


United Nations Nations Unies

DIVISION FOR THE ADVANCEMENT OF WOMEN
DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
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**Judicial colloquium on the
application of international human rights law at the domestic level**

Nassau, The Bahamas, 17 to 19 May 2004

Statement

Judges, magistrates and judicial officers from The Bahamas, Barbados, Belize, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago, met in Nassau, The Bahamas, 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. The colloquium was organized by the United Nations Division for the Advancement of Women in collaboration with the Government of The Bahamas, Ministry of Social Services and Community Development. Funding for the colloquium was provided by the Government of Germany.

The participants in the colloquium examined legislative and judicial developments, trends and common challenges to gender equality, particularly in the areas of nationality and marriage and family relations; and of violence against women, and the extent to which domestic jurisdictions are incorporating international human rights law in their decisions in those areas. They noted that there is no automatic incorporation of international human rights treaties into domestic law in all but one of the countries represented at the colloquium.

Participants welcomed the fact that as of May 2004, 177 States are party to the Convention on the Elimination of All Forms of Discrimination against Women, including all States of the Caribbean region. They noted that 60 States are also party to the Optional Protocol to the Convention, but that so far, only one State of the region (Belize) is a party to the Optional Protocol.

Challenges

Based on their discussions, participants identified a number of challenges to increased use of international human rights law in crafting a jurisprudence of gender equality at the domestic level. In particular, participants found that:

- Only a very small number of cases decided by the courts of the region made use of international human rights law to interpret and apply laws in a manner that would advance justice for women, which may also be due to judges' lack of

- knowledge about and awareness of the scope and content of such instruments and the manner in which they can be applied;
- Training of judges, magistrates and lawyers on international human rights law to which their countries are parties is insufficient, and in particular with regard to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;
 - Barriers persist for women in access to justice, including their lack of knowledge of their rights, social stereotyping of their roles, and their inability to approach the courts because of the costs involved;
 - Violence against women persists and there is a common perception of the different forms of such violence in the countries of the region, and emergence of new challenges such as trafficking in women and children;
 - There is a lack of, or insufficient, legislation on family matters. Even when such legislation is in place, it is often outdated, and not always adequately implemented;
 - Common law unions and ‘visiting relationships’ are common in the region, but the law does not provide any, or adequate protection of the rights and interests of women in such relationships in regard to maintenance, division of property and inheritance;
 - Family courts, or family law divisions at the High Court/Supreme Court level, do not exist in several of the participating countries, and there is a lack of accessible and effective structures for dealing with family matters, and with violence against women. The limited jurisdictional boundaries of these courts significantly restrict their effectiveness. These shortcomings lead to inadequate access to justice for women in violence against women and family law matters. In many instances, the number of judges and magistrates assigned to family matters is insufficient to ensure that such matters are dealt with expeditiously, and the infrastructure of these courts is inadequate or absent to deal with such cases in an effective manner. In addition, courts lack the professional counsellors, psychiatrists and other support personnel necessary to function effectively;
 - There is a lack of respect for orders issued by magistrates and the trivializing of such orders;
 - Women are still isolated and ostracized when they seek redress in family matters, and may have the perception that they cannot obtain relief from the justice system;
 - There is a lack of mechanisms to enforce or monitor payment of maintenance awards, and the resultant non-payment of granted awards negatively impacts on the economic independence and well-being of women and their children;
 - The absence of legal aid for civil and family matters in many countries of the region constitutes an impediment for women to access justice.

Recommendations

Participants agreed that efforts are necessary to strengthen implementation of the Convention on the Elimination of All Forms of Discrimination against Women, and that judges and magistrates have significant opportunity to enhance use of the Convention in domestic court decisions. In particular, they call for:

- Judges to make use of and refer to the Convention on the Elimination of All Forms of Discrimination against Women in their decisions, so as to set precedents and contribute to a broader interpretation of domestic law in light of international human rights instruments;
- Awareness-raising of judges, magistrates and lawyers about the Convention on the Elimination of All Forms of Discrimination against Women and its relevance in domestic courts, and training and exchange of information to increase their capacity for a gender-sensitive interpretation of laws and statutes making use of international human rights law, particularly the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;
- Human rights education for judicial officers, lawyers and criminal justice personnel so as to enhance their knowledge about gender equality issues and their capacity to use international human rights instruments, including in situations of domestic violence;
- Judicial activism in the interpretation of legislation and in the approach of judges in dealing with issues affecting women, identifying gaps in legislation and inconsistencies of existing legislation with the spirit of the Convention on the Elimination of All Forms of Discrimination against Women, and encouraging the legislature to bring legislation in line with the Convention as well as with the Convention on the Rights of the Child;
- Strengthening of networking among judicial officers of the region, and establishment of mechanisms for regular information exchange on case law, good practices, and opportunities for continuing education and training;
- Implementation of extensive human rights education and information programmes for all relevant persons, especially on the Convention on the Elimination of All Forms of Discrimination against Women, so as to ensure that legislation that is currently being drafted in many countries of the region on gender equality and on violence against women is fully informed by international human rights law;
- Awareness raising campaigns to enhance women's knowledge of their rights and their legal literacy, to strengthen men's contribution to and participation in gender equality issues, and for measures directed at the elimination of social stereotypes that prevent women from seeking justice;
- Enhancing the educational system from an early age and undertaking awareness raising and information campaigns in support of the values of gender equality and non-discrimination, and to change cultural perceptions to make violence against women unacceptable;
- Adoption or expansion of legislation on violence against women to include comprehensive definitions of violence, including sexual harassment, stalking, economic abuse, and marital rape as a criminal offence; and that consideration be given to including 'no-drop' provisions in such legislation as well as addressing trafficking in women and children;
- Strengthening violence prevention efforts, including education and awareness raising programmes for the general public;
- Implementation of gender-sensitization programmes for the police and prosecutors, especially in regard to violence against women;

- Creation of adequate support systems and structures for women victims of violence and their children, including counselling, shelters, safe houses and hotlines;
- Programmes for rehabilitation of batterers and perpetrators of violence against women;
- Adoption, based on the Convention, of comprehensive and progressive legislation on family matters where it does not exist, and where it exists, its implementation in a systematic and gender-sensitive manner;
- Adoption of legislation to cover long-term unions other than marriage so that common law spouses can obtain adequate protection, maintenance and inheritance;
- Establishment, or reinforcement of family courts, and/or family divisions at the High Court/Supreme Court level, including jurisdiction of these courts, through enactment of appropriate legislation; upgrading of the scope and mandate of such courts and divisions to render effective and gender-sensitive justice for women; the expansion of the jurisdiction of magistrates to include hearing and determining issues of rights to property within a specified evaluation; and the provision of appropriate infrastructure for such courts;
- Discontinuation of the use of police prosecutors in magistrates' and family courts and their replacement by trained lawyers;
- Creation of effective mechanisms to ensure that women receive awarded maintenance payments and that granting of such payments is guided by equitable considerations;
- Provision of legal aid schemes for women, whether sponsored by States or otherwise, seeking relief in violence cases and in family matters so as to ensure that such women can obtain proper advice and access to courts.

Nassau, 19 May 2004