



## ***International Commission of Jurists: Non-Paper***

### ***Women's Equality Before the Law: New Independent Expert of the UN Human Rights Council***

#### ***1. Why is this Issue Important?***

The principles of equality and non-discrimination are fundamental tenets of international human rights law, and stand at the heart of international human rights protection. It is clear that as long as law does not promote and protect women's equality and as long as law that discriminates against women exists, progress in relation to guaranteeing women's human rights can only go so far. Although there is no silver bullet to ending all discrimination against women reform of law that discriminates against women and the development and enactment of law that promotes and protects their equality is a critical step.

Women's inequality before the law and in the administration of justice persists throughout the world and affects women in all countries, of all ages, and in all aspects of their lives. The lack of progress that has been made on this issue, despite repeated international commitments and widely ascribed-to international legal commitments, is widely acknowledged to be appalling.

#### ***2. Why is there a Need for an Independent Expert of the Human Rights Council? Would an Independent Expert Add-Value?***

There is a need for holistic, systematic and dedicated attention to be paid to this issue in a cohesive and sustained manner. It is a human rights issue that affects the lives of women in serious ways on a daily basis in all parts of the world. Until a mechanism is established that can deal with this issue as its exclusive focus, the momentum for change will be lacking. The time has come for the Human Rights Council to play a proper role in tackling this problem.

2010 is the 15<sup>th</sup> anniversary of the adoption of the Beijing Declaration and Platform for Action in which all States committed to reforming law that discriminates against women and developing and adopting law that promotes women's equality. There is no better way for the Human Rights Council to enhance follow up to the Beijing Declaration and Platform for Action and to make sure its actions match its commitments, than to establish the mandate for an Independent Expert in 2009. This would then allow the mandate-holder's appointment in 2010 to mark the anniversary of the Beijing Declaration and Platform for Action.

#### ***3. Given the Scope of the Problem, Can One Individual Really Add-Value?***

Yes. An Independent Expert would bring a level of focus and attention to the issue that, as the slow pace of change indicates, has so far been insufficient. It would be able to build on, pull together and draw learning from the work that is being done in

different areas by different bodies. In this way it will act as a catalyst for change, maintaining a focus on the issue and identifying solutions and ways forward. No current mechanism has the mandate to undertake this work in this manner.

**4. *Would an Independent Expert of the Human Rights Council Duplicate the Work of CEDAW?***

No. This is because although the Committee does consider issues related to law that discriminates against women and the need to ensure law is in place that protects women's equality, it can do so only every number of years in its periodic consideration of State-parties' reports. Moreover its focus is not universal, as not all States are party to CEDAW. Additionally the Committee can only consider this issue as one of many other issues that it is obliged to consider. Furthermore the function of the treaty bodies as quasi-judicial entities is different in many respects to that of the Special Procedures of the Human Rights Council. CEDAW cannot carry out in-depth cross cutting analysis on particular themes in relation to which women's inequality before the law is particularly relevant. Nor can it undertake studies of best practices, or work with States on an ongoing basis in relation to, and in support of, law reform initiatives.

**5. *Would an Independent Expert of the Human Rights Council Duplicate the Work of Other Treaty Bodies?***

No. Again the other treaty bodies can only deal with the issue as part of their periodic consideration of country-specific reports, can only deal with the matter briefly as one of many other issues, cannot carry-out in-depth cross cutting analysis of particular themes or best practices, and cannot engage with States in relation to specific law reform processes. Additionally, in the case of the other treaty bodies their ability to deal with the matter is even more limited and disparate than that of CEDAW as their remit is confined to the specific human rights enshrined in the relevant treaties. Therefore they cannot take a holistic approach to the matter.

Additionally it is very important to recall in this context that the Special Rapporteur on Contemporary Forms of Racism does not duplicate the work of the Committee on the Elimination of Racial Discrimination. The Special Rapporteur on the Rights of Migrants does not duplicate the work of the Committee on the Rights of Migrant Workers and their Families. The Special Rapporteur on Torture does not duplicate the work of the Committee Against Torture, or the Human Rights Committee. And the Special Rapporteurs on the Right to Education, Right to Health or Right to Housing do not duplicate the work of the Committee on Economic, Social and Cultural Rights.

**6. *There is a Special Rapporteur on Violence Against Women. Does this Mean that Discrimination Against Women is Already Being Dealt with by the Council and There is No Need for a New Mandate?***

No. The Special Rapporteur on Violence Against Women has the mandate to deal only with violence. And although discrimination and inequality is at the root of violence against women they are not one and the same. Not all discrimination against women results in violence and violence is only one of many human rights violations that women face due to discrimination and inequality before the law.

As such there is a need for a new Special Procedure who can focus on discrimination against women and equality before the law, and the wide range of human rights violations it gives rise to, in fields ranging from healthcare, education, nationality, and access to justice – to list but a few.

**7. *Would an Independent Expert of the Human Rights Council Duplicate the Work of Other Special Procedures of the Human Rights Council?***

No. Existing Special Procedures cannot ensure a holistic approach to the issue because their mandates are limited to particular themes and subjects. As a result, although some special procedures may touch on the issue very occasionally, they can do so on an ad-hoc basis, and only with reference to the specific theme on which they are focused. This means that there is a wide range of areas in which women are unequal before the law that fall completely outside the current special procedures' remit (e.g. legal status generally, family status, nationality and citizenship). It also means that the approach is disparate and not cohesive. Additionally they cannot focus on this problem and dedicate sustained attention to it or work with States to overcome it and identify solutions.

**8. *Is an Independent Expert of the Human Rights Council Unnecessary Due to the United Nations' Gender Mainstreaming Efforts?***

No. It is important to recall that gender mainstreaming is a means to an end, not an end in itself. Gender mainstreaming does not remove the need for the establishment of effective substantive tools to increase the protection of women's human rights. The establishment now of an Independent Expert of the Human Rights Council will complement and contribute in valuable ways to the future work of the new gender entity that will be established in New York over the next number of years.

Moreover integrating a gender perspective into its work, specifically requires the Human Rights Council to identify protection gaps and to take the necessary steps to address them, including through the establishment of new Special Procedure mandates. There is currently no Special Procedures mandate focused on discrimination against women. As noted above although there is one mandate on Violence Against Women, the two issues are not one and the same and require separate dedicated focus and attention. Moreover integrating a gender perspective into the work of the Universal Periodic Review is important but not sufficient.

Of course a new Independent Expert would be a valuable resource in the context of the Council's effort to integrate a gender perspective into its work. The Independent Expert would provide States and other relevant actors with information not only in relation to "red flags" or potential problems, but more especially with best practice examples, and lessons learned, in terms of encouraging change.

**9. *Law is Made in the Context of the Social, Cultural and Political Dynamics at Play in Any One Country. Does the Human Rights Council Really Have a Role to Play in Protecting Women's Equality Before the Law?***

Law that discriminates against women violates international human rights law. A failure to put law in place that promotes and protects gender equality violates international human rights law. While it is true that law is not created in a vacuum and law reform processes take place within societal and cultural dynamics, it is also true that in order to meet their international human rights obligations States must ensure their national laws are in compliance with international law.

The Human Rights Council is responsible within the UN system for strengthening the promotion and protection of human rights around the globe, including by addressing situations of human rights violations and making recommendations on them. An Independent Expert of the Human Rights Council would enable the Council to

shoulder its responsibility to work with States to end discrimination against women. An Independent Expert would be in a position to advise States on effective strategies for law reform that ensure their compliance with international human rights law.