



GENDER SECTION NEWSLETTER



Published by the Commonwealth Magistrates' and Judges' Association Gender Section

Volume 9 Issue

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GREETINGS FROM THE CHAIRPERSON



In this edition of our newsletter, we honour and reflect on the contributions of female judicial officers across the Commonwealth.

10 March 2022 was the first International Day of Women Judges.

This day was established by the declaration of the United Nations General Assembly on April 28, 2021. It had been championed by the International Association of Women Judges and the State of Qatar.

The General Assembly resolution drafted by the State of Qatar noted with appreciation the work of the Global Judicial Integrity Network of the United Nations Office on Drugs and Crime to incorporate women's representation issues into judicial

systems. The resolution reaffirmed that *"the active participation of women, on equal terms with men, at all levels of decision-making is essential to the achievement of equality, sustainable development, peace and democracy"*.

We have included in our newsletter key messages from members of the Advisory Board of the Global Judicial Integrity Network published on the occasion of the International Day of Women Judges.

We have another "first" to support and celebrate. On 24 January 2022 Justice Ayesha Malik was sworn in as the first female judge on the Superior Court of Pakistan.

Justice Malik earned a commerce degree before completing her legal education at Pakistan College of Law. She also holds a LL.M. from Harvard. She worked in private practice before her 2012 appointment to the Lahore High Court. Active in legal education, she has been described as "an advocate of the importance of the gender perspective in upholding the rule of law".

Justice Malik's appointment was described as a *"defining moment"* for her country and *"an inspirational moment for women"*. She has authored a number of landmark decisions including the 2021 decision

banning virginity testing of victims of rape.

It is encouraging to see the increasing number of appointments of women judges to senior judicial roles. However, women continue to face many challenges as revealed in our report on the Gambia Truth, Reconciliation and Reparation Commission.

And while the importance of gender equality is being recognized, as we note, the report of the 7th UN Forum of Business and Human Rights (2018) revealed that gender-based violence is *"one of the most prevalent human rights violations and business-related risks in the world"*. The messages from this report included in this edition are thought provoking and emphasize the importance of cultural change.

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Lastly, our news from around the Commonwealth, is always interesting, sometimes discouraging but hopefully, often, reflective of positive change in the recognition and value of women in society.

As we learn to navigate the challenges of Covid 19, attention is being paid across the Commonwealth, to the alarming increase in domestic violence and the judiciary welcome opportunities for sharing reforms and procedural developments. I was very pleased with our virtual meeting of the Gender Section last September at which Dr. Peter Jaffe, a noted Canadian psychologist, discussed the prevention of domestic homicides. This experience was very rewarding and inspiring for Dr. Jaffe and me as we engaged with 77 judges spanning the Commonwealth for two hours on a Sunday morning. Many thanks to all of you who participated.

We look forward to being together in Ghana this September 2022. Please consider your region's election of a gender section representative as we have described in this newsletter and please plan on attending the 2022 meeting of the Gender Section.

In the meantime, we will be preparing another edition of the newsletter for publication next August and we welcome your ideas, suggestions and contributions.

GAMBIA TRRC REPORT

In December 2022, the report from the Truth, Reconciliation and Reparation (TRRC) Commission was made public. The report which covers the 22 years of former President, Yaya Jammeh's regime highlighted a number of issues that had arisen during the time and made a number of recommendations. Chapter 10

covered the issues relating to gender-based violence during the regime.

The Introduction to the Chapter on Sexual and Gender Based Violence states that there was wide-spread violence during this time and women and girls suffered sexual violence, torture, inhumane and degrading treatment as well as arbitrary arrest and detention. A number of horrendous incidents are included in the report, which lists the different types of violation: "(i) the sexual violence and abuse of participants of scholarship pageants and "protocol girls"; (ii) rape and sexualized torture by state security officials of male and female detainees; (iii) violations committed as part of the infamous purge of "witchcraft" and (iv) sexual violence during "the Presidential Alternative Treatment Program." (PATP)." Whilst these violations were committed by security personnel and government officials, there was evidence that former President Yahya Jammeh also committed some of these violations himself. Unfortunately, the TRRC found that some of the victims and witnesses were reluctant to give evidence or were harassed after doing so. The Commission issued stern warning to anyone that was harassing such victims/witnesses. The Commission commended who were brave enough to speak out about their traumas.

The Gambia has ratified a number of Regional and International Conventions and Protocols including the CEDAW Convention, the African Charter on Human and Peoples' Rights, African; The Maputo Protocol on the Rights of Women in Africa, The Convention on the Rights of the Child including the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the ICCPR and the ICESCR and the Convention against Torture and Other Cruel, Inhumane

or Degrading Treatment or Punishment.

The Gambia also introduced in 2013 a Sexual Offences Act and a Domestic Violence Act. However, there continues to be a lack of support services available to victims and The Committee also noted that the lack of support and rehabilitation services available to victims of violence was preventing them from gaining access to justice effectively. There was also a lack of official disaggregated data relating to violence against women and girls, including on the number of investigations, prosecutions, convictions and sentences, as well as out-of-court settlements. The Committee was also deeply concerned about (i) the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society and (ii) the very high prevalence of harmful practices, in particular FGM, child marriage, polygamy and levirate (where the wife of a deceased man is forced to marry her former husband's brother).

DON'T FORGET THE ELECTIONS TO THE GENDER SECTION will take place during the REGIONAL MEETINGS being held on Tuesday 6 September 2022 in Accra, Ghana
(see back page for information)

FGM was officially banned in The Gambia in 2015 with the enactment of the Women's (Amendment) Act of 2015 in December 2015. The Children's (Amendment) Act of 2016 also outlawed child marriages. In addition to eliminating the practice, the law introduces prison sentences for men who marry underage girls, the parent of the girl, and the official who presided over the marriage

GAMBIA SENTENCING GUIDELINES ON RAPE

In February 2022, the CMJA working with the Gambian Judicial Training and Research Institute and the Judicial Office of England and Wales organised a visit to the Gambia to further the work that had previously been undertaken on Sentencing Guidelines. Working jointly with the recently created Sentencing Council of the Gambia, a third sentencing guideline, on rape, was drafted. Since 2019 guidelines on theft and assault have been developed and training of magistrates on these two guidelines took place during the visit.

The visiting group comprised, Mr Justice Robin Knowles, HH Judge Martin Picton, HH Judge Michael Cullum, Ms Grace Karrass from the UK as well as Judge Shamim Qureshi (CMJA Director of Programmes and Dr Karen Brewer, CMJA Secretary General). The group attended the Opening of the Legal Year and Call to the Bar as well as the Female Lawyers Association of the Gambia (FLAG) Conference. The FLAG Conference focussed on the theme "Women, Girls and the Law" and was opened by the Hon. Chief Justice Hassan Jallow. Judge Qureshi made a presentation on dealing with vulnerable witnesses during the Conference.

There was also a presentation on Business and Human Rights and Dr Karen Brewer focussed her presentation at this event on the Gender-Based issues relating to Business and Human Rights.

The CMJA are deeply grateful to the British High Commission for the continued support of the work being undertaken with the Gambian Judiciary.

INTERNATIONAL DAY OF WOMEN JUDGES

The first International Day of Women Judges took place on 10 March 2022.

The following are some of the messages that the UNODC' Global Judicial Integrity Network put together to celebrate this special day. The following messages have been reproduced from the UNODC's Global Judicial Integrity Network website, with their kind permission:

Honourable Lynne Leitch (Canada)
Women as members of the judiciary make a difference. Their faces reflect the communities they serve. Female lawyers, litigants, jurors and witnesses can see themselves represented. This is critical to public trust and confidence in the judiciary. While the legal reasoning of male and female judges is the same, women judges contribute perspectives developed through their life experiences to support and encourage reform of the law in areas where the law has been based on inaccurate and outdated assumptions and stereotypes respecting women.

Honourable Mathilda Twomey (Seychelles)
Recent fragile advances in gender equality have paradoxically made it difficult to call out existing inequities in women's representation in the workplace. The struggle for equality has not been won and daily battles must continue to be fought since women's empowerment and gender

equality play a critical role in eliminating inequality, injustice and violence that impact our daily lives. The female perspective complements that of their male counterpart and ensures the rule of law and the protection of human rights.

Honourable Zainun Ali (Malaysia)
We need to recognize that women judges are women of their time, with all the related obstacles, sacrifices, compromises and also persistence and determination. All of these inform and illuminate women judges' perspectives and ability to carry out effectively their judicial functions. On this International Day of Women Judges, these important contributions of women judges should be praised.

All the messages can be found on the UNODC's site at:

<https://www.unodc.org/dohadeclaration/en/news/2021/162/on-the-occasion-of-the-first-international-day-of-women-judges.html>

On 10 March 2022, the UNODC launched the Women in Justice/for Justice programme

GENDER BASED ISSUES RELATING TO BUSINESS AND HUMAN RIGHTS

Women's involvement in business is critical to financial growth as well as having a positive impact on business operations, the economy, society and the environment. According to the McKinsey Global Institute achieving gender equality in the world could add US\$12 Trillion to the global GDP (McKinsey Global Institute (MGI) report September 2015, "The power of parity: How advancing women's equality can add \$12 trillion to global growth").

The World Bank's Women, Business and the Law Report which measures laws and regulations that constrain women's entrepreneurship and

employment indicated, in 2019, that a typical economy gives women only three quarters the legal rights of men¹ although in many countries it is much lower. In Rwanda, the analysis indicated that it is around 78.1 % (2020 figures).

Despite constitutional and legal provisions promoting equality and removing discrimination as well as the international conventions ratified by states, in practice, women continue to experience discrimination and violence due to male dominated structures and persistent gender stereotyping.

The Convention on the Elimination of all forms of discrimination against women, CEDAW Convention, provides that States must *“agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”* (Article 2).

And calls upon States to: *“take....., all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”* (Article 3).

The International Labour Organisation (ILO) also provides for the protection for women’s rights in the workforce. Convention 111 prohibits discrimination in employment on the basis of sex, religion, political opinion, national extraction or social origin, Convention 156 on Workers with Family Responsibilities deals with women’s reproductive role as does Convention 103 and 183 which specifically relates to maternity rights.

The UN Guiding Principles on Business and Human Rights acknowledge the importance of gender issues in the different

Principles They don’t create any additional requirements for states but emphasise the importance of gender equality and the removal of discrimination in the workplace:

Principle 1 of the Guiding Principles requires appropriate steps to be taken to prevent, investigate, punish and redress against human rights abuse through effective policies, legislation, regulations and adjudication.

This includes the respect for women’s rights and the putting in place of appropriate processes to deal with all forms of discrimination, harassment, and violence against women. This is emphasized in Principle 3 and Principle 7. Principle 3 states: *“States should assess and address the direct and indirect discriminatory effects of existing laws and policies on women’s human rights. They should take account of the gender framework and guidance for the Guiding Principles in providing guidance to business enterprises on how to respect human rights throughout their operations”*

Principle 7 states: *“ensure that State-owned or State-controlled business enterprises and State agencies not only to lead by example in achieving substantive gender equality but also use their leverage to require their business partners to do the same”*

The Commentary on Principle 20 states that: *“Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.”*

Despite these provisions, The UN Working Group on Business and Human Rights has recognised insufficient emphasis has been placed on the impact of business-related human rights abuses of women and

the barriers they face in accessing effective remedies. They continue to urge further legal reforms in this field.

The report of the 7th UN Forum of Business and Human Rights (2018) points out that gender-based violence is one of the most prevalent human rights violations and business-related risks in the world. It impacts on women within their communities, those seeking employment; victims of trafficking, indigenous women, sex-workers, domestic workers, undocumented migrants and refugees, widows etc...

SO, WHAT ARE THESE HUMAN RIGHTS VIOLATIONS?

At least one in three women globally will experience sexual violence or harassment in their lifetime. This can take different forms: whether it is sextortion (that is the exchange of power for sexual favours which is considered a corrupt transaction under the UN Convention Against Corruption; or sexual harassment (including any unprofessional conduct, over friendliness or offensive behaviour whether verbal or physical that can occur either in the workplace or on the way to work and which restricts the freedom of movement of women; or bullying (whether physical, verbal or online). Women are also more likely to have poorer working conditions (longer hours, lesser pay, curtailed holidays, pressure relating to reproductive health issues such as maternity leave or pregnancy). They do not always have recourse to trade unions as they may not be able to play active roles in these organisations due to conflicting family care commitments and therefore trade unions may not consider women’s rights a priority at best or be dismissive of such rights at worst.

Women in the informal economy are even less protected than those in salaried employment. Whilst strides have been made for women to own/inherit property and land, men continue to be responsible for the decision making. Women's access to credit is often limited due to their inability to provide the necessary guarantees as all the main assets are controlled by men in their lives. Economic, trade and investment policies, whilst gender neutral, can exacerbate discrimination against women. The adverse impact of mining or expropriation of land for the exploitation of natural resources can have a devastating effect on women's rights especially in the rural areas where farming is undertaken by them for the most part. Women are rarely involved in the consultation exercises on the environmental impact of exploitation of resources, or the sale of land even though such changes affect their livelihood and their ability to feed their families.

Women are usually the first to be considered for redundancy in economic downturns or when austerity measures are imposed, thus affecting their financial security, social rights, housing and health and propelling them into further exploitation, trafficking or prostitution due to poverty.

REMEDIES

The UN Working Group on Business and Human Rights has encouraged States and business enterprises, when implementing the UNGPs, to not only be gender sensitive and responsive within the context of their international obligations but in fact be more proactive in promoting women's rights. Not only should there be environmental impact assessments of business but there should be gender impact assessments undertaken by businesses on a regular basis.

Whilst the UNGPs provide that *"States should provide effective and appropriate nonjudicial grievance*

mechanisms, alongside judicial mechanisms" (Principle 27), they emphasise that judicial mechanisms are core to for access to justice (Commentary on Principle 27). However, access for women to such remedies remains problematic for a number of reasons:

- Suspicion of traditional or formal judicial processes as they are seen to be biased a prejudiced against women
- Lack of awareness of their rights due to lack of education and high illiteracy amongst women and girls;
- Lack of legislation protecting women against gender discrimination;
- Lack of political will to file petitions;
- Limitations on physical accessibility to the courts (whether due to disability, distance or language barriers);
- Lack of access to legal aid or financial assistance to take cases to court;
- Length of cases or delays in judicial processes;
- Lack of enforcement of judgments.

Women may be reluctant to report the issues for fear of being victimised, intimidated or worse, fearing reprisals such as violence or the loss of their jobs. Women may feel pressured into backing down in cases to protect themselves from even further bullying or harassment or because they don't have any alternative due to their precarious financial situations.

Problems are exacerbated when it comes to remedies being sought from foreign companies exploiting natural resources especially if the local companies are subsidiaries of foreign companies and the division of responsibilities is unclear.

The UNGPs provide that *"Other quasi-judicial bodies, nonjudicial bodies, and human rights institutions also have an important role to play in providing appropriate remedies"*, and

the Commonwealth Forum of National Human Rights Institutions in their Edinburgh Declaration of 2016 emphasised the important role such institutions play in addressing corporate related human rights challenges (https://cfnhri.org/wp-content/uploads/2020/01/Edinburgh_Declaration_en-1.pdf).

Whilst I have focussed this afternoon on women's rights, the points that I have raised are as valid for other marginalised members of society.

As is stated in the Introduction to the UNGPs, these Principles do not create any extra international obligations by states but are based on existing international human rights norms. Judges need to be aware of not only their own constitutional and legislative provisions but the international norms and as well as the UNGPs when hearing cases where business and human rights come into conflict. Judges need to take a proactive role, taking into account the gender perspective whether it is in relation to women who are employed in business or in the communities that are impacted by business. Achieving equality for women in business requires not only adherence to international principles but also a cultural change to acknowledge that women contribute significantly to economic development and business effectiveness and to ensure that,

NEXT GENDER SECTION MEETING

Monday 5 September
2022
Labadi Beach Hotel
Accra, Ghana

when they do seek redress for discrimination or abuse in the workplace, remedies are accessible, affordable and timely.

NEWS FROM AROUND THE COMMONWEALTH

The following are summaries of various reports that the CMJA has gathered from around the Commonwealth that outline some of the developments in the field of gender and human rights.

BOTSWANA

In November 2021, the Court of Appeal of Botswana upheld a 2019 ruling by the High Court that at laws that criminalised same-sex relations were unconstitutional and should be struck down. The Government had appealed the 2019 decision. However, the Court of Appeal indicated that criminalising same sex relationships was a violation of an individual's right to dignity, liberty, privacy and equality.

CANADA

Provinces have enacted "family violence" provisions to mirror amendments to the federal Divorce Act. These amendments acknowledge that family violence exists in forms beyond physical abuse. That is, that family violence is not only physical abuse, but also conduct that displays a pattern of coercive and controlling behaviour or that causes a family member to fear for their safety. There are many public education initiatives being undertaken to enhance the understanding of coercive control, the warning signs that it is being exercised, protections for potential victims and resources available for those subject to such abuse.

There is also some discussion that coercive behavior should be made a criminal offence.

ENGLAND AND WALES

In December 2021, the UK Supreme Court rejected the idea of gender-neutral passports. In the decision, Justice Reed indicated that there was currently no law recognising non-gendered persons.

FIJI

In February 2022, The Fiji Women's Rights Movement reported that sexual violence was on the increase. Their report **Sexual Violence Against Women and Girls Rape Case Analysis 2021** includes disturbing news that most of the victims of sexual violence were under the age of 15. In fact, their analysis of statistics since 2016 points to an average age of victims of 17 and of perpetrators being 36. In most cases the victims knew the perpetrators. The court system FWRM claim is inadequate to deal with these issues with bias and stereotypes being the norm. They are campaigning for more gender sensitivity in the public sector. COVID 19 has also affected access to justice for women and girls.

GAMBIA

In January 2022, **Fatima Sowe** and **Marirama Jatta** became the first female Cadis to be appointed in the Gambia. We congratulate them on their new position.

INDIA

On 17 March 2022, the Karnataka High Court ruled that wearing hijabs was not an essential Islamic religious practice and was not recognised as a right under the Indian Constitution. The ban on wearing hijabs that had been imposed by some universities was therefore maintained although the petitioners are appealing the decision to the Supreme Court.

LESOTHO

In November 2021, the High Court of Lesotho found that a husband was considered "unworthy" to bury his wife as his brutal treatment of her had contributed to her death. The husband had been charged with murder and was out on bail and claimed, as her heir, that he had a right to bury her as opposed to her own family. The full judgement can be found at: [Makoetle Mofolo-Ntshihlele and Others v Q M and Others \(CIV/APN 337 of 2021\) \[2021\] LSHC 115 \(22 October 2021\); | \[LesothoLII\]\(#\)](#)

MALAWI

In September 2022 it was reported that the High Court of Malawi, awarded damages for false imprisonment to a number of scholars and their parents following the appeal against a decision of a magistrate in 2016 to fine the students and their parents when the students became pregnant and subsequently imposed detention on the girls and their boyfriends until payment of the fines had been made. High Court Judge **Dorothy A. DeGabriele**, found that the arrest, detention and imposition of fines against the scholars and their parents was unlawful as there was no law forbidding someone to become pregnant or make someone pregnant.

NIGERIA

In December 2021, the Gender Equality Bill that has long been awaited was rejected for another time in parliament. More recently in March 2022, women protested outside the Assembly in Abuja against Parliament's rejection of five other gender related bills that would have provided more equality for women via the constitution, including equality in citizenship for spouses' equality with men; quotas for women

in state and national assemblies; affirmative action for 35% of women in political parties and the public sector at the state and federal level amongst other provisions. Following the rejection of the amendments to the Constitution, the Minister of Women's Affairs proposed changes to the National Gender Policy 2021-2026, to ensure the Government met its mandate to provide minimum standards for gender equality, good governance and accountability, in line with their commitments to SDG 5.

PAKISTAN

In November 2021, the Pakistan Parliament passed the Criminal Law (Amendment) Act, 2021. The act introduces, amongst other clauses, stricter sentences for rape. Initially the Bill contained reference to chemical castration especially for repeat offences of rape, this clause was removed at the last minute. Human Rights groups criticized the provision as this would have been inconsistent with international law and would have been tantamount to torture and inhumane and degrading punishment although. Whilst harsher punishments have been welcomed, the problems in investigating and prosecuting such cases remain as well as the lack of victim protection.

The CMJA also congratulates **Justice Ayesha Malik** who became the first female judge of the Supreme Court of Pakistan in January 2022. Justice Malik has previously given a number of landmark decisions. In 2021, she gave the landmark decision banning virginity testing of victims of rape.

TANZANIA

In November 2021, following campaigns by human rights activists, the Ministry of Education agreed to remove all bans on pregnant girls attending schools after the birth of their child. The policy imposed by former President Magufuli deprived the girls of a right to education at the

time. In 2020 more than 5000 girls were barred from attending school as a result of this policy. The Ministry is now focussing on ensuring there is more sexual education to reduce such pregnancies.

UGANDA

In August 2021, the Constitutional Court struck down the controversial 2014 "Anti-Pornography Act", also known as the "mini-skirt law" which banned certain dress attire in public amongst controversial clauses. Since its promulgation, there has been a notable increase in harassment of women and girls and a number of arrests have been made under the law.

In December 2021, the High Court of Uganda, a widow won the right to decide on where her husband should be buried. In deciding the case, the court referred to cultural rights but indicated that the husband's will trump cultural rights and that any customary traditions that denied a widow the right to decide where and how her husband should be buried were incompatible with constitutional provisions and were in fact discriminatory.

SEEKING GENDER SECTION REPRESENTATIVES

In September 2022, during the CMJA's Triennial Conference being held in Accra, Ghana, the CMJA will be holding its Regional Elections. The Gender Section representatives will also be elected during this time. The CMJA is therefore seeking nominations for the Six regional representatives of the Gender Section for the period 2022-2025.

Duties of the Regional Representative

Each Regional representative would be expected to galvanize activities

within their region and promote the aims and objectives of the Section (see below for further information on the objectives)

Each regional representative would have authority to call on active judicial officers in each of the countries in their region to advance the aims and objectives or assist with information on developments on gender issues.

Each Regional Representative would submit an annual report to the Gender Section Chairperson in time for the chairperson to report back to Council on activities.

IF YOU WANT TO REPRESENT YOUR REGION OR PLAY AN ENHANCED ROLE IN THE GENDER SECTION, PLEASE CONTACT:

Dr Karen Brewer, Secretary General at the CMJA: kbrewer@cmja.org

CLOSING DATE for Applications for The Gender Section Representation:

23 AUGUST 2022

CONTRIBUTIONS AND COMMENTS



We would like to hear from you. If you have comments, suggestions, ideas, or concerns please send us an e-mail at

info@cmja.org

If you have an interesting story to tell, please send these too!!

GENDER SECTION NEWS

Publication by
Justice Lynne Leitch
(Chair)
Dr Karen Brewer
(Editor in Chief)

CURRENT GENDER SECTION REPRESENTATIVES
CHAIRPERSON <i>Mrs. Justice Lynne Leitch, Canada</i>
<i>Atlantic and Mediterranean</i> <i>Mrs. Bridget Shaw, Jersey</i>

<i>Caribbean</i> <i>Justice Carolita Bethell, Bahamas</i>
<i>East, Central and Southern Africa</i> <i>Ms. Naume Sikohya, Uganda</i>
<i>Indian Ocean</i> <i>Judge Kumudini Wickremasinghe, Sri Lanka</i>

<i>Pacific</i> <i>Ms. Linda Bradford-Morgan, Australia</i>
<i>West Africa</i> <i>Justice Sedina Agbemava, Ghana</i>

Objectives of the Gender Section

Aims

- ◆ To promote the interests of judicial officers throughout the Commonwealth
- ◆ To ensure wherever possible, equal access to the law.

Objectives

- ◆ To provide a forum for judicial officers to be able to consider ways of redressing any gender imbalance:
 - a) Gender Bias and other colleagues;
 - b) Gender Bias and the Public both specifically and generally;
 - c) Institutionalized Gender Bias and the Justice System.
- ◆ To exchange information among judicial officers;
- ◆ To encourage the advancement of women;
- ◆ To promote and encourage women to be aware of their legal rights;
- ◆ To address women's groups on issues relating to the law and their legal rights.



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