



Asia-Europe Meeting

Human Rights and Gender Equality

Proceedings of the 10th Informal
Asia-Europe Meeting (ASEM)
Seminar on Human Rights

Manila, Philippines
7 - 9 July 2010

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Human Rights and Gender Equality, Proceedings of the 10th Informal Asia-Europe Meeting (ASEM) on Human Rights

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Acknowledgements

It has been an honour to have taken part in the planning and implementation of the 10th Informal ASEM Seminar on Human Rights. The discussions in Manila were both timely and relevant, and it is hoped that the results reflected in this publication will serve to further understand of the topic of gender equality in Asia and Europe. On behalf of the organisers, it is with the deepest gratitude that I would like to acknowledge here all of those whose efforts made this dialogue possible.

Firstly, we would like to thank the participants from governments and civil society for their frank and constructive contributions during the Seminar. It is our sincere hope that their combined knowledge and experience reflected in this publication will serve the advancement of gender equality, and that the new connections forged over the three days of the Seminar will strengthen the networks across the two regions.

Secondly, we would like to express our profound appreciation to our partners, the French Ministry of Foreign Affairs and the Raoul Wallenberg Institute, and the members of our Steering Committee for their advice and their insight.

Our thanks go also to Undersecretary Erlinda Basilio and Ambassador Rosario Manalo of the Department of Foreign Affairs of the Republic of the Philippines for enabling us to host the Seminar in Manila. We also thank the Ateneo University Center for Human Rights, particularly Professor Carlos Medina, as well as Mr Ray Paolo J. Santiago, Ms Anna Katrina A. Carillo, Ms Ma. Kristina Merginio, Mr Nathaniel Oducado and their colleagues for their great efforts in making this event possible.

We would like to extend special thanks to our two eminent key note speakers, H.E. Leila de Lima and H.E. Lena Hjelm-Wallén. Their very personal perspectives, from Asia and from Europe respectively, at the opening of the Seminar set a tone of frank openness which informed the discussions over the three days.

Our warmest gratitude goes to Ms Mary Shanthi Dairiam, not only for laying the foundations to the Seminar through her extensive background report, but also for compiling the final Seminar Report for this publication. We must also thank Ms Erika Kvapilova, Ms Naoko Ootobe and Dr Malgorzata Olimpia Gorska for their hard work in accurately recording the exchanges within their respective working groups.

The working group discussions would not have been nearly as constructive without the firm and expert guidance of our moderators: Ambassador Manalo, Professor Göran Melander, Ms Anjali Gopalan and Ms Eniko Pap. For their skilful facilitation, we thank them.

We would gratefully like to acknowledge the efforts of the very capable staff and volunteers of the Ateneo Human Rights Center, without whom we could not have coordinated this three-day Seminar.

We also thank all the co-organisers, including the secretariat team at the Asia-Europe Foundation (ASEF) for their tireless work in bringing this Seminar through planning to execution: Ms Sol Iglesias, Ms Grace Foo and Mr Ri Seokjun, as well as Maria laitskaia for her assistance in the preparation of the Background Paper. We are grateful to Ms Anjeli Narandran and Mr Christopher Massey for their efforts in the production of this volume.

Ambassador Dominique Girard

Executive Director

Asia-Europe Foundation

PREFACE: THE INFORMAL ASEM SEMINAR ON HUMAN RIGHTS SERIES

Ms Sol Iglesias

Director for Intellectual Exchange, Asia-Europe Foundation

The Asia-Europe Meeting (ASEM)¹, an informal process of dialogue and cooperation among partners on all issues of common interest to Asia and Europe, is a forum that promotes various levels of cooperation among its members. It is a process based on dialogue, aimed at strengthening interaction and mutual understanding between the two regions and promoting cooperation leading to sustainable economic and social development.

The biennial ASEM Summit meeting is held alternately in Asia and Europe and is the highest level of decision-making in the process, featuring the Heads of States or Heads of Governments, the President of the European Commission, accompanying ministers and other stakeholders. A total of eight Summit meetings have been held in the cities of Bangkok (1996), London (1998), Seoul (2000), Copenhagen (2002), Hanoi (2004), Helsinki (2006), Beijing (2008) and Brussels (2010). The next Summit meeting will be in Vientiane in November, 2012.

At the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

¹ ASEM partners include Austria, Belgium, Brunei, Bulgaria, Cambodia, China, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Korea, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, Netherlands, Pakistan, Philippines, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Thailand, United Kingdom, Vietnam, the ASEAN Secretariat and the European Commission.

Previous seminar topics include:

- Access to justice; regional and national particularities in the administration of justice; monitoring the administration of justice.
Lund, Sweden (December 1997)
- Differences in Asian and European values; rights to education; rights of minorities.
Beijing, China (June 1999)
- Freedom of expression and right to information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment?
Paris, France (June 2000)
- Freedom of conscience and religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare.
Bali, Indonesia (July 2001)
- Economic relations; rights of multinational companies and foreign direct investments.
Lund, Sweden (May 2003)
- International migrations; protection of migrants, migration control and management.
Suzhou, China (September 2004)
- Human rights and ethnic, linguistic and religious minorities.
Budapest, Hungary (February 2006)
- Freedom of expression.
Siem Reap, Cambodia (September 2007)
- Human rights in criminal justice systems.
Strasbourg, France (February 2009)

The formula employed is as follows:

- The participation of two representatives from universities and non-governmental organisations (NGOs) invited by the organisers and one official representative for each of the 16 Asian ASEM countries; and, in order to have balanced representation between Asia and Europe, one

representative from civil society and one official from each of the 27 European ASEM countries, as well as the European Commission and ASEAN Secretariat;

- An agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups;
- Closed-door debates to allow free and direct exchanges of views; and,
- A set of recommendations, elaborated collectively to be sent to the relevant institutions in ASEM countries as an informal contribution to the official Asia-Europe dialogue.

The experience of the first nine seminars has proven the usefulness of the chosen formula: a climate of confidence and mutual understanding, in accordance with the ASEM spirit, has grown stronger throughout this process; the topics selected by the Steering Committee, which focus on issues of common interest to the two regions, have made high quality discussions possible; the high level of participation of the ASEM partners indicates the strong interest of the partners in these meetings.

ORGANISATION

The Seminar series is co-organised by the French Ministry of Foreign Affairs and the Raoul Wallenberg Institute (delegated by the Swedish Ministry of Foreign Affairs) and the Asia-Europe Foundation (ASEF)². ASEF is the only permanent institution of the ASEM process, created in 1997 with a mandate to promote mutual understanding between Asia and Europe through intellectual, people-to-people and cultural exchange.

The seminar is supervised by a Steering Committee, which comprises the Seminar's three co-organisers, representatives of the Foreign Affairs Ministries of China and Indonesia, as well as representatives of the European Commission.

² The Asia-Europe Foundation (ASEF) seeks to promote better mutual understanding and closer co-operation between the peoples of Asia and Europe through greater intellectual, cultural and people-to-people exchanges. These exchanges include conferences, lectures, tours, workshops, seminars and the use of web-based platforms. The major achievement of ASEF is the establishment of permanent bi-regional networks focused on areas and issues that help strengthen Asia-Europe relations. <http://www.asef.org>

The two coordinators – Mr Frédéric Tiberghien, Representative of the Ministry of Foreign Affairs of France, and Professor Gudmundur Alfredsson, Adviser to the Director of Raoul Wallenberg Institute – are responsible for the orientation of the Seminar Series.

After each conference, the outcomes of the discussions are gathered in a publication that may be used by governments and civil society as a reference on the state of play of the debate on human rights in ASEM countries.

The 10th Informal ASEM Human Rights seminar brought together eighty-seven participants including official government representatives, members of non-government organisations, civic associations, the academe and the private sector, representing thirty-four of forty-eight ASEM partners to discuss the state of gender equality and associated rights across the two regions as well as to share experiences and best practices.

HUMAN RIGHTS AND GENDER EQUALITY: AN OVERVIEW OF THIS VOLUME

The opening speech by Mr Frédéric Tiberghien, State Counsellor, France and Technical Co-ordinator of the ASEM Informal Human Rights Series, clearly illustrates six major areas for discussion on the broad topic of gender equality rights, setting a backdrop for the Seminar.

This is followed by two keynote speeches. H.E. Leila de Lima, Secretary of the Department of Justice, the Philippines, sets out the gender equality landscape of the Seminar's host country, the Philippines, presenting both the obstacles encountered and the progress made in the struggle for women's rights. H.E. Lena Hjelm-Wallén, Former Deputy Prime Minister and Foreign Minister of Sweden, provides a historical insight into creation of the Informal ASEM Seminar on Human Rights series, before putting the topic of gender equality into a global context.

The Background Paper, prepared by Ms Mary Shanthi Dairiam, Member of the Board of Directors, International Women's Rights Action Watch Asia Pacific, is the preliminary annotation to the Seminar. The Seminar Report, co-written by Ms Dairiam and the three other rapporteurs, constitutes the fundamental part of this publication, together with the Background Paper. They define the terms and concepts surrounding gender equality, and offer an introductory overview of the key issues discussed in each of the Working Groups as well as the essence of discussions and debates that took place in them. The working groups addressed the following topics:

- 1) Political rights and political empowerment,
- 2) Civil status and economic empowerment,
- 3) Cultural practices and social empowerment, and
- 4) Gender-related violence.

The volume ends with concluding remarks from Mr Tiberghien, in which he reflects on the main topics arising from the dialogue, highlighting areas of consensus across the regions as well as areas requiring further discussion.

The Asia-Europe dialogue reflected herein came at the time of the creation of “UN Women”, the UN entity for gender equality and empowerment for women. In the Philippines, the Seminar also took place simultaneously with the launch of the Implementing Rules and Regulations of the Philippine Magna Carta for Women. It is also noteworthy that the Philippines, having hosted the 10th Informal ASEM Seminar on Human Rights, will continue to be a full partner in organising the series of seminars going forward. These proceedings serve the purpose of providing a record of the exchanges on gender equality in the two regions during the event – notably including an exploration of lesbian, gay, bisexual and transsexual (LGBT) rights with respect to the concept of gender equality – within changing international and domestic environments.

OPENING SPEECH

- **Mr Frédéric Tiberghien**
State Counsellor, France
Technical Co-ordinator, Informal ASEM Seminar on Human Rights

OPENING SPEECH

Mr Frédéric Tiberghien

State Counsellor, France

Technical Co-ordinator, Informal ASEM Seminar on Human Rights

Excellencies, ladies and gentlemen,

In the name of all the organizers, I will try to frame the main lines of the topics presented to us for discussion, and to raise some of the questions we will be discussing in our two-days at this informal Seminar. Six main questions, in my view, have to be addressed.

The first question that arises when talking about discrimination is what exactly are we talking about? I would propose that we can measure discrimination in three ways. Firstly, discrimination can be identified by facts and figures. We can evidence discrimination through statistical indicators relating to such factors as gender, age, or membership of an ethnic minority or group. Specialists carry out surveys as to the degree of discrimination people experience, and from this form a subjective feeling on the level of discrimination which is accepted by public opinion in a given country. These inquiries provide precious indications as to what people will or will not accept at a given time.

Secondly, discrimination is also a result of social processes. It does not appear randomly, but involves mechanisms that are deeply rooted in the society. Societies rely on explicit or implicit hierarchies and on explicit or implicit gender discrimination. As this discrimination is very often denied, the first step towards gender equality it is to overcome denial through disseminating statistics and figures and talking about it. It is therefore very important to provide the public with these figures.

Thirdly, discrimination is a legal matter, a human rights matter. A number of international treaties, many of which are inventoried in the background report for this Seminar, include or put forward equality between men and women as an international rule of law. Gender equality is also a fundamental right according to the European Union. The constitutions of many modern states in the world put forward that principle.

In fact, in my view there are two possible understandings of discrimination. The first one relates to any difference in treatment which has no reasonable or objective justification in the European Convention on Human Rights (ECHR) terminology (Thlimmenos c/Grèce n° 34369/97), or which is not proportional to the goal. This sense of the word dominates the fields of constitutional law and public law where it exists. We find also this sense in the 1948 Universal Declaration of Human Rights and in its two 1966 Covenants. The second possible understanding of discrimination focuses on the unfair treatment of weak or vulnerable persons because of their gender, race or disability. It prevails in penal law and in labour law. We can trace this sense of the word in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, in the CEDAW and in the 2007 Convention on the Rights of Persons with Disabilities. As there is still a gap between the rights as declared in principle and their implementation, European law has also designed a new right, namely the right *not* to be discriminated against following the Protocol 12 of the ECHR. We will have to discuss this negative formulation of this right. Is it satisfactory if the ultimate goal is equality between genders?

The second main question we have to deal with is the identification of domains concerned with discrimination. In other words, have we completely identified the agenda? Do we have the same concerns in Asia and in Europe? Do we tackle the real problems in our different regions and countries? In order to answer that question, I think we can distinguish three conceptual categories. The first category includes problems not yet settled but very well identified. This includes such problems as the political rights and access of women to leading political positions. As far as civil rights are concerned, there are also very old questions such as the common exercise of parental authority, the ability for women to manage their revenue, wealth and assets, forced marriage and its inconsistency with the freedom of marriage recognized in international treaties. In terms of social and economic rights, there are two general areas of for thought. The first one is access to employment, the predominance of part-time jobs for women, the inequality in remuneration, the absence of equal opportunities – the famous ‘glass ceiling’ – and of course moral and sexual harassment in the work place. The second relates to health in the boarder sense, including mastery of one’s own body, abortion, contraception, and parental leave.

The second conceptual category of domains includes an old topic which has not yet been tackled sufficiently. I refer to violence against women. We can see that there is at the present moment a multiplicity of international treaties and legal

instruments to combat this phenomenon which has for too long a time been minimized and is also now very well identified. Article 14 of the ECHR says that gender violence is discrimination against women. That is very clear.

In my view, the third category includes new topics which are not yet very well identified. Four topics deserve attention in my view. The first one is the reconciliation between private, family and professional life inside the family, referring to the three famous responsibilities or daily activities of women. Of course, behind that lies the unequal sharing of domestic tasks within the family. We have to raise the question of how governments and all other players in the field can promote fatherhood. The second topic is the increasing number of families who have a woman as the head of the family. The third one, which is well documented in the background report, is women's exposure to poverty in working life and in retirement. The fourth and newest question is that of LGBT rights, which is also a very complicated problem. Public opinion is divided on this topic because it puts at stake our concept of the family and on what the stability of a family relies: is it composed of a man, a woman and children? Can we accept other composition? Finally, we also have to raise the question of which domain is the main one giving rise to this discrimination. Is it training or access to employment, because through access to employment women can gain their economic independence? According to the European approach, it can be discussed, we have to focus on women's rate of activity on the labour market and on the reduction of inequality in pay. And I want to conclude this second set of questions by quoting Françoise Giroud, a famous editor in France, who has an excellent formula to summarise this debate: A woman will be equal to a man on the day when you find incompetent women in high profile jobs.

The third main question is the rhythm of the change. Do we go too fast? Do we go too slow? What can we think about that rhythm? The feeling in that field refers to the accepted long-standing structural and behavioural change in a given society. A further two trends must be highlighted at this point. Firstly, I am deeply stricken by the rate of feminisation of some professions, especially in Europe. When you look at the figures, some professions are increasingly dominated by women in large numbers: teachers, doctors, medical professionals and more recently lawyers and judges. All these professions are more or less linked with life transmission (education, care and cure). The second trend we have to notice in Europe nowadays is access to education. The graduation rate is now higher for girls than for boys. Nearly 60% of persons graduating from university are girls. This will have important consequences in the near future, given the role of access to education in fostering equality between genders.

The fourth question I would like to raise is the direction of the change. And do we tackle the real issues? In my view the picture is extremely contrasted and it is very difficult to make up one's mind. The background paper mentions many fields where discrimination is still prominent. But our ability to make our own judgment relies on the final objective we have implicitly in mind: equality, parity or diversity. Do we insist on the similarities or on the differences between men and women? Elisabeth Badinter says that similarity between women and men brings progress, while difference between them brings discrimination and inequality. As you know, this has been a strong debate for centuries between the feminist movement and others. It also depends on the analysis of whether we share the point of view that the origin of inequality lies in the public or in the private sphere. Simone de Beauvoir, in the important book "The Second Gender" issued in 1949, linked gender inequality to the division of labour at home and to the weak participation of women in other fields such as the workplace and politics. In her more recent book on that topic, Elisabeth Badinter dwells on the private sphere. She posits that because the private sphere breeds inequality between men and women, the public sphere, notably the workplace, remains unequal. So domestic task sharing is the central question for many sociologists who believe there cannot be a significant change in the public sphere unless the problem of sharing of domestic activities is addressed first. This point has to be insisted upon.

It is not so difficult to illustrate this contrasting situation in our societies. In many fields, women's rights are still restricted but there are also other fields where their rights are better fulfilled. As a counterpart to a limited economic participation in high-risk sectors like mining, construction, and public works, women perform less risky jobs, in the formal economy at least. Women are not assigned military service, although this job sector is also going through a process of feminisation. Women also have a superior medical conception and expose themselves less than men to the risks linked with modern life such as alcohol, tobacco and fast driving. This results in women benefitting from a longer life expectancy, but in turn raises anew the problem of the level of pensions and the risk of poverty I already mentioned.

In between there are legal evolutions one can question whether they do actually contribute to the improvement of women's situations. Three examples can be derived from the French experience to illustrate these questions. As a first example, since 1892, it has been forbidden in France to employ women in factories at night. A French senator, Jacques Henriot, said in 1985 about women's employment "nobody questions its legitimacy and its lawfulness, but it is a redundancy factor and diminishes birth rates. Rather than sending women to the workplace, it is better to send them to bed." France was subsequently

forced by the European Union to modify its legislation, making it consistent with European Law by allowing women to work at night in factories. Similarly, women were not allowed to work in mines, thanks to a domestic law enacted in application of the C45 ILO Convention of 1935. However, the European Court of Justice declared it inconsistent with a 1976 directive which implies an individual appreciation of the situation. Therefore in 2008, France was obliged to denounce the ILO Convention with effect from 2009. So now women can work in mines: fortunately for them, we have closed nearly all our mines. And the final example can be seen in the benefit female civil servants receive, as a compensation for motherhood, of one year of leave per child. This benefit has also been judged contrary to European Law by the European Court of Justice, because some men also claimed the same benefit. Since then, our domestic laws have more or less cheated the ECHR obligations in order to maintain a retirement advantage for women which our politicians did not want to recognise for fear of having to put men on an equal footing. In the overarching scheme, we noticed also the same trends in the elimination of specific retirement advantages for women in all the private retirement schemes as a consequence of the principle of equal treatment between men and women. Are we sure that these three examples are moving in the right direction? I'm not sure.

The fifth main question to raise is about the driving forces that can accelerate change in the fight against discrimination. What are the engines for the change? As early as in 1791, Olympe de Gouges issued the Declaration of the Rights of Woman and of the Citizen. The feminist movement, which started in the 60s in Europe, thought that only women could effect change and that only the feminist movement could effectively fight against discrimination. It is not untrue: history shows that too few politicians, writers and thinkers, such as Charles Fourier or Stuart Mill, protested against injustice suffered by women and denounced their sheer inferiority as a consequence of the abuse of power by men. The question we must raise therefore is: are the claims of women now really taken into account at the political, economic and social level, and by which type of organizations? Political parties, unions, NGOs, economic leaders or employers? Given that, depending on the country and culture, politicians, political parties, NGOs, unions and employers are still often directed by men, there is a serious doubt about their will to change. We have therefore to insist on the specific responsibility of the states, which are in charge of implementing international treaties.

The last round of questions I would like to raise is about the remedies which are successful or unsuccessful. In a very interesting report carried out in 1909, Mr Buisson made a report to our Parliament saying that "the exercise of the natural rights of women is only limited by the constant tyranny men oppose on them.

These limits have to be reformed by natural laws and by the laws of reason.” If reliance on the laws had been on the top of the list of tools used since that time to fight against discrimination, it is no longer considered as a sufficient tool to enforce women’s rights and the debate about the efficiency of tools has also evolved.

Abstract recognition of women’s rights was the main task of the previous century but now we focus more on the concrete enforcement of abstract rights. This implies new notions such as parity and tools other than laws have emerged and are now implemented in many countries’ public policies promoting equality or parity explicitly. They suppose, of course, political commitment, and a national strategy, often under the authority of a dedicated minister. The European Union promotes these public policies as a long-term investment for society. Under that category of new tools we also have to debate the necessity of positive discrimination or quotas which many countries have introduced as one tool among others to overcome discrimination between genders. We also have to raise the question of the role and of the efficiency of the social dialogue between employers and unions within the companies because everybody knows that companies are in a way Darwinian: they select their clients and employees, and discriminate between them to retain the best. So even though the corporate social responsibility (CSR) policies which are put in place to reduce the gaps between women and men, for example in pay or opportunities, we still have a problem with the companies themselves on this point.

A last point on tools and efficiency relates to the mechanisms of redress. Independent authorities are imposed by European Law to fight against racial or sexual discrimination. Sweden has unified its laws and its previous four authorities in charge of the fight against discrimination under a new and unique Agency in charge of promoting equality. We have also to debate on the role of the judge in this area, and whether it should be it a civil judge or a penal judge. The civil path is overwhelming because it admits the presumption of unequal treatment with a beginning of proof such as testing. The penal route presents its own difficulties, because an intention to discriminate has to be demonstrated, which is very difficult to prove. This is why many countries prioritise the civil path.

So, while attempting not to pre-empt our conclusion, I would say that we need a mixture of all elements – we need laws, we need public policies, we need mechanisms of redress, we need education, in short a little of everything – in order to progress in this field.

To conclude, many interesting debates are awaiting us. The spirit of the seminar is to listen to each other in order to understand better the way we deal with all these problems in Europe and in Asia. We are not here to convince each other of the superiority of our own approaches but to examine how, given our diverse analysis and experiences, we can better implement the Universal Declaration of Human Rights in our different countries. So, I wish everybody a very frank and fruitful dialogue and I thank you for your attention.

KEYNOTE SPEECHES

- **H.E. Leila de Lima**
Secretary of the Department of Justice, the Philippines
- **H.E. Lena Hjelm-Wallén**
Former Deputy Prime Minister and Minister for Foreign Affairs of Sweden

KEYNOTE SPEECH

Her Excellency Leila de Lima

Secretary of the Department of Justice, the Philippines

Excellencies, distinguished guests, delegates and participants of the seminar.

Good evening to all of you.

Mabuhay! I knew that this is going to be an impressive assemblage of advocates for women's rights, and it is! And the wide and diverse range of subjects lined up for discourse or discussion simply overwhelms me. I am thus so honoured to be one of your keynote speakers.

We find ourselves living in interesting times. Only a week ago, the nation and the world at large, witnessed the peaceful handover of power from one Philippine administration to the next. A new President and other new leaders have assumed their offices. The difficult and complex work facing the administration has begun, that of undoing the frameworks of past abuse, of investigating criminal conduct, of visiting true accountability upon even the powerful and the wealthy, and of preventing corruption, malfeasance and human rights violations, moving forward.

At a more personal level, I find myself at an interesting moment of transition as well, from my previous role as the Chairperson of the Commission on Human Rights (CHR), to my current one as the Secretary of the Department of Justice (DOJ). I wear a different hat now, and the mandate and functions which define my position have changed, but what hasn't changed is my conviction in the absolute need to ensure that human rights are respected, protected, promoted and fulfilled in the Philippines. That is a belief I take with me into the halls of the DOJ, and which I hope will further spread within that institution.

The convictions I have developed and fostered during my abridged tenure at the CHR are nothing esoteric, beyond the ordinary comprehension on any person. They are simple convictions, shored up and strengthened by direct engagements with people who share in the same beliefs – to be upstanding persons and citizens, to obey the intent and spirit of the law and to give every person what is due them. It is people from the ranks of the marginalized, displaced, kidnapped, from the families of the missing, terrorized and intimidated, and all those who seek justice for themselves and their loved ones, that I have been moved. It is

from persons such as yourselves, human rights advocates and defenders from all walks of life, all over the globe, engaged in all forms of human rights protection that I had seen the resolve and fortitude to overcome the imperfections of government, the indignation that fellow Filipinos suffer, and the robbery of human rights. It is from persons such as yourselves that I had seen the vitality of civil society, the yearning of people to be free and secure in their rights.

And it is from all of you whom I had encountered, the victims and the advocates, that I bring with me the extraordinary mandate to shape the DOJ into the institution that it can be, a protector of human rights through justice. Change is definitely on its way all across the government sector, under the direction of our President, and I am certainly on board with this change, to deliver every ounce of justice for the purpose of securing the very rights upon which our country is founded.

Before I proceed, allow me to thank the men, women and institutions, whose efforts have made this important event possible. Let me specifically thank the French Ministry of Foreign Affairs, the Raoul Wallenberg Institute and the Asia-Europe Foundation, for bringing this 10th Informal Seminar to life. Special thanks, too, to Madame Ambassador Rosario Manalo. Let me also thank the many participants who are here, and who bring to the table experience culled from all around the world, and from many diverse organizations. You are the engine which powers this event, and the overall success of this gathering will result in large part from your efforts and from your contributions of expertise. Thank you all again for being here. Finally, thank you, for those of you who have steadfastly worked with the CHR in the past, from the alliance of human rights advocates from all over. The insights and efforts in human rights that you have shared with us are part of the larger movement that drives a renewed consciousness and campaign to strengthen human rights. Thank you.

On the theme of human rights and gender equality, one of the most significant legislative developments to occur in the Philippines, is the recent passage of the Magna Carta of Women in 2009. This law embodies a number of major strides, in favour of the human rights of women. At the same time however, a whole host of challenges remain.

First, let me go through some of the positive aspects of this law. At a more general level, the Magna Carta provides that the State, as the primary duty-bearer, has the obligation not to engage in discrimination or violate the rights of women. It must also protect them from violations carried out by private corporations, entities and individuals. The State must promote and fulfil the rights of women,

in all spheres. The law also calls on the private sector, society in general and all individuals, to contribute to the recognition, respect and promotion of the rights of women.

The law then goes on to identify more specific measures. With respect to issues of political rights and political empowerment, the law provides that the State will undertake temporary special measures aimed at accelerating the participation and equitable representation of women. Over the next five years, the number of women in third level positions in government must reach 50%. At least 40% of the membership of development councils, at the regional, provincial, city, municipal and barangay or village levels, must be composed of women. And women's participation must be ensured in decision and policy-making government bodies at all levels. So for instance, the participation of grassroots leaders is required in the Presidential Agrarian Reform Council, the National Commission on Indigenous People, the Presidential Commission for the Urban Poor, the National Anti-Poverty Commission, and more.

Many of the law's provisions also touch on civil status and economic empowerment. The principle of equality before the law is bolstered by a provision which requires the State to review and when necessary, amend and/or repeal existing laws which discriminate against women, within the next three years. In certain cases, a special benefit exists to provide two months of leave with full pay, to women following surgery caused by gynecological disorders. The law also expressly provides that men and women shall have the same rights to enter into and leave marriages or common law relationships, to freely choose a spouse, to decide on the number and spacing of their children, to freely choose a profession or occupation, to own, acquire, manage, administer, enjoy and dispose of property, and to acquire, change or retain their nationality.

The Magna Carta also pays particular attention to marginalized sectors. These sectors include small farmers, rural workers, fisher folk, the urban poor, workers in the formal and informal economies, migrant workers, indigenous peoples, the Moro, children, senior citizens, persons with disabilities and solo parents.

The law also identifies what it calls, "women in especially difficult circumstances," who include women subjected to sexual and physical abuse, illegal recruitment, prostitution, trafficking, armed conflict, detention, rape, incest and other similar circumstances. The law provides for services and interventions aimed at addressing their plight, such as protective custody, medical services, counselling, legal services, livelihood and job assistance, financial assistance and more.

With respect to cultural practices and social empowerment, a number of provisions of the Magna Carta stand out. The law provides that the State must adequately and appropriately revise gender stereotypes found in educational materials and curricula. Gender-sensitive language must be used at all times. Teachers and individuals involved in the education sector are to be provided capacity-building on gender and development, as well as human rights. The law also prohibits the practice of expelling or preventing the re-admission of women faculty members or students, merely because they became pregnant outside of marriage.

The law also provides that the State will recognize and respect the rights of Moro and indigenous women to practice their own culture and traditions, provided that these are not discriminatory to women. The Magna Carta also has a provision relating to the media portrayal of women, with the aim of raising the consciousness of the general public, with respect to the dignity of women and their contribution to society. So for instance, the Implementing Rules of the Magna Carta provide that the Philippine Commission on Women will formulate media guidelines, aimed at preventing the discriminatory, demeaning or derogatory portrayal of women, in advertisements, shows and programs.

Finally, with respect to gender-related violence, the Magna Carta puts certain protective measures in place. Violence against women is defined to include physical, sexual, psychological and economic violence, battering, dowry-related violence, marital rape, other traditional practices which harm women, sexual harassment and intimidation, trafficking, prostitution and more.

The law provides that over the next five years, the police force, legal services and social work services, must have at least 50% of their personnel composed of women. All government personnel involved in the protection of women must undergo training on human rights and gender sensitivity. Furthermore, a Violence Against Women Desk will be established in all barangays, which are the smallest and usually the most accessible political units of the Philippines.

It is clear that the Magna Carta contains many provisions which, if implemented effectively, will result in improvements for the state of the rights of women in the country. But that has always been the big “if” with respect to Philippine laws. Will the provisions and protections of the Magna Carta be translated into reality? Will these changes actually be felt by the women and men on the ground? Or will the status quo remain so firmly entrenched that the aspirations embodied in this law, will eventually wither on the vine?

Effective implementation has always been a primary challenge with respect to any Philippine human rights law. The sad reality is that over these many years, a culture of impunity has taken root, and those roots now run very deep. Laws have been ignored or flouted. Meaningful accountability has often seemed more like a distant dream or a shimmering mirage, instead of a demandable right. The test of the Magna Carta and its Implementing Rules will revolve around whether we will in fact witness a decline in violations of the rights of women, a decline in the violence to which they are subjected, and a decline in the amount of discrimination which exists, both overt and subtle.

To aid in this regard, the Magna Carta designates the Commission on Human Rights (CHR) as the Gender and Development Ombud. The CHR is tasked with investigating complaints of discrimination and violations of the rights of women, as well as implementing relevant programs and activities. From my two years at the CHR, I know that the fine men and women of the CHR will exert their utmost efforts, in order to operationalize this investigative mandate.

Again, beating back impunity and providing meaningful accountability are the key challenges we face. This is true with respect to the Magna Carta, as well with respect to our advocacy on behalf of the rights of women, in general. I believe that we at the Department of Justice (DOJ) are positioned to make a meaningful contribution in this regard.

It is the DOJ's mandate to uphold the rule of law. It is its mission to deliver justice, throughout the land, to all Filipinos. But for far too long, this mandate has been made a mockery of. For far too long, much of what is claimed to be justice has been dispensed on the basis of largesse, power and influence. For far too long, the many honest and upright members of the DOJ establishment have laboured in the shadow of those with no scruples and without integrity.

This is, however, a time of transition, away from the dismal state of years past. It is a time for the DOJ to strive to earn the respect of the wider community, by implementing reform and more effectively wielding our investigative and prosecutorial functions. It is the time to begin the process of providing true and complete justice for all. And as we work on these changes, we intend to play our part in the effort to protect the human rights of women in the Philippines.

We are focusing on the problem of human trafficking, an issue which disproportionately affects women and girl-children, not just in our country but in the wider region and world. On a related note, we are currently studying

a resolution issued by the previous Justice Secretary, which dropped human trafficking charges against 15 personnel of the Bureau of Immigration. Once we review that decision, we will act accordingly.

What is key, however, is that a clear message must be sent to all those who have, who are and who would engage in human trafficking. The DOJ must act so that human traffickers will know that their activities will bring down on them the full force of the investigative and prosecutorial power of the DOJ, as well as of the entire government. The profits from trafficking can be huge, and in the past this may very well have allowed wrongdoers, to evade prosecution through bribery. This practice must be eradicated. This evasion of justice must be brought to an end. Only when the threat of prosecution and conviction becomes all too real will human trafficking truly begin to abate.

The DOJ is also in a position to strengthen the rights of women, by engaging in more effective prosecutions and by raising its conviction rate, which currently stands at a mere 18%. This low rate of conviction ripples throughout our justice system, so that the prosecution of rapes, beatings, sexual harassment, and other violence carried out against women and girl-children, all these face a fairly low probability of success. Far too many perpetrators get off scot-free. This is precisely how not to end the culture of impunity. This is precisely what will need to change so that individuals will think twice before they beat their wives, harm their children, abuse their colleagues, or lay in wait for a stranger to pass.

We are focusing much attention on the Maguindanao massacre, where dozens of civilians, many of whom were women, were brazenly murdered. We are also looking into the case involving the murder of Ruby-Rose Barrameda-Jimenez. These cases and others like them, however, are only the tip of the iceberg. The challenges we face, as we work on behalf of the rights of women, are huge. There are the sheer number of cases, the entrenched corruption and impunity, and the economic, social, cultural and other factors, which allow violence, abuse and discrimination to thrive and spread. All these must be dealt with and soon.

Everything that can be done in advancing women's rights and the Magna Carta are in perhaps the most fluid of times, where the ordinary challenges, such as implementation and enforcement, are not supported by a standing ambivalence towards human rights. On the contrary, now is the best of times to test how far forward we can go in advancing these rights, given that there is an official governmental policy to re-train our eyes towards human rights protection and enforcement.

The atmosphere is different now. If human rights violations have not dramatically improved yet, though hardly anything changes overnight, at the very the least platform upon which we are poised to create change is firmly in place. It is not only in the human rights fields of anti-corruption and extrajudicial killings, but in every conceivable realm of human rights where the major leaps in protection and promotion can be undertaken. Advancing women's rights is very much an opportunity to be taken in these times. While I am no longer a part of the CHR, trust that in the DOJ, I will always be your staunch supporter where justice aids women's rights.

We look forward to the discussion and dialogue which will take place over the coming days. If we are to truly make the Philippines a country free from large-scale discrimination, and the violations of the rights of women, then we must face off against these formidable challenges with an equally formidable alliance, with dedicated members drawn from all sectors of society. May your deep and diverse expertise help the Philippines, as well as the wider region, chart a more effective way forward for us all. And may this gathering further strengthen our existing partnerships, as well as pave the way for new ones.

Thank you very much.

KEYNOTE SPEECH

Her Excellency Lena Hjelm-Wallén

Former Deputy Prime Minister and Minister for Foreign Affairs of Sweden

Distinguished participants,

I am delighted to participate in this 10th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights. Being one of the initiators to these dialogue seminars I am delighted to address you. On the occasion of the first meeting of ASEM Foreign Ministers in Singapore in February 1997, I as Swedish Minister for Foreign Affairs together with my French colleague, Hervé de Charette, suggested that informal seminars on human rights should be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues

The Asia-Europe Meeting dialogue addresses political, economic and cultural issues, with the objective of strengthening the relationship between the two regions, in a spirit of mutual respect and equal partnership.

The origins of the ASEM process lay in a mutual recognition, in both Asia and Europe, that the relationship between the two regions needed to be strengthened, reflecting the new global context of the 1990s, and the perspectives of the new century. In July 1994, the European Commission had already published “Towards a New Strategy for Asia”, stressing the importance of modernising EU’s relationship with Asia, and of reflecting properly its political, economic and cultural significance. The Commission Communication “Europe and Asia: A strategic Framework for Enhanced Partnerships” reaffirmed this objective.

The initial ASEM partnership consisted of 15 EU member states and 10 ASEAN member states plus China, Japan, Korea and the European Commission. ASEM saw the first enlargement at its Fifth Summit in 2004 in Hanoi, where the ten new EU Member States (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and three new ASEAN countries (Cambodia, Laos and Myanmar) were officially parts of the process. The subsequent round of enlargement in 2007 brought in Bulgaria, India, Mongolia, Pakistan, Romania and

the ASEAN Secretariat, increasing the grouping into a total of 45 partners and I'm informed that a further enlargement is due next year with Russia, Australia and New Zealand as possible new members to the group.

The Informal ASEM Seminar on Human Rights has proved to promote ground-breaking government-civil society dialogue parallel to ASEM priorities. This is achieved by bringing together government officials, academics and civil society participants of the forty-five ASEM partners.

It is fair to conclude that over the years the seminar series has developed from targeting quite easy topics to focusing on more difficult topics, thus paving the way for an in-depth discussion on the actual domestic implementation of human rights standards or lack of implementation. The participants have a better understanding of human rights issues in their respective region specific context. The relevance of the seminar series is also demonstrated by the fact that the ASEM political dimension of the seminar series has been more accentuated in recent years and member states tend to upgrade their participation.

The level of discussion has indeed increased over the years. The seminar series has established itself as one of the more important Asian-European government-civil society platforms to further the understanding, development and implementation of human rights standards in the two regions. The seminar format makes it possible for a serious and non-confrontational exchange of ideas between government and civil society paving the way for increased interaction on regional and domestic level of the issues at hand.

By targeting pertinent human rights issues, the work and importance of the seminar series has also been recognised in two recent high level ASEM meetings (Chairman's statement, 7th ASEM Heads of State Meeting, Beijing October 2008 and Chairman's statement, 9th ASEM Foreign Minister's Meeting, Hanoi, May 2009). The results of the proceedings have also been disseminated in various universities both in Asia and in Europe by lecture series organised by ASEF.

Equality is the cornerstone of every democratic society which aspires to social justice and human rights. In virtually all societies and spheres of activity women are subject to inequalities in law and in fact. This situation is both caused and aggravated by the existence of discrimination in the family, in the community and in the workplace. While causes and consequences may vary from country to country, discrimination against women is widespread. It is perpetuated by the survival of stereotypes and of traditional cultural and religious practices and beliefs detrimental to women.

Efforts to document the real situation of women worldwide have produced some alarming statistics on the social and economic gaps between women and men. Women are the majority of the world's poor and the number has increased since the mid 70's. Women are the majority of the world's illiterate. Women in Asia and Africa work more hours a week than men and are mostly unpaid. Worldwide, women still earn less than men for doing equal work. Women's unpaid housework and family labour, if counted as productive output in national accounts, would increase the measure of the global output significantly.

The concept of equality means much more than treating all persons in the same way. Equal treatment of persons in unequal situations will operate to perpetuate rather than eradicate injustice. True equality can only emerge from efforts directed towards addressing and correcting the inequalities in society. This broader view of equality must become the underlying principle in the struggle for recognition of the human rights of women.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly in 1979 and entered into force 1981. The Instrument sets out, in legally binding form, internationally accepted principles on the rights of women which are applicable to all women in all fields. The basic legal norm of the Convention is the prohibition of all forms of discrimination against women. This norm cannot merely be satisfied by the enactment of gender-neutral laws. In addition to demanding that women be accorded equal rights with men, the Convention goes further by prescribing the measures to be taken to ensure that women everywhere are able to enjoy the rights to which they are entitled. The CEDAW Convention is one of the most ratified of the UN core human rights conventions. More than 180 states have ratified the convention. Notable exceptions are USA and Iran. The sad fact is however that it is also the convention to which states have filed most reservations.

Equality of rights for women is a basic principle of the international community as well as nations with very few exceptions. The preamble of the UN Charter sets as a basic goal "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" Furthermore, Article 1 of the Charter proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all people "without distinction as to race, sex, language or religion".

We will at this seminar focus on discrimination against women. But we should remember that there is another group of both men and women – the LGBT persons – that also needs our attention. Lesbian, gay, bisexual and transgender people are heavily discriminated against because of their sexual orientation and gender identity. In many countries and within the International Human Right system steps have been taken ensuring LGBT persons' protection from discrimination. This work must continue.

Back to CEDAW. To combat gender-based discrimination, the Convention requires State parties to recognise the important economic and social contribution of women to the family and the society as a whole. It emphasizes that discrimination will hamper economic growth and prosperity. It also expressly recognizes the need for a change in attitudes, through education of both men and women to accept equality of rights and responsibilities, and to overcome prejudices and practices based on stereotyped roles. Another important feature of the Convention is its explicit recognition of the goal of actual equality in addition to legal equality, and of the need for temporary special measures to achieve that goal.

The Committee on the Elimination of Discrimination Against Women is the body of independent experts that monitors the implementation of the Convention. Countries who have become party to the treaty are obliged to submit regular reports to the Committee on how the rights of the Convention are implemented. The Committee considers each State party report and addresses its concerns and recommendations to the State in the form of concluding observations. The Committee also formulates general recommendations and suggestions directed to States and concerning articles or themes in the Convention.

Ladies and gentlemen, dear friends,

Sweden usually has a fairly good track record when it comes to gender and equality issues. It is worth noting that the recent examination of Sweden's compliance with the CEDAW-Convention resulted in a number of concluding observations pertaining the finding by a commission of inquiry that Swedish Constitution is gender-blind and not gender-sensitive and that the concept of equality in the Constitution is not in line with the Convention. The Committee further noted with concern the lack of judicial reference to the Convention. I am happy to tell you that we have tried to improve this when we made changes in our Constitution according to a decision by the Swedish Parliament a month ago.

The Committee acknowledged Sweden's elaborate system of gender mainstreaming at municipal, regional and governmental level, but raised concerns that the plan lacks effective monitoring and accountability mechanisms including sanctions for non-compliance.

The low percentage of women in high-ranking posts particular in the academia was noted with concern as well as the low representation of women in top management positions and on boards of private companies.

The high level participation in of women in the labour market and measures taken by Sweden in support of such participation was commented upon. These schemes (comprising 13 months of parental leave with at least a two months exclusive quota for fathers) enable both women and men to reconcile work and family life. When the parental leave scheme was introduced in 1974 very few fathers used it. In 1991 the share of father on leave was around six percent. According to a recent article in the International Herald Tribune eight in ten fathers now take a third of the total months of leave and nine percent of fathers take 40 percent of the total or more.

Finally the Committee noted the absence of sufficient information and statistical data necessary for a more systematic approach concerning violence against women, the prevalence of prostitution and women with disabilities.

My last issue is sexual violence in conflict. Rape during conflict is a war crime and a serious violation of human rights and humanitarian law, and has received widespread condemnation. However, sexual violence during conflict remains vastly under-addressed due to weak national mechanisms for protection and judicial redress and inadequate health and social support services. Many still view sexual violence as an inevitable, if regrettable, consequence of conflict and displacement – an attitude which encourages impunity for perpetrators and silences survivors. Sexual violence in conflict and impunity for perpetrators' crimes are amongst history's great silences.

Although a range of governmental, non-governmental and international initiatives to address sexual violence are being implemented, the scale and complexity of the problem, coupled with coordination challenges, has meant huge gaps in the response. In September 2009, the UN Security Council adopted Resolution 1888 on Women and Peace and Security, which demands that all parties to armed conflict take immediate action to protect civilians, including women and children, from all forms of sexual violence. The Council also urged greater measures

by States and the UN to end sexual violence in conflict. Attempts to end and respond to sexual violence must protect and promote women's rights, as well as empower women.

Good practices and existing programmes addressing sexual violence must be reinforced and strengthened. I'm happy to note that a fellow Swede and a friend of mine, Margot Wallström, has recently been appointed as the Secretary-General's Special Representative on Sexual Violence in Conflict. But it is sad to note the necessity for the task. Women are often leaders in the drive to end sexual violence and to secure peace. Their voices must guide advocacy and programming efforts. The constructive involvement of men and boys is also vital to help prevent and respond to sexual violence in conflict.

Friends,

These were some reflections about the many issues that will be discussed during our seminar days. I hope we will have a fruitful dialogue.

SEMINAR REPORT

- **Ms Mary Shanthi Dairiam**
Member of the Board of Directors
International Women's Rights Action Watch Asia Pacific

SEMINAR REPORT

Ms Mary Shanthi Dairiam

Member of the Board of Directors
International Women's Rights Action Watch Asia Pacific

Executive Summary¹

The 10th Informal ASEM Seminar on Human Rights, held on 7th to 9th July 2010 in Manila, The Philippines, marked an auspicious point in Asia-Europe dialogue on the subject of Gender Equality. Not only did 2010 see the creation of “UN Women”, the UN entity for gender equality and empowerment for women, but Seminar also coincided with the launch of the Implementing Rules and Regulations of the Philippine Magna Carta for Women. The participants from Asia and Europe included official representatives from the ASEM partners – among them human rights diplomats, and high-ranking officials from national gender equality agencies and human rights institutions – as well as civil society participants from the academe, research institutes, NGOs focused on women's rights and gender discrimination, and other relevant groups.

The discussion at the Seminar focused on four themes under the broad heading of Human Rights and Gender Equality, namely: political rights and political empowerment; civil status and economic empowerment; cultural practices and social empowerment; and gender-related violence. The thematic discussions addressed both cross-cutting issues common to all themes, as well as issues specific to the four themes. The summary given below consolidates these discussions.

¹ The Main Rapporteur of this Report is Ms Mary Shanthi Dairiam, Member of the Board of Directors, International Women's Rights Action Watch Asia Pacific. The Working Group Rapporteurs, Ms Erika Kvapilova, Ms Naoko Otobe, and Dr Malgorzata Olimpia Gorska, also contributed to this report. This Report reflects the views and opinions as expressed by the participants, particularly in the four Working Groups of the Seminar, as a collective exercise. Furthermore, the authors gratefully acknowledge the contributions of all seminar participants.

Legal Framework

- Gender equality and women's rights are universal human rights upheld by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international legal instruments on human rights and gender equality. Cultural diversity, which is often cited to justify non-compliance, does not change the universality of equal rights, though there is diversity among women and also among cultures.
- At the regional level, participants indicate that CEDAW is not fully utilised by governments and gender equality advocates in the EU. EU treaties and directives on equality are limited in their applicability as they focus mostly on employment and social protection or trafficking. In Asia, CEDAW is more highly relied upon but there are several reservations on key articles. Reservations reflect prevailing social values and are an expression of power structures in society. In the Association of Southeast Asian Nations (ASEAN), there is no regional framework on human rights although there is a newly-formed ASEAN Inter-governmental Commission on Human Rights and a Commission on Women and Children. At the national level, the enforcement of laws remains weak due to weak institutions, lack of political will and inadequate technical competence.

Gender Inequality

- While globalisation brings many benefits, global economic distress is an impeding factor to gender equality. There remain high barriers to women – especially the poor – to employ legal remedies for the resolution of discrimination cases. Among these impediments are the related costs as well as social stigma. Though progress has been made, the persisting ideology of 'men-as-bread-winners' and gender stereotyping are the key causes of slow progress in achieving gender equality in the world of work in many countries.
- Gender inequality persists in varying degrees – for example, in pay gaps, occupational segregation, part-time work, precariousness or informality – despite legal equality in all countries. In many cases, women's civil status and having children negatively impacts on women's employability and ability to reconcile work-family balance. There persists widespread inequality of women's access to social security benefits due to women's disadvantaged position in the labour market and, in many instances,

women's civil status. The extent of maternity, paternity and parental leave coverage and practice differs widely across countries – there is a need for increased participation of men in 'unpaid care work'.

- Gender mainstreaming was a process used in many countries, and gender equality laws have been adopted in numerous countries in Asia and Europe. In terms of political participation, temporary special measures (also known as 'positive action') such as quotas are in place to increase the representation of women in parliaments and other bodies. However, a debate persists: there was no full consensus on whether this should be on a voluntary basis and left to political parties or whether this should be legislated. Furthermore, there is an objection that positive action goes against the principle of non-discrimination, although the principle of temporary special measures is included in CEDAW and the EU treaties as a right and as essential to achieving *de facto* equality.

Vulnerable Groups

- The situation of marginalised women such as rural, poor, irregular workers, indigenous women, the disabled and LGBTs² (lesbians, gays, bisexuals, transsexuals) needs special attention. The human rights of LGBTs are violated because of the gender-based discrimination similar to that which women face. There is no adequate legal framework for protection against discrimination based on sexual orientation.

Gender-related Violence

- Gender-related violence includes violence perpetrated against women because of their gender and because of their sexual orientation. Laws on violence against women must be based on human rights principles of the universality and inalienability of all human rights.
- Cultural practices, prejudices, a patriarchal value system and a culture of silence perpetuate violence against women. Societal attitudes prevent the adoption of effective laws, the enforcement of existing laws and the claiming of rights by women. Violence against women and impunity for such violence are, together, the greatest impediment to equality.

² The term "LGBT" is used in the report as a common term, which does not exclude "Intersex" category included in the definition of the term "LGBTI"

- Honour killings and other forms of harmful practices such as child marriage exist in Asia and among migrant communities in Europe. Governments may be hesitant to take strong action and feel the need to be culturally-sensitive.
- Laws to protect women against violence, especially domestic violence, have been implemented in many countries. Some countries have laws against marital rape. Nevertheless, formal legal remedies are cumbersome and access to justice for women is a challenge. Women may be prevented from going to court due to societal attitudes. In this context, dispute resolution may not be the answer as these mechanisms are arguably patriarchal, may question the accountability of perpetrators, and be traumatising for women. Furthermore, women are still not adequately protected against (marital) rape and proof of sexual violence requires evidence of force, which may not always be the case.
- No country in conflict is coherently implementing UN Security Council Resolution 1325, which adopts a gender perspective that includes the special needs of women and girls *in situations of armed conflict*.

The following recommendations were made on: developing legal/conceptual frameworks; putting in place programmatic measures; addressing culture, ethics and prejudicial mind-sets; and, monitoring and benchmarking.

Legal/conceptual framework

1. A multi-faceted approach is necessary to achieve equal rights. There should be full compliance with CEDAW and other international standards on equal rights, and on the use of relevant international monitoring systems to push for progress, including the use of the Optional Protocol and withdrawal of reservations to CEDAW. Many participants emphasised the continued need for national legislative reforms and specific gender equality policy, including affirmative action and setting a target number of women in both the public and private sectors.
2. Laws on violence against women must be based on two principles: accountability of the perpetrator and protection for the women. There must be a more nuanced understanding of gender-related violence to include violence against LGBTs. Sexual violence laws must require evidence of lack of consent and not lack of force; and regulation must be based on the women's human rights approach instead of protection of morality. Anti-

sexual harassment clauses must be included in all public and civil service directives. The scope of protection under hate crime laws should include grounds such as women and LGBTs.

3. Institutions could be created or enhanced. For example, a competent complaints mechanism such as an Ombudsperson's office, as some Asian and European countries have adopted, could be considered.
4. There was no consensus on whether a separate LGBT human rights framework (separate from CEDAW) or the incorporation of LGBT rights in the existing frameworks against discrimination is needed. However, authorities and societies were encouraged to accept transgender children and to consider creating a third gender category. Such measures could allow children to decide for themselves about their gender later as adults and should be accompanied by awareness-raising at all levels.

Programmatic measures

1. Relevant actors must effectively apply corporate social responsibility and promote social dialogue. For those who are outside formal employment and vulnerable, equal access to training and skills development, and credit for women should be ensured, including the learning of new technologies. Women must organise and participate in trade unions to increase their voice and representation.
2. Formal education should focus on mainstreaming human rights through various subjects rather than having a single class on human rights.
3. There is a need to build the capacity of those who are dealing with LGBT asylum seekers and to use a human rights approach.
4. Gender mainstreaming must continue to take root in public and private institutions. There should be compulsory gender sensitising training for public officials.

Culture, ethics and changing mind sets

1. Diversity need not be divisive: other cultures can help to broaden perspectives. Greater mutual understanding can be promoted by working within cultures based on interests common to all groups, such as the well-being of children.

2. Women's roles in religious practices should be promoted and facilitated.
3. Mutual reinforcement of law and ethics can be enabled; for example, the de-criminalisation of homosexuality and preventing the criminalisation of homosexuality.
4. Men must be involved in all aspects of gender issues, such as the areas of reproductive health and family planning. More space for dialogue between men and women must be created in order to discuss common issues and come jointly to decisions.
5. Civil society groups can launch media campaigns and lobby efforts to help the media challenge or change discriminatory mind-sets regarding gender roles in society.

Monitoring and benchmarking

1. Gender mainstreaming and laws to protect women must be implemented through plans for evaluation with process indicators to monitor implementation, as well as indicators of achievement to assess success. Such indicators must be both quantitative and qualitative.
2. Relevant authorities are encouraged to cooperate with statistical agencies and academia to measure progress through gender-disaggregated data gathering, analysis, and setting of indicators for benchmarking.
3. Constant research, knowledge enhancement and capacity building are necessary to influence the implementation of effective monitoring and benchmarking, and to promote good practices.

SEMINAR REPORT

A. Overview

The timing of the Seminar coincided with major developments in the international women's rights protection system. The new United Nations entity "UN Women" was established as a result of the UN effort to set up a more responsive gender architecture. There were also recent legislative developments in Asia in this field, including the launch of the Implementing Rules and Regulations of the Philippine Magna Carta for Women. Furthermore, the recent and revolutionary developments in the representation of the rights of LGBT groups in the international forum made discussion of gender identity and the related rights of LGBT groups particularly well-timed.³

The overarching objectives of the seminar were twofold: firstly, to discuss ways to protect women's rights and a right to self-defined gender identity in the regions of Europe and Asia; and secondly, to share experiences and practices on women's rights protection in ASEM, while emphasising the important role attributed to the international legal framework, including CEDAW, in protecting and promoting universal human rights of women across the two regional constituencies.

The seminar specifically aimed to:

- identify challenges and foster the exchange of promising practices in ASEM relating to the protection and promotion of women's rights in all spheres of life, including the political, economic, social and cultural spheres;
- underline areas of cooperation to eliminate gender-based discrimination and gender-related violence through the strengthening of gender equality machinery at the national, regional and international level;
- formulate recommendations for relevant institutions at the national, regional, inter-regional and international levels, particularly in light of the strengthening of the international gender machinery.

³ On 19 July 2010 United Nations Economic and Social Council voted in favour of a US-led Resolution granting the International Gay and Lesbian Human Rights Commission (IGLHRC) consultative status at the United Nations.

Participants were divided into four working groups, composed of an equal mix of officials and civil society representatives from across the two regions, in order to discuss the following themes: political rights and political empowerment; civil status and economic empowerment; cultural practices and social empowerment; and gender-related violence. The thematic discussions addressed both cross-cutting issues and issues specific to the four themes.

The summary given below consolidates the discussions which took place in Working Groups 1-4.

B. Working Group 1: Political rights and political empowerment

The group reviewed and agreed upon two sets of questions: first, cross-cutting issues focusing on general (legal and policy) frameworks for women's empowerment and gender equality; second, a specific set of questions aimed at promoting women's empowerment and achieving gender equality and equity in political participation. The aim of a dialogue was not ultimately to reach agreement, but rather to hear different views and share experiences that could contribute to better understanding between Europe and Asia, as well as build bridges for fruitful cooperation in the area of human rights, and specifically women's empowerment and gender equality.

I. Relevant legal frameworks on all aspects of women's rights and gender equality, and examples of good practices in the promotion of gender equality

European participants mentioned the existence of various European Union (EU) treaties and directives (primary and secondary EU legislation) which set certain human rights standards, but do not cover all areas of women's human rights nor gender equality. In addition, application of these standards is frequently subject to different interpretations by national authorities.

The principle of non-discrimination is the most highlighted principle in the EU. It is also reflected at all levels of national anti-discrimination law. However, areas to which EU directives do not apply directly are left subject to interpretation. Political quotas discussed in this context were identified as one of the examples of such areas. Although an opinion was expressed that the existence of quotas could be a *prima facie* violation of the non-discrimination principle, other participants argued that the EU Treaty (primary EU legislation), as well as CEDAW (binding for all EU member states), allowed 'positive actions' as temporary measures to achieve *de facto* gender equality, including in the area of political participation.

Concerns were expressed about setbacks in the implementation of human rights in Europe, which can be observed in areas such as employment or trafficking in human beings, especially women and children.

Asian participants for the most part, including such countries as Cambodia, China, Japan, India and the Philippines, among others, shared their national experiences in the implementation of international human rights, underlining the non-existence of a special regional human rights framework at the ASEAN level in Southeast Asia. This was attributed partially to a great cultural, religious and language diversity in Asia. Yet, significant regional developments have been highlighted, where the ASEAN Commission on the Promotion and Protection of the Rights and Women and Girls and the ASEAN Declaration on Ending Violence Against Women guided by CEDAW have been noted as important steps in support of women's human rights at the regional level.

In addition, the important role of CEDAW in Asia as compared to Europe has been noted. It was, however, emphasised that while CEDAW is still generally underutilised by both duty bearers, such as governments, justice systems, and prosecutors, as well as rights holders, it remains an important tool for the implementation of women's human rights in Asia and Europe.

II. Reinforcement of the relevant human rights treaties, including CEDAW, through removal of the original reservations

Most of the discussion around this question concentrated on reservations that governments have against CEDAW articles and how to overcome or remove these reservations. The causes named underlying these reservations included, among others, the following: prevailing social and cultural values; economic and social development of a particular country; limited capacity of some governments, both human and financial, to implement CEDAW in full.

It was generally agreed that state parties have the right to express reservations, provided those are not in contravention of the very nature of CEDAW and are of a temporary character. It was emphasised that any reservations should be accompanied by a concrete plan formulated by the state party to ensure the temporary nature of reservations. Examples of justifiable reservations were also provided, including one specific example involving the Belgian Constitution. However, it was noted that any conflict of the Convention with national legislation shall serve as a positive impulse to adjust national legal frameworks to align it with international human rights standards.

It was also pointed out that in some cases the interpretation of ‘objective’ causes for reservations is not strongly rooted in reality and justification is very weak. Reservations can be a sign of unwillingness to implement international commitments to uphold international women’s human rights and an expression of resisting patriarchal power structures in a particular society.

All participants agreed that while overcoming state parties’ reservations against CEDAW articles, the most important mechanism is a continuous dialogue (including CEDAW Concluding Comments) among relevant parties, and, at a national level, a dialogue between NGOs and government.

III. Judicial remedies available to promote and protect gender equality, and the role of national human rights institutions in promoting and protecting gender equality

Here the participants mainly shared their experiences related to the national mechanisms in place to protect and promote gender equality. The group discussed the existence and non-existence of sufficient and appropriate mechanisms, including sanctions, in ASEM countries.

The role of ombudspersons in protecting and promoting human rights was highlighted. It was noted that this institution does not exist in all countries; moreover, its powers and coverage vary from country to country. European examples underlined the importance of this structure for the most excluded and marginalised groups of women with the limited access to justice. Also the European participants underlined the importance of regular Ombudsperson’s Office reports, shared with the general public, which play a critical role in raising awareness on gender issues and in advocating for gender equality and women’s rights.

Several participants, especially those from Asia, discussed the role of women’s organisations in monitoring the implementation of human rights and serving as ‘watch dog’ mechanisms. Some also said that serving as effective monitoring bodies, women’s NGOs need to build capacity in human rights areas. At the same time it was acknowledged that capacity development is needed also for judges, prosecutors, police and other ‘duty bearers’, as only a very limited number of court decisions have been made based on CEDAW.

IV. Emerging issues pertaining to gender equality and identity

The LBGT community was an emerging issue in the discussion of the group. The participants had some knowledge about this issue, but it was obvious that more awareness-raising on needs of LBGT is required not only among the

general public, but also among gender equality advocates both in Europe and Asia. In particular, it concerns the realisation of fundamental human rights. Some participants held the view that mixing gender equality issues, commonly understood as equality between men and women, with LGBT complicates the situation and advocacy work; LGBT rights should therefore be treated separately. A representative of the LGBT community suggested that their rights should be understood as an integral part of the existing international human rights frameworks and standards. On the contrary, another discussant contended that mixing, for example, CEDAW with LGBT rights would be wrong, as CEDAW is known as ‘women’s rights bill’ and suggested a separate human rights bill for LGBTs.

Other emerging issues mentioned included, among others: (1) the lack of funds for the implementation of gender equality commitments as a result of the global economic crisis; and, (2) migration and the possible negative implications for the human rights of female migrants. While identified by the group as relevant, these issues were not discussed in great detail.

V. Relevant statistics/trends

Some participants shared their knowledge on the collection of sex-disaggregated data in countries such as China and Belgium. In general, the participants agreed that there is a general lack of statistics broken down by sex in most areas, apart from employment and health statistics to a certain extent, which complicates evidence-based advocacy, as well as the development of adequate policies and measures aimed at closing gender gaps and addressing specific problems men and women may face. Even though such data exist in some countries, such as those in the EU for example, they are usually underused for such purposes.

Discussions highlighted the positive role of NGOs in collecting ‘soft’ data in areas where data are difficult to collect, as in the case of violence against women for instance, or do not exist at all. Firstly, such data can help to raise awareness of some human rights and gender equality issues; secondly, such data can prompt regular collection of representative data by relevant state agencies.

As far as ‘regional’ statistics are concerned, in Europe EUROSTAT collects many sex-disaggregated data sets from national statistical offices mostly related to employment, social conditions, income and demography, and which use the same methodology, so that data are comparable. In ASEAN such comparative data collection is lacking and available data are insufficient or they are lacking and problematic to gather.

The group agreed that increasingly reliable sex-disaggregated data are needed (1) to advocate for gender equality; (2) to identify areas where intervention is needed in the area of policy guidance; (3) to monitor progress towards achieving gender equality in various areas of life.

VI. The integration of a gender perspective in all levels of public and private institutions: promising practices in the effective promotion of gender equality

Several examples of good and promising practices in promoting gender equality were shared among the participants. They ranged from the Gender Equality Laws that set up gender equality structures at all levels (Belgium, Sweden, and China), to creating strong centralised gender equality structures at the highest level (Philippines).

Several participants underlined the importance of the association of responsibility for the achievement of gender equality at the highest level, which will trickle down to lower levels of executive power. Otherwise, the country runs the risk of gender equality laws left without due enforcement. While discussing positive experiences in empowering women in politics, examples were given of Greece and Norway, where women's ability to run for an office has been strengthened through targeted capacity-development actions. Highlighted in particular were the "Women Can Do It" initiative to support women in Norwegian society, and Talent Banks in Greece.

VII. Cultural practices that hinder or facilitate gender equality

The group discussed this issue through the prism of LGBT rights and perception of the LGBT as a group in society. A representative of the LGBT community stressed the importance of avoiding exclusion and of treating the LGBT group as equal citizens covered by the existing human rights frameworks, rather than treated them as a separate 'social group'. Historically both LGBT and women's movements faced similar impediments on the way to full enjoyment of rights, including the same prejudices, limited access to rights, limited access to participation, and so on, sharing experiences and support is important to overcome the underlined challenges.

Participants from both Asia and Europe shared their experiences highlighting mainly cultural shifts and changes towards increased gender equality. The shared examples included, among others, the following: (1) increase in access to education and employment for girls and women, as seen in Cambodia; (2) diminishing preference for male children over female in countries like China; and, (3) inter-family relations in countries like Poland and the Philippines.

In conclusion, it was reiterated that, despite the existing cultural differences that sometimes hinder progress towards gender equality, globalisation, economic development and demographic changes are the key driving forces for changes in behaviour, including socio-cultural practices and perceptions. Consequently, more attention should be paid to examining the role played by the aforementioned factors in the progress towards the implementation of human rights and achieving gender equality.

VIII. Issues explicitly relating to women's empowerment and political participation

The discussion around political participation did not strictly follow the questions, as outlined in the Seminar Agenda, but was cohesive with the logic of the dialogue.

The group generally agreed on the necessity of quotas as a temporary measure to be applied in order to achieve more equal political participation of men and women. The divergence in the opinions emerged around what type of quotas should be applied and the grounds for such application. Some, mostly European, participants defended constitutional and legal quotas as the most effective measure to ensure better gender balance in political structures and decision making, while many others, both Europeans and Asians, were in favour of voluntary party quotas. One European participant challenged measures based on positive action, which, in his opinion, violates the key principle of non-discrimination enshrined in all European legislation.

Examples of women's parties in Europe were also discussed as a way to promote women's participation in political life. The implications of the existence of such parties diverged in different countries. For example, in Iceland, a women's party was relatively successful and led to an increased number of female candidates on the lists of other traditional parties. In other countries such as Sweden and Lithuania, the parties were short-lived.⁴ Yet there was an indication that women's parties can play an important role as a tool to increase the visibility of female candidates, who would have problems in climbing the ladder in traditional, more male-led parties. Also, depending on the agenda, they have the potential to highlight issues that are often perceived as private, such as domestic violence, inter-family division of work, child care, and the like, and to bring them to a public arena.

⁴ In Sweden the party Feminist Initiative was formed in 2005. It has not been able to secure enough votes to get into the national parliament but is represented in regional and local government.

The majority of participants however preferred the idea of strengthening the position of women within 'mixed' traditional parties, and discussed ways to create such enabling environments through general education, party quotas, and capacity development for women, among other means.

C. Working Group 2: Civil status and economic empowerment

The group began by discussing the universality of the right to equality, before exploring reasons for the persistence of gender inequality and for the lack of progress made towards equality in civil and economic areas. This discussion took the group through effects on equality of such factors as cultural stereotyping, child care provisions, and social security, before moving on to explore possible solutions to these persisting barriers to empowerment.

The following is a summary of the key issues discussed:

I. Universality of the right to equality

There was a general consensus among the participants regarding the universality of gender equality and the equal rights of women upheld by CEDAW and other international legal instruments on gender equality, including the relevant international labour standards, regardless of culture and levels of development, while acknowledging that there was wide diversity among women and cultures. The participants also agreed that progress in advancing gender equality should be measured by the end results, not by the equality of treatment of women and men. This was because in some cases 'affirmative' action was necessary to redress the inequality resulting from past historical accumulation of discrimination.

It was generally acknowledged that there was a tendency for States to use the maintenance of culture and tradition as an excuse to tolerate discriminatory practices and persisting gender gaps. The participants were also of the view that States had obligations to their citizens, not only to protect, but also to promote equal rights for women and men. Similarly, States also have an obligation to protect the most vulnerable, in particular women, by adopting appropriate social and economic policies. The role of civil society, including NGOs, and other civil society organisations, such as trade unions and employers' organisations, as well as that of the media, was emphasised, playing the role of 'watch dog' and for promoting gender equality.

II. Persistence of gender inequality

Participants exchanged information and views with regard to the overall slow progress made in advancing gender equality in various countries, with particular focus on equal opportunities in employment. Despite the fact that the principle of gender equality and the prohibition of discrimination on the grounds of sex (*de jure*) are established in national legislation in all the countries, *de facto* gender equality has not been achieved, as gender gaps continue to persist to varying degrees. These include a lower labour force participation rate of women compared to that of men; vertical and horizontal sex segregation of occupations, perpetuating gender gaps in pay and income; and the over-representation of women in part-time and precarious forms of employment, and in informal and unprotected work, as well as the consequential poverty which disproportionately affects women more than men. In some countries, gender parity in education has been achieved, and women have even surpassed the education levels of men, including at the tertiary level. This has not, however, been translated into actual gender parity in employment either in quantity or quality.

III. Causes of slow progress

A key factor affecting the slow progress in advancing *de facto* gender equality is the persistence of stereotypes about the roles of women and men in society. The 'men-as-the-bread-winner' paradigm continues to affect women's capacity to access equal employment opportunities and occupations with higher positions and better remuneration in various establishments.

The participants noted that the ability of women to access employment and income opportunities was affected particularly when they had children. Where there was a lack of adequate and affordable social services and child care, it was difficult in many countries for working mothers to reconcile work and family responsibilities. The participants therefore suggested that States should provide or subsidise adequate and affordable child care facilities. In Asia, generally speaking, child care responsibilities remained largely with mothers and their families, often with support of private child carers, namely domestic workers.

Economic forces under globalisation have also been one of the factors impeding overall progress, as seen in the aftermath of the 2008 global economic crisis, which narrowed the fiscal space for many governments to make social provisions. This has been compounded by the increasing economic competition between countries to attract foreign direct investments, which could pressure wages downwards, for instance.

IV. Inadequate public support for maternity protection and care: a hindering factor

Maternity protection, in most countries, is by and large provided for those workers who are in formal and regular employment. As for paternity leave, the provision and lengths differ widely from country to country. The paternity leave provision was reported to be much more generous in some of the European countries, though the rate of men actually using it was far lower than ideal. The participants suggested that men should, through paternity leave provisions and family-friendly measures at work, be given greater opportunities to participate more in unpaid care work in the household. Men could be further encouraged to do so through public campaigns and other advocacy measures; for instance, using the media to change mind-sets with regard to the paternal role. The participants felt that support measures were needed in addition to legal provisions on maternity and paternity leave.

V. Social security

Generally speaking, there are gender gaps in the extent of coverage and levels of social security, given that, compared to men, women typically spend less time in remunerated work during their life time,. It was also generally noted that many women were currently out of the formal social security systems, due to the fact women tended to be engaged in more precarious or informal employment than men. In some countries, social security only covered those in the public sector, but not those in the private sector. It was suggested that a minimum social pension be provided to ensure that those women who have never been married or engaged in remunerated work do not fall into poverty.

VI. Vulnerable groups of women

The group also briefly discussed issues of vulnerable categories of women, such as migrant workers, rural, disabled, indigenous, and impoverished women, and those who were considered of lower socio-economic status, among others. Regarding the measures in place to support those who were disabled, some countries took specific measures, including the establishment of a quota in education and employment, while many other countries still had a long way to go, both in terms of promoting equal opportunities for education and employment, as well as providing the physical infrastructure to ease their mobility, especially for those with physical disabilities. As for the financially poor women and those who were self-employed, credit and training, including the use of new technologies, could be provided for their economic empowerment. The issue of lesbians, gays, and bi- and transsexuals (LGBT) was also raised. In cases where LGBT was

illegal or socially unacceptable, severe discrimination was encountered in society in general, and as a consequence could lead to total deprivation of education and employment opportunities, resulting in ultimate impoverishment.

VII. Role of international legal instruments

The participants also exchanged the experiences of their countries on the extent of concrete measures taken to implement the principles of CEDAW. While having international standards is useful, often the provisions are not fully applied at the national level, even though the countries have ratified the Convention. In one country, laws have been revised to bring them into line with CEDAW. There are a couple of countries where there is a national mechanism to follow up on the observations and recommendations of the CEDAW Committee. Where it exists, the National Human Rights Commission also has a role to play.

In most countries, a National Action Plan for Promoting Gender Equality or Development has been adopted, to follow up on the Beijing Platform for Action. In some countries, gender budgeting was used to allocate resources for taking necessary action. However, many participants felt that more work could be done to popularise and fully implement CEDAW, including the revising of laws in line with CEDAW principles. In this respect, the role of civil society, the media in particular, as a watch dog and for advocacy promoting gender equality was emphasised.

VIII. Remedial measures

As for the legal remedies to address violations of non-discrimination laws, many participants shared the view that it would take a lot of courage for an individual woman to take certain discrimination cases to the court. This was particularly true for poorer women, because of the costs involved and the stigma that might be attached to the claimant, in case of legal action. The participants were of the opinion that taking class action or going to the Ombudsperson would be easier for women. Other support measures both taken and suggested were the promoting of social dialogue on equal pay and other gender equality issues, trade union action, and increasing the membership of women in the unions. The promoting of gender equality as part of corporate social responsibility, with a reporting requirement on actual practices, was another measure suggested. However, in countries where finding a job for both women and men was already a major challenge, whether being treated equally or not, taking legal measures would be out of scope for many women workers.

IX. Recommendations

The following proposals were made:

- States that have ratified CEDAW should reform national laws to bring them fully in to line with the principles of the Convention, where there is room for improvement.
- States should promote gender equality as a universal human right, regardless of culture and tradition. These factors cannot be used as an excuse for sex-based discrimination.
- States should provide legal services for poorer members of society, so that they can seek gender justice.
- In addition to formal legal procedures, various less formal procedures should also be used to pursue gender equality, such as the use of the Ombudsperson's institution, the promoting of gender equality through social dialogue and corporate social responsibility, the strengthening of the role of trade unions, and, the increase of union membership for women.
- Affirmative action should be taken to redress the existing inequality in cases where groups are disadvantaged because of accumulated historical discrimination.
- In order to give force to the principles of CEDAW and to follow up on the Beijing Platform for Action, States should be encouraged also to establish a National Action Plan for promoting gender equality or gender and development.
- Civil society should also play a key role, not only as a watch dog, but also in disseminating and advocating for the principles of CEDAW and other international legal instruments on gender equality.
- The media should play a positive role in promoting gender equality, rather than in enforcing traditional gender stereotypes.
- States should provide for basic social services and child care to ease the burden of unpaid care work on working mothers and fathers. Men should also be sensitised and further encouraged to take up a greater proportion of unpaid care work.

- States have an obligation to provide for vulnerable persons, through the establishment of a minimum social pension, and provision of equal access to credit and training opportunities as a part of women's economic empowerment.

D. Working Group 3: Cultural practices and social empowerment

On the topic of cultural practices and social empowerment, the group decided to begin by discussing areas of good practice in ensuring gender equality, though structural change and legal frameworks. Thereafter, the group discussed specific cultural and traditional practices which perpetuate gender inequality.

A summary of the key issues follows:

1. Good practices in the promotion of gender equality, including on benchmarking progress

Participants noted that the promotion of gender equality usually begins with legislative reforms, which must be combined with effective implementation and regular monitoring. In countries where laws are not well developed, legislative reforms must codify the opinion of citizens and should be drafted in consultation with civil society, including at the local level. In countries, where laws are already advanced, the government should take a leading role to create conditions for a change in public opinion. Once the legislation is in place, it must be enforceable at all levels. In this context, it is important that the law enforcing authorities, including the judiciary, are adequately trained on gender equality issues.

Participants considered that, in order to improve the promotion of gender equality through an effective implementation of legislation and change of social attitudes, it is essential that citizens are aware of the existing laws, the rights they have under these laws, and the mechanisms for upholding these rights. Therefore, human rights education, including a gender equality curriculum, should be introduced at all levels of education. In countries where education enrolment rates are low and in areas with limited access to education, specific awareness-raising actions should be conducted at the local level, especially among grass-root communities.

The group also discussed the representation of a gender equality agenda and noted that diverse persons should act as envoys for gender equality issues. It is important that gender equality is not advocated only by selected groups, such as

women or LGBT organisations, but by a broad range of assorted movements in order to raise the importance of gender equality at the national and international levels.

Finally, the group discussed the need to benchmark progress in the promotion of gender equality. Cooperation between statistical agencies, academia and activists was identified as one example to ensure comprehensive assessment of progress. Such collaboration could be achieved through inviting activists to universities as well as involving academics in civil society work.

II. Integration of gender perspectives in all levels of public and private institutions

Participants discussed the integration of gender perspectives in public and private institutions, as well as specifically considering the integration of LGBT issues.

Participants emphasised that data and statistics should be used as an entry point to recognise problems and develop tools for better integration of gender equality issues. In this context, participants gave the example on how statistics influenced the programmes on work and family life balance, which are developed more and more frequently and which integrate gender equality in both public and private institutions. Gender-sensitive budgeting was identified as a key element for integrating gender equality among institutions. Thus, funds should be allocated into professional gender-sensitisation training of persons involved in budgeting. In addition, budgetary support for gender equality initiatives should be guaranteed; for instance, to facilitate divorce procedures. Concerning the private sector, participants saw working with companies as a key element to integrate gender equality. Companies should create their own equality plans to prevent and combat of all kinds of discrimination. However, companies should be supported in such initiatives by human rights specialists, for instance civil society organisations, to provide expertise in the development and implementation of such plans. Finally, participants noted that human rights education and awareness-raising at all levels play an important role in mainstreaming gender equality in public and private institutions.

Participants noted that integration of LGBT perspectives should be strategically adjusted to the specific context in which it is implemented. In more open environments, the integration should be carried out in a non-artificial manner and on the same footing with gender equality, as both issues are based on common sources of suppression, namely religion, culture, and tradition. At the same time, however, participants agreed that LGBT and gender equality require different solutions. In more restrictive contexts, such integration should be gradual, based

on a reasoned strategy, not to negatively affect civil society work on women's rights. In such circumstances, the support given to LGBT should be less official and more pragmatic.

III. Strengthening of the gender equality machinery through existing policies, institutions and legal frameworks at national, regional and international levels

Participants identified several general actions that must be undertaken to strengthen the existing gender equality machinery. Firstly, gender equality should always be seen as a human right, including individual claims of human rights violations. Secondly, the concept of gender equality should include all gender identities in a broad sense, such as LGBT. Thirdly, reservations to CEDAW should be withdrawn to ensure the full implementation of the Convention.

As regards specific actions, participants underlined again the need for data on gender equality to advocate for an adequate response, especially in the labour market. Some examples given by participants included statistics showing that: girls outnumbered boys in university graduation but not in the work force and particularly not at higher management positions; despite increasingly common programmes for paternity leave, in the vast majority of cases mothers still stay with children as men earn more. In addition, a 'shaming' strategy using data can be implemented as an immediate strategy. Moreover, participants considered that affirmative actions, such as quotas, are positive as long as they are applied correctly and as temporary measures that lead to change.

Finally, participants discussed actions to be taken at the international level. They agreed that the recently established UN Entity for Gender Equality and the Empowerment of Women should improve the visibility and effectiveness of the individual communication procedure established under Article 2 of the Optional Protocol to CEDAW, ratified by the majority of the member state signatories to the Convention. While CEDAW is one of the most internationally-ratified human rights treaties, and the Optional Protocol to CEDAW provides an individual complaints mechanism, the number of complaints brought under the Protocol remains rather low. Partially, it can be explained by a low visibility of the individual complaint mechanism. Currently, there is no specific and well-known website; there is little information on the complaints procedure and no relevant contact information. Consequently, in order to be effective it is important to facilitate access to the procedure for ordinary people.

IV. Cultural practices and tradition hindering or facilitating gender equality

Participants emphasised that it is not possible to overcome cultural traditions. Instead, it is important to work within culture based on common interests, such as the rights of the child. In addition, participants noted that within culturally-diverse societies, culture can be used to broaden perspectives by mixing different concepts of various cultures, and even to demolish prejudicial and extreme misconceptions.

Participants also discussed the role of women in religion as a tool to endorse gender equality. The group underlined the need to promote and facilitate women's roles in religious practices. Religious rituals and ceremonies are important; once they are opened to women, gender equality becomes more visible.

Furthermore, participants agreed that law and ethics are interrelated. Sometimes it is possible to change ethics, including attitudes, through law, for example the de-criminalisation of homosexuality or the abolition of polygamy.

V. The role of various actors, media and human rights education in the promotion of gender equality in the context of cultural practices and social empowerment

The group discussed the role that various actors play in the promotion of gender equality. Participants underlined how important it is for every individual to have the interest and the ability to make a small change in this respect. As a result of every person acting in his or her own capacity, a substantial change will follow. *In situations where an individual is powerless, there is a need for a leader who will bring about change.* Artists play an important role in subverting customs that are prevalent in society and often promoted in the media. One example of the positive influence of artists on gender equality is when female actors play roles traditionally performed by male actors. Participants also highlighted the role of movements that work to improve the cultural image of women, such as middle-aged women's movements which promote the appreciation of the female form at all ages to overcome stereotypes.

Participants agreed that the media must promote gender equality. They further underlined the need for a holistic approach to working with and through the media. On the one hand, it is essential to cooperate with mainstream media through building one's own networks of contacts, particularly with editors-in-chief, and influencing the media from the inside. Working with people and influencing their preferences on what they wish to watch is likewise required, as the media

will ultimately broadcast programmes of high popularity and good ratings. More work must be done to promote the use of gender-sensitive language by journalists.

Developing and working through alternatives is equally necessary. In this context, the internet offers various opportunities and serves as an important tool. It is important for women to be more active in making full use of it, for instance, through socio-political blogging. In countries where internet access is blocked or limited, local initiatives, including grass-root communities, should be set up.

Human rights education requires a holistic approach to both formal and informal education. In formal education, human rights should be taught at all levels, from primary to post-graduate. The majority of participants agreed that human rights should be threaded through various classes so as to demonstrate the links that human rights have with many different subjects. For example, in more restrictive contexts, human rights could be taught indirectly and linked to such classes as those on reproductive health or biology. Some participants reflected that in more open contexts, human rights could not only be mainstreamed but also taught as a separate class to give a comprehensive approach. In order to conduct human rights education effectively, further efforts are needed to adjust text books and train teachers. In addition, participants underlined the role of informal education through local information centres that work together with authorities, local police, civil society and ordinary people. Participants considered that informal programmes are a key for working with local communities.

VI. Forced marriages and discrimination based on marital status

Participants emphasised that the prevention of the phenomenon of forced marriages requires intervention by the state. It is an obligation of states to ensure that forced marriage in any form is forbidden by law. At the same time, the law must guarantee equal rights for men and women during marriage. States must also provide security for women so that economic and political inequalities do not lead women to perceive marriage as an occupation or a way to migrate across borders.

Legal guarantees must be accompanied by efforts to change social attitudes and practices. Some examples given by participants of these practices included: marriages for one night (temporary marriage based on a contract for payment), which are an entry point for sex work; young girls who get pregnant and are forced to marry in order to 'save face' based on religious rationale.

Participants gave special attention to child marriages, which is particularly common in rural areas. Children are one of the most vulnerable and disadvantaged groups as they depend on adults and are, in many societies, seen as the property of their parents. All instances of child marriages should be prosecuted without delay and the penalties should be adequately severe. This must be accompanied by awareness-raising campaigns, especially at the local community level.

VII. Equal sharing of family responsibilities

Participants noted that men must be integrated in all gender issues, such as reproductive health and family planning. A space for dialogue between women and men should be created to facilitate discussion and joint-decision making.

The group focused specifically on the issue of parental care. In Europe, paternal care is being introduced progressively in an increasing number of states. Still, not many fathers take paternity leave. Differences in wages between women and men mean that maternity leave continues to make more economic sense for families. In order to encourage men to take paternity leave, it is important to start with the basics and to ensure equal employment rights, including parity in wages.

Participants underlined the need for education and awareness-raising among men to change stereotypes. Some good practices discussed included the draft Swedish legislation pertaining to parental leave of six months' leave for *mothers*, six months' leave for *fathers*, which cannot be transferred to the mother, and an additional six months' leave for *either parent*.

VIII. Traditional practices such as female genital mutilation

Participants noted that traditional practices, such as female genital mutilation, should be addressed not only as a human right, but also as a health concern. Placing such sensitive issues in the discourse around public health would facilitate the discussion.

Awareness-raising, not just via the internet and mass media, for example, but also at community levels, is essential among all stakeholders and not only those directly affected. There must also be leaders to start bringing about such change.

Finally, participants noted that acceptance of transgender children should be widespread and that the child should be allowed to decide on their gender upon reaching majority age. In addition, participants considered many practical obstacles faced by parents of transgender children, for instance the obligation

to mark the gender while registering for health care and schooling. Thus, there is a need to create a separate category for third gender, which might be called 'neutral'.

IX. Recommendations

Good practices and benchmarking:

- Legislation must be adopted, combined with effective implementation and constant monitoring, and accompanied by adequate budgetary resources.
- Gender-sensitising training for judiciary and law enforcement agencies must be implemented.
- Mainstreaming of gender equality throughout education, starting at primary level must take place.
- Targeted interventions at local level to empower communities must be undertaken.
- Donors must focus on all groups, and not only those with capacity to apply for funding.
- Cooperation with statistical agencies and academia to measure progress through data gathering and analysis must be encouraged.
- Constant research, knowledge- and capacity-building to influence the implementation and promotion of good practices must be undertaken.

Integration of all gender perspectives:

- Statistical data and the dissemination of information must be developed as an entry point to comprehend the gaps.
- Funds should be allocated for the gender training of those responsible for budgeting.
- Integration of human rights, including gender equality, in education from primary level, as well as the dissemination of information and awareness-raising among adults is needed.

- Positive examples should be built upon, including: work-family balance, equality plans in companies, facilitation of obtaining marriage and divorce certificates.

Integration of LGBT perspectives:

- Integration must take place in non-discrimination agenda in a non-artificial manner and on the same footing with gender equality issues based on common causes of suppression, while ensuring different solutions.
- In more restrictive contexts, a more strategic approach is needed to first open the possibility for dialogue and actions and not to negatively affect work of women rights NGOs.

Actions to be taken:

- There must be a human rights-based approach to gender equality.
- The understanding of the term “gender” must be broadened to include all gender identities.
- Removal of all reservations to provisions of CEDAW must be encouraged.
- Data must be gathered in order to identify trends and find solutions.
- Access to labour markets must be facilitated.
- Affirmative actions as temporary measures should be correctly applied.
- The UN Division for the Advancement of Women and CEDAW Committee should provide more easily accessible information on the Optional Protocol Communications Procedure.

Cultural considerations

- It is necessary to attempt to work within cultures based on interests common to all groups, such as the well-being of children;
- Other cultures should be utilised to broaden perspectives; and,
- New cultural practices that promote gender equality should be created.

- There is a need to promote and facilitate women's roles in religious practices.
- Ethics can and should be altered through legal means, such as the decriminalisation of homosexuality.

Recommendations for non-traditional actors:

- Artists must be utilised as 'subverters' of stereotypes.
- Movements that change gender images – e.g. promotion of image of middle-age women – must be encouraged.
- It is necessary to work with mainstream media, both building contacts and influencing public opinion on what the media should show;
- There should be more use of alternative media such as the internet, including socio-political blogging by women, or local media; and,
- The media must promote the use of gender-sensitive language.
- Formal education should focus on mainstreaming human rights through various subjects rather than having a single class on human rights, and should cover all rights.
- Informal education should build on good practices, such as local information centres, games and work undertaken with children

Recommendations regarding traditional practices:

- Laws that prevent forced marriages in all forms should be adopted and implemented; wives and husbands must be placed on an equal footing in all respects, and this should be accompanied by a change in social attitudes.
- Particular attention must be given to children as the most vulnerable group, who are sometimes treated as the property of their parents.
- The involvement of men in all aspects of gender issues, including reproductive health and family planning, must be facilitated.

- Space must be created for dialogue between men and women to discuss common issues and make decisions jointly.
- Substitution of maternal leave with parental leave, combined with awareness-raising among men, should be promoted in addition to the promotion of mandatory maternal leave (e.g. 6+6+6 Swedish draft).⁵
- Issues such as genital mutilation should be addressed not only as a human right, but also in the context of public health, in order to open the discussion about it.
- Awareness among all stakeholders must be raised using all possible channels of communication, including within local communities, with leaders who break barriers of silence.
- There must be an acceptance of transgender children, evidenced by the creation of a third gender category and by allowing children to decide for themselves about their gender later as adults. Such measures should be accompanied by awareness-raising at all levels.

E. Working Group 4: Gender related violence

At the beginning of the session, the group identified its expectations from the discussions. The issues and challenges surrounding gender related violence would be addressed, as would the ways in which different countries approach the issues. It was also agreed that the discussions should form a space for networking, in order better to foster partnership and enhance knowledge from a comprehensive gender perspective, including women, men, and LGBT. The ultimate goal of the discussions, it was decided, would be to explore new paradigms of solutions to gender related violence.

I. General Issues

The group started with a broad discussion on relevant issues.

Violence against women is a hurdle to achieving gender equality. It is a universal phenomenon. There is no particular region or civilisation that is exclusively affected. The culture of undervaluing women exists and continues to exist

⁵ 6+6+6 is not yet draft legislation, however the issue at hand implies that each parent gets 6 months each and then it is for the parents to decide on the remaining 6-month period.

everywhere, but socioeconomic conditions can mitigate the consequences and the effects of such violence. It was emphasised that there is a need to focus on the roots of prejudice related to family, tradition, and culture. We must be aware of prejudices as they influence mind-sets. The division between the private and public spheres is artificial and there is a continuum from private to public.

The sexual exploitation of women in the media influences societal attitudes towards women and perpetuates gender-based violence. The media capitalises on what sells and young people's exposure to sexuality through the media. The stereotypical views and perceptions of gender roles in society need to be altered and there has not been change as of yet. Even though the percentage of girls attending educational institutions has increased, women are persistently perceived as being 'weak'. The State must play a bigger role in bringing about change in this area. Some participants noted that the West does not recognise the perverse effects of culture but only links inequality with ethnicity. There are also urban-rural differences in the nature of violence against women.

The group also pointed out to the difference between gender-related vs. gender-based forms of violence: the term 'gender-based' includes violence relating to woman vs. man; 'gender-related' includes violence against LGBT persons. The focus of the discussion was on gender-based violence without excluding violence against LGBT persons.

Gender-based violence law ensures that the perpetrator is held accountable, and that the protection and safety of the victim is ensured. Participants noted that in some countries the law on violence against woman is more developed and provides more progressive protection and prevention measures than in the others, including use of pre-emptive detention to prevent instances of immediate violence. For example, if a woman lodges a complaint that a man is dangerous and exhibiting signs of violence, pre-emptive detention may be used to diffuse the situation.

Two points emerged with regard to general responses against violence. First, structural violence must be addressed in terms of violence against women vis-à-vis the State. In spite of the fact that there are laws for the protection of women, there is a gap in implementation, and low intensity discrimination is prevalent. Second, laws do not self-fulfil and much effort is needed in implementation. Frameworks, benchmarks and indicators of implementation are needed for governments to implement the laws effectively, in addition to creating new anti-discrimination laws or laws on gender equality.

Women must be supported in their recourse to the law. In Bulgaria, there is an Anti-Discrimination law with 19 different grounds, the provisions of which allow for a wider scope of protection against gender-based violence than in other European countries. In practice, however, very few cases have come to court and none have been successful as the burden of proof is on the victim. Many women choose not to pursue cases for several reasons: 1) they feel ashamed and do not want to come forward publically; 2) they feel guilty, as if they provoked the behaviour; 3) there is a fear of losing the case; 4) there is a lack of legal precedent; 5) there is a fear of losing one's job and income, especially when there are few alternatives; 6) even if they win, there is an uncertainty as to what happens next, 7) they want to avoid a backlash, 8) relatives and family may not be supportive; 9) there is a belief in self-help alternatives; 10) mediation procedures tend to be a more common way of protecting privacy, getting compensation and undertaking positive reforms in companies.

II. Institutional responses and their efficacy

There are many government agencies with a specific focus on gender-based violence. The major concern remains with regard to the access of women to the assistance these agencies may provide. The most dependent women, who are in turn the most vulnerable, have limited access to these institutions and to the law. Even good structures, systems, and laws operate within a patriarchal system. One of the barriers to adequate responses to gender-based violence is the biased attitude of law-enforcement officials, including police and judges. Those who are called upon to enforce the law and to protect women from all forms of violence, such as the police do not take instances of the domestic violence perpetrated against women with the necessary degree of seriousness. State agencies are focused more on upholding the family institution and the best interests of the child rather than striving to combat gender-based violence. Often women are blamed instead of the perpetrators.

Aside from weak implementation, indicators of good implementation need to be identified. A broad range of programmatic measures must be implemented, including public awareness, sensitivity training of law enforcers, monitoring functions and mechanisms. These programs are not part of the law itself, but left to the discretion of the executive authorities. However, now there is a trend in some countries to include these programs and budgetary allocations in the law itself to make them compulsory.

It was reported that in some countries, NGO advocates, shelters, and other organisations facilitate access to justice. However, there is a phenomenon of women leaving abusive relationships, going to organisations, and then returning

to the abusive partner. In many cases, psychological counselling and support are needed to help victims gain the strength to free themselves from abusive relationships. It was also expressed that the law must protect women regardless of their choice. Sometimes women cannot afford to divorce so they feel pressured to return to abusive relationships.

In some situations, cases brought against offenders are not handled well. The media can play a role in highlighting certain cases and galvanising public opinion, keeping vigil as a watchdog while justice is sought.

The group also discussed the effectiveness of national gender equality machineries. Many felt that these institutions had low capacity, that their scope was limited, and that, in high profile cases, they still functioned within patriarchal norms.

III. Sharing of country-specific examples and promising practices in relation to violence against women

In Korea, there are many programmes for victims, including counselling and assistance (i.e. legal and medical) centres. The government provides victims, including migrant women, with temporary homes, emergency shelters or special protection facilities. There is a 24-hour hotline for women. Legal provisions exist for women and child victims of abuse under basic human rights protection from violence.

In Greece, there is good legislation against trafficking and domestic violence. Over the last five years, new laws have been passed. However there is lack of financial support to effectively apply the laws. There is insufficient monitoring and implementation, and very little data collection, especially on trafficking.

In the Philippines, there is an independent constitutional body, as well as multiple commissions, inter-agency committees and bodies specifically dedicated to women which serve policy making and implementation functions. Trafficking and violence are concerns which are being tackled. The Magna Carta for Women has been enacted. However, due to a lack of sex-disaggregated data, it is impossible to track cases separately and efficiently.

In China, more laws are being adopted, but more review is needed from a human rights perspective. There is a need for clearer definitions of the rules in order to make sure they are achieving their purported goals and that all those affected are having their concerns addressed. To stop the violence, more resources, both

human and budgetary, are needed. Also follow-up care and action are needed; moreover, capacity building of civil society is crucial. There are limits to a legal approach and all perspectives should be considered.

In Myanmar, there is a Working Group on Violence Against Women, which carries out activities to prevent violence and protect women. It has an overall state-level committee, then sub-committees all the way down to village or community level. There are counselling centres, as well as follow-up processes to address any shortfalls. The aim is to support victims as well as possible.

In Pakistan, a new bill for domestic violence has been passed by the national assembly and is currently being held up at the senate. The objective is to bring about new methods of implementation to address violence against women in the most effective way. Under a new law to obtain redress, women do not necessarily have to go through the court system but may use local level processes and mediation systems, as well as a new formation in which 'outsiders' including women are meant to be involved in decision-making, which otherwise tends to be male-dominated. Consequently, the most common outcome of both local level mediation processes and more formal legal proceedings when a case goes through the judicial system is a "send her home, reconcile" decision. These 'conciliatory' decisions do not always address underlying issues, including psychological violence.

Without a sustainable call for justice, this can ultimately result in the complainant becoming more vulnerable and even shamed through public exposure. The media play a major role, often showing women's stories to highlight the sadness of the tale and demanding justice, but there is no follow up. This can ultimately make women more vulnerable by showing their experiences and shaming them without sustained calls for justice.

There is a problem with being dependent on foreign funding. The Canadian International Development Agency (CIDA) closed its women's programs, and USAID is trying to be more culturally deferential and prioritise war-settlement as its primary target. Peace negotiations are excluding women, and accordingly new local mechanisms of resolutions are not reflecting women's concerns. The international donors have "larger problems" than women's issues, and hardly make any effort to ensure meaningfully involvement of women in rebuilding process.

In Indonesia, children who do not conform to gender norms can be persecuted, even by their own parents.

In Thailand, victims must participate in investigation and prosecution. This is a problem and can exclude trafficked women. There is also a question of the objectivity of gender monitoring bodies, since appointments could be a political patronage, rather than through demonstrated commitment to the issues.

Singapore has developed a comprehensive approach to deal with domestic violence. This includes informal mechanisms, such as mediation, reconciliation and counselling, as well as legislation to prosecute those who commit domestic violence. Examples of legislative provisions are the Penal Code and the Women's Charter. Protection orders are not unusual. If the spouse is a repeat offender, the punishment may be doubled. Since enforcement is so strong, deterrence is effective. Women can even bring husbands to court for verbal abuse. There is also a one-stop family court with medical, legal and other forms of comprehensive assistance.

IV. Issues pertaining to mainstreaming

In Malaysia, the Ministry of Women, Community and Family Development is responsible for ensuring mainstreaming. They train gender focal points in all ministries and there is an inter-ministerial committee in charge of reporting to the CEDAW Committee. However, weak political will and a lack of understanding of gender issues are two impediments to gender mainstreaming in national policies and programmes. Many bureaucrats have areas of expertise, such as trade or economics, other than women's issues, which may make it a challenge to incorporate gender equality into their area of work. While the Prime Minister sets 'Key Performance Targets' in the public sector, it is not always evident that gender links are sufficient, or that these links work well with realities of how ministries operate their departments.

In the Philippines, gender-sensitivity training has been administered all across the country at all levels of government. However, the impact of gender sensitisation at all levels has been uneven. Still, the power of example can make a big difference. If a high level official speaks about gender, it can create a trickle-down effect. Gender budgeting has to be institutionally implemented by everyone, but there are several challenges. It is unclear what programs gender budgeting will support, and there have been problems with monitoring to ensure cost-effectiveness and direct benefit for women. A newly implemented audit system has been acknowledged as successful at ensuring that earmarked finances are better used, for fear that the money will be withdrawn. Moreover, every institution must have a Policy on Decorum, which must include sexual harassment provisions. All government sectors must have executive trainings on sexual harassment. There are some problems in the private sector, though some, such as the newspaper The

Philippine Daily Inquirer, for example, have strict policies. There is also recognition of success stories – The Inquirer gives media attention to positive trends as part of their corporate social responsibility. For example, if a company gives a public statement against abuse, then the Inquirer will publish a story praising them.

In Bulgaria, national commissions, departments and action plans are in place with no substantial practical impact. The persistent changing of gender mainstreaming plans implemented by new governments every four years causes problems.

In Indonesia, LGBT issues and broader gender concerns have been mainstreamed in particular sectors.

V. The responsibility of the private sector

The group discussed the role of the private sector in promoting gender equality. It was considered that the private sector is very important because of the increased privatisation of the economy.

It was reported that, in Norway it is compulsory that women are represented at management level in the private sector, and that companies must have at least 40 % female representation on their governing boards.

In Spain, the law says that no gender shall have more than 60% participation on company boards.

In Sweden, companies were asked to implement a quota system for women. The state made clear that it was prepared to legislate on such quotas if companies did not comply. The result is that, while no mandatory limits are in place, the proportion of women on company boards today is increasing towards 50%, even though this was not the trend 20 years ago.

In Malaysia, indigenous groups have been excluded in some development initiatives. As a consequence, women are negatively impacted by private companies. Also government has relinquished its responsibilities towards these companies as there is minimal government presence in the isolated, rural, mountainous areas where indigenous people live.

In Pakistan, the privatisation of the public sector is a problem. Whereas there are more women in the ‘soft’ private sector (medical, educational), corporate sectors otherwise remain male-dominated.

VI. Specific issues regarding violence against women

LGBT issues

The group identified the need to link LGBT issues to women's protection. In Indonesia LGBT and feminist movements are interrelated. Violence has been perpetrated against 'lady-boys' because they are 'like' women. One can escape physical persecution if one behaves in accordance to the accepted gender norms.

In Pakistan, a few years ago, there was a transgender marriage where a female-to-male married a woman. Both were arrested and given jail sentences not because they broke a national law, or an Islamic law, but they were tried for perjury for false testimonies about physiognomy under oath. The case is now pending before the Supreme Court. While the Court has recognised that transgender people have legal rights, the law is silent on issue of transgender marriage. The common attitude, however, is of pity ("poor things, born like this"), but the same rights are not given to, or policies are silent on, the transgendered. The court made a recent judgment that two women could live together, because someone has to witness penetration to make it a crime.

In Malaysia, one cannot change one's gender identity on official documents. Two men or two women suspected to be in intimate relationship can be penalised. There is a growing public awareness of transgender issues, but it has not been translated into law. There are indecency/sodomy laws in the penal code. There is moral policing, and the Sharia can be used to prosecute. At present, civil society is actively mobilising around the right to sexual independence.

In Bulgaria, the right to choose sexual orientation is covered under the law and there is a legal basis for changing identity cards. The gay pride parade held in the country this year, received full political support.

Women in armed conflict

The situation of women in armed conflict continues to be a problem. During a time of conflict, women remain the most vulnerable and are particularly susceptible to physical and sexual violence. Raped women can be disowned by their families and are often recruited into the sexual services market. The UN Security Council has passed a number of resolutions to combat violence against women, but implementation remains weak. It was reported that no country engaged in war has a plan for the implementation of Security Council Resolution 1325, which emphasises the need for women to be involved in reconstruction, leadership, and the peace-building and peace-maintenance processes. This is

critical due to the particular vulnerability of women during the war and the post-conflict reconstruction. Women often cannot obtain refugee status or identity cards on their own, as they are seen as appendages of their family, and they largely do not have the skills or mobility to network. Positive examples of the participation of women being built into the peace and reconstruction processes are Nepal and Rwanda. Participants were reminded that Security Council Resolution 1325 was to celebrate its 10th anniversary on the 30th of October 2010. The group also pointed out that the dynamics of violence against women in peace and war situations must be addressed.

Sexual harassment

The group agreed that there is a problem in the context of harassment. The majority of women work in the informal labour sector, therefore not within a formal corporate structure. Moreover, cases do not, in general, make it to court, and there is a lack of incentives for the victims in this regard. Even those who should be champions of workers' rights, such as trade union leaders, may maltreat women.

In Malaysia, there is a code of practice for the public sector, with respect to sexual harassment in the workplace. The private sector was asked to adopt it as well, but less than 3% have done so. The move towards having a bill on sexual harassment was obstructed by active lobbying on the side of the employers.

A general recommendation was nonetheless made by participants on the need for effective policies and regulation to address the issue of sexual harassment.

Prostitution and trafficking

The group agreed that violations of the human rights of trafficked persons and the exploitation of women through prostitution caused by poverty need to be addressed in the context of gender-based violence. Spain, for instance, has passed a law and action plan on trafficking. While some participants highlighted examples of the legalisation of prostitution as a good practice, others argued that regulating prostitution as a form of employment may be incompatible with a human rights perspective.

Trafficking is a serious trans-boundary crime and cross-border cooperation to combat trafficking is crucial. It was pointed out that the relationship between ASEAN and EU countries is important to combat the problem of the sexual exploitation of women.

Women do not report sexual assault because of a fear of being deported should they lodge any complaint. In this context, the protection of victims, including safeguards in immigration law, are critical. In order to deter the organised sex market, it is important to criminalise those who buy sexual services. On the other hand, victims face procedural challenges, such as proof of trafficking, in accessing asylum. Moreover, participants raised concerns that assistance given to victims was dependent on criminal procedures. They were also concerned about the protection of victims and witnesses during these procedures.

Another aspect is to operationalize rights across borders and distinguish between those who have agency and those who are trafficked.

Information technologies are important tools for recruitment in the field of trafficking. This is an under-legislated area. It was pointed out that special police task forces are needed to monitor illegal activities on the internet, rather than trying to control them through censorship. The monitoring of online (or ICT) activities can be challenging.

The group agreed that labour trafficking is also an issue, not just trafficking for sexual exploitation. Furthermore, concerns were raised about the treatment of victims in 'protection' centres. In this regard, participants referred to the Ten-Point Plan of Action on Refugee Protection under the UNHCR as a good policy direction.

Forced marriages and honour killings

Participants agreed that there was a need to have a law on forced marriage and other harmful or criminal practices such as honour killing. In many of these cases women are viewed as property, and there is a desire to control women's sexuality and virginity, and because of heteronormativity. There was no agreement on the need for a specialised law (*lex specialis*), but laws on murder should be used if there is a killing.

Underage marriage is recognised in religious forums, even if formally not recognised by the government. In Malaysia, civil society groups, including Muslim women's groups, hope to transform cultural practices. These are dynamics which are not inevitable and can be changed regardless of religion. Thus, in the event that young girls in migrant communities are taken to 'home' countries for marriage, embassies should intervene. Girls are isolated in these migrant communities and this practice is wide-spread. A more proactive stance is needed to intervene in order to extend protection.

States refrain from interfering in minority group practices. Governments have no structured policies to address harmful cultural practices, including those of forced genital mutilation, which should be looked upon as inflicting torture and damage to health.

In France, debate on religious symbols in the classroom presents a complex issue of the social inclusion of migrants. There is no intention to exclude young girls who wear the headscarf for religious reasons, for example, from public education, rather the intention is to maintain secular values.

VII. Recommendations:

Governments are encouraged to work with civil society to ensure, in particular, that policies are formulated with NGO input, and that laws are implemented effectively. Furthermore, there is a need for the following:

- The benchmarking of progress, by developing good indicators to monitor implementation and to mark the results of laws and policies;
- The development of a checklist of quantitative and qualitative factors needed for the effective implementation of laws and policies.
- Gender mainstreaming to be used in the formulation of policies, indicators and plans to be developed for auditing, and follow-ups to monitor and evaluate these policies;
- The development of strategic plans for capacity-building in gender mainstreaming;
- Sexual harassment clauses to be included in parliamentary and civil service sector standing orders;
- Trainings in gender sensitivity and mainstreaming to be made compulsory;
- Governments to integrate international obligations into policies and practices;
- Countries engaged in war to implement effectively Security Council Resolution 1325 on women, peace and security, through the adoption of related action plans;

- The 10th anniversary of Security Council Resolution 1325 and the role of women in peace processes and reconstruction to be highlighted;
- A human rights approach to be taken to domestic violence laws, ensuring the accountability of perpetrators and the protection of victims. Conciliation and dispute resolution methods need not be made mandatory;⁶
- The abolition of references in criminal law to morality instead of women's human rights in cases of sexual violence, and rape to be regulated based on the lack of consent instead of the use of force;
- A strengthening of sex-disaggregated data collection on domestic violence, both on prevalence, and on the response of the criminal justice system;
- Trainings for professionals and cooperation with civil society, for cases of domestic violence;
- The interconnection between research and practice to be strengthened;
- Close cooperation between and among countries of origin, transit, and destination to be established in addressing trafficking;
- State enforcers to be more proactive in gathering evidence;
- Assistance to victims of trafficking not to be conditional on criminal procedures in place;
- Honour killings to be treated as no less than murder; and,
- Procedural and implementation provisions (allocation of budget, training, monitoring mechanism of implementation etc.) to be included in the content of laws, so it is not left to the discretion of the executive authorities.

⁶ While participants agreed on the need for conciliation and mediation, the UN Handbook for Legislation on Violence Against Women states that laws should explicitly prohibit mediation in all cases of violence against women. See <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm#handbook>

With respect to LGBT issues, it is recommended that:

- Sustained and concerted change to societal attitudes be made complementary to any legal reform through public education/awareness campaigns;
- The development of a more nuanced understanding of gender related violence;
- Rights of LGBTs to be incorporated into gender frameworks explicitly acknowledging that discrimination against LGBT is sexual discrimination subsumed within the marginalisation that women face;
- Legal reform advocacy to be undertaken in order to both decriminalise homosexuality and prevent its criminalisation;
- The scope of hate crime law to be expanded to include of women and LGBTs.

F. Concluding Observations

The seminar addressed a wide range of issues pertaining to gender equality and women's rights. While the discussion focused specifically on the international human rights of women, questions relating to gender identity were also raised, including the rights of a wider scope of right-holders, in particular LGBTs. The themes and cross-cutting issues discussed demonstrated the universality of approach to international women's rights and a common understanding of the nature of rights, both by the European and the Asian participants.

Furthermore, there has not been a divergence in relation to the substance of rights, as state in the UN Convention on the Elimination of all Forms of Discrimination Against Women. It was emphasised that a broad-spectrum of policy measures at the national, regional, inter-regional and international level are required to tackle all manifestations of inequality. Participants noted that the core of gender-equality policy includes an effective legal framework and functional gender equality institutions or mechanisms. This must be coupled with a change of traditional attitudes towards gender and of perceptions embodied in culture, religion and social practice which are so frequently used as a justification of gender-related violence and discrimination.

The work of the thematic groups and the final plenary session demonstrated the commitment of all the participants to constructive dialogue. The rapporteurs have been attentive to all views and individual opinions expressed during the discussion, and have provided an accurate summary of the discussions presented to all participants during the final plenary session.

Common understanding of the fundamental importance of international women's rights, as well as a willingness to share experiences and practices in the spirit of constructive dialogue, demonstrated the strong commitment of ASEM governments to gender equality and related policies.

BACKGROUND PAPER

- **Ms Mary Shanthi Dairiam**
Member of the Board of Directors
International Women's Rights Action Watch Asia Pacific

BACKGROUND PAPER

Ms Mary Shanthi Dairiam¹

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Summary

This paper starts with a brief account of the evolution of concepts pertaining to human rights and explains the rationale for the emergence of women's human rights standards at the international level, culminating in the adoption of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It expands on the normative framework for women's equality as required under CEDAW, emphasising the obligation of the State to eliminate discrimination in all its forms and outlines the challenges to this agenda. The paper then provides a summary of the general global trends in the achievement of women's equality. This is followed by an overview of the specific situation of women in Asia and the countries of the European Union, and a brief assessment of the application of international legal standards for women's human rights in the two regions. Finally the paper discusses specific issues pertaining to women's human rights such as political rights, civil and economic rights, socio-economic rights and gender-based violence.

I. Historical Background

The historical evolution of the concept of human rights paved the way to the contemporary legal standards set out, *inter alia*, in the United Nations Charter, the Universal Declaration of Human Rights, and two cornerstone International Human

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In order to prepare and facilitate the discussions during the 10th Informal ASEM Seminar on Human Rights, the co-organisers and Steering Committee defined a framework for a Background Paper and asked the eminent expert Ms Mary Shanthi Dairiam to prepare this report.

Rights Covenants and Protocols thereto, including the UN Covenant on Civil and Political Rights and its two Optional Protocols, known as the International Bill of Human Rights.

The international human rights standards are universally recognised principles, based on the premises of indivisibility and inalienability. They belong to *all* human beings *equally*, without any form of discrimination based on sex, race, ethnicity, religion, social or civil status and *no* human being shall be deprived of his or her rights on any grounds other than those established by law accorded to international human rights standards. States have a positive obligation to guard these rights while refraining from encroachment on the latter. In the event of a State's unwillingness or inability to do so, it is for the international community to take the lead.

The international human rights protection mechanism extends to all spheres of human life: civil, political, cultural, social and personal. In the Preamble to the Universal Declaration of Human Rights (1948), the drafters explicitly noted that both men and women shall enjoy those rights equally: "the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, [...] and in the equal rights of men and women". Article 7 of the Declaration further reiterates the principle of equality before the law and protection against any forms of discrimination, including gender-based discrimination.

The Declaration and the United Nations Charter were the first international human rights protection instruments which *de jure* acknowledge disparity between the rights of men and women and the necessity to establish mechanisms for the protection of women's rights.

At the foundation of the United Nations, there was a clear sense that the disadvantaged position of women in society was one of the proprieties that a new international order needed to address. In 1946 the Economic and Social Council of the United Nations (ECOSOC) established the Commission on the Status of Women (CSW) with a specific mandate: to bring the gender equality principle from paper to real life. In the terms of reference of the CSW it was emphasised that the main objective of this gender-specific body was to ensure the *de facto* observance of international human rights with respect to women.

Over six decades, the United Nations women-focused machinery such as the CSW has worked to develop an elaborative mechanism specifically addressing women's issues. Thus, new legal instruments have been created in order to compliment the gender-neutral human rights protection mechanism with specific measures to bring women on to an equal footing with men. The 1952 Convention on the

Political Rights of Women, the 1957 Convention on the Nationality of Married Women, and the 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict were the first milestones intended to alleviate concerns of specific relevance for women.

In the meantime, prevailing definitions of general human rights, however, were not applied to women. In spite of good intentions, the human rights regime applied human rights standards according to the experiences of men. Women's experiences of violence in the home, or restriction of mobility by family members were not seen as torture or unlawful detention worthy of state intervention. Hence, the private-public dichotomy served to confine women's interests and rights under the control of the male-dominated family. In fact, culture and tradition justified such control and it was even seen as necessary to maintain social cohesion. Men's rights were exercised in the public sphere and since restraints were placed on these rights by a restrictive State, the application of human rights was about curtailing the power of the State. Conversely, the restraints put on women, largely in the private sphere, often by private non-state actors, were not to be regulated, thus limiting the scope of the responsibility of the State.²

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the General Assembly on 18 December 1979, symbolises the culmination of the decades-long efforts to create an integrated legal mechanism to advance women's rights in all spheres of life. It became the central and most elaborative legal instrument for the protection of women's rights, and an ultimate basis for the development and evolution of subsequent women's rights protection strategies. The spirit and objective of the Convention emanates from principles of international law, general standards of equality and human rights, and the goals of the United Nations as set forth in the United Nations Charter.

In its Preamble, CEDAW explicitly acknowledges that "extensive discrimination against women continues to exist" and defines gender-based discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1)

² See C. Bunch & S. Frost, 'Women's Human Rights: An Introduction', in *Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge*, (Routledge 2000).

By becoming a party to CEDAW, Member States explicitly undertake an obligation to condemn gender-based discrimination in any form, direct or indirect, and to take active steps to pursue comprehensive policies and measures to eliminate discrimination against women at all levels and in all fields covered by the Convention, including “in the political, economic, social, cultural, civil or any other field”³. It further mandates States to undertake measures which redress instances of direct and indirect discrimination by amending laws, setting up policies to change cultural practices and traditions which promote direct or indirect discrimination against women, regulating private individuals, organisations and enterprises, compensating for past discrimination, abandoning identical treatment as the hallmark of equality, and by showing an understanding of gender-based disadvantage that requires different treatment. A complex multi-layered approach to equality is mandated, showing equality of results.

The next landmark step taken by the international community to advance women’s rights was the historic Vienna World Conference on Human Rights held in 1993. The effort was made to merge the human rights of women and of girls into the theory and practice of human rights, where they would be recognised as an inalienable, integral and indivisible part of universal human rights. The traditional view of women’s human rights as private, and therefore not subject to public debate and proceedings, was rejected; women’s human rights are fundamental and universal, and therefore trump any cultural practices or traditional beliefs. Thus, it was explicitly stated that “gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated”⁴. The violations of the human rights of women in armed conflicts have been recognised as violations of the fundamental principles of international human rights and humanitarian law. The Conference further undertook steps to strengthen the rights-protection machinery by urging the universal ratification of CEDAW and the withdrawal of reservations previously applied by the Member States with regard to particular Articles of the Convention; strengthening the human rights protection mechanism of the United Nations system by, *inter alia*, strengthening the mandate of the Commission on the Status of Women, the Committee on the Elimination of all Forms of Discrimination Against Women, the Commission on Human Rights⁵ and the part

³ Article 1 of CEDAW

⁴ World Conference on Human Rights, United Nations DPI, DPI/1394-39399, August 1993-20M, p. 34 para. 18

⁵ Following the reform of the UN human rights protection machinery, the Commission on Human Rights was replaced by the Human Rights Council.

of the UN Secretariat specifically working on the advancement of women. The other fundamental change in the women's rights protection machinery attributed to the World Conference on Human Rights in Vienna was a call for the right to the individual communication procedure, the Optional Protocol, under CEDAW.

The Optional Protocol to CEDAW, the ratification of which is still in progress, is an important instrument for putting the Convention's protection mechanisms into practice in order to ensure that women all over the world effectively enjoy the rights set forth in CEDAW.

With the advent of CEDAW, the concept of gender equality gained currency. The principle of redistributive justice, compensation for historical discrimination, and the transformation of systems of social interactions, traditions and culture were required ingredients to bring about equality of results or outcomes. In this paper, CEDAW, with its obligation to eliminate discrimination against women and to fulfil women's right to equality, will be the framework to assess successes and challenges for women.

II. Understanding Discrimination Against Women: Factors Contributing to and Perpetuating Discrimination, Preventing Equality of Outcomes

This section will begin with an elaboration of the concept of discrimination and provides an explanation for the persistence of discrimination and inequality despite the existence of legal provisions prohibiting discrimination and guaranteeing equality. It argues for holistic measures to address women's right to equality that will take account of the structural basis of discrimination and inequality. It maintains that remedies for women may be limited if a gendered approach is not taken to establish sex-based discrimination has occurred or if discrimination in its multiple forms is not recognised. This section also expresses the view that while the understanding of human rights has evolved, exceptions to its application are still made in certain circumstances, restricting the enjoyment of the right to equality for certain groups of women.

a. The structural basis of discrimination

While the goal of CEDAW is the fulfilment of women's right to equality, an important operational measure for the achievement of this goal is the elimination of all forms of discrimination. This is a complex agenda requiring the recognition of discrimination, both overt and covert, visible and invisible, intended and unintended. As mentioned in the previous section, according to CEDAW, discrimination occurs when women are unable to exercise and enjoy a human right in the economic, social, political and cultural fields. In other words women

must be able to enjoy all rights in all fields. The Convention does not allow for any kind of treatment or acts of omission that permit exceptions to, or that prevent women's enjoyment of, human rights.

Discrimination is not a random phenomenon. It is often group-based and is linked to negative perceptions or recognition of the value or worthiness, or otherwise of different groups who are divided according to their ethnicity, religion, minority status, sex or any of a number of other factors. Assumptions regarding various traits attributed to certain groups work against them. This entrenches the superiority of some groups over others resulting in what Fraser calls status hierarchy with very material consequences.⁶ Since women make up one social category that faces discrimination because of the group to which they belong, rarely is an act of discrimination perpetrated against a woman as an individual. Each woman comes bearing the stigma of being woman and is disadvantaged by it. This is the social construction of gender. Groups that are low in the status hierarchies are usually among the poorest and the most marginalised. Opportunities are denied to those seen as less worthy or capable, and vulnerabilities are intensified. Those who are perceived to be less worthy therefore also experience socio-economic disadvantage.⁷ The norms and rules by which society organises itself entrench the hierarchy, and facilitate and perpetuate the uneven distribution of resources, responsibilities and power through various institutions of society.⁸ The discriminatory social norms are seen as natural, as part of the culture and, in certain contexts, as God-given. Hence discrimination is not only socially constructed but also supported structurally and justified on the basis of the dominant value system based on culture, religion or both. Its elimination can only be brought about and equality achieved through a multi-faceted approach. It requires the recognition of the equal status and value of the subordinated group, as well as a policy for and programme of redistribution of resources and benefits. While much has been done to bring about the former through equality legislation, the latter is often problematic. Left to the arena of policy, not supported by law and subject to the discretion of policy makers, redistribution is therefore rarely justiciable as a right.

⁶ N. Fraser & A. Honneth, *Redistribution or Recognition* (Verso 2003) p. 13. Cited in S. Fredman, 'Redistribution and Recognition: Reconciling Inequalities.' in *South African Journal on Human Rights*, Volume 23 Part 2. p. 215 (Ravan Press 2007).

⁷ S. Fredman, 'Redistribution and Recognition: Reconciling Inequalities.' in *South African Journal on Human Rights*, Volume 23 Part 2. p. 218 (Ravan Press 2007).

⁸ N. Kabeer & R. Subramaniam, *Institutions, relations and outcomes: framework and tools for gender-aware planning*, (IDS Publications 1996)

The prohibition of discrimination against women aims to bring about the recognition of the equal status of women with men. However, this must go hand-in-hand with redistributive policies that address the material consequences of inequality, as well as the transformation of societal norms which deem women to be less worthy. It requires the balancing of power between women and men. This last point is the most contentious as it may be seen as going against cultural values that are perceived to be immutable. These various dimensions are however critically interrelated. Often the strategy for eliminating discrimination is addressed at changing status hierarchy positioning the discriminated person as an “abstract individual freed of group-based characteristics.”⁹ Constitutional guarantees for equality in most countries ensure that status hierarchy is prohibited but stop short of remedying the socio-economic disadvantage, often cumulative, that women and other subordinated categories experience. *De facto* equality therefore remains elusive for these groups.

In any given context, it is therefore essential that the gendered experiences of women's lives, current and historical, and the interrelated aspect of the various forms of discrimination and attendant deprivation have to be taken into consideration in order to achieve equality. There may be no overt current discrimination against women in a particular context and their status as equals may be recognised, but women may be prevented from exercising their rights because of the restrictions or constraints they face in other aspects of their lives. For example, the labour legislation in many countries has provisions for equal pay, but because of job segregation, women may be bunched in certain categories of jobs that do not pay as much as the jobs that men traditionally occupy. Most women work inside and outside the home, and at the same time face the risk of physical insecurity within the home, at the work site and in other public places, hampering their mobility and limiting their choices for work. Their lack of exposure and, at times, limited skills development, the absence of male responsibility for family care, the lack of institutionalised family support services and the possible lack of autonomy at the personal level may prevent women from accessing opportunities for upward mobility. Under these conditions, the existence of an ‘equal pay for equal work’ clause does not really benefit women. This is not to underestimate the importance of the principle of ‘equal pay for equal work,’ which in principle equalises the status of female and male workers. However it is necessary to remind ourselves that the principle alone is not enough and that

⁹ S. Fredman op. cit. p. 216

this legal provision does nothing to compensate for women's disadvantage in the labour market, as it does not compel the provision of enabling conditions to remedy that disadvantage, thus creating *de facto* equality.¹⁰

At other times the inequality of women persists because they continue to bear the effects of past discrimination. In Australia, women retrenched from a steel mill because of the ruling "last hired, first retrenched" filed a case of discrimination successfully. While it is true that the women concerned were hired last, the fact was that this mill had had a discriminatory policy several years previously of not recruiting women. At that time it was considered inappropriate for women to work in steel mills. The fact that women were the last to be hired was the consequence of historic discrimination, hence applying the rule of "last hired, first retrenched" in the case of these women was considered to be discriminatory against them although it was unintentional.¹¹

So it means more than just considering whether women are an affected group but analysing why, bringing to light the social, cultural and historical factors that contribute to processes of discrimination and the inequality of women. We need to unpack the inter-linkages between discrimination against women and the structural basis of inequality through looking at the way social rules are structured in different institutions of society.¹² For example, the social expectation that men are responsible for the economic provisioning of the family, even if this is not always so in reality, and that women are homemakers is one of the reasons for the phenomenon of occupational segregation with women in low paying jobs. In such contexts, what we are dealing with is the familial ideology of the 'male breadwinner' and 'male parent lord', which has permeated socio-cultural and legal concepts as well as economic relations in the family in most communities and the major legal systems of the world."¹³

Rights are inter-related. The ability of women to make choices in the field of employment and access opportunities on an equal basis with men requires equal access to education and autonomy at the personal level within the family.

¹⁰ S. Dairiam & M. Suarez, 'Recognizing and Realizing Women's Human Rights', in *Universal Declaration of Human Rights: Fifty Years and Beyond*. Editors Yael Danieli et al. (Baywood Publishing Company Inc. on behalf of the United Nations 1999)

¹¹ *Australian Iron and Steel Pty Ltd v Banovic*, 1989, HCA56 [1989] 168 CCR 163 (5 December 1989)

¹² N. Kabeer & R. Subramaniam. Op. cit.

¹³ S. Goonesekere, *Women's Rights and Children's Rights: The United Nations conventions as compatible and complementary international treaties*. UNICEF. (Innocenti Occasional Paper Series 1992)

Similarly, discrimination is also inter-related. The denial of rights in one field leads to the denial of rights in another. Under these circumstances what is needed is a gendered application of human rights principles through which proactive and pro-women policies are implemented that will not only ensure formal equality in the law, eliminating status hierarchy and providing equal opportunities, but also mandate other policies and programmes that provide adequate family support services, encourage male responsibility for child care, raise awareness of women's right to equality at the private and public levels, ensure personal autonomy as well as long term measures aimed at changing the ideology and cultural patterns of conduct of men and women that place them in stereotypical roles disadvantaging women. Such stereotyped positioning is not merely about who does what, but it is normative, devaluing women, diminishing women's aspirations, leaving women without power and reducing women's entitlements to equality.

b. The non-recognition of, or exceptions to, women's right to equality

In attempting to deal with discrimination, it is also essential to acknowledge that the understanding of women's right to equality is continuing to evolve, and that there are still areas of rights and contexts in which the right to equality or even the fact of discrimination are not as yet fully recognised. Various elements of non-recognition will be discussed here. The principle that all human beings are born free and equal in dignity and rights is not always practiced as a universal norm. There are several areas of concern: the non-recognition of or a very narrow interpretation of sex-based discrimination; preference given to the rights of men in cases of conflict of rights with regard to the rights of men and women; exemptions to the guarantees for equality on the basis of culture, history or religion; the lack of adequate legal protection in law and in enforcement for certain marginalised groups, thus also making exceptions to the universal application of the principle of equality.

Non-recognition of sex-based discrimination

These situations of non-recognition include the need for a male comparator to establish sex-based discrimination; in other words the necessity that discriminatory treatment of women be measured against the relative discriminatory treatment of men. Discrimination is a complex phenomenon. Article 1 of CEDAW articulates this complexity when it states that a differential or similar treatment of women that has the purpose or effect of denying women the enjoyment of all rights is discrimination. The operative term here is the word "effect". This captures the fact that whether or not an act or even an omission is judged to be discriminatory depends on the life situation of the

women concerned, including the history of disadvantage, the prejudice faced as a woman in a patriarchal setting, or the non-recognition of the fact that the special biological needs of a woman increase vulnerability and exacerbate disadvantage.

While in certain contexts it is essential to demonstrate that women experience greater degrees of inequality as compared to men, this may not always be necessary, useful or fair. Rather, what is needed at times is to show that in a given context women, on the basis of gender and biology, have experiences that men may not or will never have, so there is no possibility for comparison. This may be so, despite both women and men having apparently similar experiences such as suffering from poverty or being harmed or deprived of rights because of their sexual orientation. Hence a uni-dimensional approach to equality and considering the merit of an act of commission or omission in a particular segment of time, divested of the history of the people concerned and the differential impact of the act on women and men, restricts the potential for solutions.

The CEDAW Committee¹⁴ has made it clear that the need for a male comparator is not always necessary. Paragraph 5 of CEDAW's General Recommendation 26 on Women Migrant Workers, states,

“Although both men and women migrate, migration is not a gender-neutral phenomenon. The position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof. To understand the specific ways in which women are impacted, female migration should be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration. The integration of a gender perspective is, therefore, essential to the analysis of the position of female migrants and the development of policies to counter discrimination exploitation and abuse.”¹⁵

¹⁴ The Committee or body of experts established by the United Nations under the human rights treaty system to monitor state party compliance with their obligations under CEDAW.

¹⁵ CEDAW General Recommendation 26 on women migrant workers, Paragraph 5

Conflict of interest

Two cases submitted to the CEDAW Committee, 5/2005 and 6/2005,¹⁶ illustrate that when there is a conflict between the interests or rights of men and women, the rights of men are likely to be given pre-eminence. In these two cases, two women in Austria were killed separately by their respective husbands. In spite of repeated complaints to the police of the threats and acts of violence committed against the women by these men, the police and the public prosecutor did not take pro-arrest or pro-detention measures, possible under Austrian law, to prevent the killings. The public prosecutor was of the view that detaining the men would have been in violation of their right to movement, privileging this right over women's right to life and bodily integrity. The Committee's decision in these cases has added to the jurisprudence of equality. The Committee recommended that the State,

“...also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;”¹⁷

Exceptions to the principle of equality

Other areas of concern include contexts in which exceptions to the guarantee of equality are made on the basis of culture, history, tradition, religious interpretation, perceived public interest, or conflict. There are many examples of these. At the international level, the evolution of the human rights regime establishes the universality of rights. But at the national level, the resistance to the universality of human rights on the basis of culture continues unabated. While the rejection of universal human rights affects all rights, the cultural argument affects women's rights in particular. While standards are set for the protection of women's rights through constitutional and statutory guarantees, the protection of women's right to equality and non-discrimination is often made the exception in the law or in practice.

In some countries until recently, constitutional provisions for non-discrimination did not include sex as prohibited grounds for discrimination. The idea was equality for all but not for women. At other times, there are exceptions to the constitutional guarantee of equality, exempting areas such as religion and

¹⁶ CEDAW Communication 5/2005 and CEDAW Communication 6/2005

¹⁷ Ibid.

religious institutions from the application of the equality guarantee. It is often the rights of women that are restricted when such exceptions are made, as various interpretations of religion deal with equality in marriage and family relations by positioning women as dependents of men and as subordinate to them. One consequence of this is that several States have placed reservations on article 16 of the Convention, which provides for equality in marriage and family relations, citing non-compatibility with their religion. It is interesting to note that some of these contested rights within family relations include the right to economic resources such as the right to equal inheritance. This area of rights contested on the basis of culture or religion prescribes what is seen as socially-appropriate economic entitlements to women and men, and perpetuates stereotypical roles for women and men in the family. It denies women the capacity for autonomy and control over their lives which would enable them to access economic opportunities, facilitate social inclusion and raise their value as equal citizens. In reality it is the balancing of power relations between women and men that is contested in the name of culture and religion. In its General Recommendation 21, the CEDAW Committee expressed concern at the number of reservations to article 16 of CEDAW.

“Many of these countries hold a belief in the patriarchal structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women’s place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.”¹⁸

Subsequently, the CEDAW Committee expressed the following opinion that reservations to article 16 of the Convention are in conflict with the very object and purpose of this Convention.¹⁹

¹⁸ CEDAW General Recommendation 21 on Equality in marriage and family relations. Para 42.

¹⁹ “Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.” United Nations. Report of the Committee on the Elimination of All Forms of Discrimination Against Women. A/53/38/Rev.1 p. 49, para 17.

“Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.”²⁰

There are also instances when equality provisions in the constitution and laws are not interpreted in favour of women, or inadequate measures are taken to provide women with the protection that is in the law. Case 7/2005²¹ presented to the CEDAW Committee under the Optional Protocol can be used to illustrate this. In this case, the lower courts of Spain as well as its Supreme Court and Constitutional Court decided that the historical principle of male precedence in succession to nobility titles was compatible with the principle of equality. The judgment of the Supreme Court specifically established that male primacy in the order of succession to titles of nobility, provided for in the then laws of Spain, was neither discriminatory nor unconstitutional since article 14 of the Spanish Constitution, which guaranteed equality before the law, was not applicable in view of the historical and symbolic nature of those titles. The implications of these decisions are clear. The dissenting opinion in this case states that

“exceptions to the constitutional guarantee for equality on the basis of history or the perceived immaterial consequence of a differential treatment, it is a violation, in principle, of women’s right to equality. Such exceptions serve to subvert social progress towards the elimination of discrimination against women using the very legal processes meant to bring about this progress, reinforce male superiority and maintain the status quo.”²²

Under such circumstances, the social relations of women and men remain in a time warp regardless of advances in the law.

Marginalised groups and lack of protection

There are some significant contexts where the human rights of women remain largely unrecognised. Some of these contexts which have economic implications privilege the rich and people of a certain class over the poor and marginalised.

²⁰ United Nations. Report of the Committee on the Elimination of All Forms of Discrimination Against Women. A/53/38/Rev.1 [47] 1998. para 17

²¹ CEDAW/C/39/D/7/2005

²² CEDAW/C/39/D/7/2005. Individual opinion by Committee member Mary Shanthi Dairiam (dissenting) para. 13.7

In many countries, domestic and migrant workers are not adequately protected against exploitative employers,²³ or the law does not provide them with the means of seeking redress in case of violation of their rights. Domestic workers in many Asian countries do not fall under the legal definition of ‘worker’ and so are not protected by the labour law of the country. In some cases pro-active measures to address special needs of certain groups, such as the disabled, may not be in place. For example, if there is no public policy on accessible transportation for the disabled, the consequence is that they do not have the mobility to seize opportunities for skilling or for employment. They face harassment when they try to access an unfriendly public system and in fact even endanger their lives.

Another unprotected category which falls outside the guarantee of equality and non- discrimination is that of people of alternative sexual orientations²⁴ and gender identities.²⁵ Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity, but there are also several States that do not extend these constitutional guarantees across the board and unconditionally. Hence when human rights violations such as torture, arbitrary detention, sexual assault and rape, or denial of employment or education opportunities, are targeted toward persons because of their actual or perceived sexual orientation or gender identity, there is no protection under the law. While both men and women experience these violations, it is arguable that women are particularly vulnerable as their sexuality comes under greater scrutiny from society and enforcement agencies, and their susceptibility to sexual violence or other forms of sex-based discrimination exacerbates their situation. Women come under a double burden: they could be discriminated against as women and because of their sexual orientation.

²³ In view of the information provided to the CEDAW Committee on the lack of protection for women migrant workers, the Committee has issued General Recommendation 26 on Women Migrant Workers

²⁴ “Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.” Source: Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Adopted by a group of 29 human rights experts in November 2006 in Yogyakarta, Indonesia.

²⁵ “Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.” Source: Ibid.

Louise Arbour, former UN High Commissioner for Human Rights, is unequivocal in her defence of the human rights of lesbian, gay, bi-sexual and transgender (LGBT) people. According to her,

“Neither the existence of national laws, nor the prevalence of custom can ever justify the abuse, attacks, torture and indeed killings that gay, lesbian, bi-sexual, and transgender persons are subjected to because of who they are or are perceived to be. Because of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented and goes ultimately unreported and unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights.”²⁶

It is reported that 78 countries of the world have criminalised male to male relationships and 45 countries have criminalised female to female relationships, while 8 countries have imposed the death penalty for such relationships.²⁷ There are also many reports of violence and harassment that LGBT people face.

Women from a wide range of countries are beginning to provide information to the CEDAW Committee on the violations of the rights of lesbians in their countries. They include Slovenia, Kyrgyzstan, Mongolia, Ecuador, Turkey, the Netherlands and Lebanon. At the 42nd session of CEDAW in 2008, women from Kyrgyzstan reported that 23% of lesbian and bi-sexual women were subject to violence, in particular “curative rapes” or house arrests by parents to force them to change their sexual orientation.²⁸

The international human rights system, including key human rights treaties and mechanisms, has taken steps towards affirming States’ obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity.²⁹ However, Sonia Onufer Corrêa and Vitit Muntarbhorn, Co-Chairpersons at the drafting of the Yogyakarta Principles, point out in the introduction of that document that “human rights violations targeted toward

²⁶ Presentation by Ms Louise Arbour at the International Conference on LGBT Human rights, Montreal, 26 July 2006. Cited in ICJ, *Sexual Orientation, Gender Identity and International Human Rights Law: Practitioner’s Guide No. 4* (ICJ 2009)

²⁷ D. Sanders, *Human rights and Sexual Orientation and Gender Identity in International Law*, <http://ilga.org/ilga/en/article/577>

²⁸ Shadow Report on Discrimination and Violence against Lesbian and Bisexual Women and Transgender People in Kyrgyz Republic, October 2008, CEDAW 42nd session.

²⁹ See ICJ, *Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System*, (ICJ 2007).

persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern.” They have also expressed the concern that “the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent.” They are of the view that there needs to be a “more consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary.”

Women’s groups are raising the issues pertaining to the rights of various marginalised women at the CEDAW review and demanding accountability from State parties for their obligations under CEDAW. For real progress to be made in the protection of human rights for all there can be no derogation from the principle of all human rights for all persons on the basis of equality and without discrimination. Nor can the universality, inalienability, the interrelatedness and interdependence of human rights be compromised.

c. Multiple forms of discrimination

Many women suffer from more than one form of discrimination. The Fourth World Conference on Women held in 1995 recognised that the grounds for such discrimination could be age, migrant, part-time or unorganised worker status, ethnicity, minority status, refugee, disability, HIV infection or sexual orientation. When people suffer multiple forms of discrimination they are usually among the poorest and most marginalised. The less power they have, the less likely it is that their conditions are addressed by law and policy. Either they have no participation in the decision-making process affecting their lives, or their powerlessness makes it impossible for them to access justice and redress. This is the result of several vulnerabilities compounding and intensifying inequality. Gender interacts with each of these grounds for discrimination and intensifies vulnerability. This has been recognised at the international level. In the Durban Declaration and Platform for Action, States declare that they

“are convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights.”

But the 2009 Durban Review Conference was also of the view that “despite the crucial intersection of discrimination against women and racism, racial discrimination, xenophobia and related intolerance, there are as yet limited efforts that link these human rights mechanisms to promote the rights of women facing multiple forms of discrimination.”³⁰

Joanne Cunaghan posits that the legal frameworks have not yet been able to “articulate the normative, material and legal (inter)relations of distinct inequality grounds.”³¹ Law usually considers different grounds as mutually exclusive but not in combination.³² She points out that human beings, and here we are speaking of women, have multiple identities which blend together. In the lived experiences of women they do not merely manifest as an accumulation of identities. The solution, says Cunaghan, is not for law to take a grounds approach which then leads to the fragmentation of the grounds, but to establish remedies for the effects of these grounds. If this is not done, a claimant may have to seek remedies across each ground separately. Establishing discrimination under each ground separately is difficult as discrimination may not be perceived as against a single identity comparator.³³ It may also result in condoning a hierarchy of grounds and rights. The complexity of the violation and its effects go unnoticed. An example of this can be found in case 3/2004³⁴ submitted to the CEDAW Committee from the Netherlands: related to a claim of sex-based discrimination made by a pregnant part-time woman worker because she could not get the same maternity benefits as a full-time woman worker. The State party responded that the grounds for the alleged differential treatment of the author was to do with the fact that she was a part-time salaried employee and worked as a co-working spouse in her husband’s enterprise at the same time self-employed and not because she was a woman. In the view of the State party, there was no discrimination on the basis of sex in spite of the fact that the complaint was with reference to maternity that only women experience. According to the State party, “the entitlement (to maternity benefit) is exclusively given to women and is specifically designed to give women an advantage in relation to men. It is, therefore, impossible to see how it can lead to more unfavourable treatment of women in relation to men – considering that men cannot make any use whatsoever of the clause.”

³⁰ Durban Review Conference, Geneva 2009. www.un.org/durbanreview2009

³¹ J. Conaghan, ‘Intersectionality and UK Equality Initiatives.’ in *South African Journal on Human Rights*. Volume 23, Part 2, p. 318 (Ravan Press 2007).

³² Ibid.

³³ *Bahl v Law Society*, EWCA 1070, cited by J. Conaghan. Ibid. p. 323

³⁴ CEDAW Case 3/2004

Equality legislation is still not sufficiently developed to address adequately the effects of cross-cutting inequalities.

III. Specific obligations under CEDAW and broad trends in the achievement of women's right to equality

This section will present the trends and achievements in the protection of women's human rights. It will consider elements such as the applicability of international standards at the national level and the adequacy of legal and regulatory frameworks, as well as programmatic measures in place for the achievement of women's right to equality. It will juxtapose this against a brief elaboration of the obligation of the State undertaken internationally. It will then provide snapshots of progress made in women's enjoyment of rights in various areas of their lives.

a. Obligation of the State

As members of the United Nations and as parties to treaties such as CEDAW, States have the obligation to ensure the practical realisation of the principle of equality between women and men through effective law and policy measures, and to eliminate all forms of discrimination against women both in law and in practice. Equality under CEDAW is not an abstract concept but its fulfilment has to result in the enjoyment by women of all human rights and fundamental freedoms in all fields. This has to be done on the basis of international standards as set forth in CEDAW. Hence it is imperative that CEDAW and its standards are made applicable in the domestic legal order.

These standards basically require three elements. Firstly, the establishment of the equal value of women and men in the law and the inclusion of a definition of discrimination as per article 1 of CEDAW is made of the law, whether in the constitution or other organic law, that such law binds both public and private actors in all fields. The law needs to be capable of prohibiting not only current discriminatory acts but must also address the effects of discrimination that may be current and that which may have taken place in the past. Secondly, there need to be policies for redistribution and compensation for those in an unequal position, eschewing identical treatment when necessary, are part of this process. Socio-economic, civil and political rights are interrelated and indivisible under CEDAW. States as duty holders then have obligations of means and results, and the non-fulfilment of the right to equality is just as much discrimination as the non-prohibition of discrimination or the unequal and unfair differential treatment of two individuals. This has far-reaching implications for the obligation of the State as the elimination of discrimination may require, according to the situation, the

asymmetrical treatment of women and men and not just the avoidance of unequal treatment. Thirdly, the obligation of results requires the creation of an enabling social environment by addressing the ideology and cultural constructs that create hierarchies within gender relations. The State has to be not only reactive but also, and more importantly, pro-active.

All appropriate measures have to be taken for this, including through effective enforcement of laws and access to remedies, through macro-economic development plans that empower women and marginalised groups, as well as strategies, budgetary allocations, and mechanisms and competent institutions that adjudicate as well as monitor, ensure and 'compel' consistency of standards across the country.³⁵

b. Broad trends in the Achievement of Women's Right to Equality

Since 1975 there have been more concerted and integrated efforts at the international level, accompanied by national level efforts, for the achievement of gender equality. Prior efforts between the 1940s and 1960s were more piecemeal and fragmented, and conventions on single issues such as the Convention on the Suppression of Traffic in Persons and Exploitation and Prostitution of Others, the Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value, the Convention on Political Rights of Women, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages were adopted. The approach was to deal with certain rights but positioned as unrelated.

Significant developments in the last three decades or so are the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women,³⁶ the Declaration on Violence Against Women, and the Four World Conference culminating in the Beijing Declaration and Platform for Action. Two other significant World Conferences are the Vienna Conference on Human Rights and the International Conference on Population and Development. 2010 saw the Review of Beijing Plus 15 and governments have reviewed the progress made in the advancing their commitments made at Beijing in 1995. The question is to know what the impact of these interventions are.

³⁵ These obligations are spelt out in articles 1-5 of CEDAW.

³⁶ CEDAW has 186 ratifications as of June 2010

According to the review of the Beijing Platform for Action, the progress of women is mixed. The highest gains have been made in education. Globally education has increased, particularly in primary education. In 2006, 95% of girls were in school as compared to 92% in 1999, and 30 countries had 30% or more parliamentarians as compared to 5 countries in 1995. More women are now in the labour market but work under harsher conditions and have jobs that are insecure and pay poorly. In spite of the gains in education, women are still disproportionately poor and illiterate. Two thirds of adults who can't read are women, more than half a million women die in childbirth every year, and 70% experience some form of violence in their lifetimes.³⁷ Women's groups feel that progress has been very slow.³⁸

There are also regional and intra-regional variations. The Global Gender Gap Index (2009)³⁹ reveals that four European countries out of 134 rank the highest and 13 are among the top 20. The top four are all Scandinavian countries and those among the top 20 are Norway (11), Germany (12), Switzerland (13), Latvia (14), the United Kingdom (15), Spain (17) and France (18). Italy (72), the Czech Republic (74), Cyprus (79) and Greece (85) are the lowest-ranking European Union countries in the index. In Asia, The Philippines (9) and Sri Lanka (16) are the only Asian countries among the top 20. Those with the lowest rankings in Asia, namely those below the 100 mark, are Pakistan (132), the Republic of Korea (115), India, (114), Nepal (110), Cambodia (104) and Malaysia (100). Some of these countries dropped in ranking as compared to 2006 rankings when their rankings were Pakistan (112), the Republic of Korea (92), India (98), Cambodia (89) and Malaysia (72). In fact, all Asian countries, including the Philippines, have dropped in rank, with the exception of Mongolia which rose from rank 42 to rank 22.⁴⁰

These rankings tell us something about the relative effort being made in various countries but they do not tell us enough about the relative status of women within the country. When examined by the CEDAW Committee we can see that even the top ranking Scandinavian countries have not achieved equality in all

³⁷ Push to close gender gaps 'slow', <http://news.bbc.co.uk/2/hi/americas/8564782.stm>

³⁸ Ibid.

³⁹ The Global Gender Gap Report. 2009. World Economic Forum, Geneva, Switzerland. The Global Gender Gap Index examines the gap between men and women in four fundamental categories: economic participation and opportunity, educational attainment, political empowerment and health and survival on the basis of several sub-indicators under each category.

⁴⁰ This drop in ranking could be caused by other countries showing a relatively greater improvement as compared to 2006. The index does not tell us about the progress in closing gender gaps over a period of time within the individual countries. The index also has limitations because of the restricted range of categories and indicators.

fields. In these countries, parity has been achieved in parliaments, in education and women's right to health is not an always an issue. But there is still job segregation, wage gaps, and stereotypical assumptions regarding the roles of women and men, and violence against women is prevalent.

Louise Arbour has pointed out that there is much insidious “lower intensity” discrimination, often sanctioned by law, that condemns millions of women to daily hardship and suffering, and that goes unnoticed. According to her, the areas in which women's human rights go unprotected by the law are primarily in the arena of marriage and family relations, where the private lives of women are controlled restricting their entitlements to inheritance and property during marriage, at its dissolution, and because of widowhood. Weak laws or lack of enforcement result in impunity for the perpetration of violence against women, including rape.⁴¹

A report produced by Equality NOW⁴² for the Beijing Plus 15 review welcomed the progress made by more than half the 52 countries highlighted in its two previous reports in either partially or fully repealing or amending discriminatory laws. However, it also expressed concern that in many countries amendments to discriminatory laws have been partial, incomplete or merely cosmetic, resulting in little change to legally advance women.⁴³

The next part of the paper will present a brief regional overview of countries in Asia and the European Union (EU).⁴⁴ In preparation of for the Beijing Plus 15 review, regional assessments of the progress of women were undertaken. This review shows some success and good practices as well as some serious challenges.

⁴¹ <http://www.thestar.com/comment/article/310497>, March 2008

⁴² Equality Now is an international Women's Rights non-governmental organisation

⁴³ Report: Women still target of discriminatory laws,
http://www.usatoday.com/news/world/2010-03-05-discriminatory-laws_N.htm

⁴⁴ The regional overview is taken from the assessment undertaken by the UN regional commissions – ESCAP High lights of Progress, and Challenges in Implementing the Beijing Platform for Action: Good Practices, Obstacles and New Challenges. E/ESCAP/BPA/2009/2 for Asia and ECE. Beijing Plus 15 Regional Review. ECE/AC.28/2009/3 – unless otherwise indicated.

Asian Countries⁴⁵

According to the regional assessment undertaken by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) in preparation for the Beijing plus 15 Review held by the UN Commission on the Status of Women in March 2010, the region has made great gains in the field of education. Many countries have achieved parity at tertiary level. They include China, Malaysia, Mongolia, Philippines, Thailand and Brunei Darussalam. However, these gains in education do not translate into upward mobility in employment. Women still have low labour force participation, are segregated into low paying jobs, and there is still wage disparity. As an example, women's labour force participation in Malaysia remained at 45.7% as compared to 79% for men in 2008. There has not been much change in this over the years.⁴⁶ In Asia, poor labour conditions and the concentration of women in unregulated, low-wage sectors is also an issue. For example, at the 39th CEDAW session in 2007, the Committee expressed its concern on this to the Republic of Korea:

“...the Committee is concerned about the serious disadvantages women face, including the concentration of women in certain low-wage sectors, the high percentage of women in non-regular work, the various flexible forms of work, such as outsourcing and contracting out, and the related lack of job security and benefits, as well as the significant wage gap between men and women. The Committee is also concerned about the insufficient compliance with existing labour legislation and about the practices of companies that circumvent the law denying women workers job security. In particular, the Committee is concerned about the lack of effective monitoring mechanisms and complaints procedures for women to claim their rights.”⁴⁷

At both the Beijing Plus 15 review in March 2010 and the ESCAP High-level Intergovernmental Meeting to Review Regional Implementation of the Beijing Platform for Action and Its Regional and Global Outcomes 16-18 November 2009⁴⁸, a major concern was expressed about the impact of the global economic policy and framework on the livelihoods of poor people and women in particular. Unemployment was seen to be a major concern as a result of the global

⁴⁵ Only countries within the ASEM framework have been included here, with the exception of Sri Lanka, which is not a member.

⁴⁶ Source: Labour Force Survey Report. Malaysia.

⁴⁷ CEDAW/C/KOR/CO/6

⁴⁸ See Economic and Social Commission for Asia and the Pacific. 'Responses to the Economic Crisis – Women's Economic Security and Rights' E/ESCAP/BPA/2009/3. 12 October 2009

economic crisis with estimates that women and young people are more at risk.⁴⁹ Women in particular are at higher risk of losing their jobs because the majority of them are positioned in low-skilled, low-salaried and temporary workers with less job security and are more likely to lose their jobs during an economic crisis.⁵⁰

In addition to the fall in demand for exports leading to unemployment in Asia, a further area of concern for the region regarding the impact of the global economic crisis in the more developed countries is the expected decline in demand for migrant labour in these countries as companies and banks face bankruptcy. As women from developing countries form nearly two thirds of the total migrant population⁵¹ and as they are over represented in the informal and low-skilled or traditionally female sectors of the economy such as domestic work, care work, nursing and sex work⁵² they are at the greatest risk of being subjected to layoffs or poorer working conditions, due not only to their weak bargaining positions, but also their ethnicity.⁵³

The poor take much longer to recover, as real wages and employment take a longer time to bounce back to previous levels as compared to recovery in gross domestic product (GDP).⁵⁴ Hence government policies on social protection measures are vital, especially during and after the economic crises that countries are going through, but this is hardly in place in any Asian countries. For example, during the 1997 economic crisis in Asia, only 10 per cent of Asia's population was covered by formal social security or safety net measures against a limited set of risks.⁵⁵ The situation is compounded by the fact that because of the crisis, governments may pull back on social spending. Women in particular would be affected by such cut backs as they depend more on public goods owing to their limited access to cash incomes to purchase non-public goods and services.⁵⁶

⁴⁹ 'Economic and Social Survey of Asia and the Pacific 2009 – Addressing Triple Threats to Development.' United Nations publication, Sales No. E.09.II.F.11. Cited in ESCAP Ibid.

⁵⁰ D. Elson, "Gender Equality and the Economic Crisis", paper presented at the IDRC/SID-OG meeting, Ottawa, Canada, 27 November 2008. Cited in ESCAP Ibid.

⁵¹ United Nations Development Fund for Women (UNIFEM), 'Making the MDGs Work for All: Gender-Responsive Rights-Based Approaches to the MDGs' (New York, 2008). Cited in ESCAP Ibid.

⁵² International Organization for Migration, 'The Impact of the Global Financial Crisis on Migration, Policy Brief' (Geneva, January 2009). Cited in ESCAP Ibid.

⁵³ M. Abella and G. Ducanes, "The Effect of the Global Economic Crisis on Asian Migrant Workers and Governments' Responses", Technical note for the meeting: Responding to the Economic Crisis – Coherent Policies for Growth, Employment and Decent Work in Asia and Pacific, Manila, 18-20 February 2009. Cited in ESCAP Ibid.

⁵⁴ United Nations Development Programme, Human Development Report 1999 (New York, Oxford University Press, 1999). Cited in ESCAP Ibid.

⁵⁵ S. Cook, Social Protection in East and South East Asia: A Regional Review, Social Protection in Asia, Working Paper Issue 02 (May 2009). Cited in ESCAP Ibid.

⁵⁶ UNIFEM. Op cit. Cited in ESCAP Ibid.

Rural Development Institute (RDI)
Building a Safety Net for Women in India
Anjaya's Story

Poor women, who form the majority in India, have little access to assets like land, as they do not inherit land from their fathers and will not receive a share of their husband's land. Most often they depend on men for economic security and social status. When a woman's relationships with the men in her life terminate through death, abandonment or divorce, she has no safety net. She may be separated from her children, deprived of food and shelter and left destitute with dire consequences.

Anjaya was lucky. When her husband died she had three children to support and no education or skills to make a living. But through RDI's "micro-land ownership programme", she became the owner of a micro-plot of land in her rural village in Karnataka. She used her micro-plot to build a small house, plant vegetables, fruit trees and medicinal herbs to feed her children, and to raise poultry to generate income. "Without this land, we all surely would have died," says Anjaya. RDI's "micro-land ownership" programme in India is providing thousands of women like Anjaya with the same opportunities.

Box 1

Land is a premium resource and access to it is critical for the poor and women in particular (See Box 1). However, owing to ambitious commercial programmes that favour the rich, there are instances when land that is common property and benefitting the poor is appropriated by major commercial initiatives.⁵⁷ Targeted measures are needed to mitigate the negative effect of global and national, economic as well as socio-cultural trends and to facilitate women's capacity to seize opportunities for economic participation.

In the South East Asian countries of Viet Nam and Lao PDR, the governments have recognised the importance of land ownership by women and have started a process of issuing land titles or certificates to benefit women (See Boxes 2 and 3).

Poverty continues to be problem in many Asian countries and women disproportionately bear the brunt of poverty. As pointed out, the vast majority of women are working in the informal sector and in the rural areas.

In India for example, where 93 per cent of

the workforce is in the unorganised sector facing job insecurity and unfavourable conditions of work. Women, in addition, face an ever persistent wage gap and carry out the most menial jobs.⁵⁸

Governments have formulated and are implementing national poverty eradication strategies. Many are also integrating a gender perspective into these plans. Among such countries are Indonesia, Lao PDR, the Philippines and Cambodia. There are also specific programmes for the economic empowerment of women such as provision of micro-credit. China promotes women's employment and entrepreneurship under the Employment Promotion Act and India enacted the National Rural Employment Guarantee Act (NREGA) 2005. The NREGA is a bold

⁵⁷ See para 46 and 47. CEDAW Concluding Observations India . 2007. CEDAW/C/IND/CO/3

⁵⁸ CEDAW/C/IND/CO/3

LAO PDR

Since 1995 the National Land Title Authority has carried out the programme of Land titling, phase 1 (1995-2003) and phase II (2003-2008)). As of 2006, the project had issued 393200 land title certificates for the people, in which 142276 certificates belonged to women, equivalent to 36,18 per cent. The programme of land titling is being carried out from urban to rural and from lowland to highland areas.

Source: Responses to the list of issues and questions. CEDAW/C/LAO/Q/7/Add.1. Lao PDR 44th session. (2009)

Box 2

venture and could greatly benefit women in the rural areas, although it is not targeted specifically at women. But national data shows that women are more likely to continue to be poor. Intentions for gender responsive implementation are not always carried through and there is a lack of monitoring of gender impact. For example, the NREGA is criticized for the “ossified” structures through which it is implemented.⁵⁹

The sustainability of the benefits of these programmes depends on how comprehensive the efforts are and whether they take into consideration the impact of national and

international economic trends on the livelihoods of poor people and women in particular. Poverty eradication programmes need to be re-examined, therefore, for their results in enabling the long-term capacity of women for accessing real incomes through sustainable job creation measures, their empowerment to overcome gender-based constraints that restrict their mobility, and the stereotypical unpaid care-giving roles assigned to them limiting their access to income earning opportunities on a basis of equality with men. The impact of market forces and the attendant changing responsibility of government, unless re-defined, will not help reduce women’s disadvantage and the availability of positive measures aimed at women. This calls for programmes that make provisions for women’s participation in identifying their own needs, in policy formulation, the provision of needs-based capacity building, the eradication of negative cultural norms, the creation of safe environments, the legal protection of vulnerable groups such as migrant women and minorities, the elimination of discrimination in law and practice, and importantly the integration of international human rights standards, in particular that of CEDAW, into the efforts. All of these are issues in Asia.⁶⁰

In several countries of South East and South Asia, there are critical health issues relating to women. These include non-affordability of and access to health care, inadequacy of services relating to primary health care as well as contraceptive service delivery, inadequacy of obstetric care, prevention of early and frequent

⁵⁹ P. Ambasta et al. ‘Two Years of NREGA: The Road Ahead.’ in *Economic and Political Weekly*. February 23-28 2008

⁶⁰ United Nations Commission on the Status of Women. Op. cit.

Viet Nam

The Ministry of Natural Resources and Environment has been coordinating closely with localities to give instructions on the implementation of the revised Land Law 2003. The land-use certificates, certifying that the land-use right is a shared property now bear the names of both husband and wife if so requested by households

However, there are a number of people, including women, who remain unaware of their rights to property inheritance or find no need to exchange for the new land-use right certificate with both spousal names registered. Therefore, the propaganda and dissemination must be strengthened in the future. The State should adopt measures to issue the new certificate bearing the names of both husbands and wives even without citizen's requests.

Source: Responses to the list of issues and questions. CEDAW/C/VNM/Q/6/Add.1. Vietnam 37th session. 2007.

Box 3

pregnancies, inadequate protection of women's reproductive rights due to cultural and religious reasons and including through abuses pertaining to use of bio-technology in relation to reproductive rights, prevalence of unsafe and illegal abortion, lack of food insecurity and lack of sanitation. A number of countries, especially in South Asia, such as India and Pakistan, have some of the highest maternal mortality rates. Besides bio-medical causes and a lack of institutional capacity, there are many socio-cultural causes that need to be addressed in South Asia, including women's freedom to make decisions for themselves.⁶¹

There is much awareness today regarding violence against women. In the last decade many countries in Asia have passed laws or penal codes have been revised to protect women against various forms of violence. Countries that have done this include Mongolia, Malaysia, Indonesia,

Thailand, India, Cambodia, the Philippines, Lao PDR, Vietnam, and South Korea. The Indonesian Act on the Elimination of Domestic Violence is one of the most comprehensive.⁶² Marital rape in all of these countries has been exempted as a criminal offence. Only the Philippines has criminalised marital rape. In the same breath it leaves room for forgiveness by the wife. Countries such as Indonesia, Thailand, India, Cambodia, the Philippines and South Korea have also introduced anti-trafficking laws, and other countries have anti-trafficking plans in place. There is more focus now on providing the victim with legal protection and support instead of treating her as criminal. What is still missing, however, is adequate effort to prosecute traffickers. The main problem in the context of violence against women, however, remains in the area of enforcement and implementation. In the area of domestic violence in particular, Jaising points out that there is still

⁶¹ These health issues have been raised at the CEDAW review of South and South East Asian countries.

⁶² ESCAP Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Asia and the Pacific: Successes and Challenges. 2009. E/ESCAP/BPA/2009/INF/4

a tendency to prioritize the preservation of family over the rights of the woman, and that there is inadequate investment in well-resourced domestic violence response mechanisms.⁶³

Women's political participation continues to be one of the weakest areas in Asia despite some strong efforts to increase women's participation in decision making. Temporary special measures have been the most used here, especially for positions in local council and to some extent in the lower house of Parliament. For example, India made a constitutional amendment in 1992 to ensure 30% representation of women in local councils. In 2007, the cabinet approved a move to raise this reservation to 50%. In March 2009, Parliament passed the Women's Reservation Bill to give women 30% seats in Parliament. In Asia, Vietnam and Lao PDR have the highest representation of women in Asia with 25.8% and 25.2% of seats being held by women, respectively. Those countries which fall below the 10% mark are Malaysia (9.9%), Sri Lanka (5.3%) and Mongolia (3.9%). There is better representation of women in the upper house where members are usually appointed. There is something about the electoral process that needs to be addressed.

Direct discrimination in the law continues to exist in many States. The situation is made more complex where plural legal systems co-exist. The areas in which the law continues to discriminate are family law, age of marriage, divorce, guardianship of children, the marital power of the husband, and citizenship. The restricting effect of control over women's freedom and equality has already been discussed. Other problematic areas are the prejudicial procedural provisions in rape and sexual assault laws, as well as the weak enforcement of the law. Many countries are adopting gender equality laws. The intention of such a law seems to vary and its effectiveness and implementability needs to be tested.

Generally, weak institutional arrangements, the lack of an effective policy on women that binds all agencies, the lack of an overall integrated and cohesive strategy to promote and fulfil women's right to equality based on international and universal standards such as those provided by CEDAW, strong coordinating mechanism to monitor and enforce common standards for equality impede a plethora of efforts from bringing about results.

European Union Countries

⁶³ I. Jaising, A. Basu, B. Dutta of the Lawyer's Collective: *Domestic Violence legislation and its implementation: an analysis for ASEAN countries based on international standards and good practices*: UNIFEM, Bangkok 2009, in ESCAP Ibid.

At the regional review of Beijing Plus 15 in 2009,⁶⁴ it was reported that the priority areas focused on for the previous five years in the region had been (a) legislation to address gender-based violence, including domestic violence and trafficking; (b) women in the economy, mainly through narrowing the gap between female and male employment rates and adopting specific measures to combat women's poverty; and (c) the development and strengthening of national mechanisms for gender equality and women's empowerment. Of interest in the European Union is that there is and has been a regional strategy for equality, setting priorities. This is something that Asia does not have. The present strategy, spanning 2010-2015, identifies as priorities (a) equal economic independence, (b) equal pay for work of equal value, (c) equality in decision making, (d) putting an end to gender-based violence, (e) equality in external action and (f) horizontal or cross-cutting issues which include strengthening legislative frameworks for equality.

While these priorities have formed the basis of State action in this region, women from the region have raised other concerns. One of these regarding labour standards in trade agreements is that "work in the informal sector, which covers most of women's work, has been excluded from core labour standards and Corporate Social Responsibility (CSR) schemes. Both also exclude many issues central to women workers, such as working hours, arbitrary and inhumane treatment, harassment, unhealthy working conditions, absence of contracts, prohibition of union activities, fair remuneration, respect for pregnant women, as well as maternity leave. A further issue is that too many constraints still exist for women in getting involved in the forums that define workers' rights".⁶⁵

Women from this region have also expressed concern at the lack of coherence between development and free trade objectives espoused by the EU. It has been observed that while trade liberalisation has benefited the corporate sector, it has not taken on the objective of regulating markets to protect labour rights or redistribute economic resources or opportunities targeted at benefiting vulnerable groups in developing countries with whom the EU enters into trade agreements. Small scale enterprises of women in the dairy and other village-based industries are at risk of losing preferential treatment, currently in place in countries such as India⁶⁶. This runs contrary to obligations under CEDAW.

⁶⁴ See Economic and Social Commission for Europe. Beijing plus 15 Regional Review. UNECE/AC.28/2009/3. Chairpersons Conclusions

⁶⁵ A. Franck, Key Feminist Concerns Regarding Core Labor Standards, Decent work and Corporate Social Responsibility. (WIDE Publications 2008)

⁶⁶ Ibid.

The area where there has been the most progress is in women's political participation, with Sweden topping the list at 46.4%. But even where there is good representation of women in Parliament and in the Government at the centre, there is very low representation of women in municipal councils and in local and provincial governments, as well as in high-ranking posts, especially in the diplomatic service and in the security and defence sectors, the judiciary or in the academe; examples of these are the Netherlands⁶⁷ and Denmark.⁶⁸

There are examples of efforts taken to expand women's leadership into other areas such as the private sector. To overcome the lack of women in management and on the boards of private companies, in 2004-2006, the Norwegian government amended laws pertaining to companies to secure 40% women on the boards of companies.⁶⁹ Furthermore, the Netherlands has set a target figure of a minimum of 20% women in the top of the business sector by 2010, and followed this with some innovative strategies to implement this goal.⁷⁰

It was also expressed at the regional inter-governmental Beijing Plus 15 review that the gains made, especially in employment and laws to address gender-based violence, would need to be consolidated and strengthened. In the area of violence against women, the review expressed the need to improve the effectiveness of the implementation of legislation and in particular to strengthen inter-agency coordination and response. It was reported that the collection of reliable data on domestic violence remains a problem across the region with the majority of cases staying unreported.

Most EU countries vary in their experience of poverty. Vulnerable groups among women include immigrant/migrant and minority populations who suffer multiple forms of discrimination. Their social inclusion, while essential, cannot be forced. It is reported that there is a growing need for foreign labour in Europe, but a lack of regulation in the issuing of contracts is leading to exploitative work conditions.⁷¹ Countries in Europe do not necessarily have a distinct poverty eradication strategy but focus on improving women's employability (e.g. Denmark

⁶⁷ CEDAW/C/NLD/CO/4 37th session 2004

⁶⁸ CEDAW/C/DEN/CO/6 36th session 2006

⁶⁹ CEDAW/C/NOR/CO/7 39th session 2007

⁷⁰ CEDAW/C/NLD/CO/4

⁷¹ Women's labour migration in the context of globalisation, <http://www.wide-network.org/index.jsp?id=509>

and the Netherlands) through gender sensitive approaches. Focus has also been directed at national action plans for social inclusion (e.g. Ireland, Luxembourg, Slovakia).

Another strategy has been to implement social transfers through which income is transferred to vulnerable groups such as single mothers, as well as to implement gender-sensitive social welfare programmes. It is reported that this has been successful in Nordic countries to reduce gender differences in the at-risk-of-poverty groups.

It was also noted at the Beijing Plus 15 Regional Review that life expectancy in most Western and South-East European countries has continued to rise for both women and men, with women living longer than men in all countries. But privatisation and decentralisation of healthcare are a challenge in many UNECE member States because of the introduction of user fees. It was also reported that there was insufficient gender mainstreaming in medical research, training and healthcare services. In particular, an area that has so far received attention only in a few countries is the need for gender-sensitive medical research, especially with respect to gender-differentiated medical treatment and therapies.

The European Beijing Plus 15 Regional Review expressed concern at the vertical and horizontal labour market segregation, which leads to a pay gap. Part of the reason for this being the significant gender segregation that prevails is the educational choices made by men and women. It was reported that men continue to dominate in the fields of science, mathematics and computing while women dominate business administration, law, social sciences, journalism, humanities and arts. Some governments have taken special measures to make male-dominated careers more attractive to women. Despite improvements, women still earn considerably less than men and are vastly under-represented as entrepreneurs.

In some socially disadvantaged communities such as ethnic minorities including Roma, migrants and those from poor neighbourhoods, young people are at risk of leaving school early which impacts on their options for well-paid jobs. Girls in particular are more disadvantaged in the labour market if their education is incomplete and face social exclusion. It is therefore important to note that in the regional strategy for equality 2010-2015, one of the actions identified is the “promotion of gender equality in all initiatives on immigration and integration of migrants.”

Further, the economic value of unpaid work remains widely unrecognised. In view of this, countries in the region have facilitated the participation of women in the work force through policy interventions to make it possible for women and men to combine family responsibilities with work life by making provisions for part-time work, provision for women to return to work after child birth, parental leave, and the like. The aim of such policies has been to reduce wage and pension gaps which are prevalent in all the countries. This approach needs to be monitored as experience shows that it entrenches women's role as care-givers. Even in the most developed countries, more women than men take up the option of part-time employment.

For example, the Beijing Plus 15 Regional Review discussed the fact that part-time employment has a female face throughout the region, with some countries reporting women's share of part-time workers to be as high as 91 per cent (Luxembourg). In Norway, more than 40 per cent of employed women work part-time. Sweden reported to the CEDAW Committee at the 41st session that part-time employment is particularly prevalent in sectors dominated by women. Regardless of whether part-time employment is voluntary or involuntary, it affects salary, development and career opportunities, as well as levels of compensation in the social insurance system, e.g. sick pay and parental leave insurance, unemployment insurance and pensions. Many countries including Sweden have also put in place several legal and accountability measures in various fields including in the sphere of employment to ensure the success of their strategy. For example, employers are required to submit annual plans to reduce wage gaps between women and men. Parental leave is allocated to both parents and is not transferable. But the wage gap persists.⁷²

In the absence of a change in mind-set as to the roles and responsibilities of women and men in the family, choices that women and men make will abide by societal norms even though there are options to change the social relations of gender created by state policy. Sex role stereotyping is as much a fact of life in Europe as it is in Asia.

The need for legally binding international norms and standards

It would be useful to examine how States are relying on international standards they have ratified in fulfilling their obligations to close the gender gap. Globally, an effective legal framework through which the practical realisation of women's

⁷² See CEDAW/C/SWE/CO/7

right to equality according to the standards of CEDAW is still absent in many of the countries that have been reviewed by the Committee. While the top ranking countries in the Gender Gap Index have put in place a wide range of efforts to promote equality, these measures are not based on the standards of CEDAW. For example, the Committee has pointed out to almost every country that there was no definition of discrimination according to article 1 of CEDAW in the law and that CEDAW is still not applicable in the country. This is true even of countries like Sweden where the Government had put in place several measures to bring about equality. At the 49th session in 2008, the Committee expressed its concern to Sweden that a recent commission of inquiry had concluded that the instrument of Government of the Swedish Constitution is gender-blind, and not gender-sensitive, and the concept of equality in the Constitution is not in line with the Convention.⁷³

Generally the transformative potential of CEDAW is under-used in the countries of the European Union. Legal experts in Europe are of the view that the three main legal sources of equality and non-discrimination in the development of concepts of equality and non-discrimination in the European legal context are the constitutional traditions of Member States and the EEA countries, EC law, and human rights law, in particular the European Convention on Human Rights.⁷⁴ This leaves out CEDAW, so the meaning and scope of equality directives in Europe is not as multi-dimensional as CEDAW. For example, it is acknowledged that the gender, race and framework directives of the EU do not focus on the achievement of equality in the broader, more results-oriented, redistributive sense required for the achievement of substantive equality.⁷⁵ Legal opinion is that under EU law, positive duty may be permitted but not required.⁷⁶ Also there are variations in the acceptance of the necessity for positive duty among EU countries.⁷⁷ So jurisprudence on this matter is also inconsistent.⁷⁸ Legal scholars have expressed the view that the limitation of the EU law on sex equality is also caused by the

⁷³ Ibid.

⁷⁴ C. McCrudden & S. Prechal, *The Concepts of Equality and Non-Discrimination in Europe: A practical approach*. European network of legal experts in the field of gender equality. (European Commission 2009)

⁷⁵ C Barnard, 'The Changing Scope of the Fundamental Principle of Equality?' in *McGill Law Journal* 2001 Vol. 46 pp. 955-976. Cited in Ibid.

⁷⁶ McCrudden & Prechal. Op. cit.

⁷⁷ McCrudden & Prechal. Op. cit.

⁷⁸ R. Holtmaat & C. Tobler, 'CEDAW and the European Union's Policy in the Field of Combating Gender Discrimination' in *Maastricht Journal of European and Comparative Law*, Special Issue: Thirty Years of EU Sex Equality Law 2005 Vol. 12 No. 4 pp. 399-425

fact that in its origins, it is market-oriented. Its application in all fields is not certain.⁷⁹ It is therefore significant that the 2010-2015 EU Strategy for Equality does not indicate that the standards of CEDAW will inform all relevant action.

The status of treaty law is not clear in all the ASEAN countries, although it is said that in Cambodia, Laos, Indonesia, the Philippines and Vietnam, treaty law is recognised as part of domestic law. The problem is that the Constitutions in the latter countries have no provision to make void any domestic law that is in contradiction to international standards nor is there any provision as to what prevails if domestic law is in conflict with international treaty law.⁸⁰ Hence there is no guidance as to whether treaty law applies or not.

In almost all the countries of Asia and Europe, the *de facto* situation is that either the law does not reflect the principle of substantive equality as required by CEDAW (Malaysia, Sweden, China), or the equality legislation is not applicable in all spheres of endeavour or is enforceable only as against public agents (Malaysia, India), or accountability mechanisms are weak, or there are no remedies in the law. The applicability of the standards of CEDAW is an area for serious consideration.

IV. Specific Issues

In determining the implications for specific issues, it is essential to be aware of broader contexts of relevant macro-policies and realities at the global and national level. These include global and national economic policies and happenings such the recent economic crisis, the level of peace and security within a country, the state of the environment, the goals of national development, and the impact on women of the prevailing cultural and religious norms.

“Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace”

Beijing Declaration (para. 13) (United Nations, 1996)

⁷⁹ Ibid.

⁸⁰ S. Dairiam, ‘The domestic application of international Human Rights Law’ in *Building Capacity for Change. A Training Manual*. IWRAW Asian Pacific 2008.

Equality, development and peace are intrinsically interlinked and interdependent. A discussion of the contexts of development and peace does not fall within the scope of this paper. Rather the intention here is to provide a reminder that addressing equality rights of women in the context of specific issues without the inclusion of gender perspectives into macro-contexts would not allow for the achievement of equality or its sustainability. It is not possible for any of these components to be achieved without the other. Hence macro-economic policies must take note of the redistributive consequences of these policies in light of the constraints for women's empowerment,⁸¹ the state of the environment as well as the compelling relevance of peace in both conflict and non-conflict situations. The preamble to CEDAW also reflects this understanding.

This section of the paper will discuss some specific issues and their implications for the agenda of women's equality rights. The issues are political rights, socio-economic rights, gender-based violence, and the rights of vulnerable women.

As of June 2008:

- Women occupy only 18% of parliamentary seats around the world.
- Regional averages of the percentage of women in parliament vary greatly:
 - Nordic countries - 41.4%
 - Americas - 21.8%
 - Europe (excluding Nordic countries) - 19.1%
 - Asia - 17.4%
 - Sub-Saharan Africa - 17.2%
 - Pacific - 13.4%
 - Arab states - 9.6%

Source: Women's Democracy Centre.

a. Political Rights

Political participation and representation on a basis of equality is a recognised right that women still do not fully enjoy. The social and political acceptance of women in decision making is synonymous with the acceptance of women's leadership and is one indicator of the erosion of gender-based status hierarchy. The significance of the representation of women in political decision-making is that it has an impact on the laws and policies that affect their lives, but women continue to have unequal access

to political and economic decision-making.

The rights in this arena include the right to vote, the right to be elected into publicly elected bodies, the right to participate in the formulation of government policy and to hold public office. Owing to strong government policy matched by temporary special measures such as quotas and reservations as well as

⁸¹ Department of Social Affairs, Division for the Advancement of Women. World Survey on the Role of Women in Development. 2009.

legislative mandates, women's representation in the political sphere in western countries and in a few developing countries has advanced considerably. However, there is still cause for concern even in these countries.

While women's representation in parliaments has increased primarily because of mandatory requirements, they are grossly under-represented in senior political bodies such as the cabinet of ministers, in local councils and state-level legislatures, in senior civil service positions, and in the judiciary. Some countries in Europe have increased percentages of female ministers. In Spain and Norway, women make up 50% of the cabinet. In France 7 out of 16 are women in the cabinet, and in Denmark, female ministers comprise 46%. However, in Europe as a whole, female ministers are concentrated in social areas (14%) rather than in legal (9.4%), economic (4%), political (3.4%) and executive (3.9%).⁸² Only one in ten board members of Europe's biggest listed companies is a woman and all central bank governors in the EU are male.⁸³

Barriers

There are several barriers to women's political participation and representation. The IDEAs and NIAS studies⁸⁴ maintain that the main impediments are the male domination in political institutions and the prevalence of a "masculine model" of exercising power in political life and in political parties. As a result the environment of these institutions is unfriendly towards women and their perspectives are not always respected or represented in the view point of the party. The studies also assert that unequal access to information and lack of mobility has an impact on the rights of women to vote, to contest elections, and to become members of political parties and social networks. This diminishes women's access to power circles. Such access is essential to consolidate one's position in the party. Secondly, there is a strong relationship between access to economic resources and participation in the political sphere, and women lack the resources required, finding it difficult to obtain the financial support needed for political participation such as election campaign expenditure or resources required to attend meetings.

⁸² Women's Democracy Centre: fact sheet, http://www.iwdc.org/resources/fact_sheet.htm

⁸³ More women in top jobs key to economic growth says EU Report. Europa Press release. <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=742&furtherNews=yes>

⁸⁴ The barriers to women's political participation and representation have been studied by many. The discussion in this paper has relied on two studies: IDEAS. From Words to Action – Best Practices for Women's Participation in the Latin American Political Parties. 2008 and National Institute for Advanced Studies (NIAS) et al. Baseline Report on Women and Political Participation in India. 2001

The difficulty that women have in reconciling family life with public life is a serious impediment. This goes back to the universal culture of ascribing the role and functions of childcare solely to women and not valuing women's roles in the public sphere. Finally, women lack the knowledge and skills needed to be effective in policy formulation and to sustain their position as leaders effectively. While not all men who hold positions are skilled leaders, there is greater expectation from women regarding the quality of their leadership.

The exercising by women of the right to vote needs separate consideration. Here again the culture of male dominance and hostility towards the participation of women in public life is implicated. Since their participation in public life is relatively recent, in certain circumstances they may not have the freedom to vote independently, but may be influenced or be required to follow family or community-based affiliations. Personal safety and security is another critical factor inhibiting women from exercising the right to vote. Factional rivalry or even hostility to women's political participation may be the reasons for targeting women for acts of violence.

Some solutions

The IDEAs study suggests some useful solutions.⁸⁵ Strong state policy is essential to bring about equality of results in this area. Policies and laws that regulate political parties and mandate positive action, including reservation of seats, requiring women's entry into decision-making positions, is essential. Otherwise it will not happen, a fact which is borne out by experience in several countries. One example is the French experience. In France, political parties are required to present an equal number of women and men to local, regional, senatorial and European elections, and face financial sanctions in case of noncompliance. As a consequence, nearly 50 per cent of members of regional assemblies are women (up from 27 per cent in 1998), in contrast to only 18.5 per cent in the National Assembly, for which such requirements do not exist.⁸⁶ However, such mandatory positive actions alone may not be sufficient. The gender gap in politics cannot be redressed simply by bringing more women into the system. It is also necessary to create an enabling environment and conditions

⁸⁵ The writer also recommends the General Recommendations of CEDAW 23, Political and Public Life and General Recommendation 25, Temporary Special Measures, as well as the Beijing Platform for Action, for a more comprehensive range of ideas for the enhancement of women's political participation and representation.

⁸⁶ ECE/AC.28/2009/3 op. cit.

that will help women overcome the barriers. Reservations or quotas must be so implemented that they also include measures to empower women, reduce risk and monitor the effective participation of women.⁸⁷

The IDEAs study makes a recommendation worth considering. The suggestion is to create a women's secretariat within political parties as opposed to a women's wing. The latter does not empower women but positions them within the party as adjuncts or affiliates of the mainstream group of male members. It entrenches a social hierarchy of the dominant male versus the subordinate female, who performs feminine functions within the party. The role of the women's secretariat, on the other hand, would be the promotion and organisation of women's political participation on the basis of equality with men. The secretariat must be tasked with the preparation of a strategic plan for women's right to vote and to be elected as representatives, taking into consideration the social, economic and political barriers that women face. The plan would necessarily have to include alliances with civil society organisations in advocating for law and policy reform, as well as for building capacity of female candidates, raising public awareness and providing a support network for elected female representatives.

b. Civil and Economic Rights

This section proposes to address some features pertaining to the particular circumstances of vulnerable groups of women. Women who are vulnerable and face risk are of several categories. They include women in poverty, the disabled, rural women, migrant workers in general and undocumented workers in particular. The paper will not discuss each of their particular circumstances but will touch on some commonalities. A common feature is their extreme powerlessness and lack of political and social capital. We have seen that women generally experience such a deficit, but the situation of vulnerable women is compounded by their low status arising from a combination of their various other identities of being poor, of belonging to an ethnic minority group, or of having a disability. Hence they have absolutely no say in the formulation of policies that affect them and their entitlements, and access to even available public services is restricted. Despite what the law states, their recourse to remedies in the case of violations is undermined by prohibitive procedures or hostility in the environment. Solutions offered to them are mostly based on a welfarist approach and do not empower

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F. Bari. Women's Political Participation: Issues and Challenges. UN DAW. 2005. EGM/WPD-EE/2005/EP.12

them to make claims as rights holders or make them agents of their own change to reduce their vulnerabilities. Furthermore, the environment that contributes to such vulnerabilities is seldom targeted for change.

While there is a great deal that can be discussed here, only two issues will be looked at. One is the protection of the rights of women within the justice system and the other is the approach needed to empower vulnerable groups using women in poverty situations as a model.

It is well known that the more vulnerable a group is the more difficult it is gain justice from formal institutions. Facio⁸⁸ points to several reasons for this. Among others the following reasons are identified:

- Long delays in court processes;
- Prohibitive costs of using the system;
- Lack of available and affordable legal representation, that is reliable and has integrity;
- Abuse of authority and powers, resulting in unlawful searches, seizures, detention and imprisonment. The less powerful sections of society face this hazard;
- Weak enforcement and interpretation of the law not in favour of the victim, as well as even weaker implementation of orders and decrees;
- Severe limitations in existing remedies provided either by law or in practice. Most legal systems fail to provide remedies that are preventive, timely, non-discriminatory, adequate, just and deterrent;
- Gender bias and other barriers in the law and legal systems, including insufficient knowledge of rights;
- Lack of *de facto* protection, especially for women, children, and men in prisons or centres of detention;
- Lack of adequate information about what is supposed to exist under the law, what prevails in practice;
- Lack of adequate legal aid systems;
- Limited public participation in reform programmes;
- Excessive number of laws;

⁸⁸ Ms Alda Facio's comments are based on information gathered by IWRAP Asia Pacific from women around the world on their access to justice on women's access to justice and from studies conducted by the Organization of American States, Inter-American Commission for Human Rights (IACHR) (1) Access to Justice for Women); and (2) Access to Justice as a Guarantee of Economic, Social and Cultural Rights: Review of the Standards Adopted by the Inter-American System of Human Rights. 7 September 2007. OEA/Ser.L/V/II.129. Doc. 4 (IACHR, Review of Standards). Cited in IWRAP Asia Pacific. Report of the Interactive Discussion with the CEDAW Committee on the Optional Protocol.19 July 2009. New York

- Formalistic and expensive legal procedures (in criminal and civil litigation and in administrative board procedures);
- Avoidance of the legal system by the people most at risk due to economic reasons, fear, or a sense of futility of purpose.

All of the vulnerable groups referred to above are protected under the law in theory as their status falls within grounds on the basis of which discrimination is prohibited. However, if the duty of the State is narrowly interpreted to contain only a negative duty to ensure the absence of discriminatory acts – hence, only the duty to respect rights or to protect against and prohibit violations – then justice will not be served. This is evident from the many barriers to justice mentioned above. Under substantive equality norms, as discussed earlier, there is also a positive duty to create the conditions for the promotion and fulfilment of rights. This is also referred to as the duty to cater for the needs of a person who comes under a protected ground of discrimination within human rights legislation. So a study of the law will have to cover not only an identification of the presence of discriminatory provisions of the law but also to note what is not present in the law, policy or practice, such as: legal aid, access to legal counsel, victim protection, provisions that allow for adjustment to procedures like speeding up cases relating to critical areas of rights cases, or other enabling conditions related to the positive duty to promote and fulfil rights.

The context of women in poverty will be examined next. Much effort is taken globally to eradicate poverty. The question for us is which needs are met within such programmes and whether poverty eradication programmes also focus on giving impoverished women access to and control over resources, thus facilitating the agency and autonomy of women and not merely targeting them as instruments of better food security, more immunizations and so forth.⁸⁹ Socio-economic, civil and political rights are inter-related and inter-dependent. So poverty reduction programmes as well as social-transfer programmes for women cannot aim to meet survival needs without locating such programmes in interventions which seek to mitigate gender inequality that affects impoverished women's ability "individually and collectively to both articulate their security needs and mobilize resources to meet those security needs."⁹⁰ If this is not the goal,

⁸⁹ B. Woronik, 'Women's Empowerment in the Context of Human Security Discussion.' Paper for the Meeting on Women's Empowerment in the Context of Human Security. 7-8 December 1999, ESCAP Bangkok, Thailand

⁹⁰ Ibid.

then women affected by poverty will always remain precariously at the survival level. Reducing the vulnerability of women cannot be achieved without facilitating the agency and autonomy of women and this is what empowerment is about.

Kabeer and Subramanian,⁹¹ note that poverty alleviation programmes need to go beyond meeting survival needs and aim for attaining security of livelihoods as well as the development of agency of the people concerned to mobilize and access resources. Otherwise they slip in and out of poverty. Enabling them to mobilize resources will deliver them from relationships of patronage that are oppressive. This is more so for women who are constrained to remain in oppressive gender relationships for the sake of survival. Programmes that empower women need indicators to assess whether they move along a continuum of meeting needs for survival, security and autonomy.⁹² Using Kabeer and Subramanian's framework of survival, security and autonomy as interrelated elements, a set of generic indicators has been developed⁹³, shown in the table below, which would need further refinement according to context.

INDICATORS FOR SURVIVAL, SECURITY AND AUTONOMY: DESIRED OUTCOMES OF POVERTY REDUCTION PROGRAMMES FOR WOMEN

Survival

- Access to productive resources
- Engaging in productive activity
- Minimum income
- Adequate food intake
- Access to basic housing and related amenities
- Access to basic health services

Security

- Ownership of productive resources and assets
- Availability of safety nets
- Access to community resources (labour and material)
- Access to social network like group membership
- Social and legislative framework that confers and legitimises rights to work, to ownership of assets, to be free of discrimination
- Awareness of rights
- Forum to claim rights
- Political and social contacts
- Freedom from risk of violence

Autonomy

- Mobility: able to move without family approval
- Able to decide on important issues for self, family members and the community
- Control over income/assets e.g. Use buy and sell
- Control over own labour and time
- Representing women and the community in decision-making bodies
- Access to a wide range of occupations
- Able to act as social agent for self without intermediary e.g. access to health services, other public goods and services, make police report
- Able to make claims for self from the family
- Capacity to claim legal rights
- Participation in public protests and political campaigns
- Non-existence of harmful or discriminatory practices in the family
- Have an identity outside the home

⁹¹ See N. Kabeer & R. Subramaniam, *Institutions, Relations and Outcomes: Concepts and Methods for Gender Aware Planning*. IDS Discussion Paper, University of Sussex (IDS Publications 1996)

⁹² Ibid.

⁹³ This is a set of indicators first developed and presented by the author, Mary Shanthi Dairiam, at an ESCAP meeting held on Gender Perspectives in Human Security and as part of a commentary made by the author on the Discussion Paper: *Women's Empowerment In The Context Of Human Security* written by B. Woronik for the Meeting on Women's Empowerment In The Context Of Human Security. 7-8 December 1999, ESCAP Bangkok, Thailand See note 73 above.

c. Socio-Economic Rights

Socio-economic rights are not just individual rights. The deprivation of these rights is an indication of the historical disadvantage and inequality experienced by the group to which the individual belongs. Attempts to address such deprivation must also include efforts to advance the status hierarchy of the person concerned as a member of their group. In other words, as discussed in the earlier section of the paper, inequality and discrimination have material consequences which must be remedied to bring about substantive equality. The connection between the deprivation of socio-economic rights and denial of the right to equality is real, and the fulfilment of one right is critical for the fulfilment of the other.⁹⁴ Socio-economic rights, therefore, are an essential component of the right to equality. Women as a social group have a lesser entitlement to material goods on the basis of culture, religion and stereotypical notions of male superiority. This is brought about by assigning differential roles to women and men, devaluing the roles women play, and entitling them to lesser material resources. Equal access to land and financial resources, jobs and wages as well as education are denied to women globally in varying degrees. Advancing women's enjoyment of socio-economic rights is a political agenda but vital to the project of equality. Further, gender inequality interacts with inequality on the basis of caste, race and ethnicity or disability status and must be addressed in all its complexity.

The improvement in women's enjoyment of socio-economic rights is linked to gains in poverty reduction and the general welfare of the members of the family, especially children. In recognition of this, Governments committed themselves at the Millennium Summit in 2000 to promoting gender equality and the empowerment of women as effective ways to combat poverty and to stimulate sustainable development.⁹⁵

Access to factors of production: land, technology and financial resources

Improvement in women's access to and control over factors of production such as land and financial resources is a factor essential for the empowerment of women. It allows them to be productive and economically viable, reduces dependence on male providers, eliminates vulnerability and provides them with a safety net. In developing countries most of the population is based in rural areas, has

⁹⁴ S. Liebenberg & B. Goldblatt, 'The interrelationship between equality and socio-economic rights under South Africa's transformative constitution' in *South African Journal on Human Rights* Vol. 23 Part 2, pp. 335-361 (Ravan Press 2007)

⁹⁵ Commission on the Status of Women resolution 55/2, para. 20. Cited in UN Division for the Advancement of Women. *World Survey on the Role of Women in Development*. 2009

limited formal education and little option for formal employment. For example, only 7% of labour in India is in the formal sector. So there have to be effective conditions and incentives for self-employment. Women will benefit most from such conditions.

Nevertheless, women are discriminated against in this context owing to inequality in inheritance practices, gender-biased land reform, cultural practices or biased implementation of land reform measures, and women's lack of knowledge about their entitlements. There is also the phenomenon of land-grabbing by powerful commercial interests as mentioned earlier.

Access to credit and finance is another vital ingredient for women's economic rights. There is much effort globally to provide women with credit, especially micro-credit. While many women have gained from this, these gains have their limitations. Many women tend to be engaged in micro and small enterprises. Bold efforts are needed such as the use of temporary special measures to bring women into larger entrepreneurial schemes.

A further concern is that microfinance organisations are under pressure to become financially sustainable. One reason for this trend is that the potential for mobilising the savings of the poor has been noted by international investors. Commercialising this process may lead to a disadvantage for women who are small borrowers.⁹⁶

Women's access to social protection is another factor vital for their survival. The bearing of and caring for children, as well as having the sole responsibility for care of the family, contributes to interruptions in earning activities and the accumulation of assets.

Education

There are increasingly higher retention rates of girls in schools, but as yet this has not translated into better job opportunities for women. Part of the problem is the pattern of female education. Girls continue to take traditional subjects that do not prepare them for the job market. The link between education and employability is not fully appreciated. There are inadequate opportunities for vocational training and career counselling specifically targeted at girls.

⁹⁶ UN Division for the Advancement of Women. World Survey on the Role of Women in Development. 2009

The privatisation of education in many countries, especially at the tertiary level, will soon be a cause for lack of access to education at this level.

Employment and decent work

There are many critical issues here. Job markets have opened up in the wake of flexibility introduced into production processes that have become globalised. Skewed development concentrating on economic growth and the quest for cheap labour have become the cause of inter- as well as intra-country labour movements. In some countries of the West, there are many interventions such as provision for part-time work or parental leave to encourage the labour force participation of women while helping them cope with family responsibility. Despite these developments, the labour force participation of women does not match that of men, especially in developing countries, and there continues to be job segregation vertically and horizontally as well as a persistent wage gap.

The expanding job market has in many instances not provided decent work for women. Terms and conditions of their work are exploitative, and in these circumstances they have no platform for filing complaints. The CEDAW Committee has consistently raised these concerns with States parties. For example, the situation of women in the labour market was one of the topics discussed with China at the CEDAW review:

“The Committee is concerned about the situation of women in the employment sector, including the lack of legal provisions guaranteeing equal pay for equal work and work of equal value, the persistent wage gap, the high concentration of women in the informal sector, the toxic and harmful environment certain women workers might be exposed to and income reduction in a competitive job market. While appreciating the various efforts to promote the re-employment of laid-off women workers, it is concerned that gender might be the primary reason for being laid off. It is also concerned about the limited monitoring of implementation of labour legislation and the very low number of women who report violations of such provisions. It is also concerned about sexual harassment at work.”⁹⁷

These work conditions are prevalent in the developing as well as the developed countries.

The growth of the informal sector needs mention, as much of women's work falls within this sector and is the primary source of employment for women in most developing countries.⁹⁸ Women in the informal sector are mostly home-based workers or street vendors. The reasons for women's predominance in the informal sector merits discussion. Several explanations are provided for this. Among these are a lack of competitiveness among women owing to lower levels of education and skills, and the constraints women face in relation to time and mobility as a result of socio-cultural norms that make women solely responsible for care giving.⁹⁹

Chen also points out that there are demand factors at work. Home-based work is a link in key export industries where a share of informal work is sub-contracted from formal work as a cost cutting measure which boosts the competitiveness of businesses in the global market. But such cost cutting is at the expense of workers' rights relating to insecure contracts, lack of occupational safety, low wages and other social benefits.

The protection of the labour rights of home-based workers and the lack of social security or other safety nets for workers in the informal sector generally needs to be kept on the agenda.

Women migrant workers

There has to be some discussion of women migrant workers. They are also part of the trend characterised by a global pattern of production and cheap labour. While migration for purposes of work has provided opportunities for people to improve their economic situation, many workers, including women, are unskilled or are in low-paid unskilled jobs. The policies pertaining to such occupations in receiving countries are restrictive and exclusionary. Immigration restrictions are placed on the types of occupations and the visa categories available, the term of employment which is subject to such restrictions as stipulating limited time frames or those prohibiting change of employer, and the obtaining of permanent residence or integration through marriage. Such restrictions cause migrant workers to enter the countries concerned illegally, so besides the regular migrant workers there is also the irregular or undocumented worker population in many receiving countries. While the laws of the receiving countries should protect the

⁹⁸ M.A. Chen, *Women in the Informal Sector: A Global Picture*, The Global Movement.

⁹⁹ Ibid.

rights of migrant workers, that is not always the case. Their labour rights are frequently violated; they are excluded from access to essential services such as healthcare and may not have access to justice.¹⁰⁰

Within this context, the significance of the phenomenon of women migrating out of their countries is that it is influenced by a gendered nature of the demands in receiving countries specific to women. Job openings available to women fall within a narrow range of occupations that relate to functions stereotypically ascribed to women. This includes a demand for women workers in their perceived capacity for reproductive functions such as domestic labour, in entertainment services catering to men, or, in selected countries where there is a scarcity of women who are available to be spouses of men fulfilling certain desired criteria, to become wives. While migration opens opportunities for the economic empowerment of women, it does so by and large without disturbing certain traditional social norms pertaining to division of labour based on the social construction of gender.¹⁰¹ The rights of women migrant workers must be protected in sending, receiving and transit countries.

Health

Health rights and access to health services affect all other rights. They are particularly significant for the most marginalised as ill health is a serious risk factor if the individual has no fall-back in case of illness and has to drop out of work. Livelihoods can be lost. In many developing countries, access to even basic health services was not always available for the poor.¹⁰² Reasons for this were insufficient investment in health services and relevant infrastructure, the lack of targeting the most needy to create access, the lack of affordability owing to cost recovery measures or privatisation of services, and the control over women's decisions to access services by the family.

Averting maternal deaths is an agenda that has not yet met full success. According to The Millennium Development Goals Report 2010, some nations have significantly reduced maternal death ratios. However, as the report notes, the reductions fall far below the rates required to meet the MDG 5 target of reducing maternal deaths by three quarters between 1990 and 2015. According to the

¹⁰⁰ K. Yamanaka & N. Piper, *Feminized Migration in East and South East Asia: Policies, Action and Empowerment*. Occasional Paper 11. (UNRISD 2005)

¹⁰¹ Refer to the CEDAW Committee's General Recommendation 26 for an elaboration for the duties of the State to protect, respect and fulfil rights of Women Migrant Workers.

¹⁰² Noted by the writer during her tenure on the CEDAW Committee, 2005-2008

report, more women are receiving skilled assistance during delivery in developing countries, particularly in Northern Africa and South-East Asia. However, less than half the women giving birth in Southern Asia and sub-Saharan Africa are attended by skilled health personnel.

UNFPA Executive Director Thoraya Ahmed Obaid in a press release stated that “to speed up progress, we must invest more in reproductive health for women and girls. If every woman received reproductive health care, maternal death and disability would cease to be the devastatingly common tragedy it is today. Evidence from research and from the progress made so far prove that investing in women is not only the right thing to do, it is also smart economics. When women are healthy and survive, they provide enormous social and economic benefits for their families, communities and nations.”¹⁰³

Under CEDAW women's health goes beyond reproductive health. It encompasses all aspects of health on the continuum of a woman's life cycle. The Committee in its General Recommendation 24 has defined women's health and elaborated that Governments must develop the capacity to deliver services that is cognizant of the differential risk factors for various diseases among women and men on the basis of the differential biological and social factors affecting women and men, the differential progression in the diseases concerned in women and men, and the differential reaction to treatment with drugs in women and men on the basis of the above factors.

Socio-economic rights are intrinsic to equality rights for women. They are integral to the empowerment of women and for gaining independency. There needs to be an integrated approach taken for the fulfilment of these rights based on the standards of equality and non-discrimination, and informed by the inter-dependency of civil and political as well as socio-economic rights. Women's agency has to be developed for this and their representation in policy formulation and political decision making is essential.

d. Violence Against Women

Violence against women is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”¹⁰⁴ Evidence gathered by researchers

¹⁰³ Press release. 23 June 2010. <http://www.unfpa.org/public/news/pid/6083>

¹⁰⁴ CEDAW General Recommendation 19

reveals the pervasive nature and multiple forms of violence against women, and led to the recognition that violence against women was global, systemic and rooted in power imbalances and structural inequality between men and women.¹⁰⁵ Violence against women is indeed a form of discrimination against women. The CEDAW Committee, in its General Recommendation 19, has recognised violence against women as a gross form of discrimination and as a human rights violation. The Committee exposes the range of human rights violated by the phenomenon of gender-based violence. They include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.¹⁰⁶

Initiatives to end violence against women require approaches that promote gender equality and address values and norms that see women as inferior. To meet their human rights obligations, “States must take up the challenge of transforming the social and cultural norms regulating the relations of power between men and women and other linked systems of subordination.”¹⁰⁷

Violence against women manifests itself in many forms. It could be physical, psychological or sexual violence, economic abuse and exploitation, experienced in a range of settings, from private to public, and in today’s globalized world, transcending national boundaries.¹⁰⁸ It also includes harmful traditional practices such as child marriage, female genital mutilation, the taking of dowry and dowry deaths. It could be perpetrated in the home, in the community and in public spaces or in work places. Its eradication calls for a comprehensive coordinated and concerted effort by several actors, government, the community and civil society.

¹⁰⁵ United Nations. In-depth study on all forms of violence against women. Report of the Secretary-General. 2006. A/61/122/Add.12006.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

Challenges

Violence against women is universal. It prevails in all parts of the world including the most developed and bears witness to the fact that the unequal status of women is universal. In spite of many efforts, the adoption of laws to combat violence against women, action plans, training of the police and various forms of institutional reform, violence against women continues. The comprehensive efforts needed for its eradication have not been undertaken by any government.¹⁰⁹ The area in which most effort has been taken is the adoption of laws to address domestic violence. Many countries in Asia and Europe have such laws. This, to some extent, does indicate a change in societal attitudes. In the past, domestic violence or spousal abuse was seen as a personal matter. In some situations it was condoned as the right of men to chastise their wives. By making domestic violence an offence, States are indicating that it is a public crime and not a personal matter. So progress has been made. There are, however, many variations of the law and their implementation is weak owing to lack of capacity of law enforcers or their disregard of the law.¹¹⁰ The issue therefore is not whether penalties are severe enough to act as a deterrent but more importantly whether a perpetrator is punished at all.

This situation leads to a state of impunity where the State fails to hold the perpetrators accountable. Impunity for violence against women not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalised.

While laws to combat violence against women have been adopted, including laws to combat trafficking, and actions plans have been drawn up and implemented, there is inadequate monitoring of the implementation of the plans or of the impact of the laws on violence. So States are unable to report on results.

Data to establish the prevalence and the epidemiology of gender-based violence is lacking in all countries, and hence targeted and holistic measures are still not possible. The CEDAW Committee has been consistently recommending that what is needed is a comprehensive, inter-related, long-term, coordinated and multi-faceted strategy to combat violence against women.

¹⁰⁹ This is an opinion formed on the basis of the author's time serving on the CEDAW Committee between 2005-2008, and keeping abreast of the CEDAW reviews since then.

¹¹⁰ Women's groups have recorded the apathy and lack of interest or blatant bias of law enforcers towards the victim.

Contributions of the United Nations

The following developments trace the contributions of the United Nations:

1992 The CEDAW Committee drafted General Recommendation 19 and declared that violence against women is a form of discrimination against women, thereby bringing it under the purview of the Convention requiring States to introduce measures to deal with violence against women and report on these efforts periodically to the Committee.

General Recommendation 19 also introduced the principle of due diligence by which States must regulate private actor violence. General Recommendation 19 emphasised that discrimination under the Convention is not restricted to action by or on behalf of Governments and that the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

1993 World Conference on Human Rights, Vienna, asserted that women's rights are human rights and that culture could not be used to justify violence against women. This led to the appointment of a Special Rapporteur on Violence Against Women.

1994 The UN Declaration on Violence Against Women

1995 The Fourth World Conference on Women, Beijing, and the Beijing Platform for Action has a chapter on Violence Against Women.

2006 The UN Secretary General's study on violence against woman was produced.

2008 As a follow up to the UN Secretary General's study on violence against woman the UN DAW held an expert group meeting and drafted a comprehensive framework for a law on gender-based violence.¹¹¹

¹¹¹ See Good Practices in Legislation on Violence Against Women. Expert group meeting organised by United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime United Nations Office at Vienna, Austria 26-28 May 2008

In all of these developments, it must be acknowledged that the tremendous effort and advocacy of women's groups globally, since the 1980s, contributed to internationalising the crime of violence against women and declaring that "women's rights are human rights."

V. Conclusion

There is much consciousness about women's rights nationally and internationally, and much effort is being taken in this regard by civil society, governments, international organisations and donors. But much also still needs to be done and many challenges remain.

While there are differences in the positions of women in developing and developed countries, there are also similarities. According to the Beijing Plus 15 Review held in March 2010, progress for women has been mixed and also slow. Globally, the educational achievement of girls has shown improvement but this has not always transferred into better or decent employment for women. Job segregation, wage gaps and stereotypical assumptions about the roles of women and men and the prevalence of gender based violence are universal.

In the developing countries, women remain disproportionately poor and illiterate and more than half a million women die of child birth every year. Poverty, therefore, is an issue that needs to be addressed more strategically, taking into consideration the impact of global economic policies on the livelihoods of poor people and ensuring women's access to and control over factors of production such as land, financial resources and technology. Women who suffer from multiple forms of discrimination such as minority women, the indigenous and migrants are particularly vulnerable. Their agency must be developed and their vulnerabilities reduced.

European countries have shown much progress in women's political participation. While there is still room for improvement, serious efforts are being made to improve women's position in other areas of leadership but this is still an issue in most developing countries.

There has been some progress in amending discriminatory laws in many countries, but there is also concern that amendments to discriminatory laws have been partial, incomplete or cosmetic. Existing laws are made ineffective through weak implementation and enforcement. The areas where the human rights of women in particular go unprotected are in the domain of marriage and family relations where the private lives of women are controlled and their access to economic resources restricted during and after marriage.

Generally, weak institutional arrangements, the lack of an effective policy on women that binds all agencies, the lack of an overall integrated and cohesive strategy to promote and fulfil women's right to equality based on international and universal standards such as those provided by CEDAW, a strong coordinating mechanism to monitor and enforce common standards for equality impede various efforts that are being made.

Importantly a human rights approach must be taken recognising the universality and the interrelatedness of rights in dealing with women's rights. Holistic measures are needed to address women's right to equality that will take account of the structural basis of discrimination and inequality.

Secondly, the significance of the international standards of equality and non-discrimination as provided for in CEDAW must be appreciated and consistently applied in every aspect of endeavour to promote women's rights, such as gender mainstreaming and National Action Plans for the Advancement of Women. In particular, gender equality laws must provide for the pre-eminence of CEDAW standards. The CEDAW Committee has expressed concern that this is not always the case at the review of States parties as the following statement illustrates:

“The Committee urges the State party to take all appropriate measures to ensure that the Convention is sufficiently known and applied by all branches of Government as a framework for all laws, court verdicts and policies on gender equality and the advancement of women.”¹¹²

Finally, there is an urgent need for sex-disaggregated data to establish benchmarks so that progress can be monitored.

¹¹² CEDAW/C/LAO/CO/7. 44th session 2009. Para 12

CONCLUDING REMARKS

- **Mr Frédéric Tiberghien**
State Counsellor, France
Technical Co-ordinator Informal ASEM Seminar on Human Rights

CONCLUDING REMARKS

Mr Frédéric Tiberghien

State Counsellor, France

Technical Co-ordinator, Informal ASEM Seminar on Human Rights

It is very difficult to draw immediate and definite conclusions after such an in-depth seminar but I have selected seven major points arising from our discussions that I would like to elaborate upon as a wrap up.

Firstly, it takes a very long time to achieve change: gender gaps persist in varying degrees in each of our countries.

In that respect, globalisation, liberalisation and privatisation had and still have an impact on gender equality. Nowadays States are increasingly in competition, in the same way as other actors, and we are witnessing both more competition and less protection in international relations. One example illustrates this. If you look at the statistics published regularly in *The State of Working America*, you see that the multiple of remunerations between the general manager and the average employee was twentyfold in 1965, 30 in 1980, 56 in 1990 and 107 in 1999. So the range of remuneration is widening nearly everywhere. In a way, it is a miracle we have noticed that the salary gap between men and women has reduced, even slightly, in the context of an increased remunerative range. And it is difficult to combat the pay-gap between sexes because the range of remuneration has been widening over more than three decades. We heard also that we are now living in a world where sex is merchandise. We witnessed a kind of commoditisation of sexuality. At some point, we have to recognise that the mobility of persons and the multiplication of exchanges are linked with liberalisation, privatisation and globalisation.

As has been clearly stated over the past two days, this is why we need to focus now not only on equality of treatment but on equality of results, in order to change the situation. To achieve that, we need to address the structural basis of gender discrimination. We also need activists. In the case of sex trafficking in Southeast Asia presented here, we saw the role that activists can play to change the situation. This point was also made by Lena Hjelm-Wallén, the Swedish former Deputy Prime Minister, in her keynote speech. We also need champions: countries far ahead of the others that can pave the way to global improvement. We have

also heard about the way the Philippines is fighting against trafficking. In this respect, the Philippines is a champion. We need champions to keep some hope in this difficult world.

The second point I would stress is that we must identify the forces upon which we can rely to accelerate social change.

We seem to have mixed feelings towards political parties. Our discussions highlight that they are still structurally dominated by men and I noticed a strong recommendation for women to join political parties in order to effect change from the inside. This is a very important recommendation.

In the working group on Civil Status and Economic Empowerment, regret was also expressed about the increasing weakness of unions. We have to draw parallels between political parties and unions and put out a strong appeal for women to join unions so that their voices are heard also within that arena. Unions are, after all, important actors to promote gender equality on the labour market and within the companies.

We mentioned a third important actor, namely educators, and especially those in primary schools. Everybody was in agreement that gender education starts at school, particularly in primary school. So educators are probably among the main actors in our field.

A fourth actor is the State. Regarding its role, we have insisted not only upon the implementation of human rights as laid out by international conventions, but also on the promotion of human rights. The responsibility of the State in this last regard is often overlooked. We insist on implementation, but promotion of gender equality is as important as implementation. And it is right that we should demand such a balance from States.

We have not forgotten private organisations. At this stage, we have to remember that in the 1948 Universal Declaration of Human Rights, the Preamble insists on the role of private actors. In the field of gender equality, it is essential to mobilise private actors. We have talked about organisations of employers and companies, and we need the cooperation of these private actors if we want things to change. Furthermore, in order to justify this cooperation, we have argued that there is a business case for ensuring gender equality: the need to use all human resources and human capital to maximise the added value of a company. And the promotion of the best potential of employees was very well expressed in our discussions.

However, we did not stress enough that there is also a political case behind gender equality. Everyone who has studied this says that gender equality promotes peace and development. It is highly important in international relations to promote gender equality as it will in turn increase peace and development within and between societies.

We recognised that a change in mind-set is required in order to advance further. This is probably one of the most striking conclusions of our two days.

I heard a very good formula and I want to repeat it here: inequality and discrimination do exist but they are not inevitable. So let's keep that in mind: when we talk about mind-set, nothing is inevitable.

We also regretted that we are still living with male-dominated models of behaviour, of management of companies, and of ruling political parties. We must realise, however, that the male model of behaviour, while dominant, is not unavoidable.

A change in mind-set refers to two or three main notions or concepts. Firstly, we have to beat back impunity. In this field there is a very general feeling of impunity, and it was mentioned that it can be combated by beating it back, both in times of peace and in times of conflict or crisis, which are two different matters. The second notion is the importance of implementation and enforcement of human rights. The third notion refers to the role and the contribution of judges and of justice. Many of us regretted the relative absence of judges in this field. We need key proceedings to move ahead and to make sure that judges are not under-utilised.

A point which hampers the change in mind-set is the designation of women to the areas of care and cure. We have noticed that in the labour market, women are concentrated in certain sectors, which are mainly the sectors of care and cure, namely those relating to the transmission of life and of values. In the working group reports, it was very clearly stressed that these fields mainly rely on a 'gift' economy. How can we reconcile the transmission of life and of values, which are free gifts, with the market economy and liberalisation, which do not give any monetary value to the transmission of life and of values? We clearly stressed that the market either does not give spontaneously or undervalues labour which is linked to the transmission of life and values. Referring to the European debates, we find here some strong arguments against the Commission doctrine: as far as social security is concerned, non-contributive pensions and specific advantages for women can find a solid justification.

To accelerate the change in mind-set or in stereotypes, we need public campaigns. I already mentioned the promotion of gender equality and the important role of the State in that respect. These campaigns must create a new culture or new cultural practices to promote gender equality. We also touched upon the question of language. A female minister from my own country, who has passed the right to abortion in Parliament in 1975, said this year that “the ‘she’ wording does not accelerate gender equality”. Nevertheless there is a correct language to use and to promote in the media. One example that has been suggested is the use of the term ‘parental leave’ as opposed to ‘maternity leave’. So the language question is also part of the mind-set change.

I will turn now to the issue of priorities for action. We have pinpointed the three dominant fields where the gender fight has to be played out. The first is that of access to education, the second access to employment, and the third access to remedies and to justice.

Regarding the access to the labour market, women left the reproduction sphere to enter the production sphere. They occupy new jobs – still linked with the reproduction sphere as we saw – and they did not steal these jobs from men. Equal pay and equal opportunities are the major struggles here.

Regarding the access to justice and remedies, there are still barriers for women: the stigmatisation and the financial cost. Class actions and a more frequent use of criminal systems have been mentioned as potential solutions.

We have also noticed two specific concerns, which are probably new priorities for today and tomorrow. The first one is a relatively new phenomenon: the increasing number of single mothers or single parent families in Asia and in Europe. The second concern, which is linked to globalisation and to migrations, is the protection of domestic workers.

I jump to another series of comments on the tools we can use to promote equality.

The first one is the legislative reform, which we have talked about at length. There has been much progress in this area, but now it is implementation that is important. We have noticed, however, one or two topics on which the legal reform is not finished. I am thinking specifically about the LGBT and the change of identity for transgender people. The other point I would raise regarding legal reform is that there are four separate stages in this process: the changing of the law; the implementation of the law, which we think is weak in the arena of gender equality; the allocation of sufficient resources to implement the law; and, finally, the measuring and monitoring of results. I also noticed that some

advocated the removal, from time to time, of laws which are no longer consistent with the Universal Declaration of Human Rights or international treaties – a kind of sweeping away of laws which are contrary to the new treaties.

The second tool we talked about is the knowledge we have about the situation, which is to say statistics. There is a strong argument emphasising the necessity to invest in gathering statistics and developing indicators, as well as to evaluate public policies. Furthermore, we have also to promote benchmarking among countries on achieving gender equality. It was remarked that CEDAW does not compare the reports of different countries, even though a comparison of country reports could be worthwhile. It could also be beneficial to have these reports examined in national human rights commissions, because this is one way of discussing results. The reporting of companies dedicated to CSR is similarly not exploited as it should be.

Another tool we have mentioned is the construction of effective institutions. We have outlined the main features of an effective institution. It firstly needs political will – nothing can happen without political will. Secondly, it requires technical competence, which is the prime reason for having an institution dedicated to the promotion of gender equality. These institutions must also have adaptive mechanisms for the collection of complaints, as well as adequate mechanisms for complaint redress. A final requirement is that they devise mechanisms which help plaintiffs to bring the proof in these very intricate cases.

We have also pointed out the need to allocate more resources to women. I will simply enumerate these. Firstly, women need more freedom in their time management, which means flexibility in the organisation of labour within the companies and in the relationship with the employer. They also need a better share in the revenue, that is to say we must address the gender gap in remuneration. In order to compensate for the present structural weakness of women in organisations and companies, women have to be provided access to specific networks and leadership training, to mention just two of the many requirements discussed at this conference. In the hands of women, these resources will lead to the promotion of gender equality.

We talked of course about quotas and positive discrimination as a mean to allocate quickly more resources to women. It is a temporary measure which allows historically disadvantaged populations to reach more quickly *de facto* gender equality.

Another tool we have called for is the provision by States of national plans or programmes on gender equality. Because so few States have these plans, laws cannot be implemented. There is a specific need for laws on gender equality to be accompanied by gender equality national plans and programmes.

The final point in relation to tools is that of public services, and here I come back to privatisation and liberalisation. Some of us have noted that welfare states and social security systems everywhere are under severe threat from these movements. The privatisation of services in areas such as health and education leads to a situation where costs are higher and outputs are lower. It has also been emphasised that States must improve the organisation of these social services, and particularly childcare, which is an important condition if we want women to occupy jobs in the labour market. Furthermore, childcare should not be a service which is supplied solely by private entities. We also need public involvement in, or at least public financing of, these services for freedom of labour for women to be achieved. Moreover, if States do not act on this, we have seen two adverse consequences. Firstly, immigration increases to compensate for the lack of public facilities, specifically in the areas of home and domestic workers. We have seen that this is an important component of immigration, but it also raises problems of protection for women employed in this sector. The second way to compensate for a lack of public services is reliance on free family support, but this too is problematic. We need social support for all of these facilities, and States have to provide these social services in order to promote gender equality.

I would like to move now to some brief words on international law and domestic law.

We have talked a great deal about CEDAW. I remind everybody that CEDAW is the international convention with the most reservations in the world. These reservations reflect resistance from patriarchal patterns and structures. So the conclusion is that it is necessary to remove, as quickly and far as possible, all of these reservations, which are an indicator of society's resistance to gender equality.

Also clear from our discussions is the positive role of national reports regarding the implementation of CEDAW. There was a strong recommendation that as many countries as possible ratify the 12th Optional Protocol on communication procedures as the next step in promoting gender equality.

As for other international treaties, we have also briefly mentioned the ILO Conventions and that there is a call for the majority of States to sign the ILO Conventions relating to migrants and labour.

Regarding international law and domestic law, however, we must also recognise that there are limitations to the legal approach. We have mentioned one or two such limitations that I would like to elaborate on now. Law is built on categories, such as men and women. It is difficult, though, for the lawyers to integrate new categories into these existing structures. When a new problem arises they promote the idea of designing or creating a new category. The LGBT question causes such problems for lawyers, because it is difficult to weave it into an existing category.

We must also underline that the law is not very effective when multiple forms of discrimination are suffered. Women can also encounter discrimination based not only on their gender, but also on being elderly, disabled, poor, a migrant, or a member of an ethnic minority. Our legal systems do not cope very well with the overlap between these categories or with the accumulation of different discriminations. It is true that we need laws, but laws are not a definitive, unique or effective solution for every new problem. It has also been well remarked upon that the law is often instrumentalised by politicians. Vis-à-vis the LGBT, two attitudes are possible: for some, LGBT have to stay hidden and no law is necessary; others claim to be visible and ask for a law offering equal opportunities. One view expressed concern that if a law was passed on the rights of LGBT, all of the conservative forces would be unleashed. We must be aware that the law is not always necessarily the best or most relevant solution.

As a final point, I have noticed that there are some areas where we have not agreed, but this is only to be expected in an informal dialogue. Two or three such areas deserve attention here.

The first, following on from the points that I mentioned earlier about categories, would be the question of whether we need a separate framework for LGBT rights or whether LGBT rights should be integrated into the existing frameworks. Can we simply integrate LGBT issues into the field of gender equality issues? It has been well pointed out that the choice of sexual orientation is also a woman's right.

The second area on which agreement was not achieved, but on which we had a very interesting debate, is that of positive discrimination and quotas in political spheres. Unfortunately, I am not able to reach any definite conclusion on this topic, except that we must return to it and continue the discussions, because it is a very important point in advancing the political representation of women. We have also to check closely their results in the countries where they are implemented.

The third area we just touched upon is about religion and gender equality. Due to the place and role of women in the different religions, it would have been of deep interest to reflect more on that topic.

Finally, our seminar was a timely one.

We are in agreement of the goals, that is to say the necessity to implement women's human rights, and to promote them.

I will end with a quotation from one of our poets, Louis Aragon, dated 1963, which can explain the reason why we arrived at such a conclusion: "the future of man is the woman".

LIST OF ACRONYMS AND ABBREVIATIONS

e.g.	<i>exempli gratia</i> , for example
Ibid.	<i>ibidem</i> (in the work cited in the immediately preceding reference)
No.	<i>numero</i> , number
Op. cit.	<i>opere citato</i> (in the work cited above)
para.	paragraph
p.	page
pp.	pages
vs.	<i>versus</i> , as opposed to
ASEAN	Association of Southeast Asian Nations
ASEF	Asia-Europe Foundation
ASEM	Asia-Europe Meeting
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIDA	Canadian International Development Agency
CSR	Corporate Social Responsibility
CSW	Commission on the Status of Women
DOJ	Department of Justice
EC	European Commission
ECHR	European Convention on Human Rights
EEA	European Economic Area
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
GDP	Gross Domestic Product
ICT	Information and communications technology
IDEA	International Institute for Democracy and Electoral Assistance
ILO	International Labour Organization
IWRAW	International Women's Rights Action Watch
LGBT(I)	Lesbian, gay, bisexual, transsexual (intersex)
MDG	Millennium Development Goal
NGO	Non-governmental organisation
NREGA	National Rural Employment Guarantee Act (India)
UN DAW	United Nations Division for the Advancement of Women
UNECE	United Nations Economic Commission for Europe
UNHCR	United Nations High Commissioner for Refugees
UNRISD	United Nations Research Institute for Social Development
USAID	United States Agency for International Development

10th Informal ASEM Seminar on Human Rights “Human Rights and Gender Equality”

7-9 July 2010
Manila, The Philippines

Conference Venue: InterContinental Hotel Manila

Day 1 – Wednesday, 7 July 2010

Arrival of Participants, Registration and Welcome Reception

09:00 – 18:00	Arrival of Participants
10:00 – 12:00	Rapporteur's meeting (Invitation only to members)
14:30 – 17:30	Registration of Participants

Opening Plenary

18:00 – 19:30	<p>Chair Ambassador Dominique Girard Executive Director, Asia-Europe Foundation</p> <p>Opening Speech Mr Frédéric Tiberghien State Counsellor, France Technical Co-ordinator, Informal ASEM Seminar on Human Rights</p> <p>Keynote Speeches Her Excellency Leila de Lima Secretary of the Department of Justice, the Philippines</p> <p>Her Excellency Lena Hjelm Wallén Former Deputy Prime Minister and Minister for Foreign Affairs of Sweden</p> <p>Presentation of Background Paper Ms Mary Shanthi Dairiam Member of the Board of Directors, International Women Rights Action Watch Asia Pacific</p>
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19:30 – 19:45	Open Discussion
19:45 – 21:00	Welcome Reception
Day 2 – 8 July 2010	
08:00 – 09:00	Registration of Participants (continued) Venue: InterContinental Hotel Manila
Simultaneous Working Groups	
Discussion on Workshop – Cross-Cutting Questions (See Annex)	
09:00 – 11:00	<p>Working Group 1: Political rights and political empowerment</p> <p><u>Moderator:</u> Ambassador Rosario Manalo, Philippine Representative to the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and Asia-Europe Foundation Board Governor for the Philippines</p> <p><u>Rapporteur:</u> Ms Erika Kvapilova Programme Director, UNIFEM (United Nation Development Fund for Women), Regional Office for Central and Eastern Europe, Bratislava</p> <p>Working Group 2: Civil status and economic empowerment</p> <p><u>Moderator:</u> Professor Göran Melander Professor Emeritus, Honorable Chairman of the Board of the Raoul Wallenberg Institute</p> <p><u>Rapporteur:</u> Ms Naoko Otobe Senior Gender and Employment Specialist, International Labour Organisation (ILO)</p> <p>Working Group 3: Cultural practices and social empowerment</p> <p><u>Moderator:</u> Ms Anjali Gopalan Executive Director, The Naz Foundation</p> <p><u>Rapporteur:</u> Dr Malgorzata Olimpia Gorska International Relations Officer – European Commission Human Rights Unit, DG External Relations</p>

Working Group 4: Gender-related violence	
<u>Moderator:</u>	Ms Eniko Pap Vice President, Hungarian Women's Lobby
<u>Rapporteur:</u>	Ms Mary Shanthi Dairiam Member of the Board of Directors, International Women Rights Action Watch Asia Pacific
11:00 – 11:15	Coffee Break
11:15 – 13:00	Workshops continued
13:00 – 14:00	Lunch
14:00 – 15:30	Workshops continued- Specific Questions
15:30 – 16:00	Coffee Break
16:00 – 18:00	Workshops continued and Wrap-up
18:00 – 19:30	Report Preparation & Free Time for Participants
19:30 – 21:00	Dinner
Day 3 – 9 July 2010	
Closing Plenary	
09:30 – 11:00	Main Rapporteurs' Summary on Each Workshop
<u>Moderator:</u>	Ms Sol Iglesias Director for Intellectual Exchange, Asia- Europe Foundation
Working Group 1: Political rights and political empowerment	
Presentation & Discussion	

Working Group 2: Civil status and economic empowerment

Presentation & Discussion

Working Group 3: Cultural practices and social empowerment

Presentation & Discussion

Working Group 4: Gender-related violence

Presentation & Discussion

11.00 – 11.15

Coffee Break

11:15 – 12:30

Plenary Discussion

12:30 – 14:00

Lunch and Group Photo

14:00 – 15:30

Special Panel: Addressing the Trafficking of Women in ASEAN

Moderator: Atty Amparita S. Sta Maria Urduja
Women's Desk Director, Ateneo Human Rights Center

Panellists: Atty Deana P. Perez
Senior State Prosecutor, Department of Justice

Atty Hans Leo J. Cacdac
Deputy-Administrator, Philippine Overseas Employment Agency

Ms Deepa Bharathi
Programme Manager, Regional Programme on Empowering Women Migrant Workers in Asia

15:30 – 15:45

Coffee Break

15:45 – 16:45	<p>Special Panel (continued)</p> <p><u>Panellists:</u> Prof Aurora Javate de Dios Executive Director, Women and Gender Institute (WAGI)</p> <p>Ms Ma Cecilia Flores-Oebanda Founder and Director, Visayan Forum</p>
16:45 – 17:15	<p>Concluding Remarks</p> <p>Professor Carlos P. Medina, Executive Director Ateneo Human Rights Center</p> <p>Mr Rolf Ring, Deputy Director, Deputy Director, Raoul Wallenberg Institute, Lund University</p> <p>Mr Frédéric Tiberghien State Counsellor, France Technical Co-ordinator, Informal ASEM Seminar on Human Rights</p> <p>Ambassador Dominique Girard Executive Director, Asia-Europe Foundation</p>
17.30 – 18.30	<p>Steering Committee Meeting (Invitation only to members)</p>

ANNEX

CONCEPT NOTE & WORKING GROUP QUESTIONS

Background

The Vienna Declaration and Programme of action reaffirmed the rights of women as an inalienable, integral and indivisible part of universal human rights. The Fourth World Conference on Women in Beijing proved to be a successful forum in mobilising worldwide attention towards gender equality and the advancement of women as well as in establishing a comprehensive framework in the formats of Declaration and Platform of Action along with the UN Declaration on Sexual Orientation and Gender Identity.

However, gender inequality remains a widespread form of discrimination that is not restricted to particular countries, regions, or religions. Around the world, women continue to be victims of human rights violations, and have been the most vulnerable group during the economic recessions, with limited access to rights, resources and opportunity.

Women's rights are regarded as freedoms inherently possessed by women. These rights encompass, among others, the right to education, the right to vote and the right to equal wages and employment opportunities. Though such rights have been progressing, disparity between ASEM countries still exists.

Under CEDAW¹, States are required to eliminate discrimination that women encounter, not only by revising existing laws that directly or indirectly discriminate against women, but also by ensuring that all policy instruments are in place to allow women fully to enjoy equality in their lives.

¹ The key international agreement on women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is also described as the international bill of women's rights. Ratified by 185 UN Member States, CEDAW encompasses a global consensus on the changes that need to take place in order to realise women's human rights.

Based on relevant international standards and on comparisons between ASEM countries, the seminar will examine how to improve women's rights putting an end to the social, political and economic discrimination based on sex. Moreover, the seminar will try to identify the current trends in Europe and Asia regarding women's rights and gender equality. Attaining gender equality and the process of gender mainstreaming requires enhancing cooperation with stakeholders such as employers, NGOs, academia, media and other civil society actors. While broader questions of sexual orientation and gender identity have been tackled in the past, this seminar will certainly be the first attempt to link human rights and gender equality within the ASEM framework, in an informal and unofficial manner.

There have traditionally been great differences in the participation of women in society in ASEM countries. In some societies, prejudice and discriminatory practices against women continue to exist. Nevertheless, there has been remarkable progress in achieving gender equality in laws and institutions that could provide positive examples to fully implement international standards on gender equality. Whether this contributes to the achievement of the broader equality and freedom from discrimination in any form, including discrimination based on sexual orientation, needs further investigation.

Despite the progress over the past decade, we need to strengthen our efforts to enhance women's rights of integrity as well as sexual self-determination.

General objective

The seminar aims to develop a human rights approach to the issues raised by gender equality, to share good practices in ASEM countries and to discuss ways of better protecting women's rights.

Specific objectives

- To identify trends on how women's rights and gender equality are protected across ASEM countries
- To find common challenges between two regions in terms of women's rights and gender equality.
- To formulate recommendations for relevant institutions at a national, regional, inter-regional and international level.

WORKING GROUP QUESTIONS

Cross-cutting questions

1. What are the relevant legal frameworks on all aspects of women's rights and gender equality?
2. How can we accelerate the implementation and effectiveness of relevant international human rights treaties, including conventions, and remove reservations to them?
3. What kinds of judicial remedies exist to promote and protect gender equality? Do national human rights institutions have a role in promoting and protecting gender equality?
4. How can diverse discriminatory acts based on gender be addressed? How do existing international conventions and national legislations addressing multiple forms of discrimination against women contribute to the elimination of other gender-based discrimination?
5. What are the emerging issues related to gender equality and identity?
6. What are the relevant statistics/trends?
7. What positive experiences or good practices have been effective in the promotion of equality?
8. How is the integration of a gender perspective in all levels of public and private institutions promoted through public awareness-raising and education?
9. How can we strengthen the existing machinery for gender equality by providing adequate human and financial resources at all levels and in all areas?
10. What roles do cultural practice and tradition play in advancing gender equality?

Working Group 1: Political rights and political empowerment

- 1.1. What measures are in place to promote gender equality in political representation and decision-making (including voting at elections, referenda)?
- 1.2. How can we create discussion platforms that bring all relevant stakeholders to participate in order to enhance the representation of women in political arenas e.g. the legislature, executive, judiciary as well as on national and local level?
- 1.3. What measures are in place to support increasing the number of women at executive positions in public agencies and institutions?
- 1.4. Are temporary special measures or specific legislation needed? Are programmes encouraging political participation necessary to implement better human rights in the long run?
- 1.5. What sanctions apply when quotas are not reached?
- 1.6. What measures are in place to encourage women to join collective organisations (trade unions, political parties, NGOs etc.) and increase the representation of women in their management?
- 1.7. What measures are in place to grant asylum to anyone facing persecution in their home country because of their sexual orientation and/or gender identity?

Working Group 2: Civil status and economic empowerment

- 2.1. How is gender equality promoted in:
 - Marriage, divorce, custody, adoption*
 - Citizenship and transmission of nationality*
 - Determination of conjugal home*
 - Inheritance*
 - Pension policies (linked to marriage)*
 - Family name policy*
 - Co-habitation*
 - Work of equal value*
 - Rights to property, land and other economic resources*
 - Access to credit*
 - Protections in the informal/part-time labour market*
 - Pensions policies (linked to part-time labour and child-care)*

- 2.2. Does gender identity change legal capacities?
- 2.3. How can the rights of women in vulnerable groups be protected?
Female irregular workers
Female migrant workers
Disabled women
Impoverished women
Rural women
Female prisoners
Indigenous peoples
Others...
- 2.4. How can women's rights be protected in criminal justice procedures encompassing investigation, prosecution, trials and legal aid services?
- 2.5. What efforts have been made to eliminate the root causes for women's economic dependence (where it exists) and improve economic prospects of women?
- 2.6. Is there a digital divide resulting from gender inequality?
- 2.7. How is women's right to work promoted by guaranteeing fair working conditions and strengthening administrative and judicial remedies? What measures are in place to ensure equal pay and opportunities for women and men in the labour market?
- 2.8. How are working women's maternity leave and benefits protected by labour law or social benefits law? What paternity rights are there?
- 2.9. What measures are in place to improve social welfare services for women outside the social security system?
- 2.10. What measures are in place to develop policies in order to eliminate environmental and occupational health risks for women?
- 2.11. What measures are in place to improve childcare, disabled and elderly care facilities for women?

Working Group 3: Cultural practices and social empowerment

- 3.1. How is gender equality promoted in such socio-cultural rights such as:
 - Access to education*
 - Health and reproductive rights*
 - Religious practice and customary tradition*
 - Right to leisure*
 - Freedom of expression (media and arts)*
 - Freedom of association (women organisations and networks)*
 - Others...*
- 3.2. Who are the actors in promoting gender equality in socio-cultural questions and what are their roles?
- 3.3. Who are the major gender equality movements and interest groups, and what have they achieved?
- 3.4. How can gender equality be promoted against stereotyping in the media and advertising?
- 3.5. How can forced marriage and discrimination on the grounds of marital status be prevented?
- 3.6. Are there measures needed to eradicate traditional practices like female genital mutilation?
- 3.7. How can gender sensitivity be enhanced by boosting human rights education within society?
- 3.8. How can equal sharing of domestic and family tasks (including child care, care for the elderly) between women and men be promoted?
- 3.9. What measures are in place to improve men's awareness on sexually transmitted infections and reproductive health for women?

Working Group 4: Gender-related violence

- 4.1. What are the trends regarding violence against women? What about violence based on sexual orientation?

- 4.2. With regard to domestic violence:
What kinds of protection are in place for the victim?
How effective are sanctions, deterrents and preventive measures (telephone hotlines, whistle-blowing, etc.)? What is the scope of state protection?
What non-legislated measures or community practices exist?
How is the issue of marital rape addressed?
- 4.3. How are protections against sexual harassment and violence in the work place implemented? What obstacles are commonly faced in implementation?
- 4.4. What action is being taken to address human rights violations of female domestic workers?
- 4.5. What is the nature of public consciousness/societal attitudes with regard to gender-related violence?
- 4.6. What measures are needed to eradicate exploitation through prostitution caused by poverty & other factors, e.g. human trafficking and irregular migration?
- 4.7. What particular protections need to be in place in conflict situations?

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The Asia-Europe Foundation

The Asia-Europe Foundation (ASEF) promotes greater mutual understanding between Asia and Europe through intellectual, cultural and people-to-people exchanges. Through ASEF, civil society concerns are included as a vital component of deliberations of the Asia-Europe Meeting (ASEM). ASEF was established in February 1997 by the participating governments of ASEM and has since implemented over 500 projects, engaging over 15,000 direct participants as well as reaching out to a much wider audience in Asia and Europe. www.asef.org



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The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution



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dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide. For more information, please visit our website: www.rwi.lu.se

French Ministry of Foreign and European Affairs

For more information, please visit our website: www.diplomatie.fr



ABOUT THE HOSTS

Philippine Department of Foreign Affairs

The Department of Foreign Affairs is responsible for the coordination and execution of the foreign policies of the Republic of the Philippines and the conduct of its foreign relations and performs such other functions as may be assigned to it by law or by the President relating to the conduct of foreign relations.

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The Ateneo Human Rights Center

The Ateneo Human Rights Center (AHRC) is a university-based institution engaged in the promotion and protection of human rights in the Philippines. It's main areas of work include human rights training and education of law students and other sectors; promotion and protection of the rights of marginalized groups, including children, women, migrant workers, and indigenous peoples; development of an ASEAN human rights mechanism; research, publication, curriculum development, legislative advocacy, and policy initiatives on human rights. It was formed in 1986 and is an auxiliary unit of the law school of the Ateneo de Manila University.



On the occasion of the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France had suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

Previous seminar topics include:

- Access to justice; regional and national particularities in the administration of justice; monitoring the administration of justice (Sweden | 1997)
- Differences in Asian and European values; rights to education; rights of minorities (China | 1999)
- Freedom of expression and right to information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment? (France | 2000)
- Freedom of conscience and religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare (Indonesia | 2001)
- Economic relations; rights of multinational companies and foreign direct investments (Sweden | 2003)
- International migrations; protection of migrants, migration control and management (China | 2004)
- Human rights and ethnic, linguistic and religious minorities (Hungary | 2006)
- Freedom of expression (Cambodia | 2007)
- Human Rights in Criminal Justice Systems (France | 2009)

The formula employed is as follows:

- Each ASEM government nominates an official representative and the organisers invite two civil society participants from each of the sixteen Asian ASEM countries and one from each of the twenty-seven European ASEM countries;
- An agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups;
- Closed-door debates to allow free and direct exchanges of view; and,
- A set of recommendations elaborated collectively to be sent to the relevant institutions in ASEM countries as an informal contribution to the official Asia-Europe dialogue.

The Seminar series is co-organised by the French Ministry of Foreign Affairs and the Raoul Wallenberg Institute (delegated by the Swedish Ministry of Foreign Affairs) and the Asia-Europe Foundation (ASEF), which has acted as the secretariat of the seminar since 2000.

Supervision of the seminar is entrusted to a steering committee, composed of the seminar's three co-organisers as well as representatives of the ministries of Foreign Affairs of China and Indonesia and the European Union.

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