

THE ROLE OF NATIONAL INSTITUTIONS IN ADVANCING THE HUMAN RIGHTS OF WOMEN

BACKGROUND

This paper was requested by Forum Members following the 3rd Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions in Jakarta, Indonesia, where it was decided that further discussions should be held at the 4th Annual Meeting of the Forum on how national human rights institutions (NHRI) can work individually and collectively to further the human rights of women. The Jakarta meeting recommended that the:

Forum Secretariat be requested to report back to Forum members on options for regional activity to protect and promote the rights of women...and that adequate time be set aside for that discussion.

The paper presented at the 3rd Annual Meeting described the international framework of treaties and resolutions that underpin the human rights of women and the corresponding commitment of States to respect and promote these obligations. In comparison, this paper focuses on possible national and regional activities NHRIs can take to protect and promote the human rights of women of the Asia Pacific region.

INTRODUCTION

Widespread discrimination against women continues to exist. The international community has urged the recognition of the full enjoyment by women of all human rights, as well as their equal participation in political, civil, economic, social and cultural life.

The 1995 Fourth World Conference on Women reaffirmed the commitment to “the equal rights and inherent dignity of women and men...” and to “the full development of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms”.

In the Asia Pacific region, it seems almost impossible to simply describe, without writing several books, the diversity of experiences of women and girl children. Just a sample of statistics tells an interesting story.¹

- *In Japan nearly all currency traders are women*
- *The number of female managers in Singapore has nearly tripled in the last decade.*
- *One in five management jobs in Hong Kong is held by a woman.*

Yet there are some common threads which offer us insights:

- Women are likely to have lower education levels than men, at least until men have been educated first. (It is notable, however, that in some universities and some faculties in New Zealand and Australia women are now in a majority in enrolment statistics.)
- Women are greater users of health services for themselves and their children particularly services related to childbirth, reproductive health and HIV/Aids.
- Women are at greater risk of domestic violence, rape and other sexual assaults.
- Women have less access to capital yet are the fastest growing group of small business entrepreneurs.
- The right to work requires access to work, training and promotion free of discrimination based on gender. Women also require safe working environments – including environments free of sexual harassment.

- Cultural and religious practices can be used to control women and deprive them of their dignity and human rights.
- In many communities, poverty has a female face, especially amongst elderly women and female headed households.
- The girl child may be disadvantaged from birth being unwanted, ill nourished, uneducated and susceptible to abuse.
- Access to justice, while theoretically available in some jurisdictions on the same terms and conditions as the rest of the community, may be denied by women's lack of education, literacy, childcare and cost.

All of the women in Asia Pacific share at least some of the issues in common.²

CEDAW AND CROC

The United Nations High Commissioner for Human Rights, Mary Robinson, has called for increased efforts to promote women's rights and to eliminate discrimination against women and girls. In her statement to the 42nd Session of the Commission on the Status of Women, the High commissioner spoke specifically about the mainstreaming of the human rights of women in the activities of the United Nations, about violence against women being an obstacle to women's full enjoyment of human rights, about the realisation of economic and social rights of women being of the highest importance, about the integration of a gender-perspective in the enjoyment of the right to development and about the vital importance of human right education, including education about the human rights of women.

In relation to the United Nations treaty body system, this consists of six major international treaties. One of the most important of these is the Convention on the Elimination of Discrimination Against Women (CEDAW). In addition to CEDAW, however, of the six major treaties, four deal with non-discrimination of women (with reference to male norms). However only one treaty, the Convention on the Rights of the Child (CROC), is written in gender inclusive language.

CEDAW has been ratified by 34 of the 47 states of this region (see Appendix 1 of this paper). CROC, with its clear and inclusive focus on the girl child, has been ratified by all of the 47 states listed in the region. Given the disparity in ratification it is interesting to note that the two documents became available for ratification 10 years apart.³ Whether it is because we were all once children, or whether we have an inherent drive to care for the next generation, CROC has become the most acceptable and ratified (albeit with reservations) of the UN treaties.

On 12 March 1999, after four years of negotiations, the forty-third session of the Commission on Women adopted an Optional Protocol to the CEDAW. The Optional Protocol contains two procedures:

- a communications procedure allowing individuals, or groups of individuals, to submit claims of violations of CEDAW rights to the United Nations Committee on the Elimination of Discrimination against Women; and
- a inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

It is anticipated that the Optional Protocol to CEDAW will be submitted to the General Assembly of the United Nations for adoption in late 1999 and become available for signature by States in 2000. It will require 10 signatures before it comes into operation. Once operational, it will provide an avenue for women, or groups of women often supported by Non-Governmental Organisations (NGOs), to lodge communications with the Committee for the Status of Women about a State's failure to ensure the rights under the Convention.

The Optional Protocol will potentially raise new issues for NHRIs. For example, they may need to develop policies about their role (if any) in the Optional Protocol process and how this new development will be handled. At a practical level NHRIs may wish to make information freely

available on how individuals or groups can submit a communication. NHRIs may also wish to undertake a widespread education campaign about the availability of the process and how it relates to domestic complaints processes. In developing any such activities, NHRIs should consider the program of action developed at the Forum's regional workshop on 'National Human Rights Institutions and Non-Governmental Organisations: Working in Partnership', in terms of working with NGOs in devising and implementing educational campaigns.

At the Fourth World Conference on Women held in Beijing the role of national institutions in the protection and promotion of women's rights was recognised. The Beijing Platform for Action calls on Governments to "create or strengthen independent national institutions for the protection and promotion of these rights, including the human rights of women, as recommended by the World Conference on Human Rights". It urges Governments to "strengthen and encourage the development of programmes to protect the human rights of women in the national institutions on human rights that carry out programmes, such as human rights commissions or ombudspersons, according them appropriate status, resources, and access to the Government to assist individuals, in particular women, and ensure that these institutions pay adequate attention to problems involving the violation of the human rights of women."

What then are the issues for NHRIs in delivering these treaty rights to women? The following matters are raised for discussion:

- The role of a NHRI in commenting on a State's report under a particular Convention.
- The need for the State to ensure that the views of women are represented fairly in reporting and that a proper gender analysis of the issues raised has been undertaken.
- The role of NHRIs in working with NGOs or others in preparing shadow reports or feeding other information or questions to the examining committee.
- Whether a NHRI should prepare its own shadow report.
- What steps need to be taken to ensure that marginalised girl children and their parents' views are represented in reporting back on CROC.
- Whether the Forum wishes to actively encourage regional states that have NHRIs to adopt the Optional Protocol.
- Whether the Forum wishes to actively encourage regional states that do not have NHRIs to adopt CEDAW and the Optional Protocol as well as establishing a NHRI.
- Whether there are efficiencies to be gained by the sharing of basic educational and resource materials. For example, the New Zealand Human Rights Commission has new leaflets containing the text of CEDAW and the Optional Protocol. In addition, the Commission has produced simplified posters on both CEDAW and the Optional Protocol outlining the processes of how to lodge a communication. This material is produced in English and in New Zealand's second official language, Maori. New Zealand also includes information on CEDAW in its schools education programme in English and Maori. All of these resources may have a wider application amongst Forum Members.
- Consider whether the concept of non-derogable or mandatory social, economic and cultural rights would contribute to the advancement of women and girl children. The four current rights being discussed in this context are the right to:
 - ◆ Shelter
 - ◆ Food
 - ◆ Primary education and
 - ◆ Primary health.⁴

- Consider whether, in our experience, the clearly expressed view of the UNHCHR to mainstream women's human rights within the United Nations is being achieved through training and awareness raising with UNDP, IMF, World Bank etc or whether some more formal mechanism to bring together the initiatives of the Committee on the Status of Women and the Geneva based agencies is necessary.

RESPONSES TO QUESTIONNAIRE

In preparation for this paper a questionnaire (Appendix 2) was circulated to all Forum Members and to the Fiji Human Rights Commission. Replies were received from 4 NHRIs.⁵ The purpose of the questionnaire was to identify what were the major human rights issues for women amongst Forum members and by what means NHRI's dealt with them. The conclusions that can be drawn are therefore only preliminary.

A summary of the responses to the questionnaire are provided below:

1. Does your Commission have a special Commissioner or Commissioner responsible for women's human rights?

Of the four Commissions who responded, three did not have a specific Commissioner responsible for women's human rights and one did. Of the three who did not respond, a review of their establishment legislation reveals that one has a Sex Discrimination Commissioner, one has a National Commission for Women whose head is a member of the Human Rights Commission and in the other case the legislation does not require a separate Women's Commissioner. One Commission noted that in their state there was a separate National Commission on Violence against Women.⁶

The Paris Principles underline the importance of a pluralistic approach to the appointment of Commissioners. Each Commission, regardless of the responsibilities of individual Commissioners, needs to ensure that in planning and consultation the voices of individual women, particularly those from the most vulnerable groups, women's advocates and non-government organisations are heard.

2. What are the three main women's human rights issues in your country now?

- **Economic Rights**
Access to work, access to education, access to fair wages, access to paid parental leave and childcare, female headed households and poverty, rural/slum areas.
- **Violence**
Rape, trafficking of women, legal and attitudinal problems regarding violence, sexual harassment in the workplace, battering, incest, marital rape, prostitution.
- **Power**
Inequality of access in politics, legal status of women, development of capacity to participate.
- **Indigenous and minority issues**
Vulnerability, migrant workers, indigenous groups.
- **Health**
Access to health services, violation of reproductive rights.

This list of issues can be categorised into two fundamental concerns – security of the person and the security that comes from income to live on.

Although the four Commissions who responded to the questionnaire represent diverse parts of the Asia Pacific region the similarities of their responses was remarkable.

3. What are the most successful initiatives you have undertaken to support women's human rights?

The four Commissions outlined the following initiatives:

- **Delivery at the local level at the lowest level of government**
Establishment of programs at the local level supported by NGOs to educate men and women and promote human rights.
- **Legislative action**
Revision of employment law regarding the rights of women in the work place. Legislating for a program to provide education and enforcement of rights at the lowest level of local organisation.

Review of all government legislation, practices and policies to identify discrimination on the grounds of sex, marital status, pregnancy, care of children and other dependants and sexual orientation (amongst other grounds) and the setting up of a program to eliminate inconsistencies.
- **Education and advocacy**
Consultations with the Minister of Justice regarding migrant women workers working in other jurisdictions that do not have a NHRI.

Consultation with government regarding compensation for widows who were victims of military action.

Education program on CEDAW to women including indigenous women (in their language) extending to cover the use of the Optional Protocol when available for signing. Education brochure related to women life cycles e.g. Pregnancy and Work.

Audit of integration of women into Defence Forces. Consultation with Defence Force results in adoption of all recommendations and a program to implement them.

Gender sensitivity programs relating to women's rights as part of workshops/seminars sponsored by government agencies including the Army, Police and other institutions.
- **Planning**
National Plans of Action for Human Rights and Plans for Gender Responsive Development.

The responses to this question which asked for only the most successful initiatives, produced answers which were not complicated or expensive or related to complaint handling or courts of law. In summary they all speak of partnerships with the State, NGOs (domestic and international) and with the wider community. These kinds of initiatives are well within the capacity of all Commissions including those most recently established.

4. Do you have an education programme to deliver knowledge about the Convention to eliminate all Forms of Discrimination against Women? Describe briefly the programme.

Two Commissions indicated that they had such programs. The most recently established Commission has not yet started work in this area. Education is also provided by NGOs. The fourth Commission runs a "training for trainers" strategy and incorporates training on women's human rights in the training.

5. Does your State have an office for the Status of Women, or a Ministry of Women's Affairs or similar? Describe your working relationship with those bodies and how their work differs from your work.

All four Commissions work in an environment where a Ministry of Women's Affairs exist. The Ministries appear to have a common focus, on co-ordinating government plans for women, policy development and commentary and monitoring and evaluating the progress of women.

In terms of the working relationship with these bodies the Commissions appear to have more ongoing consultation with women's advocates and NGOs. They value their independence and have active educational programmes on women's rights. An important role for all Commissions is the review and

provision of advice on draft legislation which may or may not arise from Women's Ministries but impacts on the advancement of women, young women and girl children.

6. Do you have national NGO's working in the area of women's human rights? Name three main NGO's and describe briefly their work.

All responses nominated three main NGO's and in two cases there were National Councils of Women. The other NGO's generally had a specific focus. Those identified covered migrant workers, prevention and victim support regarding violence against women, provision of legal assistance and advocacy. A number of NGO's also worked to advance women in politics. UNIFEM and Soroptomist International were identified as significant international alliances in assisting in delivery of women's human rights projects.

7. Do you carry out joint projects with State Agencies or NGOs. Please describe joint projects.

All responding Commissions work with their parliament and a number of state agencies. Those most often mentioned were the Ministries of Justice, Foreign Affairs, and Women Affairs. Joint projects have also been carried out with Defence Forces and Indigenous Peoples' agencies. The involvement of the Forum Secretariat, international aid agencies, other Commissions and international and domestic service clubs were also significant.

8. Have you carried out any major inquiries into human rights issues affecting women in the last three years

Major inquiries identified include:

- The Marsinah Case (Indonesia) Death resulting from claim for minimum wage.
- Indonesian Migrant Workers (Indonesia)
- Widows in Aceh (Indonesia) Victims of military action.
- Women raped or killed or arbitrarily detained (Philippines)
- Domestic violence in the form of wife battering, incest rape and withholding financial support. (Philippines)
- Displacement of women in areas found to be affected with toxic waste, armed conflicts and demolition of their homes. (Philippines)
- Pregnant Workers (Australia)
- Stolen Children (Australia)
- Integration of Women into Defence Forces (New Zealand)
- Sexual Orientation and the Church (New Zealand)
- Women's Access to Justice (Maori and Pakeha) (New Zealand Law Commission with the support of the New Zealand Human Rights Commission).

Major national inquiries, while resource intensive, remain one of the most powerful tools in harnessing media, government and civil society in the protection and promotion of human rights. They provide an avenue to enable systemic change to take place and to deal effectively with issues that affect groups of people. The use of the Internet to extend the impact of inquiries beyond local areas, or within the country to a wider audience, is being effectively used by organisations such as Amnesty International and Human Rights Watch. It is something that is also being done by Forum members. The posting of reports on Commission websites enables the sharing of knowledge. In addition, Commissions should examine whether information could also be shared about the processes involved in running a national inquiry and the research needed to undertake such an inquiry.

9. Do you have a legal power to deal with human rights complaints from the public?

All responding Commissions have the power to deal with human rights complaints. The Forum Secretariat has developed a separate paper that sets out the complaints processes used by Forum members.

9(a) How do you ensure that women have access to your complaints handling procedure?

Publicity, education and promotion was the key response. Reference was also made to the need to provide mediation, conciliation and no cost services appropriate to women.

NHRIs should consider undertaking research about the accessibility of their processes. This research should benchmark performance and determine whether the services that are provided are meeting the needs of women.

9(b) What % of the complaints are from women and in what areas?

All NHRIs had clear views about the human rights needs of women but surprisingly, comprehensive statistics about complaints were not available. The one Commission in the establishment phase had not yet discussed the matter, and of the other three, one did not record complaints by gender and the other two had sketchy and recent information. In the Philippines 2.25% of the complaints were filed by women in the area of murder/homicide, rape, arbitrary detention and other human rights violations. In New Zealand reliable statistics have only been available since the introduction of a new case management systems in September 98. They indicate that 69% of all complaints are from women. 29% of all complaints relate to disability, 23% sexual harassment, 13% sexual discrimination and 7% family status. 61% of these complaints are in the employment, pre-employment areas. 98% of the sexual harassment complaints are from women alleging harassment by men usually in more powerful positions than the women complainants. Many Commissions, either at their establishment or as they develop, install computer based complaints management systems. Identification of complainants by gender and recording how they came to hear of the Commission and lay a complaint are important tools for properly targeting scarce resources in the education and information areas to the most vulnerable groups in society. While Commissions appear to have a good working knowledge of the problem areas within their jurisdictions a regular review of complaints type and source may suggest new priorities.

10. What do you see as the three main emerging issues affecting women in your country for the year 2000 and beyond?

The responses to this question fell into three groups

1. Poverty, economic rights, the right to work.
2. Violence, including international trafficking and prostitution.
3. Legal status of women including the need to pass laws to deal with the above two issues.

CONCLUSION

The focus of this paper has been on how NHRIs can respond to the human right's needs of women in the region. It has not dealt with much of the enormous volume of information available about women in Asia Pacific including UN material like the Beijing Platform for Action and the UNDP Development and Gender Indexes. However many commentators remark on the vulnerability of women in the wake of the Asian Economic crisis⁷.

"In Asia, where the economic crisis has brought massive unemployment, 60% of those retrenched have been women. Increasing poverty and a growing lack of resources have forced women to migrate across borders only to work in harsh and exploitative conditions without rights to organise."

In many jobs women tolerate inadequate and unsafe working conditions for a job. They are also often the last to be hired and the first to be fired from a job. In these circumstances the complaints brought to a Commission may not adequately reflect the abuse of rights going on. In these situations Commission's will have to be more pro-active and seek out information from local communities, police etc. Women may not only experience abusive working conditions but may be forced into illegal activities to survive. Girls, older women and women headed households are particularly vulnerable.

Research indicates that what women value most is options. Security, education and financial independence are a means to having choices. For this to continue post the economic recovery now underway, women's right to education will have to be realised at not just the primary education level but on a technological and scientific level equal to that of men. Given training and access to the

Internet for our girl children, the next century could lead to a women led entrepreneurial explosion in the Asia Pacific.

RECOMMENDATIONS

It is recommended that all Forum members:

1. Take the opportunity to provide, in cooperation with NGOs, enhanced education on the Convention to Eliminate all Forms of Discrimination against Women (CEDAW) in the context of the Optional Protocol becoming available for signature.
2. Recommend to their Governments the signing of the Optional Protocol to CEDAW.
3. Consider sharing the production and development of resources on CEDAW and the Optional Protocol. Even where languages differ, formats, videos etc may be able to be dubbed.
4. Pay particular attention to subsistence rights for women, including the right to shelter, food, primary education and primary health.
5. Ensure that economic, social and cultural rights are considered on a gender basis whether or not there is a Commissioner appointed to particularly address the interests of women.
6. Review national legislation and make recommendations for strengthening human rights protection mechanisms where, in the opinion of the NHRI, there is inadequate protection for women. This may include, for example, (i) protection from violence in all forms (including within marriage and internationally through trafficking and migrant workers) (ii) the elimination of unlawful discrimination on the grounds of sex and (iii) the implementation of economic and social rights.
7. Ensure that National Plans of Action for Human Rights, and all other national plans (e.g. violence, mental health and development) take particular note of the needs of women.
8. When implementing case management systems to handle complaints and enquiries, information should be collected about the gender of complainants and respondents so that responses can be targeted in a systemic manner – particularly through the provision of targeted information and education programs.
9. Seek information from enquirers on how they came to the NHRI so that accessibility issues for vulnerable women can be kept under constant review.
10. Multiply the effectiveness of NHRI's by working with relevant aspects of the State and civil society, including local and international NGO'S, clubs and aid agencies.
11. Ensure that the results of any national Inquiries, whilst ensuring confidentiality where applicable, be published for the public record. This should also be applicable to the processes and research used in the Inquiry to assist others undertaking inquiries.
12. Encourage leaders in all fields to use their leadership positions to further the human rights of more vulnerable women.
13. Review policies being developed to restore economic growth following the Asian economic crisis to recognise the equal rights of women to participate and share in the economic recovery and programs put in place to reduce economic insecurity.
14. Recognise that the right to education includes education for women and girl children at all levels in new technologies and scientific developments.
15. Recognise the importance of equal opportunity for women and reflect this within the structure of NHRI's in accordance with the Paris Principles. In addition, provide training to members and staff on the human rights of women.

16. Hold a workshop in 2000 on the theme 'The protection and promotion of the human rights of women.'
17. Request the Secretariat to take appropriate steps to prepare for the workshop.

Appendices:

- 1) Convention on the Elimination of all Forms of Discrimination against Women - ratified by 34 of the 47 states in the Asia Pacific region.
- 2) Questionnaire forwarded to Asia Pacific Forum National Institutions for their Institutions' contribution on the topic of the paper.

Endnotes

¹ Megatrends in Asia, John Naisbitt 7/217

² Some of these characteristics are also experienced by men of poor social or economic status

³ Convention on the Elimination of all forms of Discrimination against Women signed 17 July 1980
Convention on the Rights of the Child signed 1 October 1990

⁴ 7th Asia-Pacific Workshop on Regional Arrangements for the Promotion and Protection of Human Rights, New Delhi, 16-18 February 1999 paper "Realising the Right to Development", Professor Arjun Sengupta

⁵ One response was received after the paper was completed. The Forum Secretariat would be happy to receive additional responses prior to the finalisation of this paper and its publication on the Forum website.

⁶ Indonesia – Komnas HAM.

⁷ South East Asia Policy Advisory Network, 24/8/1998