

IWRAW ASIA PACIFIC OCCASIONAL PAPERS SERIES

NO. 1

**THE STATUS OF CEDAW IMPLEMENTATION
IN ASEAN COUNTRIES AND SELECTED MUSLIM COUNTRIES**

International Women's Rights Action Watch Asia Pacific



IWRAW ASIA PACIFIC OCCASIONAL PAPERS SERIES

NO. 1

**THE STATUS OF CEDAW IMPLEMENTATION
IN ASEAN COUNTRIES AND SELECTED MUSLIM COUNTRIES**

International Women's Rights Action Watch Asia Pacific



International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special consultative status with the Economic and Social Council of the United Nations (registered as IWRAP).

The IWRAP Asia Pacific Occasional Papers Series makes available emerging discussions and debates related to the organisation's areas of work.

IWRAP Asia Pacific Occasional Papers Series • No. 1

This paper was written by Shanthi Dairiam, Executive Director, IWRAP Asia Pacific, based on research carried out by Rea Chiongson and Bandana Shrestha, and additional assistance by tan beng hui and Hasnizuraini Hassan, Programme Officers, IWRAP Asia Pacific.

© IWRAP Asia Pacific 2004

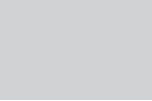
International Women's Rights Action Watch Asia Pacific
2nd Floor, Block F, Anjung FELDA
Jalan Maktab, 54000 Kuala Lumpur, MALAYSIA
Tel: 60-3-2691 3292
Fax: 60-3-2698 4203
Email: iwraw-ap@iwraw-ap.org
Website: www.iwraw-ap.org

ISBN 983-42400-0-7

Cover, Layout & Design by: Michael Voon <amx@tm.net.my>
Printed by: TM Graphic

CONTENTS

	Page
I. Introduction	1
II. Status of CEDAW implementation in ASEAN countries	2
Ratifications and reservations	2
Fulfilment of state obligation	4
Obligations of the state under the CEDAW Convention	4
Status of treaty law: Applicability at the domestic level	7
Constitutional provisions for equality and the adoption of the CEDAW Convention's definition of discrimination	9
Enactment of an equal opportunities act or a sex discrimination act	9
Statutory provisions for equality and their effectiveness	10
Provisions for temporary special measures	15
Special programmes to enable women to achieve <i>de facto</i> rights	15
Initiatives to combat violence against women	16
Capacity building	17
Institutional mechanisms	17
Data gathering	17
Awareness-raising	18
III. Status of CEDAW implementation in Muslim countries	18
National machinery for women	18
Statutory guarantees for equality	19
Women in decision-making and/or temporary special measures	20
Law reform	22
National strategy for the advancement of women	25
IV. Conclusion	25



I. Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women,¹ like all other human rights treaties, creates legally binding obligations on States parties. It provides clear guidance on the outcomes that should be achieved as parties to this treaty, and the means by which this should be done. An expert Committee is also established to monitor state compliance with their obligations under this convention. The monitoring process requires States parties to submit reports outlining the status of their compliance, one year after ratification and every four years thereafter. In planning the implementation of this convention, states need to follow the requirements as provided for in the text of the treaty as well as the jurisprudence of the CEDAW Committee that is to be found in its General Recommendations² and Concluding Comments.³

This paper will first outline the obligations of States parties under the CEDAW Convention. It will then provide a brief review of CEDAW implementation among ASEAN countries⁴ and selected Muslim countries such as Egypt, Iraq, Jordan, Maldives and Tunisia.⁵ Indonesia and Malaysia, as Muslim countries, are considered under the ASEAN section. The paper does not attempt a detailed review but will only provide some examples in implementation. Finally, some recommendations will be made.

In reviewing the status of the implementation of the CEDAW Convention, the obligations of the states under this treaty as listed in this paper, will serve as

¹ Hereafter referred to as the CEDAW Convention.

² General Recommendations are interpretative comments on specific articles of the convention or contemporary issues not specifically mentioned in the convention. To date the CEDAW Committee has issued 25 General Recommendations.

³ Concluding Comments are recommendations issued by the CEDAW Committee to individual governments upon reviewing their achievements in fulfilling the obligations under the convention through the reporting process.

⁴ ASEAN refers to the Association of South East Asian Nations and has ten member states. Out of this, only Brunei has not ratified the CEDAW Convention.

⁵ This is an updated version of a paper originally presented at a meeting on “Rights and Obligations under CEDAW” organised by the National Human Rights Commission of Malaysia (SUHAKAM) in March 2003. Although the paper focuses on the ASEAN experience with CEDAW, it was deemed useful as well to include the experiences of other Muslim countries since Malaysia is also predominantly Muslim.

a framework. The paper thus looks first at the reservations⁶ made by States parties upon ratification or accession as this has the effect of limiting the extent of rights granted to women under the convention. It then looks at specific initiatives undertaken by States parties, which are in consonance with the demands of this treaty.

II. Status of CEDAW implementation in ASEAN countries

Ratifications and reservations

The Philippines was the first country to have ratified the CEDAW Convention. It did this in 1981 followed by Laos, Vietnam, Indonesia and Thailand all of whom ratified the convention in the early eighties. In the nineties, came Cambodia, Malaysia, Singapore and Myanmar in that order.

Cambodia, Indonesia, Laos, Philippines, Vietnam and Myanmar have no reservations on any of the substantive articles of the CEDAW Convention (1-16). Only 3 countries have made reservations on substantive articles as follows:

- Malaysia: Articles 5a, 7b, 9(2), 16(1a), 16(1c), 16(1d) and 16(2)⁷
- Singapore: Articles 2, 9 and 16⁸
- Thailand: Article 16

⁶ “‘Reservation’ means a unilateral statement however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state”. (Article 2(1d) of the Vienna Convention on the Law of Treaties 1969) Upon ratification of a treaty, a state may formulate a reservation. However, reservations that are incompatible with the object and purpose of the treaty are prohibited. (Article 19 of the Vienna Convention on the Law of Treaties 1969)

⁷ The reservation on article 9(2) which give women the right to transmit their citizenship to their children and the reservations to article 16(1a), 16(1c), 16(1f), and 16(1g) are full reservations. All the others are restricted reservations in that only a certain aspect of the right is withheld. Refer to “Declarations and Reservations” <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> for the full text that defines these restrictions.

⁸ Singapore’s Second Periodic Report to the Committee on the Elimination of Discrimination against Women. CEDAW/C/SGP/2. 3 May 2001. p2.

As can be seen, Article 16 is the common article that the three above countries have difficulties with. This article deals with equality in marriage and family relations and specifies the following rights:

Article 16, Para 1

- a. right to enter into marriage
- b. right to choose spouse and enter into marriage with full consent
- c. rights during marriage and at its dissolution
- d. rights of parents regarding children
- e. right to decide on the number and the spacing of the children
- f. right to guardianship and adoption
- g. right to choose family name, profession and occupation
- h. right to ownership, acquisition and management of property

Article 16, Para 2

Abolition of child marriage, setting minimum age for marriage and registration of marriage.

Both Singapore and Thailand have reserved this article fully while Malaysia has reserved 16(1a), 16(1c), 16(1f) and 16(1g). The following explanations have been given for the restrictions made on women's rights in marriage and family relations.

Malaysia: "The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic *Shariah* law and the Federal Constitution of Malaysia."⁹

Singapore: "In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws."¹⁰

Thailand: "The Royal Thai Government wishes to express its understanding that the purposes of the Convention are to eliminate discrimination against women and to accord to every person, men and women alike, equality before the law, and are in accordance with the principles prescribed by the Constitution of the Kingdom of Thailand."¹¹

⁹ See "Declarations and Reservations" <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>>

¹⁰ *ibid.*

¹¹ *ibid.*

However it must be mentioned that since acceding to the convention with seven reservations in 1985, five have been withdrawn by the Thai Cabinet – Articles 7, 9(2), 10, 11(1b), 15(3) – leaving Articles 16 and 29¹² as the only reservations.

The reservations to Article 16 are serious. They compromise a core principle of the CEDAW Convention that rights are interrelated and that there can be no divide between rights in the private and public spheres.

Malaysia and Singapore have restricted citizenship rights to women. Both have cited conflict with the national laws. Singapore has completely reserved Article 2, which is a critical and essential article as it spells out the details of state obligation or the means by which the CEDAW Convention is to be implemented. A reservation to Article 2 calls into question the good faith of the state with regard to its acceptance of its obligations to women under the convention.

Fulfilment of state obligation

This section will outline what the state is supposed to do to implement the CEDAW Convention as a framework for assessing what positive actions have been taken by states.

Obligations of the state under the CEDAW Convention

The **outcome** that governments have to work towards under the CEDAW Convention is that, women will enjoy and be able to exercise all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other sphere on the basis of equality with men. This means that there must be both *de jure* and *de facto* equality rights for women (Articles 1, 2a, and 3).

The **norm** of equality that the CEDAW Convention imposes is that of substantive equality. This is a broad approach to equality that requires equality in the substance of the law, equal protection of the law, and equal benefit of the law. A related norm is that of non-discrimination that requires the elimination of direct and indirect discrimination. The latter means the elimination of laws and practices that have a discriminatory effect though no discrimination was intended. All efforts to bring about equality between women and men need to be based on these understandings of equality and non-discrimination.

¹² Article 29 is part of a cluster of provisions dealing with the administration of the CEDAW Convention.

The means by which this is to be accomplished are given in Articles 1-5. Obligations under these articles include the following:

- to incorporate the principle of equality and non-discrimination of men and women in the legal system, abolish all discriminatory laws and practices, and adopt appropriate ones prohibiting discrimination against women (Articles 2a, 2b, 2f and 2g)
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination: mechanisms for enforcement (Article 2c)
- to ensure elimination of all acts of discrimination against women by the public sector as well as by the private sector including persons, organisations or enterprises (Articles 2d and 2e)
- to implement programmes, make relevant institutional arrangements and any other laws necessary that will enable women to exercise the equality rights given in the law (Article 3)
- to accelerate the achievement of *de facto* rights by implementing temporary special measures such as affirmative action (Article 4)
- to eliminate cultural and traditional practices and attitudes including stereotypical roles for women and men (Article 5)

In conclusion we could say that a State party to CEDAW has to ensure the applicability of the norms and standards of this convention at the domestic level and as a quick reference of indicators to assess its implementation in this manner, the following questions may be asked:

- Has the CEDAW Convention been incorporated at the national level? This step may be necessary in countries whose legal system needs it.¹³ Legal opinion is that only then may the norms and standards of the convention, should they be differentiated from the existing norms and standards at the national level, be legally applied to provide equality rights for women.
- Has the definition of substantive equality and discrimination as given in Article 1 of the CEDAW Convention been adopted in the Constitution or other relevant laws?

¹³ Depending on the legal system and the provisions of the Constitution, treaties can be self-executing in that no further legislation is required to make them applicable at the national level or alternatively, enabling legislation is required to make treaty law applicable. However, if there is political will, the lack of enabling legislation may be an obstacle for direct applicability of treaty law in the courts but it should not be an obstacle to provide definitions of equality or discrimination or to amend legislation according to the norms and standards of the CEDAW Convention.

- Has any other appropriate legislation been enacted to make discriminatory acts in the public and private sectors actionable? Such legislation could take the form of an Equal Opportunities Act or an Anti-Sex Discrimination Act. (Article 3)
- Has there been a review of all existing legislation and have all discriminatory provisions in the law been eliminated?
- As a result of this review have any other relevant laws such as laws to protect women against domestic violence or sexual harassment been enacted and enforced?
- Have policy directives been issued to the public and private sectors to adopt codes of practice that will help to eliminate discriminatory practices and to develop equality plans for the acceleration of the *de facto* equality status of women?
- Are there legislation and programmes to combat violence against women, which is identified under the CEDAW Convention as an extreme form of discrimination against women?
- Has the convention been translated and widely disseminated at all levels of the public and private sectors to raise awareness of the obligations under this treaty?
- Have all relevant government officers in all sectors as well as the judiciary and relevant legal personnel been trained to carry out their obligations under the convention?
- Is the CEDAW Convention applicable in the courts? In other words has it been cited in the courts to gain equality rights for women?
- Has an inter-sectoral monitoring mechanism been established to gather data on compliance with the obligations under the convention and to assess effectiveness of laws and policies meant to promote women's equality?
- Is there adequate data to assess progress made in the implementation of the convention such as data disaggregated by sex and data that needs to be collected to identify obstacles to the achievement of *de facto* rights for women and to assess the effects of laws and policies on women?
- Is there a plan for implementation that sets out benchmarks for progress? Are there plans for special programmes to enable women to access rights given in the law, or plans that delineate responsibility, identify inter-sectoral cooperation, allocate budgets and integrate capacity building measures for the implementers. Are these integrated into the mainstream national development plans?

If the above set of questions is used to assess the status of implementation of the CEDAW Convention, then none of the ASEAN countries or the selected Muslim countries have made a comprehensive and cohesive effort to implement

this treaty. Indeed, the CEDAW Convention has not been widely disseminated nor have relevant agents of the state been trained to implement its provisions. There is a lack of adequate data to track obstacles to *de facto* equality, and for monitoring and assessing the effects of laws and policies on women. There have, however, been specific ad-hoc efforts that may be identified as good practices. This is especially in the area of law reform.

Status of treaty law: Applicability at the domestic level

The status of treaty law is unclear in almost all the ASEAN countries. It is said that in Cambodia, Laos, Indonesia, Philippines and Vietnam, treaty law is recognised as part of domestic law. However, there is no clear guidance in the Constitutions of these countries, on what prevails if domestic law is in conflict with international treaty law. Nor is it clear whether international treaty law is self-executing. For example, in the case of the Philippines, legal opinion is that CEDAW and other human rights instruments are not self-executing in the sense that one cannot invoke its provisions as an actionable source of right. Despite the status of law given to treaties, domestic laws that are inconsistent with the norms of the treaty do not automatically become void. Hence action needs to be taken to incorporate the norms of the treaty into domestic laws.¹⁴

The Vietnam government recognises CEDAW and other treaties as binding legal instruments and has adopted a procedure to monitor legislation to ensure its conformity with international treaties. In Vietnam, all agencies are required to make annual reports on the enforcement of the treaties concerned. However, the laws do not specifically say how to enforce treaty law. Vietnam does not have specific statutory instruments in the domestication of the provisions of international treaties into the local law system. Therefore it depends on specific circumstances as to whether international commitments will be incorporated. This has happened, for instance, in the area of trade. Nevertheless, while international law can be cited to promote one's work, exactly how much of this the executive or state institutions understand is shaky.¹⁵

In Malaysia, Singapore and Thailand, enabling legislation is required to make CEDAW applicable. This has not been done. However, while the convention cannot be used as a legal instrument within Thailand, the Combined Second and Third Periodic Report of the government to CEDAW states, "the Convention has

¹⁴ "ASEAN country profiles". IRAW Asia Pacific. 2002; and personal communication with Amparita Sta. Maria. Faculty of Law. Ateneo de Manila University. 15 March 2003.

¹⁵ *ibid.*

powerful influence on government action to end discrimination against women and ensure their human rights. Campaigns to change laws and regulations have used it as a standard against which Thailand's laws and practices should be judged and the Convention's provisions have been generally accepted as representing the standard of equality and human rights which Thailand should strive to achieve.¹⁶

In Indonesia, the CEDAW Convention forms part of the domestic law of the country and has been cited before the courts.¹⁷ However, there is a diversity of opinion regarding this. One opinion states that upon ratification it becomes part of the national legal system. Another, however, says that it cannot be directly implemented.¹⁸

Within ASEAN, there is also very little jurisprudence that cites the CEDAW Convention. Only in the Philippines has there been a few Supreme Court cases citing this treaty. One was to do with establishing the woman's right to choose her domicile and its concurrent implication on her right to stand for elections in that particular district.¹⁹ The other was a case of a discriminatory policy of a company

¹⁶ Thailand's Combined Second and Third Report to the Committee on the Elimination of Discrimination against Women. CEDAW/C/THA/2-3. 7 April 1997. p11. para. 36.

¹⁷ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Indonesia. CEDAW A/53/38/Rev.1. 1998. p27. para. 276.

¹⁸ CEDAW Country Report: Independent Information for the Committee on the Elimination of Discrimination against Women prepared by NGO Forum on CEDAW Implementation. p14.

¹⁹ In *Marcos vs. Commission on Elections* (GR. No. 119976, 18 September 1995), the question before the court was whether Imelda Romualdez-Marcos was a resident of Leyte and therefore qualifying her to run for the House of Representatives. The Supreme Court stated that the provision on domicile in the Family Code recognises revolutionary changes in the concept of women's rights in the intervening years by making the choice of domicile a product of mutual agreement between the spouses. In the concurring opinion of Justice Florida Ruth Romero, she explicitly stated: "In ratifying the instrument, the Philippines bound itself to implement its liberating spirit and letter, for its Constitution declared that "The Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations". (Article 2, Section 2, Constitution) One such principle embodied in the CEDAW is granting to men and women "the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile." (Part IV, Article 15, para. 4, CEDAW)

that would hire only unmarried women.²⁰ In both these cases the court based its decisions on the country's commitment as a States party to the convention. These cases make it possible to have an easy appreciation of the direct connection between a local violation of women's rights and an international undertaking such as the CEDAW Convention, and the role of law reform as a tool for complying with treaty obligations. Nevertheless, such cases are not the norm even in the Philippines and do not seem to have changed the culture of the courts.²¹

Obviously, the applicability of the CEDAW Convention is an area of implementation that has not been given much thought.

Constitutional provisions for equality and the adoption of the CEDAW Convention's definition of discrimination

The constitutions of all ASEAN countries have equality provisions but none take a broad approach to equality nor have they adopted the CEDAW Convention's definition of direct and indirect or intended and unintended discrimination. It has also been the reality that in all these countries constitutional provisions for equality have not been actionable without additional legislation and mechanisms to claim rights.

Enactment of an equal opportunities act or a sex discrimination act

None of the countries have enacted such acts or set up mechanisms such as Equal Opportunity Commissions. All the countries have some version of national machineries for women but it is beyond the scope of this paper to assess the effectiveness of these agencies.

²⁰ In *Philippine Telegraph and Telephone Company vs. National Labor Relations Commission* (GR No. 118978, 23 May 1997) Grace de Guzman was hired by Philippine Telegraph and Telephone Company (PT&T). She concealed the true nature of her status (married) from PT&T because of a company policy of hiring only single women. The Supreme Court held that this policy was in violation of the Constitution: Section 14, Article 2 expressly recognises the role of women in nation-building and commands the state to ensure at all times the fundamental equality before the law of women and men. Section 3, Article 13 requires the state to afford full protection to labour and to promote full employment and equality of employment opportunities. Section 14, Article 13: 'The State shall protect working women by providing safe and healthful working conditions taking into account their maternal functions and such facilities and opportunities that will enhance their welfare and enable them to realise their full potential in the service of the nation. The Supreme Court goes on to say that corrective labour and social laws on gender inequality have also emerged with more frequency in the years since the Labour Code was enacted on 1 May 1974. This is largely due to the country's commitment to CEDAW.

²¹ Personal communication with Amparita Sta. Maria. Faculty of Law. Ateneo de Manila University. 15 March 2003.

Statutory provisions for equality and their effectiveness

At the *de jure* level, there does not seem to be any discrimination against women. The protection of women's rights is codified in many of the laws such as the family code, penal and criminal procedure codes, labour law, etc. But these laws do not always benefit women because of cultural attitudes, inappropriate rules of implementation and biases against women, or inefficiency or corruption within the legal system, or as in some countries, the impunity with which the law is flouted when it comes to women's rights. For example, in Cambodia, the 1989 Marriage and Family Law eliminated much of the codified, sex-based discrimination giving women the right to freely choose a spouse, enter into and dissolve their marriage. However, the provision requiring a reconciliatory process to be undertaken before a divorce request can be granted has posed many problems for women, especially for those in abusive relationships seeking a divorce, due to the delay and cultural biases of the authorities.

The following are some positive examples of law reform among the ASEAN countries:

Best Practices in Law Reform

Philippines

Sexual harassment

The Anti-Sexual Harassment Act 1995 (Republic Act 7877) defines sexual harassment and prohibits it in the workplace, school and training environment. Victims can file an administrative, civil or criminal case versus the harasser. It obligates the institutions to promulgate anti-sexual harassment rules/regulations as well as to provide an internal committee/body to hear and investigate reported cases to avoid liability.²²

Rape

The Anti-Rape Law 1997 (Republic Act 8353) expanded the definition and coverage of rape. It covers not only penile penetration of the vagina but also into anal and oral orifices. Insertion of any object into the genital or anal orifice is also considered rape. Marital rape is penalised. Rape is reclassified from a crime against chastity to a crime against person. The implication is that a prosecutor

²² For a definition of sexual harassment, see Article 3 of the Republic Act 7877.

may now file a complaint even without the consent of the woman who has been raped.²³

Further, Section 6 of the Rape Victim Assistance and Protection Act 1998 (Republic Act 8505), i.e. the Rape Shield Legislation, provides that “In prosecutions for rape, evidence of the complainant’s past sexual conduct, opinion thereof or of his/her reputation shall not be admitted unless and only to the extent that the court finds that such evidence is material and relevant to the case”.

Sexual abuse

Section 30 of the Rule on Examination of a Child Witness i.e. the Sexual Abuse Shield Rule, states that the following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse: “(1) Evidence offered to prove that the alleged victim engaged in other sexual behaviour; and (2) Evidence offered to prove the sexual predisposition of the alleged victim. Exception – Evidence of specific instances of sexual behaviour by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.”

Family courts

Family courts have jurisdiction over cases of domestic violence against women, which are acts of gender-based violence that result, or are likely to result, in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman’s personhood, integrity and freedom of movement.²⁴

Indonesia

Strengthening CEDAW implementation

There are two regulations designed by the Ministry of Human Power to strengthen the implementation of the CEDAW Convention. These two regulations are:

- (i) Regulation of the Minister of Manpower (No. 3 PER/MEN/1989). This prohibits employers from terminating the employment of women workers during fixed or non-fixed employment periods due to marriage and pregnancy or childbirth (Article 2). It requires employers to substitute the duties of pregnant workers without reducing their rights

²³ See Article 266(a) of the Republic Act 8353. See also p83 of the Philippines Baseline Report produced as part of a regional research project called Facilitating the Implementation of State Obligation towards Women’s Equality. The project was initiated and coordinated by IWRAP Asia Pacific, while the report constitutes work in progress.

²⁴ Family Courts Act 1997 (Republic Act 8369).

- in the company if due to the characteristics of work they cannot perform these during pregnancy. If an employer fails to arrange for substitution of work, then longer maternity leave must be given (Article 4);
- (2) Government Regulation (No. 8/1981) on Remuneration Protection. This provides that employers shall not discriminate between women and men workers in determining the rates of remuneration of work of equal value. Circular letter of the Minister of Manpower (No. SE-04/MEN/88) concerning the implementation of the Convention on the Elimination of Discrimination Against Women Workers prohibits discrimination between women and men in collective bargaining agreements, including differentials in pension age, provision of health care for workers and their families (unless the husband is working in the same enterprise and already covered).²⁵

Political participation

Passage of the Political Participation Act (18 February, 2003). The act provides that 30% of candidates for parliamentary elections must be women. However, critics say that the obligation for political parties to adopt the 30% quota is purely discretionary. There are no sanctions. Of the nine factions in the national assembly, four did not support the quota clause, include the PDIP²⁶ (i.e. former President Megawati Soekarnoputri's party).

Inheritance

Indonesia has two systems of family law, one for Muslims and another for non-Muslims. A Muslim has the option to file a case before the regular state courts or under the religious courts. Religious courts will recognise an agreement by a family on the manner of dividing property. In its absence *Shariah* law will apply.²⁷ Access to state courts, however, is difficult for Muslim women as decision-making in the family rests with men. No cases have been filed before state courts by Muslim women.²⁸

²⁵ Second and Third Reports of Indonesia. CEDAW/C/IDN/2-3. 12 February 1997. p22. See also CEDAW Country Report: Independent Information for the Committee on the Elimination of Discrimination against Women prepared by NGO Forum on CEDAW Implementation. p11.

²⁶ Partai Demokrasi Indonesia Perjuangan (Indonesian Democratic Party of Struggle).

²⁷ Personal communication with Sri Wiyanti Eddyono. LBH APIK (Jakarta). 5 March 2003; and interview with Nursyabhani Katjasungkana. Indonesian Women's Coalition for Justice and Democracy. 13 March 2003.

²⁸ Interview with Nursyabhani Katjasungkana. Indonesian Women's Coalition for Justice and Democracy. 13 March 2003.

There is a 1994 decision of a Supreme Court case (Reg. No. 86K/AG/1994) H. Nur Said bin Amaq Mu'minah involving a dispute between the descendants of two brothers, Amaq Itrawan and Amaq Nawiyah. Amaq Nawiyah died first in 1930, survived by a daughter and his brother. Amaq Itrawan's heirs claim that under traditional doctrine a sibling shares in the inheritance when the deceased is survived by a daughter. However, when the deceased is survived by a son, the sibling receives no share. Article 182 of the Compilation of Islamic Law undertaken jointly by the Department of Religion and the Supreme Court in 1985, states that inheritance rights of siblings are dependent on the absence of a child. It however does not specify whether the entitlement of collateral relations is contingent on the absence of a male child only. The Supreme Court simply stated that, "so long as the deceased is survived by children, either male or female, the rights of inheritance of the deceased's blood relations, except for parents and spouse are foreclosed". The only reasoning or authority cited by the court was a brief reference to the views of Ibnu Abbas, one of the companions of the Prophet who construed the word *walad* in Koran 4:176 as embracing both male and female children.²⁹

Polygamy

There were trends towards abolishing polygamy. Heavy sanctions are provided for such as lowering of rank for civil servants and armed forces.³⁰ However, in practice, often those who violate these do not receive sanctions.³¹

Vietnam

Marriage and family life

An amended Law on Marriage and Family took effect from 1 January 2001.³² One of its new and significant features is to ensure that a wife has the same rights, interest and obligation in acquiring, using and settling common property.

²⁹ Cammack, Mark. 2000. "Indonesia. Inching toward equality: Recent developments in Indonesian inheritance law". In Dossier 22. Women Living Under Muslim Laws. January. pp7-31.

³⁰ Response of Indonesia. Meetings Coverage. 18th CEDAW Session. 2 February 1998.

³¹ CEDAW Country Report: Independent Information for the Committee on the Elimination of Discrimination against Women prepared by NGO Forum on CEDAW Implementation. p24.

³² The 2000 Law on Marriage and the Family replaced the 1986 version that previously existed. See Combined Third and Fourth Periodic Reports of Vietnam. CEDAW/C/VNM/3-4. 20 October 2000. p43.

To safeguard this, Article 27 states that in cases where the property is owned by both husband and wife, it must be registered and the names of both parties must be written down in the ownership certificate. This is a measure to protect women's interests in the property.³³ Further, reality from divorce cases show that women are in a disadvantageous position with regards to settlement of property. Article 94 of the amended law states that in principle, common property of the couple is to be divided into two halves. Domestic work of both husband and wife is also regarded as income-generating.³⁴

Labour

In addition to the general provisions on gender equality, Chapter X and other clauses of the Labour Code (1994) reflect the preference given to women in areas of employment, training, recruitment, social insurance, etc. In some instances, these preferences, while attempting to protect women, limit their opportunity for employment. Companies are also finding it difficult to implement these special provisions for women as they entail additional costs on their part.³⁵

Despite statutory guarantees for equality, there still exist discriminatory provisions in the law as illustrated below:

Indonesia

Marriage Law (No. 1/1974). This admits the legal capacity of women but also states that men (husbands) are positioned as breadwinners and heads of households and women (wives) as managers of households.³⁶

Thailand

Discriminatory laws limit women's rights in the family, citizenship rights, property rights and inheritance rights. Hill-tribe women and girls are not effectively protected by legislation or special measures. At the same time, rural women and migrant women are also vulnerable to multiple forms of discrimination. Also, rape, sexual harassment, marital and domestic violence still need to be adequately addressed in practice, in legislation and in government programmes.

³³ *ibid.* p44.

³⁴ *ibid.* p45.

³⁵ *ibid.* p29.

³⁶ CEDAW Country Report: Independent Information for the Committee on the Elimination of Discrimination against Women prepared by NGO Forum on CEDAW Implementation. p4.

Vietnam

Land Law (1993). Due to discriminatory laws with regards the retirement ages for women and men, in terms of land allotment, women end up receiving a smaller allotment than that of men. This is due to the fact that land allotment is carried out according to the working age range, which is fixed at 16–60 for men and 16–55 for women.³⁷

Provisions for temporary special measures

Thailand is the only country that has a constitutional provision to mandate temporary special measures. Affirmative action measures are allowed if they are to address the problem of discrimination. There is no information on how this is put into practice.³⁸

Special programmes to enable women achieve de facto rights

While there may be several examples of specific programmes for women, only a few are highlighted as examples.

Vietnam

Textbook reform

The National Committee for the Advancement of Women in coordination with the Women's Union compiled a set of standard textbooks on analysing and formulating gender policy, trained a contingent of 60 core lecturers, and held training courses for 300 government officials and over 1000 women cadres.³⁹

Political participation

The Party and government have issued instructions, which identified women as one of the four target groups to whom attention must be paid, and set forth the target of having at least 20% of women as members of People's Councils. The Vietnam Women's Union (VWU) has taken the initiative at all levels, to nominate female candidates for the People's Councils' elections and campaign for their election. The National Committee and the VWU have organised training

³⁷ Combined Third and Fourth Periodic Reports of Vietnam. CEDAW/C/VNM/3-4. 20 October 2000. p38.

³⁸ Section 30. 1997 Thai Constitution.

³⁹ Combined Third and Fourth Periodic Reports of Vietnam. CEDAW/C/VNM/3-4. 20 October 2000. p18.

workshops on leadership skills for the 18,000 female nominees in 61 provinces and cities. A campaign to vote for women candidates was also launched nationwide. The elections outcome showed that the percentage of women elected to People's Councils at all three levels was higher than the previous term (1994-1999). It would seem then that Vietnam's law on equal rights between the sexes in voting and running for elections has been observed with seriousness.⁴⁰

Initiatives to combat violence against women

Indonesia

A National Commission on Violence Against Women was formed in October 1998 in the aftermath of the May 1998 riots in Jakarta.⁴¹

Singapore

Efforts have been made to combat violence against women, include the criminal and evidentiary procedures protecting the privacy of victims; the 1997 amendment to the Women's Charter which broadened the definition of violence; and the government's multidisciplinary and inter-agency approach to victims of family violence involving the courts, police, hospitals and social service agencies.⁴²

The Women's Charter (Amendment) Bill 1996 defines family violence as the commission of any of the following acts:

- Wilfully or knowingly placing or attempting to place a family* member in fear or hurt;
- Causing hurt to a family* member by such act which is known or ought to have been known would result in hurt;
- Wrongly confining or restraining a family* member against his/her will; and
- Causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family* member.

*[Note: *A family member refers to a spouse or former spouse, child (including adopted and step-child), parents, father or mother-in-law and sibling]*

⁴⁰ *ibid.* p22.

⁴¹ Statement by the Indonesian delegation to the 56th Session of the Commission on Human Rights.

⁴² Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Singapore. CEDAW A/56/38. 2001. p53. para. 71.

The amended bill now provides that the Court can issue a Personal Protection Order based on “balance of probability” rather than “beyond reasonable doubt”, that family violence has occurred or likely to occur.⁴³ Applications for protection orders have increased by 68% since.⁴⁴

Capacity building

Vietnam

Training courses on gender have been organised in various ministries, branches, etc; each training attuned to a specific mandate. The gender dimension has been integrated in the training of senior Party officials at the Ho Chi Minh Political Academy.⁴⁵

Institutional mechanisms

Vietnam

Organisations striving for the advancement and development of women continue to be strengthened and expanded, particularly the National Committee for the Advancement of Women, the Vietnamese Women’s Union and the Board of Women Affairs under the Vietnam Labour Confederation. Ministries, Administrations and Agencies have established their own Subcommittees for the Advancement of Women. Now there are 50 subcommittees of this kind in a total of 53 Ministries, Administrations and Agencies.⁴⁶ In 1998, the Central Committee of Vietnam Women’s Union set up a Legal Consultancy Office for Women, an effective tool for the protection of women’s rights.⁴⁷

Data gathering

Vietnam

According to the National Committee for the Advancement of Women, between 1993 and 1999, 213 research studies were done on women and

⁴³ Initial Report of Singapore. CEDAW/C/SGP/1. 18 January 2000. p85.

⁴⁴ Second Periodic Report of Singapore. CEDAW/C/SGP/2. 3 May 2001. p32.

⁴⁵ Combined Third and Fourth Periodic Reports of Vietnam. CEDAW/C/VNM/3-4. 20 October 2000. p18.

⁴⁶ *ibid.* p14.

⁴⁷ *ibid.* p15.

gender equality alone. Gender approaches have been given greater attention in socio-economic research work. Their focus has shifted from approaches to women in development to gender studies and development, providing specific data and materials on both sexes, making clear the gap between male and female. These studies have basically constituted a database for agencies to propose amendments and supplements to existing laws and policies that relate to women.⁴⁸

Awareness-raising

Vietnam

Propaganda and dissemination programmes within the framework of the Propaganda Campaign on Gender Equality and the Advancement of Women launched by the National Committee for the whole year of 1999 brought about positive changes in the awareness of people and mass media. For example, there were television shows showing co-responsibility between spouses in household management.⁴⁹

III. Status of CEDAW implementation in Muslim countries

This section does not use the framework of the previous section but only provides some snapshots of best practices in the countries identified. It focuses on national machinery for women, statutory guarantees for equality, women in decision-making and/or temporary special measures, law reform and national strategies for the advancement of women.

National machinery for women

Egypt

In February 2000, the National Council for Women was created pursuant to the Republican Decree No. 90 of 2000. The Council replaced the National Committee for Women which had been established in 1978 as the first political institution

⁴⁸ *ibid.* p14.

⁴⁹ *ibid.* p17.

dealing with women's empowerment, laws and policies governing women's lives, as well as monitoring of CEDAW implementation. Comprising 30 members selected from different backgrounds, including academia and NGOs, the Council was said to report directly to the President.⁵⁰

Iraq

In June 1997, a high-level National Committee for the Advancement of Iraqi Women was set-up, and concerned itself with a national strategy to improve the position of women in the country. Led by the Minister of Labour and Social Affairs, its members included high-level officials from ministries and other bodies.⁵¹

Maldives

The Gender Equality Council, chaired by the President of Maldives, has taken the place of the National Women's Council.⁵²

Statutory guarantees for equality

Tunisia

The Tunisian legal system is based on the French civil law system and Islamic law. At the 14th CEDAW Session in 1995, the government's representative said that Tunisian legislation had "gradually been establishing the conditions necessary for women's equal status in the political, economic and social life", and at the same time "this new vision of society [had] been widely disseminated and gradually adopted by women".⁵³

⁵⁰ Statement by the representative of the Egyptian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Egypt. CEDAW A/56/38. 2001. p33. para. 313; and Combined Fourth and Fifth Periodic Reports of Egypt. CEDAW/C/EGY/4-5. 30 March 2000. p21.

⁵¹ Statement by the representative of the Iraqi delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Iraq. CEDAW A/55/38. 2000. p66. para. 168; and Second and Third Periodic Reports of Iraq. CEDAW/C/IRQ/2-3. 19 October 1998. p6.

⁵² Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Maldives. CEDAW A/56/38. 2001. p17. para. 128.

⁵³ Statement by the representative of the Tunisian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Tunisia. CEDAW A/50/38. 31 May 1995. p53. para. 219.

For example, the Personal Status Code, introduced soon after independence in 1956, “laid the foundations for a new organisation of the family, based on legal equality of men and women”.⁵⁴ This law had provisions banning polygamy and extra-judicial divorce (*talaq*), which were unprecedented at the time and reflected a dynamic interpretation of Islam as held by Tunisian leaders then.⁵⁵ The new family was to have been based on the concept of “mutual respect and cooperation between the spouses in all family matters including the education of their children, the obligation of women to contribute to family expenses and the abolition of the ‘obedience’ clause”.⁵⁶ While husbands were still recognised as heads of households, it was anticipated that their role as economic custodians would diminish as women became more economically independent.⁵⁷

In addition to banning polygamy, under the Personal Status Code all marriages had to be officially recorded in the civil registry, meaning that customary law marriages and free unions are deemed illegal.⁵⁸ At another level, judicial divorce is available, after reconciliation efforts, at the request of either party.⁵⁹

Women in decision-making and/or temporary special measures

Egypt

During the 2000 elections, there was a heightened awareness of the importance of political participation among women in the country. When reporting to the Committee at the 24th CEDAW Session, the representative of the Egyptian delegation attributed the increase in the number of female candidates – from 87 in 1995 to 120 in 2000, and the election of seven female candidates in the same year (compared to five in 1995) – to the efforts of the National Council

⁵⁴ *ibid.*

⁵⁵ See <<http://www.law.emory.edu/IFL/legal/tunisia.htm>>.

⁵⁶ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Tunisia. CEDAW A/50/38. 31 May 1995. p58. para. 249.

⁵⁷ *ibid.*

⁵⁸ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Tunisia. CEDAW A/50/38. 31 May 1995. p59. para. 250.

⁵⁹ Combined Initial and Second Periodic Reports of Tunisia. CEDAW/C/TUN/1-2. 12 April 1994. p185. paras. 977-978.

for Women which supported the participation of women as candidates and as voters.⁶⁰

Iraq

There was a marked increase in the number of women occupying leadership positions after the 1999 elections. This, according to the representative of the Iraqi delegation to the CEDAW Committee at its 23rd Session, was a result of the country's largest political party introducing a quota system to boost numbers of women in decision-making. In 2000, women thus comprised 8 per cent of members of Parliament, which at the time exceeded the Arab country average of 3 per cent.⁶¹

Jordan

The Jordanian representative to the 22nd CEDAW Session reported that for the first time in the history of the country, a woman occupied the post of Deputy Prime Minister. At the same time, there were a total of seven women in the judiciary.⁶²

Maldives

Women in the Maldives have also been encouraged to participate in decision-making as atoll chiefs, and as members of island women committees and atoll development bodies. In 2000, there were two women appointed to the post of Assistant Island Chief which was the second highest ranking island post, while another was appointed acting Atoll Chief.⁶³

⁶⁰ Statement by the representative of the Egyptian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Egypt. CEDAW A/56/38. 2001. p33. para. 314.

⁶¹ Statement by the representative of the Iraqi delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Iraq. CEDAW A/55/38. 2000. pp66-67. para. 172.

⁶² Statement by the representative of the Jordanian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Jordan. CEDAW A/55/38. 2000. p17. para. 145.

⁶³ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Maldives. CEDAW A/56/38. 2001. p15. para. 117.

Law reform

Egypt

Following the ruling of the Supreme Constitutional Court that a ministerial decree requiring a wife to obtain her husband's consent to obtain a passport was unconstitutional, the legislative committee of the National Council for Women initiated a review of the draft law on passports. The same committee was to initiate raising awareness of the draft law through a campaign, and also form a committee to work on a new family code.⁶⁴

Apart from the above, there were other initiatives to eliminate discrimination between women and men. This included Law No. 1 of 2000, resulting out of a 10-year period of consultation, which grants women the right to *khul* i.e. "unilateral divorce by repudiation without the need to prove damage".⁶⁵ However, in so doing, they had to forego their rights to financial provision. As a result of the same law, several executive decrees were issued including a new marriage contract that elaborated on protective provisions relating to finances and polygamy. Article 291 of the Penal Code was also repealed, removing the loophole that previously provided a defence in cases of kidnap and rape where a defendant would marry the victim.⁶⁶

There is no criminal law prohibiting female genital mutilation but a ministerial decree forbids "performing circumcision on females either in hospitals or public or private clinics".⁶⁷ Exceptions to this rule are in cases of disease and only when approved by the head of the obstetrics and gynaecology department at the hospital concerned, upon suggestion of the treating doctor. All other operations of this nature are explicitly prohibited, including those by non-physicians.⁶⁸

⁶⁴ Statement by the representative of the Egyptian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Egypt. CEDAW A/56/38. 2001. p33. para. 315.

⁶⁵ *ibid.* para. 316.

⁶⁶ *ibid.*

⁶⁷ Egypt. Order No. 261 of 8 July 1996 of the Minister of Health and Population. (Office of Asylum Affairs, Bureau of Democracy, Human Rights and Labor. US Department of State. *Female Genital Mutilation (FGM) in Egypt*. 1997. p3. cited at <<http://annualreview.law.harvard.edu/population/fgm/Egypt.fgm.htm>>).

⁶⁸ *ibid.*

Iraq

Legislative reform in relation to the Personal Status Code sought to improve women's equality, for example through reform of regulations on alimony payments for women, while the Penal Code was also amended to "exclude women from detention for certain crimes".⁶⁹

Jordan

At the time of reporting to the CEDAW Committee in 2000, the Jordanian Parliament was in the process of reviewing several proposals to revise the Penal Code. These included amendments to the penalty for adultery, and on the subject of violence against women including rape or murder. Also tabled was a proposal to repeal Article 340 of the Penal Code that cleared a man of all charges if he killed or injured his wife or female relatives in an adulterous situation.⁷⁰ There had also been progress in relation to domestic violence where a family protection department had been established to address sexual assault cases involving women and children.⁷¹

In terms of marriage and divorce, those who violate mandatory registration requirements are to be subjected to penal sanctions.⁷² Additionally, a female divorcee was given custody of her children until they reached puberty.⁷³

Maldives

Under the family law that came into force in July 2001, conditions were introduced for prenuptial agreements, polygamy and divorce. Further, the law terminates a husband's right to non-judicial unilateral divorce and instead requires him to go through court proceedings. It also guarantees equal division of joint property upon divorce, and financial compensation by ex-husbands

⁶⁹ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Iraq. CEDAW A/55/38. 2000. p67. paras. 172, 175.

⁷⁰ Statement by the representative of the Jordanian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Jordan. CEDAW A/55/38. 2000. p16. para. 142.

⁷¹ *ibid.* p17. para. 149.

⁷² <<http://www.law.emory.edu/IFL/legal/jordan.htm>>.

⁷³ *ibid.*

to children and former wives.⁷⁴ At the same time, the law standardised the minimum legal age of marriage for women and men at 18 years, except in special circumstances as determined by the marriage registrar. This was despite the fact that the *Shariah* provided that an individual could enter into marriage upon puberty. Nevertheless, the government had also embarked on a programme to discourage and prevent early marriages.⁷⁵

Also amended was the nationality law which granted women “equal rights with men to acquire, retain or change their nationality” as well as the ability to transfer their nationality to their children in cases where fathers were foreigners.⁷⁶

In terms of child custody, children under seven years would in most cases, stay with their mother. However, in circumstances where this was not seen appropriate – if, for example, the mother remarried and had other children – custody would be offered to the maternal grandmother, the paternal grandmother or the father, in descending order of priority. Once above the age of seven, a child could choose in whose custody they wish to remain.⁷⁷

Tunisia

Following amendments to the Personal Status Code, women were entitled to custody and guardianship of their children after divorce.⁷⁸ Similarly, their inheritance rights were also improved when the law was amended to ensure that an estate of a deceased would go to surviving daughters rather than only to sons or paternal uncles and their kin.⁷⁹ Last but not least, the amended Penal Code made marital rape a crime.⁸⁰

⁷⁴ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Maldives. CEDAW A/56/38. 2001. p16. para. 121.

⁷⁵ *ibid.*

⁷⁶ *ibid.* p16. para. 118.

⁷⁷ <<http://www.law.emory.edu/IFL/legal/maldives.htm>>.

⁷⁸ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Tunisia. CEDAW A/50/38. 31 May 1995. p58. para. 249.

⁷⁹ Combined Initial and Second Periodic Reports of Tunisia. CEDAW/C/TUN/1-2. 12 April 1994. p190. para. 1008.

⁸⁰ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Tunisia. CEDAW A/50/38. 31 May 1995. p55. para. 228.

National strategies for the advancement of women

Iraq

The government adopted the National Strategy for the Advancement of Women in June 1997, as part of its implementation of the Beijing Platform for Action and in line with the provisions of the CEDAW Convention, as a five-year plan to the year 2005.⁸¹

Jordan

A national strategy for women and a national programme of action for the implementation of the Beijing Declaration and the Platform for Action was prepared through a collaborative effort involving various government bodies, the national machinery and NGOs. This strategy included ensuring that the country's economic and social development plan for 1999-2003 had a gender perspective.⁸²

IV. Conclusion

Generally there does not seem to be a cohesive plan to implement the CEDAW Convention in most countries. Specific initiatives by governments in this regard fall mainly in the area of legal reform. While such reform is a significant step, a consideration is that good laws do not necessarily benefit women and there is no evidence that governments are attempting to monitor the effectiveness of their laws and policies and to strengthen enforcement mechanisms and implement all actions necessary to ensure *de facto* equality for women. Adequate databases have to be created for this and monitoring mechanisms and procedures instituted.

Another critical area is the need to regulate the private sector to obligate this sector to respect and fulfil equality rights for women. This is essential in light of the rapid privatisation that is taking place in the region.

⁸¹ Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Iraq, CEDAW A/55/38. 2000. p67. para. 176.

⁸² Statement by the representative of the Jordanian delegation cited in the Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women on Jordan, CEDAW A/55/38. 2000. p16. para. 144.

The conditions necessary for women to claim their rights under the CEDAW Convention have to be created. In this regard, the treaty must be made applicable in the domestic courts. Judges and lawyers must be made aware of the obligations of the State under the convention, and their own roles to contribute to the achievement of equality for women. Additional legislation such as an equal opportunities law that will make discrimination actionable, provide remedies as well as create institutions and procedures for claiming equality rights must be enacted.

A serious impediment to equality for women is the prevalence of culture and tradition, which impact on societal values and make existing legal frameworks ineffective. A concerted effort has to be made by governments to combat this situation.

Finally, responsibility to implement the CEDAW Convention has to be clearly established. It cannot be left to the national machineries for women. There has to be corporate responsibility on the part of the government as a whole.

