

United Nations  Nations Unies

DIVISION FOR THE ADVANCEMENT OF WOMEN

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I. Introduction

The Division for the Advancement of Women in the Department of Economic and Social Affairs (DAW/DESA), in co-operation with the Economic and Social Commission for Western Asia (ESCWA), organized a sub-regional workshop on the roles of judges and parliamentarians in implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) in Amman, Jordan, from 17-19 October 2007. Judges and parliamentarians from the following nine countries participated in the event: Bahrain, Egypt, Jordan, Kuwait, Lebanon, Qatar, Syrian Arab Republic, United Arab Emirates, and Yemen. Representatives of the Occupied Palestinian Territories also attended the workshop. The facilitators for the workshop were Ms. Meriem Belmihoub-Zerdani, a member of the Committee on the Elimination of Discrimination against Women (the Committee), and Ms. Farida Bennani, a professor of

An overview of the Convention

Ms. Belmihoub-Zerdani gave an overview of the provisions of the Convention, including the general recommendations of the Committee; reservations made by States parties to the Convention (mainly reservations to articles 2, 9, 15 and 16 which were made by countries of the ESCWA region); the Committee's stance on reservations; the work of the Committee; and the reporting process. Ms. Belmihoub-Zerdani focused on the roles that judges and parliamentarians can play in implementation of the Convention.

The compatibility of the Convention and Islamic jurisprudence (fiqh)

Ms. Bennani's presentation focused on harmonization of the Convention and Islamic jurisprudence (*fiqh*), especially in matters relating to family and personal status laws and nationality laws, since these were areas where ESCWA States parties had made reservations to the Convention. Ms. Bennani encouraged participants to examine the assumption that Islamic law and jurisprudence was rigid and inflexible on the issue of women's rights, highlighting that there were four main schools of Islamic jurisprudence which had different interpretations of Sharia and that some of these interpretations enabled women to enjoy the rights stipulated in international agreements. Ms. Bennani examined case studies from Islamic countries that have used more progressive schools of Islamic jurisprudence (*fiqh*) to inform their laws and made progress in harmonizing their laws with the Convention and lifting reservations. In her view, certain discriminatory interpretations of Islamic texts arose when these were read out of context and stressed the importance of reading Islamic verses in context. She pointed out that many arguments against women's equality were rooted in cultural practices. She encouraged judges and parliamentarians to consider the ways in which they could question and change deeply rooted cultural practices that lead to the subordination of women and impeded the full implementation of the Convention.

Discussions among the participants at the end of the first day focused on the following:

- the need for dissemination and awareness-raising on the Convention, including amongst judges and members of parliament since it was felt that key stakeholders had insufficient information about the Convention and its provisions;
- the important role to be played by other stakeholders, such as non-governmental organizations and the executive branch of government, in implementation of the Convention, and the need to conduct training workshops for such groups;
- the identification of the following as obstacles to undertaking law reform to enshrine women's rights: (i) deeply rooted cultural and traditional practices that discriminated against women; (ii) unwillingness of parliamentarians to address laws or practices seen to be within the ambit of Sharia; and (iii) the practical difficulty of using different schools of Islamic jurisprudence to change laws;
- the importance of changing mindsets in the region, as progressive laws would remain ineffective in the light of discriminatory practices;
- the need to actively engage progressive scholars of Islamic jurisprudence in law reform, for example, by having them provide legal opinions to members of parliament; and
- the link between the role of judges and members of parliament and ways to improve collaboration and increase joint efforts to implement the Convention.

The Optional Protocol

The plenary discussion during the second day of the workshop focused on the Optional Protocol to the Convention and its role in enhancing women's rights through enhanced accountability of States. Ms. Saras Jagwanth, noting that none of the participants were from a State party that had ratified the Optional Protocol, highlighted the important role that the Optional Protocol could play in assisting States in implementation of the Convention. She gave an overview on the complaints and inquiry procedures under the Optional Protocol and encouraged participants to consider the roles that they could play in advocating for the ratification of the Optional Protocol.

Violence against women

Ms. Yasmeeen Hassan gave a presentation on the international legal framework on violence against women, including the Committee's general recommendations 12 and 19. She highlighted that violence against women was both a cause and a consequence of discrimination against women. She gave a brief overview of the concerns expressed by the Committee on violence against women in concluding comments issued to States parties over the last decade, including those related to attitudes and stereotypes; data and research; legislation and its implementation;

(working group of parliamentarians) and Ms. Bennani (working group of judges), assisted by staff members of DAW and ESCWA.

Working groups on family and personal status laws

In the discussion that took place on the first day in relation to family and personal status laws, participants focused on (i) obstacles to harmonizing family and personal status laws with the provisions of the Convention; and (ii) strategies to overcome such obstacles and progress made. Participants were also invited to analyze the impact of reservations to articles 2, 9, 15 and 16 of the Convention, and deliberate on possibilities for narrowing the scope of these reservations and ultimately removing them. *The findings and recommendations of the working groups on family and personal status laws are attached hereto as Annex C.*

The discussion by *judges* focused on the following:

- Judges discussed their role in the application of the law. Many judges felt themselves restricted to a technical application of the law and did not see space for a gender-sensitive interpretation and application of the law. Many felt that it was up to the litigants in a particular case to raise the question of the applicability of the Convention and that judges could not proactively refer to the Convention.
- Judges discussed the lack of female judges, as well as the role of clerics acting as judges and applying personal status and family laws; and the realities in some countries in the region where separate personal status and family laws applied to different religious groups.
- Discriminatory cultural patterns and traditions and illiteracy among women were seen as significant challenges in reforming family and personal status laws and the implementation of the Convention.

The discussion by *parliamentarians* focused on the following:

- Participants felt that political will for amending national laws that discriminate against women existed in the region, as well as a grassroots level movement, in support of the practical realization of gender equality.
- Participants discussed the issue of reservations to the Convention and the role of parliamentarians in the process of their removal. It was noted that there was no uniform position in the region regarding the ratification of, and reservations to, the Convention – i.e., one State party had ratified the Convention without reservations, many States entered several reservations, and some entered declarations. In addition, many countries which had ratified the Convention with reservations, had ratified other international treaties without similar reservations.
- Most States in the region had reservations to articles 2, 9, 15 and 16, with reference to Islamic Sharia. The participants discussed the four schools of Islamic jurisprudence and their varying interpretations of Sharia. In addition, they noted that some reservations, such as those to article 9 (nationality), were based on other considerations that led to discriminatory citizenship laws.
- The issue of sectarianism was viewed as one of the barriers to achieving gender equality in the Middle East, especially in relation to family laws.

Working groups on violence against women

Judges and parliamentarians met in two separate working groups to discuss issues related to violence against women – based on their

- In none of the countries represented, marital rape was penalized and most did not have provisions covering sexual harassment. Jordan was the only country that had submitted a draft bill on domestic violence to parliament.
- Judges discussed the link between discriminatory laws that they enforced and women's vulnerability to violence. In particular, judges discussed how wife obedience laws in some countries made women explicitly subservient to their husbands, and that these laws may also be a contributing factor for violence against women.
- Participants felt that judges in general were unaware of the international legal framework on violence against women, and in particular the general recommendations 12 and 19 of the Committee.
- There was discussion on the different court systems (unified or parallel courts for various sects) and legal systems (civil law or common law) in the various countries. Participants noted that only some of these systems allowed the possibility of creating judicial precedents.

The discussion by *parliamentarians* focused on the following:

- The developments in each of the countries in the region were discussed, and the lack of specific laws covering violence against women was raised. Ways for preventing violence against women in various sectors, including through national action plans, were also discussed.
- Participants suggested that women sometimes perpetrated violence against women, such as by taking part in female genital mutilation or so-called honour crimes, and by failing to speak out against violence that they witnessed against other women. Participants noted that such responses by women had to be seen within current contexts, expressing the hope that in a culture supportive of gender equality such active and/or tacit support would end. One of the male participants stressed that attention was not being paid to the issue of violence against men in the family.

- While the issue of violence against women was a universal phenomenon, participants felt that the political violence suffered by women in the Occupied Palestinian Territories needed to be acknowledged and addressed.

III. Background materials

Each participant was provided with a comprehensive set of materials in Arabic, intended for use during the workshop, as well as for future reference, including:

- Text of the Convention and Optional Protocol;
- General recommendations adopted by the Committee (1-25);
- Overview of the current working methods of the Committee;
- Revised reporting guidelines;
- Concluding comments of the Committee on selected participating countries;
- Background paper (updated September 2007): “Reporting under the Convention on the Elimination of All Forms of Discrimination against Women” (DAW research paper).
- The Committee’s statement on reservations to the Convention;
- The Secretary-General’s in-depth study on violence against women; and
- General Assembly resolution on intensification of efforts to eliminate all forms of violence against women.

New York, November 2007 (REV).

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Annex B

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

Amman, Jordan
17-19 October 2007

PROGRAMME OF WORK

Wednesday 17 October 2007

8.00 – 9.00 am

Registration

9.00 – 9.30 am

Opening statements

12.30 – 2.00 pm

Lunch

1.30 – 3.30 pm

Report back from working groups on family and personal status laws

The rapporteur of each working group will report back on conclusions reached by the working group. Participants will discuss how judges and parliamentarians can complement and enhance their respective initiatives and roles in reforming family and personal status laws, monitoring the application and impact of such laws, and implementing the Convention.

3.30 – 4.30 pm

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

- § History of the Optional Protocol and its role in enhancing women's rights
- § The complaints procedure
- § The inquiry procedure
- § The role of different stakeholders towards ratification of the Optional Protocol

Ms. Saras Jagwanth and Ms. Yasmeeen Hassan
DAW/DESA

Friday 19 October

8.45 – 9.00 am

Introduction and announcements

9.00 – 9.30 am

The Secretary-General's in-depth study on violence against women and the General Assembly resolution on "Intensification of efforts to eliminate all forms of violence against women"

- § Overview of the study, including state responsibility for addressing violence against women
- § Follow-up action to implement the General Assembly resolution

Ms. Yasmeeen Hassan
DAW/DESA

9.30 am -12.30 pm

***Parallel working groups on violence against women**

Judges and parliamentarians will meet in two separate working groups to discuss issues related to violence against women, based on their country-specific experience – including (i) prevalent forms of violence against women in the region; (ii) measures that have been established to address such violence; and (iii) gaps and challenges in this regard. Participants will be invited to make short

presentations of their papers. Questions to guide discussions in the working group are attached hereto as Annex II. Each working group will appoint a rapporteur to report back to plenary.

Annex I

Questions to guide the parallel working group on family and personal status laws

Parliamentarians and judges may use the following respective lists of questions to guide their discussion, but need not limit their discussion to these.

Parliamentarians:

- What is the level of awareness of the Convention among parliamentarians in your country and among your constituencies and how can such awareness be enhanced?
- What discriminatory family and personal status laws -- such as existing legal provisions on male guardianship over women; rights of women in marriage, divorce, and custody of children; sharing of marital property; marriage age;

Annex II

Questions to guide the parallel working group on violence against women

Parliamentarians and judges may use the following respective lists of questions to guide their discussion, but need not limit their discussion to these.

Parliamentarians:

- What is the level of awareness of parliamentarians of issues related to violence against women and how can such awareness be enhanced?
- How can parliamentarians create awareness and promote discussion in their constituencies on issues related to violence against women?
- What laws exist in your country to address violence against women and what are the shortcomings in such laws?
- What are the obstacles to enacting comprehensive laws on violence against women and how can such obstacles be overcome?
- What use can be made of the Convention (especially, the Committee's general recommendation 19) and the Secretary-General's study on violence against women to guide law reform on violence against women?
- What role can parliamentarians play in the allocation of adequate resources in the national budget to deal effectively with violence against women?
- What role can parliamentarians play in the development of policy (such as national plans of action on violence against women) in line with countries' international obligations on violence against women?

Judges:

- What is the level of awareness of judges of issues related to violence against women and of international obligations in this regard? How can such awareness be enhanced?
- What challenges -- such as lack of appropriate laws or procedures, existence of discriminatory laws and procedures, non-application of existing laws, non-existence of precedent in courts dealing with violence against women, and prevalence of stereotypes -- do judges face in addressing cases of violence against women?
- What role can judges play in gender-sensitive interpretation of existing laws, rules and procedures for the benefit of women victims of violence?
- What possibilities exist to use international law, especially the Convention, in cases of violence against women, especially where national law is inadequate?
- What measures can judges take to ensure that perpetrators of violence against women are appropriately punished?

Findings and recommendations of judges and parliamentarians in the working groups on family and personal status laws

In many countries ratified international treaties take precedence over national laws so that judges must apply the provisions of such international treaties, for example the Convention on the Elimination of All Forms of Discrimination against Women (the Convention), over conflicting national laws. However, a lack of awareness of the Convention among all stakeholders, including judges and parliamentarians, hinders its implementation. In addition, certain cultural and traditional practices and sectarianism are obstacles for the implementation of the Convention, especially as related to family and personal status laws. As a result, it is recommended that:

- the Convention be published and disseminated widely;
- further training courses be organized for judges, lawyers, parliamentarians and other stakeholders to raise awareness of women's rights and the Convention;
- educational courses on the Convention be included in the curricula of colleges, universities and law schools;
- media campaigns be launched to raise awareness of the Convention in the Middle East;
- mechanisms and strategies be created to assist parliamentarians to enact and/or reform laws in accordance with the Convention and to monitor implementation of the Convention;
- women judges be appointed in all courts dealing with matters covered in the Convention; and
- advocacy networks be established among parliamentarians, judges and members of civil society for improved implementation of the Convention; and
- efforts be made to raise awareness of the Convention at the grassroots level and to create lobbies and pressure groups for the full implementation of the Convention.

While most Arab states have entered reservations to articles 2, 9, 15 and 16, on the basis that these articles would be incompatible with, or contradict Islamic Sharia, there is no unified Arab position *vis-a-vis* ratification of, and reservations and/or declarations to, the Convention. Some reservations, such as those to article 9, are political in nature and have no relation to Islamic jurisprudence. In addition, family and personal status laws in Arab countries are not uniform but are diverse. It is recommended that:

- studies be conducted and published on the compatibility of Islamic jurisprudence (*fiqh*) and the Convention;
- workshops be conducted for Sharia judges and Islamic clerics towards reaching a common understanding of family and personal status laws and the harmonization such laws with the Convention; and
- workshops be conducted for political leaders, Islamic clerics, judges and members of civil society on the compatibility of *fiqh* and women's rights in countries of the Middle East.

Findings and recommendations of judges and parliamentarians in the working groups on violence against women

Many forms of violence – physical, psychological, emotional and economic – exist in all countries. Judges do not have adequate knowledge of the general recommendations 12 and 19 of the Committee on the Elimination of Discrimination against Women on violence against women or of other international standards on violence against women, such as the Declaration on the Elimination of Violence against Women. This lack of knowledge prevents them from implementing existing laws in accordance with the provisions of the Convention. Judges have not referred to the Convention in any legal opinion. In addition, judges are not aware that enforcing discriminatory laws may result in violence against women. It is recommended that:

- training courses on the Convention and the Optional Protocol and international standards on violence against women be conducted for the police, judges, and lawyers;
- communication among parliamentarians, judges and members of civil society be enhanced at the national and international levels so that they can share strategies on preventing and ending violence against women;
- an electronic network/forum for judges and parliamentarians be established on the ESCWA website to share experiences and developments on efforts to end violence against women;
- the recommendations of the workshop entitled “Convention on the Elimination of all Forms of Discrimination against Women: Roles of Judges and Parliamentarians in Implementation” in the Middle Eastern region be disseminated and shared widely; and
- the Division for the Advancement of Women and ESCWA be encouraged to hold further workshops to raise awareness of the Convention.

There have been some positive developments on addressing violence against women in the Arab world including amendments of discriminatory laws, enactment of new laws,

draft laws submitted to parliament, and adoption of plans and strategies that include addressing violence against women. However, there are many obstacles to combating violence against women in the Arab region which include: social customs and traditions that are based on male superiority; patriarchal mentalities; lack of legislation to protect women from violence, end impunity, and punish perpetrators of violence against women; lack of statistics on violence against women; and widespread ignorance among Arab women of their rights. In addition, situations of conflict and foreign occupation make women more vulnerable to violence. Consequently, it is recommended that:

- the educational curricula in the region be reformed with the aim of eliminating discrimination and violence against women;
- steps be taken to modify and/or eliminate stereotypical images of women in the media in the region;
- special funds be allocated within national budgets to support mechanisms aimed at eliminating violence against women;
- research on violence against women and compilation of sex-disaggregated data on violence against women be supported and encouraged;
- laws to specifically protect women from all forms of violence and to punish perpetrators of violence against women be enacted and effectively implemented;
- female police units with female officers and social workers be created in police stations to address the needs of women victims of violence and to provide them greater access to justice;
- government-supported shelters be established to provide shelter and services to female victims of violence;
- the situation of women in prisons be improved through provision of services that aim at their rehabilitation and re-integration into society and such prisoners be held separated, including during pre-trial detention, based on the type of crime committed; and
- special services be provided for women living in conflict stricken areas who have greater vulnerability to violence, and all Security Council resolutions to end foreign occupation in member States and territories be implemented.