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**AIDE MEMOIRE**

**Convention on the Elimination of All Forms of Discrimination against Women:  
The roles of judges and parliamentarians in implementation**

**Economic and Social Commission for Western Asia, Amman, Jordan  
17-19 October 2007**

**Introduction**

The United Nations Division for the Advancement of Women, in cooperation with ESCWA's Centre for Women, will hold a regional capacity building workshop on the Convention on the Elimination of All Forms of Discrimination against Women for judges and parliamentarians from 13 countries in Western Asia, from 17 to 19 October 2007.

On 18 December 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). As of June 2007, the Convention had been ratified or acceded to by 185 States. The Optional Protocol to the Convention which entitles individuals or groups of individuals to submit claims of violations of the Convention's terms now has 88 States parties.

The 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, cultural and any other field. It requires States parties to pursue, without delay, 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.

Upon ratification or accession to the Convention, States parties assume specific obligations for the full implementation of the Convention at the national level. States also undertake to submit on a regular basis, for consideration by the Committee on the Elimination of Discrimination against Women (the Committee), the expert body which monitors compliance with the Convention, reports on measures taken and progress achieved in the implementation of the Convention. In its constructive dialogue with States parties and its concluding comments, the Committee urges all branches of Government – i.e the executive, legislative and judicial branches - to participate in the implementation of the Convention, follow-up to the Committee's concluding comments, and the preparation of the report.

ESCWA has undertaken numerous advisory missions to its Member States, primarily in support of the work of the national machineries for the advancement of women in the implementation of the Convention. It has recently issued a publication on the congruence between the Convention and national legislation in ESCWA countries. These efforts, as well as the Committee's concluding comments underline the need that all stakeholders take an active part in the promotion of gender equality.

The Division's mandate for capacity building efforts on women's human rights is drawn from the outcomes of several global conferences and reviews which call for enhanced efforts to promote gender equality, and especially implementation of human rights standards which particularly pertain to women. These include the Beijing Declaration and Platform for Action (1995) and the outcome of the 23rd special session of the General Assembly (2000).

### **Background and rationale**

Eleven ESCWA Member States have ratified the Convention, and many have constitutional guarantees granting women equal rights with men. Reports submitted to the Committee demonstrate the efforts that are being made by these States parties to enhance women's status and promote women's rights. However, as is the case world-wide, rights guaranteed in international and domestic law have yet to be translated fully into *de facto* equality for women in areas such as education, employment, health, participation in public life and decision-making, and in the family. In many instances, comprehensive measures to address violence against women remain to be established.

### **Reservations**

It is noteworthy that all ESCWA Member States that have ratified the Convention hold reservations to certain articles, including to articles 2 (right to equality and non-discrimination) and 16 (marriage and family life) which are viewed by the Committee as core provisions of the Convention. While reservations may be entered to the Convention, reservations that are incompatible with the object and purpose of the Convention are not permitted (article 28, paragraph 2). The Committee in its concluding comments, as well as States parties submitting objections to certain reservations, have noted that these

reservations pose barriers to the full implementation of the Convention. The Committee has also emphasized that reservations must be formulated as precisely and as narrowly as possible and regularly reviewed with a view to withdrawing them (see the Committee's statement on reservations, A/53/38/Rev.1, pp.47-50). It is therefore important to carefully assess the scope of such reservations and their impact on women's enjoyment of Convention rights, and their link to the persistence of women's inequality with men in all areas, including education, housing, health care and family responsibilities.

States have justified certain reservations, including those to articles 2 and 16, by a perceived incompatibility with *Sharia* or Islamic law. It is therefore important to explore ways for harmonizing provisions of *Sharia* and those of the Convention, with a view to limiting the scope of relevant reservations, and ultimately withdrawing them. States have also indicated that other reservations, particularly those to articles 9 (nationality) and 15 (freedom of movement) continue to be incompatible with existing national legislation or are necessary due to political considerations.

The workshop will explore the opportunities and responsibilities of judges and parliamentarians in encouraging law reform and legal interpretations that will ultimately result in the withdrawal of reservations to Convention provisions and women's de jure equality.

#### ***Family and personal status laws***

Many States parties have entered reservations affecting family law and personal status law, including guardianship, marriage, divorce and custody of children. While *Sharia* law influences family law in many Islamic countries, many States have used international law, including the Convention, to interpret *Sharia* in a manner which gives effect to equality between women and men.

The workshop will explore the opportunities and responsibilities of judges and parliamentarians in using the Convention in the interpretation of family law, including the interpretation and review of Islamic law and domestic legislation, so as to ensure equality between women and men.

#### ***Violence against women***

The Secretary-General's in-depth study on violence against women (A/61/122/Add.1 and Corr.1) was launched in October 2006. This study highlights the persistence of various forms of violence against women in all parts of the world. It acknowledges and reiterates the Committee's conclusion in general recommendation 19, that such violence is both a cause and a consequence of discrimination against women and a human rights violation. The study emphasizes that States have a responsibility, under international law, to protect women from violence, to hold perpetrators accountable, and to provide justice and remedies to victims. This study resulted in the adoption of a comprehensive resolution by the United Nations General Assembly on "Intensification of efforts to eliminate all forms of violence against women" (A/RES/61/143, of 19 December 2006) which urges States to take a series of steps to address violence against women. State parties' obligations under the Convention, the Secretary-General's in-depth study and the General

Assembly resolution have accelerated the momentum for action to address violence against women.

As indicated in their reports under article 18 of the Convention, ESCWA Member States have developed various initiatives to address violence against women. However, a comprehensive approach to address such violence remains to be achieved.

The workshop will explore the opportunities and responsibilities of judges and parliamentarians in ensuring that a comprehensive approach is in place to address all forms of violence against women. In the light of international obligations and the guidance provided by the Committee in its concluding comments, such a comprehensive approach would need to comprise measures such as specific laws on violence against women; reform of discriminatory laws, including evidentiary requirements in rape laws; and provision of services, including shelters, for women victims of violence.

### ***Optional Protocol***

The Optional Protocol entitles individuals and groups of individuals to submit communications concerning alleged violations of the Convention in a State party to the Convention and the Optional Protocol to the Committee. It also allows the Committee to inquire of its own motion into grave or systematic violations of the Convention. So far, none of the States parties to the Convention in the ESCWA region has ratified the Optional Protocol to the Convention. The workshop will review ratification and the use of the Optional Protocol for enhanced accountability of States for women's enjoyment of their rights under the Convention.

### ***Involvement of judges and parliamentarians in the implementation of the Convention***

The full engagement of all relevant stakeholders is essential in realizing women's de jure equality, as well as in accelerating progress towards the practical realization of the principle of equality between women and men, as called for under article 2 of the Convention. Parliamentarians, as drivers of legal reform, and judges, as implementers and interpreters of relevant legislation and standard-setters on the rights of women, are critical stakeholders in these efforts. Their role has become even more visible in light of recent calls by the Committee for increased judicial and parliamentary involvement in implementation, reporting and awareness-raising on the Convention.

Parliamentarians are mandated to review, revise and enact laws; narrow the scope of and remove reservations to the Convention; allocate resources for programmes aimed at promoting gender equality; and ensure the development of policies in line with the Convention. Judges have the power to use international human rights law, and in particular the Convention, to protect the rights and interests of women and girls and to interpret national laws in a gender-sensitive manner in line with obligations under the Convention.

This workshop provides an opportunity to strengthen the active involvement and contribution by these two essential groups in the implementation of the Convention.

### **Objective and expected accomplishment**

The objective of the workshop is to enhance implementation of the Convention by building the capacity of judges and parliamentarians to protect and promote women's rights to equality and non-discrimination.

The expected accomplishments at the end of the workshop include:

- Enhanced understanding of the relevance and applicability of the Convention for the work of judges and parliamentarians;
- Greater awareness and understanding of the steps necessary to enact and interpret laws in accordance with the Convention;
- Greater understanding of the possible harmonization of provisions of the Convention and provisions of *Sharia* and Islamic jurisprudence (*fiqh*);
- Enhanced awareness of the impact on women's equality of reservations to the Convention, measures to reduce such impact, and possibilities for narrowing and ultimately withdrawing such reservations;
- Greater awareness of obligations of States, under international law, to address violence against women, including in follow-up to the recommendations of the Secretary-General's in-depth study and the General Assembly resolution;
- Enhanced understanding of the Optional Protocol and the opportunities provided by it for strengthening women's enjoyment of their human rights, and the role of judges and parliamentarians in this process.

A report on the proceedings of the workshop, including keynote and working group presentations will be prepared. Participants may consider adopting a set of conclusions from the workshop.

### **Content and format**

The workshop will consist of a series of plenary and working group meetings.

#### ***Plenary sessions***

In the plenary sessions on the first day, a general discussion of the provisions of the Convention and the Committee's general recommendations will take place. Reservations to the Convention, the impact of such reservations, and the possibility of narrowing their scope and/or withdrawing them will be discussed. The possibility of harmonization of the provisions of the Convention and those of *Sharia* law and Islamic jurisprudence (*fiqh*) will be explored.

The relevance of the rights and obligations contained in the Convention for the work of judges and parliamentarians will be discussed. While noting the separation of powers, participants will strategize how judges and parliamentarians can complement and enhance their respective initiatives and roles in implementing the Convention.

The plenary session will also examine the opportunities of ratification and use of the Optional Protocol as a monitoring mechanism to ensure women's enjoyment of their human rights.

#### ***Working groups***

Participants will examine the two themes – family and personal status laws; and violence against women – on the second and third day of the workshop, whereby judges and parliamentarians will meet in parallel groups on each theme. Each group will identify opportunities and strategies for more creative and widespread use of international law and in particular the Convention, and possibilities for narrowing and ultimately withdrawing of reservations by States parties.

Each participant will be invited to prepare a short paper on one of the two themes based on her/his own country-specific experience. These papers should identify progress made in these areas, the role played by judges and parliamentarians and the obstacles encountered. These papers will form the basis of the discussion in the working groups.

*Theme 1: Family and personal status laws*

This session will examine family and personal status laws in participating countries, and in particular existing provisions in relation to male guardianship over women; rights of women in marriage, divorce, and custody of children; sharing of marital property; marriage age; polygamy; rights of women to pass their nationality to their children; and women's freedom of movement. Reservations to articles 2, 9, 15 and 16 of the Convention will be examined, as will be possibilities of narrowing the scope of these reservations, revising legislation and ultimately removing such reservations.

Judges will discuss the use of the Convention in the interpretation of family and personal status laws dealing with guardianship, marriage, divorce and custody of children and the status of women generally.

Parliamentarians will examine ways to reform family and personal status laws to eliminate discriminatory provisions, monitor the implementation of laws and raise awareness of the Convention in constituencies.

*Theme 2: Violence against women*

This session will examine obstacles to addressing violence against women in countries of the region and identify measures to overcome them.

Judges will discuss challenges such as the non-application of existing laws which may exist for the protection of women; non-existence of precedent in courts dealing with violence against women; exoneration or leniency of punishment for perpetrators of "honour" crimes; and rules of evidence and procedure, particularly in rape and sexual assault cases.

Parliamentarians will discuss the need for laws on violence against women; the allocation of resources in the national budget to deal effectively with violence against women; monitoring the development of policy in line with countries' international obligations and the promotion of public discourse and opportunities to discuss and create awareness of violence against women.

**Participants**

It is expected that one judge and one parliamentarian from each of the following countries will attend the workshop: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, and Yemen. The Occupied Palestinian Territories will also attend. Representatives of the Division, ESCWA, and the League of Arab Women will also be present at the workshop.

**Timing, duration and venue**

The workshop will be held consecutively for three days from 17 to 19 October 2007, in Amman, Jordan.

**Working language**

The workshop will be conducted in Arabic with simultaneous interpretation into English.