

## **SEVENTEENTH ANNUAL STUDENT HUMAN RIGHTS**

### **UN Human Rights Council: Ten Years On**

#### **Panel 4 - Human rights and vulnerable groups: challenges for the UN**

**Chaired by Yunan Shen, Student Conference Committee Member**

#### **The challenges of accessing and realising your rights: women's economic and social rights**

**Martha Tengesha, University of Nottingham**

Martha Tengesha delivered a presentation which highlighted the many challenges that women continue to face in realising their economic and social rights. Despite the existence of several international human rights law provisions, she considered why women's access to social and economic rights remains restricted in some areas of the world. Various barriers to women's rights were highlighted, with a particular analytical focus on the problems associated with defective law, customary laws and practices, and the public/private distinction of human rights law.

Ms Tengesha began by outlining the current international human rights law framework provided for by the UN system. She noted the historical attempts that the international community has made to ensure equal treatment between men and women. Under Article 1 of the Universal Declaration of Human Rights (UDHR), all human beings are declared to be born free and equal in dignity and rights. Article 1(3) of the UN Charter 1945 also enshrines the promotion and encouragement of respect for human rights for all, without distinction as to race, sex, language, or religion.

Attention was additionally drawn to the individual rights protected under the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR). Articles 2(1) and 2(2) were highlighted for respectively providing for equal and non-discriminatory application of the conventions, despite their differences in subject matter. ICESCR was emphasised due to its intrinsic link to peoples' standard of living, including the right to work, the right to an adequate standard of living, and the right to education.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was presented as a further attempt by the UN system to enhance women's rights. Ms Tengesha noted that although CEDAW provides a comprehensive definition of discrimination against women (Article 1), establishes temporary and permanent special measures (Article 4), and requires State Parties to promote social change to tackle women's inequality, it still has its shortfalls. Ms Tengesha asserted that CEDAW fails to recognise rights which are intrinsic to womanhood, such as reproductive rights and family planning solely from the perspective of a woman.

Regional human rights protection instruments were also highlighted by Ms Tengesha. These included the African Charter on Human and People's Rights, and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Having outlined the existence and substance of these instruments, Ms Tengesha went on to question why women continue to face difficulties in realising their rights, and why women's inequality remains so prevalent

in society. She identified a number of barriers. These included defective law, customary laws and practices, religious oppression, sexist attitudes, and the public and private distinction of human rights law.

In discussing defective law, Ms Tengesha noted the slow pace of international law developments in the context of women's rights. Having taken 13 years for a gender specific convention to be enacted, CEDAW only offers limited protection for women's economic and social rights according to Ms Tengesha. The Convention was said to be silent on some paramount women's issues, such as violence against women. It was also critiqued for taking a highly comparative approach of men and women, which disregards rights that are unique and specific to womanhood. CEDAW was criticised by Ms Tengesha for having a limited perception of women's experience – confined only to married and heterosexual individuals. She acknowledged however that the CEDAW committee has since adopted a broader interpretation of 'family' and 'marriage'.

The reluctance of international human rights law to govern in the private sphere was argued by Ms Tengesha to undermine the realisation of women's rights, as well as its own effectiveness. It was highlighted that women encounter the most economic and social rights violations in the private sector. The vertical effect of international human rights law was said to be a core challenge to the realisation of women's rights. Women are only able to enforce their rights against State Parties, not private individuals.

The deep roots of customary law and practices of certain ethnic groups were also cited as a key challenge. Ms Tengesha noted that these customs are often dominated by the patriarchy, and may even be subscribed to by State officials and the judiciary. Ms Tengesha provided examples from some parts of Africa to illustrate this. For example, custom prevents women in Zambia from holding rights to property. Not only is this practice accepted as customary law, but is also recognised as good law by the State's constitution. Further examples were given by Ms Tengesha, such as the prevalence of child marriage, and the practice of female genital mutilation in various parts of Africa. It was further highlighted that these practices often go unreported, and women and girls often respect these acts as tradition. Those who do challenge the status quo were said to likely face stigmatisation.

The latter part of Ms Tengesha's presentation considered the future of women's rights. The UN Millennium Development Goals and the 2030 UN Agenda for Sustainable Development were commended for offering a renewed hope for women's rights. However, it was said that there is much more that must be done to allow the full realisation of women's economic and social rights.

Moving forward, Ms Tengesha argued that harmonisation of the law is necessary to ensure that both regional conventions and national laws meet international standards of economic and social rights. It was also said that international law must take into account the multiplicity of women's experiences, rather than treating women as a homogenous group. Human rights education was deemed critical in ensuring that women are aware of their human rights, particularly in rural areas where customary practices are more prevalent. Finally it was proposed that more men need to be involved in recognising women's social and economic rights, and must play a more significant role in the push for equality.

## The right to nationality for children: a study of nationality laws in the GCC Countries

**Talal Alrasbi, University of Hull**

Mr Talal Alrasbi delivered a presentation that considered the deprivation of Gulf Cooperation Council (GCC) nationality of children who are born to national mothers and foreign fathers. Mr Alrasbi's presentation was divided into two areas. He firstly considered the domestic perspective of the situation, outlining the GCC nationality laws, national statistics, and the GCC States' efforts to reduce statelessness. He then went on to consider the international perspective by providing an overview of the relevant UN Conventions and their compatibility with GCC States' nationality laws. In considering the latter, it was noted that a number of reservations have been made by the GCC nations.

Mr Alrasbi began by introducing the context to the issue at hand. The GCC consists of 6 independent Arab States (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates). They are all Arabic

speaking, and Islam is both the shared religion and a source of law. It was shown that the GCC nationality laws operate the discriminatory process of granting children nationality or citizenship only from the paternal line. This means that children born to a foreign father and national mother are deprived of their mother's nationality.

The importance of nationality was emphasised by Mr Alrasbi. Citizenship was said to be a set of rights and obligations that are enjoyed equally by everyone who is a citizen of the political community. Therefore the denial of citizenship was also shown to be the denial of certain political, civil and social rights. Examples included deprivation of important documents which impacts freedom of movement; a lack of enablement to marry; not being eligible for governmental assistance; limitation of permanent residence; and a lack of opportunities for advanced education.

The problem was shown to get worse where the child in question becomes stateless. Many examples of this situation were given. Statelessness may occur, for example, where the father's country does not grant a child its nationality if the child is born abroad; if the child is born out of wedlock; where the father dies before the child was born and the child cannot prove his or her relationship to the father; or where the father is unable to provide certain documents, because he might have abandoned his family or been divorced. Mr Alrasbi presented statistics that showed 11,722 children born in GCC countries were stateless in the five years between 2009 and 2013.

It was noted that some positive measures have been put forward by GCC States to reduce the statelessness of these children. These include granting nationality in certain cases where the child is born to unknown parents, or the child is born to a stateless father. It was also observed that in 2011, the UAE granted its nationality to 2,047 children of female citizens married to foreigners, and decided to treat those children as nationals in respect of education, health and employment.

Mr Alrasbi went on to consider the relevant international human rights law framework and its compatibility with the GCC nationality laws. It was shown that the UN has addressed its concerns regarding the problem by way of a convention provision, namely through Article 9 of CEDAW and Article 7 of Convention on the Rights of the Child (CRC). Yet despite the existence of these provisions, the GCC States have made reservations to these two conventions for a number of reasons. In discussing these reservations and their rationale, three considerations were outlined by Mr Alrasbi: the conflict with nationality law, the conflict with Islamic law; and nationality as an internal matter.

Using Oman as an example, Mr Alrasbi explained that the Constitution is the supreme law of the GCC countries. Interestingly, Article 17 of the Omani Constitution prohibits discrimination on grounds such as gender, origin, and colour. In this respect, the nationality laws were argued to contradict the Constitution. They practice discrimination between men and women when a child born of a national father and foreign mother is granted Omani nationality, but a child born of a national mother and foreign father is not.

The compatibility between the UN framework and Islamic law was then discussed by Mr Alrasbi. It was noted that Saudi Arabia has said that the CRC has articles that directly conflict with Islamic law, particularly regarding the nationality issue. Mr Alrasbi revealed the contradictions in these claims, pointing out that the Saudi citizenship laws themselves acknowledge that there is a possibility for a child born to a Saudi mother and foreign father to be granted Saudi nationality in certain circumstances. It was also emphasised that other Arab and Islamic countries such as Algeria, Bangladesh, Egypt and Indonesia have granted women equal rights regarding the nationality of their children.

Attention was then drawn to provisions of CEDAW and CRC which require States to embed the principle of equality in their national constitutions or other appropriate legislation. It was also pointed out that the conventions forbid any reservations which conflict with the main purpose of the Treaties. Yet the reality of the GCC's reservations and ongoing discrimination was made clear by Mr Alrasbi.

In his concluding remarks, it was noted by Mr Alrasbi that the situation in the GCC States is not unique. It was revealed that according to UN statistics, 27 countries around the world follow the same principle in granting a child nationality. Attention was drawn to efforts by the UN Refugee Agency's global campaign launched in 2014 which aims to collect 10 million signatures in support of ending statelessness within a decade.

# The post armed conflict period and rehabilitation of properties for persons with disabilities for participation in public and political life

Ivan Mugabi, Cardiff University

Mr Ivan Mugabi delivered a presentation which critically considered the obligations on States and other actors to provide habitation and rehabilitation systems for aiding the participation of persons with disabilities in public and political life. This was discussed in the context of States that are either undergoing or recovering from situations of armed conflict. It was acknowledged that these States face a particular level of devastation and destruction that may make it difficult to fulfil their obligations under international law. Yet the inevitable link between disability and war was stressed. Mr Mugabi emphasised that disability rehabilitation must be viewed as an enabling right, in order to increase disabled persons' participation in public life.

Mr Mugabi firstly highlighted the main actors in the chain of rehabilitation, both in the international and national fields. He considered the evolution of international law in the context of people with disabilities. The role of the UN Human Rights Council and the relevant Committee for the Convention on the Rights of Persons with Disabilities (CRPD) was outlined. The growing role of NGOs and international organisations was also acknowledged. Particular emphasis was placed on the work done by the International Committee of the Red Cross (ICRC), and attention drawn to their mission statement, which advocates an assistance and capacity building approach.

The CRPD was then outlined by Mr Mugabi. He highlighted the objectives of Articles 26 and 19 in the aftermath of armed conflict situations envisaged by Article 11. It was acknowledged that over 150 states ratified the Convention in less than 10 years. In considering the obligations imposed by the CRPD, Mr Mugabi drew a distinction between peaceful State Parties and States recovering from armed conflict. He considered whether such obligations should continue to exist after a situation of armed conflict, and whether States can be expected to fulfil their human rights commitments in these circumstances.

Mr Mugabi emphasised the inherent link that rehabilitation has with reintegration. Mobility was stressed as a key objective, as this allows disabled persons greater access to certain facilities and opportunities for participation. Examples were given such as access to education, housing and health care. The link between mobility and political rights was also underlined. Access to polling stations and voting rights in the aftermath of an armed conflict was shown to be particularly paramount.

The interaction between rehabilitation and war-related disability was also explored by Mr Mugabi. He noted the inevitable consequence of a higher number of persons with disabilities following a period of armed conflict – thereby increasing the number of beneficiaries to the rights contained in the CRPD. The issues associated with this were then highlighted. The magnitude of demand for disability rehabilitation services greatly increases in CRPD State Parties which have experienced an armed conflict.

Various models of rehabilitation were analysed by Mr Mugabi. It was noted that a social-rights based model is optimum and advocated by most academics, but this may be difficult to achieve after a period of war. A medical approach was shown to be frequently taken, given the many physical injuries experienced in armed conflict. However, Mr Mugabi criticised this model as displacing the human rights agenda. Persons with disabilities are treated as patients with medical needs rather than as right holders. He also criticised the charity model, which treats veterans as powerless victims that attract public pity rather than international State obligations under the CRPD. The problems were said to be overcome by a rights-based model. Mr Mugabi proposed that the UN needs to look at people with disabilities as people with rights, rather than simply objects of the system.

It was further highlighted by Mr Mugabi that stakeholders tend to falsely look at people with disabilities as a homogenous group. It was emphasised that armed conflict creates factions amongst people with disabilities, and a broader understanding of disability must be advocated. It was emphasised that the meaning of disability is not confined to visible or physical disability. It must also include mental or intellectual disability.

Finally, Mr Mugabi considered the efforts that have been made by the international community to address the needs of people with disabilities in the context of armed conflict. These include international cooperation for the 2009 ICRC Disability Rehabilitation Project; the Paris Principles; the application of human rights obligations in belligerent occupation; the 2010 Excom conclusion; and the shift from the Millennium Development Goals (MDGs) to the Sustainable Development Goals.

**Report by Lucy Hanson, LLB Candidate, Law with Australian Law.**