

**Judicial colloquium on the application of
international human rights law at the domestic level**

to commemorate the

*20th anniversary of the adoption of the
Convention on the Elimination of All Forms of Discrimination against Women
10th anniversary of the adoption of the Convention on the Rights of the Child*

27 to 29 October 1999
United Nations Office at Vienna

Vienna, Austria

AIDE MEMOIRE

BACKGROUND

On 18 December 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women. As of June 1999, the Convention had been ratified or acceded to by 163 States. The Convention on the Rights of the Child was adopted by the General Assembly on 20 November 1989. With currently 191 States parties, this Convention is the most widely accepted international human rights treaty. Both Conventions have been acknowledged for their important contribution to the quest to improve the status of women and girls worldwide, as well as their impact on efforts to achieve equality for women and girls in the family, the community and society at large.

The CEDAW Convention provides a definition of discrimination against women, and comprehensively addresses women's right to equality and non-discrimination in the civil, political, economic, social, and cultural fields. It requires States parties to pursue a policy of eliminating discrimination against women, and to take all appropriate measures to eliminate such discrimination, whether committed by public authorities or by any person or organization.

The Convention on the Rights of the Child requires States parties to protect the rights of each child, defined as a human being below the age of eighteen. Among the Convention's general principles are the best interest of the child, a child's rights to life, survival and development, and respect for the views of the child. The protection and promotion of the rights of the girl child is guaranteed through the Convention's principle of non-discrimination.

Upon ratification of these Conventions, States parties assume specific obligations for the full implementation of the Conventions at the national level. The CEDAW Convention requires States parties to embody the principle of equality of women and men in their national constitutions or other appropriate legislation, and

ensure, through law and other appropriate means, the practical realization of this principle. States parties are also obliged to adopt legislation prohibiting discrimination, to establish legal protection for women on an equal basis with men, as well as to provide effective remedies against acts of discrimination against women. The Convention on the Rights of the Child also requires States parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention.

As a result of international treaty obligations which flow from ratification or accession, and in accordance with procedures established under domestic legal systems, many States parties to CEDAW and CRC have adopted constitutional and legislative measures to fulfil their treaty obligations at the domestic level. They have also put in place policies, programmes and specific measures aimed at the practical realization for women and girls of the rights and principles enumerated in these Conventions.

The expert bodies established to monitor implementation of the Conventions in States parties, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child, are particularly concerned with the status of the Conventions in domestic legal systems. Both Committees have advocated the incorporation of the Conventions into national constitutions, as well as the implementation of the various rights in the Conventions through legislation.

Both Committees have stressed the relevance of the Conventions and the jurisprudence of the Committees in domestic litigation. The status of international treaty law in domestic law is resolved differently in different countries, but there is a growing number of cases in which domestic courts and tribunals, from constitutional courts to lower-level courts, have referred directly or indirectly to international human rights law including in cases concerning women and children. International human rights instruments and the decisions of judicial and quasi-judicial bodies with regard to these instruments are increasingly used by judges and magistrates as a tool to attain the goals of these instruments.

The judicial colloquium to commemorate the anniversaries of these two Conventions provides an opportunity for judicial practitioners from around the world to examine how international human rights law can be used at the domestic level to achieve equality for women and girls, and to exchange experiences in this regard.

OBJECTIVES

Courts in different countries, and from different legal traditions, have increasingly drawn on international human rights treaties and jurisprudence in imaginative and creative ways to achieve the goals enshrined in such treaties. Academic literature, covering both domestic decisions, as well as decisions of international and

regional human rights bodies (European Court of Human Rights, Inter-American Court of Human Rights, United Nations Human Rights Committee) has traced these developments. Efforts have been undertaken by various bodies, including the Commonwealth Secretariat, the Council of Europe and UNDP, to increase awareness and strengthen judges' knowledge of the domestic application of international human rights norms. An impressive body of jurisprudence, both international and national, concerning human rights, including with regard to women and children, now exists.

At the same time, judges and practicing lawyers are often unaware of international human rights norms and the jurisprudence which has developed through these norms. This limits the potential impact, usefulness and model character of these norms and jurisprudence, particularly between countries and across different legal systems and traditions. This, in turn, limits the capacity for judges to foster increased respect for human rights.

The judicial colloquium, which will provide an overview of relevant international human rights norms, and extensive opportunity to discuss cases where international human rights norms have been used to benefit women and girls, aims to:

- * assess how courts in different legal systems utilize international human rights treaty law to ensure that women and girls are guaranteed their rights to equality and non-discrimination;
- * exchange experiences on the use of international human rights treaty law in domestic courts at different levels, taking into account different methods of incorporation of treaty law into domestic law; and
- * discuss strategies for more creative and widespread use of international human rights norms contained in the CEDAW and CRC Conventions at the domestic level, in both common law and civil law systems.

PARTICIPANTS

It is expected that approximately 80 senior judges and magistrates (appellate level, if possible) from around the world will participate in the colloquium. They will represent different legal traditions, as well as different levels of domestic court systems. Judges and magistrates who have themselves drawn on international human rights treaty law in decision-making will be joined by practitioners whose work could provide them with potential uses of treaty law in equality and non-discrimination cases involving women and girls.

The participants will include a small number of academics and representatives of international organizations who work on women's and children's issues.

FORMAT OF THE COLLOQUIUM

The colloquium will consist of a series of plenary and working group meetings. Each day will be devoted to a particular theme (see below) that will be introduced by keynote presentations. Keynote presentations will be followed by discussions in working groups concerning aspects and cases of the theme. A total of four (possibly five) working groups will meet in parallel. Each working group will consist of a case where international human rights law was successfully used to further equality for women or girls or international human rights law could have resulted in a more favourable outcome for women or girls.

The themes for the three days are:

*** Nationality, marriage and family relations**

Keynote speakers: (confirmation pending)

Working group topics (indicative):

- women's right to nationality
- right to confer nationality on spouse, on children
- age of marriage, and consent to marriage
- best interests of the girl child
- inheritance rights
- matrimonial property
- illegitimacy of children (girls - discrimination)
- widowhood rights
- freedom of association, of movement

*** Violence against women, violence against girls**

Keynote speakers: (confirmation pending)

Working group topics (indicative):

- domestic violence (example: dowry deaths)
- rape (including as a weapon of war)

- marital rape
- remedies, lack of remedies, against domestic violence
- female genital mutilation
- honour killings
- refugee/asylum rights
- abuse of, violence against, women in custody

*** Work and work-related rights**

Keynote speakers: (confirmation pending)

Working group topics (indicative):

- affirmative action / temporary special measures
- sexual harassment
- trafficking
- migrant labour
- abuses and exploitation of women and girl workers

OUTCOME OF THE COLLOQUIUM

It is proposed that the colloquium will issue a communiqué (or statement) on principles and strategies on how judges can, or should, use international human rights treaty law pertaining to women's and girls's human rights in the resolution of cases. A small drafting group will prepare the draft which will be discussed and adopted by the plenary.

The colloquium will also result in a publication bringing together all plenary and working group presentations, and short summaries of the discussions in the working groups.

The communiqué which will contribute to the commemoration of the anniversaries of the two conventions, will be widely distributed amongst judiciaries at the national level, and to international human rights bodies and mechanisms.

TIME TABLE

26 October 1999 (under consideration)

6:00 pm to 8:00 pm: Opening session (Plenary)

Opening statements by

Keynote address

27 October 1999

8:00 to 10:00 am: Registration of participants

9:30 - 12:30 **Plenary on Theme One - Nationality, marriage and family relations**

2:30 - 4:00 5 parallel working groups

4:30 - 6:00 5 parallel working groups

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10:00 - 12:30 **Plenary on Theme Two - Violence against women**

2:30 - 4:00 5 parallel working groups

4:30 - 6:00 5 parallel working groups

29 October 1999

10:00 - 12:30 **Plenary on Theme Three - Work and work-related rights**

2:30 - 4:00 5 parallel working groups

4:30 - 6:00 **Closing Plenary**

Adoption of communiqué

LOGISTICS and FUNDING

The colloquium will take place at the United Nations Office at Vienna, from 27 to 29 October. An opening ceremony will take place on 26 October, at 6 pm (to be confirmed).

It is planned that simultaneous interpretation (English, French, Spanish) will be available for plenary presentations and discussions. Working group sessions will be without interpretation. It is planned that among the five parallel sessions, three

will be held in English, one in Spanish, and one in French, to accommodate the language requirements of participants.

The Division for the Advancement of Women is seeking funding to cover the costs for up to 60 participants from developing countries and countries in transition. Funding sources include donor Governments, UN funding entities (in particular UNICEF, UNFPA and UNDP), and non-governmental organizations and professional organizations. The Division also invites funders to facilitate the participation of up to twenty senior judges and magistrates from developed countries.

EXPRESSION OF INTEREST TO PARTICIPATE

Interested judges and magistrates are invited to submit their expression of interest to participate in the colloquium to the Division for the Advancement of Women, at the address below, no later than 31 August 1999. They should indicate whether they wish to make a presentation within the three themes chosen for the colloquium, and provide a one-page synopsis of the presentation. Some 25 participating judges will be chosen to make presentations in working groups. The final selection of participants will be made by 10 September, and participants will be informed in the week of 13 September.

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