ORIGINAL ARTICLES

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): With Reference to Violence against Women and Trafficking in Women

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ABSTRACT

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the international human rights treaty that is exclusively devoted to gender equality. It was adopted by the United Nations General Assembly on 18 September 1979 and entered into force on 3 September 1981. It is one of the most widely accepted human rights treaties and is often described as an international bill of rights for women. Article 2 States parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. The Convention requires that all States Parties reports to include statistical data on firstly, the incidence of violence against women, secondly, information on legislative and other measures taken to protect women against violence and finally, information on the provision of services for victims. Thus, the paper deliberates the relevant articles of the Convention which are included with the aim to protect the rights of women. Special focus of the discussion is on the issues of violence against women and women trafficking in Malaysia. These issues require special attention as to gauge the extent of compliance to CEDAW by the Malaysian government in combating these unresolved problems. Legal effects of reservations to CEDAW and the enforcement mechanisms will also be deliberated.

Key words: CEDAW, Law, Right of Women, Gender Discrimination, Violence against Women, Trafficking in Women

Introduction

The Convention on the Elimination of all Forms of Discrimination against Women (hereinafter “the Convention” or “CEDAW”) was adopted by the United Nations with the aim of integrating the UN human rights system with an instrument specifically designed to eliminate any kind of discrimination against women. Prior to CEDAW, in the 1970s, there are treaties that offer protection of civil and political rights, as well as of economic, social, and cultural rights, to every individual without distinction based on sex. However, these treaties are said to be ineffective in promoting the rights of women. It was claimed that the application of the International Covenant on Civil and Political Rights (ICCPR) and also of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) did not tackle in a significant way the de facto discrimination suffered by women, despite the obligation imposed upon State parties to guarantee the codified rights and freedoms to both women and men. Furthermore, the Human Rights Committee that monitors the implementation of the ICCPR rarely examined the situation of women in the performance of its functions. The Committee mainly concentrates on the laws, rather than on the practices and customs which were the main source of women’s discrimination. Thus, this article discusses the relevant articles of the Convention which are included with the aim of protecting the rights of women. Special focus of the discussion is on the issues of violence against women and women trafficking. Legal effects of reservations to CEDAW and the enforcement mechanisms will also be deliberated.

CEDAW and Its Main Provisions:

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the international human rights treaty that is exclusively devoted to gender equality. It was adopted by the United Nations General Assembly on 18 September 1979 and entered into force on 3 September 1981. As of 1 March 2010, CEDAW has 186 States parties, representing almost the entire international community. It is one of the most widely accepted human rights treaties and is often described as an international bill of rights for women. The Convention which is consisted of a preamble and 30 articles defines discrimination against women and sets up an agenda for national action to end such discrimination. The articles of the Convention can be categorised

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into three main groups. The first group of the articles explains the nature and scope of the State’s obligations. The second group of the articles targets specific forms of discrimination and outlines measures that the State must undertake to eliminate discrimination in each of these areas. The last set governs procedural and administrative matters, such as the composition of the Committee on the Elimination of Discrimination against Women and the way in which the reporting process operates. Thus, CEDAW is the culmination of more than thirty years of work by the United Nations Commission on the Status of Women and is the central and most comprehensive document of women’s rights for both public and private spheres.

In its preamble, CEDAW explicitly acknowledges that “extensive discrimination against women continues to exist”, and emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. Article 1 of the Convention states that “For the purpose of the present Convention, the term “disrimination 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 freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 described as the core of the Convention, enshrines the following basic obligations of the States parties in implementing the Convention including embodiment of the principle of equality of men and women in their national constitutions or other appropriate legislation; to adopt appropriate legislative and other measures prohibiting all discrimination against women; to establish legal protection of the rights of women on an equal basis with men, and to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.

In article 3, the Convention gives positive affirmation to the principle of equality by requiring the States Parties to take, in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Temporary special measures are mentioned under Article 4 of the Convention. These affirmative action measures are aimed to hasten de facto equality of men and women as new legislation and amendments are invariably long and tedious processes. Article 5 (a) of the Convention provides that the States parties are obliged 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 superiority of either of the sexes, or on stereotyped roles for men and women. All appropriate measures are also to be taken by the States Parties to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

The subsequent fourteen articles focus on the agenda for equality. In its approach, CEDAW covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. Broadest attention is given to the legal status of women which include the right of women to vote, to hold public office and to exercise public functions as provided for under article 7 of the Convention. The Convention also deals with the issue of trafficking in women and exploitation of women in prostitution. This topic will be discussed later. Article 8 gives right to the women to represent their countries at the international level. Articles of the Convention 10, 11, and 13 respectively, affirm women’s rights to non-discrimination in education, employment and economic and social activities. Recognition of the significant role and contributions of rural women and their special circumstances which warrant more attention in policy planning are stated in Article 14 of the Convention. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women’s legal capacity shall be deemed null and void. Lastly, Article 16 deals with the issue of marriage and family relations.

Apart from civil rights issues, the Convention also gives special emphasis on the human reproduction and the impact of cultural factors on gender relations. The third general thrust of CEDAW aims at broadening the understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition in restricting women’s enjoyment of their fundamental rights.

The discussion below focuses on two emerging issues of CEDAW that is violence against women and trafficking in women.

Violence against Women:

Generally, violence against women is acknowledged as a form of discrimination against women. Originally, the Convention did not focus on addressing this particular issue (of violence against women). The Committee of CEDAW however, can make recommendations on any issue affecting the right of women such as violence against women. In 1989, the CEDAW Committee deliberated on this issue (of violence against women), and in 1992 the Committee adopted General Recommendation No. 19. It is required by the Committee that all States
Parties reports are to include statistical data on, firstly, the incidence of violence against women, secondly, information on legislative and other measures taken to protect women against violence, and thirdly, information on the provision of services for victims. According to Helen, these recommendations are not binding, they are however, still important as they seem to be persuasive interpretations of CEDAW rights (Helen and Kas 2005).

In Malaysia, the Domestic Violence Act 1994 (DVA 1994) was enacted as a result of the concerted efforts of various non-governmental women’s organizations to highlight the inadequacies of the previous laws in managing the issue of violence against women (Noor, 2003). The Act attempts to deal comprehensively with the problems of domestic violence as a response to the increasing number of domestic violence cases. It applies to both Muslims and non-Muslims. The DVA 1994 defines domestic violence as follows;

a) Willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;

b) Causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;

c) Compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;

d) Confining or detaining the victim against the victim’s will; or

e) Causing mischief or destruction or damage to property with intent to cause, or knowing that it is likely to cause, distress or annoyance to the victim.

Under the Act 1994, for a charge to be brought against the abuser, the crime must be one that is listed in the Malaysian Penal Code only. Thus, the provisions under the DVA 1994 have to be read together with the provisions under the Penal Code. This is considered as one of the drawbacks of the Act.

The protections available under the Act 1994 include the issuance of an interim protection order (IPO) pending investigations of the domestic violence offence. This type of protection prohibits the person against whom the order is made, from inflicting further violence onto the victim. During the criminal proceeding a long term protection order may be sought by the victim. The protection order can include other orders such as, granting of the right of exclusive occupation to the victim of the shared residence, prohibiting or restraining the abuser from entering the victim’s place of residence, requiring the abuser to allow the victim to enter the shared residence to collect the victim’s personal belongings and requiring the abuser to avoid making written or telephone communication with the victim. If satisfied that there is likelihood that the abuser may cause physical injury to the victim, the court may attach a power of arrest to such protection or interim protection order. However, it has been commented that the protection order cannot be immediately obtained as for example, in the case of interim protection order, it may only be sought if there is a police investigation being carried out (Abu Bakar and Nor, 1995). It has also been criticized that as some of the crimes of domestic violence constitute non-seizable offences, orders to investigate must be obtained from the Deputy Public Prosecutor. When an IPO is breached, often times the power of arrest is not included in the IPO itself, thereby further aggravating the vulnerable situation of the women (Honey, 2003).

The victim may also under the Act 1994 claim for compensation if the victim had suffered personal injuries or damage to property or financial loss as a result of the domestic violence. Counseling sessions may be offered to the victim to manage the trauma and fear suffered from the violent act of the abuser. Besides, the protections available under the DVA 1994, the victim may also find assistance in other laws enacted prior to the Act 1994. For example, the abuser may be charged under the Penal Code for causing personal injury to the victim under the provisions pertaining to offences against person that apply to any person generally. The other example is the protection that is provided under the Married Women Act 1957 which permits a husband or wife to sue each other in tort for damages in respect of injuries to his or her person.

In Saudi Arabia, several steps have been taken by the government to address women’s and related justice issues. In 2004, the Kingdom set up the first non-governmental human rights commission i.e., the National Human Rights Association (NHRA). The association accepted complaints from citizens, launched awareness campaigns and compiled reports and recommendations for the government. In October 2007 the Kingdom announced sweeping reforms to its legal system. A new court system with three levels of courts was introduced. This reform is expected to help judges become specialists in one category of legal issues and the specialized family courts will enable judges to better understand the dynamics of domestic relations and women’s concerns. In 2006, the Kingdom prepared a report to the United Nations the report the steps that have been taken to meet the CEDAW’s standards, including steps to address violence against women.

**Trafficking in Women:**

It is provided under Article 6 of the Convention that the States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. Trafficking in women and children is the worst form of violation of the human rights of women and children. It is one of the greatest human rights challenges of our time, as it threatens the world community by allowing a safe haven for trafficking syndicates, funding illicit activities and facilitating the spread of sexually transmitted
diseases. It restricts the victim of her freedom of choice. It has no borders, involving both developing and
developed countries and has become an organised, trans-national crime and an increasingly booming global
business.

In central Europe, Poland is considered as one of the largest “sender” countries of trafficked women. Polish
women and girls are often lured by false offers of desirable jobs abroad, and are then forced into prostitution at
brothels across Europe. Hungary is a receiver country for women trafficked from the Ukraine, Romania, and the
newly independent States. The Ukrainian mafia is reported to control most of the trafficking industry in central
Europe, including Hungary.

In Malaysia, like in many other countries, it is difficult to ascertain the exact or even an estimated number
who are trafficked into or trafficked out of the country. The volume of trafficking of women is relatively small
in comparison to its neighbours, nevertheless it is growing. In February 2004 there was a news report that the
police allegedly found 19 young women from China displayed in a glass cubicle in the centre of a budget hotel
in Selangor. These nude women, each carrying a nametag, were paraded on a three-tiered stage for clients to
make their pick. These enslaved women suffer in silence from abuse and exploitation. Moreover, geographi-
cally, Malaysia has become an ideal transit point for trafficking of people across borders.

The Malaysian Government has taken several concrete steps in order to comply with standards to eliminate
trafficking of women as provided under the Convention. The Ministry of Internal Security is currently in the
process of establishing an Inter-Agency Committee on Trafficking in Persons. The establishment of specific
laws on trafficking will be discussed by the Committee and there is a need to organize training for police
personnel, Immigration officers, officers from the Ministry of Women, Family and Community Development
(MWFCD) and its agencies, as well as the judiciary on how to identify victims of trafficking.

The Department of Social Welfare under the above Ministry is responsible for providing protection and
rehabilitation to girls below 18 years who have been involved in vice and prostitution. The victims are placed in
various institutions under the Department which provide protection and rehabilitation programmes such as
formal education, religious/moral education, vocational training and counselling. They are also encouraged to
participate in sports, recreational and cultural activities. The Department of Social welfare offers support and
counselling services to those women involved in prostitution and sexual exploitation. It has 14 centres called
‘Rumah Nur’ all over the country which offer these services. The Department also implements preventive
measures in order to raise community awareness in terms of gender equality and women’s rights. Seminars on
Reducing Violence against Women and Legal Literacy Programmes have been implemented in 219
parliamentary constitutions all over the country by Women and Family Development Councils. The objective is
to increase knowledge and awareness on violence against women and the legal rights of women.

In Indonesia, according to the International Labour Organisation report, there were many victims that had
been requested by their own parents to become prostitutes due to the economic pressure (Handayani and Ratih,
2007). The other victims, especially children, were asked to become beggars’ helpers and narcotics’ couriers.
Those victims might be identified through 3D characters, i.e., no dignity, dangerous and dirty. The data from
the Ministry of Social Affairs, in 2000 reveals that at least 70,781 women were recorded as prostitutes due to
human trafficking. The National Commission for Women’s Rights recorded in 2004 that out of 14,020 cases of
household violence, 562 were in human trafficking. The Commission for Child Protection in 2005 reported that
around 200,000 – 300,000 of trafficked women were those under 18. The Indonesian Government had identified
certain regions, often engaged in human trafficking. They are the poor regions in North Sumatra, Lampung,
West Sumatra, West Java, Central Java, East Java, West Kalimantan, North and Southeast Sulawesi and East
Nusatenggara. Indonesia is considered as a country having a large number of victims but the government has yet
to be seen to be making effective efforts at prevention or minimization of trafficking.

In Nepal, CEDAW was ratified in 1991 and has since undertaken several initiatives to protect victims of
human trafficking. In 1993, the government passed a bill to enforce stricter treatment of individuals accused of
trafficking, and in 1995, the country became party to an international treaty to combat trafficking and
prostitution. Since CEDAW was ratified, the Nepalese media and local NGOs have devoted significant time and
resources to promoting awareness of the trafficking of girls and women from Nepal to India.

In Ukraine, serious and sustained efforts to comply with standards to eliminate trafficking have been made
by the government which ratified CEDAW in 1990. In 1998 Ukraine declared trafficking in people as a criminal
offense, imposing for the first time sanction against human trafficking. In implementing the obligation of
CEDAW, the government pays primary attention to eliminating the trafficking of women through ombudsman.

In Thailand, since ratifying CEDAW in 1985, the government of Thailand has passed three laws that
address trafficking on a national level. In efforts to provide alternatives to sex work and trafficking, the
Government is offering vocational training to women and girls. The Government also has set up a national
Commission on Women’s Affairs which implements programmes to eradicate violence against women and
launched several public information programmes to discourage human trafficking.

Reservations to CEDAW:
The Convention provides that the Secretary-General shall receive and circulate to all States the texts of reservations made by States at the time of ratification of, or accession to, the Convention. A reservation incompatible with the object and purpose of the present Convention shall not be permitted. Reservation may be withdrawn at any time by notification to this effect addressed to the Secretary-General, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received. Disputes over the compatibility of reservations will be settled by arbitration or in proceeding before the International Court of Justice (ICJ) if necessary.

It is observed that Articles 2, 5, 7 and 16 of the Convention have been the subjects of the majority of reservations to CEDAW. These articles address sensitive issues with regard to States sovereignty or cultural and religious practices (Abdul Ghafur, 2006). Many States have relied on Article 29 (2) of the Convention which expressly allows States to opt out of submitting disputes concerning the interpretation or implementation of CEDAW to arbitration or the ICJ. Out of the 186 States parties to CEDAW, 57 States have currently reservations to CEDAW. Majority of them are non-Muslim countries. There are however, only 24 Muslim countries make reservations to CEDAW. A number of Islamic countries have made reservations to CEDAW primarily on the ground that certain provisions of CEDAW are contrary to Shari’ah. Examples of reservations made by some States parties are presented below.

Recently during the period of 19 May 2008 to 1 March 2010, reservations to CEDAW was entered by Qatar and at the same period objections to reservations were made by Austria, Czech Republic, Slovakia and Spain to reservations made by Qatar. The Government of the State of Qatar accepts the text of Article 1 of the Convention provided that, it is in accordance with the provisions of Islamic law and Qatari legislation. Qatar declares that the question of the modification of “pattern” referred to in Article 5 (a) must not be understood as encouraging women to abandon their role as mother and their role in child-rearing, thereby undermining the structure of the family. During the period 19 May 2008 to 1 March 2010, the Secretary-General received notifications of withdrawals of reservations from Algeria and Jordan. Algeria’s reservation was on Article 9, paragraph 2 and Jordan was on Article 15 (4).

The Government of Algeria, on 15 July 2009 notified the Secretary-General that it had decided to withdraw the reservation in respect to Article 9 (2) made upon accession. The text of the reservation reads as follows; “The Government of the People’s Democratic Republic of Algeria wishes to express its reservations concerning the provisions or article 9 (2) which are incompatible with the provisions of the Algerian Nationality Code and the Algerian Family Code.” The Algerian Nationality Code permits a child to take the nationality of the mother only when the farther is either unknown or stateless; the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; the child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under Article 26 of the Algerian Nationality Code, acquire the nationality of the mother provided the Ministry of Justice does not object.

The Government of Malaysia declares that Malaysia’s accession subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Shari’ah and the Federal Constitution of Malaysia. The Malaysian Government does not consider itself bound by the provisions of articles 2(f), 5(a), 7(b), 9 and 16 of the Convention. On 6 Feb 1998, the Government of Malaysia withdraws its reservation in respect of articles 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h). Currently, the remaining Malaysian reservations cover articles 5(a), 7(b), 9(2), 16(a), 16(c), 16(f) and 16(g). According to the Vienna Convention on the Law of Treaties, a State party may object to a reservation made by another state party within 12 months of the notification of the reservation. There are indeed some objections to the reservations made by the Islamic countries to certain provisions of CEDAW.

The Enforcement of CEDAW:

The Convention sets up the Committee on CEDAW that oversees the implementation of the Convention provisions. Members of the Committee are nominated and elected by the State parties to four-year terms and consist “of twenty-three experts of high moral standing and competence in the field covered by the Convention.” The Committee is to observe and monitor the performance of State Parties with respect to the Convention obligations, encouraging incremental changes for the better in minimizing all forms of discrimination against women. Prior to the adoption of the Optional Protocol by the UNGA in October 1999, the CEDAW Committee had at its disposal two mechanisms by which compliance by State Parties were to be monitored. One is the interstate procedure, as stated in Article 29 of the Convention, and the other is the reporting procedure, in Article 18 of the Convention.

The interstate procedure is to address the differing interpretations and usages of the Convention by member States. Disputes arising from such differences between State Parties are to be referred for arbitration. If it fails to be resolved within six months, the dispute may finally be referred to the International Court of Justice (ICJ), whose ruling has a binding effect on the State parties under International Law.
The reporting procedure operates like many other human right treaties. The States Parties are to provide a report within one year of ratification of the Convention, to be succeeded by regular reports, at least once in every four years. The contents should include legislative, judicial and administrative steps taken by the State to incorporate the terms of the Convention into national laws and policies, together with the obstacles and impediments to its incorporation. Non-governmental organizations of respective countries may present their own alternative reports, called Shadow Reports, in which they outline their views on the situation of women and on measures taken or not taken by their governments. These Shadow Reports are sent to members of the CEDAW Committee, who take them into account and formulate questions for or request explanations from the government delegations. These reports are reviewed and deliberated by the CEDAW Committee, together with the State Parties and interested groups, in terms of implementation, and concurrence with the convention. The Committee may make recommendations as a result of the deliberation, with respect to the state of compliance by the State Parties and reports to the General Assembly through the Economic and Social Council. The Secretary-General then submits these reports to the Committee on the Status of Women (CSW) to keep them abreast of the situations within each of the ratifying States parties. This reporting procedure is meant to encourage positive discussions between the State Parties and the Committee, with the aim of achieving overall progress with respect to the terms of the Convention. Together with the involvement of NGOs, this approach is considered comprehensive in pushing for better compliance by State Parties.

Weak Enforcement Mechanisms:

The discussion under this subtopics will be divided into firstly, weak reporting mechanisms and secondly, weak adherence to the normative principles of the Convention.

i) Weak Reporting Mechanism:

With the passage of time since ratification of the Convention, it is clear that these mechanisms are less than effective in bringing about positive changes in discrimination against women. State Parties are reluctant to utilize the interstate procedure especially against the background of the principle of non-intervention in the internal affairs of other States/nations, as subscribed by most nations. This is more so as practically no State is exempt from criticism of its policies towards women. In addition, State Parties can decline to be bound by this procedure (Article 29 (2)). As at 2001 no State Party has ever utilized this procedure, thus it remains untested.

Though the reporting has all the elements of scrutiny and recommendations, there are no legal means (except for political pressure of the UN) available for the CEDAW Committee to take action or reprimand non-compliant State parties. It also does not have any clause for arbitration regarding disputes of interpretations and/or practice with respect to the terms of the Convention. In addition, State parties frequently prepared reports that are inaccurate and/or superficial. The political will of many State Parties are less than adequate to actually report the true status of women in their countries.

In essence, the problems of enforcement are related to the fact that CEDAW was not vested with the authority to interpret the substantive provisions of the Convention, and therefore, unable to ensure compliance with the Convention.

ii) Weak Adherence to the Normative Principles of the Convention:

The weak enforcement, together with the acceptance of the practice of reservations to articles of the convention created an impression that commitment to the convention ideals is just symbolic. This can be true if one studies the status of women in some countries practising patriarchy. It can also be deliberated that women are also members of specific groups or communities with better rights when compared to those of the convention. Thus, the challenges go beyond the promotion of the articles of the Convention; cultures and religions of specific communities need to be known, understood and utilized to the best in the best interest of women in society.

The Optional Protocol: Enhancing Enforcement:

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) was adopted by the UN General Assembly on October 6, 1999 and entered into force December 21, 2000. The Optional Protocol provides for two procedures: i) a communication procedures that allows women to submit claims of violations of rights protected under the Convention to the Committee on the Elimination of All Forms of Discrimination Against Women; and ii) an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.
i) The Communications Procedure:

In this procedure, women or groups of people are given *locus standi*, where they can submit communications to the CEDAW committee relating to violation of their rights. This submission is only possible after all efforts at the National level are taken to the full. This procedure is also invalid if the said violation is being attended to under another international convention. The Protocol has procedures to determine the relevance, admissibility and merits of the communication(s). As with other human rights, this communication procedure is expected to enhance the operation of the women’s Convention, as redress can range from monetary or other forms of reparations, changes to the relevant laws, and/or actions for the establishment of preventive measures appropriate to the act of discrimination.

ii) The Inquiry Procedure:

The second mechanism is the introduction of an inquiry procedure. This goes beyond those available in other rights conventions, as the complainant can be any person/group that provides reliable and relevant evidence of the violation. It has two stages; a confidential stage and a public stage. At the confidential stage, the Committee receives reliable information of alleged grave or systemic violations, such as women trafficking or those in situations of armed conflict. Cooperation of the State party is then sought, and be in the inquiry, and make its submission. The Committee then deliberates, and states its findings. They are then presented to the State Party for its consideration, and to provide a reply which should include appropriate actions that need to be taken. Should this happen the inquiry then becomes public.

The Optional Protocol does not have a reservation clause. It does however, have an opt out clause (Article 10), which allows State Parties to opt out of the inquiry procedure. The protocol is significant, as it improves the monitoring mechanisms, hence contributing to the development of international human rights law. The CEDAW Committee is vested with the competence to interpret the articles of the protocol, and hence the legitimacy to develop legal principles on women’s rights. Essentially, the Optional Protocol intends to give CEDAW the legal force that it requires. Mary Robinson, the High Commissioner for Human Rights (1997-2002) notes;

“in addition to providing an international remedy for the violations of women’s rights, the Optional Protocol will act as an incentive for governments to take a fresh look at the means of redress that are currently, available to women at the domestic level.”

Conclusion:

It is important to note that in order to promote the rights of women under CEDAW there are several actions that need to be taken. Friends, family members and communities need to be educated about women’s rights under CEDAW and to educate women that violence happening against them is a violation of their human rights and international law. The same goes to the problem of women trafficking which has to be tackled effectively at all levels. Media also can play their role in publicizing women’s rights violations. Concerning the articles provided under CEDAW there is a suggestion that in any country where Islam is being practised, any international convention, treaties or instruments should only be signed and ratified after a thorough research has been made as to whether such declarations, conventions, treaties or instruments are not contrary to the principles of Shariah or have any adverse affect on Islamic law. In Malaysia, Islam is the religion of the Federation. Thus, all laws must be in conformity with the principles of Islamic law in so far it is allowed by and not in conflict with the provisions of the Federal Constitution. Malaysia and other Muslim countries have made a number of reservations based on the fact that some of the principles of CEDAW are contrary to Shariah.

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