

## DEVELOPMENT OF DOMESTIC VIOLENCE LEGISLATION

In accordance with the Convention on the Elimination of all forms of Discrimination against Women, States parties are under an obligation to respect, protect and fulfil the right to non-discrimination of women and to ensure the development and advancement of women in order to improve their position and implement their right of de jure and de facto or substantive equality with men.



Group photo of all workshop participants and facilitators

The Convention is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender. *(The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities contain explicit provisions guaranteeing women equality with men in the enjoyment of the rights they enshrine, while other international human rights treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, are implicitly grounded in the concept of non-discrimination on the basis of sex and gender. The*



Group photo of Seychelles delegation in orange Day t-shirts

*International Labour Organization (ILO) Conventions concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100), Discrimination in Respect of Employment and Occupation (No. 111) and Workers with Family Responsibilities (No. 156),) the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education, the Declaration on the*

*Elimination of Discrimination against Women, the Vienna Declaration and Programme of Action, the Cairo Programme of Action and the Beijing Declaration and Platform for Action also contribute to an international legal regime of equality*

for women with men and non-discrimination. Likewise, the obligations of States entered into under regional human rights systems are complementary to the universal human rights framework.

This imposes a due diligence obligation on our government to ensure compliance with the conditions of the Convention. Over the past 30 years, we have also seen the introduction of many general recommendations and it is through General Recommendations 12, 19, and 28 that the issue of ending violence against women is pronounced.

As a definition violence against women is understood to encompass, but not be limited to the following:(a) Physical, sexual and psychological violence occurring in the family, includingbattering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices, harmful to women, non-spousal violence and violence related to exploitation;(b) Physical, sexual and psychological violence occurring within the general,community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and ) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Many countries around the world have introduced legislation to support these general recommendations, but we as country have yet to put such legal force behind the issue.

From 19<sup>th</sup> to 21<sup>st</sup> November, UNWomen (Southern African region) brought together 3 countries in the southern African hemisphere to consider the development of a prototype Domestic Violence Bill. The Seychelles delegation, led by Special Adviser Marie-Josée Bonne, consisted of 7 persons from pertinent sectors including Tessa Siu of the Gender Secretariat, Rosemary Elizabeth of WASO, Emily Gonthier of the Attorney General's chambers, Steven Robert of the Family, Tribunal, Rita Antat of the Probation services and Agnes Fanchette of the Family Squad of the Seychelles police force. The team was exposed to the multi international instruments which guides human rights legislation with specific focus on domestic violence and ended the session by considering a draft action plan. UNWomen will be providing further technical support to the country on this matter especially in light of the fact that Seychelles will need to prepare to defend the country report to the CEDAW Committee for the first time in 2013.

Criminalizing domestic violence is one major activities incorporated in our Domestic Violence strategy, a strategy which we have developed since 2008, and which is fully in alignment with, and totally supports our country's social renaissance campaign. Domestic violence is an

abhorrent act which cannot and will not be condoned by the Seychelles as a democratic and civilized state.

## Editor's notes

### THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN ( CEDAW)

**Article I** - For the purposes of the present Convention, the term "discrimination against women" shall mean: *“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*

### **GENERAL RECOMMENDATION NO. 12 (EIGHTH SESSION, 1989)**

#### **Violence against women**

The Committee on the Elimination of Discrimination against Women,

Considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life,

Taking into account Economic and Social Council resolution 1988/27,

Recommends to the States parties that they should include in their periodic reports to the Committee information about:

- 1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);**

### **GENERAL RECOMMENDATION NO. 19 (11 TH SESSION, 1992)**

24. (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

## GENERAL RECOMMENDATION NO. 28

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### CORE OBLIGATIONS OF STATE UNDER ART 2 (FORTY SEVENTH SESSION, 2010)

#### I. Introduction

1. Through this general recommendation, the Committee on the Elimination of Discrimination Against Women (“the Committee”) aims to clarify the scope and meaning of article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), which provides ways for States parties to implement domestically the substantive provisions of the Convention. The Committee encourages States parties to translate this general recommendation into national and local languages and to disseminate it widely to all branches of Government, civil society, including the media, academia and human rights and women’s organizations and institutions.

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24. The main element of the chapeau of article 2 is the obligation of States parties to pursue a policy of eliminating discrimination against women. This requirement is an essential and critical component of a State party’s general legal obligation to implement the Convention. This means that the State party must immediately assess the de jure and de facto situation of women and take concrete steps to formulate and implement a policy that is targeted as clearly as possible towards the goal of fully eliminating all forms of discrimination against women and achieving women’s substantive equality with men.

**31. Paragraph 2 (a), 2 (f) and 2 (g) establish the obligation of States parties to provide legal protection and to abolish or amend discriminatory laws and regulations as part of the policy of eliminating discrimination against women. States parties must ensure that, through constitutional amendments or by other appropriate legislative means, the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status. They must also enact legislation that prohibits discrimination in all fields of women’s lives under the Convention and throughout their lifespan. States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.** Certain groups of women, including women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices. By ratifying the Convention or acceding to it, States parties undertake to incorporate the Convention in their domestic legal systems or to give it otherwise appropriate legal effect within their domestic legal orders in order to secure the enforceability of its provisions at the national level. The question of direct applicability of the provisions of the Convention at the national level is a question of constitutional law and depends on the status of treaties within the domestic legal order. The Committee takes the view, however, that the rights to non-discrimination and equality in all

fields of women's lives throughout their lifespan, as enshrined in the Convention, may receive enhanced protection in those States where the Convention is automatically or through specific incorporation part of the domestic legal order. The Committee urges those States parties in which the Convention does not form part of the domestic legal order to consider incorporation of the Convention to render it part of domestic law, for example through a General Law on Equality, in order to facilitate the full realization of Convention rights as required by article 2.

***32. Paragraph 2 (b) contains the obligation of States parties to ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subjected to discrimination contrary to the Convention. This obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation, and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.***

33. According to paragraph 2 (c), States parties must ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under the Convention. However, where it is not possible to do so, courts should draw any inconsistency between national law, including national religious and customary laws, and the State party's obligations under the Convention to the attention of the appropriate authorities since domestic laws may never be used as justifications for failures by States parties to carry out their international obligations.