

**STATEMENT BY
THE ASIA PACIFIC REGIONAL ADVISOR TO THE
THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS**

**TO THE
FIFTH ANNUAL MEETING OF THE ASIA-PACIFIC FORUM OF NATIONAL
HUMAN RIGHTS INSTITUTIONS
ROTORUA, NEW ZEALAND
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

8 AUGUST 2000

There is a growing recognition on the part of the peoples of the Asia Pacific Region and their Governments, of the critical importance of economic, social and cultural rights. Staggering under the heavy burden of external debt, in the throes of the stringent programmes of structural adjustment and recovering from the Asian economic crisis, the countries of the region find that far from progressively realizing ESCR, they are in a situation where ESCR are being eroded for large sections of the people.

The impact of economic globalisation, as it has been taking place, has been largely negative on ESCR. Although trade and economic growth are increasing, so too is the gap between rich and poor both within and between countries, as subsequent UNDP Human Development Reports indicate. The reason is that development so far as the developed countries recognise, is identified exclusively as economic growth forgetting that there can be no real development unless there is continuous, constant improvement of the well being of the entire population and of all individuals: Development involves the full realisation of human rights including ESCR for all individuals. ESCR strategies therefore need to be adopted in order to bring about development. They provide an important alternative to the frustration and despair that erupted in Seattle during the meeting of the WTO last year.

There is a misconception in the Western world that ECSR are not human rights because they are not enforceable like civil and political rights – the United States in particular refuses to recognise them as human rights. But this misconception proceeds on a misunderstanding. Properly understood, ECSR are as much human rights as civil and political rights. Practitioners of human rights in the Western world have long concentrated on civil and political rights to the exclusion of ESCR, because they have focussed almost solely on a violation approach rather than a promotional approach. But they overlook that there is no dichotomy between the two sets of rights. In fact, both sets of rights are vital for the existence of democracy and good governance and they are interlinked with each other and one cannot exist without the other.

The National Institutions sometimes tend to focus only on civil and political rights, forgetting that liberty and freedom cannot thrive on empty stomachs and bare bodies. This is particularly true in developing countries of the Asia Pacific. The developing countries have unique problems different from those in the developed countries. In the developed countries democracy and individual freedom came at the end of a period of sustained industrial revolution and therefore they had no particular difficulty in reconciling the claims of individual freedom with the collective welfare of society.

But the Asia Pacific countries are trying to bring about change in the social and economic conditions of the people and making basic human rights meaningful for them, while at the same time guaranteeing freedom of the individual such as freedom of speech and expression, freedom of association, etc. This exercise apparently seems to involve a clash between the individual freedoms which are enshrined in civil and political rights and the effective advancement of the large numbers of deprived persons which requires realisation of social and economic rights.

We in the Asia Pacific countries seem to be riding two unruly horses which are apparently clashing with each other but we cannot afford to give up either. This apparent conflict between the freedom of the individual and the collective rights of the disadvantaged has to be resolved and a balance has to be achieved. This delicate task has to be performed by all organs of the State including the National Human Rights Institutions with wisdom, courage and statesmanship.

So far as the National Human Rights Institutions in the developing countries are concerned, they have not only to protect civil and political rights but they have also to monitor realization of ESCR. What is necessary for the advancement of human rights in the developing countries of the Asia Pacific is a comprehensive understanding of the problem of poverty and discrimination, removal of the institutional causes of want and degradation, discrimination on the grounds of race, ethnicity, caste, sex, etc. and bringing about empowerment of the vulnerable sectors of society. This is the task which National Human Rights Institutions have to undertake and fulfil.

One difficulty which apparently seems to confront National Human Rights Institutions in dealing with ESCR is that they are not immediately enforceable but are to be progressively realised. But there are two obligations of immediacy, viz, the obligation of non-discrimination and the obligation to take steps towards the full realisation of the rights. The obligations of the Covenant of ESCR are obligations of conduct (requiring action) as well as obligations of result (requiring that actions do produce the desired results). It is therefore the task of National Human Rights Institutions to monitor the performance of these obligations and bring the deficiencies to the notice of the Parliament, the executive and the people so that they can react.

In the area of ESCR, the National Human Rights Institutions have a singular role to play. They must initiate a broad public discussion in regard to non-ratification by their State of International Human Rights Treaties and exercise pressure on the Government to ratify the instruments which are not yet ratified. They must analyse and assess the impact (positive or negative) of macro-economic policies prescribed under structural adjustment programmes and the process of economic globalisation on ESCR. Particular attention may also be paid to the setting up of national benchmarks, indicators, measures and targets and identifying specific obstacles to realisation so that national assessments may serve as a diagnostic aid to the elaboration of development assistance and technical co-operation programmes to promote the realisation of ESCR through development programmes, policies and projects.

The role of National Human Rights Institutions in initiating such programmes and policies of national assessments and in promoting awareness of the policy implications of such national assessments needs to be emphasized. The National Institutions should constantly monitor and assess the implementation of ESCR. They should also have power to investigate facts and recommend redress by affirmative action. The National Institutions must also focus on issues such as cultural and linguistic rights of minorities and also education and health and take positive measures in that direction.

There can be no doubt that international panels and the pressure generated by the monitoring mechanisms of the United Nations and Non-Governmental Organisations can help in securing enforcement of human rights. Additionally, it would help considerably if a regional convention of human rights appropriate to the needs and requirements of the Asian-Pacific countries and keeping in view the socio-economic conditions and cultural values prevailing in these countries, could be set up with a monitoring mechanism of its own. But, in my opinion, even this would not be enough. No human rights can be effectively enforced in the developing countries without the participation of the people who are the victims of violations of human rights. If human rights are to prove meaningful to those who most need them, it is vital to adopt a participatory approach to the development of human rights and their enforcement. People must fight for their basic human rights through the process of law and for that they must be organised. Human rights awareness must be created in them. There must be dynamic programmes for education undertaken by National Institutions

Permit me to close with an anonymous quotation which to my mind represents the very essence of a human rights approach to ESCR:

“I used to complain because I had no shoes until I saw a child who had no limbs.”

A human rights approach is about understanding why, in a given society, some have shoes and others do not...and taking appropriate action for remedying this situation. That is the reason why economic, social and cultural rights exist to prevent and redress inhuman wrongs. That is the reason why human rights are recognised to promote and protect that most precious of all human rights, the right to be human on a footing of equality with others.