

*Interactive Panel Discussion on the general recommendations currently being elaborated
by the CEDAW Committee*

Gender-Related Dimensions of Refugee Status, Asylum and Statelessness

By Ms. Patricia Schulz

In this General Recommendation, the Committee will address the situation of women asylum seekers (approx. ½ million in 2011), refugees (approx. 5 million in 2011) and stateless (about 6 million in 2011). These are women exposed to special risks of violation of their human rights, including the right to education, health, employment and right to vote, that are guaranteed by the CEDAW Convention.

Indeed, women asylum seekers and refugees, and stateless women, face different, additional, aggravated or cumulative forms of discrimination, in comparison with men facing the same circumstances, discriminations stemming from the inferior status assigned to women, from negative gender-stereotypes and fixed gender roles.

I will first address the situation of women asylum seekers and refugees.

1. Women asylum seekers and refugees

For women's claims to asylum to be properly addressed, the asylum system must benefit from a deep comprehension of the particular forms of persecution and human rights abuses that women experience because they are women. This has not been and is still not the case in many countries, blind to this gender dimension.

The General Recommendation will guide the non-discriminatory treatment of women's claims during the entire asylum process, on procedural and on substantive matters. Here are a few illustrations.

a. Procedural aspects

Women's claims must be processed in a fair, impartial and timely manner. This requires free legal aid, representation and assistance, and interpreters so women can express themselves and receive complete information on the procedure and on their rights in their own language.

Married women must be informed that they can lodge an independent claim to asylum based on their own alleged persecution, instead of being included into their husband's claim. Women should be interviewed separately from their male relatives: this is important particularly when the woman can lodge a claim based on domestic violence.

Women victims of torture, trafficking and/or sexualized violence should be identified early and treated with special care.

b. Substantive aspects

Gender-related forms and grounds of persecution must be recognized as the basis for receiving refugee status: some examples are the threat of female genital mutilation, forced and/or early marriage, threat of violence and/or killings in the name of 'honor', trafficking of

women, acid attacks, rape and other forms of sexual assault, severe forms of domestic violence, and the persecutory consequences of failing to conform to gender-prescribed social norms.

In addition, State parties must also recognize harm perpetrated by non-state actors, for instance by the male relatives of a woman, or by the local population, when the State is unwilling or unable to protect her or to prevent the harm, because of discriminatory policies or practices.

Seeking asylum is not an unlawful act, and State parties should not detain women asylum seekers who have followed the normal procedures of presenting themselves to the authorities. Pregnant and nursing women should in no case be detained.

The Recommendation also addresses the issue of adequate standard of living, including accommodation, education, health-care, food, clothing, and social services, and recommends practical steps to State parties.

So as to meet these procedural and substantive requirements, the General Recommendation advises State parties to train all personnel such as police, border officers and immigration officials, as well as social services, teachers, to deal in a gender sensitive manner with women's claims to asylum.

I now come to the situation of stateless women.

2. Stateless women

Statelessness is the situation of people who have never been recognized as nationals of a country or who have lost the nationality they possessed, through various situations. I concentrate here on the gender specific causes of statelessness. But before, a few words on nationality.

Nationality has long been defined as the right to rights, due to the importance of the link between a State and the people that it recognizes as citizens. Nationality was seen as an essential element of the sovereignty of States, and was defined only in domestic law. It took time until States established international norms on nationality, restricting their freedom to legislate.

Article 9 of the CEDAW Convention is one of those norms: it expresses the right for women to acquire, change or retain their nationality and to confer their nationality on their children on an equal basis with men.

Why are women much more exposed than men to the risk of being or becoming stateless though the operation of national laws? Partially, it is because many States have entered reservations to Art. 9. They have declared, upon ratifying the Convention, that they will not apply this article 9, either entirely or partially, but will keep their discriminatory legislation. In these countries, women and children therefore become or remain stateless, either through the law on nationality or through the law on marriage.

Indeed, whereas marriage and divorce generally have no influence on the nationality of men, in many countries, the nationality of women has been linked to their matrimonial status. Women can thus become stateless if the law of their country foresees that a woman's nationality is automatically lost upon marriage to a foreigner and the law of the husband's

country states that she cannot acquire her husband's nationality on the basis of marriage; if her husband changes his nationality, becomes stateless or dies or where a marriage ends in divorce, the woman loses her nationality.

The General Recommendation will therefore recommend that State parties ratify the two Conventions of statelessness (the 1954 one on the status of such persons, the 1961 Convention on the reduction of statelessness), and that State parties withdraw their reservations to Art. 9 CEDAW and ensure equality between women and men in the acquisition, change, retention and transfer of nationality.

It should also invite them to accept dual nationality where women have married foreign men, and for their children. It will also give practical guidance on collecting of sex-disaggregated data, equal access to identify documentation, timely registration of births, and elimination of indirect discrimination in naturalization requirements.

I come now to my conclusion

3. Conclusion

This General Recommendation will offer guidance on legal reforms and very practical steps. It builds on the enormous amount of work that has been done in the course of the last 20 years to make the asylum system at national and international levels gender sensitive and gender competent and to address statelessness in the same way. I would like to thank in particular the United Nations High Commissioner for Refugees for their contribution, and for their constant support to the Committee's work. UNHCR supports the Committee in the development of this General Recommendation and provides invaluable information, on the situation in the State parties that we review during our monitoring of their compliance with the CEDAW Convention.

Thank you for your attention.
