Committee in a timely manner, to ensure that Committee members had enough time to review the information before deliberations start.
- UNHCR to continue the practice of presenting oral confidential comments to the Committee at the closed meeting taking place on the first day of each session.
- UNHCR to consider ways of disseminating the Committee's Concluding Observations and State Party reports among NGOs, other partners, and to women of concern (e.g. in camp committees), drawing particular attention to recommendations on the withdrawal of reservations related to Article 9 on nationality.
- The Committee and UNHCR to further explore how their joint efforts could encourage women suffering from discrimination and violence to file individual complaints, possibly through a tripartite organization involving the Committee, UNHCR and NGOs.
- The Committee to provide information to UNHCR on the individual complaints mechanism under the Optional Protocol.

- UNHCR to disseminate this information among its staff, NGO partners, lawyers and women of concern, notably in the case of non-recognition of a claim for asylum based on gender-related persecution.
- UNHCR to also share information concerning the Committee's inquiry procedure among its protection staff and partners.

In view of the general recognition of the usefulness of the joint seminar in strengthening bonds between the CEDAW Committee and UNHCR, it was also agreed to arrange a follow-up meeting between the two bodies, in order to discuss further the above recommendations, and assess how best to pursue the collaboration.



June 2009

**Concept Note for a Joint CEDAW and UNHCR Seminar
on Examining the Particular Relevance of the Convention on the Elimination of
All Forms of Discrimination Against Women to the Protection of Women of
Concern to UNHCR, New York, 16 – 17 July 2009**

This paper outlines the rationale for holding a joint seminar between the Committee on the Elimination of Discrimination against Women (CEDAW) and the Office of the High Commissioner for Refugees (UNHCR).

1. Background

Women of concern to UNHCR include women and girls who are refugees, asylum-seekers, internally displaced, returnees, stateless, or at risk of becoming stateless. These women frequently find themselves at heightened risk of human rights violations. Although there is a growing body of international, regional and national law to protect women from discrimination and violence, they still face greater obstacles claiming and enjoying their rights than do men.

The combined effects of gender, displacement and other factors, such as socio-economic position, often heighten the risk women of concern to UNHCR face of having their human rights violated. They may be subjected to discrimination, not only vis-à-vis men, but also in relation to local women in the host communities, due to being foreigners and/or to their lack of legal status. Discrimination against women is also at the heart of sexual and gender-based violence. Often, there is a persistent culture of denial and neglect, or indeed impunity, in many displaced and returnee communities about violence against women, which can make this a hidden and personalized form of human rights violation.

Armed conflict and forced displacement generally exacerbate existing inequalities. In these situations, normally available protection networks easily break down and women's exposure to violence and other human rights violations increases. Women may be sidelined when resources become scarce, and consequently unable to claim their right to food, health care, shelter, education and documentation. They may be under-represented in decision-making fora, with little influence over policies and decisions affecting them. Power relations within their own families may change in the new environment, resulting in tensions and violence in their homes. Women who have been uprooted may also find it more difficult to seek justice, because of a lack of awareness of their rights, language, cultural or other barriers, or simply because of the

absence of effective justice mechanisms in places of displacement. Moreover, when it becomes possible to return home, women often have fewer opportunities than men to participate in peace, reconciliation and reconstruction processes.

Also, some women are persecuted for reasons of their gender, exclusively or in combination with their age or other characteristics. Where these women are unable or unwilling to avail themselves of national protection, they may be forced to flee and seek asylum abroad. While in the past, women were frequently regarded as 'dependants' of their husbands, who were considered the principal asylum applicants, an increasing number of countries recognize that women may have asylum claims in their own right. In this context, it is today well established that gender-based violence and discrimination can amount to persecution within the meaning of the refugee definition in the 1951 Convention Relating to the Status of Refugees.

The impact of discrimination against women in the field of nationality, and how it leads to statelessness, is another issue which clearly falls within the mandate of both the CEDAW and UNHCR. A study conducted by UNHCR of the nationality legislation of 40 States parties to the CEDAW showed that 50% of the States surveyed had since 1979 amended those provisions which did not give women an equal right to pass on their nationality to their children, thereby eliminating a key cause of statelessness. Nonetheless, the national legislation of at least 30 countries continues to discriminate against women in regard to their ability to confer their nationality to their children.

UNHCR is working to ensure that women and girls under its mandate can equally enjoy their rights through the following approaches: (i) the age, gender and diversity mainstreaming strategy, (ii) empowerment of women and their communities, and (iii) through programmes to prevent and respond to sexual and gender-based violence. In addition, UNHCR, as well as its Executive Committee, has expressly recognized the importance of adopting a rights and community-based approach to the various areas of work.

Since its establishment in 1982, the Committee on the Elimination of Discrimination against Women has addressed the situation of women and girls of concern to UNHCR in its consideration of States parties' reports. It has repeatedly drawn attention to the fact that women and girls of concern to UNHCR experience discrimination on the basis of sex as well as discrimination as a result of their displacement. The Committee's recognition, that gender-based violence against women and girls constitutes discrimination against women on the basis of sex and a violation of human rights, is particularly important and has informed UNHCR's policies, guidance and actions in this area. Successive General Recommendations, notably General Recommendation No. 19 on violence against women, have been critical in the international community's recognition of gender-based violence against women in all contexts, including throughout displacement, as an issue of human rights, rather than a private concern.

The Committee routinely examines States parties' laws, policies and programmes to address violence against all groups of women, and provides clear guidance for States and other stakeholders on the strategies required to eliminate such violence. The Committee has also considered individual communications from asylum seeking

women in its petition procedure under the Optional Protocol to the Convention on the Elimination of Discrimination against Women (hereinafter “the Convention”). Although the Committee decided that these communications were inadmissible due to the non-exhaustion of domestic remedies, it did recognize that one of the communications raised the issue of the situation in which women who have fled their country because of fear of domestic violence often find themselves. The Committee’s inquiry competence under the Optional Protocol is another one of its functions that could be relevant for the protection of women who are displaced, stateless or at risk of becoming stateless.

In seeking to strengthen the protection of the human rights of women of concern to UNHCR, the Office has a direct interest in the situation of these women, and the challenges they face in enjoying their rights under the Convention, being systematically raised by the Committee in its consideration of State reports and in its General Recommendations. Both the Concluding Observations and the General Recommendations adopted by the Committee constitute valuable protection and advocacy tools for UNHCR.

In connection with the fortieth session of the CEDAW, UNHCR organized a lunch briefing for the Committee on 23 January 2008 with the purpose of exploring ways to strengthen the cooperation between CEDAW and UNHCR in mutual areas of interest and concern. During this briefing, a proposal was made to hold a joint seminar to examine the particular relevance of the Convention to women of concern to UNHCR.

2. Objectives of the Seminar

The principal objective of the seminar is to increase the extent to which women of concern to UNHCR around the world enjoy the rights to which they are entitled under the Convention, through (i) examining the particular relevance of the Convention to women in situations of displacement, asylum, return, integration or statelessness, (ii) agreeing on ways for UNHCR, its partners and women of concern to enhance their use of the Convention and CEDAW’s functions, and (iii) through exploring elements for a General Recommendation on the applicability of the Convention to women of concern to UNHCR.

Participants will take stock of how, and to what extent, women of concern to UNHCR have access to and enjoy the rights and protection standards provided by the Convention, and the particular obstacles they face as a result of their displacement or other situation. Participants will jointly identify and reach consensus on possible ways to increase the extent to which women of concern to UNHCR enjoy their rights under the Convention; for example through defining elements of a future General Recommendation, bearing in mind potential normative gaps in the protection of the human rights of women of concern to UNHCR and through improving the quality and usefulness of the Confidential Comments that UNHCR regularly submits to the CEDAW prior to its sessions. The participants will also consider ways of improving the implementation of CEDAW’s Concluding Observations and recommendations at field level, for example through technical support to States.

To assist participants in preparing for the discussions, a background paper “Displacement, Statelessness and Questions of Gender Equality under the Convention

on the Elimination of All Forms of Discrimination against Women' will be circulated prior to the meeting. The paper is being prepared by Dr. Alice Edwards, Lecturer in Law and Head of the Forced Migration and Human Rights Unit of the Human Rights Law Centre of the University of Nottingham with the aim of providing the participants with a common understanding of the linkages between the rights that the Convention seeks to protect and the protection risks to which women of concern to UNHCR are frequently exposed.

3. Convener and Participants

CEDAW and UNHCR will jointly convene this seminar. It will take place in conjunction with the 44th session of the CEDAW in New York from 20 July to 7 August 2009 to enable all members of the Committee to participate.

Participants will include:

- Members of the CEDAW
- Representatives of UNHCR at Headquarters and in the field
- Representatives of the OHCHR
- Representatives of the Human Rights Law Centre of Nottingham University
- Representatives of relevant UN organizations
- Representatives of relevant NGOs
- Refugee and other women of concern to UNHCR

4. Venue

The seminar will take place at the United Nations Headquarters in New York, 3 United Nations Plaza, in Conference Room 1.

Provisional Programme of Work

CEDAW and UNHCR Seminar on Examining the Particular Relevance of the Convention on the Elimination of All Forms of Discrimination Against Women to the Protection of Women of Concern to UNHCR New York, 16 – 17 July 2009

THURSDAY 16 JULY

09.30 – 10.00 Registration

10.00 – 10.30 Opening and overview of objectives of seminar

Ms. Dorcas Coker-Appiah, Member of CEDAW

Mr. Pierre Bertrand, Director of UNHCR's New York Office

Ms. Jessica Neuwirth, Director of the OHCHR Office in New York

10.30 – 10.45 Mapping the application of the Convention to women of concern to UNHCR

Introduction by Dr. Alice Edwards of the Background Paper “Displacement, Statelessness, and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women”

10.45 – 11.00 Coffee/tea break

Plenary discussion on the particular relevance of the Convention (structured according to groups of Articles) to women of UNHCR’s concern

Moderator: Ms. Dorcas Coker-Appiah, Member of CEDAW

11.00 – 12.00 Equality and non-discrimination on the basis of sex (Articles 1-5)

Introduction by 1-2 of the refugee or internally displaced women and UNHCR

12.00 – 13.00 Sexual and gender-based violence, trafficking (Art. 6)

Introduction by 1-2 of the refugee or internally displaced women and UNHCR

13.00 – 15.00 Lunch

15.00 – 16.00 Protection and empowerment (Arts. 10-14, 16)

Introduction by 1-2 of the refugee or internally displaced women and UNHCR

16.00 – 17.00 Equality before the law, including freedom of movement (Art. 15)

Introduction by 1-2 of the refugee or internally displaced women and UNHCR

17.00 – 18.00 Nationality (Art. 9)

Introduction by a woman affected by statelessness and UNHCR

18.20 – 20.30 Reception, venue t.b.c.

FRIDAY 17 JULY

09.30 – 10.15 Summary of discussions from Day 1 and introduction of Working Groups

Moderators: Ms. Dorcas Coker-Appiah, Member of CEDAW, and UNHCR

10.15 – 11.00 Working Groups

Facilitated by Members of CEDAW and UNHCR

Themes:

- Exploring the elements for a possible future General Recommendation on the particular applicability of the Convention to women affected by displacement and/or statelessness.

Facilitated by Ms. Dubravka Šimonović, Member of CEDAW

- Maximizing the use of the Convention and CEDAW's procedures for protecting the rights of women of concern, with a particular focus on how UNHCR can further improve the quality and usefulness of its Confidential Comments to the CEDAW. *Facilitated by Ms. Pramila Patten, Member of CEDAW*

- Best practices in promoting and supporting the implementation of CEDAW's Concluding Observations and General Recommendations at country level: the role of individual women, women's groups and the community at large, NGOs, National Human Rights Institutions and the UN system, including in the area of technical assistance and capacity building.

Facilitated by UNHCR

11.00 – 11.20 Coffee/tea break

11.20 – 13.00 Continuation of Working Groups

13.00 – 15.00 Lunch

15.00 – 16.30 Reports and recommendations from the Working Groups

Moderator: Ms. Coker-Appiah, Member of CEDAW

Rapporteurs of the Working Groups will present the conclusions and recommendations, including proposals on next steps.

16.30-16.50 Coffee/tea break

16.50 – 17.30 Summary, next steps and closing remarks

Ms. Coker-Appiah, Member of CEDAW

Representative of the UNHCR

List of participants

Committee on the Elimination of Discrimination Against Women (CEDAW):

1. Ms Dorcas Coker-Appiah*
2. Ms Ferdous Ara Begum*
3. Mr Cornelis Flinterman*
4. Ms Pramila Patten*
5. Ms Dubravka Šimonović*
6. Ms Magalys Arocha Dominguez
7. Ms Violet Tsisiga Awori
8. Ms Meriem Belmihoub-Zerdani
9. Ms Ruth Halperin-Kaddari
10. Ms Yoko Hayashi
11. Ms Soledad Murillo de la Vega
12. Ms Violeta Neubauer
13. Ms Silvia Pimentel
14. Ms Victoria Popescu
15. Ms Zohra Rasekh

Office of the United Nations High Commissioner for Refugees (UNHCR):

16. Mr Pierre Bertrand, Director, UNHCR New York
17. Mr Oldrich Andrysek, Chief, Protection Policy and Legal Advice Section (PPLAS), Division of International Protection Services (DIPS)
18. Ms Karolina Lindholm Billing, Senior Liaison Officer (Human Rights), PPLAS/DIPS
19. Ms Lynn Ngugi, Senior Regional Global Advisor (Women and Children), UNHCR Kenya
20. Ms Karuna David, Senior Regional Community Services Officer, UNHCR Nepal
21. Ms Gisela Thater, Legal Officer, PPLAS/DIPS
22. Ms Natasha Yacoub, Executive Assistant, UNHCR New York
23. Ms Pamela Goldberg, Protection Officer, UNHCR Washington
24. Ms Eirin Broholm, Associate Programme Officer, Community Development, gender Equality and Children's Section (CDGECS)

Office of the High Commissioner for Human Rights (OHCHR):

1. Mr Craig Mokhiber, Acting Director of OHCHR's New York Office
2. Ms Jane Connors, Senior Human Rights Officer, Human Rights Treaty Branch, OHCHR
3. Ms Natacha Foucard, Human Rights Officer, Human Rights Treaty Branch, OHCHR
4. Ms Nathalie Stadelmann, Human Rights Officer, Human Rights Treaty Branch, OHCHR

Women of concern to UNHCR:**

* Member of the Working Group established for the seminar.

** Participants are listed with initials only, for confidentiality reasons.

25. Ms GL, Mongolia
26. Ms NK, Zimbabwe
27. Ms PN, Bhutan
28. Ms CU, Chechnya
29. Ms DAO, Kenya
30. Ms EWS, Liberia

UN Partner Organizations:

5. Ms Janette Amer, Acting Chief of the Women's Rights Section, UNDAW
6. Ms Gemma Connell, Associate Programme Officer on Violence Against Women, UNDAW
7. Ms Lee Waldorf, Thematic Advisor on Human Rights, UNIFEM
8. Ms Luz Melo, Human Rights Technical Adviser, UNFPA
9. Ms Letitia Anderson, Advocacy and Women's Rights Specialist, UN Action Against Sexual Violence in Conflict,
10. Ms. Annalies Borrel, Chief, Humanitarian Policy, UNICEF
11. Ms Galit Wolfensohn, Gender Specialist in the Office of Emergency Programmes, UNICEF
12. Ms Comfort Lamptey, Gender Adviser, DPKO
13. UNDP – t.b.c.

External Consultant

31. Dr Alice Edwards, Lecturer, School of Law, University of Nottingham

Non-Governmental Organizations:

32. Ms Carolyn Makinson, Executive Director, Women's Refugee Commission
33. Ms Ada Williams Prince, Senior Advocacy Officer, Women's Refugee Commission
34. Ms Gillian David, Women's Refugee Commission
35. Ms Sunila Abeysekera, Executive Director, International Women's Rights Action Watch Pacific (IWRAW-AP)
36. Ms Sarah Taylor, Coordinator, NGO Working Group on Women, Peace and Security
37. Ms Marianne Mollmann, Women's Rights Advocacy Director, Human Rights Watch

Working Group Participants:

Working Group I: CEDAW: Ms Violet Tsisiga Awori, Ms Dorcas Coker-Appiah, Ms Ruth Halperin-Kaddari, Ms Violeta Neubauer, Ms Silvia Pimentel, Ms Victoria Popescu, Ms Zohra Rasekh, Ms Dubravka Šimonović, Women's Refugee Commission: Ms Ada Williams Prince, Refugee/IDP-women: Ms. GL, Ms. PN, Ms DAO, UNHCR: Ms Gisela Thater, Ms Natasha Yacoub, Ms Karuna David, Ms Pamela Goldberg, External consultant: Ms Alice Edwards.

Working Group II: CEDAW: Ms Ferdous Ara Begum, Ms Meriem Belmihoub-Zerdani, Mr Cees Flinterman, Ms Yoko Hayashi, Ms Magalys Arocha Dominguez, Ms Soledad Murillo de la Vega, Ms Pramila Patten, Women's Refugee Commission: Ms Gillian David, Refugee/IDP-women: Ms NK, Ms CU, Ms EWS, UNHCR: Mr Oldrich Andrysek, Ms Karolina Lindholm-Billing, Ms Lynn Ngugi, Ms. Eirin Hollup Broholm

Opening Address by Ms Coker-Appiah, Chairperson, CEDAW

Excellencies
Distinguished colleagues
Ladies and Gentleman

It is with great pleasure that I open the Joint CEDAW and UNHCR Seminar on “Examining the Particular Relevance of the CEDAW Convention to the Protection of Women of Concern to UNHCR”. I feel privileged to chair this meeting, as the Chairperson of the CEDAW and UNHCR Working Group which was established to plan and organize this important event.

On behalf of the CEDAW Committee, I would like to warmly thank the distinguished representatives of UNHCR who have worked in close cooperation with the Committee and the Office of the High Commissioner for Human Rights towards the realization of this joint event. My colleagues and I are convinced that the next two days will provide us with an opportunity to discuss thoroughly effective ways to strengthen the protection which the CEDAW Convention extends to women of concern to UNHCR by examining the particular relevance of the Convention to women and girls in situations of displacement, asylum, return, re-integration or statelessness, and improve the implementation of the Convention by relevant partners on the ground.

Women and girls who are refugees, asylum-seekers, internally displaced, returnees, stateless, or at risk of becoming stateless are often faced with specific abuse from which they need protection. The most pervasive and widespread are sexual violence, including rape and other forms of violence, and physical insecurity.

The CEDAW Convention and its Optional Protocol, as well the Committee’s General Recommendations, form a solid protection framework for women of concern to UNHCR. Also, in its Concluding Observations, the Committee requests States parties where appropriate to provide comprehensive information on the situation of refugee women, in particular in respect of the registration process for refugees and the means used to protect refugee women from gender-based violence and the avenues available for redress and rehabilitation with respect to trafficking and smuggling. In this respect, the Committee recommends that States parties seek support from, and work in close cooperation with appropriate international agencies in the field of refugee protection, in particular, the Office of the United Nations High Commissioner for Refugees. Furthermore, the Committee urges Governments to give greater assistance to refugee and displaced women and girls and carry out rehabilitative efforts directed at such women and girls. It also stresses the importance of mainstreaming a gender perspective in all policies and programmes of national and international assistance for displaced people.

The Committee also calls on States parties to adopt laws and regulations relating to the status of asylum-seekers and refugees, in line with international standards, in order to ensure protection for asylum-seeking and refugee women and their children. It

recommends that States parties consider accession to international instruments which address the situation of refugees and stateless persons, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status.

On many occasions, the Committee has urged States parties to develop poverty-reduction programmes targeted specifically at women, including for female refugee populations, particularly affected by the feminization of poverty.

The Committee has also addressed the situation of women of concern to UNHCR in its General Recommendations. For example, in its General Recommendation N. 24 on Health, the CEDAW Committee urges States parties to ensure that adequate protection and health services, including trauma treatment and counseling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.

Under article 9 of the CEDAW Convention, the Committee recommends that States parties ensure that women have the right to transfer their nationality to their children on equal terms with men, and that stateless women are given full rights to citizenship.

The Optional Protocol also provides an effective mean to extend further protection to women and girls of concern to UNHCR.

To that effect, I would also like to recall that in its Views adopted in 2007 in *N.S.E. v. United Kingdom of Great Britain and Northern Ireland*, the Committee noted that allegation of sex discrimination could form part of an application for permission to apply to the High Court for a judicial review with a view to obtaining asylum status .

In spite of all these efforts, the situation of women of concern to UNHCR remains alarming and a lot more needs to be done. This is why the members of the Committee participating in this event and myself formulate the wish that this seminar will lead to concrete actions aimed at effectively improving the situation of these women on the ground. The Committee would very much welcome the elaboration of a General Recommendation relating to displacement and nationality rights as a result of this seminar to consolidate the work done to date by the Committee and UNHCR for the protection of women of concern to UNHCR. I am confident that with your active participation in the discussions and your valuable expertise, we will be able to achieve concrete results at the end of our meeting and pave the way for a strengthened protection for displaced and stateless women and girls.

Thank you

Opening Statement by Mr Pierre Bertrand, Director of UNHCR's New York Office

Check Against Delivery

Dear Friends,

It is an honour for me to open this seminar, jointly organized by the Committee on the Elimination of Discrimination against Women and UNHCR, with the dedicated support of the Office of the High Commissioner for Human Rights.

This seminar is a milestone in our collective efforts to ensure that the rights of displaced and stateless women and girls are fully respected. I welcome all of you here to be part of this significant event. In particular, I want to welcome those who have kindly agreed to share their experiences from being forcibly displaced. Your contributions will certainly make the discussions more relevant and concrete. I am also pleased to welcome our UN and non-governmental partners, and look forward to your contributions, which will undoubtedly also enrich the outcome.

The Committee and UNHCR have many objectives in common. We strive to ensure that women falling within our respective mandates fully enjoy their human rights. Both of us recognize that this can only be achieved if discriminatory laws, practices, social and cultural patterns, and institutional set-ups are addressed and gender equality is achieved. This initiative is based on a mutual desire to further our cooperation, and increase the benefits of our interventions for women and girls.

In its field operations, UNHCR is confronted with, and responds to, the consequences of discrimination faced by women throughout the displacement cycle. The response can be to ensure that women who have been subjected to gender-related persecution in the form of rape, domestic violence, or trafficking for the purpose of sexual exploitation, have their refugee claims examined in gender-sensitive asylum procedures. From a doctrinal perspective, UNHCR has for some time now espoused the view that sexual and gender based violence may indeed constitute persecution within the meaning of the 1951 *Convention relating to the Status of Refugees*. This is one of the specific areas in which the 'jurisprudence' of the Committee and the supervisory role of UNHCR clearly intersect. Pronouncements by the Committee on violence against women as a serious human rights violation have usefully informed UNHCR's guidance in this area.

Another area where the mandates of the Committee and UNHCR converge is in relation to women's equal rights to acquire, change or retain, as well as pass on their nationality to their children - as ways of preventing statelessness. Every day, children are born into statelessness, notably in situations where their mothers are not allowed to pass on their nationality due to discriminatory laws.

UNHCR increasingly recognizes the need to address the root causes of discrimination, as an integral part of our protection strategy aimed at preventing violations from

taking place, and responding to those which have occurred. Therefore, UNHCR's Age, Gender and Diversity Mainstreaming strategy, which seeks to promote the empowerment of women and eliminate sexual and gender-based violence, has promotion of gender equality as one of its pillars.

I am hoping that this seminar will result in a better understanding among all of us here, and UNHCR staff worldwide, of the ways in which sex and gender discrimination manifests itself, and a greater knowledge about practical steps to promote gender equality. One desirable outcomes of this seminar would be a set of recommendations to all of these stakeholders on how to more strategically and effectively use the Committee's Concluding Observations, its General Recommendations, and the individual complaints mechanism, as protection tools on the ground to bring about positive change.

I am also hoping that this seminar will result in an increased understanding of the particular obstacles that women affected by forced displacement or statelessness face in claiming their rights under CEDAW. It presents and opportunity for highlighting the links between gender equality in nationality legislation and the prevention of statelessness. Specifically, I anticipate that the Committee will systematically examine the extent to which States parties to CEDAW implement, or not, their obligations under that treaty in regard to women of concern to our Office. In this context, we welcome your advice on how UNHCR can improve the quality and usefulness of our Confidential Comments to the Committee, which, in turn, will contribute to making women of concern more visible in Concluding Observations and recommendations.

Based on the exchange and dialogue that will be taking place over the next two days, we are also looking forward to discussing the possibility of consolidating this knowledge and experience in a General Recommendation on women affected by forced displacement. We may wish to have a similar dialogue in respect of the links between Article 9 of the Convention and the prevention and reduction of statelessness. The agenda is certainly a full and challenging one. I have high hopes of concrete outcomes and wish you a successful seminar.

Opening Address by Mr Craig Mokhiber, Acting Director of the Office of the High Commissioner for Human Rights in New York

Madam Chairperson,
Distinguished Members of the Committee,
Ladies and Gentlemen,

It is with great pleasure that I represent the High Commissioner for Human Rights, Ms. Navanethem Pillay, at this joint CEDAW and UNHCR Seminar on the Protection of Women of Concern to UNHCR. This important event is a joint initiative of UNHCR and the Office of the High Commissioner for Human Rights which, as you know, has had the privilege of supporting the Committee on the Elimination for Discrimination against Women since its move to Geneva in January 2008. The High Commissioner for Human Rights highly values the cooperation between OHCHR and UNHCR and looks forward with great interest to the outcome of the discussions over the next two days. I am personally convinced that their outcome will strengthen the protection of women of concern to UNHCR through the joint work of the CEDAW Committee and UNHCR.

Women and girls who are refugees, asylum-seekers, internally displaced, returnees, stateless, or at risk of becoming stateless, are frequently victims of multiple forms of discrimination not only vis-à-vis men, but also vis-à-vis other women in their host communities. In particular, they may be subjected to sex -based discrimination, but also to discrimination based on their lack of legal status, or based on their belonging to a particular social or ethnic group.

As we know, conflict is often accompanied by gender based violence and it is likely that the impunity perpetrators commonly enjoy for their actions will be heightened. Over the last twenty-five years, there has been increased international recognition of the seriousness of gender-based violence and a growing commitment to ensure accountability and redress for victims. The systematic sexual violence which marked the conflicts in the former Yugoslavia and Rwanda, provided the background to the development of precise legal standards through the jurisprudence of the ICTY and the ICTR which confirmed that such violence may amount to war crimes, crimes against humanity, and acts of genocide. These standards are now contained in the Statute of the International Criminal Court and have been reaffirmed by Security Council Resolutions 1325 and 1820.

The violations women experience in these contexts will never be dealt with appropriately until justice issues receive sufficient attention both nationally and internationally. Stereotypes and prejudices have unfairly stigmatized women victims. We are also confronted with the invidious practice of human trafficking which women and girls in conflict and post conflict situations face. Displaced and refugee women, as well as women asylum seekers are also vulnerable to this violation. Life-threatening situations which occur in the wake of conflict, including in refugee camps where protection is not always guaranteed, drive women and girls to seek alternatives for survival where they risk falling into the hands of traffickers who promise safe

environments and job opportunities. It is, therefore, vital to develop and implement anti-trafficking strategies that place the rights of the victims at their centre.

I am aware that you will discuss these and other issues in-depth during the next two days, as you seek to develop strategies to increase the extent to which women of concern to UNHCR around the world fully enjoy the rights to which they are entitled under the CEDAW Convention. As we are all aware, this instrument sets out key legal obligations for States parties aimed at the protection of the rights of all women.

I know that this meeting will seek to adopt recommendations directed at the Committee and UNHCR which will strengthen the protection of women and girls of concern to UNHCR. In particular, I understand that it is hoped as a result of this meeting that the Committee will consider formulating a General Recommendation or other instrument on this issue.

I wish you the very best for your discussions and like the High Commissioner look forward to the result of the seminar.

Thank you.