

The CEDAW Committee has been cognizant of the general lack of enforcement of court decisions especially in sexual crimes committed against women. In the case of sexual violence committed against women in Indonesia, the CEDAW Committee referred to the State's failure to provide victims of sexual violence during past and current conflicts with "justice, truth, reparation and rehabilitation." It expressed concern regarding the settlement of rape cases resulting in the marriage of rape survivors to perpetrators, the low number of rape and sexual assault cases that have been brought to court, the police's practice of mediating rape cases, and the settlement of such cases through the payment of fines.

The CEDAW Committee pointed to the availability of regional and international mechanisms which open access to legal remedies beyond state courts and provide opportunities for interpreting the law in line with international standards. The Optional Protocol to CEDAW, which has been acceded to by many countries in SEA, is a special mechanism that accepts individual complaints pertaining to the violation of women's human rights in the event that the complainant has exhausted domestic remedies without obtaining justice.

## Progressive Judgments to Promote Women's Access to Justice<sup>15</sup>

Facing similar manifestations of gender bias in the legal system that are found in many SEA countries, exemplary Supreme Court justices and other judges in Canada have paved the way towards legislative reforms that better advance women's human rights and improve their access to justice. Conversely, judges have issued progressive decisions that interpret the Charter of Rights and Freedoms or national constitution and national laws to support the concept of substantive equality as defined under CEDAW, to which Canada is also a State party.

For example, historically in cases of divorce or legal separation, custody of the children is awarded to the mother. However, the award of custody is matched by a small amount of child support that is required of the non-custodial parent. As early as the early 1990s, judges recognised that women could not support children on such meager payments and started requiring the husband to pay a more significant amount of child support. As a result, federal legislation was passed and now there are guidelines for judges that realistically set the amount of child support that the non-custodial parent has to pay, taking into consideration his capacity to give support and the needs of the children, among other factors.

Before the 1980s, the Canadian Criminal Code required that in cases of sexual assault, the testimony of the woman victim had to be corroborated by other evidence to merit conviction of the accused. A judge was required to warn the jury of any uncorroborated testimony of a woman alleging sexual assault. Evident of gender bias against women, it was presumed that a woman's testimony on its own was not credible. Now, while the woman victim is still required to present evidence of the commission of the crime, the Criminal Code has been amended and corroboration is no longer required in cases of sexual assault.

Domestic violence is one of the most complicated issues brought before the courts. Judges encounter a domestic violence case during the bail hearing of the accused and at the trial. In many instances during the legal proceedings, several gender stereotypes could cloud the judges'

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15. From the presentation of Judge Adele Kent, National Judicial Institute, Canada, 4 September 2013