

The Colombo Declaration

April 2019



The Colombo Declaration on the role of the judiciary in advancing women's right to equality in marriage and family relations.

preamble

Recognising that women's rights in the family are an area of particular concern as they remain besieged both by discriminatory laws and patriarchal social mores, as demonstrated by the fact that most reservations to the UN Convention on the Elimination of all forms of Discrimination against Women entered by States parties have been made with regard to Article 16;

Recognising also the apparent influence of religion, culture and tradition on family law systems and the upholding by law of entrenched social biases and gender stereotypes against women which act as impediments to the realisation of women's equality in the family;

Noting the view of the CEDAW Committee that the existence of plural legal systems is in itself discriminatory against women; Such discrimination arises because many States have fragmented and archaic legal frameworks vis-à-vis women's rights in the family, owing in part to their colonial legacy, that are in turn implemented through plural legal systems that themselves remain fraught with concerns regarding impartiality and accountability;

Emphasising the need for all women to have access to justice on the basis of equality with men and non-discrimination and to have the capacity to exercise a free choice as to the law and legal system which will govern their marriage and family relations;

The participants at the regional judicial colloquium on access to justice for women's right to equality in the context of the family, held in Colombo from 20 to 22 March 2019, adopted the following conclusions and recommendations:



conclusions and recommendations

1. The participants noted that significant advances had been made in the development of international standards on the elimination of discrimination against women and girls in marriage and family relations and that in many jurisdictions there had been positive developments, in law and in practice, in ensuring equality for women in marriage and family relations. Nonetheless, there are still many jurisdictions in which existing laws and practices still embody *de jure* and *de facto* discrimination against women and girls in marriage and family relations.
2. The participants acknowledged the significant work done by the United Nations human rights treaty bodies to develop international standards in relation to equality of women and men in marriage and family relations, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Rights of the Child, and other international and regional human rights treaties and mechanisms. In particular, they noted the important work of the CEDAW Committee under its reporting, individual communications and inquiry procedures and the development of its jurisprudence in Concluding Observations and General Recommendations, in particular *General recommendation No 21 on Equality in marriage and family relations*, *General recommendation No 27 on older women and protection of their human rights*, *General recommendation No 29 on article 16 of the CEDAW Convention on the economic consequences of marriage, family relations and their dissolution*, *General recommendation No 33 on women's access to justice* and *General recommendation No 35 on gender-based violence against women, updating general recommendation No 19*.

3. The participants underlined that States are under binding international legal obligations to ensure equality and non-discrimination in all fields of life, including in marriage and family relations, and that the decisions and processes of the judiciary are attributable to the State and may engage the responsibility of the State under international law if these involve a violation of women's right to equality. They called on all judicial officers and those involved with the judicial system to implement internationally, regionally, and nationally guaranteed human rights norms requiring equality for women and men in marriage and family relations, without discrimination or gender stereotyping.
4. The participants reaffirmed the principles relating to the role of the judiciary and the application of international human rights law in domestic legal systems, set out in the [Victoria Falls Declaration of Principles for the Promotion of Human Rights of Women, 1994](#), the [Bangalore Principles on the Domestic Application of International Human Rights Law Norms, 1988](#), and most recently in the [Bellagio Declaration on state obligation and role of the judiciary in ensuring access to justice for gender based violence, including sexual violence in an effective, competent manner and with a gender perspective, 2017](#) as well as statements arising out of other judicial colloquia.
5. The participants agreed that irrespective of whether international human rights instruments have been incorporated into domestic law, members of the judiciary at all levels have opportunities to interpret, apply or develop the law in ways which are consistent with women's equality in marriage and family relations, as is shown by judicial practice in the region.¹ Consistent with their constitutional and judicial responsibilities, courts should also bring to the attention of the Government, the Parliament, or other responsible body the need for law reform where existing law is silent on or is inconsistent with women's right to equality in marriage and family relations. They further noted that the power of courts to issue rules or guidelines could also provide an opportunity for judges to ensure that women and girls enjoy equal access to justice in the context of the right to equality in marriage and family relations.
6. The participants agreed that members of the judiciary have a responsibility to be aware of applicable human rights norms relating to women's equality in marriage and family relations, as guaranteed by international and regional human rights treaties and other instruments, and should request advocates who appear before them to make submissions on applicable international law where that is relevant and appropriate.

¹ CEDAW Committee, General Recommendation No 28, para 33 referring to para 2 (c) of the CEDAW Convention

7. The participants recognised that in many cases family, inheritance, and other laws and their application create or reinforce economic inequality between women and men in marriage and family relations and that it was important for courts to adopt a substantive equality approach to interpreting and applying laws that regulate marriage and family relations, to recognise economic power imbalances and economic disparities in marriage and upon termination or dissolution thereof, and to take into account both monetary and non-monetary contributions to the family in the context of the termination or dissolution of marriage. The participants also recognized that fault-based divorce systems often operate to the detriment of women. They further noted that when courts are considering the issue of the best interest of the child in custody, visitation, or parental rights cases, they should also take into account any existence of domestic violence and its impact on the child.

8. The participants also agreed that judicial officers have a responsibility to be gender-aware and gender-sensitive in the interpretation and application of the law and in the conduct of court proceedings. The participants noted a number of positive initiatives taken by courts and judges to ensure that the courtroom is not a hostile and intimidating environment for women litigants and witnesses in the context of cases concerning marriage and family relations, and barriers to women's access to justice are overcome.² They underscored the importance of judges, court officials and administrators, and those involved in the administration of justice adopting a gender sensitive approach to the administration of justice. In this regard, they considered that the [*Bangkok General Guidance for Judges in Applying a Gender Perspective*](#) (2016) was an extremely helpful source of practical guidance.

9. The participants recommended the development by national judiciaries of closer links and cooperation with their counterparts in other countries, particularly those in the region or in similar legal systems, to promote the sharing of information about good judicial practices on the progressive interpretation and application of domestic laws in the light of international standards relating to equality of women in marriage and family relations.

10. The participants considered that women should be equally represented as members of all courts, tribunals, or other bodies, including those authorised to pronounce on the rights and obligations of women in marriage and family relations, and recommended that the authorities responsible for judicial appointments and promotions take effective steps towards the achievement of gender balance in all such courts, tribunals or other bodies.

² For example, by providing for the availability of independent expert witness in family cases, or ensuring that, with the development of electronic filing of court documents and their availability online, the privacy of parties and witnesses is effectively protected.

11. The participants agreed that judicial academies, universities, and law schools should be encouraged to develop mandatory courses in human rights, which should include a module on women's equality in marriage and family relations. They also recommended that induction or orientation programmes for new judges and programmes of continuing judicial education should mandatorily include material regarding gender sensitivity and women's equality in marriage and family relations. Judicial academies may, where appropriate, draw on expertise in the community to inform the development of training programmes.
12. The participants noted that the CEDAW Committee had consistently expressed concern about the impact of identity-based personal status laws and customs and the preservation of plural legal systems on women's enjoyment of equality in marriage and family relations. The participants shared these concerns and expressed the view that, pending the elimination of such laws and systems, members of all courts, tribunals, or other bodies which are authorised to pronounce on the rights and obligations of women in marriage and family relations should possess legal qualifications and have undergone appropriate legal training in the national legal system and international human rights norms.
13. The participants noted that in some jurisdictions not all relevant court judgments and rulings dealing with issues of women's equality in marriage and family relations are readily available to the public or to advocates. The participants recognised the importance of protecting the privacy of parties and children involved in cases dealing with marriage and family relations and the protection of victims/survivors in criminal cases, while emphasising the importance of the public availability of court judgments and rulings. They recommended that courts ensure that judgments and rulings are readily accessible to the public as a matter of course, noting that the anonymisation of judgments was generally a sufficient means of protecting the privacy of those involved in such cases.
14. The participants noted the important role that national human rights institutions, equality commissions, women's commissions, and children's rights commissions can play in making international human rights standards part of domestic legal and policy analysis through public inquiries, research, and education.

15. The participants encouraged courts to draw on the expertise of national human rights institutions, equality commissions, women's commissions, children's rights commissions, and civil society organizations by inviting or granting them leave to intervene or submit amicus curiae briefs in cases before the courts and tribunals in which issues relating to women's equality in marriage and family relations are in issue.
16. The participants noted the existence in many countries of specialised family courts presided over by specialist judges who have undertaken specific training in this field. They recommended that, where such specialised courts do not already exist, consideration be given to establishing them. All judges hearing gender-based violence and family cases should be provided with training, during orientation and on an ongoing basis, to assist them in dealing with such cases in a gender-sensitive manner that gives effect to the right to women's right to equality, dignity, and autonomy.
17. The participants also acknowledged the importance of developing alternative fora and procedures, outside formal adjudication processes, for the resolution of cases involving women's right to equality in marriage, its dissolution and family relations. However, they noted that existing power imbalances may lead to such informal mediation or similar procedures acting as barriers to women's realisation of their rights. Accordingly, they recommended that such procedures be designed so as to avoid creating any discrimination towards women, to offer women a choice as to whether to use such procedures, and to provide for access to judicial and other remedies.
18. **In conclusion, the participants committed themselves to taking these conclusions and recommendations forward in their own jurisdictions, thereby contributing to enhancing equality for women in marriage and family relations and on its termination or dissolution.**



The colloquium was organised by International Women's Rights Action Watch Asia Pacific, the Law & Society Trust, and Asia Foundation Sri Lanka

**International Women's Rights Action
Watch Asia Pacific (IWRAP AP)**

**10-2, Jalan Bangsar Utama 9,
59000 Kuala Lumpur,
Malaysia**

**Tel: +603 2282 2255
Fax: +603 2283 2552**

Web: www.iwraw-ap.org

Email: iwraw-ap@iwraw-ap.org

Facebook: [IWRAP.AP](https://www.facebook.com/IWRAP.AP)

Twitter: [@IWRAP_AP](https://twitter.com/IWRAP_AP)

Explanatory Note

This Declaration is the outcome of a regional judicial colloquium on access to justice for women's right to equality in the family in South & Southeast Asia, organized from 21 to 22 March 2019 in Colombo, Sri Lanka and attended by the following judicial officers, lawyers and women's rights experts who drafted this declaration:

1. Judge Amy Alabado Avellano, Presiding Judge of Regional Trial Court, Branch 58, San Carlos City, Negros Occidental, Philippines
2. Justice Naima Haider, Judge, High Court Division, Supreme Court of Bangladesh
3. Justice Mohsin Akhtar Kayani, Justice, High Court of Islamabad, Pakistan
4. Judge Suntariya Muanpawong, Dr. Jur. Deputy Secretary of the Supreme Court of Thailand
5. YA Datuk Nallini Pathmanathan, Judge, Federal Court of Malaysia
6. Dr Justice Shalini Phansalkar-Joshi, Justice, High Court of Bombay, India
7. Justice Khushee Tharu, Justice, High Court of Nepalgunj, Nepal
8. Judge Ms Latifah Setyawati SH., MHum Judge, Family Religious Courts, Indonesia
9. Zainah Anwar, Executive Director, Musawah
10. Hyshyama Hamin, Programme Officer, Musawah
11. Prof Ruth Halperin Kaddari, Professor of Law and Founding Head of the Rackman Center at Bar-Ilan University, Israel and Former Vice Chair and Member, UN CEDAW Committee
12. Shreya Munoth, Advocate, Supreme Court of India
13. Justice Aruna Devi Narain, Member, UN CEDAW Committee
14. Mikiko Otani, Member, UN CRC Committee
15. Prof Sharya Scharenguivel, Professor, Faculty of Law, University of Colombo
16. Dela Feby Situmorang, Assistant Coordinator, Monitoring Division, Komnas Perempuan
17. Honey Tan, Advocate & Solicitor, High Court of Malaya
18. Ermiza Tegal, Attorney-at-Law, Sri Lanka
19. Budi Wahyuni, Vice Chairperson, Komnas Perempuan
20. Hiranthi Wijemmane, Former Vice Chairperson, CRC Monitoring Committee
21. Savithri Wijesekera, Executive Director, Women in Need
22. Dr Deepika Udagama, Chairperson, Human Rights Commission of Sri Lanka
23. Umyra Ahmad, Programme Officer, IWRAP Asia Pacific

24. Prof Andrew Byrnes, Professor, Faculty of Law, University of New South Wales, Sydney, Australia & Member, Advisory Committee, IRAW Asia Pacific
25. Ishita Dutta, Programme Officer, IRAW Asia Pacific
26. Dr Lesley Ann Foster, Executive Director, Masimanyane Women's Rights International & Member; Board of Directors, IRAW Asia Pacific
27. Priyanthi Fernando, Executive Director, IRAW Asia Pacific
28. Sakuntala Kadirgamar, Executive Director, Law and Society Trust
29. Ramani Jayasundere, Director, Justice and Gender, The Asia Foundation Sri Lanka
30. Dinesha de Silva, Country Representative, The Asia Foundation Sri Lanka
31. Evangeline De Silva, Programme Manager, Gender and Justice, The Asia Foundation Sri Lanka
32. Shenali De Silva, Consultant Senior Researcher, Law and Society Trust
33. Megara Tegal, Consultant Gender Researcher, Law and Society Trust

International Women's Rights Action Watch Asia Pacific (IRAW Asia Pacific) is an independent, non-profit NGO in Special Consultative Status with the Economic and Social Council of the United Nations. IRAW Asia Pacific has gained expertise, experience and credibility from over 20 years' work of mobilising and organising women's groups and NGOs to support the work of the State in fulfilling its obligations to respect, protect and fulfill women's human rights under CEDAW, through capacity building, advocacy and knowledge creation initiatives aimed toward development of effective national women's rights advocacy strategies.