



**USAID** | **JORDAN**  
FROM THE AMERICAN PEOPLE

# MASAQ Rule of Law Project

**Contractor: DPK Consulting**

**Contract: Improved Rule of Law Program in Jordan**

**DFD-I-00-03-00141-00 Anti-Corruption**

## **Jurisprudence of Equality Program**

**International Association of Women Judges**

November 2006

**USAID Rule of Law Project (MASAQ)  
Sweifieh – McDonalds Building, 1<sup>st</sup> Floor  
Abdel Rahim Al-Haj Mohamad Street**



***International Association of Women Judges***

901 15<sup>th</sup> St., NW • Suite 550 • Washington, DC 20005  
tel.: 202.354.3847 • fax: 202.354.3853 • email: office@iawj.org • www.iawj.org

**DATE:** December 18, 2006

**TO:** Walter Kuencer, Chief of Party  
Qais Jabereen, Judicial Education Advisor  
Pat Noonan, Judicial Education Consultant  
**MASAQ RULE OF LAW PROJECT**  
Amman, Jordan

**FROM:** Joan D. Winship, Executive Director  
International Association of Women Judges

**RE:** IAWJ CONSULTANT'S TRIP REPORT

**By:** Anne T. Goldstein, Consultant  
IAWJ Human Rights Education Director  
International Association of Women Judges

**Trip Dates:** November 2-9, 2006



**International Association of Women Judges**  
901 15<sup>th</sup> St., NW • Suite 550 • Washington, DC 20005  
tel.: 202.354.3847 • fax: 202.354.3853 • email: office@iawj.org •

## **Trip Report**

**PROJECT NAME:** MASAQ Rule of Law Project, Amman, Jordan

**CONSULTANT NAME:** Anne T. Goldstein, Human Rights Education Director  
International Association of Women Judges

**DATES OF CONSULTANCY:** September 1-November 18, 2006  
November 2-9, 2006 in-country

**NAMES AND DATES OF JUDGES MET DURING CONSULTANCY:**

### **Saturday November 4, 2006 (at al Hyatt Hotel)**

#### **JORDANIAN PRESENTERS:**

- Judge Mohammed Amer
- Judge Ihsan Barakat
- Judge Malak Ghazal
- Judge Feda'a Al Homoud
- Judge Ahmad Al Aumari

### **Sunday November 5, 2006 (at New Palace of Justice)**

#### **WOMEN JUDGES:**

- Judge Samar Al Shayeb
- Judge Nawal Al Jouhari
- Judge Suhir Al Toubasi
- Judge Nehad Al Husban
- Judge Muntaha Makableh
- Judge Wasfeya Al Laham
- Judge Wala'a Akroush
- Judge Mayasah Obeydat
- Judge Rana Al Thenybat
- Judge Faten Al Rawashdeh
- Judge Manal Shamout

### **Monday and Tuesday November 6-7, 2006 (at the Judicial Institute of Jordan (JIJ))**

#### **PARTICIPANTS:**

- Judge Adnan Al Mbaydeen
- Judge Husein Al Harahsheh
- Judge Enad Obeydat
- Judge Mohammed Al Sarayrah

- Judge Saleh Ghadeh
- Judge Mohammed Ahmad Atrawneh
- Judge Ayman Al Ghazawi
- Judge Mohammed Al Khateeb
- Judge Mahmoud Al Dous
- Judge Naser Al Salaheen
- Judge Yehya Al Ma'aytah
- Judge Mohammed Al Bakheet
- Judge Ibraheem Al Bawareed
- Judge Yaseen Al Lawzi
- Judge Basel Al Faleh
- Judge Rakan Al Thyabat
- Judge Osama Darwazeh
- Judge Amal Abu Obeid
- Judge Ohood Al Majali
- Judge Majdah Al Makhatrath
- Judge Kefah Al Droubi
- Judge Kholoud Al Odwan
- Judge Doa'a Al Dousoqi
- Judge Iman Al Qatarneh
- Judge Ola Khasawneh
- Judge Iman Al Rousan
- Judge Lubna Kryshan

**JORDANIAN PRESENTERS:**

- Judge Mohammed Amer
- Judge Ihsan Barakat
- Judge Ahmad Al Aumari

**DIRECTOR, JUDICIAL INSTITUTE OF JORDAN:**

- Judge Mansour Hadidi

**Wednesday November 8, 2006 (at the New Palace of Justice)**

**JORDANIAN PRESENTERS:**

- Judge Malak Ghazal
- Judge Fedaa Al Homoud

**1. DESCRIPTION OF CONSULTANCY**

**A. Scope of Work:** Working on behalf of the International Association of Women Judges, the consultant:

- Worked with Jordanian judges to ensure that the program would be responsive to the needs of the Jordanian judiciary;

- Met with four Jordanian judges and a Jordanian prosecutor (the Jordanian experts) on presentations for the program on the situation in Jordan;
- Designed and authored curriculum and lesson plans for a two-day program for men and women judges;
- “Field tested” the curriculum and lesson plans with male and female Jordanian experts;
- Surveyed the participants at the field test as to the responsiveness of the program to the needs of the Jordanian judiciary;
- Worked with the Jordanian presenters to incorporate their feedback into the curriculum;
- Facilitated modified training program for two days at the JIJ, assisting Jordanian presenters to take a larger role in the training program than they did at the field test;
- Met with women judges to discuss formation of a Jordanian Chapter of the International Association of Women Judges, and/or women judges joining the IAWJ as individual members in order to facilitate their networking, capacity building and leadership in Jordan and in the international arena;
- Worked with MASAQ staff on survey/evaluation instrument to assess responsiveness of curriculum to needs of participants.

**B. Assessment of the Impact of the Consultancy:** I believe the consultancy was successful in achieving its key objectives as indicated above. Key points to support this are:

- Response of trainees was enthusiastic and vocal;
- Level of participation was high;
- Jordanian presenters were able to lead fully interactive training segments;
- Women judges responded positively to IAWJ membership discussion;
- Positive response from Director of JIJ.

## 2. NARRATIVE REPORT:

### IAWJ Training Program in the Context of Jordan

The International Association of Women Judges’ (“IAWJ’s”) *Jurisprudence of Equality Program* is designed to explore culturally specific forms of discrimination and violence against women. Jordanian judges and presenters expressed particular interest in the following topics:

- Nationality law that makes it easier for fathers than for mothers to pass citizenship to children;
- Violence against women, especially honor crimes;
- Corporate law that allowed transfer of stocks from businessperson to “wife” but not “husband” or “spouse;”
- Pension and social security rules that distinguish between male and female workers.

As the IAWJ expert consultant, I drafted or assisted presenters in drafting materials on each of these topics. We were able to explore all of them in detail, drawing on local expertise. For example, one of the Jordanian presenters was a prosecutor, who was able to describe at great length the challenges he faces in seeking to prosecute honor crimes and have them be taken seriously. This in turn led to a broad discussion of whether Islam countenances or condemns honor crimes, and of arguments against honor killings based on the Koran and the words of the Prophet.

During the nationality law discussion, judges were able to discuss candidly the hardships faced by mothers and children due to the harshness of the Jordanian nationality regime, and to exchange ideas regarding tools available to judges to mitigate this harshness. The pension and corporate law discussions showed subtle differences in perspectives brought to the discussion by female and male judges, and enabled a frank exchange of views in an environment that remained cordial and respectful.

The judges were obviously comfortable both with participatory training and with the manner in which the substantive law was presented. They were able to raise openly their concerns about international law in general and human rights law in particular. Specifically, some of the participants candidly expressed the view that human rights law is no more and no less than a post-hoc rationalization for Machiavellian power politics. Others contested this view. While it was apparent that many of the participants brought strong and emotionally charged views to the discussions, sessions never devolved into political debates. Rather, the tone was measured and analytical throughout, generating more light and clarity than heat.

For months prior to my arrival in Jordan, I have been privileged to work with Judge Pat Noonan. She and her colleagues at MASAQ were consistently efficient, professional, and a pleasure to collaborate with.

In particular, I would like to thank Reem Abu Hassan, who had a major role in working with the Jordanian presenters, and whose expertise on Jordanian law and the Jordanian context were invaluable. Thanks are also due to the expert translators, and to Doaa Abu Gharbieh and Shatha Zaid, who translated the written materials and assembled the curricula.

The IAWJ is particularly grateful for the support of Judge Mansour Hadidi, the Director of the Judicial Institute of Jordan, to Walter Kuencer, the Deputy Chief of Party, and Qais Jaberdeen, the Project Judicial Education Advisor, and to the five Jordanian presenters who gave so generously of their time and wisdom. We would especially like to recognize the contribution of Judge Isshan Barakat, who has become an active member of the IAWJ and who has advised us both over the phone and in person at the IAWJ conference in Sydney last spring.

Finally, on a personal note, I would like to thank Pat Noonan and her husband, Ronald Schiffman. In addition to all of Judge Noonan's professional help, she and Ron welcomed me to Jordan, included me in their social life (including Ron's birthday dinner with Walter and Mrs. Kuencer), and generally made me feel as though we had been friends for decades.

Pat and I were working together on the modifications to the curriculum suggested by the Jordanian presenters when she received word that her son, Matthew, had been seriously injured in Guatemala.

Over the next several hours, I saw what strong people Pat and Ron are, and the kind of friends and colleagues they can draw on – the help they had from MASAQ, from USAID, from a network built over a lifetime. Every parent dreads a call like this. The way they dealt with it was, and is, an inspiration. They are in my thoughts every day, and the thoughts of all of us here at the IAWJ.

### **3. LIST OF ATTACHMENTS <sup>1</sup>**

#### **A. Materials for IAWJ Meeting with presenters, 4 November 2006**

- Agenda
- List of Presenters

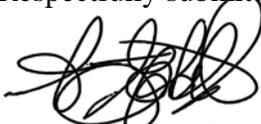
#### **B. Materials for IAWJ Meeting with women judges, 5 November 2006**

- Agenda
- List of Women Judges

#### **C. Materials for IAWJ Training program, 6-7 November 2006**

- Agenda
- List of Participants
- Curriculum (includes text of Power Point Presentation used)
- Evaluation <sup>2</sup>

Respectfully submitted,



Anne T. Goldstein  
Human Rights Education Director  
International Association of Women Judges

---

<sup>1</sup> The curriculum was modified on November 5, 2006, to incorporate the feedback of the Jordanian presenters. The English version of the curriculum contains these modifications.

The Arabic version that I have does not reflect these November 5 modifications. In addition, three of the presenters gave written intercessions in Arabic that were to be translated into English. I have not received these, nor have I received the translated evaluations.

Pat Noonan and her staff were working on these modifications when she received the phone call that her son had been injured in Guatemala. The participants received the final version in Arabic, with the modifications, but I do not have an on-line copy.

<sup>2</sup> See Footnote 1.

# **Attachment A**

**Materials for IAWJ Meeting with presenters, November 4, 2006**

**Agenda  
List of Presenters**

**Judicial Education for Jordanian Judges  
Amman Program  
November 4, 2006  
Jurisprudence of Equality Program**

**Meeting of Presenters  
Al Hyatt Hotel**

**Agenda**

<b>9:30 – 10:00</b>	<b>Introductions and welcome</b>
<b>10:00 –11:15</b>	<b>Session on the Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW") And the Concept Of "Stereotypes"</b>
<b>11:15 – 11:30</b>	<b>Break</b>
<b>11:30 – 1:00</b>	<b>Session on Gender Equality and "Real" Differences: What does international law require when men and women are <i>not</i> the same?</b>
<b>1:00 – 2:00</b>	<b>Lunch</b>
<b>2:00 – 2:45</b>	<b>Discussion: Challenges of training on gender, challenges of training judges</b>
<b>2:45 – 4:00</b>	<b>Discussion: Analysis and feedback on curriculum.</b>

**Judicial Education for Jordanian Judges  
Amman Program  
November 4, 2006  
Jurisprudence of Equality Program**

**Meeting of Presenters  
Al Hyatt Hotel**

**List of Presenters**

Judge Mohammed Amer

Judge Ihsan Barakat

Judge Malak Ghazal

Judge Feda'a Al Homoud

Judge Ahmad Al Aumari

# **Attachment B**

**Materials for IAWJ Meeting with women judges, November 5, 2006**

**Agenda**  
**List of Women Judges**

**Judicial Education for Jordanian Judges  
Amman Program  
November 5, 2006  
Jurisprudence of Equality Program**

**Meeting of Women Judges  
New Palace of Justice**

**Agenda**

- 1:00 - 1:30**    **Introductions and welcome**
- 1:30 – 2:00**    **Discussion of women’s rights issues that present themselves before the Jordanian civil courts**
- 2:00 – 2:30**    **Identifying expectations and goals for the Jurisprudence of Equality Program in Jordan**
- 2:30 –3:00**    **Identifying challenges for the Jurisprudence of Equality Program in Jordan**

**Judicial Education for Jordanian Judges  
Amman Program  
November 5, 2006  
Jurisprudence of Equality Program**

**Meeting of Women Judges  
New Palace of Justice**

**List of Presenters**

Judge Samar Al Shayeb

Judge Nawal Al Jouhari

Judge Suhir Al Toubasi

Judge Nehad Al Husban

Judge Muntaha Makableh

Judge Wasfeya Al Laham

Judge Wala'a Akroush

Judge Mayasah Obeydat

Judge Rana Al Thenybat

Judge Faten Al Rawashdeh

Judge Manal Shamout

# **Attachment C**

**Materials for IAWJ Training program, November 6-7, 2006**

**Agenda  
List of Participants  
Curriculum  
PowerPoint Presentation  
Evaluations<sup>1</sup>**

---

<sup>1</sup> Evaluations are to be translated by DPK from Arabic to English. Consultant has not yet received translated evaluations.

**Judicial Education for Jordanian Judges  
Amman Program  
November 6-7, 2006  
Jurisprudence of Equality Program**

**Agenda**

<b>Day 1</b>	<b>Morning Sessions: Introduction to human rights law on discrimination</b>
<b>9:00 –9:30 a.m.</b>	<b>Introductions and Welcome</b>
<b>9:30 – 10:30 a.m.</b>	<b>Session on Article 1 of the Universal Declaration of Human Rights</b>
<b>10:30- 11:30 a.m.</b>	<b>Session on the Sources of International Law</b>
<b>11:30-11:45 a.m.</b>	<b>Break</b>
<b>11:45-1:00</b>	<b>Session on the Principle of Equality and Non-Discrimination in International Law</b>
<b>1:00-2:00</b>	<b>Lunch</b>
	<b>Afternoon Sessions: Introduction to women’s human rights</b>
<b>2:00 – 3:30</b>	<b>Session on the Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW") And the Concept Of “Stereotypes”</b>
<b>3:30-4:30</b>	<b>Wrap-up session.</b> We will use this hour to summarize the day’s discussion, and relate the issues covered to Jordanian law
<b>Day 2:</b>	<b>Exploring the links between discrimination and violence</b>
<b>9:00 -11:00</b>	<b>Session on Gender Equality and “Real” Differences: What does international law require when men and women are <i>not</i> the same?</b>
<b>11:00-11:15</b>	<b>Break</b>
<b>11:15 - 1:00</b>	<b>Session on Religion, Discrimination and Violence</b>
<b>1:00-2:00</b>	<b>Lunch</b>
<b>2:00-3:00</b>	<b>Session on Jordan’s Reservations to CEDAW</b>

**3:00-4:00**

**Wrap-up session.** We will use this hour to summarize the day's discussion, and relate the issues covered to Jordanian law

**4:00-4:30**

**Evaluations**

**Judicial Education for Jordanian Judges  
Amman Program  
November 6-7, 2006  
Jurisprudence of Equality Program**

**List of Participants**

Judge Adnan Al Mbaydeen	Judge Basel Al Faleh
Judge Husein Al Harahsheh	Judge Rakan Al Thyabat
Judge Enad Obeydat	Judge Osama Darwazeh
Judge Mohammed Al Sarayrah	Judge Amal Abu Obeid
Judge Saleh Ghadeh	Judge Ohood Al Majali
Judge Mohammed Ahmad Atrawneh	Judge Majdah Al Makhatrah
Judge Ayman Al Ghazawi	Judge Kefah Al Droubi
Judge Mohammed Al Khateeb	Judge Kholoud Al Odwan
Judge Mahmoud Al Dous	Judge Doa'a Al Dousoqi
Judge Naser Al Salaheen	Judge Iman Al Qatarneh
Judge Yehya Al Ma'aytah	Judge Ola Khasawneh
Judge Mohammed Al Bakheet	Judge Iman Al Rousan
Judge Ibraheem Al Bawareed	Judge Lubna Kryshan
Judge Yaseen Al Lawzi	

**Jordanian Presenters**

Judge Mohammed Amer  
Judge Ihsan Barakat  
Judge Ahmad Al Aumari



**Judicial Education for Jordanian Judges  
Amman Program**

**Jurisprudence of Equality Program  
International Association of Women Judges**

**November 6-7, 2006**

**Written by:**

**Anne T. Goldstein  
IAWJ Human Rights Education Director**

**Copyright © International Association of Women Judges and Anne T. Goldstein, 2006.  
All rights reserved.**

**Judicial Education for Jordanian Judges**  
**Amman Program**  
**November 2006**  
**Jurisprudence of Equality Program**

These two days have been designed so that you will experience a “mini-training” session of the IAWJ’s *Jurisprudence of Equality Program*. This is the IAWJ’s highly regarded training program that introduces the application of international human rights treaties and laws to national and local domestic cases alleging discrimination and violence against women. Judges from Central and South America, East and Southern Africa have conducted this program, and judges from Afghanistan and Taiwan have taken part in one to three day mini-trainings.

The Jurisprudence of Equality Program (or "JEP") is designed to help member chapters of the IAWJ identify their respective training goals and challenges, and to help them tailor human rights training to the specific issues facing women in their countries.

The IAWJ has developed the following curriculum for a two-day program for Jordanian judges to be held at the Jordanian Institute for the Judiciary. It is designed as an introduction to some of the key issues involving women’s international human rights law and to contemporary debates over these issues.

This is the first JEP project tailored for a country in the Middle Eastern Region. We recognize that, as has been the case with our prior projects, the judges who take part are likely to have a range of substantive expertise on international human rights law, possibly varying between no prior exposure to very advanced study.

International law promises women many things, but here are some of the most basic:

1. The right to equality/non-discrimination and to equal protection of the law.
2. The right to freedom from physical violence.
3. The right to effective remedies for violation of their rights.

At the level of abstract theory, few if any of these rights are controversial. It is at the level of daily reality that they are contested. The challenge of training in this area -- whether the trainees are judges, other professionals, college students, community groups, high school girls, or members of any other target group -- is bridging the gap between theory and practice, and doing so in a way that is meaningful and engaging for the participants.

In keeping with JEP's starting premise that participatory learning is more effective than passive learning, rather than try to explain how to bridge this gap, we will start with an example. We will use a JEP training session based on Article 1 of the Universal Declaration of Human Rights.

## Session on Article 1 of the Universal Declaration of Human Rights

### Introductory Note:

Some people believe that it is not possible to speak of universal human rights. They argue that since each culture is unique, it is not proper for people in one culture to criticize practices in another.

Other people believe that it is possible for human beings to come together and through discussion discover that there are some values and aspirations so widely held that they could truly be called universal. The Universal Declaration of Human Rights is an attempt to spell out such beliefs.

From 1946-1948, scholars, statesmen and stateswomen from many different countries met to research and argue over what such a Declaration would entail. Their labors ultimately became the Declaration, which passed as a General Assembly Resolution on December 10, 1948. All those who worked on the Declaration acknowledged that the final product was, like all human endeavors, imperfect. Yet no single document written before or since has come closer to the ideal of a *universal* aspiration, as evidenced by the extent to which the Declaration has been used in national law and has been relied on by individuals, groups and governments.

In this session we are going to talk about Article 1. Every clause of Article 1 – virtually every word – was vigorously disputed:

*Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood.*

### Question for Discussion:

*Is Article 1 “universal”?*

To frame the question for discussion, consider the Power Point Demonstration (“The Golden Rule”)

## **Golden Rule PowerPoint Presentation – Text**

**(for Session on Article 1 of the Universal Declaration of Human Rights)**

### **Slide 1**

The Prophet said, “None of you will have faith till he wishes for his (Muslim) brother what he likes for himself.”

Hadith Bukhari Volume 1 Book 2 Number 12

### **Slide 2**

49

The wise maintain no constant mind

But take as theirs the people’s mind

“Those minded to do good we take for good, As we do those not so minded”:

And this obligates their goodness.

“And the trusted I trust,

As I trust the not-to-trust”:

In the world the wise man stands

All-enfolding, all-accepting—

No longer apart from the world, nor above.

The people lend him their eyes and their ears;

The wise man cradles them like babies.

Dao De Jing, Moss Roberts edition, 2001.

### **Slide 3**

Book 15 CHAP. XXIII. Tsze-kung asked, saying, 'Is there one word which may serve as a rule of practice for all one's life?' The Master said, 'Is not RECIPROCITY such a word? What you do not want done to yourself, do not do to others.'

-Analects of Confucius, James Legge

### **Slide 4**

Leviticus 19:18, Old Testament

Thou shalt not avenge, nor bear any grudge against the children of thy people, but thou shalt love thy neighbour as thyself: I am the LORD.

**Slide 5**

And as ye would that men should do to you, do ye also to them likewise.  
Luke 6:31, New Testament

**Slide 6**

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

## Session on the Sources of International Law

In this session, we are going to talk about the sources of international law. The generally accepted definition of the sources comes from the Statute of the International Court of Justice. The International Court of Justice (“ICJ”) is the principal judicial organ of the United Nations.<sup>1</sup> Its founding Statute sets out the sources of international law, in Article 38:

### Statute of the International Court of Justice Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59<sup>2</sup>, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Jordan has ratified several international conventions pertaining to human rights, including the International Covenant on Civil and Political Rights (“the ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“the ICESCR”) and the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”). Jordan ratified the two covenants in 1975, and the CEDAW in 1992. Copies of all three are in the appendix.

The words “convention,” “covenant” and “treaty” can be used interchangeably. The law of treaties is itself governed by an international treaty, the 1969 Vienna Convention on the Law of Treaties. Article 1 of the Vienna Convention defines a treaty simply as “an international agreement concluded between States in written form and governed by international law.”

“International custom” is also a source of law. As can be seen from Article 38 of the ICJ statute, custom comes in as “evidence of a general practice *accepted as law*.” (emphasis added) The third and fourth paragraphs of Article 38 specify other types of evidence of the existence of international law – the general principles of law recognized by civilized nations, and judicial precedents and scholarly opinions “as *subsidiary means for the determination of rules of law*”. (emphasis added)

---

<sup>1</sup> The ICJ website is <http://www.icj-cij.org/icjwww/icjhome.htm> The ICJ has jurisdiction over contentious cases between States, and can also issue advisory opinions when asked to by designated United Nations bodies. It is not the same as the new International Criminal Court (“ICC”), which was set up by the Rome Statute and given jurisdiction over “the most serious crimes of concern to the international community as a whole” (Rome Statute Article 5). The Rome Statute can be found on the ICC website at [http://www.un.org/law/icc/statute/english/rome\\_statute\(e\).pdf](http://www.un.org/law/icc/statute/english/rome_statute(e).pdf)

<sup>2</sup> Article 59: The decision of the Court has no binding force except between the parties and in respect of that particular case.

In other words, the Statute of the ICJ sets up a hierarchy. First in this hierarchy come conventions, which “establish” rules, and then come custom, statutes and precedents, all of which are “evidence of” the existence of rules.

At the international level, a treaty generally specifies the means in which it will be enforced. Most human rights treaties require States Parties to report periodically on the steps taken to comply with the treaty.

What, if anything, are the obligations of domestic court judges with regard to international law? That depends on *internal* or national law.

A nation has a good faith obligation to abide by treaties into which it enters. Article 26 of the Vienna Convention on Treaties, *Pacta sun servanda*, provides that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

In addition to the three conventions, the Appendix contains two “declarations,” both of which initially passed the United Nations General Assembly as General Assembly Resolutions. The first declaration is the Universal Declaration of Human Rights (the “UDHR”), and the second is the Declaration on the Elimination of Violence Against Women.<sup>3</sup>

A declaration differs from a treaty in that the former does not have any international enforcement mechanism. In other words, it is not “governed” by international law, the way a treaty is defined to be “governed.”

While the Universal Declaration of Human Rights is not binding as a *treaty*, it has been incorporated into national constitutions and cited by national courts. It has been translated into hundreds of languages. (see <http://www.unhchr.ch/udhr/index.htm>) Literally millions of individual citizens as well as hundreds of nongovernmental organizations of many countries have used the Universal Declaration as both an organizing tool and a rallying cry.

### **Structuring Discussion:**

- What does it mean for custom to be “evidence of a general practice *accepted as law*”?
- Read the Universal Declaration of Human Rights. As a group, can you identify three articles of the Declaration that are accepted in both law and practice in Jordan? Can you identify three articles of the Declaration that are either not required by law in Jordan, or not observed in practice?

---

<sup>3</sup> <http://www.un.org/documents/ga/res/48/a48r104.htm>

## **Session on the Principle of Equality and Non-Discrimination in International Law**

The Universal Declaration of Human Rights took nearly two years to draft. The drafters began in 1946, with the background of World War II atrocities very much in their minds.

Before murdering people, the Nazis had taken away their legal rights. They had passed laws purporting to permit the State to treat some human beings as non-people. Thus, Article 1 of the Universal Declaration, which we have already encountered, re-affirmed the intrinsic value of “all human beings.”

Article 2 of the Universal Declaration picks up on the theme of equality:

**Article 2** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Articles 6 and 7 of the Universal Declaration emphasize and develop the twinned themes of human worth and human equality:

**Article 6** Everyone has the right to recognition everywhere as a person before the law.

**Article 7** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 makes clear that these rights are not just theoretical ones. They must be honored in practice:

**Article 8** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The International Covenant on Civil and Political Rights, which is a binding treaty, has provisions on equality, nondiscrimination and the right to an effective remedy similar to those in the Universal Declaration:

### **International Covenant on Civil and Political Rights:**

**Article 2** Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- 2.1** Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
- 2.2** Each State Party to the present Covenant undertakes:
- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 3** The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

**Article 26** All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **Structuring Discussion:**

In order to explore the substantive meaning of the right to nondiscrimination, divide into three groups. Each group will consider one of the three fact patterns that follow, A, B or C. In each fact pattern, the right to equal protection/non-discrimination is at issue.

Identify: (1) the best arguments you can that the right to non-discrimination has been violated;  
(2) the best arguments you can that there has been no violation.

After you have had time to do this exercise together, appoint two “rapporteurs” for each group, one to summarize the arguments on each side for the larger group.

## **Fact Patterns for Session on the Principle of Equality and Non-Discrimination in International Law**

### **Fact Pattern A: Discrimination on the Basis of Race, Religion or National Origin**

On September 11, 2001, nineteen young men from the Middle East who claimed to be followers of Islam commandeered three airplanes and flew them into the World Trade Center in New York City and the Pentagon near Washington, D.C. A fourth plane apparently headed for Washington, D.C. crash-landed in Pennsylvania. Thousands of people died.

After September 11, according to an article by Professor David A. Harris in the American Bar Association Criminal Justice Magazine<sup>4</sup>:

. . . Arabs and other Middle Easterners were removed from planes. Others were repeatedly searched and questioned. . . . [T]he U.S. Department of Justice detained hundreds of Arabs and Muslims—not one of whom has been linked to the September 11 attacks. The department also undertook the "voluntary" questioning of 5,000, and then another 3,000, young Arab men who were, according to the U.S. attorney general, not suspects, in the hope of learning something, anything, that might help. . . . The government has also announced an "absconder initiative" in which it will focus its deportation efforts on 6,000 men from Middle Eastern nations who have violated their visas—despite the fact that they make up only the tiniest fraction of all the hundreds of thousands of violators. . . .

### **Fact Pattern B: Discrimination on the Basis of Age and Gender**

The State of Ruritania has experienced high levels of violent crime over the past several years. Economic conditions in the country are bad, and getting worse. The Ministry of Justice has been studying the crime problem, and has determined that the vast majority of violent crimes – over 90 percent -- are committed by unemployed men between the ages of 16 and 26.

Accordingly, the Parliament has just passed into law the 2006 Ruritanian Elimination of Worthlessness Act, which provides as follows: Any young man between the ages of 16 and 26 who cannot prove that he is enrolled as a full-time student must file each calendar year a notarized affidavit from his employer stating that he is gainfully employed for a minimum of 35 hours per week. Failure to file this affidavit is a crime subject to imprisonment for a period of not less than one year.

---

<sup>4</sup> Criminal Justice Magazine, Summer 2002, Volume 17 Issue 2, Racial Profiling Revisited: "Just Common Sense" in the Fight Against Terror? <http://www.abanet.org/crimjust/cjmag/17-2/profiling.html>

## **Fact Pattern C: Discrimination on the Basis of Gender<sup>5</sup>**

[PLEASE NOTE: THE MATERIALS FOR THIS FACT PATTERN WERE WRITTEN PRIOR TO THE TRAINING PROGRAM. THE JORDANIAN PRESENTERS ADDED FACT PATTERN D BASED ON THE JORDANIAN CONTEXT. GROUP DISCUSSION CENTERED ON FACT PATTERN D.]

On February 22, 1995, Maria Eugenia Morales de Sierra and a non-governmental organization called the Center for Justice and International Law (“CEJIL”) filed a complaint with the Inter-American Commission on Human Rights. The petitioners alleged that various articles of the Civil Code of the Republic of Guatemala violated the equal protection provisions of the American Convention on Human Rights.

According to the petitioners, Article 109 of the Civil Code confers the power to represent the marital union (i.e., in legal proceedings) on the husband. Article 131 empowers the husband to administer marital property. Article 110 addresses responsibilities within the marriage, conferring upon the wife the special “right and obligation” to care for minor children and the home. Article 113 provides that a married woman may only exercise a profession or maintain employment where this does not prejudice her role as mother and homemaker. They stated that, according to Article 114, a husband may oppose his wife's activities outside the home, as long as he provides for her and has justified reasons. In the case of a controversy with respect to the foregoing, a judge shall decide. Article 255 confers primary responsibility on the husband to represent the children of the union and to administer their property. Article 317 provides that, by virtue of her sex, a woman may be excused from exercising certain forms of guardianship.

The petitioners reported that the constitutionality of these legal provisions had been challenged before the Guatemalan Court of Constitutionality in Case 84-92. In response, the Court had ruled that the distinctions were constitutional, as, *inter alia*, they provided juridical certainty in the allocation of roles within marriage.

## **Fact Pattern D: Discrimination on the Basis of Gender**

### **Case Study**

Annulment of assignment deed of shares in (...) companies registered at the companies controller ...

The facts of this case are summed as follows: the plaintiffs and the first defendant are partners in (...) company registered in the limited liability companies’ register. The first defendant on

---

<sup>5</sup> This fact pattern is taken directly from the Inter-American Commission on Human Rights’ Report No. 4/01, Case 11.625, Maria Eugenia Morales de Sierra, Guatemala, January 19, 2001, <http://www.cidh.org/annualrep/2000eng/chapteriii/merits/guatemala11.625.htm>.

1/12/2005 assigned 90 shares without sale out of her 3750 shares to the second defendant (her husband), the second plaintiff being the general manager of the first plaintiff objected to this assignment before the companies controller, the controller however replied that the assignment was executed according to the provisions of article 72/C of the Companies Law, which caused the plaintiffs file this case based on the premises that the law-maker intended by article (72/C) of the Companies Law to allow the assignment of shares by the partner to his wife but not vice versa.

Applying the law on the facts beforehand, the court finds that article (72/C) no (22) year 1997 of the Companies' Law and its amendments states that "shareholder may assign his shares in the Company by means other than their sale to his spouse, or a relative up till the third degree or a mortmain, and shall inform the manager or Management Committee of this assignment unless the Company Memorandum of Association provides otherwise."

Article 1/123 of the constitution states that: "The Special Tribunal (Diwan Khass) may interpret the provisions of any law which have not been interpreted by the courts if so requested by the Prime Minister."

Whereas this constitutional text gives the court the authority to interpret any law in addition to apply the law, and whereas the judge may at his discretion go beyond the exact words of the legislation in interpreting the law but to go into the intent of the legislator behind the words, and whereas the legal jurisprudence provides ways to interpret the legal text among which are internal and external ways including the internal way by which a judge may arrive at a decision through carrying out an analogy in which she applies a judgment arrived at in a certain case by another judge but not stated in the legislations, based on a definite analogy between the two cases, or what is called the union between the cause or reason.

Hence, going back to article 27/C of the Companies Law, the court finds that the law states the assignment by a partner to the wife, the court however finds that the law-maker did not intend to limit the right to assign the property by the partner husband, but also applies to the partner wife as well as the union of the cause allows the union of the judgment, and by stating otherwise one would breach the law-maker's intention from the law especially that the constitution stated in its article (6/1) that (All Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.) (see civil cassation court decision number 2848/2004 dated 29/11/2004 stating that: the law may not contravene the constitution but adhere to its provisions." Especially that the principle of equality is required when the legal statuses are equal (see High Court of Justice Decision number 34/1977 stating that "According to Jurisprudence and Justice the principle of equality before the law stated in article (6) of the Constitution requires indiscrimination among members of the one community when their legal status is similar."

Hence and based on the formerly stated and according to the provisions of article 123/1 of the constitution and article 72/C of the Companies Law the court finds the first defendant's assigning a number of her shares to the second defendant is valid and in agreement with article 72/C of the Companies Law.

## **Session on the Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW") And the Concept Of "Stereotypes"**

**Introductory Note:** During this afternoon's sessions, we will continue to explore the meaning of "discrimination" and "equality." This session focuses on the contribution of the Women's Convention, or CEDAW to the discussion.

Article 1 of CEDAW provides a definition of discrimination:

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.

Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") adds a key concept to international equal protection analysis: the need to eradicate "customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women."

### **CEDAW Article 5(a):**

States Parties shall take all appropriate measures:

- a. To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

### **Questions for Discussion:**

- What does the definition mean when it says that a distinction is discriminatory if it has either the "*effect or purpose*" of impairing or nullifying the enjoyment of rights?
- Are there any stereotypes about what men are like or what women are like that you think are widely shared in Jordan?
- Do people in Jordan hold both positive and negative stereotypes of women? Of men?
- Why do you think CEDAW requires the elimination of "prejudices and customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"?
- What is wrong with stereotypes? Are stereotypes inherently bad? Aren't some stereotypes positive? Are some stereotypes worse than others? What if a stereotype is true (and what do we mean when we say a stereotype is "true")? If a stereotype is true, why would international law say that practices based on it have to be eliminated?

## Session on Jordanian Statutes

Divide into three groups to consider the following three categories of statutes. Each statute treats men differently than women. In your small groups, consider:

- (a) the extent to which the distinction drawn between women and men in your statute(s) reflects any of the stereotypes identified in the preceding session;
- (b) the extent to which the statute is inconsistent with Article 5 of CEDAW (discussed in the preceding session);
- (c) the extent to which the statute is consistent or inconsistent with other law in Jordan.

Select a rapporteur to report back on your deliberations to the group as a whole.

### Group A: Civil Retirement Law and Amendments no. (34) year 1959

#### Article 15

- a. The Cabinet may decide to retire an employee at completing 20 years for the male and 15 years for the female in service.
- b. -1 the age of retirement may be increased for 10 years according to the provisions of the amended law by which retirement age for the male employee is 25 years of service and 20 years of service for the female employee  
-2 the provisions of the previous article do not apply to the employee who got provisional retirement before the provisions of the amended law are in effect, the provisions of article (a) shall apply.
- c. The cabinet may transfer any employee who did not reach the legal term for provisional retirement to any institute or company or entity subject to privatization that adheres to the regulations of the social security law, provided that the pension returns deducted from the salary be transferred to the Social Security Corporation to pay for former years; the shortage of the pension deductions to cover the insurance of the insured employee shall be paid from the privatization returns fund according to regulation 6 of paragraph D, article (13) of the privatization law no (25) year 2001.

#### Article 31, Chapter 10: Family Members' Rights

The following are considered the family of the deceased employee or pensioner and have the right to a pension salary, award, or compensation under the provisions of this law:

- a. Wife or wives.
- b. Male children under 17 years of age.
- c. Single, widow or divorcee daughters.

#### Article 34

The pension salary shall not be discontinued for the employee who earned a retirement pension for her service in the case of her marriage. If she dies the salary shall be transferred to her beneficiaries according to the provisions of this law, if their need was proved and if it was proved that the employee was their supporter.

**Group B: Social Security Law no (19) year 2001**

## Article 41

Old-age pension may become due when the insured male reaches (60) years of age, and the insured female reaches the age of (55). Age shall be verified by an official birth certificate or any other official document issued by the competent authority when the insured subscribes to the insurance. Any change that may occur to the date of birth thereafter shall be disregarded.

## Article 43

A. The insured may continue his work or take a new other job after reaching the statutory age, and until the age of (65) for the insured male, and the age of (60) for the insured female. In this case, the insured shall be included in both insurance against work injury and occupational diseases, and insurance against old age, disability and death.

## Article 56

A. The husband shall be entitled to his share from his insured deceased wife if he is totally disabled and has no other private income equivalent to the share he is entitled to from the survivors' pension. If such income is less than what he is entitled to from that survivors' pension, the difference shall be made up for him, and the remainder shall be distributed among the other beneficiaries, excluding the husband, according to the shares listed in Table (4) annexed hereto.

**Group C: Jordanian Nationality Law no (6) year 1954 and amendments**

## Article (3)

A. Jordanians are

- (a) Those born of a father holding Jordanian nationality,
- (b) Those born in the Hashemite Kingdom of Jordan to a mother holding Jordanian nationality and to a father whose citizenship is unknown or who is stateless or whose paternity has not been legally established.

## Chapter Two

1. A non-Jordanian woman who marries a Jordanian is granted citizenship with the approval of the Minister of Domestic Affairs when she posts a written request according to the following:

- When she has been married for 3 years, if she is an Arab national
- When she has been married for 5 years if she is a non-Arab.
- A Jordanian woman married to a non-Jordanian man and who was granted her husband's nationality may keep her Jordanian nationality unless she decides otherwise according to the articles of this law. She may retrieve her Jordanian nationality by applying for it if the marriage is terminated for any reason.
- A Jordanian wife whose husband was granted the nationality of another country for special circumstances may keep her Jordanian nationality.

Civil Status Law No. 9 for 2001:

Article 20

- a. If a child was born outside of marriage the name of either mother or father or both shall not be recognized in the birth records (unless by a written request by both or either affirmed by a final court judgment) the registrar must choose the names of the parents. Any registration in breach of the provisions of this article in relation to the names of the mother and father is considered invalid.

## Session on Gender Equality and “Real” Differences

### What does international law require when men and women are *not* the same?

Women’s rights advocates are sometimes accused of denying that any meaningful differences exist between men and women. This accusation is overstated.

To oppose laws or practices based on gender stereotypes is not the same as to deny that differences exist between men and women. As we have discussed, gender stereotypes force people to play roles that they might not choose for themselves.

“Gender” is socially defined. Some differences, of course, are biological. Most obviously, while not all women become pregnant and give birth, *only* women can do so. This is not a “gender” difference (by definition, since “gender” is the social meaning attached to the difference between women and men), but a biological difference.

What does law have to do with this biological difference? What does “equality” or “nondiscrimination” require, when in this one respect, women and men are fundamentally not the same?

Ironically, it is often the law or legal rule that women’s rights advocates challenge that fails to recognize biological differences between women and men. Consider the laws at issue in the following fact patterns.

#### **Structuring Discussion:**

Divide into the same three small groups you broke into during the earlier session. Follow the instructions for one of the three Fact Patterns. Select a rapporteur (different from the earlier two rapporteurs) to report back to the larger group.

### **Fact Pattern A: Ecuador’s law regarding the establishment of maternity or paternity**

A child born to a married couple in Ecuador by law is entitled to inherit from both parents. A woman’s husband is presumed to be the father of her child. In the event that a child is born out of wedlock, however, the parenthood of the child is not presumed. Title VII of the Civil Code (“Voluntary Recognition of Children”) applies. Its relevant provisions are as follows<sup>6</sup>:

**Article 261** Children born outside of marriage can be recognized by their parents or by one of them, and, in this case, they will enjoy the rights established by Law, with respect to the father or mother who recognized them. . . .

---

<sup>6</sup> My translation; original on file with author.

**Article 262** Recognition is a free and voluntary act on the part of the father or mother who recognizes.

**Article 263** [Means of recognizing, such as signing the birth certificate]  
 . . . If only one of the parents recognizes the child, that parent cannot establish who the other parent is by telling in whom or by whom the child was made.

### Questions for Discussion:

- Does this law treat men and women the same? Should it?
- Does Article 263 discriminate against women?
- Would repeal of Article 263 discriminate against men?
- Ecuador has ratified the Convention on the Rights of the Child, without reservations. Article 7 of that Convention provides that every child “shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and to be cared for by his or her parents.” Does Article 263 violate a child’s right “as far as possible . . . to know his or her parents”?

### Fact Pattern B: U.S. law regarding pregnancy-related disability

In 1976, United States law forbade any employer from discriminating “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.” The General Electric Company provided its employees with disability insurance that paid them benefits when they missed work for health reasons, unless the health reason was pregnancy-related. A group of women employees sued General Electric, alleging that the health plan discriminated against women on the basis of sex. The trial court ruled in favor of the women, and the court of appeals affirmed.

In General Electric Co. v. Gilbert, 429 U.S. 125 (1976) The Supreme Court reversed, finding there was no sex discrimination because:

The . . . insurance package . . . covers some risks, but excludes others. . . The "package" going to relevant identifiable groups we are presently concerned with - General Electric's male and female employees - covers exactly the same categories of risk, and is facially nondiscriminatory in the sense that there is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not. . . . there is no proof that the package is in fact worth more to men than to women, it is impossible to find any gender-based discriminatory effect in this scheme simply because women disabled as a result of pregnancy do not receive benefits; that is to say, gender-based discrimination does not result simply because an employer's disability-benefits plan is less . . . than all-inclusive. For all that appears, pregnancy-related disabilities constitute an additional risk, unique to women, and the failure to compensate

them for this risk does not destroy the presumed parity of the benefits, accruing to men and women alike, which results from the facially evenhanded inclusion of risks. (Interior citations omitted).

Absent a showing of “pretext” – that is, absent any evidence that the employer was discriminating against pregnant people as a sneaky way of discriminating against women without saying it was doing so, the court found that the issue of sex discrimination simply did not arise. In other words, the plan did not discriminate against women, but only against pregnant people:

The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups - pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes. (Interior quotes omitted).

### Questions for Discussion:

- Do you agree with the Supreme Court, or with the lower courts?
- Do you think that discrimination against pregnant people is not discrimination on the basis of sex?<sup>7</sup>
- Would discrimination on the basis of pregnancy violate CEDAW? (Recall that under CEDAW, discrimination against women is defined as “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.”)
- What does the Supreme Court mean when it calls pregnancy an “additional” risk? Additional to what?

### Fact Pattern C: Kenya’s law regarding division of property on divorce

In the case of Tabitha Wangeci Nderitu v. Simon Nderitu Kariuki, Court of Appeals at Nairobi, Civil Appeal No. 203 of 1997<sup>8</sup>, both parties appealed from a lower court decision dividing marital property on divorce. The lower court found that both of the parties had contributed equally to the marital assets and ruled that the proceeds from the sale of the matrimonial home should be divided equally. He discounted the wife’s share of the remaining assets to only 30 percent, however, based on what he termed the “common-sense notion” that the three caesarian sections the woman had endured to deliver the couple’s children had diminished her ability to fully exert herself for the benefit of the household.

<sup>7</sup> Subsequent United States federal legislation now makes clear that employers may not discriminate based on pregnancy.

<sup>8</sup> Decision on file with the International Association of Women Judges.

On appeal, the wife argued that the court should not have discounted her share due to the caesarian sections, and the husband argued that the wife was entitled to no distribution because (a) she merely had been a housewife; and (b) since they had married under customary Kikuyu law, all properties should remain his and be inherited by his children.

**Questions for Discussion:**

You are members of the court of appeals.

- What arguments do you expect the husband will present?
- The wife?
- How would you rule?<sup>9</sup>

---

<sup>9</sup> The actual Court of Appeals ruled for the wife, finding that the Married Women's Property Act superceded the customary law, that the husband had failed to show that the caesarian sections had disabled her sufficiently to warrant a reduction to 30 percent, and that a housewife's contribution to the family in raising children counted as a contribution to the marriage.

## Session on Jordan's Reservations to CEDAW

**Introductory Note:** When Jordan agreed to be bound by CEDAW in 1992, it entered reservations to portions of three articles: 9, 15 and 16. This means that Jordan undertook to follow all the provisions of the treaty except those to which it entered a reservation. Here are the articles to which Jordan reserved, and Jordan's reservation indicated by *[brackets and italics]*.

**Article 9** States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

*[9.2 States Parties shall grant women equal rights with men with respect to the nationality of their children.]*

**Article 15** States Parties shall accord to women equality with men before the law.

**15.2** States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

**15.3** States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

*[15.4 States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.]*

**Article 16** States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

*[(c) The same rights and responsibilities during marriage and at its dissolution;]*

*[(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;]*

- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

*[(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation];*

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

**16.2** The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Jordan does not consider itself bound by the following provisions:

- Article 9, paragraph 2;
- Article 15, paragraph 4 (a wife's residence is with her husband);
- Article 16, paragraph (1) (c), relating to the rights arising upon the dissolution of marriage with regard to maintenance and compensation;
- Article 16, paragraph (1) (d) and (g).

**Questions for Discussion:**

- Why do you think Jordan reserved to Article 16(1)(c) on equal rights upon the dissolution of marriage, when it ratified the International Covenant on Civil and Political Rights without reservations? (Article 23(4) of the ICCPR: States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.)
- Do these reservations reflect stereotypes about men and women?
- What, if anything, do you see as the real world impact of these reservations?
- To what extent do you think Islam compels these reservations?

## Session on Religion, Discrimination and Violence

The United Nations Commission on Human Rights in resolution [1994/45](#), adopted on 4 March 1994, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences. The mandate was extended by the Commission on Human Rights in 2003, at its 59th session in resolution [2003/45](#).

The first Special Rapporteur, Dr. Radhika Coomaraswamy, frequently addressed the topic of religion and violence against women, starting with her first annual report:

It is universally accepted that the spirit of all the world's religions is dedicated to equality, including equality between the sexes. Though interpretations may vary, there is no question that all the world's religions are committed to the pursuit of equality and human rights. However, certain man-made practices performed in the name of religion not only denigrate individual religions but violate internationally accepted norms of human rights, including women's rights. Recent religious movements, often termed "fundamentalist", have sought to clothe these discriminatory practices with religious sanctity. In most societies there is an ongoing dialogue between women interested in women's rights and those who are close to religious traditions. It is the concern of the international community that this dialogue results in the elimination of man-made practices which violate human rights and the spirit of equality contained in the world's religions. This question should be high on the list of priorities. Religious considerations should never be used to justify the use of violence against women.<sup>10</sup>

The Special Rapporteur distinguished between religion and religious extremism or fundamentalism. Please read the following excerpt from her *1997 Annual Report*, and consider the questions that follow:

### VI. RELIGIOUS EXTREMISM

Violence against women resulting from religious extremism is a troublesome phenomenon occurring in many societies throughout the world; it is not limited to a single religion or a group of countries but exists in various forms in different States. In discussing violence against women resulting from religious extremism, the Special Rapporteur does not intend to enter into intra-religious debates to discover whether the practices are actually sanctioned by the religion concerned. The Special Rapporteur is aware of the quantity of research carried out by human rights scholars within all religions with a view to proving that religion in itself does not sanction violations of human rights. This is why the Special Rapporteur, in her first report, accepted the position that the spirit of all the world's religions is protective of human rights but man-made customs and practices, often proclaimed in the name of religion, are sometimes discriminatory towards women.

---

<sup>10</sup>E/CN.4/1995/42 <http://www.ohchr.org/english/issues/women/rapporteur/annual.htm>

In this context, the report is not interested in doctrinal debates about religion but only considers the effects of specific man-made practices and urges Government to legislate and implement programmes to eliminate such practices when they are violent against women. In making this appeal, the Special Rapporteur is mindful of the fact that the Declaration on the Elimination of Violence against Women clearly provides that "States should condemn violence against women and should not invoke custom, tradition or religious consideration to avoid their obligations" (art. 4).

The Special Rapporteur would like to recount only one of many examples provided in a report by a non-governmental organization on Afghanistan of violence against women resulting from religious extremism. "Turpeki was taking her toddler to the doctor. The child had acute diarrhoea and needed to be seen by a doctor soon. Turpeki was dressed in a *burqa*. She reached the market area when a teenage Taliban guard noticed her. The guard called her. Turpeki knew that if she stopped she would be beaten for appearing in public. She was also frightened that her child might die if she did not hurry. She began to run. The Taliban guard aimed his Kalashnikov at her and fired several rounds. Turpeki was hit but did not die. People intervened and took the mother and the child to the doctor. Turpeki's family then complained to the Taliban leaders, but were simply told that it had been the woman's fault. She should not have been appearing in public in the first place; once she did, she should stop when told to, and not run away".

In Afghanistan, in Taliban-controlled areas women are not allowed to work outside their homes or to leave their houses without having a reason acceptable to the Taliban. Regardless, they risk being caned or beaten if they are spotted on the road even if they are wearing a burqa. A woman from Kandahar told the non-governmental organization that there is no education and learning in the areas controlled by the Taliban. "All schools and educational centres are closed. There are no female doctors in Kandahar that I know of so we cannot even go to doctors ...". In Kabul, Afghan nurses who reported to work not wearing a burqa because it is impractical were dragged to a nearby tree by a 17-year-old Taliban militiaman and beaten. One who tried to escape was forced onto the floor and held between his feet while he beat her with a stick.

The offence of *Zina* as spelled out, for example, by the *Hudood* ordinance, which used to be in operation in Pakistan, is another case where religious extremism as interpreted by the State culminated in violence against women. Under the Hudood ordinance in Pakistan rape was an offence nearly impossible to prove, and if not proved, the same woman would be tried for the offence of adultery or fornication. A case in point is Safia Bibi, a blind girl who claimed that she was raped. She was also a minor who was pregnant. The Sessions Court found that Safia did not prove her rape since there were not four witnesses to her crime as required by the Ordinance. The Court, therefore, found the blind girl to be in violation of the Zina ordinance and sentenced her to three years' rigorous imprisonment. After national mobilization by Pakistan's women's organizations, the case went to the Federal Shariat Court and the Court set aside the judgement on technical grounds.

\*\*\*\*\*

In many societies, the treatment of widows by the community is often in violation of the human rights of women. In India, in certain areas, this treatment has extremely violent overtones. For example, the historic practice of women immolating themselves at the funeral of their husbands (*Sati*) and the religious glorification of sati shrines, although outlawed at present, still remain a matter of concern. In one celebrated case in Deorala, Rajasthan, Roop Kanwar and her 24-year-old husband had been married for less than eight months when he died in September 1987. Dressed in bridal finery, in front of 4,000 spectators, Roop Kanwar was burnt to death along with the body of her deceased husband on a funeral platform that had been erected in the middle of the village. The uproar created by this incident, especially since sati had been banned under British rule in 1825, resulted in the Government of India passing the Sati (Prevention of Glorification) Act.

However, the controversy in regard to this incident pointed to the high tolerance of a sati culture in some Indian communities. Pro-sati factions, despite being heavily contested, insist that the practice is religiously sanctioned. Moreover, although sati is outlawed, the State still appears to tolerate the many rituals and practices which glorify sati in different parts of India. The recent acquittal of the male members of Roop Kanwar's family who were responsible for her sati has made many observers skeptical, and would seem to indicate that the criminal justice system has failed to actively enforce the Sati Act.

The growth of Christian fundamentalist sects in certain countries has also created a climate in which violence against certain categories of women is justified. In the United States, where the right to have an abortion under certain conditions is interpreted by the Supreme Court as being constitutionally protected, certain Christian groups are involved in activism which results in justifying violence against those who are exercising a fundamental right under the Constitution. Death threats, stalking and arson are some of the violent tactics employed by these groups, although a relative decrease in 1996 was observed. Some states, although not all, have attempted to prosecute this violence. The State of Massachusetts, for example, convicted John Salvi of murdering two abortion clinic receptionists, Shannon Lowney, 25, and Lee Ann Nicholas, 38, on 18 March 1996. Christian fundamentalist groups have also attempted to denounce many of the achievements of those who have fought for women's human rights. Pat Robertson, one of the chief ideologues of the Christian Coalition in the United States, recently stated that "the feminist agenda is not about equal rights for women. It is about a socialist, anti-family political movement that encourages women to leave their husbands, kill their children, practise witchcraft, destroy capitalism and become lesbians". Such "hate speech" against women activists in the name of religion is of great concern to all those who believe in the human rights of women.

The religions of the world are not the only belief systems that are relevant with regard to the position of women in society. In many countries, tribal practices outside the experience of world religions exist within certain communities which are violent towards women. The killing of women as witches has taken place at different times across many cultures in all regions of the world. In southern Africa and on the Indian subcontinent, for example, women are killed because they are believed to be witches. In the Singhbhum district of Bihar, India, on average 200 women are murdered every year because of this

belief. Most of the victims appear to be widows who own land or women with unwanted pregnancies.

The Special Rapporteur does not claim that this section is an exhaustive study of cultural practices that are violent towards women, some of which are rooted in religious extremism. However, these are the practices which have been brought to the notice of the Special Rapporteur during her three-year tenure and seek to prove the important point that States have an affirmative obligation to confront those cultural practices of the community which result in violence against women and which degrade and humiliate women, thereby denying women the full enjoyment of their human rights. International standards require that there be concerted State policy to eradicate these practices even if their proponents argue that they have their roots in religious beliefs and rituals.<sup>11</sup>

### Questions for Discussion:

Consider the Special Rapporteur's discussion of the hudood ordinances of Pakistan, and particularly the obligation to produce four witnesses to support an allegation of certain forms of sexual assault. The "four witnesses" requirement traces its origin to Qu'ran 24:4: "And those who accuse honourable women but bring not four witnesses, scourge them (with) eighty strikes and never (afterward) accept their testimony – They indeed are evil-doers."

- Does this passage of the Qu'ran support the hudood ordinances?
- Does it have any relevance to the problem of "honor killings"?
- What is an "honourable" woman? An "honourable man"?
- If the word "honourable" has a different meaning for women than for men, is that a "real" difference or a stereotyped one, as we have used those terms in earlier discussions?
- Does giving women as well as men the benefit of a reduction in penalty for crimes committed in fury (Article 98, Jordan Penal Code) resolve any potential problem of discrimination?

---

<sup>11</sup> E/CN.4/1997/47, <http://www.ohchr.org/english/issues/women/rapporteur/annual.htm> (citations omitted)

## **Session on the United Nations Declaration on the Elimination of Violence Against Women**

As we discussed yesterday, UN Declarations, such as the Universal Declaration of Human Rights or the UN Declaration on the Elimination of Violence Against Women, are not treaties. That is, they do not by themselves create new obligations for the countries that vote for them. When they are relied on and used – by judges, legislatures, and civil society – they may, however, "harden" into binding *customary international law*. Most scholars would argue that at least some provisions of the Universal Declaration of Human Rights have attained this status.

The Declaration on the Elimination of Violence Against Women is much newer than the Universal Declaration. The General Assembly voted on the Declaration in 1993. Whether it will attain the status of customary international law remains to be seen. Consider the following excerpts:

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings . . .

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men, . . .

Solemnly proclaims the following Declaration on the Elimination of Violence Against Women and urges that every effort be made so that it becomes generally known and respected:

### Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

### Article 2

- a. Violence against women shall be understood to encompass, but not be limited to, the following: Physical, sexual and psychological violence occurring in the family, including battering, 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;
- c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

**Question for discussion:** What does it mean, to say that a State "condones" (Art. 2(C)) violence against women?

