

United Nations  Nations Unies

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THE ARUSHA DECLARATION OF COMMITMENTS

ON

THE ROLE OF THE DOMESTIC JUDGE

ON

**THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW AT THE
DOMESTIC LEVEL**

ADOPTED ON 11 SEPTEMBER 2003

We, the judges and magistrates from eleven African countries, namely: **Botswana, Gambia, Ghana, Malawi, Mauritius, Namibia, Swaziland, South Africa, Tanzania, Uganda, and Zambia,**

Met in Arusha, Tanzania, from 9 September to 11 September 2003, for a judicial colloquium on the application of international human rights law, especially the application of the Convention on the Elimination of All Forms of Discrimination against Women, at the domestic level – organized by the United Nations Division for the Advancement of Women in collaboration with the Government of Tanzania Ministry for Community Development, Gender and Children, and with funding contributed by the Government of Germany;

Considered and examined, in particular, judicial developments and trends in the areas of the human rights of women and girls as relates to nationality, family law, and violence against women, and the extent to which domestic jurisdictions have incorporated international human rights law in their decisions in those named areas;

AND

Noting that:

1. As of 11 September 2003, the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) has been ratified or acceded to by 174 States, including all but three African countries;
2. As of 11 September 2003, the Optional Protocol to the Convention has been ratified or acceded to by 55 States, including three African countries;
3. There is a growing body of jurisprudence generated by the Committee on the Elimination of Discrimination against Women (the Committee);
4. The domestic justice system is an arm of the State and, as such, and like other arms of the State, has an obligation to ensuring the observance of the State's international legal obligations, for which the State can be held accountable at the international level;

AND

Acknowledging that:

1. There is a need for training of judicial officers, lawyers and the public on the place and relevance of international human rights law at the domestic level;
2. African courts are generally inadequately resourced;
3. Women and girls have limited access to justice, for reasons of, among others, limited knowledge of their rights, social disadvantages, costs of litigation, and complex procedural rules;
4. There still exist constitutions, legislation and customary, traditional and religious norms and practices which deny women and girls equal rights with men and boys;
5. The multiplicity of many African legal systems create special challenges for the realization of the human rights of women and girls;

NONETHELESS,

Convinced that:

1. Judges, magistrates and other judicial decision-makers (judicial officers) have an important role to play in the translation of human rights norms from abstract concepts to real benefits for women and girls at the domestic level;
2. Judicial officers in both monistic and dualistic legal systems have opportunities to utilize international human rights treaty law to ensure that women and girls are guaranteed their rights to equality and non-discrimination;
3. Judicial officers in both monistic and dualistic legal systems have opportunities to make recommendations for law and policy reforms to the legislative arms of government;
4. Ratification of the Convention by a State also creates an obligation on the part of the justice system to do all that is practically possible to bring domestic constitutions and other domestic norms into conformity with the norms of the Convention;

DO HEREBY make the following DECLARATION OF COMMITMENTS and call upon other judicial officers to do the same:

1. To make the norm of equality and non-discrimination on the basis of sex the guiding and central principle in all judicial decisions.
2. In determining whether a rule or practice is discriminatory on the basis of sex to always look beyond the letter of the law and to consider the practical implications of the rule or practice.
3. To create women- and child-friendly courts with the aim of promoting their greater enjoyment of their right to equality before the law.
4. Whenever possible and relevant, to cite articles of the Convention and the Committee's General Recommendations in decisions when interpreting domestic law.
5. Whenever possible and relevant, to cite decisions from comparable jurisdictions in which the Convention has been cited.
6. Whenever appropriate, to make recommendations in one's judgements on how domestic law and/or policy might be reformed to bring it in conformity with the State's obligations under the Convention.
7. Whenever appropriate and possible, to make recommendations for the passing of specialized legislation aimed at ensuring that women and girls enjoy the rights articulated in the Convention.
8. Wherever appropriate, to encourage lawyers to make reference to the provisions of the Convention.
9. Whenever possible and appropriate to give directions aimed at finding ways and means of promoting women's and girls' greater access to legal aid services.
10. In the case of litigation where the interests of girl children are an issue, to play a proactive role by, as provided by common law, among others, calling for specific arguments on the applicability or otherwise of the Convention.
11. Whenever possible and appropriate, to make recommendations for the setting up of specialized courts and other services with the aim of promoting women's and girls' access to justice.
12. To educate oneself on the continuing developments of international human rights law, and more particularly on the work of the Committee.
13. Whenever possible, to disseminate decisions in which international human rights norms have been employed to other judges in one's country.
14. To network and collaborate with other judicial officers within one's region and/or country, with the aim of promoting the utilization of the Convention.
15. To make oneself available as a resource person / lecturer at local universities on the domestic application of international human rights law.