

THE IMPLEMENTATION OF CEDAW IN MALAYSIA: A HUMAN RIGHTS-BASED ANALYSIS

Sharifah Syahirah Syed Sheikh¹

Abstract

This article attempts to analyse the implementation of CEDAW in Malaysia from the human rights-based perspective. It consists of background and matters related to CEDAW, discussion on the human rights based analysis of the CEDAW, Malaysia's position on CEDAW reservations, and actors involved. The core discussion of this paper is the analysis of CEDAW's implementation in Malaysia. This paper analysed three main documents, which are the State Formal Report 2004 (initial and periodic report), NGO's Shadow CEDAW Report (2004) and CEDAW Committee's Concluding Comments (2006).

Keywords: women's rights, human rights, state obligation to international instruments, CEDAW

Background

Currently, women constitute 49.1 percent of the total population in Malaysia with 32% below 14 years old, 63.3% between 15-64 years old² and 4.7% above 65 years old. In 2006, female life expectancy in Malaysia stands at 76.3 years and maternal mortality is at 0.4 per 1000 life birth. In education, half of the enrolment of pupils at primary and secondary schools are female. The proportion of women in higher education is rising. Malaysian women are 61.2 % of students in public universities in 2005. However, in the work force women are under-represented in many technical and professional fields; for example, 14.3% professional architects, and 2.8% professional engineers. Women are also significantly under-represented in the higher levels of management and decision-making. A high percentage are supporting staff such as clerical workers (19%), service workers, shop and market sales workers (18.2%) (MWFC: 2006).

In politics, women only take up 9.6% in the House of Representatives after the 2004 General Election compared to 10.4% in 2000. In the Senate³, 33.3% of senators are women in 2004 compared to 29.7% in 2000. In the occupational category of legislators, senior officials, managers, professionals, technicians and associate

¹ Sharifah Syahirah Syed Sheikh is a Phd candidate at UKM

professionals, women comprises of 35% in 2004 compared to 32.2% in 2000 (MGGI 2007: 19-20).

Meanwhile in the global sphere, Malaysian women participated in various conferences such as the International Women's Conference in Nairobi, the Commonwealth Secretariat on Women and Development signed by Leaders of Commonwealth Government in Bahamas and Commonwealth Plan of Action in Vancouver (1987) (National Women Policy: 1989). In 1995, Malaysia showed keen interest in women's development when the Prime Minister's wife, Dr. Siti Hasmah Mohd Ali led the Malaysian delegation to the International Women's Conference in Beijing. The preparatory activities include the ratification of CEDAW by the Malaysian government just before its official delegation arrived in Beijing (Cecilia Ng, Maznah Mohd & Tan Beng Hui 2006: 73).

What is CEDAW?

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) known as the "Women's Convention" is an international women's human rights treaty that spells out women's rights and obliges governments to ensure the fulfilment of these rights. It has been adopted by the United Nations on 19 December 1979 and came into force as a human rights treaty on 3rd September 1981. Out of the seven major human rights conventions, CEDAW is one of the highly ratified conventions with the support of 185 countries (UN-DAW: 2007).

CEDAW consists of 30 articles that clearly state the many aspects of women's rights. Article 1 provides a definition of discrimination and forms a fundamental basis for eliminating discrimination. Articles 2-4 outline the nature of State obligation in the form of law policy and programmes that the State needs to undertake in order to eliminate discrimination. Articles 5-16 specify the different areas under which States are obligated to eliminate discrimination through measures described in articles 1-4. These include sex roles and stereotyping and customary practices detrimental to women (article 5), prostitution and trafficking (article 6), political and public life (article 7), participation at the international level (article 8), nationality (article 9), education (article 10), employment (article 11), health care and family planning (article 12), economic and social benefits (article 13), rural women (article 14), equality before the law (article 15), marriage and family relationship (article 16).

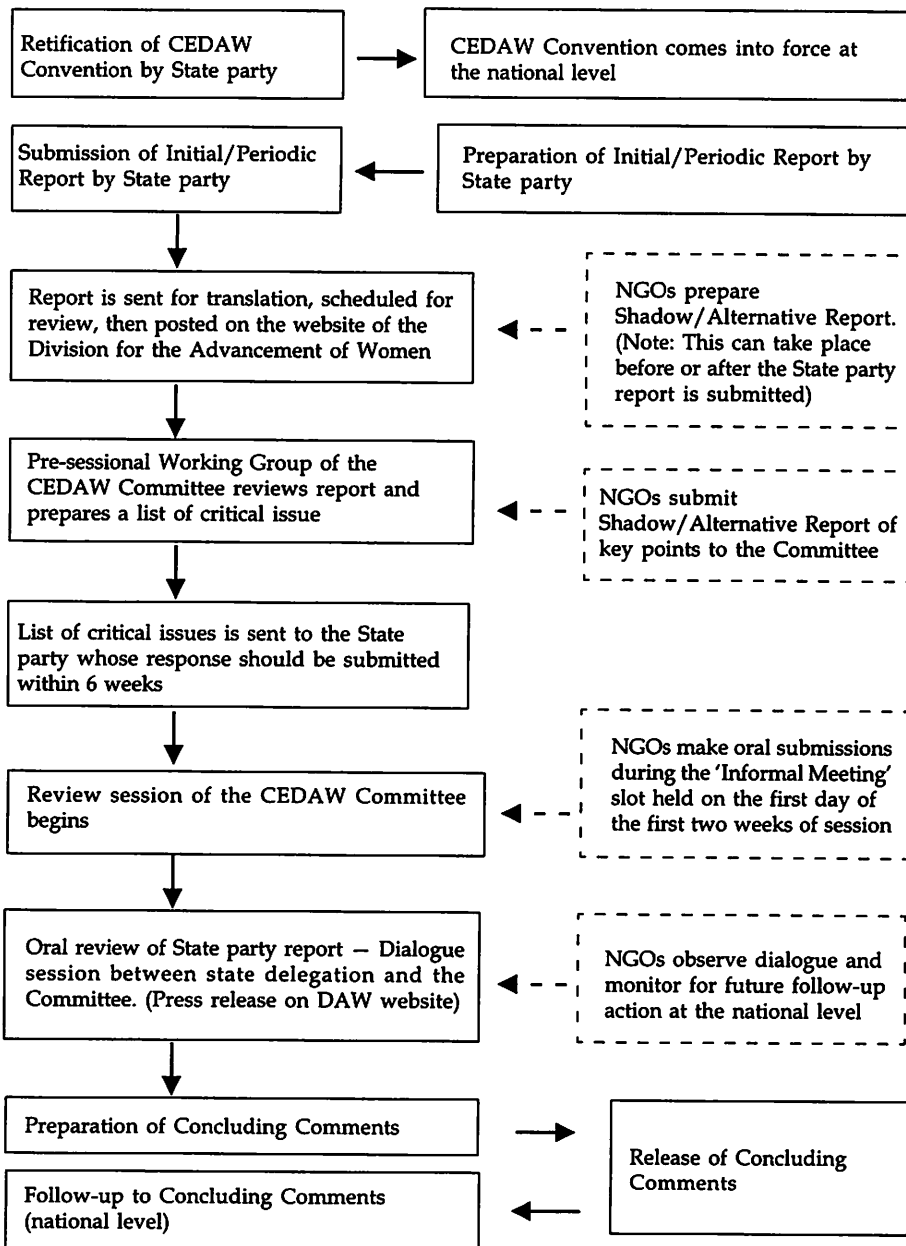
Articles 17-22 detail the establishment and functions of the CEDAW Committee and articles 23-30 deal largely with administration and other procedural aspects of the convention (IWRAW-Asia Pacific: 2007).

As a human rights international convention, CEDAW upholds three basic principles which are the principle of substantive equality, the principle of non-discrimination and the principle of state obligation. These three principles are interconnected in order to ensure the effectiveness of the convention. The principle of

substantive equality is about the recognition of equal opportunity, equal access and equal results as well as outcomes for men and women. Women are entitled to substantive equality and special temporary measures due to past discriminations, which are detrimental to women in every aspect of life. The principle of non-discrimination supports the principle of substantive equality in eliminating discrimination in the current situation. It defines discrimination as "any act that has the effect or purpose of denying the exercise and enjoyment of all rights". From this perspective, acts constitute "discrimination" not only if they either expressly single out women for disparate treatment, but also if they appear to be gender neutral but, nonetheless, have a discriminatory impact on women (WAO: 1998).

Meanwhile, the principle of state obligation states the state's responsibilities and accountability in ensuring the implementation of the convention after its ratification. Therefore, as stated in the article, state parties must submit national reports within a year of acceding to the convention and for every four year period thereafter. The system of reporting process also gives opportunities to local civil society entities to voice out their views and arguments by sending the shadow report or alternative report. There are two types of civil society reports which are shadow reports from those who had access to government reports and alternative reports from those who do not have access to government reports. After each report, the CEDAW committee sends concluding comments which include the recommendations, critiques and appreciation of the state's efforts. By having the shadow report, the CEDAW committee is able to obtain grassroots' views on how far CEDAW has been implemented by the state. This shows the democratic nature of the Convention towards achieving its principles, objectivities and functions.

The flow of reporting process is as follows:-



Resource: IWRAW-Asia Pacific (2007)

Based on this system, participation and representation of state party and civil society can be visibly observed as CEDAW upholds accountability and transparency principles in its framework. With this reporting process, the state's accountability/obligation can be measured with the reports submitted especially from the civil society groups.

Human Rights-Based Analysis

According to Kofi Annan⁴:-

“Human rights are the foundation of human existence and coexistence. Human Rights are universal, indivisible and interdependent. Human Rights are what make us human. They are the principles by which we create the sacred home for human dignity” (SUHAKAM: 2007).

Some of the most important characteristics of human rights are that they are:

- guaranteed by international standards;
- legally protected;
- focus on the dignity of the human being;
- oblige states and state actors;
- cannot be waived or taken away;
- interdependent and interrelated; and
- universal (World Health Organization (WHO): 2007).

However, Julie Stone Peters and Andrea Wolper (1995) feel that the mere extension of existing human rights protection to women is insufficient. Therefore, women’s rights must first be understood. Although the United Nations Universal Declaration of Human Rights (UHDR)⁵ proclaims that “all human beings are born free and equal in dignity and rights” yet women’s freedom, dignity and equality are persistently compromised by law and custom in ways that men’s are not.

According to Carolina Lopez C. (2004), Human Rights debates can be divided into three generations and debates as espoused in the UDHR. “First generation rights” are those civil and political rights such as freedom of association, assembly and expression. “Second generation rights” refer to social, economic and cultural rights, focuses on material well being, as well as the upholding of the right of cultural communities to sustain their unique value systems and ways of life. “Third generation rights” refer to current global issues which are thought to cut across ideological and geographical divides, joining humanity in a ‘borderless world’, such as the right to a clean environment and gender equality.

“Third generation rights” are considered necessary for the survival of the individual, the community, and of humanity itself. United Nations promotes these three generations approach and formulates the indivisibility of basic rights. The indivisibility argument does not allow States to prioritize one set of rights over another. Most of the developing nations prefer “second generation rights” in providing

the socio-economic and material well-being of the citizens rather than “first and third generation rights”. Lately, the Malaysian government is displaying this stand by stern actions taken against street demonstrations.

Other than the three generations perspectives, the state’s stand can also be measured from two types of understanding on human rights. These are the ‘Universalist’ and the ‘Relativist’. The Universalist position holds that the rights expressed in the UDHR are applicable to all individuals and societies around the globe- in all possible contexts - regardless of race, religion, or culture. The ‘Relativist’ position holds that human rights are subject to interpretation based on local norms, values, religious traditions and national priorities. In Malaysian context, the State’s position is essentially ‘Relativist’, while global human rights actors and many local NGOs advocate the ‘Universalist’ position. This ‘Universalist’ position can clearly be seen in the definition given by Kofi Annan as stated earlier. Malaysia also has clearly stated its ‘Relativist’ position in its reservations in CEDAW and its emphasis on the Federal Constitution and *Syariah* Law (Carolina Lopez C.: 2004).

CEDAW Reservations by the Malaysian Government

Malaysia ratified CEDAW on 5th July 1995 with several controversial reservations mainly on article 16 related to women and family. The reservations are article 2(f), 5(a), 7(b), 9(1), 9(2), 11, 16(1a), (1b), (1c), (1d), (1e), (1f), (1g) & (1h). Malaysia withdrew article 2(f), 9(1), 16(1b), (1d), (1e) and (1h) in 1998 after considering comments made by other countries such as Finland, Germany, Netherlands and Norway⁶. Articles 5(a), 7(b), 9(2), 11, 16(a), (1c), (1f), (1g) remain as reservations. There are eight articles which remain as reservations, namely:-

Article 5: State Parties shall 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 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.

Article 7: State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of governments.

Article 9 (2): State Parties shall grant women equal rights with men with respect to the nationality of their children.

Article 16(1): State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations

and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage
- (c) The same rights and responsibilities during marriage and at its dissolution
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

In the Shadow Report, civil societies in Malaysia expressed concern about the remaining reservations as the main factor of the remaining discriminations. According to Noor Aziah (2007), article 5(a), article 7(b) and 9(2) are not contradicting to any provisions in the Federal Constitution and Syariah Law. However, she believes that if reservations on article 16(1)(a), (b), (c), (f), (g) and 16(2) were not made, many of the provisions of these articles contravenes the *Hukum Syarak*. She recommends that the State maintain its reservations; and reconsider the withdrawal of article 16(b) and (h) reservations. Mohd Radzi (2007) agrees that Malaysia should withdraw its reservations for article 5(a), 7(b) and 9(2). However, he did not express his views on the reservations in article 16. Nik Noraini (2007a) viewed Muslim women in Malaysia as third-class citizen due to the discrimination in various *Syariah* law systems. She believes that the reservations of article 16 show the degree of discrimination against Muslim women in Malaysia. From her point of view, Muslim women are now moving two steps backward especially in family matters.

From my point of view, the Malaysian government should consider withdrawing all reservations in order to uphold the objectivities of the Convention. Discrimination against women should not be tolerated even when it is contradictory to the existing system. Based on gender based historical studies made by many scholars, it is proven that all systems including religious interpretations are male-centric and biased against women (Dancz: 1984, Maderson: 1981). Caroline Lopez C. (2004) view the Malaysian government's stand on Human Rights Conventions as 'Relativist' rather than 'Universalist', whereby the elements of human rights are subject to interpretation based on local norms, values, religious traditions and national priorities. This stand is a problematic stand when it comes to women's human rights as various studies show that the main factor of women's discrimination are patriarchal norms, values, religious traditions and national priorities. Despite of the reservations issue, Malaysian government sent its initial report and 2nd periodic report in May 2004;⁷ and presented them in the 35th Session on 15 May - 2 Jun 2006 (10 years after the ratification). After the 35th session, Malaysia has been considering withdrawing its reservations of article 5(a) and 7 (b).⁸

Actors in CEDAW's implementation in Malaysia

From the CEDAW formal report and NGOs' shadow report, there are various groups involved in representing women in Malaysia as observed from CEDAW's reporting

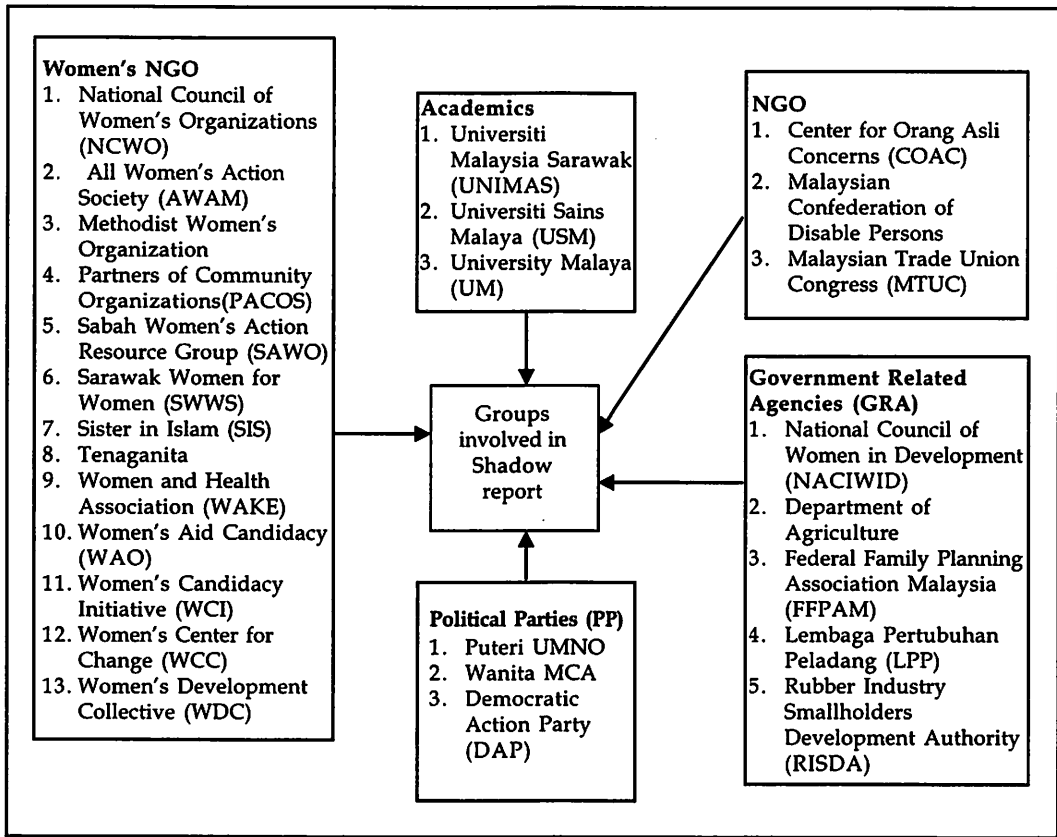
process and other processes related to it. They can be divided into three groups which are international actors, civil society actors and state actors.

The international actors involved are UN human rights & women-based entities⁹, CEDAW committee and IRAW-Asia Pacific (INGO). CEDAW committee¹⁰ is a specialist body established in 1982 consisting of 23 experts on women's issues. There are four primary functions of the committee which are (i) to monitor states' implementation through reports submitted; (ii) to formulate General Recommendations (GRs): one of the means used to address contemporary issues; (iii) to receive complaints from individuals or groups under OP-CEDAW¹¹; (iv) to conduct reporting process and receive formal and shadow/alternative report (IRAW Asia-Pacific: 2006). The second international entity is IRAW-Asia Pacific, the regional NGO that acts as 'middle person' between the UN and locals. It provides training, information and consultation to the local NGOs and state government especially on reporting process preparations. It also monitors the implementation of CEDAW in Asia Pacific countries. As IRAW-Asia Pacific is based in Malaysia, the Malaysian NGOs benefited from its activities.

State-based entities consist of ministries and government lead by KPWK, Parliament, Federal Constitution and political parties (Barisan Nasional). There is a Cabinet Committee for Gender Equality which consists of 13 ministers. However, there was no direct involvement by this Cabinet Committee in the CEDAW preparation and reporting process. There was also no involvement made by Parliament except for Chong Eng¹² a Member of Parliament in the Shadow Report especially for article 6. As CEDAW may directly affect Malaysia's legal system and the law of the land, the Department of the Attorney General is directly involved in the preparation and reporting process of CEDAW. The Barisan Nasional (BN) is the dominant coalition political party in Malaysia. BN is indirectly involved in most of the decision-making because of its majority composition in Parliament. BN has worked on women empowerment agendas at the grass-root level since before independence although for political agenda purposes. However, in the preparation and reports, BN is not visibly involved except for two representatives from *Wanita* MCA and *Puteri* UMNO in the Shadow report preparation. There were 19 representatives of the State officials in the CEDAW reporting process, five from the Attorney General's department, six from MWFC and departments such as the Family Planning Unit, Wisma Putra, Jabatan Agama Islam Malaysia (JAKIM- Department of Islamic Affairs), The Royal Malaysian Police Force, Immigration, the Health Ministry and the Education Ministry sent one representative each (Davidson: 2007).

In the civil society entity, there are a variety of groups involved in the CEDAW framework especially women NGOs mainly NCWO and JAG, other NGOs, academicians and political parties. Civil society is involved directly in the Shadow Report but its participation in the formal report is invisible. There were 28 organizations involved in the process of preparing the NGO Shadow Report. These 28 organizations can be divided into 5 groups.

The figure below illustrates the divisions:-



Resource: Shadow Report CEDAW Malaysia

The Implementation of CEDAW: Human Rights-based analysis

This analysis is based on the three generations debates discussed in the previous sub-topic. Here, I have divided CEDAW's articles into three sections according to the three generations¹³. Basically, the whole framework of CEDAW is categorized as 'third generation human rights'. However, its articles consist of first and second generation human rights. Article 1, article 2, article 5, article 7, article 8, article 9, article 15 and article 16 of CEDAW can be placed under the first generation rights (civil and political rights). While article 3, article 10, article 11, article 12, article 13 and article 14 can be placed under the second generation rights (social, economic and cultural rights). Hence, this analysis is mainly based on the 'first' and 'second' generation rights, while the whole content and objective of CEDAW is seen as belonging to the 'third generation'.

Table below shows the divisions of the articles based on the three generations.

Rights	Art 1	Art 2	Art 3	Art 4	Art 5	Art 6	Art 7	Art 8	Art 9	Art 10	Art 11	Art 12	Art 13	Art 14	Art 15	Art 16
1 st	/	/		/	/	/	/	/	/						/	/
2 nd			/							/	/	/	/	/		
3 rd	/	/		/	/	/			/						/	/

Here, it shows the interconnections of first and third generation human-rights approaches and most of the CEDAW articles are using these two approaches. Therefore the discussion on the implementation of CEDAW in Malaysia can be divided into two which are the combination of ‘first and third generation’ and ‘second generation’.

i. First Generation & Third Generation Human Rights-Based approaches

Article 1 and article 2 of CEDAW have elements of ‘first’ and ‘third generation human rights’ approaches. As the State upholds ‘Relativist’ stand, these articles are not fully implemented. The definition of discrimination given by the State has been criticized by civil society as incomplete and shows the State’s ignorance in this matter. The definition of discrimination stated in the formal report is:-

“.. treating women differently to men to the detriment of women.”

Civil society defines discrimination against women as any action which has the effect (not just the intention) of discrimination on the basis of sex constitutes an act of discrimination as stated in the Human Rights Commission of Malaysia (SUHAKAM) annual report 2000.

Despite the contradictions, civil society and the CEDAW committee congratulate the State for taking positive actions to eliminate discrimination against women by amending article 8(2) in the Federal Constitution to include ‘gender’ as the foundation to stop discrimination against women. However, civil society has identified various discriminatory articles that remain in the Federal Constitution such as article 8(2) which excludes the private sector in its clause, Part III of the Constitution Article 15 (1) on citizenship and article 8(5) which excludes discriminations in personal law (Malaysian NGO Shadow Report: 2004). In spite of these contradictions, the CEDAW committee acknowledges the state’s effort in some positive amendments to (i) the Pension Act to ensure that widows of civil servants do not lose their pensions upon remarriage; (ii) the Land (Group Settlement Areas) Act to allow wives or ex-wives of settlers to become joint owners of the settlement; and (iii) the Penal Code to increase penalties for rape and incest.

With regard to article 5, the State has acknowledged the existence of widespread stereotyping of women as followers and supporters rather than leaders or equal partners in Malaysian society. Civil society urges the State to look into five critical

areas in this matter as well as identifying and formulating policies to eliminate these stereotypes. The five critical areas are (i) national policies that address aspects of culture and religion as well as an adequate representation of women in all government institutions; (ii) all laws and practices relating to marriage and family life; also marriage counselling modules/programmes should be reviewed to eliminate discriminatory elements and stereotypical marriage assumptions; (iii) the school textbooks, curriculum and activities that perpetuate stereotyping have to be abolished; (iv) there is a need to gender sensitize the media to ensure equal and fair representation of women and in portraying constructive images of women; (v) the State has to formulate plans to remove the reservations on article 5(a).

For article 6 (trafficking and exploitation of prostitutes), the State has not provided any information and statistics on this matter. There is no specific law existing to deal with trafficking per se. There are various laws being identified by the State as laws to control this predicament; which are The Penal Code, Immigration Act 1959/1963, The Anti-Money Laundering Act 2001, Restricted Residence Act 1993, Prevention of Crime Act 1959 and the Child Act 2001. Civil society criticised the State's system of punishing the victims of trafficking. Meanwhile the CEDAW committee urges the State to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The CEDAW committee is also concerned about the lack of legislation and policies on the rights of migrant workers especially migrant domestic workers. Currently, the State has announced a compulsory insurance policy for all foreign domestic workers commencing on January 2008.

The implementation of article 7 (political and public life) showed progress especially in the 2008 election. There were statements made by various women's wings of political parties and movements demanding 20% to 30% candidacy for women. However, for the past 51 years, women's seats in Parliament has never been more than 12%, while women's seats in DUN are always less than 6%. Civil society recommends that the State reforms the election system to be more women-friendly and introduce affirmative action in order to enable more elected women candidates. Civil society and the CEDAW committee welcome State's initiatives in the establishment of the Gender Caucus Group (GCG) in The House of Representative (Dewan Rakyat) as one of the components of the Human Rights Caucus Group. However, the function of GCG is hardly seen especially when women issues arise in parliament. After all, this caucus group is under the Human Rights Caucus led by a male MP and is bound totally to partisan politics. (Zaitun Kassim: 2007) In terms of the public sector, the policy of 30% has been adopted and it is in the process of fulfilling this policy. This policy has not mentioned the need for the private sector to adopt it. The Government's formal report has not mentioned women's groups and NGOs under this article. It has only mentioned women in trade unions which raises the question of how far the State recognises women's movements as one of the agents of women's development.

There are various critiques made by the civil society and the CEDAW committee regarding the implementation of article 9 (citizenship). In CEDAW General Recommendation No. 12, nationality is critical to full participation in society. However,

with the reservation of article 9(2) there are four major problems faced by women in Malaysia. With the identification of the four major problems, civil society stated its recommendations as: (i) Article 15 of the Federal Constitution should be amended to allow women to have the same rights as men with regards to the citizenship status of their foreign spouses; (ii) the language of Schedule II of the Federal Constitution should be amended to allow both men and women to confer citizenship status on their children; (iii) there should be a clear articulation of the policy regarding granting of permanent status applications and work permits for foreign spouses.

Further challenges in CEDAW's implementation are identified in article 15 and article 16 (civil and family laws). Civil society argues that Article 8 (2) of the Federal Constitution does not extend to the protection of a person against gender discrimination by a non-state actor, which left women employees in the private sectors vulnerable to discrimination. Meanwhile in family law, Nik Noraini (2007) viewed Malaysian Muslim women as moving backward compared to Malaysian non-Muslim women in family law despite rapid development in other aspects. The CEDAW committees voiced their concern on this matter especially on the decentralization of *Syariah law* and reservations of article 16 that is against the spirit and the objectives of the Convention.

From the analysis of the articles categorised under 'first generation' and 'third generation', it is clear that there are problems in CEDAW's implementation in Malaysia. More changes need to be made in order to ensure the elimination of discrimination against women in Malaysia.

ii. Second Generation Human Rights Approach: Social & Economics Development.

There are progressive implementation stated in the government report (2004) and this report is supported by the NGO Shadow Report (2004) and concluding comments made by the CEDAW committee (2006). The development and advancement of Women (article 3) is visibly implemented after the introduction of The Plan of Action for the implementation of National Women Policy (1989) in 1997. The Malaysian government has recently reviewed the National Women Policy and its Plan of Action (Fatimah Hamid Don: 2007, Nik Safiah: 2007, Saliha Hassan: 2007). However, civil society feels that this policy has not been mainstreamed into other important national policies.

In addition to this development, the Ministry of Women's Affairs was established on 17 January 2001 with mixed feedbacks from civil society. With the existence of the Ministry, important steps has been taken such as (i) the introduction of the Gender Focal Point (GFP) in all departments (currently, only 13 departments have GFP). (MWFC: 2007); (ii) the establishment of the NAM's Institute for the Empowerment of Women (NIEW) in 2007 after the Putrajaya Declaration and NAM's Action Plan for Women's Empowerment on 10 May 2005; (iii) increasing the budget for women's development from RM 60 million in 2002 to RM 99 in 2003 and RM 128 in 2004; (iv) coordinating activities and consultations with NGOs such as NCWO, JAG, Women's wing of MTUC and others; (v) preparation, coordination and submission of the CEDAW report.

Although there is progressive development in this matter, more needs to be done particularly on the realization of affirmative actions in order to bring gender equality and equity. Civil Society agrees that MWFCDC has made effort in women in development; however, there are at least four aspects that are not effectively implemented, which are (i) the lack of transparency in the functions, priorities, plans of actions and guidelines of the existing Cabinet Committee of Gender Equality and Non-Discrimination (2004); (ii) No proper training and the lack of an effective inter-ministerial mechanism, roles and function for GFP. Therefore, its implementation is unclear especially in mainstreaming gender concerns in various ministries; (iii) the introduction of gender budgeting is not being seriously taken by the ministries; (iv) MWFCDC role is more as facilitator rather than advocator of women's issues.

For the implementation of article 10, education, statistics shows the rapid growth of women's enrolment in education especially in the institutions of higher learning. Civil society groups and CEDAW committee commend the State for achievements of this article. Yet, it is not reflected in the statistics and development of women in employment (Article 11). This matter has been discussed by the State and civil society and both have agreed that there are changes needed to increase the number of women in employment. The CEDAW committee also address this matter and view this as one of the consequences of sex-stereotype roles. Meanwhile, in terms of equality in access to health care (article 12), the lengthy State's CEDAW report on this article shows the State's concern on this issue. The State upholds the value of access to health care and services as basic human rights. It states that the State has to provide extra health services to women due to reproductive needs.

In terms of the implementation of article 13 (social and economic benefits), there are benefits introduced for this purpose including maternity benefits. There are amendments made such as the Tax Act 1967 (Act 155) whereby a wife can choose to have her income assessed separately from her husband and The Pension Act 1980 (Act 227), where the widow will continue receiving her late husband's pension even after she remarries. The State agrees that there is still gender insensitivity and bias in social, legal and economic welfare, and this should be changed to more gender friendly and positive. For article 14, the State's report shows it's concern with rural women. The State does recognise that unpaid workers are the highest among rural women. Through the Department of Agriculture (DOA), FELDA and RISDA, rural women are organised in societies in order for them to have better opportunities in the social and economic spheres. However, civil society reveals that there is restructuring taking place throughout these organizations to enable male participation and marginalize rural women.

There is visible development and changes after the State ratified CEDAW in 1995. Based on the analysis of the 'second generation' approach, the State has taken serious measures in order to ensure the realization of all articles categorized in this human rights approach compared to the articles categorized under 'first' as well as 'third' generation approaches.

Conclusion

This study shows that the Malaysian government's stand in the implementation of CEDAW after its ratification in 1995. Firstly, this study has identified two main factors of the State's struggle against some of the CEDAW articles, which are mainly due to its 'relativist' stand. The State upholds 'second generation human rights' approach rather than 'first' and 'third generation' approaches. The State is obviously not considering a 'universalist' stand by stating that the Federal Constitution and *Syariah* law are the supreme laws; and any law that contradicts these laws are invalid. Although, the State has taken a 'relativist' stand after ratifying CEDAW, it has also opened up to global assessment and scrutiny on matters related to the 'first' & 'third' generation human rights approaches.

Secondly, the State is considering this essential conflict (CEDAW's demands brought by global governance and civil society) after CEDAW's ratification. This ongoing process which is based on the nature and principles of CEDAW is demanding for the States' continuous accountability in its reporting system. The State's behaviour in submitting written responses¹⁴ to the questions raised by the CEDAW committee shows the States' concern about the implementation of CEDAW.

Thirdly, from the participants in the CEDAW reporting process, it is observed that there is involvement by various parties. This development shows that the Convention functions as one of the mechanisms in broadening the spectrum of public action/ public space particularly on women's issues. It has become one of the alternative routes for civil society to voice out women's issues in Malaysia which are normally unpopular compared to racial and ethnic issues even in elections.

Fourthly, this study shows how various entities both compliment and work against each other in fulfilling the objectives of the Convention. The Convention has developed some kind of a formal dialogue that bridges the international, national and the grassroots. However, like other human rights conventions and systems in the international sphere, CEDAW's system is upholding State's supremacy as a sovereign state, thus limiting CEDAW's functions.

Although there are many challenges in implementing CEDAW, its existence has brought in sense accountability within states and has brought more support to women's issues to be actualised. This can be seen in how the Malaysian government has been withdrawing some of its reservations over the years. The original reservations by Malaysia upon ratification in 1995 were in Articles 2(f), 5(a), 7(b), 9(1) (a), (b), (c), (d), (e), (f), (g) and (h) and 16(2) of the Convention. In 1998 Malaysia withdrew the following reservations 2(f), 9(1), 7(b), 16(1) (b), (d), (e) and (h). The government also made an announcement regarding withdrawal of reservations for Articles 5(a), 7(b) and 16(2) in 2010. The remaining reservations are Articles 9(2), 16 (1) (a), (c), (f) and (g). These are in the area of nationality and family relations.

CEDAW has also supported the human rights civil society movements in addressing local issues and gives some kind of authority to criticise the State's stand on this matter. Therefore, the existence of CEDAW as well as other human rights conventions is important in order to safeguard and preserve the realization of human rights principles and objectives globally.

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Notes

- 1 There should be breakdown of 15-40 years and 40 -65 years because women's experiences between these ages are different. 15-40 years, women are more vulnerable due to their reproductive role compared to 40 to 64 years.
- 2 The legislature in Malaysia consists of the House of Representative and Senate. Senators are appointed by Yang di-Pertuan Agong (Malaysian King).
- 3 Kofi Annan was the 7th Secretary-General of United Nations from Jan, 1997 to Jan, 2007.
- 4 UDHR is adopted and proclaimed by the General Assembly resolution 217 A (III), United Nations on 10 December 1948. It states all aspects of human rights and also recognises women's human rights.
- 5 The Convention system allows other state parties to condemn any reservations made by a state party.
- 6 The initial and periodic reports were sent after 8 years from the actual date which was 1996 for initial report and 2000 for periodic report.
- 7 Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia. 31 May 2006.

- ⁸ CEDAW is being supported by all component UN human and women rights-based entities, and is directly under the General Assembly of the United Nations.
- ⁹ Ms Shanthy Dairiam, a Malaysian was elected as a member of the CEDAW committee.
- ¹⁰ OP-CEDAW is a complementary convention to CEDAW which creates access to justice for women individually at the international level.
- ¹¹ Chong Eng is a women MP from Bukit Mertajam. She was involved in CEDAW in her personal capacity and interest in women issues (an interview conducted on July 2007 at Bukit Mertajam, Pulau Pinang).
- ¹² This categorization can be discuss and debated further.
- ¹³ Malaysian government sent a written response to the list of issues and questions on 27 March 2006.