

L'impegno degli Enti locali sui diritti umani

24 gennaio 2022
Distance learning

Convenzione ONU CEDAW

PhD Avv. Maja Bova
CoE HELP Trainer



International/Regional HR Law Standards and domestic adjustment

- UN Charter & UDHR - The issue of human rights is a relatively new one (WWII).
- The UN Charter may be considered as an international “social contract”
- European Convention on Human Rights – Drafted after the Second World War at the Hague Congress. Representatives from the then twelve Member States of the Council of Europe gathered in Strasbourg in summer 1949 for the Council's Consultative Assembly, to draft the ECHR and to establish the ECtHR. CoE and ECtHR oversee the European Convention on Human Rights. This Convention was opened for signature, on 4 November 1950, in Rome (as entered into force on 3 September 1953).
- UDHR is coeval with Italian Constitution (done at Paris, on December 10, 1948) –
- Article 2 of UDHR stipulates: “Everyone is entitled to all the rights and freedoms set forth in this Declaration [...] no distinction shall be made. This wording has paved the way for an intense standard-setting activity by UN Member States, in particular through the then Commission on Human Rights
- The then UN Commission on Human Rights & the UN Commission on the Status of Women – The standard-setters

The components of the UN HR Machinery – I . Non-Conventional Bodies/CHARTER-BASED

1. **The Human Rights Council** is a new subsidiary organ of the General Assembly and thus defined as a **Charter-based Body**;

2. **The Universal Periodic Peer Review**, being a mechanism which originates from, and relates to, the Council

UPR Cycle 3 – Italy (November 2019)

3. **The Special Procedures**, also defined as “unconventional mechanisms”. On a preliminary note, it might be recalled that Special Rapporteurs’ mandates stem from Council’s Resolutions. **According to a violation-based approach, they can deal with any countries or any human rights issue, regardless of States consent: SR on VAW, SR on THB, SR on Contemporary Forms of Slavery, WG on Discrimination against Women and Girls**

4. **The Advisory Committee**, as the subsidiary body of the Council, replaces the UN Sub-Commission for the Promotion and Protection of Human Rights, and works as the think-tank of the Council – although with very limited powers if comparing it with the then Sub-Commission;

5. **The OHCHR**, falling within the UN Secretariat (www.ohchr.org);

6. **The other “Relevant stakeholders”**, namely NGOs and NHRIs;

7. **The UNGA Third Committee**, the mandate of which is wider than the Council’s (risk of duplication).

8. **The General Assembly** as the new parent body of the Council - whereas the then UN Commission on Human Rights was under the authority of the ECOSOC.

9. The **ECOSOC**

10. The **UNCSW**

11. **UN Women**

Universal Periodic Review – Mechanism/Process

I) Interactive dialogue in the WG of the UN HRC (the Review)

Working Group: 47 Member States of the UNHRC +
UN Observer States

The Troika facilitates the review

3h^{1/2} for the Review in the UN HRC WG (about 70
min. for the SuR and 140 min. for States)

II) Adoption of the Outcome in the HRC Plenary

- The SuR provides its own position on the recommendations received
- Other relevant stakeholders and NHRIs participate (right to speak)
- One hour is allocated for the adoption of the Outcome as divided between SuR, States, and Stakeholders.
- Follow-up (Mid-term report; NMRF; National Plan of Action on HR)

- **UPR3-Italy: 306 Recommendations**
- **26 Recommendations to fight against gender-based discrimination**
- **15 more on THB**

- **UPR Guidance Note for the preparation of UPR national report: expressly refers to role and contribution of LRGs in the national reporting**

II. Conventional Bodies & International Bill of HR, TB and OP

- **Between 1947-1967, the UN developed the International Bill of Human Rights consisting of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966).**
- **From the adoption of ICERD (1965), ICESCR and ICCPR (1966) onwards, States have accepted some forms of monitoring on the fulfillment of relevant obligations by the currently ten Treaty-monitoring Bodies (acronym, TB).**

More than half of the members of the international community have ratified international human rights instruments.

- **ICERD, ICESCR, ICCPR, CEDAW, CAT, CRC, ICMW, ICRPD, UNCPPED.**
 - **An increasing number of States also ratified the Optional Protocols thereto, by which to mainly allow individuals, groups of individuals, and NGOs to submit a complaint/communication to TB.**

Treaty Bodies – Conventional Bodies

The current relevant UN system includes:

- The Human Rights Treaty-monitoring Bodies, falling within the category of Treaty-based Bodies, alternatively defined as **Conventional Bodies**.
- As for the treaty-monitoring system, **the human rights treaty system is based on nine core human rights treaties, all envisaging Treaty-monitoring Bodies. At present, there are 9 Treaty-monitoring bodies plus the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”), with a preventive-related mandate referring to torture and ill-treatment.**
- In 2006 in addition to the existing seven core human rights standards, **two new conventions were adopted, namely the Convention on the Rights of Persons with Disabilities and the Convention on Enforced and Involuntary Disappearance,**
- Compliance with these standards is monitored by relevant Treaty-monitoring Bodies through several procedures.
- **All Treaty Bodies consider periodic reports from States-Parties.**

UN 1979 CEDAW Convention & UN CEDAW Committee

- In line with ICERD Convention, **the 30-article CEDAW Convention focuses on: substantive rights; and the CEDAW Committee** (the monitoring conventional mechanisms, 23 experts, 3 sessions per year).
- **Part I** (Articles 1-6) focuses on non-discrimination, State Obligations, Special Measures, Stereotypes, trafficking and exploitation.
- **Part II** (Articles 7-9) enshrines women's human rights in the public sector with focus on participation, representation, and right to nationality.
- **Parts III - IV** (Articles 10-14 & Articles 15 and 16) describe the economic and social rights of women as well as equality before the law and in family life.
- **Part V (Articles 17-22) is devoted to States Parties' reporting procedure and the CEDAW Committee.**
- **Article 1** defines discrimination against women, as follows: *“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”*. (**See Art. 1, Codice Pari Opportunita' Uomo-Donna in D.Lgs. 198/2006**)

CEDAW General Recommendations on VAW

(Quasi – jurisprudence)

- **General Recommendation No. 19 (1992) on Violence against Women**
- *Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy*
- **Definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman (..).**

- **General Recommendation No. 35 (2017) on Violence Against Women -**
The term further strengthens the understanding of the violence
Broadening the scope: Gender-based violence against women occurs in all spaces and spheres of human interaction, whether public or private,
- **Gender-based violence against women can result from acts or omissions of State or non-State actors, acting territorially or extraterritorially, including extraterritorial military actions of States, individually or as members of international or intergovernmental organizations or coalitions, or extraterritorial operations of private corporations.**
- **Italy's NAP on Women, Peace and Security (GR No. 30 (2013))**

The Optional Protocol to UN CEDAW Convention

- At the end of the 1990s of last century, the UN General Assembly adopted the Optional Protocol to the UN CEDAW Convention, which entered into force only a year after its adoption, on 22 December 2000.
- Italy adhered to the Optional Protocol, on September 22, 2000.
- This Protocol envisages, as follows:
- **1. COMMUNICATIONS PROCEDURE**, which may be initiated by individuals or group of individuals that can refer to the CEDAW Committee cases of women's human rights violations in accordance with CEDAW Convention.
- *Article 3 - Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.*
- **2. INQUIRY PROCEDURE**, by which the CEDAW Committee may carry out investigations into cases of grave or systematic violations of women's human rights.

The European Union and Non- Discrimination

- According to TEU, the non-discrimination principle is one of the fundamental principles/values of the European Union. **The 2000 EU Charter enlists human rights, inspired by other standards. Under the title 'Equality', it emphasizes the importance of the principle of equal treatment.**
- In 2000, two Directives were adopted: **the Employment Equality Directive (2000/78/EC) prohibited discrimination on the basis of sexual orientation, religion or belief, age and disability, in the area of employment; and the Racial Equality Directive (2000/43/EC) which introduced prohibition of discrimination on the basis of race or ethnicity in the context of employment, but also in accessing the welfare system and social security, as well as goods and services.**
- In 2006, **EU recast Directive (2006/54/EC) on gender equality in Employment and Occupation**
- **Direct discrimination** is when a person is treated less favourably on the basis of 'protected grounds'. Direct discrimination is defined similarly under the ECHR and EU law.
- **Indirect discrimination** occurs when an **apparently neutral rule disadvantages a person or a group sharing the same characteristics.**
- **Harassment (and sexual harassment)**

Continued

- **Multiple and intersecting discrimination** indicates discrimination that takes place on the basis of various grounds that by intersecting each other produce aggravated impact on the victim. *“People with differing backgrounds often face multiple discrimination, because everyone has an age, a gender, an ethnic origin, a sexual orientation, a belief system or religion; everyone has some state of health or may acquire a disability”*.
- **Shifting the Burden of Proof:** *“Once the person alleging discrimination established a presumption of discrimination (prima facie discrimination), **the burden then shifts to the defendant, which has to show that the difference in treatment is not discriminatory.** This can be done either by proving that there was no causal link between the prohibited ground and the differential treatment, or by demonstrating that although the differential treatment is related to the prohibited ground, it has a reasonable and objective justification. **If the alleged discriminator is unable to prove either of the two, they will be liable for discrimination.**”*
- **Art.40 Codice Pari Opportunita’**

UN CEDAW Concluding Observations - Italy

- Focus on stereotypes and VAW
- Focus on data collection
- Focus on women workers

- Focus on the South of Italy
- Focus on Regions

- Focus on multiple discrimination

- Focus on access to education
- Focus on women's participation

- Focus on temporary special measures
- Focus on national gender equality machinery

Grazie per l'attenzione!

mjabova@gmail.com

maja.bova@esteri.it