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Violence Against Women

Executive Summary

The Beijing Platform for Action gave greater visibility to the issue of violence against women. Within the ESCAP region, the first five-year period since Beijing has been one of laying the foundations for future action in several countries to address violence against women in all its forms. This process has taken longer in some countries than in others.

Violence in the family is only gradually becoming recognized as a critical social issue. Several countries have taken action to promulgate specific domestic violence laws as part of state responsibility to expand protection for women from violence occurring in the home, including improvement of institutional mechanisms to provide a more supportive environment for women. This has been done in addition to formulating appropriate training and gender sensitization programmes for all service providers dealing with domestic violence. However, in other countries, discriminatory customary and religious laws that still govern matters in the family and entrenched social attitudes continue to work strongly against state efforts to protect women from such abuses in terms of both law reform and law enforcement. The situation is the same in respect of **rape and sexual abuse occurring in the community**. In both situations, given the stigma and fear of social ostracism attached to the reporting of sexual violence, many acts of violence are not reported by women themselves and continue to remain hidden from the community.

Some progress has been made in enacting laws on the prevention of **sexual harassment at the workplace** in some countries. Exceptionally some laws have extended coverage to domestic maids in response to increased reporting of abuse. In many countries, sexual harassment laws remain confined to public sector employment only, leaving women in private sector employment without access to legal remedies. In

some countries, this is slowly changing as government policies in this area are expected soon to include public and private sector guidelines on conduct in the work place. However, in other countries such as India, the Supreme Court had to intervene before government action was taken to put in place codes of conduct to prevent sexual harassment in both public and private sectors. So far, guidelines have only been issued to government agencies and academic institutions.

Across the three subregions of Asia - Central, South and South-East Asia **trafficking in women and girls** for prostitution and other forms of sexual exploitation has received increasing regional and international attention. Whereas major activities have concentrated in the areas of prevention and rehabilitation and reintegration, improved harmonization of policies and laws on trafficking among countries is urgently needed. Countries have however, been slow to act on their commitments. Regional cooperation among countries and all actors working on the issue has been pursued as the new basis for programme activities. This has already given rise to the South Asia Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, due to be signed in November 1999.

Custodial violence of women detained in prisons or other custodial institutions including mental health facilities remains an area where countries have been slow in their state responsibility to women. In the context of armed conflict, this has become a major concern, particularly where arbitrary powers of arrest and detention are often wielded by security and military personnel.

Legal and socially constructed barriers, which are sometimes influenced by religious considerations remain in place in a number of countries in the region which effectively impede women's rights to **reproductive choice**. The lack of shared responsibility by women and men in family planning within individual households and within the context of national development goals has seen women bearing the full impact of some measures which may have grave implications for women's health as well as may

violate women's rights to reproductive choice.

Violence Against Women

Most countries in the ESCAP region have included activities in this critical area of concern within their respective National Plans of Action. For a small number of countries however, the subject of violence has either not been acknowledged as a problem or ranks low in priority for national development.

Violence occurring in the family

Within the ESCAP region, the issue of violence in the family is only gradually becoming recognized as a critical social issue. In some countries efforts to deconstruct certain social attitudes on violence against women in the family have been taken through legislation, education and public awareness as part of state responsibility but progress has been slow. In other countries, customary and religious laws still govern matters within the family and impact strongly on state efforts to protect women against violence in the home.

It is only exceptionally in a few countries that steps have been taken to develop specific domestic violence legislation. Where this has been done, the principle of "due diligence" of state responsibility in the three key areas of prevention, investigation and punishment and provision of compensation has been noted by countries and efforts made to incorporate these into law in line with General Recommendation 19 adopted by the CEDAW Committee at its eleventh session¹. This is observed in the expansion of the definition of domestic violence beyond physical violence or threats thereof, to include inter alia, marital rape and psychological abuse, increased penalties for breaches of protection orders, provision of free legal aid services to obtain protection orders, the creation of special criminal proceedings to hear cases of domestic violence and obligatory reporting of domestic violence on the part of medical and counselling establishments. Special efforts have been made in certain countries to tailor provisions

¹ Official Records of the General Assembly, Forty-seventh session, Supplement No. 38 (A/47/38) Chap.I.

specifically for indigenous communities to respond to the needs of women in recognition that domestic abuse may be perpetrated by members of the wider family group². Countries that have adopted specific laws on domestic violence include Australia, Hong Kong, China, Malaysia, New Zealand, the Republic of Korea, Singapore³, and most recently Turkey in 1998. In the Philippines and in Vanuatu, bills on domestic violence have been introduced to their respective legislatures. While having such legislation is a positive development, some laws still fall short in provisioning full protection for women from violence in the family. This is noted in Hong Kong, China where the Domestic Violence Ordinance 1995 is still limited to only physical abuse (wife-beating)⁴.

² Such provisions have been made in the domestic violence laws in New Zealand and in some states in Australia; Violence against women in the family, Report of the Special Rapporteur on Violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, E/CN.4/1999/68, 10 March 1999.

³ The Women's Charter was amended in 1996 to enhance its provisions on family violence. These provisions include expansion of the definition of family violence, greater scope for courts to issue protection orders and court orders for counselling for perpetrators and increased penalties for breaches in court orders; Singapore Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

⁴ CEDAW Committee Draft Report, CEDAW/C/1999/I/L.1/Add.7, 3 February 1999.

Elsewhere in the region, the readiness of countries to address violence in the family as a state responsibility through law reform of existing legislation or policy measures differs widely within and between the different sub-regions. In East and South-East Asia, considerable imbalance in government action is noted. These range from actions to strengthen penal provisions and to provide a more supportive institutional framework as reported in the Philippines⁵ and Viet Nam⁶, to the slower pace of law reform in Thailand where marital rape is still not considered a criminal offence and institution of police response measures in domestic violence cases is slow⁷, to the situation in China where the absence of central government interventions has required provincial measures to be taken to combat domestic violence⁸ and in Myanmar where domestic violence is not expressly considered an issue of concern⁹. In the Pacific Islands sub-region, an environment supportive of victims of violence is slowly emerging as consideration is being given to domestic violence legislation¹⁰. In North and Central Asia, there has been no systematic strategy to deal with domestic violence, where in many of these countries, an entrenched distrust of the police stemming from its former history is a further obstacle for victims of violence to seek legal recourse. In South Asia, attempts to promote law or policy reform to address issues of violence in the family for women are proceeding slowly given strongly held conservative patriarchal values. Institutionalized

⁵ Philippine Response to UN Questionnaire on the Implementation of the Beijing Platform for Action presented by Dr. AB Reyes at Meeting of Senior Officials of National Machineries for the Advancement for Women in East and South-East Asian countries, Japan, June 1999.

⁶ In Viet Nam the maltreatment of wives is reported to be dealt with severely by legislative, administrative or educational measures; Viet Nam Second National Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1999 at page 39.

⁷ Second and third periodic reports of States parties to CEDAW Committee, CEDAW/C/THA/2-3, 7 April 1997.

⁸ China Third and fourth periodic reports of States parties to CEDAW, CEDAW/C/CHN/3-4, 10 June 1997 and CEDAW/C/CHN/3-4/Add.1, 25 November 1998, Violence against women in the family, Report of the Special Rapporteur on Violence against Women, its causes and consequences, E/CN.4/1999/68, 10 March 1999 at page 32.

⁹ Myanmar Country Paper presented by Ms. Khin Myo Myint, Deputy Director, Legal Drafting and Translation Department, Attorney-General Office presented at Meeting of Senior Officials of National Machineries for the Advancement of Women in East and South-East Asian Countries, Japan, June 1999.

¹⁰ These activities are reported being considered by Papua New Guinea and Fiji; Report of the Second Regional Meeting on Violence against Women in the Pacific, Fiji Women's Crisis Centre, 1996.

violence against women under the Hudood (Zina) Ordinance in Pakistan and violence specific to certain countries such as sati, dowry-related violence, deuki, stove burnings, honour killings continue to be practiced despite prohibitive laws¹¹.

¹¹ A number of countries in South Asia have stringent laws that prohibit specific practices against women in the context of family life which include physical abuse by husband or in-laws, incest and acid throwing. However under-reporting continues because of unequal gender relations in the family and social attitudes to domestic violence which thereby render the laws generally ineffective; Violence Against Women in South Asia - Subregional Overview, by Women for Women, Bangladesh, Women in Development Discussion Series No.3, ESCAP publication (1999).

As part of enforcement, in a number of countries, institutional mechanisms have improved to provide a supportive environment for women. These have included the establishment of women police desks¹², regulations in police investigations to assure impartial and expeditious dispensation of cases e.g. reporting of all complaints and set time-frames for preliminary investigations¹³, provisions to facilitate the protection of victims and the giving of testimony in court via more sensitive modes such as live television testimony¹⁴, standardized rape investigation kits¹⁵ to gather medical and legal evidence, and the establishment of one-stop crisis centres¹⁶. It has been observed that there is an increased number of shelters operated by government agencies and non-government organizations. At the same time appropriate training and gender sensitization programmes have been provisioned for the range of service providers e.g. police, legal personnel including court prosecutors, hospital personnel and medical practitioners and welfare workers to improve identification of and response to victims of violence. It is observed that with increasing privatization of government services in some countries, state monitoring of public and private service providers will be essential to ensure consistency in standards. From reports, women are accessing domestic violence provisions and in some instances are receiving good results that meet their protection needs. In New Zealand, a decrease in reported domestic violence cases has been observed following implementation of new policy guidelines for police action in these cases¹⁷. In other countries weak enforcement of the law which is associated with

¹² These have been established in many countries including Bangladesh, India, Pakistan, Sri Lanka, Thailand, the Philippines.

¹³ The Philippines Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/PHI/4, 25 July 1996.

¹⁴ Singapore Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

¹⁵ Malaysia Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

¹⁶ Malaysia Response to UN Questionnaire on the Implementation of the Beijing Platform for Action and Bangladesh Response to UN Questionnaire on the Implementation of the Beijing Platform for Action. In the case of Bangladesh, the one-stop crisis centres are still being tested under a pilot programme and are not formally part of national activities.

¹⁷ In New Zealand police statistics showed a decrease in "male assault female" cases which fell to 5.6 per cent in December 1996, a 1.1 per cent reduction from the previous year in 1995. This was thought to stem from the introduction of a 'pro-arrest' approach to domestic violence incidents adopted by police since 1992. New Zealand Third and fourth periodic reports of States parties to CEDAW Committee, CEDAW/C/NZL/3-4, 13 March

traditional patriarchal and customary values that continue to legitimate the unequal power relations in the family and in the community, continue to obstruct women's access to their entitled remedies under the law¹⁸.

Violence occurring within the community

A. Rape and sexual abuse

1998.

¹⁸ In India, police statistics reveal that for the period 1990 - 1992 a total of 1923 arrests were made for domestic violence. However only one conviction was secured. Violence against women in the family, Report of the Special Rapporteur on Violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, E/CN.4/1999/68, 10 March 1999 at page 34.

The increased reporting of the incidence of rape and in particular gang-rape of women in the community across all sub-regions is very alarming. Given the stigma and fear of social ostracism attached to the reporting of sexual violence by women, many of these acts continue to remain hidden from the community by women themselves. As in the case with domestic violence, where countries have accepted state responsibility they have responded in a two-fold manner by (i) strengthening penal provisions to increase penalties as part of deterrence and (ii) provisioning improved institutional mechanisms to enable women access to legal and support services. The removal of gender bias in enforcement is essential through appropriate training and gender sensitization. At the same time, increased attention in the assignment of rape and sexual abuse cases which may not always be managed by the same crime unit dealing with domestic violence cases is a further critical factor that must be addressed in enforcement. It has been observed in Sri Lanka that where women's desks have been limited to domestic violence cases, more serious cases, including rape would be reported to the Crime Division, - a male bastion until women officers made a bigger impact on that division¹⁹.

B. Sexual harassment at work

¹⁹ Sri Lanka country paper presented by VS de Silva, Association for Women's Studies, Sri Lanka at Subregional ESCAP Group Meeting on Eliminating Violence against Women in South Asia, Dhaka, Bangladesh 14-16 December 1997 organized by ESCAP in collaboration with Women for Women, Bangladesh.

Progress has been made in some countries since the Beijing Conference to advance laws on the prevention of sexual harassment at the work place in Hong Kong, China, Japan, the Republic of Korea and Singapore. These new laws have been incorporated into existing laws within the respective countries Penal Code²⁰, in employment legislation²¹ or in anti-discrimination legislation²². Law reform is also being considered in China²³. In Singapore, sexual harassment law provisions were extended in April 1998 to cover domestic maids in response to increased reporting of abuse²⁴. In some countries the development of guidelines on sexual harassment has been confined to coverage of public sector employees only and in limited circumstances with the private sector upon request²⁵. This is changing in the Republic of Korea where development of guidelines is now in progress for both public and private sectors²⁶. The most significant development in the area of sexual harassment at work comes from India, where the direct intervention of the Supreme Court of India was required before law reform measures were actioned to follow the court ruling to put in place guidelines on the prevention of sexual harassment in both public and private sectors where women constitute 50 per cent of the employees. This landmark 1997 decision stands in stark contrast to the employment environment in India where women are openly confronted by sexual harassment by male colleagues at the work place but have remained silent for fear of social ostracism, family

²⁰ Singapore Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

²¹ Thailand's Labour Protection Code (1997) in force 1998 expressly prohibits sexual harassment at work and requires monitoring by the Labour Ministry in collaboration with the national machinery for women, Report of the Committee on the Elimination of Discrimination against Women, twentieth session, A/54/38 (Part 1). In the Republic of Korea, provision is made under the Equal Employment Act and amendments to the Punishment of Sexual Violence and Protection of the Victim Act 1997; Republic of Korea, Fourth periodic report of states parties to CEDAW Committee, CEDAW/C/KOR/4, 30 March 1999.

²² Sex Discrimination Ordinance 1995, Hong Kong, China. Under this Ordinance, provision was made for the establishment of the Equal Opportunities Commission.

²³ "China sex harassment law proposed", BBC World News, 5 July 1998.

²⁴ Section 73 Singapore Penal Code.

²⁵ Japan Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

²⁶ Republic of Korea Fourth periodic report of States parties to CEDAW Committee, CDEAW/C/KOR/4, 30 March 1999.

pressures or reprisals. Thus far guidelines have been issued only to government agencies and academic institutions²⁷.

²⁷ India Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

C. Trafficking in women and girls and forced prostitution

Trafficking in women and girls for prostitution and other forms of sexual exploitation has become a common social problem within as well as between countries in the three sub-regions of Asia - South, South-East and North and Central Asia. New information technologies such as the Internet present a new dimension to the problems faced. In recent years trafficking has become highly organized as international criminal networks have become involved, attracted by the lucrative profits to be gained. Across the three subregions, national laws on the suppression of trafficking are in place. However, enforcement has proven difficult because of the low status of women in the Asia sub-region together with social and economic factors which make it acceptable for young women to be sold to traffickers by their families in accordance with custom and tradition²⁸, male demand for prostitution and abject poverty conditions which poses the greatest obstacle in the suppression of trafficking from the households from which women and girls are lured to the often over-worked and poorly paid enforcement officials (immigration at border check points, the military and police) who are prone to easy corruption money to turn a blind eye to these illegal activities. In the North and Central Asia subregion women and girls are openly recruited by traffickers, enticed by promises of wealth and riches as an escape from the economic troubles faced at home²⁹.

²⁸ These customs and traditions include matrilineal traditions practiced in rural Cambodia which designate girls to help the family, female karma (fate), social customs that designate certain castes as sex workers as badi or deuki a medieval practice of offering a girl-child to appease deities but modern day deuki have turned into active sex workers, all of which are practiced in Nepal.

²⁹ Preliminary Survey Report on Sexual Trafficking in the CIS, UNIFEM/US Information Agency press release, June 1999.

In response to enforcement problems across the Asian region, in both sending and receiving countries, national activities in concerned countries have placed emphasis on prevention of trafficking through education and social awareness campaigns and programmes of economic empowerment, and at the other end, social support programmes including rehabilitation and reintegration services to trafficked women. These activities have been undertaken by governments and non-governmental organizations, either separately or acting in collaboration, often with the technical support of the United Nations bodies and international specialized agencies. Some countries are in the process of formulating national action plans on trafficking, such as Thailand where it is reported that such plans will include express coverage of illegal migrant women trafficked into the country³⁰.

In countries where laws have not been changed to de-criminalize the act of prostitution, women who have been trafficked abroad for prostitution are forced to suffer a further double-burden as they are likely to be punished as criminals, after which, they may be held in detention indefinitely in the absence of harmonization of policies and legislative measures on trafficking and in particular, concerning repatriation. These problems are compounded for indigenous and minority women in some countries who because of their unclear nationality are unable to return to their place of origin. While these issues are known to countries, state responsibility is slow, notwithstanding stated declarations of goodwill. Given the regional dynamics of trafficking, efforts to find a common focus and cooperation among all actors working on the issue (rather than competing and duplication of actions) has been adopted as the new direction for programme activities working in partnership with regional neighbours. This has already given rise to collective agreement by sub-regional groupings of countries to unite firmly on this one issue such as the South Asia Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution³¹. Other regional programmes on trafficking have also been recently adopted

³⁰ Thailand Second and third periodic reports of States parties to CEDAW Committee, CEDAW/C/THA/2-3, 7 April 1999.

³¹ The SAARC member states include Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri

by the United Nations Development Programme (UNDP), specialized agencies such as the International Labour Organization's International Programme for the Elimination of Child Labour (ILO-IPEC) and the International Organization for Migration (IOM), which are focused on the countries in the Mekong sub-region.

Violence perpetrated or condoned by the State

A. Custodial Violence

Custodial violence of women detained in prisons or other custodial institutions including mental health facilities have been reported in a number of countries but these reports are not well documented. Efforts have been made in some countries to establish women police cells or separate women's police stations to protect women against custodial rape in India, Nepal, Pakistan and Sri Lanka which, although welcomed, fall short of provisioning for the full protection of women in such institutions. Other countries have remained slow in their response to the dangers posed to women in custodial detention.

In the context of armed conflict, the issue of custodial violence of women is a major concern, particularly where arbitrary powers of arrest and detention are often exercised by security and military personnel. In these cases it is imperative that the norms and standards governing international humanitarian law in armed conflict as provided in 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War and its Additional Protocols of 1977 are fully respected.

B. Violation of reproductive rights

Lanka.

Legal and socially constructed barriers remain in place in a number of countries in the region which effectively impeded women's rights to reproductive choice. In a region where son-preference traditions are overwhelmingly practised, inadequate action has been taken to curb some of the more harmful practices which put women's reproductive health at risk such as inadequate birth-spacing, abortions, sometimes carried out as part of illegal pre-natal sex selection and forced abortions and sterilizations. In China coercive measures of family planning officials in the forced sterilization and forced abortions of Chinese women continue to be reported, although such actions are not sanctioned by law³². In other countries, vigorous campaigns to increase contraceptive prevalence as part of national development goals has often targeted poor women and subjected them to accept such methods without proper counselling and medical advice³³.

Women's NGOs

The substantive role played by women's NGOs and their work in the different areas within this critical area of concern has been noted throughout the region. They have been involved in many activities, from social advocacy, at national and international levels, to raise greater awareness of the violence women face in the different spheres of life and its effects on women, the education of women and men in communities, to hands-on provisioning of important support services to women in need. In the last five years it is observed that there has been closer collaboration between women NGOs and government in some countries to the extent that some of their work has become an important part of national activities notably in the area of trafficking in women and girls and also in law reform activities.

³² Report of the Committee on the Elimination of Discrimination against Women , 20th session, A/54/38 (Part 1) concerning China at pages 29-34.

³³ Violence Against Women in South Asia - Sub-regional Overview, Women for Women , Bangladesh, Women in Development Discussion Paper Series No.3, UN Economic and Social Commission for Asia and the Pacific publication (1999).

Human Rights of Women

Executive Summary

The Beijing Conference led countries throughout the ESCAP region to pay increased attention to human rights of women and served as an important springboard for further progress in ratification of the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW). The importance attached to women's human rights varies greatly across the region, with reasons that are linked to, on the one hand, the level of development of the concerned country, and on the other, the political will of policy makers to act or a combination of the two factors.

Most activities in the first five-year period after Beijing have been concentrated in two key areas of legal reform and legal literacy. Overall, government actions in law reform to improve women's human rights in the fields of employment, women's inequality in the family (including domestic violence), trafficking in women and girls, women's economic rights, property rights and inheritance and nationality have been slow and uneven. Small gains have been made to raise women's legal capacity and status in some of the fore-mentioned areas; however, women are far from enjoying complete de facto equality.

Religion, cultural, customary and traditional practices, the socialization process in the home, in schools and in the community at large as well as the strong influence of the media have continued to stereotype the roles of women and men. In some circumstances, these factors have curtailed, if not rendered absolutely ineffective, the degree to which women can fully assert their entitlements under the law. For indigenous women, refugee women and migrant women, their lack of status in many countries, effectively ensures that they remain marginalized from mainstream activities, when under certain circumstances, their human rights may be the most vulnerable to abuse and exploitation. Few countries have made efforts to address the concerns of these women.

Affirmative action to eliminate barriers to women's equality has been exercised by only a few countries in the region, most notably in the fields of education and public sector employment, but they have had little impact. In some countries, the highest level of the courts have been forceful proponents of women's human rights in the past few years and have forced some governments from their political inertia to direct affirmative interventions for women's equality in certain areas. A number of countries have established national mechanisms, either with the specific mandate to support the promotion of women's human rights, or within the broad mandate of human rights, under which women's rights are included, such as national human rights commissions. They will however require the institutional support to effectively undertake their role as independent monitors of women's human rights. Their capacity to promote the advancement of women has yet to be tested.

Activities to promote legal literacy to empower women and men with knowledge of women's human rights have increased since 1995, most notably from the NGO sector. Strategies to outreach the different groups within society have been adopted from women at grass-roots level to public sector areas, including those working closely with women such as public prosecutors, the police and social education establishments. Greater use of the media and public education programmes, creative and innovative community theatre and advanced technology such as the Internet have been employed as tools of legal literacy in several countries, in addition to the more traditional delivery methods of dissemination. In some countries, these efforts have been complemented by the work of national human rights commissions, which have directed their activities to expanded target audiences in both public and private sectors, schools, military and law enforcement and prison personnel, as part of their legal education functions. In a few countries, the development of a comprehensive human rights legal education programme for women is gradually being created through effective networking among state institutions and the national human rights commission.

Human Rights of Women

The Beijing Conference gave rise to greater attention by governments throughout the ESCAP region to the human rights of women. The meeting served as an important springboard for further ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Since 1995, thirteen (13) ESCAP countries have ratified CEDAW, most recently by Tuvalu in June 1999. Overall, over two-thirds of the States Parties in the ESCAP region (member and associate members) have now ratified this Convention. Of those ESCAP countries that have ratified CEDAW, nearly one-third have entered reservations against this instrument for reasons of religion, culture or conflict of law. Even where ratification has been without reservation, implementation has generally been slow in many countries.

The importance attached to the subject of women's human rights varies greatly across the region. Reasons for that are linked to, on the one hand, the level of development of the concerned country and the priority accorded to human rights in the context of national development goals and on the other, the political will of policy makers to act or a combination of the two factors. In some countries, such as the Republic of Korea and Japan, the high level of commitment to women's human rights is reflected in comprehensive policies which address support not only for law reform but also the realization and enjoyment of such laws by women. In the case of Japan, its activities have since advanced further with the enactment in June 1999 of a women's "Basic Law" to promote a gender-equal society. The translation of policy into law effectively strengthens the legal capacity and status of women in Japan and will enable them to access legal remedies where the "Basic Law" is breached. Japan's activities join other countries in the region where a framework of human rights laws is already in place to support women's equal rights. In Thailand a National Policy and Master Plan of Action on Human Rights is being drafted which will include CEDAW provisions to complement national laws³⁴. In North and Central Asia, where women enjoy in law the fundamental human rights and

³⁴ National Commission on Women's Affairs of Thailand, paper presented at ESCAP Expert Group Meeting on the Regional Implementation of the Beijing Platform for Action, Bangkok, Thailand, 1-2 April 1999.

freedoms - a legacy from its former days, - national action plans are more directed towards the retention of these rights which are today at risk of being rapidly eroded by new realities brought on by economic transition.

I. Legal Reform

Within the area of legal reform, actions of governments have focussed on employment practices, women's inequality in the family including violence against women, trafficking in women and girls, women's economic rights, property rights and inheritance, nationality and women's health, particularly their reproductive rights.

A. Employment rights

In the area of employment rights, enactment of comprehensive anti-discrimination laws by Japan³⁵ and the Republic of Korea³⁶, came into legal effect in 1999. In the Republic of Korea, the new law is, inter alia, expected to protect women against early dismissal before men without cause, in response to the structural changes taking place in that country and anecdotal reports of social pressure placed on women to give up their jobs for men. In the area of equal pay principles, it is noted that while these have been in place for some time in a number of developed countries, equal pay has yet to be realized as reports of inequity in the pay gap continues³⁷. In the area of paid maternity leave, there has been increased action taken by some countries to provision for this in national labour codes; it is however observed that, even among some of the developed countries such as New Zealand³⁸ and the Republic of Korea³⁹, this responsibility continues to be borne primarily by employers. As a consequence, employers are reluctant to recruit women as they are regarded as being more expensive to hire. In the Republic of Korea, it has since been reported that steps are now being taken to socialize the cost of maternity leave benefits via tripartite social insurance schemes⁴⁰. It is expected that as more women seek part-time work in order to combine family responsibilities, or enter into the informal sector, their access to maternity benefits and legal redress in cases of discrimination will diminish. For women employed in Free Trade Zones (FTZ) it is noted that they continue

³⁵ The revised Equal Employment Opportunity Act came into effect on 1 April 1999. It prohibits discrimination against women in all stages of employment, including recruitment, mandatory retirement and dismissal; Japan country paper presented at ESCAP Expert Group Meeting on the Regional Implementation of the Beijing Platform for Action, Bangkok, Thailand, 1-2 April 1999.

³⁶ The 1999 Gender Discrimination Prevention and Relief Act prohibits discrimination against women in employment, education and in the provision of goods and services. It expressly prohibits discrimination in the enforcement of laws and policies. "Korean Implementation Report of the Beijing Platform for Action", Ki Soon Lee, Deputy Director, Policy Planning and Coordination Office, Presidential Commission on Women's Affairs. This paper was presented at the Meeting of Senior Officials of National Machineryes for the Advancement for Women in East and South East Asian Countries, Japan, 16-20 June 1999.

³⁷ New Zealand Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

³⁸ UN Press release WOM/1072, 8 July 1998 commentary on New Zealand report (CEDAW/C/NZL/3-4, 13 March 1998) to CEDAW Committee.

³⁹ Republic of Korea Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/KOR/4, 30 March 1998.

⁴⁰ Republic of Korea Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/KOR/4, 30 March 1998.

to fall outside the protection of national labour laws as well as constitutional guarantees of equality in employment. This is because FTZ, which are classified as private employers, are not subject to compliance with constitutional provisions (which often cover only public sector institutions) leaving women workers at risk to all manner of employment-related breaches with regard to standards and conditions of employment and sexual harassment. In the area of prevention of sexual harassment at work, significant steps have been taken through legislative reform to address this issue in countries such as Hong Kong, China, Japan, Republic of Korea and Singapore during the last five years. Law reform has also been considered in China⁴¹. However, it is in India where government implemented reform measures on this issue is most striking, having come only after the intervention of the Supreme Court of India in 1997 directing that guidelines on the prevention of sexual harassment be put in place in both public and private sectors of employment. To date, government action has been taken only in the public sector.

B. Women's rights within the family

There has been considerable imbalance in the actions taken by countries in the region to improve women's rights in the private sphere of the family. Some countries have introduced progressive laws and policies to address the subject of violence against women, particularly on the issue of domestic violence, in recognition that it is becoming a critical social issue. Yet in other parts of the region, women's inequality within the family in all matters pertaining to marriage, divorce and children have remained hidden, governed by personal and religious laws which are discriminatory against women. Overall, in situations of violence in the family and also in the community where the reported incidence of rape and sexual abuse of women is increasing, it is women's access to legal systems which remains difficult in a majority of countries. Distrust of law enforcement officials, the absence of gender-sensitive environment in the handling of such complaints

⁴¹ "China Sex Harassment Law Proposed", [BBC World News](#), 5 July 1998.

due to social and customary values and cultural traditions, and the overwhelming fear of social ostracism by women themselves keep many of these violations hidden.

In other areas, it is observed that some countries have advanced to provide women equal rights to the division of matrimonial property following marriage dissolution. While such laws have been in place for some time in North and Central Asia and in developed countries, Turkey had required the initiative and drive of women parliamentarians to put similar legislation in place⁴². At the other end of the spectrum of women's rights, New Zealand has recently reviewed the division of joint property after separation of de facto relationships and a Bill to that end has been tabled before the Parliament⁴³. With respect to the right of women to choose their family name after marriage, efforts are being made to change the laws in Thailand following the promulgation of the New Constitution in 1998, (heralded as a "People's Charter"), where gender equality provisions have effectively rendered existing discriminatory laws unconstitutional. These laws are now subject to revision. On the same issue, in the Philippines it is noted that women's inequality remains where customary law has rendered women's right to choose their family name under the civil law meaningless⁴⁴.

C. Property and inheritance rights

⁴² Turkey Second and third periodic reports of States parties to CEDAW Committee, CEDAW/C/TUR/2-3, 6 September 1996.

⁴³ New Zealand Third and fourth periodic reports of States parties to CEDAW Committee, CEDAW/C/NZL/3-4, 13 March 1998.

⁴⁴ Philippines Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/PHI/4, 25 July 1996.

With the exception of a few countries, women in the region continue to face difficulties to independently own land. In many countries in South Asia, women's inheritance rights remain governed by religious and customary laws. In Indonesia, where access to land is governed by civil, Islamic and customary laws, it is reported that a National Inheritance Law has since been enacted which is legally binding on all nationals⁴⁵. In Nepal, a Property Right Bill for Women has been prepared and recently placed before the Parliament⁴⁶. This proposed law would address gender inequalities in Nepal's Civil Code which currently prevents daughters from inheriting tenancy rights of parents⁴⁷, sharing property that belongs to parents⁴⁸ and which restricts women's independent disposal of property⁴⁹. In Hong Kong, China, land policies as they pertain to rent concessions of certain rural properties in the New Territories which permit succession by male line only and which have been protected under Hong Kong's Basic Law are now being reviewed⁵⁰ after criticism of the discriminatory policy. In Viet Nam, women still face practical difficulties in exercising their rights to property and consequently their access to credit. In spite of formal directives requiring registration of land use certificates in joint names, registration in the sole name of the husband continues. And where under constitutional provisions, land use rights are protected and can be inherited, women are not given this right in practice due to family custom of son preference⁵¹.

⁴⁵ Indonesia Second and third periodic reports of States parties to CEDAW Committee, CEDAW/C/IDN/2-3, 12 February 1997, UN Press Release, WOM/1022, 2 February 1998 commentary on Indonesia report to CEDAW Committee.

⁴⁶ Nepal Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

⁴⁷ The Act Concerning Land, 1964.

⁴⁸ No.1 of Chapter on Partition of the Muluki Ain (Civil Code).

⁴⁹ No.2 of Chapter on Women's Property of Muluki Ain (Civil Code). This requires a woman to obtain the permission of her father if unmarried, or her adult son if married or widowed before property transactions.

⁵⁰ Article 40 of the Basic Law in Hong Kong provides for the protection of lawful traditional rights and interests of indigenous villagers. By Article 40, the policy applying to male succession of rent concession to certain rural lands in the New Territories was exempted from the Sex Discrimination Ordinance 1995; China Third and Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/CHN/3-4/Add.2.

⁵¹ Viet Nam Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

D. Economic rights

Women's economic rights and ability to transact financial contracts varies across the region. While in certain countries there may be no legal impediments to women's access to formal credit, banking practice vis-à-vis women is observed to be discriminatory against women. Attitudes of banking staff in the services rendered to women had given rise to the creation of a Banking Ombudsman Scheme in New Zealand⁵² to review complaints against banks. Since the scheme started in 1992, most complaints have come from women concerning the operation of joint accounts on separation of marriage partners and prompted action to address this concern. In Bangladesh, the requirement of consent by a woman's husband or a male relative before sanctioning a loan - which had previously posed obstacles for women, especially rural women, to access credit - has been successfully challenged by non-governmental organizations, offering gender bias-free credit alternatives to women. In Nepal, law which allows women free and equal access to contract financial transactions of any form is inconsistent with other laws (as mentioned in previous section) which restrict women's independent disposal and use of property. In Viet Nam, it is noted that in civil transactions for credit services, the law⁵³ provides heads of household - defined as the one who represents the family in civil transactions - to authorize another adult family member to act on behalf of the family as its representative. Although this has been interpreted positively by the government to demonstrate that there are no obstructions to women headed households to access formal credit, this law may on the other hand be interpreted as amounting to hidden discrimination. In other areas, it is noted that in some countries, further assistance to financial resources is offered to indigenous women where mainstream sources may not be easily accessible due to formal credit requirements⁵⁴

⁵² New Zealand Third and fourth periodic reports of States parties to CEDAW Committee, CEDAW/C/NZL/3-4, 13 March 1998.

⁵³ Article 117 of the Civil Code, Viet Nam Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

⁵⁴ These financial resources are from the Maori Women's Development Fund; New Zealand Third and

and similar assistance is provisioned for women in need, including refugee women⁵⁵.

E. Reproductive rights

fourth periodic reports of States parties to CEDAW Committee, CEDAW/C/NZL/3-4, 13 March 1998.

⁵⁵ In New Zealand a Women's Loan Fund has been created by the Department of Labour to assist women in need with some of their financial expenses e.g. school fees for children and other expenses. These loans are interest-free and have been accessed by refugee women also for their needs.

In many countries, women's reproductive rights continue to be determined by religious, social and customary practices. The tradition of son preference is still widely practised throughout many parts of the region and is unlikely to be eliminated. In some countries, this has impacted on the reproductive choice of women, both in law and in practice. In Indonesia⁵⁶ and Sri Lanka⁵⁷ married women cannot be sterilized without the consent of their husbands. In Nepal⁵⁸, a proposed law on abortion will legalize abortion but there is a requirement that a married woman obtain the approval of her husband, and in the case of unmarried women, parental consent is required. And in China, its one-child policy aimed to control the growing population of the large nation, has continued to result in gender-selective abortion, female infanticide and non-registration of girl children owing to the tradition of son preference. At the same time, Chinese women and their counterparts in other countries in South Asia, continue to be targeted under vigorous national campaigns to accept sterilization or other contraception, with few government measures taken to promote greater male responsibility for contraception. There is a similar trend reported in other countries such as the Philippines⁵⁹, Thailand⁶⁰ and Viet Nam⁶¹ where efforts to promote greater voluntary male responsibility for contraception has had limited success. In a number of countries where abortion has been used by women as a method of contraception, family planning programmes have been expanded, with focus on high-risk groups, to provide women information to and access to wider choices⁶².

⁵⁶ Indonesia Second and third periodic reports of States parties to CEDAW Committee, CEDAW/C/IDN/2-3, 12 February 1997.

⁵⁷ Sri Lanka Shadow Report to CEDAW, Sri Lanka Women's NGO Forum, May 1999.

⁵⁸ UN Press Release WOM/1141, 18 June 1999 commentary on the report of Nepal to the CEDAW Committee, twenty-first session.

⁵⁹ Philippines Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/PHI/4, 25 July 1996 and Philippine response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

⁶⁰ Report of the CEDAW Committee, twentieth session, A/54/38 (Part 1).

⁶¹ Viet Nam Response to the UN Questionnaire on the Implementation of the Beijing Platform for Action.

⁶² These programmes have been undertaken in a number of the CIS states including Azerbaijan and Kyrgyzstan in conjunction with the World Health Organization (WHO) and United Nations Population Fund (UNFPA); Azerbaijan Initial report of States parties to CEDAW Committee, CEDAW/C/AZE/1, 16 September 1996, UN Press Release, WOM/1081, 22 January 1999, commentary on report of Kyrgyzstan to the CEDAW Committee. A similar strategy has been adopted in New Zealand; New Zealand Third and Fourth periodic reports of States

F. Nationality rights

parties to CEDAW Committee, CEDAW/C/NZL/3-4, 13 March 1998.

Women's legal capacity to confer nationality to their children can only be enforced by the male line in many South Asian countries⁶³. The gender bias in such laws was successfully challenged in 1997 in Sri Lanka by women, where the law prohibits women passing nationality to their children where the father is a non-national. However, although the Supreme Court found in favour of women's position, the nationality law remains unchanged. While this issue may be considered relevant for only an insignificant number of women, the case in Sri Lanka highlighted the importance of this right for women in that country where a large number of women living on plantations are married to husbands of Indian descent. In other countries, through recent amendment to laws, similar discriminatory provisions have been removed⁶⁴, and women's rights to confer citizenship strengthened⁶⁵. With respect to discriminatory laws in the granting of a woman's nationality to her foreign spouse that apply in some countries, some positive progress is noted in Thailand where following a 1996 resolution of Cabinet the law is in the process of change to grant foreign spouses of Thai women the same rights as spouses of Thai men vis-à-vis nationality.

G. Other considerations

(a) Indigenous women

In some countries, ethnic minority and indigenous women do not enjoy the nationality rights of their birth and origin. As a result, they are often restricted in their access to education and employment opportunities and in their access to legal systems. In certain countries they may be at high risk of trafficking and prostitution. Many

⁶³ In Nepal the anomaly of the law on nationality is that in a situation where a child is found in the country with parents unknown, the child will be deemed in law as a citizen of Nepal by descent until the father is located. However, the same right cannot be given to a child of a Nepali woman; Nepal Initial report to CEDAW Committee, CEDAW/C/NPL/1, 23 November 1998.

⁶⁴ UN Press Release WOM/1069, 7 July 1998 commentary of the report of the Republic of Korea to CEDAW Committee, nineteenth session.

⁶⁵ In Viet Nam the Nationality Law 1998 goes beyond the equality principle between parents to determine a child's nationality, to allowing a Vietnamese mother the right to confer nationality to her child upon birth where the father is unknown; The Second National Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1999.

indigenous women currently remain excluded from mainstream programme activities in the promotion of women's advancement. In the spirit of the Beijing Platform for Action, if women's human rights in the region are to be advanced, it is critical that these women are fully included as part of national programmes and that policy makers take immediate action to address the legal status of these women so they may attain their full human rights.

(b) Women migrant workers

Women migrant workers are employed in several countries, often as domestic help or in low level factory work. They often fall outside the reach of domestic labour laws and trade unions, and in many instances effectively have no access to legal assistance or redress against employers in cases of breach of employment in some countries. However, in some countries laws have recently been introduced to improve standards for migrant women workers, including protection of women from sexual harassment at work (see: Employment rights).

(c) Refugee women

It is only exceptionally in some countries in the region that refugee women are by law entitled to certain equivalent rights to education, employment and social assistance as nationals in their host country as countries in North and Central Asia and those countries that are State Parties to the 1951 Refugee Convention⁶⁶ and its 1967 Protocol. In the majority of countries, refugee and displaced women have few rights and their presence is at best tolerated on humanitarian grounds and services for their care largely undertaken by international relief and humanitarian organizations and to some extent security personnel (military, police, correctional services) of the concerned host country. In all of the above situations, the human security of refugee women is often at risk.⁶⁷

⁶⁶ 1951 Convention relating to the Status of Refugees.

⁶⁷ Observance by United Nations forces of international humanitarian law conducting operations under the United Nations command promulgated 12 August 1999 set out the guidelines for UN security personnel;

While some measures have been adopted to strengthen protection for these women from violence, particularly in the context of refugee camp situations, refugee and displaced women are far from enjoying their human rights. Similarly, women in armed conflict situations face grave human security issues where they are increasingly becoming legitimate targets of war by their association to particular groups as international norms governing humanitarian standards of conduct during conflict are openly flouted.

H. Affirmative Measures

Achieving de jure equality alone has not translated into defacto equality. This is observed across the entire region, irrespective of the different stages of development of countries. Religion, cultural, customary and traditional practices, the socialization process in the home, in schools and the community at large and the strong influence of the media have stereotyped the roles of women and men. In many countries there is a clear lack of political will on the part of policy makers to initiate the affirmative steps to eliminate barriers to equality to make the difference in women's enjoyment of their human rights. Article 4 of CEDAW calls upon States Parties to do more for women such as the adoption of temporary affirmative measures to accelerate de facto equality. However it is observed that few countries in the region which are States Parties to CEDAW have in fact elected to adopt such actions. In this context, it is perhaps timely that an Optional Protocol to CEDAW has been approved by the Commission on the Status of Women, which once in force will provide an avenue for women themselves to seek remedies for breaches of their human rights. In some of the countries that have adopted affirmative measures in the fields of employment and education, such as Bangladesh⁶⁸, Nepal⁶⁹, the Republic of

⁶⁸ Special measures in public sector employment have been introduced with quotas set for the recruitment of women viz., 10 per cent for officers and 15 per cent for other categories. In 1997, women filled only 7 per cent and 9 per cent of the set quotas respectively. And in the education sector where a 60 per cent quota has been set for the recruitment of primary school teachers, this target has yet to be fully met. Bangladesh Third and Fourth periodic reports of States parties to CEDAW Committee, CEDAW/C/BGD/2-3, 1 April 1997.

⁶⁹ Special incentives including school scholarships to families of girls in rural areas have been introduced to keep girls in school as a means to reduce the practice of devadesi. UN Press Release WOM/1141, 18 June 1999, commentary of report of Nepal to the CEDAW Committee (twenty-first session).

Korea⁷⁰ and Viet Nam⁷¹, results have been reportedly mixed. More significant gains have been attained in the field of women's political participation notably in Bangladesh and India at central and local level of government following the introduction of one-third quota systems.

⁷⁰ Programmes targeting increased women's employment in the public sector aimed for 20 per cent women's representation by 2000 and the encouragement of a similar scheme in public sector business and industry have had mixed results, particularly in the latter case where the scheme has been only on a voluntary basis. Programmes have also been introduced to promote employment of disabled workers, including women since 1990; Republic of Korea periodic report of States parties to CEDAW, CEDAW/C/KOR/4, 30 March 1998.

⁷¹ Affirmative action has been taken in the areas of employment and motherhood; Viet Nam Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

Mechanisms supportive to the advancement of women's human rights

Since the Beijing Conference, a number of countries have established national mechanisms to monitor progress on the advancement of women. These mechanisms have either been given specific mandates to support the promotion of women's human rights as in the Republic of Korea⁷² and in Bangladesh⁷³, or they are (or are in the process of being) established as national human rights commissions under which women's rights are included within this broad mandate as in Hong Kong, China, Fiji, Malaysia, Thailand, Turkey. These mechanisms join similar bodies in other countries that have been in existence for longer periods of time. From the reported less than successful experience of India⁷⁴ which has had a National Human Rights Commission since 1993 and a Commissioner for Women's Rights since 1996, it is imperative that these monitors are fully supported by policy makers and provided with the institutional support to do their work effectively.

⁷² In July 1999 a semi-judicial function has been conferred upon the Presidential Commission on Women's Affairs (PCWA) to determine disputes in cases of discrimination under the Act on the Prohibition of Gender Discrimination and Relief, 1999.

⁷³ A direction has been given for the establishment of a Permanent Law Commission to review all laws related to women, especially in the area of violence and also for the creation of a human rights commission; Bangladesh Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

⁷⁴ India Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

Other mechanisms that have proved to be forceful proponents of women's human rights in the last few years and which have forced governments from their political inertia, are the highest levels of the judiciary. The cases of India (on sexual harassment at the work place) and Sri Lanka (on nationality) have already been discussed. Additionally, a recent High Court judgment on indirect discrimination which has interpreted the New Zealand Bill of Rights Act 1990 to guarantee freedom from indirect discrimination as well as direct discrimination has been welcomed by women. This judicial precedent will enable women to challenge government policies and practices which have different impacts on women and men, particularly in the area of employment⁷⁵. In Nepal women have also successfully challenged laws in the Supreme Court in several instances, most notable of which was a petition that all gender-biased laws be repealed. In this case, the Supreme Court has directed government action to amend all laws within a two-year time frame⁷⁶. However, not all positive directions by the judiciary have necessarily seen action by government as illustrated by the example of the challenge in Sri Lanka, where women are still awaiting for the results of their efforts.

There are many examples throughout the region of the collective efforts of women's groups, which have become a strong and effective social mechanism for advocacy for women's rights. A very recent example is the lobbying action undertaken by the women's movement in Turkey⁷⁷ supported by the national machinery for women to realize the enactment of the Family Protection Law in 1998.

II. Legal Literacy

⁷⁵ New Zealand Third and Fourth periodic report of States parties to CEDAW Committee. CEDAW/C/NZL/3-4, 13 March 1998.

⁷⁶ Nepal Initial Report to CEDAW Committee, CEDAW/C/NPL1, 23 November 1998.

⁷⁷ Statement by Representative of Turkey at the Commission of the Status of Women, 1 March 1999.

Activities to promote legal literacy to empower women with knowledge of their human rights have increased since 1995 as national machineries for women in many countries have both separately and in collaboration with NGOs worked to disseminate widely information on the relevant international human rights instruments such as the UN Universal Declaration on Human Rights (UDHR), CEDAW and the Convention on the Rights of the Child (CRC), with the technical support of United Nations organizations and specialized agencies as part of the collaborative effort. In the Pacific Island sub-region, a regional framework for training has been developed which has become an educational model for all countries in that sub-region, including countries that have yet to ratify CEDAW. Legal literacy strategies have targeted different groups, from women at grass-roots level to public employee training institutions, social education establishments to sensitize personnel, including public prosecutors, judges, police, prison administrators, guards and other actors on the principles of gender equality. The media and public education programmes and use of advanced technology such as the Internet have been employed as tools of legal literacy programmes in a few countries, in addition to the more traditional delivery methods of dissemination. In countries where the gap between urban women and women living in rural and remote areas constitutes a major obstacle in the advancement of women, it is critical that functional literacy programmes are extended to all women, especially those in rural and remote areas and among the indigenous and ethnic minority women as a first step towards women's empowerment. At the same time, it is imperative that legal literacy programmes are extended to indigenous and ethnic minority women, refugee women and migrant women. In a number of countries, the national human rights commissions have already served as a useful conduit of legal literacy programmes directed to a range of target group audiences including both the public and private sectors, schools, military, law enforcement and prison personnel and the judicial courts, as part of their legal education functions. Their capacity to do more should be encouraged and could be expanded to work in collaboration with NGOs to outreach groups such as indigenous and minority women, women refugees and their communities and women migrant workers. Likewise the enlistment of the judiciary in legal literacy education has been reported⁷⁸ as part of efforts

⁷⁸ Iran Response to UN Questionnaire on the Implementation of the Beijing Platform for Action.

to promote women's human rights and could be usefully developed. In a few countries, it is noted that a move towards the development of a comprehensive human rights legal education programme for women is being provided through a network of institutions which include the national human rights commission, government entities responsible for labour and industrial relations, local societies of law practitioners, and legal advice bureaux⁷⁹

III. Role of NGOs in the promotion of women's human rights

Women NGOs have played a significant role in the promotion and improvement of women's human rights throughout the ESCAP region. They have served as educators of women in legal literacy programmes, formidable challengers to governments on laws and policies considered in violation of women's human rights as well as implementers of social change through their activities. There are many examples of their bold and innovative work in the region. While their work has often been praised, many NGOs still remain outside the mainstream of national programmes. In recognition of their work, which has become more and more integrated as part of national processes in the advancement of women, governments should be encouraged to include NGOs as full partners in policy making and programme planning.

⁷⁹ This model is being employed in New Zealand; New Zealand Third and Fourth periodic report of States parties to CEDAW Committee, CEDAW/C/NZL/3-4, 13 March 1998.

Women and Armed Conflict

Executive Summary

Contemporary armed conflicts in Asia largely concern conflicts fought within rather than between states such as in Afghanistan, Indonesia (Aceh, East Timor and Irian Jaya), Papua New Guinea (Bougainville) and Sri Lanka, although there are examples of traditional conflict between states such as in Nagorny-Karabakh and in the disputed region of Jammu and Kashmir. In all these conflicts, the devastation of war has resulted in the displacement of civilian populations, including women and children across borders into neighbouring countries or internally. Yet since the Beijing Conference, few countries in the ESCAP region have given this critical area of concern close attention, where it has either been excluded in national plans of action or subsumed within other critical areas of concern such as violence against women. The effect of this has resulted in the specific concerns of women and armed conflict being overwhelmed, if not lost entirely, in the broader debate of violence against women.

There are grave concerns regarding the standard of protection provided to women in conflict situations today, as violations against civilian women and girls have become increasingly a feature of contemporary warfare, where they are subjected to rape, sexual and physical abuse by state and non-state agents. In the former case, international norms of humanitarian law on armed conflict are openly flouted and state perpetrators of violence left unpunished. In the latter, gaps in the scope of the same international legal instruments and absence of national mechanisms mean women have no access to legal redress against abuses committed by non-state agents. In more diverse situations of conflict, including internal disturbances, rape has been used as a weapon of violence against women but state action has been weak to investigate the breach in the provision of protection and to bring perpetrators to justice.

In a region where few countries have ratified the 1951 Refugee Convention, the standard of protection accorded to refugee and displaced women has in many instances

been left to the efforts of the Office of the High Commissioner for Refugees (UNHCR) in coordination with government counterparts and non-governmental organizations (NGOs), including national NGOs. The main-streaming of gender concerns into refugee programmes including refugee status determination procedures is an on-going process. Programmes to empower women in education, leadership and decision-making roles within refugee and returnee communities have had mixed success. Reasons for this are invariably linked to customary and social attitudes of different refugee groups.

Small but not insignificant steps have been taken to harness the contribution of women in fostering a culture of peace in the region, most notably in peace-keeping activities - national and international in a few countries. Exceptionally, women are being included in forums for peace and conflict resolution, although matters concerning national security appear to remain in the hands of men, even in countries where women leaders are at the helm of power. Beyond the institutional structures, the voices of women in many parts of the region are being heard and gaining strength in peace advocacy to encourage greater collective international responsibility to maintain global peace.

Women and Armed Conflict

In the ESCAP region, contemporary armed conflict largely now concerns conflicts fought within rather than between states. Examples of these are noted in Afghanistan, Indonesia (including, Aceh, Irian Jaya and East Timor), Myanmar, Papua New Guinea (Bougainville), the Philippines and Sri Lanka. But there are also examples of traditional conflicts between states in the region such as the on-going conflict in the disputed region of Nagorny-Karabakh in Central Asia and also in Jammu and Kashmir. In all of these conflicts mentioned, the devastation of war has resulted in the displacement of civilians, including women and children, across borders into neighbouring countries or internally. With the recent nuclear capabilities demonstrated by India and Pakistan, tensions in sensitive hot spots have heightened, thereby dangerously undermining peace and security in the region.

In reviewing the progress achieved in the promotion and protection of women and their rights in situations of armed conflict, it would appear that this area of concern has been given little attention by countries, including those where there is on-going conflict and in countries which border neighbouring conflicts and to where displaced populations have sought safe haven or refugee status. In national plans of action, the critical area of women and armed conflict has either been excluded by many countries or in other cases, it has been amalgamated together with other critical areas of concern such as violence against women and women's human rights. In the case of the latter, this action has largely resulted in the specific concerns of women and armed conflict being overwhelmed, if not lost entirely in the broader debate of violence against women. This was not the intention of the Beijing Platform for Action or the Jakarta Declaration for the Advancement of Women.

Protection of Women Living in Situations of Armed Conflict

In many countries, the responsibility for women in situations of armed conflict has

either been passed largely to international relief organizations such as the International Confederation of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), and other humanitarian relief organizations or has been left in the hands of the military as part of security operations. In the latter case, this has raised the concern of the international community regarding the standards of protection provided to women in conflict situations as violations against women and girls have increasingly become a feature of contemporary warfare and where more and more non-combatant women and girls have been raped, often repeatedly, sexually and physically abused by state agents such as security and armed forces and the police and also by non-state agents such as paramilitary, opposition and mercenary groups. Gender violence committed by state and non-state agents has been well documented in many of the conflict areas in the region, including areas under foreign military occupation, as the new instrument of war. Even more disturbing is that such violations against civilian women and girls which constitute grave violations of humanitarian law are not being dealt with in accordance with humanitarian legal principles and the perpetrators of such acts of violence are often left unpunished by states. Where the Beijing Platform for Action has called for ratification of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949 and the Additional Protocols of 1977⁸⁰, which set forth the norms of international humanitarian law in armed conflicts, it is noted that few countries in the region are States Parties to the Geneva Convention and its Additional Protocols⁸¹. And where the Platform for Action has called upon states to respect fully the norms of international humanitarian law in armed conflicts, in those countries where there is current on-going conflict, few have applied these norms in practice. It has been reported that in cases where a state may order an investigation or inquiry pursuant to a complaint lodged against state agents, the result may often be inconclusive. Or where an

⁸⁰ Protocol I relates to the protection of victims of international armed conflicts. Protocol II relates to the protection of victims of non-international armed conflicts.

⁸¹ ESCAP countries that are States Parties to this Convention and one or both of the Additional Protocols are as follows: Armenia, Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Republic of Korea, Lao PDR, Maldives, Micronesia, Mongolia, New Zealand, Palau, Philippines, Russian Federation, Samoa, Solomon Islands, Uzbekistan, Vanuatu, Viet Nam (June 1999).

investigation may conclude that a criminal prosecution is required, the legal system fails to follow-up effectively. Examples can be cited in Sri Lanka, India relating to incidents in Jammu and Kashmir and Indonesia concerning incidents in Aceh, Irian Jaya and East Timor⁸². At the international level, such conduct has been heavily criticized for the lack of a supportive environment for victim complainants which is often intimidatory and the absence of transparency in the handling of complaints made against state agents by women victims. Much of the problem can be attributed to a conflict of interest where it is often the military court hearing complaints against its own soldiers. Such results simply further degrade the status of women and leave them without effective and proper redress. The intense scrutiny by the United Nations system of human rights and their abuses in recent years appears to have made some progress in discussions with some governments. Consequently, a few more countries in the region have given greater attention to, inter alia, strengthening of education and training on human rights law for security and law enforcement officials as well as for the wider community, and to addressing issues such as victim compensation and rehabilitation as part of future commitments.

In the case of acts of violence against civilian women by non-state agents which are committed at an equally alarming rate, but actions for which fall outside the scope of international legal instruments, there is an urgent need in the region to identify appropriate and effective mechanisms at a national level to provision access to legal redress for women victims. While there has been debate on this at the international level, no action has been noted in those countries where such abuses have been documented.

⁸² Commission for Human Rights Continues Debate on Human Rights of Women, UN Press release HC/CN/99/37 dated 14 April 1999 at page 11 and Report of the Special Rapporteur on Violence against Women Mission to Indonesia and East Timor E/CN.4/1999/68/Add.3 dated 21 January 1999.

Abuses against women are also often the by-product of internal lawlessness. The May 1998 riots in Jakarta saw waves of escalating internal conflict as certain sectors of the local Indonesian community, armed themselves to rally against the local Chinese business community. Over 150 ethnic Chinese women were reported raped⁸³ as a result of the failure of law enforcement and security officials to provide protection to all sectors of the population during the unrest. It was only after intense national and international pressure that an official inquiry was launched by the government which however, failed to draw any firm conclusions. These reports illustrate that in more and more diverse situations of conflict, whether of an international or internal nature, in armed conflict as well as internal armed disturbances, rape is used as a weapon of violence against women. While the incidences of rape during the May 1998 riots are considered to fall outside the scope of Article 1(2) of the Additional Protocol II⁸⁴ definition of armed conflict, they nonetheless demonstrate the changing realities of conflict and call for the same accountability by states as in armed conflicts to expeditiously investigate the breach in provision of protection by law enforcement and security forces and to bring perpetrators to justice. While the May 1998 riots in Jakarta may have been an isolated incident, it nevertheless sounds a cautionary warning to other countries in the region of the possible violent human excesses that may erupt as adverse economic conditions or political uncertainties exacerbate underlying faultlines in society.

The gaps in the provisioning of protection for civilian women in all of the above situations cannot and should not be left to the responsibility of the international community. Yet it is observed that the commitment of policy-makers to act expeditiously to fill in those gaps more often than not is absent. In some countries where there is internal armed

⁸³ Integration of Human Rights of Women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Mission to Indonesia and East Timor on the issue of violence against women, (20 November - 4 December 1998) at page 15.

⁸⁴ Protocol II Additional to the 1949 Geneva Conventions extended the scope of the Conventions beyond international armed conflicts as defined in Protocol I, to apply to all armed conflicts which take place in a territory between its armed forces and dissident armed forces (i.e. internal armed conflict). However, by Article 1(2) of Additional Protocol II situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature are defined as not being armed conflicts and are thereby excluded from coverage of the Geneva Conventions.

conflict, the fact that the human security of certain sections of the national population are not fully protected by their own national security and law enforcement personnel is cause for alarm.

Refugee Women

In the ESCAP region, few states have ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. In South Asia government support for hosting refugee programmes is often based largely on humanitarian tradition. In countries represented in South-East Asia, the presence of refugees today is at best tolerated. The only exception is in North and Central Asia where the Commonwealth of Independent States (CIS) has been the first sub-regional grouping to attempt to deal with questions of involuntary displacement within that sub-region in a comprehensive manner under its Programme for Action (1996), to provision for refugee and displaced populations legal protection and social support services. There are also individual countries that are States Parties to the 1951 Refugee Convention such as Japan, New Zealand and Australia which are bound to all the international obligations attached thereto.

In terms of the standard of protection accorded to the refugee and displaced women in the region, it can be said that through the combined efforts of governments, intergovernmental and non-governmental organizations (NGOs), including national NGOs, working together with the Office of the High Commissioner for Refugees (UNHCR) and other relief organizations, satisfactory progress has been made to provide for the physical and legal protection and assistance of refugee and displaced women both during their displacement and upon their return to their communities of origin. Gender concerns are being identified, addressed and actioned at all levels of a refugee programme with the active participation of refugee and displaced women. These include mechanisms/interventions designed to respond to sexual violence and other forms of violations against women in refugee camp situations⁸⁵. Refugee women are being given

⁸⁵ Refer UNHCR Guidelines on the Protection of Refugee Women, UNHCR Guidelines on Sexual Violence, UNHCR Guidelines on Evaluation and Care of Victims of Trauma and Violence.

access and equal treatment in refugee status determination procedures, and attention given to the refugee claims of women with recognition of gender-specific claims of persecution. Where return to communities of origin after conflict is now often the only solution for populations of refugees and the displaced, assistance has extended to programmes of rehabilitation which include programmes for women in leadership and decision-making within refugee and returnee communities. Obstacles have however been encountered in the provisioning of such programmes in certain countries which has had the effect of negating the affirmative measures taken to improve the status of refugee and displaced women within their own communities. The extreme situation in Afghanistan illustrates the difficulties faced by returnee women who no longer enjoy rights to education and employment and have effectively become relegated to second class citizens on their return to those areas under the control of the Taliban administration.

Women=s Contribution to Peace

Small but not insignificant steps have been taken to enhance the contribution of women in fostering a culture of peace in the region notably in peace-keeping activities. Although the participation of women in forums for peace and conflict resolution at all levels, particularly at the decision-making level is largely absent, there are noted exceptions. In the Philippines, women have been included in the Office of the Presidential Adviser on the Peace Processes (OPAPP), a government entity tasked in 1998 to coordinate peace process negotiations with rebel groups. By and large, matters concerning national security appear to remain in the hands of men, even in those countries in the region where there are women leaders at the helm of power. For some countries that have experienced the human toll of prolonged armed conflict, some efforts are being made to include women in matters of national defence. In Iran, consideration is being given to a position of an adviser in the Defense Ministry for women's affairs and for the appointment of a woman to that post. Specific details of the nature of the post are as yet unknown. In regional groupings such as the Association of South East Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) it is not clear whether a gender perspective has been integrated into discussions concerning

regional peace and security. At the level of peace-keeping on the ground, women from the region are contributing to peace efforts. In Vanuatu, civilian women volunteers are supporting the peace-keeping mission in Bougainville to assist in the provision of community services to affected populations. Similarly, women are included in the cooperation extended by Japan to international peace-keeping efforts.

Beyond the institutional structures, the voices of women caught in armed conflict calling for an end to hostilities and a return to peace are being heard. With the support of women's non-governmental organizations, peace advocacy is gaining strength in the region. An example is the collective effort of women and other members of civil society in Cambodia in past years in their advocacy for a ban on land mines. Where minefields in Cambodia cover approximately 36,000 square kilometers and are estimated to maim 300 persons a month, the peace movement in that country where women alongside war veterans, monks and nuns have played a leading role in calling for complete disarmament, spawned tremendous international support followed by action. The Ottawa Treaty, formally known as the Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction entered into force on 1 March 1999. Countries in the region that have signed the Convention are: Australia, Bangladesh, Brunei Darussalam, Cambodia, Cook Islands, Fiji*, Indonesia, Japan*, Malaysia, New Zealand, Philippines, Samoa*, Thailand, Turkmenistan* and Vanuatu. (* denotes signature and ratification.) Countries in the region that have indicated their wish to maintain land mines for security purposes include China, India, Pakistan and Singapore. In other parts of the region, the Baku Declaration on Human Rights represents the collective commitment of governments and non-governmental organizations to a subregional framework for partnership to enhance the role of women to combat violence and build sustainable peace within the particular context of the roles of women in conflict prevention, resolution and peace building, violence against women and refugee and internally displaced women.

Women Non-governmental Organizations

The role of women non-governmental organizations (NGOs) warrants special mention. They have contributed towards on-the-ground assistance to civilian women caught in contemporary situations of conflict, they have been ardent challengers to governments where women's rights in situations of war and war-like conflicts have also been violated and have strived to be included in the dialogue for peace in many parts of the region.