

Istanbul Meeting, October 31 – November 3, 2012

**CEDAW General Recommendation on the economic consequences of
marriage, family relations and their dissolution**

Statement by Prof. Ruth Halperin-Kaddari

Honorable Minister Ms Sahin, Deputy High Commissioner and Assistant SG Ms Kang, Madame Chair of CEDAW Ms Pimentel, moderator of the panel CEDAW member Ms Acar, colleagues members of the CEDAW Committee, distinguished guests,

As the Chair of the Working Group of this General Recommendation, I am grateful for the opportunity to introduce the upcoming new General Recommendation on Economic Consequences of Marriage, Family Relations and their Dissolution, which the Committee has embarked upon as early as February 2009 in its 43rd session, and now plans to adopt in its upcoming 54th session in February.

In my statement I shall give some background about this new general recommendation, and will describe its framework in broad terms. But first, let me acknowledge the work and the support of the other CEDAW experts members of this working group: Madame Ameline; Madame Awory; Madame Jaising; Madame Patten; Madame Pimentel and Madame Popsecu.

I would also like to acknowledge the invaluable contribution I am fortunate to gain from the collaboration with Prof. Marsha Freeman, Director of International Women's Rights Action Watch (IWRAP Minnesota).

Madame Chair,

As stated in the Universal Declaration of Human Rights, the family is the basic unit of society. It is a social and a legal construct, and to some, it is also a religious construct. The family is where all of us human-beings get our very basic notions of interrelationships: the understanding of the meanings of connections, care, as well as roles, duties and responsibilities. It is the place of socialization for children, who become young adults, and in the process they internalize the norms, the social

patterns, the various family roles they witnessed in their families. When the family functions on the basis of gender equality and equity, these are the values that shall accompany those who grew in such families throughout their adult lives. When maltreatment, exploitation and inequality characterize the family, they shall characterize their members throughout their lives.

The family is where it all begins, the reproduction and the production. The reproductive functions of the family entail nurturing, education and socialization; the productive functions of the family relate to distribution of work, of care work, and of wealth. Each and every one of these functions of the family is primarily diffused with gender aspects. Indeed, the family is the prime locus of gender roles division which then extends throughout all spheres of social and economic life.

Family-market relations have long been the subject of study and research, and it is well established that family structures, gendered labor division within the family, and family laws affect women's economic well-being no less, and probably even more, than labor market structures and labor laws. It is also well established that the economic aspects of family formation and dissolution are not experienced on an equal basis by men and women in any country in the world. More precisely, women often do not equally enjoy their family's economic gains, and they usually bear a much higher burden upon breakdown of the family.

The economic consequences of divorce have been of growing concern to social scientists and policy makers. Research in industrialized countries has demonstrated that while men usually experience only some income losses after divorce, most women experience a substantial decline in household income and an increased dependence on social welfare where it is available. Throughout the world, female-headed households are the most likely to be poor. Regardless of the vast range of family economic arrangements all women, whether in developing or in industrial countries, share the experience of being worse off economically than men in family relationships and following dissolution of those relationships.

Inequality in the family can indeed be the most damaging of all forces in women's lives, underlying all other aspects of discrimination and disadvantage, and is sheltered

by ideologies and cultures. Families are governed by different legal systems, ranging from civil-secular legal systems, to religious, to customary, to ethnic systems. These may differ in content and in ideology, but sadly, as the CEDAW Committee realizes one session after the other, not one of these legal systems offers true equality, *de facto* and not just *de jure*, between men and women.

The Committee keeps hearing about women who have no marital economic rights at all, as their marriages are unregistered; about women who live in de-facto relationships who have no economic rights whatsoever, i.e. no share in the property that was accumulated during the relationship, no post-separation support, and no part in their partner's pension rights nor rights as survivors if the partner dies; about women who upon marriage "have to move into the man's family to abide with that family's norms", and when marriage is dissolved "the wife has to move out of the house taking only her own belongings"; about the dowry system which is still practiced in many countries; and more, and more. Particularly complex and problematic is the situation of plural legal systems. The Committee hears of multiplicity of legal systems that exist in many countries, so that whereas the formal civil codes may extend economic protections to married women and to women following divorce or death of their spouses, marriages or unions that are conducted under customary or traditional systems, which are in fact the more common forms of family constructions there, remain heavily patriarchal and leave women destitute following the dissolution of such unions.

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women provides for the elimination of discrimination against women at the inception of marriage, during marriage, and at its dissolution by divorce or death. In 1994, the Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 21, which elaborated upon many aspects of Article 16 and drew a broad vision of egalitarian family law, but did not address the economic aspects of family relations and their dissolution comprehensively.

Since 1994, the Committee has reviewed many States parties' second, third, and subsequent periodic reports and has noted the perpetuation of inequality in the family. Many states have implemented only incremental legal changes, if any, and fall short

with respect to addressing discriminatory family laws, traditional or customary patterns of marriage and marital behavior that clearly disadvantage women. Some of the states with the greatest inequality have not addressed marital property and inheritance issues for decades.

In view of global developments since 1994, including the increasing impact of the global market economy, the entry of growing numbers of women into the paid work force, increases in income inequality within states and between states despite overall economic growth, growth in divorce rates and in *de facto* family formation, and above all the persistence of women's poverty, the economic aspects of Article 16 have become increasingly important.

Hence, the new General Recommendation on the economic consequences of family relations and their dissolution will be most useful to States parties and to the women who reside in them. This General Recommendation will serve as a guide for States parties in achieving an egalitarian legal regime under which the economic benefits of marriage and the costs and economic consequences of marital breakdown are equally borne by men and women. It establishes the norm for evaluating States parties' implementation of the CEDAW Convention with respect to economic equality in the family. It is drafted with reference to General Recommendation No. 21, building upon the significant normative ground it already covered and updating its content in light of the CEDAW Committee's reviews of State party compliance and other relevant developments since its adoption.

All this is the background to the new General Recommendation.

I would like now, very briefly, to outline it:

- It starts with constitutional issues, including situations of multiple legal systems;
- It proceeds to offer an analysis of the various forms of family relations that exist in the different states, and provides for the normative framework to be adopted in each case, including customary marriages, registered partnerships, polygamous marriages and de-facto unions;
- It continues with addressing the economics of marriage formation, including the practice of bride price or dowry and the possibility of forming a pre-

nuptial agreement including mechanisms to safeguard against abuse of power when negotiating such agreements;

- It then addresses administration and management of property during the relationships;
- And then moves on to discuss the economic consequences of divorce, including the determination and the division of marital property; valuation of non-financial contribution; consideration of post-separation financial award to balance disparities in allocation of economic benefits and burdens of the marriage and its dissolution;
- Then comes inheritance, including independent widows' inheritance rights upon death of their spouses, as well as other discriminatory inheritance practices such as levirate marriages;
- It concludes with addressing the issue of reservations to the Convention on the basis of religious or customary laws;

Madame Chair, dear colleagues, as we can see, the issues are numerous, and are far from simple. But the time has come.

If I may paraphrase on the words of Hillel the Sage:

"If it is not upon us, then upon whom; and if not now, then when".
