

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The Inquiry Procedure – the first inquiry **By Maria Regina Tavares da Silva**

The Optional Protocol foresees two types of procedure – a complaints procedure and an inquiry procedure. In accordance with article 8 the second one can be undertaken when the CEDAW Committee receives reliable information indicating grave or systematic violations of rights under the Convention.

The first inquiry undertaken by the CEDAW Committee addressed the situation of abduction, rape and murder of women in Ciudad Juarez, Mexico.

The Process

In October 2002, the Committee received information from NGOs – Equality Now and Casa Amiga – on the matter of the killings and disappearances in Ciudad Juarez, a matter that had already been addressed by the Committee in its Concluding Comments, following discussion of the Mexican report in August 2002.

In the following session – January 2003 – the issue was discussed and two members of the Committee were appointed to undertake a detailed examination of this information, together with data from other sources, namely Special Rapporteurs and other Treaty bodies. The information was considered reliable and the Committee invited the Government of Mexico to co-operate and submit its observations.

In July 2003 the information provided by the Government of Mexico, which showed recognition of the situation and willingness to cooperate, enunciated some of the measures being taken to address the problem.

However, additional information provided by Equality Now and Casa Amiga and also the Mexican Committee for the Defence and Promotion of Human Rights indicated that new murders were occurring and impunity was still prevailing.

The Committee decided, therefore, to conduct a confidential inquiry under article 8(2), which included a visit to the territory by the same two members in October 2003.

A large number of contacts at Federal level, State Level and Municipal level and also with NGOs and victims' families took place and, on the basis of the information provided and the analysis of the situation, a Report was drafted that included Recommendations to the Government of Mexico.

In the following session – January 2004 – the Report and the Recommendations were discussed and adopted by Committee and sent to Government of Mexico.

As foreseen in the Protocol, a period of 6 months was given for the Government to submit information on measures taken in response to the Recommendations.

Such information was submitted at end of the next session in July 2004 and again for the session of January 2005, which means that formally this confidential process came to an end. The Committee, therefore, publicised the Report and the Recommendations, together with the Government response.

From then on the Committee can ask for follow-up information in regard to the measures taken in response to the inquiry, a follow-up which is now taking place.

This is as far as the development of the process.

The facts

The facts under investigation concern the murders and disappearances of women, occurring in that region, particularly since 1993, in very large numbers, although these numbers are inconsistent, varying according to different sources, national and international, governmental and non-governmental.

These crimes have been denounced by civil society, but ignored or minimised by authorities for a long time. In some cases women themselves were blamed for the situation, victims' families complained of harassment by some authorities and a general climate of impunity seemed to prevail.

There was a progressive perception of the situation by international organisations and a final recognition of its gravity by the authorities, that only in 2004 really started to address the problem.

The profile of victims was a systematic one – young, poor, maquila workers, students or commerce employees. Many were victims of sexual violence, which seemed to be a component in many crimes, since about one third of the victims had suffered some form of sexual abuse, rape or mutilation.

The motivations suggested seemed to be linked to trafficking in women for sexual exploitation or for production of violent videos, to drug trafficking or trafficking in organs, etc. etc. A lot of questions and very few answers!

When proceeding with the inquiry, it was our main concern to look at situation, not just as specific criminal cases, but cases in a complex context – economic, social, cultural – and also one of widespread violence and gender based discrimination.

Ciudad Juarez lies in the border area close to the United States; it is an open door to immigration, legal and illegal, from Mexico and from other countries. It is a society where socio-economic changes have occurred very rapidly, and where economic growth has not been accompanied by structural development, by basic services and infrastructures and community building. It is also a violent society, of social tensions and family tensions, where women have an inferior position in a culture of misogyny and discrimination.

The consequence was, on the one hand, a persistent climate of impunity for years, which included threats and hostile attitudes towards family members of victims and human

rights defenders; and on the other, an incapacity of the authorities, particularly at State and local level, to face this situation and take measures, a fact that only happened in recent years and for which international pressure played a significant role.

Within this context, a debate had been going on for sometime on the possibility to transfer the investigation from the State level to the Federal level, due to the incapacity of State authorities. Such a transfer is possible, namely in cases of organised crime, drug, organ and human trafficking, but the crimes under consideration are considered as ordinary crimes, therefore under State jurisdiction. The controversy was strong but, apparently, now there is a proposal pending in Congress that would allow it.

It was against this background, that the Committee envisaged the situation and made its Recommendations.

The Recommendations

The Recommendations focus on the need to address the investigation of the crimes, but also on the need to intervene in a wider social context.

There are 16 Recommendations falling into three different categories:

1) 4 Recommendations of a General nature – concerning the respect for CEDAW obligations, the integration of a gender perspective into the various social policies, particularly regarding violence, the integral responsibility of authorities at the different levels, the dialogue with NGOs and civil society in general, etc.

2) 8 Recommendations on the investigation of the crimes and the punishment of the perpetrators and support to the victims – concerning a better co-ordination of different levels of authority and the possibility of attraction of the investigation at Federal level, the sanctioning of negligence and tolerance of some authorities, the establishment of early warning mechanisms in cases of disappearance, the autonomy and independence of the investigation and the capacity building of investigators, not only technical capacity of criminal investigation but also in regard to violence as a human rights violation, the guarantee that mothers and relatives are treated with respect and compassion and given guarantees of representation in criminal investigation, the reinforcement of protection mechanisms to relatives and human rights defenders, the possibility of an agreement with the USA, aiming at a systematic co-operation taking into account the border situation, etc.

3) 4 Recommendations on preventing violence, guaranteeing security and promoting and protecting the human rights of women – concerning the awareness-raising and training of public officials and judicial personnel, the sensitisation of the media in regard to violence as a human rights violation and in regard to women's human rights, the intensification of policies for preventing violence, the guaranteeing of security and the restoring of the social fabric, the provision of legal support to victims of violence and their families in the access to justice and to medical and psychological support, the provision of the necessary means to combat violence in Ciudad Juarez, particularly in regard to the Special Commissioner appointed to address the problem, etc..

We could rightly say that the basic concern of the Report and of the Recommendations was, not only to look at the crimes as individual facts, but to look at them in a systemic way and within a specific context, therefore addressing the need to face these root causes of violence against women, in order to create a culture of gender equality and of respect of the human rights of women. Such an approach was envisaged as a specific contribution of the CEDAW Committee.

The Government Responses

These included a general description of the programs adopted and of the actions taken to respond to the situation and specifically in relation to each one of the Recommendations made by the Committee.

To address the situation in a global manner, a Commission for the Prevention and Eradication of Violence against Women in Ciudad Juarez was created under the authority of the Federal Government, with representatives from a large variety of official departments and the so-called 40-point program is being implemented and co-ordinated by a Special Commissioner appointed in October 2003.

To co-ordinate the criminal investigation, together with State authorities, a Special Prosecutor at Federal level was appointed in January 2004. Both these figures, the Commissioner and the Special Prosecutor have produced regular and detailed reports on the actions taken and on the results achieved.

Two main lines of action are being pursued:

- 1) Social development and promotion of human rights
- 2) Criminal investigation and administration of justice

As regards the measures taken at Federal level and State and Municipal level to promote social development and protect and promote the human rights of women, they include: media campaigns and awareness-raising on gender-based violence, programs of assistance to victims' families, both legal assistance and psychological support, emergency telephone lines, improvement of housing conditions, creation of shelters, social development projects, urbanisation and transport policies, creation of early warning systems and surveillance systems in risk areas, etc.

In regard to the investigation of the crimes, measures taken include: the systematisation of information on number and types of crimes, an in-depth analysis of the crimes and status of each investigation, the creation of a data base on missing women and victims of murder, the establishment of responsibilities of public officials, both administrative or criminal responsibilities, including the indictment of some for negligence or irregular actions in the investigation and proceedings, protection measures addressed at individuals or associations dealing with these cases, the cooperation with the FBI regarding capacity building for criminal investigation, cooperation with border police authorities of El Paso, etc.

The results

There are not many indicators yet of results achieved. However, some indications are already pointed out in the Government's reports as being positive: a decrease in the global number of cases of assault and robbery – 18.22% and a decrease in the numbers of ordinary crimes – 17.1%. However, there are no comparable results in regard to crimes of sexual violence. There is also a decrease in the time of response by authorities in case of emergency calls – from an average of 25-30 minutes to 4 minutes. And certainly, a much stronger awareness of the issue of Ciudad Juarez, of its nature, social meaning and terrible consequences!

Aiming at a quick evaluation, we might say that there seems to exist an attempt at an integral attention to situation, not just the investigation of the crimes, but at addressing the social issues, the poverty, the social environment, education, protection of basic rights, etc.

There seems to be a certain determination to go forward with the investigation of the crimes and bringing those guilty to justice and assisting the victims; there seems to be a good amount of resources granted for investigation and social programs.

On the other hand, in the information provided by the Government, there is a constant reference to the political will of the authorities to solve the problems, both in a short term perspective, the pursuit of justice and in a long term one, the eradication of violence.

And yet, not all is absolutely clear and in the way to being solved.

The crimes have not stopped, they have continued and the NGOs complain that there is not enough progress; there are complaints that investigations are slow, that many of those responsible are still left free, that there is not enough political will.

For that reason, and also considering that this process implies a social change takes some time and must be regularly pursued and evaluated, the Committee is proceeding with its follow-up under the terms of Protocol – article 9 – having requested further information on the evolution of situation.

Lessons learned

The inquiry was, certainly, a significant step in line with the actions taken by other *fora* of international organisations and of civil society.

National NGOs had been calling and denouncing for a long time, but only when international organisations entered the process things seemed to start moving.

Special Rapporteurs on extrajudicial, summary or arbitrary executions (1999) and on the independence of judges and lawyers (2001), the Special Rapporteur on Women's Rights of the Inter-American Commission on Human Rights (2002), Amnesty International in August 2003, the UN Commission on the Prevention of Crime and Drugs, just before the CEDAW inquiry, among others had called attention to the problem, all had been critical.

Today, the issue of Ciudad Juarez is fully recognised as a serious problem and as a responsibility of the State.

The CEDAW inquiry was one more step in this process and a helpful one, I think!

Because it was not just an investigation but a process of dialogue with a great emphasis on the issue of violence against women, not just on the crimes committed, but on the whole environment and on the need to change its underlying culture of misogyny and discrimination.

A dialogue that goes on as well with the NGOs involved in this process. They know the situation, some are on the ground and their views help the Committee to keep a balanced view of the situation.

The assessment, therefore, from my point of view, and in spite of the problems still persisting, is a positive one. And it is, certainly, a valid procedure for women and women's organisations to adopt when their rights under the Convention are violated. We have a powerful and valuable instrument within our reach. It must be used!