**CEDAW and racism**

**Intersectionality of gender and racism**

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Geneva, 8th October 2013

Thank you very much for giving me the opportunity to present an overview of the work that the CEDAW Committee has been doing in relation with racism and racial discrimination and discrimination based on sex and gender.

1. **Introduction : the text of the Convention**

The CEDAW speaks of sex, women and men who constitute the group to which women’s situation is to be compared in order to establish if they get equal treatment. The Convention mentions 2 categories of women for whom there is special protection, that is rural women (art. 14) and pregnant women (art. 11 and 12). The Convention also applies to girls, implicitly.

The text does not mention racism or racial discrimination, but since **all** forms of discrimination against **all** women fall under the scope of the Convention according to Art. 1, which is very close to Art. 1 CERD, racism is implicitly included in it, and women are protected against racial discrimination in all articles of the Convention, be it the definition, the core obligations of State parties, the need to take temporary special measures, the fight against stereotypes, education, health, participation in political and public life, etc. The protection even goes beyond these articles since the Convention aims at protecting women in all fields, whether specifically named in the Convention or not. Although gender is not mentioned in the Convention, the Committee has interpreted it as covering gender based discrimination.

1. **The position of the Committee**

The Committee has early recognized the existence of double, triple, or multiple discrimination. It often uses the term intersectionality or intersectional discrimination to address the situation where women and girls are discriminated against not only on the basis of their sex or gender, but also because of some other characteristics such as race, ethnicity, cast, disability, migration, etc. It is keenly aware of the **intersection** of discrimination based on various grounds, and of their particularly negative dynamics. I will come to this at the end to discuss if intersectionality is sufficient to overcome the some problems due to the division of HR in categories, addressed in different treaties and by different treaty bodies.

 The Committee has tackled the situation of many groups of women, from ethnic, racial, religious or sexual minorities, indigenous women, migrant women, older women, girls, women with disabilities, poor women, etc. in its Concluding Observations and Recommendations, its General Recommendations, its decisions on Communications and inquiries, and in its Statements. I will take you through these instruments, starting with

1. **Concluding Observations and Recommendations on racism and racial discrimination**

**Recommendations** are sent **to State parties** after the dialog with their delegations on the initial and periodic Reports they have to present to the Committee (art.18). Some address a focussed issue such as the necessity “to ensure access by women, including indigenous and other racial minority women, to vocational training” (Surinam, 2007). Some Recommendations address a tangle of issues in a few sentences, such as in the COBS for the Netherlands 2007,

“r) take effective measures to eliminate discrimination against immigrant, refugee and minority women, both in society at large and within their communities
r) increase its efforts to prevent acts of racism, particularly against women and girls
r) conduct impact assessments of laws and policies which affect immigrant, refugee and minority women and include data and analyses in next report
i) include information on number of women who were granted residence permits, as well as those who were granted refugee status on grounds of domestic violence

The Committee systematically addresses **structural issues** such as the mechanisms fighting against discrimination or the need for detailed data in order to take informed decisions and policy measures. Stereotypes; violence against women, and the use of temporary special measures, for groups of women such indigenous women and women of African descent” (Costa Rica 2011) are always part of the COBS, as well as participation in decision making in political and public life, nationality, employment, health, economic situation., rural women, equality in law and marriage and family. The –committee requests State parties to take measures to integrate women belonging to minorities (broad sense) in the labour market, guarantee their access to health and social services, to education, etc, and generally to take legislative and practical steps to protect them from discrimination.

1. **General Recommendations**

GR are an instrument for the Committee to help State parties implement their obligations, by explaining the content and scope of the various articles of the Convention. The Committee has so far elaborated 29 GR.

I would like to draw your attention to 4 General Recommendations that have special importance :

**GR 28** on the core obligations of State parties under Art. 2, which also deals with intersectionality and the need for State parties to take measures against compounded forms of discrimination, (reference to intersectionality in § 18, and § 26 ), **GR 26** on women migrant workers, **GR 24** on women and health and the groundbreaking **GR 19** on Violence against women, that has to a wide extent, filled the lacuna of the Convention on VAW. All of these address the situation of “racialized” women, women belonging to ethnic groups, casts, etc.

I now come to a newer instrument which has enabled the Committee to detail its views on intersectionality.

1. **Communications and inquiries**

Thanks to the Optional Protocol (ratified by 104 State parties), the Committee can examine individual communications and conduct enquiries, since 2000.

I would like to present 3 cases:

The first is **da Silva Pimentel vs. Brazil (Communication no. 17/2008) and deals with violation of the right of women to non discrimination, specifically in the field of health**.

The author is the mother of the victim, a young women who died because the private clinic, to which care for pregnant women had been delegated by the State authorities, made grave mistakes in the diagnostic and treatment of her condition. The Committee noted the violation of Art. 2 since the Brazilian health system was dysfunctional, very little money was available for health services needed by women and training was poor, resulting in very high maternal mortality rates.

7.7 The Committee notes the author’s claim that Ms. da Silva Pimentel Teixeira **suffered from multiple discrimination, being a woman of African descent and on the basis of her socio-economic background.** In this regard, the Committee recalls its concluding observations on Brazil, adopted on 15 August 2007, where it noted the existence of de facto discrimination against women, especially women from the most vulnerable sectors of society such as women of African descent. It also noted that such discrimination was exacerbated by regional, economic and social disparities. The Committee also recalls its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, recognizing that discrimination against women based on sex and gender is inextricably linked to other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. …In such circumstances, the Committee concludes that Ms. da Silva Pimentel Teixeira **was discriminated against, not only on the basis of her sex, but also on the basis of her status as a woman of African descent and her socio-economic background”.**

Paradoxically, in its Recommendations to the State party, the Committee failed to underline the need for measures dealing specifically with the situation of indigenous and women of Afro-descent ! This case is the first time a Treaty body has held a State party accountable for the preventable death of a pregnant woman. Interesting case also in the analysis of responsabilites of a Federal state for the acts of the federal entities.

In a communication **Isatou Jallow vs. Bulgaria, decided in 2012**, the Committee was confronted with a request from a Gambian woman who had married a Bulgarian man and followed him to Bulgaria, where her husband started abusing her physically and sexually, wanting her to participate in pornographic films and photographs and allegedly also abused their young daughter. She tried to get protection from the social services, the police and courts with no success whereas her husband was very successful in his efforts to deprive her of her child and make her consent to a divorce on very bad terms for her! I quote from the decision

§ 82. In contrast with her husband’s application under the Protection against Domestic Violence Act that was duly heard, the State party’s authorities failed to act with due diligence, to provide her with effective protection and to **take into account her vulnerable position, as an illiterate migrant woman with a small daughter without a command of Bulgarian or relatives in the State party.** It further notes that **no translation of the emergency protection order was provided to the author**.

In addition to compensation for the victim and her daughter, the Committee recommended Bulgaria

(a) To take measures to ensure that women victims of domestic violence, in particular migrant women, have effective access to services related to protection against domestic violence and to justice, including interpretation or translation of documents, and that the manner in which domestic courts apply the law is consistent with the State party’s obligations under the Convention;

I will now quote from the last case, Kell vs. Canada, **No. 19/2008, UN Doc. CEDAW/C/51/D/19/2008 (26 April 2012), where** the Committee recognized that the author, had ben discriminated against as an aboriginal woman and as the survivor of domestic violence.

§ 93.  The author noted that “As an aboriginal person, she experienced racism, and as a woman, she experienced sexism. Both of these aspects of discrimination contributed to a pattern of behaviour that was “at best bullying and at worst abusive”. This is a very good way of illustrating the Catch 22 situation of women discriminated against on more than the ground of sex/gender where one of the dimensions of the discrimination disappears.

 *§ 10.2. The Committee again referred to intersectionality and reminded that “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned (para. 18). Accordingly, the Committee finds that an act of intersectional discrimination has taken place against the author.”*

The last instrument is

1. Statements, art. 21

The Committee took the occasion of the Durban Review Conference, 20-24 April 2009, Geneva, to issue a short and clear Statement by its Chair, on the multiple forms of discrimination that some women face owing to their colour national origin, etc. And in some other statements it has also addressed their situation.

**Let me come to my conclusion.**

The Committee seldom explicitly refers to the CERD Convention or to the General Comment 25/2000 on gender of the CERD Committee, but it is constantly preoccupied by the compounded discrimination that women suffer on the basis of their **gender AND their belonging to another category** that is also discriminated upon, such as race, ethnicity, migrant status, etc**,**

The work of CERD/CEDAW ; both Committees deal with race and sex/gender, that are deeply linked. Human rights are universal, indivisible and interdependent and are formalized in different treatises, monitored by different treaty bodies.

Intersectionality is the way to address the compounded discrimination people suffer, based on various grounds, such as race, sex, disability, socio economic status, religion, etc. and to overcome the obstacles of having their rights dealt with in different instruments. The treaty bodies have all recognized this and use the intersectionality analysis in their work. In view of the pervasive nature of discrimination based on sex and gender, the inclusion of sex and gender in the analysis of all the other forms of discrimination is necessary.

Under-inclusion/over-inclusion