

In a recent case decided in Malaysia, the court reiterated the doctrine of 'legitimate expectation', which warrants domestic application of international instruments without need of legislation even in common law countries that adhere to a dualist tradition. In the Australian court case of *Ministry for Immigration and Ethnic Affairs v. Teoh* (1995) 183 CLR 273, it was stated that:

"Ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation of a **legitimate expectation**, absent statutory or executive indications to the contrary, that administrative decision-makers will act in accordance with the Convention..."²⁸

While several countries in SEA have taken a more cautious approach, these recent developments clearly affirm the growing acceptance for national courts to apply or refer to international law such as CEDAW in deciding cases even in countries that have inherited a British common law system that is historically dualist and subscribes to non-enforceability. As a Convention, CEDAW is a legitimate source of law and can be applied in domestic judicial decision-making in the following ways:

- as an interpretive guide;
- to resolve ambiguity;
- to fill gaps in domestic law;
- and as a source of definition in particular concepts of equality and discrimination.²⁹

Continuing judicial education is important to ensure consistent compliance to CEDAW and other state obligations. It is essential for members of the judiciary to familiarise themselves with the growing body of work on international human rights law and jurisprudence, including significant advances that have been made over the years such as the development of the CEDAW Optional Protocol for individual complaints. CEDAW is a Convention acceded to by their respective countries and judges in SEA have a duty to enforce it domestically.³⁰

Incorporation of 'Equality' Provisions in National Constitutions

Discrimination on the basis of sex is prohibited in the constitutions of SEA countries. For example, key principles from the CEDAW Convention were re-incorporated into the 2007 Constitution of Thailand, which includes guarantees of temporary special measures supported by the State for victims of violence against women.

But in order for constitutions to ensure equal and effective access to justice for women, more than a general equality guarantee is required. The constitutional provisions for gender equality should be specific and it is critical that the requirement of equality between women and men based on CEDAW standards be incorporated to frame the equality priorities throughout the entire document.³¹

28. Cited in *Indira Gandhi A/P Mutho v Pengarah Jabatan Agama Islam Perak et al*, *Judicial Review*, No. 25-10 2009

29. Presentation of Imrana Jalal, 5 September 2013

30. *Ibid.*

31. Raday, F., 'Women's Access to Justice,' quoted in the presentation of Shanthi Dairiam, 4 September 2013