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1. EXECUTIVE SUMMARY

The Round Table Discussion was organized essentially to ascertain the level of implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Malaysia and to provide an avenue and an opportunity for all to discuss the implementation of CEDAW.

The Round Table Discussion brought together approximately 48 participants from a wide range of affiliations and background. The participants were an intermingle of Government representatives, NGOs, academics and SUHAKAM Commissioners and staff.

18 of these individuals were from Government ministries, departments and agencies whose work involves policy-making and/or policy implementation of women's rights. Amongst the Government agencies that participated were the Ministry of Women and Family Development, Immigration Department, the Institute of Understanding Islam Malaysia (IKIM), the Royal Malaysian Police, the National Registration Department, the Ministry of Education and the Ministry of Health.

30 individuals representing 22 NGOs attended the Round Table Discussion. It was rewarding to note that participants from East Malaysia had attended the Round Table Discussion as well. NGOs with one or more representatives include ABIM Helwa, Bar Council of Malaysia, Malaysian Aids Council (MAC), Partners for Community Organising (PACOS), Sarawak Women for Women Society, Sabah Women's Action Resource Group, Tenaganita, Women’s Candidacy Initiative and academics from University of Malaya (UM), International Islamic University Malaysia (UIA) and National University of Malaysia (UKM). In addition, a number of observers, mainly members of the press attended the Round Table Discussion.

The diversity of participation in the Round Table Discussion ensured that the discussion was lively and informative, providing a good learning experience for all participants.

The papers presented at the Round Table Discussion addressed a broad range of issues, ranging from the implementation of the provisions of CEDAW from the perspectives of Government initiatives, civil and criminal law and Islamic family law, the application of CEDAW
in ASEAN and other Muslim countries and the experiences of the Equal Opportunities Commission of Hong Kong.

Lively discussions ensued and one issue that received much attention was the treatment of women under Islamic family law, particularly, the doctrine of wali mujbir and kufu, polygamy, division of matrimonial property (harta sepencarian), Islamic laws of inheritance and the unbalanced divorce process that a wife has to go through as compared to the husband.

From the papers and the discussions, what is apparent is that whilst progress has been made to address the inequalities faced by women in Malaysia, nevertheless certain areas needed re-examination. In the area of both civil and Syariah law, it is observed that in instances where the law guarantee equality, the implementation of equality provisions is undermined by cultural, religious and social practices whilst other areas such as sexual harassment require enactment of a new legislation to advance women’s rights.

Based on the various pertinent issues that were identified at the RTD, SUHAKAM recommends:

i. Uniformity in the enactment and application of Syariah law in different States of Malaysia on account of the differences in Islamic law from State to State. Further, in interpreting Syariah law, SUHAKAM advocates the overarching principle of equality for all, while ensuring a balanced distribution of rights and responsibilities between men and women.

ii. An open and objective dialogue between the relevant Government agencies and the various organisations, with the aim of ascertaining the reasons behind the reservations and where appropriate urging the withdrawal of the reservations.

iii. That the provisions of CEDAW be translated into domestic law, through the enactment of an Act of Parliament incorporating CEDAW in order for CEDAW to have any meaningful application to women in Malaysia.

iv. A review of other laws, policies and mechanisms, to address all forms of discrimination against women, to give direct effect to CEDAW in Malaysia.

v. That the Government adopt a holistic and integrated approach to gender mainstreaming, by ensuring that there is in place, a systematic examination of possible
effects on men and women at the preparation, implementation and monitoring stage of all Government policies and programmes.

vi. That the Government, in particular the Ministry of Women and Family Development collect, analyse disseminate gender-disaggregated data that takes into consideration the real situation and experiences of women in Malaysia.

vii. That the Ministry of Women and Family Development increase the involvement of SUHAKAM and other relevant actors of civil society in the formulation of Malaysia’s report to the CEDAW Committee.

viii. The Round Table Discussion on CEDAW provided an opportunity for interested parties to engage in a comprehensive discourse on women’s rights and raise awareness on equal treatment. In this respect, SUHAKAM plans to organise similar Round Table Discussions annually.

Recognition of the issues and the solutions is but the initial step; what is needed henceforth is action to implement these suggestions. To that end, it must be acknowledged that everyone, women and men alike have equal roles to play in the development of an equal society. It is hoped that this report would serve as a catalyst to the holding of further dialogues and discussions on women’s rights and a basis towards the protection and promotion of equality.
2. **THE ROUNDTABLE DISCUSSION ON THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

The Human Rights Commission of Malaysia (SUHAKAM) was established in 1999. The task of monitoring the application of human rights treaties acceded to or ratified by Malaysia was entrusted to the Treaties and International Instruments Working Group (TIIWG), one of the five working groups of SUHAKAM.

Malaysia became a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 5 July 1995. The Round Table Discussion was organised as part of TIIWG’s efforts to monitor the implementation of CEDAW in Malaysia.

Right from the onset, the Ministry of Women and Family Development and a host of non-governmental organisations (NGOs) were actively involved in the organisation of the Round Table Discussion. The NGOs involved were the National Council of Women’s Organisations (NCWO), Women’s Aid Organisation (WAO) and the International Women’s Rights Action Watch - Asia Pacific (IWRAW Asia Pacific). The collaboration between TIIWG with the Ministry of Women and Family Development and the NGOs was decided upon to ensure the participation of a cross-section of interests from the field of women’s rights.

As a precursor to the Round Table Discussion, participants were provided with a background paper on CEDAW, prepared by Ms. Shanthi Dairiam (Director of IWRAW Asia Pacific), which outlined the salient principles of CEDAW and served as background paper for the Round Table Discussion.

The Background Paper for the Round Table Discussion together with the text to CEDAW is at Annex 1.
3. OBJECTIVES

It was envisaged that the Round Table Discussion held in conjunction with International Women’s Day 2003 would:

- provide a forum for experts, representatives from the Government and the NGOs to discuss the implementation of CEDAW;
- provide information on and raise awareness of the development on women’s rights at the local level; and
- initiate an on-going venue for coordinated and concerted effort in the promotion of women’s rights.

4. AGENDA

The full day Round Table Discussion was divided into three main sessions; the first session concerned CEDAW in Malaysia, followed by the second session on the implementation of CEDAW in South East Asian and Muslim countries and finally a discourse on equal opportunity laws in Hong Kong. After each session, participants and the speakers were given an opportunity to engage in a discourse on the issues raised.

The Round Table Discussion commenced with opening remarks by Dato’ Ranita Mohd. Hussein, Chairperson of TIIWG.

The first session followed, with three speakers addressing the issue of implementation of the provisions of CEDAW in Malaysia and related Islamic family laws. The moderator for the first session was Datuk Dr. Raj Abdul Karim, Commissioner of SUHAKAM. The first speaker of the day came from the Ministry of Women and Family Development. Mrs. Margaret Ho, Under-Secretary of the Ministry of Women and Family Development, gave a succinct progress report on the implementation of the provisions of CEDAW in Malaysia from the Ministry’s perspective. The second speaker, Ms. Honey Tan of Women’s Centre for Change (WCC), provided an analysis of Malaysian laws and policies relating to equality for the Malaysian woman while the third speaker, Cik Nik Noriani Nik Badli Shah of Sisters in Islam (SIS), made a thorough examination of Islamic family laws, analysing them in terms of equality requirements under CEDAW.
The second session began after lunch with Ms. Shanthi Dairiam, Director of IWRAW Asia Pacific as the speaker and Dr. Mohd. Hirman Ritom Abdullah, another member of TIIWG, as the moderator. Ms. Shanthi Dairiam provided the participants with a substantial review of the application of CEDAW in other South East Asian and Muslim countries. The discussion that followed mainly focused on the efficacy of alternative or shadow reports that are submitted to the UN Committee on the Elimination of Discrimination against Women (the “CEDAW Committee”).

The third and final session continued thereafter, with Cik Zainah Anwar, a Commissioner of SUHAKAM as the moderator. The speaker of this session was Ms. Anna Wu, Chairman of the Equal Opportunities Commission of Hong Kong (EOC). Ms. Anna Wu’s presentation examined the functions of the EOC and their struggles and achievements in their strive for equality.

The Programme and List of Participants for the Round Table Discussion is at Annex 2 and 3 respectively.

5. OPENING REMARKS

In her opening remarks, Dato’ Ranita Mohd. Hussein, Chairperson of TIIWG gave a brief overview of the functions of TIIWG and objectives of the Round Table Discussion.

She traced the historical development of International Women’s Day, from the International Conference of Socialist Women in Copenhagen in 1910 to the adoption of CEDAW in 1979 by the United Nations General Assembly. In this, the noteworthy characteristic of CEDAW in formally recognising the adverse influence of tradition and culture as an underlying factor to stereotyping and inequality was highlighted. The Chairperson also stressed that equality is a precondition to the prosperity and development of a nation.

Attention was drawn to the UNDP Human Development Report 2002, which indicated that for Malaysian women today there is still inequality in terms of pay, representation and gender related developments. In this regard, the importance of implementation and incorporation of provisions of CEDAW in the domestic law was reiterated.
The Chairperson concluded with the hope that the outcome of the Round Table Discussion could be of some contribution to Malaysia’s Country Report to the CEDAW Committee and point towards an effective way of achieving equal rights in Malaysia.

The Chairperson’s Opening Remarks is at Annex 4.

6. SESSION PROCEEDINGS

Session 1 (Paper 1) - Progress on the Implementation of CEDAW

Mrs. Margaret Ho, Under-Secretary of the Ministry of Women and Family Development, provided a brief outlook on the implementation of the provisions of CEDAW by the Malaysian Government. Her presentation was based on the Government report prepared for the CEDAW Committee. The report is a combination of the first and second report spanning 1996 - 2000.

The speaker explained the background of how the Malaysian Government ratified CEDAW and the rationale behind the reservations. The reservations were primarily grounded on Syariah laws. She however said that it was timely that the Ministry of Women and Family Development review these remaining reservations in consultation with other agencies to see if these reservations are still necessary.

Mrs. Margaret Ho acknowledged the need to change the deeply entrenched attitudes based on culture and stated that the challenge for the Ministry of Women and Family Development is to overcome these attitudes by working closely with the NGOs and the private sector. She then examined the accomplishments and areas of concern with respect to each article of CEDAW. The issues that were considered include:

- the amendment to Article 8(2) of the Federal Constitution to prohibit discrimination on the basis of gender. It was pointed out however that the definition of “discrimination against women” in accordance to Article 1 of CEDAW is not included.

- in carrying out Malaysia’s obligations in Article 2 of CEDAW, the Income Tax Act 1967 and the Guardianship of Infants Act 1961 were amended. In addition, the Domestic Violence Act 1994 and the Child Act 2001 were enacted.
• the formulation of a national policy on women and the allocation of funds for women’s development and single mothers. However, there is a need to move away from women gravitating towards jobs associated with women like nursing and teaching.

• equal access to health services for women. In this context, the issue of women with AIDS was highlighted where it was pointed out that the Ministry of Women and Family Development is currently working with MAC on this issue.

• it was also highlighted that as evident in the Seventh Malaysia Plan, women in Malaysia are earning more than before.

• as for the issue of sexual harassment, an Act to that effect is being contemplated but the effectiveness of such legislation is questionable seeing the repercussion in the United States.

• as for rural women, there are projects in place to promote equality for rural women.

Mrs. Margaret Ho’s paper on Progress on the Implementation of CEDAW is at Annex 5.

**Session 1 (Paper 2) - Measuring up to CEDAW: How Far Short are Malaysian Laws and Policies?**

Ms. Honey Tan of Women’s Centre for Change provided an overview of the civil and criminal laws in Malaysia, examining the advantages and shortcomings in terms of providing equality for women. She began by pointing out that even where the laws may be adequate, the implementation is often affected by cultural, religious and social practices compounded by the lack of gender sensitivity of the agencies involved. She proceeded to examine how international laws affect national legislation and the need to incorporate CEDAW into domestic law through the doctrine of transformation. Ms. Honey Tan acknowledged that while Article 8(2) of the Federal Constitution was amended to recognize gender as a ground for discrimination, she noted that there still exists a few provisions that run counter to the spirit of Article 8(2) of the Federal Constitution, for example Article 12(1), 15, 26 and 24 of the Federal Constitution.

In the area of civil laws, the speaker touched on the following issues that were still wanting:

• The need for a ‘Sexual Harassment Act’ as currently the existing Code of Practice on the Prevention and Eradication of Sexual Harassment in the workplace is not binding and many employers have failed to adopt it.

• As for the proposal to set up a Family Court, it was emphasized that family matters in court tend to be adversarial and a Family Court with support facilities would minimize the
conflicts. The Family Court should not be limited to civil courts only but should also be extended to the Syariah Courts.

- Participation of women in politics in Malaysia remains low and Ms. Honey Tan proposed that Malaysia adopt an affirmative action policy like in Indonesia where 30% of election candidates must be women.

- It was pointed out that the Child Act 2001 makes a distinction between children who are in need of care and protection (abused children) and children in need of protection and rehabilitation (children exploited for prostitution). Children exploited for prostitution, who are mostly girls, are in need of care and protection as well. Following from this, the distinction contributes to the false impression that the victims of sexual abuse contribute towards the crime and are thereby tainted by the crime. The result is de facto discrimination against women.

- The (unregistered) contribution by wives to the acquisition of property is still not recognised as a caveatable interest, thus placing wives in a vulnerable position as the husbands without their knowledge nor consent can sell the property.

Ms. Honey Tan then proceeded to examine the criminal laws in Malaysia. She highlighted the narrow definition of rape in the Penal Code and also the failure to recognize marital rape. It was also pointed out that the new provision in the Penal Code criminalizing incest fails to recognize that because of the familial relationships between rapist and survivor, instances where consent may be deemed vitiated must be adequately provided for. In addition, judges who decide on rape and incest cases need to be gender sensitised on these matters and when required, expert advice should be procured. As for the issue of trafficking of women, it has not received much attention, as the law tends to prosecute the women rather than the men or the traffickers.

With regard to policies on women, the speaker highlighted the fact that although the Sixth, Seventh and Eight Malaysia Plans deal comprehensively with women’s issues, there does not appear to have been an assessment of the efficacy of these policies. On that note, Ms. Honey Tan concluded by reiterating that there must be political will to gain substantive equality for women and that women are entitled to a larger slice of the budget. Lastly, she indicated the need to raise the awareness of men to become agents of change.

The final paper for Session 1 concentrated on Islamic family laws from the perspective of CEDAW, presented by Cik Nik Noriani from Sisters In Islam. In her introduction, she explained that her presentation would look into the areas of discrimination faced by Muslim women, with the focus on only de jure discrimination under the provisions of Islamic family law.

The first discriminatory aspect that was highlighted was in the area of marriage guardianship (wali nikah) which is in direct conflict with the right to freely choose a spouse and to enter into marriage as guaranteed in Article 16(1) CEDAW. Cik Nik Noriani recommended the repeal of the provisions on wali mujbir currently existing in certain states. She explained that the doctrine of ijbar allows the wali mujbir who is the woman’s father or paternal grandfather to marry off his virgin daughter or granddaughter without her consent under certain circumstances. The doctrine of kufu (that the prospective husband is of the same status) which supposedly protects the women from the doctrine of ijbar only does so to a certain extent as Cik Nik Noriani pointed out that kufu only requires that the prospective husband be of the same status, leaving the woman vulnerable as she may still be compelled to marry a man against her will if he is deemed to be of ‘equal status’.

The speaker then proceeded to the issue of polygamy, which is also inconsistent with Article 16(2) of CEDAW. According to Cik Nik Noriani the main problem with polygamy is the misconception that polygamy is the ‘right’ of every Muslim men. Further, the main consideration when allowing a Muslim man to take on another wife is the financial capacity to support more than one family, with not much regard given to other considerations of securing justice for the wives. Furthermore, the statutory penalties of merely a small fine are insufficient in preventing men from contracting polygamous marriages outside court. Cik Nik Noriani also explained that recommendations have been made by women’s groups to include the first wife’s permission as a prerequisite and the capacity of the first wife to apply for a ta’liq divorce from a polygamous husband. The Hanbali school of law has already formulated the latter policy and it is adopted by many Muslim countries.

Regarding the divorce process, Cik Nik Noriani reiterated that the process discriminates against Muslim women as unilateral pronouncement of divorce by the husband outside court is indirectly encouraged by the imposition of a small fine on this statutory offence. In fact, such unilateral divorce may be registered under the Islamic Family Law Act. In contrast to this, although there are various grounds of divorce that can be sought by the wife, the divorce process is often
lengthy. The speaker also highlighted another area of concern in the divorce process, that is, the unjust allegation of *nusyuz* against the wife. The wife will then not be entitled to maintenance on the ground that she unreasonably refused to obey the lawful commands and wishes of her husband. Cik Nik Noriani provided examples where the husband, to avoid paying maintenance, misuses *nusyuz* and also where *nusyuz* has produced unjust results, for instance in domestic violence cases. Not to mention that women often face delay in payment of maintenance.

Cik Nik Noriani then moved on to the issue of guardianship and pointed out that Islamic family law only recognises the father, paternal grandfather and their executors as entitled to guardianship, ignoring the role of the mother in the upbringing of the child. On the issue of illegitimate children, she explained that there is a lack of legal responsibilities on the father of illegitimate children as the mother of the child bears the sole responsibility of maintaining the child. This perpetuates the irresponsibility of the father and the false perception that only the mother is responsible for the child.

Some aspects of Islamic property laws were also argued to be in contravention of Article 16(h) of CEDAW, in particular, Muslim women are being discriminated against when it comes to the issue of inheritance. Cik Nik Noriani elaborated that under the *faraid* distribution system, women’s contribution towards the family needs are disregarded when it comes to inheritance, as the emphasis is still on men to provide maintenance for the family, resulting in men receiving a greater share of the inheritance. It was stressed that there is a need for equal distribution with regards to the present socio-economic circumstances and that the historical rationale behind the *faraid* system must be re-examined.

Cik Nik Noriani then proceeded by stating that what has been presented so far relate to gender specific provisions of Islamic family law. However, gender-neutral provisions also work against Muslim women. She provided an example of the division of matrimonial property (*harta sepencarian*). Although this provision allows either spouse to claim a share in the properties acquired by the other spouse during the course of the marriage, it however weakens the women’s position in claiming for her 1/3 share of *harta sepencarian* because the other provisions in the Islamic family law are not gender neutral. Cik Nik Noriani suggested that women in actual fact carry a double burden of contributing financially to the family and also non-financial contribution of bringing up the children and doing the housework.
Cik Nik Noriani concluded by stating that there seems to be confusion between traditional and modern practices and that society is moving towards where men have many rights and few responsibilities, whereas women have fewer rights and more responsibilities. Therefore, it is time for women in Malaysia to make greater effort in contributing to the formulation of a new Islamic outlook, which takes into consideration equality for all.

Cik Nik Noriani’s paper on *CEDAW & Islamic Family Laws in Malaysia* is at Annex 7.

**Discussion on Session 1**

The ensuing discussion, which touched upon all three papers presented in Session 1, began with a query relating to Article 16(2) of CEDAW regarding the minimum age for marriage, specifically on the choices of 16 and 18 as the marriageable age. Cik Nik Noriani responded that her paper did not address this particular issue, as it is not a major concern as compared to the other issues that were raised in her paper.

The next issue in discussion focused on the issue of powers of guardianship in regards to marriage. It was opined that the Hanafi school of law should be adopted where the power of ijbar of the wali should be applicable to cases of minors only. Guardians of minors look after the minors’ interests in many different ways outside the question of marriage. According to the said participant, the power of guardianship in respect of marriage is not necessary. There is an early opinion, the Mutazillah school, that has addressed this issue where the answer given is that there is no need for the power of guardianship in regard to marriage because for so long as a person is a minor, the need for marriage does not exist. In response to Cik Nik Noriani's assertion that under certain circumstances, like in Kelantan, the wali can marry off the daughter or granddaughter without her consent, it was asserted that the problem in Kelantan was not due to the Syariah specific position but the fact that its Islamism has been politicised.

Another participant raised several points from Cik Nik Noriani’s paper, for discussion. The first relating to Islamic law of inheritance where it was pointed out that there is a distinction between *Quranic* shares and *asabah* shares (any amount left after division of *Quranic* shares). *Quranic* shares are allocated in 17 situations and only seven of them relate to men’s entitlement, the remainder are women’s entitlement. Thereafter, the *asabah* shares are distributed equally between men and women. This discussant asserted that since *Quranic* shares are more important than *asabah* shares and women are entitled to more instances of *Quranic* shares than men, women are more favourably treated when it comes to the distribution of property.
As for the issue of guardianship in marriage, while it was agreed that no verse in the Quran justifies ijbar, the same participant underlined the importance of deference to one’s parents and how one cannot discard the wishes of one’s parents in totality. This discussant then proceeded to explain that kufu is to allow for women to be given their due rights to ensure that a happy family life is the destiny of their marriages. In many cases, it was believed that equality in material gains between the husband and wife would relate to a stable union in the family. Islam is for a stable union and for the marriage to be forever. On his last point, the participant expressed his view that when comparing Islamic and civil laws, one cannot distinguish which follows the other. Two examples were given to illustrate this point, of where breach of promise was introduced by Islamic law as a ground of divorce. This was to ensure that men and women value the importance of a marriage. As a second example, it was pointed out how previously divorce was not allowed in other civil and common law countries whereas Islam had provided for divorce from the very beginning.

Cik Nik Noriani addressed all of the issues raised by starting with the point on inheritance rights. She reiterated that the Quran introduced women’s inheritance rights into a patriarchal society, which previously did not entitle women to inheritance. Further, because the asabah is not fully explained in the Quran and there are differences among the schools of law as to who is the akrab or the asabah is entitled to, this has led to different interpretations as to the division of the asabah shares. Cik Nik Noriani stressed that the Quran in fact introduced women’s inheritance rights but it is unfortunate that society today perceives the Quran as limiting women’s inheritance rights instead.

On the issue of showing respect to parents, Cik Nik Noriani posed in return the question of whether it is proposed then that both men and women should seek consent to marry from their parents. She pointed out that while ideally one should obtain the consent of one’s parents before marrying, what is legally required is a different matter. In this instance, following the ‘respect to parents’ argument, the law should be amended so that the legal requirement to seek the consent of one’s parents to marry should be applicable to both men and women.

With regards to kufu and suitability, Cik Nik Noriani emphasized again the difference between what is ideal and what should be the law. She felt that while compatibility is important, this is again the ideal and that not all that is ideal should be codified into law. In respect of the notion of marriage which is suitable is to last forever, Cik Nik Noriani highlighted that from statistics on
divorce rates, it is found that divorce among the Muslims are seven times higher than those of other faiths and beliefs. This begs the question of what is the cause for this.

Further, Cik Nik Noriani argued that the same notion of a marriage having to last forever has resulted in lengthy delays when the woman applies for divorce, even to the extent of abused wives being asked to be patient; whereas, that same notion of a marriage having to last forever is not impressed upon men who have pronounced *talaq* through the short messaging system (SMS) of the hand phone or even by the roadside.

Cik Nik Noriani then emphasised that criticism is not levelled against Islam but rather the Muslims’ confusion and lack of understanding about Islam and piecemeal applications of certain aspects of traditional practices that were formulated in accordance with the traditional practices of medieval societies; the confusion over what are the eternal principles of the Quran and the practice of the Prophet, and what are the juristic rulings suitable for specific time-periods and specific places. She explained that what has happened is that the confusion over the juristic formulations has resulted in discrimination against Muslim women, which is not intended in Islam. She further stated that it is unfortunate that calls for reviews nowadays are mostly in respect of lessening the men’s responsibilities towards women while maintaining the women’s responsibilities towards their husbands, resulting in the breakdown of the traditional linkages between rights and responsibilities.

On the issue of selection of fatwas and the difference in opinions, a participant observed that people often rely on the minority view. While the minority view does have its validity, there is a need for some consistency in its application and that it is entirely up to the Government to decide which is the most appropriate view. The same participant cautioned that consistency is important and that there must be one ‘anchor’ school of law supplemented with other more harmonious or just views, if necessary. This opinion should not be misconstrued as being entirely against reviews and reforms to Islamic family law but consistency and sincerity must be maintained.

The direction of the discussion shifted briefly by a comment from a participant signifying her agreement on the concluding comments in the paper presented by Ms. Honey Tan, that the role of men in promoting equality is very important. Educating men of the significance of equality is essential and to do so sufficient budget should be allocated for such purpose.

The discussion then resumed with the issue of Islamic family law where another participant touched upon seven points in relation to Cik Nik Noriani’s paper. The first comment was in
relation to the provision in CEDAW regarding the right to choose a spouse freely. It was suggested that this should be considered in the context of where a Muslim woman is not allowed to marry a non-Muslim man. Secondly, in respect of the concept of 

*walī*, according to that participant, Malaysian Islamic family law has moved from the previous stand of adhering to only the Shafi’i school of law to include the Hanafi school of law in relation to guardianship. The end result is that the law now puts the parents and the prospective bride and groom on equal legal footing. As such, it was felt that the current reservation against the related CEDAW provision should be maintained.

Thirdly, in light of recent pronouncement that the Islamic family laws in Malaysia are to be standardised, comments regarding Kelantan’s situation where the Shafi’i school of law is strictly adhered to are unwarranted. Referring to the cases cited, where despite rulings in favour of the wives, the husbands are still able to marry another by running to another state, the participant submitted that even with the uniformity of the law, men could still go elsewhere, such as another country altogether, to get married to another wife. As such, the law is not the answer to issues surrounding polygamy.

Fifthly, touching on *nusyuz*, the discussant argued that in Arabic, the term *nusyuz* is in fact specific to women and that there is another term for men. On guardianship and custody, instead of the mother losing the right to custody upon her remarriage, the discussant submitted that the mother is not losing her right but losing her priorities of rights if the child’s welfare is at stake. Otherwise, the custody should be with the mother. The said participant concluded with an observation that although a lot of work needs to be done on the issue of illegitimate children, this does not mean that the related reservation on Article 16 should be lifted.

The next discussant shared the view that visions and initiatives should not be confined necessarily to the framework of a particular school of jurisprudence. While it was acknowledged that the judiciary needs to be consistent in the application of the various schools of thought in similar cases, it was felt that there is a wider issue at hand in respect of originality in facing and addressing issues of society. One needed to rise above the framework of scholastic jurisprudence that has been established in the past citing examples of where some of the best contributions to Islamic thoughts have come from outside the framework of the four recognised schools. Cik Nik Noriani agreed with the point of rising above scholastic jurisprudence and also highlighted again the concern that there is a lot of confusion and distortion resulting in women shouldering more and more responsibilities, without the corresponding augmentation of rights.
The discussion also focused on the implementation of CEDAW and the reservations entered by Malaysia to CEDAW. This discussion began on a positive note with a commendation on the generous budget allocated for women’s programmes, as highlighted by Mrs. Margaret Ho. However, it was stressed that there is a need to clearly ascertain what constitutes women’s programmes and that a comprehensive plan of action for the implementation of CEDAW is vital. Although there is mention of women’s policy and plan in the national development plan in a separate chapter but there is no integration of specific responsibilities, which implement CEDAW into every sector. As a result the Government assumes that it is the sole responsibility of the Ministry of Women and Family Development to implement women’s policy.

Mrs. Margaret Ho from the Ministry of Women and Family Development reaffirmed the importance of gender mainstreaming. Following from this, the Ministry of Women and Family Development is working with the Ministry of Health to look at standards that affect reproductive health of women. With regard to the national development plan, Mrs. Margaret Ho added that the inter-ministerial agency would look into this issue. Mrs. Margaret Ho also clarified that there is a Gender Budget Analysis, a pilot project aimed at injecting a gender perspective in the national budget. It involves the Ministry of Health, Ministry of Education, Ministry of Human Resources, Ministry of Agriculture as well as other ministries.

A participant voiced her concern on the statistical misinformation that is evident in the Eighth Malaysian Plan. According to the said participant, the data in the chapter on women is inaccurate. It is very difficult to obtain genuine gender disaggregated data, as the data is not systematically collected. To substantiate this observation, the same participant cited as an example, the statement that 8% of men hold managerial positions as compared to 13% of women. These figures were not measured against the number of men and women that are employed, and therefore do not accurately reflecting the true position. Mrs. Margaret Ho revealed that the Ministry of Women and Family Development has already started a project in November 2002 called Gender Disaggregated Information System to collect disaggregated data based on gender.

Another challenge that was highlighted was the problem of child custody faced by many women under Section 51 of the Law Reform (Marriage and Divorce) Act 1976, which allows for the dissolution of marriage on ground of conversion to Islam. Many women find that they lose custody when the converted husband is given custody of children. To this, a participant disputed this statement and reiterated that in Islamic family law, the issue of hadanah (custody) is not rigid. Although a party is given custody, it does not mean that the other party does not have any
right. Therefore, under Islamic family law, custody is a flexible question. Ms. Honey Tan responded that although the law states that parents are equal guardians, but in reality one parent often decides on what is good for the child. Another participant drew attention to the sociological impact of the problem. The reality, she suggested, should be tabulated. Yet another participant narrated the reality of what was happening at the local level that many men convert just to acquire custody of the children, an assertion which received further agreement from another participant. To this, another participant opined that converting into Islam and avoiding responsibilities is an on-going problem. The Ministry of Women and Family Development was urged to take heed of this issue. Another participant echoed this sentiment and it was further stressed that there is a need for a Syariah system that is consolidated and unified. To the query if there is any law reform committee working on Islamic issues, Mrs. Margaret Ho answered to the affirmative that there is a Technical Working Group in place. She agreed that in the case of conversion of one party the ancillary matters have to be settled in the civil courts before any party converts to another religion.

On the issue of distribution of property under Islamic family law, one problem that was raised during the discussion was that courts often refuse to recognise the wife’s rights especially during the division of *harta sepencarian* (matrimonial property). The same participant also raised the issue of *wali*, more specifically the reality that many incest survivors (most of the reported cases are in the Malay community) find themselves in a predicament whereby they have to obtain the permission of their abuser before getting married. Alternatively, to avoid the abuser from being the *wali* the incest survivors would have to put themselves through the unpleasant and distressing process of relaying the whole incident to the court and to their future husband’s family. To this, another participant interjected to share his experience that in Egypt, the problem of incest is dealt with by the Hudud law.

The concern that there should be a more effective way to monitor Malaysia’s implementation of CEDAW was also discussed. The importance of data was illustrated by bringing up the earlier statement that incest is a problem of the Malay community and how this can only be proven if there are reliable data. It was stressed that monitoring the implementation of CEDAW imply monitoring the real impact on women’s lives. Mrs. Margaret Ho responded that an inter-agency committee has been set up by the Ministry of Women and Family Development to monitor data relevant to the successful implementation of CEDAW.
The moderator then drew attention to the Optional Protocol to CEDAW and whether women have access to it. Mrs. Margaret Ho replied that the Ministry of Women and Family Development was gathering information and data pertaining to it.

The discussion shifted to the issue of rural women where it was highlighted that rural women are only seen as partners or assisting their husbands, even though these women are solely responsible in running the farms. A participant expressed the view that rural women should be given due recognition as primary producers and also including the role of women in the process of revitalizing the agriculture industry in Malaysia.

The issue of indigenous women was also raised where a participant suggested to look into issues related to indigenous women in Sabah and Sarawak so that they are not marginalized. The discussion then centred on the topic of the prohibition of night work for women. A participant recalled that the Employment Act 1955 prohibits women from being employed at night unless the employer provides transport and shift allowance. However, this benefit of transport and shift allowance is not accorded to male employees and was observed as discriminatory by the said participant. Ms. Honey Tan responded to this observation that it is the duty of the employers to ensure the safety of women employees who work the night shift. This assertion received endorsement by another participant where it was reiterated that it is the responsibility of the employers in such an instance and that it was not the fault or weakness of women but that the environment is not safe and it is correcting the environment that should be addressed. She went on to add that CEDAW imposes on States Parties two main obligations, the first is to ensure that the laws and policies do not discriminate, and the second is to ensure that equal results are achieved.

The Child Act 2001 was the culminating topic of the discussion where there was concurrence with Mrs. Margaret Ho’s assertion that the Child Act 2001 was an achievement as it sets out to care and protect children. Accordingly, under the Child Act 2001 a different approach is used if a child is caught for committing a crime. In such an instance, these children would be cared for and sent for rehabilitation. Ms. Honey Tan agreed but added that while protection is essential, children should not be further labelled as having been in a welfare home.
Session 2 - Implementation of CEDAW in Other States (South East Asia & Muslim Countries)

In Session 2, Ms. Shanthi Dairiam of IWRAW Asia Pacific looked at the implementation of CEDAW in a selection of Muslim countries and countries within the ASEAN region. The Muslim countries that were examined included Egypt, Iraq, Jordan, Maldives and Tunisia, with Indonesia and Malaysia being discussed under the ASEAN category. The ASEAN countries discussed were Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Ms. Shanthi Dairiam began with a brief overview of ratification of major international human rights treaties by Muslim and ASEAN countries, followed by the reservations and reporting status of the respective countries with regard to CEDAW. Most of South East Asia ratified CEDAW in the 1980s with the exception of Cambodia, Malaysia, Singapore and Myanmar which acceded to/ ratified CEDAW in the 1990s. As for reservations to CEDAW, she noted that some of these countries have made reservations to CEDAW which undermined the very essence of CEDAW. Ms. Shanthi Dairiam also noted that reservations by Muslim countries are often based on Syariah Laws. Interestingly, Indonesia, the largest Muslim country in the world, had not entered any reservations to CEDAW.

The speaker proceeded to distinguish between direct and indirect discrimination in Article 1 of CEDAW. Article 2 was examined with Article 3 and 4. Ms. Shanthi Dairiam raised several pertinent issues, namely, the extent of implementation of CEDAW, its applicability at national level, whether the definition of equality in Article 1 had been incorporated in the Constitution and in domestic legislation and in both the public and private spheres i.e. in relation to matters of employment, in the codes of conduct for the private and public sector, in the translation and dissemination of CEDAW, and in the training of members of the judiciary and police to be sensitised to women’s issues. Other issues raised concerned the courts’ practice (or lack thereof) in recognising CEDAW, the monitoring of CEDAW, and gender disaggregated data.

It was also noted that implementation of CEDAW in ASEAN countries remain unclear. Although equality is guaranteed in the Constitutions of most of these countries, the definition of discrimination and equality remains narrow and there is no clear guidance as to the status of international law or the impact of international law when it comes into conflict with domestic laws. Ms. Shanthi Dairiam further observed that none of the ASEAN countries have an equal opportunity legislation. Therefore, it is evident that none of the ASEAN countries had
implemented CEDAW coherently. At best, good practices have been piecemeal and on an ad-hoc basis. Cultural and historical attitudes, inefficiency, bias, and corruption still exist as an impediment to equality.

The speaker examined the South East Asian countries of Indonesia and the Philippines in detail. For Indonesia, Ms. Shanthi Dairiam elaborated on the dual-system of family law, one for Muslims and another for non-Muslims and the Political Participation Act, which provides for 30% representation of women in political parties. As for the Philippines, it was pointed out that the Supreme Court of Philippines had in several cases cited CEDAW. The court based its decisions on the country’s commitment as a State Party to CEDAW. In addition, it was highlighted that Singapore had a good programme on violence against women and the courts have been pivotal in extending the definition of domestic violence and lowering the standard of proof in domestic violence cases to one of balance of probability.

Ms. Shanthi Dairiam proceeded to examine the position in several Muslim countries, in particular Egypt, Iraq, Tunisia and Maldives. It was highlighted that the advancement of women’s rights in Egypt included the establishment of a National Commission on Women, the first political institution to focus on the empowerment of women, the review of the draft law on passports and the criminalisation of ‘Female Genital Mutilation’ (FGM). Ms. Shanthi Dairiam further pointed out that Tunisian law no longer required a husband to maintain his wife and a wife to obey her husband. Instead, equal co-operation in managing family affairs is expected of both spouses. Women can gain guardianship of their children and polygamy is a penal offence. Further, extra-judicial divorce is prohibited and Tunisian domestic violence legislation provides stiff penalties for spousal abuse.

The speaker concluded by stating that for CEDAW to be comprehensively implemented, it has to be integrated and cohesive, with definite plans, benchmarks and different levels of data disaggregated by sex. It was stressed that monitoring mechanisms need to be institutionalised to supervise the effectiveness of laws and policies and that co-operation from the private sector is needed. Further, Ms. Shanthi Dairiam emphasized that the application of CEDAW by domestic courts would create the conditions necessary for women to claim their rights. Cultural and traditional practices which impede on women’s equality need to be eliminated.
Discussion on Session 2

The discussion began by an observation that women today are not allowed to participate in the mosque but this was not the situation previously. This practice came only after Prophet Mohammad died. It was further observed that women now participate in all spheres of life and the only area that women’s participation is not allowed is in the mosque.

The discussion then centred on the issue of shadow reports. One participant requested for a list of countries where NGOs prepare alternative reports to the CEDAW Committee. Ms. Shanthi Dairiam responded that IWRAW Asia Pacific has been co-ordinating a global effort to facilitate the writing of shadow reports and almost all countries have strong NGO lobbies. However, the converse is true of countries such as Myanmar, China, Vietnam and Laos where although there is some level of work by IWRAW Asia Pacific, visible NGO presence remains distant. In fact, almost every country has NGOs presenting alternative reports, even former Soviet Union countries, although these reports may not necessarily come from women NGOs of the relevant country. Shadow reports could also come from international NGOs like Amnesty International and Human Rights Watch, and women living with refugee status outside the particular country could also present alternative views to the CEDAW Committee. An example was where Tibetan women who were not living in Tibet or China attended the session when China reported, or where refugee women from Myanmar who were living in Thailand attended the session in New York. So currently for every country there are shadow reports that are presented although not always coming from women from within that country.

The same participant then queried the effectiveness of the shadow reports. To this, Ms. Shanthi Dairiam explained that shadow reports have been effective in assisting the CEDAW Committee in reviewing State Party compliance, in identifying gaps in the information provided by the State Party, ambiguities and misinterpretations. She added that shadow reports are not the only source of alternative information, as other UN specialised agencies such as WHO, UNICEF, UNFPA also present alternative information to the CEDAW Committee. However, the CEDAW Committee is cautious in relying on these alternative reports and only credible reports are accepted.

Another participant affirmed that the CEDAW Committee are attentive to shadow reports, elaborating that there are currently 23 independent experts, with at least three from the Muslim countries of Turkey, Bangladesh and Indonesia, in the CEDAW Committee. Many of these experts have wide expertise in the interpretation of Syariah laws in the light of CEDAW. She
further added that after the shadow report has been examined, States Parties should look at the concluding comments, as they would facilitate the establishment of priority areas and assist in formulating plans of action.

To another query on the action that could be taken by civil society to accelerate the incorporation of CEDAW domestically, Ms. Shanthi Dairiam commented that there was a need for transformation of CEDAW into domestic law. Nonetheless, there were instances where without specific legislation, the standards of CEDAW were applied in the courts. Ms. Shanthi Dairiam explained that it was open to legal scholars and practitioners to frame their arguments to apply the provisions of a treaty. In addition, provisions of a treaty can be used to interpret laws. Ms. Shanthi Dairiam also highlighted the legal argument that if a government took the trouble to ratify a treaty, its intention must be to apply its norms and standards. According to her, in Vietnam training has been conducted in bureaucratic meetings to apply the provisions of CEDAW, while in Botswana, a judge cited CEDAW provisions notwithstanding the fact that at that time, CEDAW had yet to be ratified by the government. The judge reasoned that if 130 countries had ratified CEDAW then equality and non-discrimination are principles of international customary law. Following from this, Ms. Shanthi Dairiam pointed out that the intention; political will and the open-mindedness of the judiciary are needed to implement the principles of CEDAW in courts.

The discussion concluded with the issue of the concerted efforts of the Malaysian NGOs in writing the shadow report. A participant expressed her hope that by writing the shadow report, the needs, obstacles and monitoring mechanisms in respect thereof would be highlighted.

Ms. Shanthi Dairiam’s paper on Implementation of CEDAW in Other States (South East Asia & Muslim Countries) is at Annex 8.

**Session 3 - CEDAW: The Hong Kong Experience**

The final session of the day focused on the implementation of CEDAW in Hong Kong. Ms. Anna Wu from the Equal Opportunities Commission of Hong Kong (EOC) shared the challenges and experience of the EOC in their struggle for equality. She began by noting that the problems faced by women everywhere in the world are similar, evolving from being treated as chattels, to being subjected to protective laws akin to juveniles and lunatics and finally to demanding rights and making choices for themselves.
The speaker then gave a brief history of the EOC since its establishment in 1996. She explained that the EOC administer three laws, namely, the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. These domestic legislations play an important role in the pursuit for equality. Ms. Anna Wu expounded the functions of the EOC in investigating and conciliating complaints, principally the EOC’s power to litigate. She explained that the strategic litigation role is essential as it enables the EOC to fulfil its functions and to counter parties that are unwilling to conciliate. In addition, the EOC also provides training courses and a settlement register of successful cases will be in place soon, which will provide information on complaints, related legal issues and an explanation of the solutions.

Ms. Anna Wu spoke briefly about the history of Hong Kong, and how, while it was under the British rule, the English Common Law and certain imperial enactments applied to Hong Kong. However many aspects of customary law adverse to women were preserved. Although these customary laws were subsequently removed or amended, these changes were accidental in nature and not a result of any conscious effort on the part of the Government to abolish discriminatory practices. She explained that it was only in 1984 at the signing of the Joint Declaration on the future of Hong Kong that the people of Hong Kong first became aware of the significance and meaning in individual lives, of several international instruments, like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and CEDAW. The June 4th 1989 tragedy in Tianamen Square, Beijing also triggered the British Government to entrench the ICCPR through domestic legislation in the form of a bill of rights.

Ms. Anna Wu shared with participants the background to the anti-discrimination legislation in Hong Kong. She stressed that citizens can sue only on the basis of domestic legislation and therefore without domestic law there is no real right. With the passage of the Hong Kong Bill of Rights, the rights under the ICCPR and the ICESCR became enforceable but its applicability was limited only to the Government and public authorities. It was highlighted that this was not the scope of the original draft of the proposed bill of rights. It was a final legislative change which brought about the restriction. Nevertheless, in June 1994, the Government of Hong Kong announced its proposed legislation on sex discrimination, which unfortunately made no reference to pregnancy or marital status, proffering an incredulous explanation that these had nothing to do with gender. However, due to mounting pressure, in October 1994, the Government introduced a wider form of the Sex Discrimination Bill.
The speaker proceeded to present participants with a glimpse of the status of women in Hong Kong today by sharing statistics in different sectors of employment, mental health, political/public service, economic power, discrimination and sexual harassment. She pointed out three themes that emerge from these statistics: feminisation of poverty, job segregation, and how these relate to CEDAW.

The special features of CEDAW highlighted by Ms. Anna Wu included the requirement for governments to level the playing field and to take proactive and positive steps to advance the status of women, as well as the wide definition of ‘discrimination against women’ in Article 1 of CEDAW. However, the speaker also highlighted how CEDAW was result orientated using men as the yardstick to measure equality. It was observed that because India chaired the sub-committee that drafted CEDAW, this meant that the opinions of developing nations were taken into consideration. She added that the strength of CEDAW rests on international consensus, which is a strong counter to claims that equality between women and men should be made relative to culture and tradition or local conditions or local divisions. According to her, the general wording of CEDAW meant that its provisions could be applied to local circumstances.

It was furthermore highlighted that CEDAW imposes upon governments the positive obligation to eliminate discrimination and provide legal protection to women by ensuring the establishment and functioning of competent judicial tribunals and institutions. In addition, governments are required to mainstream gender perspectives in policy making through a central mechanism that focuses on and co-ordinates policies and programmes on women. As for the CEDAW monitoring mechanism, its importance cannot be emphasised enough as it requires the government to promote and consult the public before reporting, thereby creating awareness and accountability.

Ms. Anna Wu concluded by explaining that a domestic legislation that prescribes equality is merely a part of the obligation that CEDAW places upon governments, it is a starting point. It is CEDAW that picks up from there and pushes governments to achieve equality of results.

**Discussion on Session 3**

During the discussion, clarification was sought on the significance in the different terms used such as ‘sex’ as compared to ‘gender’ and ‘sex discrimination’ as compared to ‘gender discrimination’. The same participant also enquired whether the Sex Discrimination Ordinance is
a gender-neutral law; for example whether there could be situations where men turn to the EOC to complain about having been discriminated against.

Ms. Anna Wu pointed out that the title ‘Sex Discrimination Ordinance’ was chosen by the Government of Hong Kong and it was intended to cover both genders. Therefore, it is a gender equality law and the EOC does have complaints from men in some cases although the majority of cases come from women. As far as the significance in the different terms used, her response was that it is envisaged that all implications are covered. In relating her experience of moving a Private Member’s Bill, Ms. Anna Wu explained that she had used the term ‘equal opportunity’ as it was felt that this had a more positive connotation rather than using the language of discrimination. The choice of term used is dependent on the values and mission that one wants to forge in the end. Ms. Anna Wu explained that the law relates to biological sex, not social gender and therefore different sexual orientations would for the time being, not be covered. However if the courts feel that social gender should be included, then this position could change.

The discussion then focused on the issue of migrant women. In response to an enquiry on how the Hong Kong Government would address the issue of migrant women in the context of CEDAW and whether the Government was aware of the different forms of discrimination faced by migrant women, Ms. Anna Wu explained that once a migrant worker enters Hong Kong, he/she would receive the same protection as citizens of Hong Kong. However, the Government had recently decided to reduce the minimum pay guaranteed to migrant domestic workers by asking the employer to pay a levy of HK$400, a cost that will ultimately be borne by the migrant workers themselves. This new policy could indirectly be considered as both sex and racial discrimination.

On the issue of human trafficking, one participant clarified that it would be wrong to say that all women who are victims of trafficking enter the country without the proper documentation. Most of the women that the Police deal with carry a valid passport and are not in breach of any immigration regulations or laws and in such instance the Police cannot do much. It was explained that there is an element of coercion in trafficking. When interviewed the women often deny that they are forced into vice, and stated that they voluntarily enter the country fully aware of their situation. The problem is the lack of evidence as the women themselves are not willing to testify. There is also the economic dimension to be considered. The said participant stressed that Malaysia was not a source country. Ms. Anna Wu noted that trafficking is an area which is
difficult to be dealt with by just one country. It requires cross border co-operation. The concern however, is the lack of surveillance over the health needs of these women.

Another participant touched on the issue of how private citizens are not able to access international treaties. According to that participant, in Malaysia, international instruments were referred to in less than 20 court cases. There was only one case where the judge positively referred to the Convention on the Rights of the Child and applied its standards. She felt that it was imperative for Malaysia to have an Act of Parliament to implement CEDAW. The same participant also enquired as to whether the move to opt for a tribunal or commission was more advantageous than establishing a special court in light of recent local movement towards the use of a tribunal or commission considering the over-burdened court system.

Ms. Anna Wu in response explained that before a treaty is incorporated into domestic law, the treaty can still be used to force the government to adopt a policy or it can be used for advocacy and awareness. The government must at least have accepted that these are the standards by which it has to adhere to and any failure to do so is maladministration. Ms. Anna Wu elaborated that in Hong Kong, there is an ombudsman to examine this issue. In addition, an individual can resort to the judiciary by way of judicial review on the basis of a treaty obligation. A treaty can also be used for interpretative purposes, thereby setting the benchmark for certain rights.

On the matter of tribunals, Ms. Anna Wu stated that when the equality law was first raised, a commission with a tribunal was set up. It had a quasi-judicial function to preserve the separation of powers between administration and executive. But if a court is established, it can still adopt a tribunal forum to make it more accessible to the people. She stressed the importance of creating awareness and the building-up of judicial precedents. Ms. Anna Wu explained that she was in the midst of reviving the issue of a tribunal for cases that cannot be reconciled.

The discussion reverted to the issue of migrant women with a comment from a participant that the CEDAW Committee had issued statements and recommendations to governments on migrant women affirming that CEDAW covers all women within their boundaries, including migrant women. Shadow reports by NGOs on migrant women issues have provided an impetus to the CEDAW Committee when making such recommendations. She cited the example where the CEDAW Committee made a recommendation to the Singapore Government on the issue of Filipino migrant women in Singapore on the strength of a report by NGOs from the Philippines.
Further, the same participant expanded on the issue of setting up different legal institutional arrangements. She explained that this task could be difficult for developing countries especially if it is resource intensive. She mentioned the different models such as in South Africa where certain courts are designated as Equality Courts. Ms. Anna Wu noted that the Hong Kong Courts have looked at developing specialist skills within the judiciary, even proposing an Equality Court at the Constitutional Court level or District level. She however explained that the disadvantage of such a system is that the Equality Court would be bound to comply with court rules which could be complicated. Nevertheless, the Equal Opportunity legislation has managed to reduce the number of applicable rules. In fact, the judiciary has successfully delivered comprehensive judgements to that effect. She suggested the alternative of an informal tribunal governed by simplified rules of procedure.

Ms. Anna Wu also spoke of the will of the government to do more for women by designating a minister on women’s issues. In Hong Kong, there is a Women’s Commission which looks into gender mainstreaming. The EOC supports this effort. However the Commission’s function is merely advisory. Ms. Anna Wu highlighted that it was vital to have one person co-ordinating the different ministries.

On the issue of educating the judges on women’s rights, Ms. Anna Wu explained that it is important to create the tools for judges to use, for instance the appropriate law that they can be used in making decisions. It is also important to learn from the experiences of other jurisdictions and to be creative in the interpretation of the law. There are many common issues, like trafficking, sexual harassment, pregnancy and customary law in respect of which the different nations in Asia can take a unified stand.

The discussion ended with Ms. Anna Wu addressing the query on the kind of programmes that could be used to raise awareness of CEDAW. Ms. Anna Wu suggested that annual conferences and workshops should be organised so that the government could report on what they have done and their plans for the proceeding year. She expressed her preference for this kind of consistent advocacy approach rather than a shadow report every four years. Ms. Anna Wu added that if the government could not provide the necessary gender disaggregated data, then the only way was for NGOs to do their own survey as gender disaggregated data would be very useful as a tool for educating and advocacy.

Ms. Anna Wu’s paper on *CEDAW: The Hong Kong Experience* is at Annex 9.
7. CONCLUSION

In her concluding remarks, Dato’ Ranita Mohd. Hussein, the Chairperson highlighted the recurring themes that had emerged throughout the day’s discussion.

One of the issues that received attention was the rationalisation of Islamic laws with the principle of equality. The Chairperson acknowledged that there was a valid and urgent need for uniformity of Syariah Laws throughout Malaysia and the need to ensure that the codification involved an enlightened and progressive interpretation of Syariah law. She also took note of the suggestion that SUHAKAM incorporate Islamic law reform into the work of its Law Reform Working Group.

On the issue of effective mechanisms to monitor implementation of CEDAW, the Chairperson pointed out that besides monitoring laws and regulations, it was necessary to monitor realities and for this, it was important to get extensive and accurate data of real situations and circumstances. She also highlighted the concern among participants of the Round Table Discussion of difficulties in monitoring the impact of programmes on women under the Seventh Malaysia Plan. She suggested that this was a matter to be taken up by the Ministry for Women and Family Development in co-ordination with SUHAKAM and NGOs.

The Chairperson confirmed that the Malaysian legal system required local law to incorporate provisions of international treaties before international treaties could have any effect domestically. The Chairperson pointed out that there was no local legislation adopting CEDAW, although there were separate laws to reflect CEDAW provisions and obligations. The Chairperson added that the necessity for a single Act of Parliament to reflect CEDAW needed to be examined further.

Noting the clarification on the implementation of CEDAW in South East Asia and Muslim countries as well as in Hong Kong, the Chairperson raised the issue of Malaysia’s own direction and plan of action. The Chairperson clarified that SUHAKAM would continue to monitor the implementation of CEDAW provisions and the review of the remaining reservations made by Malaysia to CEDAW. SUHAKAM hoped to achieve this through a co-operative and co-ordinated effort between the various parties. The Chairperson made special mention of the Country Report on CEDAW, which State Parties to the CEDAW Convention were obliged to submit.
periodically to the CEDAW Committee, referring to it as an important catalyst for the monitoring of CEDAW and said that all parties should be encouraged to continue with the collaborative efforts in preparing the said CEDAW Report.

The Chairperson’s Closing Remarks is at Annex 10.

8. RECOMMENDATIONS

8.1 Review the interpretation of Syariah law
Of the many issues that were raised and debated during this Round Table Discussion, one that received much attention was the treatment of women under Islamic family law. The problem is compounded by the glaring need to homogenize the different administration of Islamic law in different States of Malaysia on account of the differences in Islamic law from State to State. In this regard, SUHAKAM urges the relevant authorities to ensure uniformity in the enactment and application of Syariah law throughout Malaysia.

Further, in interpreting Syariah law, SUHAKAM advocates the overarching principle of equality for all. It is vital that there must be appreciation that the relationship between rights and responsibilities is a symbiotic one. Therefore, SUHAKAM urges that in interpreting Syariah law there is ensured a balanced distribution of rights and responsibilities between men and women.

8.2 Re-examination of the reservations to CEDAW
It is timely that Malaysia’s reservations to CEDAW be re-examined, particularly reservations premised on Syariah law. In this regard, SUHAKAM recommends for an open and objective dialogue between the relevant Government agencies and the various organisations, including SUHAKAM with the aim of ascertaining the reasons behind the reservations and where appropriate urging the withdrawal of the reservations. The dialogue should also explore mutual areas of concern and build upon common grounds in order to address the reservations made by Malaysia to the CEDAW and.

8.3 The enactment of an Act of Parliament incorporating CEDAW
In order for CEDAW to have any meaningful application to women in Malaysia, SUHAKAM recommends that the provisions of CEDAW be translated into domestic law. The laudable amendment to Article 8 of the Federal Constitution can be viewed as a stepping stone towards
the enactment of an Act of Parliament that grants to women all rights enshrined in CEDAW and imposes on the Government accountable to the obligations related thereto.

8.4 Review of existing laws, policies and practices that discriminate against women
Concomitant with the aforementioned recommendation for a single Act of Parliament to give direct effect to CEDAW in Malaysia, there should be a review of other laws, policies and mechanisms, including the criminal justice system, to address all forms of discrimination against women. Gender-neutral laws should be also be further examined to ensure that the resulting effect of such laws do not discriminate against women.

8.5 Proposals for gender mainstreaming
Substantial equality is a fundamental element for the progress of any nation and its full realisation requires the equal participation of both men and women in all aspects of development from the decision-making process to the economic, social and cultural aspects. To achieve this long-term goal, what is needed is the mainstreaming of the gender perspective into all policies and programmes, taking into consideration the concerns, needs and experiences of the women in Malaysia. SUHAKAM calls upon the Government to adopt a holistic and integrated approach by ensuring that there is in place, a systematic examination of possible effects on men and women at the preparation, implementation and monitoring stage of all Government policies and programmes.

Gender mainstreaming is a shared responsibility of every facet of society and not the sole responsibility of the Ministry of Women and Family Development. Therefore, SUHAKAM urges every agency to include a gender perspective in its respective agenda.

8.6 The need for gender disaggregated data
The full realisation of gender equality imply the need to base the policies and programmes on accurate data reflecting the real and current situation of women in Malaysia. Furthermore, precise data will facilitate and strengthen any strategy for gender mainstreaming. In this context, SUHAKAM calls upon the Government, in particular the Ministry of Women and Family Development to collect, analyse disseminate gender disaggregated data that takes into consideration the real situation and experiences of women in Malaysia.

8.7 Increased involvement of SUHAKAM and civil society in the formulation of Malaysia’s report to the CEDAW Committee
With regard to the report required by the CEDAW Committee on measures adopted by Malaysia to give effect to the provisions of CEDAW, SUHAKAM urges the Ministry of Women and Family Development to increase the involvement of SUHAKAM and other relevant actors of civil society in the formulation of Malaysia's report to the CEDAW Committee. Such practice is in fact encouraged by the CEDAW Committee.

8.8 Organisation of annual consultation between SUHAKAM, civil society and Government agencies
The Round Table Discussion on CEDAW provided an opportunity for interested parties to engage in a comprehensive discourse on women's rights and raise awareness on equal treatment. It would further have the effect of invariably strengthening effective collaboration between SUHAKAM, NGOs and relevant members of civil society working to promote and protect equality. In this respect, SUHAKAM plans to organise similar Round Table Discussions annually.

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