

against Women

Forty-sixth session

Summary record of the 932nd meeting (closed) *

Held at Headquarters, New York, on Friday, 16 July 2010, at 10 a.m.

Chair person: Ms. Gabr

later: Ms. Halperin-Kaddari (Vice-Chairperson)

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The meeting was called to order at 10.05 a.m .

Statement by the United Nations Special Rapporteur on violence against women, its causes and consequences

1. **Ms. Manjoo** (United Nations Special Rapporteur on violence against women, its causes and consequences) said that despite significant progress achieved in recent years at the international level in the legal and institutional responses to violence against women, the reality on the ground showed that many forms and manifestations of such violence remained endemic around the world. That reality, and the challenges ahead, required increased joint efforts among international human rights mechanisms. She had made it a priority to strengthen synergies and possible areas of cooperation with bodies and institutions and in particular with the Committee.

2. Her first thematic report to the Human Rights Council, in June 2010, had addressed the issue of reparations to women who had been subjected to violence. Women were often the target of sex-specific and other forms of violence, both in times of conflict and in ordinary times, and there was a need for specific measures of redress. Her report highlighted the view that reparations should have a transformative potential and aim to subvert, rather than reinforce, pre-existing patterns of structural subordination, marginalization and inequalities that were often the root cause of violence against women. Complex schemes of reparations, providing a variety of benefits, including guarantees of non-repetition, could better address the needs of beneficiaries both at a practical level and in terms of their self-esteem. In that regard, she was encouraged that the Committee's approach focused on the broader aspects of reparations and that some of its recommendations had referred not only to violence against women in general, but also to a variety of specific forms of violence.

3. She suggested that the Committee should consider adopting a general comment on article 2 (c) of the Convention that would link the right to reparation with the concept of effective protection, since without both formal and substantive remedies the State could not adequately protect victims. The general comment could explore the various modalities of reparations for violations of women's rights and indicate some of the considerations that States must bear in mind to ensure that such modalities were defined and applied in a non-discriminatory way in their respective national legal systems, in a manner that reflected the specific needs and interests of women.

4. Her next thematic report, to be presented in June 2011, would focus on the intersectionality of multiple forms of discrimination against women and its impact on the continuum of violence, emphasizing the universality of violence against women and its linkages to other systems of domination based on inequality and subordination. Her 2012 report would focus on the issue of the responsibility of the State to exercise due diligence to prevent, investigate and punish acts of violence against women.

5. Over the past year, she had participated in regional consultations with civil society organizations, in El Salvador, Thailand and Zambia. Later in 2010 she would be attending a regional consultation in the Philippines. Those consultations afforded an opportunity to keep abreast of regional and domestic trends and establish direct contacts with women's organizations, academics and victims in different regions of the world; they also served to inform civil society about her mandate with a view to promoting and facilitating cooperation, including country visits. It would be worthwhile for a Committee member from the relevant region to participate in such consultations in order to present the work of the Committee, in particular with regard to its communications procedure, and promote ratification of the Optional Protocol. She would continue to encourage the consolidation of consultations in some regions and to promote them in regions, such as Europe, which had not yet institutionalized that practice.

6. During her country visits to monitor and follow up situations in specific countries, she had found the Committee's concluding observations invaluable in her interactions with State and non-State actors. She hoped that her recommendations in country mission reports were also useful to the Committee's work. So far she had conducted visits to El Salvador and Kyrgyzstan; she would be going next to Algeria, the United States of America and Zambia, and she had also requested visits to Jordan, Somalia, Turkmenistan, Uzbekistan and Zimbabwe.

7. On 23 April 2009, jointly with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, she had sent an allegation letter to the Government of the Philippines concerning Executive Order No. 003, which had resulted in a ban on contraceptives and on family planning services in public health facilities in the city of Manila. The

response from the Government, dated 5 November 2009, had indicated that the executive order did not ban the use of contraceptives or restrict access to family health services; although contraceptives could not be provided free of charge, there was no ban on their distribution by private facilities and non-governmental organizations, or on their sale in pharmacies. She welcomed the Committee's consideration of the possibility of conducting an inquiry and recommended that it carry out a country visit, if possible.

8. The Committee's visit to Mexico in order to investigate the abduction, rape and murder of women in and around Ciudad Juárez had resulted in some positive action taken by the Mexican Government, such as the adoption of a general law on violence against women; she herself had found the Committee's report very useful when looking at the situation of femicides in Central America in preparation for the regional consultation in El Salvador in March 2010 and other meetings. The recent decision of the Inter-American Court of Human Rights in *Cotton Field v. Mexico* had set very high standards in terms of the State's due diligence obligation and also addressed the issue of gender sensitive reparations with a transformative potential.

9. In terms of communications, she was convinced that she and the Committee could benefit from exchanging information on a more systematic basis, particularly since a large number of cases brought before the Committee were directly related to violence against women. Cases which included specific allegations of human rights violations could be communicated in order to determine the most appropriate course of action. Another possibility would be for the Committee to review and follow up selected cases which appeared to be admissible under its procedure. She looked forward to regular exchanges with the Committee throughout her tenure.

10. **Ms. Ameline** said that although women throughout the world were often the first to fall victim to violence, conflicts and discrimination, they were also in the forefront of progress. In emergency and post-crisis situations, such as the situation in Haiti, efforts should be mobilized to demonstrate that women could play an equal part in rebuilding their countries.

11. She fully supported the Special Rapporteur's approach to reparation; all countries should be encouraged to ratify the Optional Protocol and the Statute of the International Criminal Court.

12. The work being carried out in Europe to align the provisions of legislation most advantageous to women demonstrated the value of regional integration. During the General Assembly's review of progress towards achieving the Millennium Development Goals, in September 2010, the need for gender equality must be considered in relation to all the Goals.

13. **Ms. Arocha Domínguez** said that she was pleased that the Special Rapporteur had addressed her concerns about the participation of civil society organizations in regional consultations. The very broad, participatory and representative process of preparations which had preceded the Special Rapporteur's visit to El Salvador had been of great benefit in terms of awareness-raising, integration and coordination.

14. **Ms. Patten** requested the Special Rapporteur to elaborate on the types of reparation that were being proposed and asked whether they covered housing, since monetary compensation did not always solve the problems, for example in cases of domestic violence.

15. She supported the Special Rapporteur's view of effective legal protection under article 2 of the Convention; the Committee and the Special Rapporteur should work together on the follow-up procedure. A modus operandi needed to be found for exchanging information so that the Special Rapporteur could draw on the recommendations of the Committee. She asked whether the Special Rapporteur envisaged model legislation on violence against women, especially domestic violence, in her plan of work.

16. It was appropriate to find a way to exchange information regarding communications on violence against women, particularly since the Special Rapporteur was not bound by the same confidentiality rules as the Committee. The Committee needed to use the inquiry procedure more extensively and, to that end, it was important that the Special Rapporteur should pass on information so that the Committee could launch an inquiry in appropriate cases.

17. **Ms. Šimonovič** said that the Special Rapporteur had referred to cooperation with the Committee; the Committee was already making use of her country reports and recommendations. The communications procedure was another possible area of cooperation; there should be no obstacle to the Committee receiving information from the Special Rapporteur since there was no restriction as to who should send information to the Committee.

18. With regard to the specific inquiry being made in the Philippines, she requested the secretariat to make available copies of the letter which the Special Rapporteur had sent to the Government of the Philippines, and of the reply she had received. It was important for the Committee to have full information so that it could determine which provisions of the Convention might have been violated. She would welcome a personal assessment from the Special Rapporteur in that regard.

19. **Mr. Flinterman** said that he agreed that the right to reparation should be seen in terms not only of restitution, but also of transformative potential. He wondered whether the Special Rapporteur had based that right on the Convention, which had been ratified by 186 States and therefore, it could be argued, represented customary international law.

20. The Committee would soon adopt a general recommendation on article 2 of the Convention, and could draw on the report of the Special Rapporteur in order to refine its language.

21. The Special Rapporteur and the Committee had somewhat different roles: the former could be approached at any time, whereas the latter was bound by confidentiality and considered only cases in which all local remedies had been exhausted. There was nevertheless great potential for synergies. For that purpose, it would be useful for the Committee to have access to a survey of the recommendations received by the Special Rapporteur.

22. **Ms. Halperin-Kaddari** said that the Special Rapporteur and the Committee should each keep the other informed of communications that might satisfy its criteria for action. The Special Rapporteur had provided crucial information with regard to the ban on contraceptives in public health-care facilities in Manila. It was essential to ensure that such information continued to be

conveyed in the future. She asked her to comment on how her mandate related to that of the gender entity established pursuant to General Assembly resolution 64/289.

23.**Ms. Hayashi** said that while her own understanding had been that the category of gross and systematic violations applied largely to post-conflict situations, the Special Rapporteur's interpretation appeared to be broader. She would welcome further comment on the distinction between on the one hand women subjected to violence in countries coming out of widespread conflict or authoritarian repression, and on the other hand women subjected to systemic violations in other contexts .

24.**Ms. Popescu** asked at what level the regional consultations took place. It was important to maintain contact with non-governmental organizations, academics and victims, but also to ensure that States parties were aware of their obligations.

25. There remained a tendency to see domestic violence as a private matter. She wondered if the Special Rapporteur had raised the issue with authorities and religious leaders; violations were often a result of deeply entrenched patriarchal traditions.

26. She would appreciate any comments on the table of human rights indicators, which incorporated the indicators proposed by her predecessor.

27. It would also be useful to know the Special Rapporteur's opinion on how the Committee could proceed with its inquiry into the situation in Mexico.

28.**Ms. Ara Begum** said that the Committee intended to adopt a general recommendation on ageism, a prominent cause of abuse, neglect and violence. In her country reports, the Special Rapporteur might consider addressing the situation of older women, notably by describing their needs and the human rights violations to which they were subjected.

29.**Ms. Belmihoub-Zerdani** said that she was prepared to assist the Special Rapporteur in her forthcoming visit to Algeria, and to introduce her to potential interlocutors. Women were well represented in the Government and judiciary of Algeria.

30.**Ms. Jaising** said that in her view, interaction between the Committee and the Special Rapporteur should focus more on thematic issues than on communications. The guidelines in place for the drafting of reports and concluding observations led to a certain uniformity, and a greater focus on thematic issues might help to counter that trend.

31. It would be useful to reach a definitive view on whether or not the Convention constituted customary international law. Although the Committee had declared that article 2 was non-derogable, numerous derogations remained in place. Another controversial area that underscored much of the Committee's work was the relationship between the principle of equality on the one hand and the status of religion and indigenous customary law on the other.

32.**Ms. Zou Xiaojiao** asked on what basis the Special Rapporteur selected the countries to be visited, and why the number of visits per year was limited to two. Governments should be made aware that such visits were intended not merely to find fault, but also to report on good practices. The Special Rapporteur should listen to civil society while also working with the authorities, whose input was equally important.

33.**Ms. Manjoo** (Special Rapporteur on violence against women, its causes and consequences) said that the regional consultations were civil society events to which she had been invited. She encouraged the institutionalization of such meetings, which gave her an opportunity to hear the views of women from a range of countries. However, they were not organized or funded under her mandate, and it was therefore not for her to decide whether religious and indigenous leaders should be invited.

34. Country visits were planned for a variety of reasons. Her visit to El Salvador had been suggested by groups in that country as a follow-up to her predecessor's visit and in view of her presence in the region. Visits were limited to two per year owing to funding constraints; unlike some other special procedures mandate holders, she did not obtain independent funding from foundations or Governments.

35. Her work was based on the 15-year review of the mandate, which had been conducted by her predecessor. The review had identified certain areas as conceptually underdeveloped. Reparations were recognized as a due diligence obligation, but how that obligation applied during what was conventionally known as times of peace, as opposed to post-conflict situations, remained to be defined. She had therefore sought to examine how the basic principles contained in General Assembly resolution 60/147, known as the van Boven principles, which did not focus on gender, could be interpreted creatively. She had examined different types of reparation, including individual, communal and symbolic reparations. Housing was one form of reparation envisaged as part of a holistic and transformative approach. It would be useful for a group of experts to be convened in order to determine a list of issues for consideration.

36. The work of the Committee was crucial to the preparation of her visits, as was the information submitted by civil society and that contained in the universal periodic review.

37. With regard to the Millennium Development Goals, she herself favoured the twin-track approach of a separate goal for women's empowerment, but that in turn required interpretation of all the other goals from a gender perspective, which was a challenge for many States. Reports on the Goals and on the universal periodic review process were already becoming a technocratic exercise, and the challenge for mandate holders was how to sift through those technocratic reports to distil the essence of a situation. Conceptual clarity was of course desirable, but all mandate holders faced limits and frustrations. For instance, in her 2012 report on due diligence she would not be able to mention any country by name without inviting criticism.

38. The code of conduct for mandate holders was sometimes used as a pretext to claim that they had exceeded the limits of the mandate as a way to deflect attention from the information contained in reports. There had been some discussion of a strengthened internal inquiry process for self-policing by mandate holders. The proposed mechanism would be quasi-judicial; while an allegation of

misconduct was being investigated no report could be issued. The mandate holders saw that as a potential delaying tactic by States and were fighting the imposition of such a system. With regard to confidentiality of communications, her practice was that all communications remained confidential until they appeared in her annual report. Because there was no enforcement mechanism, one of the challenges faced by mandate holders was a lack of response by States. One of the ways she addressed it was to mention which States had not replied to her communications whenever possible. She would encourage more joint communications by related mandates as a way to elicit more response. Unlike the Committee, she was not bound by the requirement that domestic remedies had to be exhausted before she could receive a complaint.

39. As to how she chose countries to visit, she was guided by information received. For example, a plan to visit Zambia had arisen out of a regional meeting she had attended; it had seemed opportune because a new law on violence against women was being adopted. She planned to visit the United States of America out of her concern at the perception of a North-South divide and a desire to take a more even-handed approach by showing that violence against women existed all over the world, even in developed countries. She would pay particular attention to domestic violence as it related to the culture of gun violence in that country. Concerning human rights indicators, her 2012 report on due diligence would build on her predecessor's work in that area.

40. Although femicide was still a problem in Mexico and in the Central American region as a whole, the Committee's inquiry had acted as a catalyst for change and had led to the adoption of new laws.

41. She pointed out that the African Commission on Human Rights had not yet heard a single case involving women's human rights, which led her to wonder how her mandate and the Committee could cooperate in sharing their knowledge in order to raise awareness in that region and in other regions as well. The Special Rapporteur on torture had looked at violence against women as a form of torture, yet it appeared that the bar for establishing torture was set too high to encompass domestic violence. Further discussion on the constraints and benefits of that joint approach was needed.

42. She urged the Committee to continue to challenge the dichotomy between the public and private spheres, which intersected in many areas — sexual orientation, religious dress codes and efforts to halt the spread of HIV/AIDS were just a few.

43. *Ms. Manjoo withdrew.*

44. *Ms. Halperin-Kaddari, Vice-Chairperson, took the Chair.*

Activities of the Committee under the Optional Protocol to the Convention (*continued*)

45. **The Chairperson**, recalling the Committee's decision taken at its forty-fifth session to conduct a confidential inquiry into the ban on modern contraceptives from all health facilities in the Philippines and a denial of information or referrals for family planning services, said that the Committee had decided to postpone until the current session its decision on whether a visit to the Philippines would be warranted.

46. **Ms. Patten**, speaking as Chair of the working group on the inquiry in the Philippines, said that she had been surprised to learn that the State party had not been informed about the Committee's decision. The secretariat had apparently conducted an exchange of views with the State party and the bureau had been informed accordingly. In the future, it would be appropriate for members of the working group also to be kept abreast of developments on such substantive issues.

47. With regard to the inquiry itself, there had been new developments indicating that the State party was not being cooperative. The Special Rapporteur on violence against women and the Special Rapporteur on the right to health had both raised the same issue with the Government of the Philippines. In fact, the Special Rapporteur on the right to health had informed the Human Rights Council that he had sent a letter to the Government seeking more information on the implementation of Executive Order No. 003, but had not received a reply.

48. At the local level, the mayor of the city of Manila had been re-elected for a fourth term and, according to NGO sources, had given all indications that Executive Order No. 003 would continue to apply. At the national level, a new President had been elected; his position on women's access to contraceptives and family planning was, at best, ambiguous. By all indications, the judiciary and the legislature were also not warm to the idea of allowing women access to contraceptives or family planning services.

49. In the light of those developments, the decision should be made to undertake a visit to the Philippines during the current year by a team made up of at least two members of the Committee.

50. **Ms. Šimonovič** said that the secretariat should provide a complete text and documents detailing its exchange of views with the State party. A document should also be prepared to explain clearly what was meant by the expression "grave and systemic violation of women's rights".

51. **Mr. Flinterman** said that a visit should be undertaken before the inquiry, because it was through the visit that the veracity of the allegations of grave and systemic violation of women's rights could be established. The information provided was generally reliable and constituted prima facie evidence that women's rights were being violated in the country and a visit should be undertaken as soon as possible to corroborate that information.

52. **Ms. Zou Xiaojiao** said that she would hesitate to undertake a visit because the information which the secretariat had received was mainly from United Nations agencies and reflected only the Government's view. Great care should be taken to collect information from all reliable sources before deciding to undertake a country visit, because the issue was sensitive, with religious and social overtones. It was important to have a written document explaining the situation in detail before a decision could be made.

53. **Ms. Jaising** said that several authorities had already made public pronouncements indicating that contraceptives were not and

would not be available in the public sector. Even though the authorities claimed that contraceptives were available in the private sector, that was irrelevant, as affordability and accessibility of contraceptives should apply across the board. A country visit was therefore warranted.

54.**Ms. Murillo de la Vega** said that while a written document could be requested, a visit would send a message to the State party that the Committee was concerned about the violation of women's rights in the country and would give Committee members the opportunity to obtain information first-hand.

55.**Ms. Coker-Appiah** said it had been her understanding that the Committee had agreed at its forty-fifth session that an inquiry was necessary. She failed to see why some members felt that the information available was not sufficient. Even if the information provided by United Nations agencies was not considered reliable, there was enough information from other sources. In the case of the Mexican inquiry, for example, most of the information had been obtained from civil society. A recent documentary by the British Broadcasting Corporation had also shown top political and religious leaders of the Philippines stating clearly that contraceptives would not be available for women in the public sector. A country visit was therefore warranted.

56.**Ms. Neubauer** said that the public authorities of the State party had indicated clearly that they would continue to prohibit access to contraceptives in the public sector. They were also putting considerable pressure on private clinics, such that many had stopped providing contraceptives and family planning services. The decision should therefore be made to undertake a visit.

57.**Ms. Popescu** said that she wondered whether all steps had been taken to get the State party to submit the information required. It would be preferable to have written information — maybe a summary — which would be carefully analysed by Committee members before they could make a decision.

58.**The Chairperson** said that the secretariat had submitted a timeline of its interactions with the State party which would be distributed to members.

59.**Ms. Patten** said that she had a document which presented an overview of the religious and social context in the Philippines, which could be circulated to members to help them in making their decision about the country visit.

60.**The Chairperson** said that all relevant and available documentation would be circulated to members for consideration before a decision was made.

The meeting rose at 1.05 p.m .