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Chapter 11

Women's rights in the administration of justice

Facilitator's Guide

Learning objectives

- To make the participants aware of the specific human rights problems faced by women in different spheres of life
- To familiarize the participants with the existing international legal rules for the protection of the rights of women
- To increase the participants' awareness of their own potential as judges, prosecutors and lawyers to improve the protection of the rights of women

Questions I

- How are the rights of women protected by the legislation in the country where you work?
- In your view, is this legislation efficiently enforced?
- What are the specific problems facing women in the country where you work?
- Are these problems due to shortcomings in the de jure protection of women or to a failure to enforce the existing legal rules?

Questions II

- Are there any other reasons that might explain the problems encountered by women in the country where you work?
- If so, what are they?
- Do girls face any specific problems in the country where you work?
- If so, what are these problems and what may be their root cause?

Questions III

- How, and to what extent, does the law deal with the specific problems of girls?
- What can you as judges, prosecutors and lawyers do in order to improve the protection of the rights of women in the country where you work?

Relevant legal instruments I

Universal instruments (1)

- The Charter of the United Nations, 1945
- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

Relevant legal instruments II

Universal instruments (2)

- The Convention on the Political Rights of Women, 1953
- The Convention on the Nationality of Married Women, 1957
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962
- The Convention on the Rights of the Child, 1989
- The Optional Protocol to the Convention on the Rights of the Child, Child Prostitution and Child Pornography, 2000

Relevant legal instruments III

Universal instruments (3)

- The Convention on the Elimination of All Forms of Discrimination against Women, 1979, and its Optional Protocol, 1999
- The Convention against Discrimination in Education, 1960
- The Rome Statute of the International Criminal Court, 1998

Relevant legal instruments IV

Universal instruments (4)

- The Universal Declaration of Human Rights, 1948
- The Declaration on the Elimination of Violence against Women, 1993
- The Vienna Declaration and Programme of Action, 1993
- The Beijing Declaration and Platform for Action, 1995

Relevant legal instruments V

Regional instruments

- The African Charter on Human and Peoples' Rights, 1981
- The African Charter on the Rights and Welfare of the Child, 1990
- The American Convention on Human Rights, 1969
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994
- The European Convention on Human Rights, 1950

Women's right to legal personality

Key legal provisions

1. Article 6 of the Universal Declaration of Human Rights:
“Everyone has the right to recognition everywhere as a person before the law.”
2. Article 16 of the International Covenant on Civil and Political Rights:
“Everyone shall have the right to recognition everywhere as a person before the law.”
3. Article 24 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:
“Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.”
4. Article 3 of the American Convention on Human Rights:
“Every person has the right to recognition as a person before the law.”
5. Article 5 of the African Charter on Human and Peoples' Rights:
“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. . .”

Women's right to legal personality

What it means

Women have a right to legal personality. Women shall have equality with men before the law. This right is absolute and must be guaranteed in all circumstances and at all times.

Women's right to equality before the law and equal protection of the law

Key legal provisions I: Universal level (1)

1. Articles 1 (3), 13 (1) (b), 55 (c) and 76 (c) of the Charter of the United Nations
2. Articles 1 and 2 of the Universal Declaration of Human Rights
3. Articles 2 (1), 3, 4 (1) and 26 of the International Covenant on Civil and Political Rights

Women's right to equality before the law and equal protection of the law

Key legal provisions II: Universal level (2)

4. Articles 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights
5. The Convention on the Elimination of All Forms of Discrimination against Women
6. Declaration on the Elimination of Discrimination against Women

Women's right to equality before the law and equal protection of the law

Key legal provisions III: Regional level

1. Article 2 of the African Charter on Human and Peoples' Rights
2. Articles 1, 24 and 27 (1) of the American Convention on Human Rights, and article 3 of the Additional Protocol in the Area of Economic, Social and Cultural Rights
3. Articles 4, 5 and 6 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
4. Articles 14 and 15 (1) of the European Convention on Human Rights and Protocol No. 12 to the Convention.
5. Article E, Part V, of the European Social Charter (Revised), 1996

The meaning in general of equality and non-discrimination I

The principle of equality and non-discrimination does not mean that all distinctions made between people are illegal under international law.

Differentiations are legitimate and thereby lawful provided that they:

- Are pursuing a legitimate aim, such as, for instance, affirmative action in order to address inequality
- Are reasonable given their legitimate aim

The meaning in general of equality and non-discrimination II

Alleged purposes for differential treatment that cannot be objectively justified and measures that are disproportionate to the attainment of a legitimate aim are unlawful and contrary to international human rights law.

In order to ensure the right to equality, States may have to treat differently persons whose situations are significantly different.

The 1993 Vienna Declaration and Programme of Action

The 1993 Vienna Declaration and Programme of Action provides in Part I, paragraph 18, that:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

The 1995 Beijing Declaration and Platform for Action

The Beijing Platform for Action provides in paragraph 2 of its Mission Statement that:

The Platform for Action reaffirms the fundamental principle set forth in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. As an agenda for action, the Platform seeks to promote and protect the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle.

The meaning of equality between women and men I

Women have the right to equality with men before the law. This right to legal equality is independent of the civil status of the woman.

The prohibition of discrimination based on sex includes gender-based violence.

The meaning of equality between women and men II

Women's right to legal equality with men means that States have to eliminate all legal and factual discrimination against women in both the public and the private sectors. It also implies that States are, as a minimum, duty-bound to take all appropriate measures to modify local customs and traditions that may impede the full realization of women's right to equality.

Women's right to respect for their life as well as their physical and mental integrity I

Key legal provisions (1)

1. Articles 3 and 5 of the Universal Declaration on Human Rights
2. Articles 6, 7, 9 and 10 of the International Covenant on Civil and Political Rights
3. Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights
4. Articles 4, 5 and 7 of the American Convention on Human Rights

Women's right to respect for their life as well as their physical and mental integrity II

Key legal provisions (2)

5. Articles 2, 3 and 5 of the European Convention on Human Rights
6. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
7. Declaration on the Elimination of Violence against Women

Women's right to respect for their life as well as their physical and mental integrity III

What it means (1)

Every woman has the right to respect for her life as well as for her physical and mental integrity on an equal basis with men.

Gender-based violence and the threat of such violence are prohibited by international human rights law, in both the public and the private sphere.

Women's right to respect for their life as well as their physical and mental integrity IV

What it means (2)

Violence against women impairs or nullifies their right to enjoy their rights and freedoms on a basis of equality with men.

Women in vulnerable situations must be given special attention and protection against acts of violence.

Women's right to respect for their life as well as their physical and mental integrity V

What it means (3)

Women's right to life must be respected at all times.

States have a corresponding legal duty positively to protect women's life. Violence including abductions, enforced disappearances, murder and extrajudicial killings are strictly prohibited at all times.

Violence linked to dowry as well as "honour killings" are strictly prohibited by international law and must be prevented, prosecuted and punished by the State concerned.

Women's right to respect for their life as well as their physical and mental integrity VI

What it means (4)

Female genital mutilation is harmful to the health and life of girls and women and contrary to international law. States have a legal duty to take appropriate and effective measures to eradicate this practice.

In order to prevent maternal mortality, national legislation must, as a minimum, provide for the possibility of abortion in cases such as where the health of the mother is in danger, as well as in cases of rape or incest.

The death penalty may not be imposed on pregnant women.

Women's right to respect for their life as well as their physical and mental integrity VII

What it means (5)

States have a legal responsibility under international law to take positive measures to reduce infant mortality and increase life expectancy by dealing with the root causes and providing women with equal access to food and health care.

Women's right to respect for their life as well as their physical and mental integrity VIII

What it means (6)

Women have the right to freedom from torture, and cruel, inhuman and degrading treatment and punishment at all times, including in times of emergency.

Women deprived of their liberty must be treated with humanity and given special protection against violence and sexual abuse. Pregnant women and nursing mothers are to be provided with special facilities in detention.

Women's right to respect for their life as well as their physical and mental integrity IX

What it means (7)

Corporal punishment is prohibited by international law, including when imposed on women for reasons of adultery or for having violated specific dress codes.

A woman must not be returned to a country where she runs a serious risk of being subjected to torture or other treatment contrary to international law.

Women's right to respect for their life as well as their physical and mental integrity X

What it means (8)

Domestic and community violence against women is contrary to international law. States have a legal duty to take immediate and effective measures to eradicate all forms of gender-based violence in society. This duty implies, inter alia, that States must provide adequate and effective protection under criminal law to victims of violence by private individuals.

Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking I

Key legal provisions (1)

Slavery, the slave trade and servitude are either expressly or implicitly prohibited by:

- Article 8 (1) and (2) of the International Covenant on Civil and Political Rights
- Articles 1, 2 and 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Article 5 of the African Charter on Human and Peoples' Rights
- Article 6 (1) of the American Convention on Human Rights
- Article 4 (1) of the European Convention on Human Rights
- The Slavery Convention, 1926, as amended by Protocol, 1953
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956

Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking II

Key legal provisions (2)

Women's right to freedom from forced and compulsory labour is guaranteed by the following legal provisions:

- Article 8 (3) of the International Covenant on Civil and Political Rights
- Article 6 of the American Convention on Human Rights
- Article 4 (2) of the European Convention on Human Rights
- The ILO Forced Labour Convention, 1930 (No. 29)
- The ILO Abolition of Forced Labour Convention, 1957 (No. 105)

Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking III

Key legal provisions (3)

Trafficking in persons and/or women and children is prohibited by:

- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
- Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Article 35 of the Convention on the Rights of the Child, and the Optional Protocol on the sale of children, child prostitution and child pornography, 2000
- Article 6 (1) of the American Convention on Human Rights
- The First Protocol to the Convention on Transnational Organized Crime

Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking IV

What it means (1)

Women have the right to freedom from slavery, the slave trade and servitude, as well as forced and compulsory labour.

Women may not, consequently, be subjected to any kind of slavery or similar practice, such as prostitution and domestic or other kinds of services that may be disguised slavery or servitude.

Trafficking in women and girls is strictly prohibited by international law.

Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking V

What it means (2)

Slavery, the slave trade, servitude, forced and compulsory labour, as well as trafficking in women and children, including girls, are practices that must be penalized in national law and those responsible for these illegal acts must be forcefully prosecuted by the national authorities.

Women's right to freedom from slavery, the slave trade, forced and compulsory labour, as well as trafficking VI

What it means (3)

States have a legal duty to take immediate, appropriate and effective measures to combat these unlawful practices at all levels, including through international cooperation, and to provide adequate help and protection to the victims concerned, including those of foreign nationality.

The rights to equality as to marriage I

Key legal provisions

The right of intending spouses to marry freely and to found a family is protected by:

- Article 16 of the Universal Declaration of Human Rights
- Article 23 (2) of the International Covenant on Civil and Political Rights
- Article 17 (2) of the American Convention on Human Rights
- Article 12 of the European Convention on Human Rights
- Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962

The rights to equality as to marriage II

What it means (1)

Women have the right to enter into marriage with their full and free consent on the same basis of equality as men. Forced marriages are prohibited by international law and must be outlawed at the national level. The same holds true for dowry and other similar traditions.

Traditions, customs and religious beliefs cannot, consequently, be allowed to justify forced marriages under international law.

The rights to equality as to marriage III

What it means (2)

Polygamy is incompatible with international law since it violates the principle of equality between women and men, violates the dignity of women and is an inadmissible discrimination against women.

If set too low, the legal marriageable age may violate the principle of free consent; the legal age for marriage should preferably be 18 years for both men and women.

The rights to equality as to marriage IV

What it means (3)

The prohibition of divorce under national law violates the right to marry and found a family. Temporary bans on remarriage are contrary to international law.

The rights to equality as to marriage V

What it means (4)

All marriages, whether civil or religious, should be kept in an official registry. Such registration is indispensable to preventing forced marriages, bigamy and polygamy.

The rights to equality as to marriage VI

What it means (5)

The right to found a family means, among other things, that women are entitled to decide on the number and spacing of their children, preferably in consultation with their partner.

Compulsory family planning, such as forced sterilization, is prohibited under international law.

Equality of rights in terms of nationality and in the choice of name

Under international law women and men have equal rights in terms of *nationality* laws. This means that female and male spouses who marry foreigners must be treated equally and must have equal rights to transmit their nationality to their children.

Under international law women and men also have the same right to choose a *family name*.

Equal rights and responsibilities of spouses I

Key legal provisions

According to the following legal provisions, spouses have equal rights and responsibilities as to marriage, during marriage and at its dissolution:

- Article 23 (4) of the International Covenant on Civil and Political Rights
- Article 16 (1) (c), (d), (f) and (h) of the Convention on the Elimination of All Forms of Discrimination against Women
- Article 17 (4) of the American Convention on Human Rights
- Article 5 of Protocol No. 7 to the European Convention on Human Rights

Equal rights and responsibilities of spouses II

What it means (1)

Women and men have equal rights and responsibilities as to marriage, during marriage and at its dissolution. They have, in other words, the same rights and responsibilities with regard to all matters arising from their relationship, such as their residence, assets and children.

Married women have the same right as their spouse to choose and exercise a profession and occupation suited to their abilities.

Equal rights and responsibilities of spouses III

What it means (2)

International law accepts various forms of family life, including unmarried couples. Women living in de facto unions should have the same rights as men with regard to family life as well as in the sharing of their property and income. These rights should be protected by law.

Equal rights and responsibilities of spouses IV

What it means (3)

Under international law women and men have equal rights with regard to *divorce*. Repudiation is prohibited by this law.

Women have an equal right of *succession* when the marriage is dissolved by the death of the spouse.

Women's equal right to legal capacity in civil matters I

Women have the right to equal legal capacity in civil matters as compared to men.

This means, for instance, that women must be ensured equal rights to own and administer property, to conclude contracts and obtain credit, and to be allowed to work without their husband's or any other person's permission.

Women's equal right to legal capacity in civil matters II

The right to equal legal autonomy also implies that women have a right to *inherit* on a basis of full equality with men.

Customs and traditions are not allowed to prejudice the effective exercise of these rights.

Women's right to equal participation in public affairs, including elections I

Key legal provisions

- Article 25 of the International Covenant on Civil and Political Rights
- Articles 7 and 8 of the Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Political Rights of Women, 1953
- Article 23 of the American Convention on Human Rights
- Article 13 of the African Charter on Human and Peoples' Rights
- Article 3 of Protocol No. 1 to the European Convention on Human Rights

Women's right to equal participation in public affairs, including elections II

What it means (1)

Women have a right to equal participation with men in the conduct of the public affairs of their country and they have the right to do so either directly themselves or through freely chosen representatives.

Women have a right to vote in all elections and referendums on an equal footing with men, and to be elected themselves in all elections.

Women's right to equal participation in public affairs, including elections III

What it means (2)

Women have an equal right with men to hold public office and to perform governmental functions at all levels.

Women have a right to equal participation in the formulation and implementation of Government policy.

Women's right to equal participation in public affairs, including elections IV

What it means (3)

Women have an equal right to participate in public debate, either alone or through a variety of organizations, a right that presupposes the effective enjoyment of the freedoms of expression, assembly and association.

States must ensure that women have an equal opportunity with men to represent their Government at the international level.

Women's right to equal participation in public affairs, including elections V

What it means (4)

The right to equal participation in a country's public and political life is a cornerstone of a democratic society based on respect for the freely expressed will of the people concerned.

Women's right to equal enjoyment of other human rights I

The right to freedom of movement and residence

Women have the right to freedom of movement and residence on an equal basis with men.

No person has the right to prohibit an adult woman from travelling or choosing her residence.

No custom or tradition can justify a limitation of this right.

Women's right to equal enjoyment of other human rights II

The right to privacy

Women have the right to enjoy respect for their private life on the same basis as men. This right must be effectively guaranteed.

A woman's reproductive life forms part of her private sphere, over which she has the ultimate right to decide.

Women's right to equal enjoyment of other human rights III

Other essential freedoms

Women have the right to exercise the freedoms of thought, conscience, belief, religion, opinion, expression, association and assembly on the same basis of equality as men. No one has the right to interfere with a woman's free exercise of these rights.

Restrictions on the exercise of these freedoms must respect the conditions laid down in international human rights law. Such restrictions must not be discriminatory.

Women's equal right to education I

Key legal provisions

- Article 13 of the International Covenant on Economic, Social and Cultural Rights
- Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women
- Article 17 of the African Charter on Human and Peoples' Rights
- Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights
- The Convention against Discrimination in Education, 1960

Women's equal right to education II

What it means (1)

Girls and women have the right to equal access to education as boys and men, be this at the primary, secondary or higher levels of education.

Under international human rights law, women have the right to choose their subjects of study and the professions they want to pursue. There must be no gender-based restrictions on the access to higher education.

Women's equal right to education III

What it means (2)

Education is essential in allowing women effectively to enjoy other human rights and to help them play a constructive role in the development of their country.

Women's right to an effective remedy, including the right of access to the courts and due process of law I

Key legal provisions

- Articles 2 (1) and 14 of the International Covenant on Civil and Political Rights
- Article 2 (b) and (c) of the Convention on the Elimination of All Forms of Discrimination against Women
- Article 7 (a) of the African Charter on Human and Peoples' Rights
- Articles 8 and 25 of the American Convention on Human Rights
- Articles 6 and 13 of the European Convention on Human Rights

Women's right to an effective remedy, including the right of access to the courts and due process of law II

What it means (1)

- Under international human rights law, women have the right of access to justice, and the right to due process of law, on equal terms with men.
- This means, in particular, that women must have access to effective domestic remedies, including effective access to the courts, for the purpose of vindicating their rights. This holds true with regard to all alleged violations of their human rights, but becomes particularly important in cases of alleged violence against their person.

Women's right to an effective remedy, including the right of access to the courts and due process of law III

What it means (2)

In order to ensure the effective exercise of the right of access to the courts/access to justice, States may have a legal obligation to provide legal aid.

The due process guarantees laid down in international human rights law are equally valid for women as for men. This implies, among other things, that women's evidence must be given and assessed on the same terms as that of men, and that all women must be allowed to benefit from the presumption of innocence.