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Beijing Platform for Action and Its Regional and Global Outcomes

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**IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF  
ALL FORMS OF DISCRIMINATION AGAINST WOMEN IN ASIA AND  
THE PACIFIC: SUCCESSES AND CHALLENGES**

(Item 8 of the provisional agenda)

*Note by the secretariat*

The Executive Secretary has the honour to transmit to the High-level Intergovernmental Meeting to Review Regional Implementation of the Beijing Platform for Action and Its Regional and Global Outcomes an information note prepared by the United Nations Development Fund for Women (UNIFEM).

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## Introduction

1. The United Nations Convention on the Elimination of All Forms of Discrimination against Women<sup>1</sup> was adopted in 1979 to address the specificities of systemic and historical discrimination against women within the international human rights framework. In 2009, we celebrate the thirtieth anniversary of this unique human rights instrument. Just as the Convention has its roots in the First World Conference on Women (Mexico City, 1975), so does this important anniversary coincide with the global commemoration of the fifteenth anniversary of the Beijing Platform for Action that emerged from deliberations at the Fourth World Conference on Women (Beijing, 1995) and with the tenth anniversary of the Optional Protocol to the Convention. Together, the frameworks of the Convention, the Beijing Platform for Action, the Millennium Declaration and the Millennium Development Goals adopted in 2000 have shaped interventions through law and policy that address issues of women's inequality and of their right to live free of discrimination, coercion and violence.

2. The Convention on the Elimination of All Forms of Discrimination against Women provides the principal framework for addressing women's rights in international law. It is a unique and comprehensive treaty, integrating civil and political rights with economic, social and cultural rights, as well as recognizing the role of culture and tradition in restricting women's enjoyment of their rights and recognizing the role of private or non-State actors in directly and indirectly committing violations of the rights protected by the Convention. The definition of discrimination established in the Convention incorporates concepts of both direct and indirect forms of discrimination, through its identification of the historical and systemic roots of discrimination against women. This has allowed for the development of the concept of equality to include both formal and substantive equality, and for the consideration of the equality of opportunity along with the equality of results. Through its substantive equality approach, the Convention places an obligation on the State for the development of enabling conditions that would facilitate women's full enjoyment of rights set out in the Convention.

3. The adoption of the Optional Protocol to the Convention in 1999 allowed for States to recognize the competence of the Committee on the Elimination of Discrimination against Women, which is a panel of 23 independent experts that meets three times a year, to receive complaints submitted by or on behalf of individuals or a group of individuals that allege violations of the rights set out in the Convention and claim lack of justice and remedial measures at the national level. So far the Committee has given 15 determinations under the Optional Protocol. The jurisprudence developed by the Committee through these contributes to the validation of Convention standards in international human rights law. In addition, the Committee has undertaken one inquiry in response to complaints received from women's groups in Mexico and elsewhere, in respect of murders of women in the Ciudad Juarez area of Mexico. So far, there have been no determinations of any cases from the Asia-Pacific region, although some are pending.

4. A significant feature of the Convention on the Elimination of All Forms of Discrimination against Women is article 4.1, which enables the enactment of temporary special measures to accelerate de facto equality between men and women. In 2004, the Committee on the Elimination of Discrimination against Women adopted General Recommendation 25 on Temporary Special Measures, providing a deeper understanding of this article. In many countries in South Asia, this provision has

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<sup>1</sup> See the website of the Office of the High Commissioner for Human Rights for the full text and other details ([www.ohchr.org](http://www.ohchr.org)).

enabled Governments to enact laws that create “quotas” or “reserved seats” for women in political and administrative structures so that women’s participation in decision-making can be ensured. Temporary special measures have also come in for their share of criticism for providing advantages to women who would be otherwise disqualified, if merit were the only factor taken into consideration. The notion of historicity of discrimination must be recalled here, because the role of temporary special measures is to address, within a specified time frame, inequalities based on discrimination of a historical and systemic nature. In addition, it is important to keep in mind that this mechanism is also used by States to redress inequalities based on race, ethnicity, caste or tribal origin and other factors.

5. The Convention on the Elimination of All Forms of Discrimination against Women promotes the obligation of States to ensure full enjoyment of the rights established by the Convention to all who reside within its borders. The principle of State obligation imposes a duty on a state to implement its commitments and responsibilities under international law, which includes both treaty and customary law, to respect, protect and fulfil human rights in law and in practice.<sup>2</sup> The Convention has enabled the principle of State obligations to be enhanced to include consideration of State responsibility for the actions of non-State actors, through the concept of “due diligence”. This concept<sup>3</sup> defines State responsibility for human rights protection very broadly, and considers that even when it is clear that the State had no direct involvement with a violation of human rights, the fact that the violation has taken place can point to the State’s failure to prevent such a violation from taking place, to provide adequate safeguards and so on. However, women’s human rights defenders in the region have pointed out that States sometimes understand the concept of State obligation primarily or only in terms of its obligation to report to the treaty body in question, and not as an obligation to implement the Convention or as an obligation to the people and the women of their country.

6. A key issue relating to the obstacles to the full implementation of the Convention is the large number of reservations that in fact affect the intent and purpose of the Convention. Although the Vienna Convention on the Law of Treaties allows for States parties to make a reservation or a declaration on a particular provision or article of a treaty, it requires that all reservations be compatible with the object and purpose of the relevant treaty. If the argument of the State when making a reservation is that it needs to amend legislation in order to enable the smooth implementation of the relevant article, the reservation can only be temporary. The Committee’s consistent recommendations to Governments regarding the removal of reservations coupled with widespread advocacy by women’s groups have resulted in significant withdrawals of reservations over the past 10 years. As the Convention reaches its thirtieth anniversary, some legal experts argue that it has now passed into customary international law, and the norms established by the Convention are recognized as peremptory norms<sup>4</sup> (*jus cogens*) and cannot have reservations placed against them.

7. Scrutiny of many of the reservations entered by States with regard to the Convention, including by States within the Asia-Pacific region, show that they are

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<sup>2</sup> Customary law includes the international norms and standards that are so commonly accepted that they become part of international law.

<sup>3</sup> The concept of due diligence was initially developed by the Inter-American Court on Human Rights and articulated, for example, in the Velasquez-Rodriguez judgment in 1988, on a case of abduction and disappearance in Honduras.

<sup>4</sup> A peremptory norm is a fundamental principle of international law which is accepted as a norm from which no derogation is permitted. For example, the denial of the right to marry to persons of marriageable age is listed as a peremptory norm and therefore a reservation or declaration may not be made to such a norm.

focused on women's role in the private sphere, particularly in terms of women's rights to equality within the family<sup>5</sup> and women's freedom of movement and right to choose residence and domicile.<sup>6</sup> In the public arena, many States find it difficult to recognize women's right to pass on their nationality and citizenship to their children regardless of the nationality of the children's father.<sup>7</sup> States are also reluctant to commit to reforms that call for changing and modifying customs and practices which constitute discrimination against women<sup>8</sup> or that call for the modification of social and cultural patterns of conduct and customary and all other practices that affirm the inferiority or superiority of either of the sexes.<sup>9</sup> This clearly illustrates the major barriers that still exist in terms of the affirmation of women's equality under the Convention.

### **I. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A LIVING DOCUMENT, IN TUNE WITH CONTEMPORARY REALITIES**

8. The history of the Convention is marked by its special relationship to women's movements around the world. The connection between the two has strengthened the work of the Committee and of the movements, united in the common goal of the full realization of rights by women. The activism and the energy built up among women's groups throughout the World Conference processes<sup>10</sup> of the 1990s expanded the spaces for women's organizations to interact with States and with the United Nations and in particular with the international human rights system. The active engagement of women's groups with the reporting process continues to enrich the work of the Committee, while the substantive and standard-setting work of the Committee enables women's groups to advance their work on women's human rights at the national and local levels. In order for any issue to be reflected in the Concluding Observations of the Committee, it should ideally be included in the "shadow report" and raised during the constructive dialogue between the Committee and the State. It is the engagement of women's groups from the country concerned that challenges the silences and ensures that areas of discrimination against women that the State may not raise are brought into the dialogue. For example, the Concluding Observations for Kyrgyzstan in 2008<sup>11</sup> expressed the concerns of the Committee about reports of discrimination and harassment against women because of their sexuality as well as about acts of harassment against women in prostitution by police officials, which was possible because the From Global to Local project of International Women's Rights Action Watch Asia Pacific had ensured inclusion of these issues in the Shadow Report and also in the advocacy during the session.

9. The Committee has adopted the practice of having open-ended consultations with women's organizations during their regular sessions, and women's groups use this space to bring to the attention of the Committee emerging areas of concern regarding discrimination against women. For example, in 2008, the International Women's Rights Action Watch Asia Pacific organized a briefing on discrimination against women on the basis of sexual orientation and gender identity for the members of the Committee. There is on-going dialogue with the Committee on issues regarding women affected by conflict as well. UNIFEM has partnered with International

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<sup>5</sup> Article 16 and all its subsections is the most heavily reserved article.

<sup>6</sup> Article 15.

<sup>7</sup> Article 9.2.

<sup>8</sup> Article 2f.

<sup>9</sup> Article 5a.

<sup>10</sup> Among them were the Conference on Human Rights (Vienna, 1993), the Conference on Population and Development (Cairo, 1994) and the Fourth World Conference on Women (Beijing, 1995).

<sup>11</sup> CEDAW/C/KGZ/CO/3: Nov 2008.

Women's Rights Action Watch Asia Pacific for over 10 years to enable some of this interaction to happen. For example, UNIFEM regularly supports the From Global to Local project of International Women's Rights Action Watch Asia Pacific, enabling the participation of women from reporting countries in the States parties' reporting process and ensuring that the concerns of women from that country are articulated in a manner that can be reflected in the Concluding Observations of the Committee.

10. The creation of General Recommendations by the Committee in the past 10 years is one arena of extremely constructive interaction between the Committee and women's organizations. Among the General Recommendations in which the engagement of women's groups was prevalent are: General Recommendations 19 (on violence against women),<sup>12</sup> 23 (on women in political and public life),<sup>13</sup> 24 (on women and health)<sup>14</sup> and 26 (on the rights of women migrant workers).<sup>15</sup>

11. The Committee also pays particular attention to the reporting process, and in recent years has taken a bold step to put pressure on States parties that are tardy with their reports, by demonstrating their willingness to review States' compliance with the Convention without the State party report. In addition, noting that many Governments tended not to refer to previous Concluding Observations in monitoring their own track record of implementation, the Committee has begun to cross-reference earlier reports, past Concluding Observations and recommendations from other treaty bodies and Special Procedures of the Human Rights Council in their dialogues with the State under review. The Committee has also begun highlighting specific recommendations on priority areas and calling on Governments to report back within one or two years on their implementation of that particular recommendation, instead of waiting for the regular review in four years' time.

## **II. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN IN THE ASIA-PACIFIC REGION**

12. As of 2009, 186 countries have ratified the Convention. Of the ESCAP member States, the Islamic Republic of Iran, Nauru, Palau and Tonga have not ratified it. At least half of the countries have reservations and declarations that prevent the full implementation of the Convention in their countries. In countries with multi-ethnic or large minority populations, the reservations reflect the reluctance of the State to be seen to interfere in the exercise of laws determined by culture or tradition. The Government of Singapore has argued that, due to the multi-ethnic nature of its society, it reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to religious or personal laws of particular communities. The Government of India has declared that it shall abide by the provisions of articles 5 (a) and 16 (1) in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. For many countries governed by forms of sharia law, States clarify that their commitment to the obligations under the Convention are only valid insofar as it does not contradict sharia law.

13. However, it must be noted that, in the past five years, there have been several withdrawals of reservations that indicate not only a willingness to respond positively to the recommendations made by the Committee on the Elimination of Discrimination against Women, but also a responsiveness to the demands being made by women's groups in their countries and globally. Fiji withdrew its reservations entirely, while

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<sup>12</sup> 1992.

<sup>13</sup> 1997.

<sup>14</sup> 1999.

<sup>15</sup> 2008.

Bangladesh, the Cook Islands, Malaysia, New Zealand, the Republic of Korea and Thailand all withdrew some of their reservations.

### A. The successes

14. The obligations that are imposed upon the State when it becomes a party to the Convention are similar to those imposed by any other human rights treaty. In fact, since the Convention integrates civil and political rights as well as economic, social and cultural rights in its text, reporting to the Committee calls for Governments to include responses to women's equality and discrimination against women in all spheres of their lives. The easy confluence of the Convention with other framework documents for women's empowerment, such as the Beijing Platform for Action, and with the Millennium Development Goals has meant that Governments can move towards implementation of key principles of women's human rights and towards compliance with the Convention in laws, policies and programmes in terms of fulfilling their obligations not only for the Convention, but for the other frameworks as well.

15. The influence of the Convention framework and principles on States can be clearly observed in the creation of gender-sensitive laws and policies in the Asia-Pacific region as well as in the formulation of national plans of action for the advancement and empowerment of women. In its Concluding Observations, the Committee has consistently called for the incorporation of the Convention into national laws, which should also include a clear definition of discrimination. States have responded positively by creating legislative and policy structures to ensure their compliance. To ratify the Convention in July 1985, the Government of Japan addressed discrimination against women, amending the Nationality Law to allow equal treatment to both sexes in the naturalization process and enacting the Equal Employment Opportunity Law. In August 2001, article 8(2) of the Malaysian Constitution was amended to include gender as one of the prohibited grounds of discrimination. In more recent times, in the process of drafting a new Constitution for Timor-Leste, the Convention became an important tool to sensitize elected representatives on issues of women's rights. In Thailand, the Constitutional reform process of 2007 led to the new Thai Constitution allowing for temporary special measures to end discrimination against women.

16. In both countries, women's groups were very engaged in the processes, drawing on the Convention and, in the case of Thailand, on Concluding Observations, to argue their case.<sup>16</sup> In the Solomon Islands, UNIFEM is supporting the Ministry of Women, Youth and Children to ensure that gender equality provisions are enshrined in the new Federal Constitution, including a reservation of 20 per cent of parliamentary seats for women and a guarantee that women's human rights are prioritized in cases of conflict with tradition and customs.<sup>17</sup> The drafters of the Vietnamese Law on Gender Equality of 2007 drew heavily on the Convention, while Azerbaijan's enactment of a law on State Guarantees of Equal Rights for Women and Men in 2006<sup>18</sup> is also reflective of the Convention.

17. The Convention on the Elimination of All Forms of Discrimination against Women is also the theme of capacity-building and training programmes for Government officials, members of national and local decision-making and law-making bodies, members of the legal profession, of the law enforcement agencies and of the judiciary carried out by UNIFEM and other international and national

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<sup>16</sup> *Time for Action: Implementing CEDAW in Southeast Asia*: UNIFEM: <http://cedaw-seasia.org>.

<sup>17</sup> UNIFEM Annual Report: 2008/2008.

<sup>18</sup> CEDAW/C/AZE/CO/4: August 2009.

organizations. In Bangladesh, basic information on the Convention and its principles has been included in the curriculum of the Government staff and defense training colleges. The Philippines Judicial Academy developed a training programme module on the Convention and Gender Sensitivity in the Courts with the assistance of UNIFEM, and since 2006, more than 400 lawyers, legal researchers, judges, court clerks and court attorneys have been trained on the Convention.

18. The development of laws on domestic violence and on violence against women in the region can be seen as one area in which the influence of the Convention is very clear. Throughout the last 10 years, the Committee has consistently called on States to create laws and policies that would prevent violence against women and also allow women who are victims and survivors of violence to access justice and redress in an appropriate and respectful manner. This coincided with a similar demand in the Beijing Platform for Action<sup>19</sup> and with a call by the United Nations Special Rapporteur on Violence against Women.<sup>20</sup> While Governments and State institutions mandated with promoting women's rights and empowerment took on the task of drafting legislation, women's groups were proactive in providing information on the highest available standards and in carrying out public education and advocacy campaigns to build support for the legislation. Most of the countries in South, South-East and East Asia now have some form of legislation relating to violence against women in their legal systems, or in draft form,<sup>21</sup> many of them deriving some substance from the Committee's General Recommendation 19. Laws against domestic violence in the Lao People's Democratic Republic, Indonesia and the Philippines make reference to the Convention.<sup>22</sup> The Indonesian Act on the Elimination of Domestic Violence, which is one of the most comprehensive, states in article 3 that it is based on the principles of respect for human rights, justice and gender equality, non-discrimination and victim protection.<sup>23</sup> It criminalizes marital rape, and provides protection for domestic workers who live in the household. However, many of the laws that seek to criminalize violence against women, and domestic violence in particular, reflect the social and cultural realities of patriarchal societies and are often not implemented to their fullest. As Jaising and others point out, the lack of adequate and well-resourced domestic violence response mechanisms and the tendency to prioritize the preservation of family over the rights of the woman stand in the way of effective strategies to end violence against women.<sup>24</sup>

19. The principles set out in the Convention are also increasingly used by lawyers and judges in arguing and determining cases relating to women's rights. The well-known "Visakha" judgment in India,<sup>25</sup> which led to the creation of guidelines on sexual harassment, was one of the first occasions when lawyers introduced arguments based on the Convention into judicial proceedings. The Convention has also been cited as a reference by courts in Nepal on several different occasions, while in Pakistan, there have been cases where the courts have clearly referred to article 16,

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<sup>19</sup> See [www.un.org/womenwatch/daw](http://www.un.org/womenwatch/daw).

<sup>20</sup> See United Nations document E/CN.4/1996/53/Add.2 for A Framework for Model Legislation on Domestic Violence, submitted to the United Nations Commission on Human Rights by Ms. Radhika Coomaraswamy, United Nations Special Rapporteur on Violence against Women.

<sup>21</sup> Among them are Cambodia, India, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, Mongolia, Nepal, the Philippines, the Republic of Korea, Singapore, Sri Lanka, Thailand and Viet Nam with laws in place, and Bangladesh, Pakistan and Timor-Leste with laws pending.

<sup>22</sup> Indira Jaising, Asmita Basu, Brototi Dutta of the Lawyer's Collective: *Domestic Violence legislation and its implementation: an analysis for ASEAN countries based on international standards and good practices*: UNIFEM, Bangkok 2009.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> See website ([www.IPC498A.wordpress.com](http://www.IPC498A.wordpress.com)) for full text of judgment on 13.08.1998 by the Chief Justice of India and Justice Sujatha Manohar and B.N. Kirpal.

declaring that ratification of the Convention should be respected. Activists cite amendments to the Muslim Law Ordinance in Pakistan as also being linked to the norms established by the Convention.<sup>26</sup> In many countries in the region, the principle established by article 9 (2) of the Convention—that women should have equal rights to transmit their nationality and citizenship to their children, irrespective of the citizenship/nationality of their spouse—has been integrated into national law. In examining the table of reservations to the Convention, it is clear that this is one of the articles reserved by many countries, and later withdrawn, as the necessary legislative enactments and amendments were made.

20. The Forum for Women, Law and Development in Nepal has been particularly successful in using the judicial system to promote compliance with the Convention. In a judgment on a case regarding marital rape, for example, the court cited General Recommendation 19 and Section 103 of the Beijing Platform for Action,<sup>27</sup> as the basis for its direction to Parliament to amend the Penal Code to include marital rape. The Convention's principles of equality and non-discrimination have also been drawn on by the Forum for Women, Law and Development and other civil society activists in Nepal to bring about changes in other laws that were discriminatory against women.<sup>28</sup> On March 14, 2002, the Nepalese Parliament passed the eleventh Amendment to the Country Code Bill after nine years of advocacy by women's groups. The Amendment eliminated discrimination against women in areas relating to equal rights in marriage, divorce and in inheritance,<sup>29</sup> and decriminalized abortion, including the right to demand an abortion up to 18 weeks after conception in the case of pregnancy resulting from rape.

21. A public interest litigation case initiated by the Bangladesh National Women's Lawyers Association in 2009 challenged the High Court to take action on sexual harassment in the workplace and in educational institutions. The Convention was at the centre of the Court's deliberations. Looking at the Convention and the Constitution together and guided by the Convention's article 11 on equality in employment, as well as General Recommendation 19 on violence against women, the Court issued sexual harassment guidelines for the whole country, which will remain in place until legislation is passed.<sup>30</sup> In 2008 in Kyrgyzstan, there was a review of the basic principles of the law regulating property rights, looking at gender-based inequalities. Advocacy by women's groups led to the amendment of the law on management of agricultural land that now includes provisions on women's rights to land within the Kyrgyzstan land management process. In Tajikistan, UNIFEM, together with the Food and Agriculture Organization of the United Nations, supported the establishment of 16 district task forces that provide legal advice on land rights, and also create opportunities for rural women to receive training on leadership and empowerment.

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<sup>26</sup> The amendments provide for interim maintenance to women until their case is decided. Another significant amendment has reduced the limitation period for women to take their case to the High Court, in cases of marriage and its dissolution. While previously it could take three or four years, the period has been reduced to six months; cited in *SA Consultation on Concluding Observations*, Delhi 2008: IWRAW Asia Pacific.

<sup>27</sup> Both of which call upon States parties to enact laws on marital rape.

<sup>28</sup> For example, the Foreign Employment Act which prohibited women from working abroad was amended to allow both women and men to go abroad for employment, with special protective measures ensured by the State. The Constituent Assembly Member Election Act reserved 50 per cent of the seats for women and 20 per cent for indigenous people. A discriminatory provision in the Army Act was changed so that single women can now join the army; married women are still barred. The Civil Service Act was amended to include a quota of 30 per cent for women, though only at the lower levels of the civil service.

<sup>29</sup> Among the gains for women were that daughters are now accepted as heirs to family property and inheritance, widows have a full right to inheritance, and daughters have a right to claim the costs of their health and education and general upbringing from their families.

<sup>30</sup> Cited on the UNIFEM website on the thirtieth anniversary of the Convention.

### **III. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND OPPORTUNITIES FOR TRANSFORMATION**

22. The recognition of the Convention by States and by the international community as a whole as the framework that provides the foundation for creating laws, policies and programmes relating to women's equality, is the most positive factor in its favour. This acceptance opens up a range of possibilities for strengthening institutional structures for the advancement of women's human rights. Exchange of skills and capacities at all levels, as well as sharing of success stories and good practices within the region, could provide a critical base of support and strength for Governments, for the United Nations and other international and regional agencies committed to advancing women's human rights, as well as for women's groups and civil society groups seeking to promote and protect women's rights.

23. Collective strategizing to analyse and change the situation with regard to women's equality meets a particular challenge when dealing with countries in which laws governing personal and family life are defined on the basis of tradition, custom or religion. In some countries, the existence of Personal Laws specific to communities on the basis of their religion and/or geographic location perpetuates the inequality of women from those communities. In situations where States have entered reservations to the Convention on the basis that the provisions set out in sharia law, and in the Sunna, would take precedence over the text of the Convention, implementation of articles 15 and 16 in particular becomes almost impossible. In the Philippines in 2000, the mayor of Manila at that time prohibited the display of published material on contraception in public health-care centres, undermining the right of women to have access to the means to control their fertility, on the basis that contraception is not acceptable in a Catholic-majority country.<sup>31</sup>

24. Women's rights and human rights groups have responded by arguing that all interpretations of tradition, culture and religion are subject to change. In Bangladesh, campaigners for the lifting of reservations to the Convention point out that there is no uniformity in the reservations made on this basis;<sup>32</sup> just as there are diverse forms of sharia law in practice in different countries with legal systems that derive from Islam. For example, Brunei Darussalam, Kuwait, Maldives, Oman and Pakistan are some of the countries governed by sharia law that have ratified the Convention without making a reservation on article 2, even though all these countries have specified the supremacy of sharia law.<sup>33</sup> While transforming these situations is no doubt a challenging process, the recent ratification of the Convention by Qatar, the constructive responses by the Government of Bahrain during the review of its report in November 2008, and the withdrawal of reservations by a number of countries such as Bangladesh, Kuwait, Jordan and Malaysia, point to the potential for such change. Thus, social transformation may be necessary in order for views on gender equality and women's rights to change.

### **IV. CHALLENGES IN ACHIEVING NATIONAL PROGRESS ON IMPLEMENTATION OF THE CONVENTION AND ON THE REALIZATION OF WOMEN'S HUMAN RIGHTS**

25. The most significant challenge in the region is with respect to the comprehensive implementation of the Convention to address issues of tradition,

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<sup>31</sup> *Executive Order No. 003: Declaring Total Commitment and Support to the Responsible Parenthood Movement in the City of Manila and Enunciating Policy Declarations in Pursuit Thereof*, of 2000.

<sup>32</sup> See report of South Asia Consultation on Concluding Observations; IWRAW Asia Pacific, Delhi, 2008.

<sup>33</sup> On the other hand, Bahrain for example, which has a reservation on article 2, has incorporated the equality of women and men into their Constitution and also declared that the Convention has the status of law and can be directly applied. See Concluding Observations of the Committee on the Elimination of Discrimination against Women on Bahrain: CEDAW/C/BHR/CO/2.

custom and culture insofar as they impinge on women's enjoyment of their rights. The Committee on the Elimination of Discrimination against Women has frequently noted that personal laws based on religion reinforce discriminatory culture, tradition and stereotypes and hinder women's equal status within the family. It has also pointed to the links between violence against women and discriminatory social, cultural and religious norms, especially when these norms lead to families and societies condoning violence against women. Such norms may also result in the State's failure to hold the perpetrators legally accountable.

26. Responding to these arguments, the Committee has often declared that reservations to the Convention based on tradition or culture are incompatible with the Convention. In Concluding Observations issued to Tuvalu, the Lao People's Democratic Republic and Timor-Leste in 2009,<sup>34</sup> the Committee invited the State party to view culture and tradition as dynamic aspects of the country's life and social fabric, subject to many influences over time and therefore subject to change, and urges the State party to put in place a comprehensive strategy, including legislation, to modify or eliminate cultural practices and stereotypes that discriminate against women in conformity with articles 2 (f) and 5 (a) of the Convention. In the case of Japan, the Committee called for proactive and sustained measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men.<sup>35</sup> The Convention recognizes the concept of a right to culture and identity but within the framework of respect for the norm of gender equality and the full range of human rights articulated in the Convention and other core international human rights treaties.<sup>36</sup>

27. The challenge of ensuring implementation of laws compliant with the Convention also remains. Experience shows that, during the process of drafting and adopting any law or policy that sets out to affirm women's rights, it is extremely important to pay attention to the potential implementation of the law and ensure that adequate resources are made available for building capacity of law enforcement agencies and the judiciary regarding the substantive and practical implications of the law that is about to be passed. Regular judicial colloquiums and the establishment of databases which will facilitate sharing of jurisprudence from the region may be methods by which some of these concerns could be addressed.

28. The promotion of non-formal methods of dispute resolution as potential spaces for delivery of justice and redress at the community and local levels is an aspect that must be reviewed. In most cases, the traditional forums for community-based dispute resolution are patriarchal in attitude and male in composition. In Pakistan, the *panchayats* and *jirgas* in the tribal areas of the country have been found to be illegal by the Sindh High Court and the Supreme Court of Pakistan. In India, the Legal Services Authority that is mandated with the provision of legal assistance to needy petitioners is experimenting with sending disputes to the *Lok Adalat* comprising retired judges and lawyers. Yet, as activist lawyers point out, the focus is on settling the dispute rather than examining the violation of rights.<sup>37</sup> In Afghanistan, women's human rights defenders have been critical of the perception that non-formal dispute resolution mechanisms could be a tool in improving the rule of law, without considering the substantive effects on women and on minorities. There is no denying the lack of trained lawyers and judges, delays in legal processes and difficulties faced

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<sup>34</sup> Concluding Observations: Tuvalu, para. 28; Lao People's Democratic Republic, para. 22; Timor-Leste, para. 28.

<sup>35</sup> Concluding Observations: Japan, para. 30.

<sup>36</sup> See the presentation by Professor Savitri Gunasekera at Regional Consultation on article 16 and 5 of the Convention; IWRAW Asia Pacific, Colombo, December 2003.

<sup>37</sup> Quoted from presentation by Geeta Ramaeshan, India, at SA Consultation on Concluding Observations, Delhi, May 2008: IWRAW Asia-Pacific.

by rural communities to access the legal system. Almost 80 per cent of judges presently engaged in adjudication have obtained primary education in religious schools. There are only 72 to 75 women judges, and four family courts for the entire country, two of which are led by men. Because of this situation, 85 per cent of the cases go through the informal justice system.<sup>38</sup> Therefore, it is essential to ensure such systems are compliant with the Convention and respect the equal rights of women if implementation of the Convention is to be achieved.

29. Supporting States to focus on women's rights to equality in employment and to decent conditions of work becomes crucial in the current environment of recession and growing unemployment in many countries in the region. Creative application of the Convention could play a role in this. For example, article 2 (f) requires State parties to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women. Investment agreements could be defined within this framework and brought under scrutiny. Article 2 (b) and article 2 (c) could be used for regulating transnational corporations or foreign direct investments. Article 2 (b), which calls for State parties to prohibit all forms of discrimination against women, could be cited in an export processing zone, for example, to challenge a multinational corporation that pays unequal wages or very low wages to women. Article 2 (e), which calls for States to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, could be used for extracting social responsibility from transnational corporations. Promotion of this approach to implementation of the Convention in the context of globalization could be supported by the argument that, while it is an international treaty, it could be used to strengthen national sovereignty.<sup>39</sup>

## V. CONCLUSION

30. As the experiences of implementation of the Convention in the Asia-Pacific region show, the potential for its framework to shape laws, policies and programmes that affirm women's equality and that challenge discrimination against women can flourish in an environment in which there is a combination of political will, a high level of consciousness regarding the Convention and regarding women's rights. It is crucial to involve high ranks of decision makers and to ensure active civil society engagement with the Government for advocacy on compliance with the Convention. While prevailing economic, social, political and cultural factors create many barriers and obstacles to its implementation, this is balanced through growing interest in its use and application by Governments and women's groups, and through systematic support from the donor community and the United Nations.

31. As we mark the thirtieth anniversary of the Convention and the fifteenth anniversary of the Fourth World Conference on Women, the challenges that confront initiatives and efforts to affirm women's equality are many. The economic recession and growing forces of all forms of extremism combine to create an environment which is not conducive for the promotion and protection of human rights, and especially the rights of women. It is only judicious and strategic collaboration between individuals and groups committed to the full implementation of the Convention and women's human rights at all levels, both within and outside Government that can enable the realization of equality of women.

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<sup>38</sup> Marzia Basel, Afghan Women Judge's Association, at South Asia Consultation on Concluding Observations, IRAW Asia-Pacific, Delhi, May 2008.

<sup>39</sup> Women's Economic Rights and CEDAW, meeting organized by IRAW Asia Pacific in Lao People's Democratic Republic, 2006.