

Sixth Annual Meeting on The Role of the Asia Pacific Forum in the Protection and Promotion of Human Rights

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Oral Intervention of the Pre Forum NGO Consultation on Gender Issues for National Human Rights Institutions¹

Discrimination on the basis of gender and the exploitation of women is a serious problem facing the Asia Pacific region which requires affirmative and comprehensive attention by all State parties. National Human Rights Institutions (NHRIs) have an essential role to play in the development of strategies to eliminate discrimination and exploitation of women.

It is acknowledged that Asia Pacific Forum (APF) held a special seminar on gender in Fiji in May 2000, and that from it came a number of recommendations and initiatives which have the support of the NGO community. It is also noted that the APF proposes to hold a workshop combating trafficking of women and girl-children in 2002, and that UNICEF and ECPAT plan to hold a forum on the matter in Yokohama, Japan in December of this year.

We have focused our intervention on interstate trafficking of human beings because the vast majority of victims of trafficking are women and girl-children. Further, the cross-border dimensions of the APF are ideal to address this issue which involves a number of cross-jurisdictional considerations. It should be noted that there is also a significant gender issue surrounding the trafficking for sexual exploitation of boy-children.

At its core, the international trafficking in women and girl-children is about exploitation, violence, forced prostitution, abduction and fraudulent coercion of the most reprehensible kind. Despite numerous useful international efforts to combat trafficking, significant gaps remain such as inadequate law enforcement mechanisms and a lack of cross-border co-operation. Anti-trafficking initiatives have not adequately prioritized the apprehension and prosecution of traffickers.

The lack of clarity of the immigration status of victims of trafficking actively impedes law enforcement and prosecutorial capabilities. Victims are often treated as criminals being either arrested or deported, which effectively removes these key prosecution witnesses from the process. Furthermore mandatory deportation of trafficking victims based on their immigration status has the potential to expose them to further persecution and exploitation in their original State. The fraud and other criminal conduct of traffickers must be distinguished from the actions of victims who are often driven to enter into arrangements with traffickers through necessity, systemic disadvantage, poverty, and fraudulent misrepresentation.

The Asia Pacific Seminar of Experts in Preparation for the World Conference Against Racism, held in September 2000 in Bangkok, Thailand recognised the proliferation of trafficking in the region as posing a serious challenge to law enforcement agencies. It is in this context that the regional NHRIs should recognise the need for an aggressive and comprehensive enforcement strategy.

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The Pre Forum NGO Consultation offers the following recommendations that could serve as guidelines for NHRIs in their strategies to address Gender and Related Issues:

1. Under the Paris Principles NHRIs are obliged to encourage ratification of key international instruments or accession to those instruments by their respective States, and to ensure their implementation. Many such instruments provide critical protections for victims of trafficking. We recommend that in the context of gender issues, particular attention be given to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention of the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the International Convention on Economic Social and Cultural Rights (ICESCR) and their respective Optional Protocols where they exist.
2. NHRIs must facilitate visits to the State by United Nations special mechanisms, particularly the Special Rapporteur on Violence Against Women.
3. The criminal justice system may be exploited to further victimise women and girls who are, for example, parties to hostile family disputes, victims of rape or trafficking, or who are subjected to prejudicial and arbitrary immigration policies. NHRIs should implement systems to monitor the operation of the judicial system with a view to avoid manipulation of the judicial system for underhanded purposes.
4. NHRIs must integrate gender and related issues into their mandates and organisational structures. Where necessary, NHRIs should set up a special section under their national plan of action to deal with gender-based violations of human rights and work closely with existing organisations specializing in human rights and related fields. NHRIs must ensure that their National Plan of Action for Human Rights includes gender related initiatives.

The Pre-Forum NGO Consultation further offers the following recommendations to specifically address Trafficking of Human Beings:

5. NHRIs should review existing legislative or administrative provisions and assess their humanitarian impact when implemented in relation to victims of trafficking, and make recommendations where appropriate in order to ensure that these provisions conform with the fundamental principles of human rights both in their direct and indirect application.
6. NHRIs should develop systems of regional co-operation by encouraging States to enter into extradition, cross-jurisdictional and other collaborative arrangements geared towards the effective prosecution of perpetrators of human rights abuses against trafficked people.
7. NHRIs should develop and conduct awareness programmes with agencies that deal with victims of trafficking premised on an approach that takes into account the human rights as well as the law enforcement issues involved, and which identify communities that are particularly vulnerable to being trafficked.
8. NHRIs should review the responses of governmental agencies to human rights abuses perpetrated against victims of trafficking and should encourage governments to develop inter-agency strategies to ensure a co-ordinated and effective approach by the various agencies involved.

9. NHRIs should also monitor and encourage protection of defenders of the trafficked in conformity with the UN Declaration on the Protection of Human Rights Defenders.
10. NHRIs should help develop a Code of Conduct that include:
 - places for trafficked women to stay pending deportation with adequate access to services such as legal aid, counseling, medical and other essential services;
 - ensuring that trafficked women have access to their country's diplomatic representation in compliance with the Vienna Convention on Consular Access;
 - an avoidance of mandatory deportation in circumstances where a return to the original State may expose victims of trafficking to further exploitation and persecution, and where premature expulsion from the host State may jeopardize victims' access to civil redress for loss of income and other entitlements owed to them in return for their labour;
 - provisions for the granting of asylum and access to authorities concerned including the opportunity to contact a representative of the UNHCR. Provision should also be made for asylum visas for victims who provide information to police or who testify in criminal prosecutions.
11. NHRIs should encourage governments to establish special procedures within the judicial system to ensure that prompt prosecutions of traffickers are heard without any adjournment, except in the most exceptional of circumstances.
12. NHRIs should develop comprehensive strategies which would address the protection, rehabilitation and humanitarian treatment of victims of trafficking by State agencies in host and transit countries, in situations of detention and imprisonment and in the context of repatriation. NHRIs should also outline strategies for children recognising their special needs and rights.
13. The APF and its members should promote effective regional and bilateral reciprocal arrangements and mechanisms to harmonize laws and practices in the region. These should rest on existing frameworks such as the Association of South-East Asian Nations (ASEAN), the Bangkok Accord and Plan of Action to Combat Trafficking in Women (1998) and the Asian Regional Initiative Against Trafficking in Women and Children (Manila Declaration 2000).
14. NHRIs should urge state parties to create a specified Task Force which brings together all appropriate and relevant Ministries and departments to address the issues surrounding trafficking.
15. The APF should commission two of its member institutions (one from a source State and the other from the host State) to undertake a pilot project to work together on the issue of trafficking and to use the results of the project to develop a broad framework for regional co-operation.

I thank you for your kind attention.