

## VIEWS AND COMMENTS

### CEDAW - Draft General Recommendation No. 35 on the Gender - related dimensions of Disaster Risk Reduction in a Changing Climate

#### A. Introduction and Objective (Chapters I to III)

##### 1.0 Scope and definitions

##### 1.1 'Disaster'

- The scope of the General Recommendation should be clarified through defining and using terms consistently. The draft General Recommendation refers to 'disasters' as separate to climate change (para 2), 'natural disasters' (para 4), 'climate change related disasters' (para 6) and 'situations of disaster in a changing climate' (para 31).
- The Committee should align its use of the term 'disasters' with that in the ILC draft articles on the protection of persons in the event of disasters. The draft articles state:  
*'disaster' means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.*
- There are two reasons why the General Recommendation should adopt the definition of a disaster set out in the ILC draft articles.
  - First, the Commentary to the ILC draft articles notes the difficulty of isolating and proving causes of disasters and the undesirability of forcing the victims of disasters to establish their cause, particularly in the case of disasters with multiple causes.
  - Second, even if the ILC draft articles are not adopted as a treaty, they draw on a decade long extensive study of customary international law, on which states and international organisations have had the opportunity to comment. It makes sense for the General Recommendation to use the term 'disaster' consistently with its widespread usage within the UN system and by States.
- While the Committee has decided to focus on disasters in a changing climate, broadening the scope of its General Recommendation to disasters more generally, would be sensible. It would raise the profile of gender in disaster risk reduction and provide an international standard that could be used by states to measure their progress from a baseline and share successes and best practices with each other. Further, civil society could draw on the standard in advocacy for disaster risk reduction. While the General Recommendation will inform and guide state practice under CEDAW, this Committee is the first to address the issue of gender in disasters in relation to a binding international treaty commitment, albeit in the form of a non-binding Recommendation.

## **1.2 Disaster risk reduction or all phases of the disaster cycle?**

- While the General Recommendation refers to disaster risk reduction, some aspects of it refer to disaster response and recovery. For example, it mentions a heightened risk of violence to women and girls in the aftermath of disaster and an increased burden of caretaking and domestic work for women following disasters. Barriers to women's ability to access justice and claim reparations for losses, and ensuring women's equal access to infrastructure and services, also relate to disaster recovery, rather than disaster risk reduction.
- It would be helpful for the General Recommendation to analyse the obligations of States at different stages of the disaster cycle, i.e., risk reduction, preparedness, response and recovery. If the Recommendation is not intended to refer to other stages of the disaster cycle apart from risk reduction, a clear statement to that effect should be included and these references should be removed. Nevertheless, a CEDAW General Recommendation that addresses gender and disaster response would be more comprehensive and would provide guidance to States and humanitarian actors that is currently lacking.

## **1.3 'Gender'**

- The term 'gender' as used in the draft General Recommendation is largely a synonym for women.
- The draft General Recommendation rightly acknowledges the differential impact of disasters on women, girls, boys and men and the differences between different groups of women (para 2). Nevertheless, in other places, the Recommendation slips into conflating gender with women. This is disappointing, given that States and CEDAW have previously acknowledged the essential role of men in addressing gender equality. While CEDAW focuses on women, as per its mandate, the draft Recommendation has the potential to influence States and civil society to identify the ways in which men are gendered, and how this plays out in disasters. An example of the impact of disasters on men is the tendency noted for men to turn to alcohol and become violent, as maladaptive coping strategies in the wake of disasters.

## **1.4 Gender identity and sexuality**

- References to gender identity and sexuality as a marker of a particular sub-group of women are inconsistent.
- Paragraph 19(a) omits mention of gender identity or sexuality while paragraph 25(a) is more comprehensive and refers to 'LBTI women' without explaining the acronym. The General Recommendation should refer consistently to gender identity and sexuality as factors that may give rise to discrimination, or increase vulnerability in disasters while using

the broadest and most inclusive terms possible, acknowledging that gender identity and sexuality vary between cultures and societies.

- The Committee is to be commended for acknowledging an increase in violence against transgender persons in situations of disaster. Reference to transgender persons should be introduced earlier, in reference to sexual and gender identity, and in relation to intersectional discrimination. It is also important to consider how transgender persons are excluded from disaster risk reduction measures, through failure to include them in early warning systems and disaster preparedness measures, for example, and how pre-existing social marginalisation is amplified in disasters.

## **B. General Principles of the CEDAW Convention applicable to disaster risk reduction in a changing climate (Chapter IV)**

### **2.0 Accountability and access to justice**

- The draft General Recommendation seems to assume that justice and law enforcement systems will continue to operate in a disaster. However, it needs to also suggest how to minimise disruption to these systems when there is a disaster. This is particularly important for women and girls wishing to report and seek protection from sexual and domestic violence from the police and courts. Some examples of measures to address this issue include mobile or specialized reporting mechanisms, investigation teams and courts. The Committee may wish to consider the feasibility of its recommendations where there is a large-scale disaster situation that severely disrupts the State organs.

## **C. Thematic areas of Concern (Chapter VI)**

### **3.0 Health**

- The draft General Recommendation refers to ‘gender-based differences in vulnerability to infectious and non-infectious diseases occurring in situations of disaster and as a result of climate change’.
- The General Recommendation should spell out that some pandemics could constitute disasters, that climate change is affecting the distribution and severity of certain diseases, and that gender-based differences in vulnerability to disease may be the result of inequality, such as social expectations on women to be primary care-givers of children, the elderly and the sick. The role of health workers in identifying and responding to signs of sexual violence and related trauma should also be emphasised, with adequate training provided to health workers.

## **D. Dissemination and Reporting (Chapter VII)**

- While the suggestion is welcome for states to ‘regularly report’ on measures they have adopted to promote the human rights of women in disaster risk reduction, it is unclear to whom States should report and how often. Examples of state reporting could include as part of the Universal Periodic Review, to UN conferences on disaster risk reduction and reporting at a national level in accordance with relevant domestic law and policy.
- The Committee could also consider whether other fora could be created that would facilitate the exchange of information and best practices between States, humanitarian actors and civil society, and recognise a need for States and humanitarian actors to update gender-related plans, policies and strategies to reflect new research and practices and to respond to emerging challenges. It is important to include disaster risk reduction civil society organisations in cooperative networks listed in paragraph 70.

## **E. Issues not addressed by the draft General Recommendation**

### **4.0 Potential for disasters to improve status of women**

- The draft General Recommendation rightly acknowledges the vulnerability of women and girls to disasters as ‘socially and culturally constructed and can, therefore, be changed’.
- The General Recommendation should also acknowledge explicitly that vulnerability is not permanently located in a particular social group but varies with different disasters.
- The General Recommendation should encourage states to view disasters as an opportunity to improve on the status quo and to take active steps to remove discriminatory laws. An example is the repeal and replacement of laws preventing widows from accessing title to land in Aceh, following the 2004 Indian Ocean tsunami.

### **4.1 Shelter and prevention of violence post-disaster**

- The draft General Recommendation notes the link between homelessness and increased threat of violence and the need for women to participate actively in ‘planning, implementing and monitoring housing and urban development programmes and policies, including in terms of emergency’.
- The Recommendation should spell out the link between inadequate housing and shelter and increased risk of gender-based violence against women with participation in emergency housing planning, an important means to achieve the aim of prevention of violence following disasters. This should include identifying risk factors for violence and taking measures to prevent violence as part of disaster planning and preparedness.

## **4.2 Non-state actors**

- While the draft General Recommendation primarily addresses the obligations of States parties to CEDAW, it has the potential to influence other actors who are likely to be involved in disaster response and recovery, such as UN agencies, NGOs, faith-based groups and the private sector. The Committee could consider addressing those actors to recommend that they adopt a gender sensitive approach such as through a gender balance in relief personnel. Reference to the work done by humanitarian organisations on gender in disasters may also provide States with examples of best practices and guidelines that may translate many of the policies incorporated in this Recommendation into workable plans of action.

## **4.3 Intersection with other rules of international law**

- The Committee should also consider how the General Recommendation will interact with other CEDAW instruments and initiatives, as many of the issues that are highlighted in a disaster context reflect enduring, often structural, inequalities. It should also reiterate that measures to improve the position of women and girls should be taken in a 'normal' non-disaster context, and not restricted to emergency laws or procedures.

## **4.4 Terminology**

- The draft General Recommendation uses the terms 'gender responsive' and 'gender sensitive' without explaining the differences, between these terms. It also refers to 'gender machineries' and 'women's machineries' again without explaining the difference.

## **F. Conclusion**

- Whilst Mauritius welcomes the contents of this draft General Recommendation No. 35, yet, it is also important to ensure that the General Recommendation does not act as parallel reporting guidelines which would defeat the purpose of treaty reporting in so far as CEDAW is concerned on the General Principles of the CEDAW applicable to Disaster Risk Reduction in a changing Climate.
- The disaster risk reduction governance, institutional and legal measures put into place in Mauritius aim at addressing challenges on the obligations of States to take effective measures to anticipate and respond to the new hazards and disaster risks that have emerged as a result of climate change.
- Whilst the General Recommendation sets out guidance for State practice under CEDAW, it may be more purposeful to address the issue of gender in disasters on its own first, as there are many issues as highlighted under the General Recommendation that come into play.

- No specific mention of gender has been made in our National Disaster Risk Reduction and Management legislation purposely, so as not to give rise to any form of discrimination based upon the provisions in our Constitution.
- The General Recommendation should also address the application of IHL Rules.

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