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SOUTHEAST ASIA REGIONAL JUDICIAL COLLOQUIUM  
ON GENDER EQUALITY JURISPRUDENCE AND  
THE ROLE OF THE JUDICIARY IN PROMOTING  
**WOMEN'S ACCESS TO JUSTICE**



SUMMARY OF PROCEEDINGS

September 2013

Bangkok, Thailand

UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports Member States in setting global standards for achieving gender equality, and works with governments and civil society to design the laws, policies, programmes and services required to implement these standards. UN Women stands behind women's equal participation in all aspects of life, focusing on the following five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

SOUTHEAST ASIA REGIONAL JUDICIAL COLLOQUIUM ON GENDER EQUALITY JURISPRUDENCE AND THE ROLE OF THE JUDICIARY IN PROMOTING WOMEN'S ACCESS TO JUSTICE

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## List of Acronyms

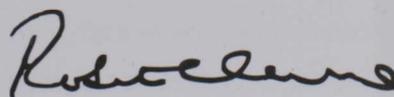
ASEAN	The Association of Southeast Asian Nations
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMS	ASEAN Member State
APWLD	Asia Forum on Women, Law and Development
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
CEDAW SEAP	Regional Programme on Improving Women's Human Rights in Southeast Asia
CRC	Convention on the Rights of the Child
CSO	Civil society organization
DFATD	Department of Foreign Affairs, Trade and Development, Canada
FLTP	Feminist Legal Theory and Practice
GSTT	Guru Sandaran Tidak Terlatih
ICJ	International Commission of Jurists
PKDRT	Parliament passed Act No. 23/2004 on the Elimination of Domestic Violence
PP DHL	Education Office of the Hulu Langat District
RA	Republic Act
SEAP	Southeast Asia Programme
SPPT-PKKTP	Integrated Criminal Justice System in Handling of Cases of Violence Against Women
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

## Foreword

In 2013, significant normative development took place at the regional and national levels to advance gender equality, particularly on women's access to justice as a necessary foundation for gender equality. 'Under international human rights law, States have a legal obligation to ensure that all individuals are able to access competent and impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential pre-requisite for the protection and promotion of all other civil, cultural, economic, political and social rights. It is thus both a right in itself and the means of restoring the exercise of rights that have been disregarded or violated'.

UN Women is implementing the Regional Programme on Improving Women's Human Rights in Southeast Asia (CEDAW SEAP) supported by the Department of Foreign Affairs, Trade and Development, Canada (DFATD), covering eight countries namely Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Timor-Leste and Viet Nam under the CEDAW SEAP Programme. One of the key focus areas of the Programme is enhancing women's access to justice through awareness raising and capacity development of government (executive, legislative and judiciary) as well as of civil society organizations. While ensuring that women have access to justice is a key thread running through CEDAW, the judiciary is also an important mechanism for ensuring CEDAW implementation, as judges have the opportunity to interpret and apply the provisions of the Convention in domestic court decisions, and thus send a powerful message to society that discrimination against women cannot be tolerated.

Additionally, we would like to acknowledge the strong support of International Commission of Jurists (ICJ) and the Office of the Judiciary of Thailand. The judicial colloquium organized by UN Women during September 2013 brought together senior judges from 8 Southeast Asia programme countries in which the judges agreed to encourage the establishment of a gender equality committee within judiciaries; and encourage the formation of a regional network of judges to promote continuing dialogue, knowledge and information sharing; while the regional exchange and learning among members of the judiciary in Southeast Asia were enhanced. It brought together judges from court levels – Supreme Court or High Court justices and lower court judges who have either rendered decisions applying CEDAW principles or whose mandate includes decision cases that have a direct impact on WHR. Judicial Declarations were developed following the conclusion of various Judicial Colloquiums. These include: the Bangalore Principles, the Victoria Falls, Pacific Islands Judges Declarations and the Caribbean Conclusions. In the spirit of forging common understanding and collaborative efforts among members of the judiciary in Southeast Asia, Concluding Recommendations were drafted by the participants of the Judicial Colloquium. The Concluding Recommendations serves to enhance and provide specific guidelines on the applicability of CEDAW and its principles to domestic judicial decision-making law, and as a source of definition in particular on concepts of equality and discrimination. It is with our deepest hope that this publication will enhance the accuracy of Southeast Asia and serve as a useful tool for judiciary, policy makers and development practitioners



Roberta Clarke

Regional Director and Representative in Thailand  
UN Women Regional Office for Asia and the Pacific

Bangkok, Thailand  
June 2014

1. General Discussion on Access to Justice for Women: Joint Statement by Denmark, Finland, Iceland, Norway and Sweden, CEDAW Committee, 54th Session (18 February 2013)

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# Introduction

UN Women is implementing the Regional Programme on Improving Women's Human Rights in Southeast Asia programme under the guidance of the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), Southeast Asia Programme (SEAP) and supported by the Department of Foreign Affairs, Trade and Development, Canada (DFATD). The Programme seeks to enhance women's access to justice by raising the awareness and capacity development of government and civil society organizations (CSOs) within the following eight countries:

- Cambodia
- Indonesia
- Lao People's Democratic Republic (Lao PDR)
- Myanmar
- The Philippines
- Thailand
- Timor-Leste and
- Viet Nam

UN Women has also been working with the justice sectors of the participating countries to improve understanding of CEDAW among judges and court personnel, and promote its use in courts.<sup>2</sup>

As the first activity involving the justice sector in this new phase of CEDAW promotion and implementation, the UN Women Regional Office for Asia and the Pacific, in collaboration with the Office of the Judiciary of Thailand and the International Commission of Jurists (ICJ), convened the Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice in Bangkok, Thailand on 4 -5 September 2013. The Judicial Colloquium is intended to enhance regional exchange and learning among members of the judiciary in Southeast Asia.<sup>3</sup>

The objectives of the Colloquium are:

- to promote the role of judges in the implementation of CEDAW;
- to enhance awareness among judges of the barriers women face in accessing justice;
- to provide a learning forum on gender equality jurisprudence and give judges an opportunity to take stock of developments and the evolving role of the law in responding to gender inequality;
- to promote capacity building programmes for a gender responsive judiciary;
- to create a space for judges in South-East Asia to share knowledge, lessons learned, and positive examples of judicial strategies for promoting gender equality.<sup>4</sup>

2. UN Women, 'Concept Note,' Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice in Bangkok, Thailand on 4 -5 September 2013

3. UN Women Press Release, 'UN Women Asia and the Pacific to hold a colloquium to promote women's human rights in the Southeast Asian Judicial System', 4 September 2013

4. Op. cit.

All of the eight countries involved in CEDAW SEAP are signatories to CEDAW. CEDAW is the cornerstone of the State parties' commitment to incorporate the principles of state accountability, non-discrimination and equality in their respective legal systems. The Convention also provides guidance for the interpretation and application of the fundamental principles of gender equality, the rule of law, independence of the judiciary and the promotion and protection of human rights enshrined in the national constitutions of countries in South-East Asia (SEA). Hence, the Judicial Colloquium provides a forum to familiarise judicial actors in the region with the growing international jurisprudence on human rights and women's access to justice.<sup>5</sup>

The Association of Southeast Asian Nations (ASEAN), as a regional governmental institution, is in the process of drafting standard-setting instruments for application in SEA. The ASEAN Intergovernmental Commission on Human Rights (AICHR) drafted the ASEAN Human Rights Declaration in 2009. ICJ, as an international organization committed to the advancement of human rights and the rule of law, is critical of the Declaration because it appears to be a step back from existing commitments that ASEAN member States have made in various international human rights conventions including CEDAW.<sup>6</sup>

In particular, the Declaration employs the concept of 'cultural relativism' which makes the realisation of human rights conditional on regional and national contexts such as the different political, economic, legal, social, cultural, historical and religious backgrounds of various countries. This Judicial Colloquium is a timely platform to confront the implications of this Declaration in invoking culture or religion as 'justification' for violations of the rights and freedoms of women. Rather than subscribe to the notion that culture – including traditions, religious beliefs and customary practices – is static, the better approach is to be cognisant that culture evolves and that the process of change presents an opportunity to capture the best aspects of every culture and promote human rights as a global cultural framework that negates any form of discrimination and violence against women.<sup>7</sup>

Feminist and critical legal scholars have long ascertained that the law can reinforce and recreate unequal power relations between men and women. The law is laden with ideologies in its content, in its omissions and its interpretations by the courts. According to UN Women Asia and the Pacific Regional Director Roberta Clarke, "this is so because those charged [with] making and interpreting the law drink from the same cultural pool as the rest of us characterised by inequalities".<sup>8</sup> Therefore, members of the judiciary have to be aware of how law is used, wittingly or unwittingly, to maintain unequal power relations between men and women.

In this colloquium, the premise is that culture can constrain legal developments. But law reform and jurisprudence can also compel and support cultural change in equal measures. Hence, this forum provided a platform to discuss the ideologies and bias systems, as well as the remnants of culture that are inimical to women's human rights and harness the transformative potential of law and jurisprudence in ending all forms of discrimination and inequality. In this context, members of the judiciary play a critical role in disrupting inequalities and the normalcy of unequal gender relations through the application of the core principles of CEDAW on state accountability, non-discrimination and equality before the law.<sup>9</sup>

5. Introductory Remarks, Deepa Bharathi, Regional Programme Manager, CEDAW Southeast Asia Programme, UN Women Regional Office for Asia and the Pacific, 4 September 2013

6. Opening Remarks, Saman Sia-Zarifi, Regional Director for Asia and the Pacific, International Commission of Jurists (ICJ), 4 September 2013

7. Ibid.

8. Opening Remarks, Roberta Clarke, Regional Director of UN Women Regional Office for Asia and the Pacific, 4 September 2013

9. Ibid.

This Judicial Colloquium, supported by Canada's Department of Foreign Affairs, Trade and Development, was designed to support members of the judiciary in raising knowledge and awareness of CEDAW and promote gender equity and the dismantling of the barriers women face in accessing justice. "The rule of law and an impartial, well-trained and trusted judiciary is an essential component of just societies."<sup>10</sup> Members of the judiciary can help shape the legal environment and indeed the legal and judicial culture in their respective countries within SEA. The Colloquium brought together judges from the Supreme Court or High Court justices and lower court judges who have either rendered decisions applying CEDAW principles or whose mandate includes deciding cases that have a direct impact on women's human rights (e.g., judges of Juvenile and Family Courts). Representatives of judicial training institutes from the eight countries participating in CEDAW SEAP were also present in the forum. Legal experts also participated in order to share their expertise on CEDAW and international human rights law. Civil society representatives involved in litigating cases directly related to women's human rights also participated to share their perspectives on key considerations for the judiciary for each of the topics discussed in the Colloquium.<sup>11</sup>

This is a summary of the proceedings of the Judicial Colloquium and a synthesis of the key points raised at the meeting. It draws from all of the presentations and relevant points made during the open forum. Rather than follow the chronology of the programme, related topics are clustered into various chapters to facilitate a more cohesive understanding of the numerous issues discussed in the different sessions. This summary is intended to serve as a resource or reference for judges to engender every aspect of the legal system and improve women's access to justice.

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10. Opening Remarks, H.E. Philip Calvert, Ambassador of Canada, 4 September 2013

11. UN Women, 'Concept Note' 4-5 September, 2013

# Gender Bias in Legal Systems and Women's Access to Justice

The legal recognition of rights is a vital component in efforts to enable access to justice in relation to human rights abuses. Simply put, it provides the foundation for individuals to claim their rights as entitlements under the law since, where a right is not recognized in law, an individual may not be able to invoke it or achieve justice at the national level for its breach.<sup>12</sup>

In substance and practice however, law tends to reflect the subordination of women in different countries in SEA and worldwide. This subordination is pervasive in almost every sphere of gender relations, both public and private, and is also entrenched in every step of the justice chain. These inadequacies of the law contribute to as well as result in both the cause and effect of women's inequality. Efforts to enable women's access to justice must be cognizant of women's socially constructed disadvantage inscribed in the law and address this.<sup>13</sup>

## Barriers that Women Face in Accessing Justice<sup>14</sup>

Barriers to women's access to justice are evident in every stage of the legal process starting from the decision by the rights holder to take legal action, to the investigation, prosecution and litigation of the case, until the issuance of a final decision and its enforcement. Gender bias is well entrenched in the legal system and discussed below are some of the significant gaps in legal processes that relate to obstacles that women face to access justice:

At the outset, women lack sufficient knowledge of their rights as well as the applicable legal procedures to seek relief before the courts. Many lack resources and are discouraged by the high costs of proceedings or the inaccessibility of the courts, particular for women with restricted mobility. Social antagonism at women claiming rights or intimidation not to take the dispute outside of the community further discourage women from pursuing any legal action.

Ineffective investigations, especially involving crimes against women, further prejudice women's chances of successfully prosecuting any offence. Insufficient documentation of the cases by the police leaves out important evidence. There are also many instances where the interpretation of evidence by judges favour perpetrators and challenge the credibility of the women victims. In addition, judgments of acquittal or lenient punishment meted out to those convicted of offences, particularly related to violence against women, result in denying women their right to effective remedy before the courts.

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12. Comments from the International Commission of Jurists (ICJ) submission to the UN CEDAW Committee, 11 February to 1 March, 2013 as quoted in the presentation of Shanthi Dairiam, Founder International Women's Rights Action Watch (IWRAP) Asia Pacific, 4 September 2013

13. Presentation of Shanthi Dairiam, 4 September 2013

14. Ibid.

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

assessment, such as, "If she wants him back, I am not going to say no;""He can't be that violent if she wants him back"; She's lying and made up the whole thing". Rather than unquestionably subscribe to these stereotypes, judges should inquire into the context and understand factors that may affect the disposition of the woman victim in the case such as financial pressures or psychological inability to push away the batterer.

It must be emphasised that judges have be aware and understand the contexts in which they are making their decisions. "Contextual judging," or the consideration of social, economic, cultural and other factors that affect the litigants' situation is necessary to ensure fair and equitable judgments, particularly in cases involving violence against women. As demonstrated in the case of *R. v. Ewanchuk* where the trial court acquitted the accused of raping the complainant because of the way she dressed, judges should be wary of gender stereotypes underlying their judgments. Improper decisions have far reaching negative consequences on women's access to justice than just the failure of the complainant to seek judicial relief.

## Advocating for Feminist Legal Theory and Practice<sup>16</sup>

Feminist Legal Theory and Practice (FLTP) is a framework of engaging with the law as a double-edged tool that has both transformative as well as oppressive attributes. It seeks to dissect, engage with and transform laws, legal practices and the systems that shape and inform them from a feminist perspective grounded in human rights. FLTP training conducted by the Asia Pacific Forum on Women, Law and Development (APWLD) examined:

- the starting point of FLTP, which is the recognition of the intersecting oppressions of women because of their sex, ethnicity, caste, class, religion, sexual orientation and other status;
- evolving feminist theories and principles and human rights standards that are used in the analysis of women's legal situations, taking into account issues around feminism and human rights;
- laws, as institutions, at the national and international level, for their role in women's oppression and what they can contribute to addressing it. Given the plurality of legal systems in many Asian and Pacific countries, customary and religious laws are also examined;
- theories, concepts and issues around feminism, human rights and laws that are considered in framing, planning and implementing strategies.

In essence, FLTP challenges the traditional notion that law is a neutral, objective, rational set of rules, unaffected by the perspective of those who possess the power inherent in legal institutions. It seeks to address the social, cultural and political contexts that shape legal systems and explores how the application of a feminist perspective to the law can transform women's legal situations. It also allows for greater understanding of gender, discrimination, law and human rights that are crucial when identifying and discussing issues encountered by legal advocates when addressing gender issues.<sup>17</sup>

16. Presentation of Virada Somswadi, Professor, Chiangmai University, Thailand, 4 September 2013

17. Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA) web site, <http://www.hurights.or.jp/archives/asia-pacific/section1/11%20Asia%20Pacific%20Forum%20on%20Women.pdf> accessed 25 September 2013

FLTP as a perspective remains relevant particularly in Thailand where gender bias still permeates the legal system. Androcentricity, gender stereotyping, double standards and gender insensitivity are evident in every aspect of the legal system, particularly in the gender biases underlying court decisions in rape cases to date. For example, in the Thailand Supreme Court Case 4465/2530, the court ruled that a previous relationship between the complainant and the accused precludes the claim of 'date rape.' In Supreme Court Case 536/252, the court held that consensual sex had occurred, not statutory rape, since the eleven year old victim did not cry out for help. And in Supreme Court case 2957/2544, the court convicted the accused only because it believed that the victim, who was a virgin, could not have fabricated the details of the rape incident.

FLTP is crucial to avoid injustice for women who have sought legal relief before the courts. More importantly, FLTP and other approaches such as 'contextual judging' ensure that critical factors are taken into consideration to avoid miscarriages of justice. It is important that judges contribute to the reformation of systems and structures built on male dominance and female subordination that perpetuate inequality and obstruct women's access to justice, not seek only to resolve individual cases and bring remedies only to the litigants.

# State of the Domestic Application of CEDAW in SEA Countries

The following countries in SEA, which participated in the Judicial Colloquium, have signed or acceded to CEDAW: Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand, Timor-Leste and Viet Nam. Except for Timor-Leste, more than 20 years have passed since each country's accession, a considerable amount of time within which to ensure compliance with the legal standards of CEDAW.

COUNTRY	DATE OF SIGNATURE <sup>18</sup>	DATE OF ACCESSION <sup>19</sup>
Cambodia	17/10/1980	15/10/1992
Indonesia	29/07/1980	13/09/1984
Lao PDR	17/07/1980	14/08/1981
Malaysia		05/07/1995
Myanmar		22/07/1997
Philippines	17/07/1980	05/08/1981
Thailand		09/08/1985
Timor-Leste		16/04/2003
Viet Nam	29/07/1980	17/02/1982

Source: UN Treaty Collection<sup>20</sup>

However, the international standards for equality as provided in the Convention have not been integrated into domestic legal systems in SEA countries and "the legal framework to mandate and demand such a coherent, holistic and consistent application of the Convention is not available in these countries with any level of certainty."<sup>21</sup> The concern expressed to Lao PDR when it was reviewed by the CEDAW Committee in 2009 sums up its current state of domestic application in the region:

18. 'Signature' is a means of authentication and expresses the willingness of the signatory State to continue the treaty-making process. Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound, but qualifies the signatory State to proceed with ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. UN Treaty Collection, Glossary, [http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml#signaturesubject](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#signaturesubject) accessed 24 September 2013

19. "Accession" is the act whereby a State accepts the offer or the opportunity to become a party to a treaty. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. (Ibid.)

20. United Nations Treaty Collection web site, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) accessed 24 September 2013

21. Presentation of Shanthy Dairiam, 4 September 2013

"There is inadequate knowledge of the rights of women under the Convention, its concept of substantive gender equality and the Committee's general recommendations, in society in general, including among all branches of the Government and the judiciary at all levels. It is further concerned that women themselves, especially those in rural and remote areas, are not aware of their rights under the Convention and thus lack the capacity to claim them."<sup>22</sup>

Judges certainly have a role to play in identifying gaps in the domestic application of international human rights conventions like CEDAW, particularly in the adjudication of cases in their respective jurisdictions. Several factors influence the readiness of judges to assume this role, such as:

- the practice or legal tradition of the country/region, i.e., whether it subscribes to a monist or dualist approach;
- provisions in national constitutions on equality and/or the domestic application of international human rights law;
- the attitude of the executive branch *vis-à-vis* compliance with state obligations under international human rights law and the overall independence of the judiciary to enforce the rule of law;
- the exposure of judges to continuing judicial education, including developments in international human rights law;
- the willingness of counsel/lawyers/advocates to pitch innovative arguments or submissions that invoke international human rights norms, including CEDAW, and build a case law of precedents;
- the absence, presence and/or use of regional and international human rights frameworks and mechanisms such as optional protocols that facilitate domestic application of international human rights law;
- the degree of litigation on women's rights/human rights, e.g., is it a litigious society? Is there easy access to litigation such as a process of direct petition in India?
- the attitudes/perceptions on gender equality of individual judges. Individual variations are quite striking even within the same country.<sup>23</sup>

## Advances in the Domestic Enforceability of CEDAW

There are two prevailing approaches regarding the domestic enforceability of international human rights law or any treaty like CEDAW.

In a monist approach where domestic and international legal systems are considered to be one unified system, the act of ratifying an international treaty immediately incorporates it into national law. It can be directly applied by a judge in a domestic court or directly invoked by citizens like any national law. In a dualist approach, which emphasizes that national and international legal systems are two separate spheres, a treaty must be translated into national law to be applied domestically. Each State party to a treaty adopts an approach according to its legal traditions.

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22. CEDAW Committee, 'Concluding observations on the combined sixth and seventh periodic report of the Lao People's Democratic Republic, adopted by the Committee at its forty-fourth session,' 20 July – 7 August 2009, as cited in the presentation of Shanthi Dairiam, 4 September 2013

23. Presentation of Imrana Jalal, Commissioner, International Commission of Jurists, 5 September 2013

In South-East Asia, non-common law countries such as the Philippines and Indonesia have adopted a monist approach to treat international treaties as part of the national legal system upon ratification or accession. Common law countries that were colonized by the British generally have subscribed to a dualist approach where international law is not considered part of domestic law without an act of Parliament. However, over the years, this dualist legal tradition has been waning even in common law countries.<sup>24</sup>

The Bangalore Principles on the Domestic Application of International Human Rights Norms (1988) recognized that fundamental human rights are inherent in humankind, and as such could provide guidance for judges in deciding cases concerning basic rights and freedoms. While it acknowledged that international rules are not directly enforceable in most countries of common law unless expressly incorporated into domestic law by legislation, Principles 4 and 7 also acknowledged that "it is within the proper nature of the judicial process and well-established judicial functions for national courts to have regard to international obligations which a country undertakes – whether or not they have been incorporated into domestic law – for the purpose of removing ambiguity or uncertainty from national constitution, legislation or common law" or if the national law is uncertain or incomplete.<sup>25</sup>

Expounding on the Bangalore Principles, Justice Michael Kirby, former Justice of the High Court of Australia, enumerated guidelines for the domestic enforceability of international law in his groundbreaking article on the Australian use of international human rights norms:

- international law (whether human rights norms or otherwise) is not part of domestic law in most common law countries;
- "it does not become part of such law until Parliament so enacts or the judges (as another source of lawmaking) declare (it) domestic law";
- The judge will not declare international laws to be domestic laws automatically, simply because the norm is part of international law or is mentioned in a treaty, even one ratified by their own country;
- "But if the issue of uncertainty arises (as by a lacuna in the common law, obscurity in its meaning or ambiguity in a relevant statute) a judge may seek guidance in the general principles of international law, as accepted by the community of nations.... It is the action of the judge, incorporating the rule into domestic law, which make i[t] part of domestic law." (emphasis supplied)<sup>26</sup>

An international convention, in effect, may play a part in the development of the common law by the courts. As upheld in other Australian cases, "where a statute or subordinate legislation is ambiguous, the courts should favour the construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party." (*Chu Kung Lim v. Minister for Immigration, Local Government & Ethnic Affairs* [1992] 176 CLR1) It is accepted that a statute is to be interpreted and applied, as far as its language permits, so that it is in conformity and not in conflict with the established rules of international law. (*Polites v. The Commonwealth*)<sup>27</sup>

24. Ibid.

25. Bangalore Principles on the Domestic Application of International Human Rights Norms, 1988

26. Kirby, Michael, 'The Australian Use of International Human Rights Norms: From Bangalore to Balliol – A View from the Antipodes,' *The University of New South Wales Law Journal (UNSWLJ)*, Volume 16(2), 1993,

27. Cited in *Noorfadilla Ahmad Saikin v. Chayed bin Basirun & Others*, *Malayan Law Journal*, 1 MLJ, 2012

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..."<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

## 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.<sup>31</sup>

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

To this effect, the CEDAW Committee in its Concluding Observations has stated to all States Parties in SEA that their constitution or other appropriate legislation does not include an effective guarantee of substantive equality. It does not include a definition of discrimination that encompasses both direct and indirect discrimination and discrimination in public and private spheres, in accordance with Article 1 of the Convention. The outcome of this is that there is a risk that courts will tend to interpret constitutional guarantees of equality narrowly or there will be inconsistent interpretations of equality.<sup>32</sup>

In an exemplar act, the High Court of Malaysia in *Noorfadilla Ahmad Saikin v. Chayed Basirun et al.* (2012) 1 CLJ 781-3, illustrated the direct applicability of CEDAW in interpreting the provisions on gender equality incorporated in the Malaysian Constitution. It stated:

CEDAW is without doubt a treaty in force and Malaysia's commitment to CEDAW is strengthened when Article 8(2) of the Federal Constitution was amended to incorporate the provisions of discrimination based on gender. The court has no choice but to refer to CEDAW in clarifying the term 'equality' and 'gender discrimination' under Article 8(2) of the Federal Constitution."

In upholding the right of the complainant – a pregnant woman – to be employed, the court applied the CEDAW definition of discrimination under Article 1. It also invoked Article 11 of the Convention, which specifies the duties of the State Parties to take all appropriate measures to eliminate gender discrimination in employment.

Absent a comprehensive framework on substantive equality in the national constitution, as illustrated in the *Noorfadilla Ahmad Saikin* case, the courts can take the initiative to refer to CEDAW in interpreting equality provisions in the constitution. Again, the judges' knowledge of international human rights law and jurisprudence and their ability to apply international standards of equality are crucial for this practice to prosper. Comprehensive and purposeful implementation of CEDAW at the domestic level requires full participation of members of the judiciary.

## Enforcement of Domestic Laws that Comply with CEDAW

Despite the constitutional infrastructure now in place in SEA countries, the difference between the *de jure* and *de facto* realisation of women's human rights remains a fundamental challenge. The recognition of rights and freedoms contained in the constitution and in other legal and relevant entities are not benefitting women as intended. The CEDAW Committee has consistently recommended that State party reports must show the implementation and impact of laws, policies and programmes. However, this is never taken seriously even by some countries in the region that have acceded to CEDAW for close to 30 years.<sup>33</sup>

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32. Presentation of Shanthi Dairiam, Director, IWRAW Asia Pacific, 4 September 2013

33. Presentation of Shanthi Dairiam, 4 September 2013

For example, Indonesia, which has acceded to CEDAW since 1984, has not repealed discriminatory provisions in the Marriage Act of 1974. There are also severely discriminatory by-laws, including those in the province of Aceh, which restrict women's human rights. The by-laws include strict imposition of dress code, restriction of freedom of movement, and severe punishments of alleged immoral relationships that result in gender-based violence. In many countries, domestic workers, migrant workers, workers in the informal sector, LGBT people and refugees are not protected under the law.<sup>34</sup>

All of the countries have equality provisions within various laws pertaining to education, employment, land rights, political participation and other related legislation on women's human rights. However, the CEDAW Committee recommends that each State party focus on the implementation of existing laws and policies by: setting clearly defined and time-bound targets; systematically collecting and analysing data; monitoring impact, trends over time and progress towards realizing goals and results achieved; and allocating sufficient human and financial resources for the effective enforcement of existing laws.<sup>35</sup>

The Philippine government took 29 years for it to fulfil its obligation to provide an adequate legal framework for women's equality directly based on international human rights law as prescribed under CEDAW. Republic Act (RA) 9710, or the Magna Carta of Women Act of 2009, provides a comprehensive guarantee of women's human rights including women's access to comprehensive health services, health information and education covering all stages of a woman's life cycle, including access to maternal care and responsible, ethical, legal, safe and effective methods of family planning.

It is too early to assess the effect of this law on women, but the Supreme Court of the Philippines will have the opportunity to decide on the enforceability of women's human rights guaranteed under this law. There is a pending case before the court regarding the constitutionality of RA 10354, the Responsible Parenthood and Reproductive Health Act of 2012, which provides for women's universal access to contraception, fertility control, sexual education, and maternal care. The court suspended implementation of this law shortly after its passage to hear arguments and decide on its constitutionality.

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34. Ibid.

35. CEDAW Concluding Observations for Viet Nam quoted in the Presentation of Shanthi Dairiam, , 4 September 2013

# 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.<sup>36</sup>

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.<sup>37</sup> 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 Laws<sup>38</sup>

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

Simplification as an agenda of dominant meta-narratives also conflates tradition and religion with violations of women's human rights and freedoms. It is too simplistic to treat tradition and religion as inherently against the advancement of women. It is also as simplistic to say that the secular State is as modern and rational as it appears. Both are political and cultural forums subject to contestations. Political struggles have been played out in these platforms resulting in laws and the inherent ambiguity of the legal text. The judiciary participates in these contestations when it determines what is factually relevant when engaging the ambiguity of legal words or terms.

Therefore, in our interpretation of laws, we must always keep in mind that even the most dominant of narratives or stereotypes within our societies will not result in their pure monolithic position in our legal orders. Fundamental values are also found with equal priority now in our legal orders. For instance, the Philippine Constitution provides for equal protection before the law and ensures the fundamental equality of women and men. Similar provisions are contained in international conventions to which the Philippines are a signatory such as CEDAW. But in spite of such provisions in laws and covenants, women's human rights continue to be curtailed.

The case pending before the Philippine Supreme Court regarding the constitutionality of the Responsible Parenthood and Reproductive Health Act of 2012 is portrayed as a battle royale between Church and State. Those who seek to nullify the law are portrayed as either morally upright in protecting the right of the unborn or irrational sticklers to dogma who defend the unborn at the expense of women's right to health. As for those who defend the law, they are either the champion of women's rights or the agents of death. A meta-narrative that simplifies identities and provides dichotomies would also force us to choose between these rights. From the judicial perspective, when we simplify, we play into the hand of the politically dominant. This is unacceptable.

The advancement of one right over the other or the interest of one group over the other may settle a dispute, but it will not advance the public interest. It may settle the case, but will not result in more meaningful freedoms or true equality before the law. The law, like tradition or religion, becomes dogmatic when it is applied and interpreted from a single point of view. Law turns into dogma when it is interpreted according to universal or absolute pronouncements or the belief that cultures, identities and rules are static or ought to remain so.

Our cultures and identities are products of human interactions. Cultures intermingle, viewpoints are dynamic. They change because our understanding and interpretation of reality changes too. The law must be interpreted so that it keeps pace with the manifold experiences of realities that take place in the everyday realm of human interactions. In this light, the following considerations allow for better nuance and interpretation of laws:

1. Generally, courts must take great care not to arbitrarily alter the plain text of the law. Judges must be sensitive to the political inroads that progressive movements have made and understand how the text accommodates such realities;
2. The authoritativeness of legal texts is no excuse to provide an unworkable result. Texts may be authoritative, but the judges' reading of it may not be exhaustive of the entirety of meaning. To read is to deploy experience and culture. It is also to advance the purposes of many of our human rights. The role of the judiciary is to identify the critical values that are embedded in our laws. It is the judiciary's role to articulate the fundamental framework of order and values that should inform political debate;

3. Where there is ambiguity or doubt, the law should be interpreted according to the following:
  - » the intent of its makers in the light of the history of their times and the conditions and circumstances of its enactment;
  - » tempered with the court's full understanding of the goal to be accomplished by the law, judges should be aware of the law's language and purposes as well as their own interpretations. Judges should be fully aware of the consequences of their interpretations. The judiciary has the duty to read the authoritative text, for example of the Constitution, in a manner that remains true to its text while at the same time giving full effect to all the values and principles enshrined in it;
  - » it is not helpful to consider a case as though the positions of the litigants are only about the essential conflicts between secular rights v. religious beliefs or the rights of women v. the right to free exercise of one's belief. Instead, the judiciary must adopt a way of considering a case that is less dogmatic and open to interpretations to liberate. Judges must be careful that their constructions do not contribute to the reification of a patriarchal culture;
  - » Members of the judiciary have a role to play in ensuring that cultural structures that are more affirming of human dignity evolve. But the public's role in shaping the cases that define the laws are also as critical as many of our courts are passive institutions.

## Reconciling the Competing Jurisdictions of Civil Courts and Syariah Courts

In a country of such diverse ethnicities such as Malaysia, the issue of culture or religion clashing with claims of women's human rights has become one of the controversies brought before the courts for resolution. In the case of *Indira Gandhi v. Mohd Riduan Abdullah et. al* (Judicial Review No. 25-10-2009), the father, Mohd Riduan Abdullah, converted his three minor children of a civil marriage to Islam without their mother's consent. When informed that the Syariah High Court had deprived her of the custody of her three children Indira, a non-Muslim, filed to challenge the constitutionality and validity of her children's conversion to Islam without her consent.

The petitioner and defendant in this case belong to two different religions; the petitioner is a non-Muslim and the defendant is a Muslim convert. Therefore, the court had to resolve which court – whether the Syariah High Court or the Civil Superior Court – should have jurisdiction over the case. In upholding the Civil Court's jurisdiction, the Judicial Commissioner explained that the applicant was challenging the constitutionality of the respondents' acts in converting her children to Islam without her consent. She was asserting her rights under the Federal Constitution as well as under the Guardianship of Infants Act 1961.

Because dual legal systems are in force in Malaysia, there are many cases of competing jurisdictions between Civil Courts and Syariah Courts. A single case might even involve several issues that neither court could have full jurisdiction over. To resolve this, the court directed that if in a case before the Syariah Court a civil law issue arises, the party raising the issue should file a case in the Civil Court solely for the determination of that issue and the Civil Court's decision should be applied by the Syariah Court in the determination of the case, or vice versa.

Moreover, the court explained that Syariah Courts do not have any jurisdiction over a case if one of the parties is a non-Muslim, even if the subject matter falls within its jurisdiction. In other words, non-Muslims cannot come under the jurisdiction of the Syariah Courts and its orders cannot bind non-Muslims. Not only does the subject matter of a case determine which court assumes jurisdiction, but the parties must also come within the purview of Syariah Courts for such courts to preside over a case.

## Upholding Freedom of Religion and Equality before the Law

In granting the non-converting parent's petition to nullify her minor children's conversion to Islam without her consent, the court in the case of *Indira Gandhi v. Mohd Riduan Abdullah et. al* invoked Article 8 of the Federal Constitution of Malaysia. Article 8 states that "all persons are equal before the law and entitled to the equal protection of the law." There shall be no discrimination in law against citizens on the ground of religion, race, gender or any other status. The court upheld that a father converting his minor children to Islam without the consent of the mother violated her right to equal protection before the law on the grounds of religion and gender.

The court further ruled that Article 11 of the Federal Constitution guarantees every person the right to profess and practise his or her religion. In this case, the court emphasised that a parent of a new found faith must not exercise it in such a way as to deny the rights of the other parent to practise her faith and to deprive that other parent of her religious freedom as well.

According to the court, Article 3 (1) of the Federal Constitution proclaims that Islam is the religion of the Federation, but it does not prohibit the practice of other faiths. The court cited that in the deliberations of the constitutional commission, "there was universal agreement that if any such provision were inserted (to the effect that Islam should be the State religion) it must be made clear that it would not affect the civil rights of non-Muslims."

The court also reasoned that the UN Convention on the Rights of the Child (CRC) and CEDAW, which were acceded to by Malaysia, are "highly persuasive" and should guide the interpretation of the fundamental rights enshrined in the Federal Constitution. In particular, according to the court, Article 16(1) of CEDAW guarantees women's equal rights in marriage and family life. When Malaysia reported before the CEDAW Committee in 2006, the Court cited the following relevant excerpt of the Concluding Comments:

The Committee is concerned about the existence of the dual legal system of civil law and multiple versions of Syariah law, which results in continuing discrimination against women, particularly in the field of marriage and family relations.... The Committee is further concerned about the lack of clarity in the legal system, particularly as to whether Civil or Syariah law applies to marriages of non-Muslim women whose husbands convert to Islam.

The CEDAW Committee recommended that Malaysia undertake a process of law reform to remove inconsistencies between civil law and *Syariah* law and ensure that any conflict of law regarding women's rights to equality and non-discrimination is resolved in full compliance with its Constitution, CEDAW, and particularly General Recommendation 21 on equality in marriage and family relations.

### 'Sisters in Islam' book is not 'Prejudicial to Public Order'<sup>39</sup>

On 31 July 2008, *Muslim Women and the Challenge of Islamic Extremism*, a publication released by Sisters in Islam in Malaysia, was banned on the basis that the book was "prejudicial to public order." Under the Printing Presses and Publications Act (1984) the Home Minister is vested with absolute discretion to prohibit either absolutely or in part or subject to conditions, a publication if he is satisfied that any part of it is "in any manner prejudicial to or likely to be prejudicial to public order, morality, security." According to the Minister, the contents of the publication tarnished the purity of Islam and caused suspicion and public anxiety. (Dato' Seri Syed Hamin Bin et. al v. Sisters in Islam (2012))

On 15 December 2008, Sisters in Islam filed for judicial review before the High Court to lift the Prohibition Order banning the book. The High Court quashed the Home Ministry's order. An application by the Home Affairs' Ministry to reinstate the ban was rejected by the Court of Appeal on 27 July 2012 upholding the High Court's decision. The Appeal Court said:

The then Home Minister, Datuk Seri Syed Hamid Albar, had taken an "over simplistic" position when he equated the banning of the book by the Islamic Development Department of Malaysia (JAKIM) as being a threat to public order. To be satisfied that the book was prejudicial to public order in the face of the fact there was no prejudice to public order in the two years the book was in circulation, is in such outrageous defiance of logic that it falls squarely within the meaning of *Wednesbury* unreasonableness, and of irrationality.

The Court in the case did not discuss any questions pertaining to either the exercise of the freedom of religion or the freedom of expression that might underpin the controversy regarding the banning of the book. While according to JAKIM, the publication was prohibited because of its tendency to confuse Muslims, particularly Muslim women or "those with shallow knowledge of the religion," the Court stressed that these concerns do not relate directly to any claim that the release of the book is prejudicial to public order. The fact that no public uproar or disruption occurred during the time the book was in circulation for two years was sufficient grounds to nullify the Prohibition Order issued by the Home Minister.

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39. Based on the Presentation of Ratna Osman, Director, Sisters in Islam, Malaysia, 4 September 2013

## Changing Tradition and Women's Right to Equality in Marriage and Family Relations<sup>40</sup>

As mentioned, '*chhab srei*' is a code of conduct, which outlines the behaviour expected of Cambodian women in society. It includes a set of rules addressed to unmarried women to please their future husband, and once married, they are expected to fulfil their husband's desires. *Chhab srei* is transmitted from generation to generation for centuries and has been taught in schools until 2007. It has permeated the cultural mindset of the populace and influenced the interpretation of existing laws on gender equality to the disadvantage of women.

Aside from culture, the Buddhist religion also heavily influences the prevailing practices on marriage and family relations. Arranged marriage has survived as a tradition that honours the obligation of parents to marry off their children to good families to preserve their pride and honour. Divorce is also considered a 'shameful affair,' especially for women, so it is discouraged. Rather than divorce, women are pressured to reconcile with their spouse or partner even in cases of spousal abuse. These gender discriminatory practices prevail in spite of provisions in the Cambodian Constitution that men and women are equal in all ways, especially regarding marriage and family matters.

Changes in culture, which are also reflected in changes in the law, are evident in a recent case regarding the wife's right to the conjugal home. Marina and Dara entered into a marriage arranged by their parents in a traditional ceremony in 2000. When Dara died, Marina lost her right to claim as Dara's lawful heir since their marriage was not registered. At most, she was allowed to stay in the conjugal house because she cohabited with the deceased for over 10 years and presumed to have been married to him. While she remained unemployed during the marriage, her contributions as housewife were considered equal in value to employment outside the home as decreed under the Cambodian Civil Code and the Cambodian Constitution.

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40. Presentation of Vichuta Ly, Director, Legal Support for Children and Women (LSCW), Cambodia, 4 September 2013

## Specific Cases and Approaches in Advancing Women's Access to Justice

Countries in SEA are beginning to develop a growing collection of innovative approaches to advance women's human rights. Through landmark litigation, including a case submitted before the CEDAW Committee through the Optional Protocol, new standards and practice are evolving in the region as several countries aim to enforce CEDAW through the courts and ensure women's access to justice. Detailed below are current cases and approaches that illustrate the various ways of harnessing the judiciary to address different manifestations of gender discrimination and violations of women's human rights in both public and private spheres.

### Legal Breakthroughs for Victims of Violence against Women<sup>41</sup>

Based on the records of Komnas Perempuan (National Commission on Violence against Women) in Indonesia, there were 216,156 cases of violence against women in 2012. About 66% of the cases occurred in the private sphere, an increase of about 5% compared to the number of cases in 2011. Sexual violence constitutes the highest number of incidents. Komnas Perempuan also recorded an increasing number of discriminatory practices in the name of morality that target women, from 282 cases in 2011 to 432 cases in 2012. Among the cases of violence against women reported, 102 of the complaints involved public officials as perpetrators.

In Komnas Perempuan's assessment, law enforcement officers treat domestic violence like any crime. They focus on procedural examination, which eventually lead to lenient sanctions and a lack of reparation and recovery for women victims. Generally the testimonies of husbands are given more weight and the circumstances of women victims are not taken into consideration, which can result in the re-victimization of women victims if they are charged as defendants rather than complainants. For example, if the wife reports her husband for abuse, the husband's testimony that he was the victim can be admitted and a countersuit can be filed against the wife.

In such cases of reciprocal complaints, Komnas Perempuan observed that the court tends to weigh the cases against each other rather than decide on the merits of each case. In one case, the High Court acquitted the woman victim who was counter-charged by her husband as the perpetrator of violence. The court dismissed the case against the wife based on a stereotypical notion that a wife is submissive and obedient to her husband so she could not have committed the crime. While she was acquitted, the verdict reinforced gender stereotypes about women and disregarded the evidence of domestic violence committed by the husband.

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41. Presentation of Sri Nurherwati, Commissioner, Komnas Perempuan, Indonesia, 4 September 2013

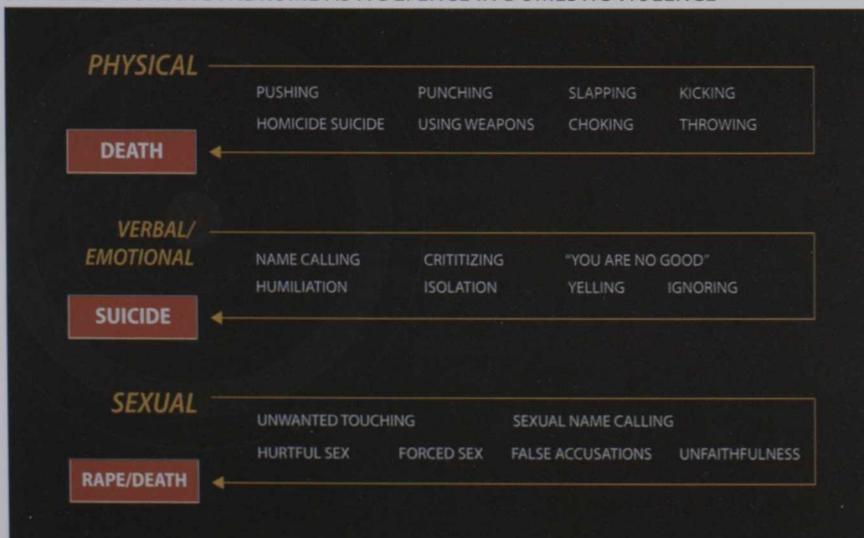
Many cases of domestic violence are often hidden behind divorce proceedings. This is indicated by data Komnas Perempuan collected from the Syariah courts, which recorded 203,507 certificates of divorce issued in 2012. The causes of divorce included incidents of domestic violence that were not prosecuted before criminal courts. For example, while polygamy is punished under the Indonesian Penal Code, it is not prosecuted by the Syariah courts if the husband is a Muslim. The cancellation of the husband's second and succeeding marriages is also rejected by a judge as it is not considered contrary to Syariah laws. Absent efforts to reconcile the parallel legal systems, Muslim women who are victims of domestic violence remain at a disadvantage.

Since the Indonesian government ratified CEDAW on 24 July 1984, Parliament passed Act No. 23/2004 on the Elimination of Domestic Violence (PKDRT), which has been the cornerstone of law reforms on women's human rights in the country. The law contains critical provisions for the protection of women including recognition of physical as well as non-physical violence, such as psychological and economic threats. Marital rape is also acknowledged as a crime. PKDRT has provided an impetus for other important initiatives to reform the legal system and better enforce state obligations under CEDAW.

Komnas Perempuan, the Supreme Court, the Attorney General's Office, the police, the Ministry of Women's Empowerment and Child Protection and the Association of Indonesian Advocates entered into a Joint Agreement on Access to Justice for Women Victims of Violence in November 2011. Under this agreement, the Supreme Court organised a training in 2013 to improve the gender sensitivity of judges and increase their understanding of violence against women. The initial training was for 40 teaching hours, but there are on-going discussions for the Supreme Court to adopt it as a regular program.

Since 2012, Komnas Perempuan has been developing the concept of a Special Court as an alternative to the conflicting jurisdictions of civil and criminal courts and the Syariah courts in the country. In July 2013, Komnas Perempuan held a dialogue with the Chief Justice of the Supreme Court and submitted a proposal for the creation of such an alternative court. The Chief Justice received a proposal that one judge be appointed in criminal and divorce proceedings filed by one complainant, such as in a case of domestic violence. Currently, the proposal is being studied prior to adoption.

BATTERED WOMAN SYNDROME AS A DEFENCE IN DOMESTIC VIOLENCE<sup>42</sup>



42. Presentation of Adoracion Cruz Avisado, former Judge and Director of Transformative Justice Institute, Philippines 4 September 2013

Republic Act 9262 or the Anti-Violence against Women and their Children Act was enacted in 2004 in compliance with the commitments of the Philippines under CEDAW and the CRC. Section 3 of the Act defines 'battered woman syndrome' as a scientifically defined pattern of psychological and behavioural symptoms found in women living in battered relationships as a result of cumulative abuse. It is not a case of insanity, but a form of post-traumatic stress disorder (PTSD).

Section 26 of the Act provides that victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements of self-defence as a justifying circumstance under the Philippine Revised Penal Code. But in order to invoke it as a defence, the couple must go through the battering cycle at least twice. This cycle of violence consists of three phases that are repeated over time:

FIRST PHASE: TENSION-BUILDING	SECOND PHASE: ACUTE BATTERING	THIRD PHASE: TEMPORARY TRANQUILITY
<ul style="list-style-type: none"> <li>• consists of minor battering</li> <li>• woman suffers from minor abuses, which she tolerates</li> <li>• pacification of batterer through kind and nurturing behaviour</li> <li>• the woman stays out of the batterer's way to prevent the escalation of violence</li> <li>• the woman harbours the belief that the man has the right to abuse her</li> </ul>	<ul style="list-style-type: none"> <li>• characterised by brutality and destructiveness by the batterer</li> <li>• the woman has no control,</li> <li>• only the batterer may put an end to the violence</li> </ul>	<ul style="list-style-type: none"> <li>• begins when the acute battering incident ends</li> <li>• the batterer becomes conscious of his cruelty and tries to compensate by asking for the woman's forgiveness or showing tender and loving behaviour</li> <li>• the battered woman falsely convinces herself that the battery will never happen again</li> </ul>

In the case of *People v. Marivic Genosa* (G.R. No.13598, January 15, 2004), the Philippine Supreme Court, for the first time, elucidated on the concept of the battered woman syndrome. In this case, a woman shot and killed her husband because her husband was beating her. The woman raised the defence of battered woman syndrome, but it was treated merely as a mitigating circumstance. A dissenting opinion stated that it should have been considered as justifying circumstance, exculpating the complainant of any criminal or civil liability.

## Protection of Women's Human Rights in Judicial Processes<sup>43</sup>

Following Thailand's accession to CEDAW in 1985, legal reforms have been instituted over the years to comply with its commitments under the Convention. Specifically, several amendments in criminal procedure were introduced to ensure a women and child-friendly legal process, particularly for victims of violence. At the core of these reforms is a "multi-disciplinary approach" that involves a team of judges, public prosecutors, lawyers, social workers and psychologists, who work together to deliver a coordinated response in the best interests of the victim-survivors. Several new procedures were introduced in the investigation and prosecution of cases in order to guarantee the rights of women and children. A victim-survivor who is not over 18 years old may request to be accompanied by a psychologist or social worker and a lawyer during the police or public prosecutor's investigation. Regardless of age, a victim-survivor in domestic violence cases must be accompanied by a psychologist, social worker or a trusted person of her own choosing during the investigation of the case.

As a pilot project, psycho-social counselling services for survivors of domestic violence were also provided by medical or court clinics in the Thonburi Criminal Court. Following the successful implementation of this project, it has been replicated in the Nontaburi Provincial Court and District Court as well as in the Chiang Mai Criminal Court.

In trials before Juvenile and Family Courts, the new rules on criminal procedure now allow a victim-survivor to give testimony through a psychologist or social worker to avoid confrontation with the defendant. For children, the court may allow the use of closed circuit television. Intended to prevent re-traumatisation of victim-survivors, the complainants or witnesses may use these procedures at any time during the trial, including during cross-examination.

In cases of sexual abuse, new rules on evidence now prohibit the courts to hear the presentation of any evidence that relates to the sexual behaviour of the complainant with other people, except with the defendant, unless deemed necessary. This new rule has been adopted to change existing practice in the prosecution of sexual offences wherein the character or sexual history of the complainant was allowed to be presented as evidence and considered relevant in determining the commission of a sexual crime.

In cases of domestic violence, such as when a wife kills her husband as a result of spousal abuse, the courts in Thailand have also admitted the battered wife syndrome as a defence. However, the courts do not consider it as a justifying circumstance that exempts the wife from any criminal or civil liability. Rather, this defence is only taken into account to come up with alternative sentencing of the accused spouse, such as probation or suspension of punishment. Since the admissibility of battered wife syndrome is not decreed in any law, its application is also dependent on the individual discretion of any judge.

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43. Presentation of Justice Vacharin Patjekinvinyusakul, Presiding Judge of the Supreme Court, Thailand, 4 September 2013

## Applying CEDAW to Address Discrimination in the Workplace<sup>44</sup>

The plaintiff applied for a position as a temporary teacher or *Guru Sandaran Tidak Terlatih* (GSTT) with the Education Office of the Hulu Langat District (PP DHL). After completing the interview, the plaintiff was given a Placement Memo on 12 January 2009, signifying that she was accepted for the position. However, when a PP DHL officer subsequently learned of her pregnancy, the Placement Memo was withdrawn. The main issue in this case was whether refusing the employment of a pregnant woman was gender discrimination, in violation of Article 8(2) of the federal constitution of Malaysia.

The court explained that the word 'gender' was incorporated into Article 8(2) of the federal constitution precisely to comply with Malaysia's obligation to CEDAW. Hence, in interpreting this constitutional provision, it is "the court's duty to take into account the government's commitment and obligation" under CEDAW. According to the court, Articles 1 and 11 of the Convention, which prohibit employment discrimination against women, were applicable in this case. Withdrawing employment on the ground that the plaintiff is pregnant is a form of gender discrimination. Hence, the act is unconstitutional, unlawful and void.

The court held that discrimination on the basis of pregnancy is a form of gender discrimination because of the basic biological fact that only women have the capacity to become pregnant. To uphold the principle of gender equality codified in both the national constitution and CEDAW, the court stated that the plaintiff should have been entitled to be employed as a GSTT even if she was pregnant. As discussed previously, the court also ruled that there is no impediment for the court to refer to CEDAW in interpreting the Constitution since it is a treaty in force, to which Malaysia is a State party.

## CEDAW Optional Protocol: Addressing Gender Stereotyping in Rape Trials<sup>45</sup>

In the case of *Karen T. Vertido v. Philippines*, the plaintiff, a 42-year-old woman who was the executive director of a local chamber of commerce filed a complaint for rape against a 60-year-old businessman who was a former president of the chamber. He offered to bring the complainant home after an official function of the chamber. En route to the complainant's house, the accused drove to a motel and raped her. The complainant tried to escape; she even hid in a bathroom, pleaded with the accused, physically struggled, dissociated, and lost consciousness.

The crime was committed in 29 May 1996 and reached the court in November 1997. After eight years of litigation, a female judge – the last of four judges that heard the case – rendered a decision of acquittal in 2005. The decision of acquittal is final and bars any appeal because of the doctrine of double jeopardy. A Communication regarding the case was filed before the CEDAW Committee under the Optional Protocol, to which the Philippines is also a State party. The CEDAW Committee released its views on 1 September 2010.

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44. Presentation of Edmund Bon, Legal Counsel in the case of *Noorfadilla Ahmed Saikin v. Chayed Bin Basirun, et. al*, 5 September 2013

45. Presentation of Evalyn Ursua, Legal Counsel in the case of *Vertido v. Philippines*, 5 September 2013

In the submission before the CEDAW Committee, the complainant stated that the decision was discriminatory as defined in Article 1 of the Convention in relation to General Recommendation No. 19 on Violence against Women. According to the complainant, the ruling violated the positive obligations of the Philippines as a State party under Article 2 (c), (d) and (f) of the Convention to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions, including national tribunals, act in conformity with this obligation.

The complainant also argued that the decision was rendered in bad faith and without basis in law and in fact, which caused her great injury. It relied upon gender-based myths and misconceptions about rape and rape victims and violated her rights to a fair, impartial and competent tribunal:

When the rules on criminal procedure speak of proof beyond reasonable doubt as a requirement for conviction, it presupposes a fair, impartial and competent tribunal. A decision that is based on gender-based myths and misconceptions or one rendered in bad faith could hardly be considered as one rendered by a 'fair, impartial and competent tribunal'.

The following gender-based myths and stereotypes, without which the accused would have been convicted, were pointed out in the complainant's submission to the CEDAW Committee:

- **rape charges can be made easily** - Without citing statistics or empirical data, the Supreme Court established in a long line of cases a guiding principle that "unfounded charges of rape have frequently been proffered by women actuated by some sinister, ulterior or undisclosed motive." *People vs. Salarza* (1997);
- **a rape victim must try to escape at every opportunity** - When the judge ignored the evidence of the complainant's struggles to escape, the judge, in effect, blamed the complainant for employing ineffective means and failing to avoid the rape. "The responsibility for the sexual assault is laid at the door of the victim for not detecting and preventing it from happening, and not upon the felon who schemed and caused the event to happen." (Philippine Supreme Court Associate Justice Florenz Regalado in his dissenting opinion in *People v. Salarza*: 1997);
- **to be raped by means of intimidation, the victim must be timid or easily cowed** - By negating the rape of the complainant who, as admitted by the judge, was not a timid woman because "she had the courage to resist the advances of the accused," the court perpetuates a stereotype of a rape victim and suggests that the law protect only those who conform to this stereotype. The self-assured, sophisticated, educated, urbanite, among others, are immediately disadvantaged;
- **to be raped by means of threat, there must be a clear evidence of direct threat** - The court posited that there was no evidence of a gun or a direct threat to the complainant. Rather, the accused is "a Lothario, a dirty old man trying to seduce her with offers of material gain and placate her with promises that he would take care of her." The court ignored evidence presented of the complainant's struggle, including testimonies of three psychiatrists on rape trauma and the psycho-social consequences of rape;

- **if the accused was able to proceed to ejaculation, then the rape victim did not resist the sexual act and it is unbelievable for a man in his sixties to commit rape**  
- According to the court, if the private complainant is to be believed, even with such resistance and pain as she implied by her testimony, the accused was still able to proceed to the point of ejaculation. "Considering that the accused in this case is already in his sixties, the implied sexual prowess necessary to achieve what the private complainant claims happened is simply unbelievable."

The CEDAW Committee in its Views and Recommendations stated that the Philippines as a State party is responsible for judicial decisions that violate its Convention. It is obliged to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women under Article 2 (c) and (f) and Article 5 (a) read in conjunction with Article 1 of CEDAW and General Recommendation No. 19. It is directed to pay the complainant appropriate compensation commensurate with the gravity of the violations of her rights.

#### **The CEDAW Committee, explained in detail:**

The guiding principle used by the courts that an accusation for rape can be made with facility' reveals in itself a gender bias.... Stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.

Rape constitutes a violation of women's right to personal security and bodily integrity, and its essential element is lack of consent.... In this regard, the Committee stresses that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.

The CEDAW Committee advised that the definition of rape in the Philippine Penal Code should be amended to include lack of consent as an essential element of the crime. It recommended appropriate and regular training on CEDAW, its Optional Protocol, and general recommendations, in particular General Recommendation No. 19, for judges, lawyers and law enforcement personnel. The training should include an understanding of crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid re-victimization of complainants and to ensure that personal mores and values do not affect decision-making.

# Enhancing Training on Women's Human Rights for the Judiciary

Awareness raising and capacity development of officials in all administrative branches of justice and law enforcement remains essential to ensure the engendering of legal systems and allow women better access to justice. Many training programmes specifically for members of the judiciary have been introduced in different SEA countries. Below are a few examples of the training methodology and curriculum designed for judges and implemented through various judicial training institutes.

## Experiential Learning as a Training Methodology<sup>46</sup>

In conducting training for judges, the National Judicial Institute of Canada adopts experiential learning as a training methodology. It is a skills-based approach that connects judicial education to actual tasks judges have to perform. In this approach, learners are given a chance to acquire and apply knowledge and skills in an immediate and relevant setting. Learning is achieved by designing the training based on the follow key adult learning principles:

- connect learning to learners' experiences - Learning takes place when connections are made with past experiences or linked to what judges have done or if they find the new knowledge and skills to be relevant in their work;
- use learners' experiences as resources - Adults learn best when their experiences are valued, so the training should create opportunities for judges to share experiences and learn from each other;
- contextualize learning experiences - Introduce activities, for example, role playing courtroom scenes or giving judgments that are as close to judges' realities as possible.
- integrate various perspectives in the learning activities - Encourage judges as learners to be critical thinkers and allow sufficient space for them to explore and progress at their own level.

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46. Presentation of Judge Adele Kent, National Judicial Institute of Canada, Canada, 4 September 2013

The training should be designed to move around the experiential learning circle illustrated below:

MANDATORY TRAINING FOR JUDGES IN THE PHILIPPINES<sup>47</sup>



In the Philippines, the Philippine Judicial Academy conducts the training for judges and court personnel in the country. The trainings are mandatory pursuant to an Administrative Order issued by the Supreme Court Chief Justice directing all members of the judiciary to attend. A total of 80 training workshops are conducted per year, and the trainings are for 2-3 days consisting of different modules such as 'Gender Sensitivity and Its Relevance in the Courts' Decisions and Proceedings'.

The training also adopts an experiential learning approach and activities suited for adult learners are introduced such as role-playing, problem-solving exercises and an interactive critique by a panel of experts. The objectives of the training, which covers all four modes of the experiential learning circle, are:

- to enable participants to internalise the concept and issues of gender and development;
- to understand that women and men are different and have different needs;
- to identify best practices and any gaps where gender sensitivity is most wanting and apply the concepts, processes and competencies they have acquired to these situations;
- to learn and develop skills in handling cases involving women and children, whether as victims or alleged offenders, in a gender sensitive manner and thus contribute to a women and child-friendly court system;
- to continuously look for and adopt gender-sensitive behaviour and language in the performance of their tasks and lead by example as gender-sensitive persons.

47. Presentation of Adolfo S. Azcuna, Chancellor, Philippine Judicial Academy, Philippines, 5 September 2013

The training workshops cover different topics related to women's human rights such as:

- gender fair language;
- sexual harassment;
- CEDAW and the courts;
- an overview of women's rights;
- specific laws on women's human rights;
- gender sensitivity and ethical and legal writing;
- gender sensitive court interpretation.

Upon the request of participants, a session on how to cope with stress led by a psychiatrist has been included in the module. Recently, the Department of Foreign Affairs has communicated the recommendations of the CEDAW Committee in the Karen Vertido case that appropriate and regular training be conducted for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner. More sessions on CEDAW, in addition to 1.5 hours focused on the basic principles of the Convention, have been added to the training workshops.

## Making Criminal Courts Gender Sensitive in Thailand<sup>48</sup>

A partnership was established between the Rabibhadanasak Judicial Research Institute, the National Human Rights Commission of Thailand and Teeranat Kanjanauksorn Foundation to address the findings of a research on women's access to justice in Thailand that points to the male-centredness of the Thai judicial system. It aims to integrate the concept of 'substantive equality' enshrined in CEDAW to ensure that court proceedings take into account the different needs of women survivors and defendants because of their gender.

Meetings with the Office of the Judiciary and a core group of judges who were enthusiastic about the project were held to design a participatory capacity-building approach to train judges on the specific issues affecting women's human rights. As part of the design process, resource materials on applying CEDAW and developing gender-sensitive courts from other countries such as the Philippines were translated and disseminated among the core group involved in the project. Subsequently, the project was pilot tested in the Thonburi Criminal Court and Ratchadabhisek Criminal Court.

Designing the capacity building program for members of the judiciary was highly participatory. It involved judges, court personnel and civil society representatives. The intended participants were also consulted in the design process. Learning tools were included in the activities to encourage collective exchange of ideas and skills among the participants. As a result, individual and institutional changes have occurred, particularly in the Thonburi Criminal Court, such as:

- increased gender sensitivity of court personnel in different units;
- better court ruling for domestic violence cases, which have taken into consideration the different contexts of women as victims and offenders;

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48. Presentation of Naiyana Supapung, Director, Teeranat Kanjanauksorn Foundation, 5 September 2013

- a fear-free courtroom for women survivors;
- the establishment of a psycho-social counselling clinic in the court with the cooperation of the Ministry of Public Health.

There is room to further improve the gender-sensitive trainings for judges in Thailand. At present, trainings conducted by the Judicial Training Institute consist of about 80% lectures. Learning from the resource speakers, this could be improved with the introduction of other training methods. There is also resistance among judges to add more sessions on human rights. According to them, expertise on human rights lies with the National Commission on Human Rights and judges don't need to learn more about this subject matter. Some judges are also averse to the term 'gender-bias' as it is interpreted to mean compromising the principle of neutrality and impartiality of judges and tribunals.

In Indonesia, gender-sensitivity trainings for the judiciary have been conducted by several government agencies, national human rights institutions and civil society organizations. However, most of the trainings are reliant on international donors for funding. In early 2013, a gender sensitivity training for judges was organised by the Supreme Court pursuant to the Joint Agreement with Komnas Perempuan and other agencies on Access to Justice for Women Victims of Violence, but funding may not be available to make it into a regular program if the Supreme Court's budget is cut. Incorporating these trainings within the educational programs for prospective judges might be the only alternative to ensure funding.

## Concluding Recommendations

Judicial Declarations were developed following the conclusion of various Judicial Colloquiums. These include: the Bangalore Principles (1988); the Victoria Falls Declaration (1994); Hong Kong Conclusions (1996); Georgetown Recommendations (1997); Pacific Islands Judges Declaration (1997); and the Caribbean Conclusions (2011). Drafted and endorsed by judges, these Judicial Declarations contain the common commitments and aspirations of the participating judges. While not legal binding, these Judicial Declarations have played an important role in providing the judiciary with specific guidelines on different areas of law and judicial conduct. In particular, several of these Judicial Colloquiums have put forward strategies for action on the advancement of women's human rights and women's access to justice.

In the spirit of forging common understanding and collaborative efforts among members of the judiciary in SEA, Concluding Recommendations were drafted by the participants of the Judicial Colloquium. Based on an initial draft prepared by the organisers, the participants discussed the draft in small groups and at a plenary during the last day of the forum. It was also circulated to the participants prior to finalisation. The Concluding Recommendations reaffirm the judges' adherence to CEDAW, particularly the principles of state accountability, non-discrimination and equality in their legal system, and the significant and critical role of the judiciary in promoting gender equality and women's access to justice.

The Concluding Recommendations provide specific guidelines on the applicability of CEDAW and its principles to domestic judicial decision-making in the follow ways: as an interpretive guide; to resolve ambiguity; to fill gaps in domestic law; and to provide definitions, in particular definitions of concepts of equality and discrimination.

Among the strategies for action recommended is integrating into on-going judicial education programs training and continuing education for judges and judicial officers at all levels of the courts on CEDAW, its principles, and other relevant international human rights instruments and their application to all areas of law and procedure. Further, the trainings should focus on sexuality and sexual violence and include discussions on progressive gender-responsive interpretations of customary and religious norms to promote women's human rights. (See Annex 1, Concluding Recommendations, Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice in Bangkok, Thailand on 4-5 September 2013)

# Annex 1: Concluding Recommendations



## Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice

4th -5th September 2013 InterContinental Hotel, Bangkok, Thailand

### Background

1. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), in collaboration with the International Commission of Jurists (ICJ) and the Thailand Office of the Judiciary convened a judicial colloquium on 4-5 September 2013 with the following objectives:
  - a. to discuss developments in gender equality jurisprudence in relation to State obligations under the CEDAW, including challenges and successful cases
  - b. to discuss the role of the judiciary in promoting women's access to justice
  - c. to strengthen the understanding of CEDAW and its application in the context of culture and customary and traditional practices or religion among the judiciary in South East Asia.
2. The Colloquium brought together judges from all court levels, including the Supreme Courts, legal practitioners, government institutions, judicial educators, national human rights institutions and representatives from civil society organizations from Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Philippines, Thailand, Timor Leste, and Viet Nam.
3. The meeting noted participants come from countries in Southeast Asia (SEA) that are parties to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and that these States have committed to end discrimination in all forms against women, including through the incorporation of the principles of state accountability, non-discrimination and equality in their legal system.

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49. Only representatives from civil society in Malaysia participated in this judicial colloquium.

4. The participants accepted, as a common starting point, that their national constitutions also commit States to the fundamental principles of gender equality, the rule of law, independence of the judiciary and the promotion and protection of human rights.
5. The participants emphasized the significant and critical role of the judiciary in promoting gender equality and women's access to justice and the judiciary should take a leadership role for this purpose.
6. The participants agreed that gender bias can impede women's access to justice, particularly where judicial decision-making is based on stereotypical attitudes about the nature and roles of women and men. Thus they noted the need to deepen appreciation of gender socialization, unequal power relations, and gender expectations and how these shape the experience of the administration of justice and contribute to the differential access to justice.
7. The participants recognized that South East Asia is a culturally rich and diverse region with a plurality of justice systems, secular, customary and religious norms. They stressed the need to value cultures while at the same time emphasized that culture, customary rules, religion and traditional practices should not be invoked as justification for violations of the rights and freedoms of women.
8. The participants noted the uneven progress by States in the implementation of CEDAW obligations through domestic laws. Given that all SEA states have ratified CEDAW and bearing in mind the principle under the Vienna Convention on the Law of Treaties that State Parties are obliged to refrain from acts that would defeat the treaty's object and purpose, the participants agreed that judges must strive to interpret domestic law in consonance with CEDAW.
9. The participants emphasized the relevance of international human rights standards, and in particular those contained in CEDAW, to litigation, noting that in general there was no constitutional or legal barrier to referring or invoking international human rights treaties. Among other uses, these standards might in appropriate cases, be used in order to elucidate the meaning of constitutional guarantees.
10. The participants invited judges and legal practitioners from SEA to take into account women's differential experiences, perspectives and needs of women in jurisprudential development and in court processes. They noted judicial developments in certain countries on battered women's syndrome, reproductive and maternity rights, and for the establishment of gender-sensitive and responsive court processes.

## Recommendations

1. Encourage the establishment of gender equality committees within judiciaries where appropriate to monitor and support the application of gender equality principles, gender-sensitive procedures and gender-responsive practices within the judiciary.
2. Encourage the formation of a regional network of judges to promote continuing dialogue, knowledge and information sharing regarding the application of CEDAW and other international human rights treaties in judicial systems.

3. South East Asian judges should apply CEDAW and/or CEDAW obligations and Principles to domestic judicial decision making to combat and redress gender discrimination. CEDAW and its principles may be used in the following ways:
  - a. as an interpretive guide
  - b. to resolve ambiguity
  - c. to fill gaps in domestic law
  - d. as a source of definition in particular of concepts of equality and discrimination.
4. Initial training and continuing education for judges, judicial officers from all levels of the courts, and others tasked with the administration of justice, legal practitioners, using appropriate methodologies based on collective experiences of judges should be provided on CEDAW, its principles, and other relevant international human rights instruments and their application to all areas of law and procedure, and should be integrated into ongoing judicial education programs.
5. Judicial institutions should be encouraged to conduct gender training including with a focus on sexuality and sexual violence in close cooperation with civil society experts, including those working with survivors of gender-based violence and those affected by gender discrimination.
6. Judicial training programs should include progressive gender-responsive interpretations of customary and religious norms, where applicable, in close cooperation with civil society experts.
7. Dialogue should be promoted among judges, legal practitioners and legislators on the incorporation of CEDAW into national laws and their application to gender-based discrimination cases.
8. Encourage knowledge and information sharing, including through social media, on judicial decisions between judges among South East Asian countries on CEDAW and its implementation at the domestic level.
9. National and regional databases should be established on gender equality jurisprudence with translation into local languages as well as a common language where possible.
10. Amend and update or create relevant guidelines on judicial practices to ensure judicial processes protect the dignity and safety of complainants and witnesses including through non-intimidating and non-discriminatory courtroom management and use of appropriate technology to reduce secondary victimization especially in cases of sexual violence.
11. SEA judicial institutes should consult with each other on a periodic basis to exchange ideas for courses on gender training. National evidence-based research should be conducted to enhance a better understanding of judges to promote women's access to justice and gender equality.

# Annex 2: Concept Note

## Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice

4th -5th September 2013 InterContinental Hotel, Bangkok, Thailand

### 1. Background:

The Convention on the Elimination of Discrimination of All Forms of Discrimination against Women (CEDAW) is the most comprehensive international treaty for ensuring the rights of women. Often referred to as the international women's bill of rights, CEDAW has been ratified or acceded to by 187 countries to date.

The CEDAW provides a powerful framework and legal obligation for countries to move towards achieving gender equality. It obligates States Parties to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women. Implementation of the Convention by States Parties has been uneven however, and more effort is needed to ensure its principles are implemented at the national level. The judiciary is an important mechanism for ensuring CEDAW implementation, as judges have the opportunity to interpret and apply the provisions of the Convention in domestic court decisions, and thus send a powerful message to society that discrimination against women cannot be tolerated.

Unfortunately however, international human rights standards, including the CEDAW, are not sufficiently well known among many members of the judiciary. This is in part because lawyers and judges are not always adequately trained in international and regional human rights norms, and it is often difficult for them to access information or obtain advice about human rights jurisprudence. In addition to limited training and knowledge sharing opportunities, CEDAW implementation in the justice sector is also impeded by judicial decisions that are based on stereotypical notions about the nature and role of women, and by the view that human rights applies only to the public sphere, and not the private sphere - where women often experience violations. Moreover, in many countries, implementation of CEDAW principles may also be hindered by certain traditional or customary practices and cultural prejudices that violate women's human rights. Judges also frequently fail to recognize that equal treatment of persons in unequal situations may perpetuate rather than alleviate injustice. Often, formal equality rather than substantive equality is the focus of judicial decision making.

All ASEAN member states are States Parties to the CEDAW, thus it is important to ensure that judiciaries in the region respect the norms and standards stated within the Convention. In other words, judges should be guided by the CEDAW when interpreting and applying the provisions of the national constitutions and laws, including customary law. In order to do so, judges must familiarize themselves with the growing international jurisprudence of human rights and particularly with the expanding material on the protection and promotion of the human rights of women. The CEDAW Committee often recommends in Concluding Comments that State parties implement measures to create awareness about the Convention among judges and judicial personnel, so as to ensure that the spirit, objectives and provisions of the Convention are well known and used in judicial processes.

### UN WOMEN'S PROGRAMME

UN Women is implementing the Regional Programme on Improving Women's Human Rights in Southeast Asia (CEDAW SEAP) supported by the Foreign Affairs, Trade and Development, Canada (DFATD), covering eight countries - Cambodia, Indonesia, the Lao People's Democratic Republic (Lao PDR), Myanmar, the Philippines, Thailand, Timor-Leste and Viet Nam. One of the key focus areas of the Programme is enhancing women's access to justice through awareness raising and capacity development of government (executive, legislative and judiciary) as well as of civil society organizations.

UN Women has been working with the justice sector in participating countries to improve understanding of the CEDAW among judges and court personnel, and promote its use in courts. The Programme intends to enhance regional exchange and learning among judiciaries in Southeast Asia. This judicial colloquium shall be the first activity involving the justice sector in this phase of the programme.

## 2. Objectives of the Judicial Colloquium:

The objectives of the colloquium are:

- To promote the role of judges in the implementation of CEDAW
- To enhance awareness among judges of the barriers women face in accessing justice
- To provide a learning forum on gender equality jurisprudence and give judges an opportunity to take stock in developments and the evolving role of the law and judiciary in responding to gender inequality.
- To promote capacity building programmes for a gender responsive judiciary
- To create a space for judges in Southeast Asia to share knowledge, lessons learned, and positive examples of judicial strategies for promoting gender equality

## 3. Expected Results:

At the end of the judicial colloquium it is expected that the following will be achieved:

- Increased knowledge of use of international norms and standards for gender equality in judicial practices and decisions

- Enhanced dialogue and experience sharing among Southeast Asian judges and judicial training institutions in promoting gender equality
- Action plans proposed for capacity building at country and regional levels to promote women's access to justice and gender responsive judiciary

The long-term outcomes/impact of the judicial colloquium are:

- Increased number of court decisions refer to CEDAW
- Improved judicial procedures allowing women better access to justice
- More women attain justice through courts.
- As leaders in their communities, members of the judiciary will help shape social attitudes about gender equality by challenging discriminatory practices both inside the court and in society at large.

#### **4. Specific topics that will be discussed during the judicial colloquium are:**

- (a) Gender equality jurisprudence and the role of the judiciary in promoting women's access to justice;
- (b) How the judiciary may respond when culture, customary and traditional practices or religion are invoked as justification for violations of the fundamental rights and freedoms of women;
- (c) Domestic legislation and the CEDAW;
- (d) Judicial decisions addressing violations of women's human rights in the private sphere, applying CEDAW and other international human rights instruments;
- (e) Judicial decisions addressing violations of women's human rights in the public sphere, applying CEDAW and other international human rights instruments;
- (f) Enhancing training on women's human rights for the judiciary and court personnel; and
- (g) Advancing judicial awareness and education on women's human rights and access to justice.

#### **5. Participants:**

At least 40 participants have been invited to this judicial colloquium. There will be Supreme Court-level judges and representatives from judicial training institutions of the 8 participating countries (Indonesia, Philippines, Timor Leste, Thailand, Cambodia, Viet Nam, Lao PDR, and Myanmar). Judges from lower courts of the participating countries have also been invited, specifically those who have either rendered decisions applying or invoking CEDAW principles or those whose mandates include deciding cases that have a direct impact on women's human rights (e.g. judges from juvenile and family courts).

Legal experts from the national, regional, and international levels have also been invited to speak on specific topics and help enrich the discussions with their expertise on CEDAW and international law. Finally, representatives from civil society groups have also been invited, specifically those whose work entails litigation of cases directly related to women's human rights. These legal experts and representatives from civil society groups are also invited to share their perspectives on key considerations for the judiciary for each specific topic.

## **6. Dates and Location:**

4th -5th September 2013, in Bangkok, Thailand

## **7. Implementation Arrangement**

The regional colloquium is being organized by the UN Women's Regional Office for Asia and the Pacific, in collaboration with the Office of the Judiciary of Thailand, and the International Commission of Jurists (ICJ). The three parties collaboratively designed the programme and identified resource persons. UN Women is providing financial support for this arrangement, while the Office of the Judiciary of Thailand acts as the host government institution.

# Annex 3: Programme Agenda



## Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice

4-5 September 2013 InterContinental Hotel, Bangkok – Thailand

### FIRSTDAY, 4 SEPTEMBER 2014

8:00 – 8:30

**Registration**

8:30 – 10:00

**Welcome by the Chair** – Hon. Judge Wirat Chinwinigkul, Secretary-General of the Thai Office of the Judiciary

**Remarks** – Mr. Saman Zia-Zarifi, Regional Director for Asia and the Pacific, International Commission of Jurists (ICJ)

**Remarks** – Ms. Roberta Clarke, Regional Director of UN Women Regional Office for Asia and the Pacific

**Opening Note** – H.E. Mr Philip Calvert, Ambassador of Canada

**Group Photo**

10:00 - 11:15

**Session One – Introducing the issues: Gender equality jurisprudence and the role of the judiciary in promoting women's access to justice**

**Chair:** Justice Suntariya Muanpawong, Chief Judge of the Juvenile and Family Court of Nakhon Pathom Province

- **Overview of feminist legal theory and practice** – Prof. Virada Somswadi, Chiang Mai University (15 mins)
- **A general overview of barriers women face in accessing justice** – Ms. Shanthi Dairiam, Director, International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) (15 mins)
- **Manifestations of gender bias in the judiciary** – Judge Adele Kent, National Judicial Institute, Canada (15 mins)

**Discussion** (30 minutes)

11:15 – 11:30

**Refreshments**



11:30 – 13:15

**Session Two – How the judiciary may respond when culture, customary and traditional practices or religion are invoked as justification for violations of the fundamental rights and freedoms of women**

**Chair:** Judge Maria Natercia, Judge of the Court of Appeal, Timor-Leste

- **Key considerations for the judiciary:**  
Justice Marvic Leonen, Supreme Court of the Philippines (20 mins)
- **CSO Perspective:**  
Ms. Ratna Osman, Director, Sisters in Islam (SIS), Malaysia (15 mins)  
Ms. Vichuta Ly, Director, Legal Support for Children and Women, Cambodia (15 mins)

**Discussion** (40mins)

13:15 – 14:15

**Lunch**

14:15 – 15:30

**Session Three – Domestic legislation and the CEDAW**

**Chair:** Ms. Roberta Clarke, Regional Director, UN WOMEN Regional Office for Asia and the Pacific

- **Overview of status of implementation of CEDAW principles in Southeast Asia** – Ms. Shanthi Dairiam, Director, IRAW Asia Pacific (15 minutes)
- **The role of the judiciary in identifying gaps between domestic legislation and the CEDAW** – Ms. Imrana Jalal, Senior Social Development Specialist on Gender and Development (Asian Development Bank)/ ICJ Commissioner (15 minutes)

**Discussion** (45 mins)

15:30 – 15:45

**Refreshments**

15:45 – 17:20

**Session Four – Judicial decisions addressing violations of women's human rights in the private sphere, applying CEDAW and other international human rights instruments**

**Chair:** Ms. Imrana Jalal, Senior Social Development Specialist on Gender and Development (Asian Development Bank)/ ICJ Commissioner

- **Applying CEDAW in deciding cases of VAW/domestic violence** - Justice Vacharin Patjekvinyusakul, Presiding Judge of the Supreme Court, Thailand (20 minutes)
- **The legal and conceptual framework of 'battered woman syndrome' as a defense** – Judge Adoracion Cruz Avisado, Transformative Justice Institute, Philippines (20 mins)
- **Key considerations for the judiciary in cases of violations of women's human rights in the private sphere** – Ms. Sri Nurherwati, Commissioners, Komnas Perempuan, Indonesia (15 mins)

**Discussion** (40 minutes)

18:30 – 20:30

**Reception dinner**

SECOND DAY, 5 September 2013

8:30 – 9:00

Registration

9:00 – 10:15

**Session Five – Judicial decisions addressing violations of women's human rights in the public sphere, applying CEDAW and other international human rights instruments**

**Chair:** Ms. Imrana Jalal, Senior Social Development Specialist on Gender and Development (Asian Development Bank)/ ICJ Commissioner

- **Applying CEDAW in addressing workplace discrimination** – Mr. Edmund Bon, counsel for the petitioner in the case *Noorfadilla Ahmad Saikin v. Chayed Bin Basirun, et. Al.*, Malaysia (15 mins)
- **Gender stereotyping in rape trials** – Ms. Evalyn Ursua, counsel in the case *Vertido vs. The Philippines* (15 mins)

**Discussion** (45 mins)

10:15 – 10:30

Refreshments

10:30 – 12:00

**Session Six – Enhancing training on women's human rights for the judiciary and court personnel**

**Chair:** Prof. Virada Somswadi, Chiang Mai University

- **Existing programs in the following countries:**
  1. **Canada** – Judge Adele Kent, National Judicial Institute of Canada (15 mins)
  2. **Philippines** – Justice Adolfo S. Azcuna, Chancellor, Philippine Judicial Academy Associate Justice (Ret.), Supreme Court of the Philippines (15 mins)
  3. **Thailand** – Ms. Naiyana Supapung, Director of Teeranat Kanjanauksorn Foundation, Thailand (15 mins)

**Discussion** (45 minutes)

12:00 – 13:00

Lunch

13:00 – 14:30

**Small group discussion – Advancing judicial awareness and education on women's human rights and access to justice**

- **Small group discussion:** strategies and entry points for strengthening judicial awareness and education on women's human rights and access to justice.

**Guide questions for the small group discussion:**

1. *How is judicial sensitization/continuing education structured in your country?*
2. *Who are the key partners you have in judicial sensitization/continuing education? (Note: these partners may be CSOs – whether national or international or inter-governmental organizations such as UN Women, UNDP)*

3. *How could gender equality and women's access to justice be integrated into existing programmes that your judicial training institution is already implementing?*
4. *What are other strategies you suggest for reaching judges with ongoing judicial sensitization and education on gender equality and women's access to justice? (Note: these strategies may be more dialogues at the national level, online resources, networking among judges, etc.)*

**14:30 – 15:00**

**Refreshments**

**15:00 – 16:30**

**Reporting back and plenary – Advancing judicial awareness and education on women's human rights and access to justice**

**Chair:** Mr. Sam Zarifi, Regional Director for Asia and the Pacific, International Commission of Jurists (ICJ)

- Report back from groups and exchange in plenary

**Discussion**

**16:30 – 17:00**

**Wrap-up and Closing**

- Concluding remarks on behalf of the organisers:
  - » Office of the Thai Judiciary
  - » International Commission of Jurists (ICJ)
  - » UN Women



## Annex 4: Short Biographies

### Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice

4-5 September 2013 InterContinental Hotel, Bangkok – Thailand



**Philip Calvert, H.E. Mr.**

Ambassador Extraordinary and Plenipotentiary of Canada to the Kingdom of Thailand

Email: phil.calvert@international.gc.ca

Mr. Calvert (B.A. Honours, University of British Columbia, 1980; MA, York University, 1982; PHD, University of Washington, 1991) joined the Department of External Affairs in 1982. His first assignment was as Second Secretary in Beijing from 1984 to 1987. At Headquarters, he worked in the Trade Policy Competitiveness Division and the APEC Division, as Director for technical barriers and regulations and as Deputy Chief Negotiator for

Canada for China's accession in the World Trade Organization. Abroad, Mr. Calvert has served as both Counselor and Deputy Head of Mission in Beijing. Since 2008, Mr. Calvert has been Director General of the North Asia Bureau.



**Roberta Clarke, Ms.**

Regional Director of UN Women Regional Office for Asia and the Pacific and Representative in Thailand

Email: roberta.clarke@unwomen.org

Ms. Clarke was the Regional Programme Director of UN Women Caribbean. She is an Attorney-at-Law with Master's degrees in International Human Rights Law from the University of Oxford and Sociology from York University, Canada. She also holds B.A. Honours in Law and Arts from the University of the West Indies, Barbados. Prior to her career at the United Nations, she worked with the Economic Commission for Latin America and the Caribbean. Between 1992 and 1999, she practiced as a lawyer in Trinidad and Tobago.

Ms. Clarke has extensive experiences in civil society engagement at national, regional and international levels and currently sits on the Advisory Councils of Interights and the International Council for Human Rights Policy. She was a Board member of the Women, Law and Development International and the Trinidad and Tobago Family Planning Association.

She has written on violence against women in the Caribbean, human rights, law and development and gender mainstreaming and has strong interest in the area of responses to the needs and rights of women and girls in a concentrated HIV epidemic and of national prevention strategies targeting populations at higher risks.



**Deepa Bharathi, Ms.**

Regional Programme Manager, CEDAW Southeast Asia Programme  
UN Women Regional Office for Asia and the Pacific  
Email: [deepa.bharathi@unwomen.org](mailto:deepa.bharathi@unwomen.org)

Ms. Deepa, Regional Programme Manager, CEDAW Southeast Asia Programme. With her extensive experience and exposure to the region – she overlooks and manages the Regional Programme “Facilitating CEDAW Implementation towards the Realization of Women’ Human Rights in Southeast Asia (CEDAW SEAP.) Supported by the Department of Foreign Affairs, Trade and Development, Canada (DFATD), the programme covers eight countries including Cambodia, Indonesia, the Lao People’s Democratic Republic, Myanmar, the Philippines, Thailand, Timor-Leste and Viet Nam. The programme also supports the Human Rights bodies in ASEAN – the ASEAN Commission on the Protection and Promotion of the Rights of Women and Children (ACWC) and the ASEAN Inter- governmental Commission on Human Rights (AICHR). Prior to this, Ms. Deepa served as a Regional Programme Manager – Empowering Migrant Workers in Asia. The UN Women Regional Programme on Empowering Women Migrants Workers in Asia (EWMWA) is active across Bangladesh, Cambodia, India, Indonesia, Jordan, Lao PDR, Nepal, the Philippines, Thailand and Viet Nam. Ms. Deepa also headed the Committee for Asian Women (CAW) as a Programme Manager.

She has also written widely on Empowering Women Migrants Workers; some of her published papers are ‘Forced Migration, Forced Labour and Trafficking: Women’s Issues, Knowledge for Daily Living’, ‘Reclaiming Dignity, Struggles of Local Domestic Workers’. She received her Master of Science (M.Sc.) in Mathematical Statistics from Delhi University, India



**Saman Zia-Zarifi, Mr.**

Regional Director of International Commission of Jurists (ICJ)  
for Asia and the Pacific in Thailand  
Email: [sam.zarifi@icj.org](mailto:sam.zarifi@icj.org)

Mr. Zia-Zarifi served as Amnesty International’s Director for Asia and the Pacific from 2008 to 2012. He was at Human Rights Watch after 2000, where he was deputy director of the Asia division. He was Senior Research Fellow at Erasmus University Rotterdam, the Netherlands, from 1997 to 2000.

He has written widely on the impact of multinational corporations and economic globalization on human rights, including *Liability of Multinational Corporations for Violating International Law* (co-edited with Menno Kamminga, 2000). Saman practiced as a corporate litigator in Los Angeles after graduating from Cornell Law School in 1993. He was born and raised in Tehran, Iran, and received a BA from Cornell University in 1990 and an LL.M. in Public International Law from New York University School of Law in 1997.



**Emerlynne Gil, Ms.**

International Legal Adviser, International Commission of Jurists (ICJ) for Southeast Asia

Email: [emerlynne.gil@icj.org](mailto:emerlynne.gil@icj.org)

Prior to ICJ, Ms. Gil headed the Human Rights Defenders Department of the Asian Forum for Human Rights and Development (FORUM-ASIA) where she led advocacy initiatives at the regional and international levels for the implementation of standards under the UN Declaration on Human Rights Defenders.

Emerlynne served as a court attorney under Justice Adolfo S. Azcuna at the Supreme Court of the Philippines and also as a lecturer at the University of the Philippines' Department of English and Comparative Literature. She also worked as a corporate and labor litigation attorney at a law firm in Makati City, Philippines, immediately after receiving her law degree from the University of the Philippines College of Law in 2000. She received her LL.M. in International Human Rights Law from the University of Notre Dame Law School in South Bend, Indiana, in 2007 and her Bachelor of Arts degree in Comparative Literature from the University of the Philippines in 1996.



**Honourable Justice Wirat Chinwinigkul, Mr.**

Secretary General of the Office of the Judiciary  
Courts of Justice

Honourable Justice Wirat Chinwinigkul graduated from Thammasat University with the Bachelor's degree (Honour) in Law and the Thai Bar under the Royal Patronage. He also received the honorary Juris Doctor from Ramkhamhaeng University. He began his career as an Assistant Professor at the Faculty of Law, Ramkhamhaeng University. In 1981, he transferred to be a judge. As the judge, he held several key positions, such as Judge of the

Phuket Provincial Court and the Thon Buri Kwaeng Court, Chief Judge of the Songkhla Juvenile and Family Court and the Songkhla Provincial Court, Deputy Chief Justice, Region VIII and IX, Research Justice of the Juvenile and Family Division of the Supreme Court, Secretary of the Supreme Court, Research Justice of the Supreme Court, Justice of the Supreme Court and Secretary-General of the Office of the Judiciary.

During the period of his services in the courts until now as the executive of the Office of Judiciary, he has provided many important contributions in the protection of children, juveniles and family along with the rehabilitation and support for children and juveniles. He has emphasized the protection of people's rights and liberty with the awareness of human rights especially those relating to offenders who are children, juveniles, women and family members. He has continually cooperate and support various projects under initiatives of Her Royal Highness Princess Bajrakitiyabha in order to protect the rights of female detainees and women survivors of domestic violence, including other family members. On the coming date of October 1, B.E. 2556 (2013), Hon. Justice Wirat Chinwinigkul will be appointed as Vice President of the Supreme Court – a significant position to supervise trial and adjudication of the Supreme Court – in order to protect civil rights in proceedings, the rights of children, juveniles, women and those who suffer from domestic violence in particular.



**Justice Vacharin Patjekvinyusakul, Mr.**

President Judge of the Supreme Court of Thailand

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Justice Vacharin Patjekvinyusakul completed his Bachelor's and Master's degrees in Law and Political Sciences and Master's degree in Public Law from leading Universities in Thailand and also finished his Barrister at Law. He gained extensive experience from various courts from the first instance courts and the appealed courts dealing with juvenile and family cases and criminal cases. At present, he is the Presiding Judge of the Supreme Court of Thailand. He has established strong partnership with academic, civil society organizations, including national funding agencies and UN Women to implement various projects to promote and protect human rights-based justice delivery. He has been largely involved in drafting the rules of Court under the law on Juvenile and Family court, and drafting for the amendment of the anti-domestic violence law. He has also played key role as supervisor to the civil society's draft on Gender Equality Bill.

In 2009, As Chief Judge of the Thonburi Criminal Court, one of the three Criminal Courts in Bangkok, he was the pioneer in establishing the Women's Friendly Court. It includes training for judges and other court personnel, provision of safe space for women survivors during the trial, issuance of the procedural guidelines on witness investigation without confronting with the offender and the rules of Court to protect the survivor from repeated violence and rehabilitation of the perpetrator, and establishment of the counseling clinic for the survivors from domestic violence, sexual violence and drug abused before Court trial.



**Judge Suntariya Muanpawong, Dr. Jur.**

Chief Judge of the Juvenile and Family Court of

Nakhon Pathom Province

Email: suntariya@hotmail.com

Judge Suntariya Muanpawong holds a Bachelor's and Master's degree in Public Law from Thammasat University in Thailand and a Master's and Doctorate's degree in Public Law from University of Muenster, Germany. She started her career as a lawyer at Thammasat Law Clinic and as a legal officer at the Harbour Department. She has been a judge for 17 years, starting from a judge trainee and a judge at the Central Labour Court. At present, she is the Chief Judge of the Juvenile and Family Court of Nakhon Pathom Province. After returning from Germany, she worked at the Office of the Judiciary for many years, setting up the Prince Rabi Judicial Research Institute. She had conducted many research projects and academic activities among Thai judges and jurists.

Her main works and interest are human rights protection and justice reform. She has extensive experience working with civil societies and academics throughout the country. She was one of the Sub-Commissioners for drafting the Constitution of 2007. She has also worked with various international partners, such as the International Commission of Jurists, German and European foundations etc. Judge Suntariya has long been engaged in the Women Rights protection movement. She was a Commissioner at the parliament in drafting the new law on juvenile and family court and procedure, involved also with the drafting of the anti-domestic violence law.

She is a leading female judge who introduced the concept of "Gender Justice" to Thai jurist community. She was an editor of several books on women rights and was a guest lecturer at some universities and law academies. She has joined interesting activities with the UN Women and other women organizations for many years. She has had good cooperation with judges and lawyers among the ASEAN countries.



**Virada Somswadi, Asso. Prof.**

Commissioner, Law Reform Commission of Thailand

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Assoc. Prof. Virada Somswadi completed her Bachelor's degree of Laws from Chulalongkorn University in Thailand, and Master's degree of Laws from Cornell Law School, Cornell University, U.S.A. She established and was the founding director of the Women's Studies Program-now recognized as Women's Studies Center at Chiang Mai University, where Thailand first Women's Studies graduate program was launched in 2000. She is currently a member of the 11 member Law Reform Commission of Thailand, chairing the Specific Committee on Gender Equality She is a founding member of the front runner non-governmental regional organization, working for gender equality and justice-Asia Pacific Forum on Women, Law and Development (APWLD) which was established in 1986. She remains on APWLD governing board until to-date.

She has been steering women's organizations in the capacity as the President of Association of Women, Law and Development in Asia Pacific-the legal entity of the Asia Pacific Forum on Women, Law and Rural Development (APWLD) and the Foundation for Women, Law and Rural Development (FORWARD) both of which she established in 1998 and 2002 respectively. She has been invited to sit in the Board of Trustees of the Coalition Against Trafficking in Women Asia Pacific in 2006. She pushed for Thailand first Feminist Review-Stance, to be launched in 2007. Her advocacy in women's human rights, social and academic contribution has brought her many awards and recognition by national and international organizations such as 2007 'Women of Courage' Award from the United States of America Department of State and Outstanding Person Award for Promoting Women's Status and Gender Equality from Prime Minister of Thailand. She has authored and edited several books, journals, and presented paper related to feminist perspective, law, judiciary and practices



**Edmun Bon Tai Soon, Mr.**

UndiMsia! community mover, Malaysian Centre for Constitutionalism and Human Rights (MCCHR)

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Mr. Bon is a partner in the Criminal Law and Public Interest Litigation Department and specialises in criminal defence, constitutional and administrative law, and public interest litigation. He routinely advises and represents individuals, financial institutions and corporations in a wide variety of criminal cases including commercial crime cases and securities offences. Edmund has appeared as counsel in many leading and high-

profile Malaysian cases and is frequently consulted by private clients, the Malaysian Bar Council, public authorities and governmental bodies on legal issues and law reform. Most recently, he appeared as one of the counsel for the Malaysian Bar in the Royal Commission of Inquiry into the Death of Teoh Beng Hock. He was previously an elected member of the Malaysian Bar Council and chaired the Constitutional Law (2009-2011), Human Rights (2007-2009) and National Young Lawyers' (2006-2008) committees. He continues to be involved in various social movements and enterprises having co-founded the Malaysian Centre for Constitutionalism & Human Rights (MCCHR also known as PusatRakyatLB).

Edmund speaks regularly at numerous local and international conferences and conducts workshops on law-related topics. His articles and papers have been published by the media and in law journals. His latest publication is the Halsbury's Laws of Malaysia on "Citizenship, Immigration, National Security and the Police" (Volume 27, 2010). Edmund read law at University College London and was called to the English Bar (Lincoln's Inn) in 1997. He is a Chevening scholar and has a Masters degree in International Human Rights Law from Oxford University, was admitted as an advocate and solicitor of the High Court of Malaya in 1998, and has been in active practice since then.



### **Justice Marvic Mario Victor F. Leonen**

Supreme Court of the Philippines

Justice Marvic M.V.F. Leonen is currently an Associate Justice of the Supreme Court of the Philippines. He is the Former Dean and Professor of Law at the University of the Philippines College of Law since 1989. He graduated with an AB Economics degree, magna cum laude, from the School of Economics in 1983. He obtained his Bachelor of Laws degree from the College of Law in 1987 ranking fourth. Later that year, he cofounded the Legal Rights and Natural Resources Center, Inc, a legal and policy research and advocacy insitution which focused on providing legal services for upland rural poor and indigenous people's communities. He served as the Center's executive director for fifteen years. He also earned a Master of Laws degree from the Columbia Law School of the Columbia University in New York.

He first joined the faculty in 1989 as a professional lecturer in Philippine Indigenous Law. He became assistant professor during Dean Pacifico Agabin's term and academic administrator under Dean Merlin M. Magalona's term. In 2000, he was invited to act as the UP System's University General Counsel. In 2005, he became the first Vice President for Legal Affairs of the UP System, and 2008, he became the Dean of the College of Law at the University of the Philippines.

In July 2010, He was named by Philippine President Benigno Aquino III as the Philippine government's chief negotiator with the Moro Islamic Liberation Front. He successfully led the parties into a framework agreement on the Bangsamoro which was signed on October 15, 2012. He was appointed to the Court on November 21, 2012.



**Judge Adele Kent, Mrs.**

National Judicial Institute, Canada  
Email: akent@judicom.ca

Judge C. Adele Kent received her LLB in 1977 from the University of Alberta. She practised law in Edmonton and then Calgary, specializing in the areas of medical malpractice and construction litigation. She was appointed to the Court of Queen's Bench of Alberta in 1994.

Judge Kent has been a member and then co-chair of the Ethics Advisory Committee, a committee that provides confidential ethical advice federally appointed judges. She was a member of the Canadian Judicial Council's communications committee. She currently sits on the Strategic Planning Committee of the Court of Queen's Bench.

Judge Kent works extensively with the National Judicial Institute. She designs courses and teaches in the areas of judicial ethics, civil law, insolvency, the judicial career and social context, both in Canada and internationally. She has been involved in the planning of courses addressing issues of gender, aging, culture and race. She is the author of *Medical Ethics: The State of the Law* and articles on teaching judicial ethics and conflicts of laws. She speaks English and French and is learning Spanish.



**Ratna Osman, Ms.**

Executive Director of Sisters in Islam, Malaysia  
Email: ratna@sistersinislam.org.my

Ratna Osman is the Executive Director of Sisters in Islam, a Muslim women's NGO committed to promoting an understanding of Islam that recognises the principles of Justice, Equality, Freedom and Dignity within a democratic nation state. Her work at Sisters in Islam includes creating public awareness and advocating for reform in laws and policies by promoting and developing a framework of women's rights in Islam, taking into consideration women's experiences and realities. She joined Sisters in Islam in 2009 as the Programme Manager for the Advocacy, Legal Services and Reform Unit, and was involved in the advocacy campaign together with Joint Action Group for Gender Equality (JAG) in pushing for the amendments of the Islamic Family Law Bill.

Ratna has delivered talks on the works of Sisters in Islam at various international events like the Universities in Australia and New Zealand, at the Carter Centre in Atlanta, USA. She was also in Barcelona, Spain to receive the 2011 award from Casa Asia on behalf of Sisters in Islam in recognition of their work advocating for the rights of Muslim women. She graduated from the International Islamic University, Islamabad with a LL.B (Law & Shariah) degree.



**Vichuta Ly, Ms.**

Legal Support for Children and Women (LSCW)

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Website: <http://www.lscw.org>

Ms Ly is founder and Director of Legal Support for Children and Women (LSCW) Organisation in Cambodia. LSCW is non-profit, non-political organisation founded in 2002 whose mission is to contribute to the development of the rule of law, to promote access to justice and to protect human rights.

Ms Ly is part time Lecturer on Gender Studies at the University of Pannasastra, Cambodia. She has conducted many researches relating to gender based violence in Cambodia and Cross-border, especially human trafficking. In 2009, she was invited as expert witness to the Court of Women in Bali, Indonesia. In 2011, she was invited as panalist for women hearing relating to gender based violence during the Khmer Rouge regime in Phnom Penh.

Ms Ly obtained her law degree (LLB) in 1998, a bachelor degree (1992) and master degree (1994) of chemistry in Canada. She attended the British Embassy's Chevening Fellowship Programme of the University of College London in the UK (2008) and received a certificate on Gender, Social Justice and Citizenship which specializes on gender analysis and policies drafting.



**Adoracion P. Cruz-Avisado, Ph.D.**

Former Judge of Regional Trial Court in Davao City

Email: [dorycruzavisado@yahoo.com](mailto:dorycruzavisado@yahoo.com)

Ms. Adoracion "Dory" P. Cruz Avisado is a developmental lawyer. She was a trial lawyer for about 14 years. Majority of the cases she handled were on family and marital related issues. She is a well known human rights advocate and has been in the forefront in defending women and children's rights as human rights.

From 1999 to 2004, she served as Presiding Judge of the Regional Trial Court Branch 9 in Davao City in Mindanao, Philippines. She is a recipient of multiple awards from all three branches of the Philippine government. In 2001, during Centenary celebrations of the Supreme Court, she was given an award for "Transparency and Advocacy of Judicial Reform". For two years in a row, the Executive Branch awarded her for "Speedy Disposition of Cases". The Legislative, through both the House of Representatives and the Senate awarded her for "Pro-Active Measures in the Administration of Justice" in her handling of drugs cases.

In March 2004, Dory tendered her irrevocable resignation as a judge when she saw that due to fraternity ties, injustice was being committed against a court stenographer in another branch of the Court in Davao City. She found the need to resign for her to advocate for the implementation of the Anti Sexual Harassment Law in the Judiciary. She then, along with her family, established the self funded ACCCTS Center and the Transformative Justice Institute which have been advocating for the transformation of the Philippine Justice System. As Chairperson of the Transformative Justice Institute, she works closely with the various pillars of the Criminal Justice System in the Philippines including the courts. To enable her to conduct in depth research on the Philippine Justice System she took up and finished her Masters in Applied Social Research Major in Gender Studies, and Doctorate in Development Studies.



**Shanthi Dairiam, Ms.**

Former CEDAW Committee Member  
Email: shanthidairiam@yahoo.com

Ms. Shanti Dairiam, a Malaysian human rights and women's rights advocate has been involved in the promotion of women's right to equality and non-discrimination for the past 30 years, through the application of international human rights norms and standards. In 1993 she founded the International Women's Rights Action Watch Asia Pacific, a regional and international independent, non-profit NGO, based in Malaysia that monitors and facilitates the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women. This programme assists women's groups in around 120 countries. She has served as Vice President, of Women's Aid Organization Malaysia (a program to combat domestic violence), was a past member of National Advisory Council of Women, Malaysia, past Executive Committee member of the National Council of Women's Organizations (NCWO) and was a member of the Gender Equality Task Force of UNDP between 2007 and 2008.

Ms Dairiam has also served as an expert assisting key UN agencies such as APGEN, the Office of the High Commissioner of Human Rights and UNWOMEN and provided technical services to several governments in the Asia Pacific Region, in selected countries of Africa and Latin America to build capacity for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). She holds a Masters in Literature from the University of Madras, India and a Masters in Gender and Development from the Institute of Development Studies, University of Sussex, UK.

Ms Dairiam served as a member of the UN Committee on The Elimination of All Forms of Discrimination against Women (CEDAW) from 2005-2008.



**P. Imrana Jalal, Ms.**

Senior Social Development Specialist (Gender and Development) Poverty Reduction, Gender and Social Development Division, Regional and Sustainable Development Department Asian Development Bank  
ICJ Commissioner  
Email: [ijalal@adb.org](mailto:ijalal@adb.org)

Ms. Imrana Jalal is a Senior Social Development Specialist (Gender) at ADB. She has a Bachelors and Masters degree in law from the University of Auckland, New Zealand; and a Masters degree in Gender Studies from the University of Sydney, Australia. She is a lawyer by profession, and was formerly a Commissioner of the Fiji Human Rights Commission. Imrana is the author of *Law for Pacific Women*, and architect of the Family Law Act 2003 which removed formal legal discrimination against women in Fiji. *Law for Pacific Women* is a recommended text book at the law school of the University of the South Pacific. Imrana is a founding member of the Pacific Regional Rights Resource Team (RRRT), which in 1998 received the UNICEF Maurice Pate Award for its cutting edge work in women's rights. She has also served as a barrister and solicitor in the Attorney General's Office of Fiji, as Public Legal Advisor, as a social/political columnist in the daily newspaper, *The Fiji Times*, and as an advisor to many UN agencies.

She is a founding member of the NGO, the Fiji Women's Rights Movement. Imrana is also a member of the regional networks - Women Living Under Muslim Law, and the Asia-Pacific Forum on Women, Law and Development. She is also a Commissioner on the Geneva-based International Commission of Jurists, as one of its 60 Commissioners, and continues to sit on its Executive Board.



**Justice Adolfo S. Azcuna (Ret.)**

Chancellor, Philippine Judicial Academy, Supreme Court of the Philippines  
Email: [adolfazcuna@yahoo.com](mailto:adolfazcuna@yahoo.com)

Justice Adolfo S. Azcuna was born in Katipunan, Zamboanga Del Norte on February 16, 1939, the son of Felipe B. Azcuna and Carmen S. Sevilla. He received the degree of Bachelor of Arts, with academic honors, at the Ateneo de Manila in 1959 and the degree of Bachelor of Laws, cum laude, at the same institution in 1962. He was admitted to the Philippine Bar in 1963, placing 4th in the 1962 bar examinations. He forthwith embarked on a government career as Assistant Private Secretary of then Presiding Justice Jose P. Bengzon of the Court of Appeals in 1963 and, thereafter, upon the appointment of the latter to the Supreme Court in 1964, as his Private Secretary. Justice Azcuna taught International Law at his alma mater, Ateneo de Manila, from 1967 to 1986. In 1982, he completed post-graduate studies in International Law and Jurisprudence at the McGeorge School of Law in Salzburg, Austria.

Representing Zamboanga Del Norte, he was elected as member of the 1971 Constitutional Convention. Subsequently, he was appointed as a member of the 1986 Constitutional Commission. He held several government posts during the term of President Corazon C. Aquino, first as Presidential Legal Counsel, then as Press Secretary and subsequently as Presidential Spokesperson. In 1991, he was appointed Chairperson of the Philippine National Bank. On October 17, 2002, he was appointed Associate Justice of the Supreme Court by President Gloria Macapagal-Arroyo.

In 2007, Justice Azcuna was conferred the Metrobank Foundation Professorial Chair in International and Human Rights Law for which he delivered a presentation entitled, "International Humanitarian Law: A Field Guide to the Basics." Justice Azcuna retired from the Supreme Court on February 16, 2009 and was appointed, on June 1, 2009, as Chancellor of the Philippine Judicial Academy a post which he is holding at the moment. His major publications include "Transnational Law Practice," "International Law Teaching in the Philippines," "Foreign Judgment [Monetary] Enforcements in the Philippines," "Piercing the Veil of Corporate Entity: From Willets to Santos," "ASEAN Conflict of Law," "The Supreme Court and Public International Law," and his two Supreme Court books: "Seeing Reality in Today's World" and "Seeking Justice in Today's World."



**Sri Nurherwati, Ms.**

Commissioner, Komnas Perempuan

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Ms. Sri Nurherwati is one of the commissioners of Indonesian National Commission on Violence Against Women (Komnas Perempuan), one of specific National Human Rights Institutions, for 2010-2014 period. At Komnas Perempuan, she is also chairing Recovery Sub-Commission. Her commitment in advocating women rights has been shown through her involvement in civil society organizations, namely as Internal Coordinator at the Legal Aid Foundation in Semarang (1995), as Director of Legal Resource Centre-Keadilan Jender dan Hak Asasi Manusia (Gender Justice and Human Rights) in Central Java (1999), and as Coordinator of the Legal Service Division of Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan (Indonesian Women's Association for Justice and Legal Aid Institute) in Jakarta (2006). She was also active on the issue of corruption – founded KP2KKN (the Committee for the Elimination and Investigation of Corruption, Collusion and Nepotism) in 1998.



**Evalyn Ursua, Ms.**

Legal Counsel in the case *Vertido vs. The Philippines*

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Ms. Evalyn Ursua is a human rights advocate, litigator, researcher and academic. She has worked on women and children's rights issues in the Philippines for more than 20 years. She and two lawyer friends pioneered women's rights legal advocacy in the Philippines when they founded a women's legal resource advocacy group in 1990. Since then, she has engaged in test case litigation involving women's human rights as well as in education and training programs in communities and for women activists in various parts of the Philippines. In 2008, she filed, as counsel for Karen T. Vertido, a complaint against the Philippines for discrimination under the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol. It was the first complaint to come from the Asia-Pacific Region, and the first of its kind to be filed under the Optional Protocol to the CEDAW. The CEDAW Committee issued its landmark Views on the complaint on July 10, 2010, where it found the Philippines liable for discrimination. In 2011, she filed another communication with the CEDAW Committee, on behalf of a young deaf woman who was a victim of discrimination in the judicial process because of her disability.

Ms. Ursua's policy development work included personally writing and co-writing proposed legislation on rape, abuse of women in intimate relationships and prostitution for non-government organizations and government agencies that legislators sponsored and became the basis of enacted laws. She also wrote a proposed law on divorce for a party list group which is still pending in the Philippine Congress. Ms. Ursua taught courses on gender and the law and on marriage and the family at the University of the Philippines College of Law and Department of Women and Development Studies in Diliman, Quezon City. For her work in defending and promoting women and children's rights, she was given The Outstanding Women in the Nation's Service (TOWNS) Award for Women and Children's Rights Advocacy by the TOWNS Foundation, Inc. in 1998, during the Centennial Year of the founding of the Philippine Republic. Ms. Ursua has a Bachelor of Laws from the University of the Philippines (Class Valedictorian, 1990), and a Master of Laws in Asian Legal Studies from the National University of Singapore.



**Naiyana. Supapung, Ms.**

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Ms. Naiyana Supapung completed her Bachelor's Degree of Law from Ramkhamhaeng University in Thailand. In 1984, Naiyana began her career as a lawyer at Women's Rights Protection Center in Friends of Women Foundation (FOW), the only body that gave advice and provided legal aid to abused women and girls at that time. She quickly gained reputation for being a lawyer for a family of a sex worker being chained and burned alive in a brothel in Phuket Province. The case won in all three-tiers of court, resulting in it being the first ever case in Thailand where brothel owner and pimp were legally punished – life sentence for the brothel owner and 10-year imprisonment for the pimp. She later defended many women and became an expert on cases of rape and domestic violence.

In 1991, she established and was the Founding Coordinator of Friends of Thai Women Workers in Asia (FOWIA) which worked in coordination with local support groups and Royal Thai Embassies to provide assistance to Thai women working, particularly but not exclusively as sex workers, and facing problems in Japan, Taiwan, Hong Kong, Malaysia and Singapore. In 1994, she was selected to become an Ashoka Fellow, fellowship for social entrepreneurs all around the world who are innovators for the public given by a US-based foundation. In 1996, Naiyana became Coordinator of the Women and Constitution Network (WCN), working to coordinate 48 women's organisations all over Thailand to campaign for participation of the people, especially women, in the process to draft the Constitution of the Kingdom of Thailand and advocate gender equality provisions in the draft constitution.

The 1997 – the first ever Thai Constitution with recognition of gender equality and non-discrimination was firmly established, she and the WCN worked on to provide advice and assistance to the people to use the 1997 Constitution to protect human rights, especially women's rights. In 2002, Naiyana was elected by the House of Senate to be a National Human Rights Commissioner, the first ever group of commissioners for The National Human Rights Commission of Thailand (NHRCT), newly established as an independent body by an Act enacted according to the 1997 Constitution. In 2010 she became a Founding Executive Director, and a Board Member and Secretary, of Teeranart Kanjanauksorn Foundation (TKF) and has since then continued to work, particularly with the judiciary and justice sector in coordination with civil society sector, to promote and support human rights and liberty, gender equality, non-discrimination and non-violence, and also rights of LGBTIQ.

# Annex 5: Participants' List



## SOUTHEAST ASIA REGIONAL JUDICIAL COLLOQUIUM ON GENDER EQUALITY JURISPRUDENCE AND THE ROLE OF THE JUDICIARY IN PROMOTING WOMEN'S ACCESS TO JUSTICE

4-5 September 2013

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