

Judicial colloquium on the Application of International Human Rights law at the Domestic Level

4 to 6 November 2002
United Nations Economic and Social Commission
Bangkok, Thailand

Aide Memoire

A. Background Information

On 18 December 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As of June 2002, the Convention had been ratified or acceded to by 170 States. The Optional Protocol to the Convention which entitles individuals or groups of individuals to submit claims of violations of the Convention's terms to the Committee, and provides the Committee with the power to inquire into grave or systematic violations of the Convention entered into force in December 2000, and now has 44 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, 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.

Upon ratification or accession to the Convention, States parties assume specific obligations for the full implementation of the Convention at the national level. The 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 expert body established to monitor implementation of the Convention in States parties, the Committee on the Elimination of Discrimination against Women (CEDAW), is particularly concerned with the status of the Convention in domestic legal systems. The Committee has advocated the incorporation of the Convention into national constitutions, as well as the implementation of the various rights in the Convention through legislation.

The Committee has stressed the relevance of the Convention and the jurisprudence of the Committee 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 girls. 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 tools to attain the goals of these instruments.

The Convention also obliges States parties to submit to the Secretary-General a report on the legislative, judicial, administrative or other measures that they have adopted to implement the Convention within a year after its entry into force and then at least every four years thereafter or

whenever the Committee so requests. These reports, which may indicate factors and difficulties affecting implementation, are forwarded to the CEDAW for its consideration.

B. Objectives

The **judicial colloquium** will provide an overview of relevant international human rights norms and extensive opportunity for participants to discuss cases where international human rights norms have been used to benefit women and girls. It will also provide an opportunity for judicial practitioners from developing countries in the ESCAP region to examine how international human rights law can be used at the domestic level to achieve equality for women and girls by:

- assessing 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;
- exchanging 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;
- discussing strategies for more creative and widespread use of international human rights norms contained in the Convention at the domestic level, in both common law and civil law systems;
- developing a consensus on the utilization of the international human rights norms contained in the Convention and discussing strategies on how this can be implemented in the resolution of human rights cases at the country level.

C. Participants

It is expected that approximately 20 senior judges and magistrates (appellate level, if possible) from the following countries will participate in the colloquium: Malaysia, India, Pakistan, Cambodia, Bhutan, Nepal, Thailand, Singapore, Bangladesh, East Timor and Afghanistan. Judges and magistrates who have themselves drawn on international human rights treaty law in decision-making will be joined by others 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 working in the field of women's human rights.

D. Format

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 three working groups will meet in parallel. Each working group will consist of a case study where international human rights law was successfully used to further equality for women or girls or where use of 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
- rape, including marital rape;
- traditional practices, for example dowry
- remedies, lack of remedies, against domestic violence
- trafficking in women and girls
- abuse of, violence against, women in custody

Work and work-related rights

Keynote speakers: (confirmation pending)

Working group topics (indicative):

- temporary special measures under article 4.1 of the Convention on the Elimination of All Forms of Discrimination against Women (positive discrimination; affirmative action)
- sexual harassment
- migrant labour
- abuses and exploitation of women and girl workers

E. Outcomes

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' 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 will be widely distributed amongst judges at the national level and to international human rights bodies and mechanisms.

F. Timing, Duration and Venue

The colloquium will be from 4 to 6 November 2002 at the United Nations Building, Bangkok, Thailand.

G. Working Language

The working language of the colloquium will be English and interpretation will not be provided.

