

STATE OBLIGATION

SUBSTANTIVE
EQUALITY

NON-DISCRIMINATION

Promoting Women's Human Rights Compliant Justice Delivery



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.

**Regional Workshop for Judicial Training Institutions
on Good Practices in Promoting Women's
Human Rights Compliant Justice Delivery
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TABLE OF CONTENTS

04	○	List of Acronyms
05	○	Foreword
06	○	I. Introduction
06	○	II. CEDAW and its key principles
09	○	III. The CEDAW Committee
12	○	IV. Courts' obligation to implement CEDAW
18	○	V. Development of a CEDAW Casebook for Use by Courts and Judicial Training Institutions
21	○	VI. Identifying and Eradicating Gender Stereotypes in Judicial Decision-Making
23	○	VII. Development of a Booklet on Gender Stereotypes and Other Indirect Forms of Discrimination against Women in Judgments
27	○	VIII. Recommendations and Conclusion
28	○	ANNEX 1: Constitutional and non-discrimination provisions in Southeast Asia
29	○	ANNEX 2: The Bangalore Principles of Judicial Conduct
33	○	ANNEX 3: Concept Note
37	○	ANNEX 4: Biographies of Resource Persons
44	○	ANNEX 5: Opening Remarks
47	○	ANNEX 6: Press Release
48	○	ANNEX 7: Media Brief

LIST OF ACRONYMS

ASEAN	○	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
CEDAW	○	Convention on the Eliminate All Forms of Discrimination against Women
CEDAW SEAP	○	Regional Programme on Improving Women's Human Rights in Southeast Asia
DFATD	○	Department of Foreign Affairs, Trade and Development, Canada
ICJ	○	International Commission of Jurists
OP	○	Optional Protocol
RA	○	Republic Act
SEAP	○	South East Asia Programme
UN WOMEN	○	United Nations Entity for Gender Equality and the Empowerment of Women
VAW	○	Violence against Women
VAC	○	Violence against Children



ROBERTA CLARKE

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(NOVEMBER 2014)



**The CEDAW
Committee
has repeatedly
noted that
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face significant
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Since 2004, UN Women’s Regional Office for Asia and the Pacific, with generous support from the Canadian Government, has been working to promote CEDAW implementation and substantive equality for women in Southeast Asia. CEDAW, which has been ratified by all ASEAN countries, obliges States parties to put in place measures to ensure de facto equality. As part of this obligation, Member States must ensure that all individuals are able to access competent and impartial judicial and adjudicatory mechanisms equally without discrimination.

To that end, UN Women has been supporting law enforcement mechanisms in the region, including judiciaries and judicial training institutions, to enhance their application of CEDAW and its principles to domestic judicial decision-making.

This report summarizes proceedings and discussions from a regional workshop hosted by UN Women, the International Commission of Jurists (ICJ) and Thailand’s Office of the Judiciary, on promoting women’s human rights compliant justice delivery. Judges are guardians of human rights and play an essential role in delivering justice for women. However, too often gender stereotyping and discrimination in the courtroom prevent women from being able to claim their rights. The CEDAW Committee has repeatedly noted that women still face significant barriers to accessing justice in part because they have difficulty reaching the courts, and when they do, are often told by judges that they are to blame for their problems. A lack of transparency also impedes access to justice, particularly when court decisions are not written or easily accessible and thus do not allow for proper appeals. A lack of transparency also inhibits judiciaries themselves from engaging in critical self-analysis and investigating and addressing discriminatory attitudes within their own ranks.

This publication addresses these issues and discusses cases in the region where judges have interpreted and applied CEDAW principles into domestic decisions. The report will be followed by a more in-depth CEDAW Casebook for Southeast Asia, and a Booklet on Gender Stereotyping in the courtroom. It is our hope that these will serve as useful tools to promote knowledge-sharing among judiciaries on how to apply CEDAW principles and ultimately enhance women’s human rights compliant justice delivery.

→ Article 2 of the Universal Declaration of Human Rights (1948) states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

I. INTRODUCTION

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

is the most comprehensive international treaty for ensuring the rights of women. CEDAW is one of only two international human rights treaties that has been ratified by all countries in Southeast Asia, attesting to its importance in the region. The judiciary is an important mechanism for ensuring CEDAW implementation: however, international human rights standards, including 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 apply only to the public sphere, and not the private sphere where women often experience violations. Moreover, 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.

The CEDAW Committee regularly recommends in Concluding Comments that States 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. In order to facilitate this process, UN Women, supported by the Government of Canada

through the Department of Foreign Affairs, Trade and Development (DFATD) has been working with the justice sectors in Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Myanmar, Philippines, Thailand, Timor-Leste and Viet Nam, to improve understanding of CEDAW among judges and court personnel, and promote its use in courts.

This workshop follows a 2013 Southeast Asia Regional Judicial Colloquium organized by UN Women, the International Commission of Jurists (ICJ) and the Office of the Judiciary in Thailand, which facilitated an exchange on how to improve the situation of women's human rights in the region through court decisions. Building on last year's Colloquium, participants at this year's workshop explored in more detail the principles and application of CEDAW to court practices in the area of violence against women and women's economic, social and cultural rights. Additionally, as a follow-up to requests by last year's participants to provide more resources and guidance on interpreting and applying the CEDAW, UN Women, along with ICJ, has been developing a manual on how gender stereotyping has affected judicial decision-making, and a research document on citing CEDAW in judicial decisions, to be used in national judicial training curriculums, and to further strengthen the ASEAN legal institutions in their protection of women's rights and women's access to justice. This workshop aimed to seek input on preliminary drafts of these documents, and exchange best practices and challenges in ensuring gender equality in the courtroom. This report is a summary of those proceedings.

II. CEDAW AND ITS KEY PRINCIPLES

INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND DECLARATIONS provide standards for States to respect, protect and fulfill human rights.

“**Discrimination against women**” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.” **Roberta Clarke, Regional Director of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)**

“Using international instruments as a basis for discussing human rights keeps the focus on obligations governments have already taken on, and not on imposing values from the outside.”¹ The principles of non-discrimination and equality are central to all human rights law, and gender equality provisions can be found in various international human rights treaties. For example, Article 2 of the Universal Declaration of Human Rights (1948) states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Similarly Article 3 of both the International Covenant on Economic, Social and Cultural Rights (1976) and International Covenant on Civil and Political Rights (1976) both hold that, “States parties undertake to ensure the equal right of men and women to the enjoyment of all . . . rights set forth in the present Covenant.”

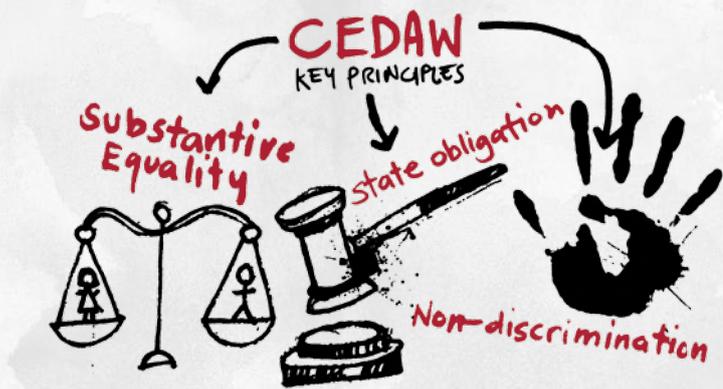
The Convention on the Elimination of All Forms of Discrimination against Women (1979) goes further, specifically outlining how to eliminate discrimination in all areas of women’s lives, and how to achieve equality between men and women. The three core principles of CEDAW include:

1. Substantive equality

States parties must go beyond formal equality, which treats men and women the same, and ensure actual equality in practice. While formal equality is critical, it does not take into account the biological and socially constructed differences between men and women. Substantive equality requires that States recognize the multiple, historic disadvantages faced by women and girls and enact temporary special measures (sometimes referred to as affirmative actions) that advance their integration into education, the economy, politics and employment.²

Following are some examples of where formal equality has not led to substantive equality:³

→ In all Southeast Asian countries women have the right to stand for parliament. However, no country in the region has an equal number of men and women political leaders. Timor-Leste has the highest percentage of women in parliament (38.5 percent) followed by Lao PDR (25 percent). Formal equality in laws regulating political leadership has not led to substantive equality, because in many places women are



not considered to be suited for public life; they lack campaign skills and confidence; they lack access to resources required to stand for public office; and they have heavy workloads which make it difficult for them to juggle home responsibilities with the demands of parliament.

→ Introducing equal pay legislation has not resulted in equal pay for women in Southeast Asia. Women earn 60-80 percent of what men earn, due to the fact that they are clustered in low paying occupations (e.g. childcare, shop work, nursing); often work in the informal economy where equal pay legislation does not apply (e.g. sewing, cooking, domestic work, sex work); are more likely to work part-time; are clustered at the low end of promotion scales; have lower educational attainment; and have inadequate maternity protection, making it difficult to remain in employment after pregnancy.

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etc.



Examples of temporary special measures designed to ensure substantive equality include:

- Quotas to advance female representation in parliament and in leadership positions in the private sector including management, executive positions and on boards;
- Scholarships for girls and women at educational institutions;
- Giving preference to female applicants if candidates for a job are equally qualified;
- Paying a family to send girl children to school rather than have them work in the fields or in the home.

Once equality is achieved, temporary special measures should be discontinued. It should be noted, however, that temporary special measures are different from permanent measures to respond to biological differences between women and men, such as maternity leave for birthing, which cannot be temporary, as they represent an ongoing need of women. Measures such as maternity leave are not affirmative action.



¹ Opening Remarks, H.E. Philip Calvert, Ambassador of Canada, 15 October 2014.

² CEDAW Committee General Recommendation 5.

³ Remarks of Christine Forster, Senior Lecturer, Law Faculty of the University of New South Wales, Australia, 15 October 2014.

⁴ Constitution of South Africa



Women earn 10-30% less than men for the same work

133

MILLION girls and women have experienced female genital mutilation in the 29 countries in Africa and the Middle East.

Substantive equality can also be promoted by laws that provide a comprehensive definition of equality that ensures “the full and equal enjoyment of all rights and freedoms”.⁴

It is important to note that protectionism is not substantive equality. Protectionism is the view that because women are different from men, they must be protected. Protectionist laws recognize the diverse needs of women, but do not attempt to change the dominant structure that leads to inequality between men and women. Examples of protectionism include laws that prohibit women from working at night or from working in mines and other manual labour jobs. This approach is not supported by CEDAW.

2. Non-discrimination

CEDAW prohibits direct discrimination, such as different treatment based on grounds of sex and/or gender differences; as well as indirect discrimination, such as laws, policies, programmes or practices that appear neutral, but in practice have a discriminatory effect. Some examples of direct and indirect discrimination include:

Direct discrimination

- A bank refusing to give financial credit to a married woman without her husband's signature. Married men do not need a signature;
- A woman's family is obliged by law to provide a dowry to a prospective husband.

Indirect discrimination

- An employer has a policy of not letting any staff work part-time (many women need to work part-time due to family care obligations);
- An employer requires an uninterrupted length of service before employees can be eligible for a promotion (this policy does not take into consideration women's reproductive roles).

CEDAW also requires recognition of multiple forms of discrimination that operate across a range of factors additional to gender and sex, such as race, sexuality, marital status and age. For example, most women who are victims of trafficking in the Asia Pacific region are trafficked from a poorer country to a wealthier one. Consequently, when identifying which women are most at risk, it is important to consider gender, race, class and other factors that contribute to the problem.

3. State obligation

When a country becomes a State party to CEDAW, it becomes legally bound to put its provisions into practice. State parties are held accountable through periodic reporting and scrutiny by the CEDAW Committee. Articles 2-4 of the CEDAW detail State obligations as follows:

- Article 2 obliges the State to enact a policy of non-discrimination through legislation, institutional mechanisms and regulatory policies. [See Annex 1 for Constitutional provisions in

“Protectionist laws recognize the diverse needs of women, but do not attempt to change the dominant structure that leads to inequality between men and women.” Christine Forster, Presentation “CEDAW: Equality and Non-Discrimination”

Southeast Asia ensuring equality between men and women];

- Article 3 obliges the State to promote equality through all appropriate means. This includes proactive measures and enabling conditions to ensure the full development and advancement of women;
- Article 4 obliges the State to put in place affirmative action to accelerate de facto equality.
- Articles 5-16 provide substance and context in which the principles of State obligation must be applied. According to these articles, the State must work to achieve substantive equality and remove discrimination in all areas, including health, employment, nationality, social and economic benefits, marriage and family life for rural as well as urban women.

Notably, the CEDAW Convention is the only human rights treaty that affirms the reproductive rights of women and recognizes culture and tradition as influential forces shaping gender roles and family relations. States parties who have ratified or acceded to the CEDAW also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

All countries in Southeast Asia have ratified or acceded to CEDAW. However, domestic application of the Convention has been uneven, and often legislatures are unaware of the demands of CEDAW. Efforts have been made in the region to strengthen legal frameworks and incorporate CEDAW's provisions into national laws: however, progress is slow. For example, in Thailand a law on gender equality has been waiting in Parliament for between five and six years, despite multiple versions and comments by civil society, UN Women and the ICJ. Advocates must continue to press the government to pass implementing legislation; and in the meantime, judicial decisions should highlight where national laws do not match international obligations. A good

example of national legislation that provides a comprehensive guarantee of women's human rights is the Philippine's Magna Carta of Women Act of 2009 - which can be used as a model for other countries in the region.

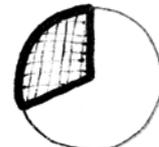
III. THE CEDAW COMMITTEE

THE CEDAW COMMITTEE interprets and provides authoritative guidance on the meaning and scope of the Convention and clarifies what States parties must do to ensure women full enjoyment of their economic, social, cultural, civil and political rights. The Committee does this by reviewing States parties' reports on progress and challenges they face in implementing the Convention and by subsequently issuing Concluding Observations to highlight areas where more effort is needed. The Committee also holds dialogues with States parties when reports are submitted, and welcomes input from civil society.

Additionally, the CEDAW Committee periodically issues General Recommendations, which provide interpretation on the scope and application of the Convention. The General Recommendations reflect the dynamic nature of the Convention and the belief by the Committee that the provisions contained within CEDAW should not be seen as limits. For example, in General Recommendation 28 the Committee noted that the Convention anticipates the emergence of new forms of discrimination that may not have been present when the Convention was drafted. It also clarifies States parties' obligation to recognize and address intersecting forms of discrimination linking discrimination based on sex and gender to other factors such as race, ethnicity, religion or belief, health status, age, class, caste, and sexual orientation and gender identity.

Similarly, although the text of CEDAW does not contain a specific article on gender-based violence, General Recommendation 19 recognizes gender-based violence as a form of discrimination against women as prohibited under Article 1 and clarifies measures to be taken by States parties to eliminate violence against women, including by non-state actors. And, in the area of reproductive health, General Recommendation 24 clarifies that the criminalization and neglect of health

Southeast Asia households headed by wives



30%
Thailand



18.7%
Philippines



12.9%
Indonesia



26.8%
Viet Nam

143 out of 195 countries guarantee equality between women and men in their constitutions as of 2014.

Yet, discrimination against women persists through: laws and policies, gender-based stereotypes and social norms and practices.



781

MILLION

adults and 126 million youth worldwide lack basic literary skills

more than 60% of them are women

care, which involves reproductive health that only women need, is a form of discrimination and provides guidance to States parties on measures needed to address this, including appropriate action by non-state actors.

The Committee has noted that the full meaning and scope of the Convention should be construed in light of its General Recommendations, Concluding Observations, and opinions and statements issued pursuant to the individual complaints mechanism and inquiry procedure into violations by States parties to CEDAW's Optional Protocol (OP). To date, four countries in Southeast Asia have ratified the OP: Thailand (2000), the Philippines (2003), Timor-Leste (2003) and Cambodia (2010). However, only the Philippines has brought forward an individual communication or requested an inquiry.⁵ The Committee considers only those individual communications that meet eligibility criteria, and issues opinions and views which are subsequently transmitted to the complainant and State party with recommendations for redress where a violation has taken place. States parties are required to give due consideration to the Committee's recommendations and submit a written response within six months. The Committee can also follow up with the State party on the status of implementation of its recommendations.

Examples of some notable Committee decisions in the areas of reproductive health and gender-based violence include:⁶

VERTIDO V PHILIPPINES



Karen Tayag Vertido, an employee of the Davao City Chamber of Commerce and Industry in the Philippines, was raped by a former President of the Chamber in 1996. The case remained at the trial court level for eight years before the Regional Court of Davao City acquitted the defendant in 2005. The Court employed the cautionary rule, scrutinizing Vertido's testimony with "extreme caution," and challenging her credibility on the ground that "an accusation of rape can be made with

facility." Although Supreme Court precedent has established that a victim's failure to try and escape does not mean there was no rape, the Court based its decision in part on the fact that Vertido had ample opportunities to escape her attacker.

→ The CEDAW Committee held that the State Court erred in relying on gender-based myths and stereotypes about rape and rape victims in Vertido's case, and stressed that there should be no assumption in law or practice that a woman gives her consent where she has not physically resisted unwanted sexual conduct. The Committee recommended that the State provide Vertido with appropriate compensation, review the definition of rape under existing law to ensure that lack of consent is an essential element of the crime of rape, remove any requirement that sexual violence be committed by violence or force, and require appropriate training for judges, lawyers, and law enforcement officers in understanding crimes of rape and other sexual offences.

LC V PERU



LC became pregnant when she was 13 years old, by a 36-year-old man who been raping and sexually abusing her since she was 11. After she became pregnant, LC jumped off a building and injured her spine. She was taken to a local hospital where it was recommended that she have surgery to prevent paralysis. However when the doctors discovered she was pregnant, they refused to do the surgery and also refused to conduct an abortion, although it was legal at the time. LC later miscarried, but because of the delay in submitting her to surgery, she became paralyzed.

→ The CEDAW Committee held the State accountable for discrimination because of its refusal to provide LC with a therapeutic abortion, which is a health care service needed by women. The State's recognition of therapeutic abortion to preserve a woman's life and mental health required it to establish a legal framework



⁵ See Karen Tayag Vertido v. the Philippines, Communication No. 18/2008, CEDAW Committee Decision 46th Session, 1 September 2010.

⁶ Remarks by Ms. Milena Pires, CEDAW Committee member, Timor-Leste, 15 October 2014.

“ The CEDAW Committee interprets and provides authoritative guidance on the meaning and scope of the Convention and clarifies what States parties must do to ensure women full enjoyment of their economic, social, cultural, civil and political rights. Milena Pires, Presentation “Perspective from the CEDAW Committee on the principles of equality and non-discrimination”



that allowed women to exercise their right to it, including mechanisms to allow timely decisions, ensure well-founded decisions, take into consideration the woman's decision and include the right to appeal. The Committee recommended that the State review its laws to allow for the effective use of therapeutic abortion to protect a woman's mental and physical health and prevent further violations such as those experienced by LC.

PIMENTEL V BRAZIL



The CEDAW Committee held the State accountable for failing to provide timely, non-discriminatory and appropriate health services that would have prevented the "maternal death" of a 28-years-old Afro-Brazilian woman living in poverty who was 6 months pregnant, because she was denied timely and appropriate health care for her pregnancy, and also found the State party responsible for intersectional discrimination based on sex/gender, race and socio-economic status.

→ The Committee also clarified the State's obligation to adopt and implement adequately funded, action and results-oriented policies, as well as their due diligence obligation to ensure that private institutions implement appropriate health services.

AT V HUNGARY

The CEDAW Committee affirmed gender-based violence as a form of discrimination prohibited by the Convention when it found the State accountable for failing to protect AT from domestic violence and to ensure that her abusive partner was removed from the family home after civil and criminal proceedings. AT was unable either to obtain a restraining order or to access shelters, because these services were unavailable.

→ The Committee's decision highlighted the inadequacy of the State's legal and institutional framework, which fell short of international standards, and found the remedies provided as being ineffective to protect and support victims and survivors of domestic violence. The Committee also condemned the low priority of courts in domestic violence matters and the stereotypes which are the root cause of gender-based violence.

States parties to CEDAW should endeavour to have these and other relevant cases, as well as CEDAW Committee General Recommendations and Concluding Observations, translated into the local language and made available to judges, prosecutors and other actors in the administration of justice, including judicial training institutions.⁷



⁵ See Karen Tayag Vertido v. the Philippines, Communication No. 18/2008, CEDAW Committee Decision 46th Session, 1 September 2010.

⁶ Remarks by Ms. Milena Pires, CEDAW Committee member, Timor-Leste, 15 October 2014.

⁷ Remarks by Milena Pires, CEDAW Committee member, Timor-Leste, 15 October 2014.

IV. COURTS' OBLIGATION TO IMPLEMENT CEDAW

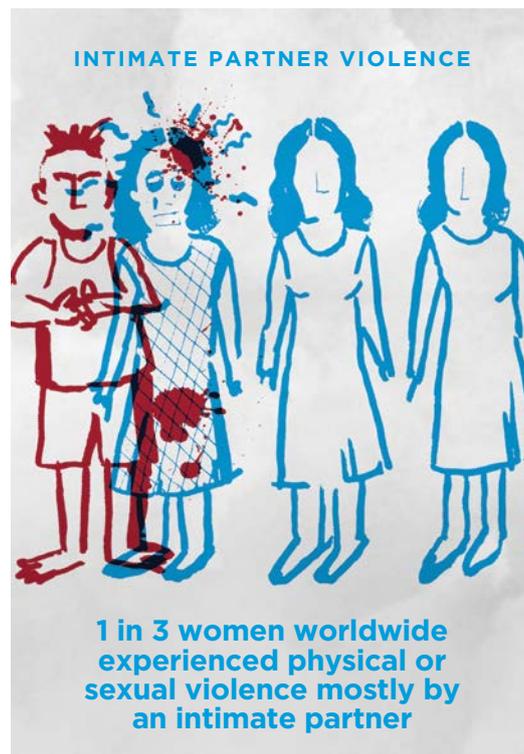
ALL ASEAN MEMBERS are State parties to CEDAW, so judiciaries are obliged to respect the norms and standards of the Convention. Despite this, courts too often manifest bias and prejudice against women by relying on discriminatory stereotypes in decision-making. For example, in deciding cases regarding marital infidelity, courts in the Philippines have chastised women for “no longer finding time to massage [their] husband in the evening” and for “not adhering to the right Filipino values.” In domestic violence cases, courts have also noted the importance of “ensuring that family remains intact at all cost.”⁸

Although most countries in the region lack comprehensive national legal frameworks on ensuring substantive equality for women, every country in ASEAN has incorporated equality provisions into their constitutions: therefore judges should take the initiative to refer to CEDAW in interpreting these provisions.

States take different approaches to applying international law to the domestic context:

→ In States with a ‘monist’ system, the act of ratifying an international treaty immediately incorporates that international law into national law. This means that cases can be brought to the court based on these international commitments, and judges may be able to cite these international instruments directly in their decisions. Under some constitutions, such as the Philippines, direct incorporation of international obligations into domestic law occurs on ratification, while in other states direct incorporation only occurs for self-executing treaties.

→ For States with a ‘dualist’ system, judges cannot cite or draw directly from international instruments in their judgements. They must first be translated into national legislation before they can be applied by national courts. The state’s ratification of an international instrument, however, creates a strong interpretative preference in its favour. It should be noted



that even though judges in dualist countries cannot cite or draw directly from international human rights instruments, they must interpret domestic law in a manner that is as consistent as possible with these instruments.

1. The Bangalore Principles⁹

In April 2000, a preparatory meeting of a group of Chief Justices and senior justices was convened in Vienna in order to address the problem that, in many countries, across all the continents, people were losing confidence in their judicial systems because they were perceived to be corrupt or otherwise partial. It was generally recognized that there was a need for a universally acceptable statement of judicial standards which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced at the national level by the judiciary, without the intervention of either the executive or legislative branches of government. As a result, over the next few years the Bangalore Principles of Judicial Conduct (‘Bangalore



⁸ Remarks by Adoracion P. Cruz Avisado, Chairperson, Transformative Justice Institute Commissioner, Philippine Commission on Women, 15 October 2014.

“ Courts in the Philippines have chastised women for “no longer finding time to massage [their] husband in the evening” and for “not adhering to the right Filipino values.” Adoracion P. Cruz Avisado, Presentation “The International Law Framework on the Obligation of the Courts to Implement the CEDAW Convention”

Principles’) were developed and adopted in order to promote judicial accountability and raise the level of public confidence in the rule of law.¹⁰

The Bangalore Principles are a powerful tool that can empower judges in dualist countries to employ international human rights obligations in national courts.¹¹ Principle 7 states 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 constitutions, legislation or common law.” Thus courts should use the Principles to apply the provisions of CEDAW in their legal analysis and decision-making.

The case *Vishaka versus State of Rajasthan* (3 BHRC 261) illustrates how a court can uphold values embodied in the Bangalore Principles by interpreting domestic law in a manner that is consistent with the provisions in the CEDAW. Principle 5 provides that “ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.” The principle of equality in the Bangalore Principles relates closely to the obligation of States under Article 11 of CEDAW on the elimination of discrimination against women in the field of employment.

FACTS: Following a brutal gang rape of a publicly-employed social worker in a village in Rajasthan, a group of activists and NGOs in India filed a class action under Article 32 of the Constitution, seeking the court’s enforcement of the fundamental rights provisions relating to working women and India’s international obligations under Articles 11 and 24 of CEDAW.

HOLDING: The court ruled that any international convention consistent with the fundamental rights guaranteed in the Constitution and in harmony with its spirit must be used to construe the meaning and content of the constitutional guarantee and to promote its object, regardless of whether implementing legislation has been passed. This is now an accepted rule of judicial construction in India.

The case follows that Articles 11 and 24 of CEDAW and General Recommendations Nos. 22, 23, and 24 of the CEDAW Committee,

relating to sexual harassment in the workplace, may be relied upon to construe the nature and ambit of the gender equality guarantee in India’s constitution.

Like the court in India, progressive judges in ASEAN Member States should rely on the Bangalore Principles in interpreting domestic legislation in a manner that is consistent to the States’ obligations under CEDAW to promote and protect women’s human rights.



The Bangalore Principles are a powerful tool that can empower judges in dualist countries to employ international human rights obligations in national courts.

2. Experiences applying CEDAW at the National Level

THE PHILIPPINES

Imelda Marcos v. Commission on Elections (1995)



FACTS: Imelda Marcos filed a lawsuit against the election commission after it disqualified her from running as Congresswoman for lack of the 1-year residency requirement.

REFERENCE TO CEDAW IN THE HOLDING: The Philippines Supreme Court ruled in Marcos’ favour, noting that while she had various residences for different purposes, none of those purposes unequivocally pointed to an intention to abandon her domicile of origin in Tacloban, Leyte. The concurring opinion of Justice Florida Ruth Romero stated that “CEDAW’s pro-women orientation, which was not lost on Filipino women, was reflected in the 1987 Constitution of the Philippines and later in the Family Code” and that “a widow can no longer be bound by the domicile of the departed husband, if at all she was before. Neither does she automatically revert to her domicile of origin, but exercising free will, she may opt to reestablish her domicile of origin.”

Justice Romero also stated that “all obstacles to women’s full participation in decision-making at all levels, including the family,” should be removed. Having been herself a Member of the Philippine Delegation to the International Women’s Year Conference in Mexico in 1975, this writer is only too keenly aware of the unremitting struggle being waged by women the world over, Filipino women not excluded, to be accepted as equals of men and to tear down the walls of discrimination that hold them back from their proper places under the sun.



¹⁰ Commentary of the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, 2007, pp. 9-10.

¹¹ See Annex 2 “Bangalore Principles of Judicial Conduct”

77
COUNTRIES
criminalize
same-sex
relationships



Philippine Telegraph and Telephone Company v. NLRC (1997)

 **FACTS:** A female job applicant stated that she was single on her application form. She was later dismissed after her employer discovered that she was married.

REFERENCE TO CEDAW IN THE HOLDING: The job applicant concealed the true nature of her marital status, not out of wilful or bad faith, but because she wanted to retain a permanent job in a stable company. In other words, she was forced by the illegal company policy into misrepresenting her civil status for fear of being disqualified from work. The Philippines' Labour Code prohibits employers from making stipulations against marriage. Corrective labour and social laws on gender inequality have emerged with more frequency in the years since the Labour Code was enacted largely due to our country's commitment as a signatory to CEDAW.

Secretary of National Defence v. Manalo (2008)

 **FACTS:** The case involved the application of the Writ of Amparo in enforced disappearances.

REFERENCE TO CEDAW IN THE HOLDING: The Philippines is signatory to various human rights conventions that guarantee the right to security of persons as well as bodily and psychological integrity. In its decision the Court referred to the CEDAW Committee's statement that the protection of the bodily integrity of women may also be related to the right to security and liberty, noting "...gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of article 1 of the Convention (on the Elimination of All Forms of Discrimination Against Women). These rights and freedoms include ... the right to liberty and security of person."

Halaguena v. Philippine Airlines (2009)

 **FACTS:** Flight attendants employed by Philippine Airlines alleged that the provision in the collective bargaining agreement on compulsory retirement was discriminatory because it required women to retire at 55 and men at 60.

REFERENCE TO CEDAW IN THE HOLDING: The issue cannot be resolved solely by applying the Labour Code. It requires the application of the Constitution, labour statutes, law on contracts and the CEDAW, and the power to apply and interpret the Constitution and CEDAW is within the jurisdiction of trial courts. A Collective Bargaining Agreement (CBA), as a labour contract, is not merely contractual in nature but impressed with public interest. It is subject to the police power of the State. If the retirement provisions in the CBA run contrary to law, public morals, or public policy, such provisions may very well be voided.

Ang Ladlad LGBT Party v. Commission on Elections (2010)

 **FACTS:** A gay rights group questioned its disqualification to run as a Party List Representative

REFERENCE TO CEDAW IN THE HOLDING: CEDAW has on a number of occasions criticized States for discrimination on the basis of sexual orientation. For example, it also addressed the situation in Kyrgyzstan and recommended that "lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished."

Garcia v. Judge Drilon (2013)

 **FACTS:** A husband complained that The Act Defining Violence against Women (RA 9262) - which criminalizes acts of violence against women and their children perpetrated by women's intimate partners - violated the equal protection and due process clauses of the Constitution.

REFERENCE TO CEDAW IN THE HOLDING: RA 9262 is constitutional and does not violate the equal protection clause. The unequal power relationship between women and men; the

“ The disadvantaged position of a woman as compared to a man requires the special protection of the law.”

Judge Teresita Leonardo-De Castro



fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. Section 14, Article II of our 1987 Constitution mandates the State to recognize the role of women in nation building and to ensure the fundamental equality before the law of women and men. Our Senate has ratified CEDAW as well as the Convention on the Rights of the Child and its two protocols. The enactment of R.A. 9262 aims to address the discrimination brought about by biases and prejudices against women. As emphasized by the CEDAW Committee, addressing or correcting discrimination through specific measures focused on women does not discriminate against men. 'Anti-male', 'husband-bashing' and 'hate-men' law labels deserve scant consideration. As a State party to CEDAW, the Philippines bound itself to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Justice Puno correctly pointed out that "(t)he paradigm shift changing the character of domestic violence from a private affair to a public offence will require the development of a distinct mindset on the part of the police, the prosecution and the judges."

Concurring Opinion of J Teresita Leonardo-De Castro: RA 9262 can be viewed as Philippines' compliance with CEDAW, which is committed to condemn discrimination against women and

directs it members to undertake, without delay, all appropriate means to eliminate discrimination against women in all forms both in law and practice. In stating that "the disadvantaged position of a woman as compared to a man requires the special protection of the law" De Castro quoted recommendations of the CEDAW Committee.

People v. Jumawan (April 2014)

 **FACTS:** A husband was accused of raping his wife, in Violation of R.A. 8353, the Anti-Rape Law of 1997.

REFERENCE TO CEDAW IN THE HOLDING: The ancient customs and ideologies from which the 'irrevocable implied consent' theory evolved have already been superseded by modern global principles on the equality of rights between men and women and respect for human dignity established in various international conventions, such as CEDAW. The Philippines, as State party to the CEDAW, recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women. One of such measures is R.A. No 8353, insofar as it eradicated the archaic notion that marital rape cannot exist because a husband has absolute proprietary rights over his wife's body, and thus her consent to every act of sexual intimacy with him is always obligatory, or at least presumed. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape.



United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, also known as 'the Bangkok Rules', which were adopted by the UN General

Central Bank Employee Association, Inc. v. Bangko Sentral ng Pilipinas, (BSP) 446 SCRA 299 (2004)

FACTS: Employee Association argued that the law's distinction between two classes of employees at BSP (namely officers or those exempted from the coverage of Salary Standardization Laws (SSL)) and the rank and file (not exempted from coverage of SSL) is unconstitutional.

REFERENCE TO CEDAW: The Court held that the continued operation and implementation of the last proviso of Section 15(c), Article II of Republic Act No. 7653 is unconstitutional as it constitutes discrimination. The court stated that the principle of equality has long been recognized under international law. The general international provisions pertinent to discrimination and/or equality are [among others]....CEDAW.

To continue to promote the use of CEDAW in judicial decision-making, the Philippine Judicial Academy operates a training institution for judges, court personnel and aspirants to the judiciary which includes special focus programmes on:¹²

- Access to justice for women;
- Gender sensitivity and addressing bias in decisions and proceedings;
- The Anti-Sexual Harassment Law;
- Using social workers and ensuring a humane environment in Family Court;
- Community consultations on problems faced by court users;
- How to apply international human rights laws including CEDAW;
- Studies on marital relations cases;
- Competency training for judges and court

personnel handling cases involving children;

- A help-book on Trafficking in Persons;
- A guide on Laws, Rules and Issuances on Cases involving Family, Domestic Relations, Women and Children (2010).

THAILAND

Applying the 'Bangkok Rules'

THAILAND TOOK THE LEAD in developing the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders, also known as

'the Bangkok Rules', which were adopted by the UN General Assembly (Resolution A/RES/65/229) in December 2010.¹³ The Bangkok Rules acknowledge that women offenders have different vulnerabilities from men, and explicitly address the specific needs of women and the different situations they come from. The Bangkok Rules are also the first international instrument to address the needs of children in prison with their parent.

Specifically, the Bangkok Rules are designed to protect female prisoners; female offenders who have been given a sentence other than imprisonment (non-custodial measure or sanction); and children of imprisoned parents accompanying their parent to prison. The Rules are designed to keep women out of prison when possible, and provide guidance on gender-sensitive alternatives for both pre-trial detention and sentencing post-conviction which address the most common causes of offending. The Rules recognize that "prison is usually an ineffective, and often damaging, solution to offending by women, hindering their social reintegration and ability to live productive and law-abiding lives following release. One example of a gender-sensitive alternative to prison is counselling services with on-site childcare facilities. This provides a solution for women offenders who are mothers, enabling them to deal with the root causes of criminal behavior whilst continuing to care for their children."¹⁴

For those women who are sent to prison, the Bangkok Rules address the need for:¹⁵

- Appropriate healthcare — including reproductive healthcare, gender-specific mental health care, substance abuse and the treatment



¹² Remarks by Maria Rowena Modesto-San Pedro, Regional Trial Court Philippines, 15 October 2014.

¹³ The Bangkok Rules supplement the existing UN Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules on alternatives to imprisonment.

¹⁴ Adapted from the UN Bangkok Rules on women offenders and prisoners - Short guide, UKAID and Penal Reform International, 2013

¹⁵ Adapted from the UN Bangkok Rules on women offenders and prisoners - Short guide, UKAID and Penal Reform International, 2013

and care of other diseases such as breast cancer screening.

→ Humane treatment that respects prisoners' dignity – The Rules prohibit the use of instruments of restraint on women during labour, during birth and immediately after birth. Solitary confinement or disciplinary segregation for pregnant women, women with infants and breastfeeding mothers is also prohibited. Search procedures must respect a woman's dignity and be carried out by female staff. Additionally, consideration must be given to specific cultural and religious requirements of imprisoned minority group members and indigenous people.

→ Protection from violence – Women prisoners are at particularly high risk of rape, sexual assault and humiliation in prison and must be protected from all forms of sexual misconduct by prison staff and other prisoners. Rule 7 of the Bangkok Rules emphasizes the duty of prison administrations to inform women prisoners of their right to seek recourse from judicial authorities on the grounds of sexual abuse or other forms of violence both before or during detention:

1. "If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.

2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.

3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action."

→ Special provision for children who are in prison with their mothers, whether medical, physical or psychological. As these children

are not prisoners, they should not be treated as such. The Rules also require special provisions to be made for mothers prior to admission, so they can organize alternative childcare for children left outside.

The Rules also support the development of empirical information on the situation of women prisoners as a basis for programme development and effective policy for rehabilitation and reintegration. They promote action-oriented research on characteristics of women offenders - what triggers their confrontation with the criminal justice system; the effectiveness of programmes designed to reduce re-offending by women: the number of children affected by their mothers' contact with the criminal justice system, and the impact of this on the children. The Rules also outline the promotion of public awareness of the trends, problems and factors associated with in women prison through research and media.¹⁶

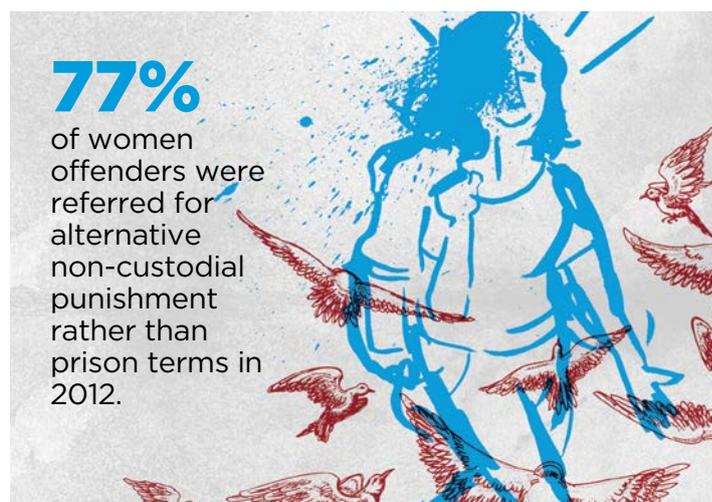
In order for the implementation of the Bangkok Rules to be effective and sustainable, the Thai Institute of Justice (TIJ), established in 2011, prioritized the promotion and implementation of the Bangkok Rules both nationally and internationally. The TIJ has conducted baseline research to profile women offenders and to develop a checklist to assess the implementation of the Bangkok Rules. While the research initially has focused on Thailand, it will later be expanded to other ASEAN countries.

Judges play an important role in ensuring that treatment of women offenders and prisoners is in compliance with the relevant international standards and norms. Pursuant to the Bangkok Rules, imprisonment of women offenders should be a punishment of last resort: however, when imprisonment is necessary, a gender-sensitive sensitive approach is required. To ensure understanding and compliance among the judiciary in Thailand, the Rules have been translated into the Thai language and distributed to 4,000 judges throughout the country. Additionally, Thailand's Court of Justice Research Institute has organized regional forums and technical seminars to raise awareness among court staff about the rules

“ The Bangkok Rules acknowledge that women offenders have different vulnerabilities from men, and explicitly address the specific needs of women and the different situations they come from Deputy Chief Justiceec Sittisak Wanachagit Presentation “Role of Judges in Protecting Women Offenders and Prisoners under the Bangkok Rules”



16 Putting the Bangkok Rules into Practice: A Framework for International Cooperation, Her Royal Highness Princess Bajrakitiyabha Mahidol, available at http://www.unafei.or.jp/publications/No90_08SL_Princess.pdf



17 Remarks of Judge Vacharin Paijektivinyusakul, Chief Justice of the Court of Appeal, Region 6, Thailand, 15 October 2014.

18 Remarks of Judge Vacharin Paijektivinyusakul, Chief Justice of the Court of Appeal, Region 6, Thailand, 16 October 2014.

19 <http://asiapacific.unwomen.org/en/focus-areas/end-violence-against-women/pilots-with-the-justice-system#sthash.plUWGnS9.dpuf>

and to promote alternatives to incarceration. Pursuant to the Rules, courts in Thailand now take into consideration the age of the offender, as well as family background, education, and other environmental factors when considering leniency.¹⁷

For example, Thailand's Court of Appeals recently invoked the Bangkok rules when it ordered the suspension of punishment for a woman who committed an offence against the Gambling Act. The offender was sentenced to two-month imprisonment by the provincial criminal court and then appealed to the Court of Appeal for the suspension of punishment. The Court of Appeal, noting that the defendant had no criminal record and the nature of the offence was not serious, stated that in order to conform to the Bangkok Rules, it was obliged to take into account the negative impact of the imprisonment on the defendant and her child, who was under 1 year old. The defendant's prison sentence was suspended, she was fined 2,500 Thai Baht (USD 83) and given one year of probation.

Many other women charged with non-violent offenses have received similar treatment in recent years. In 2012, almost 77 percent of women offenders were referred for alternative non-custodial punishment rather than prison terms. Building on this progress, Thailand's Supreme Court of justice developed a strategic

plan for 2014-2017 which places emphasis on integrity, expediency, transformational justice, alternatives to incarceration and compliance with international standards.¹⁸

Additionally, the Thonburi Criminal Court in Thailand has introduced a specially designed programme that ensures a gender-sensitive approach, particularly for victims of domestic violence. For example, in order to reduce the trauma and fear experienced by women survivors of domestic violence, a model courtroom and waiting room have been designed with partitioned witness areas, so that aggrieved women will not have to directly confront their alleged attackers while testifying. Additionally, the judges, legal officers, other supporting staff and selected mediators connected to the courtroom have received gender-sensitivity training to ensure they are able to adequately consider the needs of the victims in accordance with international guidelines.¹⁹

V. DEVELOPMENT OF A CEDAW CASEBOOK FOR USE BY COURTS AND JUDICIAL TRAINING INSTITUTIONS

DURING THE 2013 SOUTHEAST ASIA REGIONAL JUDICIAL COLLOQUIUM on improving the situation of women's human rights in the region, participants noted a general lack of knowledge on CEDAW among the judiciary, and expressed the need for more CEDAW training and a CEDAW Handbook for judges that will facilitate courts' application of CEDAW. In response, a CEDAW Casebook is being developed that highlights judicial decisions in Southeast Asia where the Convention has been applied. The Casebook will cover all final decisions by courts from 2000 to the present that have applied or referred to CEDAW, either in a substantive or procedural manner, or have applied CEDAW principles on gender equality and non-discrimination as cited in national constitutions or national laws. Cases may refer to or apply CEDAW or CEDAW principles on gender equality and non-discrimination either

“ Pursuant to the Bangkok Rules, imprisonment of women offenders should be a punishment of last resort: however, when imprisonment is necessary, a gender-sensitive approach is required. Justice Vacharin Patjektivinyusakul, Presentation “On Implementing the Bangkok Rules”

positively, as a landmark decision, or negatively, which indicates a regression in case law doctrine.

There are several challenges to developing such a Casebook, including a lack of access to written decisions in some countries in the region, including Cambodia and Lao PDR; the fact that some countries such as Indonesia, do not use the practice of *stare decisis* thus making it difficult to understand the evolution of jurisprudence on women's equality; and a lack of *ratio decidendi* (rationale for the decision) of cases in countries such as Viet Nam. However, some important cases have been identified for inclusion in the Casebook, and it is hoped that through collaboration with judiciaries and judicial training institutions, more will be included as the project progresses.

In addition to the cases from the Philippines mentioned earlier, other notable cases from Southeast Asia that have applied the CEDAW's principles on substantive equality and non-discrimination, include:

MALAYSIA

Noorfadilla Ahmad Saikin v. Chaikyad Basirun et al, (2012) 1 CLJ 781-3

 **FACTS:** Norfadilla Ahmad Saikin, 29, took the government to court to seek a declaration that pregnancy cannot be used as an excuse not to employ a person as an untrained relief teacher, and the revocation of the memo on her placement to be declared illegal and unconstitutional.

HOLDING: In upholding the right of the complainant, a pregnant woman, to be employed, the court applied CEDAW Article 1 (definition of discrimination) and Article 11 on prohibition of discrimination in employment. The court stated "CEDAW is without doubt a treaty in force and Malaysia's commitment to CEDAW was 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."

Beatrice A/PAT Fernandez v. Sistem Penerbangan Malaysia et al Permohonan No. 08-51 Tahun 2003 (W) March 11, 2005

 **FACTS:** Beatrice Fernandez's employment as a flight stewardess with the Malaysian

Airlines System was governed by a collective agreement requiring all stewardesses (in the same category as Beatrice) to resign upon becoming pregnant. Ms. Fernandez refused to resign when she became pregnant and was terminated by the respondent. She subsequently filed suit against her employer alleging that the collective agreement was discriminatory and contravened Article 8 of the Federal Constitution of Malaysia 1957, which she argued rendered the collective agreement void.

HOLDING: Article 8(1) of the Federal Constitution did not apply as the collective agreement was not a law to be taken cognizance of by the constitutional court but a contract entered into between two private parties. Thus the airline was entitled as an employer to impose those special conditions which were peculiar to such a specialized occupation. The court took judicial notice that the job required of flight stewardess is not conducive for pregnant women.

THAILAND

Constitutional Court Ruling No. 21/2546 (June 2003)

 **HOLDING:** holding that section 12 of the Names of Persons Act, which obligated married women to adopt their husband's surname, was unconstitutional as it was inconsistent with the equality provisions of section 30 of the Constitution.

Thailand Constitutional Court issued Ruling No. 17/2555 (July 2012)

 **HOLDING:** that the Revenue Code provisions whereby a wife's income (except for income from employment) had to be aggregated with that of her husband and declared in his tax return, were discriminatory and contrary to the equality provisions of section 30 of the Constitution. Each spouse has a right to file his/her own tax return.

Thailand Constitutional Court issued ruling No. 21/2546 (2003)

 **HOLDING:** Section 12 of the Names of Persons Act, B.E. 2505 (1962), which required women to take their husbands surname upon marriage, was unconstitutional as it discriminated against women and therefore was inconsistent with section 30 of the Constitution of the Kingdom of Thailand (1997).

PURPOSE OF A CEDAW CASEBOOK

To improve understanding of the CEDAW Convention among judges and court personnel, and promote its use in courts by developing both a reference and a resource on the application of CEDAW in judicial decisions in selected ASEAN countries"

Thonburi Criminal Court ruling (2011)

 **HOLDING:** a woman charged with murdering her husband after serious domestic abuse was given a suspended sentence. The Court found that she suffered from battered wife syndrome, which affected her mental health including her decision-making process and judgment over some situations. The Court held that she deserved to be rehabilitated instead of being punished with an imprisonment charge in order to be given an opportunity to access an appropriate psychological treatment and to resume her role of raising her own children.

TIMOR-LESTE**District Court of Dili, Porc. No: 70 11 2008 I C. Ord TDD, Prosecutor v. Casimiro Soares (2008)**

 **FACTS:** The defendant kicked, punched and threatened his wife with a machete in front of their seven children for returning home late after she stood in line all day to receive a her voter registration card. The victim suffered injuries requiring stitches and medical treatment.

HOLDING: “In this case we find that the defendant acted with direct and intense malice because he abused his wife violently in the presence of children . . . living in this circle of violence will influence the mindset and mental development of these minors. Given Article 17 of the Constitution and Articles 1 and 2 of the CEDAW Convention . . . it is proven that there was discrimination of the husband against his wife.”

Suggestions by members of the judiciary on how to increase CEDAW implementation in their home countries, include:**Cambodia**

Judges and prosecutors need specific training on women’s human rights issues.

Lao PDR

Lao must adopt the law on violence against women (VAW) and violence against children

(VAC). Law practitioners also need training on CEDAW as very few have even heard of it.

Myanmar

Myanmar is drawing up a law on VAW, and there are plans to amend the Constitution and review laws to ensure they guarantee equality and comply with CEDAW.

Thailand

Because Thailand is a dualist country it needs to enact a national law on CEDAW. Additionally, there is a need to review some of the domestic laws to bring them in compliance with CEDAW principles. Judges also need to be trained on CEDAW so that they have the confidence to apply its principles. To that end, Thailand plans to draft a CEDAW guide for judges and conduct training for the judiciary.

Timor-Leste

CEDAW and other human rights treaties are not currently well known. Therefore, how to promote and protect human rights and incorporate CEDAW into decision-making should be made part of the judicial training curriculum. Judicial candidates, prosecutors and public defenders all must be sensitized on women’s rights so that they really understand how to apply the laws in a non-discriminatory way and do not re-victimize those who have experienced violence.

Viet Nam

Viet Nam is considering establishing a family and juvenile court in order to better protect the rights of women and children. Training judges on women’s rights will be a priority.

Philippines

There is a need for an assessment on how many judges, police, office of the prosecutor, members of the bar association and legal aid organizations are aware of CEDAW. Judicial bench books and guidelines that explain the principles of CEDAW are essential, particularly for judges in the lower level courts, who are not familiar with this subject. Also, there needs to be more effort to incorporate teaching about CEDAW into law school curriculums.

“**Judges are the guardian of rights and freedom – they enforce the rights of the people and ensure that statutes do not only remain as statutes, but interpret and apply domestic laws in a manner that responds adequately to the challenges at hand. They are crucial in standards setting and take on the integral role in developing and protecting human rights through the court decisions that they make.**” **Sam Zarifi, Director of International Commission of Jurists (ICJ)**



VI. IDENTIFYING AND ERADICATING GENDER STEREOTYPES IN JUDICIAL DECISION-MAKING

GENDER STEREOTYPES are inaccurate assumptions of male and female attributes and unwarranted expectations of the roles women and men should play. Gender stereotypes about women include views that they are gentle, emotional, cry easily and are prone to hysterics; are slow in reacting to problems; are natural caregivers and nurturers; and are followers. Stereotypical beliefs about men include views that they never cry; tend to remain cool, calm and collected; and are rational leaders, fighters and providers who take immediate action.

These stereotypes are deeply ingrained in many cultures in Southeast Asia where traditional families tend to be patriarchal and hierarchical in structure, with males and older individuals occupying a higher and dominant status. In such families, males are highly valued and sons carry on the family name. In traditional households, females are seen as less valuable and are assigned less important roles in the family. They are expected to be passive, to adhere to the husband's family, to be subservient to the male, to perform domestic chores, and to bear children.²⁰

Discriminatory practices prevailing in the countries of Southeast Asia that contribute to stereotyping include:

- The feminization of poverty and economic disparities between men and women;
- The low representation and participation of women in public offices, government structures and the judiciary;
- The stark disparities in educational opportunities between males and females;
- The widespread prevalence of violence against women, particularly with regard to domestic violence and marital rape, child marriages, and trafficking in women and girls;
- The traditional roles and responsibilities of women and men in family and the society; and
- Entrenched discriminatory practices towards women in law enforcement, and in judicial decisions.

Article 5 of CEDAW calls upon States to eliminate practices based on stereotypes. It is one of the few human rights treaties that speaks to the need for cultural transformation. Stereotyping permeates all aspects of society, including the law and judicial decisions. Judicial stereotyping is a common and pernicious barrier to justice, particularly to women victims and survivors of violence.²¹ Gender bias in judicial decision-making includes “the tendency to interpret the actual facts of a case through a prism of favouritism for one gender over the other where such favouritism is based upon prejudice, stereotyping, distortion and irrational preferences.”²²



²⁰ Remarks by Judge Zenaida Elepano, (Ret.) former Court Administrator of the Supreme Court of the Philippines, 16 October 2014, citing Linda Nguyen, 2002.

²¹ Navi Pillay, UN High Commissioner for Human Rights, speaking on equality and justice in the courtroom, Huffington Post, 3 March 2014.

²² Remarks by Judge Zenaida Elepano, (Ret.) former Court Administrator of the Supreme Court of the Philippines, 16 October 2014, citing to paper presented by Gene. C. Coleman to the Federation of Law Societies National Family Law Program, St. John's Newfoundland, July 2000.



22 Remarks by Judge Zenaida Elepano, (Ret.) former Court Administrator of the Supreme Court of the Philippines, 16 October 2014, citing to paper presented by Gene. C. Coleman to the Federation of Law Societies National Family Law Program, St. John's Newfoundland, July 2000.

Judges' ingrained stereotypical beliefs about the nature and roles of men and women, rather than on an independent consideration of their individual worth and capabilities, lead to biased decisions. Women's issues are often trivialized in court and women witnesses are often viewed as less credible than men. Additionally, when legal principles are viewed from the male perspective (such as male-centred self-defence principles that reject the defence of 'battered women syndrome') this can lead to discrimination against women.

Cases illustrative of judicial stereotyping include:

R. P. B. v. The Philippines, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014).

 **HOLDING:** The trial court acquitted a man charged with raping RPB, a 17-year-old girl who is deaf and mute. The court concluded that RPB had failed to prove the sex was not consensual. It also questioned RPB's credibility because, in its view, she had not responded to the attack in the manner expected (i.e. she had not summoned "every ounce of her strength and courage to thwart any attempt to besmirch her honour and blemish her purity"). The court was particularly critical of RPB's "failure to even attempt to escape ... or at least to shout for help despite opportunities to do so", which in its view, "casts doubt on her credibility and renders her claim of lack of voluntariness and consent difficult to believe". R.P.B. received interpreting assistance during only some of the court proceedings.

CEDAW COMMITTEE RECOMMENDATION: The State party must ensure all proceedings involving rape and other sexual offences are conducted impartially and fairly and free from prejudices and stereotypes related to gender, age and disability. The State party must also provide regular training to judges and legal professionals to ensure that court proceedings and decisions are not adversely affected by stereotypes and biases.

Vertido v. The Philippines, UN Doc CEDAW/C/46/D/18/2008 (1 September 2010)

 **HOLDING:** The judge acquitted the accused of raping Ms. Vertido, citing insufficient evidence to prove beyond all reasonable doubt that the accused was guilty of the offence charged. Her Honour based her decision to acquit on a number of 'guiding principles' from other rape cases and her unfavourable assessment of Ms. Vertido's testimony based, among other things, on her failure to take advantage of perceived opportunities to escape from the accused.

CEDAW COMMITTEE RECOMMENDATION: In failing to end discriminatory gender stereotyping in the legal process, the Philippines violated articles (2)(c) and 2(f) of CEDAW, and article 5(a) read in conjunction with article 1 and General Recommendation No. 19 (violence against women). The State party must take effective steps to ensure that decisions in sexual assault cases are impartial and fair and not affected by prejudices or stereotypes.

People v. Relox G.R. No. 149395 - Philippines (April 28, 2004)

 **HOLDING:** The private complainant, a 33 year-old mother of two, alleged she was raped by her father in his house. The Supreme Court acquitted the accused, stating that the complainant could have shouted for help, fled when she had a chance, fought off her attacker or awakened her brother by crying for help. "While it may be said that tenacious resistance from the victim is not a requirement for the crime of rape, the lack of evidence signifying an obstinate resistance to submit to the intercourse, naturally expected from an unwilling victim, could likewise indicate that no rape has occurred."

Gender bias and stereotyping must be eradicated in courts and their decision-making process. In order to eradicate bias and discrimination in

“**The justice system is central to the social justice. Central to gender equality. It is absolutely imperative that not only is the law reform to ensure full access to women's empowerment and equality but also in the implementation of the law. There should be equal attention that stereotypes are not recreated.**”

Roberta Clarke, Regional Director of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)

the courtroom, judges must be cognizant of their own cultural baggage that may lead to bias. For example, when hearing cases alleging rape and other sexual offences, they must guard against questioning complainants about their sexual history, or assuming that all women who are victims of sexual assault would make an effort to run away or complain immediately after the attack. Taking the character of the woman into consideration leads courts to treat certain women with suspicion and impedes access to justice. Similarly, the stereotype that all children belong to women in custody disputes is a harmful stereotype and does not always lead to a result that is in the best interest of the child. Judges must be vigilant about addressing not only their own bias but also bias they observe among other justice system actors, including lawyers and litigants.²³

Women victims and survivors should be able to rely on a [justice] system free from myths and stereotypes, and on a judiciary whose impartiality is not compromised by these biased assumptions. Eliminating judicial stereotyping is therefore a crucial step in ensuring equality and justice for victims and survivors. Strategies to eradicate gender stereotyping in judicial decisions include:

1. Conducting training for judges to increase their awareness of gender bias and stereotyping and help them to:

- a. Identify and acknowledge real group and individual differences;
- b. Check their thought processes and decisions for possible gender bias and stereotyping; and
- c. Use gender-fair language in their decisions and other court issuances.

2. Formulate guidelines on how judges can avoid gender stereotyping.

3. Amend or revise codes of judicial conduct and professional responsibility to include provisions on gender-sensitivity, as well as administrative sanctions for violations of these provisions.

4. Create a task force to oversee the implementation of these initiatives, in particular to:

- a. Investigate and document the extent to which gender bias exists in the courts by conducting a review of pertinent statutes, judicial decisions, court procedures, rules and issuances, practices or conduct;

- b. Recommend methods to eliminate gender bias in the courts including the development and provision of necessary judicial education, the passage of necessary legislation and the promulgation of court rule and policy revisions;
- c. Establish feedback mechanisms for these initiatives; and
- d. Monitor implementation of these reform programmes, and evaluate and measure their effectiveness in ensuring gender sensitivity in judicial decisions.²⁴

VII. DEVELOPMENT OF A BOOKLET ON GENDER STEREOTYPES AND OTHER INDIRECT FORMS OF DISCRIMINATION AGAINST WOMEN IN JUDGMENTS

IN ORDER TO DEVELOP JUDGES' understanding about stereotyping and other forms of indirect discrimination, a booklet is being developed that highlights how gender stereotypes are manifested in laws and court decisions in Southeast Asia, and how these decisions impact on women litigants and their ability to claim their human rights. The booklet will also include examples of good practices in addressing wrongful gender stereotyping in adjudication.

The booklet will focus on international human rights norms and standards related to stereotyping, including CEDAW and its requirement that States parties banish harmful gender stereotypes and wrongful gender stereotyping (Articles 2, 5, 10); the Convention on the Rights of Persons with Disabilities, Article 8 (1); and other core international human rights treaties that have interpreted the non-discrimination principles as including the obligation to eliminate or combat harmful gender stereotypes and wrongful gender stereotyping. Relevant CEDAW Committee jurisprudence will also be explored, including decisions in: *A.T. v. Hungary* (2005); *Karen Vertido v. the Philippines* (2010); *V.K. v. Bulgaria* (2011); *L.C. v. Peru* (2011); *R.K.B. v. Turkey* (2012); *Jallow v. Bulgaria* (2012); *V.V.P. v. Bulgaria* (2012); *R.P.B. v. the Philippines* (2014); and *Gonzales Carreno v. Spain* (2014).

A preliminary review has indicated that gender stereotyping in judicial decision-making in



AGGRESSIVE
TOUGH
DOMINANT
INDEPENDENT



EMOTIONAL
SUBMISSIVE
PASSIVE
TALKATIVE
NURTURING



²³ Remarks of Roberta Clarke, Regional Director of UN women Regional Office for Asia and the Pacific, 16 October 2014.

²⁴ Remarks by Judge Zenaida Elepano, (Ret.) former Court Administrator of the Supreme Court of the Philippines, 16 October 2014, citing to Simone Cusack, *Eliminating Judicial Stereotyping, Equal access to justice for women in gender-based violence cases*, 9 June 2014.

Southeast Asia most often occurs in cases related to: 1) gender-based violence; 2) marriage and family; and 3) property and other economic rights.

1. Gender-based violence

In cases dealing with victims of gender-based violence women's character and sexual history is often called into question and they are stereotyped as either the 'virtuous' or 'good woman' or the 'sexually available slut'. For example:

→ In the Philippines: In *Civil Service Commission v. Belagan* (Supreme Court, 2004), the Appellate Court held that the complainant alleging sexual assault was an unreliable witness, her character being questionable. Given her aggressiveness and propensity for trouble, "she is not one [from] whom any male would attempt to steal a kiss." In absolving respondent from the charges, the Appellate Court considered his "unblemished" service record for 37 years.

→ Similarly in *People v. Smith* (Court of appeals 2007), in deciding on a case alleging the rape of a Filipina by an American serviceman, the court stated that "the complainant behaved with audacity and danced with men that she barely knew. What happened was not rape but unfolding of a spontaneous romantic episode."

→ In Myanmar, in the case *Union of Myanmar v. MG Own Lwin* (Supreme Ct. 1993), a 26-year-old

woman reported that the accused entered her hut and raped her. She admitted that she did not shout but instead reported the rape to her father. The township acquitted the accused. On appeal the Supreme Court held that because she had a child out of wedlock, she was the type of person who could speak untruthfully and was not to be trusted.

→ Similarly cases in Thailand such as *The Public Prosecutor of Uttaradit Province v. Mr. Jeerasak Uamhrom* (Supreme Court of Thailand, 1987) considered the relevance of the victim's sexual history or reputation, and *The Public Prosecutor of Pichit Province v. Tui Singhanath* (Supreme Court of Thailand, 1984) reflected the belief that women file complaints out of ill motives.

→ Justice officials also relied on gender stereotypes in Timor-Leste in a case where a teacher was caught on video kissing one of his students. When it was brought to the attention of the authorities the reaction was "he's a man - of course he can't resist the temptation."²⁵

Courts have also made assumptions about how a 'typical' woman might behave when confronted by sexual violence. They employ the 'standard or 'normal reaction' requirement, which subscribes to the belief that women always physically fight back when assaulted or violated, or the belief that women would naturally leave or stay away from their abuser. Such stereotypical thinking has led to 'prompt reporting requirements', 'corroboration rules' and 'cautionary rules', which act as barriers to victims seeking justice for abuse and violence.

For example, the 'cautionary rule', which is based on the stereotype that women are 'lying, deceptive and irrational creatures driven by neuroses and hormones', requires judges to "exercise great caution" in believing the testimonies of complaints in sexual assault cases on the ground that their testimonies are "inherently potentially unreliable." As a Court in the Philippines noted, "an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove . . . in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution." [Note: although the cautionary rule has not been invoked by the court in recent years, it has never formally been withdrawn or overturned by the court].



²⁵ Remarks by Timor-Leste group at Regional Workshop for Judicial Training Institutions in Southeast Asia, 16 October 2014.



Similarly problematic are laws in Indonesia criminalizing rape which require corroboration and a witness in order for a case to be filed; and the law on domestic violence provides that the testimony of the victim is sufficient if accompanied by other legal proof.

2. Marriage and Family

Stereotypes about what it means to be a ‘good mother’ or ‘good wife’ can be barriers to women seeking access to justice in divorce and child custody proceedings. Additionally:

- Sex-role stereotypes have led to harmful laws that do not recognize marital rape (such as in Lao PDR);
- The family code of the Philippines considers men to be the head of the household and final decision makers in the family (Arts. 211 & 225);
- In Lao PDR, informal village mediation is the preferred way of dealing with domestic violence disputes. The emphasis is on harmonizing the family rather than ensuring justice for the victim.

3. Economic Rights

Stereotyping in decisions related to economic rights often assumes that men are better decision-makers in property or financial matters. Examples of stereotyping in laws that are barriers to women accessing justice include:

- Articles 96 & 124, Family Code of the Philippines considers men to be the primary breadwinners, and that women only supplement the family income;
- Under Islamic law in Indonesia, men are entitled to a bigger share of the inheritance. For an example, see Putusan No. 1604/Ptd/2004/Indonesia – where married female workers in a company did not get family allowance, while their male colleagues did. The court ordered similar payments to women;
- In Timor-Leste, when informal justice mechanisms decide a woman has been wrongfully



harmed, they will award compensation to her family rather than to her;²⁶

- When filing income tax returns in Thailand, the online process, as well as the wording on hard copy tax forms, assumes that the husband is the breadwinner and the one in the family who is earning an income.²⁷

Good practices in combating stereotyping in Southeast Asia

Despite the continued prevalence of bias and stereotyping in judicial decision-making, there has been progress in addressing the problem and revisiting laws and judicial practices that are harmful to women.

For example in the Philippines:

- The ‘context and emotional threshold’ standard is applied to appreciating the time element in reporting a violation. For example in Philippine *Aeolus Automotive United Corporation vs. National Labour Relations Commission and Cortez* (G.R No. 124617, April 28, 2000), the judge correctly viewed sexual harassment as “abuse of power by the employer” and noted



²⁶ Remarks by Timor-Leste group at the Regional Workshop for Judicial Training Institutions in Southeast Asia, 16 October 2014.

²⁷ Remarks by Thailand working group at the Regional Workshop for Judicial Training Institutions in Southeast Asia, 16 October 2014

“**The Court maintains that as a State Party to CEDAW it can rely on “its accompanying UN Declaration of VAW that identified marital rape as a specific sexual offence”** Mary Jane N. Real, Presentation “Regional Workshop of Judicial Training Institutions on Good Practices in Promoting Women’s Human Rights’ Compliant Justice Delivery”



that “strictly speaking, there is no time period within which he or she is expected to complain through proper channels. The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee”;

- The doctrinal rule of ‘no standard behavioural response’ is applied in cases alleging sexual violations;
- The ‘rape shield’ rule (Sec. 6, RA 8505) is in effect;
- The rule on equality of value of material and non-material contribution in property acquisition (Art. 147, Family Code) is applied;
- There is an acknowledgement of ‘marital rape’ (People v. Jumawan, G.R. No. 187495, April 21, 2014, Supreme Court of the Philippines).

In Timor-Leste the Dili District Court, in hearing a case where a man beat his wife for leaving the house untidy, made it clear that “nothing justifies domestic violence” through its decision NUS.0980/2011.PD.DIL, Proc. No. 125/C.Ord. (Ordinary Crimes) 2014/TDDL (Dili District Court 2011).

In Cambodia:²⁸

- Marital rape is criminalized under the law on domestic violence;
- In 2011 a discriminatory law setting the age of marriage for women at 18 and men at 20 was repealed;
- Rules of the court do not require medical evidence for a victim to prove rape: the victim’s testimony is sufficient.

In Viet Nam:

- There is no timing requirement for victims of rape to file a case.²⁹

These cases and others will be documented in the booklet to raise awareness of problems related to stereotyping and direct/indirect discrimination in adjudicatory processes. While there are serious limitations to compiling such a resource, including the lack of access to written decisions in many countries, it is hoped that through cooperation with members of judiciaries and women’s rights advocates throughout the region, enough information about stereotyping in justice mechanisms can be identified to make it a valuable judicial training resource.



28 Remarks by Cambodia working group at the Regional Workshop for Judicial Training Institutions in Southeast Asia, 16 October 2014.

29 Remarks by Vietnam’s working group at the Regional Workshop for Judicial Training Institutions in Southeast Asia.

VIII. RECOMMENDATIONS AND CONCLUSION

“ENSURING ACCESS TO JUSTICE is a fundamental component of the rule of law and an indispensable element of human rights protection. A judicial system that is responsive to the needs of women is a key pillar of equality, which in turn is necessary for the full development of a society.”³⁰

Recommendations for ways that judiciaries in Southeast Asia can ensure access to justice for women include:

- “Demanding more transparency in judicial decisions and requiring written decisions which allow for proper appeals and allows the judiciary itself to investigate the attitude of judges and see if discriminatory attitudes make proper implementation of the laws difficult”³¹;
- Conducting an assessment of judicial attitudes on gender in order to better understand what judges’ attitudes are about gender discrimination and how much they know about CEDAW;
- Establishing judicial codes of conduct to ensure respect for CEDAW’s principles of gender equality and non-discrimination.
- Publishing and disseminating reports of court decisions applying CEDAW;
- Training justice system actors in women’s human rights and how to avoid and address gender stereotyping and bias. Training should be given to new judges and continuing legal education on this issue should be required for senior judges;
- Integrating CEDAW into curriculums at law schools and judicial training institutions;
- Publishing toolkits on CEDAW and distributing

them to different pillars of the justice system;

- Translating information on CEDAW and other human rights standards into local languages so that women are better able to demand their rights and access justice;
- Ensuring that bench books include information on how to apply CEDAW;
- Conducting gender audits to identify gaps and highlight best practices in:
 - ensuring gender sensitivity in the courtroom;
 - abolishing discrimination from the adjudicatory process; and
 - integrating gender equality into every aspect of decision-making;
- Working with experts at UN Women, ICJ and other international human rights organizations to access technical support in conducting research and developing assessment tools and training materials.

Although Southeast Asia is the region with the lowest rate of ratification of international documents, all countries in the region have ratified or acceded to CEDAW. This attests to the importance that countries in the region place on eliminating ALL forms of discrimination against women. Although culture, tradition and patriarchy make it a challenge to abolish discrimination, progress is happening. When promoting human rights it is important to think about improvements, not perfection. No country is perfect – none has completely eradicated discrimination against women. Southeast Asia is a complicated region, where some countries are very rich while others are poor, and where some judiciaries are very young while others are very experienced. It is clear, however, that in almost every country in the region, the vast majority of people do not deal with the justice system at all, and when they do it is at the lowest level – not the district court or Supreme Court. Therefore, attention must be focused on ensuring that those working at the lower court levels understand gender equality principles and are able to apply CEDAW in their decision-making.³² “After one has recognized the truth of human rights, the next challenging step is the implementation of human rights protection, and creation of a human-rights-oriented society. And, in this challenging step, the court and the judiciary are the vital links that can transform written human rights into rights experienced in the real world.”³³



30 Opening Remarks, H.E. Philip Calvert, Ambassador of Canada, 15 October 2014.

31 Opening Remarks, Saman Zia-Zarifi, Regional Director of the International Commission of Jurists for Asia and the Pacific (ICJ), 15 October 2014.

32 Remarks by Saman Zia-Zarifi, Regional Director of the International Commission of Jurists for Asia and the Pacific, 15 October 2014.

33 Opening Remarks, Hon. Justice Phattarasak Vannasaeng, Secretary General, Office of the Judiciary, Thailand, 15 October 2014.





ANNEX 1: CONSTITUTIONAL EQUALITY AND NON-DISCRIMINATION PROVISIONS IN SOUTHEAST ASIA

→ “The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.” “All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights.” “Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.” s 5, 30 Constitution of the Kingdom of Thailand

→ “All citizens have equal status before the law and in government and shall abide by the law and the government without any exception.” s27(1) Constitution of Indonesia

→ “All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.” “No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.” “Women and men shall have the same rights and duties in all areas of family, political economic, social and cultural life.” s16, 17 Constitution of Democratic Republic of East-Timor

→ “All citizens are equal before the law.” “All citizens regardless of their sex have equal rights in all respects, political, economic, cultural, social and in family life. Any discrimination against women and violation of women’s dignity are strictly prohibited.” Articles 52, 63 Constitution of the Socialist Republic of Vietnam

→ “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”

“Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.”

“All forms of discrimination against woman shall be abolished.” Articles 31, 45 Constitution of Cambodia

→ “Lao citizens irrespective of their sex, social status, education, faith and ethnic groups are all equal before the law.” “Citizens of both sexes enjoy equal rights in the political, economic, cultural and social fields and family affairs.” Articles 22 and 24 Constitution of the Laos People’s Democratic Republic

“The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.”

→ “The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.” “Citizens shall enjoy equal opportunity in carrying out the following functions : (a) public employment; (b) occupation; (c) trade; (d) business; (e) technical know-how and vocation; (f) exploration of art, science and technology.” s 347, 348, 349 Constitution of the Republic of the Union of Myanmar

→ “No person shall be denied the equal protection of the laws.” s 3(1) Constitution of the Republic of the Philippines

ANNEX 2: THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT, 2002

PREAMBLE

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the United Nations Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

VALUE 1: INDEPENDENCE

Principle: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

VALUE 2: IMPARTIALITY

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

APPLICATION:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 The judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

**VALUE 3: INTEGRITY**

Principle: Integrity is essential to the proper discharge of the judicial office.

APPLICATION:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

VALUE 4: PROPRIETY

Principle: Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

APPLICATION:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 Write, lecture, teach and participate in activities concerning the law, the legal system, and the administration of justice or related matters;

4.11.2 Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

4.11.3 Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

4.11.4 Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practice law whilst the holder of judicial office.

4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

VALUE 5: EQUALITY

Principle: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

APPLICATION:

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.



5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

VALUE 6: COMPETENCE AND DILIGENCE

Principle: Competence and diligence are prerequisites to the due performance of judicial office.

APPLICATION:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks.

"Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

REGIONAL WORKSHOP FOR JUDICIAL TRAINING INSTITUTIONS ON GOOD PRACTICES IN PROMOTING WOMEN'S HUMAN RIGHTS COMPLIANT JUSTICE DELIVERY

15-16 OCTOBER 2014

BACKGROUND

The Convention on the Elimination 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 188 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 is implementing the Regional Programme on Improving Women's Human Rights in Southeast Asia (CEDAW SEAP) supported by the Government of Canada through the Department of Foreign Affairs, Trade and Development (DFATD), covering eight countries - Cambodia, Indonesia, Lao People's Democratic Republic PDR, Myanmar, 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 Convention 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. UN Women is also working with ICJ in the development of two documents- one is a manual on gender stereotyping affecting judicial decision making and second is a research document on citing CEDAW in judicial decisions – both to provide reference and resource to judicial training curriculums in training institutes. The need for these products arises from the discussions in the Regional Judicial Colloquium organized by UN Women in partnership with Thai Office of Judiciary and ICJ.

OBJECTIVES OF THE REGIONAL WORKSHOP

- To seek inputs in the preliminary drafts of the two documents- the manual on gender stereotypes and case book of judicial decisions in Southeast Asia that cite CEDAW;
- To provide a platform for judicial training

institutions to share information on training materials on women’s human rights they use in their programs;

- To encourage Southeast Asian judicial training institutions to use the two abovementioned documents in training judges at the national level;

EXPECTED RESULTS:

At the end of the Regional workshop, it is expected that the following will be achieved:

- Enhanced dialogue and experience sharing among judicial training institutions and Southeast Asian judges in promoting gender equality
- Finalization of the knowledge tools which can be adopted by the judicial training institutions as part of their curriculum
- Identification of requirements to mainstream Women’s Human Rights in curriculum of judicial training institutions.

WEDNESDAY | OCTOBER 15, 2014 | BALLROOM 2, 4TH FLOOR

8:00-9:00	Registration
8:00-9:00	<p>Opening Remarks and Overview of the Agenda</p> <ul style="list-style-type: none"> ➤ Welcome Remarks: Hon. Justice Pattarasak Vannasaeng, Secretary-General of the Office of the Judiciary, Thailand ➤ Remarks: Ms. Deepa Bharathi, Regional Programme Manager of UN Women Regional Office for Asia and the Pacific ➤ Remarks: Mr. Saman Zia-Zarifi, Regional Director of the International Commission of Jurists for Asia and the Pacific ➤ Opening Note: H.E. Mr. Philip Calvert, Ambassador Extraordinary and Plenipotentiary of Canada to the Kingdom of Thailand ➤ Group Photo
9:50-10:00	Overview of the Agenda c/o UN Women and ICJ
10:15-12:00	<p>SESSION 1: Introducing the issues: CEDAW and its key principles</p> <p>Chair: Professor Myrna S. Feliciano, Department of Legal Method and Research, Philippine Judicial Academy (PHILJA), Philippines</p> <p><i>Speakers will guide participants in recalling the principles of equality and non-discrimination of the CEDAW. The speakers will be encouraged to illustrate their discussions with cases based on opinions of the CEDAW Committee.</i></p> <ul style="list-style-type: none"> ➤ CEDAW principles (principle of equality - the substantive approach to gender equality, principle of non-discrimination) and the link to other international human rights instruments: Ms. Christine Mary Forster, Senior Lecturer, Law Faculty of the University of New South Wales, Australia (60 minutes) ➤ Perspective from the CEDAW Committee: Ms. Milena Pires, CEDAW Committee member, Timor Leste (15 minutes) <p>Discussion (30 minutes)</p>

WEDNESDAY | OCTOBER 15, 2014 | BALLROOM 2, 4TH FLOOR

12:00-13:00	Lunch
	<p>SESSION 2: The obligation of courts to implement the CEDAW Convention and addressing the needs of women in the criminal justice system</p> <p>Chair: Judge Krairit Khosangruang, Judge of the Office of the President of the Supreme Court, Thailand</p> <p><i>Speakers will guide participants in recalling the principles of equality and non-discrimination of the CEDAW. The speakers will be encouraged to illustrate their discussions with cases based on opinions of the CEDAW Committee.</i></p> <ul style="list-style-type: none"> • The international law framework on the obligation of courts to implement the CEDAW Convention: Judge Adoración Panlaque Cruz Avisado, Chairperson of the Transformative Justice Institute in Davao City, Philippines (30 minutes) • The role of judges in protecting women offenders and prisoners under the “Bangkok Rules”: Justice Sittisak Wanachagit, Deputy Chief Justice of the Court of Appeal, Region 7, Thailand (30 minutes) • Experiences at the national level <ul style="list-style-type: none"> Judge Maria Rowena Modesto-San Pedro, Regional Trial Court, Pasig City, Philippines (15 minutes) – on implementing the CEDAW Convention Justice Vacharin Pajiekvinyusakul, Chief Justice of the Court of Appeal, Region 6, Thailand. (15 minutes) – on implementing the Bangkok Rules <p>Discussion (30 minutes)</p>
15:00-15:15	Refreshments
	<p>SESSION 3: Presentation on Citing CEDAW case book</p> <p><i>During this session, the case book on CEDAW citations in Southeast Asian will be presented by the international consultant who was tasked to draft it. Participants will be encouraged to give further comments on the case book during this session.</i></p> <p>Presenter: Ms. Mary Jane Nolasco Real, international consultant (20 minutes)</p> <p>Open Forum (30 minutes)</p> <p>Discussion/Group Exercise (60 minutes)</p> <p><i>Participants will break into smaller groups to discuss the following questions:</i></p> <ul style="list-style-type: none"> • What are your views on how your country may move forward towards the progressive implementation of CEDAW? • Are there any cases from your country which you think would be relevant to this research? <p>Reporting Back (25 minutes)</p>
19:00-21:00	Reception Dinner at President 1, 2 on 4th Floor

THURSDAY | OCTOBER 16, 2014 | PLATINUM 1-2 ON GROUND FLOOR

8:30-9:00	<p>RECAP DAY 1: Ms. Emerlynn Gil, International Legal Adviser, International Commission of Jurists (ICJ)</p>
9:00-10:30	<p>SESSION 4: What are gender stereotypes? How are gender stereotypes integrated into judicial decisions?</p> <p>Chair: Ms. Roberta Clarke, Regional Director of UN Women Regional Office for Asia and the Pacific – Short presentation on what constitutes gender stereotypes (15 minutes)</p> <p><i>This session will focus on identifying the types of gender stereotypes or traditional concepts of women in Southeast Asia, and more specifically the types of gender stereotyping that occur in the course of decision-making and the importance of a non-gender biased judiciary.</i></p> <p>Group exercise: Give three characteristics or attributes that you consider desirable for a woman complainant in a violence against women case in order for her to be credible before the courts (15 minutes)</p>

THURSDAY | OCTOBER 16, 2014 | PLATINUM 1-2 ON GROUND FLOOR

9:00-10:30	<p>Discussion on eradicating gender stereotypes in laws and practices: Judge Zenaida Elepaño (Ret.), former Court Administrator of the Supreme Court of the Philippines (30 minutes)</p> <p>Discussion (30 minutes)</p>
10:30-11:00	Refreshments
9:00-10:30	<p>SESSION 5: Presentation of the booklet on gender stereotypes and other indirect forms of discrimination against women in judgments – a training resource manual for judges and other justice actors</p> <p><i>The booklet on gender stereotypes and other indirect forms of discrimination against women in judgments will be presented by the consultant tasked to draft it. Participants will be encouraged to give further comments on the casebook during this session.</i></p> <p>Presenter: Ms. Evalyn Gonzales Ursua, UN Women consultant and legal counsel in the case Vertido vs. The Philippines (30 minutes)</p> <p>Group exercise (60 minutes)</p> <ul style="list-style-type: none"> ➤ What points do you suggest should be included in the booklet on gender stereotypes? ➤ What cases can you share that illustrate gender stereotyping in adjudication? (Please use the cases that you were asked to bring). <p>Reporting Back (30 minutes)</p>
13:00-14:00	Lunch
9:00-10:30	<p>SESSION 6: Planning and Strategy Session</p> <p>Chair: Judge Pelagio C. Paguican, Regional Trial Courts and Family Court, Philippines</p> <p>Small group discussions</p> <p><i>Participants shall be divided into small groups to discuss the key questions below:</i></p> <ul style="list-style-type: none"> ➤ How would you integrate the content of these publications into existing and new judicial training institutions curricula? How would you use the content of these publications in court decisions? ➤ What are other strategies you would suggest for reaching judges with on-going judicial sensitization programmes 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.).
15:30-15:45	Refreshments
15:45-16:45	<p>SESSION 6: Planning and Strategy Session</p> <p>Chairs: Mr. Saman Zia-Zarifi, Regional Director of the International Commission of Jurists for Asia and the Pacific and Ms. Roberta Clarke, Regional Director of UN Women Regional Office for Asia and the Pacific</p>
16:45 - 17:15	<p>WRAP-UP AND CLOSING</p> <p>Remarks: Mr. Saman Zia-Zarifi, Regional Director of the International Commission of Jurists for Asia and the Pacific</p> <p>Remarks: Ms. Roberta Clarke, Regional Director of UN Women Regional Office for Asia and the Pacific</p>

BIOGRAPHIES

PHILIP CALVERT, H.E. MR.

Ambassador Extraordinary and Plenipotentiary of Canada to the Kingdom of Thailand

Email: phil.calvert@international.gc.ca

Mr. Calvert (BA 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 for the Asia 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.



Philip Calvert

DEEPA BHARATHI, MS.

Regional Programme Manager, CEDAW Southeast Asia Programme UN Women for the Asia Pacific

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Ms. Bharathi, 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 Canadian International Development Agency (CIDA), 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).



Roberta Clarke



Deepa Bharathi

Prior to this, Ms. Bharathi 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.



Anne Eyrignoux

ANNE EYRIGNOUX, MS.

**Human Rights Specialist, CEDAW
Southeast Asia Programme
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Ms. Eyrignoux holds a Bachelor's Degree in French Law, Maîtrise de Droit in European and International Law from Toulouse, France, a Master's Degree (LL.M.) in International Human Rights Law from Washington, D.C., USA. She has extensive experience working in the fields i.e. Kosovo, Croatia, Albania, Western, Central and Eastern, Asia, and the Middle East and in the New York UN Headquarters working on human rights and women's rights issues. As an internal UN investigator on sexual exploitation and abuse, rape, sexual harassment, trafficking cases, she monitored violence against women and war crimes trials in Kosovo in Africa. She was Gender Adviser in the DRC Peace Keeping Mission, in New York for the UNDP Legal Support Office, UN Women in Headquarters in Ending Violence against Women (EVAW) Section. Recently, she worked as UN Women EVAW Project Manager/Programme Specialist for the Sub-Regional Office in Bratislava (Slovakia) in the occupied Palestinian territories (oPt).

Ms. Eyrignoux is currently the Human Rights Specialist in the Regional Office of UN Women in Bangkok, Thailand. One of her main roles is to provide technical/legal/human rights support on human rights issues to country and project offices and to the Regional Office on the CEDAW programme.



Saman Zia-Zarifi

SAMAN ZIA-ZARIFI, MR.

**Regional Director of International
Commission of Jurists (ICJ) for Asia
and the Pacific in Thailand
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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).



Emerlynne Gil

Mr. Zia-Zarifi 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**

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.

Ms. Gil 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.

Justice
Phattarasak
Vannasaeng**JUSTICE PHATTARASAK
VANNASAENG**

**Secretary-General, The Office
of the Judiciary**

Justice Phattarasak Vannasaeng completed his Bachelor's Degree in Law with honours from Thammasat University and a Master's Degree in Law from Thammasat University in Thailand and Temple University in USA. After graduation, Judge Phattarasak spent his first three years teaching at his alma mater. In 1984, he was appointed as judge and later held several prominent positions within the judiciary, including Secretary-General to the President of the Supreme

Court and Chief Justice of the Central Intellectual Property and International Trade Court.

In 2013, he was appointed as Secretary-General of the Office of Judiciary overseeing the entire administrative affairs of the Court of Justice. Judge Phattarasak has maintained his close tie with Thammasat University Faculty of Law where he teaches a number of courses as an adjunct professor. Judge Phattarasak holds an LL.B. and LL.M. degree from Thammasat and another LL.M. degree from Temple University

JUSTICE VACHARIN PATJEKVINYUSAKUL

**President Judge of the Supreme
Court of Thailand**
Email: vchl_2498@hotmail.com

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 fudging 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 SITTISAK WANACHAGIT

**Deputy Chief Justice of the Court
of Appeal, Region 7**

Judge Sittisak Wanachagit is currently the Deputy Chief Justice of the Court of Appeal, Region 7. He holds a Bachelor's in Law and a Master in Public Administration (MPA) from the National Institute of Development Administration. His professional experience includes the following - lawyer, Judge of the Phangnga Provincial Court, Judge of the Surat Thani Provincial Court, Director of the Central Office of Probation - Ministry of Justice, Chief Judge of Ministry of Justice acting Chief Judge - Nonthaburi Provincial Court, Judge of Civil Court, Principal Research Judge of the Court of Appeal Region 1, Chief Judge of the Trang Juvenile and Family Court, Chief Judge of the Songkla Juvenile and Family Court, Chief Judge of the Office of the President of the Supreme Court acting in Office of Judiciary.



**Justice Vacharin
Patjekvinyusakul**



**Judge Sittisak
Wanachagit**

JUDGE KRAIRIT KHAOSANGRUANG

**Executive Judge, Regional Trial Courts
and Judge Family Court**
E-mail: krairitk@gmail.com

Judge Krairit Khosangruang is currently serving at the Office of the President of the Supreme Court, Litigation Affairs Division, Office of the Judiciary of Thailand Criminal Court.

Judge Krairit received his Graduate Diploma in Public Law from Faculty of Law, Thammasat University in Thailand, Master of Laws from Kyushu University in Japan, Bachelor of Laws from the University of Warwick, in the UK and another Bachelor of Laws from Thammasat University in Thailand. In addition, he has accomplished a Lawyer License from the Lawyer Council of Thailand and Barrister-at-Law from the Thai Bar under the Royal Patronage.

Regarding Judge Krairit's professional experience, his intensive hands-on work experience ranges from his designations as Practising Lawyer, Legal Team Volunteer at the Poll Watch Organisation, Political Assistant to the Member of the Thai Senate, Judge-Trainee, Judge of the Office of Judiciary, Acting Judge of the Civil Court and the Office of Judiciary, Acting Judge of the Prakanong Provincial Court, Judge of the Narathiwat Provincial Court, Judge of



**Judge Krairit
Khosangruang**



Milena Pires

the Civil Court, Judge of the Central Labour Court, Judge of the Office of Judiciary and Judge of the Office of the President of the Supreme Court.

MILENA PIRES, MS.

CEDAW Committee, Interim Executive Director, The Centre for Women and Gender Studies
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Christine Forster

Ms. Pires is currently Executive Director of the Centre for Women and Gender Studies in Timor-Leste and is also a member of the CEDAW Committee. She is the first Timor-Leste national to be elected to a UN treaty body. She has served in the Committee since 2011 and will end her mandate at the end of 2014. Prior to her election to the CEDAW Committee, she was Senior Policy Advisor to the Vice Prime-Minister for Administration and Management of State Affairs.



Judge Rhona San Pedro

She is a founding member of the Timor Women's network, REDE and has worked on women's rights and gender equality for close to 2 decades, in various roles including Country Program Coordinator for UNIFEM in Timor-Leste, Policy Officer for the Catholic Institute for International Relations (CIIR) and Civil Society Strengthening Socialist for the Justice Facility.

Ms. Pires is also a founding member of the Social Democratic Party and was a member of the Constituent Assembly that wrote and adopted the Constitution of Timor Leste and a member also of the first legislature.



Adoracion P. Cruz Avisado

CHRISTINE FORSTER, PHD

Associate Professor, University of New South Wales
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Ms. Forster obtained LLB from Otago University (NZ), BA Massey University (NZ), MA Carleton University (Ottawa, Canada), PhD in Law (University of Sydney) Post Graduate Diploma in Legislative Drafting (University of South Pacific)

Areas of expertise: Victims of crime compensatory schemes, Indigenous issues, Health and medical law, Feminist legal theory, Criminal injuries, CEDAW and women's human rights, Positive Obligations in Gender Equality Laws, Pacific Law and Gender Equality, Tort Law.

JUDGE RHONA SAN PEDRO

Presiding Judge, Regional Trial Court of Pasig City, Branch 158
Email: rhonamp@yahoo.com

Judge Rhona San Pedro is a Commercial Court and Family Court Judge from the Philippines. She is a Professorial Lecturer of the Philippine Judicial Academy and a member of its Commercial Law Department and has lectured extensively on various topics both in the Philippines and abroad. Her work in Judicial Education finds roots in her being a Fellow of the Commonwealth Judicial Education Institute in Canada.

She has sat as member of several Committees on Rules Revision such as those on Rules of Procedure for Intellectual Property Rights Cases, Rules of Civil Procedure and Continuous Trial. She was tapped by the USAID and American Bar Association to write a Manual on Corporate Rehabilitation Proceedings and on the Highlights of the New Rules of Procedure for Intellectual Property Rights Cases. Currently, she is co-writing a Helpbook on Trafficking in Persons with the US DOJ as sponsor. She has served at all four levels of the judiciary, previously working as Court Attorney in both the Court of Appeals and the Supreme Court and was a first level court judge for 3 years. She has been a Judicial Excellence Awardee and 1 of 3 outstanding Judges for 2011.

ADORACION P. CRUZ AVISADO

Chairperson of the Transformative Justice Institute
Former Judge of Regional Trial Court in Davao City
Email: dorycruzavisado@yahoo.com

Ms. Avisado is presently the Chairperson of the Transformative Justice Institute (TJI) and is a Commissioner of the Philippine Commission on Women (PCW). She is a well known Christian Feminist and Developmental Lawyer. She is considered an expert in "Gender Law and Justice" which she teaches in the graduate school for Doctorate Students on Development Studies as well as to lawyers and other development practitioners. She is a blogger who regularly writes articles designed to advocate for the transformation of the Philippine Justice System. Her blog is <http://dorycruzavisado.blogspot.com>

She is a regular contributor of the Mindanao Law Journal published by the Ateneo de

Davao University (ADDU). ADDU also published three books she has authored in 2010, entitled: “Ate Perla and that Cancer,” as her contribution to the Program on Women and Health and two books pertaining to the needed transformation of the justice system titled: the Intertwining Culture of Corruption, Patriarchy and Impunity; Journey in the Advocacy for the Transformation of the Philippine Justice System; and JAJA, Justice for Arbet, Justice for All, a story of a Woman Human Rights Lawyer who was killed right in her own home in Cebu city as she stood up for the rights of the murdered wife of a powerful politician, Ruben Ecleo and where stories about the intertwining culture of abuses in the various pillars of justice are told.

Ms. Avisado is a well known Human Rights advocate and Advocate for the Rights of Women and Children. She was engaged in private practice of law and was a trial lawyer for about fifteen years. She also served as a Presiding Judge of Regional Trial Court Branch 9 in Davao City Philippines where she was a recipient of multiple awards including from all the three great branches of the national government.

During the centenary celebrations of the Philippine Supreme Court she was given a special award as a Judge “for Transparency and Advocacy of Judicial Reform.” Thus, up to the present she is a member of the Society for Judicial Excellence. Both the Executive and Legislative Branches of the Philippine government likewise awarded Dory for “Speedy Disposition of Cases” and for “Pro-Active Measures in the Administration of Justice.” Despite her being a recipient of multiple awards she tendered an irrevocable resignation as a Judge in 2004 in order to proceed with her advocacy in transforming the Philippine Justice System, as “an outsider advocate.” She continues to work in that regard up to the present.

MYRNA S. FELICIANO, PROF.

**Chair of the Philippines Judicial Academy’s (PHILJA) Department of Legal Method and Research
Philippines Judicial Academy (PHILJA)
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Prof. Feliciano is a pioneer in legal and judicial education; judicial reform and rights of women and children. She is professor

of law at the University of the Philippines College of Law, and was the Director of the University of the Philippines Law Centre Institute of Judicial Administration (IJA). The IJA conducts continuing legal education programs for members of the bar. Before the Philippine Judicial Academy was established, the IJA also assisted the Supreme Court in providing continuing education programs for judges and court personnel and other projects aimed to improve the administration of justice in Philippine courts.

Prof. Feliciano is now Chair of the Philippines Judicial Academy’s (PHILJA) Department of Legal Method and Research and a Member of PHILJA’s Academic Council. She is an active proponent of mandatory continuing legal education and women and children’s rights, and has held the roles of a Commissioner of the National Commission on the Role of Filipino Women (NCRFW); first Executive Director of the Mandatory Continuing Legal Education (MCLE) Committee of the Supreme Court; and Member of the Rules Committee on Family Courts formed by the Supreme Court.

Prof. Feliciano has obtained Bachelor of Science and Bachelor of Law degrees from the University of the Philippines. She also holds a Masters degree in Library Science from the University of Washington and a Master of Laws degree from Harvard University.

EVALYN URSUA, MS.

**Legal Counsel in the case of Vertido v. 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



Myrna S. Feliciano



Evalyn Ursua



Judge Andriani Nurdin

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.



Nguyen Thia Phuc

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.



Mary Jane N. Real

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.

JUDGE ANDRIANI NURDIN

Chief Judge of the High court of Nusa Tenggara Barat
Email: nurdandriani@gmail.com

Graduated from The University of Indonesia 1981, Got master degree from The University of Indonesia in 2002, and Srata 3 from The University of Padjadjaran in 2006. She was appointed as Judge since 1985. I am currently the Chief of the High Court of West Nusa Tenggara, Lombok. Indonesia

since December 2013. I was appointed as Human Rights Judge in year 2001; and was involved in the certification of Environmental Judges Training.

She worked as a consultant for the Philippine Supreme Court, a Professorial Lecturer of Administration of the UP Law Center Philippine Judicial Academy, a Professorial Lecturer and Resource Person On Case Management, Total Quality Management for Trial Courts and Trial Court Performance Standards Philippine Judicial Academy and Court Administrator

NGUYEN THAI PHUC ASSOCIATED PROFESSOR, DR.

Director of Judicial Academy
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Mr. Nguyen Thai Phuc holds Bachelor of Law in The Soviet Union, and Doctor of Law in Russia (MGU). He was Senior Prosecutor at The Appeals Institute II Court, before becoming the Dean of Commercial Law Faculty in Ho Chi Minh City. He was a Member of The National Assembly Session X (Ninhthuan Province) of The National Assembly of The Socialist Republic of Vietnam. Recently, he was appointed to be Head of Ministry of Justice Representative Agency in the South. At present, he is the Director of Judicial Academy.

MARY JANE N. REAL, MS.

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Mary Jane N. Real holds a Juris Doctor degree and a Master Degree in Development Studies at the Institute of Social Studies, The Hague, Netherlands. She is a long-time advocate of women's human rights having worked in various capacities with women's rights and human rights organizations in Asia Pacific and internationally. Previously, she was Regional Coordinator of Asia Pacific Forum on Women, Law and Development (APWLD) and as a founding member and former Coordinator of the International Coalition on Women Human Rights Defenders (WHRD IC), an international network for the protection and support of women human rights defenders worldwide.

A lawyer by profession, she was part of establishing the Alternative Law Groups

(ALG), a network of legal organizations that advocates for human rights in the Philippines. Recently, she was a Global Associate at the Center for Women's Global Leadership at Rutgers University, New Jersey, USA. She holds a Juris Doctor degree and a Masters Degree in Development Studies at the Institute of Social Studies, The Hague, Netherlands.

HON. ZENAIDA N. ELEPAÑO

Former Court Administrator Consultant on Judicial Reforms of the Philippine Supreme Court Professorial Lecturer, Philippine Judicial Academy
Email: zenelepano@yahoo.com.ph

Prof. Zenaida N. Elepaño held the position of Deputy Court Administrator of the Supreme Court of the Philippines for 11 years until 2007 year when she was appointed as Court Administrator, the first woman ever to hold this position since the establishment of the Supreme Court 107 years ago. judicial independence, women's and children's rights, rules of procedure for

A litigation lawyer for 21 years, CA Elepano taught law at the UST, the Pamantasan ng Lungsod ng Maynila, and was a professorial lecturer at the UP College of Law. In 1988, she joined the Bench as Regional Trial Court Judge and served as Executive Judge for two terms. In 1994, she was awarded by the Foundation for Judicial Excellence of the Justice Cayetano Arellano Award as Most Outstanding RTC Judge of the Philippines. In 1995, she was promoted to the Supreme Court as Deputy Administrator.

She is a professorial lecturer of the Philippine Judicial Academy and the Institute of Judicial Administration of the UP Law Center. She also lectures for the Mandatory Continuing Legal Education programs of the Supreme Court. She is a pre-bar reviewer in civil law and legal ethics, and was Bar Examiner in Remedial Law in 1995 and in Legal Ethics in 2006.

CA Elepaño has received several international study grants given by the United States, Canada, Japan and Swedish governments and has delivered numerous lectures in national as well international conferences on topics such as the Rule of Law, the Philippine judiciary and judicial independence, women's and children's rights, rules of procedure for family courts, court administration and case management.

She has likewise written and published several articles, lectures and monographs on these topics. She is a Fellow of the Canadian Judicial Education Institute (CJEI). Having recently retired as Court Administrator, she is presently Consultant of the Philippine Supreme Court on Judicial Reforms and continues to serve the Philippine Judicial Academy as Professional Lecturer and Resource Person on Case Management, Total Quality Management for Trial Courts and Trial Court Performance Standards. She Lectures at MCLE seminars on Family Law, Procedural Rules for Family Courts, Pretrial and Trial Techniques, Legal Writing, Preparation of Pleadings, Writ of Amparo and Habeas Data, Legal Ethics and Professional Responsibility, Supreme Court Circulars affecting Lawyers and Conflict of Laws, among others.

JUDGE JACINTA C. DA COSTA

Judge, Tribunal District de Dili Court, Timor-Leste
Email: csmj@tribunais.tl

Judge Jacinta C. da Costa graduated from Gadjah Mada University Yogyakarta, Indonesia in 1997. During Indonesian time, she worked as an Assistant Lawyer in the Human Rights NGO. Since 2000, she undertook the role of a Probationary Judge and as a Judge in the Dili District Court in 2007 up till today. She also serves as a Secretary Judge for the Superior Council of Magistrate.

JUDGE PELAGIO C. PAGUICAN

Executive Judge, Regional Trial Courts and Family Court, Philippines
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Judge Pelagio C. Paguican, presently the Presiding Judge of the Regional Trial Court, Branch 12, Davao City, Philippines and this Court is a Family Court. He passed the Bar Examination in 1980. He also served as a Public Attorney under the Public Attorney Affairs, Department of Justice for 15 years. He was appointed Regional Trial Court Judge in 1998 for the past 16 years now. Presently the Executive Judge of the Regional Trial Court, Davao City Philippines for the past 4 years.



Zenaida N. Elepaño



Judge Jacinta C. da Costa



Judge Pelagio C. Paguican

15 OCTOBER 2014, INTERCONTINENTAL, BANGKOK

OPENING FOR THE REGIONAL WORKSHOP FOR JUDICIAL TRAINING INSTITUTIONS ON GOOD PRACTICES IN PROMOTING WOMEN'S HUMAN RIGHTS COMPLIANT JUSTICE DELIVERY

H.E. Ambassador Philip Calvert, Ambassador Extraordinary and Plenipotentiary of Canada to the Kingdom of Thailand

Excellencies, Distinguished Guests, Ladies and Gentlemen,

I am delighted to be here this morning to participate in the opening of this important and timely regional workshop.

On behalf of the Government of Canada, I would like to extend my warmest welcome to the distinguished delegations.

Let me congratulate UN Women, the ICJ and our Thai hosts for putting on this important colloquium on a crucial issue.

The Government of Canada is very happy to be supporting this event, which is a follow-up to the September 2013 "Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice." This is funded by Phase II of our Regional Programme on Improving Women's Human Rights, a program which has been in operation since 2004, and whose current phase focuses on knowledge generation and exchange, stock-taking and priority-setting for advancing the implementation of CEDAW in the region.

Last year's colloquium facilitated exchanges between participants on how to improve the situation of women's human rights in the region through court decisions.

This year's Regional Workshop builds on last year's colloquium, and is an excellent opportunity to explore in more detail the principles and application of CEDAW, and to exchange good court practices from ASEAN countries in the area of violence against women and women's economic, social and cultural rights, and to produce written material to guide officials. This information, we hope, can inform jurisprudence and decision-making, and thus further strengthen the ASEAN legal institutions in their protection of women's rights and women's access to justice. We also hope it continues to encourage countries in the region to continue to move forward with laws supporting gender equity.

I am glad to see further exchanges devoted to understanding and applying CEDAW. Using these international instruments as a basis of discussion is very important, because it keeps the focus on obligations governments have already taken on, and not on imposing values from the outside. This is Canada's approach in our human rights advocacy internationally—we focus on existing obligations under instruments such as CEDAW, the International Covenant on Civil and Political Rights, and the Convention Against Torture. And, I might add, it is disappointing to see the current situation in Thailand today, where the gap between obligation and action is quite profound.

This colloquium is important and timely. Ensuring access to justice is a fundamental component of the rule of law and an indispensable element of human rights protection. A judicial system that is responsive to the needs of women is a key pillar of equality, which in turn is necessary for the full development of a society.

It is a timely issue because the need seems even more urgent than it was last year. As you all know, 600 million women around the world continue to lack basic protection against domestic violence. Conflicts are multiplying around the globe, and sexual assault as a feature of these conflicts continues to multiply as well. In addition, while there has been progress in the past twelve months, we have also seen the legal systems in many countries continue to fail women, particularly those who are victims of domestic violence and sexual assaults. We have seen lenient sentences based on warped concepts of "boys will be boys". And we have seen courts and politicians supporting this culture of blaming the victim.

In Canada, we too have been working through these issues. We have had our share of questionable decisions clearly based on gender stereotyping and victim blaming—cases which have been overturned and decisions on which have entered into our common law. There is more Canada can do to address violence against women and to improve access to legal processes,

particularly for aboriginal women. Access to justice for women in poverty continues to be a challenge for us.

At the same time, Canadian courts have been on the frontlines of removing discriminatory barriers, advancing the concept that formal equality may not be enough and that identical treatment may result in inequality. No country is without its problems, but by learning from these problems and sharing best practices, we can advance women's access to justice across the region.

Of course, a starting point is a fair and transparent justice system, which we see as a fundamental requirement of a democratic government. It means an objective and independent civil court system, with avenues for appeal. As an aside, Canada continues to be concerned about the human rights implications of the use of military courts for civil purposes.

Law and justice systems which prevent and provide redress for discrimination and violence, support women's empowerment. Such legal systems contribute to an environment of respect, dignity and equality for all and can provide the means for women to demand accountability.

And that's why we are all here today, building our collective knowledge to create legal systems which support equality, and thus allow countries and people to reach their full potential. Participants in this workshop, as community leaders, and members of the judiciary will help shape social attitudes about gender equality by addressing discriminatory practices both inside the court and in society at large.

I trust that this Regional Workshop will open up avenues of cooperation and lead to constructive new approaches towards gender equality and the protection of women's human rights.

Thank you.

15 OCTOBER 2014, INTERCONTINENTAL, BANGKOK

OPENING FOR THE REGIONAL WORKSHOP FOR JUDICIAL TRAINING INSTITUTIONS ON GOOD PRACTICES IN PROMOTING WOMEN'S HUMAN RIGHTS COMPLIANT JUSTICE DELIVERY 15 OCTOBER 2014, INTERCONTINENTAL, BANGKOK

Hon. Justice Phattarasak Vannasaeng Secretary-General,
Office of the Judiciary, Thailand

Good Morning:

Distinguished Speakers and Guests,
Ladies and Gentlemen,

It is both an honor and my pleasure to be at this event, the Regional Workshop of Judicial Training Institutions on Good Practices in Promoting Women's Human Rights Complaint Justice Delivery, and deliver these opening remarks this morning.

A Human without human rights is a human without dignity. In today's world, there is no need to reiterate how important human rights are. It can be said with fair certainty that the universality of human rights is well acknowledged and recognized throughout the world. However, such recognition is just an incipient step in the long walk toward genuine equal protection for all— regardless of gender, age, faith, race, creed, language or political ideologies. After one has recognized this truth of human rights, the next challenging step is the implementation of human rights protection, and creation of a human-rights-oriented society. And, in this challenging step, the court and the judiciary are the vital links that can transform written human rights into rights experienced in the real world.

On that note, and from my own experiences as a judge in various courts in Thailand, the courts serve as a front line to confront and encounter human rights issues and violations that can appear in manifold forms. To this end, the Office of the Judiciary has long been held in high regard for the protection of human rights, and the Court of Justice has also played important roles in guarding against human rights violation. From this personal experience, together with my position as a member of the current National Legislative Assembly, I have initiated several improvements and modifications to strengthen human rights protection in Thai society. An example of this would be the legislature which sanctions excessive punishment for a particular offence relating to intellectual property right

infringement, favoring detention instead of a simple fine. Many more laws of this kind are currently in the pipelines.

Among human rights in need for further protection, and a critically important aspect and purpose of this convention is the right of women to enjoy life and liberty without any kind of discrimination. From a historical perspective, women have been treated unduly and unfairly due to many mistaken stereotypes unjustly imposed on them. I strongly believe that such unfair treatment and stereotyping is not acceptable and cannot persist in any society, much less our own. Furthermore, the notion that no form of discrimination is to be tolerated in the court system or court proceedings if of equal importance.

To this end, I believe that the judiciary branch has been one of the bright spots of Thailand, leading the forefront in women's activism and encouraging equal rights. The judicial appointment system has been using a merit system for quite some time, which looks from the start to the end of one's career. Gender has never been an obstacle in this appointment process. Currently, there are more than 4,300 judges who have been appointed as Court Justices and more than a third of those are female judges. If we review trends in recent recruitment of judge-trainees, the proportion of female-to-male trainees is on the rise. More importantly, the Judicial Commission has often appointed female justices to some of the most important posts of the judiciary, e.g. the president of many Regional Courts of Appeal, the Chief Judge of the Criminal Court. In the Supreme Court itself, there are many female justices sitting on the Supreme Court's bench.

To foster the knowledge and awareness of human rights that include gender-sensitive issues pertaining to judges, as the Secretary-General, I have emphasized the importance of such awareness on many occasions. This year, we plan to organize an overseas training on this exact aspect of human rights protection at an internationally-renown institution. Moreover, in various internal training programs, the

topic of human rights protection has been incorporated to create a high level of awareness within these departments. I can say with relative certainty that the judges and court officials of the judiciary are quite familiar with human rights and are well prepared to provide the ultimate safeguard for human rights, not only for Thai citizens, but also equally for anyone who comes, visits or works in Thailand.

Today's regional workshop shares the same goals and aspirations as those of the official workshops of the judiciary in regards to human rights. And on that note, I am certain that this workshop will foster and reinforce the awareness of human rights further still. I would like to take this opportunity to graciously thank 'UN Women', the organizers of this workshop, the International Commission of Jurists, the Foreign Affairs, Trade and Development Commissions of Canada, who agreed to co-organize this program. Further thanks is due to the speakers and resource personnel as well as any and all people who helped to make this event possible. I wish the event every bit of success it deserves in addressing this highly important topic.

At the conclusion of the program, I firmly believe that the reinforcement of human rights will stand at the top of the agenda for everyone concerned. The eventual benefits of this program will not belong to the courts, the judges or even the participants of this program, but rather to the people who need us and others to preserve their fundamental rights.

With Sincerest Thanks and Best Wishes.

15 OCTOBER 2014, INTERCONTINENTAL, BANGKOK

OPENING FOR THE REGIONAL WORKSHOP FOR JUDICIAL TRAINING INSTITUTIONS ON GOOD PRACTICES IN PROMOTING WOMEN'S HUMAN RIGHTS COMPLIANT JUSTICE DELIVERY

Deepa Bharathi, Regional Programme Manager CEDAW-SEAP Programme
UN Women Regional Office for Asia and the Pacific

Hon. Justice Pattarasak Vannasaeng,
Secretary-General of the Office of the
Judiciary, Thailand

H.E. Mr. Philip Calvert, Ambassador
Extraordinary and Plenipotentiary of
Canada to the Kingdom of Thailand

Mr. Saman Zia-Zarifi, Regional Director of
the International Commission of Jurists
for Asia and the Pacific Honorable Judges

Distinguished Representatives of Judicial
Training Institutions,

Excellencies, Distinguished Guests, Ladies
and Gentlemen,

Good morning.

UN Women Regional Office for Asia and the Pacific has been working with the judiciary in South East Asia for the past 10 years through its regional programme on the Convention on the Elimination of All forms of Discrimination of Women (CEDAW) implementation. As UNIFEM and now as UN Women, we have received generous support from the Government of Canada on improving the understanding of CEDAW, its principles of non-discrimination and substantive equality. CEDAW is one of the most widely ratified conventions and one of the two conventions which are ratified by all South East Asian Countries. Often called the Bill of Rights for Women, the ratification of CEDAW makes it imperative for all branches of the State Party to undertake efforts to eliminate all forms of direct and indirect discrimination and ensure defacto and dejure equality.

The CEDAW Convention is the only human rights treaty which affirms the reproductive rights of women and recognises culture and tradition as influential forces shaping gender roles and family relations. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice.

Over the past decade, CEDAW South East Asia Programme in the UN Women has been working with the executive, the judiciary and more recently with parliamentarians in the region to realize a vision of ending discrimination against women and girls in South East Asia.

Honorable Delegates, Excellencies, Ladies and gentlemen,

This event, supported by the Government of Canada, is a follow-up to last year's "Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice." Last year the event brought together a core group of actors in state-sponsored justice systems/senior judges from eight countries covered by the CEDAW South-East Asia Programme (SEAP). The two-day

Colloquium resulted in an agreement by judges to encourage the establishment of a gender equality committee within judiciaries and encourage continuing dialogue, knowledge and information sharing. The colloquium also resulted in some important recommendations including the need to develop more materials on women's human rights, and specifically on gender stereotyping influencing judicial decisions.

The CEDAW SEAP Programme has been supporting and conducting national and regional initiatives to support the development, review and implementation of legislative frameworks in compliance with the CEDAW principles. This work is being undertaken alongside support to ASEAN and its mechanisms to protect the human rights of women and girls – ASEAN Inter-governmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

In particular, CEDAW programme has been supporting on-going training of trainers on feminist legal theory and practice (FLTP) to build sustainable strategies and approaches to promote effective women's human rights in law-making, law reviews and in promoting women's access to justice, particularly for disadvantaged and marginalized women; and drafting of indicators on a wide range of issues related to access to justice for women in the region which will serve as a knowledge tool to measure work in women's access to justice to ensure harmonization of style that is currently being done in office. The indicators will include reference to legal frameworks for CEDAW implementation, structural and procedural obstacles to women's access to justice, women's access to justice in aggravated and acute contexts (e.g., conflict and post-conflict settings).

UN Women is also currently conducting a Regional Research on Women's Access to Justice in Plural Legal Systems in the 8 countries of the Programme which focuses on the broad spectrum of the justice systems, including those that are informal, non-formal including customary, indigenous, traditional and religious orders. The Regional Research Study aims at filling the gap in global knowledge in the area of women's experiences in plural legal systems in South-East Asian countries. Aimed at evaluating women's access to justice in the plural legal systems of South-East Asia and determining how women's access to justice can be enhanced according to international human rights standards, the study provides suggestions for practical interventions for the short term as well as recommendations to improve access to the justice for women of the 8 CEDAW SEAP countries.

2015 may prove to be a turning point in the history of women's human rights. Governments will decide on Sustainable

Development goals one of which will be (should be) on Gender Equality and women's human rights, the 20 years Post Beijing Platform for Action review will take place which will identify gaps in achieving gender equality and progress on women's human rights. Closer home, 2015 will be the year of ASEAN integration. All of these regional and global events provide an opportunity for all of us in this room, in whatever roles we play in advocating for improvement in women's human rights. The judiciary have an important role in the new world for making new advances on social and gender justice.

Today we have assembled to discuss, deliberate and dwell upon issues relating to substantive equality, women's human rights vis-...-vis legislation and judicial decisions. In the words of Justice R.C. Lahoti, an author on women's empowerment and role of judiciary, "A judge is an eyewitness to a real-life drama—how the script written by the legislature is played by real-life characters. The parties while critically evaluating the laws may tend to have a partisan look; a judge can make a correct and realistic evaluation of the laws and find out authoritatively the difficulties in implementation of or lacunas in legislation. Secondly, and which is more important, a judge while administering the laws, if deprived of requisite sensitivity may frustrate the objectives sought to be achieved by the best of the laws. However, one thing shall have to be clearly borne in mind i.e. the role of the judiciary, in the vindication of gender justice."

This workshop aims to foster networking, exchanges, learning among the judiciary in south east asia, to seek your wisdom and inputs into training resource materials which are being developed at the request of many of you and which we hope will contribute to mainstreaming women's human rights in the curriculum of judicial training institutions.

I look forward to hearing your experiences in applying the CEDAW Convention in your court decisions and to see how we can continue to all work together with courage, conviction and commitment to enhance women's access to justice. Achieving gender equality is essential in unleashing the full capability of countries to attain sustainable peace, economic development and long-term prosperity. There is no doubt that equal access to justice is a prerequisite to meeting this goal.

Before I end, I would like to take a moment to thank the Office of the Judiciary and ICJ for their continued partnership with UN Women and thank the Government of Canada for its continued faith in UN Women in improving women's human rights in South East Asia. I also wish to thank all of you for accepting our invitation and for the precious gift of your time.

Thank you ! Khapun Kha !

P R E S S R E L E A S E

UN WOMEN ASIA AND THE PACIFIC TO HOLD A REGIONAL WORKSHOP FOR JUDICIAL TRAINING INSTITUTIONS TO PROMOTE WOMEN'S HUMAN RIGHTS IN THE SOUTHEAST ASIAN JUDICIAL SYSTEM

14 October 2014 (Bangkok, Thailand) – Judges and representatives from judicial institutes from across Southeast Asia will gather at a regional workshop to discuss how they can help counter gender-based violence and gender stereotypes. The workshop, organized by the UN Women Regional Office for Asia and the Pacific, in collaboration with the Office of the Thai Judiciary and the International Commission of Jurists (ICJ) will be held at the InterContinental Hotel in Bangkok from 15 to 16 October 2014. Journalists are invited to the opening session on the morning of 15 October and to the reception dinner on 15 October.

This workshop, **Regional Workshop for Judicial Training Institutions on Good Practices in Promoting Women's Human Rights Compliant Justice Delivery**, will focus on using the CEDAW Convention and on eradicating gender stereotypes, especially in cases related to violence against women. It also aims to improve the progress of the implementation of the CEDAW Convention and strengthen the regional network of judicial training institutions in eight Southeast Asian countries, namely Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, Timor-Leste and Vietnam.

Speakers at the opening session in the morning of 15 October 2014 include Hon. Justice Pattarasak Vannasaeng, Secretary-General of the Office of the Thai Judiciary; H.E. Mr. Philip Calvert, Ambassador of Canada for Thailand; Ms. Roberta Clarke, Regional Director of the UN Women Regional Office for Asia and the Pacific; and Mr. Sam Zarifi, ICJ's Regional Director for Asia and the Pacific.

Among the forum's participants are Milena Pires, CEDAW Committee member, Timor Leste; Justice Vacharin Pajekvinyusakul, Chief Judge of the Court of Appeal, Region 6, Thailand; Justice Sittisak Wanachagit, Deputy Chief

Justice of the Court of Appeal, Region 7, Thailand; Christine Mary Foster, Senior Lecturer, Law Faculty of the University of New South Wales; and Judge Maria Rowena Modesto-San Pedro, Judge of Regional Trial Court – Pasig City Philippines. The reception dinner on 15th October will have members of the diplomatic community.

All Southeast Asian nations are party to the CEDAW, but there has been uneven progress among them in complying with international human rights standards in eliminating discrimination against women in their judicial systems and promoting gender equality. There is therefore a recognized need to ensure that core principles of CEDAW and the observations of the CEDAW Committee are implemented in South East Asian countries' domestic court decisions.

This event follows an international conference held in September 2013, also organized by UN Women Regional Office for Asia and the Pacific, in collaboration with the Office of the Thai Judiciary and the International Commission of Jurists (ICJ), which focused on substantive issues of gender responsive jurisprudence and women's human rights. Participating judges at that event also discussed the principles of women's human rights as defined in international human rights laws.

This year's Regional Workshop will offer a rare opportunity for all journalists to hold exclusive interviews with dignitaries in the international and regional judicial sector; learn about good practices from Southeast Asian tribunals in applying CEDAW and its principles and on rendering gender sensitive judgments.

This Regional Workshop is an important initiative, organized at this scale, with the judiciary of South East Asia, on women's human rights. This activity is supported by the Foreign Affairs, Trade and Development Canada (DFATD).

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ABOUT UN WOMEN 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.

M E D I A B R I E F

REGIONAL WORKSHOP FOR JUDICIAL TRAINING INSTITUTIONS ON GOOD PRACTICES IN PROMOTING WOMEN'S HUMAN RIGHTS COMPLIANT JUSTICE DELIVERY

15 OCTOBER 2014, INTERCONTINENTAL, BANGKOK

UN Women has been working with the judicial sector in Southeast Asian countries in which UN Women has a programme on improving Women's Human Rights namely Cambodia, Lao PDR, Indonesia, Myanmar, Thailand, Viet Nam, Philippines and Timor-Leste. The programme works to enhance the understanding of key stakeholders on International Human Rights Standards and norms especially the Convention on Elimination All Forms of Discriminations against Women (CEDAW), widely known as the international women's rights bill.

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 will host a Regional Workshop for Judicial Training Institutions on Good Practices in Promoting Women Human Right's Compliant Justice Delivery on 15 -16 October 2014. The workshop aims to provide a platform for judicial training institutions to share information on training materials on women's human rights they use in their programmes, seek inputs in the preliminary drafts of the two documents – the manual on gender stereotypes and case book of judicial decisions in Southeast Asia that cite CEDAW.

All journalists are invited to attend the meeting of 15 October 2014 at Ballroom 2 which will offer an opportunity to discuss and interview with four speakers including **Ms. Milena Helena Lopes de Jesus Pires, CEDAW Committee Member, Ms. Siriporn Skrobanet, Executive Director, Foundation for Women Thailand, Justice Zenaida Elepano, former Court Administrator of the Supreme Court of the Philippines, Judge Adriani Nurdin, Judge – Court of Appeal of Banten, Indonesia and Ms Roberta Clarke, UN Women for the Asia and Pacific's Regional Director and Representative of Thailand** on 16 October 2014. The two-day forum is open for journalists.

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