

Addressing Conflict between Culture or Religion and Women's Human Rights

Social, traditional and cultural value systems of SEA region societies are in contradiction to the definition of 'equality' as a universal norm in international conventions such as CEDAW. Laws and policies in different countries are negated by religious and cultural inferences that can be detrimental to women's human rights. For example, the cultural norm of '*tuduc*' or maintenance of family harmony in Viet Nam; the traditional code of conduct known as '*chhab srei*' that dictates the expected behaviour of women in Cambodia; or the norm of the male as the head of household in Indonesia and other countries are responsible for biases in law enforcement, adjudication or even non-application of the law that in effect prejudice women.³⁶

The CEDAW Committee believes that cultures should be regarded as dynamic aspects of a country's life and social fabric and are subject, therefore, to change. It urges the State party to put in place without delay a comprehensive strategy, including the review and formulation of legislation to modify or eliminate traditional practices and stereotypes that discriminate against women, in conformity with Articles 2 (f) and 5 (a) of the Convention.³⁷ In the same spirit of addressing the conflict between culture or tradition and women's human rights, below are examples of how courts in different countries have grappled with this issue.

The Concept of 'Identity' and its Implications in the Interpretation of Laws³⁸

Culture and religion are concepts that people use as markers for their identities. Identities are not static but evolve as peoples' economic, social, and political environments change. We participate in the creation of our identities, but it is also true that our identities are created for us, often patterned after the dominant meta-narratives of societies and cultures that we inhabit. Often the labels we use to assert rights are shaped by material experiences, which for many are about marginalisation and oppression.

It is convenient for those who are politically and culturally dominant within a political sphere to simplify identity. These struggles are presented in a meta-narrative of dichotomies such as that there are two distinct and complementary genders – man and woman – and every person falls into these categories, and only one. By aligning biological sex with gender identity and roles, men continued to be privileged while women are relegated to a subordinate position, which is presented as reasonable or natural.

36. Presentation of Shanthi Dairiam, 4 September 2013

37. Ibid.

38. Excerpt of transcribed speech by Marvic Leonen, Justice of the Supreme Court, Philippines, 4 September 2013