



# Promoting the Equality of Women: IWRAW Asia Pacific's Journey

*Shanthi Dairiam*





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*Edited by Susanne Zwingel*

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**2023**

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I am grateful to record my thanks to the numerous women from Asia and from many parts of the globe for their active, appreciative, and contributory participation in the various facets of this programme which was in many ways experimental. They helped flesh out women’s human rights concepts, while creating a clearer understanding of the practical applicability of the principles of equality and non-discrimination. The development of the programme owes much to their wisdom and their willingness to share this.

When the writing of the history narrative started, questionnaires were sent out to women associated with IWRAP Asia Pacific asking for input recollected from their history of this association and how they had benefited. Many responded with enthusiasm.

Workshops were held in Ecuador, Costa Rica, and South Africa for the same purpose and further in-depth interviews were held with a select few. Many, many thanks to all of them. The history drew much from my own memory and recollections. But what triggered my memory was the detailed and thorough documentation of all the activities that had been carried out at that time. Mention must be made of various volunteers and programme officers who produced such useful and valuable documentation.

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# Prologue

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*The narrative is as much a history of the early years of IRAW Asia Pacific as it is of my journey as someone who discovered CEDAW in 1988 and was instantly convinced of its significance as a tool for the fulfillment of women's right to equality.*

*What motivated me to embark on this journey, was not merely to found a women's rights organisation, but to engage in activism that was inspired by an awareness of the reality of women's lives and the universality of the discrimination they faced.*

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Set up in 1993, the International Women's Rights Action Watch (IWRAP Asia Pacific) started as an organisation with a singular focus on creating awareness among women's groups about the significance of monitoring and promoting the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>1</sup>

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#### **WHY THE STORY OF IWRAP ASIA PACIFIC IS BEING WRITTEN AND WHAT IT IS ABOUT**

The narrative of IWRAP Asia Pacific's history intends to document the uniqueness of this organisation, its history, growth and influence, and the motivation of its founder Mary Shanthi Dairiam. It is therefore written from the perspective and informed by the personal experiences of the founder.

The aim of IWRAP Asia Pacific was to fill the gap between the promise of women's rights internationally and their actual realisation at the national level. With an initial geographical focus on South Asia, it worked to create awareness among women's groups of the significance of international human rights standards for the actualisation of women's human rights at the national level, especially through law and policy measures.

The programme started modestly with orientations for women's groups in selected countries of South Asia, including Bangladesh, India, Nepal, and Sri Lanka. These orientations introduced the potential of CEDAW and motivated women to use the framework of CEDAW to enhance the effectiveness of their current agenda for the promotion and protection of women's rights. The premise was that women themselves, as rights holders, are key to the successful application and utilisation of CEDAW by governments.

Since then, the programme has expanded. From a simple approach of creating awareness among women's groups about the critical importance of CEDAW for the fulfillment of women's rights to equality, IWRAP Asia Pacific's work evolved to creating conceptual

clarity on women's right to equality. For example, it promoted a holistic understanding of discrimination against women: Rather than focusing on prohibiting discrimination only on the basis of sex, which is relevant for both women and men, understanding was created that discrimination against women had to be recognised even if no comparison could be made with the situation of men. Such a comparison is possible, for instance, with regard to political representation or labour force participation, but cannot be applied to areas which only or mainly affect women, such as maternal health of gender-based violence. The programme further elaborated on the obligations of the State as a continuing process starting with the legal prohibition of discrimination but continuing until *de facto* equality was achieved. Obligations of the State could not just be a one-off phenomenon. The programme then led to the recognition that human rights, universality, and equality are interdependent, and simultaneously developed methodologies and related skills among women's groups and multiple stakeholders for the application of international human rights standards<sup>2</sup> in national contexts.

IWRAW Asia Pacific has worked primarily through collaborative partnership with women's groups. In that sense, IWRAW Asia Pacific's journey will also be the story of its partners.

I was the founder and Executive Director of IWRAW Asia Pacific from 1993-2004, but what I started influenced the organisation's trajectory into several years beyond that period. I have also been serving as a life member of the Board of Directors of IWRAW Asia Pacific. This narrative will essentially cover the period of my



*This may enable and inspire others to draw upon our experience to create their own institutional structures and processes for the advancement of women's human rights locally and globally, and to make CEDAW relevant and real at the national level.*



tenure as Executive Director between 1993 and 2004 and it will touch a bit on the trajectory of the programme past 2004. During this time, our work focused mainly on Asia, both South and East. Geographical expansion into the Middle East and North Africa (MENA) region, Africa, and parts of Central Asia and Europe took place later and will not be covered here. The exception to this is that the narrative touches on the achievements and processes relating to the Global to Local programme<sup>3</sup> which started in 1997 and in which women and women's groups from practically every world region have participated. Due to its immense value for women's organisations and the added substance it has brought to the CEDAW procedure, this programme is still ongoing.

IWRAW Asia Pacific and I feel that it would be useful to document the nature and form of its evolution. This may enable and inspire others to draw upon this experience to create their own institutional structures and processes for the advancement of women's human rights locally and globally, and to make CEDAW relevant and real at the national level. The narrative therefore also describes some of IWRAW Asia Pacific's key programmes and activities highlighting their salient components, conceptual underpinnings, and lessons that emerged.

The publication is geared towards multiple audiences:

- *Women's groups and NGOs*, as the major purpose is to motivate women's human rights organisations, other human rights organisations, and even organisations working for social justice without reference to human rights, to create new perspectives on rights-based programmes, and for them to adopt similar elements and principles in their programming. Rather than merely play an oppositional role, NGOs need to contribute to building government capacity, so that governments become better at fulfilling their State obligations under CEDAW and other human rights standards.
- *Human rights lawyers* whose legal advocacy and litigation is invaluable to help women claim their rights and get access to justice, and for the creation of equality jurisprudence.
- *People* interested in tracking the history of women's rights and women's movements.
- *Donors*, as they need to be able to recognise organisations such as IWRAP Asia Pacific whose programmes are dedicated to a certain trajectory, manifested in sustained, process-oriented, and interrelated initiatives with clear internal logic rather than merely a list of activities.
- *Governments* who need to take their ratification of CEDAW seriously and recognise that there is value in engaging with NGOs as partners, seeing them as a resource who can support them in the implementation of CEDAW and other international standards on women's human rights.

The historical narrative which only touches on the work in the earlier years of IWRAP Asia Pacific is very valuable. It has the advantage of presenting the reasons for the founding of the organisation. More importantly, it outlines the foundation and concepts of IWRAP Asia Pacific's work which were developed in the early years and then evolved and expanded in later years. This expansion took place not only geographically, from Asia to other parts of the world, but also thematically. It includes areas such as legal strategies and the inclusion of judicial activism, socio-economic rights of women, business and human rights, trafficking and migration, the impact of global neoliberalism, and more recently, work on the Sustainable Development Goals (SDGs).



*What motivated me to embark on this journey was not merely to found a women's rights organisation, but to engage in activism that was inspired by an awareness of the reality of women's lives and the universality of the discrimination they faced.*



### Chapter Overview

The narrative is as much a history of the early years of IWRAP Asia Pacific as it is of my journey as someone who discovered CEDAW in 1988 and was instantly convinced of its significance as a tool for the fulfillment of women's right to equality. The narrative will be therefore in the first person. In the Introduction, the publication starts with giving readers a sense of my background and what motivated me to embark on this journey. It was not merely to found a women's rights

organisation, but to engage in activism that was inspired by an awareness of the reality of women's lives and the universality of the discrimination they faced. The following chapters all focus on one aspect in detail, but they are written as standalone chapters and do not need to be read sequentially.

Chapter 1 details the dynamics that led to the creation of IWRAP Asia Pacific, in particular my realisation of the importance of international women's rights standards and the plan to connect women's organisations in South Asia directly with CEDAW and its review process.

Chapter 2 describes IWRAP Asia Pacific's early work on making the CEDAW convention known among women's groups in South Asia. It was a very fruitful period because many women were doubtful about the benefits of working with international frameworks, and we had to engage with their skepticism to get across what the strengths of CEDAW were and how the Convention could make their work more impactful.

Chapter 3 dives deep into three United Nations (UN) World Conferences that were formative for IWRAP Asia Pacific's work: The 1993 Conference on Human Rights in Vienna, the 1994 International Conference on Population and Development in Cairo, and the Fourth World Conference on Women in Beijing in 1995. The substantive discussions that took place at all three of them helped sharpen the strategic focus of IWRAP Asia Pacific.

Chapter 4 tells the story of early IWRAP Asia Pacific trainings on capacity building around CEDAW as a collective learning process which culminated in the so-called Amma Manual. In it, core women's rights concerns such as institutional inequality and discrimination and their concrete manifestations were identified in order to develop strategies for social change.

While IWRAP Asia Pacific was, from its inception, a collective endeavour in which a diversity of experts was involved, Chapter 5 illustrates how it started out as a one-woman operation in administrative terms.

Chapter 6 is the most comprehensive chapter as it entails the evolution of IWRAP Asia Pacific's work in its entirety. It focuses on seven interrelated dimensions of the organisation's work: Awareness raising on CEDAW and creating conceptual clarity regarding its most important concepts, especially substantive equality; self-reflection of the organisation and development of future goals; capacity development of and together with partners; our focus on legal strategies, including enhancing the role of judges in realising women's access to justice; technical assistance; and IWRAP Asia Pacific's input in strengthening international human rights standards. In respect to the last field, our contribution to the creation and dissemination of the Optional Protocol to CEDAW stands out. This chapter shows a gestation process of a non-governmental organisation that created a dynamic relationship with CEDAW and filled a gap in the treaty system, namely the need to mobilise domestic women's organisations to improve accountability of governments and enable women to use international treaties to advance their interests.

Chapter 7 describes the most important reasons for IWRAP Asia Pacific's success, namely its dedication, vision, and active collaboration with many partners, supporters, resource persons, and allies from all over the world.

To illustrate this collaborative nature of IWRAP Asia Pacific's work, Chapter 8 portrays five memorable training workshops in Nepal, Mongolia, China, and India. All of these workshops break new ground, either because of the topic focus (e.g., women's rights in the context of armed conflict), or because they were first encounters with domestic organisations, as in Mongolia and China.

Chapter 9 describes the two flagship programmes of IWRAP Asia Pacific: The first is the Project on Facilitating the Fulfillment of State Obligation (in short, the Facilitating Project). It enabled domestic women's organisations in South and Southeast Asia via a monitoring framework to identify intersecting dimensions of women's rights violations and develop comprehensive approaches to address them. The impact of this project is illustrated through a case study of women's activism in Nepal which targeted discriminatory inheritance rights. The second programme is the Global to Local programme which radically transformed the constructive dialogue between the CEDAW Committee and governments by including domestic women's organisations. Perhaps more importantly, it enabled women's organisations to use the international standards in their work at home and increased their ability to collaborate with and scrutinise their governments.

Chapter 10 gives testimony of the many contributions of IWRAP Asia Pacific to real-life change for women, told partly from the perspective of its partner organisations. They attest to a broader repertoire and new ways of thinking in their work due to their collaboration with IWRAP Asia Pacific, the empowerment that came with being able to use international treaties and the concepts enshrined in them, and the importance of mobilising many women and working collectively.

Chapter 11 tells the story of IWRAP Asia Pacific through the memories and profiles of eight women who were centrally involved in its programmes. The lawyer Tulika Srivastava relates how the understanding of substantive equality that she acquired through IWRAP Asia Pacific trainings helped her develop holistic strategies to fight for women's access to justice. Roshmi Goswami, an activist in the conflict-ridden northeastern region of India, learned to connect the struggle for women's basic needs with a rights approach to increase government accountability and to make communities aware of women's rights violations. Manisha Gupte, Indian activist on women's health and socio-economic rights, similarly grounded her activism in the CEDAW rights-based language to demand government obligation and accountability. Sapana Pradhan Malla, Nepali lawyer and activist who now serves as Supreme Court Judge, successfully used the knowledge acquired through IWRAP Asia Pacific trainings to integrate the concept of gender equality and non-discrimination into various pieces of legislation, government programmes, litigation, and training of lawyers

and judges. Lesley Ann Foster, activist on violence against women in South Africa, was trained by IRAW Asia Pacific on CEDAW principles and shadow report writing. She used this tool for substantive policy change in her own country and supported activists in several other countries to make the best use of this strategy. Madhu Mehra, a lawyer from India, developed various ways of activism, including community-based action research, to transmit the notion of substantive equality to local and global constituencies. Women's rights expert Alda Facio from Costa Rica has been an early collaborator and supporter of IRAW Asia Pacific who used the exchange with me to sharpen her own understanding of the meaning of substantive equality of which she has extensively written. Finally, Egyptian activist Amal Hadi learned about CEDAW and the principle of substantive equality through IRAW Asia Pacific's Global to Local programme and through preparing shadow reports. She emphasises the empowering effect of IRAW Asia Pacific as a southern NGO influencing international dynamics.

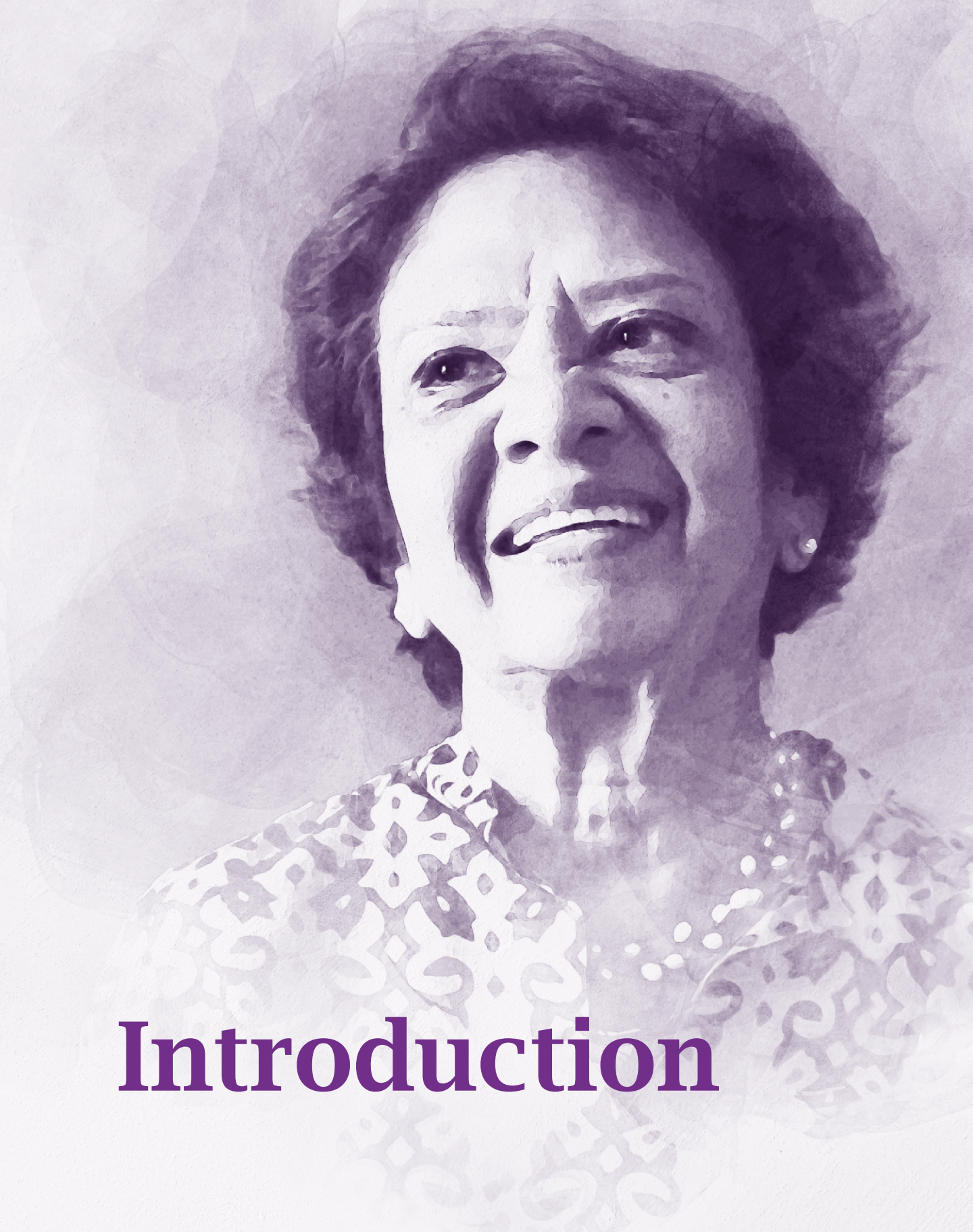
Because IRAW Asia Pacific's approach of connecting national-level advocacy with regional coordination and international standard setting was so innovative, it was often difficult to get funding. Chapter 12 shows that our work often did not 'tick the boxes' of international donors and that a lot of convincing needed to be done.

After the journey of IRAW Asia Pacific has been detailed in the preceding chapters, the epilogue reflects on challenges and potential future trajectories. While IRAW Asia Pacific could not realise all dimensions of its ambitious transnational advocacy strategy for women's rights and gender equality, it is clear that its work on clarifying the comprehensive meaning of the CEDAW framework represents a lasting legacy of which many activists around the world have benefited. A vision for IRAW Asia Pacific's future is to continue to strengthen international women's rights standards, as well as expand regional networks and cooperation in and beyond South and Southeast Asia.



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# Introduction



### MY AWAKENING TO EQUALITY

This section is about me, the author, my life in India at an early age and the influences that sowed the seeds of activism and awareness of women's inferior social position which, I realised, could not be overcome even by comfortable material conditions. The section also talks about how I was impelled to enter into activism and how I became part of the women's movement in Malaysia. Before I married a Malaysian and came to Malaysia in 1967, I had been a lecturer in English for five years at a Madras University College in India, but my qualifications were not recognised in my new home country. Therefore, I decided to search for other avenues to use my capabilities.

I was born in South India into a small close-knit but conservative family. I have only one sibling, a brother who is a year older than me. My parents who were both teachers were progressive in many concrete ways, but not ideologically. They believed in educating both son and daughter equally, but not as equals. While my brother was encouraged to take up engineering, I was encouraged to take up English literature. This being seen as something of a refinement, the luxury a girl could afford. The boy on the other hand needed qualifications that would enable him to earn a living. The stereotyping and the entrenchment of the gender division of labour was at work. But this was not apparent to me at that time.

Growing up in a conservative social environment from my early years in South India, I was exposed to the phenomenon of negative social norms, stereotyping, and the conditioning that women went through from

childhood resulting in gender-based social hierarchies. But I was also fortunate to receive a liberal education which saved me from becoming a victim of my circumstances and gave me the mental outlook needed to break free from the negative social conditioning.

I grew up in a cultural environment that segregated boys and girls—attended an all-girls school and college, sat in different sections of buses and trains in South India in the 1950s and early 1960s, and experienced segregated seating arrangements even in church worship. But I had been sent to an English-medium<sup>4</sup> convent missionary school as my parents felt it would add to my 'refinement'. My brother on the other hand was sent to a Tamil-medium school as the boy needed to have facility in the language of the administration of the state.<sup>5</sup> At school, besides maths, English literature was my favourite subject and I soon found myself immersed in a world inspired by the romantic poets of England and peopled with the heroes and heroines of Shakespeare, Charles Dickens, Thomas Hardy, and many others. My parents' decision in ensuring a more liberal education for me had far-reaching effects. While I grew up in a conservative cultural environment at home, I lived a different life in my mind.

My life in the convent gave me another powerful insight: There was no one absolute truth. This was ingrained in my mind at a very young age, and ironically, while in the company of strict rule-bound existence imposed by the nuns. Most of the students in the convent who were Anglo Indians were different from the Tamil community I came from. The conservatism and restrictions placed on women in the Tamil community contrasted sharply with the social openness of the

Anglo Indians.<sup>6</sup> My perspective started to change, and my view of the world slowly became expansive.

The idea that there was no one absolute truth further took root in my thinking during my university days when I was immersed in the diversity that India is. Up to my school days I did not have much interaction with this diversity. My environment was almost wholly Christian, and a chauvinistic version<sup>7</sup> of Christianity at that. At the university where I had to reside, I was exposed to an explosion of religions and communities: Hindu, Christian, Muslim, Parsee, Buddhist, and Jains. Each community practised its religion with as much belief, conviction, and faith as I did in my own religion.

The conservatism in my home and the restrictions on the behaviour and freedom of girls was pervasive and extended to the larger community and society in which I grew up. As a child and even as a young girl I saw that this was the norm but did not understand its significance. It was only later that I realised that the restrictions on the behaviour of girls is the beginning of manifestations of control and that this could be detrimental to girls and women, even resulting in deprivations and cruelty.

In my childhood, I was surrounded by articulate women – my mother and her two sisters, who were all professional teachers. When they got together there was always much conversation and laughter. I have no complaints about my childhood in which I experienced nothing but affection and love and the good intentions of my parents. George Senthur Pandian, my father, in particular loved me to death. I could do no wrong in his eyes, and my mother Annie Navamani Devedasan was a role model for me

with regard to professionalism and confidence. They made sure I had the best education possible. But I knew also from early on that I did not have the freedom of the male.

Upon marriage to a Malaysian in the mid-sixties and moving to Malaysia, I was confronted with another unexpected experience. I took a break from work for five years during which time I had my two daughters. But on trying to go back to work, I discovered to my dismay that my Master's degree in English Literature was not recognised in Malaysia. I could not teach at the university level and I could only teach, to begin with, in a private Chinese school and later at the Mara Junior Science College, a secondary school and part of a special programme established by the government of Malaysia as part of the affirmative action scheme for Malay children.

My dissatisfaction with the lack of recognition of my capabilities spurred me to seek other avenues of employment, and I switched jobs. I moved into a totally new field—family planning and women's health—and got involved with the women's groups and engaged in law and policy reform pertaining to rights in marriage, violence against women, and the elimination of discrimination against women. This was in the 1970s. Since then, I have been committed to promoting equality for women, and all of this work has been in the NGO sector.

The very protected life I had led as a child at first did not expose me to the phenomenon of overt discrimination and abuse that women experienced in their personal lives. But as I got involved with the family planning programme in 1981 run by the voluntary sector, the Federation of Family Planning Associations,<sup>8</sup>

I began to realise the insidious nature of conservatism, stereotyping, segregation, and differential treatment of women and men, however benign. I saw that these practices set norms and values that create hierarchies in relationships, and that while they could be practised with benevolence as in my childhood days within my family, they could also be manifested in the devaluing of women and in the prevalence, acceptance, and even justification of cruelty and abuses against women. The way society organised itself was by creating and sustaining hierarchical male-female relationships. To maintain this, men had to be in control through an interconnected process leading to the appropriation of greater power, resources, and rights in the private and public spheres. Inequality in all spheres was then legitimised through law and policy, creating an almost impenetrable web of discrimination that perpetuated itself.

This fact was particularly made apparent when I went to work for the Federation of Family Planning Associations. There I met women clients from various backgrounds who experienced many problems within their marital relationships. What struck me was the stark reality of women's lives that did not allow them to set the terms of their personal relationship. Many could not make a personal decision to accept contraceptives, or choose when to have a child, or to have sex with their husbands. Women seeking treatment for sexually transmitted infections were too afraid to pass on medications to their husbands. The clinic staff would advise them that this was necessary and that if they were infected, their husbands would be too, and would have to be treated. But the women would be petrified when they were told that. They would say

that they could not say these things to their husbands. They would express their fears that their husbands would never accept the fact of their infection and would be suspicious of their wives' infection with dire consequences for them. They were clearly intimidated at the very thought of confronting their husbands on such an intimate matter.

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*The way society organised itself was by creating and sustaining hierarchical male-female relationships. Inequality in all spheres was then legitimised through law and policy, creating an almost impenetrable web of discrimination that perpetuated itself.*

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I was stunned that women could not negotiate this issue in a relationship. This made me realise the depth of the hierarchy and inequality between women and men, which we often see but rarely register. No matter how academically qualified and whatever employment status a woman holds, she is still not equal to her husband. Through my work with the Federation of Family Planning Associations in Malaysia, I gained experience on the issue of the oppression of women. I noticed in particular that women had no autonomy in their personal lives, especially in their sexual lives, and were subjected to violence, both physical and sexual.

But this abuse was not recognised as a violation of human rights in Malaysia and in most parts of the world in the early 1970s. It was considered a family matter, something to be sorted out within the family. It was even justified as a mechanism to maintain a certain social order. But what spurred me on was the urge to bring

about change. I realised that it was not enough to improve the conditions of women such as ensuring that they had employment and an income, although this was essential. There were many other structural, legal, and social barriers that entrenched women's inferior position, denying them equality and independence. It became clear to me that initiatives for change would have to be comprehensive, holistic, and rights-focused, not merely issue-focused such as on employment or health.

As I worked in the area of reproductive rights, I joined the women's groups in Malaysia during the 1980s. It was a period of intense activism by women in the country, mostly in relation to reform of laws pertaining to marriage and violence against women. In the late 1970s, the National Council of Women's Organisations (NCWO) was at the forefront of campaigns for law reform. In 1975, the NCWO and the Association of Women Lawyers produced an analysis of all national laws that discriminated against women, and they identified the absence or inadequacy of legal protection for crimes against women, as in the area of rape or domestic violence. They were also at the forefront of a campaign to compel the government to start implementing the newly enacted law reform on marriage for non-Muslims. This law had been enacted by parliament in 1976, six years after it had been first demanded by women's groups. But the government was dragging its feet and it took until 1982 for the law to be finally implemented. In that same year the Women's Aid Organisation (WAO) established the first shelter for battered women, controversial as it was. A comprehensive NGO campaign on

ending violence against women began in 1985, and new women's organisations were born. 1985 was also the year of the UN Nairobi Women's Conference. Changes were taking place in many parts of the world, and Malaysia was no exception. There were government initiatives to create structures and institutions for the advancement of women such as the National Machinery for Women. A National Policy for Women was adopted in 1989 and for the first time, a chapter on women was included in the Sixth Malaysia Development Plan (1990-1994).

I volunteered with the National Council of Women's Organisations in their law reform and ending violence against women campaigns in the 1970s and 1980s, and later joined the newly formed WAO in 1984. This was the beginning of my engagement with women and the law and the agenda of ending violence against women.

My own awakening to the social oppression of women and its insidious societal effects converged with the awakening of Malaysian women to the abuse they faced at home and in society, and to their entrenched subordination in law and policy. What the women of Malaysia began to see was the interconnectedness of the private and the public. They also began to see how critical it was to fight for their rights. The global environment, through the efforts of the UN and the Decade of Women (1975-1985), along with the UN World Conferences in the early 1990s, legitimised and globally supported the rising activism of women at the national levels. My own awakening therefore came at an opportune moment. There was much to do. And so, the journey began!

# 1



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## The Creation

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*IWRAW Asia Pacific's vision at its inception was the fulfilment of equality rights for women, and its mission was to bring the critical voices of women to bear on international standard setting and influence policy formulation at the national level. This vision prevails up to this day.*

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The history of IRAW Asia Pacific starts with a gestation phase before its actual foundation in 1993. During this time, the idea of the organisation was gradually conceptualised, and through the writing of funding proposals, its initial financial viability could be secured.

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My engagement with CEDAW started in 1988, when I read an article about this treaty, and subsequently attended a meeting held at the UN in Vienna in 1988 to discuss CEDAW in the context of reproductive rights. At that time, I was working with a regional programme on women, law, and development that was based in Malaysia, the Asia Pacific Forum on Women, Law, and Development (APWLD). Before this, I had worked for around 12 years as a volunteer and then as a staff member with the national voluntary family planning programme in Malaysia (see previous chapter), and I was still involved with advocacy relating to women's reproductive rights. It was in dealing with these highly contested rights that I had become keenly sensitive to issues of women's inequality. I felt that gaining insights into using international human rights standards such as those enshrined in CEDAW would be useful to address the intransigent resistance to women's reproductive rights and consequently, their overall well-being. Gradually, on getting to know the potential of CEDAW, I realised that the elimination of discrimination and the fulfilment of women's right to equality were key to women's ability to exercise their rights in every context and in all spheres. Working on rights for women thematically, without placing them in the larger context of discrimination and inequality, would be futile. Further, my conviction grew around the importance of universal standards for equality and non-discrimination. Otherwise, local and particular contexts dictated entitlement to rights that was not only arbitrary but also unjust, alienating the weakest section of the population, particularly women, from the enjoyment of human rights in the name of culture, tradition, or the validity of class hierarchy.

The question of why this programme was started in the Asia Pacific region specifically goes back to the awareness that I had developed after getting to know about CEDAW, namely that international standards need to be applied at the local level and that women themselves as rights holders are key to this application. This awareness originated parallel to another programme in the United States called the International Women's Rights Action Watch (IWRAP) under the auspices of the Women and Public Policy Centre of the Humphrey Institute of Public Affairs, University of Minnesota. It was co-founded and directed by a wonderful and inspirational woman called Arvonne Fraser,<sup>9</sup> who along with Steve Isaacs<sup>10</sup> and Rebecca Cook,<sup>11</sup> formed the secretariat. I attended a meeting on CEDAW in 1988 which was one of a series organised by IWRAP Minnesota. This programme had been initiated to publicise and monitor the implementation of CEDAW. In Arvonne Fraser's words,

The challenge was to popularise and encourage implementation of CEDAW. It involved government and politics and set goals and standards for equality between women and men. This treaty expanded the concept of human rights by focusing on women. It was the most concise and usable document adopted during the UN Decade of women.<sup>12</sup>

She saw this treaty as a document comprehensively touching on development and rights. Its strength was that if a government ratified CEDAW, it obligated itself to modify its laws and policies to be in conformity with the treaty's standards. But she was also aware that "Too many governments ratified it as a gesture than as a commitment."<sup>13</sup>

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*On getting to know the potential of CEDAW, I realised that the elimination of discrimination and the fulfilment of women's right to equality were key to women's ability to exercise their rights in every context and in all spheres. Working on rights for women thematically, without placing them in the larger context of discrimination and inequality, would be futile.*

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Arvonne's aim was "To move the international women's movement approach from that of supplicant to that of agent for change."<sup>14</sup> For her, "It was time that women saw that governments lived up to it",<sup>15</sup> that is, the standard that CEDAW represented. She felt the need to create an international constituency to promote this treaty at a time when few knew it existed. It was imperative that a wide international audience had this knowledge and got ready to use it.<sup>16</sup>

The origins of Arvonne Fraser's pioneering work go back to 1985 during the UN Nairobi Conference on Women. There, she had first raised the issue of the participation of women's groups in the treaty monitoring process. This process, also called constructive dialogue, is based on periodically submitted reports of States Parties and took place between State representatives and the Committee of experts. Arvonne is credited to have said that CEDAW is the women's convention and hence, women must take ownership of it. In other words, she recognised the significance of establishing a relationship between the CEDAW Committee and women's groups from early on, in a time when the CEDAW monitoring procedure was

an exclusive matter between the Committee and the States Parties.

There was no involvement of women's groups in the CEDAW reporting process, but Arvonne Fraser felt it was necessary to bring women's perspectives into that process. Hence, post Nairobi, IWRAP and Arvonne Fraser started holding annual events discussing in substance various rights provided for in CEDAW. These events were held at the same time that the CEDAW review sessions took place at the United Nations. These occasions were also used as a forum to submit alternative reports called 'shadow reports' by IWRAP on the countries that were concurrently reporting to the Committee. These reports were compiled on the basis of independent information collected from academics or NGOs in the respective countries. They enhanced the Committee's work of reviewing the implementation of CEDAW by States Parties. Gradually, Arvonne was able to build a relationship of trust with the Committee through the IWRAP programme and its international network of activists. Later, she was joined by Marsha Freeman<sup>17</sup> who became the director of IWRAP. This relationship between activists and the CEDAW Committee greatly facilitated the work of IWRAP Asia Pacific when it began the process of bringing national level women's groups into the CEDAW review process.

After I participated in the CEDAW review session for the first time in 1988, I became part of the international CEDAW monitoring network of activists formed by Arvonne Fraser. At that time Malaysia had not even ratified CEDAW, so there was no reason for me as an activist from Malaysia to be part of

this network. But the network comprised an excellent group of people including, among others, Rebecca Cook (Canada), Steve Isaacs (USA), Alda Facio (Costa Rica), Jane Connors (Australia/United Kingdom), Andrew Byrnes (Australia), Shireen Huq (Bangladesh), Unity Dow (Botswana), Athaliah Molokomme (Botswana) Maggie Reibangira (Tanzania), Lyn Friedman (USA), Isabel Plata (Colombia), Silvia Pimentel (Brazil), Chaeloka Beyani (Zambia), Thandabantu Nhlapo (South Africa), later Ramya Subrahmanian (India), and myself (Malaysia). They were mostly scholars of international law or international women's rights practitioners. It was extremely stimulating to be part of this group.

The work of IWRAP<sup>18</sup>—publicising the CEDAW Convention, raising awareness and educating regarding its potential, and at times providing technical assistance when needed—did bear results in the lives of individual women in different parts of the world and highlighted their battles to claim the right to equality. These struggles included women asserting themselves as equal partners in marriage and family life, fighting to own property, or to transmit citizenship to their children based on the standards of CEDAW. In many advocacy efforts, including in countries like Tanzania, Zimbabwe, Botswana, Ireland, Argentina, Kenya, and Lebanon, CEDAW was becoming known and being used in individual cases.

A landmark case in Botswana merits mention. Unity Dow, a lawyer challenged the discriminatory citizenship law of the country which prohibited her from transmitting Botswanan citizenship to her children born of an American father. She cited women's right to equality and non-discrimination as enshrined



in CEDAW, even though Botswana had not ratified CEDAW. She was emboldened to do this due to the high profile given to CEDAW through the work of IWRAW. With help from a Minneapolis law firm, IWRAW sent her legal information to argue her case and on appeal, Unity won her case before the Supreme Court of Botswana. The highlight of the judgment was the argument that even though Botswana had not ratified CEDAW, under international customary law, children had the right to nationality of both parents and women had an equal right to transmit citizenship to their children. Hence, CEDAW made a difference even in a country that had not ratified it.<sup>19</sup> However, these gains, affirming as they were of IWRAW's work, were not enough. Arvonne herself recognised this when she stated that an international secretariat "Could not influence governments to make the changes called for in CEDAW."<sup>20</sup>

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**What was needed was to bring women from the reporting countries to participate in the international review process. They could then go back with this knowledge and demand accountability from their governments to implement the Committee's recommendations.**

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When I started participating in the annual IWRAW CEDAW meetings from 1988, engaging with the CEDAW Committee and observing the CEDAW sessions, I learned a great deal about CEDAW and its potential. But there was also a sense of disquiet. People like myself and Shireen Huq,<sup>21</sup> who were part of this movement felt that the international advocacy that was going on and the shadow

reports being presented to the CEDAW Committee, were no doubt beneficial as the CEDAW Committee used the alternate information to good advantage when they reviewed CEDAW State Parties. It was a useful and path-breaking movement and activity. But what was missing was the groundswell of women as rights holders from each reporting country who could witness the dialogue and then maximise the development that was being achieved at the international level and create an impact on the ground back at home.

It is at the country level that rights can be exercised and the duty holders, which are the governments of States Parties, need to be held accountable in their own territory by their own citizens. Only women from the country can do that. An international movement cannot effectively draw that kind of accountability at all times in a sustained manner. So, we decided we will start this groundswell of women at the national level in Asia and link them to the international processes. What was needed was to directly bring women from the reporting countries to participate in the international review process. They could then go back with this knowledge and demand accountability from their governments to implement the Committee's recommendations.

The first IWRAW Asia Pacific proposal sent out to donors in 1992 had this in the justification section:

This proposal is informed by the premise that State Parties functioning in isolation from the constituencies of women in their countries may lack either the political will or the awareness and skills, or both to ensure the realisation of women's rights

as enshrined in the Convention. The project has aims for the creation of a groundswell of women's constituencies who have the sophistication to engage constructively with their governments to protect the integrity of the Convention and bring about its effective implementation.

In other words, the proposal argued that the Convention was not being taken seriously enough by governments. The proposal continued:

Thirteen years after the adoption of the Convention, (1992) the awareness and commitment of Governments in the Asia Pacific region varies. All 14 island countries in the Pacific and nine countries of Asia have not as yet acceded to the Convention,<sup>22</sup> while five countries have made reservations limiting its application. Out of the thirteen ratifying/acceding countries, two have yet to make their first report and four have not gone beyond submitting their first report. A strong and highly conscious constituency of women will by its presence and interaction with the State serve to create the political will to take the Convention seriously.

The proposal also provided justification for linking the activism of women from the national level to the international level:

The strength of the Convention rests on the international consensus (116 ratifications) of support for its norms and its mandate of equality. This internationally supported mandate is a strong counter to claims that equality is contrary to culture and tradition. At the ground level

the application of the Convention must be linked to its international standards. This linkage requires the establishment of a relationship between women's groups and CEDAW Committee that has the synergistic effect of strengthening women's capacity to claim their rights while enhancing CEDAW's functions in monitoring State compliance with interpreting the Convention.

Hence the proposed project envisages the establishment of linkages with women's groups and networks nationally and regionally to facilitate the flow of information from the ground to the international level and from international to local level.

The Minnesota IWRAP programme, in contrast, did not have the aim to work regionally or nationally. They were only mandated to do work at the international level. So, Shireen Huq who was at that time the WID advisor at the Danish embassy in Bangladesh<sup>23</sup> and I made the decision to start work on CEDAW in the Asia Pacific region. One meeting of the IWRAP Minnesota international team was held in Minnesota in 1990, and it was there that Shireen and I brainstormed and developed ideas for what a regional programme on CEDAW could accomplish. I was serious about starting the work in Asia and many conversations were held with Arvonne Fraser and Marsha Freeman. They were encouraging and we spent much time discussing the options. IWRAP Asia Pacific was started with the blessing of IWRAP Minnesota. But it was agreed that the work in Asia would be independent of the Minnesota programme.

However, I negotiated for the use of the name IRAW because I thought it was useful to be known by that name and the good will that came with it. So, we have been totally autonomous and independent since inception, registered in Malaysia as a not-for-profit organisation. Our work started in 1993 with a grant from the Netherlands.



*The philosophy of the programme was that IRAW Asia Pacific would not work independently in the countries of the region, but only through collaborative partnership with women's groups at the national level.*



I wrote the proposal for the Asia Pacific programme and called it Building Capacity for Change. The idea was to start with creating awareness among women about the significance of international human rights standards for the achievement of women's human rights, and to promote the use of CEDAW and its implementation in this regard. The programme started in South Asia: Nepal, India, Bangladesh, and Sri Lanka. These particular countries were chosen in the first stage because I knew many of the domestic women's groups and there was a sense of familiarity with the situation of women's rights in these countries. Right from the start, the philosophy of the programme was that IRAW Asia Pacific would not work independently in the countries of the region, but only through collaborative partnership with women's groups at the national level. This was not only a philosophy but also a practical strategy. It was clear that CEDAW had to find a place at the national level, and there had

to be a base of women's groups that would sustain this agenda. IRAW Asia Pacific's collaboration with national level groups had to be continuous. The contribution that IRAW Asia Pacific has consistently made is to be a bridge: It has created a synergy between national and international activism and supported the application of international human rights norms and standards at the national level. To start, we had to identify groups that we could potentially collaborate with.

Looking at this period fills me with amazement at my bravado. The year was 1992. I had returned to Malaysia having obtained an MA degree in Gender and Development at the University of Sussex, United Kingdom, and after a short stint at the Commonwealth Secretariat. I had resigned from Asia Pacific Forum on Women, Law, and Development (APWLD) to do the MA and had no job waiting for me. My good sense said to me that I should look for a job and start earning some money. But my inner conscience pushed me to start a CEDAW programme. While Shireen Huq had been my 'co-conspirator' and partner in all the decisions and plans, she was in Dhaka holding a full-time position, while the programme was based in Kuala Lumpur. The execution of the plans was in my hands. I had to write the proposal. I had no office infrastructure, no access to a computer, email, or fax and of course, no income to pay rent for my house and cover other expenses. I relied on the good will of friendly NGOs such as the National Council of Women's Organisations (NCWO) for use of their computer. I could only type slowly with two fingers, working late at night when the computers were free. I even sent the proposal out by fax from the post office. We had no access to email then.

No other organisation was focusing on CEDAW at the national levels in Asia, and I had no idea whether it would appeal to any donor, or even whether women's groups would want to work with CEDAW. Likewise, it was uncertain whether I could transfer my conviction about the significance of an equality and non-discrimination framework and the value of international standards for women's human rights to women across Asia. But I did not waver in my pursuit. Finally, the government of the Netherlands, with some prodding from the Minnesota IWRAP programme came through with the first year's grant by mid-1993.

Arvonne Fraser did pioneering work and initiated the creation of an international network of women activists, motivating them to take an interest in CEDAW and in the reporting process at the UN. One of the greatest achievements of her work was to raise the profile of CEDAW as a human rights treaty for women. The adage that women's rights are human rights started with Arvonne.<sup>24</sup> The IWRAP Asia Pacific programme was able to build on the work of IWRAP Minnesota and the relationship that had been created with the CEDAW Committee and the practice of providing them with shadow reports. But the IWRAP Asia Pacific programme went further to focus on the critical aspects of creating constituencies of women at the national level with a strong voice to invoke their rights and push for national level action by their governments to implement CEDAW. It had the potential to create the necessary political will domestically by using the processes of CEDAW at the international level.

IWRAP Asia Pacific's vision at its inception was the fulfilment of equality rights for women, and its mission was to bring the critical voices of women to bear on international standard setting and influence policy formulation at the national level. This vision prevails up to this day.

IWRAP Asia Pacific was thus born in June 1993. Its creation coincided with the setting up of ARROW, a regional programme on women's reproductive rights in Malaysia.<sup>25</sup> I rented a room from this organisation as office space and the first funding from the Netherlands was channelled through ARROW who acted as our fiscal agent, as IWRAP Asia Pacific was not yet registered. One of the then directors of ARROW, the late Rita Raj, was most supportive, and she facilitated the establishment of IWRAP Asia Pacific. Rita Raj and Rashidah Abdullah, the two founding directors of ARROW, had been my colleagues in the Federation of Family Planning Associations, Malaysia. ARROW signed the contracts with donors, set up a bank account and provided overall financial supervision as required by donors. This they did until 1996 when IWRAP Asia Pacific was formally registered in Malaysia as a non-profit organisation. To ARROW I remain very grateful.

The main purpose of setting up IWRAP Asia Pacific at that time was to effectively disseminate information and build awareness on CEDAW among women's groups in South Asia. But the tricky issue was getting women interested and invested in working with CEDAW, interpreting the spirit of CEDAW, and establishing a common understanding of *substantive equality* as demanded by the Convention.

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## The Early Years, 1993-1996:

The Agony and Ecstasy of Learning  
and Teaching CEDAW and Equality

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*How do you shame a government that has no shame? We had to create a groundswell. That was the real challenge of the first phase: Convincing women they had power.*

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In my view, this first phase is about the most significant. It was in this phase that IWRAP Asia Pacific laid the foundations for understanding the meaning of equality and non-discrimination: two inseparable facets of the same coin. It was a time to learn in substantive terms about these principles and also, how to create alliances of women in South Asian countries instilling in them the conviction that their thematic work on women must be based on the international standards of CEDAW.

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### **THE AGONY AND ECSTASY OF LEARNING AND TEACHING CEDAW AND EQUALITY**

Several country-level orientations were conducted to make the women realise the significance of taking a rights approach as CEDAW is a human rights treaty which would allow for State accountability towards women's equality. These learning processes were the foundation of IWRAP Asia Pacific's long-term work.

This chapter narrates the early days of IWRAP Asia Pacific between 1993-1996 in Kuala Lumpur, when I was single-handedly managing the operations of the office and implementing the programme in South Asia. The budget and the grant given by the government of the Netherlands was not sufficient to hire other staff. So, I was all in all the proverbial factotum.

The objectives of the first phase of the programme were:<sup>26</sup>

To facilitate the formation of broad-based alliances of women's groups in the Asia Pacific region and to build their capacity to:

- Monitor the implementation of the Convention in their countries and facilitate greater effectiveness of such implementation through creative partnership with their governments.
- Promote accession to the Convention where this had not taken place.
- Take advantage of the opportunities provided by the UN International Conferences to be held in 1993, 1994, and 1995 to utilise the Convention as an instrument for legitimising women's

rights and equality and for confirming the importance of the Convention as an instrument for democratic development.

### **ORIENTATIONS, ORIENTATIONS: HOW WE DEVELOPED THE UNDERSTANDING AND ACCEPTANCE OF CEDAW**

In this phase, between 1993 and 1996, several orientations were conducted in South Asia—Bangladesh, India, Nepal, and Sri Lanka—to build awareness about CEDAW. The orientations were well attended and mostly no one, not even the lawyers, knew about CEDAW. Typically, the orientations were conducted by myself and Shireen Huq, whom I used as a consultant. Both of us were perhaps just one step ahead of the women participants. We ourselves were learning as we went along. We would make the participants work on case studies they could relate to and help them see the relevance of CEDAW and taking a rights approach.

#### **What it is That had to be Achieved, and Challenges Faced**

The first of the orientations on CEDAW was conducted in Kathmandu, Nepal jointly with the three women's organisations: SAATHI, MANUSHI, and WID Nepal. Subsequently, more orientations were conducted in India, Bangladesh, and Sri Lanka. We introduced CEDAW to the women's groups in all these countries. At that stage, women were engaged in a great deal of activism with their governments for better laws, and for better programmes and services, but it was done without the international human rights standards that had been established through CEDAW. Sri Lanka was the first South Asian country to have ratified CEDAW in 1981, but

we found that the women there did not know about CEDAW when we did our first orientation in late 1993. That was the first real challenge for us: to inform the women that there is such a thing as CEDAW, that their government had ratified it, and to convince them that working with it and bringing international standards to bear on the ground was critical. There was also a great deal of skepticism about CEDAW that we confronted. It truly was a challenge to convince women in several countries of South Asia that they needed to work with CEDAW.

The women's groups expressed skepticism on different levels. One was a practical type of skepticism: "What can something that is international do for us?" We would get questions like, "There is this woman in my village who was raped yesterday, what can your CEDAW do for her?" As though it was my CEDAW. It took a lot of discussion to get across the fact that an international instrument, though ratified, cannot confer instant rights on women and that at the national level, domestic law is still the most relevant body of applicable law. But the point we wanted to drive home was that international standards can nonetheless be used to hold the government accountable for weaknesses in access to justice for women, and that compliance of domestic law with these international standards needed to be enforced. International law helps to improve the legal and policy framework for rights enjoyment. This was the way to go: improve the system so change will be long-term and sustainable. In contrast, working towards instant remedies on a case-by-case basis would be a never-ending task—it would be 'running to stand still in the same place'.



### ***Creating a Groundswell***

*If more and more women's groups would start exerting pressure on their governments to comply with their obligations to women, they would have to take note. We had to create a groundswell. That was the real challenge of the first phase: Convincing women they had power.*



There were many moments when we had to create the understanding that using CEDAW would not detract from the existing agenda of the groups. Women would come into the orientation with an anxiety that they were being asked to take on additional projects. They would say, “But we are working on health, not CEDAW.” We would have to convince them that working on CEDAW would not take them away from health or whatever agenda, but that it would enhance their existing work by bringing in international standards, a rights approach, and means of drawing accountability from their governments. We have heard remarks such as, “UNFPA is funding my organisation to work on the ICPD follow up, why should we work on CEDAW?”

This phase of orientations on CEDAW started in a very simplistic manner, providing basic information about CEDAW and its potential. But was the knowledge of CEDAW enough? During the orientations in South Asia, many concerns were raised about working with CEDAW. One was, “How do you make the government accountable for something that is international, even if we think they are good standards?” In response, we would say things like, “It is the naming and the shaming, you

can't put your government in jail for non-compliance, but they can be named and shamed at the international level.” Then a gentleman participant who happened to be a district judge, at an orientation said, “My government has no shame at all.” How do you shame a government that has no shame? We would get that kind of skepticism, but we were hopeful. In this age of globalisation, we stressed that pressure could be exerted on governments at the international level to make them comply with their obligations to women. There were points of leverage that could be used. And that if more and more women's groups from an increasing number of countries would start exerting this pressure, governments would have to take note and even learn from each other. We had to create a groundswell. That was the real challenge of the first phase: Convincing women they had power.

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**The question was: Why should women trust the Committee and CEDAW in their countries?**

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### **Perceived Political Hazards of Working With International Treaties**

There was also a perceived political hazard in getting one's government involved in an international process and then be held accountable for compliance with its obligations by other States Parties to the treaty. Theoretically, all parties to a human rights treaty are responsible to one another for compliance, but there was concern that some of the more developed or powerful countries would dominate the international



process and pressurise less powerful countries to comply with the standards of CEDAW. The United States was particularly feared in this respect, and concerns were expressed that popularising CEDAW would create a situation which would give the United States one more avenue to dictate terms to their country. When we pointed out that the United States had not ratified CEDAW and hence would not be part of any international process relating to it, the atmosphere would become more relaxed. This was always a source of amusement for me, and I would often start the orientations by giving the information that the United States had not ratified CEDAW.

But the United States aside, these were serious political questions we had to find answers to. One issue was the skepticism about the Committee as an international body. Concerns centred around women's integration into the global market as a measure to increase economic efficiency, rather than because of the compulsion of ensuring economic security for the women and their families. Equally it was problematic when aid and trade relations between developed and developing countries were increasingly linked to political conditionalities such as democratic governance and human rights compliance, as the women attending our workshops wondered: on whose side would international bodies like the CEDAW Committee stand? Would they support Asian women? Especially as such conditionalities were imposed and not because democracy and human rights were essential for women's equality? The question was: why should women trust the Committee and CEDAW in their countries?

Our response at that moment in the early 1990s was that while increasingly human rights were being used either as a 'whipping stick' or a 'carrot for developing countries up to that time, perhaps because CEDAW and women's rights have been so marginal in the human rights context, there had been no attempt to use CEDAW at the international level to pressurise countries in any political or economic way. But we acknowledged that it is important to be alert to the possibility of the misuse of human rights treaties/conventions. At that time, the marginal nature of women's rights to the international community served as a safeguard against its misuse. Further, except for Article 29 of CEDAW which allows reference to the International Court of Justice in case of a dispute between States relating to the implementation of CEDAW, there was no mechanism within its framework to allow for State-to-State pressure. The only means by which States could be encouraged to implement CEDAW is through the monitoring or review/reporting process<sup>27</sup> by the CEDAW Committee and by local-level activism. We also pointed out that the CEDAW Committee consists of experts from all regions of the UN community of nations, which serves to ensure that it is not used as a means to pressurise or pillory States for reasons unrelated to CEDAW.

It is interesting that today the initial distrust of the CEDAW Committee has vanished. With women from almost every reporting country submitting their shadow or alternative report to the Committee and in view of the space that the Committee has created for NGOs in the reporting process, a very cordial relationship of mutual trust exists between women from the national level and the Committee.

Another concern women raised was about the benefit of the monitoring mechanism. Since the only way to oversee implementation of the Convention was the international reporting procedure in which only the State had a role, would this mechanism not give the State ample opportunity to hide any violations of women's human rights? Besides, by expecting the State to speak for women in the international process, was the procedure not enhancing State powers rather than promoting women's rights?

We responded: The terms of CEDAW bind the State legally to *fulfil* women's rights to equality. The monitoring/reporting mechanism emphasises the State's responsibility both for its citizens' *enjoyment* of their guaranteed rights and for preventing violations of those rights. It also emphasises the importance of thorough investigation of overt and covert violations.

The monitoring/reporting mechanism provides a process and forum where governments are required to answer questions regarding their responsibilities and where different forms of pressure can be used. In particular, the constructive dialogue is a forum that provides an opportunity for advocacy groups within countries to monitor their governments' progress and even question this progress in ways that are not readily available through local processes. So, women can come to the reporting process at the UN and provide to the Committee alternative information that is critical of the government's information. In this way, the government cannot get away with misinformation.

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**CONCERN: Would we be overly enhancing the powers of the State by expecting it to speak for women in the international process, through State Party reporting?**

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Although it is the State's responsibility to eliminate discrimination against women as elaborated in CEDAW, it is unrealistic to expect that it will do so without local pressure. Further, local-level action, with women's groups interacting with the State, and defining strategies required of the State is also crucial to stop the danger of enhancing State powers in the guise of eliminating discrimination.

**A Never-ending Process of Addressing Doubts and Promoting the Strengths of CEDAW**

The orientations with all the questions posed to us by women put Shireen and me into a constant thinking and reflecting mode day in and day out. It also helped us to devise strategies for how to make CEDAW an effective instrument. At time I would wake up from my sleep thinking "Ha! This is the answer to that question raised in the last orientation", or I would be driving to work mulling a particular question about CEDAW in my head and find I had shot past the turning to the office.

When we had settled the political questions, the usefulness of CEDAW was constantly raised especially in India. Though CEDAW explicitly covers a wide range of concerns, on its face, it appears to leave a number of key issues related to women out of its ambit.

Examples of the latter include violence against women, particular references to caste-based discrimination and violence, new economic policies and so on. If these issues were not explicitly covered in the text of the treaty, how useful could it be for realising women's rights?

We argued that the strength of CEDAW lies in its interpretation. It is an instrument agreed to by consensus by an international body representing the views of many countries. Like other human rights treaties, it is worded generally so that it can apply to a wide range of country situations and so that its interpretation can develop to meet changing circumstances. Although particular issues are not mentioned explicitly, that does not preclude a view that they are covered implicitly. What we must do is learn to interpret and apply its general and broad articles to a wide range of conditions and specific concerns. The CEDAW Committee is empowered to do this<sup>28</sup> through drafting General Recommendations which are authoritative elaborations of the scope of CEDAW, especially if a critical or emerging context is excluded in the text of CEDAW. The Committee does this by taking note of the State Parties' lack of understanding of the specificities of their obligations under the provisions of CEDAW as perceived through the reporting process and through wide consultation with stake holders including women's rights groups.<sup>29</sup> The drafting of General Recommendations has provided the scope for women's groups to bring ground level realities and contexts to the attention of the Committee.

Even though there is no mention of violence against women in CEDAW, the Committee was of the view that it essentially constitutes a form of discrimination against women as per Article 1 of CEDAW and they adopted General Recommendation 19 through which relevant articles of CEDAW have been interpreted to show that violence against women is in fact a form of discrimination implicitly dealt with by CEDAW.<sup>30</sup>

The fundamental point about CEDAW, as well as other human rights treaties is that they are based on principles which are open to interpretation. Even more fundamental is that CEDAW is a treaty and not a programme of action, which means that it creates binding legal obligations on States, rather than merely moral obligations. We urged that groups in countries must familiarise themselves with CEDAW, analysing each article in the light of its implications for women's issues in that country context. They must be aware also that CEDAW is open to interpretation for the benefit of women; the State may seek to interpret CEDAW and its articles so as to justify actions which may, in fact, stand as obstacles to the advancement of women. Women's groups must guard against this. CEDAW provides a specific context in which women and the State can debate rights for women. It may not always be in the interests of the State to entrench the rights guaranteed in CEDAW, so it will be up to women themselves to engage actively in claiming these guarantees and transforming them into programmes of action which advance the interests of women at a practical level. Above all through interpretation, CEDAW could be applied to contexts or groups of women not explicitly mentioned in the text.

We drove home the point that for women to truly exploit the potential of CEDAW, they must develop a significant knowledge of its provisions, expertise in interpreting the articles so as to creatively apply them to the various issues, and to integrate them into advocacy efforts. To convince women in several South Asian countries that the universal and international standards of equality and non-discrimination enshrined in CEDAW would enhance the effectiveness of their issue-based work was a challenge. This was all we did for the first two or three years.



*For thirty years we have been demanding equality from our government, but we did know what it was until you did this session for us.*

- Members of Mahila Parishad, Bangladesh



### Creating Clarity on Substantive Equality

Once people were convinced that they could work with this treaty and use it for advocacy, the next questions that came back to us was: “What does the treaty really mean?” “What does it offer us in real terms?” “So, in principle, yes, it’s about international standards, but what is the meaning of equality?” “We also know equality,” they would say. “Even before CEDAW we have been working on equality and therefore, what is this equality that is so special?”, and in that case “What is the understanding of sex-based discrimination?” These were not strange concepts but had different meanings to different people. So, we had to be very succinct and clear, and create

the conceptual clarity on the meaning of substantive equality, and the question of direct and indirect discrimination. We had to really unpack the meanings of these as given in CEDAW.

In the very beginning it was all between Shireen and myself; and we were novices. We had a superficial knowledge of CEDAW and very little knowledge of substantive equality, the central focus of CEDAW. But we had allies in Ramya Subrahmanian<sup>31</sup> and Ratna Kapur,<sup>32</sup> both from India. The latter, an academic lawyer, had been doing the most work on substantive equality. Ramya brought Ratna into the orientations and training, and Ratna did the first sessions on substantive equality. IRAW Asia Pacific owes Ratna Kapur a debt of gratitude for helping us develop the understanding of substantive equality and bring clarity to this concept.

Women had hitherto been wary of using this concept of equality because of its androcentric legal interpretation that a woman had to function like a man to be considered equal. They knew from experience that this interpretation only served to entrench discrimination against them.



*We had a superficial knowledge of CEDAW and very little knowledge of substantive equality, the central focus of CEDAW. IRAW Asia Pacific owes Ratna Kapur a debt of gratitude for helping us develop the understanding of substantive equality and bring clarity to this concept.*



But substantive equality was what they had been waiting for. (See box below for a simple interpretation of substantive equality.)

Eventually, women at the orientations and trainings related to this concept. I have memories of reactions of participants at some trainings in Bangladesh with Mahila Parishad (a long-standing women's organisation in Bangladesh). The women there who were

very senior and had a long-standing history of activism in their country came up to me and said, "For thirty years we have been demanding equality for women from our government, but we did not know what it was until you did this session for us."

Today, this slogan of opportunity, access, and results still resonates with the hosts of women who have been associated with us.

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### SUBSTANTIVE EQUALITY

Substantive equality is based on the recognition of the existence of sex- and gender-based difference and the significant role it plays in women's lives. Regardless of the source of the difference (i.e., natural or social), this model says that differences between men and women have been historically used to women's disadvantage and to subordinate women. So, gender/sex differences cannot be ignored.

The substantive model of equality also offers a critique of the standards that underpin so-called gender-neutral laws. The ostensibly gender-neutral standards of the equal treatment model are not neutral at all; rather, these are based on male standards. If these standards, biased in favour of men, are equally applied to women, in the interests of neutrality or equal treatment, then women will be penalised for difference, and the underlying inequalities between men and women will simply be reinforced. In a world where these differences are still relevant, law cannot ignore this difference.

Therefore, not only was it necessary to create opportunities for women on an equal basis with men, but access to these opportunities had to be facilitated for women because they may face difficulties in seizing them. Examples of such existing inequalities are limitations of mobility and experience, lack of safety, less access to factors of production, lack of freedom to make their own decisions, lack of control over their time, and being solely responsible for childcare, etc. They would require differential treatment enabling them to overcome the disadvantages they face, both historical and current, to make them equal. Thus, the substantive model is concerned not with equal treatment, but with equal results or outcomes.

Equality is therefore multi-dimensional and the slogan in all our orientations and trainings was:

- EQUALITY OF OPPORTUNITY
  - EQUALITY OF ACCESS and
  - EQUALITY OF RESULTS
-

Much of these early discussions on CEDAW have found place in our training package. I realised later how effectively IRAW Asia Pacific had developed the capacity to interpret and draw out the potential of CEDAW. At a CEDAW workshop which IRAW Asia Pacific held in Mongolia in 1997, we were privileged to have the first Chair of the CEDAW Committee, Ms Ider Luvsandanzangyn, as a participant. As a Mongolian diplomat in the late 1970s and early 1980s at the UN, she had participated in the drafting of CEDAW and then served as the first Chair of CEDAW in 1982. At the end of the workshop, she stated: "I helped draft this treaty. But it is only now after attending this workshop that I realise its full potential." High praise indeed!

### **Learning That Women Had Rights and Not Just Issues**

But while doubts and skepticism about an international instrument and the CEDAW Committee led to much dialogue and debate, these orientations also provided the space for learning about a rights approach.

As we studied and explored the potential of CEDAW, its principles and concepts, an awareness of the rights approach that women had to engage with was strengthened. In the early orientations with women's groups, the basis of the discussions was the contexts and issues that women's groups were working on and the approaches they used. This helped to advocate for the importance of a rights-based approach and not just a needs-based or violations approach. Through case study application, it became apparent that in every situation there was not just an incident of

discrimination and a related harm but also a denial of rights, and that these rights were interrelated. In any context or theme, what emerged from our analysis was that there was not a deficit of just one right, but that the root cause of women's deprivation was a multi-faceted rights denial. Holistic solutions were needed. A prime example of this was reproductive health and rights which demonstrates the interrelatedness of socio-economic and civil and political rights. (See Table 1 on the opposite page.)

We conducted workshops through which women could draw their own conclusions establishing the interrelatedness of rights using the themes they were working on such as violence against women, trafficking, reproductive rights, livelihoods and income, gender-based violence, and the urban and rural environment. We gave them discussion guidelines that made them see that there was a need for a more holistic approach to their work and we did this in a participatory manner in spite of a large number of participants.

For example, in one such workshop in Nepal in April 1994, 55 persons participated, including women activists, medical professionals, researchers, and male development practitioners from the government and non-governmental organisations. The general focus of the workshop was Reproductive Health. Participants identified a wide range of rights as relevant for the general theme (see Table 1). This subject was very significant as the local partner MANUSHI who collaborated with IRAW Asia Pacific pointed out that, "The perspectives on Reproductive Health had never been openly discussed in a forum of this kind."<sup>33</sup>

TABLE 1: RIGHTS TO REPRODUCTIVE HEALTH<sup>34</sup>

PRIMARY RIGHTS	ASSOCIATED RIGHTS THAT CREATE THE CONDITIONS FOR THE EXERCISING OF THE IDENTIFIED REPRODUCTIVE RIGHTS <sup>35</sup>
<ul style="list-style-type: none"> <li>• Right to choose marriage partner, remarriage in case of divorce or widowhood</li> </ul>	<ul style="list-style-type: none"> <li>• Social and legal right to have a separate identity as a woman</li> </ul>
<ul style="list-style-type: none"> <li>• Right to choose whether to be pregnant or not</li> </ul>	<ul style="list-style-type: none"> <li>• Right to literacy, education, and information</li> </ul>
<ul style="list-style-type: none"> <li>• Right to refuse unwanted sex and right to have safe sex</li> </ul>	<ul style="list-style-type: none"> <li>• Right to work and access to income</li> </ul>
<ul style="list-style-type: none"> <li>• Right to safe abortion</li> </ul>	<ul style="list-style-type: none"> <li>• Right to inheritance and parental property rights</li> </ul>
<ul style="list-style-type: none"> <li>• Right not to be solely responsible for fertility control</li> </ul>	<ul style="list-style-type: none"> <li>• Right to access and control over family resources</li> </ul>
<ul style="list-style-type: none"> <li>• Right to choice of contraceptive methods</li> </ul>	<ul style="list-style-type: none"> <li>• Right to decision making</li> </ul>
<ul style="list-style-type: none"> <li>• Right to quality comprehensive reproductive health services including counselling</li> </ul>	<ul style="list-style-type: none"> <li>• Right to self determination</li> </ul>
<ul style="list-style-type: none"> <li>• Right to informed consent regarding surgical procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Right to privacy</li> </ul>
<ul style="list-style-type: none"> <li>• Right to sex education and basic health education</li> </ul>	
<ul style="list-style-type: none"> <li>• Right not to be devalued for having female children or for not having children</li> </ul>	

The second set of associated rights clearly had implications for the social and legal status of women. At the end of the discussion, the participants could see that there was a link between this status of women and the fulfilment of reproductive rights. Women needed independence and the right and capacity to make decisions for themselves to realise their reproductive rights. This message was made apparent a short time later at the International Conference on Population and Development in Cairo (5-13 September 1994).

Where socio-economic rights were concerned, we illustrated through case study analysis that rights fulfilment could not just be about service delivery. Availability of services would provide opportunities, but a rights framework would demand access to the opportunity. The individual woman would have to have the capability to overcome gender-based disadvantage or biases to access the opportunity or the enabling conditions that helped provide access. There can be no equality without equality of outcome. This was a contextual demonstration of substantive equality. The slogan 'Equality of Opportunity, Access and Results' was not anymore just rhetoric, but became a reality for workshop participants.

Taking a rights approach also brought an understanding of women as rights holders and claimants of rights and the State as a duty holder. As Henkin<sup>36</sup> has postulated, “The idea of rights also implies entitlements on the part of the holder in some order under some applicable norm to be translated into and confirmed as legal entitlement in the legal order of a political society.”

Accordingly, women were citizens with rights which must be claimable. This changed the understanding of State-citizen relations. The State had obligations and accountability towards its citizens. There could not just be a patron/client relationship, but the State needed to answer to the demands of its citizens. Further, once rights were claimed they could not be withdrawn. There could be no regression. We raised awareness that the rights discourse could be powerful. It gave much scope for transforming the work of the women.

### **Not Only Rights, But Human Rights**

The dedication to CEDAW brought a further awareness of how women’s rights work was connected to universal human rights principles of equality and non-discrimination. Substantive equality was a human right, and it was a universal standard. Culture or religion or any other national particularity could not compel a justification for discrimination or violence against women. This meant we had to advocate for the inalienability and the universality of rights! Henkin<sup>37</sup> writes, “Human rights are not merely aspirations or assertions of the good. To call them rights implies they are claims as of right, not by appeal to grace, or charity, or brotherhood, or love, they need not be earned or deserved.”



*A myth that was often raised was that CEDAW and notions of human rights and equality were an imposition by the West on the developing countries. Ah, but the United States has not ratified the Convention so it cannot be a Western imposition now, can it? But seriously, we had to prepare clear and convincing arguments that CEDAW was **not** a Western imposition.*



We drove home the point that CEDAW was for *all* women and equality had to be unconditional. Human rights are an enabler of social change. The combination of human rights and the norm of equality helps redress both inequalities in material circumstances and inequalities in social relations so that all humans are valued as equals and social justice is enabled. The lesson was that human rights are essential for the achievement of social justice.

But if we were to promote this ideology there would be conflicts for the women’s groups in their contexts as a result of entrenched social and cultural values that justified women’s inequality as essential for communal and family harmony. There would be serious challenges. A myth that was often raised was that CEDAW and notions of human rights and equality were an imposition by the West on the developing countries. Ah, but the United States has not ratified the Convention so it cannot be a Western imposition now, can it? Often the United States would be synonymous with the West. Help comes in strange ways!



But seriously, we had to prepare clear and convincing arguments that CEDAW was not a Western imposition. We pointed to the drafting history of CEDAW when representatives from developing countries such as the Philippines and India played a key role. We pointed out all regions of the world had been represented in the working group established by the Commission on the Status of Women (CSW) to prepare the draft of CEDAW. This was the era of the cold war and socialist countries exerted much influence in international discussions. The result was that CEDAW included socio-economic rights as much as civil and political rights, the former being as vital for women from developing countries. The inclusion of Article 14 on the rights of rural women was another example of the influence of developing countries in the drafting process. India supported by Egypt, Indonesia, Iran, Pakistan, Thailand, and the United States had introduced the provision on rural women.<sup>38</sup> We made it clear that all UN member States had a say in the content of CEDAW and most of our governments had ratified it voluntarily. Obviously, the best argument against equality being a Western imposition is that equality has been recognised almost universally in the early 1990s through the ratification of CEDAW by the vast majority of governments: Asian, African, and Latin American governments included.<sup>39</sup> Hence we defended equality as a universally accepted norm.

But we still needed a global endorsement of the universal normative standards of human rights to back our arguments to promote women's human rights. This is where the three UN World Conferences conducted exactly during this period supported IWRAW Asia

Pacific's vision. The timing of these Conferences could not have been more opportune as they helped consolidate and enhance the learning on human rights that would be the basis of IWRAW Asia Pacific's programme. The first of them, The World Conference on Human Rights held in Vienna in 1993, was path-breaking and inspirational. It has done more for women's human rights than any other global event. It grappled with these same conceptual human rights ideas, and we became sharper in our arguments as a result.



*The best argument against equality being a Western imposition is that equality has been recognised almost universally in the early 1990s through the ratification of CEDAW by the vast majority of governments.*



Journalist Margaret Ng for the *Far Eastern Economic Review* published a column just prior to the Vienna World Conference on Human Rights from 14 to 25 June 1993. In it, she formulated the argument I needed to debunk the resistance to human rights as a Western import:

It is preposterous to believe that human rights is a Western concept. Human rights is no more Western than Christianity is oriental. It is not important who hit upon the idea of human rights. Once it is universally recognised as a right—and it has among nations of both East and West—it belongs to the world, and everyone has a duty to uphold it.<sup>40</sup>

### Establishing Links With Women's Groups

To get the programme going in the early stage, we established links with groups in South Asia, who collaborated with IWRAP Asia Pacific to conduct the orientations. In Nepal, they were SAATHI, MANUSHI, and WID Nepal. In India, we collaborated with Initiatives for Women in Development (IWID) in Chennai, the Coordination Unit for the Beijing Conference preparation<sup>41</sup> in Delhi, and Mahila Samakya. Mahila Parishad and Naripokkho were our partners in Bangladesh, and the Centre for Women's Research (CENWOR) and Lawyers for Human Rights and Development in Sri Lanka. There were wonderful women activists from the organisations concerned who worked with us and were our partners: Pramada Rana, Arzu Rana, and Prabha Thacker in Nepal, Ramya Subrahmanian, Madhu Mehra, Suneeta Dhar, Tulika Srivastava, Gita Ramaseshan, and SK Priya from India, and the late Kamalini Wijayatilaka and Jezzima Ismail from Sri Lanka. The organisations we worked with brought several other groups into the orientations that were conducted on CEDAW between 1993-1996. In turn they conducted echo orientations and mini trainings on CEDAW at the regional and district levels in their countries and so the base of women informed about CEDAW grew.

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*Our work produced ripple effects that we could not always track. We realised this when someone spoke about it almost by accident.*

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One of the staff members of the Beijing Conference Coordination Unit in India was Madhu Mehra, a young lawyer who today is the founder of a well-known feminist organisation called Partners for Law and Development (PLD) in Delhi. The Coordination Unit through Madhu Mehra cooperated with IWRAP Asia Pacific to carry out key orientations on CEDAW at this time. Madhu has remained a key resource person and partner for IWRAP Asia Pacific. It was at one of these orientations that Tulika Srivastava, another young lawyer, was introduced to the programme. She was at that time a staff member of Mahila Samakya, a government sponsored programme for the empowerment of women in Lucknow, Uttar Pradesh. She, too, later founded her own organisation, the Association for Advocacy and Legal Initiatives (AALI), and she remained a resource person and partner for us.

Our work produced ripple effects that we could not always track. We realised this when someone spoke about it almost by accident. On one occasion, a CEDAW Committee member from Israel spoke to me about a trip she had taken to India and had gone into the hills of Uttar Pradesh. There she witnessed a Catholic nun in a village seated with a group of women under a tree discussing with them about their right to equality. She was talking to them about CEDAW. The CEDAW expert was quite sure that the nun must have attended one of my trainings. In fact, that nun (her name was Pilar) had been trained by Tulika who had been trained by me. In turn, she was disseminating the message to groups of village women in the hills. The ripple effect was certainly there.

Through all these processes, the awareness of the disparities between women and men was sharpened. Now the women had a standard — the CEDAW Convention—by which to assess the status of women. For example, after the initial orientation and training on CEDAW in 1993 and 1994, SAATHI in Nepal conducted a series of orientations on CEDAW in around 10 districts between 1996-1997, reaching out to persons from varied backgrounds, grassroots women, local activists, etc. They converted the text of CEDAW into pictorial form to better disseminate the information to grassroots women and men.



*I was a novice those days. The CEDAW orientations that IRAW Asia Pacific conducted made me understand the significance of movement building. I learnt much and especially from you, how to bring about change. I learnt about the existence of UN human rights institutions and how to work that system. My capacities were enhanced.*

– Pramada Rana Shah, of SAATHI, Nepal



Prior to conducting the workshops, SAATHI examined the legal status of women from the perspective of the standards of CEDAW. This examination revealed several discriminatory laws. It was also discovered that Nepal had not amended any laws in favour of women since the sixth amendment of 1975. So, laws that were in conflict with CEDAW were still on the books. Through the workshops SAATHI realised there was neither awareness in the country about CEDAW, nor about the accountability

of governments to women under CEDAW, nor about the potential of using CEDAW as a tool for demanding equal rights for women. SAATHI and other groups felt that the government was ignoring the needs and rights of women. The issue SAATHI focused on was violence against women. So, they built awareness on the obligation of the government as a party to CEDAW to implement programmes to combat violence against women and to adopt a law on domestic violence. To sustain the awareness building programme and to enable the use of CEDAW by women for their advocacy on violence against women, SAATHI conducted training of trainers and helped the formation of several community-based groups that carried on the advocacy.

The initial orientations and training that IRAW Asia Pacific had conducted in 1993 and 1994 contributed to the nucleus of movement building and the mobilising of constituencies of women that had the capacity to demand their rights. The individual women from the organisations who worked with us in those days also gained knowledge of human rights and had their skills developed for advocacy. Pramada Rana Shah from SAATHI of Nepal who was a young activist, 24 years of age in 1993, who helped to organise the first CEDAW orientation in Nepal said to me, “I was a novice those days. The CEDAW orientations that IRAW Asia Pacific conducted, made me understand the significance of movement building. I learnt much and especially from you, how to bring about change. I learnt about the existence of UN human rights institutions and how to work that system. My capacities were enhanced.”<sup>42</sup>



*By the end of 1993, barely a year after IRAW Asia Pacific was established, there was an increasing demand of women's groups for much more in-depth training on CEDAW that would teach them how to use it to claim their rights. By 1994, IRAW Asia Pacific worked toward strengthening national groups and alliances that could sustain CEDAW-related work in their countries. The role of IRAW Asia Pacific was catalytic and supporting.*



Much later, the Forum for Women, Law and Development, Nepal spearheaded a successful major advocacy campaign on law reform relating to property rights. Part of the success of this campaign was the great level of rights awareness that many collaborating women's organisations could build on.

In India, the first training for lawyers was conducted by Tulika through Mahila Samakaya in Lucknow and in Chennai by IWID in 1994 and 1995, respectively, and in Kathmandu through ASK in 1996. Several such trainings took place through 2002-2004 with help of the National Alliance for Women in Bangalore. Not only was our base of women and women's organisations growing but we were also diversifying our target groups to include lawyers so CEDAW could be introduced into the courts of India. At that time, when we called ourselves a regional organisation, we didn't really do regional work yet. Rather, it was the sum of country-level work, creating a base of women that we could work with country by country—women activists as well

as women lawyers who could pick up on the concepts of equality and sharpen their own strategies for advocacy.

One outcome of the Nepal workshops in 1993 and 1994 was that activists were made aware that though Nepal had ratified the CEDAW Convention in 1991, no progress towards submitting its initial report—which would have been due in 1992—had been made by the government. After the workshops on CEDAW held there, women campaigned with the government to get them to start writing the initial report. They discovered that no government agency had been tasked with the responsibility of writing the report. So the first task for the NGOs was to get the government to assign a government agency to take responsibility for this. Finally, the first CEDAW report was submitted to the UN in 1998, and the first CEDAW review of Nepal took place in 1999.

### **Moving on**

When people got convinced that they could work with this treaty and use it for advocacy, the next question that came back to us was: "How do we apply CEDAW in real terms?" By the end of 1993, barely a year after IRAW Asia Pacific was established, there was an increasing demand of women's groups for much more in-depth training on CEDAW that would teach them how to use it to claim their rights. By 1994, IRAW Asia Pacific worked towards strengthening national groups and alliances that could sustain CEDAW-related work in their countries. The role of IRAW Asia Pacific was catalytic and supporting. Next, we began the task of developing training materials and building a pool of trainers.

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## The UN World Conferences and IWRAP Asia Pacific

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*There was much tension and dissent even before the Vienna Conference started. The fact of women's rights as human rights was in itself still alien even to mainstream human rights advocates.*

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In the 1990s three momentous UN Conferences, the Vienna Conference on Human Rights, the International Conference on Population and Development, and the Beijing Fourth World Conference on Women were held. All three conferences held sequentially were highly contentious. Nevertheless, despite the heated and at times almost filibustering nature of the debates, consensus was reached by governments on key issues pertaining to human rights.

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**The Vienna Conference on Human Rights**  
14-25 June 1993

**The International Conference on Population and Development (ICPD)**  
5-13 September 1994

**The Beijing Fourth World Conference on Women (FWCW)**  
4-15 September 1995

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## **WHAT WOMEN GAVE AND WHAT WOMEN GOT**

### **It was Serendipity!!!**

In the 1990s three momentous UN Conferences, the Vienna Conference on Human Rights (14-25 June 1993), the International Conference on Population and Development (ICPD, 5-13 September 1994) and the Beijing Fourth World Conference on Women (FWCW, 4-15 September 1995) were held. All three conferences held sequentially were highly contentious. Nevertheless, despite the heated and at times almost filibustering nature of the debates, consensus was reached by governments on key issues pertaining to human rights. All three conferences set interrelated standards for women's human rights. Women's groups from global to national, played key roles in the success of these conferences. As the founding director of IWRAP Asia Pacific, I attended all three conferences. At that time IWRAP Asia Pacific had just been established in 1993 in Malaysia. As a nascent women's rights organisation, it benefited from the conceptual clarity on human rights that I obtained from these conferences and which served as a basis for its work. I also witnessed first-hand the global politics that influenced the debates around human rights. From this came wisdom that made it possible for IWRAP Asia Pacific to be strategic in its work.

The timing of IWRAP Asia Pacific's work on CEDAW was opportune, as the first phase of work also coincided with the important World Conferences. The year 1993, also the year of IWRAP Asia Pacific's inception, had opened fresh spaces for women's advancement

and equality. The Vienna Declaration of the 1993 World Conference on Human Rights established, in unequivocal terms, women's rights as an inalienable part of universal human rights and as an essential pre-condition to women's participation in development as agents and beneficiaries. As women gained more conviction of the legitimacy of their rights that were being universally recognised, there were greater demands for international and national mechanisms and systems through which they could achieve their rights. In this context CEDAW took on added significance. Its potential as a key source of international standards for women's rights and the force of its norms and standards in relation to domestic applicability was appreciated at the Vienna Conference on Human Rights. Ratification and implementation of CEDAW was seen as crucial for the realisation of the Vienna Declaration and Plan of Action. Recognising this, the Vienna Declaration called for the universal ratification of CEDAW by the year 2000 (paragraph 39).

### VIENNA CONFERENCE ON HUMAN RIGHTS

At the Vienna Conference, women's groups were highly organised and campaigned fiercely to ensure that women's rights would be acknowledged as human rights. There was a signature campaign launched by the Centre for Women's Global Leadership (CWGL)<sup>43</sup> in New York headed by Charlotte Bunch,<sup>44</sup> led by the slogan 'Women's rights are human rights'. In the lead-up to the Vienna Conference on Human Rights in 1993, CWGL with women's rights partners launched the Global Campaign for Women's Human Rights. A major component of the Campaign was a petition calling for the United Nations to place

women's human rights issues on the agenda for the Vienna Conference. The petition emerged from the first 16 Days of Activism Against Gender-Based Violence Campaign [see <https://16dayscampaign.org/about-the-campaign/>] in 1991 and proved to be an effective mobilising, educational, and lobbying tool to advance women's human rights. The petition collected half a million signatures in 23 languages from 124 countries and helped secure a formal declaration in the Vienna Declaration recognising women's rights as human rights and violence against women as a human rights violation.

IWRAP Asia Pacific had barely been set up as we had started functioning only in June 1993. In fact, we were still finding our feet by the time of the ICPD in 1994. For both these conferences, as well as for the Fourth World Conference on Women (FWCW), IWRAP Asia Pacific worked collaboratively with the IWRAP Minnesota programme. They were in a better position to raise funds for participation of women from different regions of the world as they had a track record of having established an international network of women activists. In particular, the FORD Foundation had an interest to ensure that women from developing countries would have a voice at the Vienna Conference and had provided funds to the IWRAP Minnesota programme to link developing country activists into the preparations.

Although the work of IWRAP Asia Pacific had barely started, I was at the Vienna Conference and participated in the NGO Forum organised by the Ludwig Boltzmann Institute of Human Rights (BIM)<sup>45</sup> and headed by Manfred Nowak, an Austrian human rights lawyer and scholar.

This institute presented many clear demands to the official conference including on women's rights.

There was much tension and dissent even before the Conference started. The most contested ideas at the official conference were those pertaining to universality of human rights, culture as justification for violation of women's human rights, the indivisibility of rights, the right to development, and the inviolable nature of State sovereignty. The fact of women's rights as human rights was in itself still alien even to mainstream human rights advocates. Developed and developing country governments were strongly divided on all these issues, with developing countries pushing for the right to development and non-interference in internal affairs. They also objected to the proposal for the creation of a new mechanism—a Human Rights Commissioner—which the West supported. The statement of the Secretary General Boutros Boutros-Ghali in a column written for the Washington Post prior to the Vienna Conference, warning that proposals to create new high-level positions and permanent forums might only create discontent and resistance, dismayed NGOs.<sup>46</sup>

As a matter of fact, the Conference did create the position of High Commissioner for Human Rights and called for the drafting of an Optional Protocol to the CEDAW Convention. The Secretary General Boutros-Ghali also urged quiet diplomacy while an NGO activist flashed back that "There was no evidence that silence saves lives."<sup>47</sup> Even before the conference, developed countries were pitted against developing countries, and NGOs

pitted against governments of all hues and against the UN bureaucracy. The frustrations of NGOs also ran high because the Vienna Conference rules did not permit the naming of countries in highlighting human rights abuses even in the NGO Forum document.

### **Contested Issues: The Asian Position and NGO Response**

Asian governments met in Bangkok as part of the preparation for the main conference in Vienna and had drafted the Bangkok Declaration expounding their perspectives on human rights as preparation for the World Conference. This document sought to establish the Asian concept of human rights to be distinguished from the Western Concept. According to Margaret Ng who wrote a column for the World Conference on this,<sup>48</sup> the Bangkok Declaration saw the prevailing concept of human rights as a creature of Western culture incompatible with Asian culture. In the Bangkok Declaration, the Asian governments called for economic aid and development from Western countries as a pre-condition for human rights, but also emphasised sovereignty and autonomy of each Asian State. In her understanding, the Bangkok Declaration assumed that "There are human rights and then there are Asian human rights. If we accept this [...] we must as well give up on the concept of universality." She saw this as an endorsement of cultural relativism and condemned the double standards that this implied in strong terms: "A wrong at home among people like us is a crime and a sin. The same among natives is a time-honoured local custom."



So, universality has no relevance in the Bangkok Declaration. It was being reported in the press that Asian leaders opposed universality of human rights because Asia was unique and very different from the West in culture and political thought and philosophy. These differences gave them the right to take distinctive positions on human rights. A specific term had been coined for this by Asian luminaries: 'situational uniqueness'.<sup>49</sup> In Southeast Asia, Musa Hitam,<sup>50</sup> head of the Malaysian Delegation to the World Conference, spoke strongly against the imposition of Western perceptions of human rights. At the Bangkok Preparatory Conference, he is quoted to have said, "Each country is entitled to its own perception of human rights and forcing developing countries to follow the western perception is unfair and unjust."<sup>51</sup> No universality here.



*These differences gave them the right to take distinctive positions on human rights. A specific term had been coined for this by Asian luminaries: 'situational uniqueness.'*



Just days before the Conference and building up to it, one could read headlines in the press such as 'Asians Challenge West on Human Rights',<sup>52</sup> and 'Culture Divide: East Asia Claims the Right to Make its Own Rules'.<sup>53</sup> At the Conference itself, expressing Malaysia's views opposing the indivisibility and the interdependence of rights, Musa Hitam stated, "Civil and political rights should come almost automatically after development has been achieved."<sup>54</sup> Malaysia and Singapore had been

the most strident in propounding the Asian approach, and accusing the West of imposing its concepts on developing countries. Some governments accused the industrialised North of using human rights to deny development aid to poor countries. But an interesting insight into these stands was provided by one Southeast Asian official who said, "The stress on a distinctive Asian human rights philosophy, is all a political ploy by certain ruling elites to preserve their existing methods of rule."<sup>55</sup> This was the politics of diversity in human rights. There was much to absorb and process.

In response to the regressive stand of Asian governments, the Asian NGO human rights community convened in Bangkok to counter the assault on the universality of human rights and the privileging of cultural relativism. They issued their own declaration, the Bangkok NGO Declaration on Human Rights.<sup>56</sup> This Declaration is a joint statement of several human rights and development NGOs, presented at the Regional Meeting for the Asia-Pacific in preparation for the UN World Conference on Human Rights, Bangkok, 29 March 1993. The signatories comprised 240 representatives of 110 NGOs from 26 countries. The Declaration put forward a detailed human rights agenda for implementation and emphasised that:

There is an emerging understanding of universalism encompassing the richness and wisdom of Asia-Pacific cultures. As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.



*I realised that arguments in the abstract against cultural relativism would not take us far. We had to demonstrate concretely the harm that women experience in the name of culture and condemn it.*

***Is inequality culturally appropriate and equality not?***



The human rights advocates affirmed their commitment to “The principle of indivisibility and interdependence of human rights be they economic, social, and cultural or civil and political rights.” They further affirmed that “There must be a holistic and integrated approach to human rights and that one set of rights cannot be used to bargain for another.”

As I read the press articles as preparation just prior to my participation in the Conference, I was learning to form my arguments on these contentious concepts. Are culture and cultural practices so sacred that they have to be preserved even if they cause harm, and especially when it is usually women who face discrimination and harm? Seeing the stubborn stand Asian governments were taking with regard to the use of culture as a reference for the acceptance of human rights, I realised that arguments in the abstract against cultural relativism would not take us far. We had to demonstrate concretely the harm that women experience in the name of culture and condemn it. Is inequality culturally appropriate and equality not? How do we debunk this? The question was how to expose the harmful manifestations of inequality that made women less valued than men. I read a piece

by Geraldine Ferraro<sup>57</sup> who was a member of the US delegation to the Vienna Conference which was useful. She described a long list of violations women are routinely exposed to, including:

Gender based violence, female infanticide, genital mutilation, wife murder, rape, discrimination in health care or barriers to political, economic and social equality or giving little girls less food, less education, less medical care than boys or when women can't travel or marry without male consent or when children and property belong legally only to men or when women are denied the right to control their bodies, or women's right to vote, meet or speak out are circumscribed.

These violations, she argued, in the present understanding, are dismissed as traditional practices, family problems or as less important than the abuse a man faces when he is put behind bars and is tortured for speaking his mind. However, they “Deny women their full humanity and women who are not fully human cannot be allowed to take part in government, business or development.” Therefore, it was necessary to understand them as “Violations of women's human rights and (they) must come within the purview of international jurisdiction.”<sup>58</sup> I was picking up the concrete arguments so essential for the work of IWRAP Asia Pacific that had to be premised on the principle that human rights are universal, inalienable, indivisible, and interdependent.

The Conference struggled with these concepts and principles. Culture continued to be debated as sacred and the demand by some

governments was that universality must be subject to local conditions and norms free from external interference. The final consensus on this topic read,

While the significance of national and regional particularities and various historical, religious and cultural backgrounds must be borne in mind, it is the duty of States regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. (Paragraph 5, Vienna Declaration and Programme of Action. 1993)

So, notwithstanding Asian perspectives, a consensus had been reached on the idea that States must promote and protect all human rights regardless of the political, economic, and cultural systems.

### **The Inspiring Presence of the Dalai Lama**

An event that left a lasting impression on me was the presence and speech of the Dalai Lama. He had been scheduled to address the delegates on the issues of human rights in Tibet. But under pressure from the People's Republic of China, the UN withdrew the invitation to the Dalai Lama.<sup>59</sup> The Austria Centre was the official venue of the World Conference, and the Ludwig Boltzmann Institute of Human Rights had negotiated with both the UN and the Austrian government that the ground floor of the Austria Centre would be the 'NGO floor', where the NGO Forum was organised with more than 1500 NGOs and more than 3000 NGO delegates as well as roughly 400 parallel events, many on the human rights of women.

When the Dalai Lama was invited to speak at the NGO Forum, the Chinese government strongly objected that he could enter the Austria Centre. Similarly, the government of Israel objected to the invitation of Yasser Arafat as speaker. This, of course, undermined the independence of NGOs. It took Manfred Nowak three days to negotiate a solution with the Austrian government and the UN (Ibrahima Fall, then Director of the UN Human Rights Centre). At the end, the negotiation succeeded and both speakers were allowed to enter the NGO floor. In the meantime, Amnesty International, which had its own large tent at the Danube Island, had offered to host the speech of the Dalai Lama. The Dalai Lama only for a short time visited the NGO floor, and then, accompanied by Manfred Novak, he went to the Danube Island (in the rain), where he made a very inspiring speech with a lot of media attention at the Amnesty tent.<sup>60</sup>

The Dalai Lama touched simply and eloquently on the very issues that were being contested at the official conference—the universality and the indivisibility of human rights and the principle of universal responsibility to protect the human rights of others and hence limiting State sovereignty. His words have remained with me and have helped me formulate my arguments on these very topics. Here are some relevant excerpts of his speech:

Recently some Asian governments have contended that the standards of human rights laid down in the Universal Declaration of Human Rights are those advocated by the West and cannot be applied to Asia and other parts of the Third World because of differences in culture and differences in social and

economic development. I do not share this view and I am convinced that the majority of Asian people do not support this view either, for it is the inherent nature of all human beings to yearn for freedom, equality, and dignity, and they have an equal [right] to achieve that. I do not see any contradiction between the need for economic development and the need for respect of human rights. The rich diversity of cultures and religions should help to strengthen the fundamental human rights in all communities. Because underlying this diversity are fundamental principles that bind us all as members of the same human family. Diversity and traditions can never justify the violations of human rights. Thus, discrimination of persons from a different race, of women, and of weaker sections of society may be traditional in some regions, but if they are inconsistent with universally recognised human rights, these forms of behaviour must change. The universal principles of equality of all human beings must take precedence.

It is not enough, as communist systems have assumed, merely to provide people with food, shelter, and clothing. The deeper human nature needs to breathe the precious air of liberty. However, some governments still consider the fundamental human rights of its citizens an internal matter of the State. They do not accept that the fate of a people in any country is the legitimate concern of the entire human family and that claims to sovereignty are not a license to mistreat

one's citizens. It is not only our right as members of the global human family to protest when our brothers and sisters are being treated brutally, but it is also our duty to do whatever we can to help them.<sup>61</sup>

### **What was Agreed to by the Vienna Conference**

The NGO Forum for the Vienna Conference on Human Rights organised by the Ludwig Boltzmann Institute, Vienna was structured into several working groups with specific themes. I chaired the Working Group on 'Examination of the Relationship between Human Rights, Development and Democracy'. We were in a large room and it was crowded. The discussions from the floor were impassioned and vociferous, criticising the levels of poverty in the world, the injustices of the disparities of wealth around the world, and the inequality in global power structures. Voices were raised in anger with thumping of desks and stamping of feet. The atmosphere was almost rowdy, yet conclusions were arrived at. I have selected some of the more political recommendations that were made by this working group and summarised them:

### **Recommendations:**

1. The democratization of the structure of the United Nations itself, with the abolition of the veto in the Security Council and of the weighted voting in the international financial agencies. The recognition of impoverishment of large sectors of the population as a gross violation of human rights—civil, political, economic, social, cultural—in their entirety.

2. The examination by the United Nations of the compatibility of structural adjustment programmes undertaken by its international financial agencies with the relevant provisions of the United Nations human rights treaties.
3. The examination and redefinition by the United Nations of the role of its international financial agencies in the interests of development, democracy and human rights.
4. The condemnation of the monopolization of decision-making processes in international economic relations. The call upon non-governmental organizations to launch a global campaign of popular resistance to the present Uruguay Round of GATT negotiations.<sup>62</sup>

Needless to say, none of these recommendations were reflected in the final Vienna Declaration and Plan of Action. The closest was one recommendation in Part II A. Item 2 which stated:

Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights.

In other words, the United Nations itself was not going to examine or redefine the role of its international financial institutions in the interest of development, democracy, and human rights.

The Vienna Plan asked the institutions concerned merely to do their own assessment of their impact on the enjoyment of human rights.

Another recommendation in the Vienna Declaration that resembled our Working Group's demands was:

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level. (Paragraph 10)

Here, the right to development was affirmed, and later, in paragraph 14, poverty was recognised as an impediment to the enjoyment of human rights. But this recommendation was more of a rhetorical statement.

The most significant outcome was the firm recognition of governments that,

All human rights are universal, interrelated, interdependent and indivisible. (Paragraph 5)

It is the duty of States, regardless of their economic, political and cultural systems to promote and protect all human rights and fundamental freedoms. (Paragraph 5)

The Asian governments' notion of "Economic development first, then civil and political rights can follow", did not gain currency. We need to remember the outcomes of Vienna in our

human rights advocacy in Asia and the ASEAN in particular. Since Vienna, the ASEAN has set up a regional human rights mechanism, the ASEAN Inter-governmental Commission on Human Rights, and has adopted an ASEAN Declaration on Human Rights. But the old refrain of Asian values and the compulsion of cultural particularities keeps raising its head.

### The Success of the Women's Advocacy

Whether human rights were dealt with or not in an expansive manner at the conference, the final conference document accepted most of the demands of the women's campaign. The New York Times reported, "Women's rights in particular gained a strong and effective presence at the conference." The women's lobby therefore was successful and the Vienna Declaration and Plan of Action has established at a conceptual level, that:

Women's rights are an integral part of universal human rights and that violence against women is a human rights violation. (Paragraph 18)

The Vienna Plan of action also, *inter alia*:

... stresses the importance of working towards the elimination of violence against women, exploitation and trafficking in women, the eradication of any conflicts which may arise between the rights of women and harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. (Paragraph 38, section 3, The Equal Status and Human Rights of Women)

This is the first time that there was consensus by the international community that violence against women is a human rights violation—an apt corollary to the acknowledgment that women's rights are human rights and to the by now indisputable principle of the Universality of Human Rights. This development in thought, in my opinion, is owing in no small measure to the Tribunal on Violence against Women staged at the Vienna Conference by the Center for Women's Global Leadership based at Rutgers University and headed by Charlotte Bunch. Women testified to specific abuses in five basic areas: human rights abuses in the family, war crimes against women, violations of women's bodily integrity, violations of women's socio-economic rights, and political persecution and discrimination. This Tribunal was the culmination of an international campaign by over 900 women's organisations around the world seeking to bring women's human rights issues onto the agenda of the Conference. The women's campaign raised awareness that abuses of women have too long been dismissed as private, family, cultural, or religious matters. They demanded that they be seen for what they are: fundamental violations of the 'right to life, liberty, and security of person', as guaranteed by the Universal Declaration of Human Rights.<sup>63</sup>

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*The women's campaign raised awareness that abuses of women have too long been dismissed as private, family, cultural, or religious matters. They demanded that they be seen for what they are: fundamental violations of the 'right to life, liberty and security of person', as guaranteed by the Universal Declaration of Human Rights.*

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*The women's campaign had called for the integration of women throughout the agenda of the Vienna Conference. This had not happened. Women's rights continue to be seen as separate issues even now.*

*While there is truth in the fact that women have special rights and require separate attention, as in the areas of maternity and vulnerability to gender-based violence, all human rights issues also have implications for women. The continuing challenge is to make this visible and recognised.*



The comprehensive first-hand testimonies of women victims of gender-based violence turned the tide into acknowledging that women's unique and exclusive experiences of violations counted as human rights violations. It further led to establishing violence against women as a critical component of the women's human rights agenda and within campaigns and services worldwide to combat violence against women, carried out by civil society organisations and government agencies to this day. An example of such a global campaign is the annual Sixteen Days of Activism against Gender-Based Violence. (See previous page.)

A significant outcome pertaining to violence against women was the adoption of the Declaration on the Elimination of Violence against Women (DEVAW) by the General Assembly. The Declaration on the Elimination of Violence Against Women was adopted without a fair vote<sup>64</sup> by the United Nations General Assembly through Resolution 48/104

of 20 December 1993. Contained within it is the recognition of 'the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.'<sup>65</sup> The 1993 Declaration on the Elimination of Violence against Women explicitly addressed violence against women, and it became the first international instrument to do so. Violence against women had been internationalised and the international community had been tasked with taking responsibility for its elimination.

It is true that in Vienna the international community had clearly endorsed the norm that women's rights are human rights and were in consensus that cultural relativism must not be allowed to trump women's human rights. This was the result of petitions signed by over 240,000 women and men from around 800 organisations in more than 124 countries, pressurising member States of the United Nations to recognise women's rights as a major human rights issue requiring serious attention throughout its system.<sup>66</sup> However, the problem remained that women's human rights were treated as a separate issue under a separate section titled 'The Equal Status and Human Rights of Women'. The women's campaign had called for the integration of women throughout the agenda of the Vienna Conference. This had not happened. Women's rights continue to be seen as separate issues even now. While there is truth in the fact that women have special rights and require separate attention as in the area of maternity and vulnerability to gender-based violence, all human rights issues also have implications for women. The continuing challenge is to make this visible and recognised.

### Lessons from Vienna

The lesson of Vienna is that we have to develop theories of human rights that show how every aspect of human rights has the same *and* a differential impact on women as compared to men. These impacts can be further compounded by the various other identities of ethnicity or other status a woman may have. We have to interact with mainstream human rights organisations and other human rights mechanisms, such as treaty bodies to ensure the development of a theoretical framework of traditional human rights law so that it reflects the violations suffered exclusively by women in all spheres of activity. This will help eliminate the organisational and conceptual separation of women's human rights issues from mainstream human rights programmes. I am reminded that this is a brief IWRAP Asia Pacific had received from Andrew Byrnes even before the Vienna Conference. (See Chapter 5.)

Likewise, women's organisations would benefit from learning to use the various international procedures under which issues pertaining to women could be raised and pressure could be brought to bear on their States—again, IWRAP Asia Pacific had received this advice by Andrew Byrnes.

I learned much from the Vienna experience. From the debates and discussions that were swirling around me and the background papers for this conference written by many, I sharpened my understanding of human rights concepts such as universality and indivisibility as well as the language needed to articulate these ideas. I had recently returned with a Masters' degree in Gender and Development from the University of Sussex, and I had

absorbed various theories of the social construction of gender and its impact. I was able to overlay these theories with the human rights concepts and principles and enrich my understanding of women's human rights.

I was also exposed to and participated in international advocacy for human rights at its most vociferous, in all its diversity and on a large scale. Hitherto my experience of international advocacy was with the CEDAW Committee where a small group of women had engaged in influencing the treaty review process with a friendly Committee of experts. That was a useful process but more precise and focused on a country-by-country basis and I have engaged in this since then. But the conference experience was an entirely different kettle of fish. Here the advocacy was a battle for a global recognition of critical human rights norms, with us NGOs struggling for a space for dialogue against a resistant international community of governments.

### Why was the Women's Advocacy Successful?

The constant flow of adrenaline all around was in itself energising. Within this milieu, the women's rights agenda had to find its place. It was wheels within wheels. The women's advocacy platform rose to the occasion, with clear goals, focused, persistent, coordinated, cohesive, grouping and re-grouping, strategising and re-strategising as the conference proceeded, seeking new allies with every twist and turn of the debate. But they had started the preparations well in advance of the Conference, mobilising widespread support from women and men with the global signature campaign and holding a satellite planning conference prior to the World



Conference to ensure that women's human rights would be integrated into the deliberations of the World Conference. The leadership of institutions such as the Center for Women's Global Leadership was very instrumental to the success achieved. It was clear women had to fight for their own rights, no one else would do it for them. The Vienna experience prepared us for the International Conference on Population and Development (ICPD) in 1994 and the Fourth World Conference on Women (FWCW) in 1995.

There was one further thought that I kept mulling over at this time. The human rights NGOs had been deeply frustrated and even angry that the Conference would not allow mention of acts of human rights violations by individual governments, so there could be no 'naming and shaming'. In spite of this, I felt that much had been gained at this Conference through the recognition of the norms of the universality and interdependence of human rights as well as through the recognition of women's rights as human rights.

## **THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT (ICPD)**

### **Highly Contentious and Sensitive Debates**

The discussions at the ICPD conference in Cairo (1994) were not only highly contentious, but in my view, even more contentious than those at the Vienna Conference on Human Rights (1993). The focus of contention and contestations was regarding the recognition of women's reproductive and sexual rights. Feminist women's organisations had to be political in their strategies and engage in intense negotiations to get their aspirations for equality, freedom of choice, and an approach to population policies that broadened the scope of the population debate to include reproductive rights, health, and development issues.<sup>67</sup>

At this conference and during its preparation, the Holy See along with its allies, including Argentina, Benin, Costa Rica, Guatemala, Malta, Poland, Slovakia, Venezuela, Ecuador,

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## **LESSONS FOR IWRAP ASIA PACIFIC**

- The task ahead was to exploit the recognition of these positive norms and ensure that effective systems and accountability mechanisms are in place for the promotion, protection, and fulfilment of human rights.
- The question for activism was to what extent we take a violations approach pointing out failures of the State and to what extent we push for reform of the systems and demand the fulfilment of positive obligations by the State.
- Further, it is essential to develop a theoretical framework of traditional human rights law so that it reflects the violations suffered exclusively by women in all spheres of activity.

All of this was significant for the ways in which the IWRAP Asia Pacific programme evolved.

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El Salvador, Honduras, and Nicaragua played a strong role fueling dissent and preventing consensus. A similar role was played by Al-Azhar and the Organisation of Islamic Cooperation (OIC),<sup>68</sup> influencing Muslim-majority countries in the MENA and East Africa regions.

Concepts of universality, indivisibility, State sovereignty, and the primacy (or not) of culture over human rights had been the contentious issues in Vienna. In Cairo, the issues that were contested were: family planning, sexual and reproductive health and rights, safe motherhood, access to safe abortion, the use of condoms to prevent the spread of HIV/AIDS, and sexual and reproductive health services for adolescents, as well as the use of the term 'couple' versus 'individuals'. In particular, by the end of PrepCom<sup>69</sup> II and leading into PrepCom III, from 1 March 1991 – April 1994, the Vatican's position was still unbending towards family planning. It opposed every means of family planning other than periodic abstinence. Access to abortion remained contentious until the end with the Holy See and its allies remaining opposed to abortion under any circumstance as well as to reproductive and sexual health services for adolescents.

Other developing countries facing the reality of the deaths of thousands of women annually due to illegal and unsafe abortion, felt the stand of the Holy See was defying reality. It was estimated that 400,000 women each year were dying from complications of unsafe abortion, and 800,000 cases of medical complications from unsafe abortions annually occurred in Latin America alone. For many countries, abortion was a health issue and

a reproductive right that could save lives.<sup>70</sup> Going into the PrepCom III there was concern that negotiations in Cairo at the Conference itself would sacrifice more valuable time on the issues of family planning and abortion that could be used to strengthen the overall Programme of Action. This Conference was one of the worst examples of countries reaching stalemates over definitions of terms such as 'condoms', the 'individual', 'family planning', and 'fertility regulation' instead of making progress over the idea of reproductive and sexual health approach to fertility regulation.

As a result, in spite of the intense debates during the PrepComs, some key issues were left to be resolved at the final Conference in Cairo in September 1994. These were the definition of family planning, reproductive and sexual health and rights, and safe motherhood; the reproductive and sexual health needs of adolescents; the preamble and principles (Chapters 1 and 2); and the resource requirements needed for implementation.

### **Women's Advocacy: Women's Declaration on Population Policies**

Women's groups rallied together to face this opposition. In April 1994, the Third World Network reported that a group of more than 130 women's groups challenged the Vatican's right to impose on the secular world its dogma on contraception and family planning. They wrote a letter to the government delegates who would be attending the preparatory meeting for the September conference in Cairo urging them to defend the health and reproductive rights of women.<sup>71</sup>

During this preparatory phase of the Conference, several women's health advocates representing women from Africa, Asia, Latin America, and the Caribbean, the US, and Western Europe initiated a 'Women's Declaration on Population Policies' in January 1993. The Declaration called for an enlightened Programme of Action "Which reflects the deep understanding that population change, poverty, gender inequality, patterns of consumption, and threats to the environment are so interconnected they cannot and should not be separated." It called on national governments and international agencies to reshape their policies to ensure health and rights were integrated in their population policies.

From the time the Women's Declaration was launched up to the Conference itself, over 2,288 individuals and organisations from more than 105 countries signed and endorsed the Women's Declaration—women and men from many walks of life, professions, cultures and sectors, unions and village associations, major family planning agencies, feminist networks, and human rights groups.<sup>72</sup>

What is central to the stand of women at the ICPD conference was the principle that there is a link between the status of women and their ability to control their fertility, free of coercion and without any harmful effects. This was reminiscent of the principle, "The link between health and the status of women", that Margery K Butcher<sup>73</sup> propagated in her successful activism to introduce family planning services in Southeast Asia in the 1950s.



*Ivanka Corti, the then Chair of the CEDAW Committee, demanded to know why, then, was there such a controversy over "teaching women how to avoid unwanted motherhood?"*



### **CEDAW as a Tool for Achieving the Goals of ICPD**

For people like me working with CEDAW, there were moments that further strengthened my conviction that the broad holistic rights-based approach that CEDAW demanded was critical to achieving every individual concrete right. Ivanka Corti, the then Chair of the CEDAW Committee addressed the Conference on 7 September 1994.<sup>74</sup> She started off by showing her concern for the 'unjustifiable' controversies that had been stalling consensus during the preparatory phases of the Conference around the terms 'family planning' and 'abortion' and how contradictory this was. She drew attention to the fact that CEDAW referred to the right to 'family planning' in three of its articles (Article 10 on Education, Article 12 on Health, and Article 14 on Rural Women). None of these articles had been reserved by any of the 137 countries that had ratified CEDAW. She demanded to know why, then, was there such a controversy over "Teaching women how to avoid unwanted motherhood?"

She reiterated the indivisibility of rights espoused by the Convention when she said, "Women's status is highly interdependent with economic growth, elimination of poverty, sustainable development, and population issues."

As I heard her words, I sat up. There before me was Ivanka Corti drawing links between the affirmation of women's rights as human rights in the Vienna Declaration, the goals of ICPD, and the intentions of CEDAW. Her statements were in fact a validation of the significance of CEDAW as a tool for achieving the goals of ICPD as much as for the goals of Vienna. As I listened to her that day I was elated. IWRAP Asia Pacific was a nascent organisation embarking on a dedicated programme to facilitate the implementation of CEDAW. I was again convinced we were on the right track. CEDAW's principles and intentions would find context and substance in the specific recommended actions of all three thematic UN Conferences.

#### POSTSCRIPT

**But in my view, even as of now, the advocates of human rights and those advocating the goals of ICPD and the institutions supporting them, seldom integrate their agendas even today. Advocates of health, family planning, employment, or human rights work in isolation. The link between health and the status of women continues to elude us.**

She continued to endorse this idea and further stated,

Noting that there is a vicious cycle of women's illiteracy, poverty, high fertility rates, and discrimination in formal and informal employment, as well as an interrelation of these issues with population and development issues, and that due attention must therefore be attributed to this interdependence in any population and development policies. Women should also be granted equal

participation in the related governmental and non-governmental decision-making processes.

She raised the awareness of the Conference that:

The elimination of the social, cultural, economic, and political discrimination against women is a prerequisite for achieving the human rights of women and for enhancing the quality of life of the people, as well as reducing poverty, promoting economic growth, and attaining sound population policies.

#### VALIDATION OF THE PLANNED DIRECTIONS OF THE IWRAP ASIA PACIFIC PROGRAMME

##### The Politics of Opposition to the Goals of ICPD

In taking their stand for the centrality of women's human rights to the population agenda, the adversaries that women had to deal with were the Holy See and its government allies, both Christian and Muslim, and demographers. These battle lines for women activists did not preclude other adversarial stands between governments with their own internal political and economic agendas. For example, there was conflict between those governments, such as India, that insisted the Conference focus more narrowly on population issues, while other governments, including the Nordic countries and members of the European Community, maintained that population issues cannot be resolved without due consideration to other development and environment issues. There was also a stand-off between the Holy See and other governments.

For example, the Holy See saw the demographic control policies of the USA presented as protection of the environment and women's rights in developing countries as coercive and demographic imperialism with the aim of protecting developing country resources for its own appropriation, which it was.<sup>75</sup> But neither was the Holy See the best protector of women's rights in the area of reproductive and sexual rights. Women had to be their own advocates and not allow their agenda to be diminished by being drawn into the umbrella of protection offered by anyone. Every official delegation participating in the Conference had its own agenda and that of women was to ensure that women were at the centre of the 'population' discourse as subjects.<sup>76</sup>

### The Strategic Stand of the Women's Lobby

The women's lobby led by the International Women's Health Coalition (IWHC) and the Women's Environment and Development Organization (WEDO) put together a Women's Caucus comprising about 300 women from different parts of the world. They got themselves on to the government delegations, and then transmitted information from the Caucus to the debates on the floor. In this way women were able to participate more directly in the official debates as compared to Vienna and influence the outcomes. This *modus operandi* was a model that worked for women at the Fourth World Conference on Women in 1995 as well. On issues where there was the most controversy, such as on the issue of safe abortion, women worked the hardest to ally themselves with like-minded governments and organisations. The highly contested section 8.25 on abortion remained unresolved until the actual Conference in September 1994.

It was finally resolved without the whole conference being stalled with the Holy See entering its reservations on these controversial issues. Section 8.25 reads:

All government and related inter-governmental and non-governmental organizations are urged to strengthen their commitment to women's health to deal with the impact of unsafe abortion as a major public health concern [...].

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*Women had to be their own advocates and not allow their agenda to be diminished by being drawn into the umbrella of protection offered by anyone. Every official delegation participating in the Conference had its own agenda and that of women was to ensure that women were at the centre of the 'population' discourse as subjects.*

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### Gains of ICPD

Ultimately what were the gains? Jason L. Finkle and C. Alison McIntosh<sup>77</sup> attribute the euphoria at the end of the Conference to the fact that agreement was reached by 180 countries and a Programme of Action was adopted. This was despite the haggling over semantics and serious threats of the derailment of the whole process because of the internal politics of governments and ideological and dogmatic conflicts generated by the Holy See and its allies. Many would agree. Also, a new paradigm of population policy emerged: the development of poor countries and poverty alleviation were acknowledged to be the means for reducing

resource pressures on societies, giving less emphasis to demographic targets. In fact, Fred Sai, the Secretary General of the ICPD stated that,

...the inclusion of the word 'development' in the official title of the Conference marked a significant move away from discussing population issues in the divisive context of demographic targets, towards a recognition that the problem of population growth was now part of a human development agenda.<sup>78</sup>

Two chapters of the ICPD Plan of Action were of great significance for women: Chapter 7 on Reproductive Rights and Health and Chapter 4 on Equality, Equity and the Empowerment of Women. It is because of the gains made through these chapters that the focus shifted from family planning to a more holistic concept of reproductive and sexual health. Women advocates contributed much to the definitions on reproductive health and introduced the idea of sexual health as integral to reproductive health.

Moreover, the equality of women and the improved status of women were acknowledged as central to fertility control and development. Chapter 4 is considered to be a strong chapter and owes much to the input from the women advocates. One of the most critical sections of this chapter reads:

Improving the situation of women enhances their decision-making capacity at all levels in all spheres of life, especially in the area of sexuality and reproduction. This in turn is essential for the long-term success of population programmes.

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*The focus shifted from family planning to a more holistic concept of reproductive and sexual health. Women advocates contributed much to the definitions on reproductive health and introduced the idea of sexual health as integral to reproductive health*

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Furthermore, many observers have pointed out that non-governmental organisations (NGOs), particularly the women's coalition, played an unprecedented role in drafting the Programme of Action. The significance and effects of the involvement of women in the entire process from the preparations that started in 1991 to the final adoption of the Programme of Action must be fully recognised. The impact of their involvement was felt not only in the content of the final product the ICPD Programme of Action but there were significant gains for movement building that took place nationally and internationally throughout the preparatory phases in 1992-1994. Gita Sen, Co-Chair of Development Alternatives for Women (DAWN), points out that there are important lessons to be learnt from the involvement of women, in particular “The creation of strong networks and strengthening and legitimizing of NGOs nationally as productive results of the process.”<sup>79</sup> This lesson from ICPD also pointed the way for the productive and strategic involvement of women in the Fourth World Conference on Women in 1995.

There is one more critical gain that needs mention. One that has brought me much delight. The Holy See and its Latin American and Muslim allies had consistently lobbied

against the rights of individuals to attain the highest standard of reproductive and sexual health. In spite of views by many delegates on the centrality of the rights of individuals to make choices in the interests of their reproductive and sexual health, the inclusion of the word 'individual' was still objected to by the representative of the Holy See in Cairo backed by several Latin American and Islamic countries who tried to remove reference to "The right of individuals to decide freely and responsibly the number, spacing and timing of their children, and the right of individuals to make decisions concerning reproduction free of discrimination, coercion, and violence." The argument seemed to be that the individual had to be in a legitimate (heterosexual?) relationship to make reproductive or sexual choices. So, the term to use would have to be 'couple'.

This argument for me was inscrutable. Having worked in a family planning organisation in Malaysia, and entirely with women clients, I had placed much emphasis on obtaining recognition of the right of the individual woman *in a relationship* (mostly marital), to have the right to decide for herself as an individual, on all matters pertaining to her sexual and reproductive health. If this were not the case, we would have to drop the advocacy for recognition of marital rape! Whether the relationship was heterosexual or not, in my experience and conviction, the individual had an inalienable right to reproductive and sexual health, well-being, and choices.

As an NGO observer I watched this debate on the floor in Cairo going back and forth wondering how it would end. Suddenly the booming voice of a woman delegate from Zimbabwe burst forth as she addressed the

representative of the Holy See. She challenged him, "Monseigneur, why do you object so much to the use of the term 'individual'? Surely you want your individual right to celibacy protected."

Laughter rippled across the floor. A light bulb went off in my head. The woman delegate had clarified so simply that the rights of the individual can never be negated even in the context of group rights. The rejection of individual rights by many in the developing world, and especially through the discourse on Asian values in my own back yard as a Western import, and as antithetical to the culture and well-being of Asian communities, was debunked at that moment. Because even where a group or collective right is recognised, this right has to be enjoyed or exercised by members of the group as individuals. The right of the individual in a relationship must still be protected. I have used this anecdote continuously when I speak of the perceived conflict between group and individual rights pointing out that there is a thin line between these two sets of rights. It has been the basis of a session in IWRAP Asia Pacific's training package, on group versus individual rights.

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*The woman delegate had clarified so simply that the rights of the individual can never be negated even in the context of group rights. Because even where a group or collective right is recognised, the right of the individual in a relationship must still be protected.*

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The text regarding 'the individual' versus 'the couple' reads in chapter 7.3 of the ICPD Programme of Action as follows:

... the basic right of all couples and individuals to decide freely and responsibly, the number, spacing and timing of their children and the right to attain the highest standard of sexual and reproductive health.

So, the word 'individual' got in.

Later, on the eve of the Beijing Conference on Women in September 1995, my education on the connection between the rights of the individual and the larger picture was made more complete when I read an article which cited from the UN Population Fund (UNFPA)'s 1995 A State of the World Population Report 'Decisions for Development: Responsibilisation and Women's Reproductive Health'.

The report points out that very young women face higher risks in pregnancy and childbirth than those who wait until after the age of 20: "They are less likely to continue their education or get well-paid jobs and have higher rates of separation and divorce." The report also argues that sustainable development and economic growth are only possible if aid from the international community focuses on *satisfying individual needs through global strategies that also take into account sustainable population growth*<sup>80</sup> (my emphasis). For me, the interrelationship between the individual, and the collective or community, between the micro and the macro could not be disputed.

#### **FOURTH WORLD CONFERENCE ON WOMEN (FWCW)**

Between 1975-1995, the United Nations organised four World Women's Conferences all of which carried great significance for women'

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### **LESSONS FOR IWRAP ASIA PACIFIC**

- The enduring message from Cairo for IWRAP Asia Pacific has been that rights are indivisible and interdependent. Each context or theme has its own set of rights but there has to be an enabling set of rights as well that has implications for the rights in question. In the area of reproductive and sexual rights which are of critical relevance for women, the right to equality and non-discrimination is of primary concern if reproductive and sexual rights are to be enjoyed and exercised by women.
  - The recognition of the wellbeing of individual women and their participation as equal agents and beneficiaries of all development efforts, free from all forms of discrimination in the private and public spheres, and the elimination of stereotyping has to be consciously planned for. This will result in giving women control over their own fertility. Population control efforts then need not be coercive, and women need not be exploited for this purpose. There is indeed a link between health and the status of women. IWRAP Asia Pacific's contribution has to be the enhancement of the status of women on the basis of equality.
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rights. These conferences took place in Mexico City in 1975, Copenhagen in 1980, Nairobi in 1985, and in Beijing in 1995.

The UN General Assembly passed a resolution in 1990 (45/129) to hold a World Conference on Women in 1995 as a follow up to the Nairobi Third World Conference on Women (1985) and to focus on the implementation of the Nairobi Forward Looking Strategies. The slogan adopted for this Fourth World Conference on

Women was 'Action for Equality, Development and Peace'. This Conference was held in Beijing and organised by the UN Commission on the Status of Women (CSW).

The Conference output, The Beijing Platform for Action, was actually put together bit by bit through preparatory meetings (PrepComs), from as early as March 1993 when the first outline for the Conference was developed by the CSW. In that year, five regional plans of action were developed which served as inputs into the draft Platform for Action. Further, two major preparatory committee meetings were held in New York in March 1994 and 1995, and one minor meeting in August 1995.

Throughout the PrepComs, the draft generated much controversy and at times triggered responses which could be termed reactionary. These debates carried out over a period of two years did not get much publicity as the media was reserving its energies for Beijing. But the result of the two years of debate was that many critical areas of women's rights relating to legal rights, poverty eradication, employment, health, education, violence, armed conflict, etc. were resolved even before Beijing.

Issues that were reserved for Beijing were the highly controversial ones. These were the issues of the universality of women's rights, the human rights of women to have control over their sexuality and reproductive functions, sexual orientation, the meaning of equality, and even the very concept of gender.

At the time of the Conference in September 1995, IWRAP Asia Pacific was two years old. We had connected with constituencies of women in South and Southeast Asia and had been working with them since our inception in 1993, convincing them of the importance of equality for women and of working with CEDAW to achieve it. Our contribution to the Women's Conference process was to bring in the rights perspective so relevant for the advancement of women and to create an understanding of the significance of CEDAW to bring this about. When Vienna happened in June 1993, IWRAP Asia Pacific had just been set up, and at the time of Cairo in September 1994, we were barely a year old. By September 1995 we had a base of women advocates in Asia and we had work to do.

The preparations for this Conference by governments and NGOs were intense. It started as early as 1992 at the regional and international levels. Women worldwide were now experienced in mobilising to influence the Conference on Women. Energies were high as human rights concepts of great relevance to women had been affirmed through the Vienna and Cairo Conferences. Many activists felt that the key agenda of Beijing was that there should be no going back on the agreements reached in Vienna and Cairo, and that the application of these concepts should be made concrete. In looking back at the Third World Conference on Women in Nairobi 1985 and the Forward

Looking Strategies (NFLS) produced by this Conference, there were concerns that this document acknowledged the inequalities in all spheres experienced by women but fell short of concretely challenging the unequal power relations between women and men, where a woman even with a PhD could be beaten by her husband.<sup>81</sup> Another criticism was that the NFLS remained a set of principles as governments were not compelled to implement them. So, women wanted the Beijing Conference to go beyond Nairobi. They were lobbying for rights and resources and a document that spelt out actions to be taken. That is why the Beijing document has objectives and actions and is called the Beijing Platform for Action (BPFA). But both rights for women and resources were contested items at the FWCW in spite of the gains of the Vienna and Cairo Conferences.



*For a great number of women's rights activists from all parts of the world, the concept of universality meant that women should enjoy a common core cluster of rights. Above all it meant that manipulative interpretations of religion or culture should not be used to deny women any of these core rights.*



### Controversial Issues

The concept of the universality of rights created a great deal of tension. For some governments especially in the G77 block, this concept conjured up visions of entitlements leading to the legitimising of behaviour that contradicted good religious and cultural values. The question frequently posed was, how can everyone enjoy the same set of rights when

there is so much socio-economic and cultural diversity in the world? The debate was indeed fierce with western countries and some G77 countries strongly promoting universality of rights and conservative G77 countries opposing the concept. In my opinion, neither side really tried to understand the concerns of the other.

But the universality of rights was a concept that had been hotly debated and then resolved at the 1993 Vienna Conference on Human Rights. For a great number of women's rights activists from all parts of the world, the concept of universality meant that women and in fact all human beings should enjoy a common core cluster of rights such as the right to life, the right to good health, the right to be free of abuse, the right to employment and to be free of exploitation, the right to access to productive resources, the right to political participation and representation, the right to non-discrimination on the basis of sex, etc. regardless of socio-economic or cultural diversity. Above all it meant that manipulative interpretations of religion or culture should not be used to deny women any of these core rights. In some instances, it was a matter of life and death that the principle of universality was accepted. In reference to practices such as Sati,<sup>82</sup> maternal mortality, female genital mutilation, caste-based violence or child marriages, harmful practices, often framed as particular cultural traditions, prevailed over universality. The issue was finally resolved in Beijing and the relevant sentences read,

While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States regardless of their

political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The implementation of this Platform, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms, and the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by women of their human rights in order to achieve equality, development and peace. (Paragraph 9)

The above is a good example of what one frequently heard about in the Women's Conference, 'compromise language', meaning that which has 'something for everyone' or language that used convoluted sentences with no clear indication of what it really supported.

Another hotly contested concept was that of sexual rights. Eventually the term 'sexual rights' did not appear in the text. For those opposing this term, granting this right to women amounted to legitimising promiscuity and/or illicit relationships. For most women it meant having the right to say no to coercive sex, the right not to be sexually assaulted or molested and to have protection against such violations, the right to enjoy safe sex, and to have the means to do so. It meant bodily integrity. Anyway, all was not lost as the text finally agreed to give women the right to control their sexuality while omitting the term 'sexual rights'. The text in the document reads:

The human rights of women include their right to have control and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relations between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences. (Paragraph 97)

The debate on abortion was just as heated although eventually, the text closely followed the text of the 1994 International Conference on Population and Development (ICPD). The text in fact does not promote abortion on demand but clearly states that under no circumstance should abortion be resorted to as a method of family planning. All relevant agencies are urged to deal with the health impact of unsafe abortions as major public health concern and reduce recourse to abortions through an emphasis on family planning services. It also requires that where abortion is not against the law, such abortion should be safe. The paragraph ends with an appeal to consider reviewing laws containing punitive measures against women who have undergone illegal abortions. (Paragraph 107 k)

Around 40 Catholic and Muslim countries entered reservations against this text on abortion and the previous one on sexuality.

The concepts of equality and equity attracted their fair share of opposition and support. At first it was confusing as to why equality and

equity had become an either-or contest making these concepts mutually exclusive. Things became clearer when it dawned on everyone that the contest was really one that concerned inheritance rights. For some countries the offending phrase was 'right to equal inheritance'. For them equity was preferable as it could be interpreted to justify giving men a greater share of inheritance based on the stereotypical assumption that men had greater responsibility for the economic provisioning of the family. Finally, under pressure particularly from certain African countries, the term 'equality' was retained, and the term 'equity' was removed.<sup>83</sup> On the other hand, the text does not acknowledge women's right to equal inheritance but rather the 'equal right to inherit'. Some countries made it very clear at the close of this debate that what this meant was that women could have the equal right to inherit but that their share would not be equal to that of men, because men had greater responsibility for the economic provisioning of their families. At the close of the 20th century, the world had not as yet faced the reality that most women support their families economically. There was no acknowledgement of the fact that male and female roles have blurred considerably.

In the chapter on the girl child and the one on health, quite an intense conflict was also experienced over the issues of the rights of children versus the rights of parents particularly as this was seen as taking away the rights of parents to guide or control their children in relation to their sexual behaviour.

This was one area where there was a clear-cut difference of opinion between the countries of the North and those of the South. As mentioned earlier, in all other conflicts over the rights of women, this difference was not so clear. The northern countries were supporting the right of adolescents to practise safe sex, while this was not acceptable to the countries of the South. The text finally reads:

Full attention should be given to meeting the educational needs of adolescents to enable them to deal in a positive and responsible way with their sexuality taking into account the rights of the child to access to information, privacy, confidentiality, respect and informed consent, as well as the responsibilities, rights and duties of parents and legal guardians to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention on the Rights of the Child, and in conformity with the Convention on the Elimination of All forms of Discrimination Against Women.

The issue of the rights of parents over children instigated great emotion. What is of critical importance to acknowledge however is that in all circumstances, parents cannot be given absolute rights over their children. Sometimes children have to be protected from their parents in order to safeguard them from physical, emotional, and sexual abuse and exploitation through child labour and to ensure the development needs of the child for health, nutrition, and education.

The attempt to include the issue of sexual orientation was not resolved until the last day in Beijing. Finally, the reference to sexual orientation was deleted. Those who supported its inclusion were arguing that there was no attempt to create a new category of rights but that what the text was promoting was the right of an individual not to be discriminated against on the basis of their sexual orientation. In other words, one should not deny a person the right to employment, health services, housing, or the right to be protected from violence on the basis of their sexual orientation. Those who were against inclusion argued that explicit reference to sexual orientation, even in the context of basic human rights and freedom from violence, would be an endorsement of homosexuality, which they did not support.

A final word on the concept of gender.

To put it simply, for many, gender meant the socially constructed difference between women and men resulting in differentials in roles, responsibilities, rights, and privileges and in asymmetries of access to resources and benefits and power, resulting in disadvantage and disprivilege. But at the Conference, opponents of the concept constructed gender as a means to include non-heterosexual relationships. The onslaught against gender, which was inspired by the Holy See, and which collected allies from Muslim countries, was started at the PrepCom in March 1995 and was finally laid to rest at the start of the meeting in Beijing. Finally, the term 'gender' was retained with the proviso that the UN would set up an expert team to define the meaning of gender.

### **Negotiators at the International Level**

We also need to consider who the actors were in the process of the negotiation of the text. First of all, there were the member States of the United Nations who were divided into negotiating blocks. The European Union was one block and the G77<sup>84</sup> and China formed another block, with Canada, the USA, Australia, New Zealand, Japan, and Israel having an independent voice. Next there was the strong and highly motivated voice of the Holy See. UN agencies and other inter-governmental organisations who had observer status formed another important group. Outside of this circle were thousands of tireless women lobbyists and activists organised into various caucuses, representing a diversity of ideological affiliations and influencing the course of the negotiations.

Within this arrangement there were wheels within wheels with informal and at times temporary alliances being formed to suit the need of the moment. For example, the Holy See had its own cluster of supportive governments from within G77 sometimes acting as the voice of the Holy See. Sometimes an alliance was formed between the Holy See and conservative Islamic countries. This was particularly apparent in the opposition to the concept of gender and to the concept of sexual and reproductive rights.

The G77 itself was a very diverse group. Because of this, there were at times intense intra-group conflicts within G77 over the issue of certain rights and concepts such as the right to equality and to the concept of

universality and sexual and reproductive rights. In other words, there were developing countries promoting concepts such as equality, universality and sexual rights just as much as the developed countries. So, it would be erroneous to conclude that the battle in Beijing was mainly a conflict of values based on cultural and/or religious differences between the industrialised and the developing countries.

### **The Networking of Women and Their Advocacy**

A further intention of women was that the contexts for the application of human rights for women would be defined by women, so for a period of almost two years or more prior to Beijing, women networked at all levels, local, national, regional, and international. Workshops were held at all these levels and women's experiences, needs and rights were discussed, and advocacy papers written. Women were determined to be part of the global policy making, and to do this they sought common ground in spite of their diversity and engaged in dialogues across all boundaries—geographical as well ideological. For instance, a major meeting of women was held in Santo Domingo, Dominican Republic in June 1995 to consolidate the thinking of women's organisations at the global level. This meeting was inspired by the experiences of the just concluded PrepCom in March/April 1995 in New York, where women were dismayed to find that critical issues already agreed on in preceding UN World Conferences (Vienna, Cairo, etc.) remained bracketed in the draft BPFA, potentially rolling back the advances made in the earlier conferences. This meant they would have to be renegotiated

in Beijing. It was observed that the Vatican and conservative Muslim countries had been instrumental in reopening these debates.

Virginia Vargas representing the Latin American and Caribbean Regional Coordination, a counter part of the Asian and Pacific NGO Working Group, called for a meeting of her region with global networks as they felt there was a need for women to articulate themselves globally in order to overcome the limitations of women's lobby at the PrepCom in March 1995 and to reorient the process to women's interests. She stated in her letter of invitation to the global networks that her region feels it important to "Build interregional links and contribute to the construction of an international feminist political nucleus that we believe is fundamental for this process."<sup>85</sup> Around 35 women representatives from the networks of all the regions attended the two-day meeting in Santo Domingo. I was one of them.

As a bottom line, women demanded that the FWCW should not backtrack on the gains of the previous World Conferences. Patricia Licuanan of the Philippines, Chairperson of the UN Commission on the Status of Women and hence also Chair of the Main Committee at the UN responsible for the drafting of the BPFA, commented that about 20-22 per cent of the BPFA remained in brackets following consultations held in New York from 31 July to 4 August 1995.<sup>86</sup> This was unacceptably high, especially because many of the contested ideas had been agreed on in the earlier conferences. Even on the eve of the World Conference in Beijing, others expressed the concern that the BPFA as it stood was a weak document and "Was not unequivocal on the

question of human rights, the impact of the global economy on women's lives, the need for women to control sexual and reproductive health rights, and their lack of economic rights."<sup>87</sup>

Going towards Beijing, the three most contentious issues were women's rights as human rights, reproductive health rights (fought for so hard in Vienna and Cairo) and the mobilisation for new and additional resources to finance the BPFA. Resistance for the first two issues came from the Vatican and delegates from conservative Muslim countries as well as some developing countries, while resistance on the third issue came from the delegates of the developed West. As I engaged in the processes of the World Conference it was clear to me that women had no absolute allies within governments, developed or developing.

The Asia Pacific non-governmental preparation was coordinated by the Asia Pacific Working Group led by Thanpuying Sumalee Chartikavanij of Thailand. This working group had been established by UNIFEM in March 1993 to bring together the voices of women from the Asia Pacific region. The whole of 1993 and up to 1995 was just all about the Conference, day in and day out. Thanpuying Sumalee once laughingly said that her husband had remarked that he had forgotten what her face looked like as all he got to see of her at home was her back. She spent so much time at her computer, with her back to the rest of the room working on matters pertaining to the Conference. Women everywhere were consumed by the Conference, and this on top of the fact that they were also involved during part of this time with the Vienna Conference on Human Rights and the International Conference on Population and Development.

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*The three most contentious issues were women's rights as human rights, reproductive health rights, and the mobilisation for new and additional resources to finance the BPFA. As I engaged in the processes of the World Conference it was clear to me that women had no absolute allies within governments, developed or developing.*

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At the PrepCom in New York and the Conference in Beijing, the Women's Caucus that carried out the lobby was coordinated by WEDO, holding daily meetings and helping the NGOs follow the various developments and complex dynamics of the drafting of the BPFA that was taking place. Another Caucus called the Linkage Caucus coordinated by the Centre for Women's Global Leadership (CWGL) held thematic meetings according to the chapters of the BPFA and helped women pitch their lobbying efforts according to their issue of concern. And there were wheels within wheels, as women also met at these international levels in their Regional Caucuses to ensure that regional perspectives were not neglected. It was not easy for women to speak with one voice. But women were everywhere, they were on government delegations and acted as conduits for passing information to the NGOs on what was transpiring on the drafting floor, who was an ally on what issue and took back to the floor language and substantive suggestions from the NGOs. At the end of the day many groups held their government delegations accountable for the stands they had been taking in the course of the day by making them hold daily debriefing sessions with the NGOs.

### The Basis of the Conflicts

In order to understand the dynamics of the conflicts that the Conference generated, one has to realise that not every aspect of the conflict was based on ideological differences or on a differing sense of ethics and morals. For example, sometimes, some countries that fiercely opposed certain concepts or ideas, especially if they saw that they had the support of the USA or the European countries, did so because this was their chance to confront these countries as equals and exercise their right to disagree. Since the text had to be negotiated through a process of consensus, a couple of countries could stall the discussions. These were countries that were either facing sanctions or severe criticisms or review and had no real standing in the international political arena, with powerful countries of the North being behind such actions. Being helpless to oppose that situation, it gave them great satisfaction to look the representative of a powerful Western country in the eye, for example, and say, "My government will not agree to such and such" and be taken seriously. This is not to say that there never was an ideological difference, but in my perception, there was much that was 'proxy warfare'.

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*Technically there were so many cross-cutting issues were women's rights were concerned. One needed to have knowledge on economics, trade and industry, health and reproduction, on the environment, international law, human rights, etc. At times, through sheer ignorance, delegates opposed a certain idea.*

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There were many different factors creating conflicts. Some countries were at times holding back consent on certain issues as a bargaining chip. One country that held the discussion up almost single-handedly at times on the issue of universality did so to get consent from the countries of the North on the issue of the right to development. With regard to the issue of universality, at times, the conflict was not so much on the concept itself but about the unfairness of the North in the selective application of human rights norms. Another factor which contributed to the conflict was the fact that English was not the first language for many of the delegates. Some expressions had no equivalents in their own languages, and they were at times unable to grasp the real meanings. A further problem was that technically there were so many cross-cutting issues were women's rights were concerned. One needed to have knowledge on economics, trade and industry, on health and reproduction, on the environment, international law, human rights, etc. At times, through sheer ignorance, delegates opposed a certain idea.

Sometimes uncertainty over what stand to take over an issue made delegates take a cautious and conservative stand. Better to be safe than sorry. Most of them were government bureaucrats who were under these circumstances protecting their skins as they were not sure about what their own government stand would be on the matter. There were times when some government representatives were not fully aware of developments that had already taken place in their country with regard to women's rights. Then again there were those delegates who were nothing short of being manipulative.



They had assessed that taking certain conservative stands would get them approval from conservative bosses or from conservative segments of the society. Finally, there were those who would deny women their rights because they recognised the threat to traditional authority and leadership posed by women's equality.

### Handling Controversy

But where one in all sincerity felt that the issue was not acceptable, the question was how to best handle it. The controversial issues did have positive aspects, because the debates touched so many important dimensions of women's lives. But they could also lend themselves to interpretations that were unacceptable. Several countries resorted to reservations. This practice carries many drawbacks, the foremost of them is that it denies women positive aspects such as the right to have control over matters related to sexuality. But this practice did allow dissenting States to live with the Platform for Action as a whole despite some disagreeable elements.<sup>88</sup>

### The Role of the Press

One final word about the publicity around the conflicts. The press by and large, especially the most influential outlets from the Global North, picked up the 'popular' hot topics. Some real conflicts were hardly publicised. These were the economic issues pertaining to unfair terms of trade, the debt situation, the negative aspects of structural adjustment programmes, the continuing control of some countries of the North over their former colonies, the over consumption of the North, the control

exercised by multinational companies over the economy, etc. These were all critical issues for G77 countries and also formed the basis for clear cut conflict between the North and the South.



*The controversial issues did have positive aspects, because the debates touched so many important dimensions of women's lives. Several countries resorted to reservations. This practice carries many drawbacks, but it did allow dissenting states to live with the Platform for Action as a whole despite some disagreeable elements.*



### The Participation of IWRAP Asia Pacific

Representing IWRAP Asia Pacific, I participated in all of the preparations, both governmental and nongovernmental, at the regional level and at the international level in New York at UN headquarters. Shireen Huq<sup>89</sup> of Naripokkho of Bangladesh participated in many meetings at the regional level. DANIDA, for whom she worked, was the lead donor coordinating funding efforts for the whole process and she was wearing two hats. Taking a cue from Cairo, the UN had encouraged governments to put NGOs on their delegations. Many countries had complied, and this is how women managed to participate in 'global policy making'. I was on the Malaysian government delegation for all the PrepComs, the informal preparation in July/August 1995 in New York, the regional inter-governmental meeting in Jakarta, and the World Conference in Beijing itself.

At the same time IWRAP Asia Pacific was conducting its own activities to mobilise and organise the women who were now our constituencies in the Asian region. IWRAP Asia Pacific's agenda was to bring in the message of Vienna and an awareness of the significance of equality and rights for women into the outcome of the Beijing Conference. IWRAP Asia Pacific brought women from Asia into the conference preparations, trained, and prepared them to influence the outcomes.

- During the preparatory period, IWRAP Asia Pacific held a consultation with women in the region and produced an analysis of the resistance to women's rights among governments participating in the Beijing conference. The piece was called 'Lack of Awareness, and Commitment to Internationally and Nationally Recognised Women's Human Rights among Governments: Preparation for the Beijing Conference'. Almost all the issues identified by the women are current even today (see Annexe 1).
- Fully cognizant of its strategic role in the region as an institution with a mandate of promoting a rights approach in addressing women's situation and pursuing development goals, IWRAP Asia Pacific had facilitated initial discussions on critical rights-related issues contextualised in the realities and histories of countries in the region. In the NGO Forum at the Beijing Conference, IWRAP Asia Pacific sponsored a panel discussion titled 'Ethics, Values, and Rights' that pointed to real barriers to the advance of a rights framework and explored potential

alternative routes to advancing the interests and rights of women.

- I also wrote a paper titled 'Universal, Indivisible, Interdependent, Interrelated and in Peril'<sup>90</sup> for the magazine POPULI published by UNFPA which stressed the importance of bringing the Vienna gains on human rights into Beijing.

### **Lesson from the Fourth World Conference on Women: Movement Building is the Key**

In my view, if there was one success of the Women's Conference it was the movement building and exchange of experiences that took place so solidly. Women from all parts of the world advocating for rights, spoke with one voice having learnt from their advocacy in working to get global affirmation at Vienna and Cairo that women's rights are human rights. This coming together was facilitated by the many regional and international gatherings of women. As a testament to the coming together of women, locally, nationally, regionally, and internationally and advocating for the perspectives of women into the final Conference document, the editorial comment in the Earth Negotiations Bulletin<sup>91</sup> on the eve of the Conference in Beijing read,

This Conference is about thousands of women and men who have engaged in an international dialogue over the past two years on a series of complex issues related to women. The product of their work will be the basis of negotiations during these two weeks of work in Beijing.

### Moving On

The Fourth World Conference on Women in Beijing (1995) marks the culmination of historical processes leading to the understanding of the human rights of women. These processes have taken us through several other world conferences, the Rio Conference on Sustainable Development (1992), the World Conference on Human Rights in Vienna (1993), the International Conference on Population and Development in Cairo (1994) and the World Summit for Social Development in Copenhagen (1995).

**In my view, if there was one success of the Women's Conference it was the movement building and exchange of experiences that took place. Women from all parts of the world advocating for rights, spoke with one voice having learnt from their advocacy in working to get global affirmation at Vienna and Cairo that women's rights are human rights.**

Conflicts and controversies aside, the Beijing Declaration and Platform for Action has much that can take women forward in whichever part of the world they may be located. For example, the principles of universality and the indivisibility of rights and the principles of equality and non-discrimination have been affirmed. There is a commitment to protect the human rights of women and the girl child and to eradicate all forms of violence against women. Special measures have been prescribed for women suffering in situations of armed conflict. The achievement of the ICPD

conference in relation to women's control of their fertility and of their sexuality has been consolidated. The political participation of women and their representation at all levels of government is seen as essential along with women's economic independence and equal access to resources. The need for mutual sharing of family responsibilities between women and men is recognised. And the two concepts 'gender' and 'equality' that were hotly opposed and debated during the PrepComs were retained in the BPFA. If one looks at the details of the objectives in each chapter there is enough that is pertinent enough to bring about positive change.

What remains to be done is to create an awareness among policy makers that non-discrimination on the basis of sex is now a matter of international customary law, that the principle of equality as defined in CEDAW entails the achievement of *de facto* equality and not only the creation of equal opportunity. This also requires gender responsive policies and programmes in every sector of the government and a strong government machinery for carrying out these policies. Above all, we need to raise awareness in every department within a State that the government has made a serious international commitment to all of the above. And to conclude, we desperately need mechanisms for accountability.

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*What remains to be done is to create an awareness among policy makers that non-discrimination on the basis of sex is now a matter of international customary law.*

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### WHAT IWRAP ASIA PACIFIC LEARNT AND WHAT HELPED IN THE DEVELOPMENT OF ITS PROGRAMME

1. Historically it was assumed that women's rights were automatically subsumed under and taken care of in the mainstream human rights agenda. But the reality of women's experiences has been that this agenda has not been responsive to the violations of women's rights. These include various forms of male violence against women, violations of sexual and reproductive rights, and the denial of equality to women in marriage, leadership, and political representation as well as access to economic rights, etc. The basis for such denial has been culture and tradition, the stereotyping of women's roles and responsibilities for care giving or the lack of recognition of women as equal citizens.
  2. Thus, although the Vienna Declaration has established at a conceptual level that women's rights are an integral part of universal human rights, developing conceptual clarity and ensuring a real integration of women's rights into the mainstream human rights agenda and action is necessary to realise that significant assertion agreed upon by the international community in the Vienna Conference. For instance, interaction with mainstream human rights organisations and treaty bodies need to be maintained and collaborative activities undertaken to ensure the development of a theoretical framework of human rights law reflective of the sex-based violations suffered by and inflicted on women.
  3. A facilitative mechanism is needed to ensure the input of and participation by women and groups in the South in the process. Likewise, women should develop knowledge and skills to use various international procedures under which issues pertaining to women could be raised and pressure brought to bear on their respective governments.
  4. Respect for human rights and fundamental freedoms require that the State put in place mechanisms for redress and accountability, through law and policy measures.
  5. Movement building has to continue, and collective action has to be undertaken finding common ground in order for the advocacy of women to be effective.
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# 4



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## The Thirst for Skills:

The Amma Manual (1994-1996)

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*We documented desperately every word that fell out of our mouths, and the mouths of our participants. The documentation of that training is the foundation of the very comprehensive training package we have today and which we call the Amma Manual —the mother manual.*

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By the second year of the orientations, women were ready to work with CEDAW and demanded more technical assistance from IWRAP Asia Pacific. The demand for skills in CEDAW application and monitoring gave the impetus for developing a resource package that outlined core content and methodologies for training.

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### **FORMALISING THE CONTENT OF CAPACITY BUILDING FOR THE APPLICATION OF CEDAW (1994-1996): THE AMMA MANUAL,<sup>92</sup> OUR FLAGSHIP PUBLICATION**

The concept of equality and non-discrimination was central to this package. It was a dynamic package growing as training sessions were conducted. Its richness drew from the participation and responses of all participants over several years starting from 1994. In this year, an expert group was set up to develop a framework and outline for the training. The expert group comprised Andrew Byrnes, Alda Facio, Marsha Freeman, Shireen Huq, Pramada Rana, and me. This meeting helped clarify all the nuances of understanding equality.

### **Training of Trainers Takes Place: All Guts and Determination – Little Experience**

We had been promoting CEDAW as a legal instrument that needed to be understood and used in its totality and not just article by article. CEDAW brought home the fact of the interrelatedness of rights. It could not be reduced to its sum of individual provisions, and one did not have to look for a specific article relevant for contexts. Further, it had to be applied through a conceptual understanding of its principles:

- Substantive equality
- Non-discrimination
- Obligations of the State

But these concepts could not remain as slogans. They had to be unpacked and methods for their applicability needed to be developed in context.

### Was it just training, and training materials delivered by 'technical experts'?

**The women learned from each other, and we learned too. Capacity was developed collectively.**

#### **Regional-level Pilot Testing of the Training: It was a Collective Learning Process**

The first pilot regional testing of a comprehensive training, bringing together more concretely the topics we were bandying about during the orientations, and using the framework developed by the expert group mentioned earlier, was carried out in Gonoshsathaya Kendra, a health facility in Savar,<sup>93</sup> Bangladesh from 18 to 22 December 1994. There were about sixteen participants from India, Sri Lanka, Nepal, and Bangladesh.

The trainers were Shireen, Ramya Subrahmanian, and I. We had no training materials, we had a training agenda, topic headings and topic outlines, and background reading as prescribed by the expert group meeting on training convened earlier, and we had trainers. We gave ourselves briefs, read as much as we could, prepared case studies (actual situations) and did the training. The case studies were very useful. They illustrated, in context, the implications of substantive equality and sex-based discrimination as well as the obligations of the State. They gave substance to the slogans. It was all impromptu. We documented desperately every word that fell out of our mouths, and the mouths of

our participants. The documentation of that training, undertaken almost singlehandedly by Ramya and carried out to perfection, is the foundation of the very comprehensive training package we have today and which we call the Amma Manual—the mother manual. Many other pieces and refinements have been added and the Amma Manual grew bit by bit with every training workshop over the next few years. We added more theoretical information to the experience and practical wisdom of the groups of participants over time.

The manual that we developed in 1994 was significant because it made us realise we were learning in the process—we did not come into the programme with expertise knowing all this. As we worked, we depended a lot on our participants. We would do a session and participants would fill in a lot of gaps with their thinking. They would respond and react to what we said. They would challenge us with questions and say we haven't answered this question or that question and we would have a discussion and people would throw ideas out and we would gather all of that and document it. That is how the Manual was developed (for an illustration of this process, see Annexe 2, Example 1).

These women were not just pupils. They were activists in their countries and came with insights of women's oppression. So, the Amma Manual was grounded in the realities of women and their experiences of resistance to discrimination and deprivation as we used actual cases studies to show the application of the CEDAW framework in women's realities. Women picked this up and were able to relate it to their own realities. We theorised on these

experiences together and learnt from each other. In its final form, the objectives of this package were basic but quite comprehensive to provide conceptual knowledge and skills in the application of CEDAW as an international treaty. It aimed to:

- Create clarity with regard to the concepts of substantive equality, the principle of non-discrimination, and State obligation.
- Promote a rights approach to women's advancement, as well as the need for the development of a theoretical framework of human rights law that is reflective of the gender-based violations suffered by women.
- Present the premise that rights guaranteed by international treaties have to be actively claimed by women and that this requires the mobilisation of different constituencies and sustained advocacy with the State.
- Identify that social institutions (see below) played a role in perpetuating inequality.
- Emphasise the importance of engaging with the law as an instrument for claiming rights and develop skills in the application of the CEDAW Convention in differing contexts.
- Create awareness of the politics of law and its gender and cultural bias as impediments for women to access justice and equality.
- Raise awareness of the need for synergy between local and international advocacy and provide an introduction to the UN Human Rights system, the reporting procedures of the CEDAW Convention, women's role in these procedures, and the significance of the Optional Protocol to the CEDAW Convention.

In substantive terms the training unpacked substantive equality and facilitated the learning to apply it in context. Another critical lesson was understanding the role of institutions in perpetuating discrimination and inequality.

At this training, Ramya introduced a session on institutions and inequality. This topic was a critical component of the training because it helped us to understand the dynamics of how discrimination is produced and entrenched, and it laid the foundation for strategic advocacy. We saw that discrimination and inequality doesn't just happen naturally and that it is created through a process and that institutions have a very significant role in creating, entrenching, interlocking, and reinforcing discrimination through institutional roles, practices, and behaviour. This session was based on a discussion paper written by Naila Kabeer and Ramya Subrahmanian titled 'Institutions and Inequality'<sup>94</sup> later published by the Institute of Development Studies (IDS), University of Sussex in 1996. It defined institutions as the family, the community, the market, and the State and helped unpack the way these institutions built on each other's practices justified by social norms and the legitimacy of gender stereotyping.

This session helped us analyse the ideology of sex difference, illustrating that the social construction of differences between men and women is the basis on which rules, resources, responsibilities, power and rights are distributed or allocated between women and men in society resulting in discrimination. For example, a social rule or norm is that men are





*Looking at the way institutions reproduce inequality will thus have serious implications for the way we demand rights. It becomes apparent that in the contemporary context, rights are being built upon existing inequalities or differences, and are not aiming to challenge them.*



breadwinners and women are home makers, or that men are leaders and decision makers, and women are followers and implementers of decisions. In accordance with the rules, starting from the household, women are expected to be obedient, submissive, and fulfil household responsibilities while remaining in the background. None of the institutions provide resources to them—economic or social, which are seen (from the perspective of the social construction of gender) as irrelevant for them. This has serious consequences for women. Women then may be given fewer options for education or intellectual exposure. Denial of chances to the woman for education by the family leads to fewer options in the workplace.

It helped expose the contradictions in the dichotomy between the private and the public from a gender perspective and demonstrated the role of culture and social norms which inform all institutions, and which provides the justification for discrimination. The model of social organisation used in law and policy is often based on the separation of these different institutions. This has led to the constant demarcation of spheres of activity: the public and the private. As is obvious, the

private sphere is seen to be the domain of women, while the public sphere that of men. Gendered distinctions of this kind point to the power of the ideology of sex difference.<sup>95</sup> The construction of gender roles within each of these institutions becomes extended to the organisation of women's activities. For example, the fact that women's reproductive functions are carried out within the sanction or legitimacy of the household is further extended to include all functions relating to childrearing to the same institution. It therefore becomes socially 'unruly' to consider marketplace substitutes for the rearing of children: where this does happen, it is at a great emotional or social cost to women whose identity as a 'mother' is thus brought into question.<sup>96</sup>

Looking at the way institutions reproduce inequality will thus have serious implications for the way we demand rights. It becomes apparent that in the contemporary context, rights are being built upon existing inequalities or differences, and are not aiming to challenge them. This means that prevailing conceptualisations of rights are not going to be inherently useful for substantive equality claims for women because they do not take into account the factors that will need to be addressed to achieve equality of outcome (for illustration, see Annexe 2, Example 2).

A final point: Looking at inter-institutional relationships which determine the reproduction of inequalities between women and men will also enable us to consider the nature of relationships that will need to be addressed. We cannot just talk about rights in the context of the individual and the State, but we need to

look at the way relationships can be regulated across all these institutions. Hence, we need to work towards community or collective understandings of rights, as well as learn to incorporate sensitivity to the different kinds of rights that different women will require or prioritise based on their composite identities. It also shows up the fact that discrimination is not an individual act for which you can place liability on an individual but that discrimination against women was often systemic and entrenched within institutional practices.<sup>97</sup> It made us look at advocacy strategies in a more sophisticated manner.



*The significance of the training package is that it is not only a repository of elements of the technical aspects of CEDAW implementation, it raises awareness of the politics behind law making and adjudication and that the law can create and entrench unequal social and gender relations.*



Through the experimentation on developing the CEDAW training package in Savar, we learnt that the text of CEDAW tells us what should be achieved for women, but that the methodology by which to achieve this had to be worked out in context.

This awareness informed the development of frameworks and methodologies by IWRAP Asia Pacific over the years for CEDAW application and monitoring.

Further, the training package is not only a repository of elements of technical aspects of CEDAW implementation through law and

policy measures. It also promotes law and policy as instruments of a rights approach for the elimination of discrimination and the attainment of equality. What is of significance is that it raises awareness of the politics behind law making and adjudication, and that the law can create and entrench unequal social and gender relations.

### **How Do We Reverse the Negative Aspect of the Law?**

To illustrate this there are a couple of sessions on The Role of the Law, and on Limits and Possibilities of the Law. The former discussed a holistic approach to the law which encompasses the substance, structure, and culture of the law.<sup>98</sup> This session has lessons for access to justice which goes beyond the technicalities of the law. The latter session dealt with the gender and class bias in law making and the inadequacy of the monopoly of the law in ensuring access to justice.<sup>99</sup> These sessions helped in formulating strategies for reversing this negative aspect of the law.

### **Legal Advocacy Must Bring About Social Change**

The discussion on substantive equality in the package lays bare a feminist understanding of women's oppression as a socially constructed phenomenon and raises awareness of institutionalised biases against women especially within law and policy seen as legitimate. Legal advocacy must therefore work towards social change based on the principles of universality, the rejection of cultural relativism, the appreciation of the rights of the individual,<sup>100</sup> and equality for all (see Annexe 2, Example 3).

So, the training was instrumental in raising awareness that implementing CEDAW was about bringing about social change. It was about creating a conducive social environment for the recognition of women's rights to equality and developing persuasive arguments to convince authorities to implement rights-based approaches that will uplift women's equality status.



*Legal advocacy must work towards social change based on the principles of universality, the rejection of cultural relativism, the appreciation of the rights of the individual, and equality for all.*



### **Technical Training on the UN Mechanisms**

Technically, the Amma Manual also builds skills and knowledge of global developments in the sphere of international human norms and standards, and the significance of international human rights advocacy for the promotion of women's human rights nationally. As one participant stated, "The training gave us a belief that there is a UN mechanism that can be used to reform law at the national level and that it can work."

At the same time, it stands by the contention that women's human rights cannot be subsumed within mainstream human rights perspectives. This was a learning that came from participation in the 1993 Vienna Conference on Human Rights. There are gender-based differences which must be explained theoretically.

Finally, the lesson for us was that any programme that IWRAP Asia Pacific engages with must not only be technically sound, but also facilitate the mobilisation of women as rights holders to draw accountability from the State for change in social and gender relations. This is a key condition for the exercise of human rights in any country, and in the creation of a culture of compliance with human rights on the basis of equality of women and men and the equality of different groups of people. This is a political goal that cannot be achieved without mobilising constituencies of women with capacity to move forward the agenda of women's human rights. This is a primary aim of capacity building.

The Amma Manual contains 25 sessions. Each session contains a facilitator's guide, and notes, subject matter content, power points and diagrams, case studies, and handouts where relevant. It takes seven to eight days to implement but sections of it could be selected for shorter two- or three-day workshops.

### **A Word About the Pre-testing in Savar and a Vastly Pregnant Shireen**

Shireen was at that time eight months pregnant and we decided to hold this pilot training in Gonoshasthaya Kendra which is a community health centre in Savar, around 20 kilometres out of Dhaka, Bangladesh. So, it was a residential training. This was a precaution in case delivery came early and there we would be right in the middle of a health facility. Besides, this health centre was run by Shireen's husband, Dr Zafrullah Choudhury and she had decided that she

would deliver there if the baby decided to arrive during the training. Gonoshasthaya Kendra was not an ideal place. Accommodation facilities were basic.

It was cold in December, and we had to put up with the lack of running hot water (just hot water in a bucket carried to our rooms every morning), lack of heat in the rooms, and no telephone connections in the rooms among others.

But the one thing I was not prepared to give up was a cup of freshly brewed coffee. I had brought my own coffee making paraphernalia and, in my view, the best and most aromatic coffee powder and that was from Chennai, South India. I brewed my coffee in my room early in the mornings, and the fumes of fresh coffee would come wafting out of my room much to the envy of everyone else.



*We were in constant communication as everything we did was experimental. We were learning even as we were implementing, studying CEDAW, and unpacking its potential.*

*The fact that the IRAW Minnesota programme had given us the chance to observe the CEDAW sessions annually was a great help. We learnt the intricacies of State obligation from the CEDAW reviews and the issues raised by the Committee.*



This was Shireen's first pregnancy and it had been a rough one. Shireen was confident as she said there was a month to go. Some of the experienced Sri Lankan women in the training would however look at the way Shireen's belly was positioned and say, "You don't have a month to go, you will deliver soon." As matters stand it was painful to look at Shireen—belly as enormous as it could get, and the water retention so obvious that it distorted her features. Her movements were impeded by her weight, and she would slowly waddle from place to place, with the unmistakable 'pride of pregnancy' gait and at times with a vague look on her face, the sign of poor circulation perhaps.

In 1993 and 1994, I spent an inordinate amount of time with Shireen shuttling between Bangladesh and Kuala Lumpur, planning for the conduct of orientations in South Asia together and planning and implementing the pilot testing of the training in Bangladesh. We were in constant communication as everything we did was experimental. We were learning even as we were implementing, studying CEDAW, and unpacking its potential. The fact that the IRAW Minnesota programme had given us the chance to observe the CEDAW sessions annually was a great help.

We learnt the intricacies of State obligation from the CEDAW reviews and the issues raised by the Committee. Sometimes we would laugh and say we saw more of each other than our husbands. In fact, there were occasions when I even displaced Shireen's

husband in bed as we would lie together at night planning the workshops and sharing ideas on how to proceed to the next stage. In this way I spent a great deal of time with Shireen during her pregnancy and I would joke that her son knew me before he was born and had become familiar with my voice from his mother's womb.

Well as the women predicted, Shireen gave birth to Bareesh, a month earlier and prematurely on December 30th a few days after the training. He was a tiny baby only 2.2 kg in weight—amazing that that enormous belly carried such a small human being. But he was perfectly formed without the little old man look of premature babies but needing much care.

With all the CEDAW-related work going on until almost the delivery, and my constant partnership and physical presence with Shireen during her pregnancy, I would also like to claim that not only was Bareesh familiar with my voice before birth, but I believe he also became familiar with the terms 'equality', 'non-discrimination', and 'State obligation' when he was in his mother's womb. That boy, an adult now, has a special place with me.



*Sometimes we would laugh and say we saw more of each other than our husbands. In fact, there were occasions when I even displaced Shireen's husband in bed as we would lie together at night planning the workshops and sharing ideas on how to proceed to the next stage.*



### **The Team that Helped with the Packaging of the Amma Manual**

The Amma Manual was the core set of materials out of which grew innovations and adjustments according to the differing needs of emerging contexts and target groups. This manual was formalised a few years after the Savar pre-testing training in 1994. The team that gave it its structure and content were Shireen Huq, Eleanor Conda,<sup>101</sup> Madhu Mehra, and me. Special mention must be made of Eleanor Conda, whose brilliance in unpackaging complex concepts, both legal and sociological, and restating them with clarity, simplicity, and preciseness while eliminating vagueness, has never failed to amaze me.

I still remember the several hours of planning sessions for various training workshops, when Eleanor would sit back, eyes narrowed, between bouts of smoking, articulating substance and content of concepts and operationalising them for application. There I would be, eyes glued to her face taking in every word she said, recognising its brilliance and applicability. IWRAW Asia Pacific has benefited much from Eleanor Conda's intellectual brilliance.<sup>102</sup>

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# 5



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## Who was in the Office and Who was Developing the Programme all this While

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*There was a team of resource persons who contributed at various stages between 1993-1996. While it may appear there was no one else, there were actually a lot of people involved.*

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During the phase of capacity building which was 1993-1996 and even up to 1997/1998 there was no other staff besides myself.

I was the postman, banker, accountant, administrative officer, and programme staff carrying out the programmes, doing the advocacy.

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But in its strict sense it was not a one woman show. Maybe I was the person coordinating the programme and carrying out administration but there was a team of resource persons who contributed at various stages between 1993-1996.

There was Shireen Huq, Ramya Subrahmanian, Andrew Byrnes,<sup>103</sup> and Alda Facio from the IWRAP Minnesota team, Savitri Goonesekere<sup>104</sup> whom I knew from my APWLD days, Madhu Mehra, Tulika Srivastava, Geetha Ramaseshan, and SK Priya of India from the various orientations, and Eleanor Conda whom I had identified and sought after meeting her at another event in 1994.

Eleanor, Shireen, and I formed an informal coordinating team although we lived in different parts of Asia. We also had an informal team of advisors from inception. We had advice that we periodically sought from Andrew Byrnes, Savitri Goonesekere, Alda Facio, and Ramya. Since 1994-1995 was also the period of intense preparations for the Beijing Fourth World Conference on Women, this core team had the opportunity to meet in New York for those preparations under the aegis of the Minnesota programme. At those times we would take time off to hold IWRAP Asia Pacific review and planning meetings. So, I worked with several individuals, resource persons, and advisors and while it may appear there was no one else, there were actually a lot of people involved, albeit informally.

We also took advice from every orientation and training that was conducted. We had already established programme partners in South Asia. In terms of developing the programme, we had inputs from them as well as from



participants each time after every activity. In that sense a very collective process was there right from the start. Every orientation and training threw up ideas for follow up which would get integrated into the overall programme and the informal advisory group would be the sounding board. So, the IRAW Asia Pacific programme evolved with the benefit of a breadth of experiences and the vision of very many people.

For example, Andrew Byrnes through the Minnesota IRAW programme had been a constant observer of the CEDAW review sessions. He had been interacting with the CEDAW Committee members and wrote commentaries for some of the CEDAW Review sessions for the Minnesota programme. His knowledge of what actions or activities needed to be undertaken to enhance the work of the CEDAW Committee, and to ensure more effective implementation of CEDAW, benefited IRAW Asia Pacific. He gave us briefs on this and I have reproduced excerpts from his brief mainly because these ideas are still relevant and still need to be worked out. (See opposite column.)

But the coordinating centre, the office in Malaysia, was singlehandedly managed by me and it was on me to translate all the good ideas and vision into implementable ideas. Since I was also a resource person and had to travel to other parts of Asia to carry out the orientations and trainings, the rest of the work could not stand still. Faxes would be coming in while I was away and the administration for the next event had to take place. At that time, we only had faxes, no email yet. I roped in my two daughters to help as volunteers. Both were working adults at that time.

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#### BRIEFS BY ANDREW BYRNES TO IRAW ASIA PACIFIC [Excerpted, 1995]

- The need for systematic comparative research compiling case laws from national courts and tribunals in which the Convention is cited as well as for a collection of cases dealing with similar guarantees in international treaties.
  - Such a comparative study and the preparation of a brief based on the study would provide models for interpretation and application of the provisions of the Convention in national courts.
  - Further in-depth analysis, reflection, and consultations on the incorporation of international human rights guarantees in domestic law as they relate to the rights of women.
  - Information relating to individual States Parties that may have been supplied by that State Party to another treaty body.
  - The development of a theoretical framework of traditional human rights law so that it reflects the violations suffered exclusively by women. This will help eliminate the organisational and conceptual separation of women's human rights issues from mainstream human rights programmes.
  - Greater publicity for the various international procedures under which issues relating to women can be raised.
  - At the academic level, a broad circulation of teaching materials already in existence which relate to the Convention or to other relevant international guarantees.
  - Eventually, the formulation of a jurisprudence of the Convention by the CEDAW Committee could be encouraged by IRAW Asia Pacific, as this would create a sharper understanding and guidance of how to apply the standards of the Convention at the domestic level.
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My elder daughter Carol Shamini would go to the office in my absence and re-fax all my faxes to me and I would carry on with the administration of the programme wherever I was, sometimes even replying to faxes through the business centre at airports. My younger daughter Esther Sumita helped me make the statement of expenses after each orientation or training. She was very adept with figures and very neat too. I could not have been the factotum I was without my two girls.

Nevertheless, I had to work non-stop, taking no leave, and most of the time working late into the night to keep track of everything. It was fortunate the office was located in Anjung Felda (a government building that housed the government's land development agency) with a large compound, with free parking, and free security. It was safe to be working late.

On one of those days, I had a guest, the late Nazreen Huq (Shireen Huq's sister) who was in my office with me until about 12.30 midnight and we left together in my car to go home. As we drove out through the gates, the security guard on duty waved me out with a smile. He was used to my late hours. Nazreen was very surprised. She said, "Here we are two women out at midnight all by ourselves, driving on our own, and the security guard waves pleasantly. In Bangladesh this would never happen. The security guard would have been disapproving and would have even expressed his displeasure in a hostile manner to see two women out alone like this."

I told her that Malaysia was different. Women here had more spatial mobility as compared to women in South Asian countries.

As I drove on, I was thinking to myself, this is one of the reasons I had located the office in Malaysia. I could move around by myself no matter what time of day without eyebrows being raised. There were 24-hour food stalls where I could walk in to get a bite to eat all by myself and would be served pleasantly. And in spite of an inactive but fully equipped kitchen at home, I never starved however late I stayed out. In fact, I had to explain to one of the donors (Danida) who had felt that the office should be in a country less developed than Malaysia. My response was that if the intention was that the IWRAP Asia Pacific programme should benefit the less developed countries like Sri Lanka and Bangladesh, then it would be better if the secretariat were based in a country like Malaysia. Because here the telecommunications and other infrastructure such as banking services is efficient, and foreign exchange rules are less restrictive. It would be easier for me to coordinate a programme for Sri Lanka sitting in Kuala Lumpur than if I were to sit in Bangladesh.

All the time I constantly worked late and alone without the threat of patriarchal hostility, and also without fear of ghosts! Yes, I was warned that ghosts made appearances at night in the Anjung Felda building and other tenants had stopped working late because of this. May be all my concentration was so focused on my work, that if ghosts appeared it never registered. I had no time for ghosts, and obviously they had no time for me.

# 6



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## The Evolution of the Programme in Phases (1993-Going past 2005)



*While social change may come at a price, it is transformational and sustainable in the long term as it represents a move from dependency to autonomy for women and from inequality to equality.*



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The chapter provides a narrative of the evolution of IRAW Asia Pacific programme.

It is an overview of the journey that unfolded in ways that was not envisaged when it was initiated. The programme started in 1993 with a simple focus on the creation of awareness of the significance of CEDAW as an instrument of change for women. This focus evolved into not just seeing women as recipients and beneficiaries of rights, but even more importantly as envisioning women being transformed to be game changers in influencing the setting and interpretation of international human rights standards.

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This chapter will contain some repetition of other chapters, as this will serve the purpose of its completeness.<sup>105</sup>

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These strands or phases were not clear cut with identifiable time framed boundaries that proceeded in a smooth chronological manner. They overlapped and proceeded according to contexts and needs in different locations. Among other things, they were influenced by the experience and exposure to the realities of women's inequality as revealed during the collective development of training materials, as well as the lessons on human rights that emerged during the World Conferences. Nevertheless, seven distinct phases can be identified in this evolution and they are presented in this chapter in the following order: awareness of CEDAW and developing conceptual clarity; taking stock three years after inception; expanding skills and capacity development; legal strategies; enhancing the role of judges; technical assistance; and strengthening of international human rights standards. The evolution of the programme as narrated in this chapter includes not only phases of the work but also an evolution of thought, the creation of conceptual clarity regarding the principle of equality as well as programmatic strategies.

### **1. AWARENESS OF CEDAW, DEVELOPING CONCEPTUAL CLARITY TO ACHIEVE GENDER EQUALITY**

When the programme started in 1993, the urgency was to create awareness in women at country level that CEDAW was a critical tool for advancing their rights. By that time Bangladesh, Nepal, and Sri Lanka, as well as Cambodia, Laos, Indonesia, Philippines, Thailand, and Vietnam, had acceded to CEDAW. There were still countries in both regions, South and Southeast Asia, that had not ratified or acceded to CEDAW. And even with countries

that had acceded or ratified, women's groups were not aware of it and they played no part in drawing accountability from their countries for compliance with such international obligations.



*The strategic thrust that the programme was taking was to capacitate the State through creating conceptual clarity on the principles of CEDAW and facts-based activism and constructive recommendations that could bring about change.*



The first two years were an intense period of awareness raising about the importance of the CEDAW. Basic orientations were held in several all-South Asian countries. The most critical contribution at this time was also to inspire and motivate women's groups in the region to locate their advocacy within the rights and equality framework of CEDAW. Within a year or so, armed with this awareness, women in the two regions wished to engage the dynamism of CEDAW in promoting their rights and began to demand for capacity building towards this end (see Chapter 2).

By now there was confidence that the programme needed to focus on reform in policy and law and the positive obligations of the State to implement women's human rights. The question for activism was, to what extent do we take a violations approach pointing out failures of the State, and to what extent do we push for reform of the systems? The strategic thrust the programme was taking was to capacitate the State rather than weaken it through negative criticism. This

could be done through creating conceptual clarity on the principles of CEDAW; and facts-based activism and constructive recommendations that could bring about change.

The next critical contribution of IWRAW Asia Pacific starting with the early years and continuing to evolve was therefore to help develop clarity, centred on the meaning of substantive equality, non-discrimination, State obligation, and the expanded concept of women's rights as human rights. These are principles on which the strength of CEDAW rests. (Our understanding of these concepts is elaborated in the following as well as in the key projects detailed in Chapter 9)

### **Meaning of Equality and Non-discrimination: Two Sides of the Same Coin**

There had to be a conceptual shift in the understanding of what equality meant. A level of distinction between equal rights and equality had to be created. It required to first understand structural privileges, and recognise that differences between women and men are a manifestation of the inferior positioning of women. An ideological shift was needed leading to an understanding that equality is a value that creates the conditions for women and men to be equals and that it is more than just about equal conditions, equal opportunities, or equal legal rights. The economic arguments for equal treatment, such as that it is good for economic production or that women are a good investment may be important, but then the imperative of social justice and social change gets short shrift. Moreover, the economic perspective of looking at direct production

costs is limited if we don't consider savings on healthcare for treatment of violence for example, as incidents of violence against women would have been reduced if equality had been achieved.



*If decisions are made regarding eligibility of individuals only considering the merit situation of persons at a given point in time in their current context, then what has not been considered is the discrimination a person may have faced in the acquisition of merit in the past. Neutrality under such circumstances constitutes indirect discrimination.*



The concept of substantive equality, as discussed by IRAW Asia Pacific over the years, encompasses not only equality of opportunity but also equality of results. It takes into consideration, that gender-neutral laws and policies will only benefit women who can behave like men or have similar advantages that men may have. This would mean they don't have to take on the burdens of family care or get pregnant or were exposed to any type of discrimination in the past. An example of the last can be found in the dialogue between Singapore government and the CEDAW Committee during the State Party review in 2000. The government of Singapore claimed that there was no discrimination against women in the country as the principle of meritocracy was used to decide eligibility to access all opportunities. If one has the merit, then one will receive the benefit and *the sex of the individual bears no consideration*. But the

Committee challenged the government and stated that if decisions are made regarding eligibility considering only the merit situation of persons at a given point in time in their current context, then what has not been considered is the discrimination a person may have faced in the acquisition of merit in the past. Discrimination against persons who do not have comparable merit will continue. The cycle of discrimination has to be broken.

Neutrality under these circumstances constitutes indirect discrimination. The sex of an individual has implications and must be considered as it may decide one's eligibility because of past privilege or disadvantage based on one's sex. Hilary Charlesworth makes this clear when she states, "The law should support freedom from systematic subordination because of sex, rather than freedom to be treated without regard to sex."<sup>106</sup>

It wasn't enough to discuss the concept of equality without linking it to the concept of non-discrimination which needed to be seen not only on the basis of sex, but also on the basis of being a woman. Most constitutions and laws provide guarantees for prohibiting discrimination based on sex. But this has not always worked to women's advantage. This is because discrimination because of sex can be very narrowly defined as differential treatment given to two sets of people (male and female), who are similarly situated. So, when we have two sets of people with different needs, (not similarly situated) and if one of them is disadvantage by what may be a neutral rule that does not disadvantage the other, then it is not considered to be discrimination.

The inability to exercise the right is then seen as a weakness of the person who is disadvantaged. This attitude will persist even though women's inability to access the opportunity is due to the inequality they experience, as a result of past and current discrimination. For example, if credit facilities are offered to women and men on the same conditions (neutral rule) such as that collateral needs to be provided, then women may not be able to access the credit, as the laws of inheritance or social practice may prevent them from owning property that they can offer as collateral.

In identifying whether discrimination has taken place, the focus is not always on differential treatment but importantly on whether the woman has experienced a 'distinction', 'exclusion' or 'restriction' *in the enjoyment of the rights concerned* (Article 1 of CEDAW).

If discrimination is not seen as the denial of rights and the focus is only on sex-based differential treatment, then a male comparator will be needed to establish that discrimination has taken place. This may not always be possible as the contexts in which women experience discrimination often differs from the experiences of men. Examples of this would be sexual harassment, spousal abuse, pregnancy, etc. Ethnicity and class factors could also compound experiences of discrimination making it impossible to find precise comparators. Hence there is a difference in considering discrimination on the basis of sex alone versus discrimination that a woman has accrued over her lifetime.

The model of equality that is effective is one that provides for corrective measures or positive duties and actions that will create the enabling conditions for women to overcome the effect of past discriminations or the effect of biological and socially constructed differences that may disadvantage women. The position of women will not improve as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions, and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.<sup>107</sup>

This understanding would also help to see the limitations of other models such as the protectionist approach, or the approach based on the model of equivalence, complementarity as well as the 'treat likes alike approach.' The last model categorises persons according to certain characteristics and only feels obligated to ensure that all persons within a certain category should have the same treatment including the enjoyment of equality rights. For example, under this principle, all pregnant women should be treated alike and equally and there should be no differential treatment among them. But non-pregnant individuals belong to a different category, and they may enjoy more rights than the group of pregnant women and this will not be seen as discrimination. Hence equality is not seen as a universal right.

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**States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”**

- United Nations, CEDAW, Article 3

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This fallacious approach to equality is illustrated in a case filed by a woman in Malaysia who, on losing her job when she became pregnant, claimed discrimination against her on the basis of her pregnancy. She lost her case as the court stated,

In the circumstances, in construing Article 8 of the Federal Constitution, our hands are tied. The equal protection in Clause (1) of Article 8 of the Constitution there of extends only to persons in the same class. It recognizes that all persons by nature, attainment, circumstances, and the varying needs of different classes of persons often require separate treatment. In this case the appellant because of maternity status could not claim to be equal to non-pregnant persons.<sup>108</sup>

### **What are the Aims of Equality?**

There are many. But the most fundamental of the arguments for promoting equality is that it is essential to ensure the full development and advancement of women and that equality must be exercised by them in all fields. This is unequivocally stated in Article 3 of CEDAW.

The late US Supreme Court Justice Ruth Bader Ginsburg<sup>109</sup> expressed similar sentiments in succinct terms in one of her early cases, *United States v Virginia*. She struck down the men-only admissions policy at the Virginia Military Institute condemning the unequal treatment of women at the Institute stating, “No law or policy should deny women full citizenship stature—equal opportunity to aspire, achieve, participate in, and contribute to society based on their individual talents and capacities.”<sup>110</sup> The substantive model of equality attempts to bring about social change. Such change does not come without risk as it may upset the status quo, and it may be construed as dismantling the existing social order. Discrimination against women is therefore seen as necessary for the well-being of the family and society.<sup>111</sup> It is essential that within any project that aims to enable women claim their rights to equality, there should be a component that anticipates the risk and helps women cope with the risk. This is because, while social change may come at a price, it is transformational and sustainable in the long term as it represents a move from dependency to autonomy for women and from inequality to equality.



### Equality or Equity

Equality is also not to be confused with equity nor can the two be used interchangeably. The CEDAW Committee is firm in its stand on this. Those who prescribe the concept of equity over equality do so because they say that equity requires that each person be provided for according to their needs. Equality, in their view, stops at giving same opportunities to women and men but does not guarantee that women will be able to access these opportunities. This shows a misunderstanding of what equality means especially since the advent of CEDAW.

Equality and the practical enjoyment of it by women is a universal value, a legal standard and goal, and a human right. Without equality, human rights would have no meaning. It is equality that demands that human rights are for all regardless of sex, status, origin, descent, location, sexual orientation, and gender identity. Equity on the other hand is not a standard or a goal. It is subjective, discretionary, and arbitrary. It is fragile as a policy if used as a standalone concept without it being linked as a means to achieve the goal of equality.

Equity can also be used against women. During the debates when the Beijing Platform was drafted in 1994/1995, Muslim countries and the Holy See and its followers from Latin America strongly argued for the use of the term 'equity' and resisted the term 'equality'. For them, women and men could not be valued equally. They demanded the use of the term 'equity', as in their view, this term

justified greater resources and power skewed in favour of men because of their God-given and immutable responsibilities as providers and leaders. 'Equity' was then to be used to give to men according to their 'need'. The determination of need itself is political and value-driven. But the conservative forces did not get their wish during the Beijing Platform debates, as the Women's Human Rights Caucus argued heatedly and long against the term 'equity'. The Beijing Platform adopted the term 'equality'. We would be retracting the hard-won conceptual gains made in our understanding of equality 25 years ago, if we now say the concept of equality is not useful. Equity cannot stand alone or be used interchangeably with equality.

As Frances Raday<sup>112</sup> states,

It is of immediate importance to reassert women's universal human right to substantive equality. Other values such as equity, complementarity, and human dignity allow interpretation which is consonant with traditional patriarchal values and does not secure equality for women, either in the public space or in the family.<sup>113</sup>

Under CEDAW, substantive equality is the goal to be achieved in all spheres. To achieve this, the obligation of the State extends beyond a purely formal legal obligation of equal treatment of women with men. Under Article 2 of CEDAW, States have the dual obligation of incorporating the principle of equality in the law (formal equality) and ensuring as well, the practical realisation of the principle of equality.

### The Significance of Temporary Special Measures

It is essential at this time to say a word about temporary special measures which are required under CEDAW Article 4.1. Temporary special measures are more commonly understood as affirmative action. A question frequently asked is, "Is affirmative action for groups based on race, gender, or ethnicity reverse discrimination of others, who are not of the same race or identity?" The response to this is that there is no such thing as reverse discrimination.

Under CEDAW, affirmative action is not seen as discrimination of any kind. The text of CEDAW refers to it as temporary special measures. These are an essential measure to reverse historical discrimination that existed against a particular group which has resulted in cumulative disadvantage and under representation of that group in all fields. When such measures have been implemented, the comparative enjoyment of rights of various groups must be assessed, and it should not be seen from the perspective of what happens to individuals.

Some individuals may have to give up their positions in the interest of justice when their own group is highly developed and has been historically advantaged as compared to the inequality experienced by other groups.

Temporary special measures are an expression of equality rather than an exception to it. Adopting such an approach affirms a primary commitment to the remedying of widespread, deeply entrenched, and identifiable group-based patterns of inequality.<sup>114</sup>

In other words, substantive equality is not only *de facto* equality between individuals but also between groups of people some of whom may have been discriminated against in the past.

According to this principle, temporary special measures become a manifestation of the right to equality. Failure to implement temporary special measures may constitute unfair discrimination.<sup>115</sup>

This means that there will be a levelling up of the disadvantaged group. The group that feels they are being discriminated against because of affirmative action will not have lower representation and enjoyment of rights than the group that received the benefit of temporary special measures. Rather, the groups are equalised. So, there is no discrimination here. Affirmative action is an equalising measure essential for the achievement of substantive equality. Otherwise, we have declarations of equality in the law and claims of neutrality that does not bring about positive social change and *de facto* equality.

### The Indiscriminate Use of the Concept of Patriarchy

There was also concern that 'patriarchy', which kept cropping up in many of the discussions with women's groups, was vague as a concept. It was pointed out that if accountability had to be drawn from the State and the relevant advocacy aimed to monitor State action, it was necessary to unpack this concept in terms of indicators of patriarchy. This would facilitate the formulation of concrete recommendations for the elimination of patriarchy as well as to monitor change. It was therefore essential to establish the connection between patriarchal

systems and their reflection in laws, policies and practice leading to discrimination against women, justified by culture, religion, and mindsets. Patriarchy as a root cause of discrimination against women must be made concrete.

### **The Indivisibility of Rights**

Further, social change can only take place in an appropriate socio-economic environment that provides the enabling conditions for women to access their rights. Therefore, CEDAW demands gender-responsive development policies and programmes that are premised on a rights perspective and is relevant to all contexts of women's lives. The interrelatedness and indivisibility of socio-economic and civil and political rights is an essential framework for achieving equality. CEDAW therefore must be understood in its entire significance and spirit as it is a repository of the interconnectedness of all rights and not fragmented into separate articles.

### **The Concept of Access to Justice and its Operationalisation**

Next was the realisation that while clarity of human rights and equality concepts was critical it was even more important to enable access to justice. Many aspects had to be considered. Through the years of orientations and the training that had been undertaken,

there was awareness that while a good law or policy may be in place this would not ensure the enjoyment of rights by women. But for women to be able to claim and exercise their rights, it was important to ensure that effective systems and accountability mechanisms are in place for the promotion, protection, and fulfilment of human rights. So, there was the realisation that we had to create an awareness among women of the need to focus on institutional reform and create an understanding of the role of various institutions, formal and informal, in perpetuating inequality or enabling equality.

Some sessions in the Amma Manual guided us on access to justice issues. A session on the Role of the Law showed that a useful framework to identify legal barriers for women's access to justice is to look at three interactive components of the law—its substance, structures, and culture that imposed a communal and societal value system which does not recognise women as equals. This session along with a session on Limits and Possibilities of the Law, highlighted the politics of law making which did not necessarily guarantee justice for women, the poor, and the powerless. In other words, the law is socially and politically constructed. Hence a law project cannot just be a legal technical project. In examining the position of the community and the legal systems towards bringing benefit to women, it is also essential



*To identify legal barriers for women's access to justice one has to look at three interactive components of the law—its substance, structures and culture that imposed a communal and societal value system that did not recognise women as equals.*



to make explicit that the cultural and legal bias towards women is differentiated with regard to different groups of women based on their minority, ethnic, and other identities. The next several years saw IRAW Asia Pacific grappling with creating clarity on these concepts as well.

## **2. TAKING STOCK THREE YEARS AFTER INCEPTION: CONSOLIDATING THE WORK, ENHANCING IRAW ASIA PACIFIC'S INSTITUTIONAL CAPABILITIES AND RECOGNISING OUR STRENGTHS**

By 1996, the programme of IRAW Asia Pacific was expanding and we needed to take stock and develop a strategic plan and credible institutional arrangements to implement and sustain it. There was a major demand for capacity building for the application of CEDAW coming through from all corners of the region. The groups we had worked with hitherto were now convinced that the CEDAW would be an effective tool for the application of equality, non-discrimination, and for social transformation. There was a demand to go beyond theoretical knowledge dissemination on the human rights of women. Hence, IRAW Asia Pacific had to take a step back and reflect, whether it had the capacity for further expansion.

In 1996, a thorough assessment of the last three years (1993-1995/96) was carried out through a five-day strategic planning meeting, 3-6 June 1996. The organisation's first such meeting was held with the participation of Shireen Huq, Eleanor Conda, and I as we had constituted a core group. It was an intensive five days with Eleanor leading the way.

The meeting assessed past performance of IRAW Asia Pacific since June 1993, as well as its strengths and weaknesses, and a three-year plan for 1997-1999 was developed. In doing this, the team considered the views of the loose Advisory Committee on future directions as well as emerging needs, trends, and developments in relation to women's rights. These insights were gleaned through interaction with women who had been participating in the IRAW Asia Pacific programme and through networking at the regional and international level. The directions for the next three years of the programme were set.

It was decided that there would be a more defined segmentation of the pertinent target sectors and groups at which CEDAW-related activities should be directed. In the past, orientations and training had been limited to women's groups and lawyers. In this phase, there would be a holistic approach, including designing appropriate training/orientations for the judiciary, functionaries of relevant agencies of government, policymakers, development agencies, mainstream human rights advocates, etc.

Capacity building of women's groups would focus on sharpening their activism to monitor fulfilment of State obligation and to build their capacity to claim their rights. This would be accomplished by setting up a monitoring network in South and Southeast Asia,<sup>116</sup> training of lawyers to prepare model briefs, and where possible or necessary, the use of court action to enforce State obligation.

At the Strategic planning meeting, it was decided to organise the work into two sub-regional programmes, South and Southeast Asia. We also included East Asia. As a result, the countries in which IWRAP Asia-Pacific consolidated its in-country activities from 1997 onwards were as follows:

- in the Southeast Asia region: Cambodia, Indonesia, Malaysia, Mongolia, Philippines, Thailand, and Vietnam;
- in the South Asia region: Bangladesh, India, Nepal, and Sri Lanka.
- In East Asia: China and Mongolia

This regional focus had two main agendas: to build capacity for change and to enhance the realisation of rights.

At the planning meeting, the need for institutional development took on more significance and urgency as IWRAP Asia-Pacific attempted to intensify and broaden its programme in the region. We thought that institutional capability and sustainability would be strengthened through two measures: increasing staff and the formation of a regional training team together with a pool of experts and consultants.

At the same time, an external evaluation of the programme was conducted with the help of the government of the Netherlands who had been funding IWRAP Asia Pacific for the last three years in order to evaluate whether they should continue funding us. The evaluation was positive, but it made some critical recommendations for the sustainability of IWRAP Asia Pacific as an organisation.

As a result of the strategy planning meeting and the Dutch evaluation, IWRAP Asia Pacific was registered as a non-profit organisation in Malaysia in 1996. A Board of Directors was set up as a legal requirement of this step. It was comprised of myself, Dato Noor Farida Ariffin<sup>17</sup> and the late Rita Raj<sup>18</sup> who was then a director of the regional women's reproductive health programme, Asian-Pacific Resource and Research Centre for Women (ARROW). I am eternally grateful to these two women who were IWRAP Asia Pacific's first directors and helped set up IWRAP Asia Pacific officially. Between 1993-1996, we had functioned as an unregistered organisation.

Even though I was the only staff, up until that time, as mentioned earlier, the organisation had a strong external structure in the form of an informal advisory group comprising Andrew Byrnes, Savitri Goonesekere, Shireen Huq, Eleanor Conda, Ramya Subrahmanian, and Alda Facio. In addition, after the Beijing conference, IWRAP Asia Pacific acquired many significant partners such as Ruth Manorama of the National Alliance for Women (NAWO) India; Lesley Ann Foster of Masimanyane (South Africa); Sapana Pradhan Malla of the Forum for Women, Law and Development (FWLD) Nepal; Madhu Mehra, Partners for Law and Development (PLD), Tulika Srivastava, Association for Advocacy and Legal Initiatives (AALI), and Roshmi Goswami, North East Network (NEN), all from India; the late Kamalini Wijaytileka of the Centre for Women's Research (CENWOR), and Kumudini Samuel and Sepali Kottegoda of the Women and Media Collective: the last three from Sri Lanka.

### Strengthening the Organisation

The need to hire staff and to formalise our advisory system was imminent. Until the end of 1996, I was still the only full-time member of staff coordinating, managing, and implementing the programme and responsible for fundraising. “But the baby was growing up and it would not be possible to carry her on my hips anymore.” It meant intensive fund-raising. My entire being was consumed by the anxieties of sustaining this programme expanding at a pace, in fact snowballing—that was both exciting and scary. I lived, slept, and breathed IWRAP Asia Pacific.

In 1997, Azlini Abdul Ghani and Li Yoon Pook were hired as two staff members for finance and administration, and in 1998 two programme staff, Audrey Lee and Simran Gill, were hired. The last two were young law graduates walking into their first job. Together we made a good team.<sup>119</sup>

Post registration, the loose advisory structure was institutionalised and a formal Advisory committee comprising Savitri Gooneselere (Sri Lanka), Andrew Byrnes (Australia but based at that time in Hong Kong), Shireen Huq (Bangladesh), Ruth Manorama (India), Eleanor Conda (Philippines), and Mere Pulea (Fiji) was set up.<sup>120</sup>

For me, the anxieties at this moment were palpable. During the earlier period, when I was the sole staff member, I could barely pay myself a salary as donors were not too keen to fund institutional costs. In 1995 with the participation in the Fourth World Conference on Women to manage, I could pay myself

a salary for only six months of the year. The situation was not much different in 1996. I could only pay myself for eight months of the year. I questioned how I was going to pay four more people and raise money for Advisory Committee meetings when at times I couldn't even pay myself.

“

*But the baby was growing up and it would not be possible to carry her on my hips anymore.*

“

The hiring of staff was done with a leap of faith. Otherwise, we couldn't have run this programme. The thinking that gave me courage was, if more staff were hired and the programme had the benefit of an institutionalised advisory structure, it would show results through a vastly enhanced programme output that sustained its visionary appeal. Its relevance to women in the region would be obvious. *Money would come in, and it did.* What gave me confidence was that the Strategic Planning meeting of July 1996 had identified our strengths based on which the decision to expand the programme and organisation was made. These were:

- Good training frameworks and materials
- Good methods of analysis to continuously develop clarity on key concepts like equality, discrimination, and access to justice
- A committed network of allies that could undertake the work of IWRAP Asia Pacific
- A pool of resource persons who could be tapped particularly for law-related assistance
- The credibility of the programme among women within the Asia Pacific programme

### 3. EXPANDING SKILLS AND CAPACITY DEVELOPMENT

We were now on a roll, and the years from 1997 onwards were very dynamic years in terms of skills and capacity development and expansion. As early as 1994 and onwards into the early 2000s, capacity building programmes were the focus. Implementing CEDAW according to its principles requires a change in attitudes and approaches. Hence, the programme had developed methodologies and frameworks for analysing the various sites of discrimination, for developing holistic measures for achieving the *de facto* equality of women and for training women's rights advocates for the application of CEDAW both within and outside of court procedures.

#### Pool of Trainers: Building Capacity in the Region Through Training of Trainers (TOT)

In 1994, we had started developing the training package which had been expanded and refined. The next step was to create a pool of trainers within our target regions as IRAW Asia Pacific would not be able to develop the required capacities of women in Asia single handedly. Regional Training of Trainers in Asia was on the agenda. Furthermore, the plan was to help generate nuanced knowledge of applying the concept of equality in varying contexts and social settings through regional and national Training of Trainers.

In this stage IRAW Asia Pacific shifted its role from an organisation that coordinated and conducted training at the national levels to one that developed expertise, by putting together resource persons, conducting Training of Trainers, and providing training

materials, which could address emerging themes and issues. This meant that national organisations conducted trainings as a collaborative activity with IRAW Asia Pacific. At the same time, each organisation took steps to strengthen its regional-level pool of trainers and resource persons who were able to take on the different levels of capacity building needed at the national and regional levels.

By 2005, Regional Training of Trainers and National Training of Trainers (TOT) had been conducted building up training capacity in Asia. TOTs were held in Thailand, Indonesia, Philippines, Vietnam, India, Bangladesh, and Suva in Fiji. TOTs with a regional outreach within the counties concerned were implemented in Kolkata, Bihar, Arunachal Pradesh, and Pune, India; Negombo in Sri Lanka; and East Timor. The pool of trainers was constantly replenished. Many of these TOTs were organised and implemented by the women's groups trained earlier and supported with technical assistance in the form of training materials and resource persons from IRAW Asia Pacific. It was therefore possible to expand the outreach of developing the pool of trainers.

The trainings aimed to develop practical analytical skills for activists in using a rights framework for law and policy advocacy based on the substantive equality model of CEDAW. The trained activist groups were able to replicate CEDAW trainings for other women's groups in their countries achieving a multiplier effect. Over the years, awareness, and knowledge of CEDAW has been building up in regions other than Asia, but Asia was where most capacity building has taken place in those years.<sup>121</sup> The pool of Trainers was what

gave continuity, consistency and enhanced the understanding of core concepts. Staff would come and go. But the pool retained historical memory, wisdom, and theoretical soundness.

### **Aiming for Defined Segmentation of Target Groups for the Training**

At this stage we were already aiming for a more defined segmentation of target groups for the training. So, the target groups did not comprise just women activists, but also included lawyers, government functionaries, human rights commission members, and selectively even parliamentarians. In this phase, the training included interventions for groups working in varied contexts such as women in situation of armed conflict, women of minority religion, Dalits, and rural women. IWRAP Asia Pacific carried these out in collaboration with women's groups to build capacity for governments to implement human rights standards vertically. Here, our partners were provided with tools aimed at sharing information/arguments/methodologies developed through our programmes. From 1999 on, capacity building of government functionaries took place in Cambodia, Indonesia, Iraq, Lao PDR, Malaysia, Maldives, Mongolia, and Thailand.

### **Updating of Concepts**

An important feature of the capacity-building programme and the formation of a pool of trainers, was a series of regional meetings called the Updating of Concepts. By now IWRAP Asia Pacific had built up a sizable pool of trainers in the region. The concept behind this initiative was that IWRAP Asia Pacific

saw this pool as partners and collaborators in refining and upscaling the knowledge and conceptual understanding of women's human rights. Since the field of human rights was dynamic and changing, the training pool was backed by a series of consultations called The Updating of Concepts. These consultations focused on the changing contexts the trainers were facing on the ground and helped them develop arguments and methodologies for addressing them.

Through a consultative process, the trainers would bring ground level perspectives of challenges in different contexts for transmitting key concepts. After attending IWRAP Asia Pacific's initial TOT, they had worked out methodologies for communicating the concepts to different audiences, developed fresh case studies, and developed precise articulation of communicating the more refined concepts. This added to our repertoire of expertise and served to mentor newer members of the pool.

The aim of the Consultations was to identify concepts that needed to be updated and emerging challenges/themes that should be addressed by IWRAP Asia Pacific. Starting from 2003, four consultations were held: Concepts for Updating CEDAW Implementation and Emerging Challenges and Themes; Updating Skills in the Application of CEDAW; Developing a Framework for CEDAW Compliance; Developing Methodologies for Training in the Application of the CEDAW Compliant Framework. Refresher modules were also factored into the Consultations. See the box on the next page for a sample of topics discussed.



## TOPICS DISCUSSED AT THE UPDATING OF CONCEPTS MEETING

### UPDATING OF TRAINING CONCEPTS MEETING ORGANISED BY IWRAW ASIA PACIFIC, KUALA LUMPUR, MALAYSIA

30 August - 2 September 2003

Objectives were to identify concepts that need to be updated and emerging challenges/themes that should be addressed by IWRAW Asia Pacific from 2003-2005.

#### Topics Discussed:

- A.** Even when courts are promoting principles, why is there resistance to the progressive implementation of rights?
- B.** Efforts by the Hong Kong equal opportunities commission to implement CEDAW.
- C.** Crafting a comprehensive strategy to promote women's right to inherit and the resulting backlash.
- D.** Strategic approaches to promoting international human rights standards at the national level: practical uses of the principles under CEDAW.
- E.** Principles that apply for the promotion and realisation of women's rights:
  - 1. Application of the principles of indivisibility and interdependence.
- F.** Strategies for making economic, social, and cultural rights justiciable and working on rights as interdependent.
  - 1. Universality: challenging discriminatory social and cultural norms.
  - 2. Making the case for Dalit women: a right to be equal to whom.
  - 3. Using CEDAW to challenge discriminatory practices affecting rights in marriage: extending protection in the private sphere.
- G.** Exploring a comprehensive framework for using the convention in specific fields.
  - 1. Using Article 4.1: The case of women's political participation in Pakistan.
  - 2. Article 14: Rural Women: A starting point for addressing intersectionality and adequate standard of living under CEDAW.

18 - 21 September 2004

Objectives were to share and discuss how the implementation of the CEDAW Convention is taking place within the different local contexts.

#### Topics Discussed:

- A.** Exploring external factors that affect the domestic implementation of international human rights standards. These include:
  - 1. Economic globalisation, re-establishment of the national security state/war against terrorism, rising tide of nationalism, religious, and cultural extremism and democracy in crisis.
  - 2. Internal factors that affect the use and application of the CEDAW Convention at the national level. The factors identified include resistance by individuals within institutions, lack of conceptual clarity, lack of coherence and hierarchies within government, changes in international cooperation and funding priorities and decentralisation and privatisation of essential services.
- B.** Applying CEDAW in various contexts, e.g.:
  - 1. Violence against women in Bangladesh; rural women and economic opportunities in Laos; women and political participation in India.
- C.** Benefits and risks of working with governments on the implementation of CEDAW.
- D.** Assessing policies that affect the realisation of women's reproductive rights.

### **CEDAW-compliant Framework**

At one of the Updating of Concepts meetings held in 2007, a framework for the application of CEDAW was produced as a tool for national partners and policy makers in the development of laws, policies, and programmes for women's human rights.

The meeting brought together IWRAP Asia Pacific's resource persons and national implementing partners to deepen their understanding of how to operationalise CEDAW in specific contexts and issues beyond a theoretical understanding. It took the application of CEDAW one step further by developing a framework that can be used to draft, challenge, and reform laws and policies, and build CEDAW-compliant programmes and services, taking into account the challenges posed by the external environment.<sup>122</sup>

This was done through practical application exercises of CEDAW in four specific themes—livelihoods, violence against women, health, and political participation—taking into account the current social, economic, and political environment in which we live. It provided the space for the resource persons and partners to examine their current women's rights work and to identify elements that had served the purpose of introducing normative standards of equality in specific contexts. This framework has added to IWRAP Asia Pacific's frameworks,<sup>123</sup> which have contributed extensively to the understanding, claiming, and implementing the human rights of women.

The meeting was attended by 26 members of IWRAP Asia Pacific's resource pool and national implementing partners and by 6 programme staff of IWRAP Asia Pacific (Tulika Srivastava, Janine Moussa, Audrey Lee, Lee Wei San, Wathshlah Naidu, and Lisa Pusey). Shanthy Dairiam, Eleanor Conda, Madhu Mehra, and Shireen Huq served as the steering group for this meeting.

## **4. LEGAL STRATEGIES: BUILDING A POOL OF LAWYERS FOR FEMINIST LITIGATION**

### **Lawyers' Training**

The Amma Manual had to be supplemented with fresh materials for the training of both activists and lawyers to enable the claiming of rights. The existence of a rights framework that CEDAW provides does not automatically confer rights on people; it only legitimises the claims for rights. We have to be able to claim our rights.

The law gives enforceability to our rights. Through the law we can establish who has the entitlement to rights and who is obligated for the fulfilment of rights in different contexts. The law also establishes standards for rights. These standards and the norms that underpin them are constantly evolving and it is by developing the jurisprudence around women's rights that women can keep aspiring for higher standards of rights for themselves. In the absence of domestic law to validate women's claims to their rights, the use of 'international expression of rights' in the courts will establish new norms and standards. Therefore, when women claim their rights through the courts, they facilitate the development of jurisprudence at the national level, on equality and non-discrimination.<sup>124</sup>



*The existence of a rights framework that CEDAW provides does not automatically confer rights on people; it only legitimises the claims for rights. We have to be able to claim our rights.*



There are some examples of such claims in the Asian and Pacific region. In 1988, the Federal Court of Australia dismissed a challenge to the constitutionality of the sexual harassment provisions of the Federal Sex Discrimination Act, holding that Article 11 of the Women's Convention imposed a very clear obligation on Australia to eliminate sex discrimination in employment and that sexual harassment was a form of sex discrimination within the meaning of the Women's Convention.<sup>125</sup> In 1997, the Supreme Court of India ruled that the rape of a social worker in a village in Rajasthan revealed the hazards to which working women may be exposed and the depravity to which sexual harassment could degenerate. It was of the opinion that such an incident was a violation of the fundamental right to gender equality and to life and liberty. It also stated that it was a clear violation of the constitutional guarantee to practise any profession or carry out any occupation, trade or business. It held that in the absence of domestic law to formulate effective measures to check the evils of sexual harassment of working women. The contents of international conventions and norms are significant for the purpose of interpreting gender equality, right to work with human dignity, and the safeguards against sexual harassment implicit therein. Furthermore, the court was of the view that while the primary responsibility for ensuring a safe working

environment rested with the legislature and the executive when the violation of the fundamental rights of workers is brought before the court for redressal, an effective redressal requires that some guidelines should be laid down by the court for the protection of these rights to fill the legislative vacuum.<sup>126</sup>

However, such efforts to claim rights by women are too few and far between. The capacity building for the litigation project aspired to accelerate the awareness of women to claim their rights through the courts and contribute to the evolution of jurisprudence on women's equality and non-discrimination.

When assessing the situation for women who wish to claim their rights, we come across many barriers such as a culture and tradition that is hostile to women's claims to their rights, gender bias in the administration of justice generally and in the courts in particular, and the absence of litigation by and on behalf of women. The last would indicate that women do not come forward to claim their rights for a variety of reasons. All of this raises access to justice issues and has serious implications. We were debating and discussing access to justice issues from the early 1990s onwards.<sup>127</sup> As Justice Cartwright of New Zealand (a former CEDAW Committee member) once stated, it is essential to have good cases in court that will help expand the parameters of the meaning and content of women's rights so that good precedents are set.

Hence, education and training of women and providing them with support to enable them to claim their rights is essential. Besides, developing the capacity of litigating lawyers to bring cases to court would have to be part of

this agenda. The next several years (late 1990s onwards) saw IRAW Asia Pacific grappling with this agenda as well.

Several trainings on the law and litigation were conducted from 1997-2004. In the beginning, these trainings were rather *ad hoc*. To change this, a comprehensive legal resource package was developed so there would be consistency of core content touching on the applicability of CEDAW, and the international human rights standards in courts at the national level. This also required a litigation plan that would take into consideration the political environment for women claiming rights and accompanying risk factors, and the need for social change. We looked at it as a legal strategy based on feminist legal theory and practice rather than as just developing litigation skills or refining court practice.

Between 1997-2005, 13 well-structured Lawyers Trainings were conducted in Nepal, India, Sri Lanka, Bangladesh, and Vietnam to develop practical and analytical skills for lawyers and non-lawyers<sup>128</sup> to use a rights framework based on CEDAW for strategic litigation and advocacy in the courts. This was especially essential since domestic remedies have to be exhausted if cases are to be filed to the CEDAW Committee using the Optional Protocol (OP) to CEDAW.<sup>129</sup> These trainings too were organised by national groups such as NAWO, AALI, PLD, NEN (all from India), FWLD (Nepal), Ain-O-Salish Kendra, Bangladesh Women Lawyers Association (Bangladesh), Law and Society Trust (Sri Lanka), and with technical assistance from IRAW Asia Pacific. One of the earliest trainings in India was for the women lawyers' network that had a ripple effect as it transmitted knowledge to other

lawyers in the network. Many of the trainings also focused on the requirements of the Optional Protocol to CEDAW.

The implementation of the training of lawyers marked a shift towards using the conceptual framework of CEDAW for the realisation of women's rights by women accessing, exercising, and enjoying their rights as enshrined in international standards.

### Legal Discussion Papers

A key activity within this project was a consultation with lawyers that produced a set of legal discussion papers. The papers started to be produced in 1998 and became a resource for lawyers who litigate on behalf of women. The output expected from this project was a set of technical papers on selected areas of women's rights that incorporated the most progressive jurisprudence from domestic courts and framed legal arguments from a human rights and feminist perspective. The papers also set out to cite State obligation under human rights treaty law and CEDAW in particular, along with obligations entered into by governments through their participation in the World Conferences. The topics touched on five selected issues of concern to women: rape, sexual harassment, domestic violence, matrimonial property rights, and nationality and citizenship.<sup>130</sup>

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*We looked at it as a legal strategy based on feminist legal theory and practice rather than as just developing litigation skills or refining court practice.*

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## 5. ENHANCING THE ROLE OF JUDGES AND THE CLAIMING OF RIGHTS BY WOMEN

### Judicial Colloquium for Senior Judges in the Asia Pacific Region

IWRAW Asia Pacific also identified judges as a group to work with. The goal was to make them sensitive to using a human rights framework in courtroom advocacy. Work with judges started with IWRAW Asia Pacific's participation in a judicial colloquium for senior judges in the Asia Pacific region organised by the Commonwealth Secretariat and Commonwealth Magistrates Association, held in Hong Kong on 20-22 May 1997.

Two of IWRAW Asia Pacific' representatives were resource persons and presented two papers on 'Nationality and Women's Human Rights' and 'Violence against Women: The Importance of International Human Rights Standards'. The output from the colloquium is a document called 'The Conclusions of the Asia Pacific Regional Judicial Colloquium for Senior Judges on the Domestic Application of International Human Rights Norms Relevant to Women's Human Rights'.

One of the recommendations in the previously mentioned document reads:

Participants noted that many opportunities exist for judges and other judicial officers to draw on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other international human rights instruments so as to interpret and apply creatively constitutional provisions, legislation, the common law and

customary law. In so doing, they drew attention to the wealth of decisions from countries with shared jurisprudential traditions where judges had engaged in such creative interpretation and application. The importance of educating the judiciary and legal profession with respect to international human rights standards and principles relevant to gender issues was stressed, as well as the need for national judiciaries to carry out studies on gender bias in the judicial process.

The need for judges to interpret Constitutional provisions creatively was a message IWRAW Asia Pacific carried into its Strategic and Feminist Litigation programme.

### Symposium on Transition, Post-independence Changes, and the Future: Critical Issues of Law and Justice in South Asia

Another noteworthy regional activity with judges and lawyers was conducted in 1998. IWRAW Asia Pacific and the Faculty of Law at the University of Colombo collaborated to organise a symposium for judges and lawyers in Colombo, Sri Lanka, as part of the University's 50th anniversary celebrations. The symposium, titled 'Transition, Post-Independence Changes, and the Future: Critical Issues of Law and Justice in South Asia', was held from 23 to 26 July 1998. It attracted distinguished participants from the judiciary, the legal profession, academia, and civil society from several countries in Asia and the Pacific and from South Africa which shares Sri Lanka's Roman Dutch civil law tradition. It had a strong focus on integrating human

rights and gender equality in responding to emerging and critical issues of law and development.

Professor Savitri Goonesekere, Andrew Byrnes, Shireen Huq, and myself, the first three being members of IRAW Asia Pacific's Advisory Committee, contributed to the structure of the symposium and the identification of keynote speakers. All of us, along with Geetha Ramaseshan and Ivy Josiah who were both members of IRAW Asia Pacific's resource pool, served on the panel discussions.

A specific recommendation that resulted from the symposium was the need for regional research cooperation, preparation of case books, capacity building, and promoting law reforms at the national level. The lack of comparative materials was identified as a reason for not being able to stimulate developments in national law and in legal education in the region.<sup>131</sup>

### **Caribbean Regional Judicial Colloquium for Senior Judges on the Promotion of Human Rights of Women and the Girl Child**

On behalf of IRAW Asia Pacific, I contributed to this Colloquium held on 14-17 April 1997 in Georgetown, Guyana. It was one of a series of regional judicial colloquiums conducted by the Commonwealth Secretariat. The broad aim of the colloquium was to raise awareness among judges about the critical importance of a judicial culture that promotes women's human rights. The colloquium affirmed the importance of a set of principles concerning the role of the judiciary in advancing human rights by reference to international human rights norms that had been evolved through previous

colloquiums organised by the Commonwealth Secretariat. It drew attention to the schism over the relative importance of civil and political rights versus socio-economic rights and the fact that civil and political rights have received undue attention within human rights discourse. It was also pointed to the division between public and private responsibility for women's rights, and the fact that State policy often supports an exploitative family structure. This legitimised male authority over women, failed to protect women's rights in the private sphere and created the conditions for violence against women.

I brought IRAW Asia Pacific's experience of activism in the region to the Colloquium and presented a paper titled 'Educating Lawyers on the Promotion of the Human Rights of Women: an NGO Perspective'. The paper outlined IRAW Asia Pacific's training experience which aimed to enable lawyers to be conscious of the bias in substance and interpretation of the law. Such bias usually did not favour women. The training also stressed the need for interpreting the law, where possible, using human rights norms and contributing to the development of jurisprudence that set new standards in the area of women's rights.

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## 6. TECHNICAL ASSISTANCE

Another aspect of capacity building was technical assistance according to need. Over the years, we had collected a wide body of information and relevant documents pertaining to human rights in general, and women's rights in particular. We disseminated them according to the needs of specific groups. One example is the provision of expert assistance to groups in Nepal such as the Forum for Women, Law and Development, that IWRAP Asia-Pacific facilitated in early 1995. The aim was to formulate a proposed law (model draft bill) to replace the extant archaic and discriminatory law on property rights. IWRAP Asia Pacific facilitated expert assistance for the drafting of a new law on property rights through the late Rani Jethmalani who was a prominent supreme court advocate of India. In her lifetime she has contributed to significant advances in women's rights in marriage and family relations through her litigation and legal advocacy in India. She conducted workshops for key groups in Nepal on a model family law. Rani shared her knowledge and experience about all the legal amendments in reference to Hindu Succession Act with both NGO and government drafting groups.

Over the years, IWRAP Asia Pacific provided technical assistance in numerous occasions. In 1995, women's groups in Malaysia were provided with technical assistance to advocate for the government to withdraw its reservations to CEDAW. In the context of the Indonesian crisis of democratic reform around 1997/1998, the groups we worked with were engaged in dialogue regarding the need to include gender perspectives into any

constitutional reform that may take place. We sent them model constitutions and literature on processes of reforming constitutions with a gender perspective in other countries. In 2003, IWRAP Asia Pacific provided inputs into the draft Gender Equality Law in Dushanbe, Tajikistan. This consultation was organised by the Organisation for Security and Cooperation in Europe (OSCE) In 2003, IWRAP Asia Pacific led a Consultation on CEDAW monitoring and implementation in Central and Eastern Europe/ Commonwealth of Independent States, held in Almaty, Kazakhstan organised by UNIFEM.

Technical assistance was provided in the form of a training establishing synergy between CEDAW and CRC to the National Human Rights Commission of Maldives, organised by UNFPA and UNICEF Maldives. Participants were Members of the National Human Rights Commission, government ministries, departments, the Attorney General's Office and Police services, Chamber of Commerce and Civil Society organisations.

### DEVELOPMENT OF FRAMEWORKS FOR A RIGHTS APPROACH AND MONITORING AND IMPLEMENTATION OF CEDAW

Through a consultative process with women's groups, three frameworks were developed starting from 1997 for CEDAW monitoring and application, and for a rights approach to programming. These frameworks are timeless and applicable in different contexts. The first is the Monitoring Framework which is useful to identify obligations of the State under CEDAW in selected contexts and to develop specific recommendations for public policy based on equality and non-discrimination. This was done as part of the programme on Facilitating

the Fulfilment of State Obligation towards Women's Equality (see Chapter 9 for details).<sup>132</sup> The second was A Framework for The Rights Approach to Programming.<sup>133</sup> And the third was A CEDAW Compliant Framework for law and policy formulation.<sup>134</sup>

## KNOWLEDGE CREATION

Knowledge creation was also achieved through expert group meetings, regional dialogues, and sub-regional meetings on topics such as legal approaches to claiming rights. One important meeting in this respect was a regional dialogue between women's rights activists and human rights groups organised by IWRAP Asia Pacific in Manila from 16 to 18 November 1996. The overarching objective of the dialogue was to sensitise mainstream human rights groups to the gendered aspects of human rights violations and enlist their cooperation in protecting the human rights of women. At this dialogue, workshops were held on themes relating to women's human rights. The themes and the specific topics that they covered were such key human rights concepts as equality and universality; violence against women; reproductive rights; gender dimensions of civil and political rights; right to life/security; right to citizenship/nationality; disappearance; gender dimensions of human rights violations in specific situations; internally displaced persons; and migrant women workers.

Indira Jaising, Senior Advocate in the Supreme Court of India, presented the keynote address. Although socio-economic rights did not form a workshop theme, T. Rajamoorthy of the Third World Network presented a paper on 'Globalisation and its Implications for Human

Rights'. The women's rights activists present at the dialogue were: Nur Amalia (Indonesia); Firdous Azim (Bangladesh); Kathy Clarin, Cecilia Hofmann, and Evalyn Ursua (the Philippines); Sapana Pradhan Malla (Nepal); Joy Oraa (APWLD, Malaysia); Nirmala Pandit (India); and Viniana Seeto (Fiji). The human rights groups represented in the dialogue were the Coordinating Committee of Human Rights Organisations of Thailand, ADHIKAR (India), the Bangladesh Environmental Lawyers' Association, Movement for the Defense of Democratic Rights (Sri Lanka), PUCL (India), Informal Sector Service (Nepal), LICADHO (Cambodia) and Palembang Legal Aid Institution (Indonesia). Participants found the dialogue informative and insightful. Strategies for cooperative action were charted out on the final day of the dialogue.



*This very strong commitment to substantive political, social, and increasingly legal content and linking all these things together, is a hallmark of the important work that IWRAP Asia Pacific has done on the development of knowledge products."*

- Andrew Byrnes



Knowledge creation has been on going from the early years. To date, consultations and expert group meetings have been a feature of the programme raising knowledge levels and bringing relevance and dynamism to the programme. As Andrew Byrnes pointed out at one of the meetings, "This very strong commitment to substantive content, substantive political, social, and increasingly legal content and linking all these things



together, is a hallmark of the important work that IWRAP Asia Pacific has increasingly done on the development of knowledge products.”<sup>135</sup> Such knowledge creation cannot be confined to one period or phase of the programme. It started from the early years and continues. Much knowledge and collective experience of large numbers of advisors, resource persons, and participants has been gained over the years.

It was important to document them and make this knowledge available to wider audiences. Manuals, Occasional Paper Series, and guidelines for shadow reports were produced in varying contexts. These publications have been instrumental in expanding the outreach of our work. They were not *ad hoc* publications.

## **7. CONTRIBUTING TO THE STRENGTHENING OF INTERNATIONAL HUMAN RIGHTS STANDARDS AND DRAWING ACCOUNTABILITY FROM THE STATE**

The major long-term goal of the programme has always been the domestic application of international human rights norms as they applied to women’s right to equality, primarily through the implementation of CEDAW. As the phrase ‘international human rights norms’ implies, human rights norms and standards are set at the international level. The FWCW in Beijing, the meetings of the Commission on the Status of Women (CSW), the deliberations on the drafting of the Optional Protocol to CEDAW, the meetings of the Human Rights Commission, the Conference on the International Criminal Court, and the CEDAW sessions are all examples of fora when human rights norms and standards are set or interpreted. Advocacy at all of these arenas began to occupy us from 1995/1996 onwards.

Three UN World Conferences were held in the 1990s. They were the 1993 Vienna Conference on Human Rights, the 1994 International Conference on Population and Development, and in 1995, the Fourth World Conference on Women. These conferences were timely as they provided a tremendous awakening on the significance of human rights for all, and for establishing women’s rights as human rights. In particular, these conferences clarified and provided justification for universal human rights principles that were deemed irrelevant and antithetical to the Asian way of life (see Chapter 3 on the World Conferences). Absorbing the human rights precepts globally agreed on at the UN World Conferences, IWRAP Asia Pacific started to contribute to human rights standard setting and interpretation, which helped us demand accountability of the State for its international obligations to women.

By the mid-1990s, the women were ready to engage in such standard setting and standard interpretation. In fact, it was vital that they do that, so that their experiences and needs are included in the basis of such standard setting, thus linking the national to the global and global to national. As women became more confident and had a better understanding of the potential of the international human rights system for advancing their rights, they also needed to engage with the procedures of the system to challenge non-compliance of their governments with the standards to which they have committed themselves. For this, they have to monitor State compliance at national level and then advocate for reform at national, regional, and international levels.

This was another aspect and phase of the programme. To achieve this, two long-term programmes were developed starting around 1997. One was a monitoring programme that was implemented as two sub-regional projects—South and Southeast Asia. The programme 'Facilitating the Fulfilment of State Obligation to Women's Equality' provided the basis for national advocacy as well as for international advocacy with CEDAW. The findings of the monitoring helped strengthen alternative reports to the CEDAW Committee which in turn enhanced the CEDAW Committee's capacity to draw accountability from their governments. This project brought a network of national core groups together at the sub regional level for purposes of developing a common framework for monitoring State compliance with their obligations under CEDAW. This allowed for comparative analysis of State action and exchange of best practices, backed by a process of advocacy and monitoring State action at the national level. In fact, though it is presented as a regional programme, it relied heavily on in-country work in relation issue specific networking, coalition building and advocacy with national governments (see Chapter 9 for details).

The second programme, called 'From Global to Local', is still ongoing and changed the dynamics of the CEDAW review of States Parties. Whereas in the early days of the Committee, the review was a dialogue between two parties: the CEDAW Committee and the State Party. Now, women as rights holders could be present as observers and were able to give to the CEDAW Committee alternate information which could be used to test the veracity of the information provided by the State. The presence of women at the

CEDAW sessions forced their governments to be more transparent and to take their obligations seriously.<sup>136</sup> (See Chapter 9 for more information.)

The Global to Local programme gave IWRAP Asia Pacific the scope to coordinate its first international human rights programme in 1997. IWRAP Asia Pacific opened the project to a global constituency of women whose government reports were reviewed by CEDAW. IWRAP Asia Pacific facilitated the participation of women from reporting countries all over the world to review their governments' performance in front of the CEDAW Committee.<sup>137</sup> This programme has been much appreciated by the women concerned and the CEDAW Committee.

### **MECHANISMS AND STANDARDS FOR CLAIMING RIGHTS: DRAFTING OF THE OPTIONAL PROTOCOL AND CONTRIBUTION TO THE DRAFTING OF GENERAL RECOMMENDATIONS OF CEDAW AND ICESCR**

#### **Drafting the Optional Protocol to CEDAW (OP-CEDAW)**

In 1996, the process of drafting the Optional Protocol to CEDAW had been initiated by the Commission on the Status of Women. There had been some discussion for the need for this for some time, as there was no complaints mechanism under CEDAW as there was under the ICCPR<sup>138</sup> and CAT.<sup>139</sup> This concern was more purposefully raised during the Fourth World Conference on Women in Beijing and a recommendation was made for governments to:

Support the process initiated by the Commission on the Status of Women (CSW) with a view to elaborating a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women that could enter into force as soon as possible on a right of petition procedure, taking into consideration the Secretary-General's report on the optional protocol, including those views related to its feasibility. (Report of the Fourth World Conference on Women. Paragraph 230 k)

Around 1996, the UN through the CSW had set up an Open-ended Inter-governmental Working Group to draft the Optional Protocol to CEDAW. These meetings were held in New York every year in March during the sittings of the CSW until the year 2000 when the Optional Protocol to CEDAW was adopted.

IWRAW Asia Pacific can take pride in its contribution to the drafting of the Optional Protocol coordinated by the CSW. It facilitated the participation of a small team of Asian women in this process consistently over a period of time from 1996-2000. The team was led by Tulika Srivastava (AALI), India; the late Dr Shantha Thapaliah (LACC),<sup>140</sup> Nepal; Eleanor Conda (WLB), Philippines; and the late Kamalini Wijayasekara (CENWOR), Sri Lanka.<sup>141</sup> All the national-level representatives were activist lawyers, and they contributed an awareness of the ground-level political realities to the negotiations. This was not easy as NGOs were not officially part of the Open-ended Inter-governmental Working Group. They had to be on side lines and find advocacy spaces to lobby and influence the process.

All negotiating sessions were problematic as it was difficult to obtain a consensus on the text. Some of the government delegations wanted a strong well-drafted text, which would contribute progressively to international law. Many others were resistant to the idea of an optional protocol. So frequently there were deadlocked positions. In spite of an intention of having an Optional Protocol in 1998 to celebrate the 50th Anniversary of the Universal Declaration of Human Rights, the discussions were postponed to 1999.



*IWRAW Asia Pacific can take pride in its contribution to the drafting of the Optional Protocol coordinated by the CSW. It facilitated the participation of a small team of Asian women in this process. All of them were activist lawyers, and they contributed an awareness of the ground-level political realities to the negotiations.*



The discussions were deadlocked around several issues, including:

- Should only the individual victim have the *standing* to make a complaint, or should organisations, or groups of individuals be allowed to make a complaint on behalf of the victim?
- What rights or violations should fall within the *scope* of the OP: should only actions that violate rights be covered, or also non-fulfilment of positive obligations by a State?
- What should the *juridical powers* of the State be?
- Should *reservations* to the provisions of the OP be allowed?

The IWRAP Asia Pacific team was an integral part of the NGO lobby at the discussions of the Optional Protocol. While in New York, they had clear bottom-line positions based on my guidance from Kuala Lumpur. It is fair to say that they contributed constructively to the lobby process and influenced the inter-governmental process. Apart from this, all of them won the confidence of their Missions in New York, gave them technical inputs and inspired them to play a constructive role in the inter-governmental process. Tulika Srivastava stands out as having displayed excellent lobbying skills and received open praise from the Chair of the Optional Protocol discussions and the Indian delegation as having made particularly good contributions to the progress of the discussions.



*We were keenly aware it is critical to mobilise and create constituencies of women who will make demands because women are not yet a visible constituency in most countries.*



### **Significance of the Optional Protocol to CEDAW**

Why did we take such an interest in this mechanism? The entry into force of the Optional Protocol places CEDAW on an equal footing with the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, all of which have communications procedures.

What is the use of this instrument? As stated at one of the IWRAP Asia Pacific trainings, the OP-CEDAW:

- brings the right-bearers into the centre stage of the process of international accountability of the State: wherein, the States are now accountable to their own people for fulfilment of the obligations under the CEDAW;
- puts the seal of justiciability on the rights enumerated in the CEDAW; and
- supports a process that would enable States and human right defenders to monitor domestic processes.<sup>142</sup>

If a complaint is made under the OP-CEDAW, this provides an opportunity to contribute to the development of human rights standards and clarity of State obligations in context. It can result in the development of legal standards regarding women's rights and a better understanding of the content of those rights, depending on strong recommendations from the Committee. It will also raise awareness and help to mobilise women to demand their rights. It will clarify for a diverse set of women what their rights are. If women hear about a right in an abstract manner, they may not understand it. But if the right is very concrete, it will resonate with them.<sup>143</sup>

Using the OP-CEDAW to get explanations and recommendations from the Committee will provide a specific context around which to mobilise women to fight for their rights. We were keenly aware it is critical to mobilise and create constituencies of women who will make demands. Male interests are often privileged because men are a visible constituency and women are not yet a visible constituency in most countries. The OP-CEDAW would

raise awareness that women's groups and activists should not underestimate their own power. Once they come together to create a constituency, whether at the international or national level, they have tremendous power, and it can lead to influence with governments.

Using the OP-CEDAW will clarify these rights and define what actions constitute discrimination for judges, the police, bureaucrats, husbands, women themselves, and countless others. It will clarify what constitutes a State obligation under CEDAW and other Conventions. It will also highlight the interconnectedness of rights, including those not explicitly stated in the CEDAW, and that certain rights are pre-conditions for the enjoyment of other rights. It will give concrete meaning to substantive equality.<sup>144</sup>

It will encourage the implementation of CEDAW at the domestic level since State officials and judges might not want their non-compliance to be exposed at the international arena and could lead to progressive rulings on human rights at the local level. It will improve understanding of the ways in which women are discriminated against and will create more jurisprudence on women's rights.

As discussed at one of the IRAW Asia Pacific OP-CEDAW trainings,

The OP-CEDAW provides a final glimmer of hope to the individual, after domestic remedies have failed, in an environment that is not loaded, not adversarial, and that has political imperatives." Often justice fails women at the domestic level. "The opportunity to go to the CEDAW Committee at least gives a person or

movement another chance to sort out the issue in the spirit of constructive dialogue. The Committee will not consider political exigencies but will look at the rights of the victims. The Committee offers suggestions and recommendations and does not hand out orders.

Finally, the ratification process will hopefully allow for inward reflection. Human rights work is as much about developing normative content as it is about ensuring State accountability. It will motivate States Parties to monitor and reflect on their own work and methodologies.

An important purpose served by the OP-CEDAW when it is used by women, is that it provides States parties the opportunity to assess the weaknesses in the procedures, the legal and administrative institutions and implementation processes of the legal system that do not allow women to obtain the benefit of the law as intended and to take remedial action.<sup>145</sup>

### **'Our Rights are Not Optional' Campaign**

The OP-CEDAW was adopted by the UN General Assembly on 6 October 1999 and came into force on 22 December 2000 according to Resolution A/Res/54/4. IRAW Asia Pacific was endorsed by women's groups participating in the advocacy for the drafting of the OP-CEDAW to spearhead a global campaign on the ratification and use of the Optional Protocol to CEDAW. IRAW Asia Pacific therefore launched this campaign on 8 June 2000 with the collaboration of the Mission of Chile in New York and called it 'Our Rights are Not Optional'. The Campaign focused

on two interrelated and parallel objectives: to craft strategies for the ratification of the OP-CEDAW, and to promote and develop the capacities of women's groups to effectively use and access this protocol. To facilitate this agenda, a resource package called 'Our Rights are Not Optional' was developed. An international advisory group had been formed who functioned as regional focal points with representatives from every region, along with a couple of additional independent experts. Members of this group advised and provided leadership to the campaign. The members and alternatives in the Regional Focal Points of the OP-CEDAW Advisory Group were:

- Tulika Srivastava, Association for Advocacy and Legal Initiatives (AALI), India;
- Sapana Pradhan Malla and Sabin Shrestha, Forum on Women, Law and Development, Nepal;
- Seema Naidu, Regional Rights Resource Team (RRRT), Fiji;
- Kafui Adjamagbo-Johnson, Women in Law and Development in Africa (WILDAF/ FeDDAF), West Africa;
- Thoko Matshe, Women in Politics Support Unit (WiPSU), Zimbabwe;
- Lesley Ann Foster, Masimanyane, South Africa;
- Kinga Lohmann, KARAT Coalition;
- Wendy Harcourt, Women in Development Europe (WIDE);
- Marlene Libardoni, AGENDE, Brazil;
- Cecilia Anandez, The Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM), Uruguay;
- Amal Hadi, New Women's Research Centre, Egypt; and
- Afaf Jabiri, KARAMA, Jordan.

The independent experts were:

- John Cerone, USA;
- Shanthi Dairiam, Malaysia; and
- Alda Facio, Costa Rica.

International, regional, and national consultations were convened. For 2004-2005, IWRAP Asia Pacific had organised activities in collaboration with Masimayane (South Africa); CIMA (Latin-America); Bangladesh Women Lawyers' Association (Bangladesh); and Forum for Women, Law and Development (Nepal).

Parallel to the March 2000 Beijing plus Five Preparatory Committee meeting, IWRAP Asia Pacific launched an introductory workshop series in New York in March 2000 developed in conjunction with the New York University Human Rights Law Clinic. The workshops were conducted in English.

Finally, in June 2000, taking advantage of the presence of activists from all parts of the world at the Beijing +5 Review, IWRAP Asia Pacific conducted a two-day international consultation in New York from 10-11 June 2000 with French and Spanish interpretation and with supporting briefing materials, to obtain commitment from the women to move the Optional Protocol campaign forward and to plan the first steps of the campaign. Women's groups in every region of the world committed themselves to this campaign and lobbied their countries to accede to the Optional Protocol.

The first regional consultation to plan national-level campaign activities was held in February 2001 in Costa Rica for the Latin American region. Another significant consultation was held on 17 December 2004 in Nepal. The main

objective of the consultation was to urge the government of Nepal to ratify the OP-CEDAW.<sup>146</sup> Specifically, it sought to provide a forum for both the duty bearers and rights holders to share, reflect, and have a deeper understanding of the OP-CEDAW. Approximately 120 people came to this meeting, including members of parliament, representatives of government agencies, the National Human Rights Commission, the judiciary, UN agencies, NGOs, INGOS, women's police cells, the Royal Nepal Army, political parties, and the media. Shanthi Dairiam and Alda Facio, members of the Advisory Group of the Global Campaign for the Ratification and Use of the OP-CEDAW, served as resource persons and IWRAP Asia Pacific also provided additional technical assistance. Other members of the Advisory Group attended this meeting as well. Their perspectives and input, in particular on the experiences they shared on the ratification of the OP-CEDAW by other States Parties, was useful. This was followed by the Third Advisory Group Meeting of the Global Campaign for the Ratification and Use of the Optional Protocol to CEDAW on 18-19 December 2004.

Another significant Asian regional activity was a 'Technical Consultation on Realising the Potential of the Optional Protocol: Litigation Strategies on the Claiming of Equality and Non-Discrimination' held in Kathmandu, Nepal, 5-7 December 2007. The main objectives were to critically examine how cases on equality and non-discrimination are being argued at the national level, and to develop strategies and best practices for litigation at the national and international level on cases of equality and non-discrimination.

This three-day consultation brought together over 20 experts, activists, and lawyers, mainly from the South and Southeast Asia region who had ratified the OP-CEDAW, to brainstorm and strategise over how to maximise the use of the OP-CEDAW and all of its benefits. Resource persons were:

- Shanthi Dairiam, IWRAP Asia Pacific Board of Directors;
- Alda Facio, IWRAP Asia Pacific OP-CEDAW campaign Advisory Group Member, on the Ratification and Use of OP-CEDAW;
- Andrew Byrnes, Law Professor and IWRAP Asia Pacific Advisory Committee Member;
- Melissa Upreti, Center for Reproductive Rights;
- Tulika Srivastava, IWRAP Asia Pacific;
- Janine Moussa, IWRAP Asia Pacific; and
- Lisa Pusey, IWRAP Asia Pacific.

From 27-30 August 2005, IWRAP Asia Pacific organised a four-day Global Consultation in Kuala Lumpur to inspire and help women to promote the ratification and use of the Optional Protocol to CEDAW. A hundred and eighteen women from 53 countries participated. Interpretation in Spanish, French, and Arabic was provided, enabling a diverse group of women to participate. The aim of the Consultation was to share best practices and exchange information on the Optional Protocol, and for the participants to return to their countries and regions to apply what they learned from the Consultation as well as to launch into more intensive advocacy towards the increased ratification and use of the OP-CEDAW.

### UNEXPECTED IMPACT OF THE 'OUR RIGHTS ARE NOT OPTIONAL' CAMPAIGN: BRAZIL SUBMITS ITS INITIAL REPORT TO CEDAW<sup>147</sup>

The work done by AGENDE, Brazil and their partner entities in mobilising for the ratification of the OP-CEDAW led to other important results besides the signing and ratification of this human rights international treaty. By sensitising the Executive Power in relation to the international mechanisms of women's human rights protection, these actions have contributed to a governmental mobilisation that prompted the writing of the First National Report to CEDAW.

In 2001, after the President of the Republic had signed the OP-CEDAW and it had been sent to the National Congress to be ratified, the Executive Power, by means of the Ministry of International Relations (MRE), invited a group of civil society entities to constitute a consortium of organisations and people to draft a preliminary version of the Report to CEDAW. Eight entities from the civil society had been invited to participate in this consortium. The organisation AGENDE was one of them, and there were three other specialists. The writing of the National Report to CEDAW had lasted till the second semester of 2001. The first version of the document was handed to the MRE in March of 2002. Almost 20 years after the ratification of the CEDAW Convention in Brazil in 1984, the government presented to the civil society the National Report to CEDAW on 22 October 2002, according to Article 18 of CEDAW.

Brazil should have presented a first report soon after the Convention ratification in 1985, as well as periodic reports every four years. However,

this document intended to cover the period from 1984 to 2001 and was submitted as the combined initial, second, third, fourth, and fifth periodic report from Brazil to the CEDAW Committee in November 2002.



*I was present at that CEDAW review of Brazil, and I watched the looks of the Brazilian delegation as they heard these words. They had been reprimanded by the CEDAW Committee.*



#### A Footnote to Brazil's First CEDAW Report

Brazil's initial report was reviewed by the CEDAW Committee in June 2003. The Chair of the Committee, Feride Acar, opened the dialogue, stating that:

Brazil was in an extraordinary position: although it had ratified the Convention in 1984, it had only just complied with the provisions of Article 18, paragraph 1, which required an initial report on implementation one year after ratification, and at least every four years thereafter. As a result, the women of Brazil had been deprived of international scrutiny of their situation for a long time. The obligation to report to the Committee was a cornerstone of the Convention with which Brazil had failed to comply.<sup>148</sup>

I was present at that CEDAW review of Brazil, and I watched the looks of the Brazilian delegation as they heard these words. They had been reprimanded by the CEDAW Committee.



The Global Consultation on the Optional Protocol to CEDAW resulted in the creation of seven regional 'Our Rights are Not Optional' campaigns located in every region.

The OP-CEDAW Advisory Group had the potential for movement building as they undertook CEDAW and OP-CEDAW related action in their regions bringing various groups together. An example of this is the Africa Consultation on Realising the Potential of CEDAW and the Optional Protocol to CEDAW as a Tool for the Protection and Promotion of Women's Human Rights, held in Cape Town, South Africa from 12-13 November 2008. This meeting was held in collaboration with WILDAF/FeDDAF West Africa and Women in Politics Support Unit (WIPSU) Zimbabwe—the coordinators of the Africa Regional Optional Protocol to CEDAW Campaign and members of the Advisory Group Global Campaign. The meeting was attended by over 20 women from Burundi, Cameroon, Democratic Republic of Congo, Ghana, Malawi, Mali, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Togo, Tanzania, Uganda, and Zimbabwe. Representatives of regional networks including FEMNET. Ms Dorcas Coker-Apiah (CEDAW Committee member from Ghana) also attended.

The meeting was an opportunity to bring together women's groups in Africa interested in doing more work around CEDAW and the OP-CEDAW, to share IWRAP Asia Pacific's experiences in using CEDAW as a tool for change. At the meeting, plans for collaborative work in the region were put in place and potential communications and inquiries under the OP-CEDAW were identified and discussed.

### **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)**

Bearing in mind the need to share the experiences gained during Optional Protocol to CEDAW negotiations, IWRAP Asia Pacific decided to get involved in the processes Advocating for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). This decision was also based on our Asian partner organisations' interest to work closely with NGOs specialising on economic, social, and cultural (ESC) rights in order to develop a better understanding of how to use CEDAW to promote these rights for women.

As a member of a global NGO Coalition for the OP-ICESCR, IWRAP Asia Pacific engaged in the process of the drafting of the OP-ICESCR which took place in Geneva from 2003 until its adoption in 2008. It pursued two objectives: to share IWRAP Asia Pacific's experience and expertise in negotiating the text of the OP-CEDAW, and to ensure that women's experiences of economic, social, and cultural rights violations were reflected in the negotiations and in the drafting of the OP-ICESCR. IWRAP Asia Pacific was a Steering Committee member<sup>149</sup> of the NGO Coalition for the OP-ICESCR.<sup>150</sup> The Coalition was coordinated/hosted by ESCR-Net.<sup>151</sup> IWRAP Asia Pacific's programme officer Maria Herminia Graterol and Caroline Lambert, a short-term consultant hired by IWRAP Asia Pacific, led this process for IWRAP Asia Pacific.

To begin with the Coalition had difficulties with the mandate of the UN Working Group which was to consider options for an Optional Protocol to ICESCR. Speaking on behalf of the Coalition, IWRAP Asia Pacific made a statement to the UN opposing this mandate.

The main point raised in this statement was:

Let us, as the Coalition, be clear. To our mind, the option of an Optional Protocol is not an option. It perpetuates a historic hierarchy of rights, wrought in a different political age. It fosters an inequality of review procedures within the human-rights monitoring mechanisms. It ignores the broad-ranging implementation of economic, social, and cultural rights in all regions of the world. And it denies the growing, and global, jurisprudence on economic, social, and cultural rights, which has derived in large part from the increasingly comprehensive domestic mechanisms to address economic, social, and cultural rights. And it ignores the needs of our shared constituents, those who suffer violations of their economic, social, and cultural rights. Their need for access to justice is the imperative which drives these discussions and our participation in this process, both here in Geneva and in our own work at the national level.

As such, it is our view that the option that should be given greatest attention in the next session of the Working Group is that of an OP to the ICESCR; an OP which provides for clear mechanisms of review on the implementation of economic, social, and cultural rights.

One of the first actions of IWRAP Asia Pacific in relation to the OP-ICESCR was to set up a lobbying team to influence the Open-ended Inter-governmental Working Group set up by the UN Commission on Human Rights to draft the OP-ESCR. The lobby team held discussions with country delegations from different regions on the need of an OP-ICESCR. At the same time, the team also worked in collaboration with other NGOs advocating for the OP-ICESCR. Many States openly opposed further developments in relation to ESC rights. This was more evident immediately after the UN Special Rapporteur on the Question of the OP-ICESCR presented his second report to the Commission on Human Rights and the negotiations of the text of the resolution on the establishment of a UN Open-Ended Working Group began. IWRAP Asia Pacific and other groups were able to follow discussions and share the lessons learnt from the OP-CEDAW experience with supportive governments. Specifically, the IWRAP Asia Pacific lobby group focused on: (a) raising awareness of NGOs and some friendly governments on the ways the OP-CEDAW process could inform the OP-ICESCR process; (b) developing materials to encourage women's groups working at the national level to get involved in the processes that may lead to the OP-ICESCR; and (c) assisting in the coordination of the formal establishment of the OP-ICESCR NGO Coalition.

Other activities undertaken by the NGO Coalition during the meeting, and in preparation for it, included: The development of a comprehensive package entitled 'Take Action NOW! Advocacy Kit' which provided background information on the ICESCR; the OP-ICESCR; key issues relating to the

justiciability of economic, social, and cultural rights; arguments for an OP-ICESCR; and points refuting arguments against an OP-ICESCR. It also included advocacy and media activities to increase the capacity of national-level NGOs in their work with governments prior to the meeting of the Open-Ended Working Group.

The Steering Committee of the NGO Coalition held regular teleconferences in the lead up to the meeting to develop lobbying strategies, identify partners in key countries, and work to ensure regional representation among NGOs present at the Geneva meetings. Daily NGO debriefings during the annual biweekly meetings of the Open-Ended Working Group and the production of a daily update for partner organisations at the national level were undertaken by IWRAP Asia Pacific.

The NGO Coalition made important contributions at this meeting, and it was the first time that governments explicitly acknowledged that there are many NGOs, both in the North and in the South interested in promoting an OP-ICESCR. IWRAP Asia Pacific's lobbying team for the OP-ICESCR comprised Tulika Srivastava (India), Caroline Lambert (Australia), Sabin Shresta (Nepal), Marlene Libardoni (Brazil), Barbara Limanowska (Poland), and Maria Herminia Graterol (IWRAP Asia Pacific). IWRAP Asia Pacific's partners in the Optional Protocol to the ICESCR Coalition included the International Commission of Jurists (ICJ); FIAN; World Organisation Against Torture (OMCT); Centre for Housing Rights and Evictions (COHRE); the Inter-American Platform on Human Rights and Development; and the Social Rights Advocacy Centre (Canada).

### **Participation in the drafting of CEDAW's General Recommendations**

As early as 1999, IWRAP Asia Pacific contributed to the drafting of CEDAW's General Recommendations (GR). These are an important part of the CEDAW Committee's work because GRs serve as guidance for State Parties to fulfil their obligations under CEDAW with regard to specific aspects of the Convention. The first GR IWRAP Asia Pacific contributed to was GR 24 on Women and Health. In 2004, we made a major contribution to the GR 25 on Temporary Special Measures (Article 4.1 of CEDAW). IWRAP Asia Pacific organised a one-day seminar in New York, on the topic of bringing together activists and the CEDAW Committee members. IWRAP Asia Pacific and Columbia University Human Rights Institute made other significant contributions to the preparation of the General Recommendation on Article 4.1. In particular, two background papers were prepared and shared with the CEDAW Committee in 2001 and 2002:<sup>152</sup> the first was a working paper on 'The Intersection of Race, Ethnicity And Gender In The Context Of Temporary Special Measures' (2001), prepared by the Human Rights Institute (Columbia University Law School), International Women's Rights Action Watch Asia Pacific, and the Race, Ethnicity and Gender Justice Project in the Americas (American University) with comments from the Women's Human Rights Caucus to the UN World Conference Against Racism. The second paper was titled 'Towards the Progressive Interpretation of Temporary Special Measures Under the CEDAW Convention' (2002).

In 2007, IWRAP Asia Pacific conducted an expert group meeting that contributed technical inputs to the GR 28 on Core Obligations of the State under Article 2 of CEDAW. This contribution was very substantive because the meeting brought together legal experts from different parts of the world, two members of the CEDAW Committee, and activists working on CEDAW. The meeting was coordinated by Andrew Byrnes, Professor of Law from the University of New South Wales, Australia. The group interpreted the obligations of the State in concrete terms based on the framework of Article 2 of CEDAW. This GR was adopted by the Committee in 2010.

Other GRs that IWRAP Asia Pacific contributed to in no small measure are GR 30 on Women in Conflict Prevention, and Conflict and Post Conflict Situations, adopted in 2013; GR 33 on Women's Access to Justice, adopted in 2015; and GR 35 which updated the earlier GR 19 on Violence against Women, adopted in 2017. To this day, IWRAP Asia Pacific's continues to contribute to the creation of GRs.

While IWRAP Asia Pacific's contributions to the GRs are substantive and purposeful, we acknowledge the extensive efforts of the CEDAW Committee in bringing to the GRs their comprehensive experience in assessing the understanding State Parties may have of the scope of women's rights under CEDAW and of their corresponding obligations. The Committee also holds broad consultations with respective constituencies of women as rights holders to surface ground-level realities as input. As stated earlier, the GRs serve as important guidance for State Parties to understand and fulfil all of their obligations under CEDAW.

### **Enhancing the Effectiveness of UN Treaty Bodies: Participation in Annual Treaty Bodies Chairs Meeting and Reform of the Treaty Body System**

IWRAP Asia Pacific had been taking part in the annual treaty bodies chairpersons' meetings starting in 2003 with the second Inter-Committee Meeting of UN Human Rights Treaty Bodies. These meetings are organised by the Office of the UN High Commissioner for Human Rights (OHCHR) and held in Geneva, Switzerland. They seek to contribute to exchanges between treaty bodies regarding strategies for follow up at the national level, of recommendations of Committees. As these meetings are of great strategic importance, IWRAP Asia Pacific considered it important to participate in these meetings. One important item on the agenda was the Strengthening of the Treaty Bodies System.<sup>153</sup>

The main objective of the Treaty Body Strengthening process was to simplify the treaty body system in order to decrease the burden on State Parties, and to harmonise the work of existing treaty bodies. For example, it was proposed that States should submit a core document with information that applied to all treaty mandates and supplement it with treaty specific reports in order to reduce their overall reporting duties. One of the reasons why IWRAP Asia Pacific participated in and was monitoring this process from 2003 onwards was because the issues that were being addressed had important implications for NGOs working with treaty bodies. IWRAP Asia Pacific aimed to bring voices of NGOs in the South into UN human rights processes and to ensure that women's rights are central to the processes.

At each meeting IWRAP Asia Pacific submitted oral interventions and statements. IWRAP Asia Pacific's contribution and participation in these meetings has been crucial, ensuring that in the process of reform of the treaty system, the women's human rights dimension received serious consideration. IWRAP Asia Pacific circulated a gender critique of reforms to the reporting process, which was received with great interest.<sup>154</sup>

Some of the critical points identified and raised by IWRAP Asia Pacific at the treaty body strengthening meetings focused on:

- The potential role that the OHCHR could play when providing technical support to governments preparing initial or periodic reports to UN treaty bodies;
- The need to undertake ongoing capacity building, taking into consideration technical as well as political reasons for non-compliance with obligations of the State to implement the treaty and report on the progress made. This would be a means of ensuring States Parties develop a clearer understanding of their obligations under UN human rights treaty law;
- The obstacles and difficulties government officials and NGOs face when submitting information to treaty bodies (i.e., lack of clarity on the content of rights for women under CEDAW, lack of statistics and data, etc.); and
- Enhancing the effectiveness of the Treaty Bodies' Concluding Comments. These should emphasise the importance to strengthening and supporting processes led by NGOs and other members of the civil society.



*One of the reasons why IWRAP Asia Pacific participated in and was monitoring this process was because the issues that were being addressed had important implications for NGOs working with treaty bodies.*



Rea Chiongson of IWRAP Asia Pacific monitored the proceedings of the meetings as well as made verbal interventions on behalf of the organisation during the dialogue between representatives of the treaty bodies and NGOs. She critiqued the proposed draft guidelines and provided recommendations to strengthen the implementation of State obligation under human rights conventions. Some of the key points she raised were:

- In efforts towards coordination, harmonisation, and collaboration, there must be a conscious effort to ensure that the most advanced jurisprudence and recommendations are adopted, rather than rely on the least common denominator.
- Notwithstanding the advantages of the Expanded Core Document which was being proposed—including its potential to be useful by reaffirming that human rights are interdependent and indivisible, and that measures to promote and protect human rights in one treaty enhances the promotion and protection of human rights in another—treaty-specific concerns should still be noted.
- Clarity concerning 'congruent rights'<sup>155</sup> is required in ways that ensure non-marginalisation of women's rights, and the best standard of equality is being applied.

The concern for women was that women's human rights had expanded under CEDAW. For a continuation of progress, it had to be ensured that any reform to the current system retain this level of normative standards and expertise and adopt the most progressive standards and jurisprudence in the current system. It was especially critical that CEDAW's definition of substantive equality, non-discrimination, and State obligation was retained. The CEDAW Convention and Committee had created a specialised understanding of women's human rights, the obligation of the State to bring about the practical realisation of women's right to equality, the significance of indirect discrimination, and defining any act that had the effect of denying women the exercise of rights as discrimination regardless of intent, the primacy of temporary special measures, maternity as a social function the costs of which had to be borne by society, and the obligation of the State to transform social relations and the social environment. This type of specialised understanding had to be retained under any new system.

Between 2003-2005 IWRAP Asia Pacific also attended the Annual Meeting of Chairpersons of the UN Human Rights Treaty Bodies. Here, IWRAP Asia Pacific also played a critical role in sensitising the meetings towards the issue of NGO participation in the work of treaty bodies. While there had been informal relationships between the CEDAW Committee and NGOs since 1988, and shadow reports had been submitted by some groups, a clear mandate for a formal role for NGOs in the CEDAW review process was absent. The Global to Local programme of IWRAP Asia Pacific created a legitimate space for national NGOs to interact

with the Committee. In this context it is important to note that the first From Global to Local project (1997) was organised just at the time when the Committee and other human rights treaty bodies were starting to explore how they could establish a more clearly defined relationship with NGOs. The need for such a relationship had been reiterated at the sixth Meeting of Chairpersons of Human Rights Treaty Bodies in 1995, at which the Chairpersons stressed the central function of NGOs to provide reliable information necessary for the conduct of the activities of the treaty bodies. The Chairpersons recommended that the UN Secretariat facilitate the exchange of information between treaty bodies and NGOs (United Nations 1995, para. 23).<sup>156</sup> As a result of these developments, there was a decision by the CEDAW Committee "to invite the United Nations Secretariat to facilitate an informal meeting with non-governmental organisations outside the regular meeting time of the Committee" (Decision 16/II in CEDAW Report 199, 1) This decision was made in the same session for which the first From Global to Local project training was conducted.

Later, the Committee included specific mention of the role of NGOs in its revised Rules of Procedure adopted in January 2001, thus giving more legitimacy to the presence of NGOs at the review of States Parties' reports (CEDAW 2001, 86-115).<sup>157</sup> Although there were many other factors behind the creation of stronger NGO-treaty body relationships—such as recommendations from the UN World Conferences on strengthening the role of NGOs in human rights implementation, the From Global to Local programme contributed to creating a momentum for such a change in the relationship with the CEDAW Committee

(UNIFEM 2004).<sup>158</sup> Governments also started to explicitly acknowledge the roles played by NGOs in the implementation of UN treaty mechanisms. IWRAP Asia Pacific actively engaged in a process towards more systematised collaboration between treaty bodies.



*With this range of global activities IWRAP Asia Pacific had proved its capacity and the relevance of international human rights work being done by an organisation from the South.*



### Human Rights Commission

From 28-29 April 2003, representatives from IWRAP Asia Pacific attended the 59th session the Human Rights Commission. As the question of the OP-ICESCR began to gain momentum in 2003, the UN Commission on Human Rights had established an Open-Ended Working Group to discuss options for the elaboration of an OP-ICESCR. Of interest to IWRAP Asia Pacific were the discussions on Item 10 (Economic, social, and cultural rights) and Item 12 (Integration of the human rights of women and gender perspectives) and made two interventions.

With this range of global activities IWRAP Asia Pacific had proved its capacity and the relevance of international human rights work being done by an organisation from the South. *We had arrived as an international human rights organisation.* It had not been easy to get this recognition (see Chapter 12 on the Politics of Funding).

IWRAP Asia Pacific's overall approach has been concisely summarised by Anne Bayefsky.<sup>159</sup> She states,

IWRAP-Asia Pacific is a classic example of an NGO which moved from a theoretical set of treaty standards to a methodology for implementation at the national level. In so doing, it integrated a dynamic and symbiotic relationship to a treaty body (CEDAW). It began by identifying a gap in the treaty system, namely, the need to:

- mobilize women's groups at the national and regional level to improve accountability of governments in fulfilling treaty obligations
- improve the flow of information from the international level of legal standards to the local level (including monitoring and facilitating the implementation of the treaty locally)
- enable women to use the treaty to advance their interests.<sup>160</sup>

See Annexe 6 for the full statement on IWRAP Asia Pacific by Anne Bayefsky.

### The Evolution of Shanthi Post-2005/2006

Finally, I must mention my own evolution. In 2005 I made a major change and switched sides. I made myself available as a candidate to be elected as a CEDAW Committee member. The Malaysian government nominated me and campaigned successfully for my candidature. I served one term from 2005-2008. This changed my relationship with IWRAP Asia Pacific, requiring me to step down as Executive Director although I continued as a member

of the Board of Directors. Why did I switch sides? AWID<sup>161</sup> interviewed me as soon as I got elected and asked me: "What were the motives, personal and political, that moved you to participate in the election process for the CEDAW Committee?" This was my answer:

The CEDAW Committee sets and interprets standards for women's human rights using the framework of the CEDAW Convention with its emphasis on substantive equality. This is a critical function as it is the only UN organ mandated to do so. Having worked as an NGO promoting the human rights of women for more than 25 years, I felt that I would be able to bring the realities of women's lives to this function and would be able to provide a sharper analysis of the persistence of inequality and the kinds of interventions that need to be in place.

For the last 13 years in particular, I have been working directly with the CEDAW Convention. This has been done through the IWRAP Asia Pacific programme that I founded in 1993. Since 1997 I have been implementing a process called From Global to Local, through which women from developing countries have been able to participate in the CEDAW review process in New York. I therefore have considerable knowledge of how the CEDAW Committee works and how the review process works. I had the confidence that I could contribute to this process from the vantage point of this knowledge. I felt that I could now change sides and become an effective member of the CEDAW Committee and that my feminist perspectives would ensure my integrity in

promoting the human rights of women. By 2005 I had resigned as Executive Director although I remained as a member of the Board of Directors of IWRAP Asia Pacific.

Some of the direction I had given to the programme continued to be consolidated and strengthened after this, but new directions and thrusts were also planned, as can be seen in the Programme of Action below. It has been interesting to see the planned trajectory of the programme post 2005.

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### **IWRAP ASIA PACIFIC PROGRAMME OF ACTION (2006-2008)**

25 August 2006

IWRAP Asia Pacific notably seeks to develop new dimensions of work in order to face emerging global challenges, such as fundamentalism and the disappearance of rights. IWRAP Asia Pacific envisages to do this in the following ways:

- Analysis of globalisation, trade, and deregulation in relation to responsibility and accountability under international human rights law, in order to reinforce the claiming of women's human rights at all levels.
  - Expand existing work with other human rights treaties in ways that incorporates women's human rights perspectives.
  - Strengthen work on economic, social, and cultural rights.
  - Develop resources, knowledge, and methodologies in the contexts of disability rights and sexuality rights.
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# 7



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## What were the Factors that Facilitated the Growth of IWRAP Asia Pacific?

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*The constant wins kept us going and fed our souls in real time!*  
- Maria Herminia Graterol

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What contributed to the evolution of IWRAP Asia Pacific and positioned it as a leading organisation mobilising women's groups to draw accountability from their governments for the fulfillment of their international human rights obligations towards women? It was the collective identity of IWRAP Asia Pacific.

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### **RECIPE FOR IWRAP ASIA PACIFIC'S SUCCESS: DEDICATION, VISION, AND COMMITMENT**

As Andrew Byrnes pointed out at one meeting, it was the dedication, vision, and commitment of the people involved. He said, "Shanthi has been eminent but of course there have been many others who gave time, going without fees as they saw that IWRAP Asia Pacific was not merely a technocratic organisation but that it had a dedicated and political vision."<sup>162</sup>

The programme drew on the work of other intellectuals and academic communities. There was a strong resource pool of members who came from partner organisations as well as from the academic community. These individuals also served on technical and advisory groups for various strands of the work and were not merely detached one-off resource persons. They were invested in the programme, gave it their wisdom, and ensured continuity. They stepped in at moments when there was a shortage of staff and either took on short term consultancies to do this or did it gratis because it fed into their own advocacy or took it on out of sheer commitment to IWRAP Asia Pacific as they felt an ownership of the goals of IWRAP Asia Pacific. The programme never missed a beat even when there was a lapse of time in hiring staff. In my view it was this collective involvement, commitment, and contribution that strengthened the dynamism of the programme and gave IWRAP Asia Pacific a sense of collective identity.

I feel it is appropriate at this stage to name them even if some of them have been mentioned earlier. The persons who were members of the key resource and technical

advisory pool, even helping us shape the programme from the early stages and continuing, were Shireen Huq, Eleanor Conda, Andrew Byrnes, Savitri Goonesekere, and Madhu Mehra. Alda Facio of Costa Rica was a true companion and well-wisher for IWRAP Asia Pacific, helping us to develop the Amma training package and later pioneering with us on the Global to Local programme since 1997. In the early years of the Global to Local programme, Alda was the liaison person for IWRAP Asia Pacific with Latin American groups identifying participants and convincing them to attend the programme. Latin American groups had not heard about IWRAP Asia Pacific and we did not know the groups there except for CLADEM<sup>163</sup> through whom some participants were recruited. But by and large, the groups were skeptical about accepting an invitation from an unknown Asian organisation to go to the UN and speak about their governments. Alda vouched for us and for the credibility of the programme. A Nicaraguan participant confirmed this when she stated, “From the beginning of our work with IWRAP Asia Pacific, the presence of Alda in it was a guarantee for us to trust the Global to Local initiative and the first training that we had on CEDAW confirmed such trust.”<sup>164</sup>

Alda continued to be with IWRAP Asia Pacific for many years. Along with Ali Miller and Debra Leibowitz, two academics in New York, she helped develop the Global to Local programme and helped monitor its effectiveness for many years when the CEDAW review was held in New York. Throughout this time, they did not receive any remuneration. Debra provided a steady pool of students as interns for the Global to Local programme from Drew University in New York where she was a professor.

Others in the resource pool or helping us at varying times were Madhu Mehra and Tulika Srivastava, Geetha Ramasheshan, Geetha Devi, and SK Priya (India); Savitri Goonesekere (Sri Lanka); Andrew Byrnes and Dianne Otto (Australia); Martha Morgan, Carole Petersen, and Donna Janette Sullivan (USA); Sapana Pradhan Malla (Nepal); Deepika Udagama (Sri Lanka); and Clara Rita Padilla and Evelyn Uruswa (Philippines). All of those mentioned were lawyers—either academic, activist, or practising. Further, Roshmi Goswami, Shantha Mohan, Manisha Gupta, and Niti Saxena (India); Allison Agarwal (Australia); Sudarshana Gunawardane and the late Sunila Abeyesekera (Sri Lanka); Sabin Shrestha (Nepal); Ivy Josiah (Malaysia); and Nursyabani Katjasungkana (Indonesia)<sup>165</sup> all helped develop the programme and build capacity at various moments.<sup>166</sup>

Ruth Manorama, the President of the National Alliance of Women (NAWO)<sup>167</sup> of India, stands out. She was a mass mobiliser at a political and social level. She mobilised mass movements comprising vulnerable groups—the Dalits, tribals, slum dwellers, and the unorganised sector—helping them to demand their rights on the basis of equality and demanding social security support systems and a voice in policy formulation. Roshmi Goswami of North East Network (NEN) referred to this mobilising as “creating spaces for the advocacy of others.” Ruth organised the first Indian CEDAW shadow report in 1999, bringing together around 80 women’s groups from all parts of India. Indian IWRAP Asia Pacific partners like PLD, AALI, and NEN made important contributions to the shadow report. In this shadow report, space was created for a chapter on the rights of the Dalit women, and a chapter on women in

armed conflict. The last was written by Roshmi of NEN. Neither of these topics is specifically mentioned in CEDAW but are now routinely taken up by the Committee. In fact, there is a General Recommendation on Women in Armed Conflict #30. Ruth and NAWO created a ripple effect in India through several trainings on CEDAW, training of trainers, and training of lawyers.

In May 2005, the Indian government published its second periodic CEDAW report. NAWO considers this report to be much better than the first one. It is clear that the government has been sensitised by NAWO's sustained policy advocacy, and by the supporting role of Shantha Mohan of NIAS<sup>168</sup> and Geetha Devi<sup>169</sup> in the reporting process.

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*There has been a clear articulation of the goals of the organisation throughout and this is a question of focus which was extremely important in the early days when IWRAP Asia Pacific was the only one focusing on CEDAW.*

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I would be remiss if I did not make special mention of two of the senior programme staff at that time, Maria Herminia Graterol of Venezuela (2002-2005) and Rea Abada Chiongson of the Philippines (2003-2006). When they joined IWRAP Asia Pacific they had each just graduated with a Master's degree in Human Rights Law from Columbia University, New York. They came equipped with the latest scholarship in international human rights law. This, combined with the gender perspectives in the law, domestic and international, that IWRAP Asia Pacific

had become a repository of, and my own wisdom and experience made us a strong team, innovating and discovering methods of taking the women's human rights agenda forward. They could work independently and at the same time all three of us had the space and trust to bounce ideas off one another. In my view, their tenure at IWRAP Asia Pacific was a powerful moment for all of us! I think the environment at that time was also ripe for changes for the positive and as Maria says, "The constant wins kept us going and fed our souls in real time!" Maria and Rea also contributed to the growth of the other staff as they generously mentored them.

### **The Clarity of Focus and Adaptability to Context**

Secondly, as the Netherlands Evaluation of 2005<sup>170</sup> and others have pointed out, there has been a clear articulation of the goals of the organisation throughout and this is a question of focus which was extremely important in the early days when IWRAP Asia Pacific was the only one focusing on CEDAW. The third point would be the adaptability of IWRAP Asia Pacific, the constant or regular introspection to say: how is the scene changing? How do we need to adapt not just in relation to CEDAW but into a context of a broader political and legal human rights environment? Next is a very strong commitment to substantive political, social, and increasingly legal content. As Andrew Byrnes notes, linking all these things together was the important work that IWRAP has increasingly done on the development of knowledge, the development of jurisprudence, challenging, and feeding into all kinds of processes.<sup>171</sup>

■

**The partnership with IWRAP Asia Pacific enables the organisations to work with women's rights at different levels—grassroots, state/national and regional—and to connect and conceptualise the issues.**

- Evaluation by the Netherlands, 2006

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**The Strength of Partnership**

The findings of the government of the Netherlands in its Evaluation<sup>172</sup> of the work of IWRAP Asia Pacific in 2005 also highlighted that IWRAP Asia Pacific had established strong partnerships with great care from the beginning. The evaluation states:

IWRAP Asia Pacific had identified groups and individuals in the region as prospective participants for the first training activities. From these initial contacts several valuable partnerships emerged. High professional standards, a clear commitment to women's human rights and capacity to mobilise critical mass have been guiding criteria in the selection of partners—be it individual lawyers, grassroots organisations or national networks. At the start, they “hand-picked” an interesting mix of bright young lawyers, experienced women's rights advocates, academics, grassroots groups and national networks, and brought them together on one platform or into specific programmes. By 1997, this led to a close partnership with some fifteen groups from Bangladesh, India, Nepal, Pakistan, and Sri Lanka, which it calls the South Asian core group. There is also a South East Asian core group of nine partners.<sup>173</sup>

The work of these partners carried the agenda of IWRAP Asia Pacific forward. The Evaluation also indicated that the leaders of these partnership groups from South Asia<sup>174</sup> were extremely articulate during the evaluation, about the fact that IWRAP Asia Pacific and the CEDAW framework had helped them to grow personally as leaders, thereby strengthening their organisations. According to the Evaluation, Indian IWRAP Asia Pacific partners which were involved in the Facilitation Project<sup>175</sup> (AALI, NEN, and NIAS) could apply the CEDAW concepts in various specific thematic contexts and ongoing capacity-building work. Not only were they able to apply the CEDAW framework in a range of contexts, they were also increasingly able to ‘give back’ their own practical experience to the IWRAP Asia Pacific Network. A group of key resource persons/trainers on CEDAW emerged from the Indian IWRAP partners; they acted as resource persons/trainers in regional and international fora.

Two of the Indian partners were networks themselves: NAWO and NEN. As a big national network of women's organisations, NAWO provides a forum to address the rights of women, Dalits, tribals, and other disadvantaged sections. NAWO's key strength is its large constituency. NAWO has a national mobilising capacity, and it has a strong political voice. The Netherlands evaluation was of the view that NAWO had done a commendable job in capacity building of its constituencies, at regional and national level.

As a regional network within India, NEN had been partnering with many other civil society organisations from 1995 and became a focal point in the northeast region for gender

training and for promoting women's rights within the framework of CEDAW.

Between 1996-2004, NAWO made concerted efforts to strengthen capacity for policy advocacy focusing on training on CEDAW, and the use of the law for the promotion of women's rights. The trainings and consultations were regional (Eastern, Southern, and Northern India) and state-level activities, all together five regionals and 11 state levels. Participants' backgrounds were wide-ranging for all these activities: activists, lawyers, legislators, women's groups, government officers, academics, the police, and Chairs of State Women's Commissions. Two of the activities were post Beijing consultations, that aimed to introduce CEDAW implementation into Beijing follow up. Participants comprised large constituencies of women from South Indian States and one comprising around 400 women representing all States of India, respectively. IWRAP Asia Pacific provided technical assistance to these activities in the form of resource materials or guidance, and at times resource persons.

Other Indian IWRAP Asia Pacific partners also made serious efforts to build capacity for policy advocacy: MASUM notably in Maharashtra, AALI in UP, PLD in Orissa, and with partners throughout India. All of this had a 'ripple effect' and promoted CEDAW awareness and implementation of its principle of equality which was IWRAP Asia Pacific's primary objective.

In Uttar Pradesh, one of India's most populous<sup>176</sup> and more patriarchal and feudal states, AALI played an important role in

anchoring the emerging state-level women's network, Women's Association for Mobilisation and Action (WAMA) in Uttar Pradesh.<sup>177</sup> A good example of PLD's regional networking is the partnership it established in 1997 with the Human Rights Network Orissa (HURINEO) with 12 organisations. The network focuses on common human rights concerns in Orissa that has been witness to starvation deaths, displacement of tribes for private profits, and rising communalism.

MASUM runs an extensive integrated community health programme with a clear rights-based perspective.<sup>178</sup> MASUM's representative, Manisha Gupte reported during IWRAP Asia Pacific's 2005 Global Consultation on the Optional Protocol to CEDAW of how grassroots women linked their daily activities back to CEDAW. She said:

We have done training and capacity building for our organisation as well as for others in Maharashtra State and in India and also training of trainers on CEDAW. We found that once women understand especially the first founding articles of the CEDAW, women absolutely accept those. And in the beginning the questions are asked as to how this affects my life. But we've found that when they go back and when, the right to healthcare campaign takes place, for example, when they go to the primary health centre, they talked of the obligation of fulfilment of rights. When they go to the courts, they talk of protection of rights as well as by the State and non-State actors. And when they're talking to mothers of adolescent girls, they're talking of discrimination.

And so therefore they're using these articles on a very daily basis. When they're dealing with government officials, what happens is that for a moment the government officials are startled with all this language, and it gives an advantage to the community-based groups to edge forward. Because people understand that if they are using this language, they know something and there is somebody behind them. And I think that that helps in community work.<sup>179</sup>



*What Indian IWRAP Asia Pacific partners achieve is not just ad hoc support and service provisioning in terms of 'helping women', but ripple effects through processes where critical systemic changes are initiated towards achieving goals of gender equality. These cannot be easily captured in an evaluation report.*

- Evaluation by the Netherlands, 2006



NIAS occupies its own 'niche' in the group of Indian IWRAP Asia Pacific partners. Its position as an independent research institution helps it to do *advocacy within the government system*, thus creating greater legitimacy for the CEDAW framework and greater familiarity of government institutions with the framework. The government of India requested NIAS to advise in the preparatory process towards the second and third government report on the status of Indian women for CEDAW. NIAS conducted action research on violence against women in six districts in Karnataka. A result was the formation of local-level committees

that became known as women courts. Village leaders as well as representatives of law enforcement agencies were part of these committees (at least 50 per cent women).

Several IWRAP Asia Pacific partners have done in-depth research and documentation work which enabled them to bring out the systemic nature of violence against women. All this research work culminated in publications, and it served as input for consultations, public hearings, campaigns, and other forms of advocacy. So, the impact of the work of IWRAP Asia Pacific created ripple effects. According to the 2006 Evaluation by the Netherlands:

What Indian IWRAP Asia Pacific partners achieve is not just *ad hoc* support and service provisioning in terms of 'helping women', but ripple effects through processes where critical systemic changes are initiated towards achieving goals of gender equality. These cannot be easily captured in an evaluation report.<sup>180</sup>

The Netherlands evaluation also highlighted that the major relevance of IWRAP Asia Pacific is located in its unambiguous focus on making the CEDAW and other related Human Rights Conventions work:

The conceptual and strategic leadership of IWRAP Asia Pacific is highly valued by its partners and has had a visible impact on their own advocacy work. These organisations themselves do cutting edge work with grass roots groups and national groups which feeds back into IWRAP Asia Pacific thinking and praxis.

Individuals and organisations felt they were part of IWRAP Asia Pacific and were always willing to give it support. Shireen Huq explained this phenomenon at one meeting:

My recollection of the growth and the trajectory of IWRAP Asia Pacific, at least in South Asia is that many people were emerging and finding a space for leadership when they came in contact with the work that was happening through IWRAP Asia Pacific. It sort of defined a path for many of them which was free of one issue or the other, so it gave a sort of a broad platform of equality on which to look at various and multiple things without having to sectoralise one's work.<sup>181</sup>

She further commented,

I see that amongst the lawyers that we trained in South Asia in the early years, that there was an instant connection and there was time then where everyone was finding their feet and had lots of energy which they could give to IWRAP Asia Pacific, draw from there and operate nationally. But it really gave a broader platform because much of the activism within the country is sectoralised, so you are either working on violence against women or you are working on political participation, but the work with IWRAP Asia Pacific gave a very free space to do cross-section work.<sup>182</sup>

What was also very important was encouraging leadership, giving pre-eminence and prominence to women's groups. As an international organisation, IWRAP Asia Pacific did not profile itself at the local level

in a way that diminished the profile of local organisations. We consciously kept doing that. The local partner had as much say in how things go. It was a true partnership that we had. That was the other aspect of our feminism: being catalytic rather than profiling ourselves as an international feminist organisation.

### **Funding Support**

Finally, it was also the external support in the form of finance. There were the femocrats in some of the international organisations who were committed to make these resources available to IWRAP Asia Pacific.

The government of the Netherlands deserves special mention. In 1993, it took a leap of faith in providing initial funds. IWRAP Asia Pacific could take off thanks to a significant grant made in 1993 by DSI-VR that provided financial support from its Women's Fund, initially for a period of three years.

This helped IWRAP Asia Pacific to establish itself as an organisation, and to initiate activities and programmes at the national and international level. In 1996, the programme began to build up momentum. DSI/VR provided financial support for a second and a third period (1995-1997 and 1998-2002; funding was Dfl 321.000 and Dfl 616.000 respectively).<sup>183</sup> In 2003 IWRAP Asia Pacific obtained core funding through the TMF<sup>184</sup> channel amounting to Euro 799,554 for the period 2003-2005. IWRAP Asia Pacific received core funding only 11 years after its inception and soon after from FORD Foundation; after that time the Women's Fund of the Netherlands government had been abolished.



The Netherlands did a first evaluation of the programme in 1996<sup>185</sup> and provided funds consistently through 2005. They were the most dependable source of funds during that period. Without the assurance of the Netherlands' three-year grants in the early years, it would have been difficult to survive. I also wish to mention FORD Foundation New York and Delhi. They also provided a core institutional grant in 2004. Other donors were Danish International Development Agency (Danida), United Nations Development Programme (UNDP), United Nations Development Fund for Women (UNIFEM) New York, UNIFEM Southeast Asia, and UNIFEM South Asia (now UN Women), Canadian International Development Agency (CIDA), Southeast Asia Gender Equality Fund, the Tides Foundation, and Rights and Democracy Canada. They provided funds for specific projects.

I wish to give special recognition to the New York Office of the then UNIFEM and the femocrats there who supported and identified with IWRAP Asia Pacific and with the Global to Local programme in 1997. This was such a unique and unusual programme. For the first time women from the national level were being brought to the UN to draw accountability from their governments at an international level. There was skepticism from some donors about this. But Roxanna Carrillo of UNIFEM listened to the idea when I explained it and unhesitatingly grasped the political nature of this idea and granted the funds for a pilot programme. Subsequently, Ilana Landsberg Lewis and Lee Waldorf provided a level of continuity of funds for the programme and were part of a management working team to steer the programme for many years.

The funding pattern has changed over time, but it was always a factor of: do we do what the donors want, or do we do what we want to do? There was not a lot that donors insisted that we do. For example, when we first started the Global to Local programme (1997) and wanted to bring women into the CEDAW review process, there was some objection from European donors about Asian women travelling to New York doing international advocacy. I negotiated with them, pointing out to the need for Asian women to participate in international advocacy and they accepted it (see Chapter 12).

In the early years a donor questioned why I had budgeted for a fax machine. I would not be sending faxes anywhere as Asian women's groups would not have fax machines. I replied I would be able to send proposals out by fax to donors. The fax machine was approved. IWRAP Asia Pacific owes a debt of gratitude to all the donors who supported it.



*As an international organisation, IWRAP Asia Pacific did not profile itself at the local level in a way that diminished the profile of local organisations. We consciously kept doing that. The local partner had as much say in how things go. It was a true partnership that we had.*

*That was the other aspect of our feminism: being catalytic rather than profiling ourselves as an international feminist organisation.*





Global consultation on the ratification and use of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, organised by IWRAW Asia Pacific. Kuala Lumpur, Malaysia. 27-30 August, 2005.

# 8



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## Memorable Trainings

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*After the late training hours, the Mongolian trainees would gather together almost daily and stay up even later, having fun playing music and dancing. But to my surprise they would all arrive in the morning at the training room on time, never even a minute late.*

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Among the numerous trainings IRAW Asia Pacific has carried out, these five—held in Dhulikel, Nepal; Ulaanbaatar, Mongolia; Beijing, China; and Shillong and Lucknow, India—stand out.

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### **THE FIRST TRAINING OF TRAINERS (TOT) IN DHULIKEL, NEPAL<sup>186</sup>**

The earliest Training of Trainers was an eight-day TOT held from 27 October to 3 November 1998 in Dhulikel, Nepal, assisted by Forum for Women, Law and Development (FWLD) Nepal. This was an unforgettable training as the venue was a small town nestled in the foothills of the Himalayas. It was the most awe-inspiring sight to wake up to in the mornings and gaze on the snow-covered peaks, glistening pink and golden in the light of the dawn sunrise. It set the mood for the rest of the day. The camaraderie that prevailed among the participants and their joint interaction and sharing of ideas and responses created a learning lab that cannot be forgotten.

Four men and 20 women from eight countries, including the two programme officers from IRAW Asia Pacific, attended the workshop. Participants represented the following NGOs:

- Bangladesh Mahila Parishad
- Naripokkho, Bangladesh
- North East Network, India
- International Women Rights Action Watch Asia Pacific
- Women's Aid Organisation, Malaysia
- National CEDAW Watch Network, Mongolia
- Legal Aid and Consultancy, Nepal
- AURAT Foundation, Pakistan
- Women's Legal Bureau, Philippines
- Global Alliance Against Trafficking in Women (GAATW)
- Women's Constitution Network, Thailand

The broad objectives of the training were to develop a pool of trainers who would create an awareness in women:

- about their rights on the basis of equality between women and men, and on the basis of the principle of non-discrimination as guaranteed by the Convention; and
- about the need to mobilise women to present themselves as a political constituency whose demands for equal citizenship and rights cannot be ignored by any government which claims to be liberal and democratic.

The training was conducted in two parts. The first part exposed all participants to common core contents dealing with concepts and principles underpinning CEDAW, the dynamics of the legal process and international human rights instruments and standards. The second part dealt with maximising the capability and potential of non-lawyers and lawyers alike for activism in law and policy reform.

Facilitators were Shanthi Dairiam, Malaysia, Director of IWRAP Asia Pacific; Eleanor Conda, Philippines, Advisory Committee Member of IWRAP Asia Pacific; Madhu Mehra, India, Consultant from IWRAP Asia Pacific; and Shireen Huq, Bangladesh, Advisory Committee Member of IWRAP Asia Pacific.

### Process and Accomplishments

We knew we were on the right track when we noted the enthusiastic reception that the training content and methodology received from participants, who were seasoned activists from the countries of Asia Pacific.

Participants were exposed to a wide range of relevant concepts, subject matter, frameworks for analysis, and training methodology.

The participatory methodology used, case studies, brainstorming sessions, process sessions, and sharing of experiences was helpful in getting varied perspectives and in internalising the lessons learnt. There was emphasis on creating clarity on the concepts and skills in transmitting the concepts. Each session was followed by a clarification session and a reinforcement of communications. Participants indicated their capability and interests in specialising in selected topics, thus achieving IWRAP Asia Pacific's objective of expanding its resource pool of trainers.

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**The first regional training in Dhulikel, Nepal in 1998 was illuminating not only because we had exceptional trainers like Shanthi Dairiam, Shireen Huq, Madhu Mehra, and Eleanor Conda, but we were in a learning lab with activists from all over Asia Pacific who each brought to the table their training skills and grounded experience in unpacking discrimination. This opportunity gave me a solid grounding in feminism and activism. Understanding the sameness, protectionist, and corrective approaches to equality to address discrimination was especially insightful. Learning to argue why a protectionist approach is shortsighted and not beneficial to women in the long run gave me the confidence to convince State authorities to reform their welfare-like approach to address women's issues.**

- Ivy Josiah, Executive Director, Women's Aid Organisation, Malaysia

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The use of the case studies during workshop exercises gave the context in which to apply a problem and was therefore easier to understand. Case studies were exhaustive and very challenging. The use of case studies and process sessions made it more accessible to the 'quiet' ones to get involved and helped facilitate the learning process by changing the mode/mood of interaction within the group. For example, groupwork allowed the group to look at CEDAW more intimately, study any article, and explore the rights measures policies, etc. that can come out of it in context.

The process of stimulating the thinking of participants and learning from their experience and context had been an ongoing practice for some time in IWRAP Asia Pacific. The Dhulikel TOT training was no exception. It functioned as an excellent learning lab, as Ivy Josiah, a Malaysian activist, called it (see highlight in previous page). Participants and resource persons exchanged experiences of ground-level reality in unpacking discrimination. In this way we helped internalise the fact that achieving equality is not just through technically perfect legal and policy measures, but that creating the conditions for social transformation was indispensable. The outputs and conclusions from this TOT made a significant contribution to the improvement of the Amma Manual.



*The training also facilitated the participants to produce certain outputs by providing them with the relevant theory, concepts, and frameworks for producing the outputs. This necessitated the long hours and having the participants in residence.*



### **TRAINING OF TRAINERS IN MONGOLIA FOR THE NATIONAL NETWORK ON CEDAW MONITORING**

Another memorable Training of Trainers was the one held at Ikh Tenger, Ulaanbaatar, Mongolia from 11 to 15 September 1998. The total number of participants was 30 women from the National Network on CEDAW Monitoring from the city and province level. They were from the following organisations:

- Women's Social Progress
- Mongolian Women's Association
- UBCT Women's Organization
- Liberal Women's Brain Pool (LEOS)
- Women Lawyers' Association
- Center for Women Against Violence
- Democratic Social Women's Organization
- Women's Research and Information Center
- Rural Development Fund for Women
- Association of Women for Justice

One of the main intentions of the training was to make plans for the conduct of training of grassroots women. The training was very intensive, and sessions went on until 11 PM. The training also facilitated the participants to produce certain outputs by providing them with the relevant theory, concepts, and frameworks for producing the outputs. This necessitated the long hours and having the participants in residence.

An unexpected output at this training, due to the needs expressed by participants, was the development of outlines for training for five target groups and not just for rural women as originally planned. Instead, outlines for training were developed for the following groups: rural women, women activists, local authorities, the police, and the media.

### Follow-up

1. It was resolved that the participants would form a training network and would consciously bring in new members to sustain the network.
2. The participants identified themselves as resource persons specialising in certain topics and divided themselves into groups responsible for each of the five target groups for which training outlines had been developed. Each group selected a lead person who would coordinate the training for that target group.
3. Ms Zanaa Jurmed of the CEDAW Monitoring Network would be overall coordinator of the training network.
4. The priority target group for the conduct of training on women's rights would be rural women.
5. A meeting of the group leaders would be called by Ms Zanaa Jurmed in one week's time to make plans for refining the training outlines, developing the procedures for conducting each topic/session, and for the preparation of the materials. At this meeting, a time would also be set for conducting the training for rural women and plans would be made for regular meetings of the training network to exchange ideas and experience and to update their knowledge.

The quality of the administrative support provided by Ms Zanaa Jurmed of the Liberal Women's Brain Pool (LEOS) and the excellent interpretation provided by Mrs Haliun Dalantai was highly appreciated.



*The time-consuming case study groupwork would go late into the night. They took this work seriously as if they were resolving real-life situations.*



### An Interesting Observation about the Mongolian Trainees

They worked hard and played hard. The time-consuming case study groupwork would go late into the night. They took this work seriously as if they were resolving real-life situations. They would not stop until they had comprehensive answers despite my asking them to cease work when it got really late. They would say to me, "You set us this exercise and now you do not wish to see us complete the work and check our answers." So, we would all stay on until every group had finished their work to their satisfaction and reported. I would speculate to myself, "This disciplined attitude to completing their work must be the consequence of the Soviet influence that was part of Mongolian history until the late eighties." The Mongolian People's Republic was a unitary sovereign socialist state which existed between 1921 and 1992. After the late training hours, they would gather together almost daily and stay up even later, having fun playing music and dancing. But to my surprise they would all arrive in the morning at the training room on time, never even a minute late, fully made up and fashionably dressed wearing knee-high boots.

IWRAW Asia Pacific was greatly impressed by the commitment, enthusiasm, and capacity for concentration and hard work displayed by the participants.

## TRAINING FOR THE ALL-CHINA WOMEN'S FEDERATION<sup>187</sup>

The three-day orientation/training on CEDAW was conducted for the All-China Women's Federation (ACWF) on 16-18 December 1998 at the Catic Plaza Hotel, Beijing, China. It gave us insights into the strengths and weaknesses of the legal system in China as it pertained to women's rights. IRAW Asia Pacific had not done any work, CEDAW-related or otherwise, in China. IRAW Asia Pacific was invited by the All-China Women's Federation to conduct the training as China was going to be reviewed by the CEDAW Committee on its third and fourth periodic report in early 1999, and they wanted to be more prepared.

### Background

It is a fact that despite all the drawbacks of the high level of State regulation that China represents, it has the distinction of having accepted the premise of equality and non-discrimination long before any other member State of the United Nations. However, it cannot be stated that such an action has resulted in the adequate protection or fulfilment of women's rights. Illiteracy, discrimination in employment, domestic violence, trafficking in women and girls, the unfair impact of population control policies on women and girls, and disparities between the status of rural and urban women were all issues that were still of concern. While the State has put in place extensive legislation to protect the rights of women, it lacked the teeth for enforcement, and prevailing ideology that stereotyped women and men was a serious barrier. At the macro level, the challenge of the economic transition and

the massive population posed enormous difficulties for the State.<sup>188</sup>

To better understand the complexities within China so that IRAW Asia Pacific could collaborate appropriately with women in China, a social investigation visit to China was conducted in July 1997.<sup>189</sup> The trip confirmed that without an official or 'semi-official' partner organisation in China, it would be next to impossible to set up a programme there. Although the All-China Women's Federation has many limitations as an 'official' body run primarily by professional staff, it has many advantages and strengths. It does act as the official channel to represent the voices of rural and urban women from grassroots level upwards in the National People's Congress as well as in other national policy-making fora. It has a nationwide structure that connects nearly 60,000 federations at all levels. ACWF has the official mandate to work for equality and women's advancement. ACWF therefore can provide a strategic entry point to ensure that the discussion on rights and equality in the context of CEDAW gets out of Beijing and into the provinces.

During the Social Investigation Visit, in response to the question of the relevance of CEDAW in discussions on equality, given the existence of the Women's Law,<sup>190</sup> several persons expressed the opinion that there was not enough awareness about the social and cultural implications of the Women's Law. Second, that there had not been enough public discussion during the drafting of the Women's Law. If CEDAW could provide an entry point to generate public discussion on the social and cultural aspects of gender inequality, it could mobilise activism



on rights issues. Accordingly, one of the recommendations of the Social Investigation Visit was to conduct a substantive orientation on CEDAW involving the ACWF members and others as an entry point for further work in China.

### The Orientation

Seventy-nine women participated. The majority of the participants were from the various provinces and headquarters of the All-China Women's Federation, while the rest were faculty and students from the Women's College, faculty from the Centre for Legal Studies and Services, Beijing University, and the media.

This was a collaborative activity between IWRAW Asia Pacific and the All-China Women's Federation<sup>191</sup> funded by the FORD Foundation.

Although China had ratified CEDAW in 1981, and its third and fourth periodic report and Hong Kong's first report were due in January 1999, this was the first time that an orientation on CEDAW was held in China. The timing of the orientation was very productive as it was held on the eve of the review of the reports of China and Hong Kong by the CEDAW Committee.<sup>192</sup> This presented an opportunity to familiarise a wide range of women from ACWF with the report of China and to get them to reflect on the contents.

It also provided an opportunity for them to get acquainted with the processes that had taken place in Hong Kong through the efforts of government and non-governmental organisations in the preparation of Hong Kong's report. The participation of Andrew

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**The ACWF was not used to participatory training processes that required them to give their views. There was some discomfort with this process that we adopted for the training. They were more used to lecture-type methodology. In the beginning, whenever a point of discussion was raised by me, asking, for example, their views on the effectiveness of the law in the country etc., one senior member of the ACWF kept repeating, "We would like to assure the member of the international community that matters are under control," or something to that effect. At one point I interrupted the speaker and said, "Please, I am not a member of 'the international community'. I am your neighbour from Malaysia." That broke the ice. I was no longer seen as that remote international entity with whom they had to create a good impression about China, but someone they could relate to and be frank with.**

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Byrnes, Professor of law, University of Hong Kong, as one of the resource persons, gave credibility to the training, owing to his familiarity with the processes of the CEDAW report preparations in Hong Kong.

### What was Achieved

Participants benefited from learning about the concepts of substantive equality, and direct and indirect discrimination. The understanding of the concepts of equality and discrimination had been hitherto confined to the traditional notions of formal equality and discrimination that was overt in nature, while non-discrimination was equated with neutral treatment. The exposure participants received at the orientation provided them with the tools to interpret State obligation

under CEDAW differently, an interpretation that places an obligation on the State for the practical realisation of women's rights. As one of the participants stated, "At this training orientation I have learnt to look at my rights from another perspective."

The women brainstormed in groups on the role of public institutions in facilitating the enjoyment of rights by women, and on strategies for legal reform and building capacity of women to claim rights. They agreed that public institutions have a responsibility to create a climate in which people will have the confidence and capacity to assert their claims to rights. Suggestions were made for strengthening existing State interventions, new ideas were also generated and barriers to women's advancement were discussed.

There was much participation and while there was not always an agreement, it was also clear to them that though the State had legislated extensively to protect women's rights, flaws in the procedures for implementation of the law denied the benefits of the law to women. They acknowledged that the gap between law and reality was 'big'. It was strongly felt that the implementation of laws pertaining to women had to be more rigorously monitored and that the State had a duty to enforce crime prevention. One of them stated, "The most important thing we learnt is not to wait for the government to act but we must push for laws or policies to be adopted. I hope that in China in the future, the implementation of the law will also happen."

They realised that a culture and tradition that positioned women as inferior to men was strongly entrenched in society and in various

institutions, and undermined attempts to bring women into the mainstream of national development. Most problems lay in the area of Article 5 of CEDAW, which are custom, tradition, and the stereotyping of women as inferior to men. One of them stated, "IT IS AN UNSEEN WAR. We have to evaluate what the problems are and be more vigilant."

It was pointed out that the whole society must learn about the Women's Law of 1992, and not the Women's Federation alone. The legal system itself should provide legal aid and counselling for women. It was also proposed that there should be advocacy for an acknowledgement of women's contribution to social development and human civilisation. Women have a role in pushing the society forward and women's contribution historically should be publicised to raise the awareness of society.

The most critical problem is the inability of women to claim their rights. Women's competence and confidence is important. They should be educated first. The key strategy is to raise women's awareness about their rights. This has to be done in different contexts and the differences between the urban and rural sectors and the more developed and less developed regions have to be considered.

This orientation/training, held just prior to the review of China's report, created a climate in which the ACWF was motivated to sharpen their skills in order to strengthen the implementation of CEDAW. They had acquired a clearer understanding of equality and discrimination, and decided to follow up on the recommendations that would be given by the CEDAW Committee upon reviewing China's report in January 1999.

### **WORKSHOP TO ADDRESS VIOLATIONS OF WOMEN IN SITUATIONS OF ARMED CONFLICT, INDIA<sup>193</sup>**

A five-day workshop on 18-22 November 1997 was held in Shillong, India.<sup>194</sup> This workshop was a collaboration between IRAW Asia Pacific and the North East Network (NEN) led by Roshmi Goswami.<sup>195</sup> Contextualising the significance of CEDAW in situations of armed conflict was a new area for IRAW Asia Pacific. This workshop was path-breaking in unravelling a holistic context for the situation of women in armed conflict. The late Sunila Abeyasekera of Sri Lanka and I facilitated the workshop. The northeastern region of India poses particular difficulties for advocacy on women's rights as there has been an ongoing armed insurgency movement there demanding political autonomy for the region. Women from the region face the dilemma generated by the conflict between their struggle for equal rights, and the need to maintain cohesion within their communities in the face of the larger political struggle for political autonomy. There was a great deal of human rights activism in this region as a consequence of violations of the human rights of civilians by both the armed forces and insurgents. But this activism did not have a women's rights perspective.

The methodology used by the workshop was to have two levels of discussion. The first two days were spent creating clarity among the women's groups in the region, and the next three days were spent in a dialogue between the women's groups and mainstream human rights organisations. The dialogue session aimed to raise the awareness of the human rights organisations about the particularities of the violations of women's rights in situations

of armed conflict, as well as the violations of the women's right to equality by their families and community.

The reference point used by the workshop was to highlight the conceptual and political gains made for women through the various World Conferences in the 1990s. The next step was to examine the particular difficulties posed to the practical actualisation of these political gains while trying to maintain community cohesion in the context of the armed conflict in the region.

The workshop identified the need to surface the manifestations of the gendered features of the violations of fundamental freedoms and move the advocacy from taking into account violations that particularly affect women to including the struggle for equality. This was not achieved without intense negotiations and debate first with the women, as they had been conditioned to negate their own claims to equality because of the political hazards the community was facing. They saw their own struggle within the community as the struggle for the rights of individual women which would compromise the larger collective struggle of the community against the State.

Then the dialogue with the male human rights activists had to take place, and this was not without contention. They were the leaders of the people's struggle against the State. Many of them were highly educated and there were academics among them. But their attitude was that women's rights were not relevant to the political struggle and they felt that even violence against women was to be expected. It was, in today's parlance, 'collateral damage'. In the open debate, one of the academics, a law professor, openly justified the rape of women by

the Indian armed forces. He stated, "You must remember that the armed forces stationed in the northeast have not been with their wives for a long time, as this is not a family posting." He had to be challenged and this was a new experience for the male activists.

A significant topic that was dealt with was the multi-dimensional nature of the conflict: communities against the State and inter-community conflict on the basis of the diversity of ethnicities that were competing

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***Does the struggle for the rights of individual women compromise the larger collective struggle?***

**Since much of the conflict in the North East of India was linked to the resurgence of ethnic identities, patriarchal values were strongly reinforced. Women suffered violence perpetrated by both state and non-state actors. "If there were ethnic clashes it was the women and children who were rounded up and hacked by the rival group. If there were army operations, it was the women again who were targets. But despite everything women had to continue being the shelter providers, the keepers of faith and communities." In the private sphere of the family, cultural norms ruled while violence was used to control women. As long as their communities were engaged in a struggle for political autonomy, women were not allowed to claim socioeconomic rights such as an independent income, access to productive resources, health services, safety and security in the private or public sphere, and elimination of discriminatory cultural norms.**

- Taken from Roshmi Goswami. 'Rights, Compromises and Negotiations - Challenges to Securing Women's Human Rights in Armed Conflict Situations'. Unpublished.

for dominance. An argument that gained credence and convinced the women was that the integrity of the community would be compromised when half of the individual members of the community were weakened by the denial of their human rights. When the community gained political and economic autonomy and rights, maintaining that status could not be assured when half of its individuals were prone to exploitation and abuse. The collective strengths of the community were only as viable as the strength of its individuals, and basic needs of women would not be met without the recognition of the human rights of women. This workshop forced participants as women to go through a great deal of thought processes to accept the need for social change. Fifty-three people participated in the workshop. It was a turning point and laid the foundation for work on women's human rights in the northeast.

The evaluation showed that there was unanimous agreement that this was the first time that the women achieved conceptual clarity on several issues they had been hearing about and dealing with in their work.

### **Follow-up**

IRAW Asia Pacific included the North East Network (NEN) into its regional programme 'Facilitating the Fulfilment of State Obligation to Women's Equality'.<sup>196</sup> For this programme, IRAW Asia Pacific helped NEN develop a framework that helps surface the multiple effects of armed conflict on women other than violence. These include the exacerbation of poverty as a result of the loss of the destruction of livelihoods, social deprivation brought on by the loss of male support killed

or disappeared, and the denial of redress for violations of rights in the private sphere because of the responsibility placed on women to maintain family and community cohesiveness in the face of external threat to the integrity of the community.

NEN consolidated the learnings of this workshop by conducting several follow-up workshops at the district and state level on women and armed conflict in the northeast region. The social positioning of women as equals and the legitimacy of women's rights within the political struggle began to gain credence.

**WORKSHOP ON MUSLIM WOMEN'S SITUATION AND RIGHTS, ORGANISED BY OXFAM (INDIA) TRUST, LUCKNOW<sup>197</sup>**

IWRAW Asia Pacific including myself and Tulika Srivastava of India from AALI, a training consultant of IWRAW Asia Pacific, conceptualised and helped implement a three-day workshop on Muslim women's rights on 28-31 August 1997 in Lucknow. The question of the isolation of the Muslim minority community in general, and women in particular, from rights-related work has been central to the discussions by activists. This workshop was held to understand the issue of the rights of Muslim women in the context of increasing inter-communal tension and violence, and the resultant intra- as well as inter-community pressures faced by them. AALI also felt the need to assess the relevance of their work to the women of the minority community.

The workshop brought together 25 Muslim women of various backgrounds, activists, wdevelopment workers, lawyers, and

grassroots workers. The aim of the workshop was to enable Muslim women to articulate the issues relating to their rights and to develop strategies to address them. Since Muslim women in India belong to a minority group, the sensitivities and insecurities of their community pose an obstacle to an open discussion of their situation. It also denies legitimacy to Muslim women's demands for change in their situation as this is seen as undermining community cohesiveness which was considered to be politically inviolable by the community. Hence, any activism by Muslim women to promote their rights runs the risk of being construed as disloyalty to the community.

The workshop provided clarity on the concept of discrimination and its role in disadvantaging women even if the agents of discrimination came from within the community. In other words, discrimination is no less detrimental if it is perpetrated by the community towards its own members. The politicisation of religion and the isolation of the community within India presented a difficult context for mobilising Muslim women. The training set out to provide clarity on the situation of Muslim women through a series of case studies on inter- and intra-community tensions, presented by affected women. The workshop emphasised the critical importance of securing minimum standards of human rights for women, applicable to all women regardless of their diversity, and set out the arguments to legitimise this. Strategies for addressing Muslim women's rights and to minimise crisis or social fall-out that comes from taking on rights-related work within a minority community were also discussed.

There was as much self-reflection on women's demand for rights, led by individual participants narrating their stories, as there was analysis, theorising, and discussion of ideas for strategising led by resource persons. The self-reflection on the following page is briefly summarised and narrated in the first person to re-create the spirit of the discussion and its authenticity.

### Discussion on Strategising for Change

The first step has to be towards securing minimum standards of human rights for women, which cannot be undermined in any situation i.e., economic, political, religious, etc. None of these factors should affect it. No changing circumstances should be able to affect the rights once recognised. Further, women's claims have to be based on a framework which takes into account women of all religions. Otherwise, women would be suspicious of each other, and be afraid that a different and foreign culture is being imposed on them.

In countries, whenever women have come forward to interpret religion and the rights granted in that context, they have been refuted by fundamentalists on the ground that women are not scholars and do not have the required training for the task, and their work has been discredited. This is the reason that we should also look beyond our cultural and religious identities, and demand our human rights as women, without discrimination. This is not as simple as it appears, and there are challenges before us.

We must learn to expand our sources of values. Rights can be claimed, but if they are not rooted in the value system of the society, they

are not secure. So, an important agenda is to work towards changing the value system of the society. The aim should be to try to shift the sources of values and to expand it from religion and culture to include law, policy, international norms, and civil society as a whole. We must expose the contradiction within societies where there are different sources of values, for different things; economic policy is often not based on religion but is decided by global trends and neoliberalism. This is accepted. However, when it comes to women, then their rights are based on religious values. As this logic privileges men and is convenient, it remains unquestioned.

By expanding our sources of values and hence our claims, we contribute to the changing of culture. It is no longer static, but dynamic. It can thus be positive, and not bound within groups or historical periods. In this manner, we also ensure that we can come together as women and support each other. If we are not able to do so, then we will be defined by the group we belong to, as mothers, sisters, etc., and our aspirations and ambitions will be confined to answering the needs of the group. So, we need to form our own group, and together forge our identity as women, and base our claims on equality and non-discrimination.

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*We will need to redefine our own identity, and challenge the vehicular image constructed by the society. To build this ability to question and challenge is of course the biggest challenge before us as feminists and rising to it will determine the strength of the movement.*

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### SELF-REFLECTION

We must examine our demands for rights in the context of our multiple identities as women. The dilemma faced by most of us, and in this context, especially, Muslim women, is which identity should be the basis for our claims. If we examine our rights in the context of violence against women, which is as much inter-community as intra-community; we will have to bring forward our broader identity as women and make that our basis.

Communalism has serious repercussions for women. It is used as an excuse by both communities (the minority and the majority) to put additional controls on women as well as to violate them as symbols of the 'Other'. This does not happen only when there is actual rioting. It also happens before and after. In fact, the possibility of rioting is a standard reason/excuse for controlling women, and depriving them of their basic rights like mobility, and even dictating their dress code. However, none of these controls are a guarantee that women will not be violated. Often, these controls are to proclaim identity, which render women even more vulnerable.

We will need to redefine our own identity, and challenge the vehicular image constructed by the society. To build this ability to question and challenge is of course the biggest challenge before us as feminists and rising to it will determine the strength of the movement.

We will also have to examine the male perspective to understand their basis of

claims. Men claim rights over women, their bodies, their labour, and their time, etc. as men, and that is unchallenged. Our claims, even on ourselves, for instance our manner of dress, is immediately linked to our other identities, such as: marital status, class, caste, and especially, culture and community. Further, claiming our rights, on the basis of our community identity, limits our claims themselves. As Hindu women, we do not have the right to question religious dictates, and therefore, cannot claim right to paternal property. Similarly, as Muslim women, we will not be able to demand monogamous marriages as a right. This clearly illustrates that as women we will need to define and claim our rights as women, though our issues and the related complexities may be intrinsically different. They represent different experiences and identities. We are at the same time, women, Muslim, and Dalit. As a Dalit Muslim woman, her struggle is on many fronts, with the upper caste, the majority community, her own community, and within her family. Each struggle is equally critical for her survival. The male-female relationship within the family has an impact, outside as well, and the gender relationship in the public sphere has an impact within family and vice versa. If we accept secondary status in one arena, we will be faced with secondary status everywhere. The community and the society use women as vehicles for dissemination of socio-religious values at large. These values are essentially anti-women and we, as women, need to challenge this.

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To make this happen we need to engage in consensus building. However, there are obstacles to this. If women are to engage in consensus building within the community and the nation, there need to be certain conditions—women need a platform, and representation; access to institutions that have the power to bring about social transformation; education; income; good health; time, etc.

Negotiation for value change is done through collectivism, based on ethnicity, religion, caste, class, and gender. Women get fractured into one or the other and get caught in inter-group conflicts. Women need to rise above their multiple identities and negotiate as women. First there must be consensus among women about core rights. As a collective, women need to be strong and claims for rights have to be based on equality and non-discrimination.

Two strategies were discussed: involving men, and working with religious authorities.

There was a need to examine these strategies more closely to understand their possible impact. It is often assumed that religious authorities and men are oppressing women due to some oversight. It is also assumed that such oversight can be corrected by explaining our positions, demands, and pointing out the relevant religious text. We know from our experience that this is not true. Specific texts and other sources have been used to deny women rights, and it has not happened by an unfortunate mistake. These are conscious actions and positions, taken to control women, and to deny them autonomy. The resistance to women's rights is a part not only of most religions *per se*, but is of advantage to them, which they will defend even more strongly, if

we approach them directly. So, when making strategies for working with men and religious authorities, we need to take into account all that it will entail, as well as its usability.



*This would create a shift within communities towards acceptance of alternative value systems rather than focusing only on religious value systems as the only source for equality.*



By 'all' I mean first an honest appraisal of the resistance to women's right to equality that comes from religious authorities and of the assumptions women have regarding such resistance. Do they think there is a misunderstanding or misinterpretation of religious texts, or do they realise that the resistance arises because in fact these institutions understand that religion gives women freedom to be equal and they cannot allow this? Often women themselves confuse compassion with equality. Self-interest of the male-dominated institutions is at the fore. They have taken power unto themselves to be the sole interpreters of religion to their advantage.

The implication for women's activism is that there has to be an aim to infiltrate religious institutions with feminist women and men. This is an important agenda, although fraught with challenges. A larger base of such feminist religious authorities must be created. The leadership of women at many levels must be promoted and acceptance of women as leaders needs to become the norm. Mass movements of women is an important strategy through which reform of religious



institutions can be promoted and created. Finally, women must be also mobilised as women without placing too much emphasis on their religious identity. This would create a shift within communities towards acceptance of alternative value systems rather than focusing only on religious value systems as the only source for equality.<sup>198</sup>

The oppression of the Muslim community in India by the majority community as a whole was also examined at the meeting. Because that is the external context for the claiming of rights by Muslim women. Not only does the majority community oppress and commit violence on Muslim women, it contributes to the intra-community violence perpetrated on Muslim women. Through sloganeering and constantly identifying Muslims as oppressing their women, and Muslim women as needing outside help, the majority community is creating an environment in which women cannot make any claims, as it is then seen as anti-community. This in turn isolates the women making the claims from their own community as well as putting them in an unenviable position in which they are seen as being against their own family, community, and culture.

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**You do not advocate with or lobby these extremist religious leaders. *You lobby against them.***

- A poor woman from the village

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### On a Final Note

The participants were a mix of Muslim women from the villages, often at the mercy of local self-appointed but powerful Muslim male village leaders and educated female development workers coordinating village-level strategising for the actualisation of Muslim women's human rights in the villages. It was interesting to see the conflicting views of these two groups regarding advocacy or strategising when dealing with religious leaders. The development workers wanted the women to exercise caution when dealing with the male Muslim leaders, to negotiate with them, and to advocate or lobby with them to get them to see the women's point of view. The women on the ground said there was no point advocating with these extremist religious leaders but more importantly these men should be lobbied against, thus de-legitimising and neutralising them. Their bravery and willingness to take risks as compared to the more well-placed development workers was admirable. One of them said it was essential to defy these leaders to reduce their powers. She gave the example of how one male leader in her village had set the social rules of women being compelled to wear the hijab at all times, causing them a great deal of inconvenience in carrying out their daily duties. This woman narrated how she went to this man's office, tore off her head covering, and dumped it on his table. She claimed the spell was broken.

The workshop realised there was no easy path to change, and the risks were many. But one thing was clear: dealing with the situation case by case, while essential, was not enough. Women had to come together as women and mobilise for change.



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## Two Flagship Programmes

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*IWRAW Asia Pacific was the first organisation devoted to directly bringing the voices of women from the national level to monitor the review of the governments by the CEDAW Committee at the UN.*

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This chapter will deal with two programmes that contributed greatly to IWRAP Asia Pacific as an international women's human rights programme. These were the monitoring of CEDAW compliance at the national level—a project called *Facilitating the Fulfilment of State Obligation*—and the monitoring of CEDAW compliance at an international level—the *Global to Local* programme.

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**FACILITATING THE FULFILMENT OF STATE OBLIGATION TO WOMEN'S RIGHT TO EQUALITY, ALSO KNOWN AS THE FACILITATING PROJECT: UNDERSTANDING STATE ACCOUNTABILITY – A REGIONAL APPROACH**

**Challenges Facing Southern-based Human Rights Groups and Institutions**

When IWRAP Asia Pacific started its work in the early 1990s, women's human rights advocacy in the South tended to be reactive, sporadic, and events-based. More work needed to be done to address structural causes that permit violations of rights, and this required a more analytical approach that is research oriented. This does not merely mean producing statistical evidence of violations but researching into the underlying causes of violations and the strengths and weaknesses of State efforts at creating the conditions for the practice of human rights. A weakness of existing advocacy is that it often makes rhetorical demands of governments. The demands are not specific enough nor are they backed by relevant data.

Demands by activists for certain outcomes are also not always based on normative standards. There has been much development at the international level in the field of human rights practice, such as the work of treaty bodies that gives us the needed framework. But women's human rights organisations work with treaty bodies in a disjointed way and do not necessarily use the outcome of these bodies to strengthen local activism.

Connected to the above is the fact that Southern human rights NGOs who work at the international level do not necessarily link such

work to capacity building of local activists or link them to the international processes. Often, the local-level activists are disenchanted with the international processes and have little awareness of the benefits of such linkages.



*CEDAW requires governments to eliminate discrimination, but it does so in broad terms. The context and substance of such action must be spelt out at the domestic level. The Facilitating Project was intended to contribute this substance and context while at the same time strengthening NGO activism to advocate and lobby governments for the effective implementation of CEDAW.*



### **The Facilitating Project as a Solution**

Based on these observations, in 1997/1998, a regional multi-year project called Facilitating the Fulfilment of State Obligation to Women's Right to Equality, also referred to as the Facilitating Project, was initiated by IRAW Asia Pacific. It had the intention of monitoring specific obstacles to the achievement of women's rights in selected fields, and to assess the nature and quality of State action being taken as per its obligations under CEDAW to bring about equality for women. In the several years of monitoring the implementation of CEDAW that we had been engaged in, we found that specific actions that the State must take to fulfil its obligation are often not clear to governments. States themselves have not put in place a monitoring mechanism to assess what specific action they should take in the fulfilment of their obligations. Experience has shown that State action tends to skim the

surface of an issue without delving deeper to analyse its causes or the effectiveness of a particular action taken to remedy the situation and, consequently, to refine the steps that have to be taken to fulfil their obligations in the specific context.<sup>199</sup>

CEDAW in Articles 2-4 requires governments to eliminate discrimination, but it does so in broad terms requiring the State to respect, protect and fulfil rights for women through all appropriate means. The context and substance of such action must be spelt out at the domestic level. It was intended that the medium-term and long-term outcome of the Facilitating project would contribute this substance and context. It is this gap in information that this project aimed to fill while at the same time strengthening NGO activism to advocate and lobby governments for the effective implementation of CEDAW. The project intended to do this by establishing a mechanism and process by which the State's progress in the achievement of women's rights can be monitored on a specific issue of concern to the women in the country and assessed, while NGO advocacy would be more substantiated and made consistent.

A planned output of the project was to develop a model for data gathering and monitoring the status of women within the standards set by CEDAW so as to facilitate the implementation of CEDAW, something which it hopes will be taken up by relevant governments. This is a research-oriented activity, and the findings of the monitoring process were presented through the production of baseline reports that could be shared with governments to stimulate increased attention on their part to their obligations under CEDAW. It was also

meant to provide content for the shadow reports of NGOs that would be submitted to the CEDAW Committee when the State Party concerned is reviewed.

## IMPLEMENTATION PROCESS AND ACHIEVEMENTS

The project in the first instance saw the creation of core groups at the national level (i.e., a small group of national-level women's organisations spearheading the project in their respective countries). These core groups were the focal points of this project at the national level and served as a foundation for a sustained and effective NGO-led system for monitoring States' compliance with and the fulfilment of obligations under CEDAW. The aim was for these core groups to form broader networks with other women's groups and civil society in general, thus creating a strong base from which to launch advocacy with the government.

The following were the members of the core groups.

### SOUTHEAST ASIA

#### Indonesia:

- Indonesia Women's Association for Justice (Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia Untuk Keadilan: LBH-APIK)

#### Laos PDR:

- Lao Women's Union

#### Malaysia:

- Women's Aid Organisation
- Women's Crisis Centre (later renamed to Women's Centre for Change)
- Law Faculty, Universiti Malaya

#### Mongolia:

- National Network CEDAW Watch Network Center
- Mongolian Women Lawyers' Association
- Women's Information and Research Center

#### Philippines:

- Women's Legal Bureau

#### Thailand:

- Gender and Development Working Group

#### Vietnam:

- Centre for Family & Women's Studies

### SOUTH ASIA

#### Bangladesh:

- Naripokkho
- Bangladesh Mahila Parishad

#### India:

- North East Network (NEN)
- Association for Advocacy and Legal Initiatives (AALI)
- National Institute for Advanced Studies, Gender Unit (NIAS)

#### Nepal:

- Forum for Women, Law and Development (FWLD)

#### Pakistan:

- AURAT Foundation

#### Sri Lanka:

- Center for Women's Research (CENWOR)

A monitoring framework was collectively developed with the groups to identify gaps in State action focusing on an area of concern. Core groups from Southeast Asia attending the first regional meeting of the project in 1997 developed the guidelines and components of the monitoring framework.<sup>200</sup> This was subsequently adopted by the South Asian core groups in 1998.<sup>201</sup> The Monitoring Framework is given on the next page.

MONITORING FRAMEWORK	
1	<b>Disparity or deficit in the enjoyment of rights</b> in a field or context as compared to men.
2	<b>Contributory factors:</b> legal, economic, social, cultural, political.
3	<b>Effects on women</b> when the right(s) identified in item 1 has been denied. The harm that this does to women, short- and long-term; ideologically and concretely; harms that stand alone, and harms that are interrelated.
4	<b>Obligations of the State to address the contributory factors</b> and to enable <i>de facto</i> enjoyment of the right(s) concerned under national law and under CEDAW. The identification of State obligations will be based on findings in items 1 and 2.
5	<b>Obligations the State has actually undertaken</b> to address findings in item 2 and its effectiveness.
6	<b>Deficit/gaps in the fulfilment of State Obligation</b> as enumerated under item 4 and what it is actually doing (items in column 5).
7	<b>Specific recommendations to the State to address the gaps</b> , based on CEDAW standards.
8	<b>Effectiveness of current advocacy of the women's groups.</b> Is it based on an awareness of gaps in State obligations undertaken?

Research was conducted on the specific issue chosen by the core group and baseline reports were produced utilising the findings of the Monitoring Framework, through which data was gathered by each country core group.

### SELECTED TOPICS FOR THE BASELINE REPORTS

The following topics were selected by the core groups from each country for the research and writing of baseline reports:

#### SOUTHEAST ASIA<sup>202</sup>

**Indonesia:** Violence against women sponsored by the State

**Laos:** Rural women and their livelihood

**Malaysia:** Women's rights in marriage and divorce

**Mongolia:** Women's employment rights

**Philippines:** Violence against women

**Thailand:** Trafficking in women

**Vietnam:** Employment of Vietnamese women in the market economy

#### SOUTH ASIA

**Bangladesh:** Violence against women

**India:**

1. Women in armed conflict situations
2. Political participation of women
3. Rights of women in marriage

**Nepal:** Inheritance rights of women

**Pakistan:** Political participation of women

**Sri Lanka:** Domestic violence

The baseline reports provided information on the status of women in the context of a particular issue, revealing the disparities or disadvantages women face as compared to men. It helped surface the contributory factors to the poor status of women, defining these as elements of discrimination that needed to be eliminated and established the interrelatedness of rights as well as the prevalence of discrimination and its negative effect. It assessed the appropriateness of State initiatives to address the discrimination and made a case for the State to ensure *de facto* rights by providing specific recommendations for the implementation of the obligations of the State according to context.

The baseline reports helped facilitate an analysis of the situation within the region, identifying similar barriers to the elimination of discrimination against women (e.g., cultural and religious practices, lack of data, etc.). It gave a critique of existing State initiatives, highlighted best practices and enabled an exchange and sharing of ideas/solutions or recommendations to the State in light of its commitment to the practical realisation of women's rights in their respective countries and in particular contexts.



*Activism has also got to be sustained and it should be so planned that the outputs of one activity should feed into another on an ongoing continuum. This process also reveals the continuing obligations of the State.*



Gains of this project included:

- Creation of clarity on the principles of CEDAW's substantive equality and specific obligations of the State relevant to that principle through orientations and workshops.
- Identification of deep-rooted causes of the violation of women's human rights and, consequently, greater clarity on the interrelatedness and indivisibility of rights.
- Development of indicators by which to assess advances in the creation of conditions for the achievement of equality.
- The tracking of positive national-level activities of the government:
  - > Increased awareness of CEDAW and more effective involvement of women and NGOs in the CEDAW reporting process.
- The mobilisation of women to understand and advocate for the elimination of deep-rooted causes of the violations and denial of rights, energising them to claim their rights.
- Establishment of a foundation for a sustained and effective NGO-led system for monitoring State compliance with and the fulfilment of obligations under the CEDAW Convention.
- Strengthening of a cohesive movement to advocate for change at the national level bringing together a diverse range of activists:
  - > consensus building among women's groups and the mobilisation of women to understand the deep-rooted causes of the violations and denial of rights and energise them to claim their rights, as opposed to advocating for claims based on vague assumptions.



- The development of substantiated and holistic advocacy for equality, and not only issue-based advocacy.
- Strengthening the capacity of women to actively engage in national- and international-level advocacy through the generation of systematised, processed, and analysed data and information pertinent to the implementation of CEDAW for input into shadow reports that will be presented to the CEDAW Committee.
- Ultimately, positive changes in law, policy, and practice.

### RESULTS EXPECTED AND UNEXPECTED

In the long term, the monitoring framework has been a useful tool for application in differing contexts at the national level in later years.

All of this work raised the profile of the members of the core group at their respective national levels and enhanced their capabilities and credibility. As an example of such gains, please see the extract from the self-assessment report of AALI, India as a result of engaging with the Facilitating Project. It is important at the outset to be clear that in evaluating the achievements of the Facilitating Project, changes or reforms to laws and policies according to CEDAW standards were not the only measures or indicators of success, although that was a stated intention (see box in the following page).

Other important results were the creation of conceptual clarity on equality and the oppression of women; changes in the approach or mindset towards activism by the women's

groups, in terms of substance and taking on the rights-based approach; the realisation of the significance of sustained and facts-based activism and advocacy that demands specificities of State obligation; and awareness of the need to partner, and the practical effect of partnering with, varying interest groups and enhancing their advocacy. Further, the core groups recognised the relevance of advocating and plugging into the international human rights system and that this would ensure the growth and sustainability of their activism.

In certain countries, positive reform of the law/policy took place.

Mention must also be made that the project in Southeast Asia and South Asia resulted in a synergistic effect between the two sub-regional projects. Outputs of both projects were shared at regional meetings to provide learning experiences.

### Lessons Learnt

The lessons are that activism has to be based on rational arguments backed by credible information.

Activism has also got to be sustained and it should be so planned that the outputs of one activity should feed into another on an ongoing continuum. This process also reveals the continuing obligations of the State. The preparation of the baseline reports has fed into shadow reports which in turn has spearheaded the advocacy at the CEDAW reviews of the countries concerned. This has then fed into the Concluding Comments of CEDAW relating to these countries. There had to be further activism in-country on the implementation

of the Concluding Comments. All participating countries went through and experienced this process.

The core groups must continue to expand the circle of groups and individuals who can advocate for women's rights promoting

equality and non-discrimination, and who have the capacity to use the human rights treaty system for the same.

The women's groups also must learn to use all the available treaties to promote women's rights.

### AALI ASSESSMENT REPORT

We were able to network with the state level women's network Women's Association for Mobilisation and Action (WAMA), which comprises various organizations and raise their awareness regarding discrimination against women in specific contexts. Further, the entire process of meeting other NGOs, and talking to them about rights, and violence etc., has strengthened our understanding and sharpened our argument on the issue. As an organization we have grown tremendously, in terms of our capacities and abilities. We also feel that our role vis a vis the women's rights issues has evolved and become clearer, largely due to the Base Line Study. As a research advocacy group, we have seen our role evolve from just talking to the State and courts, to other community-based organizations, development organizations, as well as donor agencies. Today, because of having done this

study, we can intervene in strategy formulation, and have even changed the focal issues and processes of other groups.\*

The follow-up to the Facilitating Project has largely been the campaigning work we are doing for other organizations which has been for:

- Incest
- Sati
- Wife beating
- Choice in Marriage

We have been able to provide theoretical and substantive framework to the activism around these issues, and further due to the study, the state machinery sees us as an expert group on issues related to domestic violence, which has created the base for us to intervene at the law and policy level, regarding women.

\* For instance, Vivekananda Sewa Samiti, Lucknow, is a small group, which runs non-formal education centres. Till attending our meeting, they had ignored issues of violence, seeing that as an intra-community issue. However, when a 7-year student was raped by a neighbourhood boy, they came to us. We offered technical assistance, but insisted that they do the follow-up, and be there with us for everything. This has helped them to start reviewing their outlook, learning new skills, and helped us to look at our capacities, limitations and roles.

The following case study on inheritance rights in Nepal illustrates in more detail the outcome of the Facilitating Project.

The research on inheritance rights for women in Nepal under the Facilitating Project scored a momentous victory with the passing of Country Code (11th Amendment) bill in parliament in Nepal on 13 March 2002. This bill contains provisions which, among others, reversed existing law on the issue of the inheritance rights of women.

### **THE ADVOCACY FOR INHERITANCE RIGHTS OF WOMEN IN NEPAL AND THE IMPACT OF THE FACILITATING PROJECT: A CASE STUDY<sup>203</sup>**

Nepal is the only Hindu country in the world. And the Hindu religion is predominantly patriarchal in its outlook. Manu,<sup>204</sup> a philosopher of the Hindu religion, stated in the *Manusmriti*<sup>205</sup> that a wife and a slave can have no property and that the wealth they acquire belongs to the person to whom they belong. The strong influence of Hinduism has been evident in the legal system, and many violations of women's right to equality have been justified on that basis.

In this case study, only inheritance rights will be discussed. Equal property rights have been both a sensitive and burning issue in Nepal. The Hindu philosophy of law regards only sons as heirs to ancestral property. The concepts of family and property are closely interrelated. Birth entitles men to the membership of the family and to share in ancestral property. However, the same does not entitle women to either membership in the family or a share in ancestral property. Women acquire membership in their husband's family through

marriage, which entitles them to acquire rights in their husband's property. Hence, women's membership in the family is governed by their marital status. This had been the situation codified in the law since the mid-1800s.

The legal and strategic movement for equal property rights began in Nepal in 1993 when a writ petition filed by Meera Dhungana and Meera Khanal challenged the discriminatory provision that requires a daughter to be unmarried and to be 35 years of age to receive her share of parental property. The court issued a directive order to the parliament to introduce an appropriate Bill within a year for the consideration of the family laws relating to property. But the court also directed that the social fabric of society must not be disrupted.<sup>206</sup> In the decision, the court was more concerned about possible negative impact that equal inheritance rights of women could have on the social structure, and possible discrimination towards men.<sup>207</sup>

Not much interest was shown by the concerned agencies to initiate the process of introducing a Bill and amending the discriminatory inheritance rights provisions. In fact, there were many negative arguments raised against the demand for equal inheritance rights for women. They included: disturbance in social structures, increased number of divorces, land fragmentation, the possibility for only rich women to get married, disturbance of relationship between brothers and sisters, fear that sons-in-law will take the property or that women cannot manage the property, or that women will have dual property, through their husbands and through their parents.

A lot of resistance was presented against reforming the law and not implementing the court verdict. There was negative media coverage in the initial phase, against the court decision and the concept of equal inheritance rights.

Despite several sporadic advocacy efforts from 1993 onwards by various women's groups to get the Executive to present a bill to parliament—the 11th Amendment to the Country Code—the advocacy was not successful. The Forum for Women, Law and Development (FWLD),<sup>208</sup> one of the organisations at the forefront of such advocacy efforts, states that:

one of the reasons for the lack of interest of the general public was the perception that the issue was influenced by a Western value system, and that it was raised by a few urban feminist women. However, for women's rights activists the issue of equal inheritance rights was not only about material gain but also about the basic human rights and human dignity of women.<sup>209</sup>

The discrimination inflicted on women and the slow process of reform relating to women's inheritance rights and resistance to the initiative to change, along with the fact that the movement was scattered and unorganised and hence not very effective, encouraged the Forum for Women, Law and Development (FWLD) under Sapana Pradhan Malla<sup>210</sup> to participate in the Facilitating Project initiated in South Asia by IWRAP Asia Pacific in 1998. Under this project a *Baseline Study on Inheritance Right of Women* was the first step.

The issue had generated various mixed views, concerns, and assumptions, eventually making the issue one of prime national concern. There was a difference of views at different levels: community level, civil society, and the government bodies. Though women's organisations and activists lobbied for passage of the 11th Amendment with reforms, the movement was scattered and unorganised and was unable to make a breakthrough. It was crucial to build a common consensus among the different groups working for gender equality and to move ahead. The need was to assess the situation of the country on the issue and to develop workable future strategies. Therefore, a *Baseline Study on Inheritance Right of Women* as part of IWRAP Asia Pacific's South Asian Facilitating Project was undertaken by FWLD with the support of IWRAP Asia Pacific in 1999. This study assessed the situation on the ground and developed a plan of action for civil society groups for achieving equal inheritance rights of women. Based on the recommendations made by the study, women's groups across the country carried out various activities to achieve the goal.

The *Baseline Study on Inheritance Right of Women* was a critical intervention at that time. It developed a situation analysis and a future strategy that helped to build a systematic movement based on practical reality.<sup>211</sup>

In the first instance, the report documented facts relating to several legal aspects that were discriminatory regarding women's rights to property and inheritance. It went on to document the effects of discriminatory inheritance rights laws on women, and highlighted State obligation under various national and international legal instruments.

The report then examined the gaps in State Obligation according to the international standards of CEDAW, to which Nepal was a party, and detailed specific recommendations to the State.

The baseline report contributed much to the advocacy and struggle of Nepali women to achieve equal inheritance rights, especially after the court decision in Meera Dhungana and Meera Khanal's case in 1993. The Monitoring Framework, the mechanism through which data was collected for the baseline report (see page 159) developed under the Facilitating Project, required not only an identification of the specific rights denied relevant to the chosen theme of inheritance (Item 1) but also an analysis of the layers of causes for such denial (Item 2) and more importantly the diverse effects of such causes (Item 3). Through the research came cascading out a wide range of violations of women's rights, an inevitable effect of the lack of rights to property and inheritance.

### **Discriminatory Effects of the Denial of Inheritance**

In the first instance, inheriting family property gave the male the legitimacy and status of being a member of the family. On this status hinged many other rights. Women on the other hand were not socially considered to be members of their natal family—more as guests who would become members of their husband's family.

The effect of the lack of equal property rights was the reason behind subordination of women, which included low capacities for women. As they were not considered to be

full members of the family, parents generally gave less priority to girls' education and other technical skills/vocational training, and even access to healthcare. Girls were basically trained to be good wives and mothers. Sons, however, were sent to school for education and other vocational training. Thus, the stereotyped training and education affected girls' growth, leaving them far behind men to compete in professional fields. This has resulted in low-level/unpaid female employment or business, disparities in distribution of productive assets and income and low health status. Less attention was given to women's health and that of the girl child as it was not seen as obligatory for parents to invest sufficiently in the health of a girl child. Nepal has one of the highest rates of maternal mortality in the world, and the life expectancy of women is lower than that of men. The study also indicated that women have only 4.4 percent of the total agricultural land in their names, whereas more than 80 percent of women work in the agriculture sector. This situation was also compounded by the fact that women's participation in politics/government was low.

Women were denied equal citizenship rights on the basis that they were not an equal member of the family, and a woman was not recognised as an independent personality. This meant that a woman was denied the right to transfer citizenship to her own children and spouse. She was not considered to be an equal citizen and she lacked an independent legal identity.

Women were considered to be a burden and an obligation since they were not considered to be members of the family, therefore subject to 'giveaway'. As a result, the woman had no value in society. The consequences were

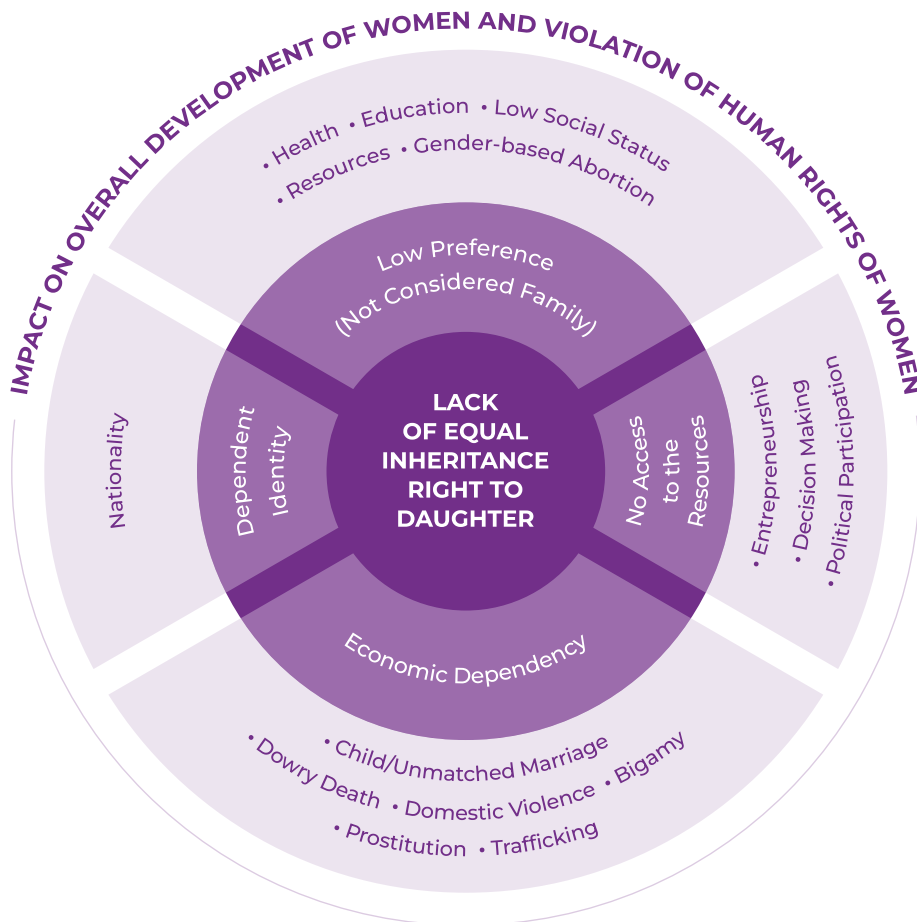
prevalence of child marriage, abortion of the female foetus, bigamy, and inappropriately matched marriages. Women were compelled to live in situations of domestic violence because they were completely dependent on their husbands.

As second-class citizens, women were dependent on their fathers before marriage, on their husbands during marriage, and in old age on their sons. In conclusion, men

as holders of the property were considered superior and women as non-holders of the property were considered subordinate to men. This subordination not only obstructed their access and control over productive resources, but also impeded women's participation in decision making and thereby led to low self-esteem and lack of self-determination of women. (Refer to the diagram below for an illustration of the spiralling impact of the denial of inheritance rights.)

**BASELINE STUDY ON INHERITANCE RIGHT OF WOMEN**

Diagram adapted from Sapana Pradhan Malla's report. 2003, p. 18.



This discrimination in relation to inheritance right violates Article 11 of the Constitution of Kingdom of Nepal; Articles 1, 2, 3, 5, 13, 14, and 16 of CEDAW; Articles 1, 3, 16, and 26 of the International Covenant on Civil and Political Rights (ICCPR); Articles 1, 9, and 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR); Articles 2 and 12 of the Universal Declaration of Human Rights (UDHR) and Article 2 of the (Committee on the Rights of the Child) CRC. The study showed that not only was the whole situation violating women's human rights, it was also having a negative impact on the overall development of women. This, in turn, impacts national development and the national economy.

The section of the baseline report that brought to light these effects of the discrimination in denial of inheritance rights leading to the devaluation of women and, consequently, their low status in material terms was very critical. These effects were not just assumptions or opinions. The conclusions were arrived at based on data and statistics relating to women, collected from various Ministries of government and the Central Bureau of Statistics as well as through surveys, workshops, focus group discussions, and personal interviews. The information indicating the devalued status of women was overwhelming.

What it also demonstrated was that inheritance rights were not just about economic rights and an urban issue of elite women with property, or that such rights were an imposition by Western values. It was evident that the denial of inheritance and property rights led to the devalued status of women and the subordination of all women.



*The baseline report highlighted the fact that a demand for equal inheritance rights for women would go far beyond increasing the wealth status of women. It would give women equality and dignity, a recognition of women as a member of the family and as an equal citizen of the nation.*



It further demonstrated that this had become part of the cultural value system of the society, impacting negatively on all women, rich or poor, with property or no property, urban or rural, educated or uneducated. The baseline report highlighted the fact that a demand for equal inheritance rights for women would go far beyond increasing the wealth status of women. It would give women equality and dignity, a recognition of women as a member of the family and as an equal citizen of the nation. This in turn would lead to better investments in women by the family and by the public sector, and upgrade their status on the basis of equality. Many negative indicators of women's wellbeing could gradually be eroded and there need not be cultural or ideological barriers for the practical realisation of the constitutional guarantee of equality. The right to equal inheritance was therefore relevant for all women of Nepal.

#### **Further Impact of the Baseline Report**

The findings of the baseline report led to much national debate. While a campaign for equal inheritance rights had been going on since Meera Dhungana's case in 1993, due to the scattered and unorganised civil society movement, it was unable to make

a breakthrough. The *Baseline Report on Inheritance Right of Women* of the Facilitating Project was a critical intervention at that time.<sup>212</sup> Also, since there was an accusation that inheritance and property rights were urban women's issues, grassroots advocacy for social mobilisation for law reform was undertaken, taking the issue beyond just property to the inequality of women. This helped to build linkages of the movement from central to grassroots level and vice versa. Nationwide debate was generated and there was a strong call for the passage of the 11th amendment to the Country Code giving equal property rights for women.

Due to the nationwide debate during the process of eleventh amendment to the Country Code, the entire society was forced into rethinking the patriarchal structure, male supremacy, and the status of individual freedom of women. Women were now beginning to link the issue of inheritance to the broader issues of equality.<sup>213</sup>

With the recognition that the issue was one of inequality of women, the resistance against the implementation of the court's decision forced women's organisations and individuals, and a range of societal organisations, to come together for strong action for reforming the law. A series of activities such as media campaigns, awareness raising at grassroots levels, workshops, meetings, and rallies were held. In fact, during the law reform process, almost all the NGOs, human rights groups, and sister organisations of political parties—directly and indirectly—supported the movement. Collective initiatives were immensely helpful to make strong interventions. This cohesion within the

lobby and the strong conviction on the critical significance of women's right to inheritance and property was made possible by the well-researched facts of the inequality situation of women and its link to the lack of inheritance rights.

The study also highlighted the presumption of unexpected adverse impact of legal reform, especially, increase of child marriage, infanticide, dispute between brothers and sisters, increased polygamy, and destruction of the social structure. Finally, there was awareness of the political challenges such as lack of political will, low participation of women in decision making, and political instability, all of which placed difficulties on eliminating remaining discrimination and enforcement of the amended laws.

### **Intervention through Reporting Process Under CEDAW**

The findings of the baseline study were useful to create linkages between issues and State accountability showing evidence of disparities and discrimination, and gaps and weaknesses in the initiatives of the State. During the advocacy process, it was also realised that research-based evidence was very effective for advocacy and useful to draft a shadow report to be presented to the CEDAW Committee when Nepal reported to that Committee.

In 1999, the Nepal government had submitted its initial report to the CEDAW Committee and the women's groups also submitted a shadow report highlighting the discriminatory inheritance laws with data based on the baseline study. The shadow report submitted by the NGO group had outlined inheritance



rights of women as an important element of women's rights, mentioning and highlighting it in a separate chapter of the report.<sup>214</sup> The report also raised the flaws and gaps in the Supreme Court directive order of 1995 in the Meera Dhungana case, especially its overt concern to maintain the existing social structure.

In its Concluding Observations, the CEDAW Committee was concerned about the interpretation of the discriminatory laws by the Supreme Court and the Court's view that if laws do not conform to culture and tradition, society will be disrupted. The Committee recommended that a definition of discrimination in compliance with Article 1 of the Convention be included in the relevant laws, and urged the government to amend—among others, and as a matter of priority—discriminatory laws on property and inheritance. The recommendations of the Committee added strength to the advocacy at the national level.

### **Consensus Building and the Passing of the 11th Amendment of the Country Code**

While the 11th Amendment Country Code Bill was passed in the lower house at the recommendation of the Law, Justice and Parliamentary Committee on 9 October 2001, it was rejected by the National Assembly on 13 October 2001. Consensus among all including among political decision makers, professional and community organisations was needed to carry the bill forward and many activities were carried out towards this end. In this context, a national conference and rally were organised

by a host of prominent women's rights NGOs in Nepal including FWLD on 12 February 2002. Some 1200 people participated with representations from various ministries and members of parliament, the judiciary, foreign embassies, UN agencies, INGOs, donor organisations, local NGOs, media, National Human Rights Commission, civil society, and grassroots people's movements from all over the kingdom. It was a conference that dealt with discriminatory laws in general and shared with the participants heart-rending stories from women suffering from the ill-effects of the discriminatory laws. Not only was it a major media event which forced the decision-makers to take note, it clearly also was an event of great educative and lobbying value. Above all was the realisation that effective social mobilisation is critical for legal reform. Consequently, this event made an impact on policy makers and society and facilitated the passage of the Bill. The Lower House passed the Bill again with overwhelming majority on March 14, 2002. The final victory came eventually after the Royal Seal on the Bill on 26 September 2002 when the Bill came into operation as law in the Kingdom of Nepal.

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**Collective advocacy, made possible by research-based facts, created an awareness within the society, empowered women, helped build systematic movement, challenged primacy of culture, demonstrated interrelatedness of rights and resulted in comprehensive amendments to the laws.**

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## Postscript

The baseline study on inheritance rights provided basic guidelines to the civil society to conduct and target their activities for the amendments in the law to ensure equal inheritance rights to women. What helped in this case was adequate preparation and research on the issue. The *Baseline Study on Inheritance Right of Women in Nepal* helped prepare FWLD with adequate arguments for their advocacy. Organising the issue as one of human rights and using international human rights mechanisms such as CEDAW and international advocacy linking it to national legal strategies to convince the court and parliament of their obligations under CEDAW was particularly useful.

One important lesson learnt was that when challenging the social cultural value system of a society, one cannot just challenge it but must also be able to convince the people of its negative impact. The *Baseline Study on Inheritance Right of Women* helped to do this as it provided facts-based arguments to challenge discrimination based on culture.

The circumstances changed after the 11th Amendment of the Country Code in 2002 as new challenges emerged. Therefore, the study was updated while also developing a new plan of action to implement the amended law and to eliminate remaining discriminatory legal provisions relating to property rights. Clearly, a major battle has been won in the realisation of women's right to inheritance. But there are important steps that need to be taken to achieve these rights.<sup>215</sup> For example, there has to be wide dissemination of the

rights provided by the 11th Amendment to the Country Code, gender sensitisation of all agencies, effective implementation of the reformed law, building institutional capability and creating special procedures for access to justice, further reform of remaining discriminatory provisions of the law and, finally, shifts in the socio-cultural value system.<sup>216</sup>



*When challenging the social cultural value system of a society, one cannot just challenge it but must also be able to convince the people of its negative impact. The Baseline Study on Inheritance Rights of Women helped to do this as it provided facts-based arguments to challenge discrimination based on culture.*



## GLOBAL TO LOCAL (G2L): MONITORING STATE ACCOUNTABILITY AT THE INTERNATIONAL LEVEL

IWRAP Asia Pacific was the first organisation devoted to directly bringing the voices of women from the national level to monitor the review of the governments by the CEDAW Committee at the UN. From around 1986 until then, the monitoring of State Party compliance with their obligations under CEDAW was carried out by international NGOs. Credit for the work of IWRAP Asia Pacific must be given to IWRAP Minnesota, who saw the value of a women's perspective in monitoring State Party compliance with obligations under CEDAW. The process put in place by IWRAP Minnesota no doubt had good effect in enhancing the work of the CEDAW Committee.

But since the beginning, one of the main concerns for IWRAP Asia Pacific was the lack of participation and impact of women's movements from the national level in these kinds of processes. The IWRAP Minnesota programme facilitated the monitoring of CEDAW compliance by States Parties from an international level with an international pool of activists. My dissatisfaction with this process, and the need to expand beyond this to include the voices of women from the national level directly, spurred me to set up IWRAP Asia Pacific<sup>217</sup> and the initiation of the project called From Global to Local.

On the occasion of the 16th session of the CEDAW Committee Meeting on 13 January to 2 February 1997, IWRAP Asia Pacific and UNIFEM, New York, collaborated to bring together eight women from six reporting countries to the UN. They were the ones that were going to report at the 17th session of the CEDAW Committee in July 1997. The idea was to help women shape their advocacy at the local level to fall within the mandate of the Convention by linking it with the international processes for monitoring the implementation of this Convention at the UN level.

In the first attempt of this path-breaking pilot programme, the participants were from Canada, Turkey, Bangladesh, Morocco, Philippines, and Zaire.

The 'guinea pigs' were:

- Lois Chang (Canada)
- Ipek Ilkcaracan, Women for Women's Human Rights (Turkey)
- Ayesha Khanum, Mahila Parishad (Bangladesh)
- Salma Ali, Bangladesh National Women Lawyers' Association (Bangladesh)
- Nouzha Skalli, Association Democratique des Femmes Maroc (Morocco)
- Consolacion Soriano, Sardinia-Paglingkod Batas Pangkapatiran (Philippines)
- Evalyn Ursua, Women's Legal Bureau Inc. (Philippines)
- Immaculee Birhaheka, PAIF/Collectif Des Associations (Zaire)

The success of this initial pilot testing resulted in the establishment of the Global to Local programme on a regular basis. As of 2020, this programme has facilitated the participation of hundreds of women from over 140 countries in the constructive dialogues of their countries with the CEDAW Committee.

In this programme, IWRAP Asia Pacific provides organisations of civil society women the opportunity to talk directly with the experts of the CEDAW Committee, by submitting and presenting information (shadow reports) alternative to that provided by the States Parties. Participant organisations are taught how to present their information and how to raise issues within a limited timeframe.

Official reports submitted by States lack important information about the real needs of women and often do not accurately reflect the situation of women in the country. In this regard, the role of national-level civil society groups is of fundamental importance to provide alternative information and to advocate at the national level to exert pressure on the government in order to get it to implement the recommendations or Concluding Observations of the Committee.

**By reflecting their voice and experience, shadow reports are authenticated. Women's issues were thus profiled under the umbrella of CEDAW.**

– South African Participant, on the key learning and value of mobilising grassroots women's participation.

### **Participation in the CEDAW Process and Demanding Accountability of States**

Through the IWRAP Asia Pacific capacity-building process, factors contributing to the oppression of women and direction on the need for women's rights organisations to form a broad base are made clear. This has benefited their work in defending the human rights of women, strengthening their knowledge on the functioning of CEDAW and its monitoring process. It has resulted in the women being able to make more specific recommendations to the Committee for achieving the State institutional agenda for the protection and fulfilment of women's human right to equality. Women's movements, presenting reports to the Committee, were able to increase their visibility and learn new strategies for their advocacy work to be more effective. This is evident from the testimonies of women's groups who participated in the programme.<sup>218</sup>

We managed to make a strong case for what we identified as the most urgent issues on which the Argentine State was failing women's rights in violation of CEDAW. In other words, we learned from the training how to frame the issues in the Convention and claim women's rights at the international level.

Many participants noted that the recommendations of the Committee in the Concluding Observations reflected most, if not all, of the concerns communicated by them to the Committee.

I strongly believe that the Recommendations of the Committee were not only on point but stronger towards the State than in previous sessions, in great part because of NGO presence and our presentation of the issues denounced in the shadow reports, the interaction with the Committee members and an efficient presentation of such issues to the Committee, all of which was possible because of the training received in IWRAP Asia Pacific's From Global to Local training sessions and the lobbying led by IWRAP Asia Pacific. It was one of the best learning experiences.

– Leticia Kabusacki, Argentina.

### **Standards for Women's Human Rights: Substantive Equality and Non-discrimination**

The learning was multidimensional. The women learned not only about the CEDAW accountability processes and how to participate but also that CEDAW implementation by the State has to be based on the universal normative standards of equality and non-discrimination. They learned that in ratifying CEDAW, the State has undertaken a binding obligation to fulfil the equality rights of women and that they must demand accountability from the State as a duty bearer. Participants said they learned to use CEDAW in all their advocacy.

A Nicaraguan participant stated,

The processes of learning in IWRAW Asia Pacific's workshops enabled me, and other partners who also took part in them, to clarify the differences between formal and real equality in many of our organisations and to argue against the governmental positions in favor of equity. Also, they provided help to overcome limitations produced by literal readings, so as to enable women to interpret texts in a wider sense linked with legal perspectives and the spaces for legal and political performances.

The quality of the contents of the training sessions on women's human rights has improved our work by permanently including the claim for substantive equality in the various discussions and activities and in all the different spheres: economic, political, cultural and other daily life ones—to explain the way in which gender discriminations are present in our societies.

The demand for substantive equality has been constant in proposals to the different branches of government and their structures from almost all women's groups in Nicaragua. Such demands successfully achieved the Equality Law, the ruling of the Legislative branch, the recently approved 'Integral Law against the Violence to Women' and the reforms to the Article 641 of the Criminal Code whereby the legislators state that the law regards women as protected subjects complying thereby with the regulatory framework of human rights, specially the anti-discrimination legislation which is

based upon the specification of those who have rights, in substantive equality and of course in the right of women to live a life free of violence.

### **Linking Local and International Levels: The Power of Collective Activism**

Lesley Ann Foster, Executive Director of Masimanyane Support Services,<sup>219</sup> states:

A key feature of participation in the G2L programme was the preparation of shadow reports critiquing State Party reports developed through numerous country level consultations. This happened even in Botswana, where civil society organisations are few and not as vibrant compared to other African countries, and also with a population that is sparse in comparison.<sup>220</sup>

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**The key learning was the value of mobilising grassroots women's participation. By reflecting their voice and experience, shadow reports are authenticated. Women's issues were thus profiled under the umbrella of CEDAW.**

- South African Participant

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Through this process, NGOs convened national dialogues to disseminate CEDAW information to communities. South African participants also claimed that CEDAW was a useful tool for individual and collective advocacy strategy development.

Working on the shadow report helped bring people together for collective information exchange. Shadow reports therefore reflected

ground-level realities and brought the voices of women to the international level, the Southern African groups reported. Through collective work, equality and non-discrimination have been critically examined. The result of collaboration and networking with other groups has strengthened calls for redress of a range of issues, beyond respective organisational interests.

Costa Rican NGOs were of the view that:

the fact that the organisations meet to write the report enables us to coincide in aspects that unify issues and makes them visible, which in turn leads to a rapprochement amongst the organisations and an opportunity to do joint work.

Platforms have been created for activists across the spectrum (including LGBTI and religious groups) to work together to advance the principle of non-discrimination. Ugandan NGOs reported that a focus on non-discrimination was a significant achievement, which was through the participation of LGBTI activists.

The programme also impressed upon participants the importance of taking information back to their countries. This took the form of information dissemination on the Concluding Observations and the performance of their governments during the review by the CEDAW Committee. This information has been discussed at government level as well with women in local communities, who have been made aware of how the CEDAW process affects their lives. Through this process, NGOs have been able to link international processes with national advocacy for women's

rights. They also made CEDAW relevant at the national level with agencies as duty bearers, and at the community level with people as rights holders. Ongoing activism has been informed by the importance of monitoring government's commitment to implementation.

### **Significance of Fact-based Advocacy**

One important lesson learnt in the preparation of the shadow reports is the importance of analysis and fact-based advocacy derived through ground-level consultations. An example pointed out earlier in this chapter was the case on inheritance rights in Nepal, where inheritance rights were reserved for men only. Activism was garnered to demonstrate the link between patriarchy and inheritance rights in Nepal. This was underpinned by research (facts gathering) on religious and cultural practices that disadvantaged girl children and women socially and economically. The findings confirmed the deliberate devaluing of women and girls through their low access to education and health, the practice of early marriage resulting in early pregnancy, unsafe abortion, and the links to maternal morbidity and mortality. This led to the ushering in of equality legislation in Nepal.

Another example that groups from Botswana shared was that through a partnership with Gender Links, a situational analysis on gender-based violence (GBV) has resulted in a baseline report of its prevalence. So, a further value added has been networking with other CSOs/institutions, and an extension of networking took place in the Southern African Development Community (SADC) region as well as at the international level.<sup>221</sup>

**The training and preparation by IRAW Asia Pacific for the G2L increased my understanding of the whole concept of CEDAW, its operations and modalities. It also enabled me to share in the challenges that other women in other countries face. Listening to the presentation by States including mine made me realise that we have a long way to attain full elimination of discrimination against women in my country. The understanding of CEDAW issues made me appreciate more that women's rights are human rights. I was impressed by the States who submitted that they had treated CEDAW observations as a concern of their respective countries as a whole and not leaving it to only the Ministry concerned with women affairs like mine had.**

- Jane Nakintu, ACFODE, Uganda

### **The Power of Watching One's Government Under International Scrutiny**

Women became aware of how important it was that national-level women's groups participated in international advocacy rather than international NGOs doing this. They realised the power of women as citizens watching their State defend itself before an independent expert body.

When they return home, they carry with them the power of first-hand knowledge of how their State had been evaluated at the international level. In some instances (as reported by some groups), this changes the dynamics of State-NGO relationships. More credibility is conferred on them because of the recognition and legitimacy given by the United Nations to women's participation in

the international review of the performance of the State, and the productive interaction between the CEDAW Committee members and the NGOs. As a consequence of the international scrutiny in the presence of the NGOs, there was increased government transparency and improved government-NGO relationship. Governments in some instances began to have more respect for the NGOs.

For example, following the NGOs' lobbying of the CEDAW secretariat in 2011, Zambian NGOs reported that the relationships between NGOs and the Zambian government have strengthened. In Zimbabwe, after participating in the G2L programme, NGOs have worked with the government and, in this process, government suspicion of NGOs has begun to diminish.<sup>222</sup> Following a second round of G2L capacity building, data gathering, and report writing, NGO focus was on the implementation of the Concluding Observations. The government's initial reaction to this was negative, but NGO/government relations have since changed. There is more mutual respect, more recognition of the capacities of the NGOs, more willingness to cooperate, and reduction of mutual suspicion.

A Costa Rican participant describes the situation in her country this way: "Costa Rican authorities know who we are and that upsets them, so they propose dialogue and inform us of their plans. They get nervous."

There were many stories told by those interviewed about the visibility of NGOs created through the Global to Local project and how this led to constructive relationships being developed with the government. In the case of Azerbaijan, the presence of the NGOs

at the Committee's Review session during the government's initial reporting pressed the government to acknowledge the presence of women's human rights organisations in the country for the first time. This opened channels for subsequent communication between women's NGOs and the government back in the country. Similarly, the NGOs from Georgia gained their government's respect through their presence at the Committee meeting. In Nepal, after the presentation of the initial report to the Committee in 1999, the government invited the NGOs to collaborate in the development of a follow-up CEDAW Action Plan.<sup>223</sup>

By observing the review, women gained knowledge of the stand of the government on women's right to equality and their weaknesses. Some governments have no clear understanding of the principles of equality and non-discrimination or obligation of the State, or they have a poor understanding of the context and ground-level realities preventing

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**What is that about nudity—would the police go around with a tape measure to check the length of clothes or see if a breast is exposed? Women have a right to the aesthetic of their bodies and the right to present themselves any way they want. A woman's body is the only piece of real estate on which she owes no mortgage. Dress codes are about power and dressing a woman from head to toe is a form of rape.**

- CEDAW Committee Member questioning the Nigerian delegation on the Nudity Bill.

Heinrich Boell Stiftung Nigeria. 'The Women's Convention in Nigeria'. 14 October 2012)

women from exercising their rights. In some instances, the review shows that States are indifferent to women's human rights, or they harbour a resistance to women's right to equality. All of this helps women to plan their advocacy strategically when they return home after the review.

A case in point is that of Nigeria. Nigeria's sixth report was considered by the CEDAW Committee on 3 July 2008. With a delegation of 73 persons, the Nigeria team, led by the Honourable Minister for Women's Affairs, was the largest ever in the history of the CEDAW meetings. A major point of contention was the Nudity Bill being debated in parliament which prescribed a rather restrictive dress code for women. A CEDAW Committee Member was particularly displeased with the Nudity Bill, which a parliamentarian present on the delegation was sponsoring. In her view there was no need for such a bill especially when there were more fundamental issues regarding women's human rights to be addressed, such as the domestication of CEDAW; whether discriminatory provisions in local laws are amended; whether the national, state and local poverty reduction strategies recognise the principles of equality; issues around FGM; widowhood rites; early marriage; state shelter for battered women; access to land; nationality/citizenship; and maternal mortality. The 73-member delegation was unable to defend this bill (see box for the challenge on this bill to Nigeria).<sup>224</sup> The bill eventually was not passed.

I was the Rapporteur of the CEDAW Committee during the Committee's exchange with the Nigerian delegation, and witnessed it first-hand. One participant summed it



up when she stated, “States Parties also see women as critical constituents capable of revealing the inconsistencies of their governments, if they do not fulfil their commitments to women in a serious way.”

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**Despite economic, political, social, cultural and linguistic differences, the main concerns among the NGOs from different parts of the world were absolutely transversal to all.”**

- Ana Costa and Vera Fonseca, two women of different generations, Portugal

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### Regional and International Exchange and Sharing

Another benefit has been regional sharing. At the Global to Local programme held at the UN, NGOs have the opportunity for a regional exchange. This exchange made evident that challenges faced by women are global and affect women in developing and developed countries equally. They learn of the similarities and the experiences of other countries, which helps avoid a repeat of previous failures. Although women’s conditions are better in developed countries as compared to women living in developing countries, the norms and practices regarding women’s inequality (women’s subordinate social status) remain, despite differences in women’s socio-economic conditions (see highlight for an illustration of the denial of violence against women by Finland during the CEDAW review). Inequality and discrimination against women are universal; hence we have to continue the fight for the universality of equality and human rights.

As a Nicaraguan participant pointed out,

The similarities of gender discrimination in different cultures and latitudes enabled me to overcome the local and nationalist point of view in the analysis of the work of States (interactions between civil society and political society). I saw discrimination exercised by powerful groups and their institutions within societies towards women and men, victims of the ideology and the socialisation process of patriarchy.

The extension of networking has been taking place in the SADC region as well as at international level. South African activists have assisted other countries in shadow report research development and writing. Research in South Africa has been replicated in the United Kingdom and Norway, a direct ripple effect.

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**In general, the framework of the discourse on violence against women in Finland remains challenging. The discourse is silenced by redirecting focus from the big picture towards the individual and by creating an illusion of symmetry between different phenomena of violence. Instead of breaking taboos, statements such as 'women are violent too' and 'the greatest problem in Finland is violence between two males' are examples of the aforementioned diversion tactics. They help obscure the gender-specific issues in violence and cause the common value base, which would allow for efficient action against violence, to be broken down.**

- G2L participant from Finland,  
at the Finland 42nd Session of the CEDAW Committee

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### **More Long-term Gains and Capacities Developed Through the Global to Local Programme**

The countries reported that the biggest gains have been the attainment of conceptual clarity on substantive equality that CEDAW demands. NGO participants were challenged to advance the work beyond (the limitation of) formal equality and not confuse equality with equity, protectionism, or complementarity. Argentinian participants stated,

Our understanding of CEDAW significantly deepened throughout IWRAP Asia Pacific sessions, in particular the concept of substantive equality, that although seemed to be always there did not get a fair explanation until it was dissected throughout the training. It was helpful to focus on how the rights are articulated under the Convention and linked to the situations of inequality we experience in our countries.

The participants realised a contextual analysis was needed to monitor whether and/or to what extent affirmative action is being enforced. The philosophy underpinning CEDAW Article 4 (temporary special measures on affirmative action) is that women have systematically and historically been discriminated against; thus, putting policies and rights laws in place to support women is what is required to advance substantial equality. This is alongside positive duties by the State to make concrete investment into women's self-empowerment processes to teach women how to resist patriarchal institutions, behaviours, and practices.

There have been definite gains of working with CEDAW. The training enabled a focus and improved networking and collaboration overall to lobby for the protection of women's rights and to eliminate discrimination. Much knowledge has been gained in understanding the scope of CEDAW and what a dynamic instrument it is. When one can use the general and specific recommendations and the jurisprudence of the Protocol, one can gain clarification on the intentions of CEDAW and even enhance the application of other instruments that promote the equality of women. Many NGOs have said that they have become tutors of CEDAW teaching it. They were invited to give presentations on CEDAW, to build the capacity of organisations within and outside of their countries, according to feedback from Botswana, Uganda, Tanzania, Zambia, and Mongolia. The knowledge on CEDAW principles gained by those participating in Global to Local has been disseminated to other groups. Thabisa Bob of South Africa stated,

I didn't know about CEDAW until I was trained by Masimanyane. I was exposed to IWRAP Asia Pacific and worked on report preparation, writing and I participated in the review. My contribution since has been in building support with other women's organisations locally, regionally and internationally.

Many participants recognised that participating in IWRAP Asia Pacific's training sessions, starting the process of writing and presenting the alternative reports, and informing and monitoring the State's compliance, significantly contributed to having ownership of CEDAW's

contents. It was their Convention, the Women's Convention as we called it in the early days. The Nicaraguan participants realised the usefulness of these processes for the wide women's movement in Nicaragua. They summarised the achievements of working with CEDAW as "the inclusion of CEDAW in academic programmes or activities; CEDAW as a permanent consultation instrument in lawsuits, campaigns, demonstrations, and so on, and the final product was the recent approval of the Law Against Violence to Women."<sup>225</sup>

My personal growth has been permanent: ever since my participation in IWRAW Asia Pacific's workshops up to the present I have not stopped following up the activities of the Committee and its recommendations, which has enabled me to integrate the information in my personal, professional and human rights, in particular women's rights activism.

A deepening of the learning has taken different forms, such as popularising women's rights language by translating it into local languages. Information provision and capacity building was directed at government service providers (health and police) as the key agency for policy implementation and was extended to include traditional leadership. In Zambia, through collective efforts including working with men's organisations, this advocacy has led to a vibrant constitutional review process.

Advocacy has been focused on discrimination and equality. The importance of gender budgeting was another issue that has been

raised and several governments became sensitised to prioritising women's needs in the budgeting process, also by using gender-disaggregated data. The language of CEDAW is used by the Departments of Justice and in court processes, according to feedback from Kenyan participants from WILDAF and FIDA.

A value add noted is "the interaction with IWRAW Asia Pacific has reawakened me to realise that various forms of discrimination against women exist. IWRAW Asia Pacific is fertilising many women's organisations in this process" (comment from a Kenyan participant). South African groups reported that CEDAW assisted with the transitioning from apartheid to democracy, and its application has been extended to other areas of legislative reform. Working on CEDAW enabled NGO nomination onto the National Committee which developed the Domestic Violence Act. The preamble of the South African DV Act contains a statement acknowledging the obligation of the State under CEDAW to end violence against women and children.

In 2011, research was conducted into the violation of rights amongst South African women. A direct consequence has been the response from the government to monitor and prosecute child marriages (Ukutwala is a local practice of abduction and early child marriage, which is outlawed, yet ongoing).<sup>226</sup>

Masimanyane of South Africa attested to their organisational growth, from limited knowledge of CEDAW to its utilisation in their work, especially in applying human rights standards to their work. The organisation's work is based on the CEDAW principles of

equality and non-discrimination, and the language of CEDAW has been integrated into its programming, resulting in conceptual clarity and a change in the discourse and language on women's rights. It has improved the organisational leadership's understanding and analysis of substantive equality to better respond to the more popular protectionist approaches.

**A lesson learnt is that government contestations are a given. Building women's capacity, ensuring their voice and raising awareness through opportunity has contributed to the integrity and authenticity of the work on CEDAW in South Africa.**

Another testimony comes from Roxana Arroyo, Costa Rica:

Both the programmes Woman, Justice and Gender and the Justice and Gender Foundation have specialised in providing consultancies to the judicial branch, women's organisations, women's mechanisms, advocacies and others. This has enabled an integration of a new reading of the law (androcentric deconstruction of it), which will eventually have an impact in the access to justice integrating gender perspective. In this process, CEDAW's theoretical framework is used and specially its concept of substantive equality. In this ethical-legal rationale, the materials provided by IWRAP Asia Pacific through Alda Facio have been very useful.

## **SPECIFIC GAINS AT THE NATIONAL LEVEL THROUGH THE G2L PROGRAMME<sup>227</sup>**

### **Concluding Observations Have an Impact on State Behaviour**

NGOs have adopted creative strategies in using the Committee's Concluding Observations to strengthen the work and lobbying that they are already doing at the national level. Some examples, which we have gathered from women activists who were a part of the From Global to Local programme, include:

- The Women's Political Resource Center in Georgia was able to use the Georgian government's review by the CEDAW Committee to get the President to issue a decree on 'Measures for Strengthening the Protection of Women's Rights in Georgia'. This decree catalysed a discussion about instituting quotas to increase the number of women in parliament.
- At the 18th CEDAW Session, the government of Zimbabwe was praised by the Committee for repealing the Legal Age of Majority Act of 1982 which denied women the legal adult status. Upon their return home, however, the government announced that they would reinstate the Act. Drawing on their experiences at the UN, the four Zimbabwean women activists who had participated in the From Global to Local project and observed their government's review by the CEDAW Committee were able to widely publicise the contradiction in State action. The government subsequently withdrew its intention to reinstate this discriminatory Act.

- A recommendation for a specific law in South Africa to prohibit discrimination was made by women's rights activist at the CEDAW review in 1998. This was echoed by the CEDAW Committee in its Concluding Comments. In September 2000, the South African government passed a law called the Promotion of Equality and the Prohibition of Unfair Discrimination Act. This Act has a section on gender discrimination.
- In Nepal, the Nepali NGOs who attended the CEDAW session used the Concluding Comments as an opening to engage their government in a dialogue. They also used the Concluding Comments to further legitimise their claim for changes in discriminatory laws. After mobilising mass support on the need for reforms, in 2002, the NGOs success was reflected in the eleventh amendment to the country code which brought to an end more than 20 discriminatory provisions in the law. Significant among these were the discriminatory provisions in inheritance laws, adoption, divorce, and criminal laws including laws on abortion, etc. While many other factors played a role in the reform process, the CEDAW Concluding Comments served as a catalyst for change. When NGOs advocate for legal reform using the Convention, they are bringing in international standards and contributing to legal development in the area of women's rights at the national level.
- Using media coverage to popularise their struggle and by arguing for the implementation of the CEDAW Committees recommendations in the Concluding Comments for Japan, the Women Workers Network (WWN) in

Japan was able to successfully obtain a judgement that Japanese executive and management practices discriminated against women in terms of wage and other promotional issues in the Sumitomo Electric Wage Discrimination case. These discriminatory practices were common in Japanese working life despite the fact of Constitutional protection against discrimination as well as specific legislation on equal opportunities. The WWN's efforts set a legal precedent on the concepts of anti-discrimination and equality laws as applied to women's rights in employment, which is to be informed by the international norms including those of CEDAW.

#### Domestic Collaboration on Shadow Reports

The women's movement in Brazil used the occasion of the country's recent report to the CEDAW Committee to organise a national coalition of nearly 1,200 NGOs in support of women's rights. This coalition worked together to identify and prioritise key issues and to present their concerns to Brazilian federal and state authorities. (See also examples of domestic collaboration earlier in this chapter.)



*While many other factors played a role in the reform process, the CEDAW Concluding Comments served as a catalyst for change. When NGOs advocate for legal reform using the Convention, they are bringing in international standards and contributing to legal development in the area of women's rights at the national level.*





*The main takeaway from this experience is that women's groups have to draw on the most progressive standards for women's rights as available from the work of all treaty bodies. In their advocacy with the CEDAW Committee they would do well to cite these other progressive standards and raise awareness of the Committee.*



### **The Importance of Connecting Progressive International Standards to Produce Domestic Change**

There were many gains of the Global to Local programme. But very occasionally there was dissatisfaction felt by the activists. One such situation happened at the 42nd session in 2008 when Canadian representatives from the Canadian Federation of University Women (CFUW) presented to the Committee a chapter in their shadow report titled 'Canada Fails to Establish Non-State Actor Torture as a Specific and Distinct Criminal Human Rights Violation'. In it, CFUW was advocating that the CEDAW Committee would give recognition to domestic violence as torture and persuade Canada to criminalise domestic violence as torture. In the law Canada only recognises and criminalises acts of torture that are inflicted by State Actors. In spite of raising a question on this at the review, the Committee was silent on this issue in the Concluding Observations to Canada. CFUW saw this as a failure by the Committee to operationalise their General Recommendation 19.7(b).<sup>228</sup>

The CFUW took the issue of Domestic violence as torture to the Committee against Torture (CAT) at its 48th session held on May/June 2012. The Committee agreed with this concept and issued the following Concluding Observation to Canada:

20. The Committee regrets the statement by the delegation that the issues on violence against women fall more squarely within other bodies' mandate and recalls that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State officials or private actors (arts. 2, 12, 13 and 16).

The State party should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture or ill-treatment committed by non-State officials or private actors and provide remedies to victims.

– (CAT/C/CAN/CO/6) Committee against Torture, Forty-eighth session, 7 May - 1 June 2012.

What emerged from this experience is that in 2008, the CEDAW Committee did not hold a robust debate with Canada on domestic violence as torture when they had an opportunity to do so. They had not integrated this concept into their thinking and practice, while at the same time, CAT had made progress in the area of violence against women, framing it as a failure of due diligence by State authorities if they did not recognise and provide sanctions against torture by non-State actors. In fact, in its General Comment No. 2 of 2008, CAT has named such failure as acquiescing of the State to an impermissible act.<sup>229</sup> It should also be noted that the women in Canada were successful in their advocacy for the recognition of domestic violence as torture only four years after they had first raised it with CEDAW in 2008.<sup>230</sup>

The main takeaway from this experience is that women's groups have to draw on the most progressive standards for women's rights as available from the work of all treaty bodies. In their advocacy with the CEDAW Committee they would do well to cite these other progressive standards and raise awareness of the Committee.



*In 2008, the CEDAW Committee did not hold a robust debate with Canada on domestic violence as torture when they had an opportunity to do so. CAT has named such failure as acquiescing of the State to an impermissible act. Domestic violence as torture was recognised only four years after it had first been raised with CEDAW in 2008.*



### **Appreciation from the CEDAW Committee**

The Report of the Chairperson, Ms Rosario Manalo, on activities undertaken between the 33rd and 34th sessions of the CEDAW Committee, held from 16 January to 3 February, states the following:

I wish to take this opportunity to thank IWRAW Asia Pacific for its continuing excellent encouragement and support to national non-governmental organizations towards the preparation of shadow reports, and for channelling this information so effectively to Committee experts. I encourage all donors—UN entities, private organizations and Governments alike—to recognize the additional demands that will be put on IWRAW Asia Pacific and national NGOs as the number of States considered on an annual basis will increase from 16 in 2005, to 31 in 2006, to 38 in 2007.<sup>231</sup>

Ms Manalo issued a letter of appreciation to IWRAW Asia Pacific in July 2006 which is reproduced here.

It is my great pleasure to extend to IWRAW Asia Pacific the Committee's appreciation for the valuable work done in promoting and facilitating the implementation of the Convention on the Elimination of all Forms of Discrimination against Women at the national level. The Committee specifically welcomes the efforts of IWRAW Asia Pacific in working with local NGOs from reporting countries, guiding them in the preparation of shadow reports and their presentation to the Committee. The Committee strongly welcomes that

IWRAP Asia Pacific has over many years been able to bring representatives of NGOs from reporting countries to the Committee's sessions, thus allowing for an informal discussion between Committee experts and representatives of these organizations on the critical issues affecting implementation of the Convention. The Committee benefits from this inter-action with NGOs and appreciates the fact that their presence during the Committee's constructive dialogue with representatives of the reporting State may also constitute an important leverage for further strengthening of follow-up action to the Committee's concluding comments and, thus, enhanced implementation of the Convention.

On behalf of the Committee, I wish to commend IWRAP Asia Pacific for its continued excellent encouragement and support to national non-governmental organizations towards the preparation of shadow reports, for channelling this information so effectively to Committee

experts, and for facilitating NGO attendance at the Committee's sessions.

The increased number of States to be considered annually by the Committee starting from 2006 provides an opportunity for the Committee to monitor the implementation of the Convention in a significantly larger number of countries annually than in the past. The Committee hopes that IWRAP Asia Pacific will continue to be in a position to work with local NGOs in all reporting States, and to bring representatives from such organizations to the designated sessions of the Committee when these reports will be considered the Committee is aware that this welcome extension of meeting time also brings with it increased expectations for engagement by IWRAP Asia Pacific with local NGOs in a larger number of countries, and trusts that Governments and other international donors will take these new opportunities into account when making decisions about supporting IWRAP Asia Pacific in its valuable work.<sup>232</sup>



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## IWRAP Asia Pacific's Overall Contribution to Change<sup>233</sup>

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*As it evolved, IWRAP Asia Pacific served both the purpose of a think tank and that of a sophisticated policy advocacy group and capacity builder.*

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This chapter looks at the positive impact that the programme of IWRAP Asia Pacific has had on individuals and organisations it has engaged with. Some of this comes through in earlier chapters, but it is worth consolidating the views in one chapter as well.

As it evolved, IWRAP Asia Pacific served both the purpose of a think tank and that of a sophisticated policy advocacy group and capacity builder.

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Its major relevance has been located in its unambiguous focus on making the CEDAW and other related Human Rights Treaties work. The conceptual and strategic leadership of IWRAP Asia Pacific is highly valued by its partners and has had a visible impact on their own advocacy work. These organisations themselves do cutting-edge work, which is fed back into IWRAP Asia Pacific thinking and strategies.

IWRAP Asia Pacific succeeded in enabling women's organisations to relate national- and international-level advocacy to the grassroots level, through its From Global to Local project and in its professional Training of Trainers programmes, trying to find a productive balance between advocacy work and 'practical' work on the ground. This ability to link ground-level work and realities with policy advocacy is a major strength of IWRAP Asia Pacific.

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**“IWRAP Asia Pacific has been highly successful in applying rights-based concepts derived from the CEDAW framework in specific local contexts, and in turn to sharpen the concepts and advocacy tools based on the learning on the ground. This has been truly a 'global to local and local to global' learning process.”**

- External Evaluation through the Government of the Netherlands, 2006

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In the early years, IWRAP Asia Pacific identified groups and individuals in the region as prospective participants for the first training activities. They 'handpicked' an interesting mix of bright young lawyers, experienced women's

rights advocates, academics, grassroots groups, and national networks, and brought them together on one platform or in specific programmes. Further through its Facilitating Project, which was an active project from 1997-2006, IRAW Asia Pacific established close partnerships with some 15 groups from Bangladesh, India, Nepal, Pakistan, and Sri Lanka, which it calls the South Asian core group. The South Asian core group was at its time the most 'evolved' core group. India, being the largest country in the South Asian region, had its own national core group, which consisted of six organisations. There was also a Southeast Asian core group of nine partners; the focus and dynamics of this group were somewhat different from that of the South Asian core group.

IRAW Asia Pacific's From Global to Local programme has organised women to draw accountability from their governments for their obligations to eliminate discrimination against women and fulfil women's rights to equality. This programme has become a catalyst for the possible creation of a worldwide movement of women's groups capable of utilising feminist human rights scholarship for claiming their right to equality and non-discrimination. Women's groups from 140 countries and from various parts of the world have been catalysed to internationalise their local situation and participate in international advocacy through the CEDAW review process at the UN. "No other international human rights organisation has so mobilised rights holders from the local and national level for direct participation at the international level."<sup>234</sup> It would not be wrong to say that IRAW Asia Pacific introduced the prospect of women from the national level challenging their governments internationally

for their international obligations towards women.

### **Enhancing Democratic Processes and Enabling Law and Policy Change at the National Level**

The international CEDAW review has the potential for impact at the national and local level in the arena of equality rights for women, as governments have an obligation to work with the conclusions of the CEDAW Committee. This has paved the way for strengthening democratic processes, and for empowering local activists who continue their advocacy at the national level demanding follow up action of their governments.

Mariam Al-Rowaie, the President of the Bahrain Women's Union, referring to the CEDAW Committee's review of Bahrain (September 2006 to September 2011), says:

We were able to use the CEDAW as a reference in all the issues that we demand from the Bahraini government in order to achieve justice and equality and encourage the government's commitment to implementing the recommendations of the CEDAW Committee. In addition, we have developed a plan for the implementation of CEDAW through local training for different categories of lawyers, judges, youth and the formation of a committee of jurists to review the status of women in national laws and legislation and holding roundtables with parliamentarians about a proposed law for protection from domestic violence formulated by the Women's Union to the House of Representatives.

Women's groups in many countries have sharpened their advocacy to bring about law and policy change using the standards of the CEDAW Convention. Ms Zanna Jurmed<sup>235</sup> of Mongolia says:

My organisation and I have grown thanks to knowledge gained on CEDAW and Gender Equality issues and shared experiences with other women's human rights NGOs from the region and worldwide organisations at the trainings. Due to constant and close relations with Shanthi and IWRAP Asia Pacific, we have developed our programme areas of activities every year. The Center for Citizens' Alliance/former CEDAW Watch Network Center, in Mongolia which I am associated with, within the scope of the Gender Equality and Human Rights programme, has worked continuously to participate in the discussions of draft laws such as Law on Gender Equality, Election Law and Advocate Law, to monitor the implementation of the CEDAW. Thanks to the gained knowledge we have developed the shadow reports twice in 2001 and 2008 and worked out an analytical paper with broad comments on Mongolian laws from CEDAW principles and perspectives in 2004.

She further reported:

Yes. I think my activities to disseminate all that I have known and gained from Shanthi and IWRAP Asia Pacific has resulted in quite successful resonances and effects. Educated society has accepted the notion and concept of women's

human rights and gender equality. That resulted in the adoption of the Law on Gender Equality in Mongolia in 2010, for example.

### **Enhancing Strategic Advocacy of Women's Groups**

I believe that my mentoring and the influence of IWRAP Asia Pacific has enhanced the work of several organisations to have more strategic effect. Women's groups worldwide learnt that advocacy for change must be based on data and information that would be compelling. It must also run on a continuum. Gains in one situation must spearhead gains in another sphere.

Lesley Ann of Masimanyane Support Centre<sup>236</sup> explains,

... the greatest strength I observed and want to acknowledge here, is the fact that IWRAP Asia Pacific had one focus. A clear, concise and powerful focus on women's rights through CEDAW. The organisation under Shanthi's leadership did not veer in all directions but kept clearly to what it knew and what it believed in. This is its greatest strength because by holding this clear focus, the organisation and everyone associated with it, grew in their knowledge, developed a profound analysis and honed enormous skill in the field of human rights generally and women's rights specifically. I have gained knowledge on organisation building, on structuring of organisations and of process management.<sup>237</sup>

### **Demystifying International Treaty Law and UN Processes and Learning to Use International Standards such as CEDAW**

Women realised that international standards are important for law and policy and that they can participate in the interpretation of these standards through their involvement in the international CEDAW Review processes. It was very empowering for them when they understood that this is feasible and possible for national-level groups.

At home in Malaysia, Ivy Josiah, a prominent women's rights activist, acknowledged,

Using actual cases studies to ground the CEDAW framework in women's realities as Shanthy and IRAW Asia Pacific showed us how to do, gave us a belief that there is a UN mechanism that can be utilised at the national level, and it can work. The global to local approach is especially critical in demystifying UN standards and mechanisms. Setting standards through evidence-based research is both critical and honest.

There is no replacement for consistent monitoring and documenting.

### **Conceptual Clarity on Equality and Non-discrimination: Rights as Interrelated and Interdependent**

The main strength of IRAW Asia Pacific is the creation of clarity regarding the concept of equality as an exercisable right under CEDAW. Shanthy Mohan of the National Institute of Advanced Studies, (NIAS) India<sup>238</sup> says she gained conceptual clarity on equality through IRAW Asia Pacific and the training

provided by me. It helped NIAS redesign their programme on the elimination of violence against women, from a violations/ disadvantage approach to a rights approach. She says,

We structured our projects both on governance and on violence against woman with the goal of facilitating women's participation in governance and preventing violence against women. Hitherto we didn't look at rights or norms or standards for achieving rights. We looked at disadvantages and problems women faced because of violence and how to help them overcome these disadvantages.

And she says there was no attempt to look at it from the perspective of enabling women to exercise certain rights—such as the right to life or the right to dignity—all of which are violated when there is no right to freedom from violence. There was no recognition that right to equality and non-discrimination was a pre-condition for the right to freedom from violence and vice versa. Or that discrimination against women would have to be addressed and women must be empowered to exercise many other critical rights such as the right to housing, food, income, as well as civil and political rights in order to eliminate violence against women in the long term. Or that equality and non-discrimination must translate into the practical enjoyment of concrete rights and that rights were interconnected. Shanthy says. "IRAW Asia Pacific's training enriched the way I could connect substantive equality with the whole question of the realisation of rights, equality and non-discrimination."<sup>239</sup>

The lesson is that prohibition of discrimination in the law alone is not enough.

### **Mobilising Women, Thinking Collectively, and Building Capacity of Others**

IWRAP Asia Pacific's From Global to Local programme has mentored national-level organisations in all regions to think collectively and strategically. Organisations say their work has gained much through association with IWRAP Asia Pacific. All participating organisations globally and in all regions say they learnt to work collectively through *ad hoc* coalition building. The programme helped them to build capacity and to understand legal obligations of their governments according to international standards for equality as a result of preparing shadow reports to CEDAW in a cyclical manner. All shadow reports are prepared through a long-drawn-out process of consultations.

Madhu Mehra of Partners for Law and Development (PLD) emphasised the significance of honing the skills of a group of people continuously so they can work independently.<sup>240</sup> The training resources provided by IWRAP Asia Pacific facilitated this. As the CEDAW review process is cyclical, the participation and mobilising of women is ongoing. This experience emphasised the fact that whilst legislation is the first step to achieving equality between women and men, the process requires the support of effective structures, measures, and resources for implementation, continuous monitoring, evaluation, and review.

Rather than only talking about rights or policy reform conceptually or rhetorically, organisations have learnt to engage in activism that is backed by knowledge and research and based on ground-level realities. They realised that accountability has to be demanded with rigour.



*Working collectively must be based on ethics. All partners within the collective must be enabled to retain their identity, independence, and visibility.*



Madhu Mehra also says that working collectively must be based on ethics. All partners within the collective must be enabled to retain their identity, independence, and visibility. She says she learnt this from IWRAP Asia Pacific, appreciated it and has adopted it as part of the ethics of her organisation. One dimension of this collective focus of IWRAP Asia Pacific has been to expand the leadership within the movement and to bring in young women. Lesley Ann Foster of Masimanyane Support Centre says,

I also learned how important it is to mentor young women and to take them with you as much as possible. Shanthi said that teaching young women translates to making the movement grow so that even if they left, they took with them a strong understanding of women's rights, equality and non-discrimination wherever they may be.<sup>241</sup>

### **Demanding the Fulfilment of State Obligation: Linking Local and Global Advocacy**

Lesley Ann Foster states that the impact of IRAW Asia Pacific and Shanthi Dairiam on the work of Masimanyane has 'transformed' the way in which Masimanyane works. She says,

It helped us to frame our interventions within the CEDAW framework and it assisted us to fight for state accountability, mainly in the area of improving women's access to justice. We were able to open counselling and legal services centres in courts and advocated the use of CEDAW with judges. We have worked to integrate the language of women's rights, of equality and non-discrimination. We have continued to make inputs into various pieces of legislation such as the Sexual Offences Bill, Maintenance Bill, Traditional Courts Bill etc. using CEDAW standards.<sup>242</sup>

The Facilitating the Fulfilment of State Obligation programme enabled women's groups in Asia to demonstrate the need for the continuing obligation of the State towards rights holders. The obligation of the State does not stop with the adoption of a law or policy, and the State has to reduce vulnerabilities and risks people may face and ensure rights given by the law can be exercised. Tulika Srivastava of India literally founded a new organisation, Association for Advocacy and Legal Initiatives (AALI) to house this national-level project on the Fulfilment of State Obligation (Facilitating Project) working on issues of child and forced marriage or prevention of choice in marriage. The framework developed through The Facilitating Project has informed all the work

of AALI as it does with several other organisations in Asia.

The findings and conclusions of national advocacy then feeds into international advocacy linking the two and completing the cycle.

### **Making Every Type of Women's Inequality Visible**

IRAW Asia Pacific emphasises that there are differences in the experiences of women and men in relation to the violation of their rights. Sometimes this is not acknowledged or even visible. Roshmi Goswami, formerly with the North East Network (NEN), India, has acknowledged that "IRAW Asia Pacific and Shanthi helped visibilise women's rights abuses in the context of conflict in the North East region of India." In that context, violations of women's rights take place as a result of State action, action by the insurgents and violations that take place in the privacy of the home. The emphasis of human rights activism in that region was on civil and political rights and even women's groups would not raise violations of their rights especially those which were perpetrated in the home, or violations of women's economic and social rights as it touched on cultural norms. IRAW Asia Pacific broke this barrier. Roshmi says, "You showed us creative ways of using CEDAW as an entry point to bring international standards to bear but with respect for culture, taking into consideration where society was coming from and how to strategise."<sup>243</sup>

To sum it up, IRAW Asia Pacific partners have created a critical mass of functional CEDAW literates. These literates have compelled others to also take note of the existence of CEDAW and the critical importance of equality as the

standard for women's rights. Sapana Pradhan Malla says, "Today, even the Supreme Court refers to CEDAW, whereas five years ago the awareness among both government and judiciary about CEDAW was low."



*IWRAP Asia Pacific partners have created a critical mass of functional CEDAW literates who have compelled others to also take note of the existence of CEDAW and the critical importance of equality as the standard for women's rights.*



### What Still Has to be Achieved

The partnership with IWRAP Asia Pacific has enabled the organisations to work with women's rights at different levels—grassroots, state/national and regional—and to connect and conceptualise issues. The groups have gained credibility and are a resource for CEDAW implementation. However, the Netherlands evaluation<sup>244</sup> rightly pointed out that,

... though each of the individual organisations has a close relationship with IWRAP Asia Pacific and does significant work in the advancement of women's human rights, the synergy between these organisations at the national level had not evolved to an extent that it functions as a national core group with shared responsibilities and mutual accountabilities.<sup>245</sup>

Further, while many gains were made in an incremental manner in the reform of certain laws and policies and the relationship of the

groups with their governments was in many instances changed to one built on respect, the application of the CEDAW framework by the State in a comprehensive and cohesive manner, be it in law, policy, or development practice was still to be achieved.

In my view, this could be attributed to the lack of cohesion among the various groups at the national level. Each one pursued their own issue-based agendas, especially after the CEDAW review. The State too responded to this fragmented approach. The cohesion and collective approach taken by the groups in the preparation of the shadow reports was not maintained after the CEDAW review. Every group monitored and advocated for their own issue, no doubt with passion, but not for the overarching issues. These included the lack of a legal framework for equality and the definition of discrimination, the lack of an intersectional approach to promote equality and to eliminate discrimination, the collection of data for this, an overall campaign to eradicate stereotyping, and, above all, the lack of a comprehensive plan to implement the recommendations of CEDAW accompanied by indicators to monitor this process. There was typically no cohesive and vigorous campaign for these broad issues at national levels.

The question is if IWRAP Asia Pacific could have done more to create the cohesion among the groups at the national level. The Netherlands Evaluation was of the view that "it is difficult to get the broader overview of the processes that connect IWRAP Asia Pacific's multiple activities and projects to long-term results and impact." This is telling and is something to reflect upon.



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## Profiles of Individuals

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*Tulika was so incensed and passionate at the degradation and injustice against the woman, that she actually went to the hearing to oppose the perpetrators' plea for bail on the morning of her wedding day!*

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This chapter highlights eight individuals whose orientation on women's rights was transformed or refined, whose career trajectories, in a sense, have been influenced or developed because of their interaction with IWRAP Asia Pacific or through a relationship that they had with IWRAP Asia Pacific.<sup>246</sup>

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#### **TULIKA SRIVASTAVA**

##### **Addressing Violations Against Women and Challenging Women's Vulnerabilities Holistically: A Passionate Journey**

Tulika was introduced to CEDAW through the CEDAW orientations that IWRAP Asia Pacific conducted in collaboration with the Beijing Coordination Unit in Delhi in 1993 and in April 1994. She attended the orientation representing Mahila Samakhya,<sup>247</sup> a government programme where she was a staff member.

She is from Lucknow, in the state of Uttar Pradesh, India and had been trained as a lawyer at Lucknow University. She says that at the University, international law was not a big deal, and there was no discussion about human rights. The whole legal practice that she was engaged in was largely about evidentiary fact-based cases at the court level, even at the family court level. In her experience, even one's legal practice did not prepare one for understanding international human rights law, how international human rights function, human rights as a phenomenon, or as a legal concept. She had started her career as a practicing lawyer in 1989 but was not happy with the focus of her work, as she felt she was not fighting for justice, or realising any of the goals that had inspired her to become a lawyer. When the opportunity to work with rural women came up, she felt this would be much better than continuing only with practice of law. So, she accepted a position of consultant for law with the Uttar Pradesh Mahila Samakhya, with assignment for Saharanpur, a town in western UP.

She continued with her legal practice as well, which combined with her work on building legal capacities of neo-literate women, added to an enhanced understanding of the role of law. It also made her aware of the indifference of the women's movements to the use of law as tool for justice.

At that time, one of the cases she was struggling with was that of a woman employed by a GONGO,<sup>248</sup> an autonomous organisation set up and funded entirely by the UP Department of Women and Child Development. The woman had been dismissed by this organisation due to her request for maternity leave. The question was whether the government was liable or not for this act of discrimination as it was done by an 'autonomous' organisation and the government agency concerned was not directly involved. For Tulika, it had been a hard argument, given the definition of State according to Article 12 of the Indian Constitution.<sup>249</sup> In this regard, the orientation on CEDAW, Article 2(e) was enlightening. It opened her eyes to the fact that under international law, the State has an obligation to ensure through regulatory frameworks, that no entity (person, organisation or enterprise), discriminates against women. So, it affirmed for her an expanded definition of State and created clarity on the expanded concept of State obligation. For Tulika as a lawyer, it was a deeply reaffirming moment to realise that CEDAW was law and could be invoked in a court of law as source for interpretation as well as implementation.

At that time, the focus of women's rights organisations was dismantling patriarchy through mobilising women, cadre building, awareness raising, and organising, but not through the use of law. The huge number of cases, and the delays, as well as the constant denial by courts of women's rights and experiences, had led the women's movements to query the relevance of law, and essentially, its effectiveness. For Tulika, if one did not engage and deal with the law, then there was no way of institutionalising any process. She was unhappy with Mahila Samakya as it did not want to use the formal legal system, even though they did agree to build capacities of the field activists on law itself.

She says when she came to the CEDAW orientation, in April 1994, "it was a breath of relief." Tulika notes that at that time there was a lack of legal capacity among women NGOs, particularly in UP, and this was largely because they were not willing to deal with the law.

At the IWRAP Asia Pacific orientation the process was to look at CEDAW's legal standards and align it with national Law and the Constitution and see what rights are being negated. This was a new exposure for her. The case studies discussed at the orientation made her see the situations of women within a framework of rights, obligations, duty bearers, and their liabilities and the role of the law. This gave her a fresh perspective on undertaking actions for achieving women's rights other than using a framework of patriarchy and gender for the advocacy, which women's groups at that time were typically doing. But referring to patriarchy did not give her a handle to take action against duty bearers.

Her critique of the women's advocacy at that time was that there was work on the manifestations of women's oppression but divorced from contexts and addressed in a fragmented manner. Little things were challenged. There was a campaign for the abolition of dowry. But the devaluation of the female child by her family was not challenged. Natal families were equally responsible for the dowry abuses, as they had contributed to this devaluation of women by not providing their daughters with education, inheritance, property, or any other rights that the sons were entitled to. They were abettors and accomplices of the abuses against their daughters. They had to be made liable. It emerged for her as she participated in the orientations and training on CEDAW, that in any context of abuse there was more than a victim and a perpetrator. There were multiple duty bearers who had obligations and were liable for the abuse or the risk to being abused beyond the perpetrator.

Just the year before, in 1993, there had been the case of a woman accused of theft, who was stripped on the steps of the court by those accusing her. None of the people who had stripped her were arrested. There were fierce arguments offered that there was no law that allowed for the arrest of these people. No challenges on these gaps were made—“How was it that people could walk into a court of law, and drag a woman out, and strip her in broad daylight, in a public space, with much public around? Why was she accused in the first place, and where were the court police and security measures to prevent the stripping? Would an upper caste woman have been stripped in a similar manner?”

There were many unanswered questions. Tulika was so incensed and passionate at the degradation and injustice against the woman, that she actually went to the hearing to oppose the perpetrators' plea for bail on the morning of her wedding day!

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*It emerged for Tulika in the orientations and training on CEDAW, that in any context of abuse there was more than a victim and a perpetrator. There were multiple duty bearers who had obligations and were liable for the abuse or the risk to being abused beyond the perpetrator.*

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Her belief that such manifestations of violence needed to be understood holistically, rather than being responded to in bits and pieces and out of context, became even stronger after the orientation I led. Tulika states that all this while she had vague notions about these gaps and it was the interaction with IRAW Asia Pacific's programme and me that made her think and look at contexts through a framework of rights, obligations, duty bearers, and societal underpinnings of such phenomena, and not just at the violations in isolation. Her legal practice opened her eyes to the gaps. She realised that disadvantage was diverse, but the law had one approach. In order for law to become an instrument of justice for women, it was critical, she says, “that we engage with it, and it cannot only be to get a certain relief, but to ensure that law addresses the reality of the situation and responds to the experience of women as such.”

She expresses deep appreciation of the work done by IWRAP Asia Pacific, and our commitment to bringing in women from outside of the capital and metro city contexts.

IWRAP Asia Pacific undertook an orientation for lawyers in Lucknow and supported action-research on rights of women in marriage under its flagship programme called Facilitating Fulfilment of State Obligations to Women's Equality (Facilitating Project) in 1997. During this time, Tulika founded Association for Advocacy and Legal Initiatives (AALI) and undertook significant work around the right to choice which was part of the Facilitating Project led by IWRAP Asia Pacific. Part of this project was a national consultation on the right to marry, supported by the Centre for Islamic and Middle Eastern Law (CIMEL) and IWRAP Asia Pacific on the Right to Marry.<sup>250</sup> She says,

Not many institutions would invest in a small town like Lucknow and allow that space for thinking and challenging. That exposure gets you to think, enables you to challenge certain barriers, makes you re-examine certain incidents, through a frame of rights, a frame of entitlements, and a frame of obligations with multiple duty bearers; it creates an understanding of the role of the state as the ultimate duty bearer.

In the lawyers training, Tulika says one of the most useful frameworks that IWRAP Asia Pacific introduced for unpacking the dimensions of the law as it impacted on women was the 'Substance, Structure and

Culture of the Law'.<sup>251</sup> Case law was analysed using this framework, together with the elaboration of substantive equality and non-discrimination, the links between social norms, value systems, and the law and its structures of implementation. Tulika realised through such exercises that advocacy had to be much more complex than a singular focus on bits of law reform such as the abolition of dowry or the push for a Uniform Civil Code.

Tulika is grateful to Ratna Kapur<sup>252</sup> who provided much needed clarity on substantive equality, that is a corner stone of IWRAP Asia Pacific's work. She says that until then she knew sameness as equality and had argued it in court, that those placed in the same position need to be treated in the same way and through the same process. So, to actually unpackage that and start looking at equality in terms of ensuring that the disadvantage of a group has to be nullified so that they can benefit equally, was a real breakthrough for her in her thinking. It was further revealing that,

... just because you are engaged in nullifying the disadvantage for a particular group of people so they can come up, or be on the same playing field, does not mean that there is any favour being expended there. And also, just by bringing them up to the same playing field does not mean you make them equal. We have to make sure the game is played equally through all other measures such as infrastructure, procedures, monitoring, and data gathering, so that they actually benefit equally. The obligation of the State is continuous.

Tulika took this concept back to her community of women and they understood immediately. They could understand equality in a different way, they could understand violence in a different way. They could see that violence is not only when there is hitting going on, but that it is also their vulnerability that allowed them to be hit. The idea of substantive equality helped them rethink and challenge that, who the duty bearers are to ensure that they're not at risk of violence, what kind of safety and security they were asking for, and how it needed to be put in place.

She feels she was one of the few lucky ones who have gone through a very rigorous process with IWRAP Asia Pacific. She was part of CEDAW orientations in Delhi, and the one of the few who attended the first Training of Trainers held in Gonoshwasthya Kendro in Savar, Dhaka, in December 1994.<sup>253</sup> She helped organise and participate in the first training for lawyers, which was held in Lucknow in 1995; and helped document the second training held in Kathmandu, Nepal in 1996, and was part of many others. Later she worked with the CEDAW committee under the G2L programme as part of IWRAP Asia Pacific, both during the constructive dialogue process of various countries and as a member of IWRAP Asia Pacific's advocacy for the drafting of the Optional Protocol to CEDAW. This work allowed her to both learn and contribute to international processes, through a very grassroots understanding. It also enabled her to bring back the gains to her communities in UP as well as South Asia.

During the early days Tulika says she did not know how to write a proposal, how to organise a training, or how to draft an agenda.

She still remembers whenever she writes an agenda now, at the back of her head is what she learned from Shanthi, namely that, "the agenda should flow and be linked like a story and a guide. It has a beginning, it has a middle, it has an end—but here the end will be your outcome—what do you expect at the end of it."

Where is Tulika now? In 1995, she participated in the World Conference on Women in Beijing as part of the IWRAP Asia Pacific team. There, she and other Uttar Pradesh activists realised how far behind they were in reaching the goals that were being discussed at the international level.

There was a need to build a strategic and organised approach and a holding organisation was needed for this. In 1998 the Association for Advocacy and Legal Initiatives (AALI)<sup>254</sup> was founded. The organisation undertakes research, activism, and direct response with a strong focus on violence against women and the right to choice in entering a relationship. The work of the organisation reflects the strategic thinking she has absorbed from her CEDAW related exposure. Tulika was a team leader at AALI for several years, and in 2007, she paid back to IWRAP Asia Pacific by becoming its Executive Director for a year.

From 2008, she started a new journey in restructuring and working for a women's fund, then known as South Asia Women's Fund (SAWF), now the Women's Fund Asia (WFA). She states clearly that her understanding of equality and non-discrimination enabled a far more critical engagement with the politics of resources. She was able to build an analytical mandate for the organisation, both

in resource mobilisation and in grant making. Her work here is rooted in her substantive understanding of the principles that are foundational to CEDAW. The role of WFA is to ensure resources on a basis of equality and non-discrimination, for feminist organising and advancing rights-based implementation for the realisation of human rights of women, girls, trans and gender non-conforming persons through their leadership.

Currently, she is the Executive Director of Women's Fund Asia which provides financial support and guidance to the work of women's organisations in Asia. In this capacity she continues to support strategic, holistic, and rights-based women's advocacy work.

### **ROSHMI GOSWAMI**

#### **The Re-education of Roshmi Goswami: From Basic Needs to Basic Rights**

Roshmi's introduction to a rights-based approach came about when she attended an international conference titled 'From Basic Needs to Basic Rights'<sup>255</sup> organised by Margaret Schuler of Women, Law and Development International, Washington. This conference was held in 1994 in Kuala Lumpur, Malaysia and hosted by IRAW Asia Pacific. Roshmi came as a participant from the northeast region of India<sup>256</sup> where she had been participating in the NGO preparatory processes for the Fourth World Conference on Women to be held in Beijing in 1995. At the time of the interview with Roshmi in 2012, it was estimated that the region as a whole was 30 per cent behind the rest of the country in terms of economic development, despite its natural resources. These resources have been exploited to the benefit of the rest of the

country without a corresponding development of infrastructure and opportunity in the region. The natural fallout of this has been unrest, conflict, and demands for self-determination.<sup>257</sup> As a result, there was much human rights activism in the region, but its focus was on civil and political rights only.

The region is not homogenous, but home to several diverse ethnic groups and sub-groups. There is much human rights activism in the region because of the gross violations of the rights of the communities and the political activists in the context of the conflict situation. These conflicts have seriously affected women. Women experience greater violations, caught between different violators, the Indian Security Forces, and insurgents. Roshmi is of the view that since much of the conflict is linked to questions of ethnicity, patriarchal values get strongly reinforced. As a result, women face violations by the insurgents and the State. They also face intra-community violations at the personal level. Often the volatile political situation is used as justification to disregard violations of women's rights as they were not seen as serious political actors even by the human rights activists.

Roshmi Goswami is the co-founder of the North East Network (NEN)<sup>258</sup> founded in 1994 during the mobilisation process for the Beijing conference (1995), with the aim of documenting issues affecting local women and carrying their voices from the hitherto marginalised area.

When Roshmi participated in the conference 'From Basic Needs to Basic Rights', she recalls she found it confusing. Her orientation on women's rights at that time was that a

discourse on rights did not seem relevant in the context in which she worked. Her experience in the North East Region was that women did not have their basic needs met—food, health, access to income, or livelihoods. Her stand was that if the basic needs of women were met then one could move to the next level and speak of rights, but not otherwise. She returned from the conference thinking that the meeting did not hold much for grassroots workers like her.

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*We were beginning to see that a position of needs is subject to the whims and vagaries of the powers that be who, even in these egalitarian tribal communities, are male. Bringing in the language of rights would help to shift those powers and power relations.”*

– Roshmi Goswami, North East Network (NEN)

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But although throughout the conference the agenda of bringing a rights approach into all endeavours benefiting women did not make sense to her, she says every individual session of the Conference was vastly stimulating. This is what got her thinking. The Conference therefore did make a difference and it made her think differently of her work in the northeast of India. She began to see the conflict situation itself from a gender perspective. The priority for the people of the northeast was self-determination, and the male-dominated human rights groups were preoccupied with what they saw as a deficit of civil and political rights. In this context, Roshmi says that women fell between the cracks. The basic needs of women were about socio-economic rights, and the violence they

experienced was perpetrated by the State, the insurgents, and the community. These concerns had no place within the civil and political rights movement. The human rights groups placed all rights within the category of civil and political rights.

As women's rights activists, they had been sending memos to the government demanding that the basic needs of women be met, but change was not forthcoming in the lives of the women. The realisation slowly came to her that needs and rights cannot be separated. She began to see that governments had to be made accountable and making requests for the meeting of needs without anchoring the needs on something that will make the government accountable will go nowhere. Needs cannot be met without rights and, in particular, human rights and socio-economic rights cannot be separated. Rights were indivisible. One cannot be achieved without the other.

Roshmi's journey from needs to rights had begun imperceptibly at the 1994 Kuala Lumpur Conference 'From Basic Needs to Rights' and gained strength as she became aware of the futility of exclusively needs-based activism with and for women in the conflict situation at home. It was further consolidated during the Fourth World Conference on Women in 1995 where she was inspired by the confident struggles of movements from all over the world claiming that women's rights were human rights.

Post Fourth World Conference on Women, Roshmi was convinced that their work regarding the women had to be anchored on rights, that women had to be brought into the



human rights movement in the North East, that the vibrant human rights movement had to be engendered and that grassroots activism had to be linked to international advocacy. Roshmi has written about this. She says,

In our own work we were beginning to see that a position of needs is subject to the whims and vagaries of the powers that be who, even in these egalitarian tribal communities, are male. Bringing in the language of rights would certainly help to shift those powers and power relations.<sup>259</sup>

Pursuant to this awakening, Roshmi along with IWRAW Asia Pacific organised a five-day consultation workshop in Shillong, Assam, in 1997,<sup>260</sup> bringing in the women from the region along with male human rights activists. The intention was to create awareness that women's rights are human rights in all contexts, within community and family relations, and in the political context of the conflict. The consultation had the expectation that the women would be the catalysts to change the mindset of the men. The late Sunila Abeysekere of Sri Lanka and I conceptualised and conducted this workshop on behalf of NEN guided by Roshmi. The workshop was fraught with tensions, but it was path-breaking and Roshmi indicates its impact was exceptional. At the start it was difficult to get women to see themselves at the centre of the rights struggle. Within the politics of the context and the struggle with the State largely led by men, the women had internalised the stand that their struggle as women and their rights as individuals was of no significance to the rights of the collective, and in fact was antithetical to the struggle of the collective

community for self-determination. The discussion at the consultation focused on the rights of individual women, encompassing reproductive and sexual rights, access to economic resources, freedom from domestic violence, the sexual violence they faced in the conflict situation and dehumanisation in the community, and in general the inequality of women in the family and community. The overwhelming emotion justifying such inequality by all the actors, was that the rights of the community for self-determination and autonomy was far more critical.

At the workshop Sunila and I set out to establish that there was a thin line between the rights of the individual and that of the community as a collective.<sup>261</sup> We drove home the point that socio-cultural norms and culture constructed women's interests in stereotypical ways, distinguishing and prioritising the decision-making and leadership roles of men, and reducing women into subordinate roles and positioned as unequal and inferior. This justified discrimination against women as a norm. They needed constant reinforcement that the larger struggle would be weakened if the rights of half the community was not recognised, if women were disempowered, violated, weak, and unequal. We persisted with the point that the challenge for women is to delegitimise established sources of values that construct women's interests in stereotypical ways to the disadvantage of women, and to legitimise new sources of values such as international norms and standards of equality.

The men who were brought in on the third day were curious as to what women had to say about human rights and some were downright skeptical. At first, the mood was that women's

rights were not relevant to their struggle, and they were even dismissive of the sexual violence against women that was perpetrated by the army.

But the workshop was a turning point. By this time the women had opened up and the impact of the workshop was that it was the foundation for the entire work on human rights in the North East after this. It opened the space for several state- and district-level workshops for the women on CEDAW, emphasising the social positioning of women as equals and the legitimacy of introducing women's rights within the political struggle. Roshmi says CEDAW was a strategic entry point with its three basic principles—equality, non discrimination, and State accountability. In particular it was an international instrument acceptable and accessible to the State as they had acceded to it, and it was possible to use it to address tricky and sensitive issues of women's rights in areas of internal conflict. She stated, "CEDAW gave legitimacy to our inquiries and analysis." IRAW Asia Pacific continued its collaboration with NEN and its human rights advocacy at this period.

Roshmi is appreciative of the capacity that I continued to provide for their work. She said to me,

You showed us that CEDAW was not a dry instrument. You literally helped us apply CEDAW creatively maintaining a balance between respect for cultural identity and respect for universal standards of equality. You showed us how to unpack these universal human rights standards and to strategise.

She says, "This was critical because the primacy of cultural identity was at the core of people's struggle with the Union of India." Using this understanding they were able to establish women's leadership within the framework of Security Council Resolution 1325. Before this, women did not accept their own leadership.

By 1997, NEN participated in IRAW Asia Pacific's Facilitating Project (refer to Chapter 9), using CEDAW to monitor State responsibility towards women in situations of armed conflict. The project had the potential to help women's groups develop more effective cooperation with their governments. Roshmi was of the view that, "It was just what we needed at our local level, and we quickly got involved with the project by preparing a baseline study on Women in Armed Conflict Situations." This study was the basis of the first shadow report to the CEDAW review on women in armed conflict in India in 2000. The report gave a comprehensive in-depth analysis of gender perspectives in armed conflict and the interrelatedness of rights denied to women. It highlighted the significance of recognising the range of roles women played in armed conflict and the varied impact of the conflict on them.

Subsequent to her work with NEN in the North East, Roshmi became a donor as programme officer with FORD Foundation, New Delhi (2001-2009). According to her, this posting was part of her journey from Needs to Rights. She says as a donor she was tuned into a rights discourse. She was dealing with sexual and reproductive rights projects and she wanted to have a framework for assessing the work of her South Asian country grantees.

IWRAW Asia Pacific helped develop a CEDAW compliant, practical rights-based framework to programming through a consultation<sup>262</sup> with the participation of the FORD grantees. She says this framework informed her grant making strategies. What she is also happy about is that as a donor she was also able to support women's rights organisations at both regional and country level, strengthening their sustainability with core grants.

### SAPANA PRADHAN MALLA

#### The Meteoric Rise of Sapana Pradhan Malla

I met Sapana when I had come to Nepal to conduct an orientation on CEDAW in 1993. We had a half an hour's breakfast conversation. Sapana was a young practising lawyer but did not know much about CEDAW. In that brief conversation the discussion focused on the significance of using standards of CEDAW for litigation and advocacy. As Sapana says,

We were not even aware that time, that Nepal was party to CEDAW. We had not even realised how important the CEDAW could be. But after Shanthi's visit we began to use CEDAW as a bill of rights for Nepali women.<sup>263</sup>

This was the power of a focused half an hour's conversation and a mind that grasped the potential of CEDAW in a flash.

Sapana expands, "Shanthi was my inspiration to work on women's rights using CEDAW as a framework. With her insights, we were able to understand what discrimination against women is." Having that understanding was especially important because it enabled them to litigate successfully against crimes against

women, such as marital rape. This insight, she says, came from the collaboration with me and IWRAW Asia Pacific and it gave them the realisation that discrimination is not only an act that discriminates overtly, but also any action or inaction that has a discriminatory effect on women (Article 1 of CEDAW). Sapana also says she learnt that the private and public domains are linked, and that violations in the private domain are crimes as well. Because of that understanding, they were able to demand that the State intervene if there is violence, even inside the home. This included criminalisation of marital rape.

In Nepal, IWRAW Asia Pacific built the capacities of women's groups to have a clear understanding of the principles of CEDAW and it enabled them to use it as a framework for promoting and protecting the rights of women. Nepal was a country where much of the law discriminated against women and where equality for women was not the norm. So, the law had to be challenged. There was a great deal of activism for law reform not only by social activist groups but also by women political activists, but the government was not listening. Sapana said it was therefore expedient to establish the Forum for Women Law Development (FWLD) to challenge the law using CEDAW as a framework. So, this organisation was established in 1995, to use CEDAW as a tool to make government accountable to amend discrimination against women.

The clear understanding of the rights framework—which they learnt from IWRAW Asia Pacific and specifically from me—not only helped in working on law reform, but it could also be linked with any project. For example, it

was useful, when she was asked to work on the 10th Development Plan of the government. Here she was able to bring in the concept and principles of non-discrimination and equality as a framework for development. Also, when FWLD was working on reforming different legislation in the country or doing advocacy, that framework really helped.

Sapana says that because her personal capacity was built through IWRAP Asia Pacific, she has been able to mobilise the community, bring the community issues to the national level, and take it up to the international level to the CEDAW processes. From there, she was also able to bring it back to the national level and the community level. So, they were able to bring about not only a recognition of the rights of women but also enabled the *de facto* practical realisation of the rights through litigation. And this is what CEDAW demands.

There were great successes in the courts through the work of FWLD. The Supreme Court of Nepal, in the absence of a definition of discrimination against women in the law, stated that Article 1 of CEDAW should be used as a framework of non-discrimination against women. Further, the term 'substantive equality' has become part of the language of the courts, and this is reflected in the fact that special measures for the advancement of women, especially disadvantaged groups, has already been recognised by court in many decisions. Working with the CEDAW framework has been a continuous effort and they have engaged with IWRAP Asia Pacific continuously on this endeavour.

### Enhancing Capacity of the Courts: Creating Equality Jurisprudence

The work carried out by Sapana and FWLD started by using CEDAW as a framework for women's rights. It had a very strong component of claiming rights for women and of creating jurisprudence on equality and non-discrimination through a litigation strategy. This litigation strategy has enhanced the capacity of the courts. For this, FWLD also had to work with judges.

Sapana acknowledges that professionally she has advanced and been recognised because of her work on equality. At the time of the interview with Sapana, Nepal was in political transition and in peace-building process. Because of her knowledge on women's rights and human rights, she was called to become a Constituent Assembly member, where she served from May 2008 to May 2012. She was therefore able to work on the new constitutional framework. She says,

If you look at the Constitution there is a principle of non-discrimination, which has gone beyond the traditional formal model of equality prohibiting discrimination on the basis of race sex, class, and caste. The Constitution now says non-discrimination based on pregnancy, marital status, health status.

As a result, they have been able to expand the jurisprudence and criminalisation of discrimination within the country.

FWLD's litigation strategy in turn has enhanced the capacity of the court. For this they also sensitised and empowered the judges through a massive training programme, which was conducted in collaboration with different NGOs, the UN system and through the judicial academy.

### The Rise of Sapana

In the early 1990s, Sapana was a corporate lawyer and was not a women's rights activist. She was just doing *pro bono* work on women's rights. But she says with the clarity and understanding on women's rights that CEDAW gave her, she was encouraged to engage more with legal work on women's rights. As a result, she gave up her corporate law practice and became a full-time women's right practicing lawyer. This not only built up her capacity to work at the national level, but it also helped her to work at the regional level, as well as at the international level.

She states that the understanding and expertise on equality and the norms of CEDAW helped her bring a critical analysis to any programme, any project, any policy, any legal provision. She is proud to say that if you look at the laws that were enacted in Nepal after she was a member of the Constituent Assembly (CA) from May 2008 till May 2012, and also a member of the Constitutional Committee that had responsibility to prepare the draft and reach consensus on contentious issues, they are gender sensitive. As the CA also functioned as a transitional parliament where she was part of the legislative committee and expert advisor to the Women's Caucus, all of the laws are gender sensitive. Women's participation has been ensured not only in the committee or

commission, but even in the recommending body: "All the legal frameworks, even if it's Hydropower Law, even Investment Board Act, Mediation Act, we have made sure that they are gender sensitive."

When asked about the challenges she faces as an advocate for women's rights, she told Pass Blue:<sup>264</sup>

When I started working on women's rights, I decided to take up this work because it wasn't just social, cultural bias against women that existed in the country, but even the law was problematic. But when you want to reform the law, you need to challenge everything: the State, the biases against women, culture, religion and strong patriarchal views.

Her work with CEDAW has allowed her to bring gender sensitivity in all of her work, not only as a lawyer in court practice. She has been invited to give expert consultancy services on equality and CEDAW reporting, writing shadow reports, implementing CEDAW's Concluding Observations, providing technical assistance on how to be strategic on filing public interest litigation, how to develop CEDAW compliant legal frameworks, how to critically analyse and provide alternate language in the law reform process, and engaging NGOs and all line ministries and departments. For this she has worked in countries such as Cambodia, Afghanistan, Mongolia, India, and Pakistan. She has been invited to share the Nepal experiences in different trainings as a resource person at the national, regional, and international level. In Afghanistan she provided technical services on the human trafficking act. And in

Mongolia, she reviewed the first research they had conducted on human trafficking. For all of this she was contracted by UN agencies such as Office of the High Commissioner for Human Rights, UNICEF, and by UNODC in relation to the Transnational Organised Crime Convention. She also evaluated UNIFEM's programme on gender and justice using the CEDAW framework. She proudly states, "and it is all because of Shanthi being my Guru."

At another level, she has been recognised internationally and was invited to the Board of Equality Now.<sup>265</sup> She received a global international women's rights award, the Gruber Prize<sup>266</sup> in 2008 and her organisation FWLD received the Margaret Sanger award on their contribution to decriminalising abortion. Sapana's contentment is obvious when she says, "We have been able to get recognition regionally as well as internationally."

Sapana's career has continued to rise. She was elected to the UN Committee against Torture for the term 2014-2017 and on 1 August 2016, she was elevated to the Supreme Court of Nepal.<sup>267</sup>

### **LESLEY ANN FOSTER**

#### **The advent of CEDAW into the advocacy of Lesley Ann Foster and Masimanyane**

I met Lesley Ann Foster in Harare at a strategic planning meeting of what was called 'The International Women's Movement' in June 1996. The initial CEDAW report of South Africa was going to be reviewed at the UN in New York in July 1998. I had not met Lesley Ann before this, nor did I know of her. But hearing that she was from South Africa, I approached her during a tea break and asked her whether South African women were preparing a

shadow report to CEDAW. She told me she did not know what CEDAW was, and she certainly did not know whether women were preparing a shadow report. She later recalls she was stunned as she had no idea what I was talking about. We sat on the floor in a corner of the meeting room during that tea break and I gave her a very short version of what International Treaties are and how CEDAW was such a treaty. I told her that it was very important that the women in South Africa prepare a shadow report so that the monitoring CEDAW Committee had access to accurate information about women in South Africa. Only then would the review of South Africa be useful for women. She grasped the significance of this immediately and took me seriously despite the fact that we had not known each other before.

At that time Lesley Ann was the Executive Director of Masimanyane Women's Support Centre, based in East London, South Africa. It was a support initiative founded in 1995 for women who are survivors of domestic violence and rape, while engaging in advocacy to draw accountability from various State agencies and the criminal justice system for the enforcement of laws and policies that address violence against women. During that period, the Eastern Cape had the highest number of rape cases in the country. NGOs like Masimanyane were trying to turn the tide on this statistic.

On returning to South Africa, Lesley Ann moved fast. She contacted two women, Dr Zubeida Dangor<sup>268</sup> who was also working on violence against women, and Rashida Manjoo.<sup>269</sup> Rashida, being a lawyer, knew about CEDAW but did not know anyone who was

working with it or developing a shadow report. Both women were keen to work on a shadow report. It is noteworthy that while these were eminent women at that time in South Africa carrying out critical work on gender-based violence and the reform of the justice system, the introduction of CEDAW standards of equality was initiated into their work through the efforts of Masimanyane and Lesley Ann by bringing them into the CEDAW shadow report writing process.

When I raised the need for the writing of a CEDAW shadow report, I also assured Leslie Ann that IWRAW Asia Pacific would provide technical assistance and training to do this. Leslie Ann conducted a series of consultations with women's groups who had not heard of CEDAW or a shadow report, but they quickly realised its potential as an international accountability measure to get the responses that were not forthcoming from the government. Leslie Ann recalled that they were all frustrated with the failure of the government which was not taking their work on violence seriously, and in some instances even disparaging of their work.<sup>270</sup> They were ready to go.

With the shadow report guidelines and the training that I provided later, and based on numerous consultations and division of labour among the groups, a shadow report was produced. At first the groups were concerned about a focus for the report as CEDAW comprised 16 substantive articles whereas the groups' focus was on violence. However, they realised that violence against women and girls was interrelated with many other rights, such as education, employment, literacy, health, and

welfare. The deficit of such rights constituted risk factors for violence against women and were consequences of it. This was reflected in the report. With some editing and guidance from me, the shadow report was ready to be sent to the Committee.

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*They quickly realised CEDAW's potential as an international accountability measure to get the responses that were not forthcoming from the government.*

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A second training was provided by IWRAW Asia Pacific through me, to prepare them for their presence and observation of the CEDAW review of South Africa in July 1998. Our From Global to Local programme was only held in January each year then. So, there was no From Global to Local programme in July. A small brave team put together by Masimanyane then set off to New York in July and in spite of some level of initial nervousness, performed their task of interacting with the Committee brilliantly and got their messages across to the Committee on the lived realities of women in South Africa. Their one week stay in New York was highly productive and they had my guidance throughout, although I was in Kuala Lumpur. Every evening by 8pm after their daily observation of a couple of the review of other governments at the UN, the team would talk to me over the phone narrating the experience of the day and seeking my advice. It would be 8 am the next day for me. This time difference and conversation with me was surreal to them and one of them blurted out, “We are talking to tomorrow with Shanthi.”

Lesley Ann affirmed that those daily conversations gave them the confidence to deal with a totally alien experience and to overcome any feeling of intimidation they may have had when dealing with the Committee. She says, the daily conversations with me “helped clarify issues, confusions and concerns that the team had, and confirmed or affirmed the validity of insights they were picking up from their daily observations at the UN.”<sup>271</sup> This was empowering for them. There was considerable hand holding taking place from Kuala Lumpur.

### **The Impact of the Shadow Report and the Advocacy with the Committee**

Lesley Ann is of the view that their report and informal oral presentation in 1998 was very powerful. They had captured very adequately the essence of factors contributing to the extremely high levels of violence against women in South Africa. When the government was questioned by the Committee, Lesley Ann recalls that the line of questioning was extensive and deep. To their satisfaction, the Committee picked up on every issue they had raised in their shadow report and more. She says, “This was very affirming.”

The end result was that of the 26 Concluding Observations issued by the Committee to South Africa, 18 focused on aspects of violence against women as highlighted in the shadow report. The most significant Concluding Observation was that the South African government should enact an equality legislation.<sup>272</sup> The link between inequality and violence against women was being recognised and addressed. Finally, Lesley Ann observed that the participation of the women's groups at the CEDAW review process gave “the NGOs

credibility and earned the NGO sector the respect of the government locally, provincially and nationally.” The Ministry of Justice appointed Lesley Ann on a Committee tasked to identify laws that had to be reformed. *And it all started with a small tea break conversation at a conference!*

### **Post-CEDAW Events and Impact**

According to Lesley Ann they did not have a strategy for post-CEDAW advocacy. This was the post-apartheid era: most people in the country were very focused on the transformation within the country, and CEDAW did not interest them. But Masimanyane was keen to integrate CEDAW into the work they were doing at the local level. They developed relevant knowledge and capacity amongst the women's group they had worked with and many began to use CEDAW at the local government or municipal level as well as at a provincial level. Over the years, Masimanyane has developed a strong base within local communities and partnership with several South African women's organisations. Women on the ground were trained to look at their context under each article of CEDAW and assess the quality of basic services provided by the State using the framework of the three principles of CEDAW: substantive equality, non-discrimination, and State obligation. Two of the members of the delegation that went to the CEDAW review in 1998 were appointed to the South African Law Commission where they were tasked with developing legislation to address domestic violence. They ensured that CEDAW was the lens through which the issues were viewed. They included the definition of discrimination in the preamble to the Bill and it has remained there to this day.





*The engagement with the CEDAW process helped to develop new language which in turn improved the local, national and international advocacy strategies.*



Lesley Ann narrates with pride that working on the CEDAW Shadow report completely transformed the way in which Masimanyane worked.

It helped us to frame all our interventions within the CEDAW framework and it assisted us to fight for State accountability. We have worked to input equality and non-discrimination into the language of women's rights. We have continued to make inputs into various pieces of legislation using CEDAW and the standards sets through this Convention.<sup>273</sup>

Lesley Ann points out that Masimanyane's work on CEDAW has expanded and included the development of a monitoring that NGOs can use to assess State accountability under CEDAW. This expanded their understanding of women's rights generally and clarified what constituted a violation specifically. This was very useful when working on issues of domestic violence, rape, and other forms of sexual violence. Many women's groups, researchers, academics, politicians, activists, and other stakeholders were trained on CEDAW and in this way a body of information, skill and expertise was developed for the country. The engagement with the CEDAW process helped to develop new language which in turn improved the local, national and international advocacy strategies.

Masimanyane Women's Support Centre, as the initiating and coordinating organisation, gained visibility nationally and internationally and came to enjoy respect in the violence against women sector. This, in turn, led to funding.

### **Change Effectuated in the Country as a Result of the Shadow Report**

Lesley Ann has written about this.<sup>274</sup> She has reported that the government used the report to develop a strategy for addressing violence against women in the country.

The organisation was commissioned by a parliamentary committee to investigate the lived realities of women using the CEDAW convention and the Beijing Platform for Action as a framework for this assessment. The results were compiled into a country report on violence against women.

Extensive legislative reform took place, and more than 4,000 laws were reviewed to ensure non-discrimination against women and girls. Extensive programmes have been established in the country to support women and girls who are victims of gender-based violence. Research has been commissioned by the national government to develop the data systems related to violence against women. Donor funding increased for NGOs and government agencies in respect of violence against women and girls. NGOs and community-based organisations (CBOs) sprouted across the country providing more support in larger number of communities. The analysis of women's human rights expanded and deepened considerably.

### Masimanyane's Global Footprint

Masimanyane began to be known internationally. They were commissioned to coordinate an international study to assess government initiatives to implement CEDAW—a joint initiative of York University, Canada, and the UN Division for the Advancement of Women (DAW).

The South African NGO shadow report became a model report and was used extensively across the world by women's groups. Masimanyane has developed two shadow reports presented to the CEDAW Committee which resulted in important changes in government responses to violence against women. Masimanyane has also provided training in shadow report writing in more than 30 countries across the world, including 15 in Africa. Lesley Ann has provided training and support on CEDAW to Norwegian women's groups and was instrumental in the development of their shadow report in 2007. She was then invited to provide guidance to some groups in the Middle East and worked with nine countries sharing her experience and giving some guidelines to the work they were doing (Egypt), or that which was being proposed.

She was responsible for the shadow report development of Jordan in 2008 where she met with the Karama network and spoke about the South Africa report. She edited their first draft and provided the guidance on how they needed to structure their report. She also worked with Iraqi women orientating them on CEDAW and linked them up to IWRAP Asia Pacific. Along with me, she assisted them to develop their shadow report.

Back at home, Masimanyane along with a group of women's organisations submitted a report to the CEDAW Committee in 2012 for the conduct of an Inquiry under the Optional Protocol to CEDAW<sup>275</sup> on the unchecked levels of violence against women in South Africa taking place with impunity.

The impact of Lesley Ann's involvement with IWRAP Asia Pacific has also got a global footprint. She was appointed by IWRAP Asia Pacific as the African coordinator of the Global Campaign on the Optional Protocol to CEDAW (IWRAP Asia Pacific's Our Rights are Not Optional) for two years starting in 2000. Currently, Lesley Ann serves as Co-Chair of the Board of directors of IWRAP Asia Pacific.

Masimanyane's regional footprint was established when they were elected for the term 2007-2014 to host the secretariat for Amanitare Sexual Rights Network which works in six African countries and has members in 20 more countries. Each country supported by Masimanyane and Amanitare worked to strengthen policies on sexual and reproductive rights in those countries. These countries were Zambia, Zimbabwe, Uganda, Nigeria, Mozambique, and South Africa.

In 2014, Masimanyane was elected to host the newly established International Network to End Violence against Women and Girls (INEVAVGs) increasing the organisation's international footprint across five continents. INEVAVG is conceptualised and formulated in South Africa by a group of women from the South representing five continents and who have decades of experience of working to end violence against women and girls. INEVAVG was founded in response to heightened

global concerns about violence against women and girls, increasing levels of impunity, and poor State accountability. As a founding member of INEVAWG, Lesley Ann conceptualised and initiated the creation of this network.<sup>276</sup>

INEVAWG aims to ensure that INEVAWG's approach is rooted in intersectional feminist analyses that recognise and seek to address violence against women and girls within the realities of patriarchy, neoliberalism, militarism, surveillance states, corporate capture of public institutions, white supremacy, heteronormativity, and the legacy of colonialism. The aim is the 'Repoliticising of Violence against Women and Girls'.<sup>277</sup>

The intention is to prioritise the need and importance of working from the margins to ensure that local realities inform national, regional, and global human rights and social justice approaches to end violence against women and girls. INEVAWG works in solidarity with sister activists and organisations.



*Masimanyane shares information and works in solidarity with organisations to address the rising levels of violence against women and the rising levels of impunity.*



### **Masimanyane has Grown Into a Global Equality and Social Justice Organisation**

From a small support initiative founded in 1995 for women who are survivors of domestic violence and rape, Masimanyane has grown into a global equality and social justice organisation

that is locally rooted, but globally connected. It is seeking to broaden the work it does by sharing information and working in solidarity with organisations from around the world to address the rising levels of violence against women and the rising levels of impunity.

Lesley Ann and Masimanyane have an understanding that gender-based violence has at its roots the denial of women's right to equality, bodily integrity, and autonomy; hence, the strategies to address gender-based violence have to be holistic, going beyond the law, and embracing social and political dimensions. This understanding has received unexpected recognition. She is proud that in 2020 the South African Women Lawyers Association appointed her the Chair of its Gender-Based Violence programme.

The recognition of the impact of Lesley Ann's work on women's human rights and violence against women reached its zenith when she was elected to the South African Presidential Gender-Based Violence Steering Committee in 2020. The life span of the Steering Committee is one year. Within this year this Committee was tasked to develop a Strategic Action Plan<sup>278</sup> to address gender-based violence against women, seen by the President of South Africa, as a national crisis requiring a national and political response. It is intended that this plan has the widest scope and coverage, and the parliament has mandated that based on the framework of the National Plan, every district has to develop their implementation plan. The Presidential Gender-Based Violence Steering Committee was also tasked with developing the Terms of Reference for a National Council on gender-based violence which is currently being established.

**MADHU MEHRA****An Advocate for Moving from Formalistic Law Reform to Holistic Achievement of Social Justice for all Women, Including the Most Invisibilised**

The Women's Conference in Beijing held in 1995 with its preparatory processes from 1993 propelled Madhu Mehra, then a young lawyer from India, into the international women's human rights arena. Madhu worked at the Coordination Unit in India set up by a consortium of donors to facilitate the NGO preparations and civil society reports for the Beijing Conference. Documenting the realities of women's lives, across their diverse contexts, through extensive consultations throughout India, Madhu was able to integrate awareness raising and preparation of the first NGO shadow report for CEDAW, into the complex multi-sectoral Beijing preparatory process on women's rights. Since India had acceded to CEDAW in 1993, it was anticipated that the initial country report might be submitted in 1994, making CEDAW related work dovetail with Beijing Conference processes. It was at that juncture in 1993, that I first met with Madhu, leading instantaneously to an invigorating and sustained collaboration to conduct orientations around CEDAW, and eventually, embed it in domestic activism and accountability processes.

As part of the Beijing process, I conducted two roundtables on CEDAW with leading women's rights activists and stakeholders in the country—one in Delhi with assistance from The Coordination Unit, and the other in Chennai, with assistance from Initiatives for Women in Development (IWID) based in Chennai, India which was coordinated by Ramya Subrahmanian.<sup>279</sup>



*Some felt international norms were illusory on account of the distance between global forums and grassroots realities, others felt that customary laws within Indigenous communities were superior within tribal contexts.*



Both were timely. The interest and curiosity generated about this treaty in India, was also accompanied with skepticism, if not resistance, from some quarters. Some felt international norms were illusory on account of the distance between global forums and grassroots realities, others felt that customary laws within Indigenous communities, being holistic and embedded in collective responsibilities rather than individualism, were superior within tribal contexts.

These viewpoints, among others, were part of the debates that made for diverse, vibrant, and of course, contesting engagement with CEDAW during the Beijing processes in India. Madhu coordinated the first shadow report, called the 'purple book', through a collective process in which organisations produced thematic chapters consultatively with their sectoral allies, all of which came together in one report.<sup>280</sup> In anticipation of the initial country review, which did not take place until 2000, this process set the tone for NGO shadow report processes that followed.

Madhu speaks with great appreciation of the process of her own involvement with the CEDAW initiatives of IRAW Asia Pacific, participating as she did in 1994, at the pre-testing of the first regional training

programme on CEDAW in Bangladesh. Following this programme, she joined the cohort of regional trainers for IWRAP Asia Pacific, and the team that prepared the Amma Manual on CEDAW, international human rights norms, and their supplication at the domestic level.<sup>281</sup>

Madhu says that the way IWRAP Asia Pacific trainings wove together interrelatedness of discrimination, structures, and social norms across domains that helped create a holistic notion of equality that was linked to material and ideological transformation. Without changing of lived realities, or manifesting results, the formal law reforms proclaiming equality were just not enough. Likewise, lawyers alone—without support of multi-sectoral change agents, were not adequately equipped to identify or tackle the faultlines of discrimination. IWRAP Asia Pacific's regional trainings, in which lawyers and social workers participated, brought together diverse stakeholders to engage with each other and exchange insights into addressing discrimination from their respective vantage points.

Madhu says that her early involvement with IWRAP Asia Pacific, which provided the leadership and a gateway for global and regional work for women's human rights, also caused CEDAW to become intrinsic to her own professional life from then on. What was significant for her was that IWRAP Asia Pacific nurtured growth, and offered rich regional community and a platform that enabled the innate potential of so many women, including herself, to manifest and flourish. As she speaks to me, she says, "You had the ability to recognise this and support it."

The timing of different exposures, regional, and global women's rights work, aligned possibilities for Madhu. The initial brush with the regional women's rights work during the preparations for the Beijing World Conference on Women in India, became abiding associations with two leading regional organisations. With IWRAP Asia Pacific her work on CEDAW expanded within and beyond national boundaries, and with the Asia Pacific Forum for Women, Law and Development (APWLD), her involvement grew from contributing to the feminist legal theory and practice programme to their governance functions.<sup>282</sup>

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*What was significant for Madhu was that IWRAP Asia Pacific nurtured growth, offered rich regional community and a platform that enabled the innate potential of so many women, including herself, to manifest and flourish. She says to me, "You had the ability to recognise this and support it."*

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Enthused by the need to make visible and address linkages between structural realities, social norms and the law—the essence of CEDAW and critical feminist legal engagement—led Madhu to the setting up of Partners for Law in Development (PLD)<sup>283</sup> with like-minded lawyers and activists in 1998. PLD achieved this through building partnerships at various levels in India. Their work methods involved partnerships and collaborations at the community, state, national, and regional levels, "combining diverse strengths to monitor, create knowledge and advocate for the realisation of social justice and women's equality."

PLD has evolved over the years. From a programme that talked conceptually about CEDAW and equality they have learned to move to the application of the concepts to contexts and issues. She says,

If we are to be involved in national level monitoring of the State, we need thematic focus, we need a knowledge base, and we need research. Otherwise, we slip into rhetoric. Activists often don't want to do research but go straight into policy reform. But we need to know what sort of policy or law is needed and why the policy or law does not work. PLD aspires to do credible research.

The rigour and holistic nature of PLD's approach is enlightening as she explains the process. They conduct action research, involving people on the ground and getting a clear idea of what the State must do versus what it has not done, followed by informed intervention. This helps to rigorously draw accountability.

Another part of the work of PLD is about initiating alternate lawyering to bring about social justice for women through the law. This entails identifying local lawyers working with local communities; working with them to bring people together to discuss and create mutual understanding of the most pressing women's rights issues and identify transformational strategies to address marginalisation.

She says they drew on the insights gained from the local level to understand access to justice. It was data on the ground that created an understanding of ground-level realities.

For this they obtained insights from community-level groups that were not available at the national level. For example, they were seeing matrimonial cases all the time, which meant they were not helping all women; they were only helping wives. LGBT individuals did not count, sex workers did not count, rape victims did not count, women in a bigamous relationship did not count, cohabiting women did not count. In an exceptional situation they might. Child sexual abuse cases did not come in droves—the only people who were coming out were wives. And that, for her, was saying a lot and she wanted to know where these other women were. Women were having relationships and where were they? Why did they never have a problem of gender balances in every relationship? Where was the justice for them?

Law groups that are training on gender-based violence, know domestic violence and sexual harassment in the workplace. These are national issues. However, the very particularised forms of violence that are specific to the most marginalised groups are unknown, and the invisible remains invisible. So then an entire study and an inquiry into those hidden issues grew. PLD worked on issues of witch hunting, cohabiting women, single women, and women in intimate relationships outside of marriage. These are invisibilised women. But the research is not just to create a knowledge base of what is happening to whom. Action research involves people on the ground to get a clear idea of State obligation the need for policies, the tracking of existing policies, and tracking overall progress. This has to be the basis of advocacy.

She ends by saying conceptual rigour needs to be developed continuously. The root cause of discrimination, which is the devaluation of women, must be exposed and corrected. She says equality cannot be linked to short-term indicators in a simplistic manner. Among the communities there is an appreciation of substantive equality and of the different approaches to equality. The application of these concepts is still a challenge as is an understanding of indirect or unintended discrimination. At that time there were no specialist materials on gender, law, and CEDAW. PLD developed materials to create an understanding of equality and did capacity building, reached out to large numbers of persons including mediation groups working with community groups for crisis intervention. PLD's illustrations of the equality model is used widely in other states and even in Fiji. But since it is not tracked, we don't know the spread of such dissemination.

The IWRAP Asia Pacific model training programme on CEDAW, based on the Amma Manual, was adopted in PLD's work as well, and contributed towards making PLD a lead CEDAW resource group in India. Over the years, PLD conducted training programmes nationally and at the South Asia level, drawing on the continuing education model of IWRAP Asia Pacific, where successive workshops help to deepen the learning, widen the pool of trainers, and enable application of CEDAW to local contexts. As part of this initiative, PLD's pool of state-level trainers undertook action research to document indirect and direct forms of discrimination against women in the implementation of social security projects under the National Rural Employment Guarantee Act (NREGA)

in India. This data collection from the field sites culminated in a meeting with district administration, where findings were presented and solutions to overcome barriers to women's equal participation were discussed. For PLD, honing skills and leadership of local activists in CEDAW, and facilitating local action was replicating how IWRAP Asia Pacific has approached its regional work.

I asked her, "How much of your work is directly challenging government and their accountability for obligations towards women—and what is the activism in this country all about, really?"

As a legal resource organisation, she replies, PLD has played a key role in campaigning for law reforms on sexual violence, sexual harassment at the workplace, and domestic violence as part of the women's movement, and for decriminalisation of homosexuality as part of a multi-sectoral coalition, Voices Against 377. PLD has been part of NGO-led CEDAW and Universal Periodic Review country processes,<sup>284</sup> and at the domestic level makes submissions to parliamentary select committees and statutory bodies like the commissions on human rights and women. Programmatically, PLD's research and evidence collection has provided the basis for its advocacy and accountability work—through building consensus, contributing to women's rights discourses and as credible references for informing opinion, and in some cases, as interventions in PILs.<sup>285</sup> Accountability processes tend to take many forms—shaped by the situation and what is most strategic. Some issues quickly snowball into protests demanding urgent responses, some are memorandums and demands by

citizens and activists alike, and others require litigation. At the local levels, there is case work, mediation by women led community groups, collectivisation, and creation of pressure groups.

Is the concept of equality brought into all this work? I ask.

Well, I think, you know equality is kind of an abstract concept. When you're working on an issue, you do whatever it takes to resolve the issue. There are areas where issue-based work has moved away from conceptual understandings. It is not easy to arrive at a consensus on the conceptual underpinnings of a situation.

There is work still to be done. The most significant observation for me was as Madhu stated earlier, "How do we ensure that equality is not just linked to short-term indicators, but to social transformation?"

### MANISHA GUPTÉ

#### The Rights-based Approach to Activism: The Sase of MASUM

IWRAP Asia Pacific carried out a training programme in India in 2001 on CEDAW for women's groups in Maharashtra. The training was organised by the Rural Health NGO Mahila Sarvangeen Utkarsh Mandal, (MASUM)<sup>286</sup> and conducted by me, Madhu Mehra of PLD, New Delhi, India and IWRAP Asia Pacific programme officer tan beng hui. Manisha Gupte who headed MASUM says that in all the 14-15 years of health activism they had been carrying out, they had heard of CEDAW but never engaged with it or any other UN processes. Their whole background

was political work. They had been organising against the emergencies of the 1970s in India, then with the women's movement, then the civil rights, civil liberty movement, and the Dalit movement. So, they were much more into the movement mode. They were working with women on class issues, caste issues, and issues of rural development.

She says the impact of the IWRAP Asia Pacific CEDAW training was deep. Hitherto, they had been ideological and political in their activism but had not used the language of rights. She says, "You know, the fact is that the one session on the link between historical, cross-cutting, and current discrimination and the fact that discrimination happens today because of discrimination earlier, changed my approach."

She says CEDAW gave them a structure for their activism. The training gave them clarity on a rights-based approach, which included the recognition of what constituted discrimination and enabled them to identify a set of non-negotiable rights for women. For example, she says they realised that talking about patriarchy *per se* was not as useful as when we named patriarchy as a manifestation of discrimination. They were able to see that the government had obligations to the people, and that the government had to be called out for failure to fulfil obligations, because such failure is a manifestation of discrimination by the government, even if such acts of omission were unintended.

Further, the standards for the fulfilment of rights would be equality. She says that they learnt about different approaches to equality, formal, protectionist, and the standard to aim for was substantive equality. They learnt



that for substantive equality to be achieved, the State had to undertake positive duties in favour of women. Not implementing such positive duties would amount to indirect discrimination. Manisha says that the distinction between different approaches to equality, formal, protectionist, and substantive, blew her away.

With this understanding of the rights-based approach, Manisha says they realised that activism was about collaborating with the government to sensitise them to be rights-oriented and to see the people they served as stakeholders. In all the years of their rural health activism, they had never wanted to provide services that would fill the gap in government services. They had always only provided diagnostic services, but women had to go to the government clinics for treatment. But now using the CEDAW framework their focus was to enable the government services to be accountable to the people as a democratic government should be. The Netherlands evaluation of IWRAP Asia Pacific conducted in 2005,<sup>287</sup> states that MASUM runs an extensive integrated community health programme with a clear rights-based perspective.

Manisha recognises that the corollary to a rights-based approach is the empowerment of people to know their rights and not think of them as needs only, to know the obligations of the government, and to make the demands for the fulfilment of their rights. The constituencies MASUM works with therefore go to access government health services and know what questions to ask of the service providers. Manisha says to me, “You digested rights and gave us a clear understanding what

they meant in practice.” They have sensitised doctors who are now more respectful of rural women. Senior doctors bring junior doctors and students to talk to them. The respect is there.

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*With this understanding of the rights-based approach, they realised that activism was about collaborating with the government to sensitise them to be rights-oriented and to see the people they served as stakeholders.*

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MASUM has functioned as the training unit for the Maharashtra Women and Health programme (MAH-WAH). MASUM in partnership with IWRAP Asia Pacific has conducted intensive training programmes on CEDAW for NGOs in Maharashtra, as well as from other states of India. This was followed by CEDAW Training of Trainers in December 2003 in which 21 participants representing 15 organisations from Gujarat, Delhi, Karnataka, Uttar Pradesh, and Maharashtra participated. This training was conducted with the support from two external resource persons—Madhu Mehra (PLD, New Delhi), and Tulika Srivastava (AALI, Lucknow) who were from the IWRAP Asia Pacific resource pool.

Over the years, MASUM has developed into a reliable training resource in the areas of women’s healthcare, gender sensitisation, and mainstreaming of gender issues, violence against women, human rights, reproductive and sexual rights, and economic, social, and cultural rights (ESCR). This process started with the IWRAP Asia Pacific Maharashtra-level training on the CEDAW in December 2001.

## ALDA FACIO

### Love Affair with Equality

When I met her in 1989, Alda Facio<sup>288</sup> was part of the international group of activists that Arvonne Fraser put together to work on CEDAW at the international level (see Chapter 1). She was an ally right from the start and provided great encouragement for the starting up of IWRAP Asia Pacific. She later joined our team of experts and helped develop the outline for our Amma Manual. In 1997 I got her to be part of the team that implemented IWRAP Asia Pacific's Global to Local programme.<sup>289</sup> Alda says her involvement as a resource person in this programme created clarity for her on the concept of substantive equality. She says that for years she had been writing about the androcentric nature of the law and equality and put forth arguments in favour of these concepts. At the Global to Local training, she could see that the women had been thinking they know about equality, but they really did not. This spurred her to keep clarifying the concept of substantive equality, debate it and develop arguments to promote it. Over the years she has elaborated on the aspects of substantive equality, how the notion of equality permeates all human rights, and on a clearer understanding of discrimination.

Alda mentions she uses my dissenting opinion in the Optional Protocol case<sup>290</sup> when training on equality because this is a very clear example of what discrimination against women is and how understanding this is imperative for achieving substantial equality.<sup>291</sup> She says that being with participants of the Global to Local programme and with IWRAP Asia Pacific has contributed to her growth. She has written, trained, and become known

as an expert on equality in the field and acknowledged by judges, the legislature, and academics, and has been constantly invited to conduct courses primarily in Latin America. In 2014, she was appointed by the Human Rights Council as the LAC member to the Working Group on Discrimination against Women and Girls because of her commitment to eliminating discrimination against women.



*Alda is of the view that IWRAP Asia Pacific should never lose focus on CEDAW, especially if it starts working with other treaties. The value of CEDAW is that it legally mandates substantive equality as the framework for all rights for women.*



She has produced many publications and manuals on equality, for example for judges. These manuals have been introduced to the Judicial Academies in most countries in the region, so they have a bit of a ripple effect. She founded a programme on equality focusing on training judges in the region at the United Nations Latin American Institute for Crime Prevention (ILANUD).<sup>292</sup> She founded the Fundación Justicia y Genero to expand the work of the programme to other areas of the law that needed attention, such as training of civil society and women's machineries.

She says that she has been impacted by the thinking of IWRAP Asia Pacific in the way she analyses the law, its structures, and its culture,<sup>293</sup> looking at it from a gender perspective. In 1987 when she wrote a paper on equality it was very 'light'. At that time Costa Rica was trying to pass a law on

substantive equality and Alda had tried to influence the passing of that law by including temporary special measures (Article 4.1 of CEDAW) as an essential component of substantive equality to enable women to overcome disadvantage. But the law did not pass, as she did not have adequate arguments for the acceptance of temporary special measures in the law and hence for substantive equality itself. Only the formal model of equality was accepted as the norm.

But subsequently, working with me made a difference for her. She says she is not a disciplined person and does not pay attention to details. When she writes she sees the links in her mind but then thinks everyone sees them, which is often not the case. She learned from me that the links need to be explained so that everyone can see them. She says she has become a better teacher because of this. Equality in the law is not about having everything as the other in material terms. Equality is not, as she says, factual. Equality must be seen as a right and it is about the right to be valued equally. She is concerned about the lack of conceptual clarity that still exists about equality as many people tend to use the concept of equity interchangeably with equality. Equality is a standard, a principle, and a value. Equity on the other hand is subjective and discretionary. She has written a paper on this topic.<sup>294</sup>

Alda is of the view that IWRAP Asia Pacific should never lose focus on CEDAW, especially if it starts working with other treaties. The value of CEDAW is that it legally mandates substantive equality as the framework for all rights for women.

### AMAL HADI

#### From political activism to activism on CEDAW and equality

Amal was an Egyptian social activist from the leftist moment in the seventies, fighting for social justice and democracy and not quite aware of women's rights. Through her medical studies and practice she used to be aghast at the indignity of the treatment of women in the obstetric wards. Although her views supported some elements of women's rights, she saw herself as a political activist and not a women's rights activist. The spark came in the 1980s when she was involved in organising the first Arab African Women's Conference in the preparation for the Nairobi Conference on Women in 1985. She sees it as a life-changing event, throwing herself into feminist discourses and activism. First, she came into direct contact with many Arab and African feminists. Second, she delved into Arab women's concerns through her paper 'Women's Health during the UN Decade on Women', revealing a trend of declining budgets, allocation to the health and education sectors. Third, it was through this conference and paper that the newly established New Woman Group members asked her to join them, to mark the beginning of a lifelong commitment.

From the 1980s onward, political changes took place in Egypt but New Woman remained a strong feminist organisation. The 1990s were the era of the World Conferences, the International Conference on Population and Development (ICPD) in 1994 and the Fourth World Conference on Women in 1995. Amal became involved in these two conferences, and for the first time was exposed to the international women's movement. ICPD in particular, was crucial as it

was held in Cairo, and witnessed the birth of the National NGOs' Forum and its Gender Task Force. Scattered human rights NGOs began to come together focusing on gender. This was a deciding moment for Amal as she began to work with CEDAW. In 1997 she participated in a training on CEDAW conducted for Egyptian women by IWRAP Asia Pacific through UNICEF. After this, the CEDAW coalition was formed comprising 22 NGOs, which embarked on the preparation of the first CEDAW shadow report through a highly collaborative process.

The shadow report writing with guidance from IWRAP Asia Pacific was an incredible experience. It took place over one and a half years, and the coalition managed to secure adoption of the report by more than a hundred other NGOs through a process of consultations all over the country. The important result was that many groups got to know about CEDAW, the obligations of the government under CEDAW, and how governments were fulfilling these obligations.

In 2001, along with four other members of the Egyptian CEDAW Coalition, she attended IWRAP Asia Pacific's Global to Local programme (G2L) in New York when Egypt was reviewed by the CEDAW Committee. She says the G2L programme and the training on equality she received then was an eye opener. As she explains, it took away the abstraction around equality and the discussion brought to light the reality of equality in women's lives. As women NGOs in Egypt had already been mobilised to come together because of the World Conferences, the enlightenment around equality helped to keep the momentum going as they were able to explain the impact of CEDAW's equality on the ground. Being

at the CEDAW review of Egypt also helped demystify the international body that was the CEDAW Committee reviewing States Parties and made the process real. They were also thrilled that the Committee took their shadow report seriously and all the issues that they had raised in the shadow report were posed to the government delegation of Egypt. She states that they felt empowered that they could influence the Committee.

Subsequent to this, they lobbied hard for the lifting of the reservation to Article 9.2 on nationality and to amend the related law that would give women the right to transmit their nationality to children born to foreign fathers. This law was duly amended in 2004 and the reservation to article 9.2 was lifted in 2010.

In 2001, Amal joined the Optional Protocol Advisory Group for IWRAP Asia Pacific. She feels that the Second Global Consultation on OP-CEDAW 2005,<sup>295</sup> organised by IWRAP Asia Pacific, was a pivotal step for the regional work in the MENA region. The decision to include Arabic interpretations during the conference facilitated the participation of many NGOs from the region, and the preparation of a regional action plan, that materialised in the first regional meeting on CEDAW in 2006. In that global meeting, the Regional Coalition for Equality Without Reservation was established.

Amal sees IWRAP Asia Pacific as a unique organisation. It is a southern NGO influencing international dynamics. G2L, she says, is a far-reaching programme, inspiring because it touches a variety of women from many countries giving them the scope to interact with each other and exchange information which empowers them.

# 12



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## The Continuing Challenge of Fundraising – Are We Regional or International?

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*Not all donors recognise the legitimacy of national-level groups linking their work to international advocacy, much less the role of a Southern NGO coordinating a global human rights programme.*

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In the years as the programme evolved, I quickly discovered that funders do not always recognise the importance of human rights work, especially if it is process oriented. Work had to be concrete and theme-based: poverty alleviation, health rights, land rights, rural women in agriculture, etc., and everything had to be phrased as quantifiable deliverables.

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### **Problems Faced with Funding as the Programme Evolved**

Because of the lack of appreciation of process-oriented work which had a certain mid-term or long-term trajectory, there was no assurance of continuity of funds, so it was difficult to plan on a long-term basis which is essential for sustained activism. The way funding was available was more encouraging of events-oriented work. Funding was also not fully available for salaries and other core costs. This must be integrated into projects. Sometimes we took on too many projects to have enough core costs covered, with detrimental effects regarding efficiency.<sup>296</sup>

Secondly, NGOs such as ours had begun to carry out 'international' work. We coordinated a programme not only in Asia, but also two international projects. The first is the Global to Local project (described in Chapter 9) that brings women from all reporting countries to the CEDAW review of State Party reports and links local activism to international activism. The second was the global campaign for the ratification and use of the Optional Protocol to CEDAW (described in Chapter 6). However, not all donors recognise the legitimacy of national-level groups linking their work to international advocacy, much less the role of a Southern NGO coordinating a global human rights programme.

### **Challenges Faced by Southern-based Human Rights Groups and Institutions**

In the 1990s and even going into the 21st century, European donors felt that we should be doing more in-country capacity-building work, rather than regional or international

work. Negotiations had to take place to convince the donor of the validity of a Southern NGO like ours facilitating national-level NGOs to impact international advocacy, and that human rights standard setting and interpretation at the international level benefits from the input of national- and local-level realities of women.

When IWRAP Asia Pacific started linking Asian women into international advocacy activities and in particular implementing its Global to Local programme, requiring Asian women to be present at the UN in New York to present alternative information to the CEDAW Committee, a major European donor raised concerns regarding the proposal I sent to them. The donor stated that work with Asian women should be located in Asia and they should not be travelling to the UN in New York. The concern was that Asian women needed capacity building, and this focus would be lost if they travelled abroad. I wondered if the donor recognised what sort of capacity building Asian women would need and for what or how this would evolve, or if there was a recognition of the scope of human rights work Asian women could potentially engage in.

My response to the donor was as follows:

We accept your concern about not losing focus on capacity building at the country levels and would like to assure you that focus still remains. But the programme has evolved since we first started and the kinds of capacity building and the manner in which it is delivered has also changed. At first, we had to create awareness in women at country level about the importance of taking a human rights

approach, that the Women's Convention had relevance and was a critical tool for advancing their rights. Now women at the national levels are much more aware of the importance of the Convention and wish to engage the dynamism of the Convention in promoting their rights.

The major goal of the programme is the domestic application of international human rights norms. As the phrase 'international human rights norms' implies, human rights norms and standards are set at the international level. The Beijing Conference, the meetings of the CSW and the deliberations on the Optional Protocol to the Convention, the meetings of the Human Rights Commission, the Conference on the International Criminal Court, the CEDAW sessions are all examples of fora when human rights norms and standards are set or interpreted. There is also a need to locate the Women's Convention within broader human rights concerns and systems. This is in keeping with Vienna.

The setting of international norms is also critical because of the need for universal minimum standards of human rights especially in the light of rising fundamentalism in our countries. The women we are working with are ready to engage in such standard setting and interpretation. In fact, it is vital that they do that, so that their experiences and needs form the basis of such standard setting, thus linking the national to the global and global to national. If this does not take place, norms and standards will be set according to the perspectives of women from the North.

As women become more confident and have a better understanding of the potential of the international human rights system for advancing their rights, they also need to engage with the procedures of the system to challenge non-compliance by their governments with the standards to which they have committed themselves. For this they have to monitor state compliance at national level and then advocate for reform at national, regional and international levels.

To achieve this, we have developed two programmes. One is a monitoring project that we are implementing as two sub-regional projects—South and Southeast Asia. This project, called Facilitating the Fulfilment of State Obligation to Women's Equality, brings a network of national groups together at the sub-regional level for purposes of developing common frameworks for monitoring state compliance with their obligations to women's equality, for comparative analysis of state action, for exchange of best practices and backed by a process of monitoring state action at national level, and advocacy for reform at the national level. In fact, though it is presented as a regional programme, it relies heavily on in-country work in relation to research for purposes of monitoring state compliance, issue-specific networking, coalition building and advocacy with national governments.

On the part of IWRAP Asia Pacific, ongoing technical assistance is built into the programme to build capacity at country level for monitoring, carrying

out research and developing indicators of positive or negative state action, strategising for advocacy etc. So national-level capacity building may not appear as one clear project.



*We have observed government representatives from countries like Indonesia, that did not believe in open dialogue with NGOs, take a different approach with their NGOs at the CEDAW sessions, being willing to listen and have a free conversation with them about discrimination against women in their countries.*



The monitoring programme will then provide the information for international advocacy with CEDAW. The findings of the monitoring will go into alternative reports and women will be facilitated to go directly to the CEDAW Committee with the information to strengthen the Committee's capacity to draw accountability from their governments. The women will then be able to bring the conclusions of the Committee back home to demand that their governments implement these conclusions. Their presence at the CEDAW sessions also forces their governments to be more transparent and to take their obligations seriously. This is the second programme and it is called From Global to Local. It has been implemented for two years, 1997 and 1998, and shows tremendous potential for changing the dynamics of the CEDAW review of state party reports. We have



observed government representatives from countries like Indonesia, that did not believe in open dialogue with NGOs, take a different approach with their NGOs at the CEDAW sessions, being willing to listen and have a free conversation with them about discrimination against women in their countries.

Furthermore, there is a certain level of capacity building and technical assistance that is not very visible in the proposals. One approach we have taken to capacity building at the local level is to develop material resources such as a resource package for training and to develop a pool of trainers through regional training of trainers. These materials and human resources will be available to the groups at the national level and they will be encouraged to raise their own funds to carry out the training. IWRAP Asia Pacific will continue to update the training materials incorporating emerging human rights concepts and enlarging the pool of trainers. This would make the local groups more independent and I believe the process of skilling the local groups will be more sustainable. We have also over the years collected a wide body of information and relevant documents pertaining to human rights in general and women's rights in particular. We disseminate them according to need to specific groups.

The manuals and publications we are planning for again is a new phase of our work. We have gained so much knowledge and experience over the years that we think it is important to document them

and make them available to a wider audience. These publications will help expand the outreach of our work. They are not *ad hoc* publications.

In conclusion I would like to assure you that we continue to place a strong focus on national-level capacity building through social investigation visits, national-level training, issue-based technical assistance etc.

We do believe that capacity building and technical assistance at national level is important. But such capacity building has to take different dimensions, embracing skills to monitor state action, to enforce domestic application of human rights norms at country level as well as to engage in standard setting and advocacy at international levels.

Secondly, regional and international activities will not be implemented for their own sake but only for the value they will add to local activism and the care will be taken to see that the two levels of activities are cohesively linked and complement each other. In this way everything we do is interlinked and one activity leads to another.

We recognise the need for you to make sure that funds are spent for maximum effect but hope that in the light of the explanation given above, you will also be prepared to consider our views and where appropriate be flexible so that you continue to give us the support where it is most needed.<sup>297</sup>

### Manoeuvring Through Donor Policies

My early experience with fundraising gave me many frustrating experiences. Donors were from the developed countries. They organised their funds in various ways and we had to understand their ways. There was an international pot of funds and then national pots. IWRAP Asia Pacific did not qualify for the national pots. Sometimes there is a regional pot. In some instances, organisations such as ours cannot get funds from the international pot. I was actually told on one occasion by a donor that “if an NGO based in the USA, London or Geneva does work in four countries of Asia, it will be recognised as an international NGO. But not if you are based in the South, and even if you work in 12 countries of Asia.” I was incensed by this principle. It strengthened my resolve that human rights NGOs will and must be based in the South and carry out international human rights work.

Sometimes, when we applied to a European donor for funds from the international human rights pot, we were told we were based in a region and hence did not qualify and were asked to apply to their regional Asia Pacific desk. But some regional pots are meant for several issues or theme-based work, from health, to environment, peasant and land rights, to gender, women, etc. Our work did not usually fit into any of the boxes. Building capacity for a rights-based approach and setting the standard of equality and non-discrimination—for all of these themes, including monitoring the State for compliance with its international obligations, there was no box to tick.



*Women's rights programmes face greater difficulties because this work was not classified as human rights work by donors with a human rights pot. Only civil and political rights work was human rights work. Women's rights proposals were directed to the women's rights pot which had a smaller allocation than human rights work.*



Getting funds for South Asia work was not too difficult, but Southeast Asia is a different story because many donors had only country-level and no regional offices. I would have to go to several country offices to apply for funding. Some donors had no provision at all for regional organisations or were more inclined to give funds to national-level organisations.

Women's rights programmes faced greater difficulties because this work was not classified as human rights work by donors with a human rights pot. Only civil and political rights work was human rights work. Women's rights proposals were directed to the women's rights pot which had a smaller allocation than human rights work. So, the quantity one could access was limited. Finally, a lot of donors had established a long-term relationship with certain organisations and were not willing to commit themselves to the more newly established organisations such as ours.

I was certainly of the view that regional organisations were needed to build capacity, facilitate the creation of frameworks and methodologies, etc. and help provide the linkages between the global and

local activism. In the area of law and the development of equality jurisprudence regional approaches were even more needed.

Sapana Pradhan Malla of Nepal highlights the need for a regional approach to ensure the adherence to universal standards for women's rights. She says,

In South Asia there is still much hegemony of religion and culture, and sometimes judges are influenced by this and for them to take up different positions on women's rights is not easy. So, when there is still domination of religion in politics and in the state resulting in prejudice or discrimination against women, we need a collaborative effort in the region through regional comparative exchange and sharing the competitive challenges and success among the judges and among the lawyers. This is important, because it can also inspire and encourage many judges to take a strong position on expanding the jurisprudence of CEDAW at the national level. International exposure for the judges on CEDAW and universal standards is also critical and has to be ongoing.<sup>298</sup>

What was clear to me in setting up IWRAP Asia Pacific as a regional/international NGO, was that Southern NGOs from the national level needed to be major players in human rights activism as this is an essential element for the strengthening of a check-and-balance process within the country. This would lead to the strengthening of political constituencies that will make demands for greater accountability and transparency from governments at the

national level. No one can do this from outside. For this they had to be players at the international level as well, where human rights standards were set and/or interpreted. They needed capacity building for this.

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*Southern NGOs from the national level needed to be major players in human rights activism as this is an essential element for the strengthening of a check-and-balance process within the country. This would lead to the strengthening of political constituencies that will make demands for greater accountability and transparency from governments at the national level. No one can do this from outside.*

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So, I struggled on. There were years when at the beginning of the calendar year IWRAP Asia Pacific would face severe cash flow problems. There would be no guarantee of funds to pay the salaries of existing staff or meet the needs of overhead expenditure. Since we did not value one-off events-oriented projects but rather focused on process-oriented work, continuity of funding year to year was critical. The start of each year was always incredibly stressful. I have at times had to engage in the proverbial 'beg or borrow' tactics to get by, but of course not the 'steal' part of it. Funding would eventually come in even if delayed. But the tension was to ensure adequate funds for staff salaries although project costs were met. We received a core grant from the Netherlands and from FORD Foundation, New Delhi, that enabled guarantees for staff salaries only in 2003 and 2004 respectively, eleven to twelve years after the inception of IWRAP Asia Pacific.



IWRAP ASIA PACIFIC  
UPDATING OF CONCEPTS  
ADDRESSING CONTEXTS  
AND CHALLENGES  
25TH OCTOBER 2007

# 13



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## Epilogue

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*The women we have collaborated with have learnt to review their realities as a deficit of rights, and human rights more specifically, and not just as issues to weave stories around or agonise over. There is a realisation that when their rights are denied, there is scope for drawing accountability for the failure of the fulfillment of State obligation.*

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I look back at the story of IRAW Asia Pacific's journey with satisfaction seeing the level of appreciation and affection extended towards IRAW Asia Pacific and towards me in particular, for my dedication to the promotion of women's equality, for my personalised and individual mentoring of many whose lives I feel I have touched, and whose capacities had been built to promote women's equality in their context.

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I wish to leave on record two such testaments. Their value lies in the fact that they were part of birthday greetings sent to me in 2019 long after they had experienced the benefit of interaction with me. They still remember me, and the effect of that experience is still with them. It was assuring that my hard work had paid off and perhaps I would be leaving a 'legacy' behind.

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Happy birthday dearest Shanthi. On this very special day, I would like to thank you for the gift of a training and introduction to CEDAW 20 years ago which changed my life. You changed many lives around the world with your vision and passion for women's human rights. That is your legacy. Sending you lots of love from Addis.

– Doris Mpoumou<sup>299</sup>

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When I first met Shanthi a little over 20 years ago, I was somewhat of a cocky scholar thinking that just because I was a student of one of the 'architects' of CEDAW, that I know more about it than most people in the country. I quickly learnt my lesson to listen to people who live and fight for the essence of the human rights instrument. Shanthi lives, breathes and exudes women's human rights. Her fight is relentless and inexhaustible. Until today, she speaks with unchanged fervour and passion but much more articulate for her experience and standing.

Shanthi was a schoolteacher (MRSM Seremban in the 1970s), and remains a teacher for many of us in the women's movement. May God keep her healthy, happy and 'happening', always. Much ♥♥♥ to you, Shanthi.

– Noraida Endut<sup>300</sup>

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### THE DIFFICULTY OF BALANCING AND HARMONISING NATIONAL AND INTERNATIONAL WORK

Reflecting on the trajectory of IWRAP Asia Pacific shows that while the 1990s and early 2000s opened spaces for IWRAP Asia Pacific to be a credible international human rights organisation, this phase also created challenges. This was because there were major reform processes at the UN level going on. Kofi Annan produced the report 'In Larger Freedom' (2005) that spelt out the need for change, for cohesion in the UN, for reforms in its systems, and so we had issues to deal with such as treaty body reform, harmonising the work of the treaty bodies, and the drafting of the Optional Protocol to CEDAW and the Human Rights Council as it transitioned from the Human Rights Commission. This was very distracting from the core of what we wanted to do in terms of building capacity of women for claiming rights, drawing accountability for State obligation, and creating cohesion in the advocacy among groups at the national level.

Despite the fact that considerable efforts were expended in advocacy activities that sought reforms and developments of the human rights system at the international level, more work was needed to make such efforts relevant to the national-level realities. An example of this would be the treaty strengthening process initiated by the OHCHR. It focused more on efficiency measures such as reduction of meeting time and technical assistance provided by the treaty bodies, streamlining reporting procedures, restricting translation of documents, harmonising the work of the treaty bodies, etc. Some of this was proposed ostensibly to reduce the burden

of reporting for States Parties and for States Parties not to have to face the 'onerous' task of addressing the large number of concluding observations. But in my view, the primary aim of the treaty strengthening process should have been to enhance compliance with treaty obligation at the national level. It should have been a core of the treaty strengthening process to build the capacity of States Parties to thoroughly implement their treaty obligations. If the treaties were effectively implemented the content of the reports could have become concise and the treaty bodies would not have had to issue a large volume of concluding observations or to repeat them. What is more, the lives of people could have improved. In my opinion, we could have enhanced our efforts to create an awareness of the positive synergy between treaty implementation at the national level and treaty reporting at the international level.

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*The primary aim of the treaty strengthening process should have been to enhance compliance with treaty obligation at the national level. If the treaties were effectively implemented the treaty bodies would not have had to issue a large volume of concluding observations. What is more, the lives of people could have improved.*

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By the end of 2005, the question was, “How do we ground ourselves once more?” There was always the concern that IWRAP Asia Pacific would become more international and move away from its original focus. That focus was on drawing accountability from the State, on enhancing human rights

practice entrenched by the national-level activism, and on advancing the development of equality jurisprudence based on CEDAW at the national level. Despite the multiple trainings of lawyers and activists to develop skills for litigation on women's rights, equality jurisprudence at the national levels was not as extensive as we would have wanted.

IWRAP Asia Pacific had invested a great deal in the training of lawyers for litigating on women's rights. The expectation was that more cases would be brought to court for the claiming of rights by women. The CEDAW Committee had repeatedly stated that there were not enough instances of women claiming their rights in court. Further, the Optional Protocol to CEDAW had come into force in 2000. But that mechanism could only be used if domestic remedies had been exhausted right up to the highest level of the court structure. By 2005, Asian women had not utilised the Optional Protocol, as hardly any cases had been filed at the national level challenging discrimination against them.<sup>301</sup> The aim of IWRAP Asia Pacific's legal project was to get national-level litigation going so if there was no legal remedy at the national level, individual communications could be sent to the Committee for a remedy at that level. But I think the project did not focus enough on identifying a potential case and tailoring the training around it, motivating the potential litigant to take her case to court, mobilising women's groups to provide political and social support to the litigant, and enhancing the skills of lawyers to bring that case to court at the national level first. The training we provided was in my view theoretical. So national-level litigation did not really take off.

The Optional Protocol was one way in which the national could have been linked to the international. The focus of our training was on training the lawyers. So lots of skilled lawyers were produced, but that did not result in cases coming into court. Separately we were also engaged in an international campaign on the ratification and use of the Optional Protocol to CEDAW. The ideal situation would have been to take advantage of the international level developments to enhance advocacy and implementation at the domestic level and not fall into the trap of bifurcating them.

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*All this was leading to a context of the regression of human rights and in particular women's human rights. We need to keep establishing that CEDAW and other treaties would be an effective tool for advocacy and draw accountability from governments when human rights were being negated.*

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New women were joining the advocacy. They had to be first convinced that CEDAW was the tool that will help bring about change in their lives. Their contexts were fraught with needing to address neoliberal macro-economic policies that were hostile to those most marginalised, environmental degradation, the politics of State capture, and the appropriation of labour and resource by corporations supported by violence and extremism. All this was leading to a context of the regression of human rights and in particular women's human rights. We need to keep establishing that CEDAW and other treaties would be an effective tool for advocacy and draw accountability from governments when human rights were being negated.



While not ignoring global trends, it was imperative to establish the intersection of global economic trends with national economic policies and their impact on women's right to education, health, employment, livelihoods, and personal security and integrity.

The lesson from this early phase of work is that a dynamic and strategic approach was needed, creating cohesiveness among women's rights groups and enabling the sustained mobilisation of these groups at the national level to arrest the adverse impact of neoliberal policies on them, strongly pushed for by international financial institutions and their cohorts, the multinational corporations. And for sustainability of such mobilisation and effect, to have joined forces with other mass movements such as those on labour, land rights, farmers' rights, Indigenous rights, environment, etc. bringing the equality framework into their work instead of working in isolation at the national level.

### **The Equality Framework of CEDAW to Fulfil Women' Human Rights is Indisputable**

As we studied happenings in various countries,<sup>302</sup> leading to our appreciation of international human rights standards for women's rights, our conviction that no matter the complexity and hostility against human rights generated by emerging socio-economic contexts, the need to anchor women's rights work within the substantive equality framework of CEDAW was indisputable and undeniable. Further, the acceptance of CEDAW as a mechanism that States had undertaken obligations under and hence could not reject in principle, strengthened our conviction.

I have been asked by women, "What can this treaty do for us?" My reply has always been, "What are you going to do with this treaty?" There is much we can do even if this treaty is not formally incorporated in municipal legislation and is not applicable in the courts. For a fact, it is a treaty that still has legitimacy because it has been ratified or acceded to by governments. Roshmi Goswami of NEN, India pointed this out when she advocated for a rights approach for the fulfilment of the needs of women in the northeastern region of India, a contentious and conflict-ridden region (see Chapter 11, Profile of Roshmi Goswami).

Post Fourth World Conference on Women in 1995, Roshmi was convinced that their work regarding women had to be anchored on rights. As women's rights activists they had been sending memos to the government demanding that the basic needs of women be met, but change was not forthcoming in the lives of the women. The realisation came that needs and rights cannot be dichotomised. Governments had to be made accountable and making requests for meeting needs without anchoring the needs on something that will make the government accountable will go nowhere.

Roshmi says CEDAW was a strategic entry point for their activism with its three basic principles—equality, non-discrimination, and State accountability. As an international instrument ratified by the State, it allowed activists to address the State regarding tricky and sensitive issues of women's rights in areas of internal conflict. She stated, "CEDAW gave legitimacy to our inquiries and analysis."

A case study of Afghanistan where women were using CEDAW to make their claims also demonstrates the validity and realism of this conviction (see box on the following page).

My concerns as to whether the pursuit of CEDAW is a worthy goal is allayed when I read these testimonies. Under difficult circumstances CEDAW gives all of us a handle to demand accountability as an instrument that has been voluntarily ratified and cannot be antithetical to decisions regarding public policy. In fact, it is an aid to demand public policy entrenching equality and non-discrimination. Women have to use it consistently in all their endeavours, and in all contexts include in advocating for gender sensitive development policies, trade negotiations, external relations, development aid, migration, and refugee policies.

### How Do We Move Forward?

It has been over 40 years since the adoption of CEDAW. There are now two generations of feminist activists for whom CEDAW is almost synonymous with IWRAP Asia Pacific. But the impact on the ground is less clear. There are two aspects that need scrutiny.

The women we have collaborated with have learnt to review their realities as a deficit of rights, and human rights more specifically, and not just as issues to weave stories around or agonise over. There is a realisation that when their rights are denied, there is scope for drawing accountability for the failure of the fulfilment of State obligation. They know too that international standards must underpin the achievement of their rights, as the State

has undertaken to be compliant with such standards. Conceptually there is the realisation that equality and non-discrimination are the non-negotiable principles that have to be demanded and monitored. The knowledge is there, but there is no groundswell as yet of women making these demands, nationally or internationally.

How do we move forward? Not only must women be knowledgeable and skilled in the use of CEDAW, but we must ensure that all government agencies at every level and donors and international institutions are equally knowledgeable. This is an agenda that IWRAP Asia Pacific must pursue relentlessly. In fact, it is essential we do so, considering the risks of regression of human rights generally and women's rights in particular.

It will require that we expand our global outreach, and at the same time enhance our focus on national- and regional-level activism that will facilitate the mobilisation of constituencies of national and regional equality promoters.

“

*We must ensure that all government agencies at every level and donors and international institutions are equally knowledgeable. This is an agenda that IWRAP Asia Pacific must pursue relentlessly. In fact, it is essential we do so, considering the risks of regression of human rights generally and women's rights in particular.*

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### WOMEN'S RIGHTS ACTIVIST FROM AFGHANISTAN RESTORES OUR CONFIDENCE IN INTERNATIONAL TREATIES.

"Yesterday, 'this incredible article by Afghan womens rights activist Wazhma Frogh (adapted from her recent testimony before a Senate Judiciary subcommittee hearing on CEDAW ratification) quite literally restored my faith in international human rights treaties and mechanisms especially as the treaty grants no enforcement authority to the U.N. or any other agency.

Well, according to Wazhma Frogh, CEDAW has made a tangible impact in the fight for equal rights for Afghan women. In fact, it has bolstered the courageous efforts of Afghan women to advocate for their own lives in a very concrete way.

CEDAW has been a banner, a torch we've held high, as we've made our journey towards basic rights [...] We used its terms to lobby for Article 22, which states that Afghan women and men are equal before the law. Since the country had no significant history for such an argument to be accepted by the Grand Assembly of elders and conservative elements, CEDAW was our main basis for advocacy.

We also worked with religious scholars using CEDAW to promote women's rights [...] We compared the rights CEDAW outlined with Islamic rights, trying to prove that no conflict existed between religious rights and women's human rights in Afghanistan.

A major success of our Afghan Women's Network was in using CEDAW terms to develop and lobby for the Elimination of Violence Against Women (EVAW) law. In a country where violence and discrimination against women are an everyday reality, enactment was not easy. The law made rape a crime in Afghanistan for the first time, and nullified forced marriages and early marriages without consent of the girl, punishing the perpetrators with imprisonment. Such an arrangement was taken from CEDAW Article 16, which makes the State responsible for eliminating discrimination around issues of marriage and family matters.

In 2009 we used Afghanistan's international obligations, particularly CEDAW, to make history against the discriminatory articles of the Shia Personal Status Law. This law denied women's custody rights and required us to seek permission from our husbands to leave the house. We were able to make the government change the most discriminatory articles in this important legislation.

These are only a few of Afghan women's many achievements using CEDAW [...] More than 48 other countries are involved in Afghanistan politics, with obvious and hidden political motives, so only an international instrument with a universal common agenda for women's rights could work, and that was CEDAW for us."

This remains a challenge, although from 2005 to present day there have been serious attempts to bring ourselves back to both the regional- and national-level focus. This is something we need to keep discussing: How do we balance our involvement at the international level at the same time making sure that we are grounded at the national level? This balancing needs strategising.



*One way that IWRAP Asia Pacific could contribute to the effective implementation of CEDAW globally and multiply the effectiveness of projects like Global to Local is by assisting to build the kind of expertise that IWRAP Asia Pacific has in other regional organisations.*



For instance, the Global to Local programme needs redesigning. IWRAP Asia Pacific has been very successful in facilitating the influence of women from the Global South in international advocacy, primarily through the Global to Local programme which addresses the CEDAW review of State Parties' compliance with their obligations under CEDAW at the United Nations. Women from around 140 countries have participated in CEDAW reviews to date—some of them multiple times—and the lived realities of women from the South have been brought to the attention of the CEDAW Committee and the global compliance review process. The local has indeed been brought to the global. But has the global been brought to the local adequately and consistently? This is in doubt.

In 2004, the then UNIFEM<sup>304</sup> created an opening for us to do this. When it carried out its evaluation of the Global to Local programme in 2004,<sup>305</sup> one of the recommendations was that:

IWRAP Asia Pacific may want to limit the activities in New York to what can only be done in New York and repackage the rest as a regional training for which regional and country level funding is easier to attract. It seems that a large part of the three-day orientation on CEDAW that takes place right before the CEDAW session starts in New York, can be carried out in the regions. The training activities in New York can also be treated as a necessary extension of the regional training and included in the regional/country proposal.

UNIFEM also recommended that:

IWRAP Asia-Pacific may consider seeking out partner institutions in the other regions such as Africa and Latin America where IWRAP Asia Pacific itself does not have the resources or comparative advantage to reach out and create a global coalition to advance CEDAW.

One way that IWRAP Asia Pacific could contribute to the effective implementation of CEDAW globally and multiply the effectiveness of projects like Global to Local is by assisting to build the kind of expertise that IWRAP Asia Pacific has in other regional organisations.

In this way the transfer of some of the Global to Local project training to the regional level recommended above can also take place, and it will become a shared effort of regional organisations.

Partnerships with regional institutions, who will be autonomous, will have the potential to focus on enabling cohesive implementation of CEDAW at the national level; more effective, sustainable claiming of rights by women; and the demanding of State accountability consistently. At the same time, these collaborative efforts can be the foundation for a Global Equality Coalition. Through this effort we can ensure that however IWRAW Asia Pacific and the partners within the coalition expand their work, either thematically, in varying contexts at the national and international level or in terms of international advocacy, our focus on achieving the equality of women and the preeminence given to the accountability framework of CEDAW will never waver. We have yet to embark on this adventure.



*This political will can be created through a strong and highly conscious constituency, not only among women and women's groups but also among institutions of government.*

*Rather than focus only on violations of rights, women and women's groups should focus on the positive obligations of the State to create the legal framework for equality.*



### **Unfinished Business: Mobilising to Create and Strengthen Women's Rights Standards**

The effective use of CEDAW is largely dependent on the political will of governments. This political will can be created through a strong and highly conscious constituency, not only among women and women's groups but also among institutions of government. Women need to make collective demands of the State as a visible constituency of rights holders. Rather than focus only on violations of rights, they should focus on the positive obligations of the State to create the legal framework for equality.

The conceptual shift that has to be made is that in advocacy for the human rights of women, standard setting is a continuing process involving the creation of new standards and the ongoing interpretation of existing standards. Such advocacy will strengthen the State rather than diminish it. The aim is to progressively harmonise the value system of society with public policy. This speaks to CEDAW Article 5 which requires that the social and cultural value system must be transformed. Mobilising has to be purposeful.

At the end of 2005/2006, it was clear that there continued to be many exciting phases of work that could be facilitated and carried out by IWRAW Asia Pacific in the future.

## A Tribute to the CEDAW Committee

Since 1982, a total of 151 experts have served as members of the Committee. Tasked with monitoring compliance of States Parties with their obligations to women's equality under CEDAW, this 23-member Committee has raised awareness, educated, encouraged, and challenged States Parties for the past 40 years to fulfil their obligations to women and to ensure their *de jure* and *de facto* equality. Meeting three times a year, they are dedicated, committed, and far-sighted in their interpretation of equality and non-discrimination, promoting the fulfilment of women's right to equality unequivocally, in varied contexts and circumstances. Undoubtedly, they are the greatest allies women have within the United Nations (UN) Human Rights System.

# A Tribute to Arvonne Fraser

1925 – 2018

Arvonne Fraser was a very special friend and well-wisher of IWRAW Asia Pacific. In 1985, as the director of the International Women's Rights Action Watch and co-founder of the Center on Women, Gender, and Public Policy based in the Humphrey School of Public Affairs at the University of Minnesota, Arvonne initiated trail blazing work on international accountability of governments on the fulfilment of women's rights and equality under CEDAW, leading to the creation of an international network of women activists. Arvonne's aim was "to move the international women's movement approach from that of supplicant to that of agent for change." She felt the need to create an international constituency to promote this treaty at a time when few knew it existed. For her, it was imperative that a wide international audience had this knowledge and got ready to use it.

It was this vision and effort of Arvonne's that inspired and encouraged the founding of IWRAW Asia Pacific, based in Kuala Lumpur with her blessing.

Thanks to the efforts of Arvonne Fraser, former US representative to the United Nations Commission on the Status of Women (CSW), women all over the world are empowered to engage effectively with the UN and hold governments accountable to their obligations under CEDAW. She was, as is said of her, "consistently ahead of the curve" and is hailed as one of the founders of IWRAW Minnesota, in national and international feminism.

We pay tribute to a life well-lived and the immense contribution she has made to women's human rights.



# A Tribute to Rita Raj

1944 – 2006

Rita was a staunch supporter of women's rights and played a critical role in the establishment of IWRAP Asia Pacific. When Shanthi Dairiam started the IWRAP Asia Pacific programme in 1993, Rita, who was one of the founding directors of the Asian-Pacific Research and Resource for Women (ARROW) in Malaysia, arranged for ARROW to act as fiscal agent. On behalf of IWRAP Asia Pacific, ARROW received grants, signed contracts, and even ensured that financial reporting was properly performed. In essence, Rita enabled IWRAP Asia Pacific to exist. When the organisation was registered in 1996, Rita became one of the first directors of IWRAP Asia Pacific.

Rita's dedication and commitment to women's human rights saw her getting involved with various other women's groups and initiatives, nationally and internationally. She was a past president of Women's Aid Organisation, which had established the first shelter for domestic violence survivors in Malaysia. She was also associated with the National Population and Family Development Board of Malaysia (NPFDB), the Gender and Development Programme of the Asian and Pacific Development Centre (GAD-APDC), the Boston Women's Health Collective, the World Health Organisation (WHO), and the United Nations Development Fund for Women (UNIFEM).

Her pioneering work in the area of reproductive health with the Federation of Family Planning Associations, Malaysia, needs special mention. In the 1960s, she contributed to the setting up of the evaluation system for the Federation. Through this process she helped to set criteria for evaluating the quality of care in the family planning clinics of the Federation throughout Malaysia. This was an emerging field of work in Malaysia at that time in which the Federation played a leadership role. Rita invited nothing but the utmost respect from anyone who knew her. She was a woman of great integrity, highly principled and courageous, very professional in anything she undertook and always reliable, but never one for self-promotion. As a friend she was generous, affectionate, and kind, and above all she never lost her sense of humour no matter what she was going through.

Rita was a gentle, perceptive, and strong supporter of IWRAP Asia Pacific from even before it was registered as a legal entity, and her passing was an immense loss to us. Despite leaving Malaysia in 1995 to live and work in the USA, Rita cared deeply about IWRAP Asia Pacific, continued to help us in very critical ways, and welcomed newcomers with warmth that will be remembered for long.

*"We at IWRAP Asia Pacific can never forget Rita. She is part of our history."*

– Shanthi Dairiam –





# Annexes and Endnotes



## ANNEXE 1

**Lack of Awareness, and Commitment to Internationally and  
Nationally Recognised Women's Human Rights among Governments:  
Preparation for the Beijing Conference (1994)**

**Bottom-line Issues**

1. There is great resistance to the concept of the universality of rights for women especially at national levels. Strong arguments based on notions of cultural relativism, the imperatives of religious beliefs, traditional values, and development priorities are being used to discredit the universality of rights.
2. There is a growing emphasis on 'traditional family values' and the perception that women's independent status is a cause of the disintegration of the family.

Furthermore, there is no recognition of sexual orientation as a fundamental human right within the context of the expanding definition of the family. There is a need also to include single mothers and single women in the expanding definition of the family and their concerns addressed.

3. There is danger in the tendency to focus on specific areas of need, such as education of girls or employment, that will isolate such needs from the cluster of rights that will establish women's entitlements to services and programmes. The indivisibility of rights is critical to the advancement and empowerment of women. States have to commit themselves

to the principle of gender equality, non-discrimination, the full citizenship and legal capacity of women in all spheres—civil, political, social, and cultural—and to establish constitutional guarantees for women's equality.

The prohibition of non-discrimination places an obligation on the part of governments to undertake affirmative action that will ensure the enjoyment of positive rights by women. It means that governments need to remedy the obstacles to the enjoyment of *de facto* rights.

The principle of non-discrimination also obligates governments to outlaw all social and cultural practices such as genital mutilation, early marriages, polygamy, denial of inheritance rights, inequality in marriage and divorce, etc. that devalue women. Such practices should not be condoned on the excuse that State interference to ban such practices would impinge on cultural and community rights.

There has to be an awareness at all levels that rights in the 'private sphere' affect women's ability to fully exercise citizenship in the public sphere.

4. Many countries have yet to commit themselves to a clear policy of non-discrimination or to have mechanisms such as a sex discrimination act through which discrimination can be remedied. Even where countries have ratified CEDAW, they have not taken the next step to receive the principles of CEDAW into domestic legislation. As a result, in many developing countries in particular, there is insufficient recognition of discrimination against women in national legislation, policies, and programmes even if there are constitutional guarantees for women's equality. Many countries have not moved beyond the rhetoric of 'women's rights are human rights'.
5. Human rights violations are made in the name of religion, and there is an intensification of religious fundamentalism. Women's rights are particularly violated in contexts where plurality of legal systems exist and women's rights within families are negated through the application of religious or customary personal laws.
 

Dialogues should be initiated within religious and cultural traditions towards the acceptance of international human rights standards.
6. There is also a strong resistance to addressing economic issues such as Structural Adjustment Programmes (SAPs), unfair trade practices, national debt, sustainable agriculture, consumption practices of the developed countries, and hazardous environmental practices. There is a tendency to pay lip service to women's rights without taking into consideration the contexts in which the rights can be achieved.
7. At present, multinationals and international financial institutions are not accountable under international human rights standards, and there is resistance from States to creating such accountability.
8. There is a lack of national and international mechanisms to protect against and ensure accountability for violations of women's human rights by non-State actors, and lack of sufficient understanding of certain behaviours in the private sphere as abusive, e.g., physical confinement of women in the home.
9. Receiving countries also resist granting rights to migrant workers such as their right to basic services, equal protection under national laws of receiving countries, and family reunification.
10. The questions of militarisation, occupation, trade in arms, refugees, and the imposition of economic sanctions also need to be addressed urgently as the human rights of the most vulnerable groups of the population—a large percentage of whom women and children are—are grossly violated when these questions remain unresolved in the affected countries.

## ANNEXE 2

Three Examples Extracted from *Building Capacity for Change: A Training Manual on the Convention on the Elimination of All Forms of Discrimination against Women*. IWRAP Asia Pacific. 2001. Updated version August 2008.

### Example 1: Inequality and Discrimination

#### PROCESS

This session can be conducted as a roundtable discussion.

Ask the participants to name a few examples of discrimination which they have been subjected to because they were female, either as children or as adults.

Get the participants to examine these examples and identify what is the real nature of the discrimination.

Lead the discussion to identify the assumptions and social norms on which these discriminations were based and rights denied, the disadvantages (short-term and long-term) that these have resulted in, and unravel the interconnectedness of discrimination. Show how discrimination in one area leads to discrimination in another area.

Finally conclude that discrimination is socially constructed, and therefore change can be introduced. These are practices that we do not have to maintain.

#### Example of discrimination cited by participants:

There was a village festival and public events were being organised. As part of this, a group of women wanted to hold a workshop to discuss problems of women in the village and requested the village chief to

provide them with a tent for the workshop as tents were being provided for all the events. The chief refused to do so saying there was no need for women to get together.

#### DISCUSSION

##### *Identification of the nature of the discrimination and its impact*

This situation reflects the denial of the right to freedom of expression and the right to organise. Under these circumstances, women will not have the opportunity to gain collective strength to seek solutions to their problems. It results in the isolation of women. Women who persist in trying to find the space to organise will be labelled as bad. This will make women censor their own behaviour.

##### *Assumptions/harmful social norms*

- A woman's place is at home. She should submit to whatever is her fate and not try to change it.
- Women do not know what is good for them. They should not be allowed to make decisions for themselves.
- Women have no right to complain.
- If women are allowed to get together and share experiences, it could lead to the break-up of the 'social order'.
- Men will lose control if they allow women to organise.
- Men should always be in control.

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### Example 2: Social Norms, Culture, and the Law

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**BASED ON *GOUTAM KUNDU V. STATE OF WEST BENGAL*, AIR 1993 SC 2295 OR (1993) 3 SCC 418**

#### FACTS

A married woman discovered her pregnancy while away from her husband's home, and the husband claimed that the child was not his and threw her out. When she raised a claim for maintenance for herself and the girl child, the husband filed an objection challenging paternity and demanded that the child undergo a blood test to establish his claim.

#### DISCUSSION GUIDE

Analyse the findings of the court decision case law to see where the barriers for equality lie: in the substance, structure, and/or culture of the law showing the interconnectedness of these barriers. In assessing the barriers, identify specifically multiple forms of discrimination if applicable.

Is there any element in the case that reinforced or corrected a socially constructed rule? If so, how is it being reinforced or corrected?

Is there an equality approach? What approach is the law taking here – protectionist, or based on formal equality or on substantive equality? Will the court decision be transformative in relation to women's social position or will it reinforce pre-existing negative social norms?

#### FINDING

The court rejected the husband's request for a blood test on the basis of Section 112 of the Evidence Act which raises a presumption of legitimacy. The court felt the burden of proof was on the husband to know that he could not possibly have had access to the wife, and not

on the wife to prove otherwise (see Section 102 of the Evidence Act). Such blood tests cannot be conducted except in the most exceptional circumstances. It was felt that the issue of paternity was raised by the husband only for the collateral purpose of avoiding payment of maintenance.

The court ruled in the favour of the woman on the following grounds:

- Because a strong case of non-access to the wife had not been made by the husband.
- Because the possible effects of the test could be that:
  - > the child might be labelled a bastard, and
  - > the mother would be branded an unchaste woman.
- Because no one can be compelled to give a blood sample.
- Because he is the father whom the marriage indicates.

#### DISCUSSION

In this case, barriers to women's equality lie in:

##### *Structures of the law*

The lawyer's arguments and the judge's decision reflect the barriers that are created by the protectionist concepts of the law. The judge in fact emphasises the importance of chastity for the woman, thus patriarchy is being promoted as it is assumed that a woman will not have social standing and will be called characterless if she has a child outside of marriage.

The judgement is thus protectionist in:

- a. protecting the chastity of the woman, and
- b. protecting the legitimacy of the child.

It is clear that the issue of paternity was raised by the husband only for the collateral purpose of avoiding payment of maintenance. The arguments in court and the judgement should have centred around this.

### ***Culture of the law***

The cultural norms underpinning the law and the attitude of the court is the importance of virginal purity and the subordination of women's sexuality to the family.

### ***Social rules***

The sole purpose of a woman's sexuality is fertility and her reproductive rights lie not with her, but with society.

Some participants did, however, feel that marital fidelity is something that most people, men or women, have a right to expect and demand, not solely for the purpose of the legitimacy of children, but as a part of the relationship.

### **CONCLUSION**

While the decision itself is favourable to the woman in this case, it reflects and perpetuates a protectionist legal structure and societal rules that are ultimately harmful to women and can be used against them in other situations. The decision is therefore not transformative.

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## **Example 3: Clarification of Concepts – Equality and Non-discrimination**

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This is a group exercise aimed at helping participants develop arguments in favour of equality. It follows the session on substantive equality to develop arguments to overcome resistance to the concept of equality and to promote equality.

### **PROCESS**

In plenary, brainstorm on several arguments commonly used against the equality of women and men.

Divide participants into groups of five and divide the arguments among them. Ask the groups to formulate arguments to counter these using the attached guidelines.

Examine each of the arguments against equality using the following questions:

- What are the assumptions underpinning this argument, or are the statements in these arguments true? If not, explain why this is not true. What is the truth?

- How does the operation of, or belief in, this argument disadvantage women and deny them rights? Give concrete examples.

### **DISCUSSION**

*The following is an example:*

*Giving women equality is against religion and culture, and society will not accept it.*

***The truth:***

- While religion has historically been used to control women and weaker sections of society, it is not unchangeable. For instance, many religions have defended the powerful classes, i.e., monarchies, and contributed to the maintenance of class structures, which has now been challenged in many regimes and changed.

- b. The caste structure created, sanctioned, and maintained by the Hindu religion is now changing, and there is broad-based acceptance that one section of the society cannot be oppressed and used to benefit another. If exploitation of caste groups, maintained on the basis of religion, can change, then women can also use the same argument of rights to change their reality.
- c. Men appropriated religious authority, and instead of ensuring non-discrimination on the basis of sex, colour, race, ethnicity, or birth, used their authority to subjugate women. Imams, priests, pundits, etc., have used their social authority to issue injunctions contributing to certain cultural and social norms, which have negative implications for women. Such injunctions are based on a subjective interpretation of religious principles.

***Disadvantages:***

- a. Because religion is used to justify women's inferior position, it makes it very difficult to bring about change; as subordination seems to be sanctioned by divine will, it is considered unchangeable. Under these circumstances advocating for change in women's position creates hostility.
- b. Women too are conditioned to accept their subordinated position, because they think it is the will of God and are unable to distinguish between faith and religion. They believe if they challenge the latter, it will amount to challenging the 'natural' and 'right order'. In accepting their own oppression, they believe that they are accepting God's will, as they see God as having created man as superior.
- c. As the position of women is seen by religious interpretations to be inferior, they are excluded from religious leadership or from interpreting the religious texts. They are therefore at the mercy of male leadership, who out of self-interest will never provide liberating interpretations, and women will continue to be oppressed by unjust religious interpretations.
- d. It also creates certain negative implications for religion as it is seen as sanctioning injustice and subordination.

### ANNEXE 3

#### MONITORING GUIDE

##### A Model for Monitoring the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women

Developed Through the Project:  
Facilitating the Fulfilment of State  
Obligation to Women's Equality  
(1997-2004). 2002

Excerpts from:  
Part IV – Monitoring Framework: Rationale and Guide  
Part V – Summary and Examples  
Part VI – Report Format

#### PART IV

##### Monitoring Framework: Rationale and Guide

There is a value in NGOs participating in international levels of advocacy for the consolidation and promotion of local-level gain along with the importance of monitoring State action has been elaborated in Part III. And for this a key point to be emphasised is that: how discrimination is analysed is vital to the formulation of appropriate and effective mechanisms for policy and law. In order to monitor 'progress', NGOs need a clear idea of what it is we are measuring, and how we can measure it. This brings us to the concepts and methodology for developing indicators of change. This part presents the methodology (hereinafter called the framework) on using the CEDAW framework in monitoring State action.

The framework presented below has been developed based on the conceptual framework of the Convention. It attempts to systematise, to the extent possible, steps that can help work through the indicators that we can use to identify whether change has taken place; if

so, what kind of change; and what impact that change has had. The importance of a framework is that it enables partnership between different organisations and different country contexts, especially if the analysis is based on shared understandings, which can only facilitate better advocacy initiatives. It also makes explicit to users of data generated through such a process, the reasons why some manifestations of difference between women and men constitute discrimination, rather than naturally created divides, thus helping NGOs to make the case for 'action'. We thus talk in terms of 'evidence' to emphasise the importance for NGOs learning how to make a case and substantiate that case in the course of advocacy initiatives. A framework also helps us to focus our attention on gathering relevant information and provides a format for effective presentation and advocacy. Above all, frameworks also alert us to the importance of rigour and sound evidence to ensure that our claims are irrefutable. Sound analysis is a valuable form of advocacy in itself.



The framework presented below is divided up into the following sections:

**SECTION I** contains the conceptual analysis of discrimination in a given sector including evidence of disparity or denial of rights (results), evidence of discrimination (causes and barriers), and evidence of impact of discrimination as an interrelated phenomenon.

- **Evidence of disparities:** this refers to the presentation of the existing situation of women vis-à-vis men as well as their situation only pertinent to women based on biological or socially constructed differences between women and men, in a particular sector or theme, which we may also call the manifestations of the problems identified.
- **Evidence of discrimination:** this refers to the analysis of causes and barriers that have led to the inequality identified above. This is a critical section because of possible conflicts over the concepts used in the analysis. The use of 'gender' as an organising concept is critical here, although there may be a lot of resistance to identifying unequal power relations between women and men as emerging from social processes that are reversible and can be changed. Resistance comes from those people who believe that differences between women and men are natural (biological) and irreversible, and that discrimination emerges from natural laws of difference between women and men. How evidence of discrimination is presented is critical to changing the mindset of policy makers and planners who do not understand discrimination. Identification of causes and barriers helps us to also identify what kinds of programmes

and policies we need, and what their content and process should be.

- **Evidence of the effect of discrimination – leading to more denial of rights:** Related to this is the ability to identify the impact or effect of discrimination. This will show us how discrimination and rights are interrelated; and that rights denied in one area will lead to the denial of rights in another area. For example, discrimination in the right to education will lead to restrictions in the area of the right to employment.

**SECTION I** helps us to identify quantitative (evidence of inequality) as well as qualitative (evidence of discrimination) indicators. These are indicators that need to be changed.

**SECTION II** deals with State obligation and helps us to develop on the analysis of Section I, and provides a schema for assessing the types of initiatives, changes required.

- **State obligations (what should be done?):** Identifying the range of obligations that the State has to undertake in order to create conditions for change is an important first step setting our parameters for action. This is our advocacy framework vis-à-vis the State; it provides us with a starting point for critical engagement with the State. The range of obligations can be obtained from constitutional guarantees, legal provisions, existing policy commitments, international commitments, whether through human rights conventions (such as the Women's Convention), or whether through commitments made at conferences such as the Beijing Platform for Action.

- **Current State actions/initiatives:** These can be derived again from policy and other commitments already made by the State, and the kinds of programmes put in place.
- **Assessment of State actions/initiatives:** The emphasis here is not just on what States do, but also analysing the content of State programmes, and the strategies they develop.

#### CONTENT OF ADVOCACY

- **Identification of gaps and recommendations:** The assessment of State actions makes visible the gaps that exist in State initiatives—in terms of strategy, content and process—and provide a constructive way to take debates on change forward. This section will contain precise and specific recommendations for reform of State policy and programmes, aiming for *de facto* fulfilment of women's right to equality. The recommendations need to take into consideration all the facts gathered and analysis made so far, and need to be prioritised.
- **NGO actions:** Finally, there is a need to simultaneously collect data on what NGOs are doing, and also monitor the strategies, content, and processes of NGO initiatives to see where the gaps are.

A word on research methods is important here. There is no question that how we go about generating evidence to back our claims determines how strong our advocacy is. Representing women's voices will help us to make our case effectively, so that we cannot be dismissed by policy makers as representing a minority of women or speaking on behalf of others. Similarly, having sound data, collected in a methodologically sound way, can help refute alternative interpretations which may seek to dismiss our findings. This means that secondary data available needs to be validated and enriched through periodic field-level evaluations and assessments of the impact of State action, whether in law or policy.

The monitoring framework is presented in a format next (see table on following pages).

**MONITORING THE IMPLEMENTATION OF THE CONVENTION**<sup>306</sup>

**Monitoring Progress in the Elimination of Discrimination  
Against and Achievement of Equality for Women**

**SECTION 1**

– Column 1 – Evidence of disparity	– Column 2 – Evidence of discrimination	– Column 3 – Effect of discrimination
<p>Inequalities/disparity in:</p> <ul style="list-style-type: none"> <li>• Treatment/opportunity</li> <li>• Results or the actual enjoyment of rights</li> </ul> <p>Article 2(a):</p> <ul style="list-style-type: none"> <li>• The practical realisation of the principle of equality</li> <li>• <i>De facto</i> equality</li> </ul> <p>NB: relate findings also to relevant articles in Women's Convention according to theme.</p>	<p>Causes or barriers:</p> <ul style="list-style-type: none"> <li>• Public and private spheres</li> <li>• Article 2(d), Article 2(e):               <ul style="list-style-type: none"> <li>&gt; Customs and practices (Article 2(f))</li> <li>&gt; Prejudices, customs, and all other practices (Article 5 (a))</li> <li>&gt; Stereotyping, lack of self-determination for women</li> <li>&gt; Laws, regulations (Article 2(f)) and other government measures (Article 2(d))</li> <li>&gt; Absence of or inadequate enabling conditions (Article 4.1)</li> <li>&gt; Absence of other rights impinging on the rights in question according to the context being examined. E.g., if employment is being examined, the lack of education has implications for employment.</li> </ul> </li> </ul>	<p>Applying the Article 1 test (pinpointing and understanding the discrimination)</p> <ul style="list-style-type: none"> <li>• That discrimination could be a:           <ul style="list-style-type: none"> <li>&gt; distinction?</li> <li>&gt; exclusion?</li> <li>&gt; restriction?</li> </ul> </li> <li>• Does such distinction/exclusion/restriction           <ul style="list-style-type: none"> <li>&gt; impair, or</li> <li>&gt; nullify the</li> <li>&gt; recognition</li> <li>&gt; enjoyment or</li> <li>&gt; exercise by women of human rights and freedoms?</li> </ul> </li> <li>- Name the rights so denied to women because of the discrimination identified in Column 2.</li> <li>- Does it show how the denial of rights is interrelated, how one right denied leads to the denial of other rights? Illustrate this interrelatedness.</li> <li>- What is the harm to women because of such denial of rights? Are women exposed to abuse, violence? Does it lead to economic deprivation, or loss of independence? Do women become devalued, leading to further deprivations? What are the short- and/or long-term effects?</li> </ul>

## SECTION 2

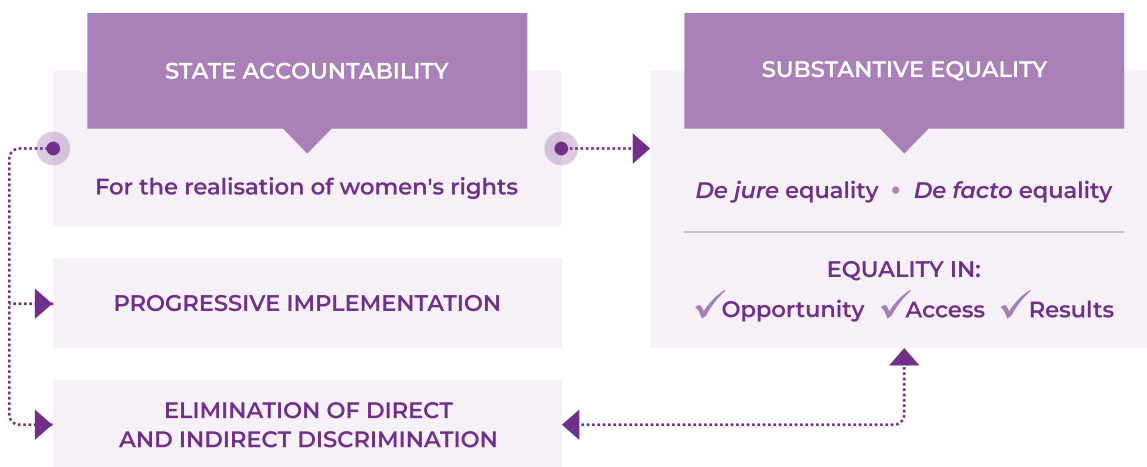
<p align="center">– Column 4 – State obligations in principle according to the standards of the Convention</p>	<p align="center">– Column 5 – What the State is actually doing</p>	<p align="center">– Column 6 – Identification of gaps in the fulfilment of State action. What should be done by the State (column 4 minus what it is actually doing (5)) and effectiveness/ achievement of such State action</p>	<p align="center">– Column 7 – Recommendations for policy advocacy to address the gaps identified in column 6</p>	<p align="center">– Column 8 – NGO initiatives</p>
<p>Article 2: Embodiment of the principles of equality in the constitution or law</p> <ul style="list-style-type: none"> <li>• Ensuring through law or other appropriate means, practical realisation of the principle.               <ul style="list-style-type: none"> <li>&gt; Enabling conditions (Article 3)</li> <li>&gt; Temporary Special Measures (Article 4)</li> </ul> </li> <li>• Prohibition of discrimination— through law and other measures, including sanctions.</li> <li>• Legal protection of the rights of women.</li> <li>• Effective protection of women against any act of discrimination— through national tribunals and other public institutions</li> <li>• Refraining from engaging in any act or practice of discrimination against women; ensuring that public authorities and institutions shall act in conformity with this obligation.</li> <li>• Taking all appropriate measures to eliminate discrimination against women by any person or organisation or enterprise.</li> </ul>	<p>To be assessed on the basis of the previous column.</p> <p>Which of the obligations listed in Column 4 is actually undertaken by the State?</p>	<p>What has still to be carried out by the State.</p> <p>To be assessed by comparing Column 5 with Column 4.</p> <p>Is State action being monitored for impact?</p> <p>Have goals, targets, and benchmarks been set?</p> <p>Is there adequate data gathered not only by sex but by other categories such as rural/urban, ethnicity, religious affiliation, etc.?</p>	<p>Based on the findings of Column 5, formulate detailed and specific recommendations and specify the agencies or entities who are responsible.</p>	<p>Inequalities, and their causes if identified.</p> <p>Strategies to eliminate them, if any.</p> <p>Identification of gaps in State action according to context.</p> <p>Strategies to promote achievement of non-discrimination and equality.</p> <p>Sustained activism, and whether activism is sustainable.</p> <p>Collaboration with government agencies.</p> <p>Collaboration and cohesion among NGOs.</p>

– Column 4 – Continuation		– Column 6 – Continuation		
<ul style="list-style-type: none"> <li>• Taking all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women.</li> <li>• Repeal of all discriminatory penal provisions.</li> </ul> <p>Article 5:</p> <ol style="list-style-type: none"> <li>a. taking all appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women</li> <li>b. ensuring that family education includes proper understanding of maternity as a social function and recognition of common responsibility of men and women in the upbringing and development of their children.</li> </ol>		<p>Is the data analysed to identify barriers or obstacles preventing impact?</p> <p>E.g., Has opportunity been created for all women and can women's access to opportunity be provided?</p> <p>Who is left behind, and why?</p>		

## PART V

## Summary of the Monitoring Framework Based on the Women's Convention and Examples

## PRINCIPLES AND CONCEPTS

**EXAMPLE**

**Issue: Employment of women**

**Elements of disparity to be identified in the areas of:**

- Labour force participation
- Sectoral balance
- Category of jobs
- Level of posts
- Wages and benefits
- Job security
- Opportunities for promotion and training
- Other conditions of work, occupational hazards, harassment, etc.

**Causes:**

- Lack of opportunity: laws and policies that discriminate
- Discriminatory practices
- Lack of enabling conditions e.g., lack of transport for night work, lack of safety in public places, lack of maternity benefits, day care services, hostels for working women
- Women not having information on job opportunities
- Women not empowered enough to know their rights and make claims
- Women not having the right kinds of education and skills
- Culture and ideology that sees as women as secondary wage earners

**Effects on women:**

- Elaboration of the effects on women of their inferior employment status

**EFFECTIVENESS OF STATE ACTION****Recommendations to the State**

- What should the State do to address the causes?
- What has the State done and with what results?
- What are the gaps in State action?
- What are the specific recommendations for State action that will help address the causes and eventually reduce the disparities?

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**PART VI**  
**Report Format**

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The following format is suggested

- Introduction: Relevant macro background of the country that affects the status of women
- Statement of the issue
  - > Rationale for selection of the issue in relation to the context provided in the introduction
  - > Scope of the investigation or aspects looked into
- Status of the data available
- Evidence of disparity/disadvantage
  - Evidence of causes or barriers (discrimination that has led to the disparity or disadvantage)
  - Effects on women
  - State obligations
    - > What should the State be doing?
    - > What has it done and how effectively?
    - > What are the gaps and weaknesses?
  - Priority recommendations for advocacy with the State
  - Critique of NGO actions and recommendations for NGO activism

## ANNEXE 4

## THE RIGHTS-BASED FRAMEWORK

**WHAT ARE RIGHTS AND WHY RIGHTS?**

- *Rights are inherent.* They derive from our being human.
- *Rights are inalienable, indivisible, and universal.*
- *Rights are enforceable and can be claimed* by the rights holder from the duty bearer through the mechanism of law or policy. There are consequences if rights are breached—it can be an offence not to fulfil rights. There are also mechanisms for claiming rights. Hence, there is accountability.
- *Rights are not arbitrary;* they are defined by certain standards and norms.
- Once recognised, *rights cannot be reduced.* But they are dynamic and open to expansion.
- Rights have the potential for political mobilising and the creation of constituencies for recognising and claiming rights. People become active claimants, who are conscious of being rights bearers who have entitlements.
- The violation of the rights of even one individual is a wrong.
- Rights provide a strong language to make claims. Rights can be invoked.

**THE PHILOSOPHY OF THE RIGHTS-BASED APPROACH:**

- It values the universality, inalienability, and interrelatedness of human rights.
- It recognises the norms of equality and non-discrimination.
- It gives equal value to *all* human beings.

**WHY USE THE RIGHTS-BASED APPROACH?**

- It helps us broaden our understanding of discrimination and disadvantage;
- It enables us to explore holistic approaches to problem-solving by establishing the inter-relatedness of rights;
- It identifies and emphasises State obligation to respect, protect, and fulfil human rights; and
- It encourages us to shift paradigms in order to transform dependency to empowerment: from needs to rights.

**SOME OF THE PRINCIPLES THAT INFORM THE RIGHTS-BASED APPROACH ARE:**

- It is *people-centred*, focusing on the transformation and development of individuals and their communities through the process of claiming rights;
- *Individuals must be able to exercise their rights* in law (*de jure*) and in practice (*de facto*);
- *Rights must be able to expand and evolve.* There should be no regression;
- Must *create social transformation and empower marginalised communities and individuals* to establish entitlements for themselves;
- Just distribution of resources and power;
- It enables advocates to *apply universal human rights standards* to everyday situations and contribute to their implementation; and
- It helps us identify a framework for seeking and understanding ways by which States and other *actors should*



*be held accountable* for the realisation of women's rights.

### ENABLING ENVIRONMENT

- Culture of human rights
- Rule of law
- Democratic space for claiming, articulation of rights by people: freedom of expression and movement, freedom of information, assembly, etc.

### THE FRAMEWORK FOR A RIGHTS-BASED APPROACH

The four basic elements of the rights-based approach:

- Recognition of rights
- Exercising of rights
- Sustaining and evolving rights
- Claiming rights and redressing violations

#### KEY ELEMENTS AND QUESTIONS INFORMING THE RIGHTS-BASED APPROACH:

#### THINGS WE CAN DO TO INTEGRATE THE RIGHTS-BASED APPROACH TO OUR WORK:

### ENABLING THE RECOGNITION OF WOMEN'S HUMAN RIGHTS

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Identify which rights are recognised and which are not, and the process through which they can be recognised (law, policy or practice).</li> <li>• If rights are recognised, identify whether they are based on universal and international standards such as human rights treaties.</li> <li>• Identify how the enjoyment of rights that are already recognised can be limited by the lack of implementation of other rights.</li> <li>• Analyse the ways rights are being articulated, claimed and implemented by different players (e.g., constituencies, civil society (NGOs) and government):             <ul style="list-style-type: none"> <li>- Is there consistency in the understanding of the meaning/characteristics, and attributes of rights by all concerned?</li> <li>- Are the linkages between the implementation of rights and the realisation of substantive equality and non-discrimination being made?</li> </ul> </li> <li>• Is there an understanding of who are the duty holders and rights bearers/holders?</li> </ul> | <ul style="list-style-type: none"> <li>• Develop popular materials to encourage human rights learning within and among organisations and communities.</li> <li>• Identify a plan for your organisation— what will be your role after the needs of constituents are met and their rights are recognised? How can you help sustain achievements?</li> <li>• Raise awareness about the international human rights standards to which the state has obligated itself.</li> <li>• Initiate and contribute to national and international advocacy.</li> <li>• Form alliances and mobilise the rights holders.</li> </ul> |
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## ENABLING WOMEN AND MARGINALISED COMMUNITIES TO EXERCISE THEIR RIGHTS

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- Are there mechanisms, infrastructure, and means to exercise rights?
  - Are women able to exercise their rights fully? What are the main barriers for the exercise of their rights? How do we resolve them?
  - Are women able to access their rights? Are there enabling conditions to help such as temporary special measures?
  - Are all groups of women able to exercise their rights? Are there specific enabling conditions that need to be in place to contribute to the advancement of marginalised individuals and communities?
  - Are there systems for data gathering, developing indicators, monitoring, and utilisation?
  - Is there compliance with international human rights standards?
  - Are there adequate resources (materials, financial, training, etc.) for the exercise of rights?
  - Are there social norms, cultural and religious practices and interpretations that discriminate against women and prevent their exercise of the rights concerned? How do we address them, especially as they are institutionally entrenched?
  - Is there a good understanding of the various power relations and their specific impact, and the need to negotiate within these power relations so that women can exercise rights?
  - Can women meaningfully negotiate rights in their power relations? Does this result in forwarding our agenda?
  - What kind of political environment should be present for us to exercise our rights, and how can we achieve this?
  - Are there laws governing private actors to ensure they undertake obligation to allow women to exercise their rights?
  - Have 'conflicting' rights been addressed?
  - How are we drawing accountability from State obligation for the fulfilment of rights?
- Contribute to advocacy to ensure quality, availability, acceptability, and accessibility of services.
  - Identify duty holders.
  - Mobilise people (rights holders) to make demands and provide input into standard setting.
  - Undertake fact-finding and action-oriented research aimed at identifying obstacles and inter-related rights.
  - Raise community awareness around conditions and actions needed to access and enjoy rights.
  - Evaluate and analyse the provision of services available.
  - Build alliances for advocacy.
  - Contribute to policy formulations and monitor relevant legislative processes.
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### CONTRIBUTING TO THE EVOLUTION OF RIGHTS AND SUSTAINING ACHIEVEMENTS

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- How do we ensure that rights progress rather than regress?
- How do we contribute to the transformation of the meaning of rights?
- How do we sustain the exercise of rights?
- How do we strengthen the protection of rights?
- How do we react to new challenges both nationally and internationally? (Climate change and disasters; conflict; neoliberal economic policies and trade agreements; regime change that does not honour previous agreements or policies, resulting in budget cuts; and policy and priority changes.)
- Contribute to advocacy to ensure quality, availability, acceptability, and accessibility of services.
- Monitor whether rights are respected, protected, and fulfilled.
- Identify new challenges and emerging issues and implications.
- Raise awareness of the people on entitlements and state obligations.
- Build capacity and ensure people's participation in identifying needs and evolving rights and barriers.

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### CREATING CONDITIONS TO ENABLE WOMEN AND MARGINALISED COMMUNITIES TO CLAIM THEIR RIGHTS AND SEEK REDRESS FOR VIOLATIONS

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- Are women demanding their rights when their rights have been violated?
  - Are rights justiciable and/or enforceable?
  - How do women claim their rights and in what venues?
  - Is there adequate legal aid?
  - Are there measures, procedures, capable institutions/tribunals, and mechanisms to ensure, protect, and redress rights at the national level?
  - Are there international mechanisms where you can also claim your rights? Is their capacity to claim rights at that level?
  - Are there effective remedies for violations of women's rights?
  - Enhancing capacity of rights holders to claim their rights, such as legal literacy.
  - Researching and documenting of violations, impact, and contributory factors.
  - Alliance building.
  - Creating recognition of violation in compliance with international standards.
  - What are we doing to enable women to claim their rights? Such as: creating support services to make demands, or claim redress and demand justice.
  - Capacity building for duty holder to provide redress.
  - Rehabilitation of survivor(s).
  - Documenting who is claiming their rights and who is not, or which rights are not claimed.
  - Mobilising to challenge the state failure to protect, nationally and internationally.
  - Linking micro-level field experience to policy formulation and back.
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## ANNEXE 5

## THE CEDAW COMPLIANCE FRAMEWORK

Women globally are still experiencing multiple forms of discrimination and inequalities, limiting full enjoyment of their human rights. Gender equality resulting in the substantive equality and non-discrimination promoted by the Convention on Elimination of All forms of Discrimination Against Women (CEDAW) remains a challenge for women across the regions.

IWRAP Asia Pacific through its work on using CEDAW in diverse contexts of women's human rights has developed various tools and frameworks to strengthen the work of national level groups and organisations influencing policy making and law reform processes.

One of the tools is the CEDAW Compliance Framework developed in 2007 at the Updating of Concepts and Training Skills Meeting. This framework aims to enable a structured understanding of how the Convention, its principles and provisions can be the basis for laws, policies, and programmes to ensure

not only the formal or *de jure* equality to women, but implementation of these results in substantive/*de facto* equality, eliminating both direct and indirect discrimination experienced by women in public and private spheres.

The Framework itself is in four major parts. First, the guiding principles—including human rights standards and norms from CEDAW and the international human rights system in general—underpin the framework. The learning is that CEDAW is a comprehensive instrument which is inclusive of all aspects of human rights as manifested in all human rights instruments (civil and political as well as economic, social and cultural).<sup>307</sup> The second part is the application of CEDAW itself—which is broken down into a problem analysis—framing a problem statement, the object and purpose of the law, policy or programme, and the content of the law, policy, or programme. The third part relates to implementation, and the fourth part, which is critical to any intervention, relates to monitoring and accountability.

**ADVANCING THE HUMAN RIGHTS OF WOMEN: A FRAMEWORK FOR CEDAW COMPLIANCE**

**1. GUIDING PRINCIPLES: DRAWN FROM TEXT OF CEDAW AND OTHER HUMAN RIGHTS CONVENTIONS, GENERAL RECOMMENDATIONS, CONCLUDING COMMENTS, EVOLVING JURISPRUDENCE**



- Universality and indivisibility of rights
- Equality before the law and equality under the law
- Inherent and inalienable
- Full realisation of all rights as rights are interdependent and inter-related (non-hierarchical)
- Principles of non-regression/non-derogation
- Progressive realisation linked to principles of non-regression/non-derogation (mobilise resources, set targets, set time frames to show progress, in good faith)
- Minimum core obligations
- Due diligence
- State as duty holders, citizens, and persons as rights bearers (individual and group rights), noting intersectionality
- Ability of people to exercise rights and enjoy rights – *de jure* and *de facto*
- Mechanisms for accountability
- Mobilisation of people as rights holders

- Non-discrimination
- General Interpretative Framework (Articles 1, 2, 3, 4, 5, 23, 24 with specific articles and relevant General Recommendations)
- Substantive equality
- Elimination of discrimination: direct/indirect, in law and in practice, in both private and public spheres, etc.
  - Prohibition of discrimination on the basis of sex and that which takes place on the basis of being a woman
  - Elimination of discriminatory ideological factors justified by cultural, social norms, religious interpretation, etc.
  - Temporary special measures:
    - Article 4(1): Historical/structural/current discrimination and multiple discrimination based on discriminatory notions of gender
    - General Recommendation 25
  - Measures that enable the fulfilment of special needs of women – biological needs (Article 4(2), 5b, and preamble)
  - Towards promoting substantive equality (access, opportunity, results)
  - de jure, de facto*
  - Article 3: Full development/advancement of women
  - Women as rights holders

\*Economic, social, cultural, civil and political rights

## 2. APPLYING THE GUIDING PRINCIPLES TO ENSURE CEDAW COMPLIANCE (LAW REFORM, POLICY FORMULATION, PROGRAMME DESIGN)

**2.1 Problem analysis:** Choose a context or right, and through research conduct a situation analysis to identify the problem and changes needed in law and policy. Use the guidelines below. This operationalised into more details and called Situation Analysis Framework, attached at the end of this document.

- a. Understand the nature of the discrimination and the multiple sites of discrimination and inequality.
- b. Determine the extent/magnitude of the discrimination and inequality and build an evidence base.
- c. Identify direct and indirect factors/determinants of discrimination keeping in mind the interdependence of sectors and issues.<sup>308</sup>
- d. Expand understanding and analysis of gender construction (ideology, masculinity, power relations, etc.).
- e. Consider the emerging concerns relating to heteronormativity, sexuality, gender 'transgressions', etc.
- f. Use a political economy lens to analyse the global and national forces of neoliberal globalisation, fundamentalisms, and militarisation.
- g. Undertake risk analysis and look for possible forms and sources of resistance (e.g., fundamentalisms, cultural arguments, etc.).

- h. Identify the factors that contribute to the State's non-fulfilment of its obligations, such as:
  - i. Lack of political will (e.g., ratification but no incorporation, regression of government pledges and declarations, reservations);
  - ii. Lack of awareness and understanding of obligations and lack of capacity by State functionaries.

**2.2 Problem statement:** Frame the problem in terms of discrimination and/or a rights violation, and not just as a gender issue.

**2.3 Object and purpose of the policy/law/programme:** Promote the human rights of women and/or substantive equality in relation to a particular right or issue, premised on the recognition of women as legitimate rights holders on a basis of equality.

**2.4 Assessing compliance of law or policy with CEDAW standards.** Content of the policy/law/programme. Are there:

- a. Explicit provisions for equality and non-discrimination,<sup>309</sup>
- b. Explicit provisions for prohibition of direct and indirect discrimination by the State as well as non-State actors;<sup>310</sup>
- c. Measures to address special needs of women to facilitate the realisation of rights and equality of results:
  - i. Address the biological needs of women;<sup>311</sup>
  - ii. Address needs pertaining to sexuality.<sup>312</sup>

- d. Temporary Special Measures to overcome the effect of past discrimination and facilitate women's access and benefit from the proposed law/policy/programme:<sup>313</sup>
  - i. Address the causes and consequences of historical multiple discrimination including the needs of women arising out of social construction of gender roles and disadvantage;<sup>314</sup>
  - ii. Enabling measures to ensure women benefit from the policy reform, programme provisions and new legislation.<sup>315</sup>
- e. Measures to address the particular needs and disadvantage arising out of multiple layers of discrimination (intersectionality);<sup>316</sup>
- f. Measures to create an enabling environment and counter sexism and gender stereotyping;<sup>317</sup>
- g. Measures to promote and strengthen a political environment that upholds the primacy of the fundamental human rights of individuals and peoples;<sup>318</sup>
- h. Measures to prevent and minimise adverse effects of neoliberal economic policies on the human rights of women and benefit from new opportunities;<sup>319</sup>
- i. Equality and rights to be addressed as a cross-cutting issue with implementation responsibility located across departments, agencies, and ministries;<sup>320</sup>
- j. Regulations that draw accountability of private actors to uphold human rights standards;<sup>321</sup> and
- k. Mobilise and build capacity of women as a constituency of rights holders.<sup>322</sup>

When developing the above content:

- Guard against the instrumentalist motive behind 'pro-women' proposals/measures (which are driven by patriarchal values/notions);
- Guard against heteronormative bias; and
- Ensure participatory process for content formulation involving different stakeholders.

### 3. Implementation

- a. Measures to mobilise support for the intervention (policy, law, programme);<sup>323</sup>
- b. Institutional arrangements to ensure effective implementation including:<sup>324</sup>
  - i. procedures and effective systems in place;
  - ii. allocation of fiscal and human resources;
  - iii. clear rules and regulations for implementation (enforcement/implementation responsibilities) and safeguards against discrimination in implementation against women and other marginalised groups such as migrants and refugees; there should be an intersectional approach (women/Indigenous/disabled etc.) and
  - iv. capacity building of duty holders (all branches of government—vertically and horizontally);
- c. Measures to facilitate intra and inter-departmental cohesion;
- d. Timeframe.

#### 4. Monitoring and Accountability<sup>325</sup>

- a. Continuous monitoring of implementation, including through participation of rights-holders;<sup>326</sup>
- b. Collection, analysis and utilisation of data (disaggregated by sex and other identities) to determine benefit of the reform (evidence base of impact—is there equality of access, results, etc.);<sup>327</sup>
- c. Provisions to provide for transparency and access to all information collected;<sup>328</sup>
- d. Internal monitoring mechanisms (within a ministry or department) to ensure accountability for institutional commitment to equality;<sup>329</sup>
- e. Measures to ensure availability of gender-sensitive complaints mechanisms and procedures;<sup>330</sup>
- f. External monitoring mechanisms to ensure accountability of government within a federated structure (whom to hold accountable, for what, by whom, and by what means) at the national level;<sup>331</sup> and
- g. Tracking of the utilisation of resources allocated for the advancement of women (both national revenue and foreign aid).<sup>332</sup>

## ANNEXE 6

ANNE BAYEFSKY

### UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS

OHCHR. April 2001

IWRAP Asia Pacific is a classic example of an NGO which moved from a theoretical set of treaty standards to a methodology for implementation at the national level. In so doing, it integrated a dynamic and symbiotic relationship to a treaty body (CEDAW). It began by identifying a gap in the treaty system, namely, needs to:

- mobilize women's groups at the national and regional level to improve accountability of governments in fulfilling treaty obligations
- improve the flow of information from the international level of legal standards to the local level, (including monitoring and facilitating the implementation of the treaty locally)

- enable women to use the treaty to advance their interests.

IWRAP Asia Pacific then identified strategies at both the national and international level to (a) improve women's ability to claim rights, (b) foster mechanisms of enforcement which implement those rights, and (c) facilitate ongoing monitoring to track progress in compliance. Its programme was built step-by-step to:

- enhance understanding of 'women's rights' and 'equality' by using the Convention, particularly to emphasize the standard of de facto equality; develop the framework for identifying discrimination against women and the nature of state obligations under the Convention



- inspire women's groups in the region to locate their advocacy within a rights framework, and to be aware of the Convention as a critical tool for advancing their rights
  - run training sessions to develop practical, analytical skills for lawyers and non-lawyers in legislative and policy advocacy; train lawyers on filing test cases challenging discriminatory laws, on the use of the international rights instruments in domestic cases, share examples of effective litigation in this context; prepare a practical guide to preparing legal briefs for claiming human rights for women through the domestic application of international human rights standards
  - assist campaigns to encourage governments to withdraw reservations
  - expand training programmes to a broader range of target sectors than women's groups, such as human rights groups, human rights commissions, the judiciary and lawyers, government officials, parliamentarians
  - provide technical support to women's groups to facilitate the development and sharing of model legislation, and to comment on proposed bills
  - run training the trainers sessions in order to build regional capacity
  - establish monitoring networks
  - use the outcomes of the monitoring to write alternative reports to be submitted to CEDAW; provide technical support to assist in the production of shadow reports
  - attend CEDAW sessions, meet with CEDAW members and provide them with information
  - encourage the adoption and ratification of the Optional Protocol to CEDAW
  - empower women to use the Optional Protocol to claim their rights.
- This integrated approach seeks to maximize national input at the international level, and the use of international standards at the national level. The approach is adaptable to other NGOs and other treaties.

## ENDNOTES

### PROLOGUE AND INTRODUCTION

- 1 CEDAW is a United Nations (UN) human rights treaty for the realisation of women's rights and equality of women and men (gender equality). It was adopted by the UN in 1979. It is currently (2023) ratified or acceded to by 189 countries of the world who accept binding obligations to eliminate discrimination against women in their countries and to fulfil women's right to equality. As all other human rights treaties, CEDAW also imposes an obligation on States Parties to submit periodic reports (every four years) to a UN Committee of independent experts, referred to as the CEDAW Committee, that reviews compliance of governments with their obligations under CEDAW. At the end of each review, recommendations called Concluding Observations are issued to the government concerned.
- 2 International human rights standards are the level of achievement or the exercise of human rights deemed to be the norm through international consensus. While human rights are inalienable and accrue to every human by virtue of being human, they should be exercisable and protected as a right by the State through law and policy.
- 3 The Global to Local programme (G2L), started in 1997, aims to facilitate the presence of women from the national level to make an impact on the review of the compliance of governments with their obligations under CEDAW. This review is undertaken by an expert Committee at the United Nations in Geneva (the CEDAW Committee). The G2L builds the capacity of national-level women's groups to prepare alternative reports and submit them to the expert Committee. These reports are useful for the Committee experts as they help them check the veracity of the governments' report and raise their awareness of ground-level realities in the context of which discrimination against women takes place. The women are also able to observe the review and the performance of their governments. More details of this impactful programme can be found in Chapter 9.
- 4 'Medium' here refers to the medium of instruction. India had a dual language system of instruction in schools—English and the vernacular which varied according to each state. My native state is Tamil Nadu, so there were schools where the medium of instruction was English and schools where it was Tamil.
- 5 My brother and I began our education at a time when India had obtained independence from the British in 1947. Politically waves of nationalistic fervour gave pre-eminence to vernacular languages as the medium of instruction in schools and in state-level administration.
- 6 The Anglo Indians are a mix of British and local populations in India which was colonised by the British. Such mixed populations were called by other names such as Eurasian, or Burgher in different parts of Asia colonised by more diversified European races such as the Portuguese and the Dutch.
- 7 Christianity is chauvinistic in the sense that it considers itself a superior religion and teaches that one can only go to heaven through belief in the death and resurrection of Christ.
- 8 In the 1970s, I was a volunteer with the Federation of Family Planning Associations, known as the Federation of Reproductive Health Associations after the 1994 International Conference on Population and Development (ICPD). After six years as a volunteer, I took on a full-time position at the Federation and worked there from 1981-1986.

### CHAPTER 1

- 9 The late Arvonne Fraser was Senior Fellow Emerita of the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota, and co-founder and Director of the Institute's Centre on Women and Public Policy, former Director of the International Women's Rights Action Watch and former ambassador to the UN Commission on the Status of Women.
- 10 Steve Isaacs was Professor Emeritus, Columbia University, New York 1988-2012. He co-directed the IRAW programme in Minnesota with Arvonne Fraser for many years.
- 11 Rebecca Cook, who was a lawyer, had joined the Development Law and Policy programme at Columbia University directed by Steve Isaacs.

- 12 Arvonne Fraser. *She's No Lady*. Nodin Press. LLC. 2007. p. 240.
- 13 Ibid, p. 241.
- 14 Ibid, p. 241.
- 15 Ibid, p. 240.
- 16 Ibid, p. 241.
- 17 Marsha Freeman was a Senior Fellow at the University of Minnesota Human Rights Centre and Adjunct Professor of Law at the University of Minnesota Law School.
- 18 The activities of IRAW were manifold. It “published the Women’s Watch Newsletter (English and Spanish); produced a manual *Assessing the Status of Women: A Guide to Reporting under the Convention* (English, French, Spanish and Arabic) for gathering and analyzing information about the status of women in any county or community; organized a network of members working in all regions of the world to promote increased attention to the convention and law and policy changes in conformance with its principles; supported and monitored the work of the Committee on the Elimination of Discrimination Against Women (CEDAW); provided independent data and information on women’s status and on violations of women’s rights and others, including the media; produced and distributed publications and special reports [...] as a clearinghouse for information on the Convention; [and] organized international seminar/conferences coinciding with the annual CEDAW review meeting held alternately in Vienna and New York.” (WIN News 18.2 Spring 1992:2).
- 19 Arvonne Fraser. *She's No Lady*. Nodin Press. LLC. 2007, p. 251.
- 20 Ibid. p. 246.
- 21 Shireen Huq was a women’s rights activist in Bangladesh and a founding member of Naripokkho, a feminist women’s rights organisation in Dhaka.
- 22 Today (2023), ratifications of CEDAW globally stand at 189 and of the 14 Pacific island countries, 11 have ratified it.
- 23 Shireen Huq was involved in the CEDAW project in Asia in her personal capacity and as an *ad hoc* consultant and not as an employee of the Danish embassy.
- 24 One of her memorable quotes is, “The abrogation of women’s rights is equally important. Women killed by husbands were as dead as men killed by a dictator’s death squad.” From Arvonne Fraser. *She's No Lady*. Nodin Press. LLC. 2007. p. 249.
- 25 Asian-Pacific Resource and Research Centre for Women (ARROW), Malaysia. It had been functioning for a few years as an adjunct programme of the Gender and Development programme of the Asian and Development Centre in Kuala Lumpur, focusing on Women’s Reproductive Rights. In 1993 it became an independent non-governmental organisation and moved to its own office space in Anjung Felda, Jalan Maktab, Kuala Lumpur.

## CHAPTER 2

- 26 The first proposal of IRAW Asia Pacific. *Building Capacity for Change*. Dated 1992.
- 27 All States Parties have an obligation to deliver reports in intervals of four years and based on these reports, enter into a constructive dialogue with the CEDAW Committee about their compliance with the Convention.
- 28 Article 21 of CEDAW.
- 29 The CEDAW Committee has hitherto drafted 39 General Recommendations (see: <https://www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx>).
- 30 Subsequently, the CEDAW Committee adopted General Recommendation 35 updating General Recommendation 19.
- 31 Ramya Subrahmanian was a young and energetic classmate of mine from my Masters programme on Gender and Development at the University of Sussex, 1989-1990. At the time of the CEDAW orientations in India, she was working with the Institute for Women and Development (IWID) in Chennai.
- 32 Ratna Kapur is a global legal scholar with an international standing. She has lectured and published on issues of human rights, international law, and constitutional law, in particular on secularism, freedom of expression, equality, and gender equality and sexual rights around the world.
- 33 *Report of the Seminar/Workshop on the Convention on the Elimination of All Forms of Discrimination against Women*. 4-7 April 1994, Kathmandu, Nepal. MANUSHI.
- 34 Ibid.

- 35 Ibid.
- 36 Louis Henkin. *The Age of Rights*. 1990. Columbia University Press. New York. p.3.
- 37 Ibid, p. 3.
- 38 Noreen Burrows. *The 1979 Convention on the Elimination of All Forms of Discrimination against Women*. XXXII NILR 1985, p. 446.
- 39 Around 130 governments had ratified CEDAW by the early 1990s.
- 40 Margaret Ng. 'Asia deserves human rights just as much as the West'. *Far Eastern Economic Review*. June 1993.
- 41 The Coordination Unit had been set up by a consortium of donors for coordinating the preparations in India for the Beijing Fourth World Conference on Women.
- 42 Phone interview with Pramada Rana Shah on 14 October 2012.

### CHAPTER 3

- 43 The Center for Women's Global Leadership (CWGL), based at Rutgers University-USA, was founded in 1989 by Charlotte Bunch. The CWGL is both an academic centre at a major public research university as well as a non-governmental organisation with ECOSOC Special Consultative Status at the United Nations working on policy and advocacy. CWGL works to develop and facilitate women's leadership worldwide not only for women's human rights, but also for international social justice. A flagship programme of CWGL, the 16 Days of Activism against Gender Violence Campaign, was launched by CWGL in 1991 as an annual campaign that demands the elimination of all forms of violence against women. This rallying cry erupts annually between 25 November and 10 December, and more than 6,000 organisations from approximately 187 countries have participated as of 2023 (<https://16dayscampaign.org/about-the-campaign/>).
- 44 Charlotte Bunch, Founding Director and Senior Scholar, at the Center for Women's Global Leadership, Rutgers University, has been an activist, author, and organiser in the women's, civil, and human rights movements for four decades. She is the author of numerous essays and has edited or co-edited nine anthologies including the Center's reports on the UN Beijing Plus 5 Review and the World Conference Against Racism. Her books include two classics: *Passionate Politics: Feminist Theory in Action* and *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights*. (<https://womens-studies.rutgers.edu/faculty/core-faculty/117-charlotte-bunch>).
- 45 The Ludwig Boltzmann Institute of Human Rights (BIM) is a Vienna-based research institute. It was founded in early 1992 by Felix Ermacora, Manfred Nowak and Hannes Tretter, all three Professors of Law at the University of Vienna. Manfred Nowak was its Director at the time of the Conference on Human Rights. Shortly after it was founded, the Austrian Ministry of Foreign Affairs requested BIM to coordinate the NGO input during the World Conference. Manfred has revealed that at that time, they had five staff members. Considerable funds had to be raised (primarily from the EU and the FORD Foundation) and some 100 volunteers attracted to help organise the invitations, travel, hotel bookings, the NGO Forum, 400 parallel events etc., for more than 3,000 NGO delegates. Manfred Nowak states that they were faced with a huge deficit.
- 46 'Proposals Challenged. Boutros-Ghali's column dismays NGOs'. *TerraViva*. The independent daily of the World Conference. 11 June 1993. Number 1.
- 47 Ibid.
- 48 Margaret Ng. 'Asia deserves human rights just as much as the West'. *Far Eastern Economic Review*. June 1993.
- 49 Michael Vatikiotis in Kuala Lumpur and Robert Delfs in Tokyo. 'Cultural Divide: East Asia claims the right to make its own rules'. *Far Eastern Economic Review*. 10 June 1993.
- 50 Musa Hitam was the former Deputy Prime Minister of Malaysia.
- 51 *Financial Times*. 'Asians challenge West on human rights'. 11 June 1993.
- 52 Ibid.
- 53 Michael Vatikiotis and Robert Delfs. Op. cit.
- 54 *Financial Times*. Op. cit.
- 55 Michael Vatikiotis and Robert Delfs. Op. cit.
- 56 *Bangkok NGO Declaration on Human Rights: report by the Secretariat*. A/CONF.157/PC/83. 19 April 1993.

- 57 Geraldine Ferraro. 'Human Rights for Women'. *The New York Times*. Op-Ed. 10 June 1993.
- 58 Ibid.
- 59 *Media Release*. Network CBC/CBO. 11 June 1993.
- 60 Input into this paragraph regarding the presence of the Dalai Lama was provided by Manfred Nowak.
- 61 Quoted from 'Human Rights and Universal Responsibility'. A speech given by His Holiness the Dalai Lama to the United Nations World Conference on Human Rights, Vienna, Austria, June 1993.
- 62 *NGO Forum Report: All Rights for All*. Recommendations adopted by the Forum of Non-Governmental Organizations (NGOs). June 1993.
- 63 Charlotte Bunch and Niamh Reilly. *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights*. Centre for Women's Global Leadership, Rutgers University, USA & UNIFEM New York, USA.
- 64 United Nations General Assembly. See [https://en.wikipedia.org/wiki/United\\_Nations\\_General\\_Assembly](https://en.wikipedia.org/wiki/United_Nations_General_Assembly).
- 65 Ibid.
- 66 Charlotte Bunch. 'The Global Campaign for Women's Human Rights: Where Next After Vienna'. *St. John's Law Review*. Volume 69, Issue 1 Volume 69, Winter-Spring 1995, Numbers 1-2. Integrating Women's Human Rights into Deliberations of the 1993 UN World Conference on Human Rights and into the On-going Work of the United Nations—Report and Recommendations from the International Women's Strategic Planning Meeting, a satellite conference for the World Conference on Human Rights organised by the Center for Women's Global Leadership at Rutgers University.
- 67 *WFS: The legacy of women's caucus*. 8 September 1994 by icpd:ngonet in igc:icpd.general.
- 68 The OIC comprises 57 countries from the Middle East, Asia, and Africa.
- 69 PrepCom was the term for the UN preparatory meetings, a series of which was held in preparation for the main conference. Many issues were resolved during the PrepComs and only the most contentious ones were left for the main conference.
- 70 *Earth Negotiations Bulletin*. 'A brief analysis of PrepCom II'. Summary of issues No. 11. 10-21 May 1993 and *Earth Negotiations Bulletin*. Summary Issue No. 30. 4-22 April 1994.
- 71 Thalif Dean. 'Women Urge Countries to Challenge the Vatican'. IPS. Third World Network.
- 72 *WFS: The legacy of women's caucus*. 8 September 1994 by icpd:ngonet in igc:icpd.general.
- 73 Margery Butcher, a British national domiciled in Malaysia, was a pioneer in the field of family planning. She advocated for government services for family planning in several countries of Southeast Asia starting in the 1950s. She was also the author's mentor as she transitioned from being an English teacher to that of being a volunteer and programme officer at the then Federation of Family Planning Associations, Malaysia from the late 1970s to 1987.
- 74 Ms Ivanka Corti. *94-09-07: Statement of CEDAW*. United Nations Population Information Network (POPIN), UN Population Division, Department of Economic and Social Affairs, with support from the UN Population Fund (UNFPA).
- 75 Vandana Shiva. 'Third World Network Features. Women's rights reduced to reproduction issue'. *Women's Rights & Reproduction*. 1 September 1994 by igc:twm in icpd:twm.features.
- 76 Ibid.
- 77 Jason L. Finkle and C. Alison McIntosh. 'The Cairo Conference on Population and Development: a new paradigm?' *Population and Development Review*. 21.2 (June 1995), p. 223.
- 78 Fred T. Sai. 'The ICPD Programme of Action: pious hope or a workable guide?' *Health Transition Review*. Supplement 4 to Vol.7, 1997, pp. 1-5.
- 79 UN Non-Governmental Liaison Service. 'NGLS Round Up'. International Conference on Population and Development. Two Years Later. From [www.un-ngls.org/orf/pdf/12icpd.PDF](http://www.un-ngls.org/orf/pdf/12icpd.PDF).
- 80 'Education the Challenge for Women's Future'. *TerraViva Monthly*. August 1995, No.1.
- 81 'Organisers Warn Women not to Get Bogged down by Language'. *Beijing Watch*. A Daily Paper for the Fourth World Conference on Women. Women's Feature Service. 4 September 1995. This statement intended to debunk the assumption that a highly educated

woman should have the resources, social support, and confidence to be able to protect herself from being beaten by her husband. It pointed to the prevailing power relations between women and men no matter what her material conditions were and that this needed to be acknowledged and addressed.

- 82 Sati is the earlier practice in India of burning a wife when her husband dies and is cremated.
- 83 The debate on equality and equity as mutually exclusive concepts is counter-productive. The attempt by some countries to deny women their right to 'equality' and substitute 'equity' in its place would have the consequence of keeping women in a permanent state of disadvantage. Equality is a legal standard and therefore is a goal to aspire towards. Equity on the other hand is not a standard but a process of distribution of resources and benefits that takes into consideration the differing needs of different groups. A process of 'equitable' distribution is essential to facilitate women's or other disadvantaged groups' aspiration to equality. But it cannot be an immutable and permanent measure.
- 84 I was on the Malaysian governmental delegation throughout the PrepCom and had an insider experience of the formal negotiations. The G77 consisted of countries from several regions—Asia, Africa, and Latin America—and the positions of the regions were developed at regional conferences. But at the main conference, G77 states negotiated as one bloc and tried to get their regional views included. They were often split in their views.
- 85 Virginia Vargas. 'Letter of invitation to NGO meeting in Santa Domingo'. Circular #005/95. 25 April 1995.
- 86 Rachel Kyte. *Beijing Watch*. Women's Feature Service. Op. cit.
- 87 Ibid.
- 88 See this assessment of reservations: "While fundamental differences over some of the language in the draft Platform emerged at the 39th Session of the CSW, over the word 'gender' for example, the facility for entering reservations to selected portions of the document was always likely to provide dissenters with a mechanism for living with the elements they found disagreeable. The large number of reservations on health

and sexuality reflect abiding political and cultural differences that the FWCW exposed and reflected, but could not realistically be expected to resolve. The combination of consensus language and reservations can be viewed as a status report on those issues for women in different parts of the world." (*Earth Negotiations Bulletin*. Vol 14. No. 21).

- 89 Shireen Huq was and is an associate of IRAW Asia Pacific. See Chapter 2 and 3 for Shirin's involvement with IRAW Asia Pacific.
- 90 Shanthi Dairiam. 'Universal, indivisible, interdependent, interrelated and in peril.' *In Populi*. Volume 22, No. 7. September 1995.
- 91 *Earth Negotiations Bulletin*. International Institute for Sustainable Development. 4 September 1995.

#### CHAPTER 4

- 92 *Amma* means 'mother' in the Tamil language. This manual was called by that name in recognition of the fact that it was comprehensive and comprised a first level of learning on basic human rights and equality concepts and national and international processes. It had the potential to give birth to further levels of learning. The name was not chosen consciously, but someone who was trained with that manual spontaneously called it the Amma Manual and the name stuck.
- 93 Gonoshathaya Kendra is a community health facility. Savar is an Upazila (lower administrative unit) of Dhaka District in the Division of Dhaka, Bangladesh. It is located at a distance of about 24 kilometres (15 miles) to the northwest of Dhaka city.
- 94 Naila Kabeer and Ramya Subrahmanian, 1996, 'Institutions, Relations and Outcomes: Framework and Tools for Gender-Aware Planning', *IDS Discussion Paper 357*.
- 95 Ibid.
- 96 Ibid.
- 97 Ibid.
- 98 This framework, 'Substance, Structure and Culture of the Law', is elaborated by Margaret Schuler, in *Empowerment and the Law, Strategies of Third World Women*. OEF International 1986. The framework was first used by Lawrence Friedman in *Legal Culture and Social Change*.

- 99 Eleanor Conda provided many insights into the session on the Limits and Possibilities of the Law.
- 100 The right of the individual for self-determination is a lesson learnt from the discussions of the International Conference on Population and Development (1994). The Amma Manual contains a session on the rights of the individual versus group rights.
- 101 Eleanor Conda was identified by me at another meeting in around 1994 and recognising her capabilities, I brought her into the programme of IWRAP Asia Pacific as a consultant. Her contribution to the training efforts and to the various strategic planning exercises was invaluable. She served on the first Advisory Committee of IWRAP Asia Pacific and was a member of the Capacity-Building Team for many years. She is a lawyer and at the time of her involvement with IWRAP Asia Pacific she was the Executive Director of the Women's Legal and Human Rights Bureau (WLB) in Manila, Philippines.
- 102 Eleanor would appear at every session and moment, even if they were informal ones, and in sickness and in health, impeccably dressed, perfectly groomed, made up and always in high heels.

#### CHAPTER 5

- 103 Andrew Byrnes is Professor of Law at the University of New South Wales, Sydney, Australia, where he served as Chair of the Australian Human Rights Centre from 2005 to 2017. He teaches and writes in the fields of public international law, human rights, and international criminal/humanitarian law. His work includes publications on women's human rights, gender and human rights, United Nations human rights treaty bodies, national human rights institutions, economic and social rights, peoples' tribunals and international law, and the incorporation of human rights standards in domestic law. Prior to that he was Associate Professor of Law at the Faculty of Law, University of Hong Kong, where he was Director of the Centre for Comparative and Public Law and Director of the Master of Laws in Human Rights until his departure in 2001. He served on the first Advisory Committee of IWRAP Asia Pacific from 1996 and continues to do so.
- 104 Emeritus Professor of Law Savitri W. E. Goonesekere has been described as a 'legal luminary', 'woman pioneer' and a 'legend in the legal and academic fields of Sri Lanka'. The University of Colombo has had the rare distinction of having had Prof. Goonesekere as its first female Vice Chancellor and its first woman Professor of Law. Prof. Goonesekere has been and continues to be a distinguished academic and legal professional. A prolific writer, Goonesekere was instrumental in the evolution of modern legal education in Sri Lanka. She served on the first Advisory Committee of IWRAP Asia Pacific from 1996 and continues to do so.

#### CHAPTER 6

- 105 The content of this chapter draws primarily from the annual reports of IWRAP Asia Pacific.
- 106 Hillary Charlesworth. 'Human Rights as Men's Rights', in *Women's Rights, Human Rights: International Feminist Perspectives*, Julie Peters and Andrea Wolper, eds., New York: Routledge, 1995, p 107. Cited in Shanthi Dairiam. *Women's Right to Equality: The Promise of CEDAW*. UN Women. 2014.
- 107 CEDAW General Recommendation No. 25. Paragraphs 8 and 10.
- 108 'Beatrice a/p A.T. Fernandez v Sistem Penerbangan Malaysia 2'. Kesatuan Sekerja Kakitangan Sistem Penerbangan Malaysia Semenanjung Malaysia. Rayuan Sivill No. W-02-186-1996.
- 109 US Supreme Court Justice Ruth Bader Ginsburg, "the history-making jurist, feminist icon and national treasure." Taken from BBC Obituary of the Supreme Court Justice. 1933-2020.
- 110 Cited from 'Ruth Bader Ginsburg: Obituary of the Supreme Court Justice', by BBC. <https://www.bbc.com/news/world-us-canada-49488374>.
- 111 Sapana Pradhan Malla. 'Inheritance Rights of Nepali Women: Journey Towards Equality'. Forum for Women, Law and Development (FWLD) and IWRAP Asia Pacific, 2004. In 1993, a case was filed in the Supreme Court of Nepal, challenging the discriminatory inheritance

law which did not entitle women to inherit parental property until the age of 35 and only if they remained unmarried. The court, despite recognising the discrimination in the law, gave a directive to the government to introduce an appropriate bill in parliament but cautioned that sudden change in social norms might destabilise society. Part of the court's decision reads, "in making sudden changes in traditional social practices and in matters of social norms pursued by the society since a long time ago, the society happens to become unable to adopt several matters, and if so happens, a different situation beyond perception would emerge."

- 112 Professor of Law at the Haim Striks Law School at Colman College of Management Academic Studies, where she also acts as President of the Concord Center for Integration of International Law in Israel and as Head of the School's Graduate Programs. She served as an expert member of the Convention on the Elimination of All Forms of Discrimination Against Women Committee as member of the UN Human Rights Council Working Group on Discrimination against Women.
- 113 Via CEDAW4Change Listserv.
- 114 Colleen Sheppard. 'Study Paper on Litigating the Relationship between Equity and Equality'. Ontario Law Reform Commission. 1993.
- 115 Ibid.
- 116 This decision led to the initiation, in 1997, of the programme called Monitoring the Fulfilment of State Obligation conducted in South and Southeast Asia. For details, see Chapter 7.
- 117 Dato' Noor Farida Ariffin has had a long and distinguished career spanning more than 40 years holding a number of key positions in the public service in Malaysia. I had known her since the mid-1970s when she was a legal officer in the Attorney General's Chambers in Malaysia and at the same time worked with civil society as an activist for the promotion of women's rights. In the 1970s, she became the President of the Association of Women Lawyers through which she contributed much to the Malaysian women's campaign on the elimination of discrimination in the law against women and the campaign on eradicating violence against women (1970s to 1980s). In 1992, during the gestation period for IWRAP Asia Pacific, she was serving as the Director of the Women and Development Programme, Human Resource and Development Group at the Commonwealth Secretariat in London and was very encouraging of the setting up of IWRAP Asia Pacific. She headed the newly established Legal Division of the Foreign Ministry in Malaysia in 1993, and in 1996 was appointed the Under-Secretary of the newly formed Territorial and Maritime Division of the Foreign Ministry, Malaysia. Between 2000 and 2007, Dato' Noor Farida Ariffin was the Ambassador of Malaysia to the Kingdom of the Netherlands. In 1996 when IWRAP Asia Pacific was registered, she consented to be one of the directors. She has been a source of strength for us, consenting to be on a sabbatical whenever her public office did not allow her to function as a director of IWRAP Asia Pacific.
- 118 The late Rita Raj was a former colleague of mine in the Federation of Family Planning Associations, Malaysia in the late 1970s to early 1980s. Between 1993 to 1996, as a director of ARROW she used her good offices to enable ARROW to function as our fiscal agent, signed contracts with donors, received funds on our behalf, and ensured accountability. She then became a director when IWRAP Asia Pacific was registered.
- 119 Gradually by 2004 IWRAP Asia Pacific had expanded its team to 10 staff members.
- 120 Others who served on the Advisory Committee at various times later were: Andonia Piau-Lynch (Vanuatu), Kanjapat Korsieporn (Thailand), Miho Omi (Japan), and Sapana Pradhan Malla (Nepal).
- 121 The fact that Asia had the most awareness and knowledge of CEDAW is of significance because it was an advantage when IWRAP Asia Pacific started facilitating the participation of women in the CEDAW review of their countries at the UN. This will be further discussed in Chapter 9 on the programme From Global to Local.
- 122 The primary target group of users of the framework are State Parties to CEDAW—governments and legislatures in particular. However, from the experiences of women's groups it is obvious that State Parties often



- lack the willingness, motivation, or capacity to fulfil their human rights obligations. Hence, women's human rights organisations have to proactively promote the use and application of the framework by their governments and thus facilitate the implementation of human rights principles and standards.
- 123 IWRAW Asia Pacific's tools for CEDAW Implementation include:
- The Monitoring Framework (Facilitating Project), 1997
  - The Framework for a Rights-Based Approach, 2002
  - The CEDAW Application Framework (from the Updating Concepts Meeting 2007)
- 124 IWRAW Asia Pacific. 'Background paper on Legal Discussion Papers', part of the proposal for the capacity building of lawyers.
- 125 *Aldridge v Booth* (1988) EOC 92-222, 80 ALR 1 (Fed Ct Australia [Doct E 53].
- 126 *Vishaka and others v State of Rajasthan and others* (1997). Writ petition (criminal). Nos. 666-70 of 1992. 195614. Cited in IWRAW Asia Pacific. Background paper. Op. cit.
- 127 The CEDAW Committee in its review of State Party reports has also noted the paucity of women claiming their rights to equality in the courts and came up with General Recommendation 33 on Access to Justice.
- 128 Non-lawyer activists were included in the lawyers training as it is they who are in touch with women on the ground and need the skills to recognise discrimination when it occurs and determine whether there was a need to file cases in courts. So, the training would address a variety of societal sectors who would be able to give inputs on discrimination from their own reality. Also, women litigants need a support network if their case comes to court. So, including activists in a litigation plan is essential.
- 129 The drafting of the OP had started in 1996, and the instrument entered into force on 22 December 2000. It allows women who think their rights under the Convention are violated by their state to submit a complaint to the CEDAW Committee. As of January 2023, there are 115 parties to the Optional Protocol.
- 130 1. Rape
- Consent
  - Corroboration
  - Definitions
  - Procedure e.g., medical procedure, whether the victim should be asked to demonstrate how the act was done, police investigation, trial.
2. Sexual Harassment
- Definition
  - Consent (emphasis on establishing normative standards)
3. Domestic Violence (Partner Abuse)
- Definition of the scope of who belongs in a family, whether it should be expansive to include wife, daughter, family, domestic help or only spousal abuse
  - Whether it is not only limited to married couples but will include cohabitants
  - Whether there can be arguments of self-defence
  - Defences by abuser: self-defence and provocation
  - Male prerogative to discipline wife
  - Procedures
  - Equitable remedies
4. Matrimonial Property Rights (Equal right to property acquired in marriage during marriage and upon dissolution)
- Definition to include management, ownership, division of property
5. Nationality and Citizenship
- Definition
  - Loss and transmission
- 131 The need for a collaborative effort in the region through a comparative exchange of jurisprudence and sharing the competitive challenges and success among the judges and among the lawyers has also been identified by Sapana Pradhan Malla, an advocate from Nepal. But it had not been easy to raise funds for regional approaches. See profile of Sapana Malla in Chapter 12.
- 132 The Monitoring Framework was developed through a meeting of Southeast Asian partners in 1997 to facilitate the Fulfilment of State Obligation towards Women's Equality. See Chapter 9 and Annexe 3.

- 133 This Framework was developed through a consultation on the rights-based approach, facilitated by IWRAP Asia Pacific and organised by FORD Foundation, New Delhi from 8 to 11 October 2002 in Naukuchiyatal, India. This consultation was conceptualised and implemented by Shanthi Dairiam, Executive Director of IWRAP Asia Pacific, Programme Officer Maria Graterol, and Brenda Campbell, a brilliant intern. Tulika Srivastava carried out research to establish needs. The framework is attached in Annexe 4.
- 134 The CEDAW Compliant Framework was developed at the Updating of Concepts meeting held on 25-28 May 2007, mentioned earlier in this chapter on page 106. The framework is attached in Annexe 5.
- 135 Andrew Byrnes, Advisory Committee Member since inception. Intervention made by him at IWRAP Asia Pacific's Strategic Planning Meeting. 16-19 August 2011.
- 136 The Global to Local programme aimed to facilitate an informal dialogue between the committee of CEDAW experts and women NGO representatives from the national level.
- 137 The Committee meetings took place at the UN in New York and are now hosted in Geneva.
- 138 International Covenant on Civil and Political Rights.
- 139 Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.
- 140 Legal Aid and Consultancy Centre.
- 141 Andrew Byrnes, a member of the Advisory Committee, was also involved in the process – as a contributor with Jane Connors to the Maastricht draft of 1994, and then as a representative of the International League for Human Rights and subsequently a technical adviser to the Australian delegation at the CSW Working Group.
- 142 *IWRAP Asia Pacific training materials on the Optional Protocol to CEDAW*. Contribution by Tulika Srivastava.
- 143 *IWRAP Asia Pacific training materials on the Optional Protocol to CEDAW*. Contribution from Alda Facio.
- 144 Ibid.
- 145 Shanthi Dairiam. 'Dissenting Opinion OP-CEDAW'. Case 15/2007, paragraph 9.2.
- 146 Nepal acceded to the OP-CEDAW on 15 June 2007.
- 147 IWRAP Asia Pacific. *Report of the Global Consultation on the Ratification and Use of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. Kuala Lumpur, Malaysia. 27-30 August 2005.
- 148 OHCHR. 1 July 2003. Summary record of the 610th meeting, 29th CEDAW session. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSR.610&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSR.610&Lang=en).
- 149 The *Ad Hoc* Steering Committee of the Coalition comprises representatives from IWRAP Asia Pacific, COHRE, ICJ, FIAN, and the Social Rights Advocacy Centre (Canada).
- 150 The NGO Coalition for an Optional Protocol to the ICESCR comprised national, regional, and international organisations and individuals.
- 151 ESCR-Net is an International Network for Economic, Social, and Cultural Rights and connects over 280 NGOs, social movements, and advocates across more than 75 countries to build a global movement to make human rights and social justice a reality for all.
- 152 Maria Herminia Graterol, Programme Officer of IWRAP Asia Pacific was responsible for this timely collaboration.
- 153 In 2003, six human rights treaties had been adopted by the General Assembly. In 2020, the system had expanded to include nine human rights treaties.
- 154 IWRAP Asia Pacific, 2005. 'Making United Nations Human Rights Treaty Bodies more effective. A Gender Critique of Reforms to The Reporting Process. The Case of the "Common Core Document"'. *Occasional Paper Series*. Author Dianne Otto for IWRAP Asia Pacific.
- 155 During the treaty body strengthening process, the phrase 'congruent rights' was constantly mentioned with reference to the proposal for a common core document. It meant that this document should bring together all elements/aspects of rights in various treaties that the State Party had ratified which had commonalities. One of these was equality and non-discrimination.

- 156 United Nations. 1995. *Report of the Sixth Meeting of Persons Chairing the Human Rights Treaty Bodies*. General Assembly, Fiftieth Session, A/50/505.
- 157 CEDAW. 2001. *Report of the Committee on the Elimination against Women (Twenty-fourth and Twenty-fifth Sessions)*. UN General Assembly, Official Documents, Fifty-sixth Session, No. 38, A/56/38.
- 158 UNIFEM. 2004. *Assessment of From Global to Local: A Convention Monitoring and Implementation Project*. New York: UNIFEM.
- 159 Anne Bayefsky is a human rights scholar and activist. She currently directs the Touro College Institute on Human Rights and the Holocaust and is a barrister and solicitor of the Ontario Bar. Her areas of expertise include international human rights law, equality rights, and constitutional human rights law.
- 160 Anne Bayefsky. *UN Human Rights Treaty System: Universality at the Crossroads*. OHCHR. April 2001.
- 161 AWID is a global, feminist, membership, and movement-support organisation working to achieve gender justice and women's human rights worldwide.
- CHAPTER 7**
- 162 IWRAW Asia Pacific's Strategic Planning Meeting. 16-19 August 2011.
- 163 A network of women's organisations and activists, CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights) is committed to the defence of women's rights in Latin America and the Caribbean. It was founded in 1987 in Costa Rica.
- 164 Spoken by a participant at a workshop held in Ecuador.
- 165 Listed in no order.
- 166 See section on building pool of resource persons in Chapter 6.
- 167 The National Alliance of Women (NAWO) is a national network of women's organisations founded in India soon after the Fourth World Conference on Women in 1995. It aims to promote gender equality and works extensively with CEDAW.
- 168 National Institute of Advanced Studies (NIAS), India. NIAS has a gender studies unit which conducts research-based advocacy for the advancement of women in India. It seeks to study the impact of social, economic, and political policies and programmes on securing women their constitutionally guaranteed rights and to advocate for state interventions that will raise the status of women and ensure gender justice. NIAS was one of IWRAW Asia Pacific's partners.
- 169 The government of India requested NIAS and Geetha Devi, a member of IWRAW Asia Pacific's resource pool from Bangalore, to provide technical assistance in the writing of the second State Party report.
- 170 A major evaluation of the work of IWRAW Asia Pacific was carried out by the Netherlands Ministry of Foreign Affairs in 2005. It was titled 'Evaluation of Theme-Based Co-Financing Programme of The Netherlands Ministry of Foreign Affairs Gender Study: Appraisal of International Women's Rights Action Watch – Asia Pacific'. January 2006.
- 171 Andrew Byrnes' comment at IWRAW Asia Pacific's Strategic Planning Meeting. 16-19 August 2011.
- 172 The Netherlands Ministry of Foreign Affairs. 2006. Op. cit.
- 173 Ibid.
- 174 The Evaluation only spoke to South Asia partners.
- 175 The Facilitating Project which helps monitor fulfilment of State obligation is mentioned in Chapter 6 and in greater detail in Chapter 9.
- 176 According to the 2001 Census, Uttar Pradesh (after bifurcation into UP and Uttarkhand) had a population of 166 million people.
- 177 *Towards light*. AALI. 1998-2004
- 178 The Netherlands Ministry of Foreign Affairs. 2006. Op. cit.
- 179 From 'Verbatim Report', Global Consultation on the Ratification and Use of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 28-30 August 2005, p. 30.
- 180 The Netherlands Ministry of Foreign Affairs. 2006. Op. cit.
- 181 IWRAW Asia Pacific's Strategic Planning Meeting. 16-19 August 2011.
- 182 IWRAW Asia Pacific's Strategic Planning Meeting. 16-19 August 2011.
- 183 Exchange rate | USD = Dfl 2.

- 184 Theme-based co-financing programme of the government of the Netherlands.
- 185 Sunila Abeyesekera. 'International Women's Rights Action Watch Asia Pacific. An Evaluation'. December 1996.

## CHAPTER 8

- 186 Based on a report of this training by IWRAP Asia Pacific.
- 187 Based on a report of this training by IWRAP Asia Pacific.
- 188 IWRAP Asia Pacific. *Report of Social Investigation Visit to China*. 1997.
- 189 The social investigation visit was conducted for IWRAP Asia Pacific by Shireen Huq on 22-29 July 1997. It was a very structured investigation. She met and spoke to members of the All-China Women's Federation, personnel at the Centre for Women's Legal Studies at University of Peking, lecturers from the Law Faculty at University of Peking, women judges from the Women Judges Association, individual judges (male), and personnel from the Women's Help Line. She was assisted with interpretation services provided for free by a team from FORD Foundation, Beijing. They were helpful throughout the visit.
- 190 The Women's Law was adopted on 3 April 1992 and entered into force on 1 October 1992. It includes chapters on political rights, rights related to culture and education, work, property, the person, marriage and family, and legal protection. The law also repeats and underscores the existing rights of women in Chinese law, such as the Marriage Law and Law of Succession. With the enactment of the Women's Law, China has made a contribution towards the elimination of discrimination based on gender.
- 191 IWRAP Asia Pacific resource persons: Shanthi Dairiam, Director; Andrew Byrnes, Professor of Law, University of Hong Kong; Shireen Huq, Consultant from Bangladesh; and Moana Erickson, Luce Scholar attached to the Centre for Comparative and Public Law, University of Hong Kong. Both Andrew Byrnes and Shireen Huq are members of the Advisory Committee of IWRAP Asia Pacific. ACWF Resource persons: Ding Lu, Head of Legal Division; and Cai Sheng.
- 192 This was the first time that a report of Hong Kong would be reviewed by the CEDAW committee along with the 3rd and 4th periodic report of China.
- 193 Based on a report of this workshop by North East Network (NEN).
- 194 This workshop was decided on as a result of the networking that took place at the First Conference on Post Beijing Review and Action that took place in India in February 1997.
- 195 Refer to a write-up about Roshmi Goswami in Chapter 11, page 192.
- 196 For details of this programme, see Chapter 9.
- 197 Based on a report of this workshop by AALI.
- 198 I am well aware that this is a long-term strategy that will take time. We don't rule out liberal interpretations of religious positions as a short-term measure to provide relief for women from oppressive policies or practice.

## CHAPTER 9

- 199 This can be seen from the reports State Parties submit to the CEDAW Committee for periodic review.
- 200 The first Southeast Asia regional workshop was held from 10 to 13 July 1997 in Kuala Lumpur, Malaysia to develop a framework to monitor State actions. A second regional meeting was organised from 2 to 6 December 1998 in Port Dickson, Malaysia to provide collective feedback on the first round of draft baseline reports prepared by the core groups from each country.
- 201 The first South Asia regional workshop held from 29 March to 1 April 1998 in Kathmandu, Nepal, adopted the monitoring framework developed by the Southeast Asian groups and identified priority issues to be monitored in each of the participating countries. The second South Asia regional workshop held from 18 to 22 May 1999 in Kalutara, Sri Lanka reviewed the first round of draft baseline reports prepared by the core groups from each country.
- 202 Though Mongolia is not part of the Southeast Asian region, they were included in the project due to their overwhelming response and enthusiasm to participate. The project was not able to take on board Cambodia because of political unpredictability in the country. It was also not possible to include Singapore.

- 203 The case study documented here draws heavily from and is a summary of Sapana Pradhan Malla. *Inheritance Right of Women: Journey towards Equality*. Forum for Women Law and Development (FWLD) and IRAW Asia Pacific. 2003.
- 204 Manu, in the mythology of India, the first man, and the legendary author of an important Sanskrit law code, the *Manusmriti* (Laws of Manu).
- 205 The Laws of Manu. 1500 BC.
- 206 This was an indication that there was a belief even within the legal system that discrimination against women must be maintained to preserve social stability.
- 207 Sapana Pradhan Malla. 2003. Ibid.
- 208 A legal advocacy organisation founded by Sapana Pradhan Malla and a strong partner organisation of IRAW Asia Pacific.
- 209 Sapana Pradhan Malla. 2003. Ibid.
- 210 In 1998, Sapana Pradhan Malla was the Executive Director of FWLD. At that time, she was a Supreme Court advocate in Nepal. Later, she also served as a member of the Nepalese Constituent Assembly, from May 2008 to May 2012 and in 2016 was elevated to Judge of the Supreme Court of Nepal.
- 211 Sapana Pradhan Malla. 2003. Ibid.
- 212 Sapana Pradhan Malla. 2003. Ibid.
- 213 Sapana Pradhan Malla, 'Challenging Nepal's Inheritance Law', *WPRN Newsletter*. Volume 1. July – Oct 1997. p.4 cited in Sapana Pradhan Malla. 2003. Op. cit.
- 214 *Shadow Report on the Initial Report of Government of Nepal on CEDAW*. FWLD 1999, pp. 13-17.
- 215 These are the continuing obligations of the State after reform of the law, which can never be a one-off initiative.
- 216 Sapana Pradhan Malla. 2003. Ibid.
- 217 Refer to Chapter 1.
- 218 These findings regarding the gains of the Global to Local programme are gleaned from various evaluation exercises done by participants, from questionnaires sent out to them for purposes of drafting the history of IRAW Asia Pacific and from regional consultations conducted for the Southern African, Andean, and Mesoamerican regions.
- 219 Masimanyane Support Services is a civil society organisation that runs a network of support services for women victims of violence in South Africa.
- 220 Masimanyane. *Report of Regional Consultation for Southern African States*. Held on 26 and 27 May 2012, on gains of Global to Local. Johannesburg, South Africa.
- 221 Ibid.
- 222 Ibid.
- 223 UNIFEM Evaluation of the Global to Local programme, 2004.
- 224 Heinrich Boell Stiftung Nigeria. 'The Women's Convention in Nigeria'. 14 October 2013. <https://ng.boell.org/2013/10/14/womens-convention-nigeria>.
- 225 Law 79 on Gender-based Violence in Nicaragua was passed in 2012.
- 226 Masimanyane. *Report of Regional Consultation for Southern African States*. Held on 26 and 27 May 2012, on gains of Global to Local. Johannesburg, South Africa
- 227 Source: IRAW Asia Pacific, *Global to Local Training Kit* (2009).
- 228 GR 19. 7(b) 'The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.'
- 229 CAT. 2008. General Comment No. 2.
- 230 See Jeanne Sarson and Linda MacDonald. Postscript: 'From Global to Local' Training Workshop and CEDAW. 2012.
- 231 From 'Agenda Item 3: Report of the Chairperson on Activities Undertaken between the Thirty-third and Thirty-fourth Sessions of the Committee'. See [http://www.un.org/womenwatch/daw/cedaw/cedaw34/statements/CEDAW34\\_CHAIRPERSON.pdf](http://www.un.org/womenwatch/daw/cedaw/cedaw34/statements/CEDAW34_CHAIRPERSON.pdf).
- 232 Source: <http://www.iwraw-ap.org/aboutus/pdf/CEDAW%20letter.pdf>.

**CHAPTER 10**

- 233 The findings regarding IRAW Asia Pacific's contribution to change are gleaned from questionnaires answered by participants of regional consultations conducted for the Southern African, Andean, and Mesoamerican regions and from external evaluations. The questionnaires were sent out for purposes of drafting the history of IRAW Asia Pacific.
- 234 Interview with Madhu Mehra, Executive Director, Partners for Law and Development, India.
- 235 Zanna Jurmed, Executive Director and Founder of CEDAW Watch Network, later transitioned to The Center for Citizen's Alliance, Mongolia.
- 236 Masimanyane is a programme in South Africa that runs a network of support services for women victims of violence.
- 237 Lesley Ann Foster. *The Impact of International Women's Rights Action Watch Asia Pacific on Masimanyane Women's Support Centre and My Work on Women's Rights*. August 2011.
- 238 Interview with Shantha Mohan.
- 239 CEDAW Article 2.
- 240 Interview with Madhu Mehra, Executive Director, Partners for Law and Development, India.
- 241 Lesley Ann Foster. Op. cit.
- 242 Lesley Ann Foster. Op. cit.
- 243 Interview with Roshmi Goswami. North East Network (NEN), India.
- 244 The Netherlands Ministry of Foreign Affairs. 2006. Op. cit.
- 245 Enabling such a cohesion at the national level had been on the agenda of IRAW Asia Pacific with no success. We thought of identifying one group in each country that could function as a national repository of information and scholarship (jurisprudence etc.) on CEDAW and equality matters with all groups contributing to this body of knowledge. Another group would be a national capacity-building centre that could produce trainers and resource persons for the whole country as well as be a think tank on advocacy strategies. This would also allow for cross-utilisation of resources across a whole sub-region such as South or Southeast Asia or even the whole of Asia. But it was too much to grapple with as a concept and it was difficult

for the groups to identify individual groups for these specialised functions. The idea would have had to go back to the drawing board, and it never did.

**CHAPTER 11**

- 246 The information in this chapter is based on interviews with all nine individuals conducted by myself.
- 247 The Mahila Samakhya is a government scheme operating in several states of India. It was started in 1989. It implements a concrete programme for the education and empowerment of women in rural areas, particularly those from socially and economically marginalised groups.
- 248 Government-organised non-governmental organisation.
- 249 Article 12 of the Indian Constitution. In this part, unless the context otherwise requires, 'the State' includes the government and parliament of India and the government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the government of India. Under the constitutional definition of the State, the obligation to protect individuals is confined to direct State institutions. The State would have no vicarious liability for wrongful actions of an autonomous institution set up and funded by the State.
- 250 This workshop was part of a long-term programme initiated in several countries in the region called Facilitating the Fulfilment of State Obligation (Facilitating Project). See Chapter 9.
- 251 Mentioned in Chapter 6, page 96 (Access to Justice).
- 252 See endnote 32, page 267 for an earlier reference to Ratna Kapur.
- 253 See Chapter 4.
- 254 The Association for Advocacy and Legal Initiatives (AALI) is a feminist legal advocacy and resource group addressing women's issues through a rights-based perspective. AALI envisions an egalitarian social system that recognises women as complete individuals and equal human beings through advocacy for women's human rights.

- 255 The Conference demonstrated that women as human beings are entitled to human rights. The outcome of the Conference was a publication comprising 34 articles called *From Basic Needs to Basic Rights*. This publication is about the struggle for 'engendering human rights' and to articulate a new vision that bridges the gap between basic needs and basic rights, and offers a new paradigm to explore the full range of contemporary challenges to women's advancement with respect for the principles of indivisibility and universality of human rights. (Taken from a review of the publication).
- 256 The northeastern region (NER) of India has gone through conflict and turmoil for decades. The region consists of eight states – Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, and Sikkim.
- 257 Roshmi Goswami. 'Of Rights, Compromises and Negotiations - Challenges to Securing Women's Human Rights in Armed Conflict Situations'. Unpublished.
- 258 Roshmi Goswami. Ibid. Roshmi writes, "having brought women who were caught up in different ethnic conflicts together, made inroads into remote and inaccessible areas and surfaced difficult and contentious issues. It was important that we committed ourselves to addressing them. NEN was that commitment."
- 259 Ibid.
- 260 See Chapter 8.
- 261 After this consultation, a session was added to the Amma Manual on the synergy between individual and collective rights. It was a lesson learnt at the ICPD. See Chapter 3, page 61.
- 262 *The Rights-Based Approach to Programming*. See endnote 130, page 273 for a reference to this framework.
- 263 Also see pages 163-170 on the Case Study of the Inheritance Rights of Women in Nepal.
- 264 Interviewed on 8 May 2014 by Shiwane Neupane. Pass Blue. Independent Coverage of the UN. See <https://www.passblue.com/2014/05/08/sapana-malla-a-diligent-pioneer-of-womens-rights-in-nepal/>.
- 265 Equality Now is an international non-governmental organisation founded in 1992 to advocate for the protection and promotion of the human rights of women and girls. Through a combination of regional partnerships, community mobilisation, and legal advocacy, the organisation works to encourage governments to adopt, improve, and enforce laws that protect and promote women's and girls' rights around the world.
- 266 The Peter and Patricia Gruber Foundation Women's Rights Prize is presented to an individual or group that has made significant contributions, often at great personal or professional risk, to furthering the rights of women and girls in any area and to advancing public awareness of the need for gender equality to achieve a just world.
- 267 I must say it gives me great joy to see her walk down the streets of Kathmandu with a bodyguard behind her, which is the security provided for her as a Supreme Court Justice.
- 268 Dr. Zubeida Dangor has been fighting gender-based violence in South Africa for over two decades. She is the Director of the National Movement of Shelters South Africa.
- 269 Rashida Manjoo is a Professor in the Department of Public Law, University of Cape Town, South Africa. She was supervising research into the criminal justice systems that Masimanyane was conducting. Later she was the UN Special Rapporteur on violence against women, from June 2009 to July 2015.
- 270 Lesley Ann Foster. *A Case Study by Masimanyane Women's Support Centre – A South African NGO*.
- 271 Ibid.
- 272 The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000) is a comprehensive South African anti-discrimination law enacted two years after the CEDAW review of South Africa in 1998.
- 273 Lesley Ann Foster. *The Impact of International Women's Rights Action Watch Asia Pacific on Masimanyane Women's Support Centre and my Work on Women's Rights*. August 2011.
- 274 Ibid.
- 275 The Inquiry was only conducted by the CEDAW Committee in October 2019.
- 276 Phone interview with Lesley Ann Foster.
- 277 Africa Report Consultation. *INEVAWG: Why a South-based, Black Feminist International Network to End Violence Against Women and Girls?* May 2019.

- 278 Developing a government Strategic National Action Plan to address violence against women was a recommendation in the CEDAW Shadow Report presented by Masimanyane to the CEDAW Committee in 2000 and reflected in the 2000 Concluding Observations. It came to fruition in 2020. "Twenty years is really a long gestation period," says Lesley Ann, but it did come to pass and she is gratified she was part of it.
- 279 A young graduate from the Sussex University and working with IWID, Chennai. Ramya and I had studied together at Sussex University in 1989/1990.
- 280 Published by the Coordination Unit in 1995, India's first NGO shadow report could not be formally used as the initial review took place in 2000. But the NGO processes for shadow report writing that followed thereafter, led and coordinated by NAWO, adopted the collective nature of the exercise, and in the initial years, was guided by IRAW Asia Pacific.
- 281 The Amma Manual was put together by Shanthi Dairiam, Shireen Huq, Eleanor Conda, and Madhu Mehra. See Chapter 5.
- 282 APWLD was established in Kuala Lumpur in 1987. It was a regional organisation pioneering in the field of enabling women's human rights through creating synergies between law and development.
- 283 Initiated in 1997 and established in 1998, PLD is a legal resource group committed to the realisation of social justice and equality for all women, driven by the belief that the attainment of women's equality is integral to the pursuit of social justice. The organisation aspires for a comprehensive understanding of women's equality as set out by CEDAW, and actively promotes the application and implementation of the treaty obligations. They are a leading resource group on CEDAW. For more information, see [www.pldindia.org](http://www.pldindia.org).
- 284 The CEDAW review processes are coordinated and led by the National Alliance of Women's Organisations (NAWO) that was constituted by the NGO advisory board guiding the Coordination Unit set up for facilitating preparations towards the Fourth World Conference on Women in Beijing. The civil society UPR processes are led by the Working Group on Human Rights in India, of which PLD is a founding member.
- 285 For example, in relation to witch hunting, victim-centric responses to sexual violence and research studies served to engage with policy and law-making processes, whereas intervenors in PILs were filed to advocate decriminalisation of adolescent sexuality and adultery.
- 286 Mahila Sarvangeen Utkarsh Mandal (MASUM) is an NGO that works with rural women in Maharashtra, India on issues relating to health, credit, family violence, and the creation of enabling environments through which women can access their rights. While health and development from a rights-based perspective is the key platform of MASUM, it addresses economic, political, social, and cultural issues of women, youth, and men. MASUM had been in existence for around 14 years at the time of the interview in 2012.
- 287 See endnote 170, page 275.
- 288 Alda Facio is a Costa Rican feminist jurist, writer, teacher, and international expert on gender and human rights in Latin America. She is one of the founding members of the Women's Caucus for Gender Justice at the International Criminal Court. Since 1991, she has been the Director of Women, Justice and Gender, a programme within the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) and Vice President of the Justice and Gender Foundation. Since 2014, she has been one of five United Nations Special Rapporteurs for the Working Group against Discrimination against Women and Girls.
- 289 Refer to Chapter 9.
- 290 Communication 7/2005, *Cristina Muñoz-Vargas y Sainz de Vicuña vs Spain* Individual opinion by Committee member Mary Shanthi Dairiam (dissenting) CEDAW/C/39/D/7/2005.
- 291 In CEDAW Communication 7/2005, I have given the opinion that the right to equality and non-discrimination on the basis of sex is a value, a principle, and a right. Equality is a standalone right and has to be recognised as an inalienable right regardless of any material consequences.



Otherwise, it would serve to entrench an ideology and a norm of the comparative inferiority of the female that could lead to the denial of other rights with consequences that are much more substantive and material.

- 292 ILANUD is one of nine institutes around the world created by the then Criminal Law Branch of the UN for the purpose of researching issues related to criminal justice.
- 293 Alda is here referring to the holistic approach to the law based on the concept of substance, structure, and culture of the law, which is included in the Amma Manual and mentioned in this document under the elaboration of Access to Justice, Chapter 6, page 99.
- 294 See 'Equity or Equality for Women? Understanding CEDAW's Equality Principles'. *IWRAW Asia Pacific Occasional Paper Series*. No.14. [www.iwraw-ap.org](http://www.iwraw-ap.org).
- 295 The first Global Consultation on the OP-CEDAW was held in New York from 1 to 11 June 2000. See Chapter 6.

#### CHAPTER 12

- 296 Before 2003/2004, IWRAW Asia Pacific did not receive core grants that would take care of salaries and overheads. Only project grants were received, which allowed taking a small percentage from each project budget to fund salaries and overheads including salaries of administrative and finance personnel. This meant that we had to take on more projects than we could realistically manage to cover all costs, as we could only set aside a small percentage of the budget from each project to cover all salaries and other overheads. These were the terms and conditions of the grants. It was only in 2003/2004 that we were given core grants and had the freedom to utilise them freely for salaries.
- 297 Excerpt taken from letter sent by IWRAW Asia Pacific to a European donor dated 9 July 1998. This letter convinced the donor of the significance of women from developing countries participating in international advocacy.
- 298 Interview with Sapana Pradhan Malla. 23 March 2012.

#### CHAPTER 13

- 299 Doris Mpoumou works at Save the Children International AU Liaison and Pan African Office in Addis Ababa. At the time she attended IWRAW Asia Pacific's Global to Local CEDAW training in New York in 1999, she was a citizen of the Democratic Republic of Congo (DRC), in the process of seeking asylum in the USA.
- 300 Dr Noraida Endut, Professor and Director, Centre for Research on Women and Gender (KANITA), Universiti Sains Malaysia (USM). Noraida is currently a member of the Board of Directors, IWRAW Asia Pacific.
- 301 The only exception to this situation is Nepal where several cases of discrimination against women had been filed in the courts.
- 302 At the national levels, there was increasing activism of movements against unfair trade regimes and the neoliberal economic policies promoted by international financial institutions, and for greening the environment, campaigns against extractive industries, the migration of labour and its attendant exploitative and abusive practices, and bringing human rights into business and multinational corporations. All of this activism was accompanied by hostility towards human rights defenders by powerful forces and shrinking democratic space for human rights activism.
- 303 See <http://akhilak.com/blog/2010/11/19/urge-your-representatives-to-ratify-cedaw/>.
- 304 Currently UN Women.
- 305 UNIFEM. 'Assessment of From Global to Local: A Convention Monitoring and Implementation Project'. 2004.

## ANNEXURES

- 306 All references to Articles are to the Women's Convention.
- 307 This is evidenced not only through the text of the CEDAW Convention but also through CEDAW General Recommendations, the Concluding Observations and the jurisprudence of the Optional Protocol to CEDAW.
- 308 'Direct discrimination' refers to acts which have the intention of discriminating, whereas 'indirect discrimination' refers to any action or inaction that has the effect of denying women the exercise of rights. Discrimination can occur when an apparently neutral condition or requirement is imposed that has a discriminatory effect on women, even if discrimination was not intended. Refer to Article 1 of the CEDAW Convention.
- 309 Sources of State obligation under CEDAW: Articles 1-16 particularly Articles 1, 2 and 15.1 and GRs 19, 23, 24. Sources under other human rights instruments: ICCPR Article 2 and 3, ICESCR Articles 2 and 3, and ICESCR GC 16, HRC GR 28, UN Charter (Article 1.3 and preamble), Convention on Disabilities, CERD, CRC. (Specifically in the context of marriage, CEDAW Article 16 and CEDAW GR 21 are relevant as is ICCPR Article 23.)
- 310 Sources of State obligation under CEDAW: Articles 1, 2e and 2f, GR 25 (footnote 1), OP CEDAW case - dissenting opinion in *Nguyen v Netherlands*. Sources under other human rights instruments: CRC, ICESCR, ILO and OP on Rights of Child in Armed Conflict.
- 311 Sources of State obligation under CEDAW: Articles 1, 2, 4 (para 2), 5b, 11f, 12, 14, 16, GR 19, 24 (para 12a).
- 312 Sources of State obligation under CEDAW: Article 1 (interpretation of 'sex' to encompass 'sexuality'). Sources under other human rights instruments: *Toonen* case of Human Rights Committee.
- 313 Sources of State obligation under CEDAW: Articles 4.1, GR 5, GR 23 (para 15), GR 25. Sources under other human rights instruments: CERD article 2.
- 314 Sources of State obligation under CEDAW: Articles 2f, 4.1, 5, 16, GR 3, 19, 21, 23 (para 10) and GR 25.
- 315 Sources of State obligation under CEDAW: Articles 2f, 3, 5a, 6, 15, GR 24 (para 14), and GR 25.
- 316 Sources of State obligation under CEDAW: Articles 1, 7, 10, 11, 14, 24, GR 13, 16, 18, 25 (para 12). Sources under other human rights instruments: CERD GR 29, ICCPR GC 28 para 30 and other human rights conventions.
- 317 Sources of State obligation under CEDAW: Articles 2, 5, 10, GR 8 and 25 (footnote 2).
- 318 Sources of State obligation under CEDAW: Articles 2, 3, 7, 24, GR 23 and 25 (para 23). Sources under other human rights instruments: UDHR and ICCPR.
- 319 Sources of State obligation under CEDAW: Articles 2, 3, 10, 11, 12, 13, 14, 24. Sources under other human rights instruments: ICESCR.
- 320 Sources of State obligation under CEDAW: Article 2, 24, GR 6.
- 321 Sources of State obligation under CEDAW: Article 2e, GR 24 (para 14) and OP-CEDAW cases on Domestic Violence. Sources under other human rights instruments: ILO convention.
- 322 Sources of State obligation under CEDAW: Articles 1-16.
- 323 Sources of State obligation under CEDAW: Articles 2, 3, and GR 25.
- 324 Sources of State obligation under CEDAW: Articles 2, 3, 7, 24, GR 6.
- 325 Sources of State obligation under CEDAW: Articles 2.
- 326 Sources of State obligation under CEDAW: Articles 2 (preamble para), 3, 18, 22.
- 327 Sources of State obligation under CEDAW: GR 9, GR 23 (para 48d), GR 12 (specifically in relation to violence against women), GR 14 (specifically in relation to female circumcision), GR 16 (specifically in relation to unpaid women workers).
- 328 Sources of State obligation under CEDAW: Articles 2, 3 and GR 9.
- 329 Sources of State obligation under CEDAW: Article 3, and GR 6.
- 330 Sources of State obligation under CEDAW: Article 2c, GR 6.
- 331 Sources of State obligation under CEDAW: Articles 2e, 3, 24, GR 19, 24 (para s, u, v), GR 24 (para 12, 31d and 48), GR 23 (para 47 and 49), GR 6.
- 332 Sources of State obligation under CEDAW: Articles 2 (preamble para), 3, 18, 24.

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Looking back on the International Women’s Rights Action Watch Asia Pacific (IWRAP Asia Pacific)’s advocacy for women’s rights, which started in 1993, Shanthi Dairiam tells the story of her engagement with the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Realising the power of international human rights standards to make gains for women at the national and local level, and motivated by the work of Arvonne Fraser at IWRAP Minnesota, Shanthi set about amplifying the principles of substantive equality and non-discrimination to women’s rights activists around the world. This work brought women’s realities into the interpretation of such international standards, all the way to the United Nations processes where the fulfillment of women’s right to equality and non-discrimination was being reviewed. Shanthi’s efforts helped to galvanise the women’s movement, particularly in the Global South, to demand their human rights at the highest level. In ***Promoting the Equality of Women: IWRAP Asia Pacific’s Journey***, Shanthi provides a glimpse of the challenges, collaborations and celebrations experienced along the way.